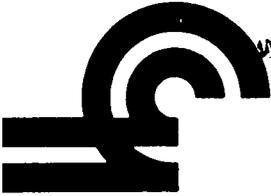


CONRAIL



RECORDATION NO. 9661 Filed & Recorded

AUG 28 1978 3 30 PM

INTERSTATE COMMERCE COMMISSION

RECORDATION NO. 9661-B Filed & Recorded

AUG 28 1978 3 30 PM

INTERSTATE COMMERCE COMMISSION

August 28, 1978

Robert L. Oswald, Secretary
Interstate Commerce Commission
12th and Constitution Avenue
Washington, D. C. 20423

Dear Mr. Oswald:

Pursuant to Section 20c of the Interstate Commerce Act and as provided by Volume 49 Code of Federal Regulations Sections 1116.1 through 1116.4 we present the following documents for recordation.

1. Lease of Railroad Equipment, dated as of January 2, 1978.

Lessor: Manufacturers National Bank of Detroit
as Trustee of Conrail 1978 Trust No. III
100 Renaissance Center
Detroit, Michigan 48243

Lessee: Consolidated Rail Corporation
Six Penn Center Plaza
Philadelphia, Pennsylvania 19104

2. Revolving Loan Agreement, dated as of January 2, 1978.

Borrower: Conrail 1978 Trust No. II,
Manufacturers National Bank of Detroit, as
Trustee
100 Renaissance Center
Detroit, Michigan 48243

Lenders: First Pennsylvania Bank N.A.
First Pennsylvania Tower
Center Square Building
Philadelphia, Pennsylvania 19101

RECORDATION NO. 9561-A Filed & Recorded

AUG 28 1978 3 30 PM

INTERSTATE COMMERCE COMMISSION

RECORDATION NO. 9661-C Filed & Recorded

AUG 28 1978 3 30 PM

INTERSTATE COMMERCE COMMISSION

RECORDATION NO. 9661-D Filed & Recorded

AUG 28 1978 3 30 PM

INTERSTATE COMMERCE COMMISSION

RECEIVED
AUG 28 3 25 PM '78

REC. OPT. & C. BR.

Counterspart Jeffrey R. Zetlemeyer

INTERSTATE COMMERCE COMMISSION

AUG 28 1978 3 30 PM

RECORDATION NO. 9661-E

INTERSTATE COMMERCE COMMISSION

AUG 28 1978 3 30 PM

RECORDATION NO. 9661-F Filed & Recorded

8-240A368

DATE AUG 28 1978
DCL
FCS

ICC Washington, D. C.

Central National Bank of Cleveland
800 Superior Avenue
Cleveland, Ohio 44114

The Fidelity Bank
Broad and Walnut Streets
Philadelphia, Pennsylvania 19106

3. Assignment and Security Agreement, dated as of January 2, 1978.

Borrower: Conrail 1978 Trust No. II

Lenders: First Pennsylvania Bank N. A.

Central National Bank of Cleveland

The Fidelity Bank

4. Consent to Assignment and Security Agreement.

Consent By: Consolidated Rail Corporation

5. Assignment of Purchase Order, dated as of January 2, 1978.

Assignor: Consolidated Rail Corporation

Assignee: Manufacturers National Bank of Detroit, as Trustee

6. Consent to Assignment of Purchase Order, dated as of January 2, 1978.

Consent By: Berwick Forge and Fabricating
Division of Whittaker Corporation
P. O. Box 188
West 9th Street
Berwick, Pennsylvania 18603

7. Letter of Amendments

Executed By: All the parties of the various
documents listed above

The Equipment covered by this transaction is:

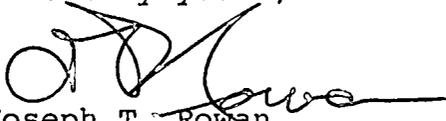
| <u>Type</u> | <u>AAR Mechanical Designation</u> | <u>No. of Units</u> | <u>Marked</u> | <u>Numbers Inclusive</u> |
|-------------|-----------------------------------|---------------------|---------------|--------------------------|
| Box Cars | XP | 162 | Conrail | 223301-223462 |

Enclosed is our check for \$200 to cover the recordation fee.
On March 31, 1978, I filed a similar group of documents

(Recordation Nos. 9302-9302E) and you calculated the recordation fee as \$200 at that time. The enclosed documents have not been previously recorded with the Interstate Commerce Commission.

After recording a counterpart original of these documents, please return the remaining copies, stamped with your recordation number to the individual presenting them for recordation. Thank you for your assistance.

Sincerely yours,



Joseph T. Rowan
Corporate Counsel

JTR/pe
Enclosures

Interstate Commerce Commission
Washington, D.C. 20423

OFFICE OF THE SECRETARY

Joseph T. Rowan
Consolidated Rail Corp.
Six Penn Center Plaza
Philadelphia, PA. 19104

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 **8-28-78** at **3:30 PM**, and assigned recordation number(s) **9661, 9661-A, 9661-B, 9661-C, 9661-D, 9661-E and 9661-F**

Sincerely yours,

H.G. Homme, Jr.,
Acting Secretary

Enclosure(s)

SE-30-T
(2/78)

EXECUTION COPY

RECORDATION NO. 3551 Filed & Recorded

AUG 28 1978 2:30 PM

INTRA-STATE COMMERCE COMMISSION

LEASE OF RAILROAD EQUIPMENT

PURSUANT TO

CONRAIL 1978 TRUST NO. II

LEASE OF RAILROAD EQUIPMENT

Dated as of January 2, 1978

between

CONSOLIDATED RAIL CORPORATION

and

MANUFACTURERS NATIONAL BANK
OF DETROIT, as Trustee

LEASE OF RAILROAD EQUIPMENT
PURSUANT TO
CONRAIL 1978 TRUST NO. II

LEASE OF RAILROAD EQUIPMENT dated as of January 2, 1978 (hereinafter called the Lease), between CONSOLIDATED RAIL CORPORATION, a Pennsylvania corporation (hereinafter called the Lessee), and MANUFACTURERS NATIONAL BANK OF DETROIT, as Trustee (hereinafter called the Lessor) under a Restated and Amended Trust Agreement for Conrail 1978 Trust No. II restated and amended as of February 15, 1978 and dated as of January 2, 1978 (hereinafter called the Trust Agreement) with FORD MOTOR CREDIT COMPANY, THE BUDD LEASING CORP. and GOULD LEASING INC. (hereinafter called the Beneficiaries).

WHEREAS the Lessee is entering into a Purchase Agreement dated as of May 5, 1978 (hereinafter called the Purchase Order) with Whittaker Corporation (Berwick Forge and Fabricating Division) (hereinafter called the Builder), wherein the Builder has agreed to manufacture, sell and deliver to the Lessee the units of railroad equipment described in Schedule A hereto, which will consist of high roof cushioned underframe multi-purpose box cars (hereinafter called the Box Cars or the Equipment or the Unit or Units);

WHEREAS the Lessee is assigning its interests in the Purchase Order pursuant to an Assignment of Purchase Order dated as of January 2, 1978 (hereinafter called the Assignment) to the Lessor, and the Builder is consenting to the Assignment and to the Lease Assignment (as hereinafter defined) pursuant to a Consent to Assignment of Purchase Order dated as of January 2, 1978 (hereinafter called the Builder's Consent), both under a Participation Agreement dated as of the date hereof (hereinafter called the Participation Agreement) between the Lessee, the Lessor, the Beneficiaries, First Pennsylvania Bank N.A., acting as a lender and as agent for each of the lenders (hereinafter defined) (the agent in its capacity as agent hereinafter with its successors and assigns called the Agent) Central National Bank of Cleveland and The Fidelity Bank (together with the Agent in its capacity as lender hereinafter called the Lenders);

WHEREAS the Lessee desires to lease such number of Units as are delivered and accepted and settled for under the

Purchase Order at the rentals and for the terms and upon the conditions hereinafter provided; and

WHEREAS the Lessor will assign this Lease for security to the Lenders pursuant to an Assignment and Security Agreement, dated as of the date hereof (hereinafter called the Lease Assignment) under a Revolving Loan Agreement dated as of the date hereof (hereinafter called the Revolving Loan Agreement) between the Lenders and the trust established by the Trust Agreement (hereinafter called the Trust), and the Lessee will consent to the Lease Assignment pursuant to a Consent to Assignment and Security Agreement dated as of the date hereof (hereinafter called the Consent);

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

§ 1. Net Lease. This Lease is a net lease. The Lessee's obligation to pay all rentals and other amounts hereunder shall be absolute and unconditional and the Lessee shall not be entitled to any abatement of rent, reduction thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs due or alleged to be due by reason of any past, present or future claims of the Lessee against the Lessor or the Beneficiaries under this Lease, the Participation Agreement, the Purchase Order, or the Assignment, or against the Builders or the Lenders or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, 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 of or any bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all

events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor, the Beneficiaries, the Lenders or the Builder for any reason whatsoever.

§ 2. Delivery and Acceptance of Units. The Lessor hereby appoints the Lessee its agent for inspection and acceptance of the Units pursuant to the Assignment, and the Lessee agrees to conduct a full inspection of the Equipment during construction of the Units, with the intention that the Equipment should be of as high a quality as if the Lessee were itself purchasing the Equipment for its permanent use. The Lessor retains the right but shall not have the obligation to make its own inspection of the Equipment during construction or upon delivery, in addition to inspections performed hereunder by the Lessee. The Units will be delivered to the Lessee, subject to the conditions herein, in the Assignment and in the Builder's Consent at the point or points within the United States designated in the Purchase Order. Upon such delivery, the Lessee will cause an employee of the Lessee to inspect the same, and if such Unit is found to be in accordance with the Specifications (as defined in the Purchase Order), to accept delivery of such Unit and execute and deliver to the Lessor a certificate of acceptance (hereinafter called the Certificate of Acceptance) in accordance with the Assignment, stating that such Unit has been inspected and accepted on behalf of the Lessee and the Lessor on the date of such Certificate of Acceptance and is marked in accordance with § 5 hereof, whereupon, except as provided in the last sentence hereof, such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease.

The Lessee will not accept the delivery of any Unit on any delivery date if:

- (a) the documents, certificates and opinions required to be delivered pursuant to Paragraph 7,

8 or 9 of the Participation Agreement on and with respect to that delivery date shall not have been delivered as stated therein, or if

(i) a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may hereafter be amended, shall be filed by or against the Lessee 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); or

(ii) any other proceedings shall be commenced by or against the Trust, the Trustee or the Lessee, for any relief which includes, or might result in, any modification of the obligations of the Trust, the Trustee or the Lessee, under the Lease, the Revolving Loan Agreement, the Consent, or the Assignment under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of the Trust, the Trustee or the Lessee, hereunder or under the Revolving Loan Agreement, the Assignment or the Consent), 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); or

(b) an Event of Default (as hereinafter defined) or other event which after notice or lapse of time or both would become an Event of Default has occurred and be continuing; or

(c) a material adverse change shall have occurred in Lessee's financial condition since February 15, 1978, except as set forth in the Supplements to the Memorandum for Private Investors dated February 15, 1978, dated April 26 and July 5, 1978; or

(d) the Agent, Trustee and Beneficiaries shall not have received on the tenth day of the most recent calendar month (including the then current calendar month) succeeding the First Delivery Date, in form and substance satisfactory to each of them,

(i) an opinion of Ronald Dietrich, Esq., Vice President-Law for the Lessee, or such other counsel for Conrail acceptable to the parties, dated as of such tenth day confirming that, as of such date, the opinion set forth in Paragraph 3.01(A)(17) of the Revolving Loan Agreement is correct;

(ii) a certificate of an executive officer of the Lessee dated as of such tenth day confirming that, as of such date, the certificate set forth in Paragraph 3.01(A)(15) of the Revolving Loan Agreement is correct and the representations and warranties contained therein are correct as if made on such tenth day; and

(iii) a certificate of an officer of the Trustee dated as of such tenth day confirming that, as of such date, the certificate set forth in Paragraph 3.01(A)(14) of the Revolving Loan Agreement is correct.

In no event will the Lessee accept deliveries after December 31, 1978.

§ 3. Rentals. Lessee agrees to pay the Lessor, as rental with respect to each Unit delivered and accepted pursuant to § 2 hereof prior to October 1, 1978 (i) for the period from the Closing Date with respect to such Unit to, but not including, October 10, 1978, which period shall hereafter be referred to as the Interim Lease Term, an amount equal to .017153% of the aggregate of the Invoiced Purchase Price plus the Transaction Costs (as such terms are defined in the Trust Agreement) with respect to each Box Car (hereinafter called the Cost with respect to such Box Car) for each day of the Interim Lease Term during which such Box Car is subject to this Lease, and (ii) for each Box Car, 48 consecutive quarterly payments each of which shall be in an amount equal to 2.5963% of the Cost of such Box Car, followed immediately by 12 consecutive quarterly payments each of which shall be in an amount equal to 1.29815% of the Cost of such Box Car.

The Rentals due for the Interim Lease Term shall be paid in October 10, 1978. The periodic rental payments referred to in clause (i) of this § 3 shall be paid on the tenth day of each October, January, April and July, commencing on January 10, 1979 (hereinafter called the First Rental Payment Date), and ending on October 10, 1993. The latter period of the Lease hereafter shall be called the Basic Lease Term.

In the event that a Certificate of Acceptance for any Unit is issued after September 30, 1978, or any Unit is settled for on any Closing Date after October 10, 1978, then the rental payments hereinbefore set forth and the Casualty Values set forth in § 7 hereof shall be increased by such amounts as shall in the reasonable opinion of the Beneficiaries, cause the Beneficiaries' net after tax annual cash flows and net after tax rates of return on investment to be at least the same as such cash flows and rates of return would have been had such Certificate of Acceptance been issued on or prior to September 30, 1978, or had such Unit been settled for on any Closing Date on or prior to October 10, 1978.

Any rental payments due pursuant to the Tax Indemnity Agreement dated as of the date hereof between the Lessor and the Lessee are in addition to and separate from the Rentals under this Lease.

During any extension of this Lease pursuant to § 13 hereof, the rentals during such extension shall be payable as provided in § 13.

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

Unless the Lease Assignment is not executed and delivered, the Lessor irrevocably instructs the Lessee to make all the payments provided for in this Lease, other than the payments provided for in §§ 6 and 9 hereof, but including without limitation the payments provided for in this § 3 and in § 7 hereof, at the principal office of the Agent until the Lenders shall have been paid the full principal amount of the loan under the Revolving Loan Agreement (hereinafter called the Loan), together with interest and all other payments required by the Revolving Loan Agreement, for the account of the Lessor in care of the Agent, with instructions to the Lenders (subject to the provisions of the Consent) first, to apply such payments to satisfy the obligations of the Trust under the Revolving Loan Agreement, and second, so

long as no event of default under the Revolving Loan Agreement shall have occurred and be continuing, to pay any balance promptly to the Lessor in Federal or other funds immediately available at such place as the Lessor shall specify in writing. The Lessee agrees to make each payment provided for herein as contemplated by this paragraph in Federal or other funds immediately available to the Agent or as otherwise provided in the Lease Assignment and the Consent, by 11:00 a.m., local time, on the date when and in the city where such payment is due.

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

Notwithstanding anything to the contrary contained herein, all rights and obligations of the Lessee under this Lease and in and to the Units are subject to the rights of the Lenders under the Revolving Loan Agreement. If an event of default should occur under the Revolving Loan Agreement, the Lenders may terminate this Lease (or rescind its termination), all as provided therein.

§ 5. Identification Marks. The Lessee will cause at its expense 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 each side of each Unit, in letters not less than one inch in height, the words "OWNERSHIP SUBJECT TO A SECURITY AGREEMENT FILED UNDER THE INTERSTATE COMMERCE ACT, SECTION 20c", or other appropriate words designated by the Lessor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Lessor's title and Lenders' security interest in such Unit and the rights of the Lessor under this Lease and the rights of the Lenders under the Purchase Order. The Lessee will not place any Unit in operation or exercise any control or dominion over the same until such words shall have

been so marked and will replace promptly any such markings which may be removed, defaced or destroyed. The Lessee will not change the identifying number of any Unit unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with the Agent and the Lessor and duly filed, recorded and deposited by the Lessee in all public offices where this Lease and the Revolving Loan Agreement shall have been filed, recorded and deposited and (ii) the Lessee shall have furnished the Agent and the Lessor an opinion of counsel to such effect. The Units may be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates on railroad equipment used by it of the same or similar type as the Units for convenience of identification of its right to use the Units as permitted by this Lease.

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

§ 6. Taxes. All payments to be made by the Lessee hereunder will be free of expense to the Lessor and the Beneficiaries for collection or other charges and will be free of expense to the Lessor and the Beneficiaries with respect to the amount of any local, state, Federal, or foreign taxes (other than any United States Federal income tax payable by the Lessor or the Beneficiaries in consequence of the receipt of payments provided for herein and other than state or local taxes measured by net income or value added, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided) or license fees, assessments, charges, fines or penalties (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called impositions) now or hereafter levied or imposed upon or in connection with or measured by this Lease or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof or the Revolving Loan 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 (except as provided above) or upon the earnings arising therefrom (except as provided above) or upon the Lessor 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 the interest of the Lessor or result in a lien upon any such Unit; provided, however, that the Lessee shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith, with due diligence, and by appropriate legal or administrative proceedings such impositions and the nonpayment thereof is permitted by law and does not, in the reasonable opinion of the Lessor, adversely affect the title, property or rights of the Lessor hereunder or the Lenders under the Revolving Loan Agreement. The Lessee agrees to give the Lessor notice of such contest within 30 days after institution thereof and the Lessor agrees to provide such information as may be reasonably requested by the Lessee in furtherance of such contest. If any impositions shall have been charged or levied against the Lessor or the Beneficiaries directly and paid by the Lessor or the Beneficiaries, the Lessee shall reimburse the Lessor or the Beneficiaries on presentation of an invoice therefor, with interest at a rate equal to the lesser of 13% per annum or the maximum rate permitted by applicable law, for the period between payment of the imposition by the Lessor and reimbursement.

In the event any returns, statements or reports with respect to impositions are required to be made, the Lessee will make such returns, statements and reports in such manner as to show the interest of the Lessor and the Lenders in such Units.

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

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

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

§ 7. Maintenance; Casualty Occurrences; Insurance. The Lessee agrees that, at its own cost and expense, it will maintain and keep each Unit which is subject to this Lease in good operating order, repair, and condition.

In the event that any Unit shall be or become worn out, lost, stolen, destroyed, irreparably damaged, seized or attached by a judgment creditor of the Lessee, or rendered permanently unfit or unavailable for use from any cause whatsoever, or taken or requisitioned by condemnation or requisitioned for use or otherwise, except requisition for use by the United States Government for a stated period not in excess of the then remaining term of this Lease (such occurrences being hereinafter called Casualty Occurrences), prior to the return of such Unit in the manner set forth in § 11 or 14 hereof, the Lessee shall promptly and fully inform the Lessor and the Agent with respect thereto. On the rental payment date with respect to such Unit next succeeding such Casualty Occurrence the Lessee shall pay to the Lessor an amount equal to the rental payment or payments in respect of such Unit due and payable on such date plus a sum equal to the Casualty Value (as hereinafter defined) of such Unit determined as of the date of such rental payment date in accordance with the schedule referred to below. As of the rental payment date on which the Casualty Value is due the rental for such Unit shall cease to accrue, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft, complete destruction or return to the Builder) the Lessor shall be entitled to recover possession of such Unit. Any Casualty Value not paid when due shall accrue interest as provided in § 16 hereof. 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 without recourse to, or representation or warranty by the Lessor. Provided that the Lessee has previously paid the the Casualty Value to the Lessor, the Lessee shall be entitled to the net

proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Lessor.

The Casualty Value of each Unit as of the payment date on which payment is to be made as aforesaid shall be that percentage of the Cost of such Unit as is set forth in Schedule B hereto opposite the rental payment date next succeeding the actual date of such Casualty Occurrence, or if there is a casualty after the Lease has terminated, the rental payment date immediately preceding the date of loss.

Casualty values will be adjusted as provided in § 3 hereof with respect to Units delivered after September 30, 1978.

Whenever any Unit shall suffer a Casualty Occurrence after termination of this Lease and before such Unit shall have been returned in the manner provided in §§ 11 or 14 hereof, the Lessee shall promptly and fully notify the Lessor with respect thereto and pay to the Lessor an amount equal to the Casualty Value of such Unit. Upon the making of any such payment by the Lessee in respect of any Unit (except in the case of the loss, theft or complete destruction of such Unit), the Lessor shall be entitled to recover possession of such Unit, and the Lessor appoints the Lessee its agent to dispose of such Unit or any component thereof, at the best price obtainable on an "as is, where is" basis without recourse to, or representation or warranty from the Lessor. The Lessee shall be entitled to the net proceeds of any sale to the extent they do not exceed the Casualty Value of such Unit and shall pay any excess to the Lessor.

In the event of the requisition for use by the United States Government (hereinafter called the Government) of any Unit during the term of this Lease or any renewal thereof not constituting a Casualty Occurrence, all of the Lessee's obligations under this Lease with respect to such Unit shall continue to the same extent as if such requisition had not occurred, except that if such Unit is returned by the Government at any time after the end of the term of this Lease or any renewal thereof, the Lessee shall be obligated to return such Unit to the Lessor pursuant to § 11 or 14 hereof, as the case may be, promptly upon such return by the Government rather than at the end of the term of this Lease or any renewal thereof, but the Lessee shall in all other respects comply with the provisions of said § 11 or 14, as the case may be, with respect to such Unit. All payments

received by the Lessor or the Lessee from the Government for the use of such Unit during the term of this Lease or any renewal thereof shall be paid over to, or retained by, the Lessee provided no Event of Default or other event which after notice or lapse of time or both would become an Event of Default, shall have occurred and be continuing; and all payments received by the Lessor or the Lessee from the Government for the use of such Unit after the term of this Lease or any renewal thereof, shall be paid over to, or retained by, the Lessor.

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

The Lessee will, at all times while this Lease is in effect, at its own expense, cause to be carried and maintained all risk property damage insurance in respect of the Units at the time subject hereto, and public liability insurance, at least in amounts and against risks customarily insured against by railroad companies on similar equipment owned by them and in amounts and against risks customarily insured against by the Lessee on similar equipment owned by it. Such public liability insurance shall be a policy containing not more than a \$2,000,000 deductible and insuring against loss of not less than \$50,000,000 per occurrence. Any policies of public liability insurance or property damage insurance carried in accordance with this paragraph shall (i) name the Lessor and the Beneficiaries and the Lenders as additional named insureds as to liability insurance or loss payees as to property damage insurance, as the case may be, as their respective interests may appear, (ii) require 30 days prior written notice of material change, cancellation or the removal of the Lessor or the Beneficiaries or the Lenders as named insureds as to liability insurance or loss payees as to property damage insurance, as the case may be, to the Lessor, the Beneficiaries and the Lenders, and (iii) shall provide that in respect of the interests of the Lessor, the Beneficiaries or the Lenders in such policies, the insurance shall not be invalidated by any action or inaction of the Lessee or any other person (other than the Lessor, the Beneficiaries or the Lenders) and shall insure the Lessor and the Beneficiaries and the Lenders regardless of any breach or violation of any warranty, declaration, or condition contained in such policies by the Lessee or any other person (other than the Lessor, the Beneficiaries or the Lenders).

Upon the execution of this Lease, and thereafter not less than 15 days prior to the expiration dates of the expiring policies theretofore delivered pursuant hereto, the Lessee shall deliver to the Lessor and the Beneficiaries a certificate of insurance issued by an authorized representative of the insurers for the insurance maintained pursuant to this § 7; provided, however, that if the delivery of a formal certificate is delayed, the Lessee shall deliver an executed binder with respect thereto and shall deliver the formal certificate upon receipt thereof.

In the event that the Lessee shall fail to maintain insurance as herein provided, the Lessor may at its option provide such insurance (giving the Lessee prompt written notice thereof) and, in such event, the Lessee shall, upon demand from time to time, reimburse the Lessor for the cost thereof together with interest, on the amount of the cost to the Lessor of such insurance which the Lessee shall have failed to maintain, at the rate per annum specified in § 24 hereof.

§ 8. Reports. On or before April 30 in each year, commencing with the calendar year 1979, the Lessee will furnish to the Lessor and the Agent an accurate statement (a) setting forth as at the preceding December 31 the amount, description and identifying numbers of all Units then leased hereunder or covered by the Revolving Loan Agreement, the amount, description and identifying numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year (or since the date of this Lease in the case of the first such statement) or are then undergoing repairs (other than running repairs) or then withdrawn from use pending such repairs (other than running repairs) and setting forth such other information regarding the condition and state of repair of the Units as the Lessor or the Agent may reasonably request and (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the identifying numbers and markings required by § 5 hereof have been preserved or replaced. The Lessor or the Agent, at their sole cost and expense, 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.

§ 9. Disclaimer of Warranties; Compliance with Laws and Rules; Indemnification. NEITHER THE LESSOR NOR THE BENEFICIARIES MAKE, HAVE MADE OR SHALL BE DEEMED TO MAKE OR HAVE MADE ANY 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 NEITHER THE LESSOR NOR THE BENEFICIARIES MAKE ANY WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE NOR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, NOR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT (EITHER UPON DELIVERY THEREOF TO THE LESSOR OR OTHERWISE), INTERFERENCE BY ANY PARTY OTHER THAN THE LESSOR OR THE BENEFICIARIES WITH THE LESSEE'S RIGHT TO THE QUIET ENJOYMENT THEREOF, IT BEING AGREED THAT ALL SUCH RISKS, AS BETWEEN THE LESSOR AND THE BENEFICIARIES AND THE LESSEE, ARE TO BE BORNE BY THE LESSEE; but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for the account of the Lessor and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Lessor may have against the Builder under the provisions of the Assignment and the Builder's Consent and the patent infringement and indemnification provisions of the Purchase Order; provided, however, that if at any time an Event of Default shall have occurred and be continuing, the Lessor may assert and enforce, at the Lessee's sole cost and expense, such claims and rights. THE LESSOR SHALL HAVE NO RESPONSIBILITY OR LIABILITY TO THE LESSEE OR ANY OTHER PERSON WITH RESPECT TO ANY OF THE FOLLOWING: (i) ANY LIABILITY, LOSS OR DAMAGE CAUSED OR ALLEGED TO BE CAUSED DIRECTLY OR INDIRECTLY BY ANY UNITS OR BY ANY INADEQUACY THEREOF OR DEFICIENCY OR DEFECT THEREIN OR BY ANY OTHER CIRCUMSTANCES IN CONNECTION THEREWITH; (ii) THE USE, OPERATION OR PERFORMANCE OF ANY UNITS OR ANY RISKS RELATING THERETO; (iii) ANY INTERRUPTION OF SERVICE, LOSS OF BUSINESS OR ANTICIPATED PROFITS OR CONSEQUENTIAL DAMAGES; OR (iv) THE DELIVERY, OPERATION, SERVICING, MAINTENANCE, REPAIR, IMPROVEMENT OR REPLACEMENT OF ANY UNITS. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Lessor that the Units described therein are satisfactory to the Lessee in their design, condition, material, workmanship, use, operation or performance, and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on the character or use of the Equipment delivered.

The Lessee agrees, for the benefit of the Lessor and the Lenders, to comply in all respects (including without limitation, with respect to the use, maintenance and operation of each Unit) with all applicable laws of the jurisdictions in which its operations involving the Units may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the United States Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units, and in the event that, prior to the expiration of the Lease or any renewal thereof, such laws or rules require any alteration, replacement, addition or modification of or to any part on any Unit, the Lessee will conform therewith at its own expense and the Lessor will have title thereto. Notwithstanding the preceding sentence, the Lessee may at its own expense, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Lessor or the Agent, adversely affect the property or rights of the Lessor or the Lenders under this Lease, the Purchase Order, the Revolving Loan Agreement, the Lease Assignment or the Assignment.

Except as set forth in the first paragraph of § 7 and the second paragraph of § 9 hereof, the Lessee, at its own cost and expense, may from time to time make such other additions, modifications and improvements to the Units during the term of this Lease as are readily removable without causing material damage to the Units (and do not adversely and materially affect the value of the Units). The additions, modifications and improvements made by the Lessee under the preceding sentence shall be owned by the Lessee and shall be removed by it upon the return of the Units pursuant to §§ 11 and 14 hereof, except to the extent such additions, modifications or improvements are subject to the next paragraph hereof.

Any and all parts installed on and additions and replacements made to any Unit (i) which are not readily removable without causing material damage to such Unit, or (ii) which were made 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 and of the Interstate Commerce Commission,

or by any lawful rule of the Department of Transportation or other applicable regulatory body, shall constitute accessions to such Unit and full ownership thereof free from any lien, charge, security interest or encumbrance (except for those created by the Revolving Loan Agreement) shall immediately be vested in the Lessor and the Lenders as their respective interests may appear. At its option the Lessor may require the Lessee to remove any or all such parts, additions or replacements at the time the Units are returned to the Lessor pursuant to the provisions of § 11 or 14 hereof.

The Lessee, Lessor and Beneficiaries agree that any installations, additions and replacements which are made by the Lessee at its expense and which constitute accessions under this Section 9 shall be treated as additional rent and the Beneficiaries will include their respective shares of the fair market value of such installations, additions and replacements in gross income in the year in which they are made and, where appropriate, shall be entitled to the investment tax credit and depreciation deductions with respect to such installations, additions and modifications.

The Lessee shall pay, and shall protect, indemnify and hold the Lessor, the Beneficiaries, the Lenders and any assignee thereof, and their respective successors, assigns, agents and servants (hereinafter called Indemnified Persons), harmless from and against any and all causes of action, suits, penalties, claims, demands or judgments, of any nature whatsoever which may be imposed on, incurred by or asserted against any Indemnified Person (including any or all liabilities, obligations, damages, costs, disbursements, expenses (including without limitation attorneys' fees and expenses of any Indemnified Person) relating thereto) in any way relating to or arising, or alleged to arise out of this Lease or the Units, including without limitation those in any way relating to or arising or alleged to arise out of (i) the manufacture, construction, purchase, acceptance, rejection, ownership, delivery, nondelivery, lease, possession, use, operation, condition, sale, return or other disposition of any Unit or portion thereof, (ii) any latent and other defects whether or not discoverable by the Lessor or the Lessee, (iii) any claim for patent, trademark or copyright infringement, (iv) any claims based on strict liability in tort, (v) any injury to or the death of any person or any damage to or loss of property on or near the Units or in any manner growing out of or concerned with, or alleged to grow out of or be connected with, the ownership, use, replacement, adaptation or

maintenance of the Units or of any other equipment in connection with the Units (whether owned or under the control of the Lessor, the Lessee or any other person) or resulting or alleged to result from the condition of any thereof; (vi) any violation, or alleged violation, of any provision of this Lease (except by the Lessor) or of any agreement, law, rule, regulation, ordinance or restriction, affecting or applicable to the Units or the leasing, ownership, use, replacement, adaptation or maintenance thereof; or (vii) any claim arising out of any of the Lessor's obligations under the Lease Assignment, the Revolving Loan Agreement, the Assignment or the Participation Agreement. The Lessee shall be obligated under this § 9, irrespective of whether any Indemnified Person shall also be indemnified with respect to the same matter under any other agreement by any other person, and the Indemnified Person seeking to enforce the indemnification may proceed directly against the Lessee under this § 9 without first resorting to any such other rights of indemnification. In case any action, suit or proceeding is brought against any Indemnified Person in connection with any claim indemnified against hereunder, the Lessee may and, upon such Indemnified Person's request, will at the Lessee's expense resist and defend such action, suit or proceeding, or cause the same to be resisted or defended by counsel selected by the Lessee and approved by such Indemnified Person, as the case may be, and, in the event of any failure by the Lessee to do so, the Lessee shall pay all costs and expenses (including without limitation attorneys' fees and expenses) incurred by such Indemnified Person in connection with such action, suit or proceeding. In the event the Lessee is required to make any payment under this § 9, the Lessee shall pay such Indemnified Person an amount which, after deduction of all taxes required to be paid by such Indemnified Person, as the case may be, in respect of the receipt thereof under the laws of the United States or of any political subdivision thereof (after giving credit for any savings in respect of any such taxes by reason of deductions, credits or allowances in respect of the payment of the expense indemnified against, and of any other such taxes as determined in the sole discretion of the Indemnified Person), shall be equal to the amount of such payment. The Lessee and the Lessor each agrees to give each other promptly upon obtaining knowledge thereof written notice of any claim or liability hereby indemnified against, however, the failure to give any such notice shall not relieve the Lessee of its obligations under this § 9. Upon the payment in full of any indemnities as contained in this § 9 by the Lessee, and provided that no Event of Default (or other event which with lapse of time or notice or both

would constitute an Event of Default) shall have occurred and be continuing, it shall be subrogated to any right of such Indemnified Person in respect of the matter against which indemnity has been given. Any payments received by such Indemnified Person from any person (except the Lessee) as a result of any matter with respect to which Indemnified Person has been indemnified by the Lessee pursuant to this § 9 shall be paid over to the Lessee to the extent necessary to reimburse the Lessee for indemnification payments previously made *for the residual value of the Unit.*

The indemnities contained in this § 9 shall survive the expiration or termination of this Lease with respect to all events, facts, conditions or other circumstances occurring or existing prior to such expiration or termination and are expressly made for the benefit of, and shall be enforceable by, any Indemnified Person. Any indemnity payment pursuant to this § 9 shall be made directly to the Indemnified Person. None of the indemnities in this § 9 shall be deemed to create any rights of subrogation in any insurer or third party against the Lessee therefor, from or under any Indemnified Person, whether because of any claim paid or defense provided for the benefit thereof or otherwise. The indemnities set forth in this § 9 do not guarantee the Loan (as such term is defined in the Revolving Loan Agreement).

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 of the Units, the security interest of the Lenders in the Units or the leasing thereof to the Lessee.

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

A. default shall be made in payment of any amount provided for in § 3, 7, 13 or 14 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 the right to possession of the Units, or any thereof;

C. default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee, contained herein, in the Assignment, the Consent or the Participation Agreement, and such default shall continue for 30 days after written notice from the Lessor or the Agent to the Lessee, specifying the default and demanding that the same be remedied;

D. a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may hereafter be amended, shall be filed by or against the Lessee and such petition shall not 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), or all the obligations of the Lessee, under this Lease or under the Consent shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier;

E. any other proceedings shall be commenced by or against the Lessee, for any relief which includes, or might result in, any modification of the obligations of the Lessee, hereunder or under the Consent or the Assignment, under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of the Lessee, hereunder or under the Consent or the Assignment), and such proceedings shall not 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), or all the obligations of the Lessee under this Lease or under the Consent or the Assignment shall not have been

and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Lessee, or for the 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, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

F. an event of default set forth in Paragraph 6.01 of the Revolving Loan Agreement shall have occurred and be continuing;

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

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

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units so terminated shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided; and thereupon may, upon such further notice, if any, as may be required for compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Lessor or its agents, take or cause to be taken immediate possession of the Equipment, or one or more of the Units thereof, without liability to return to the Lessee any sums theretofore paid and free from all claims whatsoever, and may remove the same from possession and use of the Lessee or any other person and for such purpose may enter upon the premises of the Lessee or any other premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the

Lessee, subject to all mandatory requirements of due process of law; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee as damages for loss of the bargain and not as a penalty whichever of the following amounts which the Lessor, in its sole discretion, shall specify (x) a sum, with respect to each Unit, which represents (A) the excess of the present value, at the time of such termination, of the entire unpaid balance of all rental for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over the then present value of the rentals which the Lessor reasonably estimates to be obtainable for the Unit during such period, such present value to be computed in each case on the basis of a 6% per annum discount, to the extent permitted by law, compounded quarterly from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, plus (B) any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Lessor shall have sustained by reason of the breach of any covenant, representation or warranty of this Lease other than for the payment of rental, plus (C) amounts due pursuant to the provisions of the Tax Indemnity Agreement dated as of the date hereof, between the Lessee and the Beneficiaries, or (y) a sum, with respect to each Unit, which represents (A) the excess of the present value, at the time of such termination, of the entire unpaid balance of all rental for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over the then present value of the actual rentals for such Unit which Lessor shall have contracted to receive pursuant to any

lease in replacement of this Lease, such present value to be computed in each case on the basis of a 6% per annum discount, to the extent permitted by law, compounded quarterly from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, plus (B) an amount calculated pursuant to clause (B) of this § 10(b)(x), plus (C) an amount calculated pursuant to clause (C) of this § 10(b)(x), or (z) an amount, with respect to each Unit, equal to the excess, if any, of the Casualty Value as of the rental payment date on or next preceding the date of termination over the net proceeds of the sale of such Unit if sold, or, if not sold at such time, the Fair Market Sales Value (as hereinafter defined).

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

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

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

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 reoccurrence of any such contingencies or similar contingencies.

The Lessee also agrees to furnish the Lessor, the Beneficiaries and the Agent, promptly upon any responsible officer's becoming aware of any condition which constitutes an Event of Default under the Lease or which, after notice or lapse of time or both, would constitute such an Event of Default, written notice specifying such condition and the nature and status thereof. For the purposes of this Section, a "responsible officer" shall mean, with respect to the subject matter of any covenant, agreement or obligation of the Lessee in this Lease contained, any corporate 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.

§ 11. Return of Units upon Default. If this Lease shall terminate pursuant to § 10 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor. Each Unit so delivered shall be in the same operating order, repair and condition as when originally delivered to the Lessee, ordinary wear and tear excepted, and meet the standards then in effect under the Interchange Rules of the Association of American Railroads applicable to railroad equipment of the same type as the Units. For the purpose of delivering possession of any Unit or Units to the Lessor as above required, the Lessee shall at its own cost, expense and risk:

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

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

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

The assembling, delivery, removal, re-installation, storage, insurance and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will, at its own cost and expense, insure, maintain and keep the Units 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 of any such Unit, to inspect the same. At the Lessor's option, all gross amounts earned in respect of the Units after the date of termination of this Lease shall belong to the Lessor and, if received by the Lessee, shall be promptly paid to the Lessor, or the Lessee shall pay to the Lessor for each day thereafter an amount equal to the amount, if any, by which 0.028848% of the Cost of such Box Car for each such day exceeds all gross amounts earned with respect to such Box Car and received by the Lessor for such day.

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

§ 12. Assignment; Possession and Use. This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. All the rights of the Lessor hereunder (including, but not limited to, the rights under §§ 6, 7, 9 and 10 and the rights to receive the rentals payable under this Lease) may inure to the benefit of the Lessor's assigns (including, but not limited to, the Lenders).

So long as no Event of Default shall have occurred under this Lease or under the Revolving Loan Agreement, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease and the Assignment, 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. The Lessee, at its own expense, will promptly pay or discharge any and all sums claimed by any party which, if unpaid, might become a lien, charge, security interest or other encumbrance (other than an encumbrance created by the Lessor or the Lenders or resulting from claims against the Lessor or the Lenders not related to the ownership of the Units) upon or with respect to any Unit, including any accession thereto, or the interest of the Lessor, the Lenders or the Lessee therein, and will promptly discharge any such lien, claim, security interest or encumbrance which arises. 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 the Units, except to the extent permitted by the provisions of the immediately succeeding paragraph.

So long as no Event of Default shall have occurred under this Lease or under the Revolving Loan Agreement, the Lessee shall be entitled to the possession of the Units and to the use of the Units by it or any affiliate upon lines of railroad owned or operated by it 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, and also to permit the use of the Units upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements, but only upon and subject to all the terms and conditions of this Lease and the Revolving Loan Agreement; provided, however, that the Lessee shall not assign or permit the assignment of any Unit to service involving the regular operation and maintenance thereof outside the United States. The Lessee may receive and retain compensation for such use from other railroads so using any of the Units, subject to §§ 11 and 14 hereof. The Lessee represents and warrants to the Lessor that the Units will be used, and are intended for use, in connection with interstate commerce.

Nothing in this § 12 shall be deemed to restrict the right of the Lessee to assign or transfer its interest

under this Lease in the Units or possession of the Units to any railroad corporation incorporated under the laws of any state of the United States or the District of Columbia (which shall have duly assumed the obligations of the Lessee hereunder and under the Participation Agreement, the Assignment and the Consent) into or with which it shall have become merged or consolidated or which shall have acquired its property as an entirety or substantially as an entirety, provided that such assignee or transferee will not, upon the effectiveness of such merger, consolidation or acquisition, be in default under any provision of this Lease.

§ 13. Renewal and Purchase Option. Provided that this Lease has not been earlier terminated and that no Event of Default or other event which after notice or lapse of time or both would become an Event of Default, shall have occurred and be continuing, the Lessee may by written notice delivered to the Lessor not less than six months prior to the end of the Basic Lease Term or any extended term of this Lease, as the case may be, elect to extend the term of this Lease in respect of all but not fewer than all of the Box Cars then covered by this Lease, for up to, but no more than, two consecutive additional five-year periods, the first five-year period commencing on the scheduled expiration of the Basic Lease Term and the second five-year period, if one is elected, commencing upon the expiration of the first extended term of this Lease, at the then Fair Market Rental Value (as hereinafter defined), payable quarterly in arrears in each year of the extended term. An election to extend the Lease pursuant to this § 13 shall be irrevocable.

Fair Market Rental Value shall be determined with respect to all of the Box Cars on the basis of, and shall be equal in amount to, the rental which would obtain in an arm's-length transaction between an informed and willing lessee (other than a lessee currently in possession) and an informed and willing lessor under no compulsion to lease and, in such determination, costs of removal from the location of current use shall not be a deduction from such rental. If, after 30 days from the giving of notice by the Lessee of the Lessee's election to extend the term of this Lease, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Rental Value of the Units, such rental shall be determined in accordance with the foregoing definition by the following procedure: If either party to such determination shall have given written notice to the other requesting determination of such rental by this appraisal procedure, the

parties shall consult for the purpose of appointing a qualified independent appraiser by mutual agreement. If no such appraiser is so appointed within 20 business days after such notice is given, each party shall appoint an independent appraiser within 25 business days after such notice is given, and the two appraisers so appointed shall within 35 business days after such notice is given appoint a third independent appraiser. If no such third appraiser is appointed within 35 business days after such notice is given, either party may apply, to make such appointment, to the American Arbitration Association, and both parties shall be bound by any appointment so made. Any appraiser or appraisers appointed pursuant to the foregoing procedure shall be instructed to determine the Fair Market Rental Value of the Units subject to the proposed extended term within 20 days after his or their appointment. If the parties shall have appointed a single appraiser or if either party shall have failed to appoint an appraiser, the determination of Fair Market Rental Value of the single appraiser appointed shall be final. If three appraisers shall be appointed, their determination shall be averaged, except that if one determination materially and substantially differs from the other two determinations, such determination shall be excluded when calculating the average, and such average shall be final and binding on the parties hereto as the Fair Market Rental Value. The appraisal proceedings shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association as in effect on the date hereof, except as modified hereby. The provision for this appraisal procedure shall be the exclusive means of determining Fair Market Rental Value and shall be in lieu of any judicial or other procedure for the determination thereof, and each party hereto hereby consents and agrees not to assert any judicial or other procedures. The expenses of the appraisal procedure shall be borne equally by the Lessee and the Lessor.

The Lessee, provided that no Event of Default or other event which after notice or lapse of time or both would become an Event of Default, shall have occurred and be continuing, will have the option to purchase all, but not less than all, of the Box Cars upon the expiration of the Basic Lease Term or any extension thereof, for an amount in each case equal to the then Fair Market Sales Value thereof. Fair Market Sales Value shall be determined on the basis of, and shall be equal in amount to, the sum which would obtain in an arm's-length transaction between an informed and willing purchaser (other than a purchaser currently in

possession) and an informed and willing seller under no compulsion to sell and, in such determination, costs of removal from the location of current use shall not be a deduction from such sum. Fair Market Sales Value shall be as determined by agreement between the Lessor and the Lessee or, in the absence of such agreement, by independent appraisal utilizing as nearly as possible the procedure for appraisal for Fair Market Rental Value set forth in this § 13. The Lessee must give the Lessor notice in writing of its desire to exercise such purchase option not less than 180 days prior to the expiration of the Basic Lease Term with respect to Group I or any extension thereof. An election to purchase the Box Cars pursuant to this § 13 shall be irrevocable.

The options to purchase and renew which are available to the Lessee pursuant to this § 13 may not at any time be exercised concurrently. The exercise by the Lessee of any right of purchase shall constitute a waiver by the Lessee of all rights of renewal then or thereafter otherwise available hereunder for that Unit. The exercise by the Lessee of any right of renewal shall constitute a waiver by the Lessee of any right of purchase otherwise then available for that Unit, but any right of purchase or renewal provided for herein during any succeeding renewal term shall not be deemed waived. The Lessee shall not be permitted to concurrently exercise both a right to purchase and a right to renew and in the event it shall deliver any such notice to the Lessor, the same shall be deemed without effect for all purposes of this § 13.

§ 14. Return of Units upon Expiration of Term.

The Lessor intends to retain the Units for lease at the expiration of the term of this Lease to a subsequent lessee. As soon as practicable on or after the expiration of the original or extended term of this Lease with respect to any Unit not purchased by the Lessee, the Lessee will, at its own cost and expense, at the request of the Lessor, deliver possession of such Unit to the Lessor upon such storage tracks of the Lessee as the Lessor may designate, or, in the absence of such designation, as the Lessee may select, and permit the Lessor to store such Unit on such tracks for a period not exceeding 180 days after the actual return of the last Box Car to be returned to the Lessor's possession and transport the same, at any time within such 180-day period, to any reasonable place within the area within which the Lessee operates within the continental United States, all as directed by the Lessor, the movement and storage of such

Units to be at the expense and risk of the Lessee without charge to the Lessor for insurance. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser, lessee or user of such Unit, to inspect the same. Each Unit returned to the Lessor pursuant to this § 14 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, ordinary wear and tear excepted, and (ii) 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. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. All gross amounts earned in respect of the Units after the date of termination of this Lease shall belong to the Lessor and, if received by the Lessee, shall be promptly paid to the Lessor. In the event any Unit is not assembled, delivered, and stored, as hereinabove provided, within 30 days after such termination, the Lessee shall, in addition, pay to the Lessor for each day thereafter an amount equal to the amount, if any, by which 0.028848% of the Cost of such Box Car for each such day exceeds the actual earnings received by the Lessor on such Box Car for each such day.

§ 15. Recording. The Lessee, at its own expense, will cause this Lease, the Lease Assignment, the Revolving Loan Agreement, the Purchase Order, the Builder's Consent and the Assignment to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act. The Lessee will (at its own expense) undertake the filing, registering, deposit, and recording required of the Lessor under the Revolving Loan Agreement, including any filings under the Uniform Commercial Code, and will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, reregister, deposit and redeposit or rerecord whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Agent for the purpose of proper protection, to their satisfaction, of the Lenders' and the Lessor's respective interests in the Units, or for the purpose of carrying

out the intention of this Lease, the Lease Assignment, the Revolving Loan Agreement, the Purchase Order, the Builder's Consent and the Assignment; and the Lessee will promptly furnish to the Agent and the Lessor evidence of all such filing, registering, depositing or recording, and an opinion of counsel for the Lessee with respect thereto satisfactory to the Agent and the Lessor. This Lease and the Lease Assignment, the Revolving Loan Agreement, the Purchase Order, the Builder's Consent and the Assignment shall be filed and recorded with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Unit and any Uniform Commercial Code filing shall be completed prior to such delivery and acceptance.

§ 16. Interest on Overdue Rentals. Anything to the contrary herein notwithstanding, any nonpayment of rentals and other obligations due hereunder, including without limitation §§ 3, 6, 7, 9 and 10 hereof, shall result in the obligation on the part of the Lessee promptly to pay to the extent legally enforceable, an amount equal to 12.5% per annum of the overdue rentals and other obligations for the period of time during which they are overdue.

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

(a) if to the Lessor, at 100 Renaissance Center, Detroit, Michigan 48243, attention of Corporate Agencies Administration, with copies to the Beneficiary Ford Motor Credit Company at Box 1729, The American Road, Dearborn, Michigan 48121, attention of Vice President-CIR Financing, to Beneficiary The Budd Leasing Corp. at 3155 West Big Beaver Road, Troy, Michigan 48084, and to Beneficiary Gould Leasing Inc. at 10 Gould Center, Rolling Meadows, Illinois 60008; Attention of Portfolio Manager;

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

(c) if to the Lenders, at First Pennsylvania Tower, Centre Square Building, Philadelphia, Pennsylvania 19101; Attention: Roger C. Baldwin, Vice President;

or addressed to any party at such other address as such party shall hereafter furnish to the other party in writing.

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

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

§ 19. 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 of Manufacturers National Bank of Detroit, or for the purpose or with the intention of binding said bank 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 the said bank solely in the exercise of the powers expressly conferred upon the said bank as trustee under said Trust Agreement; and that no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against said bank or the Beneficiaries or on account of any representation, undertaking or agreement of said bank as Lessor, or the Beneficiaries, either expressed or implied, all such personal liability, if any, being expressly waived and released by the Lessee and by all persons claiming by, through or under the Lessee.

§ 20. Agreements for Benefit of Beneficiaries. All rights of the Lessor hereunder (including, but not limited to, its rights under §§ 6, 7, 9 and 10 and the right

to receive the rentals payable under this Lease) shall inure to the benefit of the Beneficiaries and the Beneficiaries' assigns under the Trust Agreement.

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

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

§ 23. Obligations of Lessor Under the Revolving Loan Agreement; Additional Rentals. In the event that the Lessor shall become obligated to make any payment or to perform any obligations pursuant to the Revolving Loan Agreement not covered by the provisions of this Lease, the Lessee shall pay such additional rentals hereunder and perform such obligations so that all of the Lessor's obligations pursuant to the Revolving Loan Agreement shall be fully performed, without regard for any limitation of liability of the Lessor contained in the Revolving Loan Agreement plus an amount which, after subtracting all net Federal, state or local taxes which are or will be required to be paid by the Beneficiaries, as shall be required to maintain the Beneficiaries' net after-tax cash flows and return on their investments. This Section is not to be construed as a guaranty of the Loan.

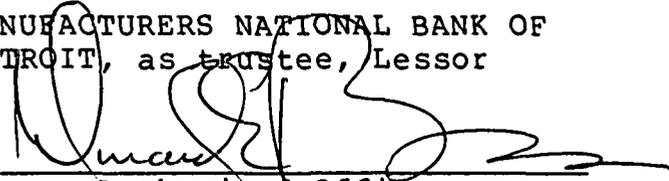
§ 24. Lessor's Right to Perform for the Lessee. If the Lessee fails to perform or comply with any of its agreements contained herein, the Lessor may upon notice to the Lessee itself perform or comply with such agreement, and the amount of the reasonable cost and expenses of the Lessor incurred in connection with such performance or compliance, together with interest on such amount at a rate equal to the lesser of 13% per annum or the maximum amount permitted by applicable law, shall be payable by the Lessee upon demand.

§ 25. Immunities, Satisfaction of Undertakings.

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

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

MANUFACTURERS NATIONAL BANK OF
DETROIT, as trustee, Lessor

By 

Authorized Officer

DONALD E. BLACK

CONSOLIDATED RAIL CORPORATION,
Lessee

By 

Title:

Asst. Treas. & Txs. & Bkg.

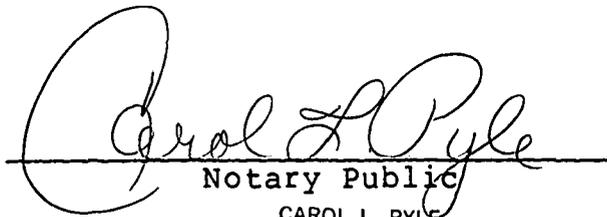
ATTEST:



ASSISTANT SECRETARY

Pennsylvania
STATE OF MICHIGAN)
CITY OF PHILADELPHIA) SS.:
~~COUNTY OF WAYNE~~)

On this *August 23, 1978*, before me personally appeared **DONALD E. BLACK**, to me personally known, who, being by me duly sworn, says that he is an Authorized Officer of MANUFACTURERS NATIONAL BANK OF DETROIT, that one of the seals affixed to the foregoing instrument is the seal of said national bank, as such Trustee and not in its individual capacity, that said instrument was signed and sealed on behalf of said national bank by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said national bank in said capacity.

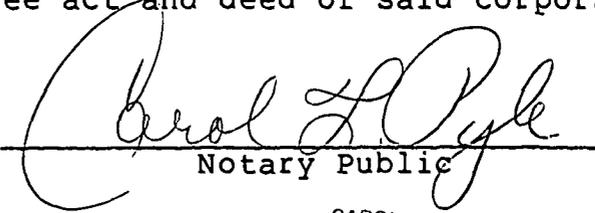

Notary Public
CAROL L. PYLE

Notary Public, Philadelphia, Philadelphia Co.
My Commission Expires January 8, 1979

[Notarial Seal]

STATE OF PENNSYLVANIA)
) ss.:
CITY OF PHILADELPHIA)

On this *August 23, 1978*, before me personally appeared **B. D. Wellmon**, to me personally known, who, being by me duly sworn, says that he is a **Asst. Treas. Txs. & Bkg.** of CONSOLIDATED RAIL CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



Notary Public

CAROL L. PYLE
Notary Public, Philadelphia, Philadelphia Co.
My Commission Expires January 8, 1979

[Notarial Seal]

My Commission expires

SCHEDULE A TO LEASE

| <u>Type</u> | <u>Quantity</u> | <u>Lessee's Identifying Numbers</u> |
|-------------|-----------------|---|
| Box Cars | 162 | CR 223301 through CR 223462 |

SCHEDULE B TO LEASE

Casualty Values†

| <u>Date</u> (10th Day of Each Month) | <u>Percentage of Cost</u> <u>Box Cars</u> | <u>Date</u> (10th Day of Each Month) | <u>Percentage of Cost</u> <u>Box Cars</u> |
|--|--|--|--|
| 10/78 & Prior Thereto | 103.26 | 4/89 | 35.31 |
| 1/79 | 103.68 | 7/89 | 33.48 |
| 4/79 | 103.90 | 10/89 | 31.68 |
| 7/79 | 104.10 | 1/90 | 29.88 |
| 10/79 | 104.17 | 4/90 | 28.09 |
| 1/80 | 104.14 | 7/90 | 26.36 |
| 4/80 | 104.03 | 10/90 | 24.67 |
| 7/80 | 103.78 | 1/91 | 24.29 |
| 10/80 | 103.42 | 4/91 | 23.91 |
| 1/81 | 102.96 | 7/91 | 23.55 |
| 4/81 | 102.44 | 10/91 | 23.19 |
| 7/81 | 101.73 | 1/92 | 22.82 |
| 10/81 | 100.67 | 4/92 | 22.42 |
| 1/82 | 93.61 | 7/92 | 22.03 |
| 4/82 | 92.80 | 10/92 | 21.63 |
| 7/82 | 91.90 | 1/93 | 21.21 |
| 10/82 | 90.93 | 4/93 | 20.76 |
| 1/83 | 89.90 | 7/93 | 20.39 |
| 4/83 | 88.81 | 10/93 | 20.08 |
| 7/83 | 87.55 | 1/94 & Thereafter | 20.00 |
| 10/83 | 85.94 | | |
| 1/84 | 78.35 | | |
| 4/84 | 77.01 | | |
| 7/84 | 75.60 | | |
| 10/84 | 74.13 | | |
| 1/85 | 72.62 | | |
| 4/85 | 71.07 | | |
| 7/85 | 69.38 | | |
| 10/85 | 67.34 | | |
| 1/86 | 59.41 | | |
| 4/86 | 57.71 | | |
| 7/86 | 55.96 | | |
| 10/86 | 54.17 | | |
| 1/87 | 52.34 | | |
| 4/87 | 50.48 | | |
| 7/87 | 48.58 | | |
| 10/87 | 46.67 | | |
| 1/88 | 44.75 | | |
| 4/88 | 42.83 | | |
| 7/88 | 40.93 | | |
| 10/88 | 39.06 | | |
| 1/89 | 37.19 | | |

† Subject to adjustment pursuant to § 3 of the Lease.