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MAY 11 12 55 PM '77
I.C.C.
FEE OPERATION BR.

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RECORDATION NO. 8818
MAY 11 1977 - 12 55 PM
INTERSTATE COMMERCE COMMISSION

RECORDATION NO. 8818
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INTERSTATE COMMERCE COMMISSION

MAY 11 1977

Date May 11 1977
Fees \$ 1.00
REC'D Washington, D.C.
RECORDATION NO. 8818
MAY 11 1977 - 12 55 PM
INTERSTATE COMMERCE COMMISSION

May 11, 1977
RECORDATION NO. 8818 - A
MAY 11 1977 - 12 55 PM

Dear Sir:

Herewith for recordation pursuant to Section 20c of the Interstate Commerce Act, on behalf of Consolidated Rail Corporation, are counterparts of the following:

- (1) Conditional Sale Agreement dated as of February 1, 1977, between The Budd Leasing Corp., as vendee, and Fruit Growers Express Company, as builder, vendor.
- (2) Lease of Railroad Equipment dated as of February 1, 1977, between Consolidated Rail Corporation, as lessee, and The Budd Leasing Corp., as lessor.
- (3) Assignment of Lease and Agreement dated as of February 1, 1977, between The Budd Leasing Corp., as lessor, vendee, and First Security Bank of Utah, National Association, as agent, vendor.
- (4) Agreement and Assignment dated as of February 1, 1977, between Fruit Growers Express Company, as builder, and First Security Bank of Utah, National Association, as agent, assignee.

The addresses of the parties to the aforementioned agreements are:

Counterpart
See Budd

Vendee-Lessor:

The Budd Leasing Corp.,
3155 West Big Beaver Road,
Troy, Michigan 48013.

Builder-Vendor:

Fruit Growers Express Company,
1101 Vermont Avenue, N.W.,
Washington, D.C. 20005

Lessee:

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

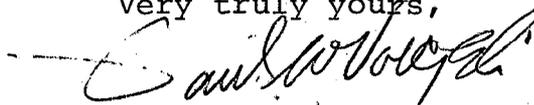
Agent-Vendor-Assignee:

First Security Bank of Utah,
National Association,
P. O. Box 3007,
79 South Main Street,
Salt Lake City, Utah 84125.

The Equipment covered by the aforementioned agreements consists of 102 100-ton 60' RBL insulated Box Cars bearing the road numbers CR376001 through 376102 (both inclusive) of Consolidated Rail Corporation, and also bearing the legend "Ownership subject to a Security Agreement filed under the Interstate Commerce Act, Section 20c".

Enclosed is this firm's check for \$100 for the required recordation fee. Please accept for recordation one counterpart of each of the enclosed agreements, stamp the remaining counterparts with your recordation number and return them to the delivering messenger along with your fee receipt, addressed to the undersigned.

Very truly yours,



Paul W. Voegeli

Robert L. Oswald, Esq., Secretary,
Interstate Commerce Commission,
Washington, D.C. 20423

Encls.
41A
BY HAND

8818-A

RECORDATION NO. Filed & Recorded

MAY 11 1977-12 55 PM

INTERSTATE COMMERCE COMMISSION

LEASE OF RAILROAD EQUIPMENT

Dated as of February 1, 1977

between

CONSOLIDATED RAIL CORPORATION

and

THE BUDD LEASING CORP.

LEASE OF RAILROAD EQUIPMENT dated as of February 1, 1977, between CONSOLIDATED RAIL CORPORATION, a Pennsylvania corporation (hereinafter called the Lessee), and THE BUDD LEASING CORP., a Delaware corporation (hereinafter called the Lessor).

WHEREAS the Lessor is entering into a Conditional Sale Agreement dated as of the date hereof with Fruit Growers Express Company, a Delaware corporation (hereinafter called the Builder and said agreement being hereinafter called the Security Documentation), wherein the Builder has agreed to manufacture, sell and deliver to the Lessor the units of railroad equipment described in Schedule A hereto (hereinafter called the Equipment);

WHEREAS under an Agreement and Assignment dated as of the date hereof the Builder is assigning its interest in the Security Documentation to First Security Bank of Utah, National Association, acting as agent (hereinafter, together with its successors and assigns, called the Vendor) under a Participation Agreement dated as of the date hereof (hereinafter called the Participation Agreement) with the Lessee, the Lessor and the investors named in Schedule A to the Participation Agreement (said investors being hereinafter called the Investors); and

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

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, both parties intending to be legally bound:

§ 1. Net Lease. This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent, reduction thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs due or alleged to be due by reason of any past, present or future claims of

the Lessee against the Lessor under this Lease or under the Security Documentation, or against 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 any bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever.

§ 2. Delivery and Acceptance of Units. The Lessor hereby appoints the Lessee its agent for inspection and acceptance of the Units pursuant to the Security Documentation. The Lessor will cause each Unit to be delivered to the Lessee at the point or points within the United States of America at which such Unit is delivered to the Lessor under the Security Documentation. Upon such delivery, the Lessee will cause an employee of the Lessee to inspect the same and, if such Unit is found to be acceptable, to accept delivery of such Unit, and the Lessee shall execute and deliver to the Lessor a certificate of acceptance (hereinafter called the Certificate of Acceptance) in accordance with the provisions of Article 3 of the Security Documentation, stating that such Unit has been inspected and accepted on behalf of the Lessee and the Lessor on the date of such Certificate of Acceptance and is marked

in accordance with § 5 hereof, whereupon, except as provided in the 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 Documentation pursuant to the first paragraph of Article 4 thereof shall be null and void and ineffective to subject such unit to this Lease.

§ 3. Rentals. The Lessee agrees to pay to the Lessor, as rental for the Units subject to this Lease, 32 consecutive payments payable on July 15, 1977, and on each January 15 and July 15 thereafter. The rental payable on July 15, 1977, for each Unit shall be in an amount equal to the product of (a) the number of days between the date on which such Unit is delivered to the Lessee and July 15, 1977 (excluding such date of delivery but including July 15, 1977, in such computation), times (b) .02654% of the Purchase Price of such Unit. The next 31 rental payments shall each be in an amount equal to 4.7778% of the Purchase Price of each Unit then subject to this Lease.

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

The Lessor irrevocably instructs the Lessee to make all the payments provided for in this Lease, including, but not limited to, the payments provided for in this § 3 and in § 7 hereof, 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 Documentation, and second, so long as no event of default or event which with the lapse of time and/or demand provided for in the Security Documentation could constitute an event of default under the Security Documentation shall have occurred and be continuing, to pay any balance promptly to the Lessor at such place as the Lessor shall specify in writing. The Lessee agrees to make each payment provided

for herein as contemplated by this paragraph in Federal or Salt Lake City funds immediately available to the Vendor by 11:00 a.m., Salt Lake City time, on the date such payment is due.

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

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

§ 5. Identification Marks. The Lessee will cause each Unit to be kept numbered with the identification number set forth in Schedule A hereto, or in the case of any Unit not there listed, such identification 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-half inch in height, the words "Ownership subject to a Security Agreement Filed under the Interstate Commerce Act, Section 20c", or other appropriate words designated by the Vendor, 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 interest in such Unit and the rights of the Lessor under this Lease and of the

rights of the Vendor under the Security Documentation. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such words shall have been so marked and will replace promptly any such markings which may be removed, defaced or destroyed. The Lessee will not change the identification number of any Unit unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with the Vendor and the Lessor and duly filed, recorded and deposited by the Lessee in all public offices where this Lease and the Security Documentation shall have been filed, recorded and deposited and (ii) the Lessee shall have furnished the Vendor and the Lessor an opinion of counsel to such effect.

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

§ 6. Taxes. 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 payable by the Lessor in consequence of the receipt of payments provided for herein and other than the aggregate of all state or local taxes measured by net income based on such receipts, up to the amount of any such taxes based on such receipts which would be payable to the state and locality 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 Documentation, all of which impositions the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. The Lessee will also pay promptly all impositions which may be imposed upon any Unit or for the use

or operation thereof (except as provided above) or upon the earnings arising therefrom (except as provided above) or upon the Lessor solely by reason of its ownership thereof and will keep at all times all and every part of such Unit free and clear of all impositions which might in any way affect the title of the Lessor or the interest of the Lessor or result in a lien upon any such Unit; provided, however, that the Lessee shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal or administrative proceedings such impositions and the nonpayment thereof does not, in the reasonable opinion of the Lessor, adversely affect the title, property or rights of the Lessor hereunder or the Vendor under the Security Documentation. The Lessee agrees to give the Lessor notice of such contest within 30 days after institution thereof and the Lessor agrees to provide such information as may be reasonably requested by the Lessee in furtherance of such contest. If any impositions shall have been charged or levied against the Lessor directly and paid by the Lessor, the Lessee shall reimburse the Lessor on presentation of an invoice therefor; provided, however, that the Lessor shall have given the Lessee written notice of such imposition prior to such payment.

In the event that the Lessor shall become obligated to make any payment to the Builder or the Vendor or otherwise pursuant to any corresponding provision of the Security Documentation (other than the proviso to the third paragraph of Article 12) 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 returns, statements or reports with respect to impositions are required to be made, the Lessee will make such returns, statements and reports in such manner as to show the interest of the Lessor and the Vendor in such Units; provided, however, that the Lessor shall, with respect to any state or political subdivision thereof of the United States of America, file required returns, statements, and reports relating to sales or use taxes, and taxes, fees, and charges on or measured by the Lessor's earnings or gross receipts arising from the Units, or the value added by the Lessor thereto, and remit the amount thereof and the Lessee shall reimburse the Lessor promptly upon demand for the amount of such taxes, fees and charges except as provided above.

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

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

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

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

In the event that any Unit shall be or become worn out, lost, stolen, destroyed, or irreparably damaged, from any cause whatsoever, returned to the Builder pursuant to any patent indemnity provision of the Security Documentation, or taken or requisitioned by condemnation or otherwise by the United States Government for a period which shall exceed the then remaining term of this Lease, or by any other governmental entity resulting in loss of possession by the Lessee for a period of 90 consecutive days (such occurrences being hereinafter called Casualty Occurrences), prior to the return of such Unit in the manner set forth in § 14 hereof, the Lessee shall promptly and fully notify the Lessor and the Vendor with respect thereto. On the rental payment date next succeeding such notice (but not earlier than January 15,

1978) 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 referred to below. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft, complete destruction or return to the Builder of such Unit) the Lessor shall be entitled to recover possession of such Unit. The Lessor hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof, at the best price obtainable on an "as is, where is" basis and the Lessee may be a purchaser of such Unit. Provided that the Lessee has previously paid the Casualty 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. The Lessee shall be entitled to credit against the Casualty Value payable in respect of any Unit returned to the Builder pursuant to any patent indemnity provision of the Security Documentation an amount equal to any payment made by the Builder to the Vendor in respect thereof under the Security Documentation.

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 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 § 16 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.

Whenever any Unit shall suffer a Casualty Occurrence after the final payment of rent in respect thereof is due pursuant to § 3 hereof and before such Unit shall have been returned in the manner provided in § 14 hereof, the Lessee shall promptly and fully notify the Lessor with respect thereto and pay to the Lessor an amount equal to

the Casualty Value of such Unit, which shall be an amount equal to 20% of the Purchase Price of such Unit, except that if the term of this Lease shall have been extended pursuant to § 13, then the applicable Casualty Value shall be determined from a schedule agreed upon by the Lessor and the Lessee. Upon the making of any such payment by the Lessee in respect of any Unit (except in the case of the loss, theft or complete destruction of such Unit), the Lessor shall be entitled to recover possession of such Unit. The Lessor hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof, at the best price obtainable on an "as is, where is" basis and the Lessee may be a purchaser of such Unit. Provided that the Lessee has previously paid the Casualty 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.

In the event of the requisition (other than a requisition which constitutes a Casualty Occurrence) for use by the United States Government (hereinafter called the Government) of any Unit during the term of this Lease or any renewal thereof, all of the Lessee's obligations under this Lease with respect to such Unit shall continue to the same extent as if such requisition had not occurred, except that if such Unit is returned by the Government at any time after the end of the term of this Lease or any renewal thereof, the Lessee shall be obligated to return such Unit to the Lessor pursuant to § 11 or 14 hereof, as the case may be, promptly upon such return by the Government rather than at the end of the term of this Lease or any renewal thereof, but the Lessee shall in all other respects comply with the provisions of said § 11 or 14, as the case may be, with respect to such Unit. All payments received by the Lessor or the Lessee from the Government for the use of such Unit during the term of this Lease or any renewal thereof shall be paid over to, or retained by, the Lessee provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing; and all payments received by the Lessor or the Lessee from the Government for the use of such Unit after the term of this Lease or any renewal thereof, shall be paid over to, or retained by, the Lessor.

Except as hereinabove in this § 7 provided, the Lessee shall not be released from its obligations hereunder

in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit from and after delivery and acceptance thereof by the Lessee hereunder.

The Lessee will, at all times prior to the return of the Equipment to the Lessor, at its own expense, cause to be carried and maintained property insurance and public liability insurance in respect of the Units at the time subject hereto, in amounts and against risks customarily insured against by railroad companies in respect of similar equipment, and, in any event, comparable in amounts and against risks customarily insured against by the Lessee in respect of similar equipment owned by it. Any policies with respect to such insurance shall name the Lessor and the Vendor as assureds and loss payees, as their interests may appear, and shall provide for at least 30 days' prior written notice by the insurance carrier to the Lessor and the Vendor in the event of cancelation, expiration or amendment. The Lessee shall furnish to the Lessor and the Vendor prior to the First Delivery Date (as defined in the Participation Agreement) a statement as to any self-insurance and as to the coverage of any such insurance policies with insurance carriers. If the Lessor shall receive any insurance proceeds or condemnation payments in respect of a Unit suffering a Casualty Occurrence, the Lessor shall, subject to the Lessee's having made payment of the Casualty Value in respect of such Unit, pay such proceeds or condemnation payments to the Lessee up to an amount equal to the Casualty Value with respect to a Unit paid by the Lessee and any balance of such proceeds or condemnation payments shall remain the property of the Lessor. All insurance proceeds received by the Lessor in respect of any Unit not suffering a Casualty Occurrence shall be paid to the Lessee upon proof satisfactory to the Lessor that any damage to such Unit in respect of which such proceeds were paid has been fully repaired.

§ 8. Reports. On or before April 30 in each year, commencing with the calendar year 1978, 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 Documentation, the amount, description and numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year or are then undergoing repairs (other than running repairs) or then withdrawn from use pending such repairs (other than running repairs) and such other information regarding the condition and state of repair of the Units

as the Lessor or the Vendor may reasonably request and (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and markings required by § 5 hereof and by the Security Documentation have been preserved or replaced. The Lessor, at its sole cost and expense, shall have the right by its agents to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Lessor may request during the continuance of this Lease.

§ 9. Disclaimer of Warranties; Compliance with Laws and Rules; Indemnification. THE LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS DELIVERED TO THE LESSEE HEREUNDER, AND THE LESSOR MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE OR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, OR AS TO THE LESSEE'S RIGHT TO QUIET ENJOYMENT THEREOF (EXCEPT AS TO ACTS OF THE LESSOR), OR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT, EITHER UPON DELIVERY THEREOF TO THE LESSEE OR OTHERWISE, it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee; but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for the account of the Lessor and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Lessor may have against the Builder under the provisions of Items 3 and 4 of Annex A to the Security Documentation; provided, however, that if at any time an Event of Default shall have occurred and be continuing, the Lessor may assert and enforce, at the Lessee's sole cost and expense, such claims and rights. The Lessor shall have no responsibility or liability to the Lessee or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Units or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of any Units or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Units. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Lessor that the Units described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee

will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

The Lessee agrees, for the benefit of the Lessor and the Vendor, to comply in all respects (including without limitation, with respect to the use, maintenance and operation of each Unit) with all applicable laws of the jurisdictions in which its operations involving the Units may extend, with the interchange rules of the Association of American Railroads, if applicable, and with all lawful rules of the Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units, and in the event that, prior to the expiration of this Lease or any renewal thereof, such laws or rules require any alteration, replacement, addition or modification of or to any part on any Unit, the Lessee will conform therewith at its own expense; provided, however, that the Lessee may at its own expense, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Lessor or the Vendor, adversely affect the property or rights of the Lessor or the Vendor under this Lease or under the Security Documentation. The Lessee, at its own cost and expense, may furnish other additions, modifications and improvements to the Units during the term of this Lease provided that such additions, modifications and improvements are readily removable without causing material damage to the Units. The additions, modifications and improvements made by the Lessee under the preceding sentence shall be owned by the Lessee.

The Lessee agrees to indemnify, protect and hold harmless the Lessor and the Vendor from and against all losses, damages, injuries, liabilities, claims (including without limitation claims for strict liability in tort) 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 or the occurrence of a default, an event of default or an Event of Default under the Security Documentation, the Participation Agreement, this Lease, or any sublease entered into pursuant to Section 12 hereunder, the ownership of any Unit, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any Unit or any accident in con-

nection 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, or the transfer of title to the Equipment by the Vendor pursuant to any provision of the Security Documentation; provided, however, that the foregoing indemnification shall not apply to any failure to pay the principal of or interest on the Conditional Sale Indebtedness (as defined in the Security Documentation) or constitute a guaranty of the residual value of the Units. 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 expiration or termination of the term of this Lease.

The Lessee shall not be released from its obligations hereunder in the event of any damage to or the destruction or loss of any or all of the Units of Equipment.

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

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

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

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

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

Lessor or the Vendor to the Lessee specifying the default and demanding that the same be remedied;

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

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

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

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

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as herein provided; and thereupon the Lessor may by its agents, subject to compliance with all mandatory requirements of law, enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess, sell, operate, lease to others and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever and without any duty to account to the Lessee for such action or inaction or for any proceeds arising therefrom; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee as damages for loss of the bargain and not as a penalty whichever of the following amounts the Lessor, in its sole discretion, shall specify:

(x) a sum, with respect to each Unit, equal to (A) the excess of the present value, at the time of such termination, of the entire unpaid balance of all rental for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over the then present value of the rental which the Lessor reasonably estimates to be obtainable for the Unit during such period, such present value to be computed in each case on the basis of a 9.5% per annum discount, compounded semiannually from the respective dates upon which rentals would have been payable hereunder had this Lease not been

terminated plus (B) an amount which, after deduction of all taxes required to be paid by the Lessor in respect of the receipt thereof under the laws of any Federal, state or local government or taxing authority of the United States of America or under the laws of any taxing authority or governmental subdivision of a foreign country, shall, in the reasonable opinion of the Lessor, be equal to all or such portion of the Investment Credit (as defined in § 16 hereof) lost, not claimed, not available for claim, disallowed or recaptured by or from the Lessor as a direct or indirect result of the breach of one or more of the representations, warranties and covenants made by the Lessee in § 16 or any other provision of this Lease or the sale or other disposition of the Lessor's interest in any Unit after the occurrence of an Event of Default, plus such sum as shall cause the Lessor's net return under this Lease to be equal to the net return that would have been available to the Lessor if it had been entitled to utilization of all or such portion of the ADR Deduction and the Interest Deduction (as such deductions are defined in § 16 hereof) which was lost, not claimed, not available for claim or disallowed or recaptured in respect of a Unit as a direct or indirect result of the breach of one or more of the representations, warranties and covenants made by the Lessee in § 16 or any other provision of this Lease, the inaccuracy of any statement in any letter or document furnished to the Lessor by the Lessee, the termination of this Lease, the Lessee's loss of the right to use such Unit, any action or inaction by the Lessee or the sale or other disposition of the Lessor's interest in such Unit after the occurrence of an Event of Default plus such sum as will pay or reimburse the Lessor for any interest, penalties or additions to tax incurred in connection with such loss, failure to claim, inability to claim, disallowance or recapture; or (y) an amount equal to the excess, if any, of the Casualty Value as of the rental payment date on or next preceding the date of termination over the amount the Lessor reasonably estimates to be the sales value of such Unit at such time; provided, however, that in the event the Lessor shall have sold any Unit, the Lessor, in lieu of collecting any amounts payable to the Lessor by the Lessee pursuant to the preceding clauses (x) and (y) of this part (b) with respect to such Unit, may, if it shall so elect, demand that the Lessee pay the Lessor and the Lessee shall pay to the

Lessor on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty Value for such Unit, as of the rental payment date on or next preceding the date of termination over the net proceeds of such sale.

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

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative and may be exercised concurrently or consecutively, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is not, at the time in question, prohibited by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make such payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf. The Lessor and the Lessee agree that the Lessor shall be entitled to all rights provided for in § 77(j) of the Bankruptcy Act or any comparable provision of any amendment thereto, or of any other bankruptcy act, so that the Lessor shall have the right to take possession of the Equipment upon an Event of Default under this Lease regardless of whether the Lessee is in reorganization.

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. Each Unit so delivered shall be in the same operating order, repair and condition as when originally delivered to the

Lessee, reasonable wear and tear excepted. For the purpose of delivering possession of any Unit or Units to the Lessor as above required, the Lessee shall at its own cost, expense and risk:

(a) forthwith and in the usual manner 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 without charge for insurance, rent or storage until such Units have been sold, leased or otherwise disposed of by the Lessor; and

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

The assembling, delivery, storage, insurance and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will, at its own cost and expense, maintain and keep the Equipment in good order and repair and will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Unit, to inspect the same. All rent and per diem charges earned in respect of the Units after the date of termination of this Lease shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor. In the event any Unit is not assembled, delivered and stored, as hereinabove provided, within 60 days after such termination, the Lessee shall, in addition, pay to the Lessor for each day thereafter an amount equal to the amount, if any, by which .02654% of the Purchase Price of such Unit for each such day exceeds the actual earnings received by the Lessor on such Unit for each such day.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this § 11, the Lessee hereby irrevocably appoints the Lessor as the agent

and attorney 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 whosoever shall be in possession of such Unit at the time.

§ 12. Assignment; Possession and Use. This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. All the rights of the Lessor hereunder shall inure to the benefit of the Lessor's assigns.

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

The Lessee, at its own expense, will promptly pay

or discharge any and all sums claimed by any party which, if unpaid, might become a lien, charge, security interest or other encumbrance (other than an encumbrance created by the Lessor or the Vendor or resulting from claims against the Lessor or the Vendor not related to the ownership of the Units) upon or with respect to any Unit or the interest of the Lessor, the Vendor or the Lessee therein, and will promptly discharge any such lien, claim, security interest or other encumbrance which arises.

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 Participation Agreement) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety, 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 Option; Right of First Refusal.

Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may by written notice delivered to the Lessor not less than six months prior to the end of the original term or any extended term of this Lease, as the case may be, elect to extend the term of this Lease in respect of all but not fewer than all of the Units then covered by this Lease, for two additional five-year periods commencing on the scheduled expiration of the original term or extended term of this Lease, as the case may be, provided that no such extended term shall extend beyond January 15, 2003, at a "Fair Market Rental" payable in semiannual payments on January 15 and July 15 in each year of such extended term.

Fair Market Rental shall be determined on the basis of, and shall be equal in amount to, the rental which would obtain in an arm's-length transaction between an informed and willing lessee (other than a lessee currently in possession) and an informed and willing lessor under no compulsion to lease and, in such determination, costs of removal from the location of current use shall not be a deduction from such rental. If, after 60 days from the giving of notice by

the Lessee of the Lessee's election to extend the term of this Lease, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Rental of the Units, such rental shall be determined in accordance with the foregoing definition by the following procedure: If either party to such determination shall have given written notice to the other requesting determination of such 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 request the American Arbitration Association to make such appointment, and both parties shall be bound by any appointment so made. Any appraiser or appraisers appointed pursuant to the foregoing procedure shall be instructed to determine the Fair Market Rental of the Units subject to the proposed extended term within 90 days after his or their appointment. If the parties shall have appointed a single appraiser or if either party shall have failed to appoint an appraiser, the determination of Fair Market Rental 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 latter average shall be final and binding upon the parties hereto as the Fair Market Rental. 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 and shall be in lieu of any judicial or other procedure for the determination thereof, and each party hereto hereby consents and agrees not to assert any judicial or other procedures. The expenses of the appraisal procedure shall be borne equally by the Lessee and the Lessor.

The Lessor agrees that (provided no default hereunder shall have occurred and be continuing) it will not sell such Units, or any of them, after the termination of this Lease and any renewals thereof, unless the Lessor shall have

given the Lessee at least 30 business days' prior written notice of such sale, specifying the sale price and terms of such sale, and the Lessee shall have had the opportunity to purchase such Unit or Units at the same price and on the same terms as specified in such notice. The foregoing right of the Lessee shall be exercisable only once and shall expire two years after the termination of this Lease and all renewals thereof.

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

§ 14. Return of Units upon Expiration of Term. The Lessor intends to retain the Units for re-lease at the expiration of the term of this Lease. As soon as practicable on or after the expiration of the original or any extended term of this Lease with respect to any Unit, the Lessee will, at its own cost and expense, at the request of the Lessor, deliver possession of such Unit to the Lessor upon such storage tracks of the Lessee as the Lessor may designate, or, in the absence of such designation, as the Lessee may select, and permit the Lessor to store such Unit on such tracks for a period not exceeding thirty days following notification to the Lessor by the Lessee that all the Units have been assembled and delivered for storage and transport the same, at any time within such thirty-day period, to any reasonable place on the lines of railroad operated by the Lessee, or to any connecting carrier for shipment, all as directed by the Lessor, the movement and storage of such Units to be at the expense and risk of the Lessee; and in the event that any Unit shall suffer a Casualty Occurrence during such storage period, the Lessee shall pay the Lessor the Casualty Value thereof set forth in Schedule B hereto. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser, lessee or user of such Unit, to inspect the same; 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, on behalf of either the Lessor or any prospective purchaser, lessee or user, the

rights of inspection granted under this sentence. Each Unit returned to the Lessor pursuant to this § 14 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted, and (ii) meet the standards then in effect under the applicable rules of any governmental agency or other organization with jurisdiction. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. All rent and per diem charges earned in respect of the Units after the date of termination of this Lease shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor. In the event any Unit is not assembled, delivered and stored, as hereinabove provided, within 60 days after such termination, the Lessee shall, in addition, pay to the Lessor for each day thereafter an amount equal to the amount, if any, by which .02654% of the Purchase Price of such Unit for each such day exceeds the actual earnings received by the Lessor on such Unit for each such day.

§ 15. Recording. The Lessee, at its own expense, will cause this Lease, the Security Documentation 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 and deposited with the Registrar General of Canada (notice of such deposit to be given forthwith in The Canada Gazette) pursuant to Section 86 of the Railway Act of Canada. The Lessee will undertake the filing, registering, deposit, and recording required of the Lessor under the Security Documentation and will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, reregister, deposit and redeposit or rerecord whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Vendor for the purpose of proper protection, to their satisfaction, of the Vendor's and the Lessor's respective interests in the Units, or for the purpose of carrying out the intention of this Lease, the Security Documentation and the assignments thereof to the Vendor; and the Lessee will promptly furnish to the Vendor and the Lessor evidence of all such filing, registering, depositing or recording, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Vendor and the Lessor;

provided, however, that no such opinion of counsel need be furnished in respect of the filing of the Security Documentation, the assignment thereof or the Lease Assignment in Canada. This Lease and the Security Documentation shall be filed and recorded with the Interstate Commerce Commission and deposited with the Registrar General of Canada pursuant to Section 86 of the Railway Act of Canada and provision shall be made for publication of notice of such deposit in The Canada Gazette prior to the delivery and acceptance hereunder of any Unit.

§ 16 (a). Federal Income Taxes. This Lease and the Security Documentation have been entered into on the assumptions that (A) the Lessor, as the owner of the Units, will 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 (1) the maximum depreciation deduction with respect to the Units authorized under Section 167 of the Code (herein called the ADR Deduction), (a) utilizing a 12-year depreciable life, which is the lower limit listed in Revenue Procedure 77-10, 1977-12 I.R.B. 4, for property in Asset Guideline Class No. 00.25, in accordance with the Class Life Asset Depreciation Range System described in Section 167(m) of the Code and the Treasury Regulations promulgated thereunder as in effect on the date hereof, (b) employing initially the 200% declining-balance method of depreciation with a change, not requiring the consent of the Commissioner of Internal Revenue, to the sum of the years-digits method of depreciation when most beneficial to the Lessor, (c) utilizing the modified half-year convention as provided in Treas. Reg. § 1.167(a)-11(c)(2)(ii), (d) including in the basis of the Units the entire Purchase Price thereof and all other items properly includible under Section 1012 of the Code (hereinafter called the Basis) and (e) taking into account a salvage value, after the reduction allowed by § 167(f) of the Code, of zero; (2) deductions with respect to interest payable under the Security Documentation pursuant to Section 163 of the Code (herein called the Interest Deduction); and (3) the 10% investment credit with respect to 100% of the Basis of the Units (herein called the Investment Credit), pursuant to Section 38 and related sections of the Code; and (B) the Lessor will be entitled to treat each item of income, deduction and credit with respect to this Lease as attributable to sources within the United States.

If the 10% investment credit applicable to any Unit

referred to in clause (3) of the first paragraph of this § 16(a) shall be increased or decreased pursuant to an amendment to the Code enacted in or retroactive to 1977, then the rental rate applicable to such Unit shall be correspondingly decreased or increased by such amount for such Unit as, in the reasonable opinion of the Lessor, will cause the net return of the Lessor in respect of such Unit under this Lease to equal the net return (computed on the same assumptions, other than the rate of investment credit, as utilized by the Lessor in originally evaluating this transaction) in respect of such Unit under this Lease that would have been available if such investment credit had not been increased or decreased; provided, however, that the rental rate shall not be decreased below the rate that is necessary to satisfy the obligations of the Lessor under the Security Documentation, notwithstanding any limitation of liability of the Lessor contained therein; and provided, further, however, that under no circumstances shall any adjusted rental rate be less than the minimum amount necessary to comply with the profit tests set forth in section 4(6) of Revenue Procedure 75-21, 1975-1 C.B. 715, as from time to time interpreted by the Internal Revenue Service. If the rental rate applicable to any Unit shall be changed pursuant to the next preceding sentence, then the assumption set forth in clause (3) of the first paragraph of this § 16(a) shall be correspondingly changed.

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 or which would increase the amount of rentals required to be taken into income by the Lessor over the amount specified to be payable under this Lease on the dates due hereunder except as specifically provided in this Lease, and that each of such corporations will file such returns, take such action and execute such documents as may be reasonable and necessary to facilitate accomplishment of the intent thereof. The Lessee agrees to keep and make available for inspection and copying upon demand by the Lessor such records as will enable the Lessor to determine whether it is entitled (A) to the full benefit of the ADR Deduction, the Interest Deduction and the Investment Credit with respect to the Units, and (B) to treat each item of income, deduction and credit with respect to this Lease as attributable to sources within the United States.

The Lessee represents and warrants that (i) all the Units constitute property the entire Basis of which qualifies for the 10% 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; (iv) none of the Units will be "used predominantly outside the United States" within the meaning of Section 48(a)(2) of the Code; and (v) the Lessor will be entitled to treat each item of income, deduction and credit with respect to this Lease as attributable to sources within the United States.

If, as the result of a misrepresentation, or failure to represent a material fact, or any act or omission of the Lessee, or any act or omission of any sublessee of the Lessee, the Lessor shall not have, or shall lose the right to claim, or shall suffer a disallowance of or shall be required to recapture, all or any portion of the ADR Deduction, the Interest Deduction or the Investment Credit (hereinafter each called a Benefit) with respect to all or part of any Unit, then in any such case the rental rate applicable to such Unit set forth in § 3 of this Lease shall, on and after the next succeeding rental payment date after written notice to the Lessee by the Lessor that such Benefit cannot be claimed by the Lessor, or (if claimed and then disallowed or required to be recaptured) on and after the next succeeding rental date after payment of the tax attributable thereto, be increased by such amount for such Unit as, in the reasonable opinion of the Lessor (supported by such reasonable evidence as may be requested by the Lessee, which may include an opinion of Counsel as defined in the next succeeding paragraph), will cause the net return of the Lessor in respect of such Unit under this Lease to equal the net return (computed on the same assumptions as utilized by the Lessor in originally evaluating this transaction) in respect of such Unit under this Lease that would have been available if the Lessor had been entitled to utilization of all of the Benefits, and the Lessee shall forthwith pay to the Lessor as additional

rental the amount of any interest or penalty (except any penalty resulting from an act or omission of the Lessor) which may be assessed by the United States against the Lessor attributable to the disallowance, recapture or loss of all or any portion of the Benefits.

In the event a claim shall be made against the Lessor which, if successful, would result in payment by the Lessee of increased rental pursuant to the next preceding paragraph and if, in the opinion of independent tax counsel selected by the Lessee and acceptable to the Lessor (herein called Counsel), a bona fide defense to such claim exists, the Lessor shall, upon request and at the expense of the Lessee, take all such legal or other appropriate action deemed reasonable by Counsel in order to sustain such defense; provided, however, that the Lessor shall not be obligated to take any such legal or other appropriate action unless the Lessee shall first have indemnified the Lessor for all liabilities and expenses that may be entailed therein and shall have furnished the Lessor such reasonable security therefor as may be requested. The Lessor may, at its option, take such action prior to making payment of any tax, interest or penalty with respect to such claim (hereinafter called a Tax Payment) or may make such Tax Payment and then sue for a refund. If the Lessor takes such action prior to making such Tax Payment, such increased rental need not be paid by the Lessee while such action is pending. In such case, if the final determination shall be adverse to the Lessor, the increased rental shall be computed by the Lessor as of the date of such final determination and the Lessee shall commence payment thereof on the rental payment date next succeeding such final determination and, on or before such rental payment date, the Lessee shall pay to the Lessor as additional rental an amount which, when reduced by any increase in the Lessor's income tax liability or liabilities resulting from the Lessor's receipt of such additional rental, will equal the amount of all interest and penalty (except any penalty resulting from an act or omission of the Lessor) paid by the Lessor in respect of such final determination, together with interest thereon from the date such payment is made by the Lessor to the date the Lessee reimburses the Lessor therefor at the rate of 10-1/2% per annum. If the Lessor makes such Tax Payment and then sues for a refund, such increased rental shall commence to be payable by the Lessee on the rental payment date next succeeding the date such Tax Payment is made and, on or before such rental

payment date, the Lessee shall pay to the Lessor as additional rental an amount which, when reduced by the increase in the Lessor's income tax liability or liabilities resulting from the Lessor's receipt of such additional rental, will equal the amount of all interest and penalty (except any penalty resulting from an act or omission of the Lessor) paid by the Lessor included in such Tax Payment. In such case, if the final determination shall be in favor of the Lessor, (A) the rental payable by the Lessee to the Lessor shall be adjusted by such amount as shall be required, in the reasonable opinion of the Lessor (supported by such reasonable evidence as may be requested by the Lessee, which may include an opinion of Counsel), and pursuant to the assumptions set forth in the immediately preceding paragraph, to cause the Lessor's net return over the term of the Lease to be the same as such net return over the term of the Lease would have been if such Tax Payment had not been made (or such adjustment shall be made proportionately if the final determination is partly in favor of and partly adverse to the Lessor) and such adjusted rental shall be payable by the Lessee on the rental payment date next succeeding such final determination and thereafter, and (B) the Lessor shall pay to the Lessee an amount which, when reduced by the tax benefit to the Lessor resulting from the payment of such amount, will equal the amount of any penalty (except any penalty not reimbursed by the Lessee) or interest refunded to the Lessor as a result of such final determination and any interest on such refunded penalty and interest paid to the Lessor by the government, promptly upon receipt thereof.

In the event the rental rates shall be increased 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.

§ 16 (b). Rental Adjustment For Lessee's Capital Expenditures. In the event and to the extent that the cost of any improvement and/or addition to a Unit or any expenditure by the Lessee in respect of any Unit or this Lease (hereinafter called Additional Expenditures) made by the Lessee, under and pursuant to the terms of this Lease or otherwise, is required to be included in the gross income of the Lessor for Federal income tax purposes at any time prior to the time such Unit is disposed of in a taxable transaction, then the Lessee shall, on written demand of the Lessor, pay to the Lessor an amount which, after deduction of all taxes required to be paid by the Lessor in respect of the receipt

thereof under the laws of any governmental or taxing authority in the United States, or under the laws of any foreign country or governmental subdivision thereof or taxing authority of either thereof, shall be equal to the additional income taxes paid or due and payable by the Lessor under the laws of any governmental or taxing authority in the United States in consequence of such inclusion, together with the amount of any interest, penalties (except penalties resulting from an act or omission of the Lessor) or additions to tax which may be payable by the Lessor in connection with such inclusion, provided, however, that if the Lessee shall have made all payments then due under this § 16, and if the Lessee shall not be in default under this Lease and no event of default shall exist under the Security Documentation, the Lessor shall pay to the Lessee not later than the time the Lessor files its income tax returns for the year in which such tax benefit is realized, an amount which, when reduced by any net tax savings to the Lessor arising from the payment thereof, shall be equal to any reduction in taxes to the Lessor resulting from the liabilities or payments with respect to which such payment shall have been made by the Lessee, provided, further, that the aggregate of all such amounts payable to the Lessee by the Lessor in respect of any such payment by the Lessee shall not exceed the aggregate amount of such payment theretofore made by the Lessee under this § 16(b).

For purposes of this subsection the cost of Additional Expenditures made by the Lessee shall be deemed to be "required to be included in the gross income of the Lessor for Federal income tax purposes" if such inclusion is required by (i) any private ruling letter issued to the Lessor by the Internal Revenue Service that has not been revoked or otherwise rendered inapplicable at the time the cost of said Additional Expenditures is incurred; (ii) any provision of the Code or the applicable regulations thereunder; or (iii) any published revenue ruling of the Internal Revenue Service which has not been held invalid by a court having ultimate appellate jurisdiction over the Federal income tax liability of the Lessor.

The Lessor agrees that it will, upon the written request and at the sole expense of the Lessee (A) seek a modification of any private ruling letter described in clause (i) of the preceding paragraph to eliminate the requirement that the cost of Additional Expenditures be included in the Lessor's gross income and (B) contest the inclusion of the

cost of Additional Expenditures in the Lessor's gross income if such inclusion is required pursuant to clause (ii) or clause (iii) of the preceding paragraph in such forum as it, in its sole judgment but with due regard to the Lessee's advice, shall select; provided, however, that the Lessor shall not be required to contest such inclusion unless it has received an opinion from independent counsel selected by the Lessee and acceptable to the Lessor that there is a reasonable basis for contesting such inclusion and the Lessee has advanced to the Lessor such sums as the Lessor may reasonably deem necessary to pay the costs of such contest.

The Lessee agrees that, within 30 days after the close of any calendar year (or in the event the Lessor gives the Lessee written notice that the Lessor's taxable year closes on a date specified therein other than December 31, within 30 days after said date) in which the Lessee has made Additional Expenditures which are required to be included in the gross income of the Lessor for Federal income tax purposes prior to the time such Unit is disposed of in a taxable transaction, the Lessee will give written notice thereof to the Lessor describing such Additional Expenditures in reasonable detail and specifying the cost thereof with respect to each Unit.

§ 17. Interest on Overdue Rentals. Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay, to the extent legally enforceable, an amount equal to 10-1/2% 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. Interest hereunder shall be determined on the basis of a 360-day year of twelve 30-day months.

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

(a) if to the Lessor, at 3155 West Big Beaver Road, Troy, Michigan 48084, Attention of John H. McBrearty, President; and

(b) if to the Lessee, at 1310 Six Penn Center Plaza,

Philadelphia, Pennsylvania 19104, Attention of Assistant
Treasurer-Cash Mobilization;

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing. Copies of each such notice shall be given to the Vendor at 79 South Main Street, Salt Lake City, Utah, 84111, Attention of Corporate Trust Division.

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

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

§ 20. 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 pursuant to the Assignment hereof to the Vendor shall be deemed to be the original and all other counterparts shall be deemed duplicates thereof. Although for convenience this Lease is dated as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

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

IN WITNESS WHEREOF, the parties hereto have executed

or caused this instrument to be executed as of the date first above written.

CONSOLIDATED RAIL CORPORATION,

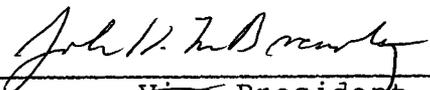
by 
Assistant Treasurer--
Cash Mobilization

[Corporate Seal]

Attest:


Assistant Secretary

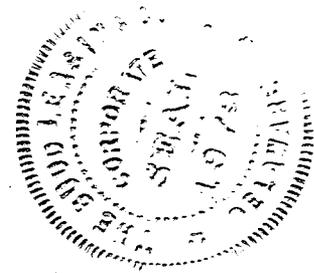
THE BUDD LEASING CORP.,

by 
Vice President

[Corporate Seal]

Attest:


Assistant Secretary



COMMONWEALTH OF PENNSYLVANIA ,)
) ss.:
COUNTY OF PHILADELPHIA,)

On this 9 day of MAY 1977, before me personally appeared B.D. Weltman, to me personally known, who, being by me duly sworn, says that he is a Officer of CONSOLIDATED RAIL CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



Notary Public

[Notarial Seal]

My Commission expires

DONALD F. FEASTER
Notary Public, Philadelphia, Philadelphia Co.
My Commission Expires June 2, 1979

STATE OF MICHIGAN,)
) SS.:
COUNTY OF OAKLAND,)

On this *9th* day of *May* 1977, before me personally appeared *John H. McBrearty* to me personally known, who, being by me duly sworn, says that he is a *President* of THE BUDD LEASING CORP., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Roberta G. Ernst

Notary Public

[Notarial Seal]

My Commission expires

11/10/80



SCHEDULE A TO LEASE

Type	Quantity	<u>Lessee's Identification Numbers (Both Inclusive)</u>
100-ton 60' RBL insulated box car	102	CR 376001-376102
AAR Mechanical Designation: RBL		

SCHEDULE B TO LEASE

Casualty Value

<u>Item I:</u>	<u>Date</u>	<u>Percentage</u>
	January 15, 1978	106.0083
	July 15, 1978	106.5237
	January 15, 1979	106.7225
	July 15, 1979	106.6543
	January 15, 1980	106.3390
	July 15, 1980	99.3727
	January 15, 1981	98.5853
	July 15, 1981	97.5710
	January 15, 1982	96.3405
	July 15, 1982	88.4891
	January 15, 1983	86.8494
	July 15, 1983	85.0177
	January 15, 1984	83.0081
	July 15, 1984	74.4180
	January 15, 1985	72.0838
	July 15, 1985	69.6047
	January 15, 1986	66.9986
	July 15, 1986	64.2599
	January 15, 1987	61.4077
	July 15, 1987	58.4390
	January 15, 1988	55.3629
	July 15, 1988	52.1939
	January 15, 1989	48.9207
	July 15, 1989	45.5716
	January 15, 1990	42.1310
	July 15, 1990	38.6196
	January 15, 1991	35.0222
	July 15, 1991	31.3528
	January 15, 1992	27.5955
	July 15, 1992	23.7890
	January 15, 1993, and thereafter	20.0000
Item II:	<u>Anniversary of Delivery and Acceptance</u>	<u>Percentage of Purchase Price</u>
	Third	19.2308
	Fifth	12.8205
	Seventh	6.4103