

CONRAIL

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ICC Washington, D.  
September 1, 1977

RECORDATION NO. 8957 Filed & Recorded

SEP 1 1977 - 1 02 PM

Robert L. Oswald, Secretary  
Interstate Commerce Commission  
12th & Constitution Ave. N.W.  
Washington, D. C. 20423

INTERSTATE COMMERCE COMMISSION

Dear Mr. Oswald:

Pursuant to Section 20c of the Interstate Commerce Act and as provided by Volume 49 of the Code of Federal Regulations Sections 1116.1 through 1116.4, we present the following Lease of Railroad Equipment as of September 1, 1977, between Consolidated Rail Corporation and General Electric Credit Corporation for recordation.

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

Lessor General Electric Credit Corp.  
P. O. Box 8300  
Stamford, Connecticut 06904

Lessee Consolidated Rail Corporation  
1310 Six Penn Center Plaza  
Philadelphia, PA. 19104

The equipment covered by the document is:

Type	AAR Mechanical Designation	No. of Units	Marked* Conrail	Numbers (Inclusive) 2971-2974
3600 HP Model U36-B diesel- electric locomotive	BB	4		

\*Each unit will have marked thereon the following legend:

"General Electric Credit Corporation, Owner and Lessor"

*Walter C. Caskey*

This document has not been previously recorded with the Interstate Commerce Commission.

Our check in the amount of \$50.00 is enclosed to cover the recordation fee.

After retaining a counterpart original of the document 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 black ink, appearing to read "J. T. Rowan", written over a horizontal line.

Joseph T. Rowan  
Assistant Corporate Counsel

JTR:smg

Enclosure

**Interstate Commerce Commission**  
**Washington, D.C. 20423**

9/1/77

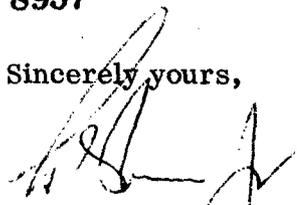
OFFICE OF THE SECRETARY

**Joseph T. Rowan**  
**Assistant Corporate Counsel**  
**Consolidated Rail Corp.**  
**Six Penn Center Plaza Rm. 1138**  
**Phila. Pa. 19104**

Dear **Sir:**

The enclosed document(s) was recorded pursuant to the provisions of Section 20(c) of the Interstate Commerce Act, 49 U.S.C. 20(c), on **9/1/77** at **1:05pm**, and assigned recordation number(s) **8957**

Sincerely yours,

  
**H.G. Homme, Jr.**  
**Acting Secretary**

Enclosure(s)

SE-30-T  
(6/77)

RECORDATION NO. 8957 Filed & Recorded

SEP 1 1977 -1 52 PM

INTERSTATE COMMERCE COMMISSION

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LEASE OF RAILROAD EQUIPMENT

Dated as of September 1, 1977

between

CONSOLIDATED RAIL CORPORATION

and

GENERAL ELECTRIC CREDIT CORPORATION

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LEASE OF RAILROAD EQUIPMENT dated as of September 1, 1977, between CONSOLIDATED RAIL CORPORATION, a Pennsylvania corporation (the "Lessee"), and GENERAL ELECTRIC CREDIT CORPORATION, a New York corporation (the "Lessor").

WHEREAS, General Electric Company (the "Builder") and the Lessee have entered into a Lease of Railroad Equipment (the "Original Lease") dated as of September 15, 1976 covering the lease of certain units of railroad equipment described in Annex A hereto (collectively, the "Equipment" and severally, the "Units");

WHEREAS, the Builder has transferred to the Lessor all of the Builder's right, title and interest in and to the Equipment;

WHEREAS, the Original Lease, as extended, expired on August 31, 1977;

WHEREAS, the Lessee desires to rent the Equipment 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 Equipment to the Lessee upon the following terms and conditions:

Section 1. Net Lease. This Lease is a net lease.

The Lessee's obligation to pay all rentals and other amounts hereunder shall be absolute and unconditional and, except as herein specifically provided, the Lessee shall not be entitled to any abatement of rent, reduction thereof or set-off 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 against the Builder or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency of or 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.

Section 2. Delivery and Acceptance of Units. The Lessee confirms that it has heretofore received, inspected, approved and accepted the delivery of the Units and that such Units are in good order and operating condition and comply with all applicable terms and conditions of this Lease and with all applicable United States Department of Transportation requirements and specifications and the current Interchange Rules, and supplements thereto, of the Mechanical Division, the Association of American Railroads, applicable thereto. Lessee represents and warrants to the Lessor solely that the Equipment was not put into service or use by the Lessee or any corporation controlled by it, in control of it or under common control with it prior to

October 8, 1976 with respect to three Units and October 20, 1976 with respect to the remaining Unit.

Section 3. Rentals. The Lessee agrees to pay to the Lessor, as rental for the Units subject to this Lease, 56 consecutive payments payable on November 30, 1977, and on each February 28, May 31, August 31 and November 30 thereafter (the "Payment Dates"). The rental payment with respect to each Unit shall be in an amount equal to \$418,800 (the "Purchase Price" for such Unit) multiplied by the quarterly rent factor (the "Quarterly Rent Factor") set forth in the table below opposite the "Money Cost Index" with respect to the Payment Date on which such installment is due. If on any Payment Date the lease rate opposite the "Money Cost Index" with respect to such Payment Date (the "Lease Rate") shall be in excess of 8.5%, the Lessee, at its option, either (i) shall pay the rental payment calculated in accordance with the preceding sentence or (ii) shall pay that portion of the rental calculated with the Quarterly Rent Factor of 3.0712%, and shall accrue on its books as a liability owing to the Lessor the difference between the rental which would be required to be paid by the preceding sentence on such Payment Date and the rental calculated with a Quarterly Rent Factor of 3.0712% (such sum, and the aggregate amount of all other such sums not repaid as provided below, and interest on such sums calculated at the rate of 6% per annum, com-

pounded quarterly, being referred to as the "Deferred Rent"). If on any Payment Date the Lease Rate is less than 8.5% and the Lessee owes to the Lessor any Deferred Rent, the Lessee shall pay to the Lessor as additional rent the lesser of (a) the Deferred Rent then outstanding and (b) the difference of the rental calculated with a Quarterly Rent Factor of 3.0712% and the rental which would be required to be paid by the second sentence of this paragraph and such additional rent shall be deducted from the Deferred Rent. On the termination of the original term of this Agreement, the Lessee shall pay the Lessor the Deferred Rent, if any, outstanding. If the "Money Cost Index" with respect to any Payment Date is not one of the "Money Cost Indexes" set forth in the table below, the Lease Rate and the Quarterly Rent Factor shall be calculated by straight-line interpolation on the basis of the table set forth below.

<u>Money Cost Index</u>	<u>Lease Rate</u>	<u>Quarterly Rent Factor</u>
5 %	5.0380%	2.4997%
5 1/2%	5.3912%	2.5550%
6 1/2%	6.0821%	2.6654%
7 1/2%	6.7689%	2.7775%
8 1/2%	7.4651%	2.8937%
9 1/2%	8.1612%	3.0124%
10 1/2%	8.7952%	3.1225%
11 1/2%	9.4686%	3.2417%
12 1/2%	10.1417%	3.3629%
13 1/2%	10.8148%	3.4863%
14 1/2%	11.4878%	3.6117%
15 %	11.8243%	3.6751%

"Money Cost Index" means the higher of the Prime Rate and the Commercial Paper Rate. The Money Cost Index

with respect to any installment of rent shall be determined on the basis of the Prime Rate in effect at the opening of business on, and the Commercial Paper Rate for the week ending on the Wednesday next preceding, the Friday which occurs 21 days prior to the Payment Date on which such installment is payable, or, if the day which is 21 days prior to such date is not a Friday, the Friday immediately preceding such day (or, in the case of the Prime Rate, if any such Friday is not a business day, on the business day immediately preceding such Friday). If in any case the Money Cost Index so determined shall be more than 15% or less than 5%, the Money Cost Index in such case shall be 15% or 5%, respectively. If in any case it shall not be practicable for any reason to determine the Money Cost Index as provided herein, Lessor may specify a Money Cost Index for such case, which will in its reasonable judgment serve to carry out as nearly as practicable the intent and purposes of this Lease.

"Prime Rate", as of any time, means the higher of the interest rates of Bankers Trust Company and The Chase Manhattan Bank (National Association) in effect at such time for short-term commercial loans to their most substantial and credit-worthy borrowers; provided, however, that if for any reason either such bank shall not have such a rate in effect at such time, the term "Prime Rate" shall

mean such rate of the other such bank in effect at such time; and provided further that if for any reason neither such bank shall have such a rate in effect at such time, such term shall mean the average of the respective rates in effect at such time at any other two member banks of the New York Clearing House Association, designated by Lessor, for short-term commercial loans to their most substantial and credit-worthy borrowers.

"Commercial Paper Rate" for any week means the average interest rate during such week for 90 to 119 day dealer-placed prime commercial paper as such average shall be determined and made available by the Federal Reserve Bank of New York (now published each Friday in the "Key Interest Rates" section of the Federal Reserve statistics in The Wall Street Journal) or, if such Bank ceases to determine and make available such rate, such term shall mean the average of the average rates during such week for 90 to 119 day dealer-placed prime commercial paper as determined by Goldman, Sachs & Co. and A. G. Becker (or their respective successors).

At least 15 days prior to each Payment Date, Lessor shall give Lessee notice of the Quarterly Rent Factor applicable to the installment then due.

If any Payment Date 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, Hartford, Connecticut or in Philadelphia, Pennsylvania, are authorized or obligated to remain closed.

Rentals under this Agreement shall be determined on the basis of a 360-day year of twelve 30-day months.

Section 4. Term of Lease. The term of this Lease shall begin as of September 1, 1977 and, subject to the provisions of Sections 7, 10 and 13 hereof, shall terminate on August 31, 1991. 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.

Section 5. Identification Marks. Within ninety days from the date hereof, the Lessee will cause each Unit to be kept numbered with the identification number set forth in Schedule A hereto 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 name of the Lessor, followed by the words "Owner and Lessor", or other appropriate words designated by the Lessor. The Lessee will make appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Lessor's title to

such Unit and the rights of the Lessor under this Lease. The Lessee 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 Lessor and duly filed, recorded and deposited by the Lessee in all public offices where this Lease shall have been filed, recorded and deposited and (ii) the Lessee shall have furnished the Lessor an opinion of counsel to the effect that such statement has been so filed, recorded and deposited, that such filing, recordation and deposit will protect the Lessor's interest in such Units and that no other filing, recording, deposit or giving of notice with or to any other Federal, state or local government or agency thereof is necessary to protect the interests of the Lessor in such Units.

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.

Section 6. Tax Matters. (a) General Tax Indemnification. The Lessee assumes responsibility for and agrees to pay, protect, save, keep harmless and indemnify on an after-tax basis the Lessor and its successors and assigns against all taxes, fees, levies, imposts, duties, or withholdings of any nature whatsoever together with penalties, fines and interest thereon ("Taxes"), imposed on, incurred by or asserted against the Lessor, the Lessee or the Equipment in whole or in part on account of, or with respect to, this Lease 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 any Taxes imposed on or measured by any income, fees or compensation received by the Lessor. The Lessee shall pay all Taxes for which it assumes liability hereunder when such Taxes are due and will indemnify the Lessor to the extent required by this subsection (a) within ten days after receipt of a written request by the Lessor for indemnification

specifying the amount to be paid, the basis on which such amount was determined and the nature of the Taxes in question; provided, however, that if any Taxes are 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 Taxes or propose an increase in the liability of the Lessor for any such Taxes (such assertion or such proposed increase being hereinafter called a "Claim"), indemnification for which would be required hereunder, the Lessor will notify the Lessee within a reasonable time of such Claim in writing. If the Lessee delivers to the Lessor written notice of its desire to contest such Claim within 30 days after receipt of notice from the Lessor, such Claim will be contested in accordance with this paragraph. The Lessor 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. The Lessor will cooperate with any reasonable request made by the Lessee in connection therewith; provided, however, that the Lessor 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 Taxes in contemplation of a suit for refund and the Lessor shall not be required to take any action

pursuant to this paragraph unless and until the Lessee shall have agreed to indemnify the Lessor in a manner satisfactory to the Lessor for any liability or loss which the Lessor may incur as a result of contesting the validity of any Claim and shall have agreed to pay the Lessor on demand all costs and expenses which the Lessor 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 Taxes and sue for a refund, the Lessee will advance to the Lessor on an interest-free basis an amount which after the deduction of all taxes required to be paid by the Lessor upon the receipt of such amount shall be sufficient to pay the Taxes which are to be contested. Upon receipt by the Lessor of a refund of any Taxes paid by the Lessee pursuant to this paragraph, the Taxes and any interest paid with respect thereto shall be paid to the Lessee forthwith upon receipt by the Lessor.

The Lessee covenants and agrees to pay all amounts due under this subsection (a) free of any Taxes and to indemnify the Lessor against any Taxes imposed by reason of any payment made by the Lessee so that the Lessor shall receive an amount which, net of any Taxes or other charges required to be paid by the Lessor 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 Lessor, as the owner of the Equipment for Federal income tax purposes, 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 with respect to the entire Purchase Price of the Equipment computed on the basis of the double-declining balance method of depreciation authorized by section 167(b)(2) of the Code, changing to the sum-of-the-years digits method of depreciation authorized by section 167(b)(3) of the Code, when most beneficial to the Lessor and without obtaining the prior consent of the Commissioner of Internal Revenue, on an asset depreciation period of 12 years, and to a net salvage value of zero after the reduction permitted by section 167(f) of the Code (the "ADR Deductions"), and (2) investment credit pursuant to section 38 of the Code for "new section 38 property" equal to 10% of the Purchase Price of the Equipment (the "Investment Credit"). The Lessee makes no representations nor warranties with respect to the foregoing.

The Lessor and the Lessee hereby agree that, for

Federal income tax purposes, the Lessor will be the owner of the Equipment and that neither the Lessee 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.

The Lessee agrees to maintain sufficient records to verify the amount of income and deductions in respect of each Unit of Equipment allocable to sources within and without the United States and within domestic state and local taxing jurisdictions. The Lessee agrees to give the Lessor, within 90 days after request therefor, a written statement describing the amount of use of the Equipment within and without the United States and within domestic state and local taxing jurisdictions and specifying in reasonable detail the basis on which such allocations were made, if such information is required in connection with the preparation of the Lessor's domestic state and local tax returns or in connection with an audit by the Internal Revenue Service of the tax returns of the Lessor.

If, solely as a result of any act or failure to act of the Lessee, the Lessor shall not have, shall lose the right to claim (including a good faith determination based upon the

advice of tax counsel of General Electric Company that such claim is not allowable), shall suffer a disallowance of or be required to recapture all or any portion of the ADR Deductions or the Investment Credit, or if the Lessor, in computing its taxable income for Federal income tax purposes, shall not have, shall lose the right to claim (including a good faith determination based upon the advice of tax counsel of General Electric Company that such claim is not allowable), shall suffer a disallowance of or be required to recapture an amount of foreign tax credit that would have been allowable to the Lessor if the Lessor had not participated in the transactions contemplated by this Lease (the "Foreign Tax Credit"), or if the Lessor, in computing its taxable income for Federal income tax purposes, reasonably determines that any payment or deposit of funds (or any income thereon) by the Lessee pursuant to the Maintenance Agreement is includible in the Lessor's gross income prior to the time that such amount is actually payable to the Lessor (any such event being hereinafter called a "Loss"), then the Lessee shall pay to the Lessor such amount or, from time to time, such amounts which, after deduction of all taxes required to be paid by the Lessor in respect of the receipt of such amounts under the laws of any Federal, state, local or foreign government or taxing authority, shall be

equal to the sum of the aggregate additional Federal, state, local or foreign income taxes payable by the Lessor from time to time as a result of any such Loss. If, as a result of a Loss, the aggregate Federal income taxes paid by the Lessor for any taxable year shall be less than the amount of such taxes which would have been payable by the Lessor had no such Loss occurred, then the Lessor shall pay the Lessee the amount of such difference in taxes, plus any additional tax benefits realized by the Lessor as the result of such payment; provided, however, that the Lessor 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 Lessor pursuant to this subsection (b) in respect of a Loss, less (y) the amount of all prior payments by the Lessor to the Lessee hereunder. The amount payable to the Lessor pursuant to this paragraph shall be paid within 30 days after receipt of a written demand therefor from the Lessor (but not prior to the earlier of (i) the filing of a return or the acceptance of an audit report in which such Loss is reflected or (ii) the payment of additional tax which becomes due as the result of 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 Lessor pursuant to this paragraph shall be paid within 30 days after the Lessor realizes any such savings in its Federal income taxes.

(c) Indemnity for Improvements and Additions.

If at any time the Lessor determines that it is required by the Internal Revenue Service to include in its gross income an amount in respect of any improvement or addition made to the Equipment by the Lessee ("Capital Expenditures"), then the Lessee shall pay to the Lessor, as an indemnity, such amount or amounts which, after deduction of all taxes required to be paid by the Lessor in respect of the receipt of such amounts under the laws of any Federal, state, local or foreign taxing authority, shall be equal to the sum of the aggregate additional Federal, state, local or foreign income taxes payable by the Lessor from time to time as a result of such Capital Expenditures plus the amount of any interest, penalties or additions to tax payable as a result of any such Capital Expenditures. If as a result of any such Capital Expenditures the aggregate Federal, state, local or foreign income taxes paid by the Lessor for any taxable year shall be less than the amount of such taxes which would have been payable by the Lessor had no such Capital

Expenditures been made, then the Lessor shall pay the Lessee the amount of such savings in taxes plus any additional tax benefits realized by the Lessor as the result of such payment; provided, however, that the Lessor 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 less (y) the amount of all prior payments by the Lessor hereunder. The amount payable to the Lessor pursuant to this subsection (c) shall be paid within 30 days after receipt of the written demand therefor from the Lessor (but not prior to payment of the additional Federal, state, local or foreign 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 this subsection (c) shall be paid within 30 days after the Lessor realizes any such savings in its income taxes.

(d) Contests. (1) If the Internal Revenue Service shall propose an adjustment in the Federal income tax returns of the Lessor for which the Lessee would be required to

indemnify the Lessor pursuant to subsections (b) or (c) and the amount of the indemnity which the Lessee would be required to pay would exceed \$25,000, then if requested by the Lessee in a timely written request, the Lessor shall request an opinion of counsel selected by the Lessor and approved by the Lessee as to whether the basis in law and in fact in favor of allowance of the item proposed to be adjusted outweighs the basis in law and in fact to the contrary. If the opinion is to that effect and if the Lessee promptly requests the Lessor to do so, the Lessor shall contest the proposed adjustment provided, however, that the Lessor 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 Lessor shall undertake judicial action with respect to such proposed adjustment, the court or other judicial body before which such action shall be commenced. The Lessor shall have full control over any contest pursuant to this subsection (d) and shall not be obligated to appeal an adverse determination by any court. At any time, whether before or after

commencing to take the action set forth in this subsection (d), the Lessor may decline to take any such action with respect to all or any portion of a proposed adjustment by notifying the Lessee in writing that the Lessee is relieved of its obligation to indemnify the Lessor with respect to the adjustment or such portion, as the case may be.

(2) The Lessor shall not be required to take any action pursuant to this subsection (d) unless and until the Lessee shall have agreed to indemnify the Lessor in a manner reasonably satisfactory to the Lessor for any liability or loss which the Lessor may incur as a result of contesting the validity of any proposed adjustment and shall have agreed to pay the Lessor on demand all costs and expenses which the Lessor may incur in connection with contesting such proposed adjustment (including fees and disbursements of counsel). If the Lessor determines to contest any adjustment by paying the additional tax and suing for a refund, the Lessee shall have paid to the Lessor an amount on an after-tax basis equal to the sum of any tax, interest, penalties and additions to tax which are required to be paid. Upon receipt by the Lessor of a refund of any amounts paid by the Lessor based on the adjustment in respect of which amounts the Lessor shall have been paid an equivalent amount by the Lessee, the Lessor shall pay to the Lessee the

amount of such refund together with any interest received by the Lessor on such amount. The Lessee shall be obligated to pay to the Lessor the indemnity being contested pursuant to this subsection (d) promptly after the Lessor has taken all the action that it has agreed in this subsection (d) to take.

(e) Definition of Lessor. For purposes of this Section 6, the term "Lessor" shall include any member of an affiliated group, within the meaning of section 1504 of the Code, of which the Lessor is, or may become, 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 Section 6 shall survive the expiration or other termination of this Lease.

Section 7. Maintenance; Casualty Occurrences; Insurance. The Lessee at its own expense will maintain and service each Unit (including any parts installed on or replacements to any Unit and considered an accession thereto as herein below provided) and comply with a preventive maintenance schedule consistent with the Builder's preventive maintenance schedules and which will include testing, repair and overhaul of each Unit so that each Unit will remain (a) in as good an operating condition as when

delivered to it under the Original Lease (ordinary wear and tear excepted), (b) in compliance with any and all applicable laws and regulations, and (c) desirable to and suitable for immediate purchase or lease and use by a Class I Railroad not then or prospectively a debtor in any insolvency or reorganization proceedings in the event of resale or release 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 employed by the Lessee for similar equipment as of the date of this Lease. In February and August of each year, commencing in February 1978, the Lessee will furnish the Lessor with a certificate ("Maintenance Certificate (A)") of a qualified engineer satisfactory to the Lessor (i) setting forth the identification numbers of all Units which are then in the condition required by clauses (a), (b) and (c) of the first sentence of this Section 7 and certifying that all such Units are in such condition, and (ii) setting forth the identification numbers of all Units which are not in such condition together with the estimated cost required with respect to each such Unit in order to comply with the maintenance requirements of this Section 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 ("Maintenance Certificate (B)") of a qualified engineer satisfactory to the Lessor setting forth the identification number of each Unit that was not certified in the preceding February or August Maintenance Certificate (A), as the case may be, as being in the condition required by clauses (a), (b) and (c) of the first sentence of this Section 7, and, as to each such Unit, (i) certifying that such Unit is in such condition as of the date of such Maintenance Certificate (B), or (ii) stating that such Unit is not in such condition. The Lessee and the Lessor have entered into a Maintenance Agreement dated as of the date hereof (hereinafter called the Maintenance Agreement), with respect to certain obligations of the Lessee in the event that any Unit listed on a Maintenance Certificate (A) as not being in the condition required by clauses (a), (b) and (c) of the first sentence of this Section 7 is not certified on the next scheduled Maintenance Certificate (B) as being in such condition.

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 shall immediately be vested in the Lessor.

In the event that any Unit shall be or become worn out, lost, stolen, destroyed, or irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise by the United States Government for an indefinite period or a stated period which shall exceed

the then remaining term of this Lease (or, if such taking, requisition or condemnation shall occur during a renewal term, for a period which shall exceed the then remaining renewal term), 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 Section 14 hereof, the Lessee shall promptly (but in any event within 30 days after such Casualty Occurrence) and fully notify the Lessor with respect thereto. The Lessee shall pay the Lessor on a date 60 days after such Casualty Occurrence the Casualty Value (as hereinafter defined) for such Unit, as of the Payment Date preceding such Casualty Occurrence plus rent accrued as of the date of such payment. Upon the making of such payment by the Lessee in respect of any Unit, or the Purchase Price (less reasonable depreciation for any period of use) of any Unit shall have been refunded by the Builder pursuant to the terms of its patent indemnity, 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. 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 Casualty Value of each Unit as of any Payment Date during the original term of this Lease 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 the portion, if any, of such amount attributable to the recapture of Investment Credit which is not, in fact, recaptured as a result of a Casualty Occurrence.

Whenever any Unit shall suffer a Casualty Occurrence after the final payment of rent in respect thereof is due pursuant to Section 3 hereof and before such Unit shall have been returned in the manner provided in Section 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 Section 13 hereof, then the applicable Casualty Value shall be (i) during the first five-year renewal term and, if there shall be no second five-year renewal period, thereafter, 20% of the Purchase Price of such Unit, (ii) during the second five-year renewal term, the fair market value of such Unit as of the rental payment date on or next preceding such Casualty Occurrence determined as provided in the following sentence, and (iii) thereafter, the fair market value of such Unit as of the last rental payment date during such second five-year renewal period. For the purposes of the preceding sentence, the term "fair market value" of a Unit shall, at the beginning of such second five-year renewal period, be equal to the Fair Market Purchase Price of such Unit at such time determined in accordance with the provisions of Section 13 hereof, and shall decline on a straight-line basis to the estimated Fair Market Purchase Price of such Unit at the end of such second five-year renewal period determined in accordance with the provisions of Section 13 hereof. 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 pos-

session 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 and shall notify the Lessor prior to any such purchase by the Lessee. Provided that the Lessee has previously paid the Casualty Value to the Lessor and provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing, 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 or any other government or governmental entity (the "Government") of any Unit during the term of this Lease or any renewal thereof, all of the Lessee's obligations under this Lease, including the obligation to pay rent, 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, (and in the case of a requisition for use

which does constitute a Casualty Occurrence) the Lessee shall be obligated to return such Unit to the Lessor pursuant to Section 11 or Section 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 Section 11 or Section 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 Section 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.

The Lessee will, at all times prior to the return of the Equipment to the Lessor, at its own expense, cause

to be carried and maintained property insurance and public liability insurance in respect of the Units at the time subject hereto, 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 Railroads. All policies with respect to such insurance shall name the Lessor as an additional named insured or loss payee, shall provide for at least 30 days' prior written notice by the insurance carrier to the Lessor in the event of cancellation, expiration or amendment, shall include waivers by the insurer of all claims for premiums against the Lessor and shall provide that losses are payable notwithstanding, among other things, negligence of the Lessee or the Lessor, more hazardous use of the Equipment than that permitted by such policies, any breach by the Lessee or the Lessor of any policy provision, or foreclosure, notice of sale or other proceedings in respect of the Equipment. The Lessee shall, not later than June 15 of each year, commencing June 15, 1978, furnish to the Lessor 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. The Lessee shall notify the Lessor 30 days prior to any cancellation, expiration or amendment of any policy of insurance.

In the event that the Lessee shall fail to maintain insurance as herein provided, the Lessor may at its option 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 Lessor for the cost thereof together with interest on the amount of such cost from the date of payment thereof at an annual rate of 10.5%.

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.

Section 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 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 description and numbers of all Units then leased hereunder, the 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 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 Section 5 hereof have been preserved or replaced, and (c) 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.

Section 9. Disclaimer of Warranties; Compliance with Laws and Rules; Indemnification. THE LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS DELIVERED TO THE LESSEE HEREUNDER, AND THE LESSOR MAKES NO WARRANTY OR MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE OR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, 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; 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 execution and delivery of this Lease shall be conclusive evidence as between the Lessee and the Lessor that the Units described herein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

The Lessee agrees, for the benefit of the Lessor,

to comply in all respects (including without limitation, with respect to the use, maintenance and operation of each Unit) with all 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, adversely affect the property or rights of the Lessor under this Lease.

The Lessee agrees to indemnify, protect and hold harmless the Lessor 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, penalties and interest, arising out of or as the result of the entering into, or the performance of, or the occurrence of an Event of Default under, this Lease, or any sublease entered into pursuant to Section 12 hereof, the ownership of any Unit, the 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 Section 14 hereof. In case any action, suit or proceeding is brought against the Lessor in connection with any claim indemnified against hereunder, the Lessee may and, upon the Lessor's request, will at the Lessee's expense resist and defend such action, suit or proceeding, or cause the same to be resisted or defended by counsel selected by the Lessee and approved by the Lessor and, in the event of any failure by the Lessee to do so, the Lessee shall pay all costs and expenses (including without limitation attorneys' fees and expenses) incurred by the Lessor in connection with such action, suit or proceeding.

In the event the Lessee is required to make any payment under this Section 9, the Lessee shall pay the Lessor an amount which, after the deduction of all taxes required to be paid by the Lessor in respect of the receipt thereof under the laws of the United States or of any political subdivision thereof (after giving credit for any savings in respect of any such taxes by reason of deductions, credits or allowances in respect of the payment of the expense indemnified against, and of any other such taxes as determined by the Lessor), shall be equal to the amount of such payment. The Lessee and the Lessor each agrees to give each other promptly upon obtaining knowledge thereof written notice of any claim or liability hereby indemnified against. Upon the payment in full of such indemnities by the Lessee, and provided that no Event of Default (or other event which with lapse of time or notice or both would constitute an Event of Default) shall have occurred and be continuing, the Lessee shall be subrogated to any right of the Lessor in respect of the matter against which indemnity has been given. Any payments received by the Lessor from any person (except the Lessee) as a result of any matter with respect to which the Lessor has been indemnified by the Lessee pursuant to this Section 9 shall be paid over to the Lessee to the extent necessary to reimburse the Lessee for

indemnification payments previously made. Nothing in this Section 9 shall constitute a guaranty by the Lessee 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 of the Units or the leasing thereof to the Lessee.

Section 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 Section 3, 7 or 13 hereof, and such default shall continue for five business days;

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

(C) default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein or in Section 5 of the Maintenance

Agreement, and such default shall continue for 30 days after written notice from the Lessor to the Lessee specifying the default and demanding that the same be remedied;

(D) an Event of Default (as therein defined) shall occur and be continuing under the terms of that certain Lease of Railroad Equipment dated as of April 15, 1977, between the Lessee and United States Trust Company of New York, as Trustee under Trust Agreement (B), dated as of April 15, 1977 with J.P. Morgan Interfunding and the Lessor;

(E) a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may hereafter be amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such effectiveness 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;

(F) any other proceedings shall be commenced by or against the Lessee for any relief which includes, or might result in, any modification of the obligations of the Lessee hereunder, under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of the Lessee hereunder), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such

ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Lessee, or for the property of the Lessee, in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

(G) 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, 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 become 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 (G) 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 (such rental to be computed on the basis of the Lease Rate in effect as of the preceding Payment Date) which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over the then present value of the rental which the Lessor reasonably estimates to be obtainable for the Unit during such period, such present value to be computed in each case on the basis of a discount equal to the Money Cost Index on the Payment Date preceding the Event of Default, compounded quarterly 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 any act or failure to act of 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 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 any act or failure to act of 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 Lessee agrees to furnish the Lessor, promptly upon any responsible officer becoming aware or any condition which constituted or constitutes an Event of Default or an event which, after notice of lapse of time, or both, would constitute such an Event of Default, written notice specifying such condition and the nature and status thereof. For the purposes of this paragraph, a "responsible officer" shall mean, with respect to the subject matter of any covenant, agreement or obligation of the Lessee, any corporate officer of the Lessee who, in the normal performance of his operational responsibilities, would have knowledge of such

matter and the requirements of this Lease with respect thereto.

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 this Lease) provided for in Section 77(j) of the Bankruptcy Act or any comparable provision of any amendment thereto, or of any other bankruptcy act, so that the Lessor shall have the right to take possession of the Equipment upon an Event of Default under this Lease regardless of whether the Lessee is in reorganization.

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.

Section 11. Return of Units upon Default. If this Lease shall terminate pursuant to Section 10 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor. Each Unit so delivered shall be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted. For the purpose of delivering possession of any Unit or Units to the Lessor as above required, the Lessee shall at its own cost, expense and risk:

(a) forthwith and in the usual manner (including, but not by way of limitation, give 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 possession thereof to return the Unit or Units) and at the usual speed place such Units upon such 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 Units to any place on the railroad lines 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 and 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 the condition required by clauses (a), (b) and (c) of the first sentence of Section 7 hereof, 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 sixty days after such termination, the Lessee shall, in addition, pay to the Lessor for each day thereafter in amount equal to the amount, if any, by which 0.026537% 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 Section 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.

Section 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, (a) the Lessee shall be entitled to the possession and use of the Equipment in accordance with the terms of this Lease and, with the prior consent of the Lessor, which consent shall not be unreasonably withheld, the Lessee may assign or transfer its leasehold interest under this Lease to a user incorporated in the United States of America (or any state thereof or the District of Columbia) and (b) the Lessee shall be entitled to the possession and use of the Equipment by it or any affiliate upon lines of railroad owned or operated by it or any such affiliate or upon lines of railroad over which the Lessee or any affiliate has trackage or other operating rights or over which railroad equipment of the Lessee or any such affiliate is regularly operated pursuant to contract, and also to permit the use of the Equipment upon 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 operation and maintenance outside the United States of America except that occasional service in Canada shall be permitted so long as such occasional service in Canada does not involve regular

operation and maintenance outside the United States of America; and provided, further, however that any such sublease of use shall be consistent with the provisions of Section 6 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 Builder or resulting from claims against the Lessor or the Builder not related to any transaction or matter contemplated by this Lease) upon or with respect to any Unit or the interest of the Lessor or the Lessee therein, and will promptly discharge any such lien, claim, security interest or other encumbrance which arises.

Nothing in this Section 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 be-

come 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. 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 August 31, 2001, at a Fair Market Rental (as defined below) payable in quarterly payments, commencing three months after the next preceding rental payment date, 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 the 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 sell or, 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 purchase 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 in accordance with the foregoing definition by the following procedure: If either party to such determination shall have given written notice to the other requesting determination of such rental or purchase price by this appraisal procedure, the parties shall consult for the purpose of appointing a qualified independent appraiser by mutual agreement. If no such appraiser is so appointed

within 20 business days after such notice is given, each party shall appoint an independent appraiser within 25 business days after such notice is given, and the two appraisers so appointed shall within 35 business days after such notice is given appoint a third independent appraiser. If no such third appraiser is appointed within 35 business days after such notice is given, either party may request the American Arbitration Association to make such appointment, and both parties shall be bound by any appointment so made. Any appraiser or appraisers appointed pursuant to the foregoing procedure shall be instructed to determine the Fair Market Rental of the Units subject to the proposed extended term or the Fair Market Purchase Price, as the case may be, within 70 days after his or their appointment. If the parties shall have appointed a single appraiser or if either party shall have failed to appoint an appraiser, the determination of Fair Market Rental or Fair Market Purchase Price, as the case may be, of the single appraiser appointed shall be final. If three appraisers shall be appointed, the determination of the appraiser which differs most from that of the other two appraisers shall be excluded, the remaining two determinations shall be averaged and such latter average shall be final and binding upon the parties hereto as the Fair Market Rental or Fair Market Purchase

Price, as the case may be. The appraisal proceedings shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association as in effect on the date hereof, except as modified hereby. The provision for this appraisal procedure shall be the exclusive means of determining Fair Market Rental or Fair Market Purchase Price, as the case may be, and shall be in lieu of any judicial or other procedure for the determination thereof, and each party hereto hereby consents and agrees not to assert any judicial or other procedures. The expenses of the appraisal procedure shall be borne equally by the Lessee and the Lessor.

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

Section 14. Return of Units upon Expiration of Term. Upon 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, 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 (except for the insurance required by Section 7 hereof which shall be provided at the Lessor's expense); and in the event that any Unit shall suffer a Casualty Occurrence during such storage period, the Lessee shall pay the Lessor an amount equal to the Casualty Value as of the last Payment Date of the original term or extended term, as the case may be. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser, lessee or user of such Unit, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence 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 Section 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) comply with all applicable interchange rules of the American Association of Railroads, all applicable 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. 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 0.026537% 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.

Section 15. Recording. The Lessee, at its own expense, will cause this Lease to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20(c) 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 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 for the purpose of proper protection, to its satisfaction, of the Lessor's interest in the Units, or for the purpose of carrying out the intention of this Lease, and the Lessee will promptly furnish to the Lessor evidence of all such filing, registering, depositing or recording, and an opinion or opinions of counsel for the Lessee, in substance and in form satisfactory to the Lessor, to the effect that all such filing, registering, depositing or recording have been

an opinion or opinions of counsel for the Lessee, in substance and in form satisfactory to the Lessor, to the effect that all such filing, registering, depositing or recording have been made, that such filing, recordation and deposit will protect the Lessor's interest in such Units and that no filing, recording, depositing or giving of notice with or to any other Federal, state or local government or agency thereof is necessary to protect the interests of the Lessor in such Units.

Section 16. Interest on Overdue Rentals. Anything to the contrary herein contained notwithstanding, any non-payment 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 10.5% 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 of twelve 30-day months.

Section 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 Post Office Box 8300, Stamford, Connecticut 06904, Attention: Loan Officer-Rail Leasing Component;

(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.

Section 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 duly executed by Lessor and the Lessee.

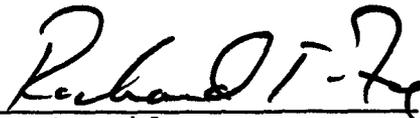
Section 19. Execution. This Lease may be executed in several counterparts, such counterparts together constituting but one and the same instrument. Although for convenience this Lease is dated as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

Section 20. 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.

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



Vice President &  
Treasurer



[Corporate Seal]

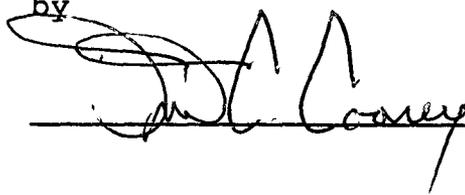
Attest:



Assistant Secretary

GENERAL ELECTRIC CREDIT CORPORATION,

by

  
\_\_\_\_\_ 992

[Corporate Seal]

Attest:

Daniel C. Cooney  
Manager - Credit Operations



  
\_\_\_\_\_ Attesting Secretary

CONNECTICUT  
STATE OF ~~NEW YORK~~ )  
                  FAIRFIELD ) SS.:  
COUNTY OF ~~NEW YORK~~ )

On this 31st day of August 1977, before me personally appeared Daniel C. Cooney, to me personally known, who, being by me duly sworn, says that he is *Manager - Credit Operations* of GENERAL ELECTRIC CREDIT 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.

*Eleanor J. Sessa*  
\_\_\_\_\_  
Notary Public  
[stamp]

ELEANOR J. SESSA  
NOTARY PUBLIC  
MY COMMISSION EXPIRES MARCH 31, 1982



SCHEDULE A TO LEASE

<u>Type</u>	<u>Builder</u>	<u>Quantity</u>	<u>Lessee's Identification Numbers (Both Inclusive)</u>
U36B 3600HP Diesel- Electric locomotives	General Electric Company	4	2971-2974

SCHEDULE B

Casualty Value

<u>RENTAL PAYMENT DATE</u>	<u>PERCENTAGE OF PURCHASE PRICE</u>
0	102.15
1	102.15
2	102.11
3	102.00
4	101.88
5	101.73
6	101.51
7	101.25
8	99.17
9	98.25
10	97.87
11	97.44
12	96.99
13	96.50
14	95.95
15	95.35
16	93.53
17	91.67
18	90.94
19	90.17
20	89.35
21	88.50
22	87.59
23	86.63
24	84.97
25	82.12
26	80.97
27	79.73
28	78.45
29	77.13
30	75.76
31	74.36
32	72.90
33	71.40
34	69.85
35	68.25
36	66.60
37	64.89
38	63.13
39	61.32

RENTAL  
PAYMENT DATE

PERCENTAGE OF  
PURCHASE PRICE

40	59.44
41	57.51
42	55.51
43	53.45
44	51.33
45	49.14
46	46.88
47	44.55
48	42.15
49	39.67
50	37.11
51	34.47
52	31.75
53	28.95
54	26.06
55	23.07
56	20.00