

REC'D 1425  
9850-A  
RECORDATION NO. 9850

NOV 20 1978 - 4 25 PM  
INTERSTATE COMMERCE COMMISSION

GRAVATH, SWAYNE & MOORE  
ONE CHASE MANHATTAN PLAZA  
NEW YORK, N.Y. 10005

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9850  
RECORDATION NO. 9850

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INTERSTATE COMMERCE COMMISSION

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Date NOV 20 1978  
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REC'D 1425  
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NOV 20 1978 - 4 25 PM  
INTERSTATE COMMERCE COMMISSION

ICC Washington, D.C.  
RECORDATION NO. 9850-C  
REC'D 1425

NOV 20 1978 - 4 25 PM

INTERSTATE COMMERCE COMMISSION

Great American Management Services, Inc.  
Lease Financing Dated as of October 15, 1978  
9.6% Conditional Sale Indebtedness Due August 30, 1994  
NOV 20 1978 - 4 25 PM  
RECORDATION NO. 9850-B  
REC'D 1425

Dear Mr. Homme:

Pursuant to 49 U.S.C. § 11303 of the Interstate Commerce Act and the Commission's rules and regulations thereunder, as amended, I enclose herewith on behalf of Great American Management Services, Inc., for filing and recordation counterparts of the following documents:

1(a) Conditional Sale Agreement dated as of October 15, 1978, between First Security State Bank, as Owner-Trustee, and General Motors Corporation (Electro-Motive Division);

(b) Agreement and Assignment dated as of October 15, 1978, between General Motors Corporation (Electro-Motive Division) and First Security Bank of Utah, N.A., as Agent;

2(a) Lease of Railroad Equipment dated as of October 15, 1978, between Great American Management Services, Inc., and First Security State Bank, as Owner-Trustee;

(b) Assignment of Lease, Reassignment of Sublease, Assignment of Surety Bond and Agreement

*Handwritten signature/initials on the left margin.*

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dated as of October 15, 1978, between First Security State Bank, as Owner-Trustee, and First Security Bank of Utah, N.A., as Agent; and

 3(a) Sublease of Railroad Equipment dated as of October 15, 1978, between William M. Gibbons, Trustee of the Property of Chicago, Rock Island and Pacific Railroad Company and Great American Management Services, Inc.;

 (b) Assignment of Sublease Agreement dated as of October 15, 1978, between Great American Management Services, Inc., and First Security State Bank, as Owner-Trustee.

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

(1) Assignee-Agent:

First Security Bank of Utah, N.A.  
79 South Main Street  
Salt Lake City, Utah 84111

(2) Trustee-Owner-Trustee-Lessor:

First Security State Bank  
79 South Main Street  
Salt Lake City, Utah 84111

(3) Builder-Vendor:

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

(4) Lessee-Sublessor:

Great American Management Services, Inc.  
In care of Thayer, Ringoen & Macdonald  
50 California Street  
San Francisco, California 94111

(5) Trustee-Railroad-Sublessee-Debtor:

William M. Gibbons, Trustee  
of the Property of Chicago, Rock Island  
and Pacific Railroad Company  
332 So. Michigan Avenue  
Chicago, Illinois 60604

(6) Surety:

Great American Insurance Company  
580 Walnut Street  
Cincinnati, Ohio 45202

Please file and record the documents referred to in this letter and cross-index them under the names of the Assignee-Agent, the Trustee-Owner-Trustee-Lessor, the Builder-Vendor, the Lessee-Sublessor, Trustee-Railroad-Sublessee-Debtor and the Surety.

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

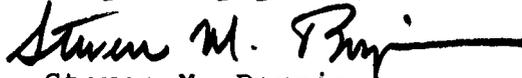
12 38-2, 2000 h.p. diesel electric locomotives bearing identifying numbers of the Railroad ROCK 4368 through ROCK 4379, both inclusive.

There is also enclosed a check for \$150 payable to the Interstate Commerce Commission, representing the fee for recording the Conditional Sale Agreement and related Agreement and Assignment (together constituting one document), the Lease of Railroad Equipment and related Assignment of Lease, Reassignment of Sublease, Assignment of Surety Bond and Agreement (together constituting one document) and the Sublease of Railroad Equipment and related Assignment of Sublease and Agreement (together constituting one document).

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

the bearer of this letter.

Very truly yours,



Steven M. Berzin  
As Agent for Great American  
Management Services, Inc.

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

Encls.

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BY HAND

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Filed 1978  
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INTERSTATE COMMERCE COMMISSION

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LEASE OF RAILROAD EQUIPMENT

Dated as of October 15, 1978,

between

GREAT AMERICAN MANAGEMENT SERVICES, INC.,

as Lessee

and

FIRST SECURITY STATE BANK,  
not in its individual capacity, but solely as Owner-Trustee for  
MERCANTILE TRUST COMPANY, N.A.,

as Lessor

---

LEASE OF RAILROAD EQUIPMENT dated as of October 15, 1978, between GREAT AMERICAN MANAGEMENT SERVICES, INC., a Delaware corporation (the "Lessee"), and FIRST SECURITY STATE BANK, a Utah corporation, acting not in its individual capacity but solely as Trustee (together with its successors and assigns, the "Owner-Trustee") under a Trust Agreement dated as of the date hereof (the "Trust Agreement") with MERCANTILE TRUST COMPANY, N.A. (the "Owner").

The Owner-Trustee has entered or will enter into a conditional sale agreement (the "Security Document") with General Motors Corporation (Electro-Motive Division) (the "Builder"), pursuant to which the Owner-Trustee has agreed or will agree to purchase and take delivery of the railroad equipment described in Schedule A hereto (the "Equipment").

The Builder is assigning its interests in the Security Document pursuant to an Agreement and Assignment (the "Assignment") to First Security Bank of Utah, N.A., acting as Agent (together with its successors and assigns the "Vendor"), under a Participation Agreement dated as of the date hereof (the "Participation Agreement") with the Lessee, William M. Gibbons, Trustee of the Property of Chicago, Rock Island and Pacific Railroad Company (the "Sublessee"), the Owner-Trustee, the Owner and the party or parties named in Schedule A thereto (the "Investors").

The Lessee agrees to lease from the Owner-Trustee all the units of the Equipment (or such lesser number of units as are delivered and accepted and settled for under the Security Document) at the rentals and for the term and upon the conditions hereinafter provided (each such unit so leased being hereinafter called a Unit).

To assure payment of certain of its obligations under this Lease, the Lessee, as principal, agrees to deliver or cause to be delivered to the Owner-Trustee, as obligee, a Surety Bond (the "Bond"), issued by the Great American Insurance Company, as surety (the "Surety"), and a form of Assumption and Assignment Agreement (the "Assumption Agreement") to be entered into between the Surety (or its substitute permitted under the Bond) and the Owner-Trustee, if the Surety so elects, being attached as an exhibit thereto,

substantially in the forms thereof approved by the Investors, the Vendor and the Owner-Trustee prior to the execution of this Lease.

The Lessee intends to sublease the Units pursuant to a Sublease of Railroad Equipment dated as of the date hereof (the "Sublease") with the Sublessee, and to assign the Sublease to the Owner-Trustee pursuant to an Assignment of Sublease and Agreement dated as of the date hereof (the "Sublease Assignment") and the Sublessee will consent to the Sublease Assignment pursuant to a Consent and Agreement substantially in the form attached thereto (the "Sublease Assignment Consent").

The Owner-Trustee will assign certain of its rights under this Lease, the Bond, the Sublease and the Sublease Assignment as security to the Vendor pursuant to an Assignment of Lease, Reassignment of Sublease, Assignment of Surety Bond and Agreement dated as of the date hereof (the "Lease Assignment") and each of the Lessee, the Surety and Sublessee will consent to the Lease Assignment pursuant to a Consent and Agreement substantially in the form attached thereto (collectively the "Consents").

NOW, THEREFORE, in consideration of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Owner-Trustee hereby agrees to lease 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, except as herein provided, the Lessee shall not be entitled to any abatement of rent, reduction thereof or setoff against rent, including, but not limited to, abatements, reductions or set-offs due or alleged to be due by reason of any past, present or future claims of the Lessee against the Owner-Trustee or the Owner, whether under this Lease, under the Security Document or otherwise, including the Lessee's rights by subrogation hereunder or thereunder against the Owner-Trustee or the Builder or the Vendor or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Owner-Trustee 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 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 Owner-Trustee, the Owner or the Vendor for any reason whatsoever.

§ 2. Delivery and Acceptance of Units. The Owner-Trustee hereby appoints the Lessee its agent for inspection and acceptance of the Units pursuant to the Security Document; provided, however, that such acceptance shall be in accordance with the provisions of Article 3 of the Security Document. Each delivery of a Unit to the Owner-Trustee under the Security Document shall be deemed to be a delivery hereunder to the Lessee at the point or points within the United States of America at which such Unit is delivered to the Owner-Trustee under the Security Document. Upon such delivery, the Lessee will cause an employee or agent of the Lessee to inspect the same, and if such Unit is found to be acceptable, to accept delivery of such Unit on behalf of the Owner-Trustee under the Security Document and itself hereunder and to execute and deliver to the Owner-Trustee a certificate of acceptance (the "Certificate of Acceptance") in accordance with the provisions of Article 3 of the Security Document, stating that such Unit has been inspected and accepted on behalf of the Lessee and the Owner-Trustee on the date of such Certificate of Acceptance and is marked in accordance with § 5 hereof, whereupon, except as provided in the next sentence hereof, such Unit shall be deemed to have been delivered to and

accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease. The delivery, inspection and acceptance hereunder of any unit of Equipment excluded from the Security Document pursuant to the second paragraph of Article 3 or the first paragraph of Article 4 thereof shall be null and void and ineffective to subject such Unit to this Lease. The Lessee hereby represents and warrants to the Owner-Trustee that no Unit shall be put into service earlier than the date of delivery to and acceptance by the Lessee or its agent as agent for the Owner-Trustee hereunder.

§ 3. Rentals. With respect to each Unit subject to this Lease, the Lessee will pay to the Owner-Trustee as (i) basic rentals, 60 consecutive quarterly payments, payable in arrears on February 28, May 30, August 30, and November 30 in each year, commencing November 30, 1979, and (ii) interim rental, one payment on August 30, 1979. The 60 quarterly rental payments shall each be in an amount equal to 2.4548% of the Purchase Price (as defined in the Security Document) of each Unit subject to this Lease on the date of such payment. The interim rental payment shall be in an amount equal to the product of the Purchase Price of each Unit subject to this Lease on the date of payment multiplied by .02640% for each day elapsed from and including the Closing Date (as defined in the Security Document) for such Unit to, but excluding, August 30, 1979. If the Owner-Trustee shall make a payment or payments pursuant to clause (a)(ii) of the third paragraph of Article 4 of the Security Document, an appropriate adjustment (in an amount agreed to by the Owner-Trustee and the Lessee at the time each agreed pursuant to the fourth sentence of Article 4 of the Security Document to permit settlement for Equipment in excess of the Maximum Purchase Price referred to therein) to the 60 basic rental payments shall be made.

In addition to the foregoing basic rentals, the Lessee will pay to the Owner-Trustee the following additional rentals: (i) an amount equal to any deficiency amount required to be paid by the Owner-Trustee pursuant to the first paragraph of Paragraph 9 of the Participation Agreement, (ii) an amount equal to any amount required to be paid by the Owner-Trustee pursuant to clause (a) of the last paragraph of Paragraph 9 of the Participation Agreement and (iii) an amount equal to any amount required to be paid by the Owner-Trustee pursuant to clause (b) of the last paragraph of Paragraph 9 of the Participation Agreement, in each case on such date as will enable the Owner-Trustee to make such payment.

If any of the quarterly rental payment dates referred to above is not a Business Day (as such term is defined in the Security Document) the quarterly rental payment otherwise payable on such date shall then be payable on the next succeeding Business Day, and no interest shall be payable for the period from and after the nominal date for payment thereof to such next succeeding Business Day.

The Owner-Trustee irrevocably instructs the Lessee to make, and the Lessee agrees to make, all the payments (other than payments under § 6 and § 23 hereof) due the Owner-Trustee provided for in this Lease including, but not limited to, all payments provided for in this § 3 and in § 7 hereof, (i) for so long as the Security Document shall remain in effect, to the Vendor, for the account of the Owner-Trustee, in immediately available funds at or prior to 11 a.m. (Salt Lake City time) to the office of the Vendor (at 79 South Main Street, Salt Lake City, Utah 84111, Attention of Trust Division, Corporate Trust Division) on the date due, with instructions to the Vendor to apply such payments in accordance with the provisions of the first paragraph of Paragraph 10 of the Participation Agreement, and (ii) if the Security Document shall no longer be in effect, to the Owner-Trustee or as directed by the Owner-Trustee in immediately available funds at such place as the Owner-Trustee shall specify in writing.

§ 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 August 30, 1994. Except for obligations of the Lessee hereunder which are specifically stated to terminate at a fixed time, the obligations of the Lessee hereunder (including, but not limited to, the obligations under §§ 3, 6, 7, 9, 11, 14, 19 and 23 hereof) shall survive the expiration of the term of this Lease.

Notwithstanding anything to the contrary contained herein, all rights and obligations of the Lessee under this Lease and in and to the Units are subject to the rights of the Vendor under the Security Document. If an event of default should occur under the Security Document as provided in § 10(D) hereof, the Vendor may terminate this Lease (or rescind its termination) and/or the Sublease (or rescind its termination) or any other sublease (or rescind its termination), all as provided therein.

§ 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 such 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 or cause to be kept and maintained, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the words, "OWNER-SHIP SUBJECT TO A SECURITY AGREEMENT FILED WITH THE INTERSTATE COMMERCE COMMISSION", or other appropriate words designated by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law or reasonably requested in order to protect the Owner-Trustee's title to and the Vendor's security interest in such Unit and the rights of the Owner-Trustee under this Lease and of the Vendor under the Security Document. The Lessee will not place or permit any such Unit to be placed in operation or exercise any control or dominion over the same until such words shall have been so marked on both sides thereof and will replace or cause to be replaced promptly any such name and words which may be removed, defaced, obliterated or destroyed. The Lessee will not change or permit to be changed 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 Vendor and the Owner-Trustee and duly filed, recorded and deposited by the Lessee in all public offices where this Lease and the Security Document shall have been filed, recorded and deposited and (ii) the Lessee shall have furnished the Vendor and the Owner-Trustee an opinion of counsel to the effect that such statement has been so filed, recorded and deposited, such filing, recordation and deposit will protect the Vendor's and the Owner-Trustee's interests in such Units and no filing, recording, deposit or giving of notice with or to any other Federal, state or local government or agency thereof is necessary to protect the interests of the Vendor and the Owner-Trustee in such Units.

Except as above provided, 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 permit the Equipment to be lettered with the names, trademarks, initials or other insignias customarily used by the Sublessee, so long as the Sublease shall remain in effect, or any other sublessee of the Equipment permitted by § 12 hereof,

so long as a sublease with such sublessee shall remain in effect, or their respective affiliates, on railroad equipment used by them of the same or a similar type for convenience of identification of their respective rights to use the Equipment under the Sublease or such other sublease, and the Equipment may be lettered in an appropriate manner for convenience of identification of the interest of the Sublessee or such other sublessee therein.

§ 6. Taxes. Whether or not any of the transactions contemplated hereby are consummated, the Lessee agrees to pay or cause to be paid, and on written demand to indemnify and hold the Owner-Trustee, the Owner, the Builder, the Vendor, the Investors and the estate held by the Owner-Trustee under the Trust Agreement and by the Vendor under the Security Document and the Participation Agreement harmless from all taxes (income, gross receipts, franchise, sales, use, property [real or personal, tangible or intangible], stamp and minimum [imposed under Section 56 of the Internal Revenue Code of 1954, as amended] taxes), assessments, fees and charges of any nature whatsoever, together with any penalties, fines, additions to tax or interest thereon, howsoever imposed, whether levied or imposed upon the Owner-Trustee, the Owner, the Builder (other than any such amounts which are the responsibility of the Builder under Article 6 of the Security Document), the Vendor, the Investors, the Sublessee, the Lessee, the trust estate created by the Trust Agreement, the estate held by the Vendor under the Security Document and the Participation Agreement, or otherwise, by any Federal, state or local government or governmental subdivision in the United States or by any foreign country or subdivision thereof, upon or with respect to: any Unit or any part thereof; the manufacture, purchase, ownership, delivery, leasing, possession, use, operation, transfer of title, return or other disposition thereof; the rentals, receipts or earnings arising therefrom; this Lease, the Lease Assignment, the Consents, the Sublease, the Sublease Assignment, the Sublease Assignment Consent, the Trust Agreement, the Participation Agreement (including the certificates of interest and the issuance thereof to Investors pursuant thereto), the Security Document, the Bond, the Assumption Agreement or the Assignment; any payment made pursuant to any such agreement, or the property, the income or other proceeds received with respect to property held by the Owner-Trustee under the Trust Agreement or by the Vendor under the Security Document and the Participation Agreement (all such taxes, assessments, fees, charges, penalties,

finer, additions to tax and interest imposed as aforesaid being hereinafter called Taxes); excluding, however: (i) Taxes of the United States or of any state or local government or governmental subdivision or authority thereof and (if and to the extent that any person indemnified hereunder is currently allowed a credit therefor against its United States Federal income taxes) of any foreign country or subdivision thereof, imposed on or measured solely by the net income or excess profits of the Owner-Trustee (in its individual capacity), the Owner, the Investors, the Builder or the Vendor (in its individual capacity), other than Taxes arising out of or imposed in respect of the receipt of indemnification payments pursuant to this Lease or the Sublease, provided that such Taxes of any foreign country or subdivision thereof incurred as a result of the indemnified party being taxed by such foreign country or jurisdiction on its worldwide income without regard to the transactions contemplated by this Lease or the Sublease shall be excluded whether or not the indemnified party is entitled to a credit against its United States Federal income taxes; (ii) any Taxes imposed as a direct result of a voluntary transfer or other voluntary disposition by or on behalf of the Owner or any transfer or disposition by or on behalf of the Owner resulting from bankruptcy or other proceedings for the relief of creditors in which the Owner is the debtor, whether voluntary or involuntary, of any interest in any Unit or interest in rentals under this Lease, without the consent of the Lessee, unless, in each case, such transfer or disposition is in connection with a Casualty Occurrence or an Event of Default shall have occurred and be continuing; (iii) any Taxes imposed on or measured by any trustee or agency fees received by the Owner-Trustee or the Vendor; and (iv) Taxes which are imposed on or measured solely by the net income of the Owner-Trustee or the Vendor if and to the extent that such Taxes are in substitution for or reduce the Taxes payable by any other person which the Lessee has not agreed to pay or indemnify against pursuant to this § 6; provided, however, that the Lessee shall not be required to pay any Taxes during the period it may be contesting or causing to be contested the same in the manner provided in the fourth paragraph of this § 6. The Lessee further agrees to pay on or before the time or times prescribed by law any tax imposed on or measured solely by the net income of the Lessee (or the affiliated group, within the meaning of section 1504 of the Internal Revenue Code of 1954, as amended, of which the Lessee is a member) under the laws

of the United States or of any state or local government or governmental subdivision thereof, or of any foreign country or subdivision or authority thereof which, if unpaid, might result in a lien or other encumbrance upon any Unit; provided, however, that the Lessee shall not be required to pay any such tax during the period it may be contesting the same in good faith by appropriate proceedings.

The amount which the Lessee shall be required to pay with respect to any Taxes indemnified against pursuant to this § 6, shall be an amount sufficient to restore the indemnified party to the same after-tax position such indemnified party would have been in had such Taxes not been imposed.

In the event that the Owner-Trustee shall become obligated to make any payment to the Builder, Investors or the Vendor pursuant to Article 6 of the Security Document, or the Owner shall become obligated to make any payment to the Owner-Trustee pursuant to any correlative provision of the Trust Agreement, not covered by the first paragraph of this § 6, the Lessee shall pay such additional amounts (which shall also be deemed Taxes hereunder) to the Owner-Trustee or the Owner as will enable the Owner-Trustee or the Owner to fulfill completely its obligations pursuant to said provision. The Owner-Trustee agrees not to enter into any amendment of the Security Document or the Trust Agreement which would adversely affect the interest of the Lessee under this Lease without the written consent of the Lessee.

If claim is made against any indemnified party for any Taxes indemnified against under this § 6, such party shall promptly notify the Lessee. If reasonably requested by the Lessee in writing, such indemnified party shall, upon receipt of indemnity satisfactory to it for all costs, expenses, losses, legal and accountants' fees and disbursements, penalties, fines, additions to tax and interest, and at the expense of the Lessee, contest in good faith the validity, applicability or amount of such Taxes by (a) resisting payment thereof if possible, (b) not paying the same except under protest, if protest is necessary and proper, and (c) if payment is made, using reasonable efforts to obtain a refund thereof in appropriate administrative or judicial proceedings, or both. The Lessee may also contest, or cause to be contested, at its own expense, the validity, applicability or amount of such Taxes in the name of such indemnified party; provided that no proceeding or action

relating to such contest shall be commenced (nor shall any pleading, motion, brief or other paper be submitted or filed in the name of such indemnified party in any such proceeding or action) without the prior written consent of such indemnified party, which consent shall not be unreasonably withheld. If such indemnified party shall obtain a refund of all or any part of such Taxes previously reimbursed by the Lessee in connection with any such contest or an amount representing interest thereon applicable to the amount paid by the Lessee and the period of such payment, such indemnified party shall pay to the Lessee the amount of such refund or interest net of expenses, but only if no Event of Default, or event which with notice or lapse of time or both would constitute an Event of Default, shall have occurred and be continuing.

In case any report or return is required to be made with respect to any obligation of the Lessee under this § 6 or arising out of this § 6, except obligations resulting from the second sentence of the first paragraph of this § 6, the Lessee shall either make or cause to be made such report or return in such manner as will show the interests of the Owner-Trustee and the Vendor in the Units, or shall promptly notify or cause to be notified the Owner-Trustee, the Owner and the Vendor of such requirement and shall make or cause to be made such report or return in such manner as shall be satisfactory to the Owner-Trustee, the Vendor and the Owner. All costs and expenses (including reasonable legal and accountants' fees) of preparing any such return or report shall be borne by the Lessee.

All the obligations of the Lessee under this § 6 shall survive and continue, notwithstanding payment in full of all amounts due under the Security Document or the termination of this Lease, but only with respect to periods included in the term of this Lease. Payment due from the Lessee under this § 6 shall be made directly to the indemnified party, except to the extent paid to a governmental agency or taxing authority. The foregoing indemnities by the Lessee shall not constitute a guarantee by the Lessee of the payment of any installments of principal or interest payable under the Security Document, or a guarantee of any value of the Equipment following the expiration of the term hereof as such term may or may not be renewed.

The Lessee shall furnish or cause to be furnished promptly, upon request, such information and data as are normally available to the Lessee and which the Owner-Trustee,

the Vendor or the Owner reasonably may require to permit compliance with the requirements of any taxing authorities.

§ 7. Payment for Casualty Occurrences; Insurance.

In the event that any Unit shall be or become worn out, lost, stolen, destroyed, irreparably damaged, or permanently rendered unfit for use from any cause whatsoever, or taken or requisitioned by condemnation or otherwise resulting in loss of possession by the Lessee, the Sublessee or any other sublessee permitted under § 12 hereof for a period of 90 consecutive days, except requisition for use by the United States Government for a period not in excess of the then remaining term of this Lease (such occurrences being hereinafter called Casualty Occurrences), during the term of this Lease, or until such Unit shall have been returned in the manner provided in § 11 or 14 hereof, the Lessee shall promptly and fully notify or cause to be notified (after the Lessee, the Sublessee or any sublessee permitted under § 12 hereof has knowledge of such Casualty Occurrence) the Owner-Trustee and the Vendor with respect thereto. On the rental payment date (not earlier than the first regular quarterly rental payment date) next succeeding the delivery of such notice (or, in the event such rental payment date will occur within 15 days after delivery of notice, on the following rental payment date, or, in the event the term of this Lease has already expired or will expire within 15 days after delivery of such notice, on a date within 15 days of such delivery), the Lessee shall pay or cause to be paid to the Owner-Trustee 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 of such Unit as of such payment date (such rental payment date being hereinafter called the Calculation Date). Upon the making of such payment by or on behalf of the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue as of the date of such payment, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft or complete destruction of such Unit) the Owner-Trustee shall be entitled to recover possession of such Unit.

If the date upon which the making or causing to be made of such payment by the Lessee in respect of any Unit as required as aforesaid shall be after the term of this Lease in respect of such Unit has expired, no rental for such Unit shall accrue after the end of such term but the Lessee, in addition to paying the Casualty Value for such Unit shall pay or cause to be paid interest thereon from the end of such

term to the date of such payment at the prime rate of interest which Manufacturers Hanover Trust Company charges on the date of such payment for 90-day unsecured loans to large corporate borrowers of the highest credit standing.

The Owner-Trustee hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof, before or after the expiration of this Lease, at the best price obtainable on an "as is, where is" basis. Provided that the Lessee has previously paid the Casualty Value to the Owner-Trustee and no Event of Default hereunder, or event which with notice or lapse of time or both would constitute such an Event of Default, shall have occurred and be continuing, the Lessee shall be entitled to retain the proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Owner-Trustee. If any such Event of Default or event has occurred and is continuing, the Lessee shall promptly pay all such proceeds to the Owner-Trustee.

The Casualty Value of each Unit as of the Calculation Date for each such Unit shall be that percentage of the Purchase Price of each Unit as is set forth in Item I of Schedule B hereto opposite such date. The aforesaid percentages have been computed without regard to recapture of the Investment Credit (as defined in § 23 hereof). Consequently, the Casualty Value of any Unit suffering a Casualty Occurrence during the period preceding the third, fifth or seventh anniversary of the date of delivery and acceptance of such Unit shall be increased by the applicable percentage of the Purchase Price set forth in Item II of Schedule B hereto and such additional amounts, if any, shall be included within the meaning of the term "Casualty Value" as used herein.

In the event of the requisition for use of any Unit during the term of this Lease or any renewal thereof, unless such requisition shall constitute 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 at any time after the end of the term of this Lease, the Lessee shall be obligated to return such Unit to the Owner-Trustee pursuant to § 11 or 14 hereof, as the case may be, promptly upon such return rather than at the end of the term of this Lease; but the Lessee shall in all other respects comply with the provisions of said § 11 or 14, as the case may be, with respect to such Unit. All payments received

by the Owner-Trustee or the Lessee from the requisitioning authority for the use of such Unit during the term of this Lease shall be paid over to, or retained by, the Lessee provided no Event of Default, or event which with notice or lapse of time or both would constitute an Event of Default, shall have occurred and be continuing; and all payments received by the Owner-Trustee or the Lessee from the requisitioning authority for the use of such Unit after the term of this Lease, shall be paid over to, or retained by, the Owner-Trustee.

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

The Lessee will, at all times prior to the return of the Equipment to the Owner-Trustee in accordance with the terms of this Lease (including the storage period provided under §§ 11 and 14 hereof), maintain or cause to be maintained, at its own expense, property and casualty insurance in respect of the Units at the time subject hereto, 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 Sublessee or any other sublessee permitted by § 12 hereof on similar equipment owned by it; provided, however, that, subject to availability, the amount of such coverage shall not, at any time, be less than \$10,000,000 (with a deductible of not greater than \$1,000,000) per occurrence. The proceeds of such insurance shall be payable to the Vendor, the Owner-Trustee, the Lessee, the Surety, the Sublessee and any other sublessee permitted under this Lease as their respective interests may appear.

The Lessee will, at all times prior to the return of the Equipment to the Owner-Trustee in accordance with the terms of this Lease, at its own expense, carry and maintain or cause to be carried and maintained public liability insurance, naming the Owner, the Surety, the Owner-Trustee and the Vendor as additional named insureds as their respective interests may appear, 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 Sublessee or any other sublessee permitted by § 12 hereof in respect of similar equipment owned by it; provided, however, that, subject to availability, the amount of such coverage shall not, at any

time, be less than \$29,000,000 (with a deductible of not greater than \$2,000,000) per occurrence.

The Lessee shall obtain from each insurer under the two paragraphs immediately above an agreement, by endorsement or separate instrument, that such insurer will give the Owner-Trustee, the Surety and the Vendor 30 days' written notice before such insurer's policy shall be materially altered or canceled or not renewed. In January of each year, the Lessee shall deliver to the Owner-Trustee, the Surety and the Vendor a certificate of insurance by or on behalf of each insurer stating the coverage, named insureds and limits of each such policy.

§ 8. Reports. On or before April 1 in each year, commencing with the calendar year 1979, the Lessee will furnish or cause to be furnished to the Owner-Trustee, the Owner and the Vendor an accurate statement (a) setting forth as at the preceding December 31 the amount, description and numbers of all Units then leased hereunder and covered by the Security Document, the amount, description and numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year or, in the case of the first such statement, since the date of this Lease (specifying the dates of such Casualty Occurrences) or to the knowledge of the Lessee are then undergoing repairs (other than running repairs) or are then withdrawn from use pending repairs (other than running repairs) and such other information regarding the condition and state of repair of the Units as the Owner-Trustee or the Vendor may reasonably request and (b) 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 the Security Document have been preserved or replaced. The Owner-Trustee shall have the right by its agents to inspect the Units and the Lessee's and its agent's records with respect thereto at such reasonable times as the Owner-Trustee may request during the continuance of this Lease.

The Lessee agrees at its expense to prepare and deliver or cause to be prepared and delivered to the Owner-Trustee within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Owner-Trustee) any and all reports (other than income tax returns) to be filed by the Owner-Trustee with any Federal, state or other regulatory authority by reason of the ownership by the Owner-Trustee or the Vendor of the Units or the

leasing thereof to the Lessee or the subleasing thereof to the Sublessee or any other sublessee permitted by § 12 hereof.

§ 9. Disclaimer of Warranties; Compliance with Laws and Rules; Maintenance; Indemnification. NEITHER THE OWNER-TRUSTEE NOR THE OWNER MAKES, HAS MADE OR SHALL BE DEEMED TO MAKE OR HAVE MADE ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN, COMPLIANCE WITH SPECIFICATIONS, OPERATION OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS OR ANY COMPONENT THEREOF DELIVERED TO THE LESSEE HEREUNDER, AND NEITHER THE OWNER-TRUSTEE NOR THE OWNER MAKES ANY WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS OR ANY COMPONENT THEREOF 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 OR ANY COMPONENT THEREOF (EITHER UPON DELIVERY THEREOF TO THE LESSEE OR OTHERWISE), it being agreed that all such risks, as between the Owner-Trustee and the Lessee, are to be borne by the Lessee; but the Owner-Trustee 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 Owner-Trustee and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Owner-Trustee may have against the Builder. The Owner-Trustee and the Owner 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 circumstance 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 Owner-Trustee that the Units described therein are in all the foregoing respects satisfactory to the Lessee; and the Lessee will not assert any claim of any nature whatsoever against the Owner-Trustee or the Owner based on any of the foregoing matters.

The Lessee agrees, for the benefit of the Owner-Trustee, the Owner and the Vendor, to comply and to cause the Sublessee and any other sublessee to comply with in all respects (including, without limitation, with respect to the

use, maintenance and operation of each Unit) with all the laws of the jurisdiction in which its, the Sublessee's or any other sublessee's operations involving the Unit 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 such laws or rules require any alteration, replacement, modification or addition of or to any part of any Unit, the Lessee will or will cause the Sublessee or any other sublessee to fully conform therewith at no expense to the Owner-Trustee or the Vendor; provided, however, that the Lessee may upon written notice to the Owner-Trustee and the Vendor, in good faith, contest or cause to be contested the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Owner-Trustee or the Vendor, adversely affect the property or rights of the Owner-Trustee or the Vendor under this Lease or under the Security Document.

The Lessee agrees that, at its own cost and expense, it will maintain and keep each Unit (including any parts installed on or replacements made to any Unit and considered an Addition thereto as hereinbelow provided) which is subject to this Lease in good operating order, repair and condition, ordinary wear and tear excepted.

The Lessee and its affiliates, at their own cost and expense, may from time to time make or permit the Sublessee or any other sublessee permitted under § 12 hereof to make such alterations, modifications and additions (including, without limitation, any special devices, assemblies or racks at any time attached or affixed to any Unit, the cost of which is not included in the Purchase Price of such Unit and which are not required for the operation or use of such Unit by the Interstate Commerce Commission, the United States Department of Transportation or any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over such Unit) (hereinafter collectively called Additions) to the Units as the Lessee may deem desirable in the proper conduct of its or any sublessee's business so long as such Additions shall not be inconsistent with the continuing operation of the Units, and shall not diminish the value, utility or condition of the Units below the value, utility and condition thereof immediately prior to the making of such

Additions, assuming the Units were then in the condition required to be maintained by the terms of this Lease; provided, however, that no such Addition shall be made if in the case of an alteration or modification the Unit cannot be readily restored to its original condition immediately prior to the time such alteration or modification was made or in the case of an addition the addition is not readily removable from the Unit to which it relates without material damage thereto and without diminishing or impairing the value or utility which the Unit would have had immediately prior to such time had such addition not been made assuming the Unit was then in the condition required to be maintained by the terms of this Lease.

Title to all Parts (as hereinbelow defined) incorporated in or installed as part of the Units shall without further act vest in the Owner-Trustee and be subject to a valid first lien and prior perfected security interest under the Security Document in the following cases: (i) such Part is in replacement of or in substitution for, and not in addition to, any Part originally incorporated in or installed as part of a Unit at the time of the acceptance thereof hereunder or any Part in replacement of, or in substitution for, any such original Part, (ii) such Part is required to be incorporated in or installed as part of the Units pursuant to the terms of the second or third paragraph of this § 9 or (iii) notwithstanding the provisions of the fourth paragraph of this § 9, such Part cannot be readily removed from the Unit to which it relates without material damage thereto and without diminishing or impairing the value or utility which such Unit shall have had at such time had such alteration or addition not occurred. In all other cases, if no Event of Default, or event which with notice or lapse of time or both would constitute an Event of Default, shall have occurred and be continuing, title to Parts incorporated in or installed as parts of the Units as a result of such alterations or additions shall vest in the Lessee or its sublessees. The term Part for the purposes of this paragraph and § 14 hereof shall be defined to include any appliance, part, instrument, accessory, furnishing or other equipment of any nature which may from time to time be incorporated in or installed as part of any Unit.

The Lessee shall pay or cause to be paid, and shall protect, indemnify and hold the Owner-Trustee, the Owner, the Investors and the Vendor (for purposes of this paragraph only, as defined in the Security Document), and their respective successors, assigns, agents and servants (hereinafter called Indemnified Persons), as third party beneficiaries hereof, 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 reasonable 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, sublease, possession, use, operation, condition, sale, return or other disposition of any Unit or portion thereof; (ii) any latent or other defects whether or not discoverable by any Indemnified Person or the Lessee; (iii) any claim for patent, trademark or copyright infringement; (iv) any claims based on strict liability in tort or imposed by statute; (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 Owner-Trustee, the Lessee or any other person) or resulting or alleged to result from the condition of any thereof; (vi) any violation, or alleged violation (except by the Indemnified Person seeking indemnity hereunder), of any provision of this Lease or of any agreement, law, rule, regulation, ordinance or restriction, affecting or applicable to the Units or the leasing, subleasing, ownership, use, replacement, adaptation or maintenance thereof; (vii) any claim arising out of any of the Owner-Trustee's obligations under the Lease Assignment, the Security Document or the Participation Agreement, except to the extent such claim arises from a negligent act or negligent omission or wilful wrongdoing of the Owner-Trustee; or (viii) any claim arising out of the Vendor's holding a security interest under the Security Document or the Lease Assignment; excluding, however, in the case of the Builder, (i) any losses, damages, injuries, liabilities, claims and demands whatsoever arising out of any tort by the Builder, or out of any breach of warranty or failure to perform any covenant under the Security Document by the Builder and (ii) any matter covered by the Builder's warranty of material and workmanship and patent indemnification set forth in Item 3 of Annex A to the Security Document. All payments hereunder shall be made directly to the Indemnified Person. 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 reasonable 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 reasonable 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 or cause to be paid to such Indemnified Person an amount which, after deduction of all taxes required to be paid by such Indemnified Person in respect of the receipt thereof under the laws of the United States or of any political subdivision thereof (after giving credit for any savings in respect of any such taxes by reason of deductions, credits or allowances in respect of the payment of the expense indemnified against, and of any other such taxes as determined in the discretion of the Indemnified Person), shall be equal to the amount of such payment. The Lessee and the Owner-Trustee each agrees to give each other promptly upon obtaining knowledge thereof written notice of any claim or liability hereby indemnified against. Upon the payment in full of, or the making of provision satisfactory to the Indemnified Person for the full payment of, any indemnities as contained in this § 9 by the Lessee, and provided that no Event of Default, or event which with notice or lapse of time or both would constitute an Event of Default, shall have occurred and be continuing, the Lessee shall be subrogated to any right of such Indemnified Person in respect of the matter against which indemnity has been given. Any payments received by such Indemnified Person from any person (except the Lessee) as a result of any matter with respect to which such Indemnified Person has been indemnified by the Lessee pursuant to this § 9 shall be paid over to the Lessee to the extent necessary to reimburse the Lessee for indemnification payments previously made in respect of such matter.

The Lessee further agrees to indemnify, protect and hold harmless the Owner-Trustee and the Investors, the Vendor and the Owner, as third party beneficiaries hereof, from and

against any and all liabilities, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Owner-Trustee and the Investors, the Vendor or the Owner because of the use in or about the construction or operation of any of the Equipment of any article or material specified by the Lessee or the Railroad and not manufactured by the Builder or of any design, system, process, formula or combination specified by the Lessee or the Railroad and not developed or purported to be developed by the Builder which infringes or is claimed to infringe on any patent or other right. The Lessee will give notice to the Builder of any claim known to the Lessee from which liability may be charged against the Builder under the Security Document.

In the event that the Owner-Trustee shall become obligated to make any payment to the Investors or the Vendor (for purposes of this paragraph only, as defined in the Security Document) pursuant to Article 13 of the Security Document, or the Owner shall become obligated to make any payment to the Owner-Trustee pursuant to any correlative provision of the Trust Agreement, not covered by the foregoing provisions of this § 9, the Lessee shall pay such additional amounts to the Owner-Trustee or the Owner as will enable the Owner-Trustee or the Owner to fulfill completely its obligations pursuant to said provisions; provided, however, no such payment shall be required with respect to payments arising as a result of acts or omissions of the Owner-Trustee or the Owner or the wilful misconduct or negligence of the Owner-Trustee or the Owner.

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. 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 or the Owner-Trustee therefor, from or under any Indemnified Person, whether because of any claim paid or defense provided for the benefit thereof or otherwise.

The foregoing indemnities by the Lessee shall not constitute a guarantee by the Lessee of any payment or other obligation, including without limitation the payment of any installments of principal or interest, under the Security Document, or a guarantee of any value of the Equipment following the expiration of the term hereof as such term may or may not be renewed.

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

(A) payment of any part of the rental provided in § 3 or § 13 hereof or payment in respect of any Casualty Occurrence pursuant to § 7 hereof shall not be made by or on behalf of the Lessee, and such failure to make payment shall continue for 10 business days after such payment is due; or

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

(C) the Lessee shall (i) apply for or consent to the appointment of a receiver, trustee or liquidator of itself or any of its properties or assets, (ii) be unable, or admit in writing its inability, to pay its debts as they mature, (iii) make a general assignment for the benefit of creditors, (iv) be adjudicated a bankrupt or insolvent or (v) file a voluntary petition in bankruptcy, or a petition or an answer seeking reorganization or an arrangement with creditors or to take advantage of any bankruptcy, reorganization, insolvency, readjustment of debt, dissolution or liquidation law or statute, or an answer admitting the material allegations of a petition filed against it in any proceeding under any such law or if corporate action shall be taken by it for the purpose of effecting any of the foregoing; or any proceedings shall be commenced against the Lessee for any relief which includes, or might result in, any modification of the obligations of the Lessee under this Lease or under the Participation Agreement 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 Participation Agreement), and such proceedings shall continue unstayed and in effect for any period of 60 days; or

(D) an event of default set forth in subparagraph

(e) with respect to the Surety, or in subparagraph (g), of Article 15 of the Security Document shall have occurred; or, any other event of default set forth in such Article 15 shall have occurred and either (i) such event results from any default by the Lessee in performing any of its obligations hereunder or under the Participation Agreement or (ii) the Payments (as defined in the Lease Assignment) are not being applied as provided in Paragraph 1 of the Lease Assignment;

then, in any such case, if the Sublease is then in effect, upon notice by the Owner-Trustee to the Lessee, and without any other action or consents (i) the participation of the Lessee as sublessor under the Sublease or any other sublease shall be terminated and (ii) the Owner-Trustee shall be substituted for the Lessee, for all purposes, as the sublessor under the Sublease or such other sublease, and, whether or not such notice is given, the Owner-Trustee may 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. The Owner-Trustee, at its option, may, in any such case:

(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 Owner-Trustee may by its agents enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess, sell, operate, lease to others and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever and without any duty to

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\* Notice: termination of this Lease prior to the end of certain periods provided in the Bond may prevent satisfaction of certain conditions precedent to recovery under the Bond.

account to the Lessee for such action or inaction or for any proceeds arising therefrom; but the Owner-Trustee shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee as damages for loss of the bargain and not as a penalty, whichever of the following amounts the Owner-Trustee, in its sole discretion, shall specify: (x) a sum with respect to each Unit which represents the excess of (1) the present value, at the time of such termination, of the entire unpaid balance of all rentals 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 (2) the then present value of the rentals which the Owner-Trustee 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 8% per annum discount, compounded quarterly from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, together with any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Owner-Trustee shall have sustained by reason of the breach of any covenant, representation or warranty of this Lease other than for the payment of the rental; or (y) an amount equal to the excess, if any, of the Casualty Value as of the rental payment date on or next preceding the date of termination over the amount the Owner-Trustee reasonably estimates to be the sales value (after deduction of all estimated expenses of such sale) of such Unit at such time; provided, however, that in the event the Owner-Trustee shall have sold or leased any Unit, the Owner-Trustee, in lieu of collecting any amounts payable to the Owner-Trustee by the Lessee pursuant to the preceding clauses (x) and (y) of this part (b) with respect to such Unit, may, if it shall so elect, demand that the Lessee pay the Owner-Trustee and the Lessee shall pay to the Owner-Trustee on the date of such sale or leasing, as the case may be, as liquidated damages for loss of a bargain and not as a penalty (i) in the case of such a sale an amount equal to the excess, if any, of the

Casualty Value for such Unit, as of the rental payment date on or next preceding the date of termination, over the net proceeds of such sale, and (ii) in the case of such a leasing, an amount equal to the excess, if any, of the present value of all rental for such Unit which would otherwise have accrued hereunder from the date of termination to the end of the term of this Lease as to such Unit over the sum of (I) the then present value of all rental for such Unit required under such new lease plus (II) the then present value of the rental (if any) which the Owner-Trustee reasonably estimates to be obtainable for the Unit during the period commencing on the termination of such new lease and ending on the date the term of this Lease would have terminated if it had not been terminated early due to default, each such present value to be computed in each case on the basis of a 8% per annum discount, compounded, in the case of rental which is estimated under clause II of this sentence, quarter-annually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated and, in the case of rental under such new lease, periodically from the respective dates upon which such rental shall be payable thereunder.

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 Owner-Trustee'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 Owner-Trustee 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 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 such rental payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

The failure of the Owner-Trustee 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; and a waiver of any such right on one occasion shall not constitute a waiver of such right as to any other occasion and shall not be effective unless in writing signed by the Owner-Trustee.

The Lessee also agrees to furnish the Owner-Trustee, the Owner, the Surety and the Vendor, promptly upon any responsible officer's becoming aware of any condition which constitutes an Event of Default, or which with 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 § 10 a "responsible officer" shall mean, with respect to the subject matter of any covenant, agreement or obligation of the Lessee in this Lease contained, any corporate official of the Lessee who in the normal performance of such official's operational responsibilities would have knowledge of such matter and the requirements of this Lease with respect thereto.

The Lessee acknowledges that it has been advised that the Owner-Trustee and the Surety have entered into the Bond which provides that in the event of an Event of Default under this Lease, the Surety or the Surety's substitute permitted under the Bond (references to Surety in this paragraph to mean Surety or the Surety's substitute) shall have the right to assume all the rights and obligations of the Lessee under this Lease and to receive an assignment of this Lease and/or of the Owner-Trustee's rights against the Lessee under this Lease. The Lessee agrees that upon receiving notice of any such assumption from the Surety, it will upon request of the Surety and at the option of the Surety (i) deliver possession of the Units to the Surety and convey, transfer or assign to the Surety as provided in § 11 below as though the Surety were named as the Owner-Trustee therein all the Lessee's right, title and interest in the Sublease and any other subleases, car contracts or other agreements with respect to the Units and take any other action and execute any documents reasonably requested by the Surety or the Owner-Trustee, which such delivery of the Units and conveyance, transfer or assignment shall terminate Lessee's leasehold interest in the Units but shall not release Lessee from any unfulfilled obligations under this Lease or (ii) become the sublessee of the Surety in respect of the Units with the rights and obligations of the Surety and the Lessee being the same as if the Surety had originally been designated as the lessor under this Lease in place of the Owner-Trustee. Lessee further acknowledges and agrees that no payment by Surety or for Surety's account, to the Owner-Trustee,

whether under the Bond or pursuant to said assumption or otherwise, shall constitute an amount arising in respect of a sale or lease of the Units of Equipment for purposes of measuring liquidated damages recoverable, whether by Owner-Trustee or the Surety or any other person and whether by subrogation, assignment of rights or otherwise, from the Lessee pursuant to paragraph (b) of this § 10.

§ 11. Return of Units Upon Default. If this Lease shall terminate pursuant to § 10 hereof, the Lessee shall forthwith deliver or cause to be delivered possession of the Units to the Owner-Trustee and shall give or cause to be given prompt telegraphic and written notice to the Association of American Railroads and all railroads having possession of any Unit so to return such Units. Each Unit returned to the Owner-Trustee pursuant to this § 11 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear and modifications, if any, permitted by this Lease excepted and (ii) meet the standards then in effect under the Interchange Rules of the Association of American Railroads, if applicable, or such comparable standards as may then be in effect. For the purpose of delivering possession of any Unit or Units to the Owner-Trustee as above required, the Lessee shall at its own cost, expense and risk:

(a) forthwith and in the usual manner cause such Units to be transported to such location as shall reasonably be designated by the Owner-Trustee and there assembled,

(b) furnish and arrange for the Owner-Trustee to store such Units on any lines of railroad or premises approved by the Owner-Trustee until such Units have been sold, leased or otherwise disposed of by the Owner-Trustee, and

(c) cause the Units to be moved to such interchange point or points as shall be designated by the Owner-Trustee upon any sale, lease or other disposal of all or any of the Units.

The assembling, delivery, storage and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee (and the Lessee will maintain the insurance required by § 7 of this Lease to be maintained during this period) and are of the essence of this Lease; and, upon application to any court of equity having jurisdiction in the premises, the Owner-Trustee 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 permit the Owner-Trustee or any person designated by it, including the authorized representative or representatives of any prospective purchaser or user of any such Unit, to inspect the same. In the event that the Units or any thereof are sold, the Lessee shall pay to the Owner-Trustee the per diem interchange for each such Unit which shall not have been assembled, delivered and stored, as hereinbefore provided, by the date of such sale for each day from the date of such sale to the date of delivery to the purchaser thereof.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this § 11, the Lessee hereby irrevocably appoints the Owner-Trustee as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Owner-Trustee, 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 Owner-Trustee without the consent of the Lessee; but the Lessee shall be under no obligation to any assignee of the Owner-Trustee other than the Vendor except upon written notice of such assignment from the Owner-Trustee. All the rights of the Owner-Trustee hereunder (including, but not limited to, the rights under §§ 6, 7, 10 and 23 and the rights to receive the rentals payable under this Lease) shall inure to the benefit of the Owner-Trustee's successors and assigns, including the Vendor.

So long as no Event of Default hereunder shall have occurred, the Lessee shall be entitled to the possession of the Units in accordance with the terms of this Lease but, except pursuant to the Sublease or as permitted by the provisions of the following two paragraphs, 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 as permitted by the provisions of the following two paragraphs and other than an encumbrance created by the Owner, the Owner-Trustee or the Vendor and not the result of an Event of Default or resulting from claims against the Owner, the Owner-Trustee or the Vendor not related to the ownership

of the Units) upon or with respect to any Unit or the interest of the Owner-Trustee, the Vendor or the Lessee therein, and will promptly discharge any such lien, claim, security interest or other encumbrance which arises, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the reasonable opinion of the Vendor and the Owner-Trustee, materially adversely affect the interest of the Vendor or the Owner-Trustee in the Equipment, the Vendor's interest in the income and proceeds from the Equipment, or otherwise under this Lease or the Security Document. Except pursuant to the Sublease and except to the extent permitted by the provisions of the following two paragraphs, the Lessee shall not 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 following two paragraphs.

So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms hereof and to permit the use of the Units by the Sublessee or by a railroad company or companies incorporated in the United States of America with which the Sublessee has contractual arrangements for the use of the Units for its benefit upon trackage owned or operated by it or upon lines of railroad owned or operated by such railroad company or companies or over which such railroad company or companies have trackage or other operating rights or over which railroad equipment of such railroad company or companies 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, the Sublease and the Security Document; provided, however, that the Lessee shall not assign or permit the assignment of any Unit to service involving the operation and maintenance thereof outside the United States of America. The Lessee and the Sublessee may receive and retain compensation for such use from other railroads so using any of the Units.

Upon termination of the Sublease, if the Lessee shall not be in default under this Lease, the Lessee may

sublease the Units to or otherwise enter into agreements (any such sublease or agreement being herein called a sublease) for the use of the Units by a railroad company or companies or other user of rolling stock, provided that (i) the sublease shall contain provisions similar to §§ 3 (fourth paragraph), 4 (fourth paragraph), 10(E) and 12 (proviso in the third paragraph) of the Sublease and such sublease shall not have a term (together with renewal options) beyond the term of this Lease (together with renewal options), (ii) such sublease shall be assigned to the Owner-Trustee under an assignment and agreement substantially in the form of the Sublease Assignment (together with a Consent and Agreement of the sublessee in the form attached thereto) and, if the Security Document is still in effect, assigned by the Owner-Trustee to the Vendor under an assignment and agreement substantially in the form of the Lease Assignment (together with a Consent and Agreement of the sublessee in the form attached thereto) and (iii) the sublease shall not contain any provisions which would, or the performance of which would, with notice or lapse of time or both, result in an Event of Default under this Lease.

Nothing in this § 12 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any solvent corporation incorporated under the laws of any state of the United States of America or the District of Columbia (which shall have specifically assumed the obligations of the Lessee hereunder and under the Participation Agreement by an appropriate instrument in writing) 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, 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 Options and Right of First Refusal.  
The Owner-Trustee intends to retain the Units for re-lease at the expiration of the term of this Lease. Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may by written notice delivered to the Owner-Trustee not less than six months prior to the end of the original term of this Lease elect to extend

the term of this Lease in respect of all, but not fewer than all, the Units then covered by this Lease for one additional two-year period commencing on the scheduled expiration of the original term of this Lease, at a quarterly rental equal to the sum of (i) 1.2418% of the Purchase Price of each Unit subject to this Lease on the date such rental is payable and (ii) the quarterly premium on the Bond as provided therein; such rental shall be payable in arrears on February 28, May 30, August 30 and November 30 in each year of the extended term of this Lease.

Provided that this Lease has not been earlier terminated, the Lessee is not in default hereunder, the Lessee has not elected to extend this Lease under the first paragraph of this § 13, the Sublease has not been earlier terminated, ~~the Sublease has been extended as provided in the first paragraph of § 13 thereof~~ and the Sublessee is not in default thereunder, the Sublessee may, as third party beneficiary hereof, by written notice delivered to the Owner-Trustee not more than six nor less than four months prior to the end of the original term of this Lease elect, on its own behalf, subject to the approval of the then credit standing of the Sublessee by the Owner, which approval shall not be unreasonably withheld, to extend the term of this Lease and assume the obligations of the Lessee hereunder for one additional two-year period commencing on the scheduled expiration of the original term of this Lease at a quarterly rental rate equal to the Rock Island Fair Market Rental Value (as defined below) of each Unit then subject to this Lease; such rental shall be payable in arrears on February 28, May 30, August 30 and November 30 in each year of such two-year term. Any such election, extension and assumption of the Lease pursuant to this paragraph by the Sublessee shall be in its own capacity (and not as agent for the Lessee) and the Owner-Trustee agrees that the Lessee shall not be a party to or liable for any obligations arising under this Lease during such extension and hereby releases the Lessee with respect to any such obligations. T&P

Provided the Lessee exercises the renewal option provided in the first paragraph of this § 13, and provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may by written notice delivered to the Owner-Trustee not less than six

months prior to the end of the original term of this Lease, as extended pursuant to the first paragraph of this § 13, elect to extend the term of this Lease in respect of all, but not fewer than all, the Units then covered by this Lease for one additional five-year period commencing on the scheduled expiration of the term of this Lease (as so extended), at a quarterly rental rate equal to the Fair Market Rental Value of each Unit then subject to this Lease; such rental shall be payable in arrears on February 28, May 30, August 30 and November 30 in each year of the extended term of this Lease.

"Fair Market Rental Value" shall be determined on the basis of the value which would be obtained in an arm's-length transaction between an informed and willing lessee-user (other than (i) a lessee currently in possession and (ii) a used equipment dealer) and an informed and willing lessor under no compulsion to lease. If, after 60 days from the giving of notice by the Lessee of the Lessee's election to so further extend the term of this Lease pursuant to the third paragraph of this § 13, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Rental Value of the Units, such value shall be determined in accordance with the foregoing definition by the following appraisal procedure: If either party to such determination shall have given written notice to the other requesting determination of such value 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 prior to the expiration of the original term of this Lease, as extended pursuant to the first paragraph of this § 13. 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, the determination of the appraiser which differs most from the other two appraisers shall be excluded, the remaining two determinations shall be averaged and such average shall be final and binding upon 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 by the Lessee.

"Rock Island Fair Market Rental Value" shall be determined on the basis of the value which would have obtained as of the commencement of the renewal period referred to in the second paragraph of this § 13 in an arm's-length transaction between an informed and willing lessee-user with a credit standing comparable to the credit standing of the Sublessee at the commencement of such period (other than (i) a lessee currently in possession and (ii) a used equipment dealer) and an informed and willing lessor under no compulsion to lease. If, after 60 days from the giving of notice by the Sublessee of the Sublessee's election to extend the term of this Lease pursuant to the second paragraph of this § 13, the Lessor and the Sublessee are unable to agree upon a determination of the Rock Island Fair Market Rental Value of the Units, the right of the Sublessee to extend this Lease under the election in the second paragraph of this § 13 shall expire.

Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, and in the event the Lessee has elected to extend the original term of this Lease pursuant to the first paragraph of this § 13 but has not elected to extend the term of this Lease (as so extended) pursuant to the third paragraph of this § 13 and the Owner-Trustee elects to sell any Units to third parties at the expiration of the term of this Lease (as so extended), the Lessee shall be given written notice of such election prior to the expiration of the term of this Lease, as so extended (such date being hereinafter called the Expiration Date). In the event that the Owner-Trustee

shall receive, prior to 90 days after the Expiration Date, a bona fide offer in writing from another party to purchase the Units and the Owner-Trustee elects to sell the Units pursuant to such offer, the Owner-Trustee shall give written notice to the Lessee of such offer. Such notice shall be given to the Lessee on any date between 60 days before and 90 days after the Expiration Date and shall include the price and, if such offer was for other than solely cash, the other terms and conditions offered by the other party to the Owner-Trustee. The Lessee shall have the sole right and option, for a period of 20 days from the date of delivery of such notice, to purchase the Units for cash at the price, or at the price and (after giving effect to credit standing of the Lessee at the time of exercise of such purchase right) on substantially similar terms and conditions, at which the Units are proposed to be sold. The Lessee shall exercise such purchase right by delivery to the Owner-Trustee of a written notice specifying a date of purchase, which date shall not be later than the later of (i) 15 days after the date of delivery of such notice by the Lessee to the Owner-Trustee or (ii) 45 days after the Expiration Date. In the event that the Lessee shall have delivered a notice of its election to purchase the Units, this Lease (including the obligation to pay rent) shall be further extended or renewed upon the same terms and conditions set forth herein from the Expiration Date or the date such notice is delivered, as the case may be, to the Owner-Trustee until the date of such purchase.

§ 14. Return of Units upon Expiration of Term. On or prior to the termination of the term of this Lease or as soon as practicable on or after the termination of the term of this Lease and in any event not later than 90 days after the termination of the term of this Lease the Lessee will, at its own cost and expense, at the request of the Owner-Trustee, cause each Unit to be transported to such point or points on the Sublessee's or any sublessee's lines as shall be designated by the Owner-Trustee immediately prior to such termination and arrange for the Owner-Trustee to store such Unit on any of Sublessee's or any sublessee's lines of railroad or premises approved by the Owner-Trustee for a period commencing on the date of its arrival at any such point and extending thereafter to a date not later than 120 days from the date at which at least 95% of such Units are first placed in storage pursuant to this § 14; the assembly, delivery, storage and transporting of such Unit to be at the expense and risk of the Lessee. During any such storage period the

Lessee will permit the Owner-Trustee or any person designated by it, including the authorized representative or representatives of any prospective purchaser or user of such Unit, to inspect the same; provided, however, that the Lessee shall not be liable for any injury to or the death of any person exercising, either on behalf of the Owner-Trustee or any prospective purchaser or user, the rights of inspection granted under this sentence, except in the case of negligence or wilful wrongdoing of the Lessee or of its employees or agents and except to the extent otherwise provided by law. The assembly, 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 Owner-Trustee shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to cause the assembly, delivery, storage and transporting of the Units. Each Unit returned to the Owner-Trustee pursuant to this § 14 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted, (ii) have attached or affixed thereto any Part title to which is in the Owner-Trustee pursuant to § 9 hereof and have removed therefrom at Lessee's expense any Part or Addition title to which is in the Lessee or any other person pursuant to such § 9 and (iii) meet the standards then in effect under the Interchange Rules of the Association of American Railroads, if applicable, or such comparable standards as may then be in effect. If any Unit suffers a Casualty Occurrence during any storage period provided for in this § 14, the Lessee shall pay to the Owner-Trustee the Casualty Value of such Unit as determined in accordance with § 7 hereof. All gross amounts earned in respect of any Unit shall, from and after the termination of this Lease as to such Unit, belong to and be the property of the Owner-Trustee. In the event that by the 120th day after the termination of the original or any extended term of this Lease the Lessee has not, at the request of the Owner-Trustee, caused at least 95% of the Units to be transported to such point or points as shall have been designated by the Owner-Trustee pursuant to this § 14, the Lessee shall pay to the Owner-Trustee the per diem interchange multiplied by the number of Units equal to the difference between 95% of such Units and the number of Units previously delivered pursuant to this § 14 (such number to be determined on each day) for each day from such 120th day to the date on which at least 95% of the Units have been so transported. If, after the termination of the storage period provided in this § 14, any Units have not been so

transported, the Lessee shall pay to the Owner-Trustee the per diem interchange for each Unit not so transported for each day after the end of such storage period until such Unit or Units have been so transported.

Upon the expiration of the original term of this Lease on August 30, 1994, if neither the Lessee nor the Sublessee shall have elected to exercise the renewal options provided by the first and second paragraphs of § 13 hereof, the Lessee will deliver to the Owner-Trustee a certificate of an officer of the Lessee to the effect that (a) no Event of Default or event which with lapse of time or notice or both would constitute an Event of Default had occurred or was continuing as of August 30, 1994; (b) no liens, charges, security interests or other encumbrances (except an encumbrance resulting from claims against the Owner-Trustee or the Owner) were, as of August 30, 1994, imposed on or with respect to any Unit, any accession thereto, or the interest of the Owner-Trustee or the Owner therein; (c) the Units have been returned to the Owner-Trustee pursuant to this § 14 in the same operating order, repair and condition required by the first paragraph of this § 14 and (d) the Lessee no longer has any interest in the Units under the Lease or otherwise. If a certificate of an officer of the Lessee is required to be furnished pursuant to the preceding sentence, the certificate described in clause (a) in the preceding sentence shall be furnished on August 30, 1994, and the certificates described in clauses (b), (c) and (d) in the preceding sentence shall be furnished on a monthly basis, beginning on March 1, 1994, and such certificate shall cover each Unit returned during the preceding 30 calendar days and shall apply to each such Unit as of the date such Unit was returned pursuant to the provisions of the first paragraph of this § 14. Upon the expiration of any extended term of this Lease, if the Lessee shall not have elected to exercise any further renewal option or if the Lessee shall have no such further renewal option, the Lessee shall deliver to the Owner-Trustee a certificate of an officer of the Lessee to the foregoing effect, with such conforming changes as shall be appropriate under the circumstances.

§ 15. Recording. The Lessee, at its own expense, will cause this Lease, the Security Document, the Lease Assignment, the Sublease, the Sublease Assignment, any sublease permitted by § 12 hereof (including the required assignment and reassignment thereof), and any assignment

hereof or thereof to be filed and recorded with the Interstate Commerce Commission in accordance with 49 U.S.C. § 11303. The Lessee will, at its own expense, undertake every filing, registering, deposit, and recording required of the Owner-Trustee under the Security Document 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 Owner-Trustee or the Vendor for the purpose of proper protection, to their satisfaction, of the Vendor's and the Owner-Trustee's respective interests in the Units, or for the purpose of carrying out the intention of this Lease, the Security Document or the Lease Assignment.

§ 16. Additional Opinions. The Lessee will promptly furnish to the Vendor and the Owner-Trustee evidence of all such filing, registering, depositing or recording, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Vendor and the Owner-Trustee. This Lease and the Security Document shall be filed and recorded with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Unit.

§ 17. Obligations of Owner-Trustee under Security Document; Additional Rentals. In the event that the Owner-Trustee shall become obligated to make any payment (other than payments in settlement for Equipment or the principal of or interest on the CSA Indebtedness (as defined in the Security Document) pursuant to the Security Document and pursuant to the proviso to the third paragraph of Article 12 thereof) or to perform any obligations pursuant to the Security Document 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 Owner-Trustee's obligations (other than as aforesaid) pursuant to the Security Document shall be fully complied with, without regard for any limitation of liability of the Owner-Trustee contained in the Security Document.

§ 18. Owner-Trustee's Right To Perform for the Lessee. If the Lessee fails to perform or comply with any of its agreements contained herein, the Owner-Trustee may upon notice to the Lessee itself perform or comply with such agreement, and the amount of the reasonable cost and expenses

of the Owner-Trustee incurred in connection with such performance or compliance, together with interest on such amount at the rate of 11% per annum (or such lesser amount as may be legally enforceable), shall be payable by the Lessee upon demand.

§ 19. 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 an amount equal to interest at a rate of 10.6% per annum on the overdue rentals and other obligations for the period of time during which they are overdue or such lesser amount as may be legally enforceable.

§ 20. Notices. Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when delivered to such other party or by registered or certified mail, postage prepaid, addressed as follows:

if to the Owner-Trustee, at 79 South Main Street (Suite 310), Salt Lake City, Utah 84111, attention of Trust Division, Corporate Trust Department, with a copy to the Owner at 721 Locust Street, St. Louis, Missouri 63101, attention of Leasing Officer;

if to the Lessee, care of Thayer, Ringoen & Macdonald, 50 California Street, San Francisco, California 94111, attention of President;

or addressed to any party at such other address as such party shall hereafter furnish to the other parties in writing. Any certificate, document or report required to be furnished by any party hereto to the other parties shall be delivered to the address set forth above or so furnished for such party. Any notice to the Lessee by the Vendor or the Investors regarding the Lessee's failure to perform any obligation hereunder shall also be furnished by the Lessee to the Owner-Trustee.

§ 21. Owner-Trustee Acting as Trustee. The representations, undertakings and agreements herein made on the part of the Owner-Trustee are made and intended for the purpose of binding only the Trust Estate as such term is defined in the Trust Agreement.

Whenever the term Owner-Trustee is used in this Lease it shall apply and refer to the Owner-Trustee and any assignee of the Owner-Trustee.

§ 22. No Recourse. 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 Owner-Trustee or the Lessee, or against the Owner or any other beneficiary of a trust for which the Owner-Trustee is acting as trustee, 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 incorporators, stockholders, directors, officers, as such, or beneficiaries being forever released as a condition of and as consideration for the execution of this Lease.

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 Owner-Trustee are each and every one of them made and intended not as personal representations, undertakings and agreements by the Owner-Trustee, or for the purpose or with the intention of binding the Owner-Trustee personally but are made and intended for the purpose of binding only the Trust Estate and this Agreement is executed and delivered by the Owner-Trustee solely in the exercise of the powers expressly conferred upon the Owner-Trustee as Owner-Trustee under the Trust Agreement; and that no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against the Owner-Trustee or the Owner on account of any representation, undertaking or agreement hereunder of the Owner-Trustee or the Owner, either expressed or implied, except for their respective obligations under the proviso to the last paragraph of Article 12 of the Security Document and subparagraph (a) of the third paragraph of Article 4 of the Security Document; 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; provided, however, that the Lessee or any person claiming by, through or under the Lessee making claim hereunder, may look to said Trust Estate for satisfaction of the same.

§ 23. Federal Income Taxes. This Lease has been

entered into on the basis that an opinion of the chief mechanical officer of the Sublessee to the effect described in the first paragraph of Paragraph 8 of the Participation Agreement will be provided to the Owner; that the Owner, as the beneficial owner of each Unit, shall be entitled to such deductions, credits and other benefits provided by the Internal Revenue Code of 1954, as amended to the date hereof (hereinafter called the Code), to an owner of property, including, without limitation, (a) deductions for depreciation of each Unit under section 167 of the Code commencing in the year that such unit is delivered to the Owner-Trustee under the Security Document computed on the basis (i) that each Unit will have a basis under section 167(g) of the Code at least equivalent to the Purchase Price of such Unit, (ii) initially of the declining balance method, using a rate equal to 200% of the straight line rate, switching to the sum of the years-digits method authorized by sections 167(b)(2) and (3) of the Code, (iii) of the asset depreciation range and class life system permitted by section 167(m) of the Code and Income Tax Regulation § 1.167(a)-11, and (iv) of an asset depreciation period of 12 years (hereinafter called the ADR Deductions), (b) deductions with respect to interest on the CSA Indebtedness when paid or accrued, in accordance with the method of accounting on the basis of which the Owner regularly computes its income provided such basis is authorized by and fully conforms to the provisions of section 163 of the Code (hereinafter called the Interest Deductions), (c) an investment credit pursuant to section 38 of the Code in the year that each Unit is delivered to the Owner-Trustee under the Security Document equivalent to 10% of the Purchase Price of such Unit (hereinafter called the Investment Credit), (d) that for Federal income tax purposes all amounts includible in the gross income of the Owner with respect to the Equipment and all deductions allowable to the Owner with respect to the Equipment will be treated as derived from, or allocable to, sources within the United States, (e) that the salvage value of each Unit below which each such Unit may not be depreciated is zero, after the deduction permitted by section 167(f) of the Code, and (f) for purposes of computing the depreciation deductions with respect to the Equipment for the calendar year 1978, the Owner will be entitled to elect and will elect the half-year convention.

The Lessee represents and warrants that (i) all of the Units constitute property the entire Purchase Price of

which qualifies for the Investment Credit under section 50 of the Code; (ii) at the time the Owner-Trustee becomes the owner of the Units, the Units will constitute "new section 38 property" within the meaning of section 48(b) of the Code and at the time the Owner-Trustee becomes the owner of the Units, the Units will not have been used or placed in service 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 Owner-Trustee; (iii) at all times during the term of this Lease and the Sublease, each Unit will constitute "section 38 property" within the meaning of section 48(a) of the Code; and (iv) the Lessee will use its best efforts to maintain or cause to be maintained sufficient records to verify for each year the period of time in such year during which each Unit is physically located within the United States and the period of time, if any, in such year during which each Unit is physically located outside of the United States and will supply or cause to be supplied such records to the Owner within 90 days after receipt of a written demand therefor.

The Lessee understands that the Owner intends (a) to claim on its Federal income tax returns the Investment Credit, the ADR Deductions and the Interest Deductions and (b) to treat on its Federal income tax returns the income and deductions with respect to the Equipment as derived from, or allocable to, sources within the United States.

If, for Federal income tax purposes, as a result of any reason whatsoever, including, without limitation, an amendment to, or change in, the Code which is enacted prior to April 15, 1979 (whether or not effective for any period prior to April 15, 1979), but excluding any of the specific occurrences or events specified in the sixth paragraph of this § 23, (a) the Owner shall not be entitled to, or shall suffer a disallowance or recapture of or shall lose the benefit of all or any portion of the Investment Credit, the ADR Deductions or the Interest Deductions or (b) any item of income or deduction with respect to the Equipment shall not be treated as derived from, or allocable to, sources within the United States (any such event described in clause (a) or (b) of this paragraph being hereinafter called a Loss), then the Lessee, at its option, after receiving written notice from the Owner of such Loss together with a certificate of an officer of the Owner setting forth in reasonable detail the computations and methods used in calculating such Loss and the amount or amounts of the payments required to be made pursuant to clause

(i) or (ii) below (such notice and certificate being hereinafter collectively called the Net Return Notice), shall either (i) commencing with the next rental payment date occurring more than 30 days after receipt by the Lessee of the Net Return Notice, which Net Return Notice may not be delivered more than 30 days prior to payment by the Owner of the tax which becomes due as a result of the Loss, increase the rental payments under this Lease over its remaining term by such an amount that will enable the Owner to realize its contemplated after tax rate of return or (ii) within 30 days of receipt of the Net Return Notice, pay to the Owner in lump sum the amount required to provide the Owner with its contemplated after tax rate of return. If the option under (ii) above is selected, then to the extent any Loss results in a later benefit to the Owner which has not been taken into account in determining the lump sum payment, payment will be made to the Lessee at the time such benefit is realized; provided, however, that the Owner shall not be obligated to make any payment pursuant to this sentence to the extent that the amount of such payment would exceed (x) the amount of all prior payments by the Lessee to the Owner pursuant to the option specified in (ii) above in respect of a Loss less (y) the amount of all prior payments by the Owner to the Lessee hereunder, and the amount by which such payment would exceed such amounts shall reduce pro tanto any subsequent obligation of the Lessee to make any payments to the Owner pursuant to the option specified in (ii) above. The adjustments required to be made pursuant to this paragraph shall be made by the Owner and shall be computed using the same method and the same assumptions as were utilized by the Owner in originally evaluating the transaction except for the assumption that has resulted in such adjustment.

Any late payment by any party hereto of any of its obligations under this § 23 shall result in the obligation on the part of such party promptly to pay an amount equal to interest at the rate per annum equal to 1% over the Prime Rate compounded quarterly on the overdue payment. Prime Rate as used herein shall mean the rate per annum which Manufacturers Hanover Trust Company, New York, New York, charges for 90-day unsecured loans to large corporate borrowers of the highest credit standing from time to time in effect for the period such interest is payable.

Notwithstanding anything to the contrary set forth hereinabove, no amount shall be payable as an indemnity here-

under in respect of any Loss to the extent such Loss is the result of any of the following:

(i) a voluntary transfer or voluntary disposition (whether prior to, during or after the term of this Lease or the Sublease, but not including a transfer or disposition as a result of a Casualty Occurrence) of any Units or of the interest of the Owner in any Units or the rentals under this Lease or the Sublease, or any transfer or disposition of any Units or of the interest of the Owner in any Units or the rentals under this Lease or the Sublease, whether voluntary or involuntary, which results from bankruptcy or other proceedings for the relief of debtors in which the Owner is the debtor, unless, in each case, such transfer or disposition is made (A) as a direct result of an Event of Default, as defined in § 10 of this Lease, which has occurred and is continuing; (B) in connection with any alteration, modification or addition to any Unit; or (C) with the consent of the Lessee;

(ii) the failure of the Owner to claim in a timely manner the Investment Credit, the ADR Deductions (including making all appropriate elections under the applicable Income Tax Regulations), the Interest Deductions or any foreign tax credit or to make a timely election, if permitted by the Code, to treat income and deductions with respect to the Equipment as derived from, or allocable to, sources within the United States, unless independent counsel selected by the Owner and approved by the Lessee, such approval not to be unreasonably withheld, shall determine that there is no reasonable basis to make such claim;

(iii) the failure of the Owner to have sufficient liability for Federal income tax against which to credit Investment Credit or foreign tax credit or sufficient income to benefit from the ADR Deductions or the Interest Deductions, as applicable;

(iv) any residual sharing, guarantee agreement or other voluntary act of the Owner (either individually or in concert with others) which is not included in the foregoing clauses and which is not required or contemplated by the Security Document, the Participation Agreement, the Trust Agreement, this Lease, the Sublease, the Sublease Assignment, the Sublease Assignment

Consent, the Lease Assignment, the Consents, the Assignment, the Bond, the Assumption Agreement if entered into or any other document contemplated by any of the foregoing or entered into in connection therewith;

(v) a change in the form or type of organization or the taxable status of the Owner or any successor or transferee of the Owner;

(vi) a Casualty Occurrence with respect to a Unit, if the Owner-Trustee shall have received all amounts required to be paid in respect of such Casualty Occurrence under this Lease; or

(vii) any amendment to, or change in, the Code or the Income Tax Regulations which is enacted after April 15, 1979 (whether or not retroactively effective for any period on or prior to such date).

If at the conclusion of an audit the Owner receives a preliminary or "30-day-letter" from the Internal Revenue Service proposing an adjustment in any item claimed in accordance with the fourth paragraph of this § 23 on a tax return or refund claim of the Owner for which the Lessee would be required to indemnify the Owner pursuant to this § 23 and the amount of the indemnity which the Lessee would be required to pay (after taking into account the effect that the adjustment would have in periods not included in the audit) would exceed \$25,000 or in the good faith opinion of the Lessee the adjustment would have a continuing or precedential effect on the Lessee or the Sublessee or the railroad industry and the Lessee so advises the Owner in writing, the Lessee shall not be required to indemnify the Owner unless and until the Owner takes the action set forth below, provided that at any time, whether before or after commencing to take such action, the Owner may decline to take such action by notifying the Lessee in writing that the Lessee is relieved of its obligation to indemnify the Owner with respect to such adjustment or any such portion specified in such notice. Upon receipt of such preliminary or 30-day letter the Owner shall promptly notify the Lessee of the proposed adjustment and, upon receipt within 20 days after Lessee's receipt of such notice of a written request to do so from the Lessee, the Owner shall promptly request from the independent tax counsel selected by the Owner and approved by the Lessee, which approval shall not be unreasonably withheld (the "Owner's Tax Counsel"), their opinion

whether there is a reasonable likelihood of a favorable determination in the event such proposed adjustment is contested. If the opinion is to the effect that there is such a reasonable likelihood, the Owner shall contest such proposed adjustment beyond the level of the Internal Revenue Service auditing agent by such administrative proceedings, if any, as may be determined by the Owner in its discretion. Upon the conclusion of such administrative proceedings, if any, the Owner shall promptly notify the Lessee of the final adjustment proposed by the Internal Revenue Service and, upon receipt within 30 days thereafter of a written request to do so from the Lessee, the Owner shall promptly request the Owner's Tax Counsel for their opinion whether there is a reasonable likelihood of a favorable determination in the event such final adjustment is contested. If the opinion is to the effect that there is such a reasonable likelihood, the Owner shall contest such final adjustment in a court of competent jurisdiction. If the Lessee requests the Owner to appeal the decision of such a court or of an intermediate appellate court, the Owner shall promptly request the Owner's Tax Counsel for their opinion whether there is a reasonable likelihood of a favorable determination in the event such decision is appealed. If the opinion is to the effect that there is such a reasonable likelihood, the Owner shall appeal such decision. The Owner, in its discretion, shall determine the initial and any appellate court and, if the adjustment relates to an item claimed on a tax return, shall determine whether the proceedings shall be for redetermination of the deficiency proposed to be assessed by the Internal Revenue Service or for refund of taxes paid based on such deficiency. The Owner shall not be required to take any action as set forth in this paragraph unless and until the Lessee shall have agreed to indemnify the Owner in a manner satisfactory to the Owner for any liability, loss or expense which the Owner may incur as a result of taking such action and shall have agreed to pay the Owner on demand all out-of-pocket costs and expenses, including, without limitation, attorneys' fees and expenses, incurred by the Owner in connection with taking such action. In the event that the Owner pays the tax resulting from a proposed adjustment and proceeds to seek a refund thereof, the Lessee agrees to pay the Owner an amount equal to interest at the rate per annum currently charged by the Internal Revenue Service on deficiencies on the amount of tax in question from the date of payment of such tax to the date of final determination of such adjustment, such amount to be payable in equal installments within each calendar

year on the dates on which rental for such period is payable under this Lease. Upon receipt by the Owner of a refund of any tax paid by it in respect of which the Lessee had paid an amount equal to interest at the rate provided in the preceding sentence while such tax payment was contested by the Owner, an amount equal to the aggregate amount of such interest shall be paid by the Owner to the Lessee forthwith. Upon completion of the actions set forth in this paragraph, the Lessee's liability with respect to its required indemnity under this § 23 shall become fixed and determinable.

For purposes of this § 23, the term "Owner" shall include any affiliated group, within the meaning of section 1504 of the Code, of which the Owner is a member if consolidated returns are filed for such affiliated group for Federal income tax purposes.

If at any time prior to the disposition of a Unit in a taxable transaction, the Owner is required to include in its gross income an amount in respect of any improvement and/or addition to such Unit made by the Lessee which is not readily removable from such unit without causing material damage to such Unit (such improvements or additions being hereinafter called Improvements), then the Lessee shall pay to the Owner, as an indemnity, such amount or amounts which, after deduction of all Taxes required to be paid by the Owner in respect of the receipt of such amounts, shall be equal to the sum of the additional Federal, state and local income taxes payable by the Owner from time to time as a result of such Improvement plus the amount of any interest, penalties or additions to tax payable as a result of any such Improvement (less any Federal, state or local tax benefits resulting from payment of any amounts reimbursed hereunder). If as a result of any such Improvement the aggregate Federal, state and local income taxes paid by the Owner for any taxable year shall be less than the amount of such taxes which would have been payable by the Owner had no such Improvement been made, then the Owner shall pay the Lessee the amount of such savings in taxes plus any additional tax benefits realized by the Owner as a result of such payment; provided, however, that the Owner shall not be obligated to make any payment pursuant to this sentence to the extent that the amount of such payment would exceed (x) the amount of all prior payments by the Lessee to the Owner pursuant to this paragraph in respect of any Improvement less (y) the amount of all prior payments by the Owner to the Lessee hereunder, and the amount by which such payment would exceed such amount shall

reduce pro tanto any subsequent obligation of such Lessee to make any payments to the Owner pursuant to the first sentence of this paragraph. For purposes of computing any amounts payable to the Owner and any amounts payable to the Lessee pursuant to this paragraph, the statutory rate of Federal, state or local income tax, as the case may be, shall be used. The amount payable to the Owner pursuant to this paragraph shall be paid within 30 days after receipt of the written demand therefor from the Owner (but not prior to payment by the Owner of the additional taxes which become due as a result of the said inclusion) accompanied by a written statement describing in reasonable detail such inclusion and the computation of the amount so payable. Any payment due to the Lessee from the Owner pursuant to this paragraph shall be paid within 30 days after the Owner realizes any such savings in its income taxes or additional tax benefits, as the case may be. The Owner agrees to contest the inclusion in its gross income of any amount with respect to an Improvement to the extent, and under the circumstances, set forth in the seventh paragraph of this § 23 as if such inclusion were a Loss.

The Lessee agrees that, within 90 days after the close of any calendar year (or in the event that the Owner gives the Lessee written notice that its taxable year closes on a date specified therein other than December 31, within 90 days after said date) in which the Lessee has made Improvements, the Lessee will give written notice thereof to the Owner, describing such Improvements in reasonable detail and specifying the cost thereof with respect to each Unit of Equipment.

In the event that any indemnity payments are required to be made by the Lessee, or in the event the amount of rentals under this Lease are adjusted, pursuant to any paragraph of this § 23, the damages and amounts set forth in § 10 of this Lease and the applicable Casualty Value percentages set forth in Schedule B to this Lease shall be appropriately adjusted by the Owner (but in no event shall the applicable Casualty Values be reduced below the corresponding Fair Values as defined in the Security Document). The adjustments required to be made pursuant to this paragraph shall be made by the Owner and shall be computed using the same method and the same assumptions, including, without limitation, tax rates, as were utilized by the Owner in originally evaluating this transaction except for the assumption that has resulted in such adjustment. In connection therewith, the Owner shall provide the Lessee with a certifi-

cate of an officer of the Owner setting forth in reasonable detail the figures and methods used in making such calculations. In the case of any such adjustments in the damages and amounts set forth in § 10 of this Lease and the applicable Casualty Value percentages set forth in Schedule B to this Lease, if any payment of such damages, amounts or Casualty Values shall have been made prior to the adjustments made pursuant to this paragraph, (a) the Lessee shall pay to the Owner the excess amount which would have been payable on the due date of such payment by reason of the adjustments pursuant to this paragraph or (b) the Owner shall pay to the Lessee the amount of such payments in excess of the amount of such payments which would have been payable by reason of the adjustments pursuant to this paragraph. The Lessee's and the Owner's agreements to pay any sums which may become payable pursuant to this § 23 shall survive the expiration or other termination of this Lease.

The Lessee shall have the right, upon demand, to have Thayer, Ringoen & Macdonald, 50 California Street, San Francisco, California 94111, or another independent party selected by the Lessee and approved by the Owner, which approval shall not be unreasonably withheld, review any calculations made by the Owner pursuant to this § 23 to determine the consistency of the methods and the assumptions used in such calculations with those used by the Owner in originally evaluating this transaction and the accuracy of such computations based on such methods and assumptions.

§ 24. Severability; Effect and Modification of Lease; Third Party Beneficiaries. 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.

This Lease exclusively and completely states the rights of the Owner-Trustee and the Lessee with respect to the leasing of the Units and supersedes all other agreements, oral or written, with respect thereto, except the Participation Agreement. 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 Owner-Trustee and the Lessee.

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

§ 25. Execution. This Lease may be executed in several counterparts, such counterparts together constituting but one and the same instrument, but the counterpart delivered to the Vendor shall be deemed to be the original counterpart. 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.

§ 26. Law Governing. The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of Illinois; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303.

§ 27. Agreement for Benefit of the Owner. All rights of the Owner-Trustee hereunder (including, but not limited to, its rights under §§ 6, 7, 9, 10 and 23, and the right to receive the rentals payable under this Lease) shall inure to the benefit of the Owner and any of the Owner's successors and assigns under the Trust Agreement.

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

GREAT AMERICAN MANAGEMENT SERVICES, INC.,

by Tom E. Pollack

[CORPORATE SEAL]

Attest:

William C. [Signature]



FIRST SECURITY STATE BANK,  
not in its individual capacity,  
but solely as Owner-Trustee,

by

\_\_\_\_\_  
Authorized Officer

[CORPORATE SEAL]

Attest:

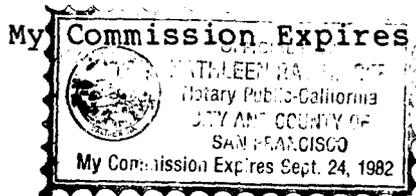
\_\_\_\_\_  
Authorized Officer

STATE OF CALIFORNIA, )  
 ) ss.:  
COUNTY OF SAN FRANCISCO,)

On this *16th* day of *November* 1978, before me personally appeared **JOM E. POLLOCK III**, to me personally known, who, being by me duly sworn, says that he is *Secretary* of GREAT AMERICAN MANAGEMENT SERVICES, INC., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

*Kathleen Rae Hilges*  
\_\_\_\_\_  
Notary Public

[Notarial Seal]



STATE OF UTAH, )  
 ) ss.:  
COUNTY OF SALT LAKE,)

On this \_\_\_\_\_ day of \_\_\_\_\_ 1978, before me personally appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, says that he is an Authorized Officer of FIRST SECURITY STATE BANK, 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 By-laws, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

\_\_\_\_\_  
Notary Public

[Notarial Seal]

My Commission Expires

Schedule A

<u>Type</u>	<del>TE</del> <u>Builder's Specification and Intended Service</u>	<u>Builder's Plant</u>	<u>Quantity</u>	<u>Estimated Unit Base Price</u>	<u>Estimated Total Base Price</u>	<u>Road Numbers (Inclusive)</u>	<u>Estimated Time of Delivery</u>
GP 38-2 2,000 h.p. diesel electric locomotives	No. 8090	LaGrange, Illinois	12	\$478,560	\$5,742,720	ROCK 4368 through ROCK 4379	November 1978

L-52  
SCHEDULE B  
to  
LEASE

Casualty Values\*

Item I:	<u>Rental Payment Date**</u>	<u>Percentage of Purchase Price</u>	<u>Rental Payment Date**</u>	<u>Percentage of Purchase Price</u>
	8/1979	84.420645	2/1988	63.001029
	11/1979	84.313883	5/1988	61.841108
	2/1980	84.089282	8/1988	60.653370
	5/1980	83.954953	11/1988	59.437147
	8/1980	83.880418	2/1989	58.191755
	11/1980	83.753113	5/1989	56.923912
	2/1981	83.572057	8/1989	-55.641129
	5/1981	83.365424	11/1989	54.333082
	8/1981	83.104170	2/1990	52.999164
	11/1981	82.791589	5/1990	51.653464
	2/1982	82.426792	8/1990	50.295725
	5/1982	82.038469	11/1990	48.915835
	8/1982	81.601599	2/1991	47.513266
	11/1982	81.115862	5/1991	46.101404
	2/1983	80.580323	8/1991	44.680066
	5/1983	80.022149	11/1991	43.239712
	8/1983	79.420223	2/1992	41.779885
	11/1983	78.772118	5/1992	40.288654
	2/1984	78.076911	8/1992	38.761663
	5/1984	77.360127	11/1992	37.198056
	8/1984	76.604684	2/1993	35.596954
	11/1984	75.805997	5/1993	33.957458
	2/1985	74.963202	8/1993	32.278647
	5/1985	74.100095	11/1993	30.637099
	8/1985	73.206353	2/1994	29.072906
	11/1985	72.291178	5/1994	27.493824
	2/1986	71.354033	8/1994	25.918304
	5/1986	70.394435	11/1994	25.166099
	8/1986	69.411824	2/1995	24.411802
	11/1986	68.405648	5/1995	23.641552
	2/1987	67.375342	8/1995	22.903243
	5/1987	66.320326	11/1995	22.221479
	8/1987	65.240009	2/1996	21.535797
	11/1987	64.133784	5/1996	20.816376
			8/1996 and thereafter	20.000000

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\* The Casualty Value of each Unit as of any rental payment date shall be that percentage of the Purchase Price of such Unit as is set forth in the above schedule opposite each such rental payment date.

\*\* The rental payment date is the 30th day of the month set forth, except in February when the payment date is on the 28th day of the month.

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SCHEDULE B  
to  
LEASE

Item II:	Anniversary of Delivery and <u>Acceptance</u>	<u>Percentage of Purchase Price</u>
	Third	19.2712
	Fifth	12.8474
	Seventh	6.4237

SUBLEASE OF RAILROAD EQUIPMENT

Dated as of October 15, 1978,

between

WILLIAM M. GIBBONS,  
TRUSTEE OF THE PROPERTY OF  
CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY,

as Sublessee

and

GREAT AMERICAN MANAGEMENT SERVICES, INC.,

as Sublessor

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SUBLEASE OF RAILROAD EQUIPMENT dated as of October 15, 1978, between WILLIAM M. GIBBONS, TRUSTEE OF THE PROPERTY OF CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY (such company being hereinafter called the Debtor and such Trustee being hereinafter called the Sublessee) and GREAT AMERICAN MANAGEMENT SERVICES, INC., a Delaware corporation (the "Sublessor").

On March 17, 1975, the Debtor filed a petition for reorganization under Section 77 of the Bankruptcy Act in the United States District Court for the Northern District of Illinois (the "Court") and such petition was duly approved as properly filed by order entered on such date by such Court (the proceedings with respect thereto being hereinafter called the Reorganization Proceedings) and William M. Gibbons was duly qualified as Trustee of the property of the Debtor on April 4, 1975.

First Security State Bank, acting not in its individual capacity but solely as Trustee (the "Owner-Trustee") under a Trust Agreement dated as of the date hereof (the "Trust Agreement") with Mercantile Trust Company, N.A. (the "Owner") has entered or will enter into a conditional sale agreement (the "Security Document") with General Motors Corporation (Electro-Motive Division) (the "Builder"), pursuant to which the Owner-Trustee has agreed to purchase and take delivery of the railroad equipment described in Schedule A hereto (the "Equipment").

The Builder is assigning its interests in the Security Document pursuant to an Agreement and Assignment, dated as of the date hereof (the "Assignment"), to First Security Bank of Utah, N.A., acting as Agent (together with its successors and assigns called the "Vendor"), under a Participation Agreement dated as of the date hereof (the "Participation Agreement") with the Sublessor, the Sublessee, the Owner-Trustee, the Owner and the party or parties named in Schedule A thereto (the "Investors").

The Sublessor will lease from the Owner-Trustee units of the Equipment which are delivered and accepted and settled for under the Security Document (the "Units"), pursuant to a Lease of Railroad Equipment dated as of the date

hereof (the "Lease"), and the Sublessor desires to sublease the Units to the Sublessee at the rentals and for the term and upon the conditions hereinafter provided.

The Sublessor intends to assign certain of its rights under this Sublease to the Owner-Trustee pursuant to an Assignment of Sublease and Agreement, dated as of the date hereof (the "Sublease Assignment"), and the Sublessee will consent to the Sublease Assignment pursuant to a Sublessee's Consent and Agreement (the "Sublessee's Consent").

The Owner-Trustee intends to assign certain of its rights under the Sublease and the Sublease Assignment to the Vendor pursuant to an Assignment of Lease, Reassignment of Sublease, Assignment of Surety Bond and Agreement dated as of the date hereof (the "Sublease Reassignment"), and the Sublessee will consent to such Sublease Reassignment pursuant to a Consent and Agreement (such Consent, together with the Sublessee's Consent, being hereinafter collectively called the Consents).

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

§ 1. Net Lease. This Sublease is a net lease. The Sublessee's obligation to pay all rentals and other amounts hereunder shall be absolute and unconditional and, except as herein provided, the Sublessee 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 Sublessee against the Sublessor, the Owner-Trustee or the Owner, whether under this Sublease, under the Security Document, under the Lease or otherwise, including the Sublessee's rights by subrogation hereunder or thereunder against the Builder or the Owner-Trustee or the Sublessor or the Vendor or otherwise; nor, except as otherwise expressly provided herein, shall this Sublease terminate, or the respective obligations of the Sublessor or the Sublessee 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 Sublessee'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 or approval of this Sublease, any present or future insolvency of or bankruptcy, reorganization or similar proceeding against the Sublessee, 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 Sublessee 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 Sublease. To the extent permitted by applicable law, the Sublessee 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 sublease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Sublessee hereunder shall be final and the Sublessee shall not seek to recover all or any part of such payment from the Sublessor, the Owner-Trustee, the Owner or the Vendor for any reason whatsoever.

§ 2. Delivery and Acceptance of Units. The Sublessor hereby appoints the Sublessee its agent for inspection and acceptance of the Units pursuant to the Security Document; provided, however, that such acceptance shall be in accordance with the provisions of Article 3 of the Security Document. The Sublessor will cause each Unit to be delivered to the Sublessee at the point or points within the United States of America at which such Unit is delivered to the Sublessor under the Lease. Upon such delivery, the Sublessee will cause an employee or agent of the Sublessee to inspect the same, and if such Unit is found to be acceptable, to accept delivery of such unit on behalf of the Owner-Trustee under the Security Document, the Sublessor under the Lease and itself hereunder and to execute and deliver to the Owner-Trustee a certificate of acceptance (the "Certificate of Acceptance") in accordance with the provisions of Article 3 of the Security Document, stating that such Unit has been inspected and accepted on behalf of the Sublessee, the Sublessor and the Owner-Trustee on the date of such Cer-

tificate of Acceptance and is marked, if such Unit is a locomotive, in accordance with § 5 hereof, whereupon, except as provided in the next sentence hereof, such Unit shall be deemed to have been delivered to and accepted by the Sublessee and shall be subject thereafter to all the terms and conditions of this Sublease. The delivery, inspection and acceptance hereunder of any unit of Equipment excluded from the Security Document pursuant to the second paragraph of Article 3 or the first paragraph of Article 4 thereof shall be null and void and ineffective to subject such unit to this Sublease. The Sublessee hereby represents and warrants to the Sublessor and the Owner-Trustee, as a third party beneficiary hereof, that no Unit shall be put into service earlier than the date of delivery to and acceptance by the Sublessee as agent for the Sublessor hereunder.

§ 3. Rentals. With respect to each Unit subject to this Sublease, the Sublessee will pay to the Sublessor as (i) basic rentals 60 consecutive equal quarterly payments, payable on February 28, May 30, August 30 and November 30 in each year, commencing November 30, 1979, and (ii) one interim rental payment on August 30, 1979. The 60 quarterly rental payments shall each be in an amount equal to 2.5598% of the Purchase Price (as defined in the Security Document) of each Unit subject to this Sublease on the date of such payment. The interim rental payment shall be in amount equal to the product of the Purchase Price of each Unit subject to this Sublease on the date of payment multiplied by .0284422% for each day elapsed from and including the Closing Date (as defined in the Security Document) for such Unit to, but excluding, August 30, 1979. If the basic rental payments under the first paragraph of § 3 of the Lease are adjusted in accordance with the last sentence of such paragraph, a corresponding adjustment (in an amount agreed to by the Sublessor and the Sublessee at the time each agreed pursuant to the fourth sentence of Article 4 of the Security Document to permit settlement for Equipment in excess of the Maximum Purchase Price referred to therein) in the 60 basic rental payments referred to in the first sentence of this paragraph shall be made.

In addition to the foregoing basic rentals, the Sublessee will pay to the Sublessor the following additional rentals: (i) an amount equal to any deficiency amount required to be paid by the Owner-Trustee pursuant to the first paragraph of Paragraph 9 of the Participation Agreement, (ii) an amount equal to any amount required to be paid

by the Owner-Trustee pursuant to clause (a) of the last paragraph of Paragraph 9 of the Participation Agreement and (iii) an amount equal to any amount required to be paid by the Owner-Trustee pursuant to clause (b) of the last paragraph of Paragraph 9 of the Participation Agreement, in each case on such date as will enable the Owner-Trustee to make such payment.

If any of the quarterly rental payment dates referred to above is not a Business Day (as such term is defined in the Security Document) the quarterly rental payment otherwise payable on such date shall then be payable on the next succeeding Business Day, and no interest shall be payable for the period from and after the nominal date for payment thereof to such next succeeding Business Day.

The Sublessor irrevocably instructs the Sublessee to make, and the Sublessee agrees to make, all the payments (other than payments under § 6 and § 20 hereof) due the Sublessor provided for in this Sublease including, but not limited to, all payments provided for in this § 3 and in § 7 hereof, (i) for so long as the Security Document shall remain in effect, to the Vendor, for the account of the Owner-Trustee, in immediately available funds at or prior to 11 a.m. (Salt Lake City time) to the office of the Vendor (at 79 South Main Street, Suite 310, Salt Lake City, Utah 84111, Attention of Trust Division, Corporate Trust Division) on the date due, with instructions to the Vendor to apply such payments in accordance with the provisions of the first paragraph of Paragraph 10 of the Participation Agreement, and (ii) if the Security Document shall no longer be in effect, to the Owner-Trustee or as directed by the Owner-Trustee in immediately available funds at such place as the Owner-Trustee shall specify in writing.

§ 4. Term of Sublease. The term of this Sublease as to each Unit shall begin on the date of delivery and acceptance of such Unit hereunder and, subject to the provisions of §§ 7 and 10 hereof, shall terminate on August 30, 1994. Except for obligations of the Sublessee hereunder which are specifically stated to terminate at a fixed time, the obligations of the Sublessee hereunder (including, but not limited to, the obligations under §§ 3, 6, 7, 9, 11, 14, 19 and 20 hereof) shall survive the expiration of the term of this Sublease.

Anything in this Sublease to the contrary notwithstanding, the term of this Sublease shall terminate on the date (i) the Court finds that the Sublessee is unable to transport the traffic offered the Sublessee because the Sublessee's cash position or other facts make the Sublessee's continuing operation of the Debtor impossible and orders the Sublessee to discontinue service and/or liquidate the assets of the Debtor or (ii) this Sublease is disaffirmed or rejected pursuant to a plan of reorganization confirmed in the Reorganization Proceedings and in such event the obligation to pay rental referred to in the first paragraph of § 3 accruing subsequent to the date that the Sublessee returns the Equipment to the Sublessor in the manner contemplated by § 14 hereof shall terminate and the Sublessor shall have no claim against the Sublessee, the Debtor or the Successor (as defined in § 10 hereof) for such unaccrued rental.

The obligation of the Sublessee to pay any and all sums:

(x) due and owing under this Sublease, including without limitation accrued rental referred to in the first paragraph of § 3, prior to the date of return of the Equipment to the Sublessor as herein provided for; and

(y) which may become due and owing subsequent to the date of return of the Equipment to the Sublessor as a result of acts or omissions of the Sublessee occurring prior to such date,

shall continue in full force and effect notwithstanding termination of the Sublease.

Notwithstanding anything to the contrary contained herein, all rights and obligations of the Sublessee under this Sublease and in and to the Units are subject to the rights of the Vendor under the Security Document and the Owner-Trustee under the Lease. If an Event of Default should occur under § 10 of the Lease, upon notice by the Owner-Trustee or the Vendor to the Sublessor and Sublessee, the participation of the Sublessor under this Sublease shall, without the consent of the Sublessor or the Sublessee and immediately and automatically and without any further action, be terminated, and the Owner-Trustee without its further consent and immediately and automatically and without any further action shall become the Sublessor under this Sublease; and the Sublessor hereby agrees and acknowledges that in such event it shall no longer be a party to this Sublease and that it would no longer have any claim whatsoever to any rental

payments paid to the Vendor pursuant to § 3 hereof subsequent to such event. If an event of default should occur under the Security Document as provided in § 10(E) hereof, the Vendor may terminate this Sublease (or rescind its termination), all as provided therein.

§ 5. Identification Marks. The Sublessee 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 Sublease to cover Unit, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each such Unit, in letters not less than one inch in height, the words, "OWNERSHIP SUBJECT TO A SECURITY AGREEMENT FILED WITH THE INTERSTATE COMMERCE COMMISSION", or other appropriate words designated by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law or reasonably requested in order to protect the Owner-Trustee's title to and the Vendor's security interest in such Unit and the rights of the Sublessor under this Sublease, of the Owner-Trustee under the Lease and of the Vendor under the Security Document. The Sublessee will not place or permit any such Unit to be placed in operation or exercise any control or dominion over the same until such words shall have been so marked on both sides thereof and will replace or cause to be replaced promptly any such name and words which may be removed, defaced, obliterated or destroyed. The Sublessee will not change or permit to be changed 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 Vendor, the Owner-Trustee and the Sublessor and duly filed, recorded and deposited by the Sublessee in all public offices where this Sublease, the Lease and the Security Document shall have been filed, recorded and deposited and (ii) the Sublessee shall have furnished the Vendor, the Owner-Trustee and the Sublessor an opinion of counsel to the effect that such statement has been so filed, recorded and deposited, such filing, recordation and deposit will protect the Vendor's, the Owner-Trustee's and the Sublessor's interests in such Units and no filing, recording, deposit or giving of notice with or to any other Federal, state or local government or agency thereof is necessary to protect the interests of the Vendor, the Owner-Trustee and the Sublessor in such Units.

Except as above provided, the Sublessee 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 Sublessee may permit the Equipment to be lettered with the names, trademarks, initials or other insignias customarily used by the Sublessee or its affiliates on railroad equipment used by it of the same or a similar type for convenience of identification of its rights to use the Equipment under this Sublease, and the Equipment may be lettered in an appropriate manner for convenience of identification of the interest of the Sublessee therein.

§ 6. Taxes. Whether or not any of the transactions contemplated hereby are consummated, the Sublessee agrees to pay, and on written demand to indemnify and hold the Sublessor, the Owner-Trustee, the Owner, the Builder, the Vendor, the Investors and the estate held by the Owner-Trustee under the Trust Agreement and by the Vendor under the Security Document and the Participation Agreement harmless from all taxes (income, gross receipts, franchise, sales, use, property [real or personal, tangible or intangible], stamp and minimum [imposed under Section 56 of the Internal Revenue Code of 1954, as amended] taxes), assessments, fees and charges of any nature whatsoever, together with any penalties, fines, additions to tax or interest thereon, howsoever imposed, whether levied or imposed upon the Sublessor, the Owner-Trustee, the Owner, the Vendor, the Builder (other than any such amounts which are the responsibility of the Builder under Article 6 of the Security Document), the Investors, the Sublessee, the trust estate created by the Trust Agreement, the estate held by the Vendor under the Security Document and the Participation Agreement, or otherwise, by any Federal, state or local government or governmental subdivision in the United States or by any foreign country or subdivision thereof, upon or with respect to: any Unit or any part thereof; the manufacture, purchase, ownership, delivery, leasing, possession, use, operation, transfer of title, return or other disposition thereof; the rentals, receipts or earnings arising therefrom; this Sublease, the Lease, the Sublease Assignment, the Sublessee's Consent, the Sublease Reassignment, the Consents, the Trust Agreement, the Participation Agreement (including the certificates of interest and the issuance thereof to the Investors pursuant thereto), the Security Document, the Bond (as defined in the Lease), the Assumption Agreement (as so defined) or the Assignment; any payment made pursuant to any such agreement, or the property,

the income or other proceeds received with respect to property held by the Owner-Trustee under the Trust Agreement or by the Vendor under the Security Document and the Participation Agreement (all such taxes, assessments, fees, charges, penalties, fines, additions to tax and interest imposed as aforesaid being hereinafter called Taxes); excluding, however: (i) Taxes of the United States or of any state or local government or governmental subdivision thereof and (if and to the extent that any person indemnified hereunder is currently allowed a credit therefor against its United States Federal income taxes) of any foreign country or subdivision thereof, imposed on or measured solely by the net income or excess profits of the Sublessor, the Owner-Trustee (in its individual capacity), the Owner, the Investors, the Builder or the Vendor (in its individual capacity), other than Taxes arising out of or imposed in respect of the receipt of indemnification payments pursuant to this Sublease or the Lease, provided that such Taxes of any foreign country or subdivision thereof incurred as a result of the indemnified party being taxed by such foreign country or jurisdiction on its worldwide income without regard to the transactions contemplated by this Sublease or the Lease shall be excluded whether or not the indemnified party is entitled to a credit against its United States Federal income taxes; (ii) any Taxes imposed as a direct result of a voluntary transfer or other voluntary disposition by or on behalf of the Owner or any transfer or disposition by or on behalf of the Owner resulting from bankruptcy or other proceedings for the relief of creditors in which the Owner is the debtor, whether voluntary or involuntary, of any interest in any Unit or interest in rentals under this Sublease or the Lease, without the consent of the Sublessee, unless, in each case, such transfer or disposition is in connection with a Casualty Occurrence or an Event of Default shall have occurred and be continuing; (iii) any Taxes imposed on or measured by any trustee or agency fees received by the Owner-Trustee or the Vendor; and (iv) Taxes which are imposed on or measured solely by the net income of the Owner-Trustee or the Vendor if and to the extent that such Taxes are in substitution for or reduce the Taxes payable by any other person which the Sublessee has not agreed to pay or indemnify against pursuant to this § 6; provided, however, that the Sublessee shall not be required to pay any Taxes during the period it may be contesting the same in the manner provided in the fourth paragraph of this § 6. The Sublessee further agrees to pay on or before the time or times prescribed by law any tax imposed on or measured solely by the net income of the Sublessee (or the affiliated

group, within the meaning of section 1504 of the Internal Revenue Code of 1954, as amended, of which the Sublessee is a member) under the laws of the United States or of any state or local government or governmental subdivision thereof, or of any foreign country or subdivision or authority thereof which, if unpaid, might result in a lien or other encumbrance upon any Unit; provided, however, that the Sublessee shall not be required to pay any such tax during the period it may be contesting the same in good faith by appropriate proceedings.

The amount which the Sublessee shall be required to pay with respect to any Taxes indemnified against pursuant to this § 6, shall be an amount sufficient to restore the indemnified party to the same after-tax position such indemnified party would have been in had such Taxes not been imposed.

In the event that the Owner-Trustee shall become obligated to make any payment to the Builder, the Investors or the Vendor pursuant to Article 6 of the Security Document, or the Owner shall become obligated to make any payment to the Owner-Trustee pursuant to any correlative provision of the Trust Agreement, or the Sublessor shall become obligated to make any payment to the Vendor, the Builder, the Investors, or the estate held by the Owner-Trustee under the Trust Agreement and by the Vendor under the Participation Agreement and the Security Document pursuant to any correlative provision of the Lease not covered by the first paragraph of this § 6, the Sublessee shall pay such additional amounts (which shall also be deemed Taxes hereunder) to the Owner-Trustee or the Owner or the Sublessor as will enable the Owner-Trustee or the Owner or the Sublessor to fulfill completely its obligations pursuant to said provision. The Sublessor agrees not to enter into any amendment of the Lease which would adversely affect the interest of the Sublessee under this Sublease without the written consent of the Sublessee.

If claim is made against any indemnified party for any Taxes indemnified against under this § 6, such party shall promptly notify the Sublessee. If reasonably requested by the Sublessee in writing, such indemnified party shall, upon receipt of indemnity satisfactory to it for all costs, expenses, losses, legal and accountants' fees and disbursements, penalties, fines, additions to tax and interest, and at the expense of the Sublessee, contest in good faith the validity, applicability or amount of such Taxes by (a) resisting payment thereof if possible, (b) not paying the same.

except under protest, if protest is necessary and proper, and (c) if payment is made, using reasonable efforts to obtain a refund thereof in appropriate administrative or judicial proceedings, or both. The Sublessee may also contest, at its own expense, the validity, applicability or amount of such Taxes in the name of such indemnified party; provided that no proceeding or action relating to such contest shall be commenced (nor shall any pleading, motion, brief or other paper be submitted or filed in the name of such indemnified party in any such proceeding or action) without the prior written consent of such indemnified party which consent shall not be unreasonably withheld. If such indemnified party shall obtain a refund of all or any part of such Taxes previously reimbursed by the Sublessee in connection with any such contest or an amount representing interest thereon applicable to the amount paid by the Sublessee and the period of such payment, such indemnified party shall pay to the Sublessee the amount of such refund or interest net of expenses, but only if no Event of Default, or event which with notice or lapse of time or both would constitute an Event of Default, shall have occurred and be continuing.

In case any report or return is required to be made with respect to any obligation of the Sublessee under this § 6 or arising out of this § 6, except obligations resulting from the second sentence of the first paragraph of this § 6, the Sublessee shall either make such report or return in such manner as will show the interests of the Owner-Trustee, the Vendor and the Sublessor in the Units, or shall promptly notify the Sublessor, the Owner-Trustee, the Owner and the Vendor of such requirement and shall make such report or return in such manner as shall be satisfactory to the Sublessor, the Owner-Trustee, the Vendor and the Owner. All costs and expenses (including legal and accountants' fees) of preparing any such return or report shall be borne by the Sublessee.

All the obligations of the Sublessee under this § 6 shall survive and continue, notwithstanding payment in full of all amounts due under the Security Document or the termination of this Sublease or the Lease, but only with respect to periods included in the term of this Sublease. Payments due from the Sublessee under this § 6 shall be payable directly to the indemnified party, except to the extent paid to a governmental agency or taxing authority. The foregoing indemnities by the Sublessee shall not constitute a guarantee by the Sublessee of the payment of any installments of principal or

interest payable under the Security Document, or a guarantee of the value of the Equipment following the expiration of the term hereof as such term may or may not be renewed.

The Sublessee shall furnish promptly, upon request, such information and data as are normally available to the Sublessee and which the Sublessor, the Owner-Trustee, the Vendor or the Owner reasonably may require to permit compliance with the requirements of any taxing authorities.

§ 7. Payment for Casualty Occurrences; Insurance.

In the event that any Unit shall be or become worn out, lost, stolen, destroyed, irreparably damaged, or permanently rendered unfit for use from any cause whatsoever, or taken or requisitioned by condemnation or otherwise resulting in loss of possession by the Sublessee for a period of 90 consecutive days, except requisition for use by the United States Government for a period not in excess of the then remaining term of this Sublease (such occurrences being hereinafter called Casualty Occurrences), during the term of this Sublease, or until such Unit shall have been returned in the manner provided in § 11 or 14 hereof, the Sublessee shall promptly and fully notify (after the Sublessee has knowledge of such Casualty Occurrence) the Sublessor, the Owner-Trustee and the Vendor with respect thereto. On the rental payment date (not earlier than the first regular quarterly rental payment date) next succeeding the delivery of such notice (or, in the event such rental payment date will occur within 15 days after delivery of notice, on the following rental payment date, or, in the event the term of this Sublease has already expired or will expire within 15 days after delivery of such notice, on a date within 15 days of such delivery), the Sublessee shall pay or cause to be paid to the Sublessor 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 of such Unit as of such rental payment date (such rental payment date being hereinafter called the Calculation Date). Upon the making of such payment by the Sublessee in respect of any Unit, the rental for such Unit shall cease to accrue as of the date of such payment, the term of this Sublease as to such Unit shall terminate and (except in the case of the loss, theft or complete destruction of such Unit) the Sublessor shall be entitled to recover possession of such Unit.

If the date upon which the making of such payment by the Sublessee in respect of any Unit as required as afore-

said shall be after the term of this Sublease in respect of such Unit shall have expired, no rental for such Unit shall accrue after the end of such term but the Sublessee, in addition to paying the Casualty Value for such Unit shall pay interest thereon from the end of such term to the date of such payment at the prime rate of interest which Manufacturers Hanover Trust Company charges on the date of such payment for 90-day unsecured loans to large corporate borrowers of the highest credit standing.

The Sublessor, as agent for the Owner-Trustee under the Lease, shall dispose of any such Unit suffering a Casualty Occurrence at the best price obtainable on an "as is, where is" basis. Provided that the Sublessee has previously paid the Casualty Value to the Sublessor and no Event of Default, or event which with notice or lapse of time or both would constitute such an Event of Default, shall have occurred and be continuing, the Sublessee shall be entitled to the proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit, and the Sublessor shall pay such proceeds to the Sublessee, and the excess shall be retained by the Sublessor. If such an Event of Default or event has occurred and is continuing, the Sublessor shall retain the proceeds of such sale for application in accordance with § 10 hereof.

The Casualty Value of each Unit as of the Calculation Date for each such Unit shall be that percentage of the Purchase Price of such Unit as is set forth in Item I of Schedule B hereto opposite such date. The aforesaid percentages have been computed without regard to recapture of the Investment Credit (as defined in § 20 hereof). Consequently, the Casualty Value of any Unit suffering a Casualty Occurrence during the period preceding the third, fifth or seventh anniversary of the date of delivery and acceptance of such Unit shall be increased by the applicable percentage of the Purchase Price set forth in Item II of Schedule B hereto and such additional amounts, if any, shall be included within the meaning of the term "Casualty Value" as used herein.

In the event of the requisition for use of any Unit during the term of this Sublease or any renewal thereof, unless such requisition shall constitute a Casualty Occurrence, all of the Sublessee's obligations under this Sublease 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 at any time after the end of the term of this

Sublease, the Sublessee shall be obligated to return such Unit to the Sublessor pursuant to § 11 or 14 hereof, as the case may be, promptly upon such return rather than at the end of the term of this Sublease; but the Sublessee 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 Sublessor or the Sublessee from the requisitioning authority for the use of such Unit during the term of this Sublease shall be paid over to, or retained by, the Sublessee provided no Event of Default, or event which with notice or lapse of time or both would constitute an Event of Default, shall have occurred and be continuing; and all payments received by the Sublessor or the Sublessee from the requisitioning authority for the use of such Unit after the term of this Sublease, shall be paid over to, or retained by, the Sublessor.

Except as hereinabove in this § 7 provided, the Sublessee 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 Sublessee hereunder.

The Sublessee will, at all times prior to the return of the Equipment to the Sublessor in accordance with the terms of this Sublease (including the storage period provided), maintain or cause to be maintained, at its own expense, property and casualty insurance in respect of the Units at the time subject hereto, 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 Sublessee on similar equipment owned by it; provided, however, that, subject to availability, the amount of such coverage shall not, at any time, be less than \$10,000,000 (with a deductible of not greater than \$1,000,000) per occurrence. The proceeds of such insurance shall be payable to the Vendor, the Owner-Trustee, the Surety, the Sublessor and the Sublessee as their respective interests may appear.

The Sublessee will, at all times prior to the return of the Equipment to the Sublessor in accordance with the terms of this Sublease, at its own expense, cause to be carried and maintained public liability insurance, naming the Owner, the Owner-Trustee, the Surety, the Sublessor and the Vendor as additional named insureds as their interests may appear, 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 Sublessee in respect of similar equipment owned by it; provided, however, that, subject to availability, the amount of such coverage shall not, at any time, be less than \$29,000,000 (with a deductible of not greater than \$2,000,000) per occurrence.

The Sublessee shall obtain from each insurer under the two paragraphs immediately above an agreement, by endorsement or separate instrument, that such insurer will give the Sublessor, the Surety, the Owner-Trustee and the Vendor 30 days written notice before such insurer's policy shall be materially altered or canceled or not renewed. In January of each year, the Sublessee shall deliver to the Surety, the Owner-Trustee, the Sublessor and the Vendor a certificate of insurance by or on behalf of each insurer stating the coverage, named insureds and limits of each such policy.

§ 8. Reports. On or before April 1 in each year, commencing with the calendar year 1979, the Sublessee will furnish to the Sublessor, the Owner-Trustee, the Owner and the Vendor an accurate statement (a) setting forth as at the preceding December 31 the amount, description and numbers of all Units then subleased hereunder and covered by the Security Document, the amount, description and numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year or, in the case of the first such statement, since the date of this Sublease (specifying the dates of such Casualty Occurrences) or to the knowledge of the Sublessee are then undergoing repairs (other than running repairs) or are then withdrawn from use pending repairs (other than running repairs) and such other information regarding the condition and state of repair of the Units as the Sublessor, the Owner-Trustee or the Vendor may reasonably request and (b) 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, the Lease and the Security Document have been preserved or replaced. The Sublessor and the Owner-Trustee shall have the right by their respective agents to inspect the Units and the Sublessee's records with respect thereto at such reasonable times as the Sublessor or the Owner-Trustee may request during the continuance of this Sublease.

The Sublessee agrees at its expense to prepare and deliver to the Sublessor and the Owner-Trustee within a

reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Sublessor and the Owner-Trustee) any and all reports (other than income tax returns) to be filed by the Sublessor and the Owner-Trustee with any Federal, state or other regulatory authority by reason of the ownership by the Owner-Trustee or the Vendor of the Units or the leasing thereof to the Sublessor or the subleasing thereof to the Sublessee.

§ 9. Disclaimer of Warranties; Compliance with Laws and Rules; Maintenance; Indemnification. THE SUBLESSOR DOES NOT MAKE ANY, HAS NOT MADE ANY AND SHALL NOT BE DEEMED TO MAKE OR HAVE MADE ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN, COMPLIANCE WITH SPECIFICATIONS, OPERATION OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS OR ANY COMPONENT THEREOF DELIVERED TO THE SUBLESSEE HEREUNDER, AND THE SUBLESSOR MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS OR ANY COMPONENT THEREOF 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 OR ANY COMPONENT THEREOF (EITHER UPON DELIVERY THEREOF TO THE SUBLESSEE OR OTHERWISE), it being agreed that all such risks, as between the Sublessor and the Sublessee, are to be borne by the Sublessee; but the Sublessor hereby irrevocably appoints and constitutes the Sublessee its agent and attorney-in-fact during the term of this Sublease to assert and enforce from time to time, in the name of and for the account of the Owner-Trustee, the Sublessor and/or the Sublessee, as their interests may appear, at the Sublessee's sole cost and expense, whatever claims and rights the Owner-Trustee or the Sublessor may have against the Builder. The Sublessor shall have no responsibility or liability to the Sublessee 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 circumstance 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 Sublessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Sublessee, on the one hand, and the Sublessor and the Owner-Trustee, on the other hand, that the Units described therein are in all the fore-

going respects satisfactory to the Sublessee; and the Sublessee will not assert any claim of any nature whatsoever against the Sublessor, the Owner-Trustee or the Owner based on any of the foregoing matters.

The Sublessee agrees, for the benefit of the Sublessor, the Owner-Trustee, the Owner and the Vendor, 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 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 such laws or rules require any alteration, replacement, modification or addition of or to any part of any Unit, the Sublessee will fully conform therewith at its own expense; provided, however, that the Sublessee may upon written notice to the Sublessor, the Owner-Trustee and the Vendor, 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 Sublessor, the Owner-Trustee or the Vendor, adversely affect the property or rights of the Sublessor, the Owner-Trustee or the Vendor under this Sublease or under the Lease or under the Security Document.

The Sublessee agrees that, at its own cost and expense, it will maintain and keep each Unit (including any parts installed on or replacements made to any Unit and considered an Addition thereto as hereinbelow provided) which is subject to this Sublease in good operating order, repair and condition, ordinary wear and tear excepted, and, in any event, in accordance with the guidelines established by the Builder in the Builder's maintenance manual, reference MI 1738, Revision "D".

The Sublessee and its affiliates, at their own cost and expense, may from time to time make such alterations, modifications and additions (including, without limitation, any special devices, assemblies or racks at any time attached or affixed to any Unit, the cost of which is not included in the Purchase Price of such Unit and which are not required for the operation or use of such Unit by the Interstate Commerce Commission, the United States Department of Trans-

portation or any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over such Unit) ("Additions") to the Units as the Sublessee may deem desirable in the proper conduct of its business so long as such Additions shall not be inconsistent with the continuing operation of the Units, and shall not diminish the value, utility or condition of the Units below the value, utility and condition thereof immediately prior to the making of such Additions, assuming the Units were then in the condition required to be maintained by the terms of this Sublease; provided, however, that no such Addition shall be made if in the case of an alteration or modification the Unit cannot be readily restored to its original condition immediately prior to the time such alteration or modification was made or in the case of an addition the addition is not readily removable from the Unit to which it relates without material damage thereto and without diminishing or impairing the value or utility which the Unit would have had immediately prior to such time had such addition not been made, assuming the Unit was then in the condition required to be maintained by the terms of this Sublease.

Title to all Parts (as hereinbelow defined) incorporated in or installed as part of the Units shall without further act vest in the Owner-Trustee and be subject to a valid first lien and prior perfected security interest under the Security Document in the following cases: (i) such Part is in replacement of or in substitution for, and not in addition to, any Part originally incorporated in or installed as part of a Unit at the time of the acceptance thereof hereunder or any Part in replacement of, or in substitution for any such original Part, (ii) such Part is required to be incorporated in or installed as part of the Units pursuant to the terms of the second or third paragraph of this § 9 or (iii) notwithstanding the provisions of the fourth paragraph of this § 9, such Part cannot be readily removed from the Unit to which it relates without material damage thereto and without diminishing or impairing the value or utility which such Unit shall have had at such time had such alteration or addition not occurred. In all other cases, if no Event of Default, or event which with notice or lapse of time or both would constitute such an Event of Default, shall have occurred and be continuing, title to Parts incorporated in or installed as parts of the Units as a result of such alterations or additions shall vest in the Sublessee. The term Part for the purposes of this paragraph and § 14 hereof shall be defined to include any appliance, part, instrument, accessory, furnishing or other equipment of any nature which may from time to time be incorporated in or installed as part of any Unit.

The Sublessee shall pay, and shall protect, indemnify and hold the Sublessor, the Owner-Trustee, the Owner, the Investors and the Vendor (for purposes of this paragraph only, as defined in the Security Document), and their respective successors, assigns, agents and servants (hereinafter called Indemnified Persons), as third party beneficiaries hereof, 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 reasonable attorneys' fees and expenses of any Indemnified Person) relating thereto) in any way relating to or arising or alleged to arise out of this Sublease 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, sublease, possession, use, operation, condition, sale, return or other disposition of any Unit or portion thereof; (ii) any latent or other defects whether or not discoverable by any Indemnified Person or the Sublessee; (iii) any claim for patent, trademark or copyright infringement; (iv) any claims based on strict liability in tort or imposed by statute; (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 Sublessee, the Owner-Trustee, the Sublessor or any other person) or resulting or alleged to result from the condition of any thereof; (vi) any violation, or alleged violation (except by the Indemnified Person seeking indemnity hereunder), of any provision of this Sublease or of any agreement, law, rule, regulation, ordinance or restriction, affecting or applicable to the Units or the leasing, subleasing, ownership, use, replacement, adaptation or maintenance thereof; (vii) any claim arising out of any of the Owner-Trustee's obligations under the Sublease Reassignment, the Security Document or the Participation Agreement, except to the extent such claim arises from a negligent act or negligent omission or wilful wrongdoing of the Owner-Trustee, or any claim arising out of any of the Sublessor's obligations under the Sublease Assignment, the Lease or the Participation Agreement, except to the extent such claim arises from an act or omission of the Sublessor; or (viii) any claim arising out of the Vendor's

holding a security interest under the Security Document or the Sublease Reassignment; excluding, however, in the case of the Builder, (i) any losses, damages, injuries, liabilities, claims and demands whatsoever arising out of any tort by the Builder, or out of any breach of warranty or failure to perform any covenant under the Security Document by the Builder and (ii) any matter covered by the Builder's warranty of material and workmanship and patent indemnification set forth in Item 3 of Annex A to the Security Document. All payments hereunder shall be made directly to the Indemnified Person. The Sublessee 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 Sublessee 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 Sublessee may and, upon such Indemnified Person's reasonable request, will at the Sublessee's expense resist and defend such action, suit or proceeding, or cause the same to be resisted or defended by counsel selected by the Sublessee and approved by such Indemnified Person, as the case may be, and, in the event of any failure by the Sublessee to do so, the Sublessee shall pay all costs and expenses (including without limitation reasonable attorneys' fees and expenses) incurred by such Indemnified Person in connection with such action, suit or proceeding. In the event the Sublessee is required to make any payment under this § 9, the Sublessee shall pay or cause to be paid to such Indemnified Person an amount which, after deduction of all taxes required to be paid by such Indemnified Person in respect of the receipt thereof under the laws of the United States or of any political subdivision thereof (after giving credit for any savings in respect of any such taxes by reason of deductions, credits or allowances in respect of the payment of the expense indemnified against, and of any other such taxes as determined in the discretion of the Indemnified Person), shall be equal to the amount of such payment. The Sublessee and the Sublessor each agrees to give each other promptly upon obtaining knowledge thereof written notice of any claim or liability hereby indemnified against. Upon the payment in full of, or the making of provision satisfactory to the Indemnified Person for the full payment of, any indemnities as contained in this § 9 by the Sublessee, and provided that no Event of Default, or event which with notice or lapse of time or both would consti-

tute such an Event of Default, shall have occurred and be continuing, the Sublessee 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 Sublessee) as a result of any matter with respect to which such Indemnified Person has been indemnified by the Sublessee pursuant to this § 9 shall be paid over to the Sublessee to the extent necessary to reimburse the Sublessee for indemnification payments previously made in respect of such matter.

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

In the event that the Owner-Trustee shall become obligated to make any payment to the Investors or the Vendor (for purposes of this paragraph only, as defined in the Security Document) pursuant to Article 13 of the Security Document, or the Owner shall become obligated to make any payment to the Owner-Trustee pursuant to any correlative provision of the Trust Agreement, or the Sublessor shall become obligated to make any payment to the Vendor, the Investors or the estate held by the Owner-Trustee under the Trust Agreement or by the Vendor under the Participation Agreement and the Security Document pursuant to any correlative provision of the Lease not covered by the foregoing provisions of this § 9, the Sublessee shall pay such additional amounts to the Owner-Trustee or the Owner or the Sublessor as will enable the Owner-Trustee or the Owner or the Sublessor to fulfill completely its obligations pursuant to said provisions; provided, however, that no such payment shall be required with respect to payments arising as a

result of acts or omissions of the Owner-Trustee, the Sublessor or the Owner or the wilful misconduct or negligence of the Owner-Trustee, the Sublessor or the Owner.

The indemnities contained in this § 9 shall survive the expiration or termination of this Sublease 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. None of the indemnities in this § 9 shall be deemed to create any rights of subrogation in any insurer or third party against the Sublessee or the Owner-Trustee or the Sublessor therefor, from or under any Indemnified Person, whether because of any claim paid or defense provided for the benefit thereof or otherwise.

The foregoing indemnities by the Sublessee shall not constitute a guarantee by the Sublessee of any payment or other obligation, including without limitation the payment of any installments of principal or interest, under the Security Document, or a guarantee of any value of the Equipment following the expiration of the term thereof as such term may or may not be renewed.

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

(A) payment of any part of the rental provided in § 3 or § 13 hereof or payment in respect of any Casualty Occurrence pursuant to § 7 hereof shall not be made by or on behalf of the Sublessee, and such failure to make payment shall continue for 10 business days after such payment is due; or

(B) default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Sublessee contained herein or in the Participation Agreement, and such default shall continue for 30 days after written notice from the Sublessor, the Owner-Trustee or the Vendor to the Sublessee specifying the default and demanding that the same be remedied; or

(C) a decree or order is entered in the Reorganiza-

tion Proceedings preventing or disabling the Sublessee from performing any of its obligations under this Sublease other than a decree, order, disaffirmance or rejection as provided for in the second paragraph of § 4 hereof; or

(D) if the obligations of the Trustee or his successor or successors hereunder are assumed by a corporation or by the Debtor's successor pursuant to a plan of reorganization for the Debtor approved in the Reorganization Proceedings (such corporation or successor being hereinafter called the Successor) and either

(i) a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as such Section 77 may hereafter be amended, shall be filed by or against the Successor 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 assumed obligations of the Successor under this Sublease or under the Participation Agreement shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by or on behalf of a trustee or trustees or other similar officer appointed (whether or not subject to confirmation or ratification) in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or officer, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier; or

(ii) any proceedings shall be commenced by or against the Successor for any relief which includes, or might result in, any modification of the assumed obligations of the Successor under this Sublease or under the Participation Agreement under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extension (other than a law which does not permit any readjustments of the assumed obligations of the Successor hereunder or under the Participation Agreement), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise ren-

dered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the assumed obligations of the Successor under this Sublease or under the Participation Agreement shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by or on behalf of a trustee or trustees or receiver or receivers or other similar officer appointed (whether or not subject to confirmation or ratification) for the Successor or for the property of the Successor 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 or officers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

(E) an event of default set forth in subparagraph (e) with respect to Great American Insurance Company, or in subparagraph (g), of Article 15 of the Security Document shall have occurred or, any other event of default set forth in such Article 15 shall have occurred and either (i) such event results from any default by the Sublessee in performing any of its obligations hereunder or under the Participation Agreement or (ii) the Payments (as defined in the Sublease Reassignment) are not for any reason being applied as provided in Paragraph 1 of the Sublease Reassignment;

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

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

(b) by notice in writing to the Sublessee terminate this Sublease, whereupon all rights of the Sublessee to the use of the Units shall absolutely cease and terminate as though this Sublease had never been made, but the Sublessee shall remain liable as herein provided; and thereupon the Sublessor may by its agents enter upon the premises of the Sublessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess, sell,

operate, lease to others and enjoy the same free from any right of the Sublessee, or its successors or assigns, to use the Units for any purposes whatever and without any duty to account to the Sublessee for such action or inaction or for any proceeds arising therefrom; but the Sublessor shall, nevertheless, have a right to recover from the Sublessee any and all amounts which under the terms of this Sublease 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 Sublessee as damages for loss of the bargain and not as a penalty, whichever of the following amounts the Sublessor, in its sole discretion, shall specify: (x) a sum with respect to each Unit which represents the excess of (1) the present value, at the time of such termination, of the entire unpaid balance of all rentals for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Sublease as to such Unit over (2) the then present value of the rentals which the Sublessor reasonably estimates to be obtainable for the Unit during such period, such present value to be computed in each case on the basis of an 8% per annum discount, compounded quarterly from the respective dates upon which rentals would have been payable hereunder had this Sublease not been terminated, together with any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Sublessor shall have sustained by reason of the breach of any covenant, representation or warranty of this Sublease other than for the payment of the rental; or (y) an amount equal to the excess, if any, of the Casualty Value as of the rental payment date on or next preceding the date of termination over the amount the Sublessor reasonably estimates to be the sales value (after deduction of all estimated expenses of such sale) of such Unit at such time; provided, however, that in the event the Sublessor shall have sold or leased any Unit, the Sublessor, in lieu of collecting any amounts payable to the Sublessor by the Sublessee pursuant to the preceding clauses (x) and (y) of this part (b) with respect to such Unit, may, if it shall so elect, demand that the Sublessee pay the Sublessor and the Sublessee shall pay to the Sublessor

on the date of such sale or leasing, as the case may be, as liquidated damages for loss of a bargain and not as a penalty (i) in the case of such a sale, an amount equal to the excess, if any, of the Casualty Value for such Unit, as of the rental payment date on or next preceding the date of termination, over the net proceeds of such sale and (ii) in the case of such a leasing, an amount equal to the excess, if any, of the present value of all rental for such Unit which would otherwise have accrued hereunder from the date of termination to the end of the term of this Sublease as to such Unit over the sum of (I) the then present value of all rental for such Unit required under such new lease plus (II) the then present value of the rental (if any) which the Sublessor reasonably estimates to be obtainable for the Unit during the period commencing on the termination of such new lease and ending on the date the term of this Sublease would have terminated if it had not been terminated early due to default, each such present value to be computed in each case on the basis of an 8% per annum discount, compounded, in the case of rental which is estimated under clause II of this sentence, quarter-annually from the respective dates upon which rentals would have been payable hereunder had this Sublease not been terminated and, in the case of rental under such new lease, periodically from the respective dates upon which such rental shall be payable thereunder.

In addition, the Sublessee 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 Sublessor's remedies with respect thereto, including all costs and expenses incurred in connection with the return of any Unit.

The remedies in this Sublease provided in favor of the Sublessor 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 Sublessee hereby waives any 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 Sublessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder and agrees

to make such rental payments regardless of any offset or claim which may be asserted by the Sublessee or on its behalf.

The failure of the Sublessor 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; and a waiver of any such right on one occasion shall not constitute a waiver of such right as to any other occasion and shall not be effective unless in writing signed by the Sublessor.

The Sublessee also agrees to furnish the Sublessor, the Owner-Trustee, the Owner and the Vendor, promptly upon any responsible officer's becoming aware of any condition which constitutes an Event of Default, or which upon 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 § 10, a "responsible officer" shall mean, with respect to the subject matter of any covenant, agreement or obligation of the Sublessee in this Sublease contained, any corporate official of the Sublessee who in the normal performance of such official's operational responsibilities would have knowledge of such matter and the requirements of this Sublease with respect thereto.

§ 11. Return of Units Upon Default. If this Sublease shall terminate pursuant to § 10 hereof, the Sublessee shall forthwith deliver possession of the Units to the Sublessor and shall give prompt telegraphic and written notice to the Association of American Railroads and all railroads having possession of any Unit so to return such Units. Each Unit returned to the Sublessor pursuant to this § 11 shall (i) be in the same operating order, repair and condition as when originally delivered to the Sublessee, reasonable wear and tear and modifications, if any, permitted by this Sublease excepted and (ii) meet the standards then in effect under the Interchange Rules of the Association of American Railroads, if applicable, or such comparable standards as may then be in effect. For the purpose of delivering possession of any Unit or Units to the Sublessor as above required, the Sublessee shall at its own cost, expense and risk:

(a) forthwith and in the usual manner cause such Units to be transported to such location as shall

reasonably be designated by the Sublessor and there assembled,

(b) furnish and arrange for the Sublessor to store such Units on any lines of railroad or premises approved by the Sublessor until such Units have been sold, leased or otherwise disposed of by the Sublessor, and

(c) cause the Units to be moved to such interchange point or points as shall be designated by the Sublessor upon any sale, lease or other disposal of all or any of the Units.

The assembling, delivery, storage and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Sublessee (and the Sublessee will maintain the insurance required by § 7 of this Sublease to be maintained during this period) and are of the essence of this Sublease; and, upon application to any court of equity having jurisdiction in the premises, the Sublessor shall be entitled to a decree against the Sublessee requiring specific performance of the covenants of the Sublessee so to assemble, deliver, store and transport the Units. During any storage period, the Sublessee will permit the Sublessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser or user of any such Unit, to inspect the same. In the event that the Units or any thereof are sold, the Sublessee shall pay to the Sublessor the per diem interchange for each such Unit which shall not have been assembled, delivered and stored, as hereinbefore provided, by the date of such sale for each day from the date of such sale to the date of delivery to the purchaser thereof.

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

§ 12. Assignment; Possession and Use. This Sublease shall be assignable in whole or in part by the Sublessor without the consent of the Sublessee; but the Sublessee

shall be under no obligation to any assignee of the Sublessor other than the Owner-Trustee, or its reassignee, the Vendor, except upon written notice of such assignment or reassignment from the Sublessor or the Owner-Trustee. All the rights of the Sublessor hereunder (including, but not limited to, the rights under §§ 6, 7, 10 and 20 and the rights to receive the rentals payable under this Sublease) shall inure to the benefit of the Sublessor's successors and assigns, including the Owner-Trustee, and to the Owner-Trustee's reassigns, including the Vendor.

So long as no Event of Default hereunder or event of default under the Security Document (as defined therein) shall have occurred, the Sublessee shall be entitled to the possession of the Units in accordance with the terms of this Sublease but, without the prior written consent of the Sublessor, the Owner-Trustee and the Vendor, the Sublessee shall not assign or transfer its leasehold interest under this Sublease in the Units or any of them, except as hereinafter provided in this § 12. The Sublessee, 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 Owner, the Sublessor, the Owner-Trustee or the Vendor or resulting from claims against the Owner, the Sublessor, the Owner-Trustee or the Vendor not related to the ownership of the Units) upon or with respect to any Unit or the interest of the Sublessor, the Owner-Trustee, the Vendor or the Sublessee therein, and will promptly discharge any such lien, claim, security interest or other encumbrance which arises, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the reasonable opinion of the Vendor, the Owner-Trustee and the Sublessor adversely affect the interest of the Vendor, the Owner-Trustee or the Sublessor in the Equipment, the Vendor's interest in the income and proceeds from the Equipment, or otherwise under this Sublease, the Lease or the Security Document. The Sublessee shall not, without the prior written consent of the Sublessor and the Owner-Trustee, 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 next paragraph.

So long as the Sublessee shall not be in default under this Sublease, the Sublessee shall be entitled to the possession and use of the Units in accordance with the terms hereof and to permit use of the Units by any railroad company or companies incorporated in the United States of America with which it has contractual arrangements for the use of the Units for its benefit upon trackage owned or operated by it or upon lines of railroad owned or operated by such railroad company or companies or over which such railroad company or companies have trackage or other operating rights or over which railroad equipment of such railroad company or companies 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 Sublease, the Lease and the Security Document; provided, however, that the Sublessee shall not assign or permit the assignment of any Unit to service involving the operation and maintenance thereof outside the United States of America. The Sublessee may receive and retain compensation for such use from other railroads so using any of the Units.

Nothing in this § 12 shall be deemed to restrict the right of the Sublessee to assign or transfer its leasehold interest under this Sublease in the Units or possession of the Units to any solvent corporation incorporated under the laws of any state of the United States of America or the District of Columbia (which shall have specifically assumed the obligations of the Sublessee hereunder and under the Participation Agreement by an appropriate instrument in writing) into or with which the Sublessee shall have become merged or consolidated or which shall have acquired the property of the Sublessee 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 Sublease.

In case of any sale or conveyance of all or substantially all of the lines of railroad of the Sublessee, or of the lines of the Sublessee on which a substantial portion of the Units are used, the purchaser, or transferee of the purchaser, shall not be at liberty to refuse to accept performance of this Sublease or to disaffirm it and any such purchaser and any such transferee shall assume and agree to perform each and all of the obligations of the Sublessee hereunder.

§ 13. Renewal Options. The Sublessor intends to retain the units for re-lease at the expiration of the term of this Sublease. Provided that this Sublease has not been earlier terminated and the Sublessee is not in default hereunder, the Sublessee may by written notice delivered to the Sublessor not less than six months prior to the end of the original term of this Sublease elect to extend the term of this Sublease in respect of all, but not fewer than all, the Units then covered by this Sublease for one additional two-year period commencing on the scheduled expiration of the original term of this Sublease at a quarterly rental equal to the Rock Island Fair Market Rental Value of each Unit then subject to this Sublease on the date such rental is payable; such rental shall be payable in arrears on February 28, May 30, August 30, and November 30 in each year of the extended term of this Sublease.

"Rock Island Fair Market Rental Value" shall be determined on the basis of the value which would be obtained as of the commencement of any renewal period in an arm's-length transaction between an informed and willing lessee-user with a credit standing comparable to the credit standing of the Sublessee at the commencement of such period (other than (i) a lessee currently in possession and (ii) a used equipment dealer) and an informed and willing lessor under no compulsion to lease; provided, however, that such Value for any quarterly period shall not be less than the rental payment due under § 3 of the Lease for such period. If, after 30 days from the giving of notice by the Sublessee of the Sublessee's election to extend the term of this Sublease pursuant to the first paragraph of this § 13, the Sublessor and the Sublessee are unable to agree upon a determination of the Rock Island Fair Market Rental Value of the Units, the right of the Sublessee to extend this Sublease under the respective election shall expire.

§ 14. Return of Units upon Expiration of Term. On or prior to the termination of the term of this Sublease or as soon as practicable on or after the termination of the term of this Sublease and in any event not later than 90 days after the termination of the term of this Sublease the Sublessee will, at its own cost and expense, at the request of the Sublessor, cause each Unit to be transported to such point or points on the Sublessee's lines as shall be designated by the Sublessor immediately prior to such termination and arrange for the Sublessor to store such Unit on any of the Sublessee's lines of railroad or premises approved by the

Sublessor for a period commencing on the date of its arrival at any such point and extending thereafter to a date not later than 120 days from the date at which at least 95% of such Units are first placed in storage pursuant to this § 14; the assembly, delivery, storage and transporting of such Unit to be at the expense and risk of the Sublessee. During any such storage period the Sublessee will permit the Sublessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser or user of such Unit, to inspect the same; provided, however, that the Sublessee shall not be liable, except in the case of negligence or wilful wrongdoing of the Sublessee or of its employees or agents and, except to the extent otherwise prospective purchaser or user, the rights of inspection granted under this sentence. The assembly, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Sublease, and upon application to any court of equity having jurisdiction in the premises, the Sublessor shall be entitled to a decree against the Sublessee requiring specific performance of the covenants of the Sublessee so to cause the assembly, delivery, storage and transporting of the Units. Each Unit returned to the Sublessor pursuant to this § 14 shall (i) be in the same operating order, repair and condition as when originally delivered to the Sublessee, reasonable wear and tear excepted, (ii) have attached or affixed thereto any Part title to which is in the Owner-Trustee pursuant to § 9 hereof and have removed therefrom at the Sublessee's expense any Part or Addition title to which is not in the Owner-Trustee or any other person pursuant to such § 9 and (iii) meet the standards then in effect under the Interchange Rules of the Association of American Railroads, if applicable, or such comparable standards as may then be in effect. If any Unit suffers a Casualty Occurrence during any storage period provided for in this § 14, the Sublessee shall pay to the Sublessor the Casualty Value of such Unit as determined in accordance with § 7 hereof. All gross amounts earned in respect of any Unit shall, from and after the termination of this Sublease as to such Unit, belong to and be the property of the Sublessor. In the event that by the 120th day after the termination of the term of this Sublease the Sublessee has not, at the request of the Sublessor, caused at least 95% of the Units to be transported to such point or points as shall have been designated by the Sublessor pursuant to this § 14, the Sublessee shall pay to the Sublessor the per diem interchange multiplied by the number of Units equal to the difference between 95% of such Units and the number of Units previously delivered pursuant to this

§ 14 (such number to be determined on each day) for each day from such 120th day to the date on which at least 95% of the Units have been so transported. If, after the termination of the storage period provided in this § 14, any Units have not been so transported, the Sublessee shall pay to the Sublessor the per diem interchange for each Unit not so transported for each day after the end of such storage period until such Unit or Units have been so transported.

Upon the expiration of the original term of this Sublease on August 30, 1994, the Sublessee will deliver to the Sublessor and the Owner-Trustee a certificate of the Sublessee to the effect that (a) no Event of Default or event which with lapse of time or notice or both would constitute an Event of Default had occurred or was continuing as of August 30, 1994; (b) no liens, charges, security interests or other encumbrances (except an encumbrance resulting from claims against the Sublessor, the Owner-Trustee or the Owner) were, as of August 30, 1994, imposed on or with respect to any Unit, any accession thereto, or the interest of the Sublessor, the Owner-Trustee or the Owner therein; (c) the Units have been returned to the Sublessor pursuant to this § 14 in the same operating order, repair and condition required by the first paragraph of this § 14 and (d) the Sublessee no longer has any interest in the Units under the Sublease or otherwise. The certificate described in clause (a) in the preceding sentence shall be furnished on August 30, 1994, and the certificates described in clauses (b), (c) and (d) in the preceding sentence shall be furnished on a monthly basis, beginning on March 1, 1994, and such certificate shall cover each Unit returned during the preceding 30 calendar days and shall apply to each such unit as of the date such Unit was returned pursuant to the provisions of the first paragraph of this § 14. Upon the expiration of any extended term of this Sublease, the Sublessee shall deliver to the Sublessor and the Owner-Trustee a certificate of an officer of the Sublessee to the foregoing effect, with such conforming changes as shall be appropriate under the circumstances.

§ 15. Recording. The Sublessee, at its own expense, will cause this Sublease, the Lease, the Security Document, the Sublease Assignment, the Sublease Reassignment and any assignment hereof or thereof to be filed and recorded with the Interstate Commerce Commission in accordance with 49 U.S.C. § 11303. The Sublessee will, at its own expense, undertake every filing, registering, deposit, and recording required of the Owner-Trustee under the Security Document

and the Sublessor under the Lease 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 Sublessor, the Owner-Trustee or the Vendor for the purpose of proper protection, to their satisfaction, of the Sublessor's, the Vendor's and the Owner-Trustee's respective interests in the Units, or for the purpose of carrying out the intention of this Sublease, the Lease, the Security Document, the Sublease Assignment, or the Sublease Reassignment.

The Sublessee will promptly furnish to the Sublessor, the Vendor and the Owner-Trustee evidence of all such filing, registering, depositing or recording, and an opinion or opinions of counsel for the Sublessee with respect thereto satisfactory to the Sublessor, the Vendor and the Owner-Trustee. This Sublease, the Lease and the Security Document shall be filed and recorded with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Unit.

§ 16. Obligations of Owner-Trustee Under Security Document; Additional Rentals. In the event that the Owner-Trustee shall become obligated to make any payment (other than payments in settlement for Equipment or the principal of or interest on the CSA Indebtedness (as defined in the Security Document) pursuant to the Security Document and pursuant to the proviso to the third paragraph of Article 12 thereof) or to perform any obligations pursuant to the Security Document not covered by the provisions of this Sublease, the Sublessee shall pay such additional rentals hereunder and perform such obligations so that all of the Owner-Trustee's obligations (other than as aforesaid) pursuant to the Security Document shall be fully complied with, without regard for any limitation of liability of the Owner-Trustee contained in the Security Document.

§ 17. Sublessor's Right To Perform for the Sublessee. If the Sublessee fails to perform or comply with any of its agreements contained herein, the Sublessor may upon notice to the Sublessee itself perform or comply with such agreement, and the amount of the reasonable cost and expenses of the Sublessor incurred in connection with such performance or compliance, together with interest on such amount at the rate of 11% per annum (or such lesser amount as may be legally enforceable), shall be payable by the Sublessee upon demand.

§ 18. 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 Sublessee promptly to pay an amount equal to interest at a rate of 10.6% per annum on the overdue rentals and other obligations for the period of time during which they are overdue or such lesser amount as may be legally enforceable.

§ 19. Notices. Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when delivered to such other party or by registered or certified mail, first-class postage prepaid, addressed as follows:

if to the Owner-Trustee, at 79 South Main Street (Suite 310), Salt Lake City, Utah 84111, Attention of Trust Division, Corporate Trust Department, with a copy to the Owner at 721 Locust Street, St. Louis, Missouri 63101, Attention of Leasing Officer;

if to the Sublessor, care of Thayer, Ringoen & Macdonald, 50 California Street, San Francisco, California 94111, Attention of President;

if to the Sublessee, at 332 South Michigan Avenue, Chicago, Illinois 60604, Attention of Chief Financial Officer;

or addressed to any party at such other address as such party shall hereafter furnish to the other parties in writing. Any certificate, document or report required to be furnished by any party hereto to the other parties shall be delivered to the address set forth above or so furnished for such party. Any notice to the Sublessee by the Vendor or the Investors regarding the Sublessee's failure to perform any obligation hereunder shall also be furnished by the Sublessee to the Owner-Trustee and the Sublessor.

§ 20. Federal Income Taxes. The Lease and this Sublease were entered into on the basis that an opinion of the chief mechanical officer of the Sublessee to the effect described in the first paragraph of Paragraph 8 of the Participation Agreement will be provided to the Owner; that the Owner, as the beneficial owner of each unit of Equipment, shall be entitled to such deductions, credits and other benefits provided by the Internal Revenue Code of 1954, as amended, to the date hereof (hereinafter

called the Code) to an owner of property, including without limitation, (a) deductions for depreciation of each Unit under section 167 of the Code commencing in the year that such Unit is delivered to the Owner-Trustee under the Security Document computed on the basis (i) that each Unit will have a basis under section 167(g) of the Code at least equivalent to the Purchase Price of such Unit, (ii) initially of the declining balance method, using a rate equal to 200% of the straight line rate, switching to the sum of the years-digits method authorized by sections 167(b)(2) and (3) of the Code, (iii) of the asset depreciation range and class life system permitted by section 167(m) of the Code and Income Tax Regulation § 1.167(a)-11 and (iv) of an asset depreciation period of 12 years (hereinafter called the ADR Deductions), (b) deductions with respect to interest on the CSA Indebtedness when paid or accrued, in accordance with the method of accounting on the basis of which the Owner regularly computes its income provided such basis is authorized by and fully conforms to the provisions of section 163 of the Code (hereinafter called the Interest Deductions), (c) an investment credit pursuant to section 38 of the Code in the year that each Unit is delivered to the Owner-Trustee under the Security Document equivalent to 10% of the Purchase Price of such Unit (hereinafter called the Investment Credit), (d) that for Federal income tax purposes all amounts includible in the gross income of the Owner with respect to the Equipment and all deductions allowable to the Owner with respect to the Equipment will be treated as derived from, or allocable to, sources within the United States, (e) that the salvage value of each Unit below which each such Unit may not be depreciated is zero, after the deduction permitted by section 167(f) of the Code, and (f) for purposes of computing the depreciation deductions with respect to the Equipment for the calendar year 1978, the Owner will be entitled to elect and will elect the half-year convention.

The Sublessee represents and warrants that (i) all the Units constitute property the entire Purchase Price of which qualifies for the Investment Credit under section 50 of the Code; (ii) at the time the Owner-Trustee becomes the owner of the Units, the Units will constitute "new section 38 property" within the meaning of section 48(b) of the Code and at the time the Owner-Trustee becomes the owner of the Units, the Units will not have been used or placed in service 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 commencing with the Owner-Trustee; (iii) at all times

during the term of the Sublease, each Unit will constitute "section 38 property" within the meaning of section 48(a) of the Code; and (iv) the Sublessee will use its best efforts to maintain sufficient records to verify for each year the period of time in such year during which each Unit is physically located within the United States and the period of time, if any, in such year during which each Unit is physically located outside of the United States and will supply or cause to be supplied such records to the Owner within 90 days after receipt of a written demand therefor.

The Sublessee understands that the Owner intends (a) to claim on its Federal income tax returns the Investment Credit, the ADR Deductions and the Interest Deductions, respectively, and (b) to treat on its Federal income tax returns the income and deductions with respect to the Equipment as derived from, or allocable to, sources within the United States.

If, for Federal income tax purposes, as a result of any reason whatsoever, including, without limitation, an amendment to, or change in, the Code which is enacted prior to April 15, 1979 (whether or not effective for any period prior to April 15, 1979), but excluding any of the specific occurrences or events specified in the sixth paragraph of this § 20, (a) the Owner shall not be entitled to, or shall suffer a disallowance or recapture of or shall lose the benefit of all or any portion of the Investment Credit, the ADR Deductions or the Interest Deductions or (b) any item of income or deduction with respect to the Equipment shall not be treated as derived from, or allocable to, sources within the United States (any such event described in clause (a) or (b) of this paragraph being hereinafter called a Loss), then the Sublessor at its option, after receiving written notice from the Owner of such Loss together with a certificate of an officer of the Owner setting forth in reasonable detail the computations and methods used in calculating such Loss and the amount or amounts of the payments required to be paid pursuant to clause (i) or (ii) below (such notice and certificate being hereinafter collectively called the Net Return Notice), shall either (i) commencing with the next rental payment date occurring more than 30 days after receipt by the Sublessor of the Net Return Notice, which Net Return Notice may not be delivered more than 30 days prior to payment by the Owner of the tax which becomes due as a result of the Loss, increase the rental payments under this Sublease over its remaining term by such an amount that will enable the Owner to realize its contemplated after tax rate of return or (ii) within 30 days of receipt of the Net Return Notice, pay to the Owner in lump

sum the amount required to provide the Owner with its contemplated after tax rate of return. If the option under (ii) above is selected, then to the extent any Loss results in a later benefit to the Owner which has not been taken into account in determining the lump sum payment, payment will be made to the Sublessee at the time such benefit is realized; provided, however, that the Owner shall not be obligated to make any payment pursuant to this sentence to the extent that the amount of such payment would exceed (x) the amount of all prior payments by the Sublessee to the Owner pursuant to the option specified in (ii) above in respect of a Loss less (y) the amount of all prior payments by the Owner to the Sublessee hereunder, and the amount by which such payment would exceed such amounts shall reduce pro tanto any subsequent obligation of the Sublessee to make any payments to the Owner pursuant to the option specified in (ii) above. The adjustments required to be made pursuant to this paragraph shall be made by the Owner and shall be computed using the same method and assumptions as were utilized by the Owner in originally evaluating the transaction except for the assumption that resulted in such adjustment.

Any late payment by any party hereto of any of its obligations under this § 20 shall result in the obligation on the part of such party promptly to pay an amount equal to interest at the rate per annum equal to 1% over the Prime Rate compounded quarterly on the overdue payment. Prime Rate as used herein shall mean the rate per annum which Manufacturers Hanover Trust Company, New York, New York, charges for 90-day unsecured loans to large corporate borrowers of the highest credit standing from time to time in effect for the period such interest is payable.

Notwithstanding anything to the contrary set forth hereinabove, no amount shall be payable as an indemnity hereunder in respect of any Loss to the extent such Loss is the result of any of the following:

(i) a voluntary transfer or voluntary disposition (whether prior to, during or after the term of the Lease or this Sublease, but not including a transfer or disposition as a result of a Casualty Occurrence) of any Unit or of the interest of the Owner in any Unit or the rentals under the Lease or this Sublease, or any transfer or disposition of any Unit or of the interest of the Owner in any Unit or the rentals under the Lease or this Sublease, whether voluntary or involuntary,

which results from bankruptcy or other proceedings for the relief of debtors in which the Owner is the debtor, unless, in each case, such transfer or disposition is (A) made as a direct result of an Event of Default, as defined in Section 10 of this Sublease which has occurred and is continuing; (B) in connection with any alteration, modification or addition to any Unit; or (C) with the consent of the Sublessee;

(ii) the failure of the Owner to claim in a timely manner the Investment Credit, the ADR Deductions (including making all appropriate elections under the applicable Income Tax Regulations), the Interest Deductions or any foreign tax credit or to make a timely election, if permitted by the Code, to treat income and deductions with respect to the Equipment as derived from, or allocable to, sources within the United States, unless independent counsel selected by the Owner and approved by the Sublessee, such approval not to be unreasonably withheld, shall determine that there is no reasonable basis to make such claim;

(iii) the failure of the Owner to have sufficient liability for Federal income tax against which to credit Investment Credit or foreign tax credit or sufficient income to benefit from the ADR Deductions or the Interest Deductions, as applicable;

(iv) any residual sharing, guarantee agreement or other voluntary act of the Owner (either individually or in concert with others) which is not included in the foregoing clauses and which is not required or contemplated by the Security Document, the Participation Agreement, the Trust Agreement, the Lease, this Sublease, the Sublease Assignment, the Sublease Assignment Consent, the Sublease Reassignment, the Consents, the Assignment, the Bond, the Assumption Agreement if entered into or any other document contemplated by any of the foregoing or entered into in connection therewith;

(v) a change in the form or type of organization or the taxable status of the Owner or any successor or transferee of the Owner;

(vi) a Casualty Occurrence with respect to a Unit, if the Owner-Trustee shall have received all amounts required to be paid in respect of such Casualty Occurrence under the Lease;

(vii) any amendment to, or change in, the Code or the Income Tax Regulations which is enacted after April 15, 1979 (whether or not retroactively effective for any period on or prior to such date); or

(viii) termination of this Sublease, pursuant to the second paragraph of § 4 hereof, upon a finding by the Court that the Sublessee is unable to transport the traffic offered the Sublessee because of the Sublessee's cash position or that other facts make the Sublessee's continuing operation of the Debtor impossible and upon an order of the Court that the Sublessee discontinue service and/or liquidate the assets of the Debtor or upon a disaffirmance or rejection of this Sublease pursuant to a plan of reorganization confirmed in the Reorganization Proceedings.

If at the conclusion of an audit the Owner receives a preliminary or "30-day-letter" from the Internal Revenue Service proposing an adjustment in any item claimed in accordance with the fourth paragraph of this § 20 on a tax return or refund claim of the Owner for which the Sublessee would be required to indemnify the Owner and/or Sublessor pursuant to this § 20 and the amount of the indemnity which the Sublessee would be required to pay (after taking into account the effect that the adjustment would have in periods not included in the audit) would exceed \$25,000 or in the good faith opinion of the Sublessee the adjustment would have a continuing or precedental effect on the Sublessee or the railroad industry and the Sublessee so advises the Sublessor and the Owner in writing, the Sublessee shall not be required to indemnify the Owner or Sublessor unless and until the Owner takes the action set forth below, provided that at any time, whether before or after commencing to take such action, the Owner may decline to take such action by notifying the Sublessor and the Sublessee in writing that the Sublessor and the Sublessee are relieved of their obligations to indemnify the Owner with respect to such adjustment or any such portion specified in such notice. Upon receipt of such preliminary or 30-day letter the Owner shall promptly notify the Sublessee of the proposed adjustment and, upon receipt within 20 days after Sublessee's receipt of such notice of a written request to do so from the Sublessee, the Sublessor shall cause the Owner to promptly request from the independent tax counsel selected by the Owner and approved by the Sublessor, which approval shall not be unreasonably withheld (hereinafter called the Owner's Tax Counsel), their opinion whether there is a reasonable likelihood of a favorable determination in the event such proposed adjustment is contested. If the opinion

is to the effect that there is such a reasonable likelihood, the Sublessor shall cause the Owner to contest such proposed adjustment beyond the level of the Internal Revenue Service auditing agent by such administrative proceedings, if any, as may be determined by the Owner in its discretion. Upon the conclusion of such administrative proceedings, if any, the Sublessor and the Owner shall promptly notify the Sublessee of the final adjustment proposed by the Internal Revenue Service and, upon receipt within 30 days thereafter of a written request to do so from the Sublessee, the Sublessor shall cause the Owner to promptly request the Owner's Tax Counsel for their opinion whether there is a reasonable likelihood of a favorable determination in the event such final adjustment is contested. If the opinion is to the effect that there is such a reasonable likelihood, the Sublessor shall cause the Owner to contest such final adjustment in a court of competent jurisdiction. If the Sublessee requests the Sublessor to cause the Owner to appeal the decision of such a court or of an intermediate appellate court, the Sublessor shall cause the Owner to promptly request the Owner's Tax Counsel for their opinion whether there is a reasonable likelihood of a favorable determination in the event such decision is appealed. If the opinion is to the effect that there is such a reasonable likelihood, the Sublessor shall cause the Owner to appeal such decision. The Owner, in its discretion, shall determine the initial and any appellate court and, if the adjustment relates to an item claimed on a tax return, shall determine whether the proceedings shall be for redetermination of the deficiency proposed to be assessed by the Internal Revenue Service or for refund of taxes paid based on such deficiency. The Owner shall not be required to take any action as set forth in this paragraph unless and until the Sublessor and the Sublessee shall have agreed to indemnify the Owner in a manner satisfactory to the Owner for any liability or loss which the Owner may incur as a result of taking such action and shall have agreed to pay the Owner on demand all out-of-pocket costs and expenses, including without limitation reasonable attorneys' fees and expenses, incurred by the Owner in connection with taking such action. The Sublessor shall not be required to take any action as set forth in this paragraph unless and until the Sublessee shall have agreed to indemnify the Sublessor in a manner satisfactory to the Sublessor for any liability, loss or expense which the Sublessor may incur as a result of taking such action and shall have agreed to pay the Sublessor on demand all out-of-pocket costs and expenses, including without limitation reasonable attorneys' fees and expenses, incurred by the Sublessor in connection with taking such action. In the

event that the Owner pays the tax resulting from a proposed adjustment and proceeds to seek a refund thereof, the Sublessee agrees to pay the Owner an amount equal to interest at the rate per annum currently charged by the Internal Revenue Service on deficiencies on the amount of tax in question from the date of payment of such tax to the date of final determination of such adjustment, such amount to be payable in equal installments within each calendar year on the dates on which rental for such period is payable under this Sublease. Upon receipt by the Sublessor from the Owner of a refund of any tax paid by it in respect of which the Sublessee paid an amount equal to interest at the rate provided in the preceding sentence while such tax payment was contested by the Owner, an amount equal to the aggregate amount of such interest shall be paid by the Sublessor to the Sublessee forthwith. Upon completion of the actions set forth in this paragraph, the Sublessee's liability with respect to its required indemnity under this § 20 shall become fixed and determinable.

For purposes of this § 20, the term "Owner" shall include any affiliated group, within the meaning of section 1504 of the Code, of which the Owner is a member if consolidated returns are filed for such affiliated group for Federal income tax purposes.

If at any time prior to the disposition of a Unit in a taxable transaction, the Owner is required to include in its gross income an amount in respect of any improvement and/or addition to such Unit made by the Sublessee which is not readily removable from such unit without causing material damage to such Unit (such improvements or additions being hereinafter called Improvements), then the Sublessee shall pay to the Owner, as an indemnity, such amount or amounts which, after deduction of all Taxes required to be paid by the Owner in respect of the receipt of such amounts, shall be equal to the sum of the additional Federal, state or local income taxes payable by the Owner from time to time as a result of such Improvement plus the amount of any interest, penalties or additions to tax payable as a result of any such Improvement (less any Federal, state or local tax benefits resulting from payment of any amounts reimbursed hereunder). If as a result of any such Improvement the aggregate Federal, state and local income taxes paid by the owner for any taxable year shall be less than the amount of such taxes which would have been payable by the Owner had no such Improvement been made, then the Sublessor shall pay the Sublessee (when received by the Sublessor from the Owner) the amount of such

savings in taxes plus any additional tax benefits realized by the Owner as a result of such payment; provided, however, that the Sublessor shall not be obligated to make any payment pursuant to this sentence to the extent that the amount of such payment would exceed (x) the amount of all prior payments by Sublessee to the Owner pursuant to this paragraph in respect of any Improvement less (y) the amount of all prior payments by the Sublessor to the Sublessee hereunder, and the amount by which such payment would exceed such amount shall reduce pro tanto any subsequent obligation of the Sublessee to make any payments to the Owner pursuant to the first sentence of this paragraph. For purposes of computing any amounts payable to the Owner and any amounts payable to the Sublessee pursuant to this paragraph, the statutory rate of Federal, state or local income tax, as the case may be, shall be used. The amount payable to the Owner pursuant to this paragraph shall be paid within 30 days after receipt of the written demand therefor from the Sublessor (but not prior to payment by the Owner of the additional taxes which become due as a result of the said inclusion) accompanied by a written statement describing in reasonable detail such inclusion and the computation of the amount so payable. Any payment due to the Sublessee from the Sublessor pursuant to this paragraph shall be paid immediately after the Sublessor receives from the Owner the amount that the Owner realized from any such savings in its income taxes or additional tax benefits, as the case may be. The Sublessor agrees to cause the Owner to contest the inclusion in its gross income of any amount with respect to an Improvement to the extent, and under the circumstances, set forth in the seventh paragraph of this § 20 as if such inclusion were a Loss.

The Sublessee agrees that, within 90 days after the close of any calendar year (or in the event that the Sublessor gives the Sublessee written notice that the Owner's taxable year closes on a date specified therein other than December 31, within 90 days after said date) in which the Sublessee has made Improvements, the Sublessee will give written notice thereof to the Owner, describing such Improvements in reasonable detail and specifying the cost thereof with respect to each Unit of Equipment.

In the event that any indemnity payments are required to be made by the Sublessee, or in the event the amount of rentals under this Sublease are adjusted, pursuant to any paragraph of this § 20, the damages and amounts set forth in § 10 of this Sublease and the applicable Casualty

Values set forth in § 7 of this Sublease shall be appropriately adjusted by the Owner (but in no event shall the applicable Casualty Values be reduced below the corresponding Fair Values as defined in the Security Document). The adjustments required to be made pursuant to this paragraph shall be made by the Owner and shall be computed using the same method and the same assumptions, including, without limitation, tax rates, as were utilized by the Owner in originally evaluating this transaction except for the assumption that has resulted in such adjustment. In connection therewith, the Sublessor shall cause the Owner to provide the Sublessee with a certificate of an officer of the Owner setting forth in reasonable detail the figures and methods used in making such calculations. In the case of any such adjustments in the damages and amounts set forth in § 10 of this Sublease and the applicable Casualty Value set forth in Schedule B to this Sublease, if any payment of such damages, amounts or Casualty Values shall have been made prior to the adjustments made pursuant to this paragraph, (a) the Sublessee shall pay to the Owner the excess amount which would have been payable on the due date of such payment by reason of the adjustments pursuant to this paragraph or (b) the Sublessor shall pay to the Sublessee when received from the Owner the amount of such payments in excess of the amount of such payments which would have been payable by reason of the adjustments pursuant to this paragraph. The Sublessee's and the Sublessor's agreements to pay any sums which may become payable pursuant to this § 20 shall survive the expiration or other termination of this Sublease and the Lease.

The Sublessee shall have the right, upon demand, to have Thayer Ringoen & Macdonald, 50 California Street, San Francisco, California 94111, or another independent party selected by the Sublessee and approved by the Owner, which approval shall not be unreasonably withheld, review any calculations made by the Owner pursuant to this § 20 to determine the consistency of the methods and the assumptions used in such calculations with those used by the Owner in originally evaluating this transaction and the accuracy of such computations based on such methods and assumptions.

§ 21. Severability; Effect and Modification of Sublease; Third Party Beneficiaries. Any provision of this Sublease 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.

This Sublease exclusively and completely states the rights of the Sublessor and the Sublessee with respect to the leasing of the Units and supersedes all other agreements, oral or written, with respect thereto, except the Participation Agreement and the Lease. No variation or modification of this Sublease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized signatories for the Sublessor and the Sublessee and no such variation shall be made without the prior written consent of the Vendor and the Owner-Trustee.

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

§ 22. Other Obligations. The Sublessee agrees that, during the term of this Sublease, the Sublessee will not assume or enter into any other leases of equipment, equipment trust agreements, conditional sale agreements or other liabilities or obligations in connection with the leasing or financing of the acquisition of equipment or other tangible personal property, (i) if such liabilities or obligations would be entitled, directly or indirectly, to any priority in right of payment over the obligations of the Sublessee under this Sublease, or (ii) if such liabilities or obligations would be secured, directly or indirectly, by any mortgage, lien or other security interest in property of the Debtor or the Sublessee (except the equipment or other property involved in the particular transaction) unless the obligations of the Sublessee under this Sublease are equally and ratably secured thereby, provided that nothing herein shall restrict the right of the Trustee to issue and sell trustees' certificates for any proper purpose.

It is hereby expressly understood and agreed that any and all obligations of the Sublessee hereunder and any and all amounts payable in connection therewith, including

but not limited to amounts payable under §§ 3 and 7 hereof and obligations arising out of any breach of warranty or breach or termination of this Sublease, or otherwise, together with interest thereon to the date of payment thereof, shall be and deemed to be necessary costs and expenses of administration incurred by the Trustee in the Reorganization Proceedings and shall rank equally and ratably with all other expenses of administration of the Trustee, except trustees' certificates heretofore or hereafter issued by the Trustee; and, without limitation of the foregoing, to the extent that the free assets are not sufficient to pay in full in cash such obligations, such obligations, together with interest thereon as herein provided, shall be paid in full in cash out of the liened assets prior to any payment or other distribution being made to the Bondholders.

For the purpose of this Sublease:

(a) The term "free assets" shall mean any and all property and assets of the Sublessee and the Debtor's estate of every kind and description, tangible and intangible (including cash on hand and on deposit), not subject to mortgage, pledge, lien, trustees' certificates, equipment trusts or other encumbrances.

(b) The term "liened assets" shall mean any and all property and assets of the Sublessee and the Debtor's estate of every kind and description, tangible and intangible, subject to the lien of the mortgage securing the Bonds.

(c) The term "Bonds" shall mean any bonds issued by the Debtor, including the following: the First Mortgage Bonds, Series A due 1980, Series C due 1983, Series G due 1993, Series H due 2004 and Series I due 2004.

(d) The term "Bondholders" shall mean the holders of any of the Bonds issued by the Debtor.

§ 23. Execution. This Sublease may be executed in several counterparts, such counterparts together constituting but one and the same instrument, but the counterpart delivered to the Vendor shall be deemed to be the original counterpart. Although for convenience this Sublease 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, respec-

tively, the date or dates stated in the acknowledgments hereto annexed.

§ 24. Law Governing. The terms of this Sublease and all rights and obligations hereunder shall be governed by the laws of the State of Illinois; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303.

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

WILLIAM M. GIBBONS,

\_\_\_\_\_  
As TRUSTEE OF THE PROPERTY OF CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY, and not individually [Seal]

Attest:

\_\_\_\_\_

GREAT AMERICAN MANAGEMENT, SERVICES, INC.,

by

\_\_\_\_\_

[CORPORATE SEAL]

Attest:

\_\_\_\_\_

STATE OF ILLINOIS, )  
 ) ss.:  
COUNTY OF COOK, )

On this            day of            1978, before me personally appeared William M. Gibbons, to me personally known, who, being by me duly sworn, says that he is the TRUSTEE OF THE PROPERTY OF THE CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY, signer and sealer of the foregoing instrument, and he acknowledged the same to be his free act and deed, as such Trustee pursuant to specific orders of the United States District Court for the Northern District of Illinois in proceedings bearing No. 75B-2697, before me.

\_\_\_\_\_  
Notary Public

[Notarial Seal]

My Commission Expires

STATE OF CALIFORNIA, )  
 ) ss.:  
COUNTY OF SAN FRANCISCO, )

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

\_\_\_\_\_  
Notary Public

[Notarial Seal]

My Commission Expires

Schedule A to the Sublease

<u>Type</u>	<u>Builder's Specification</u>	<u>Builder's Plant</u>	<u>Quantity</u>	<u>Estimated Unit Base Price</u>	<u>Estimated Total Base Price</u>	<u>Road Numbers (Inclusive)</u>	<u>Estimated Time of Delivery</u>
GP 38-2 2,000 h.p. diesel electric locomotive	No. 8090	La Grange, Illinois	12	\$478,560	\$5,742,720	ROCK 4368 through ROCK 4379	November 1978

Casualty Values\*

Item I:	<u>Rental Payment Date**</u>	<u>Percentage of Purchase Price</u>	<u>Rental Payment Date**</u>	<u>Percentage of Purchase Price</u>
	8/1979	84.420645	2/1989	63.001029
	11/1979	84.313883	5/1988	61.841108
	2/1980	84.089282	8/1988	60.653370
	5/1980	83.954953	11/1988	59.437147
	8/1980	83.880418	2/1989	58.191755
	11/1980	83.753113	5/1989	56.923912
	2/1981	83.572057	8/1989	55.641129
	5/1981	83.365424	11/1989	54.333082
	8/1981	83.104170	2/1990	52.999164
	11/1981	82.791589	5/1990	51.653464
	2/1982	82.426792	8/1990	50.295725
	5/1982	82.038469	11/1990	48.915835
	8/1982	81.601599	2/1991	47.513266
	11/1982	81.115862	5/1991	46.101404
	2/1983	80.580323	8/1991	44.680066
	5/1983	80.022149	11/1991	43.239712
	8/1983	79.420223	2/1992	41.779885
	11/1983	78.772118	5/1992	40.288654
	2/1984	78.076911	8/1992	38.761663
	5/1984	77.360127	11/1992	37.198056
	8/1984	76.604684	2/1993	35.594954
	11/1984	75.805997	5/1993	33.957458
	2/1985	74.963202	8/1993	32.278647
	5/1985	74.100095	11/1993	30.637099
	8/1985	73.206353	2/1994	29.072906
	11/1985	72.291178	5/1994	27.493824
	2/1986	71.354033	8/1994	25.918304
	5/1986	70.394435	11/1994	25.166099
	8/1986	69.411824	2/1995	24.411802
	11/1986	68.405648	5/1995	23.641552
	2/1987	67.375342	8/1995	22.903243
	5/1987	66.320326	11/1995	22.221479
	8/1987	65.240009	2/1996	21.535797
	11/1987	64.133784	5/1996	20.816376
			8/1996	20.000000
	Anniversary of Delivery and Acceptance		and thereafter  <u>Percentage of Purchase Price</u>	
Item II:	Third		19.2712	
	Fifth		12.8474	
	Seventh		6.4237	

\* The Casualty Value of each Unit as of any rental payment date shall be that percentage of the Purchase Price of such Unit as is set forth in the above schedule opposite each such rental payment date.

\*\* The rental payment date is the 30th day of the month set forth, except for February, when the rental payment date is on the 28th day.

ASSIGNMENT OF SUBLEASE AND AGREEMENT

Dated as of October 15, 1978

between

GREAT AMERICAN MANAGEMENT SERVICES, INC.,  
as Lessee,

and

FIRST SECURITY STATE BANK,  
not in its individual capacity, but solely  
as Owner-Trustee for MERCANTILE TRUST COMPANY, N.A.,  
as Owner-Trustee,

---

ASSIGNMENT OF SUBLEASE AND AGREEMENT dated as of October 15, 1978, between GREAT AMERICAN MANAGEMENT SERVICES, INC. (the "Lessee"), and FIRST SECURITY STATE BANK, not in its individual capacity, but solely as Trustee (together with its successors and assigns the "Owner-Trustee") under a Trust Agreement dated as of the date hereof with MERCANTILE TRUST COMPANY, N.A.

The Owner-Trustee is entering into a Conditional Sale Agreement dated as of the date hereof (the "Security Document") with General Motors Corporation (Electro-Motive Division) (the "Builder"), providing for the sale to the Owner-Trustee of such units of railroad equipment (the "Units") described in Annex B thereto as are delivered to and accepted by the Owner-Trustee thereunder.

The Owner-Trustee and the Lessee have entered into a Lease of Railroad Equipment dated as of the date hereof (the "Lease") providing for the leasing by the Owner-Trustee to the Lessee of the Units.

The Lessee and William M. Gibbons, Trustee of the Property of the Chicago, Rock Island and Pacific Railroad Company (the "Sublessee"), have entered into a Sublease of Railroad Equipment dated as of the date hereof (the "Sublease") providing for the leasing by the Lessee to the Sublessee of the Units.

In order to provide security for the obligations of the Lessee under the Lease and under the Participation Agreement hereinafter referred to and as an inducement to Investors (as that term is defined in the Participation Agreement) (the "Investors") to invest in the CSA Indebtedness (as that term is defined in the Security Document), the Lessee agrees to assign for security purposes all its rights in, to and under the Sublease to the Owner-Trustee.

NOW, THEREFORE, in consideration of the premises and of the payments to be made and the covenants hereinafter mentioned to be kept and performed, the parties hereto agree as follows:

1. Subject to the provisions of Paragraph 11 hereof, the Lessee hereby assigns, transfers and sets over unto the Owner-Trustee, as collateral security for the payment and performance of the Lessee's obligations under the Lease and the Participation Agreement, all the Lessee's right, title and interest, powers, privileges, and other benefits under the Sublease, including, without limitation, the immediate right to receive and collect all rentals, profits and other sums payable to or receivable by the Lessee from the Sublessee under or pursuant to the provisions of the Sublease whether as rent, casualty payment, indemnity, liquidated damages, or otherwise (such moneys being herein-after called the Payments), and the right to make all waivers and agreements, to give all notices, consents and releases, to take all action upon the happening of an Event of Default specified in the Sublease, and to do any and all other things whatsoever which the Lessee is or may become entitled to do under the Sublease. In furtherance of the foregoing assignment, the Lessee hereby irrevocably authorizes and empowers the Owner-Trustee in its own name, or in the name of its nominee, or in the name of the Lessee or as its attorney, to ask, demand, sue for, collect and receive any and all Payments to which the Lessee is or may become entitled under the Sublease, and to enforce compliance by the Sublessee with all the terms and provisions thereof.

The parties hereto acknowledge that certain rights under this Sublease Assignment are to be reassigned by the Owner-Trustee to First Security Bank of Utah, N.A., not in its individual capacity but solely as Agent (the "Vendor") under a Participation Agreement dated as of the date hereof (the "Participation Agreement"), and that pursuant to the Lease and the Sublease all moneys payable thereunder and so assigned are to be paid at the principal office of the Vendor for application by the Vendor pursuant to the Participation Agreement. In the event that the Owner-Trustee receives any amounts of money under the terms of the Lease or the Sublease and so assigned, the Owner-Trustee shall forthwith forward such amounts to the Vendor for its application as aforesaid.

2. This Sublease Assignment is executed only as security of the obligations of the Lessee under the Lease and the Participation Agreement and, therefore, the execution and delivery of this Sublease Assignment shall not subject the Owner-Trustee to, or transfer, or pass, or in any way affect or modify the liability of the Lessee under the Sub-

lease, it being understood and agreed that notwithstanding this Sublease Assignment or any subsequent assignment, all obligations of the Lessee to the Sublessee shall be and remain enforceable by the Sublessee, its successors and assigns, against, and only against, the Lessee or persons other than the Owner-Trustee and the Vendor.

3. To protect the security afforded by this Sublease Assignment, but subject to the provisions of Paragraph 11 hereof, the Lessee agrees as follows:

(a) The Lessee will faithfully abide by, perform and discharge each and every obligation, covenant and agreement which the Sublease provides are to be performed by the Lessee; without the written consent of the Vendor, the Lessee will not anticipate the rents under the Sublease or waive, excuse, condone, forgive or in any manner release or discharge the Sublessee of or from the obligations, covenants, conditions and agreements to be performed by the Sublessee which are intended to satisfy the obligations of the Lessee under the Lease, including, without limitation, the obligation to pay the rents in the manner and at the time and place specified therein or enter into any agreement so amending, modifying or terminating the Sublease and the Lessee agrees that any such amendment, modification or termination thereof without such consent shall be void.

(b) Should the Lessee fail to make any payment or to do any act which this Sublease Assignment requires the Lessee to make or do, then the Owner-Trustee or Vendor, but without obligation so to do, after first making written demand upon the Lessee and affording the Lessee a reasonable period of time within which to make such payment or do such act, but without releasing the Lessee from any obligation hereunder, may make or do the same in such manner and to such extent as the Owner-Trustee or Vendor may deem necessary to protect the security provided hereby, including specifically, without limiting its general powers, the right to appear in and defend any action or proceeding purporting to affect the security hereof and the rights or powers of the Owner-Trustee and the Vendor, and also the right to perform and discharge each and every obligation, covenant and agreement of the Lessee contained in the Sublease; and in exercising any such powers, the Owner-Trustee and the Vendor may pay necessary costs and

expenses, employ counsel and incur and pay reasonable attorneys' fees, and the Lessee will reimburse the Owner-Trustee and the Vendor for such costs, expenses and fees.

4. Subject to the provisions of Paragraph 11 hereof, the Lessee does hereby constitute the Owner-Trustee the Lessee's true and lawful attorney, irrevocably, with full power (in the name of the Lessee, or otherwise), to ask, require, demand, receive, compound and give acquittance for any and all Payments due and to become due under or arising out of the Sublease to which the Lessee is or may become entitled, to enforce compliance by the Sublessee with all the terms and provisions of the Sublease, to endorse any checks or other instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings which to the Owner-Trustee may seem to be necessary or advisable in the premises.

5. Upon the full discharge and satisfaction of all the Lessee's obligations under the Lease and the Participation Agreement, this Sublease Assignment and all rights herein assigned to the Owner-Trustee shall terminate, and all estate, right, title and interest of the Owner-Trustee and Vendor in and to the Sublease shall revert to the Lessee, but the Owner-Trustee shall execute and deliver such documents as the Lessee may reasonably request in order to confirm, or make clear upon public records, such termination and/or reversion.

6. The Lessee will pay and discharge any and all claims, liens, charges or security interests (other than those created by the Security Document) on the Sublease or the rentals or other payments due or to become due thereunder claimed by any party from, through or under the Lessee, or its successors and assigns (other than the Vendor), not arising out of the transactions contemplated by the Security Document or the Sublease or the Lease (but including tax liens arising out of the receipt of the income and proceeds from the Units) unless such claims, liens, charges or security interests would rank subordinate to the interests of the Vendor in and to the Sublease and the Lease or such rentals or other payments, or unless the Lessee shall be contesting the same in good faith by appropriate proceedings in any reasonable manner and the nonpayment thereof does not materially adversely affect such interests of the Vendor.

7. The Lessee will, from time to time, execute, acknowledge and deliver any and all further instruments required by law or reasonably requested by the Owner-Trustee in order to confirm or further assure the interest of the Owner-Trustee hereunder.

8. The Owner-Trustee may assign all or any of the rights assigned to it hereby or arising under the Sublease, including, without limitation, the right to receive any Payments due or to become due and the power to act as the Sublessee's true and lawful attorney, and the parties hereto acknowledge that this Sublease Assignment is to be reassigned to the Vendor as aforesaid. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Owner-Trustee hereunder. The Owner-Trustee will give written notice to the Lessee and the Sublessee of any such assignment other than the assignment to the Vendor.

9. This Sublease Assignment shall be governed by the laws of the State of Illinois, but the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303.

10. The Lessee shall cause copies of all notices received in connection with the Sublease and all payments thereunder to be promptly delivered or made to the Vendor at its address set forth in Article 20 of the Security Document or at such other address as the Vendor shall designate.

11. The Owner-Trustee hereby agrees with the Lessee that, so long as no Event of Default, or any event which with lapse of time or notice or both would constitute such an Event of Default, under the Lease has occurred and is then continuing, the Owner-Trustee will not exercise or enforce, or seek to exercise or enforce, or avail itself of, any of the rights, powers, privileges, authorizations or benefits assigned and transferred by the Lessee to the Owner-Trustee by this Sublease Assignment, except the right to receive, forward and apply the Payments as provided in Paragraph 1 hereof, and that, subject to the terms of the Sublease, the Lease and the Security Document, the Lessee may, so long as no Event of Default or event which with notice or lapse of time or both would constitute such an Event of Default under the Lease has occurred and is then continuing, exercise or enforce, or seek to exercise or enforce, its rights, powers,

privileges and remedies under the Sublease (except, unless the Sublease shall be terminated, the right to receive, forward and apply Payments as provided in Paragraph 1 hereof or to amend, modify or waive any provisions of the Sublease such that the Sublease would fail to meet the requirements of a sublease as provided in the fourth paragraph of § 12 of the Lease), including its rights, powers, privileges and remedies arising out of subparagraphs (a) and (b) of the first paragraph of § 10 of the Sublease.

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

GREAT AMERICAN MANAGEMENT SERVICES, INC.,

by

[Corporate Seal]

Attest:

\_\_\_\_\_

FIRST SECURITY STATE BANK, not in its individual capacity, but solely as Owner-Trustee,

by

[Corporate Seal]

Attest:

\_\_\_\_\_  
Authorized Officer

STATE OF CALIFORNIA, )  
 )  
 ) ss.:  
COUNTY OF SAN FRANCISCO, )

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

\_\_\_\_\_  
Notary Public

[Notarial Seal]

My Commission Expires

STATE OF UTAH, )  
 )  
 ) ss.:  
COUNTY OF SALT LAKE, )

On this day of 1978, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is an Authorized Officer of FIRST SECURITY STATE BANK, 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 By-laws, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

\_\_\_\_\_  
Notary Public

[Notarial Seal]

My Commission Expires

## SUBLESSEE'S CONSENT AND AGREEMENT

On March 17, 1975, the Chicago, Rock Island and Pacific Railroad Company, Debtor, filed a petition for reorganization under Section 77 of the Bankruptcy Act in the United States District Court for the Northern District of Illinois and such petition was duly approved as properly filed and by order entered on April 4, 1975, by such Court the undersigned William M. Gibbons was duly qualified as Trustee of the Property of the Chicago, Rock Island and Pacific Railroad Company, Debtor. The undersigned, the Sublessee named in the Sublease referred to in the foregoing Sublease Assignment (the "Assignment"), hereby acknowledges receipt of a copy of the Assignment, and consents to all the terms and conditions of the Assignment.

As an inducement to the Investors, as such term is defined in the Security Document referred to in the Assignment, to invest in the CSA Indebtedness (as defined in the Security Document) pursuant to which First Security State Bank, not in its individual capacity but solely as Trustee under a Trust Agreement dated as of October 15, 1978 (the "Owner-Trustee"), is in part financing its purchase of units of railroad equipment (the "Units"), which Units the Owner-Trustee is leasing to Great American Management Services, Inc. (the "Lessee"), pursuant to the Lease (as defined in the Assignment) and the Lessee is leasing to the Sublessee pursuant to the Sublease; and in consideration of other good and valuable consideration, the Sublessee agrees that:

(1) subject to the terms and conditions of the Assignment, to pay all rentals, casualty payments, liquidated damages, indemnities and other moneys provided for in the Sublease and assigned to the Owner-Trustee by the Assignment (other than indemnity payments under § 6 and § 19 of the Sublease payable to the Lessee, which shall be paid to the Owner-Trustee at its address set forth in the Participation Agreement referred to below) (which moneys are hereinafter called the Payments) due and to become due to the Lessee under the Sublease in respect of the Units leased thereunder, directly to the First Security Bank of Utah, N.A., as agent (the "Agent") under the Participation Agreement referred to in the Assignment, to be applied as provided in the first paragraph of Paragraph 10 of the Participation Agreement, to its address at 79 South Main Street (Suite 310), Salt

Lake City, Utah 84111, attention of Trust Division, Corporate Trust Division (or to such other address as may be furnished in writing to the undersigned by the Agent);

(2) the Owner-Trustee shall be entitled to the benefits of, and to receive and enforce performance of, all the covenants to be performed by the Sublessee under the Sublease as though the Owner-Trustee were named therein as the Lessee;

(3) the Owner-Trustee shall not, by virtue of the Sublease Assignment or this Consent and Agreement, be or become subject to any liability or obligation under the Sublease or otherwise;

(4) if an Event of Default or an event which with notice or lapse of time or both would constitute such an Event of Default under the Lease referred to in the foregoing Assignment shall have occurred and be continuing, the Sublease shall not, without the prior written consent of the Owner-Trustee or the Agent, be terminated (other than pursuant to the second paragraph of § 4 thereof) or modified, nor shall any action be taken or omitted by the Sublessee the taking or omission of which might result in an alteration or impairment of the Sublease or the Sublease Assignment or this Consent and Agreement or of any of the rights created by any thereof; and

(5) it will (i) execute, deliver and/or furnish all notices, certificates, communications, instruments, agreements, legal opinions and other documents and papers required to be executed, delivered and/or furnished by it (or its counsel) pursuant to the provisions of the Sublease and (ii) do all such acts and execute and deliver all such further assurances required to be done and/or executed and delivered by it pursuant to the provisions of any thereof.

This Consent and Agreement may be executed in several counterparts, each of which when so executed shall be deemed an original, and such counterparts together shall constitute one and the same instrument.

This Consent and Agreement, when accepted by the Owner-Trustee by signing the acceptance at the foot hereof,

shall be deemed to be a contract under the laws of the State of Illinois and, for all purposes, shall be construed in accordance with the laws of said State.

Dated as of October 15, 1978

WILLIAM M. GIBBONS,

\_\_\_\_\_  
As TRUSTEE OF THE PROPERTY OF CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY, and not individually. [Seal]

Witness:

\_\_\_\_\_

Accepted:

FIRST SECURITY STATE BANK,  
not in its individual capacity,  
but solely as Owner-Trustee,

by

\_\_\_\_\_

[SEAL]

Attest:

\_\_\_\_\_

