

PEPPER, HAMILTON & SCHEETZ
ATTORNEYS AT LAW

123 SOUTH BROAD STREET
PHILADELPHIA, PENNSYLVANIA 19109
215-893-3000

RECORDATION NO. 9747 Filed 1425

OCT 6 1978 - 2 10 PM

INTERSTATE COMMERCE COMMISSION

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

Dear Mr. Homme:

I am sending herewith for filing in your office pursuant to Section 20c of the Interstate Commerce Act, six counterparts of each of the following:

- (a) Conditional Sale Agreement dated as of September 15, 1978 between General Motors Corporation (Electro-motive Division) and Exchange National Bank of Chicago, as Trustee ("Exchange Bank"), covering 7 diesel-electric locomotives for use in interstate commerce;
- (b) Agreement and Assignment dated as of September 15, 1978 between General Motors Corporation (Electro-motive Division) and Girard Bank, as Agent for Investors, pursuant to which General Motors Corporation assigns to Girard Bank the former's interest in the Conditional Sale Agreement and in the locomotives;
- (c) Lease of Railroad Equipment dated as of September 15, 1978 between Toledo, Peoria & Western Railroad Company and Exchange National Bank of Chicago, as Trustee, pursuant to which the locomotives are leased to the lessee; and
- (d) Lease Assignment dated as of September 15, 1978 from Exchange Bank, as Trustee, to Girard Bank, as Agent, pursuant to which Exchange Bank assigns to the agent the former's interest in the lease.

RECEIVED
OCT 6 2 08 PM '78
I.C.C.
FEE OPERATION BR.

Handwritten signatures and notes on the left margin, including a large signature that appears to be 'Conroy'.

10 SOUTH MARKET SQUARE
HARRISBURG, PA. 17108
717-233-8483

RECORDATION NO. 9747 Filed 1425

OCT 6 1978 - 2 10 PM

INTERSTATE COMMERCE COMMISSION

1776 F STREET, N. W.
WASHINGTON, D. C. 20006
202-862-7500

2049 CENTURY PARK EAST
LOS ANGELES, CA. 90067
213-879-0904

RECORDATION NO. 9747 Filed 1425

OCT 6 1978 - 2 10 PM

INTERSTATE COMMERCE COMMISSION

No. 8-278A158
Date OCT 6 1978
Fee \$ 1.00
INTERSTATE COMMERCE COMMISSION
ICC Washington, D. C.

H. Gordon Homme, Jr.

-2-

October 2, 1978

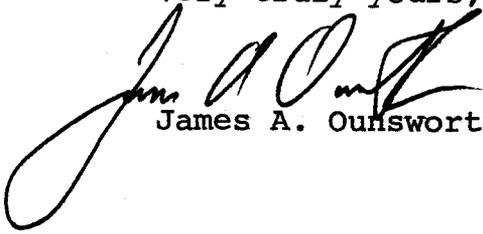
There is also enclosed a check in the amount of not more than \$200 for the recordation fees. The names and addresses of the parties to the transaction are as follows:

Vendor:	General Motors Corporation Electro-Motive Division LaGrange, Illinois 60525
Purchaser and Lessor:	Exchange National Bank of Chicago 130 LaSalle Street Chicago, Illinois 60609 Attn: Michael Goodman
Lessee:	Roger Ryan Toledo, Peoria & Western Railroad Company 2000 East Washington St. East Peoria, Illinois 61611
Assignee of Conditional Sale Agreement and of Lease:	Harold Ikeler, Jr. Vice President Girard Trust Bank, as Agent 3 Girard Square Philadelphia, Pennsylvania 19101

The equipment covered by the agreement consists of 7 - 2000 h.p. diesel-electric locomotives, GP38-2, with A.A.R. mechanical designation B-B bearing Lessee road numbers 2005-2011, inclusive, and marked "Leased from a Bank or Trust Company, as Trustee, and subject to a Security Interest recorded with the I.C.C."

Kindly return to the bearer five counterparts of each of the documents.

Very truly yours,



James A. Ounsworth

JAO/jcm
Enclosures

Interstate Commerce Commission
Washington, D.C. 20423

10/6/78

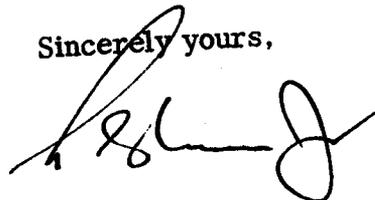
OFFICE OF THE SECRETARY

James A. Ounsworth
Pepper, Hamilton & Scheetz
123 South Broad Street
Philadelphia, Pennsylvania 19109

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 20(c) of the Interstate Commerce Act, 49 U.S.C. 20(c), on 10/6/78 at 2:10pm, and assigned recordation number(s) 9747, 9747-A, 9747-B, 9747-C

Sincerely yours,



H.G. Homme, Jr.,
Acting Secretary

Enclosure(s)

SE-30-T
(2/78)

9747 B

RECORDATION NO. FILED 1425

OCT 6 1978 -2 10 PM

INTERSTATE COMMERCE COMMISSION

LEASE OF RAILROAD EQUIPMENT

Dated as of September 15, 1978

between

TOLEDO, PEORIA & WESTERN RAILROAD COMPANY

and

EXCHANGE NATIONAL BANK OF CHICAGO

, as Trustee

[Covering 7 Diesel-Electric Locomotives]

Lease of Railroad Equipment

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LEASE OF RAILROAD EQUIPMENT, dated as of September 15, 1978, between Toledo, Peoria & Western Railroad Company, a Delaware corporation (the Lessee), and Exchange National Bank of Chicago, a national banking association, as Trustee (the Lessor) under a Trust Agreement dated as of the date hereof with Michigan National Leasing Corporation, a Delaware corporation (the Beneficiary).

WHEREAS, the Lessor has entered into a conditional sale agreement dated as of the date hereof (the Conditional Sale Agreement) with General Motors Corporation, a Delaware corporation (the Builder), wherein the Builder has agreed to construct, sell and deliver to the Lessor certain units of railroad equipment described in Schedule I hereto (the Equipment or the Units, or individually, a Unit);

WHEREAS, the Builder has assigned or will assign its interest in the Conditional Sale Agreement to Girard Bank, as agent (the Agent) for the Life Insurance Company of Virginia, pursuant to an agreement and assignment (the Assignment) dated as of the date hereof, between the Builder and the Agent;

WHEREAS, the Lessee desires to lease the Equipment, at the rentals and for the term and upon the conditions hereinafter provided;

WHEREAS, the Lessor simultaneously with the execution of this Lease will assign substantially all of its rights hereunder to the Agent pursuant to a Lease Assignment dated as of the date hereof (the Lease Assignment) which assignment is to be consented to by the Lessee pursuant to a Consent and Agreement dated as of the date hereof (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 and the Lessee hereby hires the Units from the Lessor, upon the following terms and conditions, but, upon default of the Lessee hereunder, subject to all the rights and remedies of the Vendor (as defined in the Conditional Sale Agreement), notwithstanding anything in this Lease to the contrary:

Section 1. Delivery and Acceptance of Units. The Lessor shall purchase all of the Units in the Groups as

defined and described in the Conditional Sale Agreement unless a greater or lesser number of Groups shall be agreed to by the Lessor and Builder.

The Lessor hereby appoints the Lessee its agent for inspection and acceptance of the Units pursuant to the Conditional Sale Agreement. Upon such delivery, the Lessee will cause an inspector of the Lessee to inspect the same, and if such Unit is found to be acceptable, to accept delivery of such Unit and execute and deliver to the Lessor a certificate of acceptance (a Certificate of Acceptance), the form of which is attached hereto as Exhibit A, in accordance with Article 3 of the Conditional Sale Agreement, stating that such Unit has been inspected and accepted on behalf of the Lessee on the date of such Certificate of Acceptance and is marked in accordance with §5 hereof, whereupon, subject to the next succeeding sentence, 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 excluded from the Conditional Sale Agreement pursuant to the first paragraph of Article 4 thereof shall be null and void and ineffective to subject such Unit to this Lease.

Section 2. Rentals. The Lessee agrees to pay or cause to be paid to the Lessor as rental for each Unit subject to this Lease (i) a payment on April 1, 1979, equal to .027083% of the Purchase Price of each Unit for each day elapsed from and including the Closing Date on which such Unit was settled for under the Conditional Sale Agreement to and including March 31, 1979, and (ii) 30 consecutive semi-annual payments payable April 1, and October 1 in each year commencing October 1, 1979, in an amount equal to 4.3431% of the Purchase Price of each Unit subject to the Lease on each such date.

All payments provided for in this Lease shall be made for the account of the Lessor, in care of the Agent, at Broad and Chestnut Sts., Philadelphia, Pennsylvania in immediately available funds in Philadelphia; provided, however, that any indemnity payable to the Beneficiary or the Lessor pursuant to Sections 6, 9 and 21 hereof shall be payable directly to the Lessor or the Beneficiary by check; provided further, however, that after the Agent shall have notified the Lessee that the Conditional Sale Indebtedness

payable under the Conditional Sale Agreement shall have been paid in full, such payments shall be made directly to the Lessor. The Lessee agrees that it shall make each payment provided for herein to the Agent in Federal or other immediately available funds by 11 A.M., City of Philadelphia time, on the date such payment is due.

Section 3. Net Lease. This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent, reduction thereof or setoff against rent or any other sums due or owing hereunder or payable by Lessee to any person or entity hereunder, including, but not limited to, abatements, reductions or setoffs due or alleged to be due by reason of any past, present or future claims of the Lessee against the Lessor under this Lease or against the Builder or any other person or entity, provided that nothing herein shall be deemed to impair the Lessee's right to assert and sue upon such claims in separate actions; nor, except as otherwise expressly provided herein, shall this Lease terminate or the 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 or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency, 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.

Section 4. Term of Lease. The term of this Lease as to each Unit shall begin on the date of the delivery to and acceptance by the Lessee of such Unit and, subject to the provisions of §7, §10 and §13 hereof, shall terminate on the last rental payment date hereunder.

Notwithstanding anything to the contrary contained herein, all rights and obligations under this Lease and in and to the Units, upon default by the Lessee hereunder, are subject to the rights of the Vendor under the Conditional Sale Agreement. If any event of default should occur under the Conditional Sale Agreement, the Agent may terminate this Lease (or rescind its termination), all as provided therein, unless the Lessee is not in default under this Lease and is complying with the provisions of the Consent.

Section 5. Identification Marks. The Lessee will cause each Unit to be kept numbered with the identifying number set forth in Schedule A hereto, or in the case of any Unit not there listed such identifying number as shall be set forth in any amendment or supplement hereto extending this Lease to cover such Unit, and will keep and maintain, plainly distinctly, permanently and conspicuously marked on both sides of each Unit, in letters not less than one inch in height, the following: "Owned by a Bank or Trust Company, as Trustee, and subject to a Security Interest recorded with the I.C.C.", or other appropriate words designated by the Lessor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the respective titles of the Lessor to and property interest in such Units, the Agent's Security Title (as defined in the Conditional Sale Agreement) to such Unit and the rights of the Lessor under this Lease and of the Agent under the Conditional Sale Agreement. 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 on both sides thereof and will replace promptly any such words which may be removed, defaced or destroyed. The Lessee will not change the identifying number of any Unit except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Agent and the Lessor owning said Unit and filed, recorded and deposited by the Lessee in all public offices where this Lease and the Conditional Sale Agreement shall have been filed, recorded and deposited.

Except as provided in this §5, 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 Lessee may allow the Units to be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates on railroad equipment used by them of the same or a similar type for convenience of identification of their rights to use the Units as permitted under this Lease.

Section 6. Taxes. All payments to be made by the Lessee hereunder will be free of expense to the Lessor and the Beneficiary for collection or other charges and will be free of expense to the Lessor and the Beneficiary with respect to the amount of any local, state, federal or foreign taxes (other than any United States federal income tax payable by the Beneficiary in consequence of the receipt of payments provided for herein and other than the aggregate of all state or city income taxes or franchise taxes measured by net income based on such receipts, up to the amount of any such taxes which would be payable to the state and city in which the Beneficiary has its principal place of business) or license fees, assessments, charges, fines and penalties (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called Impositions) hereinafter levied or imposed upon or in connection with or measured by this Lease or any sale, rental, use payment, shipment, delivery or transfer of title under the terms hereof or the Conditional Sale Agreement, all of which Impositions the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. The Lessee will also pay promptly all Impositions which may be imposed upon any Unit or for the use or operation thereof or upon the earnings arising therefrom (except as provided above) or upon the Beneficiary solely by reason of its ownership thereof and will keep at all times all and every part of such Unit free and clear of all Impositions which might in any way affect the title of the Lessor or result in a lien upon any such Unit; provided, however, that the Lessee shall be under no obligation to pay any Imposition of any kind so long as it is contesting in good faith and by appropriate legal proceedings such Imposition and the nonpayment thereof does not, in the opinion of the Lessor, adversely affect the title, property or rights of the Lessor hereunder or the Vendor under the Conditional Sale Agreement. If any Imposition shall have been charged or levied against the

Lessor or the Beneficiary directly and paid by the Lessor or the Beneficiary, the Lessee shall reimburse the Lessor or such Beneficiary on presentation of an invoice therefor; provided, however, that the Lessor or such Beneficiary shall have given the Lessee written notice of such Imposition prior to such payment.

In the event that the Lessor or the Beneficiary shall become obligated to make any payment to the Builder or the Agent or otherwise pursuant to Article 6 of the Conditional Sale Agreement not covered by the foregoing paragraph of this §6, the Lessee shall pay such additional amounts (which shall also be deemed Impositions hereunder) to the Lessor and/or such Beneficiary as will enable the Lessor and/or such Beneficiary to fulfill completely their obligations pursuant to said Article 6.

In the event any reports with respect to Impositions involving any Units are required to be made, the Lessee will either make such reports in such manner as to show the interests of the Lessor and the Agent in such Units or notify the Lessor and the Agent of such requirements and make such reports in such manner as shall be satisfactory to the Lessor and the Agent.

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

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

To the extent the Lessee may be prohibited by law from performing in its own name the duties required by this §6, the Lessor and the Beneficiary hereby authorizes the Lessee to act in the Lessor's and/or such Beneficiary's own

name and on the Lessor's and/or such Beneficiary's behalf; provided, however, that the Lessee shall indemnify and hold the Lessor and the Beneficiary 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 or the Beneficiary, submit to the Lessor or such Beneficiary copies of returns, statements, reports, billings and remittances, or furnish other evidence satisfactory to the Lessor or such Beneficiary of the Lessee's performance of its duties under this §6. The Lessee shall also furnish promptly upon request such data as the Lessor or the Beneficiary reasonably may require to permit the Lessor's or such Beneficiary's compliance with the requirements of taxing jurisdictions.

Section 7. Payment for Casualty Occurrences; Risk of Loss. In the event that any Unit shall be or become lost, stolen, destroyed, or, in the opinion of the Lessor or the Lessee, irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise, except for a requisition or taking which by its stated terms is less than the term of this Lease, (such occurrences being hereinafter called Casualty Occurrences) during the term of this Lease and prior to the return of such Unit in the manner set forth in Section 14 hereof, the Lessee shall promptly and fully notify the Lessor and the Agent with respect thereto. On the rental payment date next succeeding the Casualty Occurrence the Lessee shall pay to the Lessor with respect to such Unit the rental payment due on such rental payment date for such Unit plus an amount equal to the Casualty Loss Value (as hereinafter defined) of such Unit as of the date of such payment in accordance with Schedule II hereto. Upon the making of such payment of 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 loss, theft, complete destruction 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. Provided that the Lessee has previously paid the Casualty Loss Value to the Lessor, the Lessee shall be entitled to the proceeds of such sale to the extent they do not exceed the Casualty Loss Value, and shall pay such excess to the Lessor. The Lessee shall be entitled to credit against the Casualty Loss Value payable in respect of any Unit returned to the Builder pursuant to any patent indemnity provision of the Conditional Sale Agreement an amount equal to any payment made by the Builder to the Vendor in respect thereof under the Conditional Sale Agreement.

The Lessee, at its own expense, will promptly furnish the Lessor a revised schedule of payments of principal and interest thereafter to be made under the Conditional Sale Agreement, in such number of counterparts as said Lessor may request, calculated as provided in Article 7 of the Conditional Sale Agreement.

The Casualty Loss Value of each Unit shall be that percentage of the Purchase Price of such Unit as is set forth in Schedule II hereto opposite the number of such rental payment period. For the purposes of this definition, a "rental payment period" with respect to a Unit shall be each six month period ending on a rental payment date, with the exception of the first such period which shall be that portion of a period from the Closing Date for such Unit through the date next preceding the commencement of the first full six month rental payment period.

Section 8. Annual Reports. On or before March 31 in each year, commencing March 31, 1979, the Lessee will furnish to the Lessor and the Agent an accurate statement setting forth as at the preceding December 31 the amount, description and numbers of all Units then leased hereunder and covered by the Conditional Sale Agreement; the amount, description and numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year (or since the date of the commencement of this Lease in the case of the first such statement) and such other information regarding the condition and state of repair of the Units as the Lessor or Agent may reasonably request and an accurate statement stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and the markings required by §5 hereof and Article 9 of the Conditional Sale Agreement have been preserved or replaced. The Lessor, and the Agent shall have the right,

by their agents, to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Lessor or the Agent may request during the continuance of this Lease.

Section 9. Disclaimer of Warranties; Compliance with Laws and Rules; Maintenance; Indemnification. THE LESSEE TAKES EACH UNIT HEREUNDER AS IS. 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, it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee; and so long as an Event of Default is not continuing hereunder, the Lessor shall and does hereby irrevocably appoint and constitute 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 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 under the provisions of Article 13 and Annex B of the Conditional Sale Agreement; 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 Lessee's delivery of a Certificate of Acceptance to the Lessor shall be conclusive evidence as between the Lessee and the Lessor that all 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 Agent, to comply, and require every user of a Unit to comply, in all respects (including, without limitation, with respect to the use, maintenance and operation of each Unit) with all laws of the jurisdictions in which its or such user's operations involving the Units may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power of 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 such laws or rules require any alteration of any Unit, or in the event that any equipment or appliance on any such Unit shall be required to be changed or replaced, or in the event that any additional or other equipment or appliance is required to be installed on any such Unit in order to comply with such laws or rules, the Lessee will make such alterations, changes, replacements and additions at its own expense; provided, however, that the Lessee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Lessor or the Agent, adversely affect the property or rights of said Lessor or the Agent under this Lease or under the Conditional Sale Agreement.

The Lessee agrees that, at its own cost and expense, it will maintain and keep each Unit in good order and repair.

The Lessee shall make no improvements or additions to any Unit other than those provided above and except additions, modifications and improvements which are owned by the Lessee and readily removable without causing material damage to the Units.

Any and all parts installed on and additions and replacements made to any Unit (i) the cost of which is included in the Purchase Price of such Unit, (ii) in the course of ordinary maintenance of the Units or (iii) 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 as created by the Conditional Sale Agreement) shall immediately be vested in the Lessor.

The Lessee agrees to defend, indemnify, protect and hold harmless the Lessor and the Agent and their respective successors and assigns from and against all losses, damages, injuries, liabilities, claims, demands, costs, charges and expenses whatsoever, regardless of the cause thereof, and expenses in connection therewith, including, but not limited to, counsel fees and expenses, royalty payments and expenses, patent liabilities, penalties and

interest arising out of or as the result of the entering into or the performance of the Conditional Sale Agreement or this Lease, the ownership of any Unit (including, without limitation, the retention by the Agent of Security Title to any Unit), the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, construction, storage or return of any Unit or any design, system, process, formula, combination, article or material used or contained therein or in the construction thereof or any accident in connection with the operation, use, condition, possession, storage or return of any Unit resulting in damage to property or injury or death to any person, whether as a result of negligence, the application of the laws of strict liability, or otherwise except as otherwise provided in Section 14 of this Lease; provided, however, that nothing herein shall be construed to be a guarantee by the Lessee that the Units will have any residual value at the end of the term of this Lease or any extension thereof.

The indemnities arising under this paragraph shall continue in full force and effect notwithstanding the full payment of all obligations under this Lease or the termination of this Lease. The indemnities required to be paid by the Lessee to the Lessor under this paragraph shall be of an amount sufficient to restore the Lessor to the same position, after considering the effect of the receipt of such indemnities on its United States federal income taxes and state and city income taxes or franchise taxes based on net income that it would have been in had the indemnities not been required.

In addition and without limiting the preceding paragraph, the Lessee agrees to defend, indemnify, protect and hold harmless the Builder and the Lessor from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against Builder or the Lessor because of the use in or about the construction or operation of the Units or any part thereof, of any design specified by the Lessee and not developed or purported to be developed by the Builder, or article or material specified by the Lessee and not manufactured by the Builder, which infringes or is claimed to infringe on or which is claimed to constitute contributory infringement with respect to any patent or other right. The term "design" wherever used in this Lease or in any assignment of this Lease shall be deemed to include formulae, systems, processes and combinations.

The Lessee agrees to prepare and deliver to the Lessor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor) any and all reports (other than income 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 Agent of the Units or the leasing thereof to the Lessee.

Section 10. Default. If one or more of the following events (each such event being hereinafter sometimes called an Event of Default) shall occur and be continuing:

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

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

C. the insurance to be maintained by the Lessee under Section 20 hereof shall for any reason not remain in full force and effect as therein provided unless comparable substitute insurance satisfactory to the Lessor and the Agent shall be in force;

D. default shall be made in observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein or in the Participation Agreement and such default shall continue for 25 days after written notice from the Lessor to the Lessee specifying the default and demanding that the same be remedied;

E. a petition for reorganization under Section 77 of the Bankruptcy Act as now constituted or as said Section 77 may be hereafter amended shall be filed by or against the Lessee, and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease are not duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed in such proceedings in such manner that such obligations shall have the same status as

obligations incurred by such a trustee or trustees, within 30 days after such appointment (whether or not such appointment is subject to confirmation or ratification), if any, or 60 days after such petition shall have been filed, whichever shall be earlier; or

F. any other proceedings are commenced by or against the Lessee for any relief which includes, or might result in, modification of the obligations of the Lessee under this Lease under any bankruptcy or insolvency law, or law relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions, 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 duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed 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 obligations incurred by such a trustee or trustees or receiver or receivers, within 30 days after such appointment (whether or not such appointment is subject to confirmation or ratification), if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

G. an event of default set forth in Article 15 of the Conditional Sale Agreement shall have occurred as a result of any default by the Lessee in performing any of its obligations hereunder;

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, 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 enter upon the premises of the Lessee or

other premises where any of the Units may be and take possession of all or any 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 purpose whatever. The Lessor shall, nonetheless, 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 90) and also to recover from the Lessee as liquidated damages and not as a penalty (1) that percentage of the Purchase Price of the Units as is set forth on Schedule II hereto opposite the last quarterly period with respect to which the lease rental was paid by the Lessee under this Lease, plus interest to the extent legally enforceable at the rate of 10-3/4% per annum from the date of the Event of Default to the date of payment thereof, plus (2) any expenses, including reasonable attorney's fees, in addition thereto which the Lessor shall have sustained by reason of the breach of any covenant or covenants of this Lease other than for the payment of rental, less (3) the total net proceeds, if any, paid to the Vendor (as defined in the Conditional Sale Agreement) and the Lessor following any sale of the Units under the Conditional Sale Agreement or, if there has been no sale, the fair market value of the Units as reasonably estimated by the Lessor on the date of the Declaration of Default (as defined in the Conditional Sale Agreement); provided, however, that in the event that sale of any Units is prevented by the order of a court of competent jurisdiction or by any other governmental action, no reduction in the amount owing shall be made until such time as the Vendor receives any "income or proceeds of the Units" as that term is defined in the Conditional Sale Agreement. The amount payable under (1) less (3) shall be paid by the Lessee to the Lessor within 30 days after the date on which such amount is agreed upon or determined hereunder and the amounts payable under (2) shall be payable promptly by the Lessee to the Lessor upon receipt of invoice or invoices therefor.

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative, 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 permitted 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 rental payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf. The Lessor and the Lessee agree that the Lessor shall be entitled to all rights provided for in Section 77(j) of the Bankruptcy Act or any comparable provision of any amendment thereto, or of any other bankruptcy act, so that the Lessor, to the fullest extent provided by law, 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.

The failure of the Lessor to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

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

Section 11. Return of Units Upon Default. If this Lease shall terminate pursuant to Section 10 hereof, the Lessor may take, or cause to be taken or demand from the Lessee, immediate possession of the Equipment, or one or more of the Units thereof, and may remove the same from possession and use of the Lessee. For such purpose, the Lessor may enter upon the premises of the Lessee or any other premises where the Units may be located and may use and employ in connection with such removal any supplies,

services and aids and any available trackage and other facilities or means of the Lessee, with or without process of law.

In case the Lessor shall demand possession of the Units pursuant to this paragraph and shall designate a reasonable point or points for the delivery of the Units to the Lessor, the Lessee shall at its own cost, expense and risk, forthwith and in usual manner, cause the Units to be moved to such point or points and shall there deliver the Units or cause them to be delivered to the Lessor. Each Unit delivered by the Lessee shall have the Lessee's markings removed therefrom and shall be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted, and meet the standards then in effect of the Interchange Rules of the Association of American Railroads and/or the applicable rules of any governmental agency or other organization with jurisdiction. At the option of the Lessor, the Lessor may keep the Units on any of the lines or premises of the Lessee until the Lessor shall have leased, sold or otherwise disposed of the same, whichever first occurs, and the Lessee shall transport the Units to any place on any lines of railroad or to any connecting carrier for shipment, all as directed by the Lessor. For such purposes, the Lessee agrees to furnish, without charge for rent, storage or insurance, the necessary facilities at any point or points selected by the Lessor and reasonably convenient to the Lessee.

The assembling, delivery, storage and transportation of the Units as herein provided shall be at the cost, expense and risk of the Lessee. During any storage period, the Lessee will, at its own expense, maintain and keep the Equipment in good order and repair and will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser, including the Vendor or an authorized representative thereof, or lessee of any such Unit, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of the negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising the rights of inspection granted under this Section.

The Lessee shall pay rental at the rate of .027083% of the Purchase Price per day for any Unit not returned to Lessor immediately upon termination of this Lease under this Section 11.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this Section 11, the Lessee hereby irrevocably appoints the Lessor as 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. This agreement to deliver the Units, furnish facilities, and pay costs as hereinbefore provided is of the essence of the agreement between the parties, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance hereof.

The Lessee hereby expressly waives any and all claims against the Lessor and its assigns or agents and any and all claims against the Vendor and its assigns or agents for damages of whatever nature in connection with the retaking of any Unit of the Equipment in any reasonable manner.

Section 12. Assignment; Prohibition Against Liens; 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 assigns. Whenever the term Lessor is used in this Lease it shall include the assignees of the Lessor.

So long as the Lessee shall not be in default under this Lease and is in compliance with the Consent, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease but, without the prior written consent of the Lessor, the Lessee shall not assign or transfer its leasehold interest under this Lease in the Units or any of them except as hereinafter provided in this Section 12.

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 resulting from claims against the Lessor or the Agent not related to the ownership of the Units) upon or with respect to any Unit, including any accession thereto, or any part thereof or the

interest of the Lessor, the Agent or the Lessee therein, and will promptly discharge any such lien, claim, security interest or other encumbrance which arises; provided, however, that the Lessee shall be under no obligation to pay or discharge such claim so long as it is contesting the validity thereof in good faith in a reasonable manner and by appropriate legal proceedings and the nonpayment thereof does not, in the opinion of the Lessor, adversely affect the title, property or rights of the Lessor hereunder or under the Conditional Sale Agreement or the title, property or rights of the Agent in or to the Units under the Conditional Sale Agreement. If any such claim shall have been charged or levied by anyone and in any manner against the Lessor directly and paid by the Lessor or the Beneficiary, the Lessee shall reimburse the Lessor or such Beneficiary on presentation of an invoice therefor; provided, however, that the Lessor or such Beneficiary shall have given written notice to the Lessee of such claim prior to such payment. The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of or suffer or allow to pass out of its possession or control, any of such Units, except to the extent permitted by this Section 12.

So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession of the Units, to the use of the Units by the Lessee or any affiliate of the Lessee upon lines of railroad owned or operated by the Lessee or any such affiliate or upon lines of railroad over which the Lessee or any such affiliate has trackage or other operating rights or over which railroad equipment of the Lessee, or any such affiliate is regularly operated pursuant to contract, to permit the use of the Units by connecting and other carriers in the usual interchange of traffic or in the transportation thereof from the place of delivery to the Lessee; provided, however, that the Lessee shall not use or permit the use of any Unit in service involving the regular operation and maintenance thereof outside the United States of America; provided further, however, that more than 10% of the Units shall not at any time be located outside of the United States of America. The Lessee may receive and retain compensation for such use from other railroads so using any of the Units.

For purposes of this Section 12, "affiliate" shall mean any corporation which, directly or indirectly, controls

or is controlled by, or is under common control with, the Lessee. For the purposes of this definition, "control" (including controlled by and under common control with), as used with respect to any corporation, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such corporation, whether through the ownership of voting securities or by contract or otherwise.

The rights of the Lessee under this Lease may not be assigned by the Lessee, except that, with the prior written consent of the Lessor and the Agent, at the sole and absolute discretion of the Agent, the Lessee may assign all of its rights under this Lease to a third party of reliable standing with the financial community which shall have duly assumed the Lessee's obligations hereunder. Nothing contained herein shall prohibit or restrict the right of the Lessee to assign or transfer all of its right hereunder to any corporation, incorporated under the laws of any state of the United States or the District of Columbia, which shall have duly assumed all of its obligations hereunder, under the Consent and under the Participation Agreement, into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety, but in any event only if such corporation will not, upon the effectiveness of such assumption, merger, consolidation or acquisition be in default under any provisions of this Lease. Notwithstanding anything else contained in this Section, no Unit shall be located outside of the United States for more than 180 days in any one calendar year nor more than one-half of the time from the date that such Unit is placed in service until the end of that calendar year.

Section 13. Right of First Refusal. Provided that no Event of Default, or event which with the giving of notice or the lapse of time, or both, would become an Event of Default, shall have occurred and be continuing, Lessor agrees that for 30 days following the termination of the Lease Agreement (the "NAC Lease") dated as of September 15, 1978, between Lessor, as lessor, and NAC Leasing Corporation, a Delaware corporation, as lessee, whether such termination is at the scheduled expiration of the NAC Lease, at the end of any renewal term, or otherwise, and provided that Lessee shall have given Lessor written notice no more than 30 days after written notice from Lessor or such termination or

proposed termination that Lessee wants to retain its right of first refusal hereunder, the Lessor shall not sell, transfer or otherwise dispose of the Equipment unless (a) the Lessor shall have received from a responsible purchaser or purchasers a bona fide offer or offers, satisfactory to the Lessor in writing to purchase all or any portion of the Equipment; (b) the Lessor shall have given the Lessee written notice (i) setting forth in detail the identity of such purchaser, the proposed purchase price, the proposed date of purchase and all other material terms and conditions of such purchase, including, without limitation, any arrangements for the financing of such purchase known to the Lessor, and (ii) offering to sell such Equipment to the Lessee upon the same terms and conditions as those set forth in such notice; and (c) the Lessor shall not have received written notification from the Lessee within 20 days following receipt of such notice by the Lessee of its election to purchase such Equipment upon such terms and conditions. This right of first refusal shall not apply or affect Units which from time to time have been disposed of due to a Casualty Occurrence or because any Units have been deemed obsolete under the NAC Lease. The obligation of the Lessor pursuant to this Section 13 shall continue notwithstanding the expiration of this Lease.

In the event the Lessee purchases the Equipment, upon payment of the purchase price, 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 representations or warranties except that such Units are free and clear of all claims, liens, security interests and other encumbrances by or in favor of any person claiming by, through or under the Lessor) for such Units, and such other documents as may be required to release such Units from the terms and scope of this Lease and to transfer title thereto to the Lessee or such assignee or nominee, in such form as may reasonably be requested by the Lessee, all at the Lessee's expense.

Section 14. Return of Units upon Expiration of Term. As soon as practicable on or after the expiration of the term of this Lease with respect to any Unit, the Lessee will (unless the Unit is purchased by the Lessee), at its own cost and expense, at the request of the Lessor deliver possession of such Unit to the Lessor upon such storage tracks as the Lessor may reasonably 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 three months and transport the same, at any time within such three-month period, to any reasonable place, or to any connecting carrier for shipment, all as directed by the Lessor; the movement and storage of such Unit to be at the expense and risk of the Lessee. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of such Unit, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under the sentence. The movement, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to move, deliver, store and transport the Units. The Units returned to the Lessor upon the termination of the initial term or any extended term of this Lease shall (1) be in the same operating order, repair and condition as when originally delivered hereunder, ordinary wear and tear excepted, and (2) meet the standards then in effect under the interchange rules of the Association of American Railroads and/or the applicable rules of any governmental agency or other organization with jurisdiction.

Lessee agrees to pay as additional rental an amount equal to .027083% of Purchase Price of such unit per day for the period commencing as of the expiration of the lease term until delivery of such unit has been accepted by NAC Leasing Corporation for leasing under a certain lease of even date between NAC Leasing Corporation, as Lessee, and Michigan National Leasing Corporation, as Lessor.

Section 15. Recording. The Lessee will cause this Lease, the Conditional Sale Agreement and any assignment hereof or thereof to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act. The Lessee will undertake the filing, registering, depositing, and recording required of the Lessor under the Conditional Sale Agreement 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 re-record whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Agent for the purpose of proper protection, to their satisfaction, of the Agent's and the Lessor's respective interest in the Units, or for the purpose of carrying out the intention of this Lease, the Conditional Sale Agreement or the assignments thereof to the Agent; and the Lessee will promptly furnish to the Agent and the Lessor evidences of all such filing, registering, depositing or recording, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Agent and the Lessor.

Section 16. 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 as additional rental, to the extent legally enforceable, an amount equal to 10-3/4% per annum of the overdue rentals for the period of time during which they are overdue or such lesser amount as may be legally enforceable. Such interest shall be calculated on a 360-day year of twelve 30-day months.

Section 17. Notices. Any notice required or permitted to be given herein shall be deemed to have been given when deposited in the United States certified mails, first-class postage prepaid, addressed as follows:

(a) if to the Lessor, at

38200 West Ten Mile Road
Farmington Hills, Michigan 48024
Attn: Richard Zamojski, Vice President

(b) if to the Lessee, at

Toledo, Peoria & Western
Railroad Company
2000 E. Washington Blvd.
E. Peoria, Ill. 61611
Attn: Controller

(c) if to the Agent, at

Broad and Chestnut Streets,
Philadelphia, Pennsylvania 19101
Attn: Corporate Trust Department

or addressed to such other address as the Lessor, the Lessee or the Agent shall hereafter furnish to the others in writing.

Section 18. Severability. 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.

Section 19. Effect and Modification of Lease. Except for the Participation Agreement, this Lease including the Schedules attached hereto completely states the rights of the Lessor and the Lessee with respect to the Units and supersedes all other agreements, oral or written, with respect to the Units. 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 officers of the Lessor and of the Lessee or its duly authorized representative and consented to in writing by the Agent.

Section 20. Insurance. The Lessee will maintain, at its sole cost and expense, at all times during the term of this Lease and any renewals thereof (and thereafter during the first three (3) month period in which the Units are being assembled and delivered to the locations specified in Section 14 hereof), with reputable insurers acceptable to the Lessor and, so long as any portion of the Conditional Sale Indebtedness under the Conditional Sale Agreement shall remain outstanding, acceptable to the Agent, insurance in an amount not less than the Casualty Loss Value of each Unit leased hereunder, insuring against loss and destruction of, and damage to, such Unit arising out of fire, windstorm, explosion, and all other hazards and risks ordinarily subject to extended coverage insurance, and against such other hazards and risks as are customarily insured against by companies owning or leasing property of a similar character and engaged in a business similar to that engaged in by the Lessee with a deductible amount not in excess of \$50,000 per occurrence and an overall maximum equal to \$2,300,000 and public liability insurance in respect of each of the Units at the time subject hereto against all risks and liability in an amount and against risks customarily insured against by the Lessee for damage to the property of, or for personal injuries suffered by, third persons and insured against by

the Lessee on similar equipment owned or loaned by Lessee. All such insurance policies shall (i) name the Lessor and Agent as additional insureds, with losses to be payable to the Lessor, the Agent and the Lessee as their respective interests may appear, (ii) provide that the policies will not be invalidated as against the Lessor or the Agent because of any violation of a condition or warranty of the policy or application therefor by the Lessee, (iii) provide that the policies may be materially altered or cancelled by the insurer only after thirty (30) days prior written notice to the Lessor and the Agent, (iv) provide that the policies shall be prepaid a minimum of ninety (90) days and (v) 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 or the Agent. Such insurance policies shall also not have any co-insurance clauses. The insurance policies shall also provide that upon receipt by the insurer from the Lessor or the Agent of any written notice of the occurrence of an Event of Default hereunder, any proceeds payable by said insurer with respect to any loss or destruction of, or damage to, any Unit, shall be payable solely to the Agent (or the Lessor after payment of all outstanding Conditional Sale Indebtedness) from the date of said insurer's receipt of such written notice, up to the date said insurer receives written notice from the Agent or the Lessor that said Event of Default is no longer continuing hereunder.

The Lessee shall deliver to the Lessor and the Agent, prior to the commencement of the lease term for any Unit (or at such other time or times as the Lessor or the Agent may request) and from time to time, but within at least 15 days, prior to the expiration date of each policy of such insurance, a certificate signed by a firm of independent insurance brokers, appointed by the Lessee and not unreasonably objected to by the Lessor or the Agent, showing the insurance then maintained by the Lessee pursuant to this §20 with respect to the Units (and the expiration date of each policy of such insurance) and stating the opinion of said firm that the insurance then carried and maintained on or with respect to the Units complies with the terms hereof; provided, however, that the Lessor and the Agent shall be

under no duty to examine such certificate, opinion or other evidence of insurance, or to advise the Lessee in the event that its insurance is not in compliance with this Lease.

In the event that the Lessee shall fail to provide or to maintain insurance as herein provided, the Lessor or the Agent, upon notice to the Lessee, may at its option procure such insurance and, in such event, the Lessee shall, upon demand, reimburse the Lessor or the Agent for the cost and any other expenditures for such insurance, together with interest thereon at the maximum rate of interest permitted by law, but not more than 10-3/4% per annum from the date of the Lessor's or Agent's payment until reimbursed by the Lessee.

Section 21. Indemnity for Federal and Other Income Tax Benefits; Indemnity for Improvements. It is the intent of the Lessor and Lessee that this Lease will be recognized as a lease for all federal, state, city and local income taxes or franchise taxes imposed on or measured by net income, and that the Lease does not convey to the Lessee any right, title or interest in the Units except as lessee and that for United States income tax purposes (and to the extent applicable for state and local tax purposes) the Beneficiary as the beneficial owner of the Units purchased by it, shall be entitled to such deductions, credits and other benefits as are provided by the Internal Revenue Code of 1954, as amended to the date hereof (the Code), to an owner of property including, without limitation, (i) the maximum depreciation deduction with respect to the Units authorized under section 167 of the Code based on an amount at least equal to the aggregate Purchase Price of the Units utilizing the 12-year depreciable life prescribed for the Units in the Asset Guideline Class No. 00.25 in accordance with 167(m) of the Code, employing the double declining balance method of depreciation, switching to the sum of the years-digits method when most beneficial to the Beneficiary [without taking into account the salvage value of the Units until the Units have been depreciated to a salvage value that is not greater than 10% of their basis to the Beneficiary (said 10% being based upon an estimated gross salvage value of 20% of the basis of the Units which will be reduced by 10% of such basis as provided in Section 167(f) of the Code)] (such deduction being herein called the ADR Deductions); (ii) deductions with respect to interest payable under the Conditional Sale Agreement pursuant to section 163 of the

Code (such deductions being herein called the Interest Deduction); and (iii) the 10% investment credit (such credit being herein called the Investment Credit) with respect to the aggregate Purchase Price of the Units pursuant to section 38 and related sections of the Code.

The Lessee agrees that neither the Lessee nor any corporation controlled by the Lessee, in control of the Lessee, or under common control with the Lessee, directly or indirectly, will at any time take any action or file any returns or other documents inconsistent with the foregoing or which would increase the amount of rentals required to be taken into income by the Beneficiary over the amount specified to be payable under the Lease on the dates due thereunder, except as specifically provided in the Lease or hereunder, and that each will file such returns, take such actions and execute such documents as may be reasonable and necessary to facilitate accomplishment of the intent hereof. The Lessee agrees to keep and make available for inspection and copying by the Beneficiary such records as will enable such Beneficiary to determine the extent to which it is entitled to the benefit of the Investment Credit and the ADR Deduction with respect to the Units.

The Lessee represents and warrants that (i) at the time the Beneficiary becomes the beneficial owner of any Units, all the Units constitute property the full Purchase Price of which qualifies for the Investment Credit under sections 38, 46, 48 and 50 of the Code; (ii) at the time the Beneficiary becomes the beneficial owner of any Units, such Units will constitute "new section 38 property" within the meaning of sections 46 and 48 of the Code and at the time the Beneficiary becomes the beneficial owner of any Units, the Units will not have been used by any person so as to preclude "the original use of such property" within the meaning of sections 48(b) and 167(c)(2) of the Code from commencing with the Beneficiary; (iii) at all times during the term of the Lease each Unit will constitute "section 38 property" within the meaning of section 48(a) of the Code and the Lessee will not at any time during the term of the Lease use or fail to use any Unit in such a way as to disqualify it as "section 38 property" within the meaning of section 48(a) of the Code; (iv) the Lessee will maintain sufficient records to verify such use, which records will be furnished in the manner provided above within 30 days after receipt of a written demand thereof; and (v) at the time of

each Closing the Beneficiary shall become the beneficial owner of such Units.

If by reason of the inaccuracy in law or in fact of the representations and warranties set forth in the preceding paragraph or any act or omission of the Lessee or for any other reason whatsoever (other than a change in the Code occurring after the date of delivery of the last Unit under this Lease), the Beneficiary shall lose, or shall not have, or shall lose the right to claim, or shall suffer a disallowance of, or shall be required to recapture all or any portion of, the Investment Credit, the ADR Deduction or the Interest Deduction with respect to all or part of any Unit (any such loss, disallowance, recapture or treatment being hereinafter called a Loss), then, unless the Lessee shall exercise its option pursuant to the proviso contained in this paragraph, the Lessee shall, beginning with the next succeeding rental payment date after written notice is given to the Lessee by such Beneficiary of such fact, and on each succeeding rental payment date, pay to such Beneficiary such amount or amounts as shall cause the Beneficiary's net return to equal the net return that would have been realized by the Beneficiary if such Loss had not occurred (which it is understood includes giving effect to any federal, state or local income tax required to be paid by the Beneficiary with respect to receipt of payments made to it by the Lessee pursuant to the operation of this paragraph) and the Lessee shall forthwith pay to the Beneficiary the amount of any interest and/or penalties which may be assessed by the United States of America or any state or local taxing authority against the Beneficiary attributable to such Loss; provided, however, that in the event of any Loss of the Investment Credit, the Lessee may, in lieu of making the payments as hereinabove provided, at its option, pay to the Beneficiary on the next succeeding rental payment date after written notice is given to the Lessee by the Beneficiary of the fact of such Loss, a single payment in an amount as shall, in the reasonable opinion of the Beneficiary, cause said Beneficiary's net return to equal the net return that would have been realized by the Beneficiary if such Loss had not occurred (which payment shall also give effect to any federal, state or local income tax required to be paid by the Beneficiary due to such payment), together with payment of any amount equal to any interest and/or penalties which may be assessed by the United States of America or any state or local taxing authority against the Beneficiary attributable to such Loss.

Notwithstanding the other provisions of this Lease, payment shall not be required to be made by the Lessee to the extent that the Beneficiary shall have suffered such Loss as a direct result of the occurrence of any of the following events:

(i) a Casualty Occurrence, if the Lessee shall have paid to the Lessor the amounts stipulated under §7 thereof;

(ii) a voluntary transfer or other voluntary disposition by the Beneficiary of any interest in the Equipment (other than pursuant to the assignment of the Lease to the Vendor), unless, in each case, an Event of Default shall have occurred and be continuing under the Lease;

(iii) the failure of the Beneficiary to claim in a timely or proper manner the Investment Credit, the ADR Deduction or the Interest Deduction;

(iv) the failure of the Beneficiary to have sufficient liability for Federal income tax against which to credit all such Investment Credit or sufficient taxable income (before taking into account the ADR Deduction or the Interest Deduction) to benefit in full from the ADR Deduction or the Interest Deduction, as applicable;

(v) any other voluntary act or omission by the Lessor or the Beneficiary inconsistent with the transactions contemplated hereby.

Notwithstanding any other provision of this Lease, the indemnities of the Lessee contained in this Section run solely to the Beneficiary and not to any real or purported assignee or transferee of the Beneficiary where such assignment or transfer results in a taxable transaction.

If a claim shall be made by the Internal Revenue Service or any state or local taxing authority with respect to the income tax liability of the Beneficiary which, if successful, would under this Section lead to payments by the Lessee or a lump sum payment by the Lessee, such Beneficiary (as a precondition to receiving any such payments) shall give prompt notice of such claim to the Lessee and shall take such action to contest such claim as the Lessee shall reasonably request in writing from time to time; provided,

however, that within 30 days after notice by the Beneficiary of such proposed adjustment, the Lessee shall request that such adjustment be contested; provided further, however, that an Event of Default shall not be continuing under this Lease. For purposes of this paragraph, "prompt notice" shall mean written notice to the Lessee not less than 30 days before the expiration of the time period for initiating a contest of such claim. The Beneficiary may in its discretion forego any administrative appeal with the Internal Revenue Service in respect of such claim and the Beneficiary may at its option, either pay the tax claimed and sue for refund in the appropriate United States District Court or in the United States Court of Claims, as the Beneficiary may elect, or contest such claim in the United States Tax Court, considering, however, in good faith such request as the Lessee may make concerning the most appropriate forum in which to proceed; provided, however, that the final decision as to selection of the forum shall be solely that of the Beneficiary. If the Beneficiary pays the tax claimed and sues for refund, payments by the Lessee shall be required so as to maintain the Beneficiary's net return in the manner and to the extent provided in this Section, and the Lessee shall forthwith pay to the Beneficiary's the amount of any interest and/or penalty assessed against the Beneficiary with respect to such additional income tax; provided, however, that the Lessee shall not be required to make any such payments unless the Beneficiary agrees in writing to apply any refund in accordance with the next following sentence. If any Beneficiary receives a refund as a result of contesting such claim, such Beneficiary shall forthwith pay to the Lessee any interest thereon paid by the taxing jurisdiction together with the appropriate amount of any interest and/or penalty payments which should not have been assessed against and paid by the Lessee to the Beneficiary pursuant to the preceding sentence, and the payments of the Lessee with respect to such claim shall, beginning with the next rental payment due after receipt by the Beneficiary of such refund, be decreased to such amount or amounts as shall cause the Beneficiary's net return over the term of the Lease to equal the net return that would have been realized by such Beneficiary if additional income taxes of the Beneficiary in the amount refunded had not been paid but not below the amounts required to satisfy the obligations of the Lessor under the Conditional Sale Agreement. Any such contest shall be at the sole expense of the Lessee and the Lessee agrees to pay to the Beneficiary on demand any expense

incurred by the Beneficiary in connection with such contest; and the Beneficiary shall have no obligation to continue such contest in the event the Lessee fails to make such payment within 10 days after written demand.

The Lessee's and any Beneficiary's agreements to pay any sums which may become payable pursuant to this Section shall survive the expiration or other termination of this Lease.

In the event and to the extent that the cost of any improvement and/or addition (hereinafter called Capital Expenditures) to a Unit made by the Lessee, under and pursuant to the terms of the Lease or otherwise, is required to be included in the gross income of the Beneficiary for federal, state or local income tax purposes at any time prior to the time such Unit is disposed of in a taxable transaction, then the Lessee shall, beginning with the next succeeding rental payment date after the date on which the Lessee is required to furnish written notice thereof to such Beneficiary pursuant to the last paragraph of this Section after said inclusion in the Beneficiary's gross income is required, and on each succeeding rental payment date, pay to the Beneficiary amount or amounts as shall, after taking into account any present or future tax benefits that the Beneficiary reasonably anticipates it will derive from its additional investment in the Units (including, without limitation, any available current deduction, current and future depreciation deductions and investment tax credit) cause the Beneficiary's net return to equal the net return that would have been realized by the Beneficiary if the cost of such Capital Expenditures had not been includible in the Beneficiary's gross income (which payment shall also give effect to any federal, state or local income tax required to be paid by Beneficiary's due to such payment); provided, however, that the Lessee shall not be required to make any such payments unless the Beneficiary agrees in writing to contest such inclusion if requested in writing by the Lessee and as provided in this Section.

In determining the present or future tax benefits to be taken into account by the Beneficiary in establishing the payments required hereby, such Beneficiary shall attempt to maximize such benefits and hence minimize those payments by making such elections (including where advantageous the applicable asset guideline repair allowance and accelerated depreciation, if then permitted) and utilizing such conven-

tions and accounting methods as will further such objectives; provided, however, that the Beneficiary shall not be required to make any election or utilize a particular convention or accounting method if the Beneficiary determines, in its sole discretion but in good faith, (i) that in so doing it will adversely affect its federal, state or local income tax liability determined without regard to this transaction; or (ii) that such practice is inconsistent with prior accounting procedures utilized by the Beneficiary.

For the purposes of this Section, the cost of Capital Expenditures made by the Lessee shall be deemed to be "required to be included in the gross income of the Beneficiary for federal, state or local income tax purposes" if such inclusion is required by (i) any provision of the Code or state or local income tax law or the applicable regulations enacted or adopted thereunder as of the date of the Lease; or (ii) any published revenue ruling of the Internal Revenue Service issued as of the date of the Lease which has not been held invalid by a court having appellate jurisdiction over the federal income tax liability of the Lessor in a decision which has become final.

The Beneficiary shall not be required to contest a claim made by the Internal Revenue Service or any state or local income taxing authority with respect to the includability of the cost of any Capital Expenditure in such Beneficiary's gross income unless the Beneficiary has received an opinion from counsel selected by the Lessee and acceptable to the Beneficiary that there is a reasonable basis for contesting such inclusion.

The Lessee agrees to make a payment to the Beneficiary for any interest and/or penalties resulting from the failure to include the cost of Capital Expenditures in its income tax return, such payment to be made upon demand in an amount sufficient to restore such Beneficiary to the same position it would have been in had such interest and/or penalties not been imposed.

The Lessee agrees that, within 30 days after the close of any calendar year (or in the event that the Beneficiary gives the Lessee written notice that such Beneficiary's taxable year closes on a date specified therein other than December 31, within 30 days after said date) in which the Lessee has made Capital Expenditures which are of a type, or

which the Lessee believes are of a type, or are of a type which the Lessee has been advised may be of a type, required to be included in the gross income of a Beneficiary for federal, state or local income tax purposes prior to the time such Unit is disposed of in a taxable transaction, the Lessee will give written notice thereof to the Beneficiaries describing such Capital Expenditures in reasonable detail and specifying the cost thereof with respect to each Unit.

Section 22. Execution. This Lease may be executed in several counterparts, but the counterpart delivered to the Interstate Commerce Commission for recordation and subsequently redelivered to the Agent shall be deemed the original counterpart. Although this Lease is dated as of the date first above written, for convenience, 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.

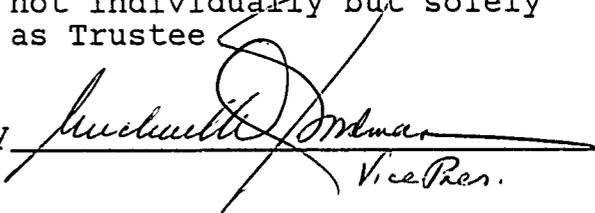
Section 23. Law Governing. The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the Commonwealth of Pennsylvania; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording or deposit hereof, if any, and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited.

Section 24. Immunities; No Recourse. It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that 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 Exchange National Bank of Chicago or for the purpose or with the intention of binding said national association personally but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement and this Lease is executed and delivered by said national association not in its own right but solely in the exercise of the powers expressly conferred upon it as trustee under the Trust Agreement; and except in the cases of negligence or wilful misconduct, no personal liability or personal responsibility is assumed by or shall

at any time be asserted or enforceable against said national association or the Beneficiary on account of this Lease or on account of any representations, undertaking or agreement of the said national association or the Beneficiary, either expressed or implied, all such personal liability against said bank or the Beneficiary, if any, being expressly waived and released by the Lessee, the Agent and by all persons claiming by, through or under either of them.

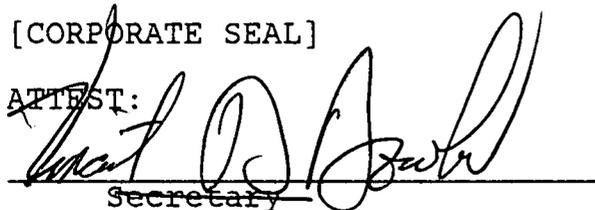
IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed as of the date first above written.

EXCHANGE NATIONAL BANK OF CHICAGO,
not individually but solely
as Trustee

By 
Vice Pres.

[CORPORATE SEAL]

ATTEST:


Secretary

ASSISTANT TRUST OFFICER

TOLEDO, PEORIA & WESTERN
RAILROAD COMPANY

By _____

[CORPORATE SEAL]

ATTEST:

Secretary

[NOTARIAL SEAL]

STATE OF :
: ss.
COUNTY OF :

On this 27th day of September, 1978, before me personally appeared MICHAEL D. GOODMAN, to me personally known, who, being by me duly sworn, says that he is Vice President of Exchange National Bank of Chicago, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation as trustee, 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 as trustee.

J. Dennis Galbreath
Notary Public

[NOTARIAL SEAL]

STATE OF :
: ss.
COUNTY OF :

On this _____ day of _____, 1978, before me personally appeared _____, to me personally known, who, being by me duly sworn, say that he is _____ of TOLEDO, PEORIA & WESTERN RAILROAD COMPANY, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[NOTARIAL SEAL]

EXHIBIT A

CERTIFICATE OF ACCEPTANCE

TO: Exchange National Bank of Chicago, as Trustee (the Lessor)
General Motors Corporation (the Builder)

I, a duly appointed and authorized representative of the Lessor and Toledo, Peoria & Western Railroad Company (the Lessee) under the Lease of Railroad Equipment dated as of September 15, 1978 between the Lessor and the Lessee, do hereby certify that I have inspected, received, approved and accepted delivery, under the Conditional Sale Agreement between the Builder and the Lessor dated as of September 15, 1978 and under the Lease, of the following Units of Equipment:

TYPE OF EQUIPMENT

PLACE ACCEPTED:

DATE ACCEPTED:

NUMBER OF UNITS:

MARKED AND NUMBERED:

I do further certify that the foregoing Units of Equipment are in good order and condition, and appear to conform to the specifications, requirements and standards applicable thereto, to all applicable United States Department of Transportation and Interstate Commerce Commission requirements and to all standards recommended by the Association of American Railroads applicable to such Equipment, that the Lessee has no knowledge of any defect in any of the foregoing Units of Equipment with respect to design, manufacture, condition or in any other respect, and that each Unit has been labeled upon each side thereof in letters not less than one inch in height as follows:

Leased from a Bank or Trust Company,
as Trustee, and subject to a Security
Interest recorded with the I.C.C.

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

Dated: _____, 1978

Inspector and Authorized
Representative of the Lessee

SCHEDULE I

(to the Lease)

Type	Builder's Specifications	Quantity	Lessee's Road Numbers (Inclusive)	Average Unit Price	Total Price	Delivery
GP38-2	8090 2000 Horse Power GP38-2 Locomotive	7	2005 through 2011	\$480,000	\$3,360,000	Hamilton, Illinois
Total.....		7		Total.....	\$3,360,000	

SCHEDULE II
(to the Lease)

CASUALTY LOSS VALUE
PERCENTAGE OF PURCHASE PRICE

Rental Payment
Period

1	1979 - April	108.7144
2	October	108.9802
3	1980 - April	109.0461
4	October	108.9247
5	1981 - April	108.6134
6	October	108.1214
7	1982 - April	101.0388
8	October	100.1958
9	1983 - April	99.1829
10	October	98.0102
11	1984 - April	90.2689
12	October	88.7909
13	1985 - April	87.1734
14	October	85.4232
15	1986 - April	77.1376
16	October	75.1443
17	1987 - April	73.0349
18	October	70.8183
19	1988 - April	68.4921
20	October	66.0682
21	1989 - April	63.5445
22	October	60.9332
23	1990 - April	58.2348
24	October	55.4498

Rental Payment
Period

25	1991 - April	52.5932
26	October	49.6684
27	1992 - April	46.6739
28	October	43.6081
29	1993 - April	40.4695
30	October	37.2564
31	1994 - April	33.9672
	October	

LEASE OF RAILROAD EQUIPMENT

Dated as of September 15, 1978

between

TOLEDO, PEORIA & WESTERN RAILROAD COMPANY

and

EXCHANGE NATIONAL BANK OF CHICAGO

, as Trustee

[Covering 7 Diesel-Electric Locomotives]

Lease of Railroad Equipment

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LEASE OF RAILROAD EQUIPMENT, dated as of September 15, 1978, between Toledo, Peoria & Western Railroad Company, a Delaware corporation (the Lessee), and Exchange National Bank of Chicago, a national banking association, as Trustee (the Lessor) under a Trust Agreement dated as of the date hereof with Michigan National Leasing Corporation, a Delaware corporation (the Beneficiary).

WHEREAS, the Lessor has entered into a conditional sale agreement dated as of the date hereof (the Conditional Sale Agreement) with General Motors Corporation, a Delaware corporation (the Builder), wherein the Builder has agreed to construct, sell and deliver to the Lessor certain units of railroad equipment described in Schedule I hereto (the Equipment or the Units, or individually, a Unit);

WHEREAS, the Builder has assigned or will assign its interest in the Conditional Sale Agreement to Girard Bank, as agent (the Agent) for the Life Insurance Company of Virginia, pursuant to an agreement and assignment (the Assignment) dated as of the date hereof, between the Builder and the Agent;

WHEREAS, the Lessee desires to lease the Equipment, at the rentals and for the term and upon the conditions hereinafter provided;

WHEREAS, the Lessor simultaneously with the execution of this Lease will assign substantially all of its rights hereunder to the Agent pursuant to a Lease Assignment dated as of the date hereof (the Lease Assignment) which assignment is to be consented to by the Lessee pursuant to a Consent and Agreement dated as of the date hereof (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 and the Lessee hereby hires the Units from the Lessor, upon the following terms and conditions, but, upon default of the Lessee hereunder, subject to all the rights and remedies of the Vendor (as defined in the Conditional Sale Agreement), notwithstanding anything in this Lease to the contrary:

Section 1. Delivery and Acceptance of Units. The Lessor shall purchase all of the Units in the Groups as

defined and described in the Conditional Sale Agreement unless a greater or lesser number of Groups shall be agreed to by the Lessor and Builder.

The Lessor hereby appoints the Lessee its agent for inspection and acceptance of the Units pursuant to the Conditional Sale Agreement. Upon such delivery, the Lessee will cause an inspector of the Lessee to inspect the same, and if such Unit is found to be acceptable, to accept delivery of such Unit and execute and deliver to the Lessor a certificate of acceptance (a Certificate of Acceptance), the form of which is attached hereto as Exhibit A, in accordance with Article 3 of the Conditional Sale Agreement, stating that such Unit has been inspected and accepted on behalf of the Lessee on the date of such Certificate of Acceptance and is marked in accordance with §5 hereof, whereupon, subject to the next succeeding sentence, 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 excluded from the Conditional Sale Agreement pursuant to the first paragraph of Article 4 thereof shall be null and void and ineffective to subject such Unit to this Lease.

Section 2. Rentals. The Lessee agrees to pay or cause to be paid to the Lessor as rental for each Unit subject to this Lease (i) a payment on April 1, 1979, equal to .027083% of the Purchase Price of each Unit for each day elapsed from and including the Closing Date on which such Unit was settled for under the Conditional Sale Agreement to and including March 31, 1979, and (ii) 30 consecutive semi-annual payments payable April 1, and October 1 in each year commencing October 1, 1979, in an amount equal to 4.3431% of the Purchase Price of each Unit subject to the Lease on each such date.

All payments provided for in this Lease shall be made for the account of the Lessor, in care of the Agent, at Broad and Chestnut Sts., Philadelphia, Pennsylvania in immediately available funds in Philadelphia; provided, however, that any indemnity payable to the Beneficiary or the Lessor pursuant to Sections 6, 9 and 21 hereof shall be payable directly to the Lessor or the Beneficiary by check; provided further, however, that after the Agent shall have notified the Lessee that the Conditional Sale Indebtedness

payable under the Conditional Sale Agreement shall have been paid in full, such payments shall be made directly to the Lessor. The Lessee agrees that it shall make each payment provided for herein to the Agent in Federal or other immediately available funds by 11 A.M., City of Philadelphia time, on the date such payment is due.

Section 3. Net Lease. This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent, reduction thereof or setoff against rent or any other sums due or owing hereunder or payable by Lessee to any person or entity hereunder, including, but not limited to, abatements, reductions or setoffs due or alleged to be due by reason of any past, present or future claims of the Lessee against the Lessor under this Lease or against the Builder or any other person or entity, provided that nothing herein shall be deemed to impair the Lessee's right to assert and sue upon such claims in separate actions; nor, except as otherwise expressly provided herein, shall this Lease terminate or the 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 or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency, 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.

Section 4. Term of Lease. The term of this Lease as to each Unit shall begin on the date of the delivery to and acceptance by the Lessee of such Unit and, subject to the provisions of §7, §10 and §13 hereof, shall terminate on the last rental payment date hereunder.

Notwithstanding anything to the contrary contained herein, all rights and obligations under this Lease and in and to the Units, upon default by the Lessee hereunder, are subject to the rights of the Vendor under the Conditional Sale Agreement. If any event of default should occur under the Conditional Sale Agreement, the Agent may terminate this Lease (or rescind its termination), all as provided therein, unless the Lessee is not in default under this Lease and is complying with the provisions of the Consent.

Section 5. Identification Marks. The Lessee will cause each Unit to be kept numbered with the identifying number set forth in Schedule A hereto, or in the case of any Unit not there listed such identifying number as shall be set forth in any amendment or supplement hereto extending this Lease to cover such Unit, and will keep and maintain, plainly distinctly, permanently and conspicuously marked on both sides of each Unit, in letters not less than one inch in height, the following: "Owned by a Bank or Trust Company, as Trustee, and subject to a Security Interest recorded with the I.C.C.", or other appropriate words designated by the Lessor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the respective titles of the Lessor to and property interest in such Units, the Agent's Security Title (as defined in the Conditional Sale Agreement) to such Unit and the rights of the Lessor under this Lease and of the Agent under the Conditional Sale Agreement. 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 on both sides thereof and will replace promptly any such words which may be removed, defaced or destroyed. The Lessee will not change the identifying number of any Unit except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Agent and the Lessor owning said Unit and filed, recorded and deposited by the Lessee in all public offices where this Lease and the Conditional Sale Agreement shall have been filed, recorded and deposited.

Except as provided in this §5, 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 Lessee may allow the Units to be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates on railroad equipment used by them of the same or a similar type for convenience of identification of their rights to use the Units as permitted under this Lease.

Section 6. Taxes. All payments to be made by the Lessee hereunder will be free of expense to the Lessor and the Beneficiary for collection or other charges and will be free of expense to the Lessor and the Beneficiary with respect to the amount of any local, state, federal or foreign taxes (other than any United States federal income tax payable by the Beneficiary in consequence of the receipt of payments provided for herein and other than the aggregate of all state or city income taxes or franchise taxes measured by net income based on such receipts, up to the amount of any such taxes which would be payable to the state and city in which the Beneficiary has its principal place of business) or license fees, assessments, charges, fines and penalties (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called Impositions) hereinafter levied or imposed upon or in connection with or measured by this Lease or any sale, rental, use payment, shipment, delivery or transfer of title under the terms hereof or the Conditional Sale Agreement, all of which Impositions the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. The Lessee will also pay promptly all Impositions which may be imposed upon any Unit or for the use or operation thereof or upon the earnings arising therefrom (except as provided above) or upon the Beneficiary solely by reason of its ownership thereof and will keep at all times all and every part of such Unit free and clear of all Impositions which might in any way affect the title of the Lessor or result in a lien upon any such Unit; provided, however, that the Lessee shall be under no obligation to pay any Imposition of any kind so long as it is contesting in good faith and by appropriate legal proceedings such Imposition and the nonpayment thereof does not, in the opinion of the Lessor, adversely affect the title, property or rights of the Lessor hereunder or the Vendor under the Conditional Sale Agreement. If any Imposition shall have been charged or levied against the

Lessor or the Beneficiary directly and paid by the Lessor or the Beneficiary, the Lessee shall reimburse the Lessor or such Beneficiary on presentation of an invoice therefor; provided, however, that the Lessor or such Beneficiary shall have given the Lessee written notice of such Imposition prior to such payment.

In the event that the Lessor or the Beneficiary shall become obligated to make any payment to the Builder or the Agent or otherwise pursuant to Article 6 of the Conditional Sale Agreement not covered by the foregoing paragraph of this §6, the Lessee shall pay such additional amounts (which shall also be deemed Impositions hereunder) to the Lessor and/or such Beneficiary as will enable the Lessor and/or such Beneficiary to fulfill completely their obligations pursuant to said Article 6.

In the event any reports with respect to Impositions involving any Units are required to be made, the Lessee will either make such reports in such manner as to show the interests of the Lessor and the Agent in such Units or notify the Lessor and the Agent of such requirements and make such reports in such manner as shall be satisfactory to the Lessor and the Agent.

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

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

To the extent the Lessee may be prohibited by law from performing in its own name the duties required by this §6, the Lessor and the Beneficiary hereby authorizes the Lessee to act in the Lessor's and/or such Beneficiary's own

name and on the Lessor's and/or such Beneficiary's behalf; provided, however, that the Lessee shall indemnify and hold the Lessor and the Beneficiary 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 or the Beneficiary, submit to the Lessor or such Beneficiary copies of returns, statements, reports, billings and remittances, or furnish other evidence satisfactory to the Lessor or such Beneficiary of the Lessee's performance of its duties under this §6. The Lessee shall also furnish promptly upon request such data as the Lessor or the Beneficiary reasonably may require to permit the Lessor's or such Beneficiary's compliance with the requirements of taxing jurisdictions.

Section 7. Payment for Casualty Occurrences; Risk of Loss. In the event that any Unit shall be or become lost, stolen, destroyed, or, in the opinion of the Lessor or the Lessee, irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise, except for a requisition or taking which by its stated terms is less than the term of this Lease, (such occurrences being hereinafter called Casualty Occurrences) during the term of this Lease and prior to the return of such Unit in the manner set forth in Section 14 hereof, the Lessee shall promptly and fully notify the Lessor and the Agent with respect thereto. On the rental payment date next succeeding the Casualty Occurrence the Lessee shall pay to the Lessor with respect to such Unit the rental payment due on such rental payment date for such Unit plus an amount equal to the Casualty Loss Value (as hereinafter defined) of such Unit as of the date of such payment in accordance with Schedule II hereto. Upon the making of such payment of 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 loss, theft, complete destruction 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. Provided that the Lessee has previously paid the Casualty Loss Value to the Lessor, the Lessee shall be entitled to the proceeds of such sale to the extent they do not exceed the Casualty Loss Value, and shall pay such excess to the Lessor. The Lessee shall be entitled to credit against the Casualty Loss Value payable in respect of any Unit returned to the Builder pursuant to any patent indemnity provision of the Conditional Sale Agreement an amount equal to any payment made by the Builder to the Vendor in respect thereof under the Conditional Sale Agreement.

The Lessee, at its own expense, will promptly furnish the Lessor a revised schedule of payments of principal and interest thereafter to be made under the Conditional Sale Agreement, in such number of counterparts as said Lessor may request, calculated as provided in Article 7 of the Conditional Sale Agreement.

The Casualty Loss Value of each Unit shall be that percentage of the Purchase Price of such Unit as is set forth in Schedule II hereto opposite the number of such rental payment period. For the purposes of this definition, a "rental payment period" with respect to a Unit shall be each six month period ending on a rental payment date, with the exception of the first such period which shall be that portion of a period from the Closing Date for such Unit through the date next preceding the commencement of the first full six month rental payment period.

Section 8. Annual Reports. On or before March 31 in each year, commencing March 31, 1979, the Lessee will furnish to the Lessor and the Agent an accurate statement setting forth as at the preceding December 31 the amount, description and numbers of all Units then leased hereunder and covered by the Conditional Sale Agreement; the amount, description and numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year (or since the date of the commencement of this Lease in the case of the first such statement) and such other information regarding the condition and state of repair of the Units as the Lessor or Agent may reasonably request and an accurate statement stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and the markings required by §5 hereof and Article 9 of the Conditional Sale Agreement have been preserved or replaced. The Lessor, and the Agent shall have the right,

by their agents, to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Lessor or the Agent may request during the continuance of this Lease.

Section 9. Disclaimer of Warranties; Compliance with Laws and Rules; Maintenance; Indemnification. THE LESSEE TAKES EACH UNIT HEREUNDER AS IS. 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, it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee; and so long as an Event of Default is not continuing hereunder, the Lessor shall and does hereby irrevocably appoint and constitute 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 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 under the provisions of Article 13 and Annex B of the Conditional Sale Agreement; 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 Lessee's delivery of a Certificate of Acceptance to the Lessor shall be conclusive evidence as between the Lessee and the Lessor that all 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 Agent, to comply, and require every user of a Unit to comply, in all respects (including, without limitation, with respect to the use, maintenance and operation of each Unit) with all laws of the jurisdictions in which its or such user's operations involving the Units may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power of 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 such laws or rules require any alteration of any Unit, or in the event that any equipment or appliance on any such Unit shall be required to be changed or replaced, or in the event that any additional or other equipment or appliance is required to be installed on any such Unit in order to comply with such laws or rules, the Lessee will make such alterations, changes, replacements and additions at its own expense; provided, however, that the Lessee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Lessor or the Agent, adversely affect the property or rights of said Lessor or the Agent under this Lease or under the Conditional Sale Agreement.

The Lessee agrees that, at its own cost and expense, it will maintain and keep each Unit in good order and repair.

The Lessee shall make no improvements or additions to any Unit other than those provided above and except additions, modifications and improvements which are owned by the Lessee and readily removable without causing material damage to the Units.

Any and all parts installed on and additions and replacements made to any Unit (i) the cost of which is included in the Purchase Price of such Unit, (ii) in the course of ordinary maintenance of the Units or (iii) 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 as created by the Conditional Sale Agreement) shall immediately be vested in the Lessor.

The Lessee agrees to defend, indemnify, protect and hold harmless the Lessor and the Agent and their respective successors and assigns from and against all losses, damages, injuries, liabilities, claims, demands, costs, charges and expenses whatsoever, regardless of the cause thereof, and expenses in connection therewith, including, but not limited to, counsel fees and expenses, royalty payments and expenses, patent liabilities, penalties and

interest arising out of or as the result of the entering into or the performance of the Conditional Sale Agreement or this Lease, the ownership of any Unit (including, without limitation, the retention by the Agent of Security Title to any Unit), the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, construction, storage or return of any Unit or any design, system, process, formula, combination, article or material used or contained therein or in the construction thereof or any accident in connection with the operation, use, condition, possession, storage or return of any Unit resulting in damage to property or injury or death to any person, whether as a result of negligence, the application of the laws of strict liability, or otherwise except as otherwise provided in Section 14 of this Lease; provided, however, that nothing herein shall be construed to be a guarantee by the Lessee that the Units will have any residual value at the end of the term of this Lease or any extension thereof.

The indemnities arising under this paragraph shall continue in full force and effect notwithstanding the full payment of all obligations under this Lease or the termination of this Lease. The indemnities required to be paid by the Lessee to the Lessor under this paragraph shall be of an amount sufficient to restore the Lessor to the same position, after considering the effect of the receipt of such indemnities on its United States federal income taxes and state and city income taxes or franchise taxes based on net income that it would have been in had the indemnities not been required.

In addition and without limiting the preceding paragraph, the Lessee agrees to defend, indemnify, protect and hold harmless the Builder and the Lessor from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against Builder or the Lessor because of the use in or about the construction or operation of the Units or any part thereof, of any design specified by the Lessee and not developed or purported to be developed by the Builder, or article or material specified by the Lessee and not manufactured by the Builder, which infringes or is claimed to infringe on or which is claimed to constitute contributory infringement with respect to any patent or other right. The term "design" wherever used in this Lease or in any assignment of this Lease shall be deemed to include formulae, systems, processes and combinations.

The Lessee agrees to prepare and deliver to the Lessor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor) any and all reports (other than income 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 Agent of the Units or the leasing thereof to the Lessee.

Section 10. Default. If one or more of the following events (each such event being hereinafter sometimes called an Event of Default) shall occur and be continuing:

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

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

C. the insurance to be maintained by the Lessee under Section 20 hereof shall for any reason not remain in full force and effect as therein provided unless comparable substitute insurance satisfactory to the Lessor and the Agent shall be in force;

D. default shall be made in observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein or in the Participation Agreement and such default shall continue for 25 days after written notice from the Lessor to the Lessee specifying the default and demanding that the same be remedied;

E. a petition for reorganization under Section 77 of the Bankruptcy Act as now constituted or as said Section 77 may be hereafter amended shall be filed by or against the Lessee, and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease are not duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed in such proceedings in such manner that such obligations shall have the same status as

obligations incurred by such a trustee or trustees, within 30 days after such appointment (whether or not such appointment is subject to confirmation or ratification), if any, or 60 days after such petition shall have been filed, whichever shall be earlier; or

F. any other proceedings are commenced by or against the Lessee for any relief which includes, or might result in, modification of the obligations of the Lessee under this Lease under any bankruptcy or insolvency law, or law relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions, 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 duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed 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 obligations incurred by such a trustee or trustees or receiver or receivers, within 30 days after such appointment (whether or not such appointment is subject to confirmation or ratification), if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

G. an event of default set forth in Article 15 of the Conditional Sale Agreement shall have occurred as a result of any default by the Lessee in performing any of its obligations hereunder;

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, 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 enter upon the premises of the Lessee or

other premises where any of the Units may be and take possession of all or any 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 purpose whatever. The Lessor shall, nonetheless, 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 90) and also to recover from the Lessee as liquidated damages and not as a penalty (1) that percentage of the Purchase Price of the Units as is set forth on Schedule II hereto opposite the last quarterly period with respect to which the lease rental was paid by the Lessee under this Lease, plus interest to the extent legally enforceable at the rate of 10-3/4% per annum from the date of the Event of Default to the date of payment thereof, plus (2) any expenses, including reasonable attorney's fees, in addition thereto which the Lessor shall have sustained by reason of the breach of any covenant or covenants of this Lease other than for the payment of rental, less (3) the total net proceeds, if any, paid to the Vendor (as defined in the Conditional Sale Agreement) and the Lessor following any sale of the Units under the Conditional Sale Agreement or, if there has been no sale, the fair market value of the Units as reasonably estimated by the Lessor on the date of the Declaration of Default (as defined in the Conditional Sale Agreement); provided, however, that in the event that sale of any Units is prevented by the order of a court of competent jurisdiction or by any other governmental action, no reduction in the amount owing shall be made until such time as the Vendor receives any "income or proceeds of the Units" as that term is defined in the Conditional Sale Agreement. The amount payable under (1) less (3) shall be paid by the Lessee to the Lessor within 30 days after the date on which such amount is agreed upon or determined hereunder and the amounts payable under (2) shall be payable promptly by the Lessee to the Lessor upon receipt of invoice or invoices therefor.

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative, 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 permitted 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 rental payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf. The Lessor and the Lessee agree that the Lessor shall be entitled to all rights provided for in Section 77(j) of the Bankruptcy Act or any comparable provision of any amendment thereto, or of any other bankruptcy act, so that the Lessor, to the fullest extent provided by law, 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.

The failure of the Lessor to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

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

Section 11. Return of Units Upon Default. If this Lease shall terminate pursuant to Section 10 hereof, the Lessor may take, or cause to be taken or demand from the Lessee, immediate possession of the Equipment, or one or more of the Units thereof, and may remove the same from possession and use of the Lessee. For such purpose, the Lessor may enter upon the premises of the Lessee or any other premises where the Units may be located and may use and employ in connection with such removal any supplies,

services and aids and any available trackage and other facilities or means of the Lessee, with or without process of law.

In case the Lessor shall demand possession of the Units pursuant to this paragraph and shall designate a reasonable point or points for the delivery of the Units to the Lessor, the Lessee shall at its own cost, expense and risk, forthwith and in usual manner, cause the Units to be moved to such point or points and shall there deliver the Units or cause them to be delivered to the Lessor. Each Unit delivered by the Lessee shall have the Lessee's markings removed therefrom and shall be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted, and meet the standards then in effect of the Interchange Rules of the Association of American Railroads and/or the applicable rules of any governmental agency or other organization with jurisdiction. At the option of the Lessor, the Lessor may keep the Units on any of the lines or premises of the Lessee until the Lessor shall have leased, sold or otherwise disposed of the same, whichever first occurs, and the Lessee shall transport the Units to any place on any lines of railroad or to any connecting carrier for shipment, all as directed by the Lessor. For such purposes, the Lessee agrees to furnish, without charge for rent, storage or insurance, the necessary facilities at any point or points selected by the Lessor and reasonably convenient to the Lessee.

The assembling, delivery, storage and transportation of the Units as herein provided shall be at the cost, expense and risk of the Lessee. During any storage period, the Lessee will, at its own expense, maintain and keep the Equipment in good order and repair and will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser, including the Vendor or an authorized representative thereof, or lessee of any such Unit, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of the negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising the rights of inspection granted under this Section.

The Lessee shall pay rental at the rate of .027083% of the Purchase Price per day for any Unit not returned to Lessor immediately upon termination of this Lease under this Section 11.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this Section 11, the Lessee hereby irrevocably appoints the Lessor as 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. This agreement to deliver the Units, furnish facilities, and pay costs as hereinbefore provided is of the essence of the agreement between the parties, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance hereof.

The Lessee hereby expressly waives any and all claims against the Lessor and its assigns or agents and any and all claims against the Vendor and its assigns or agents for damages of whatever nature in connection with the retaking of any Unit of the Equipment in any reasonable manner.

Section 12. Assignment; Prohibition Against Liens; 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 assigns. Whenever the term Lessor is used in this Lease it shall include the assignees of the Lessor.

So long as the Lessee shall not be in default under this Lease and is in compliance with the Consent, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease but, without the prior written consent of the Lessor, the Lessee shall not assign or transfer its leasehold interest under this Lease in the Units or any of them except as hereinafter provided in this Section 12.

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 resulting from claims against the Lessor or the Agent not related to the ownership of the Units) upon or with respect to any Unit, including any accession thereto, or any part thereof or the

interest of the Lessor, the Agent or the Lessee therein, and will promptly discharge any such lien, claim, security interest or other encumbrance which arises; provided, however, that the Lessee shall be under no obligation to pay or discharge such claim so long as it is contesting the validity thereof in good faith in a reasonable manner and by appropriate legal proceedings and the nonpayment thereof does not, in the opinion of the Lessor, adversely affect the title, property or rights of the Lessor hereunder or under the Conditional Sale Agreement or the title, property or rights of the Agent in or to the Units under the Conditional Sale Agreement. If any such claim shall have been charged or levied by anyone and in any manner against the Lessor directly and paid by the Lessor or the Beneficiary, the Lessee shall reimburse the Lessor or such Beneficiary on presentation of an invoice therefor; provided, however, that the Lessor or such Beneficiary shall have given written notice to the Lessee of such claim prior to such payment. The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of or suffer or allow to pass out of its possession or control, any of such Units, except to the extent permitted by this Section 12.

So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession of the Units, to the use of the Units by the Lessee or any affiliate of the Lessee upon lines of railroad owned or operated by the Lessee or any such affiliate or upon lines of railroad over which the Lessee or any such affiliate has trackage or other operating rights or over which railroad equipment of the Lessee, or any such affiliate is regularly operated pursuant to contract, to permit the use of the Units by connecting and other carriers in the usual interchange of traffic or in the transportation thereof from the place of delivery to the Lessee; provided, however, that the Lessee shall not use or permit the use of any Unit in service involving the regular operation and maintenance thereof outside the United States of America; provided further, however, that more than 10% of the Units shall not at any time be located outside of the United States of America. The Lessee may receive and retain compensation for such use from other railroads so using any of the Units.

For purposes of this Section 12, "affiliate" shall mean any corporation which, directly or indirectly, controls

or is controlled by, or is under common control with, the Lessee. For the purposes of this definition, "control" (including controlled by and under common control with), as used with respect to any corporation, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such corporation, whether through the ownership of voting securities or by contract or otherwise.

The rights of the Lessee under this Lease may not be assigned by the Lessee, except that, with the prior written consent of the Lessor and the Agent, at the sole and absolute discretion of the Agent, the Lessee may assign all of its rights under this Lease to a third party of reliable standing with the financial community which shall have duly assumed the Lessee's obligations hereunder. Nothing contained herein shall prohibit or restrict the right of the Lessee to assign or transfer all of its right hereunder to any corporation, incorporated under the laws of any state of the United States or the District of Columbia, which shall have duly assumed all of its obligations hereunder, under the Consent and under the Participation Agreement, into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety, but in any event only if such corporation will not, upon the effectiveness of such assumption, merger, consolidation or acquisition be in default under any provisions of this Lease. Notwithstanding anything else contained in this Section, no Unit shall be located outside of the United States for more than 180 days in any one calendar year nor more than one-half of the time from the date that such Unit is placed in service until the end of that calendar year.

Section 13. Right of First Refusal. Provided that no Event of Default, or event which with the giving of notice or the lapse of time, or both, would become an Event of Default, shall have occurred and be continuing, Lessor agrees that for 30 days following the termination of the Lease Agreement (the "NAC Lease") dated as of September 15, 1978, between Lessor, as lessor, and NAC Leasing Corporation, a Delaware corporation, as lessee, whether such termination is at the scheduled expiration of the NAC Lease, at the end of any renewal term, or otherwise, and provided that Lessee shall have given Lessor written notice no more than 30 days after written notice from Lessor or such termination or

proposed termination that Lessee wants to retain its right of first refusal hereunder, the Lessor shall not sell, transfer or otherwise dispose of the Equipment unless (a) the Lessor shall have received from a responsible purchaser or purchasers a bona fide offer or offers, satisfactory to the Lessor in writing to purchase all or any portion of the Equipment; (b) the Lessor shall have given the Lessee written notice (i) setting forth in detail the identity of such purchaser, the proposed purchase price, the proposed date of purchase and all other material terms and conditions of such purchase, including, without limitation, any arrangements for the financing of such purchase known to the Lessor, and (ii) offering to sell such Equipment to the Lessee upon the same terms and conditions as those set forth in such notice; and (c) the Lessor shall not have received written notification from the Lessee within 20 days following receipt of such notice by the Lessee of its election to purchase such Equipment upon such terms and conditions. This right of first refusal shall not apply or affect Units which from time to time have been disposed of due to a Casualty Occurrence or because any Units have been deemed obsolete under the NAC Lease. The obligation of the Lessor pursuant to this Section 13 shall continue notwithstanding the expiration of this Lease.

In the event the Lessee purchases the Equipment, upon payment of the purchase price, 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 representations or warranties except that such Units are free and clear of all claims, liens, security interests and other encumbrances by or in favor of any person claiming by, through or under the Lessor) for such Units, and such other documents as may be required to release such Units from the terms and scope of this Lease and to transfer title thereto to the Lessee or such assignee or nominee, in such form as may reasonably be requested by the Lessee, all at the Lessee's expense.

Section 14. Return of Units upon Expiration of Term. As soon as practicable on or after the expiration of the term of this Lease with respect to any Unit, the Lessee will (unless the Unit is purchased by the Lessee), at its own cost and expense, at the request of the Lessor deliver possession of such Unit to the Lessor upon such storage tracks as the Lessor may reasonably 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 three months and transport the same, at any time within such three-month period, to any reasonable place, or to any connecting carrier for shipment, all as directed by the Lessor; the movement and storage of such Unit to be at the expense and risk of the Lessee. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of such Unit, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under the sentence. The movement, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to move, deliver, store and transport the Units. The Units returned to the Lessor upon the termination of the initial term or any extended term of this Lease shall (1) be in the same operating order, repair and condition as when originally delivered hereunder, ordinary wear and tear excepted, and (2) meet the standards then in effect under the interchange rules of the Association of American Railroads and/or the applicable rules of any governmental agency or other organization with jurisdiction.

Lessee agrees to pay as additional rental an amount equal to .027083% of Purchase Price of such unit per day for the period commencing as of the expiration of the lease term until delivery of such unit has been accepted by NAC Leasing Corporation for leasing under a certain lease of even date between NAC Leasing Corporation, as Lessee, and Michigan National Leasing Corporation, as Lessor.

Section 15. Recording. The Lessee will cause this Lease, the Conditional Sale Agreement and any assignment hereof or thereof to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act. The Lessee will undertake the filing, registering, depositing, and recording required of the Lessor under the Conditional Sale Agreement 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 re-record whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Agent for the purpose of proper protection, to their satisfaction, of the Agent's and the Lessor's respective interest in the Units, or for the purpose of carrying out the intention of this Lease, the Conditional Sale Agreement or the assignments thereof to the Agent; and the Lessee will promptly furnish to the Agent and the Lessor evidences of all such filing, registering, depositing or recording, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Agent and the Lessor.

Section 16. 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 as additional rental, to the extent legally enforceable, an amount equal to 10-3/4% per annum of the overdue rentals for the period of time during which they are overdue or such lesser amount as may be legally enforceable. Such interest shall be calculated on a 360-day year of twelve 30-day months.

Section 17. Notices. Any notice required or permitted to be given herein shall be deemed to have been given when deposited in the United States certified mails, first-class postage prepaid, addressed as follows:

(a) if to the Lessor, at

38200 West Ten Mile Road
Farmington Hills, Michigan 48024
Attn: Richard Zamojski, Vice President

(b) if to the Lessee, at

Toledo, Peoria & Western
Railroad Company
2000 E. Washington Blvd.
E. Peoria, Ill. 61611
Attn: Controller

(c) if to the Agent, at

Broad and Chestnut Streets,
Philadelphia, Pennsylvania 19101
Attn: Corporate Trust Department

or addressed to such other address as the Lessor, the Lessee or the Agent shall hereafter furnish to the others in writing.

Section 18. Severability. 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.

Section 19. Effect and Modification of Lease. Except for the Participation Agreement, this Lease including the Schedules attached hereto completely states the rights of the Lessor and the Lessee with respect to the Units and supersedes all other agreements, oral or written, with respect to the Units. 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 officers of the Lessor and of the Lessee or its duly authorized representative and consented to in writing by the Agent.

Section 20. Insurance. The Lessee will maintain, at its sole cost and expense, at all times during the term of this Lease and any renewals thereof (and thereafter during the first three (3) month period in which the Units are being assembled and delivered to the locations specified in Section 14 hereof), with reputable insurers acceptable to the Lessor and, so long as any portion of the Conditional Sale Indebtedness under the Conditional Sale Agreement shall remain outstanding, acceptable to the Agent, insurance in an amount not less than the Casualty Loss Value of each Unit leased hereunder, insuring against loss and destruction of, and damage to, such Unit arising out of fire, windstorm, explosion, and all other hazards and risks ordinarily subject to extended coverage insurance, and against such other hazards and risks as are customarily insured against by companies owning or leasing property of a similar character and engaged in a business similar to that engaged in by the Lessee with a deductible amount not in excess of \$50,000 per occurrence and an overall maximum equal to \$2,300,000 and public liability insurance in respect of each of the Units at the time subject hereto against all risks and liability in an amount and against risks customarily insured against by the Lessee for damage to the property of, or for personal injuries suffered by, third persons and insured against by

the Lessee on similar equipment owned or loaned by Lessee. All such insurance policies shall (i) name the Lessor and Agent as additional insureds, with losses to be payable to the Lessor, the Agent and the Lessee as their respective interests may appear, (ii) provide that the policies will not be invalidated as against the Lessor or the Agent because of any violation of a condition or warranty of the policy or application therefor by the Lessee, (iii) provide that the policies may be materially altered or cancelled by the insurer only after thirty (30) days prior written notice to the Lessor and the Agent, (iv) provide that the policies shall be prepaid a minimum of ninety (90) days and (v) 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 or the Agent. Such insurance policies shall also not have any co-insurance clauses. The insurance policies shall also provide that upon receipt by the insurer from the Lessor or the Agent of any written notice of the occurrence of an Event of Default hereunder, any proceeds payable by said insurer with respect to any loss or destruction of, or damage to, any Unit, shall be payable solely to the Agent (or the Lessor after payment of all outstanding Conditional Sale Indebtedness) from the date of said insurer's receipt of such written notice, up to the date said insurer receives written notice from the Agent or the Lessor that said Event of Default is no longer continuing hereunder.

The Lessee shall deliver to the Lessor and the Agent, prior to the commencement of the lease term for any Unit (or at such other time or times as the Lessor or the Agent may request) and from time to time, but within at least 15 days, prior to the expiration date of each policy of such insurance, a certificate signed by a firm of independent insurance brokers, appointed by the Lessee and not unreasonably objected to by the Lessor or the Agent, showing the insurance then maintained by the Lessee pursuant to this §20 with respect to the Units (and the expiration date of each policy of such insurance) and stating the opinion of said firm that the insurance then carried and maintained on or with respect to the Units complies with the terms hereof; provided, however, that the Lessor and the Agent shall be

under no duty to examine such certificate, opinion or other evidence of insurance, or to advise the Lessee in the event that its insurance is not in compliance with this Lease.

In the event that the Lessee shall fail to provide or to maintain insurance as herein provided, the Lessor or the Agent, upon notice to the Lessee, may at its option procure such insurance and, in such event, the Lessee shall, upon demand, reimburse the Lessor or the Agent for the cost and any other expenditures for such insurance, together with interest thereon at the maximum rate of interest permitted by law, but not more than 10-3/4% per annum from the date of the Lessor's or Agent's payment until reimbursed by the Lessee.

Section 21. Indemnity for Federal and Other Income Tax Benefits; Indemnity for Improvements. It is the intent of the Lessor and Lessee that this Lease will be recognized as a lease for all federal, state, city and local income taxes or franchise taxes imposed on or measured by net income, and that the Lease does not convey to the Lessee any right, title or interest in the Units except as lessee and that for United States income tax purposes (and to the extent applicable for state and local tax purposes) the Beneficiary as the beneficial owner of the Units purchased by it, shall be entitled to such deductions, credits and other benefits as are provided by the Internal Revenue Code of 1954, as amended to the date hereof (the Code), to an owner of property including, without limitation, (i) the maximum depreciation deduction with respect to the Units authorized under section 167 of the Code based on an amount at least equal to the aggregate Purchase Price of the Units utilizing the 12-year depreciable life prescribed for the Units in the Asset Guideline Class No. 00.25 in accordance with 167(m) of the Code, employing the double declining balance method of depreciation, switching to the sum of the years-digits method when most beneficial to the Beneficiary [without taking into account the salvage value of the Units until the Units have been depreciated to a salvage value that is not greater than 10% of their basis to the Beneficiary (said 10% being based upon an estimated gross salvage value of 20% of the basis of the Units which will be reduced by 10% of such basis as provided in Section 167(f) of the Code)] (such deduction being herein called the ADR Deductions); (ii) deductions with respect to interest payable under the Conditional Sale Agreement pursuant to section 163 of the

Code (such deductions being herein called the Interest Deduction); and (iii) the 10% investment credit (such credit being herein called the Investment Credit) with respect to the aggregate Purchase Price of the Units pursuant to section 38 and related sections of the Code.

The Lessee agrees that neither the Lessee nor any corporation controlled by the Lessee, in control of the Lessee, or under common control with the Lessee, directly or indirectly, will at any time take any action or file any returns or other documents inconsistent with the foregoing or which would increase the amount of rentals required to be taken into income by the Beneficiary over the amount specified to be payable under the Lease on the dates due thereunder, except as specifically provided in the Lease or hereunder, and that each will file such returns, take such actions and execute such documents as may be reasonable and necessary to facilitate accomplishment of the intent hereof. The Lessee agrees to keep and make available for inspection and copying by the Beneficiary such records as will enable such Beneficiary to determine the extent to which it is entitled to the benefit of the Investment Credit and the ADR Deduction with respect to the Units.

The Lessee represents and warrants that (i) at the time the Beneficiary becomes the beneficial owner of any Units, all the Units constitute property the full Purchase Price of which qualifies for the Investment Credit under sections 38, 46, 48 and 50 of the Code; (ii) at the time the Beneficiary becomes the beneficial owner of any Units, such Units will constitute "new section 38 property" within the meaning of sections 46 and 48 of the Code and at the time the Beneficiary becomes the beneficial owner of any Units, the Units will not have been used by any person so as to preclude "the original use of such property" within the meaning of sections 48(b) and 167(c)(2) of the Code from commencing with the Beneficiary; (iii) at all times during the term of the Lease each Unit will constitute "section 38 property" within the meaning of section 48(a) of the Code and the Lessee will not at any time during the term of the Lease use or fail to use any Unit in such a way as to disqualify it as "section 38 property" within the meaning of section 48(a) of the Code; (iv) the Lessee will maintain sufficient records to verify such use, which records will be furnished in the manner provided above within 30 days after receipt of a written demand thereof; and (v) at the time of

each Closing the Beneficiary shall become the beneficial owner of such Units.

If by reason of the inaccuracy in law or in fact of the representations and warranties set forth in the preceding paragraph or any act or omission of the Lessee or for any other reason whatsoever (other than a change in the Code occurring after the date of delivery of the last Unit under this Lease), the Beneficiary shall lose, or shall not have, or shall lose the right to claim, or shall suffer a disallowance of, or shall be required to recapture all or any portion of, the Investment Credit, the ADR Deduction or the Interest Deduction with respect to all or part of any Unit (any such loss, disallowance, recapture or treatment being hereinafter called a Loss), then, unless the Lessee shall exercise its option pursuant to the proviso contained in this paragraph, the Lessee shall, beginning with the next succeeding rental payment date after written notice is given to the Lessee by such Beneficiary of such fact, and on each succeeding rental payment date, pay to such Beneficiary such amount or amounts as shall cause the Beneficiary's net return to equal the net return that would have been realized by the Beneficiary if such Loss had not occurred (which it is understood includes giving effect to any federal, state or local income tax required to be paid by the Beneficiary with respect to receipt of payments made to it by the Lessee pursuant to the operation of this paragraph) and the Lessee shall forthwith pay to the Beneficiary the amount of any interest and/or penalties which may be assessed by the United States of America or any state or local taxing authority against the Beneficiary attributable to such Loss; provided, however, that in the event of any Loss of the Investment Credit, the Lessee may, in lieu of making the payments as hereinabove provided, at its option, pay to the Beneficiary on the next succeeding rental payment date after written notice is given to the Lessee by the Beneficiary of the fact of such Loss, a single payment in an amount as shall, in the reasonable opinion of the Beneficiary, cause said Beneficiary's net return to equal the net return that would have been realized by the Beneficiary if such Loss had not occurred (which payment shall also give effect to any federal, state or local income tax required to be paid by the Beneficiary due to such payment), together with payment of any amount equal to any interest and/or penalties which may be assessed by the United States of America or any state or local taxing authority against the Beneficiary attributable to such Loss.

Notwithstanding the other provisions of this Lease, payment shall not be required to be made by the Lessee to the extent that the Beneficiary shall have suffered such Loss as a direct result of the occurrence of any of the following events:

(i) a Casualty Occurrence, if the Lessee shall have paid to the Lessor the amounts stipulated under §7 thereof;

(ii) a voluntary transfer or other voluntary disposition by the Beneficiary of any interest in the Equipment (other than pursuant to the assignment of the Lease to the Vendor), unless, in each case, an Event of Default shall have occurred and be continuing under the Lease;

(iii) the failure of the Beneficiary to claim in a timely or proper manner the Investment Credit, the ADR Deduction or the Interest Deduction;

(iv) the failure of the Beneficiary to have sufficient liability for Federal income tax against which to credit all such Investment Credit or sufficient taxable income (before taking into account the ADR Deduction or the Interest Deduction) to benefit in full from the ADR Deduction or the Interest Deduction, as applicable;

(v) any other voluntary act or omission by the Lessor or the Beneficiary inconsistent with the transactions contemplated hereby.

Notwithstanding any other provision of this Lease, the indemnities of the Lessee contained in this Section run solely to the Beneficiary and not to any real or purported assignee or transferee of the Beneficiary where such assignment or transfer results in a taxable transaction.

If a claim shall be made by the Internal Revenue Service or any state or local taxing authority with respect to the income tax liability of the Beneficiary which, if successful, would under this Section lead to payments by the Lessee or a lump sum payment by the Lessee, such Beneficiary (as a precondition to receiving any such payments) shall give prompt notice of such claim to the Lessee and shall take such action to contest such claim as the Lessee shall reasonably request in writing from time to time; provided,

however, that within 30 days after notice by the Beneficiary of such proposed adjustment, the Lessee shall request that such adjustment be contested; provided further, however, that an Event of Default shall not be continuing under this Lease. For purposes of this paragraph, "prompt notice" shall mean written notice to the Lessee not less than 30 days before the expiration of the time period for initiating a contest of such claim. The Beneficiary may in its discretion forego any administrative appeal with the Internal Revenue Service in respect of such claim and the Beneficiary may at its option, either pay the tax claimed and sue for refund in the appropriate United States District Court or in the United States Court of Claims, as the Beneficiary may elect, or contest such claim in the United States Tax Court, considering, however, in good faith such request as the Lessee may make concerning the most appropriate forum in which to proceed; provided, however, that the final decision as to selection of the forum shall be solely that of the Beneficiary. If the Beneficiary pays the tax claimed and sues for refund, payments by the Lessee shall be required so as to maintain the Beneficiary's net return in the manner and to the extent provided in this Section, and the Lessee shall forthwith pay to the Beneficiary's the amount of any interest and/or penalty assessed against the Beneficiary with respect to such additional income tax; provided, however, that the Lessee shall not be required to make any such payments unless the Beneficiary agrees in writing to apply any refund in accordance with the next following sentence. If any Beneficiary receives a refund as a result of contesting such claim, such Beneficiary shall forthwith pay to the Lessee any interest thereon paid by the taxing jurisdiction together with the appropriate amount of any interest and/or penalty payments which should not have been assessed against and paid by the Lessee to the Beneficiary pursuant to the preceding sentence, and the payments of the Lessee with respect to such claim shall, beginning with the next rental payment due after receipt by the Beneficiary of such refund, be decreased to such amount or amounts as shall cause the Beneficiary's net return over the term of the Lease to equal the net return that would have been realized by such Beneficiary if additional income taxes of the Beneficiary in the amount refunded had not been paid but not below the amounts required to satisfy the obligations of the Lessor under the Conditional Sale Agreement. Any such contest shall be at the sole expense of the Lessee and the Lessee agrees to pay to the Beneficiary on demand any expense

incurred by the Beneficiary in connection with such contest; and the Beneficiary shall have no obligation to continue such contest in the event the Lessee fails to make such payment within 10 days after written demand.

The Lessee's and any Beneficiary's agreements to pay any sums which may become payable pursuant to this Section shall survive the expiration or other termination of this Lease.

In the event and to the extent that the cost of any improvement and/or addition (hereinafter called Capital Expenditures) to a Unit made by the Lessee, under and pursuant to the terms of the Lease or otherwise, is required to be included in the gross income of the Beneficiary for federal, state or local income tax purposes at any time prior to the time such Unit is disposed of in a taxable transaction, then the Lessee shall, beginning with the next succeeding rental payment date after the date on which the Lessee is required to furnish written notice thereof to such Beneficiary pursuant to the last paragraph of this Section after said inclusion in the Beneficiary's gross income is required, and on each succeeding rental payment date, pay to the Beneficiary amount or amounts as shall, after taking into account any present or future tax benefits that the Beneficiary reasonably anticipates it will derive from its additional investment in the Units (including, without limitation, any available current deduction, current and future depreciation deductions and investment tax credit) cause the Beneficiary's net return to equal the net return that would have been realized by the Beneficiary if the cost of such Capital Expenditures had not been includible in the Beneficiary's gross income (which payment shall also give effect to any federal, state or local income tax required to be paid by Beneficiary's due to such payment); provided, however, that the Lessee shall not be required to make any such payments unless the Beneficiary agrees in writing to contest such inclusion if requested in writing by the Lessee and as provided in this Section.

In determining the present or future tax benefits to be taken into account by the Beneficiary in establishing the payments required hereby, such Beneficiary shall attempt to maximize such benefits and hence minimize those payments by making such elections (including where advantageous the applicable asset guideline repair allowance and accelerated depreciation, if then permitted) and utilizing such conven-

tions and accounting methods as will further such objectives; provided, however, that the Beneficiary shall not be required to make any election or utilize a particular convention or accounting method if the Beneficiary determines, in its sole discretion but in good faith, (i) that in so doing it will adversely affect its federal, state or local income tax liability determined without regard to this transaction; or (ii) that such practice is inconsistent with prior accounting procedures utilized by the Beneficiary.

For the purposes of this Section, the cost of Capital Expenditures made by the Lessee shall be deemed to be "required to be included in the gross income of the Beneficiary for federal, state or local income tax purposes" if such inclusion is required by (i) any provision of the Code or state or local income tax law or the applicable regulations enacted or adopted thereunder as of the date of the Lease; or (ii) any published revenue ruling of the Internal Revenue Service issued as of the date of the Lease which has not been held invalid by a court having appellate jurisdiction over the federal income tax liability of the Lessor in a decision which has become final.

The Beneficiary shall not be required to contest a claim made by the Internal Revenue Service or any state or local income taxing authority with respect to the includability of the cost of any Capital Expenditure in such Beneficiary's gross income unless the Beneficiary has received an opinion from counsel selected by the Lessee and acceptable to the Beneficiary that there is a reasonable basis for contesting such inclusion.

The Lessee agrees to make a payment to the Beneficiary for any interest and/or penalties resulting from the failure to include the cost of Capital Expenditures in its income tax return, such payment to be made upon demand in an amount sufficient to restore such Beneficiary to the same position it would have been in had such interest and/or penalties not been imposed.

The Lessee agrees that, within 30 days after the close of any calendar year (or in the event that the Beneficiary gives the Lessee written notice that such Beneficiary's taxable year closes on a date specified therein other than December 31, within 30 days after said date) in which the Lessee has made Capital Expenditures which are of a type, or

which the Lessee believes are of a type, or are of a type which the Lessee has been advised may be of a type, required to be included in the gross income of a Beneficiary for federal, state or local income tax purposes prior to the time such Unit is disposed of in a taxable transaction, the Lessee will give written notice thereof to the Beneficiaries describing such Capital Expenditures in reasonable detail and specifying the cost thereof with respect to each Unit.

Section 22. Execution. This Lease may be executed in several counterparts, but the counterpart delivered to the Interstate Commerce Commission for recordation and subsequently redelivered to the Agent shall be deemed the original counterpart. Although this Lease is dated as of the date first above written, for convenience, 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.

Section 23. Law Governing. The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the Commonwealth of Pennsylvania; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording or deposit hereof, if any, and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed; recorded or deposited.

Section 24. Immunities; No Recourse. It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that 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 Exchange National Bank of Chicago or for the purpose or with the intention of binding said national association personally but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement and this Lease is executed and delivered by said national association not in its own right but solely in the exercise of the powers expressly conferred upon it as trustee under the Trust Agreement; and except in the cases of negligence or wilful misconduct, no personal liability or personal responsibility is assumed by or shall

at any time be asserted or enforceable against said national association or the Beneficiary on account of this Lease or on account of any representations, undertaking or agreement of the said national association or the Beneficiary, either expressed or implied, all such personal liability against said bank or the Beneficiary, if any, being expressly waived and released by the Lessee, the Agent and by all persons claiming by, through or under either of them.

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

EXCHANGE NATIONAL BANK OF CHICAGO,
not individually but solely
as Trustee

By _____

[CORPORATE SEAL]

ATTEST:

Secretary

TOLEDO, PEORIA & WESTERN
RAILROAD COMPANY

By R. E. McMillan
President

[CORPORATE SEAL]

ATTEST:

M. J. Craig
Secretary

[NOTARIAL SEAL]

STATE OF :
: SS.
COUNTY OF :

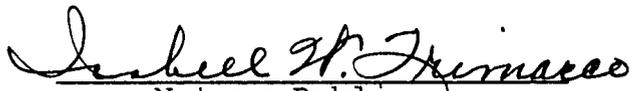
On this _____ day of _____, 1978, before me personally appeared _____, to me personally known, who, being by me duly sworn, says that he is _____ of Exchange National Bank of Chicago, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation as trustee, 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 as trustee.

Notary Public

[NOTARIAL SEAL]

STATE OF ILLINOIS :
: SS.
COUNTY OF PEORIA :

On this 28th day of Sept., 1978, before me personally appeared R. E. McMillan, to me personally known, who, being by me duly sworn, say that he is President of TOLEDO, PEORIA & WESTERN RAILROAD COMPANY, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



Notary Public

[NOTARIAL SEAL]

EXHIBIT A

CERTIFICATE OF ACCEPTANCE

TO: Exchange National Bank of Chicago, as Trustee (the Lessor)
General Motors Corporation (the Builder)

I, a duly appointed and authorized representative of the Lessor and Toledo, Peoria & Western Railroad Company (the Lessee) under the Lease of Railroad Equipment dated as of September 15, 1978 between the Lessor and the Lessee, do hereby certify that I have inspected, received, approved and accepted delivery, under the Conditional Sale Agreement between the Builder and the Lessor dated as of September 15, 1978 and under the Lease, of the following Units of Equipment:

TYPE OF EQUIPMENT

PLACE ACCEPTED:

DATE ACCEPTED:

NUMBER OF UNITS:

MARKED AND NUMBERED:

I do further certify that the foregoing Units of Equipment are in good order and condition, and appear to conform to the specifications, requirements and standards applicable thereto, to all applicable United States Department of Transportation and Interstate Commerce Commission requirements and to all standards recommended by the Association of American Railroads applicable to such Equipment, that the Lessee has no knowledge of any defect in any of the foregoing Units of Equipment with respect to design, manufacture, condition or in any other respect, and that each Unit has been labeled upon each side thereof in letters not less than one inch in height as follows:

Leased from a Bank or Trust Company,
as Trustee, and subject to a Security
Interest recorded with the I.C.C.

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

Dated: _____, 1978

Inspector and Authorized
Representative of the Lessee

SCHEDULE I

(to the Lease)

Type	Builder's Specifications	Quantity	Lessee's Road Numbers (Inclusive)	Average Unit Price	Total Price	Delivery
GP38-2	8090 2000 Horse Power GP38-2 Locomotive	7	2005 through 2011	\$480,000	\$3,360,000	Hamilton, Illinois
Total..... 7			Total..... \$3,360,000			

SCHEDULE II
(to the Lease)

CASUALTY LOSS VALUE
PERCENTAGE OF PURCHASE PRICE

Rental Payment
Period

1	1979 - April	108.7144
2	October	108.9802
3	1980 - April	109.0461
4	October	108.9247
5	1981 - April	108.6134
6	October	108.1214
7	1982 - April	101.0388
8	October	100.1958
9	1983 - April	99.1829
10	October	98.0102
11	1984 - April	90.2689
12	October	88.7909
13	1985 - April	87.1734
14	October	85.4232
15	1986 - April	77.1376
16	October	75.1443
17	1987 - April	73.0349
18	October	70.8183
19	1988 - April	68.4921
20	October	66.0682
21	1989 - April	63.5445
22	October	60.9332
23	1990 - April	58.2348
24	October	55.4498

Rental Payment
Period

25	1991 - April	52.5932
26	October	49.6684
27	1992 - April	46.6739
28	October	43.6081
29	1993 - April	40.4695
30	October	37.2564
31	1994 - April	33.9672
	October	