X

7049- B

RECORDATION NO. _____ Filed & Recorded

DEC 28 1973 -3 15 PM

INTERSTATE COMMERCE COMMISSION

LEASE OF RAILROAD EQUIPMENT

Dated as of December 27, 1973

between

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

and

UNITED STATES TRUST COMPANY OF NEW YORK, as Trustee under a Trust Agreement dated as of December 27, 1973 with General Electric Credit and Leasing Corporation

LEASE OF RAILROAD EQUIPMENT dated as of December 27, 1973, between LOUISVILLE AND NASHVILLE RAILROAD COMPANY, a Kentucky corporation (hereinafter called the Lessee), and UNITED STATES TRUST COMPANY OF NEW YORK, as Trustee (hereinafter called the Lessor), under a Trust Agreement dated as of December 27, 1973 with GENERAL ELECTRIC CREDIT AND LEASING CORPORATION (hereinafter called the Beneficiary).

WHEREAS, the Lessee has entered into purchase agreement letters dated as of March 21, 1973, and May 2, 1973 (hereinafter collectively called the Purchase Agreement), with GENERAL ELECTRIC COMPANY (hereinafter called the Builder), wherein the Builder has agreed to manufacture, sell and deliver to the Lessee the units of railroad equipment described in Schedule A hereto (hereinafter called the Units);

WHEREAS, the Builder and the Lessee have entered into a Railroad Equipment Lease dated as of May 24, 1973 (hereinafter called the Interim Lease) providing for the temporary custody and possession of the Units by the Lessee;

WHEREAS, the term of the Interim Lease expires on December 27, 1973, and the Lessee has agreed, pursuant thereto, to purchase or provide a purchaser for all the Units on such date;

WHEREAS, the Builder has assigned its interest in the rentals and other amounts payable under the Interim Lease to MORGAN GUARANTY TRUST COMPANY OF NEW YORK (hereinafter called the Assignee) pursuant to an Assignment dated as of May 24, 1973 (hereinafter called the Assignment);

WHEREAS, the Lessor desires to purchase the Units and the Lessee agrees to assign its rights to purchase the Units to the Lessor;

WHEREAS, the Lessee desires to lease all the Units at the rentals and for the terms and upon the conditions hereinafter provided; and

WHEREAS, the Lessor intends to grant a security interest in the Units to an investor or group of investors pursuant to a conditional sale agreement, equipment trust agreement, or other suitable security agreement in form satisfactory to the Lessor (such security agreement, including the guaranty by the Lessee of the obligations of the Lessor thereunder, being hereinafter called the Security Documents and such investor or group of investors being hereinafter called the Vendor);

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

§1. *Assignment of Right to Purchase.* The Lessee hereby assigns, transfers and sets over unto the Lessor, its successors and assigns:

(a) all the right, title and interest of the Lessee in and to the Units, except to the extent granted to the Lessee by this Lease; and

(b) all the right, title and interest of the Lessee in and to the Purchase Agreement and the Interim Lease, in so far as such documents relate to the Units.

The obligation of the Lessor to purchase and pay for the Units or any portion thereof is subject to certain conditions set forth in this Lease. In respect thereof, the Lessee covenants with the Lessor and the Builder and the Assignee as third party beneficiaries hereof, that, in the event of any non-payment by the Lessor in respect of any Unit, the Lessee will be obligated to pay the full purchase price therefor when due, all in accordance with the terms of the Purchase Agreement and the Interim Lease.

Subject to the provisions of this Lease, the Lessor accepts the assignments herein contained, and assumes the obligations of the Lessee under the Purchase Agreement and the Interim Lease to purchase and pay for the Units, but no other duties or obligations of the Lessee thereunder; *provided, however,* that the Lessee shall remain liable to the Builder in respect of its duties and obligations in accordance with the Purchase Agreement.

The Lessee represents and warrants that (i) the Lessee is the lawful owner, free from all claims, liens, security interests and encumbrances, of its rights under the Purchase Agreement and the Interim Lease, (ii) the Lessee has the right to sell and assign the Purchase Agreement and the Interim Lease as set forth herein and (iii) the Lessee will warrant and defend this assignment against the lawful claims and demands of all persons.

§ 2. *Purchase Price and Payment.* The term Purchase Price shall mean the purchase price of each Unit as set forth in Schedule A hereto. On December 27, 1973 (hereinafter called the Commencement Date), the Lessor shall pay to the Builder (or to the Assignee at the direction of the Builder) an amount equal to the Purchase Price of each Unit, provided that

there shall have been delivered to the Lessor, the following documents, in form and substance satisfactory to it, in such number of counterparts as may be reasonably requested:

(a) A bill of sale from the Builder to the Lessor transferring to the Lessor title to the Units, warranting to the Lessor that the Builder has legal title to such Units and good and lawful right to sell such Units and that title to such Units is free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Lessee under the Interim Lease, and covenanting to defend the title to such Units against the demands of all persons whomsoever based on claims originating prior to the delivery of such Units by the Builder under the Interim Lease;

(b) A certificate or certificates of acceptance with respect to the Units as contemplated by the Interim Lease;

(c) A certificate of an officer of the Lessee to the effect that (i) none of the Units was placed in the service of the Lessee or otherwise was used by the Lessee prior to delivery and acceptance of such Units under the Interim Lease (ii) each of the Units is in good order and repair and in the possession of the Lessee, and (iii) no Event of Default has occurred and is continuing under the Interim Lease;

(d) An invoice of the Builder addressed to the Lessor for the Units;

(e) An opinion of counsel for the Lessee, dated the Commencement Date, to the effect set forth in §15 hereof (except with respect to the Security Documents);

(f) An opinion of counsel for the Builder, dated the Commencement Date, to the effect that (i) the Builder is a duly organized and existing corporation in good standing under the laws of its jurisdiction of incorporation and has the power and authority to own its properties and to carry on its business as now conducted, (ii) the Interim Lease has been duly authorized, executed and delivered by the Builder and is a legal and valid instrument binding upon the Builder and enforceable against the Builder in accordance with its terms, and (iii) title to the Units is validly vested in the Lessor and such Units, at the time of delivery thereof to the Lessee under the Interim Lease, were free from all claims, liens, security interests and other encumbrances (other than those created by the Interim Lease), and

(g) A receipt from the Builder or the Assignee for all rentals and other payments due and payable by the Lessee pursuant to the Interim Lease, together with a release, in form suitable for recordation with the Interstate Commerce Commission, of any security interest in the Units in favor of the Assignee created by the Interim Lease and the Assignment.

Upon payment by the Lessor of the Purchase Price of the Units as hereinbefore provided each 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.

§ 3. *Rentals.* The Lessee agrees to pay to the Lessor, as rental for each Unit subject to this Lease, one payment on the Closing Date (which date shall be defined in the Security Documents and shall be not later than April 1, 1974), 30 consecutive semiannual payments payable on May 1 and November 1 in each year commencing May 1, 1974, and one payment on December 27, 1988. The rental payment payable on the Closing Date shall be in an amount equal to interest (computed on the basis of a 360-day year of twelve 30-day months) on the Purchase Price of each Unit at the rate of 10¼% per annum from the Commencement Date to and including the Closing Date. The rental payment payable on May 1, 1974, shall be in an amount equal to $^{1}/_{180}$ of the percentage set forth in the next succeeding sentence for the next 29 semiannual rental payments of the Purchase Price of each Unit then subject to this Lease for each day elapsed from the Closing Date to and including May 1, 1974. The next 29 semiannual rental payments shall each be in an amount equal to that percentage of the Purchase Price of each Unit subject to this Lease on the date of such payment which is set forth below opposite the interest rate per annum applicable to the Security Documents:

Interest Rate	Payments
8⅜%	.0464939%
8½	.0467485
8⅝	.0470291

The rental payment payable on December 27, 1988, shall be in an amount equal to $^{57}/_{180}$ of the percentage set forth in the next preceding sentence for

the 29 preceding semiannual rental payments of the Purchase Price of each Unit then subject to this Lease. If the interest rate per annum applicable to the Security Documents is not expressly set forth above, the percentages of Purchase Price constituting semiannual rental payments shall be calculated by interpolating or extrapolating the percentages of Purchase Price set forth above.

If the Security Documents do not provide for the investment by the Vendor in an aggregate principal amount of 70% of the Purchase Price of the Units on or prior to April 1, 1974, or the Vendor does not advance to the Lessor such principal amount by such date, then the rental payments shall be increased to such amount or amounts as shall, in the reasonable opinion of the Lessor, cause the Lessor's net return to equal the net return that would have been realized by the Lessor if the Vendor made an investment in an aggregate principal amount of 70% of the Purchase Price of the Units; the Casualty Values set forth in §7 hereof shall be similarly adjusted. The rental payments hereinbefore set forth are subject to adjustment pursuant to § 17 hereof.

If any of the semiannual rental payment dates referred to above is not a business day the semiannual rental payment otherwise payable on such date shall be payable on the next succeeding business day, and no interest shall accrue for the period from and after the nominal date for payment thereof to such next succeeding business day.

Unless the Security Documents are not executed and delivered, the Lessor irrevocably instructs the Lessee to make all the payments provided for in this Lease at the principal office of the Vendor, for the account of the Lessor, in care of the Vendor, with instructions to the Vendor first to apply such payments to satisfy the obligations of the Lessor under the Security Documents known to the Vendor to be due and payable on the date such payments are due and payable hereunder and second, so long as no event of default under the Security Documents shall have occurred and be continuing, to pay any balance promptly to the Lessor at such place as the Lessor shall specify in writing. If the Security Documents are not executed and delivered, all payments provided for in this Lease shall be made at such place as the Lessor shall specify in writing. The Lessee agrees to make each payment provided for herein as contemplated by this paragraph in clearing house funds in the city where such payment is to be made.

This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent, reduction thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs due or alleged to be due by reason of any past, present or future claims of the Lessee against the Lessor under this Lease, against the Builder under the Interim Lease, or under the Security Documents, including the Lessee's rights by subrogation thereunder 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 Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency of or the bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever.

§ 4. *Term of Lease.* The term of this Lease as to each Unit shall begin on the Commencement Date and, subject to the provisions of §§ 7, 10 and 13 hereof, shall terminate on the date on which the final payment of rent in respect thereof is due pursuant to §3 hereof.

Notwithstanding anything to the contrary contained herein, all rights and obligations under this Lease and in and to the Units, upon default by the Lessee hereunder, or under the Security Documents in its capacity as guarantor or otherwise, are subject to the rights of the Vendor under the

Security Documents. If an event of default should occur under the Security Documents, the Vendor may terminate this Lease (or rescind its termination), all as provided therein, unless the Lessee is not so in default under this Lease or under the Security Documents.

§ 5. *Identification Marks.* The Lessee will cause each Unit to be kept numbered with the identifying number set forth in Schedule A hereto, or in the case of any Unit not there listed such identifying number as shall be set forth in any amendment or supplement hereto extending this Lease to cover such Unit, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the words "Subject to a Security Agreement Filed under the Interstate Commerce Act, Section 20c." or other appropriate words designated by the Lessor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Lessor's and Vendor's title to and property in such Unit and the rights of the Lessor under this Lease and of the Vendor under the Security Documents. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such name and words shall have been so marked on both sides thereof and will replace promptly any such name and words which may be removed, defaced or destroyed. The Lessee will not change the identifying number of any Unit except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Vendor and the Lessor and filed, recorded and deposited by the Lessee in all public offices where this Lease and the Security Documents shall have been filed, recorded and deposited.

Except as provided in the immediately preceding paragraph, the Lessee will not allow the name of any person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership; *provided, however,* that the Lessee may allow the Units to be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates on railroad equipment used by them of the same or a similar type for convenience of identification of their rights to use the Units as permitted under this Lease.

§ 6. *Taxes.* All payments to be made by the Lessee hereunder will be free of expense to the Lessor for collection or other charges and will be free

of expense to the Lessor with respect to the amount of any local, state, federal, or foreign taxes (other than any United States federal income tax [and, to the extent that the Lessor receives credit therefor against its United States federal income tax liability, any foreign income tax] payable by the Lessor in consequence of the receipt of payments provided for herein and other than the aggregate of all state or city income taxes or franchise taxes measured by net income based on such receipts, up to the amount of any such taxes which would be payable to the state and city in which the Lessor has its principal place of business without apportionment to any other state, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided) or license fees, assessments, charges, fines or penalties (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called impositions) hereafter levied or imposed upon or in connection with or measured by this Lease or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof or the Security Documents, all of which impositions the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. The Lessee will also pay promptly all impositions which may be imposed upon any Unit or for the use or operation thereof or upon the earnings arising therefrom (except as provided above) or upon the Lessor solely by reason of its ownership thereof and will keep at all times all and every part of such Unit free and clear of all impositions which might in any way affect the title of the Lessor or result in a lien upon any such Unit; *provided, however,* that the Lessee shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Lessor, adversely affect the title, property or rights of the Lessor hereunder or the Vendor under the Security Documents. If any impositions shall have been charged or levied against the Lessor directly and paid by the Lessor, the Lessee shall reimburse the Lessor on presentation of an invoice therefor.

In the event that the Lessor shall become obligated to make any payment to the Builder or the Vendor or otherwise pursuant to any correlative provision of the Security Documents not covered by the foregoing paragraph of this §6, the Lessee shall pay such additional amounts (which shall also be deemed impositions hereunder) to the Lessor as will

enable the Lessor to fulfill completely its obligations pursuant to said provision.

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

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

§ 7. *Payment for Casualty Occurrences; Insurance.* In the event that any Unit shall be or become worn out, lost, stolen, destroyed, or, in the opinion of the Lessor or the Lessee, irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (such occurrences being hereinafter called Casualty Occurrences) during the term of this Lease, the Lessee shall promptly and fully notify the Lessor and the Vendor with respect thereto. On the rental payment date next succeeding such notice the Lessee shall pay to the Lessor an amount equal to the rental payment or payments in respect of such Unit due and payable on such date plus a sum equal to the Casualty Value (as hereinafter defined) of such Unit as of the date of such payment in accordance with the schedule set out below. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft or complete destruction of such Unit) the Lessor shall be entitled to recover possession of such Unit. The Lessor hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof, at the best price obtainable on an "as is, where is" basis. Provided that the Lessee has previously paid the Casualty Value to the Lessor, the Lessee shall be entitled to the proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Lessor.

Subject to adjustment pursuant to the provisions of §§3 and 17 hereof, the Casualty Value of each Unit as of the payment date on which payment is to be made as aforesaid shall be that percentage of the Purchase Price of such Unit as is set forth in the following schedule opposite such date:

Date	Percentage
Closing Date	105.4640%
May 1, 1974	105.4640
November 1, 1974	103.7414
May 1, 1975	103.1371
November 1, 1975	102.3552
May 1, 1976	101.4066
November 1, 1976	100.2939
May 1, 1977	99.0264
November 1, 1977	97.6069
May 1, 1978	96.0436
November 1, 1978	94.3360
May 1, 1979	92.4869
November 1, 1979	90.4934
May 1, 1980	88.3528
November 1, 1980	86.0603
May 1, 1981	83.6192
November 1, 1981	81.0210
May 1, 1982	78.2648
November 1, 1982	75.3480
May 1, 1983	72.2680
November 1, 1983	69.0223
May 1, 1984	65.6081
November 1, 1984	62.0310
May 1, 1985	58.3026
November 1, 1985	54.4553
May 1, 1986	50.5515
November 1, 1986	46.5936
May 1, 1987	42.5846
November 1, 1987	38.5275
May 1, 1988	34.4261
November 1, 1988	30.2840
December 27, 1988 and thereafter	15.0000

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 the Commencement Date.

The Lessee will, at all times while this Lease is in effect, at its own expense, cause to be carried and maintained property insurance in respect of the Units at the time subject hereto, and public liability insurance, in amounts and against risks customarily insured against ~~by railroad companies on similar equipment, and in any event in amounts and against risks comparable to those insured against~~ by the Lessee on equipment owned by it and the benefits thereof shall be payable as provided in the Security Documents so long as the indebtedness, if any, evidenced by the Security Documents shall not have been paid in full, and thereafter to the Lessor and the Lessee as their interests may appear. Any net insurance proceeds as the result of insurance carried by the Lessee received by the Lessor in respect of Units suffering a Casualty Occurrence shall be deducted from the amounts payable by the Lessee to the Lessor in respect of Casualty Occurrences pursuant to this §7. If the Lessor shall receive any such net insurance proceeds or condemnation payments after the Lessee shall have made payments pursuant to this § 7 without deduction for such net insurance proceeds or such condemnation payments, the Lessor shall pay such proceeds to the Lessee up to an amount equal to the Casualty Value with respect to a Unit paid by the Lessee and any balance of such proceeds shall remain the property of the Lessor.

§ 8. *Reports.* On or before March 31 in each year, commencing with the calendar year 1975, the Lessee will furnish to the Lessor 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 Documents, the amount, description and numbers of all Units that have suffered a Casualty Occurrence or are then undergoing repairs (other than running repairs) or have been withdrawn from use pending repairs (other than running repairs) during the preceding calendar year and such other information regarding the condition and state of repair of the Units as the Lessor 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 Documents have been preserved or replaced. The

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

Within 30 days after its annual audit has been completed, but in no event later than six months after the close of each fiscal year, the Lessee will promptly furnish to the Lessor and the Vendor a balance sheet as of the end of such year and a profit and loss statement for the year then ended prepared in conformity with generally accepted accounting principles or the regulations of the Interstate Commerce Commission, in either case applied on a basis consistent with that of the preceding fiscal year and certified by the Lessee's independent certified public accountants. The Lessee shall also furnish to the Lessor and the Vendor unaudited quarterly reports of similar tenor within 90 days after the end of each quarterly accounting period and such other financial information as the Lessor or the Vendor may reasonably request from time to time.

As soon as available and in any event within 120 days after the end of each fiscal year, the Lessee will deliver to the Lessor a certificate signed by the President, any Vice President, the Secretary-Treasurer or any Assistant Treasurer of the Lessee stating that a review of the activities of the Lessee during such year has been made under his supervision with a view to determining whether the Lessee has kept, observed, performed and fulfilled all of its covenants and obligations under this Lease and the Security Documents and that to the best of his knowledge the Lessee during such year has kept, observed, performed and fulfilled each and every covenant and obligation contained herein and in the Security Documents, or if an Event of Default under this Lease or the Security Documents shall exist or if an event has occurred which, with the giving of notice or the passage of time or both, would constitute such an Event of Default, specifying such Event of Default or such event and the nature and status thereof.

§ 9. *Disclaimer of Warranties; Compliance with Laws and Rules; Maintenance; Indemnification.* **The Lessor makes no warranty or representation, either express or implied, as to the design or condition of, or as to the quality of the material, equipment or workmanship in, the Units delivered to the Lessee hereunder, and the Lessor makes no warranty of merchantability or fitness of the Units for any particular purpose or as to title to the Units or any component thereof,** it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee;

but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for account of the Lessor and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Lessor may have against the Builder, as assignee of the Purchase Agreement. All Units are in all the foregoing respects satisfactory to the Lessee as of the Commencement Date, and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

The Lessee agrees, for the benefit of the Lessor and the Vendor, to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each Unit) with all 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 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 of any Unit, or in the event that any equipment or appliance on any such Unit shall be required to be changed or replaced, or in the event that any additional or other equipment or appliance is required to be installed on any such Unit in order to comply with such laws or rules, the Lessee will make such alterations, changes, replacements and additions at its own expense; *provided, however,* that the Lessee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Lessor or the Vendor, adversely affect the property or rights of the Lessor or the Vendor under this Lease or under the Security Documents.

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

Any and all additions to any Unit (except, in the case of any Unit which is a locomotive, communications, signal and automatic control equipment or devices having a similar use which have been added to such Unit by the Lessee, 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 Department of Transportation or any other applicable regulatory body), and any and all parts installed on and

additions and replacements made to any Unit shall constitute accessions to such Unit and, at the cost and expense of the Lessee, full ownership thereof free from any lien, charge, security interest or encumbrance (except for those created by the Security Documents) shall immediately be vested in the Lessor and the Vendor as their respective interests appear in the Unit itself.

The Lessee agrees to indemnify, protect and hold harmless the Lessor and the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including, but not limited to, counsel fees and expenses, patent liabilities, penalties and interest, arising out of or as the result of the entering into or the performance of the Security Documents or this Lease, the ownership of any Unit, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any Unit or any accident in connection with the operation, use, condition, possession, storage or return of any Unit resulting in damage to property or injury or death to any person, except as otherwise provided in § 14 of this Lease. The indemnities arising under this paragraph shall continue in full force and effect notwithstanding the full payment of all obligations under this Lease or the termination of this Lease.

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

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

A. default shall be made in payment of any part of the rental provided in § 3 hereof, and such default shall continue for five days;

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

C. default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein or in the Security Documents, and such default shall continue for 30 days after written notice from the Lessor to the

Lessee specifying the default and demanding that the same be remedied;

D. any proceedings shall be commenced by or against the Lessee for any relief which includes, or might result in, any modification of the obligations of the Lessee hereunder or under the Security Documents 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 obligations of the Lessee hereunder or under the Security Documents), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease and under the Security Documents shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Lessee or for the property of the Lessee in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such a trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

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

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

(a) proceed by appropriate court action or actions either at law or in equity, to enforce performance by the Lessee of the applicable

covenants of this Lease or to recover damages for the breach thereof including net after tax losses of Federal and state income tax benefits to which the Lessor would otherwise be entitled under this Lease; or

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided; and thereupon the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee (i) as damages for loss of the bargain and not as a penalty, a sum, with respect to each Unit, which represents the excess of (x) the present value, at the time of such termination, of the entire unpaid balance of all rental for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over (y) the then present value of the rentals which the Lessor reasonably estimates to be obtainable for the Unit during such period, such present value to be computed in each case on a basis of a rate of 3.63% per annum, discount, compounded semiannually, from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, (ii) any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Lessor shall have sustained by reason of the breach of any covenant, representation or warranty of this Lease other than for the payment of rental, and (iii) an amount which, after deduction of all taxes required to be paid by the Lessor in respect of the receipt thereof under the laws of the United States of America or any political subdivision thereof, shall, in the reasonable opinion of the Lessor, cause

the Lessor's net return under this Lease to be equal to the net return that would have been available to the Lessor if it had been entitled to utilization of all or such portion of the Investment Credit (as defined in § 17 hereof) lost, not claimed, not available for claim, disallowed or recaptured by or from the Lessor as a result of the breach of one or more of the representations, warranties and covenants made by the Lessee in § 17 or any other provision of this Lease, the failure of the Lessor to receive the Ruling (as defined in §17 hereof) or the sale or other disposition of the Lessor's interest in any Unit after the occurrence of an Event of Default, plus such sum as shall, in the reasonable opinion of the Lessor, cause the Lessor's net return under this Lease to be equal to the net return that would have been available to the Lessor if it had been entitled to utilization of all or such portion of the ADR Deduction (as defined in § 17 hereof) which was lost, not claimed, not available for claim or disallowed or recaptured in respect of a Unit as a result of the breach of one or more of the representations, warranties and covenants made by the Lessee in § 17 or any other provision of this Lease, the inaccuracy of any statement in any letter or document furnished to the Lessor by the Lessee, the failure of the Lessor to receive the Ruling (as defined in § 17 hereof), the termination of this Lease, the Lessee's loss of the right to use such Unit or the sale or other disposition of the Lessor's interest in such Unit after the occurrence of an Event of Default.

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

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

§ 11. *Return of Units Upon Default.* If this Lease shall terminate pursuant to § 10 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor. For the purpose of delivering possession of any Unit or Units to the Lessor as above required, the Lessee shall at its own cost, expense and risk:

(a) forthwith place such Units upon such storage tracks of the Lessee as the Lessor reasonably may designate;

(b) permit the Lessor to store such Units on such tracks at the risk of the Lessee until such Units have been sold, leased or otherwise disposed of by the Lessor; and

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

The assembling, delivery, storage and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Unit, to inspect the same.

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

§ 12. *Assignment; Possession and Use.* This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. All the rights of the Lessor hereunder (including, but not limited to, the rights under §§ 6, 7 and

10 and the rights to receive the rentals payable under this Lease) shall inure to the benefit of the Lessor's assigns (including the partners or any beneficiary of any such assignee if such assignee is a partnership or a trust, respectively). Whenever the term Lessor is used in this Lease it shall apply and refer to the Lessor and the Beneficiary and each such assignee of the Lessor and, where the context so requires (including, but not limited to, certain of the provisions of §§6, 10 and 17 hereof), shall refer only to the Beneficiary. The term Beneficiary as used herein shall include any affiliated group of corporations which includes the Beneficiary and which files a consolidated Federal income tax return.

So long as the Lessee shall not be in default under this Lease or under the Security Documents in its capacity as guarantor or otherwise, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease and the Security Documents, but, without the prior written consent of the Lessor, the Lessee shall not assign or transfer its leasehold interest under this Lease in the Units or any of them. The Lessee, at its own expense, will promptly pay or discharge any and all sums claimed by any party which, if unpaid, might become a lien, charge, security interest or other encumbrance (other than an encumbrance resulting from claims against the Lessor or the Vendor not related to the ownership of the Units) upon or with respect to any Unit, including any accession thereto, or the interest of the Lessor, the Vendor or the Lessee therein, and will promptly discharge any such lien, claim, security interest or encumbrance which arises. The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provisions of the immediately succeeding paragraph.

So long as the Lessee shall not be in default under this Lease or under the Security Documents in its capacity as guarantor or otherwise, the Lessee shall be entitled to the possession of the Units and to the use of the Units by it or any affiliate upon lines of railroad owned or operated by it or any such affiliate or upon lines of railroad over which the Lessee or any such affiliate has trackage or other operating rights or over which railroad equipment of the Lessee or any such affiliate is regularly operated pursuant to contract, and also to permit the use of the Units upon connecting and other carriers in the usual interchange of traffic, but only upon and subject to all the terms and conditions of this Lease and the Security Documents; *provided, however,*

that the Lessee shall not assign or permit the assignment of any Unit to service involving the regular operation and maintenance thereof outside the United States of America. The Lessee 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 Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any railroad corporation incorporated under the laws of any state of the United States of America or the District of Columbia (which shall have duly assumed the obligations of the Lessee hereunder and under the Security Documents) 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 or consolidation, be in default under any provision of this Lease.

§ 13. *Purchase and Renewal Options.* Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may by written notice delivered to the Lessor not less than six months prior to the end of the original term of this Lease or any extended term hereof, as the case may be, elect (a) to extend the term of this Lease in respect of any or all of such Units then covered by this Lease, for two additional one-year periods commencing on the scheduled expiration of the original term or extended term of this Lease, as the case may be, at a "Fair Market Rental" payable in semiannual payments on June 27 and December 27 in each year of the applicable extended term and (b) to purchase all, but not fewer than all, the Units then covered by this Lease at the end of the original or any extended term of this Lease for a purchase price equal to the "Fair Market Value" of such Units as of the end of such term.

provided that no such extended term shall extend beyond December 27, 1990,

Fair Rental Value shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an arm's-length transaction between an informed and willing lessee (other than a lessee currently in possession) and an informed and willing lessor under no compulsion to lease and, in such determination, costs of removal from the location of current use shall not be a deduction from such value. If on or before four months prior to the expiration of the term of this Lease, the Lessor and the Lessee are unable to agree upon a determination of the Fair Rental Value of the Units, such value shall be determined in accordance

with the foregoing definition by a qualified independent Appraiser. The term Appraiser shall mean such independent appraiser as the Lessor may select with the approval of the Lessee, or failing such approved selection, a panel of three independent appraisers, one of whom shall be selected by the Lessor, the second by the Lessee and the third designated by the first two so selected. The Appraiser shall be instructed to make such determination within a period of 30 days following appointment, and shall promptly communicate such determination in writing to the Lessor and the Lessee. The determination so made shall be conclusively binding upon both Lessor and Lessee. The expenses and fees of the Appraiser shall be borne by the Lessee.

Fair Market Value shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an arm's-length transaction between an informed and willing buyer-user (other than (i) a lessee currently in possession and (ii) a used equipment dealer) and an informed and willing seller under no compulsion to sell and, in such determination, costs of removal from the location of current use shall not be a deduction from such value. If on or before four months prior to the expiration of the original term of this Lease or, in case of an extension thereof, the extended term of this Lease, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Value of the Units, such value shall be determined in accordance with the foregoing definition by a qualified independent Appraiser. The term Appraiser shall mean such independent appraiser as the Lessor may select with the approval of the Lessee, or failing such approved selection, a panel of three independent appraisers, one of whom shall be selected by the Lessor, the second by the Lessee and the third designated by the first two so selected. The Appraiser shall be instructed to make such determination within a period of 30 days following appointment, and shall promptly communicate such determination in writing to the Lessor and the Lessee. The determination so made shall be conclusively binding upon both Lessor and Lessee. The expenses and fee of the Appraiser shall be borne by the Lessee.

Upon payment of the purchase price on the date of the expiration of the original term or, in the case of an extension thereof, the extended term of this lease, the Lessor shall upon request of the Lessee execute and deliver to the Lessee, or to the Lessee's assignee or nominee, a bill of sale (without representations or warranties except that such Units are free and clear of all

claims, liens, security interests and other encumbrances by or in favor of any person claiming by, through or under the Lessor) for such Units, and such other documents as may be required to release such Units from the terms and scope of this Lease and to transfer title thereto to the Lessee or such assignee or nominee, in such form as may reasonably be requested by the Lessee, all at the Lessee's expense.

§ 14. *Return of Units upon Expiration of Term.* As soon as practicable on or after the expiration of the term of this Lease with respect to any Unit, the Lessee will (unless the Unit is sold to the Lessee), at its own cost and expense, at the request of the Lessor, deliver possession of such Unit to the Lessor upon such storage tracks of the Lessee as the Lessee may designate, or, in the absence of such designation, as the Lessor may select, and permit the Lessor to store such Unit on such tracks for a period not exceeding three months and transport the same, at any time within such three-month period, to any reasonable place on the lines of railroad operated by the Lessee, or to any connecting carrier for shipment, all as directed by the Lessor; the movement and storage of such Unit to be at the expense and risk of the Lessee. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of such Unit, to inspect the same; *provided, however,* that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. If Lessor shall elect to abandon any Unit which has suffered a Casualty Occurrence or which after the expiration of this Lease the Lessor shall have deemed to have suffered a Casualty Occurrence, it may deliver written notice to such effect to the Lessee and the Lessee shall thereupon assume and hold the Lessor harmless from all liability arising in respect of any responsibility of ownership thereof, from and after receipt of such notice. The Lessor shall execute and deliver to the Lessee a bill of sale or bills of sale transferring to the Lessee, or upon its order, the Lessor's title to

and property in any Unit abandoned by it pursuant to the immediately preceding sentence. The Lessee shall have no liability to the Lessor in respect of any Unit abandoned by the Lessor after termination of the Lease; *provided, however,* that the foregoing clause shall not in any way relieve the Lessee of its obligations pursuant to § 7 hereof to make payments equal to the Casualty Value of any Unit experiencing a Casualty Occurrence while this Lease is in effect.

§ 15. *Opinion of Counsel.* On each Closing Date the Lessee will deliver to the Lessor two counterparts of the written opinion of counsel for the Lessee, addressed to the Lessor and the Vendor, in scope and substance satisfactory to the Lessor, the Vendor and their respective counsel, to the effect that:

A. the Lessee is a corporation legally incorporated, validly existing and in good standing under the laws of its state of incorporation (specifying the same) with adequate corporate power to enter into the Security Documents and this Lease;

B. the Security Documents and this Lease have been duly authorized, executed and delivered by the Lessee and constitute valid, legal and binding agreements of the Lessee, enforceable in accordance with their respective terms;

C. the Security Documents (and any assignment thereof) and this Lease have been duly filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act and such filing and recordation will protect the Vendor's and the Lessor's interests in and to the Units and no filing, recording or deposit (or giving of notice) with any other federal, state or local government is necessary in order to protect the interests of the Vendor or the Lessor in and to the Units;

D. no approval is required from any public regulatory body with respect to the entering into or performance of the Security Document or this Lease;

E. the entering into and performance of the Security Documents or this Lease will not result in any breach of, or constitute a default under, any indenture, mortgage, deed of trust, bank loan or credit agreement

or other agreement or instrument to which the Lessee is a party or by which it may be bound; and

F. no mortgage, deed of trust, or other lien of any nature whatsoever which now covers or affects, or which may hereafter cover or affect, any property or interests therein of the Lessee, now attaches or hereafter will attach to the Units or in any manner affects or will affect adversely the Vendor's or Lessor's right, title and interest therein; *provided, however,* that such liens may attach to the rights of the Lessee hereunder in and to the Units.

§ 16. *Recording.* The Lessee, at the expense of the Lessee, will cause this Lease, the Security Documents and any assignment hereof or thereof to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act. The Lessee will undertake the filing, registering, deposit, and recording required of the Lessor under the Security Documents and will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, re-register, deposit and redeposit or re-record whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Vendor for the purpose of proper protection, to their satisfaction, of the Vendor's and the Lessor's respective interests in the Units, or for the purpose of carrying out the intention of this Lease, the Security Documents or the assignment thereof to the Vendor; and the Lessee will promptly furnish to the Vendor and the Lessor evidences of all such filing, registering, depositing or recording, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Vendor and the Lessor. This Lease and the Security Documents shall be filed and recorded with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Unit.

§ 17. *Federal Income Taxes.* The Lessor, as the owner of the Units, shall be entitled to such deductions, credits and other benefits as are provided by the Internal Revenue Code of 1954, as amended to the date hereof (hereinafter called the Code), to an owner of property, including, without limitation, the maximum depreciation deduction with respect to the Units authorized under Section 167 of the Code utilizing the "class life" prescribed in accordance with Section 167(m) of the Code (such deduction being herein called the ADR Deduction), deductions with respect to interest

payable under the Security Documents pursuant to Section 163 of the Code (such deduction being herein called the Interest Deduction), and the 7% investment credit (herein called the Investment Credit) with respect to the Purchase Price of the Units pursuant to Section 38 and related sections of the Code.

The Lessee agrees that neither it nor any corporation controlled by it, in control of it, or under common control with it, directly or indirectly, will at any time take any action or file any returns or other documents inconsistent with the foregoing and that each of such corporations will file such returns, take such actions and execute such documents as may be reasonable and necessary to facilitate accomplishment of the intent hereof.

Notwithstanding anything to the contrary contained in §12 hereof, the Lessee represents and warrants that (i) all the Units constitute property the "FIFO tax cost" (as such term is used by the Builder) of which qualifies for the Investment Credit under Section 50 of the Code; (ii) at the time the Lessor 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 Lessor becomes the owner of the Units, the Units will not have been used by any person so as to preclude "the original use of such property" within the meaning of Sections 48(b) and 167(c)(2) of the Code from commencing with the Lessor; (iii) at all times during the term of this Lease, each Unit will constitute "section 38 property" within the meaning of Section 48(a) of the Code, will not be used predominantly outside the United States within the meaning of said Section 48(a) (or any exception thereto) and will be used by railroad companies; (iv) the Lessee will maintain sufficient records to verify such use; and (v) upon request of the Lessor, the Lessee will provide written reports establishing such use.

If (i) for any reason (including the inaccuracy in law or in fact of the representations and warranties set forth in the preceding paragraph or any act or omission of the Lessee or the inaccuracy of any statement in any letter or document furnished to the Lessor by the Lessee in connection with any application for ruling of the Internal Revenue Service or otherwise) prior to the Lessor's receipt of a favorable ruling (herein called the Ruling) from the Internal Revenue Service to the effect that the Lessor is the owner of the Units and has the right to claim the Investment Credit, the ADR Deduction, and the Interest Deduction or (ii) by reason of the inaccuracy in law or in fact of the representations and warranties set forth in the preceding

paragraph or any act or omission of the Lessee or the inaccuracy of any statement in any letter or document furnished to the Lessor by the Lessee in connection with any application for ruling of the Internal Revenue Service, the Lessor shall lose, or shall not have, or shall lose the right to claim, or shall suffer a disallowance of or shall be required to recapture (any such event being hereinafter called a Loss), all or any portion of the Investment Credit, the ~~Depreciation~~ ADR Deduction, or the Interest Deduction with respect to all or part of any Unit, then the rentals for the Units set forth in §3 hereof shall, on the next succeeding rental payment date after written notice to the Lessee by the Lessor of such fact, be increased to such amount or amounts as shall, (a) in case the Loss shall be in respect of the Investment Credit and the ADR Deduction, but the Internal Revenue Service shall determine that the Lessor is entitled to utilize the maximum amortization deduction (hereinafter called the Rapid Amortization Deduction) pursuant to Section 184 of the Code, be determined by substituting, in lieu of the schedule set forth in the first paragraph of § 3 hereof, the following schedule:

Interest Rate	Payments
8⅜%	.0522135%
8½	.0524471
8⅝	.0527488,

(b) in case the Loss shall be in respect of the Investment Credit, and the Internal Revenue Service shall determine that the Rapid Amortization Deduction shall not be available to the Lessee, be determined by substituting, as aforesaid, the following schedule:

Interest Rate	Payment
8⅜%	.0551335%
8½	.0554943
8⅝	.0558665,

or (c) in any other case, in the reasonable opinion of the Lessor, cause the Lessor's net return to equal the net return that would have been realized by the Lessor if the Lessor had been entitled to utilize all the Investment Credit, the ADR Deduction and the Interest Deduction, and the Lessee shall forthwith pay to the Lessor as additional rental the amount of any interest and/or penalties which may be assessed by the United States of America against the Lessor attributable to the loss of all or such portion of the

Investment Credit, the ADR Deduction or Interest Deduction; *provided, however,* that such rental rate shall not be so increased if the Lessor shall have lost, or shall not have, or shall have lost the right to claim, or shall have suffered a disallowance of, or shall have been required to recapture all or any portion of the Investment Credit, the ADR Deduction or the Interest Deduction with respect to all or part of such Unit as a direct result of the occurrence of any of the following events:

(i) a Casualty Occurrence with respect to such Unit, if the Lessee shall have paid to the Lessor the amounts stipulated under §7 hereof;

(ii) a voluntary transfer or other voluntary disposition by the Lessor of any interest in such Unit or the voluntary reduction by the Lessor of its interest in the rentals from such Unit under the Lease, unless, in each case, an Event of Default shall have occurred and be continuing;

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

(iv) the failure of the Lessor to have sufficient liability for Federal income tax against which to credit such Investment Credit or sufficient income to benefit from the ADR Deduction or the Interest Deduction, as applicable.

Any increase in rentals pursuant to clause (a) or (b) above shall be subject to further adjustment pursuant to the second paragraph of §3 hereof. In the event the rental rates shall be adjusted as hereinbefore provided, the Casualty Values set forth in §7 hereof and the damages and amounts set forth in subparagraph (b) of §10 hereof shall be adjusted accordingly. Any such adjustment in rental rates and Casualty Values shall be effective retroactive to the Commencement Date. The Lessor, at the expense of the Lessee, will apply for and diligently seek the Ruling. The Lessee will join in any request for such Ruling, and will furnish such documents, records and representations (including, but not limited to, evidence of the useful life and residual value of the Units sufficient to support the matters claimed in such request) as shall be deemed necessary and appropriate for such request by the Lessor.

§ 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 Lessee

promptly to pay, to the extent legally enforceable, an amount equal to 11¼% per annum of 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 deposited in the United States certified mails, first-class postage prepaid, addressed as follows:

130 John

(a) if to the Lessor, at ~~45 Wall~~ Street, New York, New York ~~10005~~ 10038 with a copy to the Beneficiary at P.O. Box 8300, Stamford, Connecticut 06904 and at P.O. Box 81 (North Station), White Plains, New York, Attention of Loan Officer, and

(b) if to the Lessee, at 908 West Broadway, Louisville, Kentucky 40201;

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

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

This Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the leasing of the Units and supersedes all other agreements, oral or written, with respect thereto. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Lessor and of the Lessee.

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

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

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

LOUISVILLE AND NASHVILLE RAILROAD COMPANY,

By.....

[CORPORATE SEAL]

Attest:

.....
Assistant Secretary

UNITED STATES TRUST COMPANY OF NEW YORK, AS TRUSTEE,

by.....
Vice President

[CORPORATE SEAL]

Attest:

.....
Assistant Secretary

STATE OF New York
COUNTY OF New York } SS.:

On this 27th day of December, 1973, before me personally appeared J. A. Kilduff, to me personally known, who, being by me duly sworn, says that he is an Assistant Vice President of LOUISVILLE AND NASHVILLE RAILROAD COMPANY, 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.

Nicholas Kraidich
Notary Public

[NOTARIAL SEAL]

NICHOLAS KRAIDICH
Notary Public, State of New York
No. 30-2189250
Qualified in Nassau County
Certificate Filed in New York County
Commission Expires March 30, 1975

STATE OF NEW YORK
COUNTY OF NEW YORK } SS.:

On this 27 day of December, 1973, before me personally appeared ROBERT L. FEUER, to me personally known, who, being by me duly sworn, says that he is a VICE PRESIDENT of UNITED STATES TRUST COMPANY OF NEW YORK, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, 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.

Thomas B. Zakrzewski
Notary Public

[NOTARIAL SEAL]

THO[illegible] B. [illegible]ZEWSKI
Notary Public, State of New York
No. 24-9820331
Qualified in Kings County
Certificate filed in New York County
Commission Expires March 30, 19[illegible]

Schedule A

to Lease

Type	Quantity	Lessee's Road Numbers (Both Inclusive)	Purchase Price
General Electric Model U-23B, 2250 hp., XR series diesel—electric locomotives	25	2728	$274,049.80
		2729	274,049.80
		2730	274,048.21
		2731	274,049.27
		2732	274,052.45
		2733	274,052.45
		2734	274,046.09
		2735	274,050.33
		2736	274,051.39
		2737	274,054.57
		2738	274,052.98
		2739	274,051.92
		2740	274,041.85
		2741	274,048.74
		2742	274,052.98
		2743	274,055.10
		2744	274,050.86
		2745	274,099.40
		2746	274,048.74
		2747	274,096.65
		2748	274,101.60
		2749	274,101.65
		2750	274,096.65
		2751	274,100.50
		2752	274,098.05
			$6,851,602.83