

CONRAIL



RECORDATION NO. 8804 B Filed & Recorded

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Date MAY 8 1977 INTERSTATE COMMERCE COMMISSION

May 2, 1977

Fee \$ 1.50 ICS Washington, D. C.

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RECORDATION NO. 8804 A Filed & Recorded

MAY 2 1977-10 40 AM

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

RECORDATION NO. 8804 C Filed & Recorded INTERSTATE COMMERCE COMMISSION

MAY 2 1977-10 40 AM

Dear Mr. Oswald:

INTERSTATE COMMERCE COMMISSION

Pursuant to Section 20c of the Interstate Commerce Act and as provided by Volume 29 Code of Federal Regulations Sections 1116.1 through 1116.4, we present the following documents, all dated as of April 15, 1977, for recordation:

A) Interim Conditional Sale Agreement between General Electric Company and United States Trust Company, as Trustee, and

RECORDATION NO. 8804 Filed & Recorded

MAY 2 1977-10 40 AM

INTERSTATE COMMERCE COMMISSION

Interim Agreement and Assignment between General Electric Company and J. P. Morgan Interfunding Corp.;

B) Interim Conditional Sale Agreement between General Motors Corporation and United States Trust Company, as Trustee, and

RECORDATION NO. 8804 D Filed & Recorded

MAY 2 1977-10 40 AM

INTERSTATE COMMERCE COMMISSION

Interim Agreement and Assignment between General Motors Corporation and J. P. Morgan Interfunding Corp.;

Interim Lease of Railroad Equipment between Consolidated Rail Corporation and United States Trust Company, as Trustee, and

RECORDATION NO. 8804 E Filed & Recorded

MAY 2 1977-10 40 AM

INTERSTATE COMMERCE COMMISSION

Interim Assignment of Lease and Agreement between United States Trust Company, as Trustee, and J. P. Morgan Interfunding Corp.

The names and addresses of the parties to the documents are:

With respect to the documents described under A):

Vendor and Assignor	General Electric Company 2901 East Lake Road Erie, Pennsylvania 16531
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[Handwritten signature: C. D. ...]

Three of our checks, in the amount of \$50.00 each, are enclosed to cover the recordation fees.

These documents have not been previously recorded with the Interstate Commerce Commission.

After retaining two counterpart originals of the documents please return the remaining copies, stamped with your recordation number, to Consolidated Rail Corporation, Room 1138, Six Penn Center Plaza, Philadelphia, Pennsylvania 19104, in the custody of the individual presenting them for recordation.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "B. D. Wellmon", with a long horizontal flourish extending to the right.

B. D. Wellmon
Assistant Treasurer

REGORDATION NO. 8804 Filed & Recorded

MAY 2 1977 - 10 40 AM

INTERSTATE COMMERCE COMMISSION

INTERIM
LEASE OF RAILROAD EQUIPMENT

Dated as of April 15, 1977

between

CONSOLIDATED RAIL CORPORATION

and

UNITED STATES TRUST COMPANY OF NEW YORK,

as Trustee

TABLE OF CONTENTS

	<u>Page No.</u>
Section 1. Net Lease	2
Section 2. Delivery and Acceptance of Units . . .	4
Section 3. Rentals	4
Section 4. Term of Lease	6
Section 5. Identification Marks	7
Section 6. Tax Matters	9
Section 7. Maintenance; Casualty Occurrences; In- surance	23
Section 8. Reports and Notifications	33
Section 9. Disclaimer of Warranties; Compliance with Laws and Rules; Indeminifi- cation	34
Section 10. Default	39
Section 11. Return of Units upon Default	44
Section 12. Assignment; Possession and Use	47
Section 13. Renewal and Purchase Options; Takeout.	49
Section 14. Return of Units upon Expiration of Term	53
Section 15. Recording	55
Section 16. Interest on Overdue Rentals	56
Section 17. Notices	57
Section 18. Severability; Effect and Modification of Lease	57
Section 19. Immunities; Satisfaction of Under- takings	58
Section 20. Governmental Guarantees	59
Section 21. Counterparts	60
Section 22. Governing Law	60

INTERIM LEASE OF RAILROAD EQUIPMENT dated as of April 15, 1977, between CONSOLIDATED RAIL CORPORATION, a Pennsylvania corporation (the "Lessee"), and UNITED STATES TRUST COMPANY OF NEW YORK, a New York trust company, acting as Trustee (the "Lessor") under a Trust Agreement (A) (the "Trust Agreement") dated as of the date hereof with J. P. Morgan Interfunding Corp., a Delaware corporation (the "Beneficiary").

WHEREAS, the Lessor is entering into an Interim Conditional Sale Agreement dated as of the date hereof with General Electric Company, a New York corporation, and an Interim Conditional Sale Agreement dated as of the date hereof with General Motors Corporation (Electro-Motive Division), a Delaware corporation (said corporations being herein referred to as the "Builders" and said agreements being herein referred to collectively as the "Security Documentation"), wherein the Builders have agreed to manufacture, conditionally sell and deliver the units of railroad equipment (the "Equipment") described in Schedule A hereto;

WHEREAS, under separate Interim Agreements and Assignments dated as of the date hereof, the Builders are assigning their interests in the Security Documentation to J. P. Morgan Interfunding Corp. (in its capacity as assignee, together with its successors and assigns, referred to herein as the "Vendor");

WHEREAS, the Builders are willing to guarantee certain obligations of the Lessee under this Lease and of the

Lessor under the Security Documentation pursuant to two Guaranty Agreements (the "Guaranty Agreements") dated as of the date hereof; and

WHEREAS, the Lessee desires to lease such number of units (the "Units") of the Equipment as are delivered and accepted and settled for under the Security Documentation 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:

§ 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 or recoupment of rent, including, but not limited to, abatements, reductions, set-offs or recoupments due or alleged to be due by reason of any past, present or future claims or counterclaims of the Lessee against the Lessor under this Lease or under the Security Documentation, or against the Builders 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, the rents and other amounts payable by the Lessee hereunder to 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 such Unit and, if it 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 (a "Certificate of Acceptance") substantially in the form attached hereto as Exhibit 1-A or 1-B, as the case may be, and in accordance with the provisions of Article 3 of the Security Documentation, 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; provided, however, that notwithstanding the foregoing, the delivery, inspection, acceptance hereunder of, or the delivery of a Certificate of Acceptance with respect to any Unit of equipment not covered by, or for which Lessor has no obligation of acceptance and payment under, the Security Documentation shall be null and void and ineffective to subject such unit of equipment to this Lease.

§ 3. Rentals. The Lessee agrees to pay to the Lessor, as rental for the Units subject to this Lease, 31 consecutive payments payable on June 15, 1977, and on each

December 15 and June 15 thereafter. The rental payable on June 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 the Purchase Price (used herein as defined in the Security Documentation) of such Unit was paid to the Builder and June 15, 1977 (excluding such date of payment but including June 15, 1977 in such computation), times (b) 0.023973% of the Purchase Price of such Unit. The next 30 rental payments shall each be in an amount equal to 5.571467% of the aggregate Purchase Price of all Units then subject to this Lease, which rate includes the fee to be paid to the Builders in respect of all of their obligations under the Guaranty Agreements. If there is a change for which the Beneficiary is not responsible, effective for the year 1977, in the assumptions (as set forth in § 6(b) hereof) utilized by the Beneficiary in originally calculating such rentals, the Lessor and the Lessee agree that the rentals payable hereunder and the Casualty Value percentages set forth in Schedule B hereto will be appropriately adjusted upward or downward so that the Beneficiary's after-tax rate of return and periodic recovery of net cash flow will be at least the same as they would have been had there been no change in such assumptions; provided, however, that the rentals and the Casualty Value percentages, as so adjusted, shall be sufficient to satisfy the obligations of the Lessor under the Security Documentation, notwithstanding any limitation of liability therein.

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 preceding 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 New York City are authorized or obligated to remain closed.

The Lessor irrevocably instructs the Lessee to make all the payments provided for in this Lease at the principal office of the Vendor, for the account of the Lessor in care of the Vendor, with instructions to the Vendor first, to apply such payments to satisfy the obligations of the Lessor under the Security Documentation, and second, so long as no event of default or event which, with the lapse of time or the giving of notice or both, as 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 in this Lease in Federal or other funds immediately available to the Vendor in New York City 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 under this Lease shall survive the expiration of the term of this Lease and the full payment of all amounts payable under 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 and (ii) the Vendor is entitled to apply the Payments (as defined in the Lease Assignment) in accordance with the provisions thereof, this Lease may not be terminated and the Lessee shall be entitled to the rights of possession, use and assignment provided under § 12 hereof.

§ 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 inch in height, the words "Ownership subject to a Conditional Sale 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. Tax Matters.

(a) General Tax Indemnification. The Lessee assumes responsibility for and agrees to pay, and agrees to protect, save, keep harmless and indemnify on an after-tax basis the Lessor and the Beneficiary and their successors and assigns (the "Indemnified Persons") against all taxes, fees and other governmental charges of any nature whatsoever, including without limitation penalties and interest (collectively, the "Taxes"), imposed on, incurred by or asserted against any Indemnified Person or the Equipment in whole or in part on account of, or with respect to, this Lease or any of the Security Documentation or any document referred to herein or therein and any of the

transactions contemplated hereby or thereby or the manufacture, purchase, acceptance or rejection of the Equipment or any portion thereof or the ownership, delivery, nondelivery, leasing, re-leasing, subleasing, possession, use, operation, maintenance, repair, condition, sale, return or other disposition of the Equipment or any portion thereof or any indebtedness with respect thereto or the rentals, receipts, earnings or gains arising therefrom; provided, however, that there shall be no indemnification hereunder for (i) any Taxes imposed on or measured by any fees or compensation received by the Lessor, and (ii) Federal income Taxes and income or franchise Taxes imposed on the Beneficiary or its successors and assigns by any jurisdiction in which the Beneficiary or its successors and assigns has an office, except to the extent that indemnification is provided for in subsection (b) of this § 6. The Lessee shall pay all Taxes for which it assumes liability hereunder when such Taxes are due and will indemnify each Indemnified Person to the extent required by this subsection (a) within ten days after receipt of a written request by such Indemnified Person for indemnification specifying the amount to be paid, the basis on which such amount was determined and the nature of the Tax in question; provided, however, that if any Tax is being contested under the following paragraph, any payment shall be at the time provided in such paragraph.

If any taxing authority shall assert liability for any Tax or propose an increase in the liability of any Indemnified Person for any such Tax (such assertion or such proposed increase being hereinafter called a "Claim"), indemnification for which would be required hereunder, the Indemnified Person will notify the Lessee within a reasonable time of such Claim in writing. If the Lessee delivers to such Indemnified Person written notice of its desire to contest such Claim within 30 days after receipt of notice from such Indemnified Person, such Claim will be contested in accordance with this paragraph. The Indemnified Person shall have the exclusive right to conduct the contest unless such right is waived in writing, in which event the contest and all preparations therefor shall be the sole responsibility of the Lessee and, in either case, shall be conducted entirely at its expense. Such Indemnified Person will cooperate with any reasonable request made by the Lessee in connection therewith; provided, however, that such Indemnified Person may in its sole discretion determine in what court or other forum such contest will be conducted and whether such contest will proceed by payment of the Tax in contemplation of a suit for refund and such Indemnified Person shall not be required to take any action pursuant to this paragraph unless and until the Lessee shall have agreed to indemnify such Indemnified Person in a manner satisfactory to such Indemnified Person for any liability or loss which such Indemnified

Person may incur as a result of contesting the validity of any Claim and shall have agreed to pay such Indemnified Person on demand all costs and expenses which such Indemnified Person may incur in connection with contesting such Claim (including fees and disbursements of counsel). If in any such contest the decision is made to pay the Tax and sue for a refund, the Lessee will advance to such Indemnified Person on an interest-free basis sufficient funds to pay the Tax which is to be contested. Upon receipt by any Indemnified Person of a refund of any Tax paid by the Lessee pursuant to this paragraph, the Tax and any interest paid to such Indemnified Person shall be paid to the Lessee forthwith upon receipt by such Indemnified Person.

The Lessee covenants and agrees to pay all amounts due under this subsection (a) free of any Taxes and to indemnify each Indemnified Person against any Taxes imposed by reason of any payment made by the Lessee so that the Indemnified Person to whom or for whose benefit the payment is made shall receive an amount which, net of any Taxes or other charges required to be paid by such Indemnified Person in respect thereof, shall be equal to the amount of payment otherwise required hereunder.

(b) Indemnity for Federal and Other Income Tax Benefits. This Lease has been entered into on the assumption that the Beneficiary, as the beneficial owner of the Equipment, shall be entitled to such deductions, credits and other benefits as are provided by the Internal Revenue Code of 1954, as amended (the "Code"), and state and local taxing statutes to an owner of property, including, without limitation, (1) deductions for depreciation of the Equipment under section 167 of the Code (the "ADR Deductions") computed on the basis (i) that the Equipment will have a depreciable basis under section 167(g) of the Code at least equivalent to the Purchase Price plus the transaction expenses borne by the Beneficiary or the Lessor and that the Federal corporate income tax rate in effect for 1977 will be 48%, (ii) of the double-declining balance method of depreciation authorized by section 167(b)(2) of the Code, switching to the sum-of-the-years digits method of depreciation authorized by section 167(b)(3) of the Code when most beneficial to the Beneficiary, (iii) of the asset depreciation range system of Treasury Regulation Section 1.167(a)-11, (iv) of an asset depreciation period of 12 years, and (v) of a salvage value of zero after the reduction in accordance with section 167(f)(1) of the Code, (2) deductions with respect to interest payable under the Conditional Sale Indebtedness (the

"Interest Deduction") for any period during which such Conditional Sale Indebtedness is held by any person other than the Beneficiary and (3) investment credit pursuant to section 38 of the Code for "new section 38 property" (the "Investment Credit") equal to 10% of the depreciable basis (referred to above).

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

The Beneficiary will claim on its Federal, state and local income tax returns the Investment Credit, the ADR Deductions and the Interest Deductions, respectively, to the extent that any opinion or advice of counsel satisfactory to the Beneficiary confirms its entitlement thereto.

If under any circumstances or for any reason whatsoever the Beneficiary shall not be allowed all or any portion of the ADR Deductions, the Interest Deduction or the Investment Credit, or if the ADR Deductions or the

Investment Credit with respect to any portion of the Equipment is recaptured in whole or in part pursuant to section 1245 or section 47 of the Code (any such event being hereinafter called a "Loss"), then the Lessee shall pay to the Beneficiary such amount or, from time to time, such amounts which, after deduction of all taxes required to be paid by the Beneficiary in respect of the receipt of such amounts under the laws of any Federal, state or local government or taxing authority, shall be equal to the sum of the aggregate additional Federal, state or local income taxes payable by the Beneficiary from time to time as a result of any such Loss. If, as a result of a Loss, the aggregate Federal, state or local income taxes paid by the Beneficiary for any taxable year shall be less than the amount of such taxes which would have been payable by the Beneficiary had no such Loss occurred, then the Beneficiary shall pay the Lessee the amount of such difference in taxes, plus any additional tax benefits realized by the Beneficiary as the result of such payment; provided, however, that the Beneficiary shall not be obligated to make any payment pursuant to this sentence to the extent that the amount of such payment would exceed (x) the amount of all prior payments by the Lessee to the Beneficiary pursuant to this subsection (b) in respect of a Loss, less (y) the amount of all prior payments by the Beneficiary to the Lessee hereunder. The amount payable to the Beneficiary

pursuant to this paragraph shall be paid within 30 days after receipt of a written demand therefor from the Beneficiary (but not prior to the earlier of (i) the filing of a return or the acceptance of an audit report or closing agreement in which such Loss is reflected and (ii) the payment of additional tax which becomes due as the result of ⁽ⁱⁱⁱ⁾ ~~the Loss and~~ ~~in the case of amounts which are being contested in accordance with subsection (d), not prior to the time provided in such subsection (d)), accompanied by a written statement describing in reasonable detail such Loss and the computation of the amount so payable. Any payment due to the Lessee from the Beneficiary pursuant to this paragraph shall be paid within 30 days after the Beneficiary realizes any such savings in his income taxes or additional tax benefits, as the case may be.~~

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

- (i) a voluntary transfer or other voluntary disposition by the Lessor of any interest in the Equipment, or a voluntary transfer or other

voluntary disposition by the Beneficiary of part or all of its interest in the trust estate under the Trust Agreement (A) unless, in each case, an Event of Default shall have occurred and be continuing;

(ii) the failure of the Beneficiary to claim the Investment Credit, the ADR Deductions or the Interest Deduction;

(iii) the failure of the Beneficiary to have sufficient liability for Federal income tax against which to credit such Investment Credit or to have sufficient income to benefit from the ADR Deduction or the Interest Deduction as the case may be;

(iv) a Casualty Occurrence pursuant to § 7 if the Lessee shall have paid the Casualty Value;

(v) any other acts or omissions of the Beneficiary or the Lessor; and

(vi) changes in law which do not take effect in 1977.

(c) Indemnity for Improvements and Deposits. If at any time the Beneficiary is required by the Internal Revenue Service to include in its gross income an amount in

respect of any improvement or addition to the Equipment or action required to be taken by Lessee pursuant to the Maintenance Agreement referred to in Section 7 ("Capital Expenditures") or an amount in respect of any funds deposited as Escrow Funds under and as defined in the Guaranty (the "Deposits"), then the Lessee shall pay to the Beneficiary, as an indemnity, such amount or amounts which, after deduction of all taxes required to be paid by the Beneficiary in respect of the receipt of such amounts under the laws of any Federal, state or local taxing authority, shall be equal to the sum of the aggregate additional Federal, state or local income taxes payable by the Beneficiary from time to time as a result of such Capital Expenditures or such Deposits plus the amount of any interest, penalties or additions to tax payable as a result of any such Capital Expenditures or such Deposits. If as a result of any such Capital Expenditures or such Deposits the aggregate Federal, state or local income taxes paid by the Beneficiary for any taxable year shall be less than the amount of such taxes which would have been payable by the Beneficiary had no such Capital Expenditures or such Deposits been made,

then the Beneficiary shall pay the Lessee the amount of such savings in taxes plus any additional tax benefits realized by the Beneficiary as the result of such payment; provided, however, that the Beneficiary shall not be obligated to make any payment pursuant to this sentence to the extent that the amount of such payment would exceed (x) the amount of all prior payments by the Lessee pursuant to this subsection (c) in respect of any Capital Expenditures or Deposits less (y) the amount of all prior payments by the Beneficiary hereunder. The amount payable to the Beneficiary pursuant to this subsection (c) shall be paid within thirty days after receipt of the written demand therefor from the Beneficiary (but not prior to the earlier of (i) the filing of any return or the acceptance of an audit report or closing agreement in which such inclusion is reflected or (ii) payment of the additional Federal, state or local income tax which becomes due as a result of said inclusion and in the case of amounts which are being contested in accordance with subsection (d), not prior to the time provided in such subsection (d)), accompanied by a written statement describing in reasonable detail such inclusion and the computation of the amount so payable. Any payment due to the Lessee pursuant to subsection (d) shall be paid within thirty days after the Beneficiary realizes any such

(iii) EAK
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savings in its income taxes or additional tax benefits, as the case may be.

(d) Contests.

(1) If the Internal Revenue Service or a state or local taxing authority shall propose an adjustment in the Federal, state or local income taxes of the Beneficiary for which the Lessee would be required to indemnify such Beneficiary pursuant to subsection (b), and in the opinion of Davis Polk & Wardwell:

(a) such proposed adjustment would be contrary to the conclusions reached in the tax opinion delivered to the Beneficiary upon the execution of this Lease; and

(b) there is a reasonable ground to oppose such proposed adjustment;

then the Beneficiary shall contest such proposed adjustment to the extent timely requested by the Lessee in writing; provided, however, that if such opinion is negative with respect to (a) or (b), or both, and if the Lessee so requests, then the Beneficiary shall engage at the Lessee's expense other independent tax counsel (acceptable to the Lessee) whose opinion as to (a) and (b) above shall be requested and whose opinion thereon shall be binding on the Beneficiary and the Lessee; and provided, further, that the Beneficiary shall determine in its sole discretion the nature of all

action to be taken to contest such proposed adjustment including: (i) whether any action to contest such proposed adjustment shall initially be by way of judicial or administrative proceedings, or both, (ii) whether any such proposed adjustment shall be contested by resisting payment thereof or by paying the same and seeking a refund thereof, and (iii) if the Beneficiary shall undertake judicial action with respect to such proposed adjustment, the court or other judicial body before which such action shall be commenced.

(2) If the Internal Revenue Service or a state or local taxing authority shall propose an adjustment in the Federal, state or local income taxes of the Lessee for which the Lessee would be required to indemnify the Beneficiary pursuant to subsection (b) but which is not subject to the provisions of paragraph (1) above or pursuant to subsection (c); then upon receipt of a timely request from the Lessee to do so the Beneficiary shall in its sole discretion decide whether and in what manner to contest the validity of such proposed adjustment; provided, however, that the Lessee shall not be relieved from its obligation to indemnify the Beneficiary by virtue of the Beneficiary's failure to take any action to contest the validity of a proposed adjustment which is described in this paragraph.

(3) The Beneficiary shall not be required to take any action pursuant to this subsection (d) unless and until the Lessee shall have agreed to indemnify the Beneficiary in a manner reasonably satisfactory to the Beneficiary for any liability or loss which the Beneficiary may incur as a result of contesting the validity of any proposed adjustment and shall have agreed to pay the Beneficiary on demand all costs and expenses which the Beneficiary may incur in connection with contesting such proposed adjustment (including fees and disbursements of counsel). If any contest involves paying the tax and suing for a refund, the Lessee must also advance funds for payment of the tax on an interest-free basis.

(e) Definition of Beneficiary. For purposes of this § 6, the term "Beneficiary" shall include any member of an affiliated group, within the meaning of section 1504 of the Code, of which the Beneficiary is a member if consolidated returns are filed for such affiliated group for Federal income tax purposes.

(f) Survival of Indemnities. The liability of the Lessee to pay any Taxes or to make indemnification payments pursuant to this § 6 shall, notwithstanding any expiration or termination of this Lease, continue to exist until such Taxes are paid or such indemnity payments are made by the Lessee. All indemnity payments hereunder shall

be made directly to the party entitled to indemnification.

§ 7. Maintenance; Casualty Occurrences; Insurance.

The Lessee at its own expense will maintain and service each Unit and comply with a preventive maintenance schedule consistent with the respective Builders' preventive maintenance schedules and which will include testing, repair and overhaul of each Unit so that each Unit will remain in as good operating condition as when delivered (ordinary wear and tear excepted), in compliance with any and all applicable laws and regulations, and desirable to and suitable for immediate purchase or lease and use by a Class I line-haul Railroad (not then or prospectively a debtor in any insolvency or reorganization proceedings) in the event of resale or re-lease upon default by the Lessee. In no event shall any Unit be maintained or scheduled for maintenance on a basis less frequent than the maintenance or maintenance scheduling basis currently employed by the Lessee for similar equipment. No later than the last business day of February and August of each year, commencing in February 1978, the Lessee will furnish the Lessor with a certificate (to be designated "Maintenance Certificate A") of a qualified engineer satisfactory to the Lessor (i) setting forth the identification numbers of all Units which have been maintained in compliance with this § 7 and certifying that all

such Units have been so maintained, and (ii) setting forth the identification numbers of all Units which have not been so maintained and setting forth the estimated cost required with respect to each such Unit in order to comply with the maintenance requirements of this § 7 as to each such Unit. No later than the last business day in April and October of each year, commencing in April 1978, the Lessee will furnish the Lessor with a certificate (to be designated "Maintenance Certificate B") of a qualified engineer satisfactory to the Lessor setting forth the number of each Unit (the identification number of which has been specified pursuant to clause (ii) of the preceding sentence in Maintenance Certificate A) (i) which has been maintained in compliance with the requirements of this § 7 as of the date of delivery of such certificate and certifying that all such Units have been so maintained, and (ii) which has not been so maintained. The Lessee and the Lessor have entered into a Maintenance Agreement (the "Maintenance Agreement"), dated as of the date hereof, with respect to the obligations of the Lessee in the event that the Lessee does not comply with the provisions of this § 7.

The Lessee, at its own cost and expense, may from time to time make such other additions, modifications and improvements to the Units during the term of this Lease as are readily removable without causing material damage to the Units (and do not adversely and materially affect the value of the Units). The additions, modifications and improvements made by the Lessee under the preceding sentence shall be owned by the Lessee, except to the extent such additions, modifications or improvements are made in order to comply with the following sentence. Any and all parts installed on and additions and replacements made to any Unit (i) which are not readily removable without causing material damage to such Unit and were installed or were added to such Unit in contravention of its agreements contained hereinabove, (ii) the cost of which is included in the Purchase Price of such Unit, (iii) in the course of ordinary maintenance of the Units or (iv) which are required for the operation or use of such Unit by the interchange rules of the Association of American Railroads or by the regulations of the Interstate Commerce Commission, the United States Department of Transportation or any other applicable regulatory body, shall constitute accessions to such Unit

and full ownership thereof free from any lien, charge, security interest or encumbrance (except for those created by the Security Documentation) shall immediately be vested in the Lessor and the Vendor as their respective interests may appear in the Unit itself.

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, or if there is a default under Section 2 of the Maintenance Agreement (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 (but in any event within 30 days after such Casualty Occurrence) and fully notify the Lessor, the Beneficiary and the Vendor with respect thereto. On the earlier of the sixtieth day following the date of such notice or the rental payment date next succeeding the date of such notice the Lessee shall pay to the Lessor an amount equal to the rental payment or payments in respect of such Unit accrued to or

due and payable on such date, as the case may be, plus an amount equal to the Casualty Value (as hereinafter defined) of such Unit as of the rental payment date next preceding the date of the Casualty Occurrence. 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 in respect of the Purchase Price of such Unit by the Builder to the Vendor in respect thereof under the Security Documentation.

The Casualty Value of each Unit as of any rental payment date shall be an amount equal to that percentage of the Purchase Price of such Unit as is set forth in Schedule B hereto opposite such date reduced by any Investment Credit to the extent such Investment Credit is included in such percentage and is not subject to recapture.

Whenever any Unit shall suffer a Casualty Occurrence after the final payment of rent in respect thereof is due pursuant to § 3 or § 13 hereof and before such Unit shall have been returned in the manner provided in § 14 hereof, the Lessee shall promptly (as provided above) 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 (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 with the giving

of notice or the 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 casualty insurance and public liability insurance in respect of the Units at the time subject hereto, against such risks, in such amounts and on such terms and conditions as are satisfactory to the Lessor, and, in any event, comparable in amounts and against risks customarily insured against by the Lessee in respect of similar equipment owned by it but in no event shall such coverage be for amounts or against risks less than the prudent industry standard for Class I line-haul railroads, nor shall the sum of such property insurance and deductibles at

any time be for an amount less than the Casualty Value at such time. If the Casualty Value at any given time is less than what the deductible would be under the foregoing standard then no insurance need be carried. All policies with respect to such insurance shall name the Lessor, the Beneficiary and the Vendor as additional named insureds and loss payees, as their interests may appear, shall provide for at least 30 days' prior written notice by the insurance carrier and the Lessee to the Lessor, the Beneficiary and the Vendor in the event of cancellation, expiration or amendment, shall include waivers by the insurer of all claims for premiums against the Lessor, the Beneficiary and the Vendor and shall provide that losses are payable notwithstanding any act of negligence of the Lessee, the Lessor, the Beneficiary or the Vendor, more hazardous use or occupation of the Equipment than that permitted by such policies, any breach or violation by the Lessee, the Lessor, the Beneficiary or the Vendor of any warranties, declarations, conditions or other provisions contained in such policies or foreclosure, notice of sale or other proceedings in respect of the Equipment or any change in the title to or ownership of any of the Equipment. Each such insurance policy shall expressly provide that all of the provisions thereof except the limits of liability (which shall be applicable to all insureds as a group) and liability for premiums (which

shall be solely a liability of the Lessee) shall operate in the same manner as if they were a separate policy covering each insured and shall be primary without right of contribution from any insurance carried by the Lessor, the Beneficiary or the Vendor. The Lessee shall, not later than June 15 of each year, commencing June 15, 1977, furnish to the Lessor and the Vendor a certificate of an independent insurance broker acceptable to the Lessor evidencing the maintenance of the insurance required hereunder and shall furnish certificates evidencing renewal 15 days prior to the expiration date of such policy or policies. In the event that the Lessee shall fail to maintain insurance as herein provided, the Vendor or the Beneficiary may at its option on five business days' prior written notice to Lessee provide such insurance (giving the Lessee prompt written notice thereof) and, in such event, the Lessee shall, upon demand from time to time, reimburse the Vendor or the Beneficiary, as the case may be, for the cost thereof together with interest on the amount of such cost from the date by payment thereof at an annual rate of 10-1/2%. 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 and Notifications. On or before April 30 in each year, commencing with the calendar year 1978, the Lessee will furnish to the Lessor and the Vendor (i) a certificate signed by the Chief Executive Officer, Chief Operating Officer or Vice President of Operations or the Chief Mechanical Officer of the Lessee (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, (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;

and (ii) a certificate signed by the President or the senior financial officer, any Vice President, or any Assistant Treasurer of the Lessee stating that he has reviewed the activities of the Lessee during such year and that to the best of his knowledge the Lessee during such year has kept, observed, performed and fulfilled each and every covenant, obligation and condition contained in this Lease, or if an Event of Default (as hereinafter defined) shall exist or if an event has occurred and is continuing which, with the giving of notice or the passage of time or both, would constitute an Event of Default, specifying such Event of Default and all such events and the nature and status thereof. 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.

In addition to the foregoing, the Lessee shall promptly notify the Lessor and the Vendor of any occurrence of an Event of Default or an event which with the giving of notice or the passage of time or both, would constitute an Event of Default, specifying such Event of Default and all such events and the nature and status thereof.

§ 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, subleasing, 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 United States Department of Transportation, the Interstate Commerce Commission and any other legislative, executive,

administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units, and in the event that, prior to the expiration of 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, the Beneficiary or the Vendor, adversely affect the property or rights of the Lessor, the Beneficiary 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, the Beneficiary 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, this Lease, or any sublease entered into pursuant to § 12 hereof, the ownership of any Unit, manufacture, the ordering, acquisition, use, operation, condition, purchase, sublease, delivery, non-delivery, acceptance, rejection, storage or return of any Unit or any accident in connection with the operation, use, condition, possession, storage, sale or other disposition or return of any Unit resulting in damage to property or injury or death to any person, except as otherwise provided in § 14 hereof, 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 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, 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 or under any successor statute, 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;

(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 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; or

(F) Section 77(j) of the Bankruptcy Act (or any successor provision thereto providing similar protection and benefits for creditors of railroads) is repealed, not carried forward in subsequent legislation or otherwise unavailable to the Lessor or the

Vendor, and there shall then exist or thereafter be a default under, or an event shall occur or shall have occurred which, with the giving of notice or the lapse of time or both, would become a default under any agreement or instrument then or thereafter binding upon the Lessee or to which it then or thereafter becomes a party or to which any of its property is or thereafter becomes subject,

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

(a) in the case of any Event of Default other than pursuant to paragraph (F) above, 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) in the case of any Event of Default, 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 an 8.75% 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 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 any 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 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 any 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 (such rights being fundamental to the willingness of the Lessor to enter into the Lease) provided for in § 77(j) of the Bankruptcy Act (as the same is presently in force or as the substance thereof may hereafter be re-enacted) 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.

No failure by the Lessor to exercise, and no delay by the Lessor in exercising, any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege by the Lessor preclude any other or further exercise thereof, or the exercise of any other right, power or privilege.

§ 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 condition required by § 7 hereof. 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 or which may have possessions thereof to return the Unit or Units) and at the usual speed place such Units upon storage tracks of the Lessee or any of its affiliates as the Lessor reasonably may designate;

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

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

The assembling, delivery, 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 0.023973% 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 successors and assigns.

So long as no Event of Default exists hereunder, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease and, with the prior written consent of the Lessor and the Vendor, which consent shall not be unreasonably withheld, 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 railroad lines 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

railroad lines 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 Lessee shall not sublease or permit the sublease or use of any Unit to service involving location or use of such Unit predominantly outside the United States of America during any twelve-month period or to service on behalf of any person the nature of whom would cause a loss under § 6(b) 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) 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 and Purchase Options; Takeout.

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, (i) 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 one or 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 December 15, 2002, at a Fair Market Rental (as defined below) payable in semiannual payments on June 15 and December 15 in each year of such extended term; or (ii) after the first

additional five-year rental period, as provided above, purchase all but not fewer than all of the Units then subject to this Lease, at a Fair Market Purchase Price (as defined below) payable at the end of such first additional rental period.

Fair Market Rental and Fair Market Purchase Price shall be determined on the basis of, and shall be equal in amount to, the cash rental for a five-year period or purchase price, as the case may be, which would obtain in an arm's-length transaction between an informed and willing lessee or purchaser and an informed and willing lessor or seller, as the case may be, under no compulsion to lease or sell and, in such determination, costs of removal from the location of current use shall not be a deduction from such rental or price. If, after 60 days from the giving of notice by the Lessee of the Lessee's election to extend the term of this Lease or to exercise its purchase option, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Rental or Fair Market Purchase Price of the Units, such rental or purchase price shall be determined based upon the opinion of an independent expert appraiser chosen by and mutually acceptable to, both the Lessee and the Lessor, and the Lessor and the Lessee agree to be bound by such determination.

Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the parties hereto shall use their best efforts to cause investors, through an investor trust established for such

purpose, to provide funds sufficient to make all payments in excess of 33% of the purchase price of additional Units of equipment which the Lessor wishes to acquire and lease to the Lessee pursuant to this Lease, as it may be amended and restated in connection with the foregoing, and to acquire (the "Takeout") from the Vendor all of its right, title and interest in and to the Security Documentation, as it may be amended and restated, in consideration of the payment by such trust, from monies provided by the investors, to the Vendor of an amount equal to the Conditional Sale Indebtedness (as defined in the Security Documentation) in respect of the Equipment made subject to the Security Documentation.

In the event that the parties hereto are unable to execute and deliver documentation binding on investors effecting the Takeout on terms and conditions satisfactory to such parties and such investors prior to June 16, 1977 or such later date as may be agreed upon by the Lessee and the Beneficiary (the "Option Date"), then the Lessee shall have the option exercisable in its sole discretion to purchase on the Option Date all but not less than all of the Equipment, for an amount equal to the greater of (i) the Fair Market Value of the Equipment on such date, determined as provided above, or (ii) the aggregate Purchase Price of the Equipment under and as defined in the Security Documentation plus, in each such case, all

fees and out-of-pocket expenses of the Lessor and the transaction expenses and reasonable related out-of-pocket expenses of the Beneficiary incurred in connection with the acquisition of the Equipment by the Lessor, this Lease, the Security Documentation and all agreements and transactions contemplated hereby and thereby. Such purchase price, and an amount equal to the rental for the Equipment for the period to and including the date of such purchase at the rate in effect for such period under, and determined in accordance with the provisions of, § 3 hereof, shall be payable on the Option Date.

Upon payment of the purchase price of the Equipment, the Lessee shall have no further liability or obligation of any kind whatsoever (except indemnities for events arising or relating to the period before such purchase other than indemnities under § 6(b) and (c)) under or pertaining to this Lease or other documents and agreements pertaining hereto, and the Lessor shall forthwith 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 created by 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 sixty 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 sixty-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 (EXCEPT FOR THE INSURANCE REQUIRED BY § 7 HEREOF WHICH SHALL BE PROVIDED AT LESSOR'S EXPENSE);

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 or strict liability 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 0.023973% 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 or the assignment thereof in Canada. This Lease and the Security Documentation shall be filed and recorded with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Unit and shall be timely deposited with the Registrar General of Canada pursuant to Section 86 of the Railway Act of Canada and provision shall be made for the timely publication of notice of such deposit in The Canada Gazette.

§ 16. 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 (or such lesser amount as may be legally enforceable) of the overdue rentals and other obligations for the period commencing on the second day following the date on which payment of such rentals and other obligations became due and ending on the date of the payment in full thereof.

Interest hereunder shall be determined on the basis of a 360-day year and the actual number of days elapsed.

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

(a) if to the Lessor, at United States Trust Company of New York, 45 Wall Street, New York, N.Y. 10015, Attention of J. Sinclair Armstrong; 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 and to the Beneficiary at 37 Wall Street, New York, New York 10005, Attention: Lease Administration.

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

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.

§ 19. Immunities; Satisfaction of Undertakings.

It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, undertakings, and agreements herein made on the part of the Lessor are each and every one of them made and intended not as personal representations, undertakings and agreements by United States Trust Company of New York or for the purpose or with the intention of binding the said bank personally but are made and intended for the purpose of binding only the Estate (as such term is used in the Trust Agreement) under the Trust Agreement, and this Agreement is executed and delivered by the said bank solely in the exercise of the powers expressly conferred upon the said bank as trustee under the Trust Agreement; and that no personal liability or personal responsibility is assumed by said bank or the Beneficiary (except as provided in the Trust Agreement) or on account of any

representation, undertaking or agreement of the Lessor or the Beneficiary, either expressed or implied, all such personal liability, if any, being expressly waived and released by the Lessee and by all persons claiming by, through or under the Lessee; provided, however, that the Lessee or any person claiming by, through or under it, making claim hereunder, may look to said Estate for satisfaction of the same.

§ 20. Governmental Guarantees. In the event the United States of America or any political subdivision thereof or any agency or instrumentality of any of the foregoing shall use or permit to be used its credit directly, or indirectly, to pay, guarantee or otherwise support the Lessee's obligation to pay the purchase price of or rent for or to so support any other financing arrangements for the acquisition of any rolling stock used by the Lessee (other than any such support obtained prior to the first use by the Lessee of and in order to induce any person to provide any such rolling stock) Lessee shall cause to be provided for the benefit of the Lessor and its successors and assigns a guaranty of or other comparable commitment with respect to the Lessee's obligations under this Lease from the same entity whose credit supports such other financing arrangements, such guaranty or commitment to be provided at the same time as such other rolling stock financing arrangement becomes entitled to such

protection, so that the Lessor shall at all times have the benefit of the most favorable form of governmental support for financing of rolling stock used by Lessee as is available to any other person with respect to rolling stock used by Lessee subject to the limitations set forth above.

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

§ 22. Governing Law. The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of New York; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and by Section 77(j) of the Bankruptcy Act (as presently in force, as amended, or as the substance thereof may hereafter be re-enacted).

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



Richard T. Fox
Vice President & Treasurer

UNITED STATES TRUST COMPANY
OF NEW YORK, as Trustee

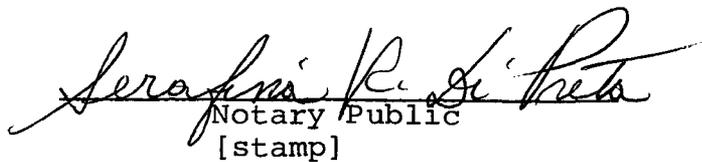
by



Vice ~~President~~ CHAIRMAN

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

On this 1st day of May 1977, before me personally appeared Richard T. Fox, to me personally known, who, being by me duly sworn, says that he is Vice President & Treasurer of CONSOLIDATED RAIL CORPORATION, that said instrument was signed on behalf of said corporation by due corporate authority and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.


Notary Public
[stamp]

SERAFINA R. DI PRETA
Notary Public, State of New York
No. 41-0967225 Queens County
Cert. filed in New York County
Term Expires March 30, 1979

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

On this 1st day of May 1977, before me personally appeared EDWIN A. HEARD, to me personally known, who, being by me duly sworn, says that he is Vice CHAIRMAN of UNITED STATES TRUST COMPANY OF NEW YORK, that said instrument was signed on behalf of said corporation by due corporate authority and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.


Notary Public
[stamp]

SERAFINA R. DI PRETA
Notary Public, State of New York
No. 41-0967225 Queens County
Cert. filed in New York County
Term Expires March 30, 1979

SCHEDULE A TO LEASE

<u>Type</u>	<u>Builder</u>	<u>Quantity</u>	<u>Lessee's Identification Numbers (Both Inclusive)</u>
3,000 h.p. Model U23-B diesel- electric locomotive	General Electric Company	10	2789-2798
3,000 h.p. Model GP40-2 diesel-electric locomotive	General Motors Corporation (Electro-Motive Division)	33	3280-3312
2,000 h.p. Model GP38-2 diesel-electric locomotive	General Motors Corporation (Electro-Motive Division)	10	8163-8172
		—	
	Total Units	53	

Schedule B
Casualty Value

<u>RENTAL PAYMENT DATE</u>	<u>PERCENTAGE OF PURCHASE PRICE</u>
Prior to December 15, 1977	103.1725
December 15, 1977	107.6826
June 15, 1978	108.6836
December 15, 1978	109.0393
June 15, 1979	109.0426
December 15, 1979	109.1103
June 15, 1980	109.0135
December 15, 1980	99.8947
June 15, 1981	99.1069
December 15, 1981	98.0814
June 15, 1982	96.7943
December 15, 1982	86.4730
June 15, 1983	84.7167
December 15, 1983	82.7574
June 15, 1984	80.5635
December 15, 1984	69.3720
June 15, 1985	66.7741
December 15, 1985	64.0118
June 15, 1986	61.0454
December 15, 1986	57.9353
June 15, 1987	54.6764
December 15, 1987	51.5290
June 15, 1988	48.3100
December 15, 1988	45.0399
June 15, 1989	41.6774
December 15, 1989	38.2580
June 15, 1990	34.7432
December 15, 1990	31.1689
June 15, 1991	27.4964
December 15, 1991	23.7616
June 15, 1992	20.0000

EXHIBIT 1A

CERTIFICATE OF ACCEPTANCE

The undersigned, the duly authorized representative of Consolidated Rail Corporation, (the "Lessee"), hereby certifies with respect to the Diesel-Electric Locomotives, manufactured by General Electric Company, (the "Manufacturer"), bearing the identifying reporting marks and numbered as follows:

pursuant to the Interim Conditional Sale Agreement, dated as of April 15, 1977, between the Manufacturer and United States Trust Company of New York (the "Vendee-Lessor") (the "Conditional Sale Agreement") and the Interim Lease of Railroad Equipment, dated as of April 15, 1977, between the Vendee-Lessor and the Lessee (the "Lease"):

1. that said locomotives have been inspected and accepted on behalf of Vendee-Lessor under the Conditional Sale Agreement and on behalf of the Lessee under the Lease at Erie, Pennsylvania.

2. that there was plainly, distinctly, and conspicuously placed upon each side of each such locomotive at the time of its delivery and acceptance a legend bearing the following words in letters not less than one inch in height:

"OWNERSHIP SUBJECT TO A CONDITIONAL
SALE AGREEMENT FILED UNDER THE INTER-
STATE COMMERCE ACT, SECTION 20c"

and that each such locomotive was otherwise marked in conformity with the requirements of § 5 of the Lease. Delivery of this Certificate to the Manufacturer by the Lessee on behalf of the Vendee-Lessor shall evidence the passage to J. P. Morgan Interfunding Corp. (the "Assignee") as assignee of the

CERTIFICATE OF ACCEPTANCE

The undersigned, the duly authorized representative of Consolidated Rail Corporation, (the "Lessee"), hereby certifies with respect to the Diesel-Electric Locomotives, manufactured by General Motors Corporation (Electro-Motive Division), (the "Manufacturer"), bearing the identifying reporting marks and numbered as follows:

pursuant to the Interim Conditional Sale Agreement, dated as of April 15, 1977, between the Manufacturer and United States Trust Company of New York (the "Vendee-Lessor") (the "Conditional Sale Agreement") and the Interim Lease of Railroad Equipment, dated as of April 15, 1977, between the Vendee-Lessor and the Lessee (the "Lease"):

1. that said locomotives have been inspected and accepted on behalf of the Vendee-Lessor under the Conditional Sale Agreement and on behalf of the Lessee under the Lease at LaGrange, Illinois.

2. that there was plainly, distinctly, and conspicuously placed upon each side of each such locomotive at the time of its delivery and acceptance a legend bearing the following words in letters not less than one inch in height:

"OWNERSHIP SUBJECT TO A CONDITIONAL
SALE AGREEMENT FILED UNDER THE
INTERSTATE COMMERCE ACT, SECTION 20c"

and that each such locomotive was otherwise marked in conformity with the requirements of § 5 of the Lease. Delivery of this Certificate to the Manufacturer by the Lessee on behalf of the Vendee-Lessor shall evidence the passage to J. P. Morgan Interfunding Corp. (the "Assignee") as assignee of the