

CONNELL LEASING, INC.

A SUBSIDIARY OF CONNELL RICE & SUGAR CO., INC.

45 CARDINAL DRIVE WESTFIELD, N. J. 07092

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RECORDATION NO. 2845-1A
Filed & Recorded

JUN 3 1977-10 11 AM

May 20, 1977

INTERSTATE COMMERCE COMMISSION

Interstate Commerce Commission
12th Street and Constitution Avenue, N.W.
Washington, D.C. 20423

Attention: Secretary

Gentlemen:

RECORDATION NO. 2845
JUN 3 1977-10 11 AM
INTERSTATE COMMERCE COMMISSION
FEE OPERATIONS BR
RECEIVED
JUN 3 1977
ICC Washington, D. C.

Enclosed herewith for filing and recording, pursuant to Section 20c of the Interstate Commerce Act, are eight (8) executed counterparts of the following:

1. Lease of Railroad Equipment dated as of May 12, 1977, between Connell Leasing, Inc. and Lake Erie, Franklin & Clarion Railroad Company; and
2. Assignment of Purchase Agreement dated as of May 12, 1977, between Connell Leasing, Inc., Lake Erie, Franklin & Clarion Railroad Company and Greenville Steel Car Company.

The foregoing documents relate to the purchase and financing of:

100-ton (3,420 cu. ft.) triple hopper cars (Car Nos. LEF 3500 through 3599, both inclusive).

Enclosed is our check in the amount of \$60 in payment of the applicable recording fees.

Please deliver five (5) counterparts, each bearing recordation data with respect to the filing pursuant to the provisions of Section 20c of the Interstate Commerce Act, to the bearer of this letter.

continued.../

C. Deeney
Joseph P. Ryan

Interstate Commerce Commission
Page 2
May 20, 1977

For your records, the names and addresses of the parties to the several instruments are as follows:

Connell Leasing, Inc. *Lessee*
45 Cardinal Drive
Westfield, NJ 07092
Attention: Mr. Grover Connell
President

Greenville Steel Car Company *(Bulder)*
Greenville
Pennsylvania 16125
Attention: Mr. John T. Egbert
Vice President - Sales

Lake Erie, Franklin & Clarion Railroad Company *(Lessee)*
Post Office Box 430
Clarion, PA 16214
Attention: Mr. Joseph L. Hartle
Vice President - Operations

Sincerely,

CONNELL LEASING, INC.

William T. Guinee

William T. Guinee
Vice President

/bjb

enc.

Interstate Commerce Commission
Washington, D.C. 20423

6/3/77

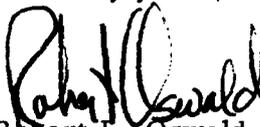
OFFICE OF THE SECRETARY

William T Guineo , Vice President
Connell Leasing , Inc.
45 Cardinal Drive
Westfield, N.J. 07092

Dear **Sir:**

The enclosed document(s) was recorded pursuant to the provisions of Section 20(c) of the Interstate Commerce Act, 49 U.S.C. 20(c), on **6/5/77** at **10:10am** and assigned recordation number(s) **8845 & 8845-A**

Sincerely yours,


Robert L. Oswald
Secretary

Enclosure(s)

SE-30
(5/76)

845

FILED IN THE OFFICE OF THE SECRETARY OF TRANSPORTATION

MAY 12 1977

LEASE OF RAILROAD EQUIPMENT

Dated as of May 12, 1977

Between

CONNELL LEASING, INC.

and

LAKE ERIE, FRANKLIN & CLARION RAILROAD COMPANY

(Filed and recorded with the Interstate Commerce Commission
on , 1977, at , Recordation No.)

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LEASE OF RAILROAD EQUIPMENT dated as of May 12, 1977, between CONNELL LEASING, INC., a New Jersey corporation (hereinafter called the Lessor), and LAKE ERIE, FRANKLIN & CLARION RAILROAD COMPANY, a Pennsylvania corporation (hereinafter called the Lessee).

WHEREAS, the Lessee has assigned to the Lessor, pursuant to an Assignment of Purchase Agreement dated as of the date hereof (hereinafter called the Assignment), certain of its interests in a Purchase Agreement dated as of May 12, 1977, (hereinafter called the Purchase Agreement), between GREENVILLE STEEL CAR COMPANY (hereinafter called the Builder);

WHEREAS, the Lessor has accepted the Assignment and proposes to purchase from the Builder such units of railroad equipment described in Schedule A hereto (hereinafter called the Units) as are delivered and accepted under the terms of this Lease;

WHEREAS, the Lessee desires to lease from the Lessor such number of Units as are so delivered and accepted hereunder, at the rentals and upon the terms and 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:

§ 1. Rights and Obligations. Except as herein provided, the Lessee shall not be entitled to any abatement of rent, reduction thereof or setoff against rent, including, but not limited to, abatements, reductions or 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 the Builder 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; provided, however, that the Lessee shall not be foreclosed from exercising such other legal rights and remedies as it may have against the Lessor.

§ 2. Delivery and Acceptance of Units. The Lessor hereby appoints the Lessee its agent for inspection and acceptance of each of the Units. The Lessee will cause its agent or an employee of the Lessee to inspect the same, and if such Unit is found to be acceptable, to execute and deliver to the Lessor a certificate of acceptance (hereinafter called a Certificate of Acceptance), 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 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 Lessor will cause each Unit to be delivered to the Lessee at the point or points specified in Schedule A hereto. Units shall not be delivered to or accepted by the Lessee subsequent to December 15, 1977, and the Lessor shall reassign to the Lessee on December 16, 1977, its rights to purchase any remaining balance of Units, under the Assignment, not delivered and accepted as herein provided prior to December 15, 1977.

§ 3. Rentals. (a) With respect to each Unit delivered and accepted hereunder prior to July 1, 1977, the Lessee agrees to pay to the Lessor, as rental for each such Unit subject to this Lease, (i) an initial installment of rent payable on July 1, 1977, and (ii) 144 consecutive monthly installments payable on the first day of each month commencing July 1, 1977. The initial installment of such rent shall be in an amount equal to 0.03333% of the Purchase Price (as hereinafter defined) of each such Unit for each day which such Unit is subject to this Lease, commencing with the date of acceptance pursuant to the terms of this Lease, and continuing to and including the date immediately preceding the initial installment payment date, and the 144 consecutive monthly rental installments, payable in advance, shall be each in an amount equal to 0.889109% of the Purchase Price of each Unit then subject to this Lease.

(b) With respect to each Unit delivered and accepted hereunder on or after July 1, 1977, the Lessee agrees to pay to the Lessor, as rental for each such Unit subject to this Lease, (i) an initial installment of rent payable on the first day of the month immediately following the date of settlement for the final Unit settled for as Assigned Equipment under the Purchase Agreement and the Assignment and (ii) 144 consecutive monthly installments payable on the first day of each month commencing on the initial installment payment date established under the provisions of (i) above. The initial installment of such rent shall be in an amount equal to .03333% of the Purchase Price of each such Unit for each day which such Unit is subject to this Lease, commencing with the date of acceptance pursuant to the terms of this Lease and continuing to and including the last day of the month in which such Unit is delivered and accepted, increased by an amount equal to .913554% of the Purchase Price for each month thereafter to and including the month in which the final Unit is delivered and accepted and the 144 consecutive monthly rental installments payable in advance, shall be in an amount equal to 0.913554% of the Purchase Price of each such Unit then subject to this Lease.

For purposes of this Lease, Purchase Price shall mean, with respect to Units, the base price per Unit as set forth in Schedule A hereto, which base price is subject to such increase or decrease as may be agreed upon by the Builder, the Lessor and the Lessee, plus any sales taxes, transportation and delivery charges incurred in connection with the acquisition of the Units.

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 all other days on which banking organizations in Pennsylvania, are authorized or obligated to remain closed.

The Lessor hereby instructs the Lessee to make all the payments provided for in this Lease directly to it at such address as shall from time to time be specified in writing by the Lessor. The Lessee agrees to make each payment provided for herein as contemplated by this paragraph in immediately available funds.

§ 4. Term of Lease. The term of this Lease as to each Unit shall begin on the date of acceptance of such Unit hereunder and, subject to the provisions of §§ 6, 7, 9, 10, 13 and 17 hereof, shall terminate on the last day of the month in which the 144th monthly rental payment is due and payable.

§ 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 "Owned by Connell Leasing, Inc." or other appropriate words designated by the Lessor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Lessor's title to and property in such Unit and the rights of the Lessor under this Lease. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such words shall have been so marked on both sides thereof and will replace promptly any such words which may be removed, defaced or destroyed. The Lessee will not change the identifying number of any Unit unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with the Lessor and filed, recorded and deposited by the Lessee in all public offices where this Lease shall have been filed, recorded and deposited and (ii) the Lessee shall have furnished Lessor an opinion of counsel to the effect set forth in subparagraph (b) (i) of § 15 hereof in respect of such statement.

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.

§ 6. Taxes. Lessee agrees to pay, or to indemnify Lessor upon demand for all license, registration and similar fees and all taxes (including withholdings, penalties, fines or interest thereon) (all of the foregoing being hereinafter called "impositions"), imposed upon Lessor or any Unit by any taxing authority with respect to the acquisition, ownership, or lease of such Unit, but only to the extent attributable to or made necessary by such activities, excluding, however, (a) federal, Pennsylvania and New Jersey taxes based on, or measured by, the net income of Lessor, (b) taxes, fees or other charges of any other jurisdiction based on or measured by the net income of Lessor, and franchise or similar taxes to the extent such taxes, fees or other charges are (i) the result of business or transactions unrelated to this Lease or (ii) if related to this Lease, result in a reduction of Lessor's liability for Pennsylvania and New Jersey taxes.

Lessee need not pay any imposition so long as Lessee is contesting in good faith and by any appropriate proceedings such imposition and nonpayment thereof or such proceedings do not, in the opinion of counsel for Lessor, adversely affect the title, property or rights of Lessor hereunder.

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

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

In the event that during the term of this Lease or until such Unit shall have been returned pursuant to § 14 hereof, any Unit shall be or become worn out, lost, stolen, destroyed or, in the opinion of the Lessee or the Lessor, irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise under authority of law and such taking or requisition shall have exceeded 120 days or shall extend beyond the term of this Lease (such occurrences being hereinafter called Casualty Occurrences), the Lessee shall promptly and fully notify the Lessor with respect thereto. On the rental payment date next succeeding such notice, or if there is no next succeeding rental payment date or if such Unit is being returned under § 14 hereof, within 30 days of the giving of such notice, the Lessee shall pay to the Lessor an amount equal to any rent then due plus a sum equal to the Casualty Value (as hereinafter defined) of such Unit as of the date of such payment, in each case in accordance with Schedule B attached hereto. If there is no next succeeding rental payment date or if such Unit is being returned pursuant to § 14 hereof, the Casualty Value shall be the amount indicated on Schedule B for the last day of the lease term.

Upon the making of the Casualty Value payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue and the term of this Lease as to such Unit shall terminate. The Lessor shall, after payment by the Lessee of a sum equal to the Casualty Value of any Unit which shall have suffered a Casualty Occurrence, and any other amounts then due hereunder, execute and deliver to the Lessee a bill of sale (without warranties) for each Unit such as will transfer to the Lessee such title to such Unit as the Lessor derived from the Builder, free and clear of all liens, security interests and other encumbrances arising through the Lessor. In the event that any Unit is taken or requisitioned under authority of law as set forth in the first sentence of this paragraph but such taking does not exceed 120 days nor extend beyond the end of the term of this Lease, the Lessee shall notify the Lessor of such taking or requisition and all of the Lessee's obligations under this Lease with respect to such Unit, including, but not limited to, rental with respect thereto pursuant to § 3 hereof, shall continue as if such taking or requisition had not occurred. All payments received by the Lessor or the Lessee in respect of such taking or requisition for the use of such Unit during the term of this Lease shall be paid over to, or retained by, the Lessee.

With respect to Units delivered and accepted hereunder prior to July 1, 1977, the Casualty Value of each Unit as of any rental payment date or such other date on which such Casualty Value is payable shall be that percentage of the Purchase Price of such Unit as is set forth in the aforementioned Schedule B attached opposite such rental payment date or such other date.

Casualty Values with respect to each Unit delivered and accepted hereunder on or after July 1, 1977, will be set forth in a supplemental schedule. Such Casualty Values will be computed on the basis of the assumptions used by the Lessor in arriving at the Casualty Values set forth in Schedule B, adjusted to reflect lease rate differences.

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 procure and maintain at its sole cost and expense at all times during the continuance of this Lease (and thereafter so long as any Unit is at the risk of the Lessee), insurance coverage for comprehensive general liability (including contractual liability with respect to the "hold harmless" or indemnification agreement between the Lessee and the Lessor contained in § 9 hereof), physical damage, theft, fire with extended coverage and any other insurance as may be reasonably required by the Lessor for the benefit of the Lessor as its interests appear in amounts, against risks, in form and with insurance companies or underwriters as shall be satisfactory to the Lessor from time to time and shall deliver to the Lessor a certificate of the issuer of such insurance coverage setting forth a description of the terms thereof; provided, however, Lessee shall not be required to maintain physical damage, theft, or fire with extended coverage insurance in an amount in excess of the applicable Casualty Value of the Units and provided, further, however, that the comprehensive general liability insurance may contain a \$25,000 deductible provision per occurrence and the physical damage, theft, fire with extended coverage insurance may contain a \$2,500 deductible provision per occurrence. Without limiting the foregoing, each insurance policy shall provide that it will not be invalidated as against the Lessor because of any violation of a condition or warranty of the policy or application therefor by the Lessee and that it may be altered or cancelled by the insurer, only after not less than 30 days advance written notice to, and that losses in excess of \$2,500 shall be adjusted only with the consent of the Lessor or its assigns. All liability policies shall name the Lessor as an insured person. All policies covering loss or damage to the Units shall provide that payment thereunder for any such loss or damage shall be made to the

Lessor and the Lessee as their interests may appear. If the Lessee shall fail to provide and furnish any of said insurance, the Lessor may, after reasonable notice to Lessee and a reasonable opportunity, under the circumstances, to correct or provide such insurance procure such insurance and the Lessee shall, upon demand, reimburse the Lessor for all outlays for such insurance with interest thereon computed at the rate of 12% per annum or such lesser maximum rate as is permitted by applicable law. The Lessee may provide for any such insurance under blanket insurance policies maintained by the Lessee with respect to other properties owned or leased by it so long as the policies are of an "all risk" type.

Any insurance proceeds as the result of insurance carried by the Lessee or condemnation payments 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 insurance proceeds or condemnation payments which are in excess of the Casualty Value, any such insurance proceeds and any such excess condemnation payments shall remain the property of the Lessor. If the proceeds attributable to a Casualty Occurrence are received by or payable to the Lessee, the amount payable to the Lessor shall be the amount so received or payable, but not more than the higher of the Casualty Value or the amount Lessor would have received if insurance proceeds had been paid or payable directly to Lessor. To the extent that the aggregate amount paid or payable by reason of a Casualty Occurrence exceeds the amount payable to the Lessor as herein set forth, such excess shall be paid to or retained by the Lessee. 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 1977, the Lessee will furnish to the Lessor an accurate statement (a) setting forth as at the preceding December 31 the amount, description and numbers of all Units then leased hereunder, the amount, description and numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year (or since the date of this Lease in the case of the first such statement) or are then undergoing repairs (other than running repairs) or then withdrawn from use pending such repairs (other than running repairs) and such other information regarding the condition and state of repair of the Units as the Lessor 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 have been preserved or replaced. The Lessor shall have the rights 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.

The Lessee will furnish to the Lessor, balance sheets as of the end of each fiscal year and profit and loss statements for the year then ended prepared in conformity with generally accepted accounting principles of the applicable regulatory authorities, applied on a basis consistent with that of the preceding fiscal year. The foregoing financial documents shall be delivered to the lessor no later than April 30 of each year. The Lessee shall also furnish to the Lessor unaudited quarterly reports of similar tenor within 90 days after the end of each respective quarterly accounting period and such other financial information as the Lessor may reasonably request from time to time.

Each set of financial documents delivered to the Lessor shall be accompanied by a certificate (correctly dated the date of delivery) of the President of the Lessee confirming that as at the date of such certificate no Event of Default as defined herein has occurred and is continuing, or if any such Event of Default has occurred and is continuing, specifying the nature and period of existence thereof and what action the Lessee has taken or proposes to take with respect thereto.

§ 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 OR MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE, 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 the Purchase Agreement. 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, 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, replacement or addition of or to any part or any Unit, the Lessee will conform therewith 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, adversely affect the property or rights of the Lessor under this Lease.

The Lessee, at its own cost and expense, may furnish 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 pursuant to the preceding sentence shall be owned by the Lessee.

The Lessor (which term as used herein shall include the Lessor's successors, assigns, agents and servants) shall have no responsibility or liability to the Lessee, its successors or assigns, or to any other person, with respect to any or all liabilities (as "liabilities" is hereinafter defined), and the Lessee hereby assumes liability for, and hereby agrees, at its own cost and expense, to indemnify, protect, defend, save and keep harmless the Lessor from and against, any and all liabilities, other than the Lessor's obligation to pay to the Builder and the Lessee, as the case may be, the Purchase Price for all Units delivered and accepted in accordance with the terms hereof. The term "liabilities" as used herein shall include any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs, expenses and disbursements, including reasonable legal fees and expenses, of whatsoever kind and nature, incurred by or asserted against the Lessor, in any way relating to or arising out of this Lease, the Purchase Agreement, the Assignment or the manufacture, purchase, acceptance, ownership, transporting, delivery, leasing, possession, control, use, operation, condition, testing, servicing, maintenance, repair, improvement, replacement, storage, sale, return or other disposition of the Units (including, without limitation, (a) any inadequacy or deficiency or defect therein, including latent defects, whether or not discoverable by the Lessor or the Lessee, or any claim for patent, trademark or copyright infringement, (b) any accident in connection therewith resulting in damage to property or injury or death to any person, including but not limited to, employees and agents of the Lessee, (c) any strict liability in tort and (d) any interruption of service, loss of business or consequential damages resulting therefrom). The Lessee agrees to give the Lessor and the Lessor agrees to give the Lessee prompt written notice of any of the liabilities hereby

indemnified against. The Lessee's obligations under this paragraph shall be those of a primary obligor whether or not the Lessor is also indemnified with respect to the same matter by any other person. The indemnities arising under this paragraph shall survive payment of all other obligations under this Lease and the expiration or 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, gross receipts tax, or gross income tax returns) to be filed by the Lessor with any federal, state or other regulatory authority by reason of the ownership by the Lessor of the Units 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 10 days after giving of written notice thereof by the Lessor;

(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 performances of any other of the covenants, conditions and agreements on the part of the Lessee contained herein, and such default shall continue for 20 days after written notice from the Lessor to the Lessee specifying the default and demanding that the same be remedied;

(d) any representation or warranty made by the Lessee in this Lease or in any document or certificate furnished the Lessor in connection herewith or pursuant hereto shall prove to be incorrect at any time in any material respect and such condition shall continue unremedied for a period of 15 days after written notice thereof by the Lessor to the Lessee specifying the default and demanding that the same be remedied;

(e) the Lessee shall consent to the appointment of a receiver, trustee or liquidator of itself or of a substantial part of its property (the term "substantial part of its property" meaning for the purposes of this clause (e) and clauses (f) and (g) hereof, property having an aggregate fair market value constituting at least 20% of the fair

market value of the Lessee's total assets), or the Lessee shall admit in writing its inability to pay its debts generally as they come due, or shall make a general assignment for the benefit of creditors, or the Lessee shall file a voluntary petition in bankruptcy or a voluntary petition or an answer seeking reorganization in a proceeding under any bankruptcy laws (as now or hereafter in effect) or an answer admitting the material allegations of a petition filed against the Lessee in any such proceeding, or the Lessee shall by voluntary petition, answer or consent to seek relief under the provisions of any other bankruptcy or other similar law (other than a law which does not provide for or permit any readjustment or alteration of the Lessee's obligations hereunder), as now or hereafter in effect, providing for the reorganization or winding-up of corporations, or providing for an agreement, composition, extension or adjustment with its creditors;

(f) an order, judgment or decree shall be entered by any court of competent jurisdiction appointing, without the consent of the Lessee, a receiver, trustee or liquidator of the Lessee or of any substantial part of its property, or any substantial part of the property of the Lessee shall be sequestered, or any creditor of the Lessee shall commence to foreclose a lien, charge or other encumbrance against any Unit, and any such order, judgment or decree of appointment or sequestration or foreclosure action shall remain in force undismissed, unstayed and unvacated for a period of 60 days after the date of entry thereof; or

(g) a petition against the Lessee in a proceeding under the Federal bankruptcy laws or other insolvency laws (other than a law which does not provide for or permit any readjustment or alteration of the Lessee's obligations hereunder), as now or hereafter in effect, shall be filed and shall not be withdrawn or dismissed within 60 days thereafter, or if, under the provisions of any law (other than a law which does not provide for or permit any readjustment or alteration of the Lessee's obligations hereunder), as now or hereafter in effect, providing for reorganization or winding-up of the Lessee, any court of competent jurisdiction shall assume jurisdiction, custody or control of the Lessee or of any substantial part of its property and such jurisdiction, custody or control shall remain in force unrelinquished, unstayed or unterminated for a period of 60 days;

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

(i) 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 without limitation net after-tax losses of federal and state income tax benefits to which the Lessor would otherwise be entitled under this Lease; or

(ii) 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 provided in this clause (ii); and thereupon the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of such Units may be and take possession of all or any of the 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 4.344% per annum discount, compounded monthly from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated; provided, however, that if the Lessee shall dispute the estimate of the Lessor under this clause (A) within 10 days after delivery to it of a written notice thereof, then such value shall be determined by an Appraiser (as defined in § 13 hereof) 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, cause the Lessor's net return under this Lease to be equal to the net return (computed in accordance with the assumptions utilized by the Lessor in estimating its net return upon entering into this Lease, as such assumptions are set forth in § 17 hereof) and that would have been available to the Lessor if it had been entitled to utilization of all or such portion of the Investment Tax Credit and the ADR Deduction (as such credit and deduction are defined in § 17 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 § 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 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 if the Lessee shall dispute the estimate of the Lessor under this clause (y) within 10 days after delivery to it of a written notice thereof, then such value shall be determined by an Appraiser; and provided, further, 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 appraisal costs, all reasonable attorney's 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 without limitation 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 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 upon notice from the Lessor 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 and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any Unit or Units have been interchanged to return the Unit or Units so interchanged) transport or cause the Units to be transported to such point or points as the Lessor may reasonably designate;

(b) place such Units upon such storage tracks as the Lessor reasonably may designate; and

(c) permit the Lessor to store such Units on such tracks at the risk of the Lessee without charge for rent or storage until such Units have been sold, leased or otherwise disposed of by the Lessor, using its best efforts to so dispose thereof expeditiously.

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, at its own cost and expense, maintain

and keep the Units in good order and repair and will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Unit, to inspect the same.

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 to any person 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, 10 and 17 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).

This Lease and the Lessee's right and interest herein, and in the option to renew this Lease, shall be prior to each and every deed of trust or mortgage or other security instrument and each such instrument, whether heretofore, now or hereafter in existence shall in all respects be subject and subordinate to this Lease and the Lessee's right and interest herein and in such renewals, obligations and options.

So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease, but, without the prior written consent of the Lessor, which consent shall not be unreasonably withheld, the Lessee shall not assign or transfer its leasehold interest under this Lease in the Units or any of them except as herein provided. 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 resulting from claims against the Lessor 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 or the Lessee therein, and will promptly discharge any such lien, claim, security interest or other 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.