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RECORDATION NO. 9026-A Filed & Recorded
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INTERSTATE COMMERCE COMMISSION

RECORDATION NO. 9026-B Filed & Recorded
OCT 5 1977 2 05 PM
INTERSTATE COMMERCE COMMISSION

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INTERSTATE COMMERCE COMMISSION

RECORDATION NO. 9026-C Filed & Recorded
OCT 5 1977 2 05 PM
INTERSTATE COMMERCE COMMISSION

October 5, 1977

Dear Sir:

Pursuant to Section 20c of the Interstate Commerce Act and the Commission's rules and regulations thereunder, as amended, I enclose herewith on behalf of Burlington Northern Inc. for filing and recordation counterparts of the following documents:

1(a) Conditional Sale Agreement dated as of September 1, 1977, between First Security Bank of Utah, National Association, as Trustee, and each of General Motors Corporation (Electro-Motive Division) and General Electric Company;

(b) Agreement and Assignment dated as of September 1, 1977, between each of General Motors Corporation (Electro-Motive Division), General Electric Company and Mercantile-Safe Deposit and Trust Company, as Agent;

2(a) Lease of Railroad Equipment dated as of September 1, 1977, between Burlington Northern Inc., and First Security Bank of Utah, National Association, as Trustee;

(b) Assignment of Lease and Agreement dated as of September 1, 1977, between First Security Bank of Utah, National Association, as Trustee, and Mercantile-Safe Deposit and Trust Company, as Agent.

Sentiment William To Abaugh

The names and addresses of the parties to the aforementioned Agreements are as follows:

(1) Agent-Vendor-Assignee:

Mercantile-Safe Deposit and Trust Company
Post Office Box 2258
Baltimore, Maryland 21203

(2) Trustee-Owner-Trustee-Lessor:

First Security Bank of Utah
National Association
79 South Main Street
Salt Lake City, Utah 84111

(3) Builders:

General Motors Corporation
(Electro-Motive Division)
LaGrange, Illinois 60525

General Electric Company
2901 East Lake Road
Erie, Pennsylvania 16531

(4) Lessee:

Burlington Northern Inc.
176 East Fifth Street
St. Paul, Minnesota 55101

Please file and record the documents referred to in this letter and cross-index them under the names of the Agent-Vendor-Assignee, the Trustee-Owner-Trustee-Lessor, the Builder and the Lessee.

The equipment covered by the aforementioned documents consists of the following:

Ten Diesel-Electric Locomotives, bearing identifying numbers BN6781-6790; and

Fifteen Diesel-Electric Locomotives, bearing identifying numbers BN5530-BN5544 both inclusive.

There is also enclosed a check for $100 payable to the Interstate Commerce Commission, representing the fee for recording the Conditional Sale Agreement and related Agreement and Assignment (together constituting one document) and the Lease of Railroad Equipment, and related Assignment of Lease and Agreement (together constituting one document).

Please stamp all counterparts of the enclosed documents with your official recording stamp. You will wish to retain one copy of the instruments for your files. It is requested that the remaining counterparts be delivered to the bearer of this letter.

Very truly yours,

Laurance V. Goodrich

Laurance V. Goodrich
As Agent for Burlington Northern Inc.

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

Encls.

11

10/5/77

Interstate Commerce Commission
Washington, D.C. 20423

OFFICE OF THE SECRETARY

Laurance V. Goodrich
Cravath, Swaine & Moore
One Chase Manhattan Plaza
New York,N.Y. 10005

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 10/5/77 at 2:05pm, and assigned recordation number(s) 9026,9026-A,9026-B &9026-C

Sincerely yours,

H.G. Homme, Jr.
Acting Secretary

Enclosure(s)

SE-30-T
(6/77)

RECORDATION NO. 9026 Filed & Recorded

OCT 5 1977 -12 25 PM

INTERSTATE COMMERCE COMMISSION

CONDITIONAL SALE AGREEMENT

Dated as of September 1, 1977

between

FIRST SECURITY BANK OF UTAH, NATIONAL ASSOCIATION,
not in its individual capacity but solely
as Trustee under a Trust Agreement
dated as of the date hereof
with BWL, Inc.,
Westinghouse Credit Corporation and Toy National Bank

and

each of

GENERAL MOTORS CORPORATION
(Electro-Motive Division)

and

GENERAL ELECTRIC COMPANY

CONDITIONAL SALE AGREEMENT

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* This Table of Contents has been included in this document for convenience only and does not form a part of, or affect any construction or interpretation of this document.

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CONDITIONAL SALE AGREEMENT dated as of September 1, 1977, between each of GENERAL MOTORS CORPORATION (Electro-Motive Division) and GENERAL ELECTRIC COMPANY (hereinafter collectively called the Builders or severally the Builder, or collectively or severally called the Vendor as the context may require, all as more particularly set forth in Article 1 hereof) and FIRST SECURITY BANK OF UTAH, National Association, a national banking association, acting not in its individual capacity but solely as Trustee (hereinafter called the Owner-Trustee) under a Trust Agreement dated as of the date hereof (hereinafter called the Trust Agreement) with BWL, Inc., Westinghouse Credit Corporation and Toy National Bank (hereinafter collectively called the Owners and severally the Owner).

WHEREAS the Builders have severally agreed to construct, sell and deliver to the Owner-Trustee, and the Owner-Trustee agrees to purchase, subject to the terms and conditions hereof, the railroad equipment described in Annex B hereto to the extent not excluded herefrom under the provisions hereof (hereinafter called the Equipment as more specifically described in paragraph 4.2 of Article 4 hereof);

WHEREAS the Owner-Trustee is entering into a lease with BURLINGTON NORTHERN INC., a Delaware corporation (hereinafter called the Lessee) in substantially the form annexed hereto as Annex C (hereinafter called the Lease); and

WHEREAS Mercantile-Safe Deposit and Trust Company (hereinafter called the Assignee) is acting as agent for certain investors pursuant to a Participation Agreement dated as of the date hereof (hereinafter called the Participation Agreement), among the Lessee, the Assignee, the Owner-Trustee, the Owners and the parties named in Appendix I thereto (hereinafter called the Investors);

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

ARTICLE 1
ASSIGNMENT; DEFINITIONS

1.1. *Contemplated Sources of Purchase Price; Assignment.* The parties hereto contemplate that the Owner-Trustee will furnish 36.05% of the Purchase Price (as defined in paragraph 4.1 of Article 4 hereof) of the Equipment and that an amount equal to the balance of such Purchase Price shall be paid to the appropriate Builder by the Assignee pursuant to an Agreement and Assignment dated as of the date hereof (such Agreement and Assignment being hereinafter called the Assignment) among the Builders and the Assignee.

1.2. *Lease Assignment.* In case of such assignment, the Owner-Trustee will assign to the Vendor (as hereinafter defined), as security for the payment and performance of all the Owner-Trustee's obligations hereunder, all right, title and interest of the Owner-Trustee in and to the Lease pursuant to an Assignment of Lease and Agreement in substantially the form of Annex D hereto (hereinafter called the Lease Assignment).

1.3. *Meaning of "Builder" and "Vendor".* The term "Builder", whenever used in this Agreement, means, both before and after any assignment of its rights hereunder, the respective party hereto which has manufactured the units of Equipment to be constructed and sold by such party and sold hereunder and any successor or successors for the time being to its manufacturing properties and business. The term "Vendor", whenever used in this Agreement, means, before any such assignment, the Builder or Builders, as the context may require, and, after any such assignment, both any assignee or assignees for the time being of such particular assigned rights, as regards such rights, and also any assignor as regards any rights hereunder that are retained or excluded from any assignment. Any reference herein to this Agreement or any other agreement shall mean said agreement and all amendments and supplements hereto or thereto then in effect.

The rights and obligations of the Builders under this Agreement are several in accordance with their interests and not joint. Accordingly, whenever this Agreement, by the use of such designation as "the Vendor", "such Builder" or other similar term, confers a right or imposes an obligation upon a corporation manufacturing and selling equipment hereunder, such right or obligation shall be construed to accrue to or to be enforceable against only the specific corporation furnishing the units of Equipment giving rise to such right or obligation and its successors as herein provided.

ARTICLE 2
CONSTRUCTION AND SALE

Pursuant to this Agreement, each Builder shall construct the Equipment at its plant set forth in Annex B hereto, and will sell and deliver the Equipment to the Owner-Trustee, the Owner-Trustee will (as hereinafter provided) purchase from such Builder and accept delivery of and pay for the Equipment, each unit of which shall be constructed in accordance with the specifications referred to in Annex B hereto and in accordance with such modifications thereof as may be agreed upon in writing between such Builder, the Owner-Trustee and the Lessee (which specifications and modifications, if any, are hereinafter called the Specifications). Each Builder represents and warrants that the design, quality and component parts of each unit of the Equipment to be delivered by such Builder under this Agreement shall conform, on the date of delivery and acceptance thereof, to all Department of Transportation and Interstate Commerce Commission requirements and specifications and to all standards, if any, recommended by the Association of American Railroads reasonably interpreted as being applicable to railroad equipment of the character of such unit, and each such unit will be new railroad equipment.

ARTICLE 3
INSPECTION AND DELIVERY

3.1. *Place of Delivery.* Each Builder will deliver the units of the Equipment to the Owner-Trustee at the place or places specified in Annex B hereto (or if Annex B does not specify a place or places, at the place or places designated from time to time by the Owner-Trustee), freight charges and storage charges, if any, prepaid, in accordance with the delivery schedule set forth in Annex B hereto; *provided, however,* that no Builder shall have any obligation to deliver any unit of Equipment hereunder subsequent to the commencement of any proceedings specified in clauses (c) or (d) of paragraph 16.1 of Article 16 hereof or the occurrence of any event of default (as described in paragraph 16.1 of Article 16 hereof), or event which, with the lapse of time and/or demand, could constitute such an event of default, or unless it has been assured to its satisfaction that it will receive the full Purchase Price (as hereinafter defined) thereof. Each Builder agrees not to deliver any unit of its Equipment hereunder (a) following receipt of written notice from the Owner-Trustee or the Assignee of the commencement of any such proceedings or the occurrence of any such event, as aforesaid, but only so long as such event continues, and (b) until it receives notice from the Owner-Trustee and the Assignee that the conditions contained in Paragraphs 7 and 8 of the Participation Agreement have been met.

3.2. *Force Majeure.* Each Builder's obligation as to time of delivery is subject, however, to delays resulting from causes beyond such Builder's reasonable control, including but not limited to acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, delays in receiving necessary materials or delays of carriers or subcontractors.

3.3. *Exclusion of Equipment.* Any Equipment not delivered at the time of receipt of the notice specified in clause (a) of the last sentence of paragraph 3.1 of this Article 3 and any Equipment not delivered and accepted hereunder on or before June 30, 1978, shall be excluded from this Agreement and the Owner-Trustee shall be relieved of its obligation to purchase and pay for such Equipment. If any Equipment shall be excluded herefrom pursuant to the preceding sentence, the Builder of such Equipment so excluded and the Owner-Trustee shall execute an agreement supplemental hereto limiting this

Agreement to the Equipment not so excluded herefrom. In the event of any such exclusion of any unit of Equipment herefrom pursuant to the foregoing provisions of this paragraph 3.3 or pursuant to paragraph 4.1 of Article 4 hereof, the Lessee will be obligated pursuant to Paragraph 1 of the Participation Agreement to accept all such units completed and delivered by a Builder and to pay the full purchase price therefor when due, all in accordance with the terms of its prior contractual arrangements with such Builder relating to the Equipment (hereinafter called the Purchase Order) and the Owner-Trustee will reassign, transfer and set over to the Lessee all the right, title and interest of the Owner-Trustee in and to the units so excluded and the Purchase Order to the extent relating thereto.

3.4. *Inspection.* During construction, the Equipment shall be subject to inspection and approval by the authorized inspectors of the Owner-Trustee (who may be employees of the Lessee), and each Builder shall grant to such authorized inspectors reasonable access to its plant. Each Builder agrees to inspect the materials used in the construction of the Equipment in accordance with the standard quality control practices of such Builder. Upon or after completion of each unit or of a number of units of the Equipment, such unit or units shall be presented to an inspector of the Owner-Trustee for inspection at the place specified for delivery of such unit or units, and if each such unit conforms to the Specifications and requirements and standards applicable thereto, such inspector or an authorized representative of the Owner-Trustee (who may be an employee of the Lessee) shall execute and deliver to the Builder of such units of Equipment a certificate of acceptance (hereinafter called the Certificate of Acceptance) stating that such unit or units have been inspected and accepted on behalf of the Owner-Trustee and are marked in accordance with paragraph 10.1 of Article 10 hereof; *provided, however,* that such Builder shall not thereby be relieved of its warranty referred to in paragraph 14.4 of Article 14 hereof. By §2 of the Lease, the Owner-Trustee is appointing the Lessee its agent to inspect and accept delivery of the Equipment. Acceptance of any unit of Equipment by the Lessee (or its employees or agents, as aforesaid) pursuant to §2 of the Lease shall be deemed to be acceptance of such unit by the Owner-Trustee.

3.5. *Builders' Responsibilities After Delivery.* On delivery by a Builder hereunder of units of Equipment and acceptance of each such unit hereunder at the place specified for delivery, such Builder shall have no further responsibility for, nor bear any risk of, any damage to or the destruction or loss of such unit; *provided, however,* that such Builder shall not thereby be relieved of its warranty referred to in paragraph 14.4 of Article 14 hereof.

ARTICLE 4

PURCHASE PRICE AND PAYMENT

4.1. *Meaning of "Purchase Price"; Exclusion of Units.* The base price or prices per unit of the Equipment are set forth in Annex B hereto. Such base price or prices are subject to such increase or decrease as is agreed to by the Builder thereof, the Owner-Trustee and the Lessee. The term "Purchase Price" as used herein shall mean the base price or prices as so increased or decreased. If on any Closing Date (as hereinafter defined in paragraph 4.2 of this Article) the aggregate Purchase Price of Equipment for which settlement has theretofore been and is then being made would, but for the provisions of this sentence, exceed the Maximum Purchase Price specified in Item 5 of Annex A hereto, the Builder of such Equipment (and any assignee of such Builder) and the Owner-Trustee will enter into an agreement excluding from this Agreement such unit or units of Equipment then proposed to be settled for and specified by the Owner-Trustee and the Lessee, as will, after giving effect to such exclusion, reduce such aggregate Purchase Price to not more than said Maximum Purchase Price, and the Owner-Trustee shall have no further obligation or liability in respect of units so excluded.

4.2. *Designation of Equipment; Settlement and Closing Dates.* All units of Equipment delivered and accepted hereunder (i) on or prior to December 31, 1977, shall be designated Schedule A Equipment and (ii) after December 31, 1977, but on or prior to June 30, 1978, shall be designated Schedule B Equipment. The Schedule A Equipment shall be settled for in such number of groups of units not to exceed three of the Equipment delivered to and accepted by the Owner-Trustee as is provided in Item 2 of Annex A hereto. The Schedule B Equipment shall be settled for in one group of the Equipment delivered to and accepted

by the Owner-Trustee as is also provided in Item 2 of Annex A hereto. The term "Closing Date" with respect to any Group (as hereinafter defined) shall be such date as is specified by the Lessee in accordance with Item 2 of Annex A hereto by six days' written notice thereof with the concurrence of the Owner-Trustee, the Assignee and the Builder or Builders of such Group of Equipment, but in no event shall such Date be later than June 30, 1978. Such notice shall specify the aggregate Purchase Price of such Group and a copy thereof shall be sent to the Builder or the Builders of such Group, the Assignee and the Owner-Trustee by the Lessee. The term "Group", as used herein, shall mean the group of units of Equipment being settled for on any Closing Date. The place of each closing shall be determined by mutual agreement among the parties hereto. Five business days prior to the Closing Date with respect to a Group of Equipment, the Builder or Builders thereof shall present to the Owner-Trustee and the Lessee the invoices for the Equipment to be settled for. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in New York, New York, Salt Lake City, Utah, or Baltimore, Maryland, are authorized or obligated to remain closed.

4.3. *Indebtedness of Owner-Trustee to Vendor.* Subject to the terms of this Agreement, the Owner-Trustee hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay in cash or immediately available funds to the Vendor at such place as the Vendor may designate, the Purchase Price of the Equipment, as follows:

(a) on the Closing Date with respect to each Group, an amount equal to 36.05% of the aggregate Purchase Price of the units of Equipment in such Group; and

(b) in 30 semiannual instalments, as hereinafter provided, an amount equal to the aggregate Purchase Price of the units of Equipment for which settlement is then being made, less the aggregate amount paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph (said portion of the Purchase Price payable in instalments under this subparagraph (b) being hereinafter called the Conditional Sale Indebtedness).

4.4. *Conditional Sale Indebtedness; Payment Dates; Interest.* (1) The instalments of the Conditional Sale Indebtedness shall be payable semiannually on January 5 and July 5 in each year, commencing July 5, 1978, to and including January 5, 1993, each such date being hereinafter called a Payment Date. The unpaid balance of the Conditional Sale Indebtedness shall bear interest from the Closing Date in respect of which such indebtedness was incurred at the rate of 8.125% per annum. Interest on the unpaid balance of the Conditional Sale Indebtedness shall be payable (i) on January 5, 1978, to the extent accrued from the Closing Date in respect of which such indebtedness was incurred to, but not including, January 5, 1978 and (ii) on each Payment Date, to the extent accrued thereafter. The amounts of Conditional Sale Indebtedness payable on each Payment Date shall be calculated so that the amount and allocation of principal and interest payable on each Payment Date shall be substantially in proportion to the amount and allocation of principal and interest on such Payment Date set forth in Schedule I hereto (subject to the provisions of Article 7 hereof) and the aggregate of such instalments of principal and interest shall completely amortize the Conditional Sale Indebtedness at maturity. The Owner-Trustee will furnish to the Vendor and the Lessee promptly after the last Closing Date a schedule, in such number of counterparts as shall be requested by the Vendor, showing the respective amounts of principal and interest payable on each Payment Date.

(2) If any of the dates for payment of principal or interest is not a business day, such payment shall be payable on the next succeeding business day, and no interest shall be payable thereon from and after the nominal date for payment thereof to such next succeeding business day.

4.5. *Calculation of Interest.* Interest under this Agreement shall be calculated on the basis of a 360-day year of twelve 30-day months.

4.6. *Penalty Interest.* The Owner-Trustee will pay interest, to the extent legally enforceable, at the rate of 9.125% per annum (hereinafter called the Penalty Rate) upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof or such lesser amount as shall be legally enforceable, anything herein to the contrary notwithstanding.

4.7. *Currency of Payment.* All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. Except as provided in Article 7 hereof, the Owner-Trustee shall not have the privilege of prepaying any portion of the Conditional Sale Indebtedness prior to the date it becomes due.

4.8. *Liability of Owner-Trustee to "Income and Proceeds from Equipment"; Meaning Thereof; Limitation on Execution of Judgments.* Notwithstanding any other provision of this Agreement (including, but not limited to, any provision of Articles 16 and 17 hereof, except as set forth in this paragraph 4.8), but not limiting the effect of Article 23 hereof, it is understood and agreed by the Vendor that the liability of the Owner-Trustee or any assignee of the Owner-Trustee for all payments to be made by it under and pursuant to this Agreement, with the exception only of the payments to be made pursuant to subparagraph (a) of paragraph 4.3 of this Article and the proviso to paragraph 13.3 of Article 13 hereof, shall not exceed an amount equal to, and shall be payable only out of, the "income and proceeds from the Equipment", and such payments shall be made by the Owner-Trustee only to the extent that the Owner-Trustee or any assignee of the Owner-Trustee shall have actually received sufficient "income and proceeds from the Equipment" to make such payments. Except as provided in the preceding sentence, the Vendor agrees that the Owner-Trustee shall have no personal liability to make any payments under this Agreement whatsoever except from the "income and proceeds from the Equipment" to the extent actually received by the Owner-Trustee or any assignee of the Owner-Trustee. In addition, the Vendor agrees that the Owner-Trustee

(i) makes no representation or warranty as to, and is not responsible for, the due execution, validity, sufficiency or enforceability of the Lease, in so far as it relates to the Lessee (or any document relative thereto) or of any of the Lessee's obligations thereunder, and

(ii) shall not be responsible for the performance or observance by the Lessee of any of its agreements, representations, indemnities, obligations or other undertakings under the Lease, it being understood that as to all such matters the Vendor will look solely to the Vendor's rights under this Agreement against the Equipment and to the Vendor's rights under the Lease and the Lease Assignment against the Lessee and the Equipment.

As used herein the term "income and proceeds from the Equipment" shall mean

(i) if one of the events of default specified in paragraph 16.1 of Article 16 hereof shall have occurred and while it shall be continuing, so much of the following amounts as are indefeasibly received by the Owner-Trustee or any assignee of the Owner-Trustee at any time after any such event and during the continuance thereof: (a) all amounts of rental and amounts in respect of Casualty Occurrences (as defined in paragraph 7.2 of Article 7 hereof) paid for or with respect to the Equipment pursuant to the Lease and any and all other payments received under §13 or any other provision of the Lease and (b) any and all payments or proceeds received for or with respect to the Equipment as the result of the sale, lease or other disposition thereof, after deducting all costs and expenses of such sale, lease or other disposition, and

(ii) at any other time only that portion of the amounts referred to in the foregoing clauses (a) and (b) (not including amounts paid by the Lessee to the Owner-Trustee as reimbursement of sums paid by the Owner-Trustee on account of prior defaults under subparagraph A of §13.1 of the Lease) as are indefeasibly received by the Owner-Trustee or any assignee of the Owner-Trustee and as shall equal the portion of the Conditional Sale Indebtedness (including prepayments thereof required in respect of Casualty Occurrences) and/or interest thereon due and payable on the date such amounts were required to be paid pursuant to the Lease or as shall equal any other payments then due and payable under this Agreement,

it being understood that "income and proceeds from the Equipment" shall in no event include amounts referred to in the foregoing clauses (a) and (b) which were received by the Owner-Trustee or any assignee of the Owner-Trustee prior to the existence of such an event of default which exceeded the amounts required to discharge that portion of the Conditional Sale Indebtedness (including prepayments thereof

required in respect of Casualty Occurrences) and/or interest thereon due and payable on the date on which amounts with respect thereto received by the Owner-Trustee or any assignee of the Owner-Trustee were required to be paid to it pursuant to the Lease or which exceeded any other payments due and payable under this Agreement at the time such amounts were payable under the Lease. Nothing contained herein limiting the liability of the Owner-Trustee shall derogate from the right of the Vendor to proceed against the Equipment as provided for herein for the full unpaid Purchase Price of the Equipment and interest thereon and all other payments and obligations hereunder. Notwithstanding anything to the contrary contained in Article 16 or 17 hereof, the Vendor agrees that in the event it shall obtain a judgment against the Owner-Trustee for an amount in excess of the amounts payable by the Owner-Trustee pursuant to the limitations set forth in this paragraph, it will, accordingly, limit its execution of such judgment to amounts payable pursuant to the limitations set forth in this paragraph.

ARTICLE 5

SECURITY INTEREST IN THE EQUIPMENT

5.1. *Vendor to Retain Security Interest; Accessories are Part of Equipment.* The Vendor shall and hereby does retain a security interest in the Equipment until the Owner-Trustee shall have made all its payments under this Agreement and shall have kept and performed all its agreements herein contained, notwithstanding any provision of this Agreement limiting the liability of the Owner-Trustee and notwithstanding the delivery of the Equipment to and the possession and use thereof by the Owner-Trustee and the Lessee as provided in this Agreement and the Lease. Such retention of security interest is solely to secure performance by the Owner-Trustee of its obligations under this Agreement (without regard to any provision of this Agreement limiting the liability of the Owner-Trustee), and, subject thereto, ownership of the Equipment shall be and remain in the Owner-Trustee subject to such performance. Any and all parts installed on and additions and replacements made to any unit of the Equipment (i) which are not readily removable without causing material damage to such unit, (ii) the cost of which is included in the Purchase Price of such unit or (iii) which are required for the operation or use of such unit by the Association of American Railroads and/or the Interstate Commerce Commission, the United States Department of Transportation or any other applicable regulatory body, shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

5.2. *Obligations Upon Payment of Conditional Sale Indebtedness.* Except as otherwise specifically provided in Article 7 hereof, when and only when the Vendor shall have been paid the full indebtedness in respect of the Purchase Price of the Equipment, together with interest and all other payments as herein provided, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Owner-Trustee without further transfer or action on the part of the Vendor. However, the Vendor, if so requested by the Owner-Trustee at that time, will (a) execute an instrument releasing its security interest in the Equipment and transferring such interest to the Owner-Trustee or upon its order, free of all liens, security interests and other encumbrances created or retained hereby and deliver such instrument to the Owner-Trustee at its address referred to in Article 22 hereof, (b) execute and deliver at the same place, for filing, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Owner-Trustee to the Equipment and (c) pay to the Owner-Trustee any money paid to the Vendor pursuant to Article 7 hereof and not theretofore applied as therein provided. The Owner-Trustee hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such instrument or instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file such certificate within a reasonable time after written demand by the Owner-Trustee.

ARTICLE 6
TAXES

6.1. *Indemnification of Nonincome Taxes.* Whether or not any of the transactions contemplated hereby are consummated, the Owner-Trustee agrees to pay, and to indemnify and hold the Vendor harmless from, all taxes, assessments, fees and charges of any nature whatsoever, together with any penalties, fines, additions to tax or interest thereon, howsoever imposed, whether levied or imposed upon the Owner-Trustee, the Owners, the Vendor, the Lessee, the trust estate created by the Trust Agreement or otherwise, by any Federal, state or local government or governmental subdivision in the United States or by any foreign country or subdivision thereof, upon or with respect to: any unit of the Equipment or any part thereof; the purchase, ownership, delivery, leasing, possession, use, operation, transfer of title, return or other disposition thereof; the rentals, receipts or earnings arising therefrom; or this Agreement, the Assignment, the Lease, the Lease Assignment, any payment made pursuant to any such agreement, or the property, the income or other proceeds received with respect to the Equipment (all such taxes, assessments, fees, charges, penalties, fines, additions to tax and interest imposed as aforesaid being hereinafter called "Taxes"); *excluding, however:* (i) Taxes of the United States or any state or political subdivision thereof and (if and to the extent that any person indemnified hereunder is entitled to a credit therefor against its United States Federal income taxes) of any foreign country or subdivision thereof, imposed on or measured solely by the net income or excess profits of the Vendor, or franchise taxes measured by net income of the Vendor, or gross receipts taxes other than gross receipts taxes in the nature of sales or use taxes, and other than Taxes arising out of or imposed in respect of the receipt of indemnification payments pursuant to this Agreement, provided that Taxes of any foreign country or subdivision thereof incurred as a result of the indemnified party being taxed by such foreign country or subdivision on its world-wide income without regard to the transactions contemplated by this Agreement shall be excluded in all cases, whether or not the indemnified party is entitled to a credit against its United States Federal income taxes; (ii) any Taxes imposed on or measured by any fees or compensation received by the Vendor; and (iii) Taxes which are imposed on or measured solely by the net income of the Vendor if and to the extent that such Taxes are in substitution for or reduce the Taxes payable by any other person which the Owner-Trustee has not agreed to pay or indemnify against pursuant to this Article 6; *provided, however,* that the Owner-Trustee shall not be required to pay any Taxes during the period it may be contesting the same in the manner provided in paragraph 6.2 of this Article 6.

6.2. *Claims; Contests; Refunds.* If claim is made against the Vendor for any Taxes indemnified against under this Article 6, the Vendor shall promptly notify the Owner-Trustee. If reasonably requested by the Owner-Trustee in writing, the Vendor shall, upon receipt of any indemnity satisfactory to it for all costs, expenses, losses, legal and accountants' fees and disbursements, penalties, fines, additions to tax and interest, and at the expense of the Owner-Trustee, contest in good faith the validity, applicability or amount of such Taxes by (a) resisting payment thereof if possible, (b) not paying the same except under protest, if protest is necessary and proper, and (c) if payment is made, using reasonable efforts to obtain a refund thereof in appropriate administrative or judicial proceedings, or both. The Owner-Trustee may also contest, at its own expense, the validity, applicability or amount of such Taxes in the name of the Vendor; provided that, no proceeding or actions relating to such contest shall be commenced (nor shall any pleading, motion, brief or other paper be submitted or filed in the name of the Vendor in any such proceeding or action) without the prior written consent of the Vendor. If the Vendor shall obtain a refund of all or any part of such Taxes previously reimbursed by the Owner-Trustee in connection with any such contest or an amount representing interest thereon, the Vendor shall pay the Owner-Trustee the amount of such refund or interest net of expenses; *provided; however,* that no event of default set forth in paragraph 16.1 of Article 16 hereof and no event which with notice or lapse of time or both would constitute such an event of default shall have occurred and be continuing.

6.3. *Reports or Returns.* In case any report or return is required to be made with respect to any obligation of the Owner-Trustee under or arising out of this Article 6, the Owner-Trustee shall either make such report or return in such manner as will show the interests of the Vendor in the Equipment or shall promptly notify the Vendor of such requirement and shall make such report or return in such manner as

shall be satisfactory to the Vendor. All costs and expenses (including legal and accountants' fees) of preparing any such return or report shall be borne by the Owner-Trustee.

6.4. *Survival.* All of the obligations of the Owner-Trustee under this Article 6 shall survive and continue, notwithstanding payment in full of all amounts due under this Agreement.

6.5. *Article 6 Subject to Articles 4 and 23.* The obligations of the Owner-Trustee under this Article 6 are subject to the limitations contained in paragraph 4.8 of Article 4 hereof and in Article 23 hereof.

ARTICLE 7
MAINTENANCE; CASUALTY OCCURRENCES

7.1. *Maintenance.* Subject to the limitations contained in Article 23 hereof, the Owner-Trustee shall, at its own cost and expense, maintain and keep each unit of the Equipment in good operating order and repair, ordinary wear and tear excepted.

7.2. *Casualty Occurrences.* In the event that any unit of Equipment shall be or become worn out, lost, stolen, destroyed or, in the opinion of the Lessee, irreparably damaged from any cause whatsoever or the Purchase Price of any unit shall have been refunded by a Builder pursuant to such Builder's patent indemnities therefor as set forth in Item 4 of Annex A hereto or any unit shall be taken or requisitioned by condemnation or otherwise by the United States Government for a stated period which shall exceed the then remaining term of the Lease or by any other governmental entity resulting in loss of possession by the Lessee for a period of 90 consecutive days during the term of the Lease (such occurrences being herein called Casualty Occurrences), the Owner-Trustee shall, promptly after it shall have received notice from the Lessee or otherwise been informed that such unit has suffered a Casualty Occurrence, cause the Vendor to be fully informed in regard thereto. On the next succeeding Casualty Payment Date (as defined in the Lease), the Owner-Trustee shall, subject to the limitations contained in paragraph 4.8 of Article 4 hereof, pay to the Vendor a sum equal to the Casualty Value (as hereinafter defined in this Article 7) of such unit suffering a Casualty Occurrence as of such Casualty Payment Date, together with an amount equal to accrued interest thereon (as hereinafter provided) and shall file, or cause to be filed, with the Vendor a certificate setting forth the Casualty Value of such unit. Any money paid to the Vendor pursuant to this paragraph shall be applied on the date of such payment to prepay without penalty or premium, ratably in accordance with the unpaid balance of each instalment, the Conditional Sale Indebtedness, together with all interest accrued on the portion of the Conditional Sale Indebtedness being prepaid. The Owner-Trustee shall promptly cause to be furnished to the Vendor and the Lessee a revised schedule of payments of principal and interest thereafter to be made, in such number of counterparts as the Vendor and the Lessee may request, calculated as provided in paragraph 4.4 of Article 4 hereof.

7.3. *Obligations Upon Payment of Casualty Value.* Upon payment by the Owner-Trustee to the Vendor of the Casualty Value of any unit of the Equipment having suffered a Casualty Occurrence, absolute right to the possession of, title to and property in such unit shall pass to and vest in the Owner-Trustee without further transfer or action on the part of the Vendor, except that the Vendor, if requested by the Owner-Trustee, will execute and deliver to the Owner-Trustee, at the expense of the Owner-Trustee, an appropriate instrument confirming such passage to the Owner-Trustee of all the Vendor's right, title and interest, and the release of the Vendor's security interest, in such unit, in recordable form, in order that the Owner-Trustee may make clear upon the public records the title of the Owner-Trustee to such unit.

7.4. *Casualty Value.* The Casualty Value of each unit of the Equipment suffering a Casualty Occurrence shall be deemed to be that portion of the original Purchase Price thereof referred to in paragraph 4.3(b) of Article 4 hereof remaining unpaid on the date as of which such Casualty Value shall be paid (without giving effect to any prepayment or prepayments theretofore made under this Article with respect to any other unit). For the purpose of this paragraph, each payment of the Purchase Price made pursuant to Article 4 hereof shall be deemed to be a payment with respect to each unit of Equipment in like proportion as the original Purchase Price of such unit bears to the aggregate original Purchase Price of all the Equipment.

ARTICLE 8

INSURANCE PROCEEDS AND CONDEMNATION PAYMENTS

If the Vendor shall receive any insurance proceeds or condemnation payments in respect of such units suffering a Casualty Occurrence, the Vendor shall promptly pay such insurance proceeds or condemnation payments to the Owner-Trustee; *provided, however,* that no event of default shall have occurred and be continuing hereunder and the Owner-Trustee shall have made payment of the Casualty Value of such units, together with accrued interest thereon, to the Vendor. All insurance proceeds received by the Vendor in respect of any unit or units of Equipment not suffering a Casualty Occurrence shall be paid to the Owner-Trustee upon proof satisfactory to the Vendor that any damage to such unit in respect of which such proceeds were paid has been fully repaired.

ARTICLE 9

REPORTS AND INSPECTIONS

On or before March 31 in each year, commencing with the year 1979, the Owner-Trustee shall, subject to the provisions of Article 23 hereof, cause to be furnished to the Vendor an accurate statement (a) setting forth as at the preceding December 31 the total number, description and road numbers of all units of the Equipment then subject to this Agreement, the total number, description and road numbers of all units of the Equipment 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 repair (other than running repairs) and setting forth such other information regarding the condition and state of repair of the Equipment as the Vendor may reasonably request and (b) stating that, in the case of all Equipment repaired or repainted during the period covered by such statement, the numbers and markings required by Article 10 hereof have been preserved or replaced. The Vendor shall have the right, by its agents, to inspect the Equipment and the Owner-Trustee's and the Lessee's records with respect thereto at such reasonable times as the Vendor may request during the term of this Agreement.

ARTICLE 10

MARKING OF EQUIPMENT

10.1. *Marking of Equipment.* The Owner-Trustee will cause each unit of the Equipment to be kept numbered with the road number of the Lessee as set forth in Annex B hereto, or, in the case of Equipment not there listed, such road number as shall be set forth in any amendment or supplement hereto extending this Agreement to cover such Equipment, 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 Security Agreement filed under the Interstate Commerce Act, Section 20c", or other appropriate words designated by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Vendor's interest in the Equipment and its rights under this Agreement. The Owner-Trustee will not permit any such unit to be placed in operation or exercise any control or dominion over the same until such markings shall have been made thereon and will replace or will cause to be replaced promptly any such markings which may be removed, obliterated, defaced or destroyed. The Owner-Trustee will not permit the road number of any unit of the Equipment to be changed except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Vendor and filed, recorded and deposited by or on behalf of the Owner-Trustee in all public offices where this Agreement shall have been filed, recorded and deposited.

10.2. *No Designations of Ownership.* Except as provided in paragraph 10.1 of this Article 10, the Owner-Trustee will not allow the name of any person, association or corporation to be placed on any unit of the Equipment as a designation that might be interpreted as a claim of ownership; *provided, however,* that the Equipment may be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates.

10.3. *Article 10 Subject to Article 23.* The obligations of the Owner-Trustee under this Article are subject to the limitations contained in Article 23 hereof.

ARTICLE 11

COMPLIANCE WITH LAWS AND RULES

11.1. *Compliance with Laws and Rules.* During the term of this Agreement, the Owner-Trustee will comply, and will cause every lessee or user of the Equipment to comply, in all respects (including, without limitation, with respect to the use, maintenance and operation of the Equipment) with all laws of the jurisdictions in which its or such lessee's or user's operations involving the Equipment may extend, with the interchange rules of the Association of American Railroads 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 Equipment, to the extent that such laws and rules affect the title, operation or use of the Equipment, and in the event that such laws or rules require any alteration, replacement or addition of or to any part on any unit of the Equipment, the Owner-Trustee will or will cause the Lessee to conform therewith at no expense to the Vendor; *provided, however,* that the Owner-Trustee or the Lessee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor under this Agreement.

11.2. *Article 11 Subject to Article 23.* The obligations of the Owner-Trustee under this Article are subject to the limitations contained in Article 23 hereof.

ARTICLE 12

POSSESSION AND USE

12.1. *Possession and Use of Equipment by Owner-Trustee.* The Owner-Trustee, so long as an event of default shall not have occurred and be continuing under this Agreement, shall be entitled, from and after delivery of the Equipment by a Builder to the Owner-Trustee, to the possession of the Equipment and the use thereof, but only upon and subject to all the terms and conditions of this Agreement.

12.2. *Lease Permitted; Lease Subordinate; No Amendment or Termination.* The Owner-Trustee simultaneously is leasing the Equipment to the Lessee as provided in the Lease, and the rights of the Lessee and its permitted assigns under the Lease shall be subordinated and junior in rank to the rights, and shall be subject to the remedies, of the Vendor under this Agreement. The Lease shall not be amended in any material respect, or terminated (except in accordance with its terms) without the prior written consent of the Vendor.

12.3. *Other Leases of Equipment.* Subject to the rights of the Lessee under the Lease, the Owner-Trustee may also lease the Equipment to any other railroad company, but only with the prior written consent of the Vendor, which consent may be subject to the conditions, among others, that (i) such lease shall provide that the rights of such lessee are made expressly subordinate to the rights and remedies of the Vendor under this Agreement, (ii) such lessee shall expressly agree not to assign or permit the assignment of any unit of the Equipment to service involving the regular operation and maintenance thereof outside the United States of America and (iii) such lease shall be assigned to the Vendor as security on terms consistent with those set forth in Annex D hereto, and in any event satisfactory to the Vendor.

ARTICLE 13

PROHIBITION AGAINST LIENS

13.1. *Owner-Trustee to Discharge Liens.* The Owner-Trustee will pay or discharge any and all sums claimed by any party from, through or under the Owner-Trustee or its successors or assigns which, if unpaid, might become a lien, charge or security interest on or with respect to the Equipment, or any unit thereof, equal or superior to the Vendor's security interest therein and will promptly discharge any such

lien, charge or security interest which arises; but the Owner-Trustee shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the security interest of the Vendor in or to the Equipment or otherwise under this Agreement. Any amounts paid by the Vendor in discharge of liens, charges or security interests upon the Equipment shall be secured by and under this Agreement.

13.2. *No Breach for Certain Liens.* This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

13.3. *Article 13 Subject to Article 23 Except in Certain Instances.* The obligations of the Owner-Trustee under this Article 13 are subject to the limitations contained in Article 23 hereof; *provided, however,* that the Owner-Trustee will pay or discharge any and all claims, liens, charges or security interests claimed by any party from, through or under the Owner-Trustee or the Owners or the successors or assigns of any of them, not arising out of the transactions contemplated hereby or in other documents mentioned herein (but including tax liens arising out of the receipt of the income and proceeds from the Equipment), equal or superior to the Vendor's security interest therein; but the Owner-Trustee shall not be required to pay or discharge any such claim, lien, charge or security interest so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not adversely affect the security interest of the Vendor in or to the Equipment or otherwise under this Agreement.

ARTICLE 14
INDEMNITIES AND WARRANTIES

14.1. *Indemnification.* The Owner-Trustee shall pay, and shall protect, indemnify and hold the Vendor and any assignee hereof, and their respective successors, assigns, agents and servants (hereinafter called Indemnified Persons), harmless from and against any and all causes of action, suits, penalties, claims, demands or judgments, of any nature whatsoever which may be imposed on, incurred by or asserted against any Indemnified Person (including any or all liabilities, obligations, damages, costs, disbursements, expenses [including without limitation attorneys' fees and expenses of any Indemnified Person] relating thereto) in any way relating to or arising or alleged to arise out of this Agreement or the Equipment, including without limitation those in any way relating to or arising or alleged to arise out of (i) the manufacture, construction, purchase, acceptance, rejection, ownership, delivery, nondelivery, lease, possession, use, operation, condition, sale, return or other disposition of any unit of Equipment or portion thereof, (ii) any latent and other defects whether or not discoverable by the Owner-Trustee or the Vendor, (iii) any claim for patent, trademark or copyright infringement, (iv) any claims based on strict liability in tort, (v) any injury to or the death of any person or any damage to or loss of property on or near the Equipment or in any manner growing out of or concerned with, or alleged to grow out of or be connected with, the ownership, use, replacement, adaptation or maintenance of the Equipment or of any other equipment in connection with the Equipment (whether owned or under the control of the Owner-Trustee, the Lessee or any other person) or resulting or alleged to result from the condition of any thereof; (vi) any violation, or alleged violation, of any provision of this Agreement or of any agreement, law, rule, regulation, ordinance or restriction, affecting or applicable to the Equipment or the leasing, ownership, use, replacement, adaptation or maintenance thereof; or (vii) any claim arising out of the Vendor's retention of a security interest under this Agreement or the Lease Assignment; except that the Owner-Trustee shall not be liable to a Builder in respect of any of the foregoing matters to the extent liability in respect thereof arises from any tort, breach of warranty or failure to perform any covenant hereunder of such Builder or is covered by such Builder's patent indemnification referred to in paragraph 14.4 of this Article 14. The Owner-Trustee shall be obligated under this Article 14, irrespective of whether any Indemnified Person shall also be indemnified with respect to the same manner under any other agreement by any other person, and the Indemnified Person seeking to enforce the indemnification may proceed directly against the

Owner-Trustee under this Article 14 without first resorting to any such other rights of indemnification. In case any action, suit or proceeding is brought against any Indemnified Person in connection with any claim indemnified against hereunder, the Owner-Trustee may and, upon such Indemnified Person's request, will at the Owner-Trustee's expense resist and defend such action, suit or proceeding or cause the same to be resisted or defended by counsel selected by the Owner-Trustee and approved by such Indemnified Person; and, in the event of any failure by the Owner-Trustee to do so, the Owner-Trustee shall pay all costs and expenses (including without limitation attorneys' fees and expenses) incurred by such Indemnified Person in connection with such action, suit or proceeding. In the event the Owner-Trustee is required to make any payment under this Article 14, the Owner-Trustee shall pay such Indemnified Person an amount which, after deduction of all taxes required to be paid by such Indemnified Person 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 in the sole discretion of the Indemnified Person), shall be equal to the amount of such payment. The Vendor and the Owner-Trustee 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 any indemnities as contained in this Article 14 by the Owner-Trustee, and provided that no event of default set forth in paragraph 16.1 of Article 16 hereof (or other event which with lapse of time or notice or both would constitute such an event of default) shall have occurred and be continuing, it shall be subrogated to any right of such Indemnified Person in respect of the matter against which indemnity has been given. Any payments received by such Indemnified Person from any person (other than the Owner-Trustee) as a result of any matter with respect to which such Indemnified Person has been indemnified by the Lessee pursuant to the Lease shall be paid over to the Owner-Trustee to the extent necessary to reimburse the Owner-Trustee for indemnification payments previously made in respect of such matter.

14.2. *Survival; No Subrogation.* The indemnities contained in this Article 14 shall survive the expiration or termination of this Agreement with respect to all events, facts, conditions or other circumstances occurring or existing prior to such expiration or termination and are expressly made for the benefit of, and shall be enforceable by, any Indemnified Person. None of the indemnities in this Article 14 shall be deemed to create any rights of subrogation in any insurer or third party against the Owner-Trustee therefor, from or under any Indemnified Person, whether because of any claim paid or defense provided for the benefit thereof or otherwise.

14.3. *Owner-Trustee Not Released if Equipment Damaged or Lost.* The Owner-Trustee will bear the responsibility for and risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of any unit of or all the Equipment.

14.4. *Warranties of Builders; Patent Indemnities; Subject to Article 23.* The agreement of the parties relating to the Builders' warranties of material and workmanship and the agreement of the parties relating to patent indemnification are set forth in Items 3 and 4 of Annex A hereto. The obligations of the Owner-Trustee pursuant to paragraphs 14.1, 14.2 and 14.3 of this Article are subject to the provisions of Article 23 hereof.

ARTICLE 15

ASSIGNMENTS

15.1. *Assignment of Owner-Trustee.* Except as provided in Article VII of the Trust Agreement, the Owner-Trustee will not (a) except as provided in Article 12 hereof, transfer the right to possession of any unit of the Equipment or (b) sell, assign, transfer or otherwise dispose of its rights under this Agreement.

15.2. *Assignment by Vendor.* All or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Owner-Trustee, may be assigned by the Vendor and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve a Builder from, any of the obligations of such Builder to construct and deliver the Equipment in accordance herewith or to respond to its warranties and

indemnities referred to in Article 14 hereof or relieve the Owner-Trustee of its obligations to such Builder contained in Articles 2, 3, 4, 6 and 14 hereof, Annex A hereto and this Article 15, or any other obligation which, according to its terms or context, is intended to survive an assignment.

15.3. *Notice of Assignment by Vendor.* Upon any such assignment, either the assignor or the assignee shall give written notice to the Owner-Trustee, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee; and such assignee shall, by virtue of such assignment, acquire all the assignor's right, title and interest in and to the Equipment and this Agreement, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Owner-Trustee of the notification of any such assignment, all payments thereafter to be made by the Owner-Trustee under this Agreement shall, to the extent so assigned, be made to the assignee in such manner as it may direct.

15.4. *No Set-Off Against Conditional Sale Indebtedness Upon Assignment.* The Owner-Trustee recognizes that this Agreement will be assigned to the Assignee as provided in the Assignment. The Owner-Trustee expressly represents, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Vendor hereunder, and for the purpose of inducing such acquisition, that the rights of the Assignee to the entire unpaid Conditional Sale Indebtedness in respect of the Purchase Price of the Equipment or such part thereof as may be assigned together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, set-off, counterclaim or recoupment whatsoever by the Owner-Trustee arising out of any breach of any obligation of a Builder with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, set-off, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Owner-Trustee by a Builder. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Owner-Trustee against and only against the Builders.

ARTICLE 16
DEFAULTS

16.1. *Events of Default; Termination of Lease; Declaration of Default; Acceleration of Conditional Sale Indebtedness.* In the event that any one or more of the following events of default shall occur and be continuing, to wit:

(a) the Owner-Trustee shall fail to pay or cause to be paid in full (i) the principal of and interest on the Conditional Sale Indebtedness when payment thereof shall be due hereunder (irrespective of the provisions of Article 4 or 23 hereof or any other provision of this Agreement limiting the liability of the Owner-Trustee) and such default shall continue for 15 days after receipt of notice thereof by the Owner-Trustee and the Owners from the Vendor or any Investor or (ii) any other sum payable by the Owner-Trustee hereunder when payment thereof shall be due (irrespective of the provisions of Article 4 or 23 hereof or any other provision of this Agreement limiting the liability of the Owner-Trustee) and such default shall continue for 15 days after the date such payment is due and payable; or

(b) the Owner-Trustee or the Lessee shall, for more than 45 days after the Vendor shall have demanded in writing performance thereof, fail or refuse to comply with any other covenant, agreement, term or provision of this Agreement (irrespective of the provisions of Article 4 or 23 hereof or any other provision of this Agreement limiting the liability of the Owner-Trustee), the Lease Assignment or any covenant, agreement, term or provision of the Participation Agreement made expressly for the benefit of the Vendor, on its part to be kept and performed or to make provision satisfactory to the Vendor for such compliance; or

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

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

(d) any other proceeding shall be commenced by or against the Owner-Trustee or the Lessee for any relief which includes, or might result in, any modification of the obligations of the Owner-Trustee hereunder or the Lessee under the Lease under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustment of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the obligations of the Owner-Trustee under this Agreement or the Lessee under the Lease), 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 Owner-Trustee under this Agreement or the Lessee under the 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 Owner-Trustee or the Lessee, as the case may be, or for their respective property in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier;

then at any time after the occurrence of such an event of default the Vendor may, upon five days' written notice to the Owner-Trustee and the Lessee and upon compliance with any legal requirements then in force and applicable to such action by the Vendor, (i) subject to the Lessee's rights of possession, use and assignment under §§4 and 15 of the Lease, cause the term of the Lease immediately upon such notice to terminate (and the Owner-Trustee acknowledges the right of the Vendor to terminate the term of the Lease), *provided, however,* that such termination shall not be in derogation of or impair the rights of the Owner-Trustee or the Vendor (under the assignment thereof), as the case may be, to enforce compliance by the Lessee with any of its covenants and agreements under the Lease or to enforce any of its rights and remedies under §13 of the Lease (subject to the Vendor's rights to repossess and sell the Equipment as provided in this Agreement), including the rights of the Owner-Trustee or the Vendor (under the assignment thereof), as the case may be, to sue for and recover damages provided for in §13 of the Lease upon the occurrence of an event of default under the Lease, and/or (ii) declare (hereinafter called a Declaration of Default) the entire unpaid Conditional Sale Indebtedness, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such Declaration of Default at the Penalty Rate to the extent legally enforceable. Upon a Declaration of Default, subject to Article 4 hereof, the Vendor shall be entitled to recover judgment for the entire unpaid balance of the Conditional Sale Indebtedness so payable, with interest as aforesaid, and to collect such judgment out of any property of the Owner-Trustee, subject to the provisions of Articles 4 and 23 hereof, wherever situated. The Owner-Trustee shall promptly notify the Vendor of any event which has come to its attention which constituted, constitutes, or with the giving of notice and/or lapse of time could constitute, an event of default under this Agreement.

16.2. *Waiver of Defaults.* The Vendor may, at its election, waive any such event of default and its consequences and rescind and annul any Declaration of Default or notice of termination of the Lease by notice to the Owner-Trustee and the Lessee in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such event of default had occurred and no Declaration of Default or notice of termination of the Lease had been made or given. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Owner-Trustee that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

ARTICLE 17
REMEDIES

17.1. *Vendor May Take Possession of Equipment.* Subject to the Lessee's rights of possession, use and assignment under §§4 and 15 of the Lease, at any time during the continuance of a Declaration of Default, the Vendor may, and upon such further notice, if any, as may be required for compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Vendor, take or cause to be taken, by its agent or agents, immediate possession of the Equipment, or one or more of the units thereof, without liability to return to the Owner-Trustee any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 17 expressly provided, and may remove the same from possession and use of the Owner-Trustee, the Lessee or any other person and for such purpose may enter upon the premises of the Owner-Trustee or the Lessee or any other premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Owner-Trustee or the Lessee, subject to all mandatory requirements of due process of law.

17.2. *Assembling of Equipment for Vendor.* In case the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall designate a reasonable point or points for the delivery of the Equipment to the Vendor, the Owner-Trustee shall, subject to the provisions of Article 4 and Article 23 hereof, at its own 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 possession thereof to return the unit or units) place such units upon such storage tracks of the Lessee as the Vendor reasonably may designate;

(b) permit the Vendor to store such units on such tracks without charge for insurance, rent or storage until all such units of Equipment have been sold, leased or otherwise disposed of by the Vendor; and

(c) transport the same to any reasonable 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 Vendor.

During any storage period, the Lessee has agreed pursuant to §14.1 of the Lease, at its own cost and expense, to insure, maintain and keep each such unit in good order and repair and to permit the inspection of the Equipment by the Vendor, the Vendor's representatives and prospective purchasers and users. This agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and, the Owner-Trustee acknowledges that upon application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled under the Lease as assignee of the rights of the Owner-Trustee thereunder to a decree against the Lessee requiring specific performance hereof. The Owner-Trustee hereby expressly waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

17.3. *Vendor May Dispose of or Retain Equipment.* At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 17 provided) may, at its election, retain the Equipment in satisfaction of the entire Conditional Sale Indebtedness and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Owner-Trustee and the Lessee by telegram or registered mail, addressed as provided in Article 22 hereof, and to any other persons to whom the law may require notice, within 30 days after such Declaration of Default. In the event that the Vendor should elect to retain the Equipment and no objection is made thereto within the 30-day period described in the second proviso below, all the Owner-Trustee's rights in the Equipment shall thereupon terminate and all payments made by the Owner-Trustee may be retained by the Vendor as compensation for the use of the Equipment; *provided, however,* that if the Owner-Trustee, before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to the Vendor the total unpaid balance of

the Conditional Sale Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Owner-Trustee; *provided, further,* that if the Owner-Trustee, the Lessee or any other persons notified under the terms of this paragraph object in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall not have given notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 17.

17.4. *Vendor May Sell Equipment; Owner-Trustee's Right of Redemption.* Subject to the Lessee's rights of possession, use and assignment under §§4 and 15 of the Lease, at any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon reasonable notice to the Owner-Trustee, the Lessee and any other persons to whom the law may require notice of the time and place, may sell the Equipment, or one or more of the units thereof, free from any and all claims of the Owner-Trustee, the Lessee or any other party claiming from, through or under the Owner-Trustee or the Lessee, at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; *provided, however,* that if, prior to such sale and prior to the making of a contract for such sale, the Owner-Trustee should tender full payment of the total unpaid balance of the Conditional Sale Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale and the Vendor's reasonable attorneys' fees, then upon receipt of such payment, expenses and fees by the Vendor, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Owner-Trustee. The proceeds of such sale or other disposition, less the attorneys' fees and any other expenses incurred by the Vendor in retaking possession of, removing, storing, holding, preparing for sale and selling or otherwise disposing of the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement.

17.5. *Sale of Equipment by Vendor.* Any sale hereunder may be held or conducted at New York, New York, at such time or times as the Vendor may specify (unless the Vendor shall specify a different place or places, in which case the sale shall be held at such place or places as the Vendor may specify), in one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine, so long as such sale shall be in a commercially reasonable manner. The Vendor, the Owner-Trustee or the Lessee may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. The Owner-Trustee and the Lessee shall be given written notice of such sale not less than ten days prior thereto, by telegram or registered mail addressed as provided in Article 22 hereof. In addition, if such sale shall be a private sale (which shall be deemed to mean only a sale where an advertisement for bids has not been published in a newspaper of general circulation or a sale where less than 40 offerees have been solicited in writing to submit bids), it shall be subject to the rights of the Lessee and the Owner-Trustee to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. In the event that the Vendor shall be the purchaser of the Equipment, it shall not be accountable to the Owner-Trustee (except) to the extent of surplus money received as hereinafter provided in this Article 17), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all or any part of sums due to the Vendor hereunder.

17.6. *Effect of Remedies and Powers and Exercise Thereof.* Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity not inconsistent herewith, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any

payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly granted to the Owner-Trustee shall not otherwise alter or affect the Vendor's rights or the Owner-Trustee's obligations hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Owner-Trustee's obligations or the Vendor's rights hereunder with respect to any subsequent payments or default therein.

17.7. *Deficiencies.* If, after applying all sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Owner-Trustee shall, subject to the limitations of paragraph 4.8 of Article 4 and Article 23 hereof, pay the amount of such deficiency to the Vendor upon demand, together with interest thereon from the date of such demand to the date of payment at the Penalty Rate, and, if the Owner-Trustee shall fail to pay such deficiency, the Vendor may bring suit therefor and shall, subject to the limitations of paragraph 4.8 of Article 4 and Article 23 hereof, be entitled to recover a judgment therefor against the Owner-Trustee. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Owner-Trustee.

17.8. *Expenses.* The Owner-Trustee will pay all reasonable expenses, including attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable expenses, including reasonable attorneys' fees, and the amount thereof shall be included in such judgment. The foregoing provisions of this paragraph shall be subject to the limitations set forth in paragraph 4.8 of Article 4 and Article 23 hereof.

17.9. *Remedies Subject to Mandatory Legal Requirements.* The foregoing provisions of this Article 17 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

ARTICLE 18

APPLICABLE STATE LAWS

18.1. *Conflict with State Laws.* Any provision of this Agreement prohibited by any applicable law of any jurisdiction (which is not overridden by applicable federal law) shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Owner-Trustee to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

18.2. *Waiver of Notices.* Except as otherwise provided in this Agreement, the Owner-Trustee, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment, or any one or more units thereof, and any other requirements as to the time, place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of the Vendor's rights and any and all rights of redemption.

ARTICLE 19

RECORDING

Subject to the provisions of Article 23 hereof, the Owner-Trustee will cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto to be filed and recorded in accordance with Section 20c of the Interstate Commerce Act and deposited with the Registrar General of Canada (notice of such deposit to be forthwith given in *The Canada Gazette*) pursuant to Section 86 of the Railway Act of Canada; and the Owner-Trustee will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record any and all further instruments required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Owner-Trustee will promptly furnish to the Vendor certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Vendor.

ARTICLE 20

REPRESENTATIONS AND WARRANTIES OF BUILDERS

Each Builder hereby represents and warrants to the Owner-Trustee, its successors and assigns, that this Agreement is duly authorized by it and lawfully executed and delivered by it for a valid consideration, that, assuming due authorization, execution and delivery by the Owner-Trustee this Agreement is, in so far as such Builder is concerned, a legal, valid and existing agreement binding upon the Builder in accordance with its terms.

ARTICLE 21

ARTICLE AND PARAGRAPH HEADINGS; EFFECT AND MODIFICATION OF AGREEMENT

21.1. *Article and Paragraph Headings for Convenience Only.* All article and paragraph headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

21.2. *Effect and Modification of Agreement.* Except for the Participation Agreement, this Agreement, including the Annexes hereto, exclusively and completely states the rights of the Vendor and the Owner-Trustee with respect to the Equipment and supersedes all other agreements, oral or written, with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized representatives of the Vendor and the Owner-Trustee.

ARTICLE 22

NOTICE

Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed to it by first class mail, postage prepaid, at its chief place of business at the following specified addresses:

(a) to the Owner-Trustee, at 79 South Main Street, Salt Lake City, Utah, 84111, attention of Trust Department, Corporate Trust Division, with copies to BWL, Inc., Suite 2700, One IBM Plaza, Chicago, Illinois, 60611, attention: Manager, Leveraged Leasing; Westinghouse Credit Corporation, 3 Gateway Center, Pittsburgh, Pennsylvania, 15222, attention: Manager, Leveraged Leasing; Toy National Bank, Fourth and Nebraska Streets, Sioux City, Iowa 51102, attention of Vice President Investments; and Comdisco Financial Services, Inc., 530 Bush Street, San Francisco, California 94108.

(b) to each Builder, at the addresses specified in Item 1 of Annex A hereto,

(c) to any assignee of the Vendor, or of the Owner-Trustee, at such address as may have been furnished in writing to the Owner-Trustee, or the Vendor, as the case may be, by such assignee,

or at such other address as may have been furnished in writing by such party to the other parties to this Agreement.

ARTICLE 23

IMMUNITIES; SATISFACTION OF UNDERTAKINGS

23.1. *No Recourse Against Certain Persons.* No recourse shall be had in respect of any obligation due under this Agreement, or referred to herein, against any incorporator, stockholder, director or officer, as such, past, present or future, of the parties hereto or the Owners, whether by virtue of any constitutional provision, statute or rule of law, or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of such incorporators, stockholders, directors or officers, as such, being forever released as a condition of and as consideration for the execution of this Agreement.

23.2. *Satisfaction of Certain Covenants.* The obligations of the Owner-Trustee under paragraph 7.1 of Article 7, paragraphs 17.2, 17.7 and 17.8 of Article 17, and under Articles 6, 9, 10, 11, 13, 14 and 19

hereof and any and all obligations at any time arising thereunder shall be deemed satisfied in full in all respects (except, in the case of Article 13 hereof, as set forth in paragraph 13.3 thereof), and be of no further force or effect in so far as they involve personal liability for money or performance or otherwise of the Owner-Trustee, other than out of "income and proceeds from the Equipment" (as defined in paragraph 4.8 of Article 4 hereof), upon the execution and delivery of the Lease (whether or not the Lease shall thereafter be amended, terminated or otherwise modified and irrespective of the genuineness, validity, regularity or enforceability of the Lease); *provided, however,* that such covenants and obligations shall be deemed covenants of the Owner-Trustee within the meaning of subparagraphs (a) and (b) of paragraph 16.1 of Article 16 hereof (it being the intention of the parties hereto that neither the Owner-Trustee nor any of its properties shall be subject to any liability for any breach or alleged breach by it of any such covenant or obligation except out of the "income and proceeds from the Equipment", but that any such breach may be made the basis of an event of default under said Article 16). No waiver or amendment of the Lessee's undertakings under the Lease shall be effective unless joined in by the Vendor; *provided, however,* that the Vendor shall consent to any agreement in writing between the Lessee and the Owner-Trustee increasing or decreasing the rentals or casualty values payable pursuant to §§3 and 7 of the Lease so long as the amounts payable thereunder are not reduced below those necessary to satisfy the obligations of the Owner-Trustee hereunder, such consent to be given by the Vendor within 30 days of delivery of a copy of any such agreement to the Vendor.

23.3. *No Personal Liability of Owner-Trustee.* 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 Owner-Trustee are each and every one of them made and intended not as personal representations, undertakings and agreements by First Security Bank of Utah, National Association, including its successors and assigns, 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 Trust Estate as such term is used in 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 trust company as trustee under the Trust Agreement; and that no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against said bank or the Owners except as provided in paragraph 13.3 of Article 13 hereof and Section 1.04 of the Trust Agreement or on account of any representation, undertaking or agreement of the Owner-Trustee or the Owners except as provided in paragraph 13.3 of Article 13 hereof and Section 1.04 of the Trust Agreement, either expressed or implied, all such personal liability, if any, being expressly waived and released by the Vendor and by all persons claiming by, through or under the Vendor; *provided, however,* that the Vendor or any person claiming by, through or under any of them, making claim hereunder, may look to said Trust Estate for satisfaction of the same. Nothing contained in this Section 23.3 shall limit, restrict or impair the rights of the Vendor to take all actions to enforce the rights and remedies provided for herein and to bring suit and obtain a judgment against the Owner-Trustee (provided that neither the Owner-Trustee in its fiduciary or individual capacity nor the Owners shall have any personal liability on any such judgment and the satisfaction thereof shall be limited to the Trust Estate, including any interest therein of the Owner-Trustee or the Owners) or to foreclose the lien and security interest created by this Agreement or otherwise realize upon the Trust Estate, including the right to proceed against the Equipment or the Lessee under the Lease.

The Owner-Trustee agrees not to enter into any supplement or amendment of the Trust Agreement except as provided in Section 8.01 thereof as in effect on the date of execution and delivery hereof.

ARTICLE 24

LAW GOVERNING

The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Utah; *provided, however,* that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and Section 86 of the Railway Act of Canada, such additional rights, if any, arising out of the filing, recording or deposit hereof and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited or in which any unit of Equipment shall be located, and such rights, if any, arising out of the marking of Equipment.

ARTICLE 25

EXECUTION

This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. It shall not be necessary that any counterpart be signed by all the parties so long as any counterpart be signed by the Owner-Trustee and one or more Builders. Each Builder shall be bound hereunder, notwithstanding the failure of any other Builder to execute and deliver this Agreement, or perform its obligations hereunder, and this Agreement shall be deemed to be a separate Agreement between the Owner-Trustee and each of the respective Builders. Although this Agreement is dated, for convenience, 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.

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

GENERAL MOTORS CORPORATION
(Electro-Motive Division),

by

Vice President

[CORPORATE SEAL]

Attest:

Assistant Secretary

GENERAL ELECTRIC COMPANY,

by

General Manager—Domestic
Locomotive Marketing
Department

[CORPORATE SEAL]

Attest:

Attesting Secretary

FIRST SECURITY BANK OF UTAH,
National Association, not in its individual capacity, but solely as Trustee as aforesaid,

by

Authorized Officer

[SEAL]

Attest:

Authorized Officer

STATE OF UTAH,
COUNTY OF SALT LAKE, } ss.:

On this 23rd day of September, 1977, before me personally appeared ROBERT S. CLARK to me personally known, who, being by me duly sworn, says that he is an Authorized Officer of FIRST SECURITY BANK OF UTAH, National Association, that one of the seals affixed to the foregoing instrument is the seal of said national banking association, that said instrument was signed and sealed on behalf of said national banking association by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said national banking association.

Susan A. Howard
Notary Public

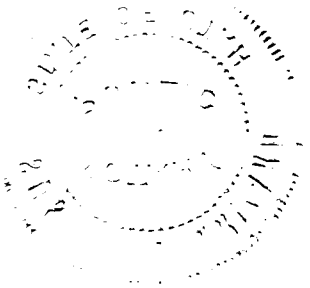
[Notarial Seal]
My Commission expires
My commission expires June 6, 1981

STATE OF PENNSYLVANIA, }
COUNTY OF ERIE, } ss.:

On this day of September, 1977, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is the General Manager—Domestic Locomotive Marketing Department of GENERAL ELECTRIC COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]
My commission expires



STATE OF ILLINOIS, }
COUNTY OF COOK, } ss.:

On this day of September, 1977, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President of GENERAL MOTORS CORPORATION (Electro-Motive Division), that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]
My Commission expires

SCHEDULE I

Allocation Schedule of Each $1,000,000 of Conditional Sale Indebtedness Payable In (i) One Interim Payment of Interest Only on January 5, 1978, and (ii) 30 Semi-Annual Instalments Commencing July 5, 1978

Instalment No.		Principal Balance (Before Payment)	Interest Payment	Principal Recovery	Ending Principal
		$	$	$	$
(Interim Payment)					
	(1/5/78)	1,000,000.00	*	-0-	1,000,000.00
1	(7/5/78)	1,000,000.00	40,625.00**	14,966.86	985,033.14
2	(1/5/79)	985,033.14	40,016.97	15,574.89	969,458.25
3	(7/5/79)	969,458.25	39,384.24	16,207.62	953,250.63
4	(1/5/80)	953,250.63	38,725.81	16,866.05	936,384.58
5	(7/5/80)	936,384.58	38,040.62	17,551.24	918,833.34
6	(1/5/81)	918,833.34	37,327.60	18,264.26	900,569.08
7	(7/5/81)	900,569.08	36,585.62	19,006.24	881,562.84
8	(1/5/82)	881,562.84	35,813.49	19,778.37	861,784.47
9	(7/5/82)	861,784.47	35,009.99	20,581.87	841,202.60
10	(1/5/83)	841,202.60	34,173.85	21,418.01	819,784.59
11	(7/5/83)	819,784.59	33,303.75	22,288.11	797,496.48
12	(1/5/84)	797,496.48	32,398.29	23,193.57	774,302.91
13	(7/5/84)	774,302.91	31,456.05	24,135.81	750,167.10
14	(1/5/85)	750,167.10	30,475.54	25,116.32	725,050.78
15	(7/5/85)	725,050.78	29,455.19	26,136.67	698,914.11
16	(1/5/86)	698,914.11	28,393.38	27,198.48	671,715.63
17	(7/5/86)	671,715.63	27,288.45	28,303.41	643,412.22
18	(1/5/87)	643,412.22	26,138.62	29,453.24	613,958.98
19	(7/5/87)	613,958.98	24,942.08	43,000.06	570,958.92
20	(1/5/88)	570,958.92	23,195.21	44,746.93	526,211.99
21	(7/5/88)	526,211.99	21,377.36	46,564.78	479,647.21
22	(1/5/89)	479,647.21	19,485.67	48,456.47	431,190.74
23	(7/5/89)	431,190.74	17,517.12	50,425.02	380,765.72
24	(1/5/90)	380,765.72	15,468.61	52,473.53	328,292.19
25	(7/5/90)	328,292.19	13,336.87	54,605.27	273,686.92
26	(1/5/91)	273,686.92	11,118.53	56,823.61	216,863.31
27	(7/5/91)	216,863.31	8,810.07	59,132.07	157,731.24
28	(1/5/92)	157,731.24	6,407.83	61,534.31	96,196.93
29	(7/5/92)	96,196.93	3,908.00	64,034.14	32,162.79
30	(1/5/93)	32,162.79	1,306.61	32,162.79	0.00

* Interest only on the Conditional Sale Indebtedness shall be payable at the rate of 8.125% per annum to the extent accrued on January 5, 1978.

** This amount will be lower if all the Equipment is not delivered and settled for on or before January 5, 1978.

Item 1: General Motors Corporation (Electro-Motive Division), a Delaware corporation, having an address at La Grange, Illinois 60525 (hereinafter called EMD). General Electric Company, a New York corporation, having an address at 2901 East Lake Road, Erie, Pennsylvania 16531 (hereinafter called GE) (EMD and GE hereinafter being collectively called the Builders).

Item 2: The Schedule A Equipment shall be settled for in no more than three Groups: the first Group shall be settled for on or after December 7, 1977; the second Group on or after December 21, 1977; and the third Group on January 5, 1978.

The Schedule B Equipment shall be settled for in one Group of Equipment on or after January 5, 1978, and on or before June 30, 1978.

Item 3: (a) EMD warrants that the Equipment manufactured by it hereunder is of the kind and quality described in, or will be built in accordance with, the Specifications referred to in Article 2 of the Conditional Sale Agreement to which this Annex A is attached (hereinafter in this Annex A called this Agreement) and is suitable for the ordinary purposes for which such Equipment is used and warrants each unit of such Equipment to be free from defects in material and workmanship which may develop under normal use and service within two years from date of delivery of such unit or before such unit has been operated 250,000 miles, whichever event shall first occur. EMD agrees to correct such defects, which examination shall disclose to EMD's satisfaction to be defective, by repair or replacement F.O.B. factory and such correction shall constitute fulfillment of EMD's obligation with respect to such defect under this warranty.

EMD warrants specialties not of its own specification or design to the same extent that the suppliers of such specialties warrant such items to EMD.

EMD further agrees with the Owner-Trustee that neither the inspection as provided in Article 3 of this Agreement, nor any examination, nor the acceptance of any units of the Equipment as provided in said Article 3 shall be deemed a waiver or modification by the Owner-Trustee of any of its rights under this Item 3(a).

(b) GE warrants to the Owner-Trustee that each unit of Equipment manufactured by it hereunder will be free from defects in material, workmanship and title under normal use and service, and will be of the kind and quality designated or described in the Specifications referred to in Article 2 of this Agreement. The foregoing warranty is exclusive and in lieu of all other warranties, whether written, oral, implied or statutory (except as to title). NO WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR PURPOSE SHALL APPLY. If it appears within two (2) years from the date of shipment by GE, or within 250,000 miles of operation, whichever event shall first occur, that the Equipment delivered by GE under this Agreement does not meet the warranties specified above, and the Owner-Trustee notifies GE promptly, GE, after verification as to condition and usage, shall correct any defect including nonconformance with the Specifications, at its option, either by repairing any defective part or parts made available to GE, or by making available at GE's plant or warehouse, a repaired or replacement part. If requested by GE, the Owner-Trustee will ship the defective part or parts, with shipping charges prepaid, to the plant or warehouse designated by GE. The foregoing shall constitute the sole remedy of the Owner-Trustee and the sole liability of GE.

The liability of GE to the Owner-Trustee (except as to title) arising out of the supplying of any unit of Equipment hereunder, or its use, whether on warranty, contract or negligence, shall not in any case exceed the cost of correcting defects in the Equipment as herein provided, and upon the expiration of the warranty period specified above, all such liability shall terminate. GE shall

have no liability for any unit of Equipment or part thereof which becomes defective by reason of improper storage or application, misuse, negligence, accident or improper operation, maintenance, repairs or alterations on the part of the Owner-Trustee, or any third party other than GE. In no event, whether as a result of breach of contract, warranty, tort (including negligence) or otherwise, shall the Builder or its suppliers be liable for any special, consequential, incidental or penal damages including, but not limited to, loss of profits or revenues, loss of the use of the Equipment or any associated equipment, damage to the associated equipment, cost of capital, cost of substitute products, facilities, services or replacements, downtime costs, or claims of customers of the Owner-Trustee, the Owners or the Lessee for such damages.

It is understood that GE has the right to make any changes in design and add improvements to equipment at any time without incurring any obligations to install, at GE's expense, the same on other equipment sold by GE.

THERE ARE NO WARRANTIES WITH RESPECT TO MATERIAL AND WORKMANSHIP, EXPRESSED OR IMPLIED, MADE BY THE BUILDERS EXCEPT THE WARRANTIES SET OUT ABOVE.

Item 4: (a) EMD shall defend any suit or proceeding brought against the Owner-Trustee, the Lessee and/or each assignee of EMD's rights under this Agreement so far as the same is based on a claim that the Equipment of EMD's specification, or any part thereof, furnished under this Agreement constitutes an infringement of any patent, if notified promptly in writing and given authority, information and assistance (at EMD's expense) for the defense of same, and EMD shall pay all damages and costs awarded therein against the Owner-Trustee, the Lessee and/or any such assignee.

In case any unit of such Equipment, or any part thereof, is in such suit held to constitute infringement and the use of such unit or part is enjoined, EMD shall at its option and at its own expense either procure for the Owner-Trustee, the Lessee and any such assignee the right to continue using such unit or part, or replace the same with noninfringing equipment subject to this Agreement, or modify it so it becomes noninfringing, or remove such unit and refund the Purchase Price and the transportation and installation costs thereof. If the Purchase Price is so refunded, such refund shall be made to the assignee of EMD's rights under this Agreement if this Agreement has been so assigned, which refund, to the extent of the unpaid Conditional Sale Indebtedness, shall be applied in like manner as payments in respect of Casualty Occurrences under Article 7 of this Agreement and, as long as no event of default or event which with the lapse of time and/or demand could constitute an event of default under this Agreement shall have occurred and be continuing, the balance shall be paid by such assignee to the Owner-Trustee.
EMD will assume no liability for patent infringement by reason of purchase, manufacture, sale or use of devices not included in and covered by its specification.

(b) Except in cases of designs specified by the Owner-Trustee and/or the Lessee and not developed or purported to be developed by GE, and articles and materials specified by the Owner-Trustee and/or Lessee and not manufactured by GE, GE warrants for itself that Equipment furnished hereunder, and any part thereof, shall be delivered free of any rightful claim of any third party for infringement of any United States patent. If notified promptly in writing and given authority, information and assistance, GE shall defend, or may settle, at its expense, any suit or proceeding against the Owner-Trustee or Lessee so far as based on a claimed infringement which would result in a breach of this warranty and GE shall pay all damages and costs awarded therein against Owner-Trustee or Lessee due to such breach. In case any Equipment or part thereof is in such suit or proceeding found to constitute such an infringement and the use of such Equipment or part thereof is enjoined, GE shall, at its expense and option, either procure for the Owner-Trustee and the Lessee the right to continue using said Equipment or part thereof, or replace same within six months of such injunction with non-infringing Equipment or part thereof acceptable to the Owner-Trustee, or modify

same so it becomes non-infringing, or remove the Equipment or part thereof and refund the Purchase Price (less reasonable depreciation for any period of use) and any transportation costs separately paid by the Owner-Trustee or Lessee, but in each case without impairing the operational capability of such Equipment. The preceding shall not apply to the use of any Equipment or part thereof furnished hereunder in conjunction with any other product in a combination not furnished by GE as a part of this transaction. As to any such combination, GE assumes no liability whatsoever for patent infringement and the Owner-Trustee and Lessee will hold GE harmless against any infringement claims arising therefrom. GE will give notice to the Owner-Trustee and Lessee of any claim known to GE from which liability may be charged against the Owner-Trustee or Lessee hereunder and the Owner-Trustee and Lessee will give notice to GE of any claim known to them from which liability may be charged against GE hereunder.

The foregoing states the entire liability of each of the Builders for patent infringement by the Equipment or any part thereof.

Item 5: The Maximum Purchase Price referred to in Article 4 of the Conditional Sale Agreement to which this Annex A is attached is $15,773,625.

ANNEX B

9026-

TO

CONDITIONAL SALE AGREEMENT

Type	Builder	Builder's Specifications	Builder's Plant	Quantity	Lessee's Road Numbers (Both Inclusive)	Estimated Unit Base Price	Estimated Total Base Price	Estimated Time and Place of Delivery
3,000 h.p. Model SD 40-2 diesel-electric locomotive	EMD	8087	La Grange, Illinois	10	BN 6781-6790	$584,700	$ 5,847,000	Prior to December 31, 1977 at Fridley, Minnesota.
3,000 h.p. Model C-30-7 diesel-electric locomotive	GE	3390-F	Erie, Pennsylvania	15	BN 5530-5544	$611,700	$ 9,175,500	Prior to December 31, 1977 at Erie, Pennsylvania.
							$15,022,500	

ANNEX C
to Conditional
Sale Agreement

LEASE OF RAILROAD EQUIPMENT

Dated as of September 1, 1977

Between

BURLINGTON NORTHERN INC.,
as Lessee,

and

FIRST SECURITY BANK OF UTAH, NATIONAL ASSOCIATION,
not in its individual capacity but solely
as Trustee under a Trust Agreement dated as of
September 1, 1977, with BWL, Inc.,
Westinghouse Credit Corporation and Toy National Bank,
as Lessor.

LEASE OF RAILROAD EQUIPMENT

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* This table of Contents has been included in this document for convenience only and does not form a part of, or affect any construction or interpretation of this document.

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LEASE OF RAILROAD EQUIPMENT dated as of September 1, 1977, between BURLINGTON NORTHERN INC., a Delaware corporation (hereinafter called the Lessee), and FIRST SECURITY BANK OF UTAH, National Association, a national banking association, acting not in its individual capacity but solely as Trustee (hereinafter called the Owner-Trustee) under a Trust Agreement dated as of the date hereof (hereinafter called the Trust Agreement) with BWL, Inc., Westinghouse Credit Corporation and Toy National Bank (the latter two corporations and said bank hereinafter called severally the Owner and collectively the Owners).

WHEREAS the Owner-Trustee is entering into a Conditional Sale Agreement dated as of the date hereof with General Motors Corporation (Electro-Motive Division) and General Electric Company (each corporation being hereinafter severally called the Builder and collectively the Builders) (such agreement being hereinafter called the Security Documentation), wherein the Builders have severally agreed to manufacture, sell and deliver to the Owner-Trustee the units of railroad equipment described in Appendix A hereto;

WHEREAS each Builder is assigning its interests in the Security Documentation pursuant to an Agreement and Assignment dated the date hereof (hereinafter called the Assignment) to Mercantile-Safe Deposit and Trust Company, acting as agent for certain investors under a Participation Agreement dated as of the date hereof (hereinafter called the Participation Agreement) among said agent, the Lessee, the Owner-Trustee, the Owners and the parties named in Appendix I thereto (hereinafter called the Investors) (said agent as so acting, being hereinafter, together with its successors and assigns, called the Vendor);

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

WHEREAS the Owner-Trustee will assign this Lease for security to the Vendor pursuant to an Assignment of Lease and Agreement (hereinafter called the Lease Assignment) dated as of the date hereof and the Lessee will acknowledge and consent thereto pursuant to the Consent and Agreement (hereinafter called the Consent) in the form attached to the Lease Assignment;

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 Owner-Trustee hereby leases the Units to the Lessee upon the following terms and conditions:

§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 setoff against rent, including, but not limited to, abatements, reductions or setoffs due or alleged to be due by reason of any past, present or future claims of the Lessee against the Owner-Trustee or the Owners under this Lease or the Security Documentation including the Lessee's rights by subrogation thereunder to the Builders or the Vendor or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Owner-Trustee or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency of or any bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter

may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Owner-Trustee, the Owners or the Vendor for any reason whatsoever.

§2. DELIVERY

2.1. *Delivery and Acceptance of Units.* The Owner-Trustee hereby appoints the Lessee its agent for inspection and acceptance of the Units pursuant to the Security Documentation. Each delivery of a Unit to the Owner-Trustee under the Security Documentation shall be deemed to be a delivery hereunder to the Lessee at the point or points within the the United States of America at which such Unit is so delivered to the Owner-Trustee. Upon such delivery, the Lessee will cause an employee of the Lessee to inspect the same, and if such Unit is found to be acceptable, to accept delivery of such Unit on behalf of the Owner-Trustee under the Security Documentation and on behalf of itself hereunder and execute and deliver to the Owner-Trustee a certificate of acceptance (hereinafter called the Certificate of Acceptance) in accordance with the provisions of Article 3 of the Security Documentation, stating that such Unit has been inspected and accepted on behalf of the Lessee and the Owner-Trustee on the date of such Certificate of Acceptance and is marked in accordance with §5.1 hereof, whereupon such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease.

2.2. *Designation of Schedule A and Schedule B Units.* All Units which are delivered and accepted hereunder pursuant to the Security Documentation on or prior to December 31, 1977, shall be called Schedule A Units; all Units which may be delivered and accepted hereunder pursuant to the Security Documentation after December 31, 1977, and on or prior to June 30, 1978, shall be called Schedule B Units. If there are in fact any Schedule B Units, the Owner-Trustee and the Lessee agree that they shall enter into a supplement hereto promptly after final settlement for all Units (i) setting forth the road numbers of the Units which are designated Schedule A and Schedule B Units, and (ii) setting forth the actual rentals and Casualty Values for the Schedule B Units determined as provided in §3.1(2) and §7.6 hereof.

§3. RENTALS

3.1. *Amount and Date of Payment.* (1) The Lessee agrees to pay to the Owner-Trustee, as rental for each Schedule A Unit subject to this Lease, one interim rental payment on January 5, 1978, and 36 consecutive semiannual payments payable, in arrears, on January 5 and July 5 in each year, commencing July 5, 1978, to and including January 5, 1996. In respect of each Schedule A Unit subject to this Lease, (a) the interim rental payment shall be in an amount equal to the product of the Purchase Price (as defined in the Security Documentation) for each such Schedule A Unit subject to this Lease multiplied by 0.014434% for each day (computed on the basis of a 360-day year of twelve 30-day months) elapsed from the Closing Date (as defined in the Security Documentation) for such Unit to, but not including, January 5, 1978, and (b) the 36 semiannual rental payments shall each be in an amount equal to the applicable basic lease rate therefor set forth in Appendix B hereto for the applicable payment date multiplied by the Purchase Price of each such Schedule A Unit.

(2) The Lessee agrees to pay to the Owner-Trustee, as rental for each Schedule B Unit subject to this Lease, one interim rental payment on July 5, 1978, and 35 consecutive semiannual payments payable, in arrears, on January 5 and July 5 in each year, commencing January 5, 1979, to and including January 5, 1996. In respect of each Schedule B Unit subject to this Lease, (a) the interim rental payment shall be an amount equal to (i) the product of the Purchase Price for each such Schedule B Unit subject to this Lease multiplied by 0.014434% for each day (computed on the basis of a 360-day year of twelve 30-day months) elapsed from the Closing Date (as defined in the Security Documentation) for such Unit to, but not including, July 5, 1978, plus (ii) an amount equal to 0.9571307% of the Purchase Price of each such Schedule B Unit, and (b) the 35 semiannual payments shall be in a sum equal to the amount as shall, in

the reasonable opinion of each Owner, cause such Owner's after-tax economic yields and cash flows (computed on the same assumptions, including tax rates, as were utilized by such Owner in originally evaluating this transaction) to equal the after-tax economic yields and cash flows (such economic yields and cash flows hereinafter called the Net Economic Return) that would have been realized by such Owner if such Schedule B Unit had been delivered and accepted on or prior to December 31, 1977; *provided, however,* that no such computation shall reduce the amount of rentals below that which is necessary to satisfy the obligations of the Owner-Trustee under the Security Documentation and that such schedule of rentals be provided to the Lessee and the Vendor promptly after the Closing Date for the Schedule B Units. In the event that any dispute should arise as to the calculation of such rentals (or the Casualty Value of the Schedule B Units under §7.6 hereof), the Lessee agrees, pending resolution of such dispute, to pay on account of such rentals (or such Casualty Value), on the dates due hereunder, amounts at least sufficient to satisfy the obligations of the Owner-Trustee under the Security Documentation and no such payment shall, as between the Owner-Trustee and the Lessee, prejudice the right of the Owner-Trustee to receive from the Lessee any amount in addition thereto, due and payable hereunder.

(3) In the event that there are any losses or liabilities arising out of or resulting from the Investments made pursuant to Paragraph 2 of the Participation Agreement, including, but not limited to, any deficiency in respect thereof, the rentals thereafter payable by the Lessee in respect of Units settled for concurrently with or after such loss, liabilities, or deficiency arose shall be increased by such amount as shall, in the reasonable opinion of each Owner, cause such Owner's Net Economic Return to equal the Net Economic Return that would have been realized by such Owner if such loss or liability had not occurred.

(4) In addition to the foregoing rentals, the Lessee hereby agrees to pay to the Owner-Trustee as rent amounts equal to the amounts required by the Owner-Trustee to make the payments provided for in the last sentence of the penultimate paragraph and in the last paragraph of Paragraph 9 of the Participation Agreement on the dates required for such payments in said Paragraph 9 (without regard to the limitation of the obligation of the Owner-Trustee set forth therein) and the Owner-Trustee agrees to apply such rentals for such purposes.

3.2. *Payments on Nonbusiness Days.* If any of the semiannual rental payment dates referred to in §3.1 is not a business day the semiannual rental payment otherwise payable on such date shall be payable on the next succeeding business day, and no interest shall be payable thereon for the period from and after the nominal date for payment thereof to such next succeeding business day. The term "business day" as used herein means a calendar day, excluding Saturdays, Sundays and any other day on which banking institutions in New York, New York, Salt Lake City, Utah, or Baltimore, Maryland, are authorized or obligated to remain closed.

3.3. *Instructions To Pay Vendor and Owner-Trustee.* If the Lease Assignment is executed and delivered, until the Vendor shall have advised the Lessee in writing that all sums due from the Owner-Trustee under the Security Documentation have been fully satisfied and discharged, the Owner-Trustee irrevocably instructs the Lessee to make all the payments provided for in this Lease to the Vendor, for the account of the Owner-Trustee, in care of the Vendor, with instructions to the Vendor (a) first to apply such payments to satisfy the obligations of the Owner-Trustee under the Security Documentation known to the Vendor to be due and payable on the date such payments are due and payable hereunder and (b) second, so long as no event of default under the Security Documentation shall have occurred and be continuing, to pay any balance promptly to the Owner-Trustee or to the order of the Owner-Trustee in immediately available funds at such place as the Owner-Trustee shall specify in writing. If the Lease Assignment is not executed and delivered, or if the Lessee shall have been advised by the Vendor in writing that all sums due from the Owner-Trustee under the Security Documentation have been fully discharged and satisfied, the semi-annual instalments of rental due hereunder and any Casualty Payments thereafter due pursuant to Section 7 hereof shall be made to the Owner-Trustee in immediately available funds in the manner provided in Section 3.4 hereof.

3.4. *Payment in Immediately Available Funds.* The Lessee agrees to make each payment provided for herein as contemplated by §3.1 in immediately available funds at or prior to 11:00 a.m. in the city where such payment is to be made.

§4. TERM OF LEASE

4.1. *Beginning and Termination; Survival.* The term of this Lease as to each Unit shall begin on the date of delivery of such Unit under the Security Documentation and, subject to the provisions of §§7, 13 and 16 hereof, shall terminate on the date on which the final payment of rent in respect thereof is due pursuant to §3.1 hereof. The obligations of the Lessee hereunder (including, but not limited to, the obligations under §6, 7, 10, 11, 12 and 17 hereof) shall survive the expiration of the term of this Lease.

4.2. *Rights and Obligations of Lessee Subject to Security Documentation.* 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 without affecting the indemnities which by the provisions of this Lease survive the termination of its term (or rescind its termination), all as provided therein; *provided, however,* that so long as (i) no Event of Default exists hereunder, (ii) the Lessee is complying with the provisions of the Consent and (iii) the Vendor is entitled to apply the Payments as defined in the Lease Assignment in accordance with the Lease Assignment, this Lease may not be terminated and the Lessee shall be entitled to the rights of possession, use and assignment provided under §15 hereof.

§5. IDENTIFICATION MARKS

5.1. *Identifying Numbers; Legend; Changes.* The Lessee will cause each Unit to be kept numbered with the road number set forth in Appendix A hereto, or in the case of any Unit not there listed such road 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 Security Agreement Filed under the Interstate Commerce Act, Section 20c", or other appropriate words designated by the Owner-Trustee, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Owner-Trustee's and Vendor's title to and property in such Unit and the rights of the Owner-Trustee 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 on both sides thereof and will replace promptly any such words which may be removed, obliterated, defaced or destroyed. The Lessee will not change the road 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 Owner-Trustee and 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 Owner-Trustee an opinion of counsel to the effect that such statement has been so filed, recorded and deposited, such filing, recordation and deposit will protect the Vendor's and the Owner-Trustee's interests in such Units and no 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 Vendor and the Owner-Trustee in such Units. The Units may be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates.

5.2. *Insignia of Lessee.* Except as provided in §5.1, 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.

§6. TAXES

6.1. *Indemnification for Nonincome Taxes.* Whether or not any of the transactions contemplated hereby are consummated, the Lessee agrees to pay, and to indemnify and hold the Owner-Trustee and the Vendor harmless from, all taxes, assessments, fees and charges of any nature whatsoever, together with any penalties, fines, additions to tax or interest thereon, howsoever imposed, whether levied or imposed upon the Owner-Trustee, the Vendor, the Lessee, the trust estate created by the Trust Agreement or

otherwise, by any Federal, state or local government or governmental subdivision in the United States or by any foreign country or subdivision thereof, upon or with respect to, any Unit or any part thereof; the purchase, ownership, delivery, leasing, possession, use, operation, transfer of title, return or other disposition thereof; the indebtedness with respect thereto; the rentals, receipts or earnings arising therefrom; or this Lease, the Trust Agreement, the Participation Agreement, the Security Documentation, the Assignment, the Lease Assignment, any payment made pursuant to any such agreement, or the property, the income or other proceeds received with respect to property held in trust by the Owner-Trustee under the Trust Agreement (all such taxes, assessments, fees, charges, penalties, fines, additions to tax and interest imposed as aforesaid being hereinafter called "Taxes"); *excluding, however:* (i) Taxes of the United States or of any state or political subdivision thereof and (if and to the extent that any person indemnified hereunder is entitled to a credit therefor against its United States Federal income taxes or is indemnified by the Lessee pursuant to the Indemnity Agreements) of any foreign country or subdivision thereof, imposed on or measured solely by the net income or excess profits of the Owner-Trustee (in its individual capacity), the Owners or the Vendor or franchise taxes measured by net income of the Owner-Trustee, or gross receipts taxes other than gross receipts taxes in the nature of sales or use taxes, and other than Taxes arising out of or imposed in respect of the receipt of indemnification payments pursuant to this Lease, provided that Taxes of any foreign country or subdivision thereof incurred as a result of the indemnified party being taxed by such foreign country or subdivision on its world-wide income without regard to the transactions contemplated by this Lease shall be excluded in all cases, whether or not the indemnified party is entitled to a credit against its United States Federal income taxes; (ii) any Taxes imposed as a direct result of a voluntary transfer or other voluntary disposition by an Owner or any transfer or disposition by such Owner resulting from bankruptcy or other proceedings for the relief of creditors in which such Owner is the debtor, whether voluntary or involuntary, of any interest in any Unit or interest in rentals under this Lease; (iii) any Taxes imposed on or measured by any fees or compensation received by the Owner-Trustee or the Vendor; and (iv) Taxes which are imposed on or measured solely by the net income of the Owner-Trustee or the Vendor if and to the extent that such Taxes are in substitution for or reduce the Taxes payable by any other person which the Lessee has not agreed to pay or indemnify against pursuant to this §6.1; *provided, however,* that the Lessee shall not be required to pay any Taxes during the period it may be contesting the same in the manner provided in the next succeeding paragraph. The Lessee further agrees to pay on or before the time or times prescribed by law any tax imposed on or measured solely by the net income of the Lessee under the laws of the United States or of any state or political subdivision thereof, or of any foreign country or subdivision thereof which, if unpaid, might result in a lien or other encumbrance upon any Unit; *provided, however,* that the Lessee shall not be required to pay any such tax during the period it may be contesting the same.

6.2. *Claims; Contests; Refunds.* If claim is made against the Owner-Trustee, or the Vendor for any Taxes indemnified against under this Section 6, such party shall promptly notify the Lessee. If reasonably requested by the Lessee in writing, the Owner-Trustee or the Vendor, as the case may be, shall, upon receipt of any indemnity satisfactory to it for all its reasonable charges for its services rendered in connection therewith and for all costs, expenses, losses, legal and accountants' fees and disbursements, penalties, fines, additions to tax and interest, and at the expense of the Lessee, contest in good faith the validity, applicability or amount of such Taxes by (a) resisting payment thereof if possible, (b) not paying the same except under protest, if protest is necessary and proper, and (c) if payment is made, using reasonable efforts to obtain a refund thereof in appropriate administrative or judicial proceedings, or both. The Lessee may also contest, at its own expense, the validity, applicability or amount of such Taxes in the name of the Owner-Trustee, the Owners or the Vendor; provided that, no proceeding or actions relating to such contest shall be commenced (nor shall any pleading, motion, brief or other paper be submitted or filed in the name of the Owner-Trustee, the Owners or the Vendor in any such proceeding or action) if in the opinion of the Owner-Trustee and the Owners or the Vendor such contest or the nonpayment of the Taxes would adversely affect the title, property or rights of the Owner-Trustee hereunder or of the Vendor under the Security Documentation. The Lessee agrees to give the Owner-Trustee notice of such contest within 30 days thereof. If the Owner-Trustee or the Vendor shall obtain a refund of all or any part of such Taxes previously reimbursed by the Lessee in connection with any such contest or an amount representing interest thereon, the Owner-Trustee or the Vendor, as the case may be, shall pay the Lessee the amount of

such refund or interest net of expenses; *provided, however,* that no Event of Default and no event which with notice or lapse of time or both would constitute an Event of Default shall have occurred and be continuing.

6.3. *Reports or Returns.* In case any report or return is required to be made with respect to any obligation of the Lessee under or arising out of this Section 6 (except obligations resulting from the second sentence of §6.1), the Lessee will, where permitted to do so under applicable rules and regulations, make and timely file such reports and returns in such manner as to show the interest of the Owner-Trustee and the Vendor in the Units as shall be satisfactory to the Owner-Trustee and the Vendor or, where not so permitted, will notify the Owner-Trustee, the Vendor and the Owners of such requirement and will prepare and deliver such reports to the Owner-Trustee and the Vendor within a reasonable time prior to the time such reports are to be filed, or in such manner as shall be reasonably satisfactory to the Owner-Trustee, the Vendor and the Owners. All costs and expenses (including legal and accountants' fees) of preparing any such return or report shall be borne by the Lessee.

6.4. *Survival.* All the obligations of the Lessee under this §6 shall survive and continue, but only with respect to periods included in the term of this Lease, notwithstanding payment in full of all amounts due under the Security Documentation or the termination of this Lease. Payments due from the Lessee to the Owner-Trustee or the Vendor under this §6 shall be made directly to the party indemnified.

§7. PAYMENT FOR CASUALTY OCCURRENCES; INSURANCE

7.1. *Definitions of Casualty Occurrence; Payments.* In the event that any Unit of Equipment shall be or become worn out, lost, stolen, destroyed, or, in the opinion of the Lessee, irreparably damaged, from any cause whatsoever during the term of this Lease or any renewal term hereof or until such Unit is returned pursuant to §§14 or 17 hereof, or the Purchase Price of any Unit shall have been refunded by the Builder of such Unit pursuant to the terms of its patent indemnity therefor or any Unit shall be taken or requisitioned by condemnation or otherwise by the United States Government for a stated 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 during the term of this Lease or during any renewal term hereof (such occurrences being hereinafter called Casualty Occurrences), the Lessee shall promptly and fully notify the Owner-Trustee and the Vendor with respect thereto. On the next succeeding fifth day of a month occurring at least ten days after such notice from the Lessee has been received or, at the option of the Lessee, if such next succeeding fifth day does not coincide with a rental payment date, on the next succeeding rental payment date (but in no event earlier than January 5, 1978) (each such date being hereinafter called a Casualty Payment Date), the Lessee shall pay to the Owner-Trustee a sum equal to the Casualty Value (as hereinafter defined) of any such Unit as of such Casualty Payment Date, plus in the case of any Casualty Payment Date coinciding with a rental payment date, the semiannual rental in respect of such Unit accrued as of such rental payment date; *provided, however,* that in the event of a Casualty Occurrence during the period any Unit is being returned pursuant to §§14 and 17 hereof and the 10 days prior thereto, the Lessee shall make such payment to the Owner-Trustee on a date 30 days after such 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 Owner-Trustee shall be entitled to recover possession of such Unit.

In addition to the occurrences constituting a Casualty Occurrence under the preceding paragraph, if any Unit shall have been taken or requisitioned by the United States Government or any other governmental entity and such taking or requisition shall not theretofore constitute a Casualty Occurrence as aforesaid, such taking or requisition shall be deemed a Casualty Occurrence if the same shall be continuing at the end of the term of this Lease, in which event the Lessee shall promptly and fully notify the Owner-Trustee with respect thereto and pay the Owner-Trustee, as the Casualty Value therefor, an amount equal to 20% of the Purchase Price of such Unit. Following such payment, the Lessee shall be entitled to receive condemnation payments in respect of such Unit up to an amount equal to such Casualty Value and any balance of such payments shall be the property of the Owner-Trustee. In the event such Unit shall be returned by the governmental entity prior to the time the Lessee shall have been reimbursed

by such application of condemnation payments in an amount equal to such Casualty Value, then the Lessee shall dispose of such Unit as Agent for the Owner-Trustee, and shall retain the proceeds of such disposition to the extent that the aggregate of the amounts so retained and the condemnation payments theretofore received by the Lessee shall equal such Casualty Value, and the balance of such proceeds shall be promptly paid to the Owner-Trustee. In the event such Unit shall be returned by the governmental entity following the time the Lessee shall have been reimbursed by such application of condemnation payments in an amount equal to such Casualty Value, such Unit shall be returned by the Lessee to the Owner-Trustee in the manner provided in Section 17 hereof.

7.2. *Requisition by United States Government.* In the event of the requisition for use by the United States Government of any Unit for a period which does not exceed the term of this Lease or for an indefinite period (except where deemed a Casualty Occurrence pursuant to the last paragraph of Section 7.1 hereof), 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. All payments received by the Owner-Trustee or the Lessee from the United States Government for the use of such Unit during the term of this Lease shall be paid over to, or retained by, the Lessee provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing.

7.3. *Lessee Agent for Disposal.* The Owner-Trustee hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof before and after expiration of the Lease, at the best price obtainable on an "as is, where is" basis. Provided that the Lessee has previously paid the Casualty Value to the Owner-Trustee (i) 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 Owner-Trustee and (ii) the Lessee shall be entitled to credit against the Casualty Value payable in respect of any Unit returned to a Builder pursuant to the patent indemnity provisions of the Security Documentation an amount equal to any payment made by such Builder to the Owner-Trustee in respect thereof under the Security Documentation.

7.4. *Payments After Expiration of Lease.* If the date upon which the making of the payment by the Lessee in Section 7.1 hereof in respect of any Unit is required as aforesaid shall be after the term of this Lease or any renewal term thereof in respect of such Unit has expired, no rental for such Unit shall accrue after the end of such term.

7.5. *Amount of Casualty Value of Schedule A Units.* The Casualty Value of each Schedule A Unit as of the Casualty Payment Date on which payment is made shall be:

(a) if the Casualty Payment Date coincides with a date on which rental is to be paid pursuant to §3.1 hereof, an amount equal to that percentage of the Purchase Price of such Unit as is set forth in Appendix C hereto opposite such Casualty Payment Date, or

(b) if the Casualty Payment Date coincides with a date other than on which rental is to be paid pursuant to §3.1 hereof, the Casualty Value shall be an amount equal to (i) that percentage of the Purchase Price of such Unit as is set forth opposite the date which coincides with the next preceding rent payment date in Appendix C hereto (the "Semi-Annual Casualty Payment Date") plus (ii) .8833% of the amount described in clause (i) hereof for each month elapsed from and including such Semi-Annual Casualty Payment Date to the Casualty Payment Date upon which payment is to be made,

plus, on any Casualty Payment Date with respect to a Casualty Occurrence occurring before the third, fifth or seventh anniversary of the date of the Certificate of Acceptance for such Unit an amount equal to the percentage of the Purchase Price of such Unit suffering a Casualty Occurrence set forth below:

Anniversary of the date of the Certificate of Acceptance	Percentage of Purchase Price to be added
Third	20.1006%
Fifth	13.4004%
Seventh	6.7002%

7.6. *Amount of Casualty Value for Schedule B Units.* The Casualty Values for each Schedule B Unit shall be determined in like manner as the computation of the rental for such Schedule B Unit as set forth in §3.1(2) hereof, *provided* that no such computation shall provide for Casualty Values below those which are necessary to satisfy the obligations of the Owner-Trustee under the Security Documentation.

7.7. *No Release.* 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.

7.8. *Insurance To Be Maintained.* (1) The Lessee will, at all times prior to the return of the Units to the Owner-Trustee at its own expense, cause to be carried and maintained (i) property insurance in respect of the Units at the time subject hereto; *provided, however,* that the Lessee may self-insure such Units to the extent it self-insures equipment similar to the Units and to the extent such self-insurance is consistent with prudent industry practice, and (ii) public liability insurance with respect to third party personal and property damage and the Lessee will continue to carry such insurance in such amounts and for such risks and with such insurance companies as is consistent with prudent industry practice but in any event at least, comparable in amounts and against risks customarily insured against by the Lessee in respect of equipment owned or leased by it similar in nature to the Units, in each case satisfactory to the Owners. The proceeds thereof shall be payable to the Vendor, the Owner-Trustee and the Lessee, as their interests may appear, so long as the indebtedness, if any, evidenced by the Security Documentation shall not have been paid in full, and thereafter to the Owner-Trustee and the Lessee as their interests may appear. Any policies of insurance carried in accordance with this paragraph shall (i) require 30 days' prior notice of cancelation or material change in coverage to the Owners and the Vendor and (ii) name the Owner-Trustee and the Vendor as additional named insureds as their respective interests may appear and in the event such policies shall contain breach of warranty provisions such policies shall provide that in respect of the interests of the Owner-Trustee and the Vendor in such policies the insurance shall not be invalidated by any action or inaction of the Lessee or any other person (other than the Owner-Trustee and the Vendor) and shall insure the Owner-Trustee and the Vendor regardless of any breach or violation of any warranty, declaration or condition contained in such policies by the Lessee or by any other person (other than the Owner-Trustee or the Vendor). Prior to the first date of delivery of any Unit pursuant to the Security Documentation, and thereafter not less than 15 days prior to the expiration dates of the expiring policies theretofore delivered pursuant to this §7, the Lessee shall deliver to the Owners duplicate originals of all policies (or in the case of blanket policies, certificates thereof issued by the insurers thereunder) for the insurance maintained pursuant to this §7; *provided, however,* that if the delivery of a formal policy or certificate, as the case may be, is delayed, the Lessee shall deliver an executed binder with respect thereto and shall deliver the formal policy or certificate, as the case may be, upon receipt thereof.

(2) In the event that the Lessee shall fail to maintain insurance as herein provided, the Owners may at their 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 Owners for the cost thereof together with interest, on the amount of the cost to the Owners of such insurance which the Lessee shall have failed to maintain, at the rate per annum specified in §19 hereof.

7.9. *Insurance Proceeds and Condemnation Payments.* If the Owner-Trustee shall receive (directly or from the Vendor) any insurance proceeds or condemnation payments in respect of such Units suffering a Casualty Occurrence, the Owner-Trustee shall 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 Owner-Trustee; *provided, however,* that no Event of Default shall have occurred and be continuing and the Lessee shall have made payment of the Casualty Value thereof, and accrued rentals in respect of such Units, to the Owner-Trustee. All insurance proceeds received by the Owner-Trustee (directly or from the Vendor) in respect of any Unit not suffering a Casualty Occurrence shall be paid to the Lessee upon proof satisfactory to the Owner-Trustee that any damage to such Unit in respect of which such proceeds were paid has been fully repaired.

§8. REPORTS

On or before March 31 in each year, commencing with the calendar year 1979, the Lessee will furnish to the Owner-Trustee and the Vendor an accurate statement (a) setting forth as at the preceding December 31 the total number, description and road numbers of all Units then leased hereunder and covered by the Security Documentation, the total number, description and road 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 repair (other than running repairs) and setting forth such other information regarding the condition and state of repair of the Units as the Owner-Trustee or the Vendor may reasonably request and (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and markings required by §5.1 hereof and by the Security Documentation have been preserved or replaced. The Owner-Trustee, the Vendor and the Owners shall each have the right by its agents, to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Owner-Trustee, the Vendor or the Owners may request during the continuance of this Lease.

§9. DISCLAIMER OF WARRANTIES

THE OWNER-TRUSTEE DOES NOT MAKE, HAS NOT MADE AND SHALL NOT BE DEEMED TO MAKE OR HAVE MADE ANY 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 OWNER-TRUSTEE DOES NOT MAKE ANY WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE NOR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, NOR 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 Owner-Trustee and the Lessee, are to be borne by the Lessee; but the Owner-Trustee 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 Owner-Trustee and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Owner-Trustee may have against a Builder under the provisions of Items 3 and 4 of Annex A of the Security Documentation; *provided, however,* that if at any time an Event of Default shall have occurred and be continuing, the Owner-Trustee may assert and enforce, at the Lessee's sole cost and expense, such claims and rights. The Owner-Trustee shall have no responsibility or liability to the Lessee or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Units or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of any Units or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Units. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Owner-Trustee 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 Owner-Trustee or the Vendor based on any of the foregoing matters.

§10. LAWS AND RULES

10.1. *Compliance.* The Lessee agrees, for the benefit of the Owner-Trustee and the Vendor, to comply in all respects (including without limitation, with respect to the use, maintenance and operation of each Unit) with all laws of the jurisdictions in which its operations involving the Units may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the 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 such laws or rules require

any alteration, replacement or addition 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 Owner-Trustee or the Vendor, adversely affect the property or rights of the Owner-Trustee or the Vendor under this Lease or under the Security Documentation.

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

§11. MAINTENANCE

11.1 *Units in Good Operating Order.* The Lessee agrees that, at its own cost and expense, it will maintain and keep each Unit (including any parts installed on or replacements made to any Unit and considered an accession thereto as hereinbelow provided) which is subject to this Lease in good operating order, repair and condition, ordinary wear and tear excepted.

11.2. *Additions and Accessions.* (1) Except as set forth in §§10.1 and 11.1 hereof, 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 second paragraph hereof.

(2) 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 in §11.2(1) hereof, (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 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 Owner-Trustee and the Vendor as their respective interests may appear in the Unit itself.

§12. INDEMNIFICATION

12.1. *Indemnified Persons.* The Lessee shall pay, and shall protect, indemnify and hold the Owner-Trustee, the Vendor and any assignee thereof, and their respective successors, assigns, agents and servants (hereinafter called Indemnified Persons), harmless from and against any and all causes of action, suits, penalties, claims, demands or judgments, of any nature whatsoever which may be imposed on, incurred by or asserted against any Indemnified Person (including any or all liabilities, obligations, damages, costs, disbursements, expenses (including without limitation attorneys' fees and expenses of any Indemnified Person) relating thereto) in any way relating to or arising, or alleged to arise out of this Lease, the Security Documentation or the Units, including without limitation those in any way relating to or arising or alleged to arise out of (i) the manufacture, construction, purchase, acceptance, rejection, ownership, delivery, nondelivery, lease, possession, use, operation, condition, sale, return or other disposition of any Unit or portion thereof, (ii) any latent and other defects whether or not discoverable by the Owner-Trustee, the Vendor or the Lessee, (iii) any claim for patent, trademark or copyright infringement, (iv) any claims based on strict liability in tort, (v) any injury to or the death of any person or any damage to or loss of property on or near the Units or in any manner growing out of or concerned with, or alleged to grow out of

or be connected with, the ownership, use, replacement, adaptation or maintenance of the Units or of any other equipment in connection with the Units (whether owned or under the control of the Owner-Trustee, the Lessee or any other person) or resulting or alleged to result from the condition of any thereof; (vi) any violation, or alleged violation, of any provision of this Lease (except by the Owner-Trustee) or of any agreement, law, rule, regulation, ordinance or restriction, affecting or applicable to the Units or the leasing, ownership, use, replacement, adaptation or maintenance thereof; or (vii) any claim arising out of any of the Owner-Trustee's obligations under the Lease Assignment or the Vendor's retention of a security interest under the Security Documentation or the Lease Assignment or the Participation Agreement, except to the extent such claim arises from an act or omission of the Owner-Trustee. The Lessee shall be obligated under this §12.1, irrespective of whether any Indemnified Person shall also be indemnified with respect to the same matter under any other agreement by any other person, and the Indemnified Person seeking to enforce the indemnification may proceed directly against the Lessee under this §12.1 without first resorting to any such other rights of indemnification. In case any action, suit or proceeding is brought against any Indemnified Person in connection with any claim indemnified against hereunder, the Lessee may and, upon such Indemnified Person'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 such Indemnified Person 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 such Indemnified Person in connection with such action, suit or proceeding. In the event the Lessee is required to make any payment under this §12, the Lessee shall pay such Indemnified Person an amount which, after deduction of all taxes required to be paid by such Indemnified Person 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 in the sole discretion of the Indemnified Person), shall be equal to the amount of such payment. The Lessee and the Owner-Trustee 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 any indemnities as contained in this §12 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 such Indemnified Person (except against another Indemnified Person) in respect of the matter against which indemnity has been given. Any payments received by such Indemnified Person from any person (except the Lessee) as a result of any matter with respect to which such Indemnified Person has been indemnified by the Lessee pursuant to this Section 12.1 shall be paid over to the Lessee to the extent necessary to reimburse the Lessee for indemnification payments previously made. Nothing in this Section 12.1 shall constitute a guaranty by the Lessee of the Conditional Sale Indebtedness of the Owner-Trustee under the Conditional Sale Agreement or a guaranty of the residual value of any Unit.

12.2. *Indemnification of Builders.* The Lessee further agrees to indemnify, protect and hold harmless each Builder as a third party beneficiary hereof from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against such Builder because of the use in or about the construction or operation of any of the Equipment of any article or material specified by the Lessee and not manufactured by such Builder or of any design, system, process, formula or combination specified by the Lessee and not developed or purported to be developed by such Builder which infringes or is claimed to infringe on any patent or other right. The Lessee will give notice to each Builder of any claim known to the Lessee from which liability may be charged against such Builder hereunder.

12.3. *Survival.* The indemnities contained in this §12 shall survive the expiration or termination of this Lease with respect to all events, facts, conditions or other circumstances occurring or existing prior to such expiration or termination and are expressly made for the benefit of, and shall be enforceable by, any Indemnified Person. None of the indemnities in this §12 shall be deemed to create any rights of subrogation in any insurer or third party against the Lessee therefor, from or under any Indemnified Person, whether because of any claim paid or defense provided for the benefit thereof or otherwise.

§13. DEFAULT

13.1. *Events of Default; Remedies.* If, during the continuance of this Lease or any extension or renewal thereof, 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 16 hereof, and such default shall continue for 15 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, in the Participation Agreement or the Indemnity Agreements (as defined in the Participation Agreement) and such default shall continue for 30 days after written notice from the Owner-Trustee or the Vendor to the Lessee specifying the default and demanding that the same be remedied;

D. any representation or warranty made by the Lessee herein, in the Participation Agreement or the Indemnity Agreements or in any certificate or statement furnished to the Owner-Trustee or any Owner pursuant to or in connection with any such agreements proves untrue in any material respect as of the date of issuance or making thereof;

E. a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may hereafter be amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under 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 a trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

G. an event of default set forth in Article 16 of the Security Documentation shall have occurred arising out of any default by the Lessee in performing any of its obligations hereunder;

then, in any such case, the Owner-Trustee, at its option, may:

(a) proceed by appropriate court action or actions either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; or

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as herein provided; and thereupon the Owner-Trustee may by its

agents enter upon the premises of the Lessee or other premises, in so far as the Lessee may be lawfully authorized to so permit, where any of the Units may be located, without judicial process if this can be done without breach of the peace and in accordance with due process of law, and take possession of all or any of such Units and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever; but the Owner-Trustee 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 that the Owners, in their sole discretion shall specify, (i) a sum, with respect to each Unit, which represents (x) the excess of the present value, at the time of such termination, of the entire unpaid balance of all rentals 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, such present value to be computed on the basis of a 6% per annum discount, compounded semiannually from the respective dates upon which rental would have been payable hereunder had this Lease not been terminated over the then present value of the rental which the Owner-Trustee reasonably estimates to be obtainable for each Unit during such period, such present value to be computed on the basis of a 6% per annum discount, compounded semiannually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated or, if such Unit is sold, the net proceeds of the sale plus (y) any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Owner-Trustee shall have sustained by reason of the breach of any covenant, representation or warranty of this Lease other than for the payment of rental or (ii) an amount equal to the excess, if any, of the Casualty Value as of the Casualty Payment Date on or next preceding the date of termination over the amount the Owners and the Owner-Trustee reasonably estimate to be the sales value of such Unit at such time; *provided, however,* that in the event the Owners and the Owner-Trustee shall have sold any unit, the Owners and the Owner-Trustee, in lieu of collecting any amounts payable by the Lessee pursuant to the preceding clause (ii) with respect to such Unit, may, if it shall so elect, demand that the Lessee pay the Owners and the Owner-Trustee and the Lessee shall pay to the Owners and the Owner-Trustee 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 Casualty Payment Date on or next preceding the date of termination over the net proceeds of such sale.

13.2. *Remedies Not Exclusive; Waiver.* The remedies in this Lease provided in favor of the Owner-Trustee 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.

13.3. *Failure To Exercise Rights Is Not Waiver.* The failure of the Owner-Trustee to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

13.4. *Notice of Event of Default.* The Lessee also agrees to furnish the Owner-Trustee, the Owners and the Vendor, promptly upon any responsible officer becoming aware of any condition which constituted or constitutes an Event of Default under this Lease or which, after notice or 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 §13.4, a "responsible officer" shall mean, with respect to the subject matter of any covenant, agreement or obligation of the Lessee in this Lease contained, 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.

§14. RETURN OF UNITS UPON DEFAULT

14.1. *Return of Units.* If this Lease shall terminate pursuant to §13 hereof or pursuant to Article 16 of the Security Documentation, the Lessee shall forthwith deliver possession of the Units to the Owner-Trustee. 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 and shall have attached or affixed thereto any special device considered an accession thereto as provided in §11 and shall have removed therefrom at the Lessee's expense any addition, modification or improvement which, as provided in §11, is owned by the Lessee. For the purpose of delivering possession of any Unit or Units 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 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 Owner-Trustee reasonably may designate;

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

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 Owner-Trustee 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 Owner-Trustee 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 amounts earned in respect of the Units after the date of termination of this Lease shall belong to the Owner-Trustee and, if received by the Lessee, shall be promptly turned over to the Owner-Trustee. 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 Owner-Trustee for each day thereafter an amount equal to the amount, if any, by which that percentage of the Purchase Price of such Unit for each such day obtained by dividing the basic lease rate as set forth in §3.1 hereof for each semiannual payment for such Unit by 180 exceeds the actual earnings received by the Owner-Trustee on such Unit for each such day.

14.2. *Owner-Trustee Appointed Agent of Lessee.* Without in any way limiting the obligation of the Lessee under the foregoing provisions of this §14, the Lessee hereby irrevocably appoints the Owner-Trustee 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 Owner-Trustee, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

§15. ASSIGNMENT, POSSESSION AND USE

15.1. *Assignment; Consent.* This Lease shall be assignable in whole or in part by the Owner-Trustee upon prior written consent of the Lessee, which consent shall not be unreasonably withheld. The Lessee hereby consents to the assignment of this Lease pursuant to the Lease Assignment.

15.2. *Lessee's Rights To Use the Units, To Permit Use Thereof by Others and To Sublease the Units.* (1) So long as (i) no Event of Default exists hereunder, (ii) the Lessee is complying with the provisions of the Consent and (iii) the Vendor is entitled to apply the Payments as defined in the Lease Assignment in accordance with the Lease Assignment, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease and the Security Documentation. Without the prior written consent of the Owner-Trustee and the Vendor, the Lessee shall not assign or transfer its leasehold interest under this Lease in the Units or any of them except as provided in paragraph (2) below of this §15.2; and the Lessee shall not, without the prior written consent of the Owner-Trustee and the Vendor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provisions of paragraph (2) of this §15.2. 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 Owner-Trustee or the Vendor or resulting from claims against the Owner-Trustee or the Vendor not related to the ownership of the Units or any encumbrance on the leasehold estate of the Lessee which is subject and subordinate to the interests of the Owner-Trustee and the Vendor) upon or with respect to any Unit, including any accession thereto, or the interest of the Owner-Trustee, the Vendor or the Lessee therein, and will promptly discharge any such lien, claim, security interest or other encumbrance which arises.

(2) So long as (i) no Event of Default exists hereunder, (ii) the Lessee is complying with the provisions of the Consent and (iii) the Vendor is entitled to apply the Payments as defined in the Lease Assignment in accordance with the Lease Assignment, the Lessee shall be entitled to the possession of the Units and to the use of the Units by it or any affiliate upon lines of railroad owned or operated by it or any such affiliate or upon lines of railroad over which the Lessee or any such affiliate has trackage or other operating rights or over which railroad equipment of the Lessee or any such affiliate is regularly operated pursuant to contract and shall be entitled to permit the use of the Units upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements and to assign its rights to the Units or to sublease the Units to any of its affiliates, but only upon and subject to all the terms and conditions of this Lease and the Security Documentation; *provided, however,* that the Lessee shall not assign, sublease or permit the assignment, sublease or use of any Unit predominantly outside the United States of America within the meaning of Section 48(a) of the Internal Revenue Code of 1954, as amended to the date hereof, nor shall the Lessee assign or sublease to, or permit the sublease or use of the Units by, any person in whose hands such Units would not qualify as "section 38 property" within the meaning of said Code. The Lessee may receive and retain compensation for the use of any of the Units from other railroads so using such Units. Any sublease permitted by this paragraph may provide that the sublessee, so long as it shall not be in default under such sublease, shall be entitled to the possession of the Units included in such sublease and the use thereof; *provided, however,* that every such sublease shall be subject to the rights and remedies of the Vendor under the Security Documentation and the Owner-Trustee under this Lease in respect of the Units covered by such sublease upon the occurrence of an Event of Default thereunder or hereunder.

15.3. *Transfers by Lessee Through Merger, Acquisition or Consolidation.* Nothing in this §15 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.

§16. RENEWAL OPTIONS AND RIGHT OF FIRST REFUSAL

16.1. *Renewal for Successive Period.* 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 Owner-Trustee not less than 180 days prior to the end of the original term of this Lease in respect of the Units still subject to this Lease, elect to extend such original term of this Lease in respect of all but not less than all the Units

then covered by this Lease for a period of two years or such other time acceptable to both the Lessee and Owner-Trustee commencing on the scheduled expiration of such original term of this Lease, at a "Fair Market Rental" payable, in arrears, in semiannual payments on the month and day such rentals were payable for the Units in each year of the original term.

16.2. *Determination of Fair Market Rental.* (1) Fair Market Rental shall be determined for each extended term of this Lease on the basis of, and shall be equal in amount to, the rental which would obtain in an arm's-length transaction between an informed and willing lessee (other than a lessee currently in possession) and an informed and willing lessor under no compulsion to lease and, in such determination, costs of removal from the location of current use shall not be a deduction from such rental.

(2) If, after 50 days from the giving of notice by the Lessee of the Lessee's election to extend the term of this Lease, the Owner-Trustee and the Lessee are unable to agree upon a determination of the Fair Market Rental of the Units, such rental shall be determined in accordance with the foregoing definition by the following procedure: If either party to such determination shall have given written notice to the other requesting determination of such value by this appraisal procedure, the parties shall consult for the purpose of appointing a qualified independent appraiser by mutual agreement. If no such appraiser is so appointed within 20 days after such notice is given, each party shall appoint an independent appraiser within 25 days after such notice is given, and the two appraisers so appointed shall within 35 days after such notice is given appoint a third independent appraiser. If no such third appraiser is appointed within 35 days after such notice is given, either party may apply, to make such appointment, to the American Arbitration Association, and both parties shall be bound by any appointment so made. Any appraiser or appraisers appointed pursuant to the foregoing procedure shall be instructed to determine the Fair Market Rental of the Units subject to the proposed extended term within 90 days after his or their appointment. If the parties shall have appointed a single appraiser or if either party shall have failed to appoint an appraiser, the determination of Fair Market Rental of the single appraiser appointed shall be final. If three appraisers shall be appointed, the determination of the appraiser which differs most from the other two appraisers shall be excluded, the remaining two determinations shall be averaged and such latter average shall be final and binding upon the parties hereto as the Fair Market Rental. The appraisal proceedings shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association as in effect on the date hereof, except as modified hereby. The provision for this appraisal procedure shall be the exclusive means of determining Fair Market Rental and shall be in lieu of any judicial or other procedure for the determination thereof, and each party hereto hereby consents and agrees not to assert any judicial or other procedures. The expenses of the appraisal procedure shall be borne by the Lessee.

16.3. *Right of First Refusal.* Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, in the event the Owner-Trustee elects to sell any Units to third parties at the expiration of the original or extended term of this Lease, the Lessee shall be given written notice of such intention prior to the expiration of such term. In the event that the Owner-Trustee shall receive, prior to removal of the Units at the end of such term of the Lease, a bona fide offer in writing from another party unrelated to the Lessee to purchase the Units and the Owner-Trustee elects to sell the Units pursuant to such offer at the expiration of such term of this Lease, the Owner-Trustee shall give written notice to the Lessee of such offer. Such notice shall include the price and the terms and conditions of payment offered by the other party in writing to the Owner-Trustee. The Lessee shall have the sole right and option to purchase the Units for cash at the price at which the Units are proposed to be sold or under the other terms and conditions of payment offered by the other party, as hereinafter provided. Within 10 business days of receipt of notice from the Owner-Trustee, the Lessee shall exercise such purchase right by delivery to the Owner-Trustee of a written notice specifying a date of purchase, which date shall not be later than the later of (i) 15 days after the date of delivery of such notice by the Lessee to the Owner-Trustee or (ii) 90 days after the expiration of such term of this Lease. In the event that the Lessee shall have delivered a notice of its election to purchase the Units, this Lease (including the obligation to pay rent) shall be further extended upon the same terms and conditions set forth herein from the date such notice is delivered to the Owner-Trustee until the date of such purchase.

§17. RETURN OF UNITS UPON EXPIRATION OF TERM

As soon as practicable on or after the expiration of the original or extended term of this Lease with respect to any Unit and in any event not later than 90 days thereafter, the Lessee will, at its own cost and expense, at the request of the Owner-Trustee, deliver possession of such Unit to the Owner-Trustee upon such storage tracks of the Lessee as the Owner-Trustee may reasonably designate, or, in the absence of such designation, as the Lessee may select, and permit the Owner-Trustee to store such Unit on such tracks for a period not exceeding three months and transport the same upon disposition of the Units, at any time within such three-month period, to any reasonable place on the lines of railroad operated by the Lessee, or to any connecting carrier for shipment, all as directed by the Owner-Trustee, the movement and storage of such Units to be at the expense and risk of the Lessee. During any such storage period the Lessee will permit the Owner-Trustee or any person designated by it, including the authorized representative or representatives of any prospective purchaser of such Unit, to inspect the same; *provided, however,* that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Owner-Trustee or any prospective purchaser, the rights of inspection granted under this sentence. Each Unit returned to the Owner-Trustee pursuant to this §17 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted, (ii) meet the standards then in effect under the Interchange Rules of the Association of American Railroads and/or the applicable rules of any governmental agency or other organization with jurisdiction and (iii) have attached or affixed thereto any special device considered an accession thereto as provided in §11 hereof and have removed therefrom any such device not so considered an accession. During any such storage period the Lessee shall maintain the Units in such manner as the Lessee normally maintains similar units of railroad equipment owned or leased by it in similar storage circumstances. 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 Owner-Trustee 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.

§18. RECORDING

The Lessee, at its own expense, will cause this Lease, the Security Documentation, the Assignment and the Lease Assignment 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 forthwith given 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 Owner-Trustee under the Security Documentation. The Lessee in addition 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 Owner-Trustee or the Vendor for the purpose of proper protection, to their satisfaction, of the Vendor's and the Owner-Trustee's respective interests in the Units, or for the purpose of carrying out the intention of this Lease, the Security Documentation, the Assignment and the Lease Assignment; and the Lessee will promptly furnish to the Vendor and the Owner-Trustee 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 Owner-Trustee, *provided, however,* that no such opinion of counsel need be furnished in respect of the filing of the Security Documentation or the Assignment in Canada. This Lease, the Security Documentation, the Assignment and the Lease Assignment shall be filed and recorded with the Interstate Commerce Commission and deposited with the Registrar General of Canada pursuant to Section 86 of the Railway Act of Canada and provision will have been made for publication of notice of such deposit in *The Canada Gazette* prior to the delivery and acceptance hereunder of any Unit.

§19. 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 interest at 9.2% per annum of the overdue rentals and other obligations for the period of time during which they are overdue or such lesser amount as may be legally enforceable.

§20. OWNER-TRUSTEE'S RIGHT TO PERFORM FOR THE LESSEE

If the Lessee fails to perform or comply with any of its agreements contained herein, the Owner-Trustee may upon notice to the Lessee itself perform or comply with such agreement, and the amount of the reasonable cost and expenses of the Owner-Trustee incurred in connection with such performance or compliance, together with interest on such amount at the rate per annum which Manufacturers Hanover Trust Company, New York, New York, charges for unsecured 90-day loans to large corporate borrowers at the time in effect shall be payable by the Lessee upon demand except as otherwise provided in this Lease. No such performance or compliance by the Owner-Trustee shall be deemed a waiver of the rights and remedies of the Owner-Trustee or any assignee of the Owner-Trustee against the Lessee hereunder.

§21. 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 Owner-Trustee, at 79 South Main Street, Salt Lake City, Utah 84111, attention of Trust Department, Corporate Trust Division, with copies to BWL, Inc., One IBM Plaza, Suite 2700, Chicago, Illinois 60611, attention: Manager, Leveraged Leasing, Westinghouse Credit Corporation, 3 Gateway Center, Pittsburgh, Pennsylvania 15222, attention: Manager, Leveraged Leasing, Toy National Bank, Fourth and Nebraska Streets, Sioux City, Iowa 51102, attention: Vice President Investments, and Comdisco Financial Services, Inc., 530 Bush Street, San Francisco, California 94108; and

(b) if to the Lessee, at 176 East Fifth Street, St. Paul, Minnesota 55101, attention: Assistant Vice President, Financial Planning,

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

§22. SEVERABILITY

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.

§23. EFFECT AND MODIFICATION OF LEASE

Except for the Participation Agreement and the Indemnity Agreements (as defined in the Participation Agreement), this Lease exclusively and completely states the rights of the Owner-Trustee 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 Owner-Trustee and the Lessee.

§24. THIRD PARTY BENEFICIARIES

Nothing in this Lease shall be deemed to create any right in any person not a party hereto (other than the Owners, the Vendor and the permitted successors and assigns of a party) and this instrument shall not be construed in any respect to be a contract in whole or in part for the benefit of a third party except as aforesaid.

§25. EXECUTION

This Lease may be executed in several counterparts, such counterparts together constituting but one and the same instrument, but the counterpart delivered to the Vendor pursuant to the Lease Assignment 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.

§26. LAW GOVERNING

The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of Minnesota; *provided, however,* that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and Section 86 of the Railway Act of Canada.

§27. IMMUNITIES; NO RECOURSE

(1) No recourse shall be had in respect of any obligation due under this Lease, or referred to herein, against any incorporator, stockholder, director or officer, as such, past, present or future, of the parties hereto or the Owners, whether by virtue of any constitutional provision, statute or rule of law, or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of such incorporators, stockholders, directors or officers, as such, being forever released as a condition of and as consideration for the execution of this Lease.

(2) 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 Owner-Trustee are each and every one of them made and intended not as personal representations, undertakings and agreements by First Security Bank of Utah, National Association, including its successors and assigns, or for the purpose or with the intention of binding said trust company personally, but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement, and this Lease is executed and delivered by the Owner-Trustee solely in the exercise of the powers expressly conferred upon the Owner-Trustee as trustee under the Trust Agreement; and that no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against the Owner-Trustee or the Owners (except as provided in paragraph 13.3 of Article 13 hereof and Section 1.04 of the Trust Agreement) or on account of any representation, undertaking or agreement of the Owner-Trustee or the Owners, 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.

§28. AGREEMENTS FOR BENEFIT OF OWNERS AND OWNER-TRUSTEE'S ASSIGNS

All rights of the Owner-Trustee hereunder (including, but not limited to, its rights under §§7, 9, 13, 14 and 17 and the right to receive the rentals payable under this Lease) shall inure to the benefit of the Owners and any of the Owners' assigns under the Trust Agreement and the Owner-Trustee's assigns (including the Vendor).

§29. TERM OWNER-TRUSTEE

Whenever the term Owner-Trustee is used in this Lease it shall apply and refer to the Owner-Trustee and any assignee of the Owner-Trustee (including, so long as any Conditional Sale Indebtedness under the Security Documentation or interest thereon shall remain unpaid or any other obligation thereunder be continuing, the Vendor).

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

BURLINGTON NORTHERN INC.,

by .....
Assistant Vice President,
Financial Planning

[Corporate Seal]

Attest:

.....
Assistant Secretary

FIRST SECURITY BANK OF UTAH,
National Association, not in its individual capacity, but solely as Trustee,

by .....
Authorized Officer

[Seal]

Attest:

.....
Authorized Officer

STATE OF MINNESOTA,
COUNTY OF RAMSEY, } ss:

On this day of September, 1977, before me personally appeared R. C. BURTON, JR., to me personally known, who, being by me duly sworn, says that he is the Assistant Vice President, Financial Planning of BURLINGTON NORTHERN INC., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

.....
Notary Public

[Notarial Seal]

My Commission expires

STATE OF UTAH,
COUNTY OF SALT LAKE, } ss:

On this day of September, 1977, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is an Authorized Officer of FIRST SECURITY BANK OF UTAH, National Association, that one of the seals affixed to the foregoing instrument is the seal of said national banking association, that said instrument was signed and sealed on behalf of said national banking association by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said national banking association.

.....
Notary Public

[Notarial Seal]

My Commission expires

APPENDIX A TO LEASE

Type	Quantity	Lessee's Road Numbers (Both Inclusive)
3,000 hp Model SD-40-2 diesel-electric locomotives	10	BN 6781-6790
3,000 hp Model C-30-7 diesel-electric locomotives	15	BN 5530-5544

APPENDIX B TO LEASE
Schedule A Units

Rental Payments	Percentage of Purchase Price*
Basic Lease Rate for Semiannual Rental Payments:	
1-18	3.55510%
19-36	4.34490%

* As defined in the Security Documentation.

APPENDIX C TO LEASE

Schedule A Units

Casualty Payment Dates	Percentage of Purchase Price*
January 5, 1978	86.4644
July 5, 1978	86.6870
January 5, 1979	87.7173
July 5, 1979	88.0772
January 5, 1980	88.3066
July 5, 1980	88.4155
January 5, 1981	88.3604
July 5, 1981	88.0770
January 5, 1982	87.5035
July 5, 1982	86.8259
January 5, 1983	85.9602
July 5, 1983	84.9344
January 5, 1984	83.7401
July 5, 1984	82.4066
January 5, 1985	80.9699
July 5, 1985	79.4475
January 5, 1986	77.8407
July 5, 1986	76.1550
January 5, 1987	74.3940
July 5, 1987	71.7736
January 5, 1988	69.0629
July 5, 1988	66.2633
January 5, 1989	63.3894
July 5, 1989	60.4393
January 5, 1990	57.4663
July 5, 1990	54.4903
January 5, 1991	51.5501
July 5, 1991	48.6272
January 5, 1992	45.7559
July 5, 1992	42.9167
January 5, 1993	40.1473
July 5, 1993	37.3290
January 5, 1994	34.4027
July 5, 1994	31.3339
January 5, 1995	28.1485
July 5, 1995	24.8107
January 5, 1996 and thereafter	20.0000

* As defined in Security Documentation.

ANNEX D

ASSIGNMENT OF LEASE AND AGREEMENT dated as of September 1, 1977, (hereinafter called this Assignment), by and between FIRST SECURITY BANK OF UTAH, National Association, acting solely in its capacity as Trustee (hereinafter called the Owner-Trustee) under a Trust Agreement (hereinafter called the Trust Agreement) dated as of the date hereof with the parties named therein (hereinafter severally called the Owner and collectively the Owners), and MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, as Agent (hereinafter called the Vendor) under a Participation Agreement dated as of the date hereof.

WHEREAS the Owner-Trustee is entering into a Conditional Sale Agreement dated as of the date hereof (hereinafter called the Security Documentation) with each of General Motors Corporation (Electro-Motive Division) and General Electric Company (said corporations being hereinafter called collectively the Builders and severally the Builder), providing for the sale to the Owner-Trustee of such units of railroad equipment (hereinafter called the Units) described in the Annexes thereto as are delivered to and accepted by the Owner-Trustee thereunder;

WHEREAS the Owner-Trustee and Burlington Northern Inc. (hereinafter called the Lessee) have entered into a Lease of Railroad Equipment dated as of the date hereof (hereinafter called the Lease), providing for the leasing by the Owner-Trustee to the Lessee of the Units;

WHEREAS, in order to provide security for the obligations of the Owner-Trustee under the Security Documentation and as an inducement to the Vendor to invest in the Conditional Sale Indebtedness (as that term is defined in the Security Documentation), the Owner-Trustee agrees to assign for security purposes its rights in, to and under the Lease to the Vendor;

NOW, THEREFORE, in consideration of the premises and of the payments to be made and the covenants hereinafter mentioned to be kept and performed, the parties hereto agree as follows:

1. The Owner-Trustee hereby assigns, transfers and sets over unto the Vendor, as collateral security for the payment and performance of the obligations of the Owner-Trustee under the Security Documentation, all the Owner-Trustee's right, title and interest, powers, privileges, and other benefits under the Lease, including, without limitation, the immediate right to receive and collect all rentals, profits and other sums payable to or receivable by the Owner-Trustee from the Lessee under or pursuant to the provisions of the Lease whether as rent, casualty payment, indemnity, liquidated damages, or otherwise (such moneys being hereinafter called the Payments), and the right to make all waivers and agreements, to give all notices, consents and releases, to take all action upon the happening of an Event of Default specified in the Lease, and to do any and all other things whatsoever which the Owner-Trustee is or may become entitled to do under the Lease. In furtherance of the foregoing assignment, the Owner-Trustee hereby irrevocably authorizes and empowers the Vendor in its own name, or in the name of its nominee, or in the name of the Owner-Trustee or as its attorney, to ask, demand, sue for, collect and receive any and all Payments to which the Owner-Trustee is or may become entitled under the Lease and to enforce compliance by the Lessee with all the terms and provisions thereof.

The Vendor agrees to accept any Payments made by the Lessee for the account of the Owner-Trustee pursuant to the Lease. To the extent received, the Vendor will apply such Payments to satisfy the obligations of the Owner-Trustee under the Security Documentation, and, so long as no event of default or event which with the lapse of time and/or demand provided for in the Security Documentation could constitute an event of default thereunder, shall have occurred and be continuing, any balance shall be paid to the Owner-Trustee on the same date such Payment is applied to satisfy such obligations of the Owner-Trustee, by check mailed to the Owner-Trustee on such date or, upon written request of the Owner-Trustee, by bank wire to the Owner-Trustee at such address as may be specified to the Vendor in writing, and such balance shall be retained by the Owner-Trustee. If the Vendor shall not receive any rental payment under §3.1 of the Lease when due, the Vendor shall notify the Owner-Trustee and each Owner by registered mail, return receipt requested at the address set forth in the Lease; *provided, however,* that the failure of the Vendor to so notify the Owner-Trustee and each Owner by registered mail, return receipt

requested shall not affect the obligations of the Owner-Trustee hereunder or under the Security Documentation.

2. This Assignment is executed only as security and, therefore, the execution and delivery of this Assignment shall not subject the Vendor to, or transfer, or pass, or in any way affect or modify the liability of the Owner-Trustee under the Lease, it being understood and agreed that notwithstanding this Assignment or any subsequent assignment, all obligations of the Owner-Trustee to the Lessee shall be and remain enforceable by the Lessee, its successors and assigns, against, and only against, the Owner-Trustee or persons other than the Vendor.

3. The Owner-Trustee will faithfully abide by, perform and discharge each and every obligation, covenant and agreement which the Lease provides are to be performed by the Owner-Trustee; without the written consent of the Vendor, the Owner-Trustee will not anticipate the rents under the Lease or waive, excuse, condone, forgive or in any manner release or discharge the Lessee thereunder of or from the obligations, covenants, conditions and agreements to be performed by the Lessee, including, without limitation, the obligation to pay the rents in the manner and at the time and place specified therein or enter into any agreement amending, modifying or terminating the Lease and the Owner-Trustee agrees that any amendment, modification or termination thereof without such consent shall be void.

4. The Owner-Trustee does hereby constitute the Vendor the Owner-Trustee's true and lawful attorney, irrevocably, with full power (in the name of the Owner-Trustee, or otherwise), to ask, require, demand, receive, compound and give acquittance for any and all Payments due and to become due under or arising out of the Lease to which the Owner-Trustee is or may become entitled, to enforce compliance by the Lessee with all the terms and provisions of the Lease, to endorse any checks or other instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings which to the Vendor may seem to be necessary or advisable in the premises.

5. Upon the full discharge and satisfaction of all sums due from the Owner-Trustee under the Security Documentation, this Assignment and all rights herein assigned to the Vendor shall terminate, and all estate, right, title and interest of the Vendor in and to the Lease shall revert to the Owner-Trustee. Promptly following such full discharge and satisfaction, the Vendor agrees that it will advise the Lessee in writing that all sums due from the Owner-Trustee under the Security Documentation have been fully discharged and satisfied and instruct the Lessee that no further payments under the Lease are to be made to the Vendor.

6. The Owner-Trustee will, from time to time, execute, acknowledge and deliver any and all further instruments required by law or reasonably requested by the Vendor in order to confirm or further assure, the interest of the Vendor hereunder.

7. The Vendor may assign all or any of the rights assigned to it hereby or arising under the Lease, including, without limitation, the right to receive any Payments due or to become due. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Vendor hereunder.

8. This Assignment shall be governed by the laws of the State of Utah, but the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and Section 86 of the Railway Act of Canada.

9. The Owner-Trustee shall cause copies of all notices received in connection with the Lease and all payments hereunder to be promptly delivered or made to the Vendor.

10. The Vendor hereby agrees with the Owner-Trustee that the Vendor will not, so long as no event of default under the Security Documentation has occurred and is continuing, exercise or enforce, or seek to

exercise or enforce, or avail itself of, any of the rights, powers, privileges, authorizations or benefits which are assigned and transferred by the Owner-Trustee to the Vendor by this Assignment and which are for the sole benefit of the Owner-Trustee, without the prior consent of the Owner-Trustee.

11. It is expressly understood and agreed by and between the parties hereto, anything in this Agreement to the contrary notwithstanding, that each and all of the representations, undertakings and agreements in this Agreement made on the part of the Owner-Trustee are each and every one of them made and intended not as personal representations, undertakings and agreements by First Security Bank of Utah, National Association, 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 Trust Estate as such term is used in 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 or shall at any time be asserted or enforceable against the said bank or the Owners or on account of any representation, undertaking or agreement of the Owner-Trustee or the Owners, except as provided in paragraph 13.3 of Article 13 of the Security Documentation and Section 1.04 of the Trust Agreement, either expressed or implied, all such personal liability, if any, being expressly waived and released by the Vendor and by all persons claiming by, through or under the Vendor; *provided, however,* that the Vendor or any person claiming by, through or under the Vendor, making claim hereunder, may look to said Trust Estate for the satisfaction of the same.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective corporate names by officers thereunto duly authorized and their respective corporate seals to be affixed and duly attested, all as of the date first above written.

FIRST SECURITY BANK OF UTAH,
National Association, as Trustee as aforesaid,

By
Authorized Officer

[Seal]

Attest:

Authorized Officer

MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, as Agent,

By
Assistant Vice President

[Corporate Seal]

Attest:

Corporate Trust Officer

STATE OF UTAH,
COUNTY OF SALT LAKE, } ss.:

On this day of September, 1977, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is an Authorized Officer of FIRST SECURITY BANK OF UTAH, National Association, that one of the seals affixed to the foregoing instrument is the seal of said national banking association and that said instrument was signed and sealed on behalf of said national banking association by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said national banking association.

Notary Public

[Notarial Seal]

My Commission expires

STATE OF MARYLAND,
CITY OF BALTIMORE, } ss.:

On this day of September, 1977, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is an Assistant Vice President of MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]

My Commission expires

CONSENT AND AGREEMENT

The undersigned, BURLINGTON NORTHERN INC., a Delaware corporation (hereinafter called the Lessee), the lessee named in the Lease (hereinafter called the Lease) referred to in the foregoing Assignment of Lease and Agreement (hereinafter called the Lease Assignment), hereby (a) acknowledges receipt of a copy of the Lease Assignment and (b) consents to all the terms and conditions of the Lease Assignment and agrees that so long as said Lease Assignment is effective:

(1) it will pay all rentals, casualty payments, liquidated damages, indemnities and other moneys provided for in the Lease (which moneys are hereinafter called the Payments) due and to become due under the Lease directly to Mercantile-Safe Deposit and Trust Company, as Agent (hereinafter called the Vendor), the assignee named in the Lease Assignment, at P. O. Box 2258, Baltimore, Maryland 21203, attention of Corporate Trust Department, (or at such other address as may be furnished in writing to the Lessee by the Vendor);

(2) the Vendor shall be entitled to the benefits of, and to receive and enforce performance of, all the covenants to be performed by the Lessee under the Lease as though the Vendor were named therein as the Owner-Trustee;

(3) the Vendor shall not, by virtue of the Lease Assignment, be or become subject to any liability or obligation under the Lease or otherwise; and

(4) the Lease shall not, without the prior written consent of the Vendor, be terminated or modified, nor shall any action be taken or omitted by the Lessee the taking or omission of which might result in an alteration or impairment of the Lease or the Lease Assignment or this Consent and Agreement or of any of the rights created by any thereof.

This Consent and Agreement, when accepted by the Vendor by signing the acceptance at the foot hereof, shall be deemed to be a contract under the laws of the State of Minnesota and, for all purposes, shall be construed in accordance with the laws of said State.

BURLINGTON NORTHERN INC.,

By

Assistant Vice President,
Financial Planning

[Corporate Seal]

Attest:

Assistant Secretary

The foregoing Consent and Agreement is hereby accepted, as of the 1st day of September, 1977.

MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, as Agent,

By

Assistant Vice President

[Corporate Seal]

Attest:

Corporate Trust Officer

CONDITIONAL SALE AGREEMENT

Dated as of September 1, 1977

between

FIRST SECURITY BANK OF UTAH, NATIONAL ASSOCIATION,
not in its individual capacity but solely
as Trustee under a Trust Agreement
dated as of the date hereof
with BWL, Inc.,
Westinghouse Credit Corporation and Toy National Bank

and

each of

GENERAL MOTORS CORPORATION
(Electro-Motive Division)

and

GENERAL ELECTRIC COMPANY

CONDITIONAL SALE AGREEMENT

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* This Table of Contents has been included in this document for convenience only and does not form a part of, or affect any construction or interpretation of this document.

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CONDITIONAL SALE AGREEMENT dated as of September 1, 1977, between each of GENERAL MOTORS CORPORATION (Electro-Motive Division) and GENERAL ELECTRIC COMPANY (hereinafter collectively called the Builders or severally the Builder, or collectively or severally called the Vendor as the context may require, all as more particularly set forth in Article 1 hereof) and FIRST SECURITY BANK OF UTAH, National Association, a national banking association, acting not in its individual capacity but solely as Trustee (hereinafter called the Owner-Trustee) under a Trust Agreement dated as of the date hereof (hereinafter called the Trust Agreement) with BWL, Inc., Westinghouse Credit Corporation and Toy National Bank (hereinafter collectively called the Owners and severally the Owner).

WHEREAS the Builders have severally agreed to construct, sell and deliver to the Owner-Trustee, and the Owner-Trustee agrees to purchase, subject to the terms and conditions hereof, the railroad equipment described in Annex B hereto to the extent not excluded herefrom under the provisions hereof (hereinafter called the Equipment as more specifically described in paragraph 4.2 of Article 4 hereof);

WHEREAS the Owner-Trustee is entering into a lease with BURLINGTON NORTHERN INC., a Delaware corporation (hereinafter called the Lessee) in substantially the form annexed hereto as Annex C (hereinafter called the Lease); and

WHEREAS Mercantile-Safe Deposit and Trust Company (hereinafter called the Assignee) is acting as agent for certain investors pursuant to a Participation Agreement dated as of the date hereof (hereinafter called the Participation Agreement), among the Lessee, the Assignee, the Owner-Trustee, the Owners and the parties named in Appendix I thereto (hereinafter called the Investors);

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

ARTICLE 1
ASSIGNMENT; DEFINITIONS

1.1. *Contemplated Sources of Purchase Price; Assignment.* The parties hereto contemplate that the Owner-Trustee will furnish 36.05% of the Purchase Price (as defined in paragraph 4.1 of Article 4 hereof) of the Equipment and that an amount equal to the balance of such Purchase Price shall be paid to the appropriate Builder by the Assignee pursuant to an Agreement and Assignment dated as of the date hereof (such Agreement and Assignment being hereinafter called the Assignment) among the Builders and the Assignee.

1.2. *Lease Assignment.* In case of such assignment, the Owner-Trustee will assign to the Vendor (as hereinafter defined), as security for the payment and performance of all the Owner-Trustee's obligations hereunder, all right, title and interest of the Owner-Trustee in and to the Lease pursuant to an Assignment of Lease and Agreement in substantially the form of Annex D hereto (hereinafter called the Lease Assignment).

1.3. *Meaning of "Builder" and "Vendor".* The term "Builder", whenever used in this Agreement, means, both before and after any assignment of its rights hereunder, the respective party hereto which has manufactured the units of Equipment to be constructed and sold by such party and sold hereunder and any successor or successors for the time being to its manufacturing properties and business. The term "Vendor", whenever used in this Agreement, means, before any such assignment, the Builder or Builders, as the context may require, and, after any such assignment, both any assignee or assignees for the time being of such particular assigned rights, as regards such rights, and also any assignor as regards any rights hereunder that are retained or excluded from any assignment. Any reference herein to this Agreement or any other agreement shall mean said agreement and all amendments and supplements hereto or thereto then in effect.

The rights and obligations of the Builders under this Agreement are several in accordance with their interests and not joint. Accordingly, whenever this Agreement, by the use of such designation as "the Vendor", "such Builder" or other similar term, confers a right or imposes an obligation upon a corporation manufacturing and selling equipment hereunder, such right or obligation shall be construed to accrue to or to be enforceable against only the specific corporation furnishing the units of Equipment giving rise to such right or obligation and its successors as herein provided.

ARTICLE 2
CONSTRUCTION AND SALE

Pursuant to this Agreement, each Builder shall construct the Equipment at its plant set forth in Annex B hereto, and will sell and deliver the Equipment to the Owner-Trustee, the Owner-Trustee will (as hereinafter provided) purchase from such Builder and accept delivery of and pay for the Equipment, each unit of which shall be constructed in accordance with the specifications referred to in Annex B hereto and in accordance with such modifications thereof as may be agreed upon in writing between such Builder, the Owner-Trustee and the Lessee (which specifications and modifications, if any, are hereinafter called the Specifications). Each Builder represents and warrants that the design, quality and component parts of each unit of the Equipment to be delivered by such Builder under this Agreement shall conform, on the date of delivery and acceptance thereof, to all Department of Transportation and Interstate Commerce Commission requirements and specifications and to all standards, if any, recommended by the Association of American Railroads reasonably interpreted as being applicable to railroad equipment of the character of such unit, and each such unit will be new railroad equipment.

ARTICLE 3
INSPECTION AND DELIVERY

3.1. *Place of Delivery.* Each Builder will deliver the units of the Equipment to the Owner-Trustee at the place or places specified in Annex B hereto (or if Annex B does not specify a place or places, at the place or places designated from time to time by the Owner-Trustee), freight charges and storage charges, if any, prepaid, in accordance with the delivery schedule set forth in Annex B hereto; *provided, however,* that no Builder shall have any obligation to deliver any unit of Equipment hereunder subsequent to the commencement of any proceedings specified in clauses (c) or (d) of paragraph 16.1 of Article 16 hereof or the occurrence of any event of default (as described in paragraph 16.1 of Article 16 hereof), or event which, with the lapse of time and/or demand, could constitute such an event of default, or unless it has been assured to its satisfaction that it will receive the full Purchase Price (as hereinafter defined) thereof. Each Builder agrees not to deliver any unit of its Equipment hereunder (a) following receipt of written notice from the Owner-Trustee or the Assignee of the commencement of any such proceedings or the occurrence of any such event, as aforesaid, but only so long as such event continues, and (b) until it receives notice from the Owner-Trustee and the Assignee that the conditions contained in Paragraphs 7 and 8 of the Participation Agreement have been met.

3.2. *Force Majeure.* Each Builder's obligation as to time of delivery is subject, however, to delays resulting from causes beyond such Builder's reasonable control, including but not limited to acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, delays in receiving necessary materials or delays of carriers or subcontractors.

3.3. *Exclusion of Equipment.* Any Equipment not delivered at the time of receipt of the notice specified in clause (a) of the last sentence of paragraph 3.1 of this Article 3 and any Equipment not delivered and accepted hereunder on or before June 30, 1978, shall be excluded from this Agreement and the Owner-Trustee shall be relieved of its obligation to purchase and pay for such Equipment. If any Equipment shall be excluded herefrom pursuant to the preceding sentence, the Builder of such Equipment so excluded and the Owner-Trustee shall execute an agreement supplemental hereto limiting this

Agreement to the Equipment not so excluded herefrom. In the event of any such exclusion of any unit of Equipment herefrom pursuant to the foregoing provisions of this paragraph 3.3 or pursuant to paragraph 4.1 of Article 4 hereof, the Lessee will be obligated pursuant to Paragraph 1 of the Participation Agreement to accept all such units completed and delivered by a Builder and to pay the full purchase price therefor when due, all in accordance with the terms of its prior contractual arrangements with such Builder relating to the Equipment (hereinafter called the Purchase Order) and the Owner-Trustee will reassign, transfer and set over to the Lessee all the right, title and interest of the Owner-Trustee in and to the units so excluded and the Purchase Order to the extent relating thereto.

3.4. *Inspection.* During construction, the Equipment shall be subject to inspection and approval by the authorized inspectors of the Owner-Trustee (who may be employees of the Lessee), and each Builder shall grant to such authorized inspectors reasonable access to its plant. Each Builder agrees to inspect the materials used in the construction of the Equipment in accordance with the standard quality control practices of such Builder. Upon or after completion of each unit or of a number of units of the Equipment, such unit or units shall be presented to an inspector of the Owner-Trustee for inspection at the place specified for delivery of such unit or units, and if each such unit conforms to the Specifications and requirements and standards applicable thereto, such inspector or an authorized representative of the Owner-Trustee (who may be an employee of the Lessee) shall execute and deliver to the Builder of such units of Equipment a certificate of acceptance (hereinafter called the Certificate of Acceptance) stating that such unit or units have been inspected and accepted on behalf of the Owner-Trustee and are marked in accordance with paragraph 10.1 of Article 10 hereof; *provided, however,* that such Builder shall not thereby be relieved of its warranty referred to in paragraph 14.4 of Article 14 hereof. By §2 of the Lease, the Owner-Trustee is appointing the Lessee its agent to inspect and accept delivery of the Equipment. Acceptance of any unit of Equipment by the Lessee (or its employees or agents, as aforesaid) pursuant to §2 of the Lease shall be deemed to be acceptance of such unit by the Owner-Trustee.

3.5. *Builders' Responsibilities After Delivery.* On delivery by a Builder hereunder of units of Equipment and acceptance of each such unit hereunder at the place specified for delivery, such Builder shall have no further responsibility for, nor bear any risk of, any damage to or the destruction or loss of such unit; *provided, however,* that such Builder shall not thereby be relieved of its warranty referred to in paragraph 14.4 of Article 14 hereof.

ARTICLE 4

PURCHASE PRICE AND PAYMENT

4.1. *Meaning of "Purchase Price"; Exclusion of Units.* The base price or prices per unit of the Equipment are set forth in Annex B hereto. Such base price or prices are subject to such increase or decrease as is agreed to by the Builder thereof, the Owner-Trustee and the Lessee. The term "Purchase Price" as used herein shall mean the base price or prices as so increased or decreased. If on any Closing Date (as hereinafter defined in paragraph 4.2 of this Article) the aggregate Purchase Price of Equipment for which settlement has theretofore been and is then being made would, but for the provisions of this sentence, exceed the Maximum Purchase Price specified in Item 5 of Annex A hereto, the Builder of such Equipment (and any assignee of such Builder) and the Owner-Trustee will enter into an agreement excluding from this Agreement such unit or units of Equipment then proposed to be settled for and specified by the Owner-Trustee and the Lessee, as will, after giving effect to such exclusion, reduce such aggregate Purchase Price to not more than said Maximum Purchase Price, and the Owner-Trustee shall have no further obligation or liability in respect of units so excluded.

4.2. *Designation of Equipment; Settlement and Closing Dates.* All units of Equipment delivered and accepted hereunder (i) on or prior to December 31, 1977, shall be designated Schedule A Equipment and (ii) after December 31, 1977, but on or prior to June 30, 1978, shall be designated Schedule B Equipment. The Schedule A Equipment shall be settled for in such number of groups of units not to exceed three of the Equipment delivered to and accepted by the Owner-Trustee as is provided in Item 2 of Annex A hereto. The Schedule B Equipment shall be settled for in one group of the Equipment delivered to and accepted

by the Owner-Trustee as is also provided in Item 2 of Annex A hereto. The term "Closing Date" with respect to any Group (as hereinafter defined) shall be such date as is specified by the Lessee in accordance with Item 2 of Annex A hereto by six days' written notice thereof with the concurrence of the Owner-Trustee, the Assignee and the Builder or Builders of such Group of Equipment, but in no event shall such Date be later than June 30, 1978. Such notice shall specify the aggregate Purchase Price of such Group and a copy thereof shall be sent to the Builder or the Builders of such Group, the Assignee and the Owner-Trustee by the Lessee. The term "Group", as used herein, shall mean the group of units of Equipment being settled for on any Closing Date. The place of each closing shall be determined by mutual agreement among the parties hereto. Five business days prior to the Closing Date with respect to a Group of Equipment, the Builder or Builders thereof shall present to the Owner-Trustee and the Lessee the invoices for the Equipment to be settled for. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in New York, New York, Salt Lake City, Utah, or Baltimore, Maryland, are authorized or obligated to remain closed.

4.3. *Indebtedness of Owner-Trustee to Vendor.* Subject to the terms of this Agreement, the Owner-Trustee hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay in cash or immediately available funds to the Vendor at such place as the Vendor may designate, the Purchase Price of the Equipment, as follows:

(a) on the Closing Date with respect to each Group, an amount equal to 36.05% of the aggregate Purchase Price of the units of Equipment in such Group; and

(b) in 30 semiannual instalments, as hereinafter provided, an amount equal to the aggregate Purchase Price of the units of Equipment for which settlement is then being made, less the aggregate amount paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph (said portion of the Purchase Price payable in instalments under this subparagraph (b) being hereinafter called the Conditional Sale Indebtedness).

4.4. *Conditional Sale Indebtedness; Payment Dates; Interest.* (1) The instalments of the Conditional Sale Indebtedness shall be payable semiannually on January 5 and July 5 in each year, commencing July 5, 1978, to and including January 5, 1993, each such date being hereinafter called a Payment Date. The unpaid balance of the Conditional Sale Indebtedness shall bear interest from the Closing Date in respect of which such indebtedness was incurred at the rate of 8.125% per annum. Interest on the unpaid balance of the Conditional Sale Indebtedness shall be payable (i) on January 5, 1978, to the extent accrued from the Closing Date in respect of which such indebtedness was incurred to, but not including, January 5, 1978 and (ii) on each Payment Date, to the extent accrued thereafter. The amounts of Conditional Sale Indebtedness payable on each Payment Date shall be calculated so that the amount and allocation of principal and interest payable on each Payment Date shall be substantially in proportion to the amount and allocation of principal and interest on such Payment Date set forth in Schedule I hereto (subject to the provisions of Article 7 hereof) and the aggregate of such instalments of principal and interest shall completely amortize the Conditional Sale Indebtedness at maturity. The Owner-Trustee will furnish to the Vendor and the Lessee promptly after the last Closing Date a schedule, in such number of counterparts as shall be requested by the Vendor, showing the respective amounts of principal and interest payable on each Payment Date.

(2) If any of the dates for payment of principal or interest is not a business day, such payment shall be payable on the next succeeding business day, and no interest shall be payable thereon from and after the nominal date for payment thereof to such next succeeding business day.

4.5. *Calculation of Interest.* Interest under this Agreement shall be calculated on the basis of a 360-day year of twelve 30-day months.

4.6. *Penalty Interest.* The Owner-Trustee will pay interest, to the extent legally enforceable, at the rate of 9.125% per annum (hereinafter called the Penalty Rate) upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof or such lesser amount as shall be legally enforceable, anything herein to the contrary notwithstanding.

4.7. *Currency of Payment.* All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. Except as provided in Article 7 hereof, the Owner-Trustee shall not have the privilege of prepaying any portion of the Conditional Sale Indebtedness prior to the date it becomes due.

4.8. *Liability of Owner-Trustee to "Income and Proceeds from Equipment"; Meaning Thereof; Limitation on Execution of Judgments.* Notwithstanding any other provision of this Agreement (including, but not limited to, any provision of Articles 16 and 17 hereof, except as set forth in this paragraph 4.8), but not limiting the effect of Article 23 hereof, it is understood and agreed by the Vendor that the liability of the Owner-Trustee or any assignee of the Owner-Trustee for all payments to be made by it under and pursuant to this Agreement, with the exception only of the payments to be made pursuant to subparagraph (a) of paragraph 4.3 of this Article and the proviso to paragraph 13.3 of Article 13 hereof, shall not exceed an amount equal to, and shall be payable only out of, the "income and proceeds from the Equipment", and such payments shall be made by the Owner-Trustee only to the extent that the Owner-Trustee or any assignee of the Owner-Trustee shall have actually received sufficient "income and proceeds from the Equipment" to make such payments. Except as provided in the preceding sentence, the Vendor agrees that the Owner-Trustee shall have no personal liability to make any payments under this Agreement whatsoever except from the "income and proceeds from the Equipment" to the extent actually received by the Owner-Trustee or any assignee of the Owner-Trustee. In addition, the Vendor agrees that the Owner-Trustee

(i) makes no representation or warranty as to, and is not responsible for, the due execution, validity, sufficiency or enforceability of the Lease, in so far as it relates to the Lessee (or any document relative thereto) or of any of the Lessee's obligations thereunder, and

(ii) shall not be responsible for the performance or observance by the Lessee of any of its agreements, representations, indemnities, obligations or other undertakings under the Lease, it being understood that as to all such matters the Vendor will look solely to the Vendor's rights under this Agreement against the Equipment and to the Vendor's rights under the Lease and the Lease Assignment against the Lessee and the Equipment.

As used herein the term "income and proceeds from the Equipment" shall mean

(i) if one of the events of default specified in paragraph 16.1 of Article 16 hereof shall have occurred and while it shall be continuing, so much of the following amounts as are indefeasibly received by the Owner-Trustee or any assignee of the Owner-Trustee at any time after any such event and during the continuance thereof: (a) all amounts of rental and amounts in respect of Casualty Occurrences (as defined in paragraph 7.2 of Article 7 hereof) paid for or with respect to the Equipment pursuant to the Lease and any and all other payments received under §13 or any other provision of the Lease and (b) any and all payments or proceeds received for or with respect to the Equipment as the result of the sale, lease or other disposition thereof, after deducting all costs and expenses of such sale, lease or other disposition, and

(ii) at any other time only that portion of the amounts referred to in the foregoing clauses (a) and (b) (not including amounts paid by the Lessee to the Owner-Trustee as reimbursement of sums paid by the Owner-Trustee on account of prior defaults under subparagraph A of §13.1 of the Lease) as are indefeasibly received by the Owner-Trustee or any assignee of the Owner-Trustee and as shall equal the portion of the Conditional Sale Indebtedness (including prepayments thereof required in respect of Casualty Occurrences) and/or interest thereon due and payable on the date such amounts were required to be paid pursuant to the Lease or as shall equal any other payments then due and payable under this Agreement,

it being understood that "income and proceeds from the Equipment" shall in no event include amounts referred to in the foregoing clauses (a) and (b) which were received by the Owner-Trustee or any assignee of the Owner-Trustee prior to the existence of such an event of default which exceeded the amounts required to discharge that portion of the Conditional Sale Indebtedness (including prepayments thereof

required in respect of Casualty Occurrences) and/or interest thereon due and payable on the date on which amounts with respect thereto received by the Owner-Trustee or any assignee of the Owner-Trustee were required to be paid to it pursuant to the Lease or which exceeded any other payments due and payable under this Agreement at the time such amounts were payable under the Lease. Nothing contained herein limiting the liability of the Owner-Trustee shall derogate from the right of the Vendor to proceed against the Equipment as provided for herein for the full unpaid Purchase Price of the Equipment and interest thereon and all other payments and obligations hereunder. Notwithstanding anything to the contrary contained in Article 16 or 17 hereof, the Vendor agrees that in the event it shall obtain a judgment against the Owner-Trustee for an amount in excess of the amounts payable by the Owner-Trustee pursuant to the limitations set forth in this paragraph, it will, accordingly, limit its execution of such judgment to amounts payable pursuant to the limitations set forth in this paragraph.

ARTICLE 5
SECURITY INTEREST IN THE EQUIPMENT

5.1. *Vendor to Retain Security Interest; Accessories are Part of Equipment.* The Vendor shall and hereby does retain a security interest in the Equipment until the Owner-Trustee shall have made all its payments under this Agreement and shall have kept and performed all its agreements herein contained, notwithstanding any provision of this Agreement limiting the liability of the Owner-Trustee and notwithstanding the delivery of the Equipment to and the possession and use thereof by the Owner-Trustee and the Lessee as provided in this Agreement and the Lease. Such retention of security interest is solely to secure performance by the Owner-Trustee of its obligations under this Agreement (without regard to any provision of this Agreement limiting the liability of the Owner-Trustee), and, subject thereto, ownership of the Equipment shall be and remain in the Owner-Trustee subject to such performance. Any and all parts installed on and additions and replacements made to any unit of the Equipment (i) which are not readily removable without causing material damage to such unit, (ii) the cost of which is included in the Purchase Price of such unit or (iii) which are required for the operation or use of such unit by the Association of American Railroads and/or the Interstate Commerce Commission, the United States Department of Transportation or any other applicable regulatory body, shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

5.2. *Obligations Upon Payment of Conditional Sale Indebtedness.* Except as otherwise specifically provided in Article 7 hereof, when and only when the Vendor shall have been paid the full indebtedness in respect of the Purchase Price of the Equipment, together with interest and all other payments as herein provided, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Owner-Trustee without further transfer or action on the part of the Vendor. However, the Vendor, if so requested by the Owner-Trustee at that time, will (a) execute an instrument releasing its security interest in the Equipment and transferring such interest to the Owner-Trustee or upon its order, free of all liens, security interests and other encumbrances created or retained hereby and deliver such instrument to the Owner-Trustee at its address referred to in Article 22 hereof, (b) execute and deliver at the same place, for filing, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Owner-Trustee to the Equipment and (c) pay to the Owner-Trustee any money paid to the Vendor pursuant to Article 7 hereof and not theretofore applied as therein provided. The Owner-Trustee hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such instrument or instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file such certificate within a reasonable time after written demand by the Owner-Trustee.

ARTICLE 6
TAXES

6.1. *Indemnification of Nonincome Taxes.* Whether or not any of the transactions contemplated hereby are consummated, the Owner-Trustee agrees to pay, and to indemnify and hold the Vendor harmless from, all taxes, assessments, fees and charges of any nature whatsoever, together with any penalties, fines, additions to tax or interest thereon, howsoever imposed, whether levied or imposed upon the Owner-Trustee, the Owners, the Vendor, the Lessee, the trust estate created by the Trust Agreement or otherwise, by any Federal, state or local government or governmental subdivision in the United States or by any foreign country or subdivision thereof, upon or with respect to: any unit of the Equipment or any part thereof; the purchase, ownership, delivery, leasing, possession, use, operation, transfer of title, return or other disposition thereof; the rentals, receipts or earnings arising therefrom; or this Agreement, the Assignment, the Lease, the Lease Assignment, any payment made pursuant to any such agreement, or the property, the income or other proceeds received with respect to the Equipment (all such taxes, assessments, fees, charges, penalties, fines, additions to tax and interest imposed as aforesaid being hereinafter called "Taxes"); *excluding, however:* (i) Taxes of the United States or any state or political subdivision thereof and (if and to the extent that any person indemnified hereunder is entitled to a credit therefor against its United States Federal income taxes) of any foreign country or subdivision thereof, imposed on or measured solely by the net income or excess profits of the Vendor, or franchise taxes measured by net income of the Vendor, or gross receipts taxes other than gross receipts taxes in the nature of sales or use taxes, and other than Taxes arising out of or imposed in respect of the receipt of indemnification payments pursuant to this Agreement, provided that Taxes of any foreign country or subdivision thereof incurred as a result of the indemnified party being taxed by such foreign country or subdivision on its world-wide income without regard to the transactions contemplated by this Agreement shall be excluded in all cases, whether or not the indemnified party is entitled to a credit against its United States Federal income taxes; (ii) any Taxes imposed on or measured by any fees or compensation received by the Vendor; and (iii) Taxes which are imposed on or measured solely by the net income of the Vendor if and to the extent that such Taxes are in substitution for or reduce the Taxes payable by any other person which the Owner-Trustee has not agreed to pay or indemnify against pursuant to this Article 6; *provided, however,* that the Owner-Trustee shall not be required to pay any Taxes during the period it may be contesting the same in the manner provided in paragraph 6.2 of this Article 6.

6.2. *Claims; Contests; Refunds.* If claim is made against the Vendor for any Taxes indemnified against under this Article 6, the Vendor shall promptly notify the Owner-Trustee. If reasonably requested by the Owner-Trustee in writing, the Vendor shall, upon receipt of any indemnity satisfactory to it for all costs, expenses, losses, legal and accountants' fees and disbursements, penalties, fines, additions to tax and interest, and at the expense of the Owner-Trustee, contest in good faith the validity, applicability or amount of such Taxes by (a) resisting payment thereof if possible, (b) not paying the same except under protest, if protest is necessary and proper, and (c) if payment is made, using reasonable efforts to obtain a refund thereof in appropriate administrative or judicial proceedings, or both. The Owner-Trustee may also contest, at its own expense, the validity, applicability or amount of such Taxes in the name of the Vendor; provided that, no proceeding or actions relating to such contest shall be commenced (nor shall any pleading, motion, brief or other paper be submitted or filed in the name of the Vendor in any such proceeding or action) without the prior written consent of the Vendor. If the Vendor shall obtain a refund of all or any part of such Taxes previously reimbursed by the Owner-Trustee in connection with any such contest or an amount representing interest thereon, the Vendor shall pay the Owner-Trustee the amount of such refund or interest net of expenses; *provided; however,* that no event of default set forth in paragraph 16.1 of Article 16 hereof and no event which with notice or lapse of time or both would constitute such an event of default shall have occurred and be continuing.

6.3. *Reports or Returns.* In case any report or return is required to be made with respect to any obligation of the Owner-Trustee under or arising out of this Article 6, the Owner-Trustee shall either make such report or return in such manner as will show the interests of the Vendor in the Equipment or shall promptly notify the Vendor of such requirement and shall make such report or return in such manner as

shall be satisfactory to the Vendor. All costs and expenses (including legal and accountants' fees) of preparing any such return or report shall be borne by the Owner-Trustee.

6.4. *Survival.* All of the obligations of the Owner-Trustee under this Article 6 shall survive and continue, notwithstanding payment in full of all amounts due under this Agreement.

6.5. *Article 6 Subject to Articles 4 and 23.* The obligations of the Owner-Trustee under this Article 6 are subject to the limitations contained in paragraph 4.8 of Article 4 hereof and in Article 23 hereof.

ARTICLE 7
MAINTENANCE; CASUALTY OCCURRENCES

7.1. *Maintenance.* Subject to the limitations contained in Article 23 hereof, the Owner-Trustee shall, at its own cost and expense, maintain and keep each unit of the Equipment in good operating order and repair, ordinary wear and tear excepted.

7.2. *Casualty Occurrences.* In the event that any unit of Equipment shall be or become worn out, lost, stolen, destroyed or, in the opinion of the Lessee, irreparably damaged from any cause whatsoever or the Purchase Price of any unit shall have been refunded by a Builder pursuant to such Builder's patent indemnities therefor as set forth in Item 4 of Annex A hereto or any unit shall be taken or requisitioned by condemnation or otherwise by the United States Government for a stated period which shall exceed the then remaining term of the Lease or by any other governmental entity resulting in loss of possession by the Lessee for a period of 90 consecutive days during the term of the Lease (such occurrences being herein called Casualty Occurrences), the Owner-Trustee shall, promptly after it shall have received notice from the Lessee or otherwise been informed that such unit has suffered a Casualty Occurrence, cause the Vendor to be fully informed in regard thereto. On the next succeeding Casualty Payment Date (as defined in the Lease), the Owner-Trustee shall, subject to the limitations contained in paragraph 4.8 of Article 4 hereof, pay to the Vendor a sum equal to the Casualty Value (as hereinafter defined in this Article 7) of such unit suffering a Casualty Occurrence as of such Casualty Payment Date, together with an amount equal to accrued interest thereon (as hereinafter provided) and shall file, or cause to be filed, with the Vendor a certificate setting forth the Casualty Value of such unit. Any money paid to the Vendor pursuant to this paragraph shall be applied on the date of such payment to prepay without penalty or premium, ratably in accordance with the unpaid balance of each instalment, the Conditional Sale Indebtedness, together with all interest accrued on the portion of the Conditional Sale Indebtedness being prepaid. The Owner-Trustee shall promptly cause to be furnished to the Vendor and the Lessee a revised schedule of payments of principal and interest thereafter to be made, in such number of counterparts as the Vendor and the Lessee may request, calculated as provided in paragraph 4.4 of Article 4 hereof.

7.3. *Obligations Upon Payment of Casualty Value.* Upon payment by the Owner-Trustee to the Vendor of the Casualty Value of any unit of the Equipment having suffered a Casualty Occurrence, absolute right to the possession of, title to and property in such unit shall pass to and vest in the Owner-Trustee without further transfer or action on the part of the Vendor, except that the Vendor, if requested by the Owner-Trustee, will execute and deliver to the Owner-Trustee, at the expense of the Owner-Trustee, an appropriate instrument confirming such passage to the Owner-Trustee of all the Vendor's right, title and interest, and the release of the Vendor's security interest, in such unit, in recordable form, in order that the Owner-Trustee may make clear upon the public records the title of the Owner-Trustee to such unit.

7.4. *Casualty Value.* The Casualty Value of each unit of the Equipment suffering a Casualty Occurrence shall be deemed to be that portion of the original Purchase Price thereof referred to in paragraph 4.3(b) of Article 4 hereof remaining unpaid on the date as of which such Casualty Value shall be paid (without giving effect to any prepayment or prepayments theretofore made under this Article with respect to any other unit). For the purpose of this paragraph, each payment of the Purchase Price made pursuant to Article 4 hereof shall be deemed to be a payment with respect to each unit of Equipment in like proportion as the original Purchase Price of such unit bears to the aggregate original Purchase Price of all the Equipment.

ARTICLE 8

INSURANCE PROCEEDS AND CONDEMNATION PAYMENTS

If the Vendor shall receive any insurance proceeds or condemnation payments in respect of such units suffering a Casualty Occurrence, the Vendor shall promptly pay such insurance proceeds or condemnation payments to the Owner-Trustee; *provided, however,* that no event of default shall have occurred and be continuing hereunder and the Owner-Trustee shall have made payment of the Casualty Value of such units, together with accrued interest thereon, to the Vendor. All insurance proceeds received by the Vendor in respect of any unit or units of Equipment not suffering a Casualty Occurrence shall be paid to the Owner-Trustee upon proof satisfactory to the Vendor that any damage to such unit in respect of which such proceeds were paid has been fully repaired.

ARTICLE 9

REPORTS AND INSPECTIONS

On or before March 31 in each year, commencing with the year 1979, the Owner-Trustee shall, subject to the provisions of Article 23 hereof, cause to be furnished to the Vendor an accurate statement (a) setting forth as at the preceding December 31 the total number, description and road numbers of all units of the Equipment then subject to this Agreement, the total number, description and road numbers of all units of the Equipment 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 repair (other than running repairs) and setting forth such other information regarding the condition and state of repair of the Equipment as the Vendor may reasonably request and (b) stating that, in the case of all Equipment repaired or repainted during the period covered by such statement, the numbers and markings required by Article 10 hereof have been preserved or replaced. The Vendor shall have the right, by its agents, to inspect the Equipment and the Owner-Trustee's and the Lessee's records with respect thereto at such reasonable times as the Vendor may request during the term of this Agreement.

ARTICLE 10

MARKING OF EQUIPMENT

10.1. *Marking of Equipment.* The Owner-Trustee will cause each unit of the Equipment to be kept numbered with the road number of the Lessee as set forth in Annex B hereto, or, in the case of Equipment not there listed, such road number as shall be set forth in any amendment or supplement hereto extending this Agreement to cover such Equipment, 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 Security Agreement filed under the Interstate Commerce Act, Section 20c", or other appropriate words designated by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Vendor's interest in the Equipment and its rights under this Agreement. The Owner-Trustee will not permit any such unit to be placed in operation or exercise any control or dominion over the same until such markings shall have been made thereon and will replace or will cause to be replaced promptly any such markings which may be removed, obliterated, defaced or destroyed. The Owner-Trustee will not permit the road number of any unit of the Equipment to be changed except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Vendor and filed, recorded and deposited by or on behalf of the Owner-Trustee in all public offices where this Agreement shall have been filed, recorded and deposited.

10.2. *No Designations of Ownership.* Except as provided in paragraph 10.1 of this Article 10, the Owner-Trustee will not allow the name of any person, association or corporation to be placed on any unit of the Equipment as a designation that might be interpreted as a claim of ownership; *provided, however,* that the Equipment may be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates.

10.3. *Article 10 Subject to Article 23.* The obligations of the Owner-Trustee under this Article are subject to the limitations contained in Article 23 hereof.

ARTICLE 11

COMPLIANCE WITH LAWS AND RULES

11.1. *Compliance with Laws and Rules.* During the term of this Agreement, the Owner-Trustee will comply, and will cause every lessee or user of the Equipment to comply, in all respects (including, without limitation, with respect to the use, maintenance and operation of the Equipment) with all laws of the jurisdictions in which its or such lessee's or user's operations involving the Equipment may extend, with the interchange rules of the Association of American Railroads 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 Equipment, to the extent that such laws and rules affect the title, operation or use of the Equipment, and in the event that such laws or rules require any alteration, replacement or addition of or to any part on any unit of the Equipment, the Owner-Trustee will or will cause the Lessee to conform therewith at no expense to the Vendor; *provided, however,* that the Owner-Trustee or the Lessee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor under this Agreement.

11.2. *Article 11 Subject to Article 23.* The obligations of the Owner-Trustee under this Article are subject to the limitations contained in Article 23 hereof.

ARTICLE 12

POSSESSION AND USE

12.1. *Possession and Use of Equipment by Owner-Trustee.* The Owner-Trustee, so long as an event of default shall not have occurred and be continuing under this Agreement, shall be entitled, from and after delivery of the Equipment by a Builder to the Owner-Trustee, to the possession of the Equipment and the use thereof, but only upon and subject to all the terms and conditions of this Agreement.

12.2. *Lease Permitted; Lease Subordinate; No Amendment or Termination.* The Owner-Trustee simultaneously is leasing the Equipment to the Lessee as provided in the Lease, and the rights of the Lessee and its permitted assigns under the Lease shall be subordinated and junior in rank to the rights, and shall be subject to the remedies, of the Vendor under this Agreement. The Lease shall not be amended in any material respect, or terminated (except in accordance with its terms) without the prior written consent of the Vendor.

12.3. *Other Leases of Equipment.* Subject to the rights of the Lessee under the Lease, the Owner-Trustee may also lease the Equipment to any other railroad company, but only with the prior written consent of the Vendor, which consent may be subject to the conditions, among others, that (i) such lease shall provide that the rights of such lessee are made expressly subordinate to the rights and remedies of the Vendor under this Agreement, (ii) such lessee shall expressly agree not to assign or permit the assignment of any unit of the Equipment to service involving the regular operation and maintenance thereof outside the United States of America and (iii) such lease shall be assigned to the Vendor as security on terms consistent with those set forth in Annex D hereto, and in any event satisfactory to the Vendor.

ARTICLE 13

PROHIBITION AGAINST LIENS

13.1. *Owner-Trustee to Discharge Liens.* The Owner-Trustee will pay or discharge any and all sums claimed by any party from, through or under the Owner-Trustee or its successors or assigns which, if unpaid, might become a lien, charge or security interest on or with respect to the Equipment, or any unit thereof, equal or superior to the Vendor's security interest therein and will promptly discharge any such

lien, charge or security interest which arises; but the Owner-Trustee shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the security interest of the Vendor in or to the Equipment or otherwise under this Agreement. Any amounts paid by the Vendor in discharge of liens, charges or security interests upon the Equipment shall be secured by and under this Agreement.

13.2. *No Breach for Certain Liens.* This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

13.3. *Article 13 Subject to Article 23 Except in Certain Instances.* The obligations of the Owner-Trustee under this Article 13 are subject to the limitations contained in Article 23 hereof; *provided, however,* that the Owner-Trustee will pay or discharge any and all claims, liens, charges or security interests claimed by any party from, through or under the Owner-Trustee or the Owners or the successors or assigns of any of them, not arising out of the transactions contemplated hereby or in other documents mentioned herein (but including tax liens arising out of the receipt of the income and proceeds from the Equipment), equal or superior to the Vendor's security interest therein; but the Owner-Trustee shall not be required to pay or discharge any such claim, lien, charge or security interest so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not adversely affect the security interest of the Vendor in or to the Equipment or otherwise under this Agreement.

ARTICLE 14
INDEMNITIES AND WARRANTIES

14.1. *Indemnification.* The Owner-Trustee shall pay, and shall protect, indemnify and hold the Vendor and any assignee hereof, and their respective successors, assigns, agents and servants (hereinafter called Indemnified Persons), harmless from and against any and all causes of action, suits, penalties, claims, demands or judgments, of any nature whatsoever which may be imposed on, incurred by or asserted against any Indemnified Person (including any or all liabilities, obligations, damages, costs, disbursements, expenses [including without limitation attorneys' fees and expenses of any Indemnified Person] relating thereto) in any way relating to or arising or alleged to arise out of this Agreement or the Equipment, including without limitation those in any way relating to or arising or alleged to arise out of (i) the manufacture, construction, purchase, acceptance, rejection, ownership, delivery, nondelivery, lease, possession, use, operation, condition, sale, return or other disposition of any unit of Equipment or portion thereof, (ii) any latent and other defects whether or not discoverable by the Owner-Trustee or the Vendor, (iii) any claim for patent, trademark or copyright infringement, (iv) any claims based on strict liability in tort, (v) any injury to or the death of any person or any damage to or loss of property on or near the Equipment or in any manner growing out of or concerned with, or alleged to grow out of or be connected with, the ownership, use, replacement, adaptation or maintenance of the Equipment or of any other equipment in connection with the Equipment (whether owned or under the control of the Owner-Trustee, the Lessee or any other person) or resulting or alleged to result from the condition of any thereof; (vi) any violation, or alleged violation, of any provision of this Agreement or of any agreement, law, rule, regulation, ordinance or restriction, affecting or applicable to the Equipment or the leasing, ownership, use, replacement, adaptation or maintenance thereof; or (vii) any claim arising out of the Vendor's retention of a security interest under this Agreement or the Lease Assignment; except that the Owner-Trustee shall not be liable to a Builder in respect of any of the foregoing matters to the extent liability in respect thereof arises from any tort, breach of warranty or failure to perform any covenant hereunder of such Builder or is covered by such Builder's patent indemnification referred to in paragraph 14.4 of this Article 14. The Owner-Trustee shall be obligated under this Article 14, irrespective of whether any Indemnified Person shall also be indemnified with respect to the same manner under any other agreement by any other person, and the Indemnified Person seeking to enforce the indemnification may proceed directly against the

Owner-Trustee under this Article 14 without first resorting to any such other rights of indemnification. In case any action, suit or proceeding is brought against any Indemnified Person in connection with any claim indemnified against hereunder, the Owner-Trustee may and, upon such Indemnified Person's request, will at the Owner-Trustee's expense resist and defend such action, suit or proceeding or cause the same to be resisted or defended by counsel selected by the Owner-Trustee and approved by such Indemnified Person; and, in the event of any failure by the Owner-Trustee to do so, the Owner-Trustee shall pay all costs and expenses (including without limitation attorneys' fees and expenses) incurred by such Indemnified Person in connection with such action, suit or proceeding. In the event the Owner-Trustee is required to make any payment under this Article 14, the Owner-Trustee shall pay such Indemnified Person an amount which, after deduction of all taxes required to be paid by such Indemnified Person 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 in the sole discretion of the Indemnified Person), shall be equal to the amount of such payment. The Vendor and the Owner-Trustee 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 any indemnities as contained in this Article 14 by the Owner-Trustee, and provided that no event of default set forth in paragraph 16.1 of Article 16 hereof (or other event which with lapse of time or notice or both would constitute such an event of default) shall have occurred and be continuing, it shall be subrogated to any right of such Indemnified Person in respect of the matter against which indemnity has been given. Any payments received by such Indemnified Person from any person (other than the Owner-Trustee) as a result of any matter with respect to which such Indemnified Person has been indemnified by the Lessee pursuant to the Lease shall be paid over to the Owner-Trustee to the extent necessary to reimburse the Owner-Trustee for indemnification payments previously made in respect of such matter.

14.2. *Survival; No Subrogation.* The indemnities contained in this Article 14 shall survive the expiration or termination of this Agreement with respect to all events, facts, conditions or other circumstances occurring or existing prior to such expiration or termination and are expressly made for the benefit of, and shall be enforceable by, any Indemnified Person. None of the indemnities in this Article 14 shall be deemed to create any rights of subrogation in any insurer or third party against the Owner-Trustee therefor, from or under any Indemnified Person, whether because of any claim paid or defense provided for the benefit thereof or otherwise.

14.3. *Owner-Trustee Not Released if Equipment Damaged or Lost.* The Owner-Trustee will bear the responsibility for and risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of any unit of or all the Equipment.

14.4. *Warranties of Builders; Patent Indemnities; Subject to Article 23.* The agreement of the parties relating to the Builders' warranties of material and workmanship and the agreement of the parties relating to patent indemnification are set forth in Items 3 and 4 of Annex A hereto. The obligations of the Owner-Trustee pursuant to paragraphs 14.1, 14.2 and 14.3 of this Article are subject to the provisions of Article 23 hereof.

ARTICLE 15
ASSIGNMENTS

15.1. *Assignment of Owner-Trustee.* Except as provided in Article VII of the Trust Agreement, the Owner-Trustee will not (a) except as provided in Article 12 hereof, transfer the right to possession of any unit of the Equipment or (b) sell, assign, transfer or otherwise dispose of its rights under this Agreement.

15.2. *Assignment by Vendor.* All or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Owner-Trustee, may be assigned by the Vendor and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve a Builder from, any of the obligations of such Builder to construct and deliver the Equipment in accordance herewith or to respond to its warranties and

indemnities referred to in Article 14 hereof or relieve the Owner-Trustee of its obligations to such Builder contained in Articles 2, 3, 4, 6 and 14 hereof, Annex A hereto and this Article 15, or any other obligation which, according to its terms or context, is intended to survive an assignment.

15.3. *Notice of Assignment by Vendor.* Upon any such assignment, either the assignor or the assignee shall give written notice to the Owner-Trustee, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee; and such assignee shall, by virtue of such assignment, acquire all the assignor's right, title and interest in and to the Equipment and this Agreement, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Owner-Trustee of the notification of any such assignment, all payments thereafter to be made by the Owner-Trustee under this Agreement shall, to the extent so assigned, be made to the assignee in such manner as it may direct.

15.4. *No Set-Off Against Conditional Sale Indebtedness Upon Assignment.* The Owner-Trustee recognizes that this Agreement will be assigned to the Assignee as provided in the Assignment. The Owner-Trustee expressly represents, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Vendor hereunder, and for the purpose of inducing such acquisition, that the rights of the Assignee to the entire unpaid Conditional Sale Indebtedness in respect of the Purchase Price of the Equipment or such part thereof as may be assigned together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, set-off, counterclaim or recoupment whatsoever by the Owner-Trustee arising out of any breach of any obligation of a Builder with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, set-off, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Owner-Trustee by a Builder. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Owner-Trustee against and only against the Builders.

ARTICLE 16
DEFAULTS

16.1. *Events of Default; Termination of Lease; Declaration of Default; Acceleration of Conditional Sale Indebtedness.* In the event that any one or more of the following events of default shall occur and be continuing, to wit:

(a) the Owner-Trustee shall fail to pay or cause to be paid in full (i) the principal of and interest on the Conditional Sale Indebtedness when payment thereof shall be due hereunder (irrespective of the provisions of Article 4 or 23 hereof or any other provision of this Agreement limiting the liability of the Owner-Trustee) and such default shall continue for 15 days after receipt of notice thereof by the Owner-Trustee and the Owners from the Vendor or any Investor or (ii) any other sum payable by the Owner-Trustee hereunder when payment thereof shall be due (irrespective of the provisions of Article 4 or 23 hereof or any other provision of this Agreement limiting the liability of the Owner-Trustee) and such default shall continue for 15 days after the date such payment is due and payable; or

(b) the Owner-Trustee or the Lessee shall, for more than 45 days after the Vendor shall have demanded in writing performance thereof, fail or refuse to comply with any other covenant, agreement, term or provision of this Agreement (irrespective of the provisions of Article 4 or 23 hereof or any other provision of this Agreement limiting the liability of the Owner-Trustee), the Lease Assignment or any covenant, agreement, term or provision of the Participation Agreement made expressly for the benefit of the Vendor, on its part to be kept and performed or to make provision satisfactory to the Vendor for such compliance; or

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

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

(d) any other proceeding shall be commenced by or against the Owner-Trustee or the Lessee for any relief which includes, or might result in, any modification of the obligations of the Owner-Trustee hereunder or the Lessee under the Lease under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustment of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the obligations of the Owner-Trustee under this Agreement or the Lessee under the Lease), 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 Owner-Trustee under this Agreement or the Lessee under the 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 Owner-Trustee or the Lessee, as the case may be, or for their respective property in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier;

then at any time after the occurrence of such an event of default the Vendor may, upon five days' written notice to the Owner-Trustee and the Lessee and upon compliance with any legal requirements then in force and applicable to such action by the Vendor, (i) subject to the Lessee's rights of possession, use and assignment under §§4 and 15 of the Lease, cause the term of the Lease immediately upon such notice to terminate (and the Owner-Trustee acknowledges the right of the Vendor to terminate the term of the Lease), *provided, however,* that such termination shall not be in derogation of or impair the rights of the Owner-Trustee or the Vendor (under the assignment thereof), as the case may be, to enforce compliance by the Lessee with any of its covenants and agreements under the Lease or to enforce any of its rights and remedies under §13 of the Lease (subject to the Vendor's rights to repossess and sell the Equipment as provided in this Agreement), including the rights of the Owner-Trustee or the Vendor (under the assignment thereof), as the case may be, to sue for and recover damages provided for in §13 of the Lease upon the occurrence of an event of default under the Lease, and/or (ii) declare (hereinafter called a Declaration of Default) the entire unpaid Conditional Sale Indebtedness, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such Declaration of Default at the Penalty Rate to the extent legally enforceable. Upon a Declaration of Default, subject to Article 4 hereof, the Vendor shall be entitled to recover judgment for the entire unpaid balance of the Conditional Sale Indebtedness so payable, with interest as aforesaid, and to collect such judgment out of any property of the Owner-Trustee, subject to the provisions of Articles 4 and 23 hereof, wherever situated. The Owner-Trustee shall promptly notify the Vendor of any event which has come to its attention which constituted, constitutes, or with the giving of notice and/or lapse of time could constitute, an event of default under this Agreement.

16.2. *Waiver of Defaults.* The Vendor may, at its election, waive any such event of default and its consequences and rescind and annul any Declaration of Default or notice of termination of the Lease by notice to the Owner-Trustee and the Lessee in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such event of default had occurred and no Declaration of Default or notice of termination of the Lease had been made or given. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Owner-Trustee that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

ARTICLE 17
REMEDIES

17.1. *Vendor May Take Possession of Equipment.* Subject to the Lessee's rights of possession, use and assignment under §§4 and 15 of the Lease, at any time during the continuance of a Declaration of Default, the Vendor may, and upon such further notice, if any, as may be required for compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Vendor, take or cause to be taken, by its agent or agents, immediate possession of the Equipment, or one or more of the units thereof, without liability to return to the Owner-Trustee any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 17 expressly provided, and may remove the same from possession and use of the Owner-Trustee, the Lessee or any other person and for such purpose may enter upon the premises of the Owner-Trustee or the Lessee or any other premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Owner-Trustee or the Lessee, subject to all mandatory requirements of due process of law.

17.2. *Assembling of Equipment for Vendor.* In case the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall designate a reasonable point or points for the delivery of the Equipment to the Vendor, the Owner-Trustee shall, subject to the provisions of Article 4 and Article 23 hereof, at its own 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 possession thereof to return the unit or units) place such units upon such storage tracks of the Lessee as the Vendor reasonably may designate;

(b) permit the Vendor to store such units on such tracks without charge for insurance, rent or storage until all such units of Equipment have been sold, leased or otherwise disposed of by the Vendor; and

(c) transport the same to any reasonable 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 Vendor.

During any storage period, the Lessee has agreed pursuant to §14.1 of the Lease, at its own cost and expense, to insure, maintain and keep each such unit in good order and repair and to permit the inspection of the Equipment by the Vendor, the Vendor's representatives and prospective purchasers and users. This agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and, the Owner-Trustee acknowledges that upon application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled under the Lease as assignee of the rights of the Owner-Trustee thereunder to a decree against the Lessee requiring specific performance hereof. The Owner-Trustee hereby expressly waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

17.3. *Vendor May Dispose of or Retain Equipment.* At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 17 provided) may, at its election, retain the Equipment in satisfaction of the entire Conditional Sale Indebtedness and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Owner-Trustee and the Lessee by telegram or registered mail, addressed as provided in Article 22 hereof, and to any other persons to whom the law may require notice, within 30 days after such Declaration of Default. In the event that the Vendor should elect to retain the Equipment and no objection is made thereto within the 30-day period described in the second proviso below, all the Owner-Trustee's rights in the Equipment shall thereupon terminate and all payments made by the Owner-Trustee may be retained by the Vendor as compensation for the use of the Equipment; *provided, however,* that if the Owner-Trustee, before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to the Vendor the total unpaid balance of

the Conditional Sale Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Owner-Trustee; *provided, further,* that if the Owner-Trustee, the Lessee or any other persons notified under the terms of this paragraph object in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall not have given notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 17.

17.4. *Vendor May Sell Equipment; Owner-Trustee's Right of Redemption.* Subject to the Lessee's rights of possession, use and assignment under §§4 and 15 of the Lease, at any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon reasonable notice to the Owner-Trustee, the Lessee and any other persons to whom the law may require notice of the time and place, may sell the Equipment, or one or more of the units thereof, free from any and all claims of the Owner-Trustee, the Lessee or any other party claiming from, through or under the Owner-Trustee or the Lessee, at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; *provided, however,* that if, prior to such sale and prior to the making of a contract for such sale, the Owner-Trustee should tender full payment of the total unpaid balance of the Conditional Sale Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale and the Vendor's reasonable attorneys' fees, then upon receipt of such payment, expenses and fees by the Vendor, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Owner-Trustee. The proceeds of such sale or other disposition, less the attorneys' fees and any other expenses incurred by the Vendor in retaking possession of, removing, storing, holding, preparing for sale and selling or otherwise disposing of the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement.

17.5. *Sale of Equipment by Vendor.* Any sale hereunder may be held or conducted at New York, New York, at such time or times as the Vendor may specify (unless the Vendor shall specify a different place or places, in which case the sale shall be held at such place or places as the Vendor may specify), in one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine, so long as such sale shall be in a commercially reasonable manner. The Vendor, the Owner-Trustee or the Lessee may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. The Owner-Trustee and the Lessee shall be given written notice of such sale not less than ten days prior thereto, by telegram or registered mail addressed as provided in Article 22 hereof. In addition, if such sale shall be a private sale (which shall be deemed to mean only a sale where an advertisement for bids has not been published in a newspaper of general circulation or a sale where less than 40 offerees have been solicited in writing to submit bids), it shall be subject to the rights of the Lessee and the Owner-Trustee to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. In the event that the Vendor shall be the purchaser of the Equipment, it shall not be accountable to the Owner-Trustee (except) to the extent of surplus money received as hereinafter provided in this Article 17), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all or any part of sums due to the Vendor hereunder.

17.6. *Effect of Remedies and Powers and Exercise Thereof.* Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity not inconsistent herewith, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any

payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly granted to the Owner-Trustee shall not otherwise alter or affect the Vendor's rights or the Owner-Trustee's obligations hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Owner-Trustee's obligations or the Vendor's rights hereunder with respect to any subsequent payments or default therein.

17.7. *Deficiencies.* If, after applying all sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Owner-Trustee shall, subject to the limitations of paragraph 4.8 of Article 4 and Article 23 hereof, pay the amount of such deficiency to the Vendor upon demand, together with interest thereon from the date of such demand to the date of payment at the Penalty Rate, and, if the Owner-Trustee shall fail to pay such deficiency, the Vendor may bring suit therefor and shall, subject to the limitations of paragraph 4.8 of Article 4 and Article 23 hereof, be entitled to recover a judgment therefor against the Owner-Trustee. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Owner-Trustee.

17.8. *Expenses.* The Owner-Trustee will pay all reasonable expenses, including attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable expenses, including reasonable attorneys' fees, and the amount thereof shall be included in such judgment. The foregoing provisions of this paragraph shall be subject to the limitations set forth in paragraph 4.8 of Article 4 and Article 23 hereof.

17.9. *Remedies Subject to Mandatory Legal Requirements.* The foregoing provisions of this Article 17 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

ARTICLE 18

APPLICABLE STATE LAWS

18.1. *Conflict with State Laws.* Any provision of this Agreement prohibited by any applicable law of any jurisdiction (which is not overridden by applicable federal law) shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Owner-Trustee to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

18.2. *Waiver of Notices.* Except as otherwise provided in this Agreement, the Owner-Trustee, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment, or any one or more units thereof, and any other requirements as to the time, place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of the Vendor's rights and any and all rights of redemption.

ARTICLE 19

RECORDING

Subject to the provisions of Article 23 hereof, the Owner-Trustee will cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto to be filed and recorded in accordance with Section 20c of the Interstate Commerce Act and deposited with the Registrar General of Canada (notice of such deposit to be forthwith given in *The Canada Gazette*) pursuant to Section 86 of the Railway Act of Canada; and the Owner-Trustee will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record any and all further instruments required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Owner-Trustee will promptly furnish to the Vendor certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Vendor.

ARTICLE 20

REPRESENTATIONS AND WARRANTIES OF BUILDERS

Each Builder hereby represents and warrants to the Owner-Trustee, its successors and assigns, that this Agreement is duly authorized by it and lawfully executed and delivered by it for a valid consideration, that, assuming due authorization, execution and delivery by the Owner-Trustee this Agreement is, in so far as such Builder is concerned, a legal, valid and existing agreement binding upon the Builder in accordance with its terms.

ARTICLE 21

ARTICLE AND PARAGRAPH HEADINGS; EFFECT AND MODIFICATION OF AGREEMENT

21.1. *Article and Paragraph Headings for Convenience Only.* All article and paragraph headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

21.2. *Effect and Modification of Agreement.* Except for the Participation Agreement, this Agreement, including the Annexes hereto, exclusively and completely states the rights of the Vendor and the Owner-Trustee with respect to the Equipment and supersedes all other agreements, oral or written, with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized representatives of the Vendor and the Owner-Trustee.

ARTICLE 22

NOTICE

Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed to it by first class mail, postage prepaid, at its chief place of business at the following specified addresses:

(a) to the Owner-Trustee, at 79 South Main Street, Salt Lake City, Utah, 84111, attention of Trust Department, Corporate Trust Division, with copies to BWL, Inc., Suite 2700, One IBM Plaza, Chicago, Illinois, 60611, attention: Manager, Leveraged Leasing; Westinghouse Credit Corporation, 3 Gateway Center, Pittsburgh, Pennsylvania, 15222, attention: Manager, Leveraged Leasing; Toy National Bank, Fourth and Nebraska Streets, Sioux City, Iowa 51102, attention of Vice President Investments; and Comdisco Financial Services, Inc., 530 Bush Street, San Francisco, California 94108.

(b) to each Builder, at the addresses specified in Item 1 of Annex A hereto,

(c) to any assignee of the Vendor, or of the Owner-Trustee, at such address as may have been furnished in writing to the Owner-Trustee, or the Vendor, as the case may be, by such assignee,

or at such other address as may have been furnished in writing by such party to the other parties to this Agreement.

ARTICLE 23

IMMUNITIES; SATISFACTION OF UNDERTAKINGS

23.1. *No Recourse Against Certain Persons.* No recourse shall be had in respect of any obligation due under this Agreement, or referred to herein, against any incorporator, stockholder, director or officer, as such, past, present or future, of the parties hereto or the Owners, whether by virtue of any constitutional provision, statute or rule of law, or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of such incorporators, stockholders, directors or officers, as such, being forever released as a condition of and as consideration for the execution of this Agreement.

23.2. *Satisfaction of Certain Covenants.* The obligations of the Owner-Trustee under paragraph 7.1 of Article 7, paragraphs 17.2, 17.7 and 17.8 of Article 17, and under Articles 6, 9, 10, 11, 13, 14 and 19

hereof and any and all obligations at any time arising thereunder shall be deemed satisfied in full in all respects (except, in the case of Article 13 hereof, as set forth in paragraph 13.3 thereof), and be of no further force or effect in so far as they involve personal liability for money or performance or otherwise of the Owner-Trustee, other than out of "income and proceeds from the Equipment" (as defined in paragraph 4.8 of Article 4 hereof), upon the execution and delivery of the Lease (whether or not the Lease shall thereafter be amended, terminated or otherwise modified and irrespective of the genuineness, validity, regularity or enforceability of the Lease); *provided, however,* that such covenants and obligations shall be deemed covenants of the Owner-Trustee within the meaning of subparagraphs (a) and (b) of paragraph 16.1 of Article 16 hereof (it being the intention of the parties hereto that neither the Owner-Trustee nor any of its properties shall be subject to any liability for any breach or alleged breach by it of any such covenant or obligation except out of the "income and proceeds from the Equipment", but that any such breach may be made the basis of an event of default under said Article 16). No waiver or amendment of the Lessee's undertakings under the Lease shall be effective unless joined in by the Vendor; *provided, however,* that the Vendor shall consent to any agreement in writing between the Lessee and the Owner-Trustee increasing or decreasing the rentals or casualty values payable pursuant to §§3 and 7 of the Lease so long as the amounts payable thereunder are not reduced below those necessary to satisfy the obligations of the Owner-Trustee hereunder, such consent to be given by the Vendor within 30 days of delivery of a copy of any such agreement to the Vendor.

23.3. *No Personal Liability of Owner-Trustee.* 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 Owner-Trustee are each and every one of them made and intended not as personal representations, undertakings and agreements by First Security Bank of Utah, National Association, including its successors and assigns, 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 Trust Estate as such term is used in 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 trust company as trustee under the Trust Agreement; and that no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against said bank or the Owners except as provided in paragraph 13.3 of Article 13 hereof and Section 1.04 of the Trust Agreement or on account of any representation, undertaking or agreement of the Owner-Trustee or the Owners except as provided in paragraph 13.3 of Article 13 hereof and Section 1.04 of the Trust Agreement, either expressed or implied, all such personal liability, if any, being expressly waived and released by the Vendor and by all persons claiming by, through or under the Vendor; *provided, however,* that the Vendor or any person claiming by, through or under any of them, making claim hereunder, may look to said Trust Estate for satisfaction of the same. Nothing contained in this Section 23.3 shall limit, restrict or impair the rights of the Vendor to take all actions to enforce the rights and remedies provided for herein and to bring suit and obtain a judgment against the Owner-Trustee (provided that neither the Owner-Trustee in its fiduciary or individual capacity nor the Owners shall have any personal liability on any such judgment and the satisfaction thereof shall be limited to the Trust Estate, including any interest therein of the Owner-Trustee or the Owners) or to foreclose the lien and security interest created by this Agreement or otherwise realize upon the Trust Estate, including the right to proceed against the Equipment or the Lessee under the Lease.

The Owner-Trustee agrees not to enter into any supplement or amendment of the Trust Agreement except as provided in Section 8.01 thereof as in effect on the date of execution and delivery hereof.

ARTICLE 24

LAW GOVERNING

The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Utah; *provided, however,* that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and Section 86 of the Railway Act of Canada, such additional rights, if any, arising out of the filing, recording or deposit hereof and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited or in which any unit of Equipment shall be located, and such rights, if any, arising out of the marking of Equipment.

ARTICLE 25

EXECUTION

This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. It shall not be necessary that any counterpart be signed by all the parties so long as any counterpart be signed by the Owner-Trustee and one or more Builders. Each Builder shall be bound hereunder, notwithstanding the failure of any other Builder to execute and deliver this Agreement, or perform its obligations hereunder, and this Agreement shall be deemed to be a separate Agreement between the Owner-Trustee and each of the respective Builders. Although this Agreement is dated, for convenience, 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.

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

GENERAL MOTORS CORPORATION
(Electro-Motive Division),

by

Vice President

[CORPORATE SEAL]

Attest:

Assistant Secretary

GENERAL ELECTRIC COMPANY,

by

General Manager—Domestic
Locomotive Marketing
Department

[CORPORATE SEAL]

Attest:

Attesting Secretary

FIRST SECURITY BANK OF UTAH,
National Association, not in its individual capacity, but solely as Trustee as aforesaid,

by

Authorized Officer

[SEAL]

Attest:

Authorized Officer

STATE OF UTAH,
COUNTY OF SALT LAKE, } ss.:

On this day of September, 1977, before me personally appeared to me personally known, who, being by me duly sworn, says that he is an Authorized Officer of FIRST SECURITY BANK OF UTAH, National Association, that one of the seals affixed to the foregoing instrument is the seal of said national banking association, that said instrument was signed and sealed on behalf of said national banking association by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said national banking association.

Notary Public

[Notarial Seal]
My Commission expires

STATE OF PENNSYLVANIA,
COUNTY OF ERIE, } ss.:

On this 23rd day of September, 1977, before me personally appeared J. E. Dwyer to me personally known, who, being by me duly sworn, says that he is the General Manager—Domestic Locomotive Marketing Department of GENERAL ELECTRIC COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

Doris W. Chilcott

[Notarial Seal]
My commission expires

DORIS W. CHILCOTT, NOTARY PUBLIC
LAWRENCE PARK TWP., ERIE CO., PA.
MY COMMISSION EXPIRES NOV. 26, 1978

STATE OF ILLINOIS, }
COUNTY OF COOK, } ss.:

On this day of September, 1977, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President of GENERAL MOTORS CORPORATION (Electro-Motive Division), that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]
My Commission expires

SCHEDULE I

Allocation Schedule of Each $1,000,000 of Conditional Sale Indebtedness Payable In (i) One Interim Payment of Interest Only on January 5, 1978, and (ii) 30 Semi-Annual Instalments Commencing July 5, 1978

Instalment No.		Principal Balance (Before Payment)	Interest Payment	Principal Recovery	Ending Principal
		$	$	$	$
(Interim Payment)					
	(1/5/78)	1,000,000.00	*	-0-	1,000,000.00
1	(7/5/78)	1,000,000.00	40,625.00**	14,966.86	985,033.14
2	(1/5/79)	985,033.14	40,016.97	15,574.89	969,458.25
3	(7/5/79)	969,458.25	39,384.24	16,207.62	953,250.63
4	(1/5/80)	953,250.63	38,725.81	16,866.05	936,384.58
5	(7/5/80)	936,384.58	38,040.62	17,551.24	918,833.34
6	(1/5/81)	918,833.34	37,327.60	18,264.26	900,569.08
7	(7/5/81)	900,569.08	36,585.62	19,006.24	881,562.84
8	(1/5/82)	881,562.84	35,813.49	19,778.37	861,784.47
9	(7/5/82)	861,784.47	35,009.99	20,581.87	841,202.60
10	(1/5/83)	841,202.60	34,173.85	21,418.01	819,784.59
11	(7/5/83)	819,784.59	33,303.75	22,288.11	797,496.48
12	(1/5/84)	797,496.48	32,398.29	23,193.57	774,302.91
13	(7/5/84)	774,302.91	31,456.05	24,135.81	750,167.10
14	(1/5/85)	750,167.10	30,475.54	25,116.32	725,050.78
15	(7/5/85)	725,050.78	29,455.19	26,136.67	698,914.11
16	(1/5/86)	698,914.11	28,393.38	27,198.48	671,715.63
17	(7/5/86)	671,715.63	27,288.45	28,303.41	643,412.22
18	(1/5/87)	643,412.22	26,138.62	29,453.24	613,958.98
19	(7/5/87)	613,958.98	24,942.08	43,000.06	570,958.92
20	(1/5/88)	570,958.92	23,195.21	44,746.93	526,211.99
21	(7/5/88)	526,211.99	21,377.36	46,564.78	479,647.21
22	(1/5/89)	479,647.21	19,485.67	48,456.47	431,190.74
23	(7/5/89)	431,190.74	17,517.12	50,425.02	380,765.72
24	(1/5/90)	380,765.72	15,468.61	52,473.53	328,292.19
25	(7/5/90)	328,292.19	13,336.87	54,605.27	273,686.92
26	(1/5/91)	273,686.92	11,118.53	56,823.61	216,863.31
27	(7/5/91)	216,863.31	8,810.07	59,132.07	157,731.24
28	(1/5/92)	157,731.24	6,407.83	61,534.31	96,196.93
29	(7/5/92)	96,196.93	3,908.00	64,034.14	32,162.79
30	(1/5/93)	32,162.79	1,306.61	32,162.79	0.00

* Interest only on the Conditional Sale Indebtedness shall be payable at the rate of 8.125% per annum to the extent accrued on January 5, 1978.

** This amount will be lower if all the Equipment is not delivered and settled for on or before January 5, 1978.

Annex A
to
Conditional Sale Agreement

Item 1: General Motors Corporation (Electro-Motive Division), a Delaware corporation, having an address at La Grange, Illinois 60525 (hereinafter called EMD). General Electric Company, a New York corporation, having an address at 2901 East Lake Road, Erie, Pennsylvania 16531 (hereinafter called GE) (EMD and GE hereinafter being collectively called the Builders).

Item 2: The Schedule A Equipment shall be settled for in no more than three Groups: the first Group shall be settled for on or after December 7, 1977; the second Group on or after December 21, 1977; and the third Group on January 5, 1978.

The Schedule B Equipment shall be settled for in one Group of Equipment on or after January 5, 1978, and on or before June 30, 1978.

Item 3: (a) EMD warrants that the Equipment manufactured by it hereunder is of the kind and quality described in, or will be built in accordance with, the Specifications referred to in Article 2 of the Conditional Sale Agreement to which this Annex A is attached (hereinafter in this Annex A called this Agreement) and is suitable for the ordinary purposes for which such Equipment is used and warrants each unit of such Equipment to be free from defects in material and workmanship which may develop under normal use and service within two years from date of delivery of such unit or before such unit has been operated 250,000 miles, whichever event shall first occur. EMD agrees to correct such defects, which examination shall disclose to EMD's satisfaction to be defective, by repair or replacement F.O.B. factory and such correction shall constitute fulfillment of EMD's obligation with respect to such defect under this warranty.

EMD warrants specialties not of its own specification or design to the same extent that the suppliers of such specialties warrant such items to EMD.

EMD further agrees with the Owner-Trustee that neither the inspection as provided in Article 3 of this Agreement, nor any examination, nor the acceptance of any units of the Equipment as provided in said Article 3 shall be deemed a waiver or modification by the Owner-Trustee of any of its rights under this Item 3(a).

(b) GE warrants to the Owner-Trustee that each unit of Equipment manufactured by it hereunder will be free from defects in material, workmanship and title under normal use and service, and will be of the kind and quality designated or described in the Specifications referred to in Article 2 of this Agreement. The foregoing warranty is exclusive and in lieu of all other warranties, whether written, oral, implied or statutory (except as to title). NO WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR PURPOSE SHALL APPLY. If it appears within two (2) years from the date of shipment by GE, or within 250,000 miles of operation, whichever event shall first occur, that the Equipment delivered by GE under this Agreement does not meet the warranties specified above, and the Owner-Trustee notifies GE promptly, GE, after verification as to condition and usage, shall correct any defect including nonconformance with the Specifications, at its option, either by repairing any defective part or parts made available to GE, or by making available at GE's plant or warehouse, a repaired or replacement part. If requested by GE, the Owner-Trustee will ship the defective part or parts, with shipping charges prepaid, to the plant or warehouse designated by GE. The foregoing shall constitute the sole remedy of the Owner-Trustee and the sole liability of GE.

The liability of GE to the Owner-Trustee (except as to title) arising out of the supplying of any unit of Equipment hereunder, or its use, whether on warranty, contract or negligence, shall not in any case exceed the cost of correcting defects in the Equipment as herein provided, and upon the expiration of the warranty period specified above, all such liability shall terminate. GE shall

have no liability for any unit of Equipment or part thereof which becomes defective by reason of improper storage or application, misuse, negligence, accident or improper operation, maintenance, repairs or alterations on the part of the Owner-Trustee, or any third party other than GE. In no event, whether as a result of breach of contract, warranty, tort (including negligence) or otherwise, shall the Builder or its suppliers be liable for any special, consequential, incidental or penal damages including, but not limited to, loss of profits or revenues, loss of the use of the Equipment or any associated equipment, damage to the associated equipment, cost of capital, cost of substitute products, facilities, services or replacements, downtime costs, or claims of customers of the Owner-Trustee, the Owners or the Lessee for such damages.

It is understood that GE has the right to make any changes in design and add improvements to equipment at any time without incurring any obligations to install, at GE's expense, the same on other equipment sold by GE.

THERE ARE NO WARRANTIES WITH RESPECT TO MATERIAL AND WORKMANSHIP, EXPRESSED OR IMPLIED, MADE BY THE BUILDERS EXCEPT THE WARRANTIES SET OUT ABOVE.

Item 4: (a) EMD shall defend any suit or proceeding brought against the Owner-Trustee, the Lessee and/or each assignee of EMD's rights under this Agreement so far as the same is based on a claim that the Equipment of EMD's specification, or any part thereof, furnished under this Agreement constitutes an infringement of any patent, if notified promptly in writing and given authority, information and assistance (at EMD's expense) for the defense of same, and EMD shall pay all damages and costs awarded therein against the Owner-Trustee, the Lessee and/or any such assignee.

In case any unit of such Equipment, or any part thereof, is in such suit held to constitute infringement and the use of such unit or part is enjoined, EMD shall at its option and at its own expense either procure for the Owner-Trustee, the Lessee and any such assignee the right to continue using such unit or part, or replace the same with noninfringing equipment subject to this Agreement, or modify it so it becomes noninfringing, or remove such unit and refund the Purchase Price and the transportation and installation costs thereof. If the Purchase Price is so refunded, such refund shall be made to the assignee of EMD's rights under this Agreement if this Agreement has been so assigned, which refund, to the extent of the unpaid Conditional Sale Indebtedness, shall be applied in like manner as payments in respect of Casualty Occurrences under Article 7 of this Agreement and, as long as no event of default or event which with the lapse of time and/or demand could constitute an event of default under this Agreement shall have occurred and be continuing, the balance shall be paid by such assignee to the Owner-Trustee.
EMD will assume no liability for patent infringement by reason of purchase, manufacture, sale or use of devices not included in and covered by its specification.

(b) Except in cases of designs specified by the Owner-Trustee and/or the Lessee and not developed or purported to be developed by GE, and articles and materials specified by the Owner-Trustee and/or Lessee and not manufactured by GE, GE warrants for itself that Equipment furnished hereunder, and any part thereof, shall be delivered free of any rightful claim of any third party for infringement of any United States patent. If notified promptly in writing and given authority, information and assistance, GE shall defend, or may settle, at its expense, any suit or proceeding against the Owner-Trustee or Lessee so far as based on a claimed infringement which would result in a breach of this warranty and GE shall pay all damages and costs awarded therein against Owner-Trustee or Lessee due to such breach. In case any Equipment or part thereof is in such suit or proceeding found to constitute such an infringement and the use of such Equipment or part thereof is enjoined, GE shall, at its expense and option, either procure for the Owner-Trustee and the Lessee the right to continue using said Equipment or part thereof, or replace same within six months of such injunction with non-infringing Equipment or part thereof acceptable to the Owner-Trustee, or modify

same so it becomes non-infringing, or remove the Equipment or part thereof and refund the Purchase Price (less reasonable depreciation for any period of use) and any transportation costs separately paid by the Owner-Trustee or Lessee, but in each case without impairing the operational capability of such Equipment. The preceding shall not apply to the use of any Equipment or part thereof furnished hereunder in conjunction with any other product in a combination not furnished by GE as a part of this transaction. As to any such combination, GE assumes no liability whatsoever for patent infringement and the Owner-Trustee and Lessee will hold GE harmless against any infringement claims arising therefrom. GE will give notice to the Owner-Trustee and Lessee of any claim known to GE from which liability may be charged against the Owner-Trustee or Lessee hereunder and the Owner-Trustee and Lessee will give notice to GE of any claim known to them from which liability may be charged against GE hereunder.

The foregoing states the entire liability of each of the Builders for patent infringement by the Equipment or any part thereof.

Item 5: The Maximum Purchase Price referred to in Article 4 of the Conditional Sale Agreement to which this Annex A is attached is $15,773,625.

ANNEX B

TO

CONDITIONAL SALE AGREEMENT

Type	Builder	Builder's Specifications	Builder's Plant	Quantity	Lessee's Road Numbers (Both Inclusive)	Estimated Unit Base Price	Estimated Total Base Price	Estimated Time and Place of Delivery
3,000 h.p. Model SD 40-2 diesel-electric locomotive	EMD	8087	La Grange, Illinois	10	BN 6781-6790	$584,700	$ 5,847,000	Prior to December 31, 1977 at Fridley, Minnesota.
3,000 h.p. Model C-30-7 diesel-electric locomotive	GE	3390-F	Erie, Pennsylvania	15	BN 5530-5544	$611,700	$ 9,175,500	Prior to December 31, 1977 at Erie, Pennsylvania.
							$15,022,500	

ANNEX C
to Conditional
Sale Agreement

LEASE OF RAILROAD EQUIPMENT

Dated as of September 1, 1977

Between

BURLINGTON NORTHERN INC.,
as Lessee,

and

FIRST SECURITY BANK OF UTAH, NATIONAL ASSOCIATION,
not in its individual capacity but solely
as Trustee under a Trust Agreement dated as of
September 1, 1977, with BWL, Inc.,
Westinghouse Credit Corporation and Toy National Bank,
as Lessor.

LEASE OF RAILROAD EQUIPMENT

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* This table of Contents has been included in this document for convenience only and does not form a part of, or affect any construction or interpretation of this document.

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LEASE OF RAILROAD EQUIPMENT dated as of September 1, 1977, between BURLINGTON NORTHERN INC., a Delaware corporation (hereinafter called the Lessee), and FIRST SECURITY BANK OF UTAH, National Association, a national banking association, acting not in its individual capacity but solely as Trustee (hereinafter called the Owner-Trustee) under a Trust Agreement dated as of the date hereof (hereinafter called the Trust Agreement) with BWL, Inc., Westinghouse Credit Corporation and Toy National Bank (the latter two corporations and said bank hereinafter called severally the Owner and collectively the Owners).

WHEREAS the Owner-Trustee is entering into a Conditional Sale Agreement dated as of the date hereof with General Motors Corporation (Electro-Motive Division) and General Electric Company (each corporation being hereinafter severally called the Builder and collectively the Builders) (such agreement being hereinafter called the Security Documentation), wherein the Builders have severally agreed to manufacture, sell and deliver to the Owner-Trustee the units of railroad equipment described in Appendix A hereto;

WHEREAS each Builder is assigning its interests in the Security Documentation pursuant to an Agreement and Assignment dated the date hereof (hereinafter called the Assignment) to Mercantile-Safe Deposit and Trust Company, acting as agent for certain investors under a Participation Agreement dated as of the date hereof (hereinafter called the Participation Agreement) among said agent, the Lessee, the Owner-Trustee, the Owners and the parties named in Appendix I thereto (hereinafter called the Investors) (said agent as so acting, being hereinafter, together with its successors and assigns, called the Vendor);

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

WHEREAS the Owner-Trustee will assign this Lease for security to the Vendor pursuant to an Assignment of Lease and Agreement (hereinafter called the Lease Assignment) dated as of the date hereof and the Lessee will acknowledge and consent thereto pursuant to the Consent and Agreement (hereinafter called the Consent) in the form attached to the Lease Assignment;

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 Owner-Trustee hereby leases the Units to the Lessee upon the following terms and conditions:

§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 setoff against rent, including, but not limited to, abatements, reductions or setoffs due or alleged to be due by reason of any past, present or future claims of the Lessee against the Owner-Trustee or the Owners under this Lease or the Security Documentation including the Lessee's rights by subrogation thereunder to the Builders or the Vendor or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Owner-Trustee or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency of or any bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter

may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Owner-Trustee, the Owners or the Vendor for any reason whatsoever.

§2. DELIVERY

2.1. *Delivery and Acceptance of Units.* The Owner-Trustee hereby appoints the Lessee its agent for inspection and acceptance of the Units pursuant to the Security Documentation. Each delivery of a Unit to the Owner-Trustee under the Security Documentation shall be deemed to be a delivery hereunder to the Lessee at the point or points within the the United States of America at which such Unit is so delivered to the Owner-Trustee. Upon such delivery, the Lessee will cause an employee of the Lessee to inspect the same, and if such Unit is found to be acceptable, to accept delivery of such Unit on behalf of the Owner-Trustee under the Security Documentation and on behalf of itself hereunder and execute and deliver to the Owner-Trustee a certificate of acceptance (hereinafter called the Certificate of Acceptance) in accordance with the provisions of Article 3 of the Security Documentation, stating that such Unit has been inspected and accepted on behalf of the Lessee and the Owner-Trustee on the date of such Certificate of Acceptance and is marked in accordance with §5.1 hereof, whereupon such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease.

2.2. *Designation of Schedule A and Schedule B Units.* All Units which are delivered and accepted hereunder pursuant to the Security Documentation on or prior to December 31, 1977, shall be called Schedule A Units; all Units which may be delivered and accepted hereunder pursuant to the Security Documentation after December 31, 1977, and on or prior to June 30, 1978, shall be called Schedule B Units. If there are in fact any Schedule B Units, the Owner-Trustee and the Lessee agree that they shall enter into a supplement hereto promptly after final settlement for all Units (i) setting forth the road numbers of the Units which are designated Schedule A and Schedule B Units, and (ii) setting forth the actual rentals and Casualty Values for the Schedule B Units determined as provided in §3.1(2) and §7.6 hereof.

§3. RENTALS

3.1. *Amount and Date of Payment.* (1) The Lessee agrees to pay to the Owner-Trustee, as rental for each Schedule A Unit subject to this Lease, one interim rental payment on January 5, 1978, and 36 consecutive semiannual payments payable, in arrears, on January 5 and July 5 in each year, commencing July 5, 1978, to and including January 5, 1996. In respect of each Schedule A Unit subject to this Lease, (a) the interim rental payment shall be in an amount equal to the product of the Purchase Price (as defined in the Security Documentation) for each such Schedule A Unit subject to this Lease multiplied by 0.014434% for each day (computed on the basis of a 360-day year of twelve 30-day months) elapsed from the Closing Date (as defined in the Security Documentation) for such Unit to, but not including, January 5, 1978, and (b) the 36 semiannual rental payments shall each be in an amount equal to the applicable basic lease rate therefor set forth in Appendix B hereto for the applicable payment date multiplied by the Purchase Price of each such Schedule A Unit.

(2) The Lessee agrees to pay to the Owner-Trustee, as rental for each Schedule B Unit subject to this Lease, one interim rental payment on July 5, 1978, and 35 consecutive semiannual payments payable, in arrears, on January 5 and July 5 in each year, commencing January 5, 1979, to and including January 5, 1996. In respect of each Schedule B Unit subject to this Lease, (a) the interim rental payment shall be an amount equal to (i) the product of the Purchase Price for each such Schedule B Unit subject to this Lease multiplied by 0.014434% for each day (computed on the basis of a 360-day year of twelve 30-day months) elapsed from the Closing Date (as defined in the Security Documentation) for such Unit to, but not including, July 5, 1978, plus (ii) an amount equal to 0.9571307% of the Purchase Price of each such Schedule B Unit, and (b) the 35 semiannual payments shall be in a sum equal to the amount as shall, in

the reasonable opinion of each Owner, cause such Owner's after-tax economic yields and cash flows (computed on the same assumptions, including tax rates, as were utilized by such Owner in originally evaluating this transaction) to equal the after-tax economic yields and cash flows (such economic yields and cash flows hereinafter called the Net Economic Return) that would have been realized by such Owner if such Schedule B Unit had been delivered and accepted on or prior to December 31, 1977; *provided, however,* that no such computation shall reduce the amount of rentals below that which is necessary to satisfy the obligations of the Owner-Trustee under the Security Documentation and that such schedule of rentals be provided to the Lessee and the Vendor promptly after the Closing Date for the Schedule B Units. In the event that any dispute should arise as to the calculation of such rentals (or the Casualty Value of the Schedule B Units under §7.6 hereof), the Lessee agrees, pending resolution of such dispute, to pay on account of such rentals (or such Casualty Value), on the dates due hereunder, amounts at least sufficient to satisfy the obligations of the Owner-Trustee under the Security Documentation and no such payment shall, as between the Owner-Trustee and the Lessee, prejudice the right of the Owner-Trustee to receive from the Lessee any amount in addition thereto, due and payable hereunder.

(3) In the event that there are any losses or liabilities arising out of or resulting from the Investments made pursuant to Paragraph 2 of the Participation Agreement, including, but not limited to, any deficiency in respect thereof, the rentals thereafter payable by the Lessee in respect of Units settled for concurrently with or after such loss, liabilities, or deficiency arose shall be increased by such amount as shall, in the reasonable opinion of each Owner, cause such Owner's Net Economic Return to equal the Net Economic Return that would have been realized by such Owner if such loss or liability had not occurred.

(4) In addition to the foregoing rentals, the Lessee hereby agrees to pay to the Owner-Trustee as rent amounts equal to the amounts required by the Owner-Trustee to make the payments provided for in the last sentence of the penultimate paragraph and in the last paragraph of Paragraph 9 of the Participation Agreement on the dates required for such payments in said Paragraph 9 (without regard to the limitation of the obligation of the Owner-Trustee set forth therein) and the Owner-Trustee agrees to apply such rentals for such purposes.

3.2. *Payments on Nonbusiness Days.* If any of the semiannual rental payment dates referred to in §3.1 is not a business day the semiannual rental payment otherwise payable on such date shall be payable on the next succeeding business day, and no interest shall be payable thereon for the period from and after the nominal date for payment thereof to such next succeeding business day. The term "business day" as used herein means a calendar day, excluding Saturdays, Sundays and any other day on which banking institutions in New York, New York, Salt Lake City, Utah, or Baltimore, Maryland, are authorized or obligated to remain closed.

3.3. *Instructions To Pay Vendor and Owner-Trustee.* If the Lease Assignment is executed and delivered, until the Vendor shall have advised the Lessee in writing that all sums due from the Owner-Trustee under the Security Documentation have been fully satisfied and discharged, the Owner-Trustee irrevocably instructs the Lessee to make all the payments provided for in this Lease to the Vendor, for the account of the Owner-Trustee, in care of the Vendor, with instructions to the Vendor (a) first to apply such payments to satisfy the obligations of the Owner-Trustee under the Security Documentation known to the Vendor to be due and payable on the date such payments are due and payable hereunder and (b) second, so long as no event of default under the Security Documentation shall have occurred and be continuing, to pay any balance promptly to the Owner-Trustee or to the order of the Owner-Trustee in immediately available funds at such place as the Owner-Trustee shall specify in writing. If the Lease Assignment is not executed and delivered, or if the Lessee shall have been advised by the Vendor in writing that all sums due from the Owner-Trustee under the Security Documentation have been fully discharged and satisfied, the semi-annual instalments of rental due hereunder and any Casualty Payments thereafter due pursuant to Section 7 hereof shall be made to the Owner-Trustee in immediately available funds in the manner provided in Section 3.4 hereof.

3.4. *Payment in Immediately Available Funds.* The Lessee agrees to make each payment provided for herein as contemplated by §3.1 in immediately available funds at or prior to 11:00 a.m. in the city where such payment is to be made.

§4. TERM OF LEASE

4.1. *Beginning and Termination; Survival.* The term of this Lease as to each Unit shall begin on the date of delivery of such Unit under the Security Documentation and, subject to the provisions of §§7, 13 and 16 hereof, shall terminate on the date on which the final payment of rent in respect thereof is due pursuant to §3.1 hereof. The obligations of the Lessee hereunder (including, but not limited to, the obligations under §6, 7, 10, 11, 12 and 17 hereof) shall survive the expiration of the term of this Lease.

4.2. *Rights and Obligations of Lessee Subject to Security Documentation.* 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 without affecting the indemnities which by the provisions of this Lease survive the termination of its term (or rescind its termination), all as provided therein; *provided, however,* that so long as (i) no Event of Default exists hereunder, (ii) the Lessee is complying with the provisions of the Consent and (iii) the Vendor is entitled to apply the Payments as defined in the Lease Assignment in accordance with the Lease Assignment, this Lease may not be terminated and the Lessee shall be entitled to the rights of possession, use and assignment provided under §15 hereof.

§5. IDENTIFICATION MARKS

5.1. *Identifying Numbers; Legend; Changes.* The Lessee will cause each Unit to be kept numbered with the road number set forth in Appendix A hereto, or in the case of any Unit not there listed such road 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 Security Agreement Filed under the Interstate Commerce Act, Section 20c", or other appropriate words designated by the Owner-Trustee, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Owner-Trustee's and Vendor's title to and property in such Unit and the rights of the Owner-Trustee 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 on both sides thereof and will replace promptly any such words which may be removed, obliterated, defaced or destroyed. The Lessee will not change the road 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 Owner-Trustee and 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 Owner-Trustee an opinion of counsel to the effect that such statement has been so filed, recorded and deposited, such filing, recordation and deposit will protect the Vendor's and the Owner-Trustee's interests in such Units and no 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 Vendor and the Owner-Trustee in such Units. The Units may be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates.

5.2. *Insignia of Lessee.* Except as provided in §5.1, 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.

§6. TAXES

6.1. *Indemnification for Nonincome Taxes.* Whether or not any of the transactions contemplated hereby are consummated, the Lessee agrees to pay, and to indemnify and hold the Owner-Trustee and the Vendor harmless from, all taxes, assessments, fees and charges of any nature whatsoever, together with any penalties, fines, additions to tax or interest thereon, howsoever imposed, whether levied or imposed upon the Owner-Trustee, the Vendor, the Lessee, the trust estate created by the Trust Agreement or

otherwise, by any Federal, state or local government or governmental subdivision in the United States or by any foreign country or subdivision thereof, upon or with respect to, any Unit or any part thereof; the purchase, ownership, delivery, leasing, possession, use, operation, transfer of title, return or other disposition thereof; the indebtedness with respect thereto; the rentals, receipts or earnings arising therefrom; or this Lease, the Trust Agreement, the Participation Agreement, the Security Documentation, the Assignment, the Lease Assignment, any payment made pursuant to any such agreement, or the property, the income or other proceeds received with respect to property held in trust by the Owner-Trustee under the Trust Agreement (all such taxes, assessments, fees, charges, penalties, fines, additions to tax and interest imposed as aforesaid being hereinafter called "Taxes"); *excluding, however:* (i) Taxes of the United States or of any state or political subdivision thereof and (if and to the extent that any person indemnified hereunder is entitled to a credit therefor against its United States Federal income taxes or is indemnified by the Lessee pursuant to the Indemnity Agreements) of any foreign country or subdivision thereof, imposed on or measured solely by the net income or excess profits of the Owner-Trustee (in its individual capacity), the Owners or the Vendor or franchise taxes measured by net income of the Owner-Trustee, or gross receipts taxes other than gross receipts taxes in the nature of sales or use taxes, and other than Taxes arising out of or imposed in respect of the receipt of indemnification payments pursuant to this Lease, provided that Taxes of any foreign country or subdivision thereof incurred as a result of the indemnified party being taxed by such foreign country or subdivision on its world-wide income without regard to the transactions contemplated by this Lease shall be excluded in all cases, whether or not the indemnified party is entitled to a credit against its United States Federal income taxes; (ii) any Taxes imposed as a direct result of a voluntary transfer or other voluntary disposition by an Owner or any transfer or disposition by such Owner resulting from bankruptcy or other proceedings for the relief of creditors in which such Owner is the debtor, whether voluntary or involuntary, of any interest in any Unit or interest in rentals under this Lease; (iii) any Taxes imposed on or measured by any fees or compensation received by the Owner-Trustee or the Vendor; and (iv) Taxes which are imposed on or measured solely by the net income of the Owner-Trustee or the Vendor if and to the extent that such Taxes are in substitution for or reduce the Taxes payable by any other person which the Lessee has not agreed to pay or indemnify against pursuant to this §6.1; *provided, however,* that the Lessee shall not be required to pay any Taxes during the period it may be contesting the same in the manner provided in the next succeeding paragraph. The Lessee further agrees to pay on or before the time or times prescribed by law any tax imposed on or measured solely by the net income of the Lessee under the laws of the United States or of any state or political subdivision thereof, or of any foreign country or subdivision thereof which, if unpaid, might result in a lien or other encumbrance upon any Unit; *provided, however,* that the Lessee shall not be required to pay any such tax during the period it may be contesting the same.

6.2. *Claims; Contests; Refunds.* If claim is made against the Owner-Trustee, or the Vendor for any Taxes indemnified against under this Section 6, such party shall promptly notify the Lessee. If reasonably requested by the Lessee in writing, the Owner-Trustee or the Vendor, as the case may be, shall, upon receipt of any indemnity satisfactory to it for all its reasonable charges for its services rendered in connection therewith and for all costs, expenses, losses, legal and accountants' fees and disbursements, penalties, fines, additions to tax and interest, and at the expense of the Lessee, contest in good faith the validity, applicability or amount of such Taxes by (a) resisting payment thereof if possible, (b) not paying the same except under protest, if protest is necessary and proper, and (c) if payment is made, using reasonable efforts to obtain a refund thereof in appropriate administrative or judicial proceedings, or both. The Lessee may also contest, at its own expense, the validity, applicability or amount of such Taxes in the name of the Owner-Trustee, the Owners or the Vendor; provided that, no proceeding or actions relating to such contest shall be commenced (nor shall any pleading, motion, brief or other paper be submitted or filed in the name of the Owner-Trustee, the Owners or the Vendor in any such proceeding or action) if in the opinion of the Owner-Trustee and the Owners or the Vendor such contest or the nonpayment of the Taxes would adversely affect the title, property or rights of the Owner-Trustee hereunder or of the Vendor under the Security Documentation. The Lessee agrees to give the Owner-Trustee notice of such contest within 30 days thereof. If the Owner-Trustee or the Vendor shall obtain a refund of all or any part of such Taxes previously reimbursed by the Lessee in connection with any such contest or an amount representing interest thereon, the Owner-Trustee or the Vendor, as the case may be, shall pay the Lessee the amount of

such refund or interest net of expenses; *provided, however,* that no Event of Default and no event which with notice or lapse of time or both would constitute an Event of Default shall have occurred and be continuing.

6.3. *Reports or Returns.* In case any report or return is required to be made with respect to any obligation of the Lessee under or arising out of this Section 6 (except obligations resulting from the second sentence of §6.1), the Lessee will, where permitted to do so under applicable rules and regulations, make and timely file such reports and returns in such manner as to show the interest of the Owner-Trustee and the Vendor in the Units as shall be satisfactory to the Owner-Trustee and the Vendor or, where not so permitted, will notify the Owner-Trustee, the Vendor and the Owners of such requirement and will prepare and deliver such reports to the Owner-Trustee and the Vendor within a reasonable time prior to the time such reports are to be filed, or in such manner as shall be reasonably satisfactory to the Owner-Trustee, the Vendor and the Owners. All costs and expenses (including legal and accountants' fees) of preparing any such return or report shall be borne by the Lessee.

6.4. *Survival.* All the obligations of the Lessee under this §6 shall survive and continue, but only with respect to periods included in the term of this Lease, notwithstanding payment in full of all amounts due under the Security Documentation or the termination of this Lease. Payments due from the Lessee to the Owner-Trustee or the Vendor under this §6 shall be made directly to the party indemnified.

§7. PAYMENT FOR CASUALTY OCCURRENCES; INSURANCE

7.1. *Definitions of Casualty Occurrence; Payments.* In the event that any Unit of Equipment shall be or become worn out, lost, stolen, destroyed, or, in the opinion of the Lessee, irreparably damaged, from any cause whatsoever during the term of this Lease or any renewal term hereof or until such Unit is returned pursuant to §§14 or 17 hereof, or the Purchase Price of any Unit shall have been refunded by the Builder of such Unit pursuant to the terms of its patent indemnity therefor or any Unit shall be taken or requisitioned by condemnation or otherwise by the United States Government for a stated 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 during the term of this Lease or during any renewal term hereof (such occurrences being hereinafter called Casualty Occurrences), the Lessee shall promptly and fully notify the Owner-Trustee and the Vendor with respect thereto. On the next succeeding fifth day of a month occurring at least ten days after such notice from the Lessee has been received or, at the option of the Lessee, if such next succeeding fifth day does not coincide with a rental payment date, on the next succeeding rental payment date (but in no event earlier than January 5, 1978) (each such date being hereinafter called a Casualty Payment Date), the Lessee shall pay to the Owner-Trustee a sum equal to the Casualty Value (as hereinafter defined) of any such Unit as of such Casualty Payment Date, plus in the case of any Casualty Payment Date coinciding with a rental payment date, the semiannual rental in respect of such Unit accrued as of such rental payment date; *provided, however,* that in the event of a Casualty Occurrence during the period any Unit is being returned pursuant to §§14 and 17 hereof and the 10 days prior thereto, the Lessee shall make such payment to the Owner-Trustee on a date 30 days after such 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 Owner-Trustee shall be entitled to recover possession of such Unit.

In addition to the occurrences constituting a Casualty Occurrence under the preceding paragraph, if any Unit shall have been taken or requisitioned by the United States Government or any other governmental entity and such taking or requisition shall not theretofore constitute a Casualty Occurrence as aforesaid, such taking or requisition shall be deemed a Casualty Occurrence if the same shall be continuing at the end of the term of this Lease, in which event the Lessee shall promptly and fully notify the Owner-Trustee with respect thereto and pay the Owner-Trustee, as the Casualty Value therefor, an amount equal to 20% of the Purchase Price of such Unit. Following such payment, the Lessee shall be entitled to receive condemnation payments in respect of such Unit up to an amount equal to such Casualty Value and any balance of such payments shall be the property of the Owner-Trustee. In the event such Unit shall be returned by the governmental entity prior to the time the Lessee shall have been reimbursed

by such application of condemnation payments in an amount equal to such Casualty Value, then the Lessee shall dispose of such Unit as Agent for the Owner-Trustee, and shall retain the proceeds of such disposition to the extent that the aggregate of the amounts so retained and the condemnation payments theretofore received by the Lessee shall equal such Casualty Value, and the balance of such proceeds shall be promptly paid to the Owner-Trustee. In the event such Unit shall be returned by the governmental entity following the time the Lessee shall have been reimbursed by such application of condemnation payments in an amount equal to such Casualty Value, such Unit shall be returned by the Lessee to the Owner-Trustee in the manner provided in Section 17 hereof.

7.2. *Requisition by United States Government.* In the event of the requisition for use by the United States Government of any Unit for a period which does not exceed the term of this Lease or for an indefinite period (except where deemed a Casualty Occurrence pursuant to the last paragraph of Section 7.1 hereof), 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. All payments received by the Owner-Trustee or the Lessee from the United States Government for the use of such Unit during the term of this Lease shall be paid over to, or retained by, the Lessee provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing.

7.3. *Lessee Agent for Disposal.* The Owner-Trustee hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof before and after expiration of the Lease, at the best price obtainable on an "as is, where is" basis. Provided that the Lessee has previously paid the Casualty Value to the Owner-Trustee (i) 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 Owner-Trustee and (ii) the Lessee shall be entitled to credit against the Casualty Value payable in respect of any Unit returned to a Builder pursuant to the patent indemnity provisions of the Security Documentation an amount equal to any payment made by such Builder to the Owner-Trustee in respect thereof under the Security Documentation.

7.4. *Payments After Expiration of Lease.* If the date upon which the making of the payment by the Lessee in Section 7.1 hereof in respect of any Unit is required as aforesaid shall be after the term of this Lease or any renewal term thereof in respect of such Unit has expired, no rental for such Unit shall accrue after the end of such term.

7.5. *Amount of Casualty Value of Schedule A Units.* The Casualty Value of each Schedule A Unit as of the Casualty Payment Date on which payment is made shall be:

(a) if the Casualty Payment Date coincides with a date on which rental is to be paid pursuant to §3.1 hereof, an amount equal to that percentage of the Purchase Price of such Unit as is set forth in Appendix C hereto opposite such Casualty Payment Date, or

(b) if the Casualty Payment Date coincides with a date other than on which rental is to be paid pursuant to §3.1 hereof, the Casualty Value shall be an amount equal to (i) that percentage of the Purchase Price of such Unit as is set forth opposite the date which coincides with the next preceding rent payment date in Appendix C hereto (the "Semi-Annual Casualty Payment Date") plus (ii) .8833% of the amount described in clause (i) hereof for each month elapsed from and including such Semi-Annual Casualty Payment Date to the Casualty Payment Date upon which payment is to be made,

plus, on any Casualty Payment Date with respect to a Casualty Occurrence occurring before the third, fifth or seventh anniversary of the date of the Certificate of Acceptance for such Unit an amount equal to the percentage of the Purchase Price of such Unit suffering a Casualty Occurrence set forth below:

Anniversary of the date of the Certificate of Acceptance	Percentage of Purchase Price to be added
Third	20.1006%
Fifth	13.4004%
Seventh	6.7002%

7.6. *Amount of Casualty Value for Schedule B Units.* The Casualty Values for each Schedule B Unit shall be determined in like manner as the computation of the rental for such Schedule B Unit as set forth in §3.1(2) hereof, *provided* that no such computation shall provide for Casualty Values below those which are necessary to satisfy the obligations of the Owner-Trustee under the Security Documentation.

7.7. *No Release.* 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.

7.8. *Insurance To Be Maintained.* (1) The Lessee will, at all times prior to the return of the Units to the Owner-Trustee at its own expense, cause to be carried and maintained (i) property insurance in respect of the Units at the time subject hereto; *provided, however,* that the Lessee may self-insure such Units to the extent it self-insures equipment similar to the Units and to the extent such self-insurance is consistent with prudent industry practice, and (ii) public liability insurance with respect to third party personal and property damage and the Lessee will continue to carry such insurance in such amounts and for such risks and with such insurance companies as is consistent with prudent industry practice but in any event at least, comparable in amounts and against risks customarily insured against by the Lessee in respect of equipment owned or leased by it similar in nature to the Units, in each case satisfactory to the Owners. The proceeds thereof shall be payable to the Vendor, the Owner-Trustee and the Lessee, as their interests may appear, so long as the indebtedness, if any, evidenced by the Security Documentation shall not have been paid in full, and thereafter to the Owner-Trustee and the Lessee as their interests may appear. Any policies of insurance carried in accordance with this paragraph shall (i) require 30 days' prior notice of cancelation or material change in coverage to the Owners and the Vendor and (ii) name the Owner-Trustee and the Vendor as additional named insureds as their respective interests may appear and in the event such policies shall contain breach of warranty provisions such policies shall provide that in respect of the interests of the Owner-Trustee and the Vendor in such policies the insurance shall not be invalidated by any action or inaction of the Lessee or any other person (other than the Owner-Trustee and the Vendor) and shall insure the Owner-Trustee and the Vendor regardless of any breach or violation of any warranty, declaration or condition contained in such policies by the Lessee or by any other person (other than the Owner-Trustee or the Vendor). Prior to the first date of delivery of any Unit pursuant to the Security Documentation, and thereafter not less than 15 days prior to the expiration dates of the expiring policies theretofore delivered pursuant to this §7, the Lessee shall deliver to the Owners duplicate originals of all policies (or in the case of blanket policies, certificates thereof issued by the insurers thereunder) for the insurance maintained pursuant to this §7; *provided, however,* that if the delivery of a formal policy or certificate, as the case may be, is delayed, the Lessee shall deliver an executed binder with respect thereto and shall deliver the formal policy or certificate, as the case may be, upon receipt thereof.

(2) In the event that the Lessee shall fail to maintain insurance as herein provided, the Owners may at their 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 Owners for the cost thereof together with interest, on the amount of the cost to the Owners of such insurance which the Lessee shall have failed to maintain, at the rate per annum specified in §19 hereof.

7.9. *Insurance Proceeds and Condemnation Payments.* If the Owner-Trustee shall receive (directly or from the Vendor) any insurance proceeds or condemnation payments in respect of such Units suffering a Casualty Occurrence, the Owner-Trustee shall 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 Owner-Trustee; *provided, however,* that no Event of Default shall have occurred and be continuing and the Lessee shall have made payment of the Casualty Value thereof, and accrued rentals in respect of such Units, to the Owner-Trustee. All insurance proceeds received by the Owner-Trustee (directly or from the Vendor) in respect of any Unit not suffering a Casualty Occurrence shall be paid to the Lessee upon proof satisfactory to the Owner-Trustee that any damage to such Unit in respect of which such proceeds were paid has been fully repaired.

§8. REPORTS

On or before March 31 in each year, commencing with the calendar year 1979, the Lessee will furnish to the Owner-Trustee and the Vendor an accurate statement (a) setting forth as at the preceding December 31 the total number, description and road numbers of all Units then leased hereunder and covered by the Security Documentation, the total number, description and road 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 repair (other than running repairs) and setting forth such other information regarding the condition and state of repair of the Units as the Owner-Trustee or the Vendor may reasonably request and (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and markings required by §5.1 hereof and by the Security Documentation have been preserved or replaced. The Owner-Trustee, the Vendor and the Owners shall each have the right by its agents, to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Owner-Trustee, the Vendor or the Owners may request during the continuance of this Lease.

§9. DISCLAIMER OF WARRANTIES

THE OWNER-TRUSTEE DOES NOT MAKE, HAS NOT MADE AND SHALL NOT BE DEEMED TO MAKE OR HAVE MADE ANY 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 OWNER-TRUSTEE DOES NOT MAKE ANY WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE NOR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, NOR 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 Owner-Trustee and the Lessee, are to be borne by the Lessee; but the Owner-Trustee 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 Owner-Trustee and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Owner-Trustee may have against a Builder under the provisions of Items 3 and 4 of Annex A of the Security Documentation; *provided, however,* that if at any time an Event of Default shall have occurred and be continuing, the Owner-Trustee may assert and enforce, at the Lessee's sole cost and expense, such claims and rights. The Owner-Trustee shall have no responsibility or liability to the Lessee or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Units or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of any Units or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Units. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Owner-Trustee 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 Owner-Trustee or the Vendor based on any of the foregoing matters.

§10. LAWS AND RULES

10.1. *Compliance.* The Lessee agrees, for the benefit of the Owner-Trustee and the Vendor, to comply in all respects (including without limitation, with respect to the use, maintenance and operation of each Unit) with all laws of the jurisdictions in which its operations involving the Units may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the 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 such laws or rules require

any alteration, replacement or addition 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 Owner-Trustee or the Vendor, adversely affect the property or rights of the Owner-Trustee or the Vendor under this Lease or under the Security Documentation.

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

§11. MAINTENANCE

11.1 *Units in Good Operating Order.* The Lessee agrees that, at its own cost and expense, it will maintain and keep each Unit (including any parts installed on or replacements made to any Unit and considered an accession thereto as hereinbelow provided) which is subject to this Lease in good operating order, repair and condition, ordinary wear and tear excepted.

11.2. *Additions and Accessions.* (1) Except as set forth in §§10.1 and 11.1 hereof, 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 second paragraph hereof.

(2) 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 in §11.2(1) hereof, (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 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 Owner-Trustee and the Vendor as their respective interests may appear in the Unit itself.

§12. INDEMNIFICATION

12.1. *Indemnified Persons.* The Lessee shall pay, and shall protect, indemnify and hold the Owner-Trustee, the Vendor and any assignee thereof, and their respective successors, assigns, agents and servants (hereinafter called Indemnified Persons), harmless from and against any and all causes of action, suits, penalties, claims, demands or judgments, of any nature whatsoever which may be imposed on, incurred by or asserted against any Indemnified Person (including any or all liabilities, obligations, damages, costs, disbursements, expenses (including without limitation attorneys' fees and expenses of any Indemnified Person) relating thereto) in any way relating to or arising, or alleged to arise out of this Lease, the Security Documentation or the Units, including without limitation those in any way relating to or arising or alleged to arise out of (i) the manufacture, construction, purchase, acceptance, rejection, ownership, delivery, nondelivery, lease, possession, use, operation, condition, sale, return or other disposition of any Unit or portion thereof, (ii) any latent and other defects whether or not discoverable by the Owner-Trustee, the Vendor or the Lessee, (iii) any claim for patent, trademark or copyright infringement, (iv) any claims based on strict liability in tort, (v) any injury to or the death of any person or any damage to or loss of property on or near the Units or in any manner growing out of or concerned with, or alleged to grow out of

or be connected with, the ownership, use, replacement, adaptation or maintenance of the Units or of any other equipment in connection with the Units (whether owned or under the control of the Owner-Trustee, the Lessee or any other person) or resulting or alleged to result from the condition of any thereof; (vi) any violation, or alleged violation, of any provision of this Lease (except by the Owner-Trustee) or of any agreement, law, rule, regulation, ordinance or restriction, affecting or applicable to the Units or the leasing, ownership, use, replacement, adaptation or maintenance thereof; or (vii) any claim arising out of any of the Owner-Trustee's obligations under the Lease Assignment or the Vendor's retention of a security interest under the Security Documentation or the Lease Assignment or the Participation Agreement, except to the extent such claim arises from an act or omission of the Owner-Trustee. The Lessee shall be obligated under this §12.1, irrespective of whether any Indemnified Person shall also be indemnified with respect to the same matter under any other agreement by any other person, and the Indemnified Person seeking to enforce the indemnification may proceed directly against the Lessee under this §12.1 without first resorting to any such other rights of indemnification. In case any action, suit or proceeding is brought against any Indemnified Person in connection with any claim indemnified against hereunder, the Lessee may and, upon such Indemnified Person'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 such Indemnified Person 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 such Indemnified Person in connection with such action, suit or proceeding. In the event the Lessee is required to make any payment under this §12, the Lessee shall pay such Indemnified Person an amount which, after deduction of all taxes required to be paid by such Indemnified Person 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 in the sole discretion of the Indemnified Person), shall be equal to the amount of such payment. The Lessee and the Owner-Trustee 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 any indemnities as contained in this §12 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 such Indemnified Person (except against another Indemnified Person) in respect of the matter against which indemnity has been given. Any payments received by such Indemnified Person from any person (except the Lessee) as a result of any matter with respect to which such Indemnified Person has been indemnified by the Lessee pursuant to this Section 12.1 shall be paid over to the Lessee to the extent necessary to reimburse the Lessee for indemnification payments previously made. Nothing in this Section 12.1 shall constitute a guaranty by the Lessee of the Conditional Sale Indebtedness of the Owner-Trustee under the Conditional Sale Agreement or a guaranty of the residual value of any Unit.

12.2. *Indemnification of Builders.* The Lessee further agrees to indemnify, protect and hold harmless each Builder as a third party beneficiary hereof from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against such Builder because of the use in or about the construction or operation of any of the Equipment of any article or material specified by the Lessee and not manufactured by such Builder or of any design, system, process, formula or combination specified by the Lessee and not developed or purported to be developed by such Builder which infringes or is claimed to infringe on any patent or other right. The Lessee will give notice to each Builder of any claim known to the Lessee from which liability may be charged against such Builder hereunder.

12.3. *Survival.* The indemnities contained in this §12 shall survive the expiration or termination of this Lease with respect to all events, facts, conditions or other circumstances occurring or existing prior to such expiration or termination and are expressly made for the benefit of, and shall be enforceable by, any Indemnified Person. None of the indemnities in this §12 shall be deemed to create any rights of subrogation in any insurer or third party against the Lessee therefor, from or under any Indemnified Person, whether because of any claim paid or defense provided for the benefit thereof or otherwise.

§13. DEFAULT

13.1. *Events of Default; Remedies.* If, during the continuance of this Lease or any extension or renewal thereof, 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 16 hereof, and such default shall continue for 15 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, in the Participation Agreement or the Indemnity Agreements (as defined in the Participation Agreement) and such default shall continue for 30 days after written notice from the Owner-Trustee or the Vendor to the Lessee specifying the default and demanding that the same be remedied;

D. any representation or warranty made by the Lessee herein, in the Participation Agreement or the Indemnity Agreements or in any certificate or statement furnished to the Owner-Trustee or any Owner pursuant to or in connection with any such agreements proves untrue in any material respect as of the date of issuance or making thereof;

E. a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may hereafter be amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under 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 a trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

G. an event of default set forth in Article 16 of the Security Documentation shall have occurred arising out of any default by the Lessee in performing any of its obligations hereunder;

then, in any such case, the Owner-Trustee, at its option, may:

(a) proceed by appropriate court action or actions either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; or

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as herein provided; and thereupon the Owner-Trustee may by its

agents enter upon the premises of the Lessee or other premises, in so far as the Lessee may be lawfully authorized to so permit, where any of the Units may be located, without judicial process if this can be done without breach of the peace and in accordance with due process of law, and take possession of all or any of such Units and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever; but the Owner-Trustee 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 that the Owners, in their sole discretion shall specify, (i) a sum, with respect to each Unit, which represents (x) the excess of the present value, at the time of such termination, of the entire unpaid balance of all rentals 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, such present value to be computed on the basis of a 6% per annum discount, compounded semiannually from the respective dates upon which rental would have been payable hereunder had this Lease not been terminated over the then present value of the rental which the Owner-Trustee reasonably estimates to be obtainable for each Unit during such period, such present value to be computed on the basis of a 6% per annum discount, compounded semiannually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated or, if such Unit is sold, the net proceeds of the sale plus (y) any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Owner-Trustee shall have sustained by reason of the breach of any covenant, representation or warranty of this Lease other than for the payment of rental or (ii) an amount equal to the excess, if any, of the Casualty Value as of the Casualty Payment Date on or next preceding the date of termination over the amount the Owners and the Owner-Trustee reasonably estimate to be the sales value of such Unit at such time; *provided, however,* that in the event the Owners and the Owner-Trustee shall have sold any unit, the Owners and the Owner-Trustee, in lieu of collecting any amounts payable by the Lessee pursuant to the preceding clause (ii) with respect to such Unit, may, if it shall so elect, demand that the Lessee pay the Owners and the Owner-Trustee and the Lessee shall pay to the Owners and the Owner-Trustee 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 Casualty Payment Date on or next preceding the date of termination over the net proceeds of such sale.

13.2. *Remedies Not Exclusive; Waiver.* The remedies in this Lease provided in favor of the Owner-Trustee 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.

13.3. *Failure To Exercise Rights Is Not Waiver.* The failure of the Owner-Trustee to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

13.4. *Notice of Event of Default.* The Lessee also agrees to furnish the Owner-Trustee, the Owners and the Vendor, promptly upon any responsible officer becoming aware of any condition which constituted or constitutes an Event of Default under this Lease or which, after notice or 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 §13.4, a "responsible officer" shall mean, with respect to the subject matter of any covenant, agreement or obligation of the Lessee in this Lease contained, 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.

§14. RETURN OF UNITS UPON DEFAULT

14.1. *Return of Units.* If this Lease shall terminate pursuant to §13 hereof or pursuant to Article 16 of the Security Documentation, the Lessee shall forthwith deliver possession of the Units to the Owner-Trustee. 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 and shall have attached or affixed thereto any special device considered an accession thereto as provided in §11 and shall have removed therefrom at the Lessee's expense any addition, modification or improvement which, as provided in §11, is owned by the Lessee. For the purpose of delivering possession of any Unit or Units 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 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 Owner-Trustee reasonably may designate;

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

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 Owner-Trustee 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 Owner-Trustee 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 amounts earned in respect of the Units after the date of termination of this Lease shall belong to the Owner-Trustee and, if received by the Lessee, shall be promptly turned over to the Owner-Trustee. 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 Owner-Trustee for each day thereafter an amount equal to the amount, if any, by which that percentage of the Purchase Price of such Unit for each such day obtained by dividing the basic lease rate as set forth in §3.1 hereof for each semiannual payment for such Unit by 180 exceeds the actual earnings received by the Owner-Trustee on such Unit for each such day.

14.2. *Owner-Trustee Appointed Agent of Lessee.* Without in any way limiting the obligation of the Lessee under the foregoing provisions of this §14, the Lessee hereby irrevocably appoints the Owner-Trustee 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 Owner-Trustee, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

§15. ASSIGNMENT, POSSESSION AND USE

15.1. *Assignment; Consent.* This Lease shall be assignable in whole or in part by the Owner-Trustee upon prior written consent of the Lessee, which consent shall not be unreasonably withheld. The Lessee hereby consents to the assignment of this Lease pursuant to the Lease Assignment.

15.2. *Lessee's Rights To Use the Units, To Permit Use Thereof by Others and To Sublease the Units.* (1) So long as (i) no Event of Default exists hereunder, (ii) the Lessee is complying with the provisions of the Consent and (iii) the Vendor is entitled to apply the Payments as defined in the Lease Assignment in accordance with the Lease Assignment, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease and the Security Documentation. Without the prior written consent of the Owner-Trustee and the Vendor, the Lessee shall not assign or transfer its leasehold interest under this Lease in the Units or any of them except as provided in paragraph (2) below of this §15.2; and the Lessee shall not, without the prior written consent of the Owner-Trustee and the Vendor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provisions of paragraph (2) of this §15.2. 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 Owner-Trustee or the Vendor or resulting from claims against the Owner-Trustee or the Vendor not related to the ownership of the Units or any encumbrance on the leasehold estate of the Lessee which is subject and subordinate to the interests of the Owner-Trustee and the Vendor) upon or with respect to any Unit, including any accession thereto, or the interest of the Owner-Trustee, the Vendor or the Lessee therein, and will promptly discharge any such lien, claim, security interest or other encumbrance which arises.

(2) So long as (i) no Event of Default exists hereunder, (ii) the Lessee is complying with the provisions of the Consent and (iii) the Vendor is entitled to apply the Payments as defined in the Lease Assignment in accordance with the Lease Assignment, the Lessee shall be entitled to the possession of the Units and to the use of the Units by it or any affiliate upon lines of railroad owned or operated by it or any such affiliate or upon lines of railroad over which the Lessee or any such affiliate has trackage or other operating rights or over which railroad equipment of the Lessee or any such affiliate is regularly operated pursuant to contract and shall be entitled to permit the use of the Units upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements and to assign its rights to the Units or to sublease the Units to any of its affiliates, but only upon and subject to all the terms and conditions of this Lease and the Security Documentation; *provided, however,* that the Lessee shall not assign, sublease or permit the assignment, sublease or use of any Unit predominantly outside the United States of America within the meaning of Section 48(a) of the Internal Revenue Code of 1954, as amended to the date hereof, nor shall the Lessee assign or sublease to, or permit the sublease or use of the Units by, any person in whose hands such Units would not qualify as "section 38 property" within the meaning of said Code. The Lessee may receive and retain compensation for the use of any of the Units from other railroads so using such Units. Any sublease permitted by this paragraph may provide that the sublessee, so long as it shall not be in default under such sublease, shall be entitled to the possession of the Units included in such sublease and the use thereof; *provided, however,* that every such sublease shall be subject to the rights and remedies of the Vendor under the Security Documentation and the Owner-Trustee under this Lease in respect of the Units covered by such sublease upon the occurrence of an Event of Default thereunder or hereunder.

15.3. *Transfers by Lessee Through Merger, Acquisition or Consolidation.* Nothing in this §15 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.

§16. RENEWAL OPTIONS AND RIGHT OF FIRST REFUSAL

16.1. *Renewal for Successive Period.* 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 Owner-Trustee not less than 180 days prior to the end of the original term of this Lease in respect of the Units still subject to this Lease, elect to extend such original term of this Lease in respect of all but not less than all the Units

then covered by this Lease for a period of two years or such other time acceptable to both the Lessee and Owner-Trustee commencing on the scheduled expiration of such original term of this Lease, at a "Fair Market Rental" payable, in arrears, in semiannual payments on the month and day such rentals were payable for the Units in each year of the original term.

16.2. *Determination of Fair Market Rental.* (1) Fair Market Rental shall be determined for each extended term of this Lease on the basis of, and shall be equal in amount to, the rental which would obtain in an arm's-length transaction between an informed and willing lessee (other than a lessee currently in possession) and an informed and willing lessor under no compulsion to lease and, in such determination, costs of removal from the location of current use shall not be a deduction from such rental.

(2) If, after 50 days from the giving of notice by the Lessee of the Lessee's election to extend the term of this Lease, the Owner-Trustee and the Lessee are unable to agree upon a determination of the Fair Market Rental of the Units, such rental shall be determined in accordance with the foregoing definition by the following procedure: If either party to such determination shall have given written notice to the other requesting determination of such value by this appraisal procedure, the parties shall consult for the purpose of appointing a qualified independent appraiser by mutual agreement. If no such appraiser is so appointed within 20 days after such notice is given, each party shall appoint an independent appraiser within 25 days after such notice is given, and the two appraisers so appointed shall within 35 days after such notice is given appoint a third independent appraiser. If no such third appraiser is appointed within 35 days after such notice is given, either party may apply, to make such appointment, to the American Arbitration Association, and both parties shall be bound by any appointment so made. Any appraiser or appraisers appointed pursuant to the foregoing procedure shall be instructed to determine the Fair Market Rental of the Units subject to the proposed extended term within 90 days after his or their appointment. If the parties shall have appointed a single appraiser or if either party shall have failed to appoint an appraiser, the determination of Fair Market Rental of the single appraiser appointed shall be final. If three appraisers shall be appointed, the determination of the appraiser which differs most from the other two appraisers shall be excluded, the remaining two determinations shall be averaged and such latter average shall be final and binding upon the parties hereto as the Fair Market Rental. The appraisal proceedings shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association as in effect on the date hereof, except as modified hereby. The provision for this appraisal procedure shall be the exclusive means of determining Fair Market Rental and shall be in lieu of any judicial or other procedure for the determination thereof, and each party hereto hereby consents and agrees not to assert any judicial or other procedures. The expenses of the appraisal procedure shall be borne by the Lessee.

16.3. *Right of First Refusal.* Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, in the event the Owner-Trustee elects to sell any Units to third parties at the expiration of the original or extended term of this Lease, the Lessee shall be given written notice of such intention prior to the expiration of such term. In the event that the Owner-Trustee shall receive, prior to removal of the Units at the end of such term of the Lease, a bona fide offer in writing from another party unrelated to the Lessee to purchase the Units and the Owner-Trustee elects to sell the Units pursuant to such offer at the expiration of such term of this Lease, the Owner-Trustee shall give written notice to the Lessee of such offer. Such notice shall include the price and the terms and conditions of payment offered by the other party in writing to the Owner-Trustee. The Lessee shall have the sole right and option to purchase the Units for cash at the price at which the Units are proposed to be sold or under the other terms and conditions of payment offered by the other party, as hereinafter provided. Within 10 business days of receipt of notice from the Owner-Trustee, the Lessee shall exercise such purchase right by delivery to the Owner-Trustee of a written notice specifying a date of purchase, which date shall not be later than the later of (i) 15 days after the date of delivery of such notice by the Lessee to the Owner-Trustee or (ii) 90 days after the expiration of such term of this Lease. In the event that the Lessee shall have delivered a notice of its election to purchase the Units, this Lease (including the obligation to pay rent) shall be further extended upon the same terms and conditions set forth herein from the date such notice is delivered to the Owner-Trustee until the date of such purchase.

§17. RETURN OF UNITS UPON EXPIRATION OF TERM

As soon as practicable on or after the expiration of the original or extended term of this Lease with respect to any Unit and in any event not later than 90 days thereafter, the Lessee will, at its own cost and expense, at the request of the Owner-Trustee, deliver possession of such Unit to the Owner-Trustee upon such storage tracks of the Lessee as the Owner-Trustee may reasonably designate, or, in the absence of such designation, as the Lessee may select, and permit the Owner-Trustee to store such Unit on such tracks for a period not exceeding three months and transport the same upon disposition of the Units, at any time within such three-month period, to any reasonable place on the lines of railroad operated by the Lessee, or to any connecting carrier for shipment, all as directed by the Owner-Trustee, the movement and storage of such Units to be at the expense and risk of the Lessee. During any such storage period the Lessee will permit the Owner-Trustee or any person designated by it, including the authorized representative or representatives of any prospective purchaser of such Unit, to inspect the same; *provided, however,* that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Owner-Trustee or any prospective purchaser, the rights of inspection granted under this sentence. Each Unit returned to the Owner-Trustee pursuant to this §17 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted, (ii) meet the standards then in effect under the Interchange Rules of the Association of American Railroads and/or the applicable rules of any governmental agency or other organization with jurisdiction and (iii) have attached or affixed thereto any special device considered an accession thereto as provided in §11 hereof and have removed therefrom any such device not so considered an accession. During any such storage period the Lessee shall maintain the Units in such manner as the Lessee normally maintains similar units of railroad equipment owned or leased by it in similar storage circumstances. 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 Owner-Trustee 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.

§18. RECORDING

The Lessee, at its own expense, will cause this Lease, the Security Documentation, the Assignment and the Lease Assignment 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 forthwith given 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 Owner-Trustee under the Security Documentation. The Lessee in addition 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 Owner-Trustee or the Vendor for the purpose of proper protection, to their satisfaction, of the Vendor's and the Owner-Trustee's respective interests in the Units, or for the purpose of carrying out the intention of this Lease, the Security Documentation, the Assignment and the Lease Assignment; and the Lessee will promptly furnish to the Vendor and the Owner-Trustee 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 Owner-Trustee, *provided, however,* that no such opinion of counsel need be furnished in respect of the filing of the Security Documentation or the Assignment in Canada. This Lease, the Security Documentation, the Assignment and the Lease Assignment shall be filed and recorded with the Interstate Commerce Commission and deposited with the Registrar General of Canada pursuant to Section 86 of the Railway Act of Canada and provision will have been made for publication of notice of such deposit in *The Canada Gazette* prior to the delivery and acceptance hereunder of any Unit.

§19. 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 interest at 9.2% per annum of the overdue rentals and other obligations for the period of time during which they are overdue or such lesser amount as may be legally enforceable.

§20. OWNER-TRUSTEE'S RIGHT TO PERFORM FOR THE LESSEE

If the Lessee fails to perform or comply with any of its agreements contained herein, the Owner-Trustee may upon notice to the Lessee itself perform or comply with such agreement, and the amount of the reasonable cost and expenses of the Owner-Trustee incurred in connection with such performance or compliance, together with interest on such amount at the rate per annum which Manufacturers Hanover Trust Company, New York, New York, charges for unsecured 90-day loans to large corporate borrowers at the time in effect shall be payable by the Lessee upon demand except as otherwise provided in this Lease. No such performance or compliance by the Owner-Trustee shall be deemed a waiver of the rights and remedies of the Owner-Trustee or any assignee of the Owner-Trustee against the Lessee hereunder.

§21. 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 Owner-Trustee, at 79 South Main Street, Salt Lake City, Utah 84111, attention of Trust Department, Corporate Trust Division, with copies to BWL, Inc., One IBM Plaza, Suite 2700, Chicago, Illinois 60611, attention: Manager, Leveraged Leasing, Westinghouse Credit Corporation, 3 Gateway Center, Pittsburgh, Pennsylvania 15222, attention: Manager, Leveraged Leasing, Toy National Bank, Fourth and Nebraska Streets, Sioux City, Iowa 51102, attention: Vice President Investments, and Comdisco Financial Services, Inc., 530 Bush Street, San Francisco, California 94108; and

(b) if to the Lessee, at 176 East Fifth Street, St. Paul, Minnesota 55101, attention: Assistant Vice President, Financial Planning,

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

§22. SEVERABILITY

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.

§23. EFFECT AND MODIFICATION OF LEASE

Except for the Participation Agreement and the Indemnity Agreements (as defined in the Participation Agreement), this Lease exclusively and completely states the rights of the Owner-Trustee 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 Owner-Trustee and the Lessee.

§24. THIRD PARTY BENEFICIARIES

Nothing in this Lease shall be deemed to create any right in any person not a party hereto (other than the Owners, the Vendor and the permitted successors and assigns of a party) and this instrument shall not be construed in any respect to be a contract in whole or in part for the benefit of a third party except as aforesaid.

§25. EXECUTION

This Lease may be executed in several counterparts, such counterparts together constituting but one and the same instrument, but the counterpart delivered to the Vendor pursuant to the Lease Assignment 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.

§26. LAW GOVERNING

The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of Minnesota; *provided, however,* that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and Section 86 of the Railway Act of Canada.

§27. IMMUNITIES; NO RECOURSE

(1) No recourse shall be had in respect of any obligation due under this Lease, or referred to herein, against any incorporator, stockholder, director or officer, as such, past, present or future, of the parties hereto or the Owners, whether by virtue of any constitutional provision, statute or rule of law, or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of such incorporators, stockholders, directors or officers, as such, being forever released as a condition of and as consideration for the execution of this Lease.

(2) 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 Owner-Trustee are each and every one of them made and intended not as personal representations, undertakings and agreements by First Security Bank of Utah, National Association, including its successors and assigns, or for the purpose or with the intention of binding said trust company personally, but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement, and this Lease is executed and delivered by the Owner-Trustee solely in the exercise of the powers expressly conferred upon the Owner-Trustee as trustee under the Trust Agreement; and that no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against the Owner-Trustee or the Owners (except as provided in paragraph 13.3 of Article 13 hereof and Section 1.04 of the Trust Agreement) or on account of any representation, undertaking or agreement of the Owner-Trustee or the Owners, 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.

§28. AGREEMENTS FOR BENEFIT OF OWNERS AND OWNER-TRUSTEE'S ASSIGNS

All rights of the Owner-Trustee hereunder (including, but not limited to, its rights under §§7, 9, 13, 14 and 17 and the right to receive the rentals payable under this Lease) shall inure to the benefit of the Owners and any of the Owners' assigns under the Trust Agreement and the Owner-Trustee's assigns (including the Vendor).

§29. TERM OWNER-TRUSTEE

Whenever the term Owner-Trustee is used in this Lease it shall apply and refer to the Owner-Trustee and any assignee of the Owner-Trustee (including, so long as any Conditional Sale Indebtedness under the Security Documentation or interest thereon shall remain unpaid or any other obligation thereunder be continuing, the Vendor).

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

BURLINGTON NORTHERN INC.,

by .....
Assistant Vice President,
Financial Planning

[Corporate Seal]

Attest:

.....
Assistant Secretary

FIRST SECURITY BANK OF UTAH,
National Association, not in its individual capacity, but solely as Trustee,

by .....
Authorized Officer

[Seal]

Attest:

.....
Authorized Officer

STATE OF MINNESOTA,
COUNTY OF RAMSEY, } ss:

On this day of September, 1977, before me personally appeared R. C. BURTON, JR., to me personally known, who, being by me duly sworn, says that he is the Assistant Vice President, Financial Planning of BURLINGTON NORTHERN INC., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

.....
Notary Public

[Notarial Seal]

My Commission expires

STATE OF UTAH,
COUNTY OF SALT LAKE, } ss:

On this day of September, 1977, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is an Authorized Officer of FIRST SECURITY BANK OF UTAH, National Association, that one of the seals affixed to the foregoing instrument is the seal of said national banking association, that said instrument was signed and sealed on behalf of said national banking association by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said national banking association.

.....
Notary Public

[Notarial Seal]

My Commission expires

APPENDIX A TO LEASE

Type	Quantity	Lessee's Road Numbers (Both Inclusive)
3,000 hp Model SD-40-2 diesel-electric locomotives	10	BN 6781-6790
3,000 hp Model C-30-7 diesel-electric locomotives	15	BN 5530-5544

APPENDIX B TO LEASE
Schedule A Units

Rental Payments	Percentage of Purchase Price*
Basic Lease Rate for Semiannual Rental Payments:	
1-18	3.55510%
19-36	4.34490%

* As defined in the Security Documentation.

APPENDIX C TO LEASE

Schedule A Units

Casualty Payment Dates	Percentage of Purchase Price*
January 5, 1978	86.4644
July 5, 1978	86.6870
January 5, 1979	87.7173
July 5, 1979	88.0772
January 5, 1980	88.3066
July 5, 1980	88.4155
January 5, 1981	88.3604
July 5, 1981	88.0770
January 5, 1982	87.5035
July 5, 1982	86.8259
January 5, 1983	85.9602
July 5, 1983	84.9344
January 5, 1984	83.7401
July 5, 1984	82.4066
January 5, 1985	80.9699
July 5, 1985	79.4475
January 5, 1986	77.8407
July 5, 1986	76.1550
January 5, 1987	74.3940
July 5, 1987	71.7736
January 5, 1988	69.0629
July 5, 1988	66.2633
January 5, 1989	63.3894
July 5, 1989	60.4393
January 5, 1990	57.4663
July 5, 1990	54.4903
January 5, 1991	51.5501
July 5, 1991	48.6272
January 5, 1992	45.7559
July 5, 1992	42.9167
January 5, 1993	40.1473
July 5, 1993	37.3290
January 5, 1994	34.4027
July 5, 1994	31.3339
January 5, 1995	28.1485
July 5, 1995	24.8107
January 5, 1996 and thereafter	20.0000

* As defined in Security Documentation.

ASSIGNMENT OF LEASE AND AGREEMENT dated as of September 1, 1977, (hereinafter called this Assignment), by and between FIRST SECURITY BANK OF UTAH, National Association, acting solely in its capacity as Trustee (hereinafter called the Owner-Trustee) under a Trust Agreement (hereinafter called the Trust Agreement) dated as of the date hereof with the parties named therein (hereinafter severally called the Owner and collectively the Owners), and MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, as Agent (hereinafter called the Vendor) under a Participation Agreement dated as of the date hereof.

WHEREAS the Owner-Trustee is entering into a Conditional Sale Agreement dated as of the date hereof (hereinafter called the Security Documentation) with each of General Motors Corporation (Electro-Motive Division) and General Electric Company (said corporations being hereinafter called collectively the Builders and severally the Builder), providing for the sale to the Owner-Trustee of such units of railroad equipment (hereinafter called the Units) described in the Annexes thereto as are delivered to and accepted by the Owner-Trustee thereunder;

WHEREAS the Owner-Trustee and Burlington Northern Inc. (hereinafter called the Lessee) have entered into a Lease of Railroad Equipment dated as of the date hereof (hereinafter called the Lease), providing for the leasing by the Owner-Trustee to the Lessee of the Units;

WHEREAS, in order to provide security for the obligations of the Owner-Trustee under the Security Documentation and as an inducement to the Vendor to invest in the Conditional Sale Indebtedness (as that term is defined in the Security Documentation), the Owner-Trustee agrees to assign for security purposes its rights in, to and under the Lease to the Vendor;

NOW, THEREFORE, in consideration of the premises and of the payments to be made and the covenants hereinafter mentioned to be kept and performed, the parties hereto agree as follows:

1. The Owner-Trustee hereby assigns, transfers and sets over unto the Vendor, as collateral security for the payment and performance of the obligations of the Owner-Trustee under the Security Documentation, all the Owner-Trustee's right, title and interest, powers, privileges, and other benefits under the Lease, including, without limitation, the immediate right to receive and collect all rentals, profits and other sums payable to or receivable by the Owner-Trustee from the Lessee under or pursuant to the provisions of the Lease whether as rent, casualty payment, indemnity, liquidated damages, or otherwise (such moneys being hereinafter called the Payments), and the right to make all waivers and agreements, to give all notices, consents and releases, to take all action upon the happening of an Event of Default specified in the Lease, and to do any and all other things whatsoever which the Owner-Trustee is or may become entitled to do under the Lease. In furtherance of the foregoing assignment, the Owner-Trustee hereby irrevocably authorizes and empowers the Vendor in its own name, or in the name of its nominee, or in the name of the Owner-Trustee or as its attorney, to ask, demand, sue for, collect and receive any and all Payments to which the Owner-Trustee is or may become entitled under the Lease and to enforce compliance by the Lessee with all the terms and provisions thereof.

The Vendor agrees to accept any Payments made by the Lessee for the account of the Owner-Trustee pursuant to the Lease. To the extent received, the Vendor will apply such Payments to satisfy the obligations of the Owner-Trustee under the Security Documentation, and, so long as no event of default or event which with the lapse of time and/or demand provided for in the Security Documentation could constitute an event of default thereunder, shall have occurred and be continuing, any balance shall be paid to the Owner-Trustee on the same date such Payment is applied to satisfy such obligations of the Owner-Trustee, by check mailed to the Owner-Trustee on such date or, upon written request of the Owner-Trustee, by bank wire to the Owner-Trustee at such address as may be specified to the Vendor in writing, and such balance shall be retained by the Owner-Trustee. If the Vendor shall not receive any rental payment under §3.1 of the Lease when due, the Vendor shall notify the Owner-Trustee and each Owner by registered mail, return receipt requested at the address set forth in the Lease; *provided, however,* that the failure of the Vendor to so notify the Owner-Trustee and each Owner by registered mail, return receipt

requested shall not affect the obligations of the Owner-Trustee hereunder or under the Security Documentation.

2. This Assignment is executed only as security and, therefore, the execution and delivery of this Assignment shall not subject the Vendor to, or transfer, or pass, or in any way affect or modify the liability of the Owner-Trustee under the Lease, it being understood and agreed that notwithstanding this Assignment or any subsequent assignment, all obligations of the Owner-Trustee to the Lessee shall be and remain enforceable by the Lessee, its successors and assigns, against, and only against, the Owner-Trustee or persons other than the Vendor.

3. The Owner-Trustee will faithfully abide by, perform and discharge each and every obligation, covenant and agreement which the Lease provides are to be performed by the Owner-Trustee; without the written consent of the Vendor, the Owner-Trustee will not anticipate the rents under the Lease or waive, excuse, condone, forgive or in any manner release or discharge the Lessee thereunder of or from the obligations, covenants, conditions and agreements to be performed by the Lessee, including, without limitation, the obligation to pay the rents in the manner and at the time and place specified therein or enter into any agreement amending, modifying or terminating the Lease and the Owner-Trustee agrees that any amendment, modification or termination thereof without such consent shall be void.

4. The Owner-Trustee does hereby constitute the Vendor the Owner-Trustee's true and lawful attorney, irrevocably, with full power (in the name of the Owner-Trustee, or otherwise), to ask, require, demand, receive, compound and give acquittance for any and all Payments due and to become due under or arising out of the Lease to which the Owner-Trustee is or may become entitled, to enforce compliance by the Lessee with all the terms and provisions of the Lease, to endorse any checks or other instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings which to the Vendor may seem to be necessary or advisable in the premises.

5. Upon the full discharge and satisfaction of all sums due from the Owner-Trustee under the Security Documentation, this Assignment and all rights herein assigned to the Vendor shall terminate, and all estate, right, title and interest of the Vendor in and to the Lease shall revert to the Owner-Trustee. Promptly following such full discharge and satisfaction, the Vendor agrees that it will advise the Lessee in writing that all sums due from the Owner-Trustee under the Security Documentation have been fully discharged and satisfied and instruct the Lessee that no further payments under the Lease are to be made to the Vendor.

6. The Owner-Trustee will, from time to time, execute, acknowledge and deliver any and all further instruments required by law or reasonably requested by the Vendor in order to confirm or further assure, the interest of the Vendor hereunder.

7. The Vendor may assign all or any of the rights assigned to it hereby or arising under the Lease, including, without limitation, the right to receive any Payments due or to become due. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Vendor hereunder.

8. This Assignment shall be governed by the laws of the State of Utah, but the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and Section 86 of the Railway Act of Canada.

9. The Owner-Trustee shall cause copies of all notices received in connection with the Lease and all payments hereunder to be promptly delivered or made to the Vendor.

10. The Vendor hereby agrees with the Owner-Trustee that the Vendor will not, so long as no event of default under the Security Documentation has occurred and is continuing, exercise or enforce, or seek to

exercise or enforce, or avail itself of, any of the rights, powers, privileges, authorizations or benefits which are assigned and transferred by the Owner-Trustee to the Vendor by this Assignment and which are for the sole benefit of the Owner-Trustee, without the prior consent of the Owner-Trustee.

11. It is expressly understood and agreed by and between the parties hereto, anything in this Agreement to the contrary notwithstanding, that each and all of the representations, undertakings and agreements in this Agreement made on the part of the Owner-Trustee are each and every one of them made and intended not as personal representations, undertakings and agreements by First Security Bank of Utah, National Association, 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 Trust Estate as such term is used in 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 or shall at any time be asserted or enforceable against the said bank or the Owners or on account of any representation, undertaking or agreement of the Owner-Trustee or the Owners, except as provided in paragraph 13.3 of Article 13 of the Security Documentation and Section 1.04 of the Trust Agreement, either expressed or implied, all such personal liability, if any, being expressly waived and released by the Vendor and by all persons claiming by, through or under the Vendor; *provided, however,* that the Vendor or any person claiming by, through or under the Vendor, making claim hereunder, may look to said Trust Estate for the satisfaction of the same.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective corporate names by officers thereunto duly authorized and their respective corporate seals to be affixed and duly attested, all as of the date first above written.

FIRST SECURITY BANK OF UTAH,
National Association, as Trustee as aforesaid,

By
Authorized Officer

[Seal]

Attest:

Authorized Officer

MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, as Agent,

By
Assistant Vice President

[Corporate Seal]

Attest:

Corporate Trust Officer

STATE OF UTAH,
COUNTY OF SALT LAKE, } ss.:

On this day of September, 1977, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is an Authorized Officer of FIRST SECURITY BANK OF UTAH, National Association, that one of the seals affixed to the foregoing instrument is the seal of said national banking association and that said instrument was signed and sealed on behalf of said national banking association by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said national banking association.

Notary Public

[Notarial Seal]

My Commission expires

STATE OF MARYLAND,
CITY OF BALTIMORE, } ss.:

On this day of September, 1977, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is an Assistant Vice President of MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]

My Commission expires

CONSENT AND AGREEMENT

The undersigned, BURLINGTON NORTHERN INC., a Delaware corporation (hereinafter called the Lessee), the lessee named in the Lease (hereinafter called the Lease) referred to in the foregoing Assignment of Lease and Agreement (hereinafter called the Lease Assignment), hereby (a) acknowledges receipt of a copy of the Lease Assignment and (b) consents to all the terms and conditions of the Lease Assignment and agrees that so long as said Lease Assignment is effective:

(1) it will pay all rentals, casualty payments, liquidated damages, indemnities and other moneys provided for in the Lease (which moneys are hereinafter called the Payments) due and to become due under the Lease directly to Mercantile-Safe Deposit and Trust Company, as Agent (hereinafter called the Vendor), the assignee named in the Lease Assignment, at P. O. Box 2258, Baltimore, Maryland 21203, attention of Corporate Trust Department, (or at such other address as may be furnished in writing to the Lessee by the Vendor);

(2) the Vendor shall be entitled to the benefits of, and to receive and enforce performance of, all the covenants to be performed by the Lessee under the Lease as though the Vendor were named therein as the Owner-Trustee;

(3) the Vendor shall not, by virtue of the Lease Assignment, be or become subject to any liability or obligation under the Lease or otherwise; and

(4) the Lease shall not, without the prior written consent of the Vendor, be terminated or modified, nor shall any action be taken or omitted by the Lessee the taking or omission of which might result in an alteration or impairment of the Lease or the Lease Assignment or this Consent and Agreement or of any of the rights created by any thereof.

This Consent and Agreement, when accepted by the Vendor by signing the acceptance at the foot hereof, shall be deemed to be a contract under the laws of the State of Minnesota and, for all purposes, shall be construed in accordance with the laws of said State.

BURLINGTON NORTHERN INC.,

By

Assistant Vice President,
Financial Planning

[Corporate Seal]

Attest:

Assistant Secretary

The foregoing Consent and Agreement is hereby accepted, as of the 1st day of September, 1977.

MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, as Agent,

By

Assistant Vice President

[Corporate Seal]

Attest:

Corporate Trust Officer

CONDITIONAL SALE AGREEMENT

Dated as of September 1, 1977

between

FIRST SECURITY BANK OF UTAH, NATIONAL ASSOCIATION,
not in its individual capacity but solely
as Trustee under a Trust Agreement
dated as of the date hereof
with BWL, Inc.,
Westinghouse Credit Corporation and Toy National Bank

and

each of

GENERAL MOTORS CORPORATION
(Electro-Motive Division)

and

GENERAL ELECTRIC COMPANY

CONDITIONAL SALE AGREEMENT

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* This Table of Contents has been included in this document for convenience only and does not form a part of, or affect any construction or interpretation of this document.

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CONDITIONAL SALE AGREEMENT dated as of September 1, 1977, between each of GENERAL MOTORS CORPORATION (Electro-Motive Division) and GENERAL ELECTRIC COMPANY (hereinafter collectively called the Builders or severally the Builder, or collectively or severally called the Vendor as the context may require, all as more particularly set forth in Article 1 hereof) and FIRST SECURITY BANK OF UTAH, National Association, a national banking association, acting not in its individual capacity but solely as Trustee (hereinafter called the Owner-Trustee) under a Trust Agreement dated as of the date hereof (hereinafter called the Trust Agreement) with BWL, Inc., Westinghouse Credit Corporation and Toy National Bank (hereinafter collectively called the Owners and severally the Owner).

WHEREAS the Builders have severally agreed to construct, sell and deliver to the Owner-Trustee, and the Owner-Trustee agrees to purchase, subject to the terms and conditions hereof, the railroad equipment described in Annex B hereto to the extent not excluded herefrom under the provisions hereof (hereinafter called the Equipment as more specifically described in paragraph 4.2 of Article 4 hereof);

WHEREAS the Owner-Trustee is entering into a lease with BURLINGTON NORTHERN INC., a Delaware corporation (hereinafter called the Lessee) in substantially the form annexed hereto as Annex C (hereinafter called the Lease); and

WHEREAS Mercantile-Safe Deposit and Trust Company (hereinafter called the Assignee) is acting as agent for certain investors pursuant to a Participation Agreement dated as of the date hereof (hereinafter called the Participation Agreement), among the Lessee, the Assignee, the Owner-Trustee, the Owners and the parties named in Appendix I thereto (hereinafter called the Investors);

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

ARTICLE 1
ASSIGNMENT; DEFINITIONS

1.1. *Contemplated Sources of Purchase Price; Assignment.* The parties hereto contemplate that the Owner-Trustee will furnish 36.05% of the Purchase Price (as defined in paragraph 4.1 of Article 4 hereof) of the Equipment and that an amount equal to the balance of such Purchase Price shall be paid to the appropriate Builder by the Assignee pursuant to an Agreement and Assignment dated as of the date hereof (such Agreement and Assignment being hereinafter called the Assignment) among the Builders and the Assignee.

1.2. *Lease Assignment.* In case of such assignment, the Owner-Trustee will assign to the Vendor (as hereinafter defined), as security for the payment and performance of all the Owner-Trustee's obligations hereunder, all right, title and interest of the Owner-Trustee in and to the Lease pursuant to an Assignment of Lease and Agreement in substantially the form of Annex D hereto (hereinafter called the Lease Assignment).

1.3. *Meaning of "Builder" and "Vendor".* The term "Builder", whenever used in this Agreement, means, both before and after any assignment of its rights hereunder, the respective party hereto which has manufactured the units of Equipment to be constructed and sold by such party and sold hereunder and any successor or successors for the time being to its manufacturing properties and business. The term "Vendor", whenever used in this Agreement, means, before any such assignment, the Builder or Builders, as the context may require, and, after any such assignment, both any assignee or assignees for the time being of such particular assigned rights, as regards such rights, and also any assignor as regards any rights hereunder that are retained or excluded from any assignment. Any reference herein to this Agreement or any other agreement shall mean said agreement and all amendments and supplements hereto or thereto then in effect.

The rights and obligations of the Builders under this Agreement are several in accordance with their interests and not joint. Accordingly, whenever this Agreement, by the use of such designation as "the Vendor", "such Builder" or other similar term, confers a right or imposes an obligation upon a corporation manufacturing and selling equipment hereunder, such right or obligation shall be construed to accrue to or to be enforceable against only the specific corporation furnishing the units of Equipment giving rise to such right or obligation and its successors as herein provided.

ARTICLE 2
CONSTRUCTION AND SALE

Pursuant to this Agreement, each Builder shall construct the Equipment at its plant set forth in Annex B hereto, and will sell and deliver the Equipment to the Owner-Trustee, the Owner-Trustee will (as hereinafter provided) purchase from such Builder and accept delivery of and pay for the Equipment, each unit of which shall be constructed in accordance with the specifications referred to in Annex B hereto and in accordance with such modifications thereof as may be agreed upon in writing between such Builder, the Owner-Trustee and the Lessee (which specifications and modifications, if any, are hereinafter called the Specifications). Each Builder represents and warrants that the design, quality and component parts of each unit of the Equipment to be delivered by such Builder under this Agreement shall conform, on the date of delivery and acceptance thereof, to all Department of Transportation and Interstate Commerce Commission requirements and specifications and to all standards, if any, recommended by the Association of American Railroads reasonably interpreted as being applicable to railroad equipment of the character of such unit, and each such unit will be new railroad equipment.

ARTICLE 3
INSPECTION AND DELIVERY

3.1. *Place of Delivery.* Each Builder will deliver the units of the Equipment to the Owner-Trustee at the place or places specified in Annex B hereto (or if Annex B does not specify a place or places, at the place or places designated from time to time by the Owner-Trustee), freight charges and storage charges, if any, prepaid, in accordance with the delivery schedule set forth in Annex B hereto; *provided, however,* that no Builder shall have any obligation to deliver any unit of Equipment hereunder subsequent to the commencement of any proceedings specified in clauses (c) or (d) of paragraph 16.1 of Article 16 hereof or the occurrence of any event of default (as described in paragraph 16.1 of Article 16 hereof), or event which, with the lapse of time and/or demand, could constitute such an event of default, or unless it has been assured to its satisfaction that it will receive the full Purchase Price (as hereinafter defined) thereof. Each Builder agrees not to deliver any unit of its Equipment hereunder (a) following receipt of written notice from the Owner-Trustee or the Assignee of the commencement of any such proceedings or the occurrence of any such event, as aforesaid, but only so long as such event continues, and (b) until it receives notice from the Owner-Trustee and the Assignee that the conditions contained in Paragraphs 7 and 8 of the Participation Agreement have been met.

3.2. *Force Majeure.* Each Builder's obligation as to time of delivery is subject, however, to delays resulting from causes beyond such Builder's reasonable control, including but not limited to acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, delays in receiving necessary materials or delays of carriers or subcontractors.

3.3. *Exclusion of Equipment.* Any Equipment not delivered at the time of receipt of the notice specified in clause (a) of the last sentence of paragraph 3.1 of this Article 3 and any Equipment not delivered and accepted hereunder on or before June 30, 1978, shall be excluded from this Agreement and the Owner-Trustee shall be relieved of its obligation to purchase and pay for such Equipment. If any Equipment shall be excluded herefrom pursuant to the preceding sentence, the Builder of such Equipment so excluded and the Owner-Trustee shall execute an agreement supplemental hereto limiting this

Agreement to the Equipment not so excluded herefrom. In the event of any such exclusion of any unit of Equipment herefrom pursuant to the foregoing provisions of this paragraph 3.3 or pursuant to paragraph 4.1 of Article 4 hereof, the Lessee will be obligated pursuant to Paragraph 1 of the Participation Agreement to accept all such units completed and delivered by a Builder and to pay the full purchase price therefor when due, all in accordance with the terms of its prior contractual arrangements with such Builder relating to the Equipment (hereinafter called the Purchase Order) and the Owner-Trustee will reassign, transfer and set over to the Lessee all the right, title and interest of the Owner-Trustee in and to the units so excluded and the Purchase Order to the extent relating thereto.

3.4. *Inspection.* During construction, the Equipment shall be subject to inspection and approval by the authorized inspectors of the Owner-Trustee (who may be employees of the Lessee), and each Builder shall grant to such authorized inspectors reasonable access to its plant. Each Builder agrees to inspect the materials used in the construction of the Equipment in accordance with the standard quality control practices of such Builder. Upon or after completion of each unit or of a number of units of the Equipment, such unit or units shall be presented to an inspector of the Owner-Trustee for inspection at the place specified for delivery of such unit or units, and if each such unit conforms to the Specifications and requirements and standards applicable thereto, such inspector or an authorized representative of the Owner-Trustee (who may be an employee of the Lessee) shall execute and deliver to the Builder of such units of Equipment a certificate of acceptance (hereinafter called the Certificate of Acceptance) stating that such unit or units have been inspected and accepted on behalf of the Owner-Trustee and are marked in accordance with paragraph 10.1 of Article 10 hereof; *provided, however,* that such Builder shall not thereby be relieved of its warranty referred to in paragraph 14.4 of Article 14 hereof. By §2 of the Lease, the Owner-Trustee is appointing the Lessee its agent to inspect and accept delivery of the Equipment. Acceptance of any unit of Equipment by the Lessee (or its employees or agents, as aforesaid) pursuant to §2 of the Lease shall be deemed to be acceptance of such unit by the Owner-Trustee.

3.5. *Builders' Responsibilities After Delivery.* On delivery by a Builder hereunder of units of Equipment and acceptance of each such unit hereunder at the place specified for delivery, such Builder shall have no further responsibility for, nor bear any risk of, any damage to or the destruction or loss of such unit; *provided, however,* that such Builder shall not thereby be relieved of its warranty referred to in paragraph 14.4 of Article 14 hereof.

ARTICLE 4
PURCHASE PRICE AND PAYMENT

4.1. *Meaning of "Purchase Price"; Exclusion of Units.* The base price or prices per unit of the Equipment are set forth in Annex B hereto. Such base price or prices are subject to such increase or decrease as is agreed to by the Builder thereof, the Owner-Trustee and the Lessee. The term "Purchase Price" as used herein shall mean the base price or prices as so increased or decreased. If on any Closing Date (as hereinafter defined in paragraph 4.2 of this Article) the aggregate Purchase Price of Equipment for which settlement has theretofore been and is then being made would, but for the provisions of this sentence, exceed the Maximum Purchase Price specified in Item 5 of Annex A hereto, the Builder of such Equipment (and any assignee of such Builder) and the Owner-Trustee will enter into an agreement excluding from this Agreement such unit or units of Equipment then proposed to be settled for and specified by the Owner-Trustee and the Lessee, as will, after giving effect to such exclusion, reduce such aggregate Purchase Price to not more than said Maximum Purchase Price, and the Owner-Trustee shall have no further obligation or liability in respect of units so excluded.

4.2. *Designation of Equipment; Settlement and Closing Dates.* All units of Equipment delivered and accepted hereunder (i) on or prior to December 31, 1977, shall be designated Schedule A Equipment and (ii) after December 31, 1977, but on or prior to June 30, 1978, shall be designated Schedule B Equipment. The Schedule A Equipment shall be settled for in such number of groups of units not to exceed three of the Equipment delivered to and accepted by the Owner-Trustee as is provided in Item 2 of Annex A hereto. The Schedule B Equipment shall be settled for in one group of the Equipment delivered to and accepted

by the Owner-Trustee as is also provided in Item 2 of Annex A hereto. The term "Closing Date" with respect to any Group (as hereinafter defined) shall be such date as is specified by the Lessee in accordance with Item 2 of Annex A hereto by six days' written notice thereof with the concurrence of the Owner-Trustee, the Assignee and the Builder or Builders of such Group of Equipment, but in no event shall such Date be later than June 30, 1978. Such notice shall specify the aggregate Purchase Price of such Group and a copy thereof shall be sent to the Builder or the Builders of such Group, the Assignee and the Owner-Trustee by the Lessee. The term "Group", as used herein, shall mean the group of units of Equipment being settled for on any Closing Date. The place of each closing shall be determined by mutual agreement among the parties hereto. Five business days prior to the Closing Date with respect to a Group of Equipment, the Builder or Builders thereof shall present to the Owner-Trustee and the Lessee the invoices for the Equipment to be settled for. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in New York, New York, Salt Lake City, Utah, or Baltimore, Maryland, are authorized or obligated to remain closed.

4.3. *Indebtedness of Owner-Trustee to Vendor.* Subject to the terms of this Agreement, the Owner-Trustee hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay in cash or immediately available funds to the Vendor at such place as the Vendor may designate, the Purchase Price of the Equipment, as follows:

(a) on the Closing Date with respect to each Group, an amount equal to 36.05% of the aggregate Purchase Price of the units of Equipment in such Group; and

(b) in 30 semiannual instalments, as hereinafter provided, an amount equal to the aggregate Purchase Price of the units of Equipment for which settlement is then being made, less the aggregate amount paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph (said portion of the Purchase Price payable in instalments under this subparagraph (b) being hereinafter called the Conditional Sale Indebtedness).

4.4. *Conditional Sale Indebtedness; Payment Dates; Interest.* (1) The instalments of the Conditional Sale Indebtedness shall be payable semiannually on January 5 and July 5 in each year, commencing July 5, 1978, to and including January 5, 1993, each such date being hereinafter called a Payment Date. The unpaid balance of the Conditional Sale Indebtedness shall bear interest from the Closing Date in respect of which such indebtedness was incurred at the rate of 8.125% per annum. Interest on the unpaid balance of the Conditional Sale Indebtedness shall be payable (i) on January 5, 1978, to the extent accrued from the Closing Date in respect of which such indebtedness was incurred to, but not including, January 5, 1978 and (ii) on each Payment Date, to the extent accrued thereafter. The amounts of Conditional Sale Indebtedness payable on each Payment Date shall be calculated so that the amount and allocation of principal and interest payable on each Payment Date shall be substantially in proportion to the amount and allocation of principal and interest on such Payment Date set forth in Schedule I hereto (subject to the provisions of Article 7 hereof) and the aggregate of such instalments of principal and interest shall completely amortize the Conditional Sale Indebtedness at maturity. The Owner-Trustee will furnish to the Vendor and the Lessee promptly after the last Closing Date a schedule, in such number of counterparts as shall be requested by the Vendor, showing the respective amounts of principal and interest payable on each Payment Date.

(2) If any of the dates for payment of principal or interest is not a business day, such payment shall be payable on the next succeeding business day, and no interest shall be payable thereon from and after the nominal date for payment thereof to such next succeeding business day.

4.5. *Calculation of Interest.* Interest under this Agreement shall be calculated on the basis of a 360-day year of twelve 30-day months.

4.6. *Penalty Interest.* The Owner-Trustee will pay interest, to the extent legally enforceable, at the rate of 9.125% per annum (hereinafter called the Penalty Rate) upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof or such lesser amount as shall be legally enforceable, anything herein to the contrary notwithstanding.

4.7. *Currency of Payment.* All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. Except as provided in Article 7 hereof, the Owner-Trustee shall not have the privilege of prepaying any portion of the Conditional Sale Indebtedness prior to the date it becomes due.

4.8. *Liability of Owner-Trustee to "Income and Proceeds from Equipment"; Meaning Thereof; Limitation on Execution of Judgments.* Notwithstanding any other provision of this Agreement (including, but not limited to, any provision of Articles 16 and 17 hereof, except as set forth in this paragraph 4.8), but not limiting the effect of Article 23 hereof, it is understood and agreed by the Vendor that the liability of the Owner-Trustee or any assignee of the Owner-Trustee for all payments to be made by it under and pursuant to this Agreement, with the exception only of the payments to be made pursuant to subparagraph (a) of paragraph 4.3 of this Article and the proviso to paragraph 13.3 of Article 13 hereof, shall not exceed an amount equal to, and shall be payable only out of, the "income and proceeds from the Equipment", and such payments shall be made by the Owner-Trustee only to the extent that the Owner-Trustee or any assignee of the Owner-Trustee shall have actually received sufficient "income and proceeds from the Equipment" to make such payments. Except as provided in the preceding sentence, the Vendor agrees that the Owner-Trustee shall have no personal liability to make any payments under this Agreement whatsoever except from the "income and proceeds from the Equipment" to the extent actually received by the Owner-Trustee or any assignee of the Owner-Trustee. In addition, the Vendor agrees that the Owner-Trustee

(i) makes no representation or warranty as to, and is not responsible for, the due execution, validity, sufficiency or enforceability of the Lease, in so far as it relates to the Lessee (or any document relative thereto) or of any of the Lessee's obligations thereunder, and

(ii) shall not be responsible for the performance or observance by the Lessee of any of its agreements, representations, indemnities, obligations or other undertakings under the Lease, it being understood that as to all such matters the Vendor will look solely to the Vendor's rights under this Agreement against the Equipment and to the Vendor's rights under the Lease and the Lease Assignment against the Lessee and the Equipment.

As used herein the term "income and proceeds from the Equipment" shall mean

(i) if one of the events of default specified in paragraph 16.1 of Article 16 hereof shall have occurred and while it shall be continuing, so much of the following amounts as are indefeasibly received by the Owner-Trustee or any assignee of the Owner-Trustee at any time after any such event and during the continuance thereof: (a) all amounts of rental and amounts in respect of Casualty Occurrences (as defined in paragraph 7.2 of Article 7 hereof) paid for or with respect to the Equipment pursuant to the Lease and any and all other payments received under §13 or any other provision of the Lease and (b) any and all payments or proceeds received for or with respect to the Equipment as the result of the sale, lease or other disposition thereof, after deducting all costs and expenses of such sale, lease or other disposition, and

(ii) at any other time only that portion of the amounts referred to in the foregoing clauses (a) and (b) (not including amounts paid by the Lessee to the Owner-Trustee as reimbursement of sums paid by the Owner-Trustee on account of prior defaults under subparagraph A of §13.1 of the Lease) as are indefeasibly received by the Owner-Trustee or any assignee of the Owner-Trustee and as shall equal the portion of the Conditional Sale Indebtedness (including prepayments thereof required in respect of Casualty Occurrences) and/or interest thereon due and payable on the date such amounts were required to be paid pursuant to the Lease or as shall equal any other payments then due and payable under this Agreement,

it being understood that "income and proceeds from the Equipment" shall in no event include amounts referred to in the foregoing clauses (a) and (b) which were received by the Owner-Trustee or any assignee of the Owner-Trustee prior to the existence of such an event of default which exceeded the amounts required to discharge that portion of the Conditional Sale Indebtedness (including prepayments thereof

required in respect of Casualty Occurrences) and/or interest thereon due and payable on the date on which amounts with respect thereto received by the Owner-Trustee or any assignee of the Owner-Trustee were required to be paid to it pursuant to the Lease or which exceeded any other payments due and payable under this Agreement at the time such amounts were payable under the Lease. Nothing contained herein limiting the liability of the Owner-Trustee shall derogate from the right of the Vendor to proceed against the Equipment as provided for herein for the full unpaid Purchase Price of the Equipment and interest thereon and all other payments and obligations hereunder. Notwithstanding anything to the contrary contained in Article 16 or 17 hereof, the Vendor agrees that in the event it shall obtain a judgment against the Owner-Trustee for an amount in excess of the amounts payable by the Owner-Trustee pursuant to the limitations set forth in this paragraph, it will, accordingly, limit its execution of such judgment to amounts payable pursuant to the limitations set forth in this paragraph.

ARTICLE 5

SECURITY INTEREST IN THE EQUIPMENT

5.1. *Vendor to Retain Security Interest; Accessories are Part of Equipment.* The Vendor shall and hereby does retain a security interest in the Equipment until the Owner-Trustee shall have made all its payments under this Agreement and shall have kept and performed all its agreements herein contained, notwithstanding any provision of this Agreement limiting the liability of the Owner-Trustee and notwithstanding the delivery of the Equipment to and the possession and use thereof by the Owner-Trustee and the Lessee as provided in this Agreement and the Lease. Such retention of security interest is solely to secure performance by the Owner-Trustee of its obligations under this Agreement (without regard to any provision of this Agreement limiting the liability of the Owner-Trustee), and, subject thereto, ownership of the Equipment shall be and remain in the Owner-Trustee subject to such performance. Any and all parts installed on and additions and replacements made to any unit of the Equipment (i) which are not readily removable without causing material damage to such unit, (ii) the cost of which is included in the Purchase Price of such unit or (iii) which are required for the operation or use of such unit by the Association of American Railroads and/or the Interstate Commerce Commission, the United States Department of Transportation or any other applicable regulatory body, shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

5.2. *Obligations Upon Payment of Conditional Sale Indebtedness.* Except as otherwise specifically provided in Article 7 hereof, when and only when the Vendor shall have been paid the full indebtedness in respect of the Purchase Price of the Equipment, together with interest and all other payments as herein provided, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Owner-Trustee without further transfer or action on the part of the Vendor. However, the Vendor, if so requested by the Owner-Trustee at that time, will (a) execute an instrument releasing its security interest in the Equipment and transferring such interest to the Owner-Trustee or upon its order, free of all liens, security interests and other encumbrances created or retained hereby and deliver such instrument to the Owner-Trustee at its address referred to in Article 22 hereof, (b) execute and deliver at the same place, for filing, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Owner-Trustee to the Equipment and (c) pay to the Owner-Trustee any money paid to the Vendor pursuant to Article 7 hereof and not theretofore applied as therein provided. The Owner-Trustee hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such instrument or instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file such certificate within a reasonable time after written demand by the Owner-Trustee.

ARTICLE 6
TAXES

6.1. *Indemnification of Nonincome Taxes.* Whether or not any of the transactions contemplated hereby are consummated, the Owner-Trustee agrees to pay, and to indemnify and hold the Vendor harmless from, all taxes, assessments, fees and charges of any nature whatsoever, together with any penalties, fines, additions to tax or interest thereon, howsoever imposed, whether levied or imposed upon the Owner-Trustee, the Owners, the Vendor, the Lessee, the trust estate created by the Trust Agreement or otherwise, by any Federal, state or local government or governmental subdivision in the United States or by any foreign country or subdivision thereof, upon or with respect to: any unit of the Equipment or any part thereof; the purchase, ownership, delivery, leasing, possession, use, operation, transfer of title, return or other disposition thereof; the rentals, receipts or earnings arising therefrom; or this Agreement, the Assignment, the Lease, the Lease Assignment, any payment made pursuant to any such agreement, or the property, the income or other proceeds received with respect to the Equipment (all such taxes, assessments, fees, charges, penalties, fines, additions to tax and interest imposed as aforesaid being hereinafter called "Taxes"); *excluding, however:* (i) Taxes of the United States or any state or political subdivision thereof and (if and to the extent that any person indemnified hereunder is entitled to a credit therefor against its United States Federal income taxes) of any foreign country or subdivision thereof, imposed on or measured solely by the net income or excess profits of the Vendor, or franchise taxes measured by net income of the Vendor, or gross receipts taxes other than gross receipts taxes in the nature of sales or use taxes, and other than Taxes arising out of or imposed in respect of the receipt of indemnification payments pursuant to this Agreement, provided that Taxes of any foreign country or subdivision thereof incurred as a result of the indemnified party being taxed by such foreign country or subdivision on its world-wide income without regard to the transactions contemplated by this Agreement shall be excluded in all cases, whether or not the indemnified party is entitled to a credit against its United States Federal income taxes; (ii) any Taxes imposed on or measured by any fees or compensation received by the Vendor; and (iii) Taxes which are imposed on or measured solely by the net income of the Vendor if and to the extent that such Taxes are in substitution for or reduce the Taxes payable by any other person which the Owner-Trustee has not agreed to pay or indemnify against pursuant to this Article 6; *provided, however,* that the Owner-Trustee shall not be required to pay any Taxes during the period it may be contesting the same in the manner provided in paragraph 6.2 of this Article 6.

6.2. *Claims; Contests; Refunds.* If claim is made against the Vendor for any Taxes indemnified against under this Article 6, the Vendor shall promptly notify the Owner-Trustee. If reasonably requested by the Owner-Trustee in writing, the Vendor shall, upon receipt of any indemnity satisfactory to it for all costs, expenses, losses, legal and accountants' fees and disbursements, penalties, fines, additions to tax and interest, and at the expense of the Owner-Trustee, contest in good faith the validity, applicability or amount of such Taxes by (a) resisting payment thereof if possible, (b) not paying the same except under protest, if protest is necessary and proper, and (c) if payment is made, using reasonable efforts to obtain a refund thereof in appropriate administrative or judicial proceedings, or both. The Owner-Trustee may also contest, at its own expense, the validity, applicability or amount of such Taxes in the name of the Vendor; provided that, no proceeding or actions relating to such contest shall be commenced (nor shall any pleading, motion, brief or other paper be submitted or filed in the name of the Vendor in any such proceeding or action) without the prior written consent of the Vendor. If the Vendor shall obtain a refund of all or any part of such Taxes previously reimbursed by the Owner-Trustee in connection with any such contest or an amount representing interest thereon, the Vendor shall pay the Owner-Trustee the amount of such refund or interest net of expenses; *provided; however,* that no event of default set forth in paragraph 16.1 of Article 16 hereof and no event which with notice or lapse of time or both would constitute such an event of default shall have occurred and be continuing.

6.3. *Reports or Returns.* In case any report or return is required to be made with respect to any obligation of the Owner-Trustee under or arising out of this Article 6, the Owner-Trustee shall either make such report or return in such manner as will show the interests of the Vendor in the Equipment or shall promptly notify the Vendor of such requirement and shall make such report or return in such manner as

shall be satisfactory to the Vendor. All costs and expenses (including legal and accountants' fees) of preparing any such return or report shall be borne by the Owner-Trustee.

6.4. *Survival.* All of the obligations of the Owner-Trustee under this Article 6 shall survive and continue, notwithstanding payment in full of all amounts due under this Agreement.

6.5. *Article 6 Subject to Articles 4 and 23.* The obligations of the Owner-Trustee under this Article 6 are subject to the limitations contained in paragraph 4.8 of Article 4 hereof and in Article 23 hereof.

ARTICLE 7
MAINTENANCE; CASUALTY OCCURRENCES

7.1. *Maintenance.* Subject to the limitations contained in Article 23 hereof, the Owner-Trustee shall, at its own cost and expense, maintain and keep each unit of the Equipment in good operating order and repair, ordinary wear and tear excepted.

7.2. *Casualty Occurrences.* In the event that any unit of Equipment shall be or become worn out, lost, stolen, destroyed or, in the opinion of the Lessee, irreparably damaged from any cause whatsoever or the Purchase Price of any unit shall have been refunded by a Builder pursuant to such Builder's patent indemnities therefor as set forth in Item 4 of Annex A hereto or any unit shall be taken or requisitioned by condemnation or otherwise by the United States Government for a stated period which shall exceed the then remaining term of the Lease or by any other governmental entity resulting in loss of possession by the Lessee for a period of 90 consecutive days during the term of the Lease (such occurrences being herein called Casualty Occurrences), the Owner-Trustee shall, promptly after it shall have received notice from the Lessee or otherwise been informed that such unit has suffered a Casualty Occurrence, cause the Vendor to be fully informed in regard thereto. On the next succeeding Casualty Payment Date (as defined in the Lease), the Owner-Trustee shall, subject to the limitations contained in paragraph 4.8 of Article 4 hereof, pay to the Vendor a sum equal to the Casualty Value (as hereinafter defined in this Article 7) of such unit suffering a Casualty Occurrence as of such Casualty Payment Date, together with an amount equal to accrued interest thereon (as hereinafter provided) and shall file, or cause to be filed, with the Vendor a certificate setting forth the Casualty Value of such unit. Any money paid to the Vendor pursuant to this paragraph shall be applied on the date of such payment to prepay without penalty or premium, ratably in accordance with the unpaid balance of each instalment, the Conditional Sale Indebtedness, together with all interest accrued on the portion of the Conditional Sale Indebtedness being prepaid. The Owner-Trustee shall promptly cause to be furnished to the Vendor and the Lessee a revised schedule of payments of principal and interest thereafter to be made, in such number of counterparts as the Vendor and the Lessee may request, calculated as provided in paragraph 4.4 of Article 4 hereof.

7.3. *Obligations Upon Payment of Casualty Value.* Upon payment by the Owner-Trustee to the Vendor of the Casualty Value of any unit of the Equipment having suffered a Casualty Occurrence, absolute right to the possession of, title to and property in such unit shall pass to and vest in the Owner-Trustee without further transfer or action on the part of the Vendor, except that the Vendor, if requested by the Owner-Trustee, will execute and deliver to the Owner-Trustee, at the expense of the Owner-Trustee, an appropriate instrument confirming such passage to the Owner-Trustee of all the Vendor's right, title and interest, and the release of the Vendor's security interest, in such unit, in recordable form, in order that the Owner-Trustee may make clear upon the public records the title of the Owner-Trustee to such unit.

7.4. *Casualty Value.* The Casualty Value of each unit of the Equipment suffering a Casualty Occurrence shall be deemed to be that portion of the original Purchase Price thereof referred to in paragraph 4.3(b) of Article 4 hereof remaining unpaid on the date as of which such Casualty Value shall be paid (without giving effect to any prepayment or prepayments theretofore made under this Article with respect to any other unit). For the purpose of this paragraph, each payment of the Purchase Price made pursuant to Article 4 hereof shall be deemed to be a payment with respect to each unit of Equipment in like proportion as the original Purchase Price of such unit bears to the aggregate original Purchase Price of all the Equipment.

ARTICLE 8

INSURANCE PROCEEDS AND CONDEMNATION PAYMENTS

If the Vendor shall receive any insurance proceeds or condemnation payments in respect of such units suffering a Casualty Occurrence, the Vendor shall promptly pay such insurance proceeds or condemnation payments to the Owner-Trustee; *provided, however,* that no event of default shall have occurred and be continuing hereunder and the Owner-Trustee shall have made payment of the Casualty Value of such units, together with accrued interest thereon, to the Vendor. All insurance proceeds received by the Vendor in respect of any unit or units of Equipment not suffering a Casualty Occurrence shall be paid to the Owner-Trustee upon proof satisfactory to the Vendor that any damage to such unit in respect of which such proceeds were paid has been fully repaired.

ARTICLE 9

REPORTS AND INSPECTIONS

On or before March 31 in each year, commencing with the year 1979, the Owner-Trustee shall, subject to the provisions of Article 23 hereof, cause to be furnished to the Vendor an accurate statement (a) setting forth as at the preceding December 31 the total number, description and road numbers of all units of the Equipment then subject to this Agreement, the total number, description and road numbers of all units of the Equipment 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 repair (other than running repairs) and setting forth such other information regarding the condition and state of repair of the Equipment as the Vendor may reasonably request and (b) stating that, in the case of all Equipment repaired or repainted during the period covered by such statement, the numbers and markings required by Article 10 hereof have been preserved or replaced. The Vendor shall have the right, by its agents, to inspect the Equipment and the Owner-Trustee's and the Lessee's records with respect thereto at such reasonable times as the Vendor may request during the term of this Agreement.

ARTICLE 10

MARKING OF EQUIPMENT

10.1. *Marking of Equipment.* The Owner-Trustee will cause each unit of the Equipment to be kept numbered with the road number of the Lessee as set forth in Annex B hereto, or, in the case of Equipment not there listed, such road number as shall be set forth in any amendment or supplement hereto extending this Agreement to cover such Equipment, 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 Security Agreement filed under the Interstate Commerce Act, Section 20c", or other appropriate words designated by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Vendor's interest in the Equipment and its rights under this Agreement. The Owner-Trustee will not permit any such unit to be placed in operation or exercise any control or dominion over the same until such markings shall have been made thereon and will replace or will cause to be replaced promptly any such markings which may be removed, obliterated, defaced or destroyed. The Owner-Trustee will not permit the road number of any unit of the Equipment to be changed except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Vendor and filed, recorded and deposited by or on behalf of the Owner-Trustee in all public offices where this Agreement shall have been filed, recorded and deposited.

10.2. *No Designations of Ownership.* Except as provided in paragraph 10.1 of this Article 10, the Owner-Trustee will not allow the name of any person, association or corporation to be placed on any unit of the Equipment as a designation that might be interpreted as a claim of ownership; *provided, however,* that the Equipment may be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates.

10.3. *Article 10 Subject to Article 23.* The obligations of the Owner-Trustee under this Article are subject to the limitations contained in Article 23 hereof.

ARTICLE 11

COMPLIANCE WITH LAWS AND RULES

11.1. *Compliance with Laws and Rules.* During the term of this Agreement, the Owner-Trustee will comply, and will cause every lessee or user of the Equipment to comply, in all respects (including, without limitation, with respect to the use, maintenance and operation of the Equipment) with all laws of the jurisdictions in which its or such lessee's or user's operations involving the Equipment may extend, with the interchange rules of the Association of American Railroads 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 Equipment, to the extent that such laws and rules affect the title, operation or use of the Equipment, and in the event that such laws or rules require any alteration, replacement or addition of or to any part on any unit of the Equipment, the Owner-Trustee will or will cause the Lessee to conform therewith at no expense to the Vendor; *provided, however,* that the Owner-Trustee or the Lessee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor under this Agreement.

11.2. *Article 11 Subject to Article 23.* The obligations of the Owner-Trustee under this Article are subject to the limitations contained in Article 23 hereof.

ARTICLE 12

POSSESSION AND USE

12.1. *Possession and Use of Equipment by Owner-Trustee.* The Owner-Trustee, so long as an event of default shall not have occurred and be continuing under this Agreement, shall be entitled, from and after delivery of the Equipment by a Builder to the Owner-Trustee, to the possession of the Equipment and the use thereof, but only upon and subject to all the terms and conditions of this Agreement.

12.2. *Lease Permitted; Lease Subordinate; No Amendment or Termination.* The Owner-Trustee simultaneously is leasing the Equipment to the Lessee as provided in the Lease, and the rights of the Lessee and its permitted assigns under the Lease shall be subordinated and junior in rank to the rights, and shall be subject to the remedies, of the Vendor under this Agreement. The Lease shall not be amended in any material respect, or terminated (except in accordance with its terms) without the prior written consent of the Vendor.

12.3. *Other Leases of Equipment.* Subject to the rights of the Lessee under the Lease, the Owner-Trustee may also lease the Equipment to any other railroad company, but only with the prior written consent of the Vendor, which consent may be subject to the conditions, among others, that (i) such lease shall provide that the rights of such lessee are made expressly subordinate to the rights and remedies of the Vendor under this Agreement, (ii) such lessee shall expressly agree not to assign or permit the assignment of any unit of the Equipment to service involving the regular operation and maintenance thereof outside the United States of America and (iii) such lease shall be assigned to the Vendor as security on terms consistent with those set forth in Annex D hereto, and in any event satisfactory to the Vendor.

ARTICLE 13

PROHIBITION AGAINST LIENS

13.1. *Owner-Trustee to Discharge Liens.* The Owner-Trustee will pay or discharge any and all sums claimed by any party from, through or under the Owner-Trustee or its successors or assigns which, if unpaid, might become a lien, charge or security interest on or with respect to the Equipment, or any unit thereof, equal or superior to the Vendor's security interest therein and will promptly discharge any such

lien, charge or security interest which arises; but the Owner-Trustee shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the security interest of the Vendor in or to the Equipment or otherwise under this Agreement. Any amounts paid by the Vendor in discharge of liens, charges or security interests upon the Equipment shall be secured by and under this Agreement.

13.2. *No Breach for Certain Liens.* This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

13.3. *Article 13 Subject to Article 23 Except in Certain Instances.* The obligations of the Owner-Trustee under this Article 13 are subject to the limitations contained in Article 23 hereof; *provided, however,* that the Owner-Trustee will pay or discharge any and all claims, liens, charges or security interests claimed by any party from, through or under the Owner-Trustee or the Owners or the successors or assigns of any of them, not arising out of the transactions contemplated hereby or in other documents mentioned herein (but including tax liens arising out of the receipt of the income and proceeds from the Equipment), equal or superior to the Vendor's security interest therein; but the Owner-Trustee shall not be required to pay or discharge any such claim, lien, charge or security interest so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not adversely affect the security interest of the Vendor in or to the Equipment or otherwise under this Agreement.

ARTICLE 14
INDEMNITIES AND WARRANTIES

14.1. *Indemnification.* The Owner-Trustee shall pay, and shall protect, indemnify and hold the Vendor and any assignee hereof, and their respective successors, assigns, agents and servants (hereinafter called Indemnified Persons), harmless from and against any and all causes of action, suits, penalties, claims, demands or judgments, of any nature whatsoever which may be imposed on, incurred by or asserted against any Indemnified Person (including any or all liabilities, obligations, damages, costs, disbursements, expenses [including without limitation attorneys' fees and expenses of any Indemnified Person] relating thereto) in any way relating to or arising or alleged to arise out of this Agreement or the Equipment, including without limitation those in any way relating to or arising or alleged to arise out of (i) the manufacture, construction, purchase, acceptance, rejection, ownership, delivery, nondelivery, lease, possession, use, operation, condition, sale, return or other disposition of any unit of Equipment or portion thereof, (ii) any latent and other defects whether or not discoverable by the Owner-Trustee or the Vendor, (iii) any claim for patent, trademark or copyright infringement, (iv) any claims based on strict liability in tort, (v) any injury to or the death of any person or any damage to or loss of property on or near the Equipment or in any manner growing out of or concerned with, or alleged to grow out of or be connected with, the ownership, use, replacement, adaptation or maintenance of the Equipment or of any other equipment in connection with the Equipment (whether owned or under the control of the Owner-Trustee, the Lessee or any other person) or resulting or alleged to result from the condition of any thereof; (vi) any violation, or alleged violation, of any provision of this Agreement or of any agreement, law, rule, regulation, ordinance or restriction, affecting or applicable to the Equipment or the leasing, ownership, use, replacement, adaptation or maintenance thereof; or (vii) any claim arising out of the Vendor's retention of a security interest under this Agreement or the Lease Assignment; except that the Owner-Trustee shall not be liable to a Builder in respect of any of the foregoing matters to the extent liability in respect thereof arises from any tort, breach of warranty or failure to perform any covenant hereunder of such Builder or is covered by such Builder's patent indemnification referred to in paragraph 14.4 of this Article 14. The Owner-Trustee shall be obligated under this Article 14, irrespective of whether any Indemnified Person shall also be indemnified with respect to the same manner under any other agreement by any other person, and the Indemnified Person seeking to enforce the indemnification may proceed directly against the

Owner-Trustee under this Article 14 without first resorting to any such other rights of indemnification. In case any action, suit or proceeding is brought against any Indemnified Person in connection with any claim indemnified against hereunder, the Owner-Trustee may and, upon such Indemnified Person's request, will at the Owner-Trustee's expense resist and defend such action, suit or proceeding or cause the same to be resisted or defended by counsel selected by the Owner-Trustee and approved by such Indemnified Person; and, in the event of any failure by the Owner-Trustee to do so, the Owner-Trustee shall pay all costs and expenses (including without limitation attorneys' fees and expenses) incurred by such Indemnified Person in connection with such action, suit or proceeding. In the event the Owner-Trustee is required to make any payment under this Article 14, the Owner-Trustee shall pay such Indemnified Person an amount which, after deduction of all taxes required to be paid by such Indemnified Person 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 in the sole discretion of the Indemnified Person), shall be equal to the amount of such payment. The Vendor and the Owner-Trustee 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 any indemnities as contained in this Article 14 by the Owner-Trustee, and provided that no event of default set forth in paragraph 16.1 of Article 16 hereof (or other event which with lapse of time or notice or both would constitute such an event of default) shall have occurred and be continuing, it shall be subrogated to any right of such Indemnified Person in respect of the matter against which indemnity has been given. Any payments received by such Indemnified Person from any person (other than the Owner-Trustee) as a result of any matter with respect to which such Indemnified Person has been indemnified by the Lessee pursuant to the Lease shall be paid over to the Owner-Trustee to the extent necessary to reimburse the Owner-Trustee for indemnification payments previously made in respect of such matter.

14.2. *Survival; No Subrogation.* The indemnities contained in this Article 14 shall survive the expiration or termination of this Agreement with respect to all events, facts, conditions or other circumstances occurring or existing prior to such expiration or termination and are expressly made for the benefit of, and shall be enforceable by, any Indemnified Person. None of the indemnities in this Article 14 shall be deemed to create any rights of subrogation in any insurer or third party against the Owner-Trustee therefor, from or under any Indemnified Person, whether because of any claim paid or defense provided for the benefit thereof or otherwise.

14.3. *Owner-Trustee Not Released if Equipment Damaged or Lost.* The Owner-Trustee will bear the responsibility for and risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of any unit of or all the Equipment.

14.4. *Warranties of Builders; Patent Indemnities; Subject to Article 23.* The agreement of the parties relating to the Builders' warranties of material and workmanship and the agreement of the parties relating to patent indemnification are set forth in Items 3 and 4 of Annex A hereto. The obligations of the Owner-Trustee pursuant to paragraphs 14.1, 14.2 and 14.3 of this Article are subject to the provisions of Article 23 hereof.

ARTICLE 15
ASSIGNMENTS

15.1. *Assignment of Owner-Trustee.* Except as provided in Article VII of the Trust Agreement, the Owner-Trustee will not (a) except as provided in Article 12 hereof, transfer the right to possession of any unit of the Equipment or (b) sell, assign, transfer or otherwise dispose of its rights under this Agreement.

15.2. *Assignment by Vendor.* All or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Owner-Trustee, may be assigned by the Vendor and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve a Builder from, any of the obligations of such Builder to construct and deliver the Equipment in accordance herewith or to respond to its warranties and

indemnities referred to in Article 14 hereof or relieve the Owner-Trustee of its obligations to such Builder contained in Articles 2, 3, 4, 6 and 14 hereof, Annex A hereto and this Article 15, or any other obligation which, according to its terms or context, is intended to survive an assignment.

15.3. *Notice of Assignment by Vendor.* Upon any such assignment, either the assignor or the assignee shall give written notice to the Owner-Trustee, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee; and such assignee shall, by virtue of such assignment, acquire all the assignor's right, title and interest in and to the Equipment and this Agreement, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Owner-Trustee of the notification of any such assignment, all payments thereafter to be made by the Owner-Trustee under this Agreement shall, to the extent so assigned, be made to the assignee in such manner as it may direct.

15.4. *No Set-Off Against Conditional Sale Indebtedness Upon Assignment.* The Owner-Trustee recognizes that this Agreement will be assigned to the Assignee as provided in the Assignment. The Owner-Trustee expressly represents, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Vendor hereunder, and for the purpose of inducing such acquisition, that the rights of the Assignee to the entire unpaid Conditional Sale Indebtedness in respect of the Purchase Price of the Equipment or such part thereof as may be assigned together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, set-off, counterclaim or recoupment whatsoever by the Owner-Trustee arising out of any breach of any obligation of a Builder with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, set-off, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Owner-Trustee by a Builder. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Owner-Trustee against and only against the Builders.

ARTICLE 16
DEFAULTS

16.1. *Events of Default; Termination of Lease; Declaration of Default; Acceleration of Conditional Sale Indebtedness.* In the event that any one or more of the following events of default shall occur and be continuing, to wit:

(a) the Owner-Trustee shall fail to pay or cause to be paid in full (i) the principal of and interest on the Conditional Sale Indebtedness when payment thereof shall be due hereunder (irrespective of the provisions of Article 4 or 23 hereof or any other provision of this Agreement limiting the liability of the Owner-Trustee) and such default shall continue for 15 days after receipt of notice thereof by the Owner-Trustee and the Owners from the Vendor or any Investor or (ii) any other sum payable by the Owner-Trustee hereunder when payment thereof shall be due (irrespective of the provisions of Article 4 or 23 hereof or any other provision of this Agreement limiting the liability of the Owner-Trustee) and such default shall continue for 15 days after the date such payment is due and payable; or

(b) the Owner-Trustee or the Lessee shall, for more than 45 days after the Vendor shall have demanded in writing performance thereof, fail or refuse to comply with any other covenant, agreement, term or provision of this Agreement (irrespective of the provisions of Article 4 or 23 hereof or any other provision of this Agreement limiting the liability of the Owner-Trustee), the Lease Assignment or any covenant, agreement, term or provision of the Participation Agreement made expressly for the benefit of the Vendor, on its part to be kept and performed or to make provision satisfactory to the Vendor for such compliance; or

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

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

(d) any other proceeding shall be commenced by or against the Owner-Trustee or the Lessee for any relief which includes, or might result in, any modification of the obligations of the Owner-Trustee hereunder or the Lessee under the Lease under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustment of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the obligations of the Owner-Trustee under this Agreement or the Lessee under the Lease), 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 Owner-Trustee under this Agreement or the Lessee under the 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 Owner-Trustee or the Lessee, as the case may be, or for their respective property in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier;

then at any time after the occurrence of such an event of default the Vendor may, upon five days' written notice to the Owner-Trustee and the Lessee and upon compliance with any legal requirements then in force and applicable to such action by the Vendor, (i) subject to the Lessee's rights of possession, use and assignment under §§4 and 15 of the Lease, cause the term of the Lease immediately upon such notice to terminate (and the Owner-Trustee acknowledges the right of the Vendor to terminate the term of the Lease), *provided, however,* that such termination shall not be in derogation of or impair the rights of the Owner-Trustee or the Vendor (under the assignment thereof), as the case may be, to enforce compliance by the Lessee with any of its covenants and agreements under the Lease or to enforce any of its rights and remedies under §13 of the Lease (subject to the Vendor's rights to repossess and sell the Equipment as provided in this Agreement), including the rights of the Owner-Trustee or the Vendor (under the assignment thereof), as the case may be, to sue for and recover damages provided for in §13 of the Lease upon the occurrence of an event of default under the Lease, and/or (ii) declare (hereinafter called a Declaration of Default) the entire unpaid Conditional Sale Indebtedness, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such Declaration of Default at the Penalty Rate to the extent legally enforceable. Upon a Declaration of Default, subject to Article 4 hereof, the Vendor shall be entitled to recover judgment for the entire unpaid balance of the Conditional Sale Indebtedness so payable, with interest as aforesaid, and to collect such judgment out of any property of the Owner-Trustee, subject to the provisions of Articles 4 and 23 hereof, wherever situated. The Owner-Trustee shall promptly notify the Vendor of any event which has come to its attention which constituted, constitutes, or with the giving of notice and/or lapse of time could constitute, an event of default under this Agreement.

16.2. *Waiver of Defaults.* The Vendor may, at its election, waive any such event of default and its consequences and rescind and annul any Declaration of Default or notice of termination of the Lease by notice to the Owner-Trustee and the Lessee in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such event of default had occurred and no Declaration of Default or notice of termination of the Lease had been made or given. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Owner-Trustee that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

ARTICLE 17

REMEDIES

17.1. *Vendor May Take Possession of Equipment.* Subject to the Lessee's rights of possession, use and assignment under §§4 and 15 of the Lease, at any time during the continuance of a Declaration of Default, the Vendor may, and upon such further notice, if any, as may be required for compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Vendor, take or cause to be taken, by its agent or agents, immediate possession of the Equipment, or one or more of the units thereof, without liability to return to the Owner-Trustee any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 17 expressly provided, and may remove the same from possession and use of the Owner-Trustee, the Lessee or any other person and for such purpose may enter upon the premises of the Owner-Trustee or the Lessee or any other premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Owner-Trustee or the Lessee, subject to all mandatory requirements of due process of law.

17.2. *Assembling of Equipment for Vendor.* In case the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall designate a reasonable point or points for the delivery of the Equipment to the Vendor, the Owner-Trustee shall, subject to the provisions of Article 4 and Article 23 hereof, at its own 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 possession thereof to return the unit or units) place such units upon such storage tracks of the Lessee as the Vendor reasonably may designate;

(b) permit the Vendor to store such units on such tracks without charge for insurance, rent or storage until all such units of Equipment have been sold, leased or otherwise disposed of by the Vendor; and

(c) transport the same to any reasonable 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 Vendor.

During any storage period, the Lessee has agreed pursuant to §14.1 of the Lease, at its own cost and expense, to insure, maintain and keep each such unit in good order and repair and to permit the inspection of the Equipment by the Vendor, the Vendor's representatives and prospective purchasers and users. This agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and, the Owner-Trustee acknowledges that upon application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled under the Lease as assignee of the rights of the Owner-Trustee thereunder to a decree against the Lessee requiring specific performance hereof. The Owner-Trustee hereby expressly waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

17.3. *Vendor May Dispose of or Retain Equipment.* At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 17 provided) may, at its election, retain the Equipment in satisfaction of the entire Conditional Sale Indebtedness and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Owner-Trustee and the Lessee by telegram or registered mail, addressed as provided in Article 22 hereof, and to any other persons to whom the law may require notice, within 30 days after such Declaration of Default. In the event that the Vendor should elect to retain the Equipment and no objection is made thereto within the 30-day period described in the second proviso below, all the Owner-Trustee's rights in the Equipment shall thereupon terminate and all payments made by the Owner-Trustee may be retained by the Vendor as compensation for the use of the Equipment; *provided, however,* that if the Owner-Trustee, before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to the Vendor the total unpaid balance of

the Conditional Sale Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Owner-Trustee; *provided, further,* that if the Owner-Trustee, the Lessee or any other persons notified under the terms of this paragraph object in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall not have given notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 17.

17.4. *Vendor May Sell Equipment; Owner-Trustee's Right of Redemption.* Subject to the Lessee's rights of possession, use and assignment under §§4 and 15 of the Lease, at any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon reasonable notice to the Owner-Trustee, the Lessee and any other persons to whom the law may require notice of the time and place, may sell the Equipment, or one or more of the units thereof, free from any and all claims of the Owner-Trustee, the Lessee or any other party claiming from, through or under the Owner-Trustee or the Lessee, at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; *provided, however,* that if, prior to such sale and prior to the making of a contract for such sale, the Owner-Trustee should tender full payment of the total unpaid balance of the Conditional Sale Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale and the Vendor's reasonable attorneys' fees, then upon receipt of such payment, expenses and fees by the Vendor, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Owner-Trustee. The proceeds of such sale or other disposition, less the attorneys' fees and any other expenses incurred by the Vendor in retaking possession of, removing, storing, holding, preparing for sale and selling or otherwise disposing of the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement.

17.5. *Sale of Equipment by Vendor.* Any sale hereunder may be held or conducted at New York, New York, at such time or times as the Vendor may specify (unless the Vendor shall specify a different place or places, in which case the sale shall be held at such place or places as the Vendor may specify), in one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine, so long as such sale shall be in a commercially reasonable manner. The Vendor, the Owner-Trustee or the Lessee may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. The Owner-Trustee and the Lessee shall be given written notice of such sale not less than ten days prior thereto, by telegram or registered mail addressed as provided in Article 22 hereof. In addition, if such sale shall be a private sale (which shall be deemed to mean only a sale where an advertisement for bids has not been published in a newspaper of general circulation or a sale where less than 40 offerees have been solicited in writing to submit bids), it shall be subject to the rights of the Lessee and the Owner-Trustee to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. In the event that the Vendor shall be the purchaser of the Equipment, it shall not be accountable to the Owner-Trustee (except) to the extent of surplus money received as hereinafter provided in this Article 17), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all or any part of sums due to the Vendor hereunder.

17.6. *Effect of Remedies and Powers and Exercise Thereof.* Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity not inconsistent herewith, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any

payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly granted to the Owner-Trustee shall not otherwise alter or affect the Vendor's rights or the Owner-Trustee's obligations hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Owner-Trustee's obligations or the Vendor's rights hereunder with respect to any subsequent payments or default therein.

17.7. *Deficiencies.* If, after applying all sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Owner-Trustee shall, subject to the limitations of paragraph 4.8 of Article 4 and Article 23 hereof, pay the amount of such deficiency to the Vendor upon demand, together with interest thereon from the date of such demand to the date of payment at the Penalty Rate, and, if the Owner-Trustee shall fail to pay such deficiency, the Vendor may bring suit therefor and shall, subject to the limitations of paragraph 4.8 of Article 4 and Article 23 hereof, be entitled to recover a judgment therefor against the Owner-Trustee. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Owner-Trustee.

17.8. *Expenses.* The Owner-Trustee will pay all reasonable expenses, including attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable expenses, including reasonable attorneys' fees, and the amount thereof shall be included in such judgment. The foregoing provisions of this paragraph shall be subject to the limitations set forth in paragraph 4.8 of Article 4 and Article 23 hereof.

17.9. *Remedies Subject to Mandatory Legal Requirements.* The foregoing provisions of this Article 17 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

ARTICLE 18

APPLICABLE STATE LAWS

18.1. *Conflict with State Laws.* Any provision of this Agreement prohibited by any applicable law of any jurisdiction (which is not overridden by applicable federal law) shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Owner-Trustee to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

18.2. *Waiver of Notices.* Except as otherwise provided in this Agreement, the Owner-Trustee, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment, or any one or more units thereof, and any other requirements as to the time, place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of the Vendor's rights and any and all rights of redemption.

ARTICLE 19

RECORDING

Subject to the provisions of Article 23 hereof, the Owner-Trustee will cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto to be filed and recorded in accordance with Section 20c of the Interstate Commerce Act and deposited with the Registrar General of Canada (notice of such deposit to be forthwith given in *The Canada Gazette*) pursuant to Section 86 of the Railway Act of Canada; and the Owner-Trustee will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record any and all further instruments required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Owner-Trustee will promptly furnish to the Vendor certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Vendor.

ARTICLE 20

REPRESENTATIONS AND WARRANTIES OF BUILDERS

Each Builder hereby represents and warrants to the Owner-Trustee, its successors and assigns, that this Agreement is duly authorized by it and lawfully executed and delivered by it for a valid consideration, that, assuming due authorization, execution and delivery by the Owner-Trustee this Agreement is, in so far as such Builder is concerned, a legal, valid and existing agreement binding upon the Builder in accordance with its terms.

ARTICLE 21

ARTICLE AND PARAGRAPH HEADINGS; EFFECT AND MODIFICATION OF AGREEMENT

21.1. *Article and Paragraph Headings for Convenience Only.* All article and paragraph headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

21.2. *Effect and Modification of Agreement.* Except for the Participation Agreement, this Agreement, including the Annexes hereto, exclusively and completely states the rights of the Vendor and the Owner-Trustee with respect to the Equipment and supersedes all other agreements, oral or written, with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized representatives of the Vendor and the Owner-Trustee.

ARTICLE 22

NOTICE

Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed to it by first class mail, postage prepaid, at its chief place of business at the following specified addresses:

(a) to the Owner-Trustee, at 79 South Main Street, Salt Lake City, Utah, 84111, attention of Trust Department, Corporate Trust Division, with copies to BWL, Inc., Suite 2700, One IBM Plaza, Chicago, Illinois, 60611, attention: Manager, Leveraged Leasing; Westinghouse Credit Corporation, 3 Gateway Center, Pittsburgh, Pennsylvania, 15222, attention: Manager, Leveraged Leasing; Toy National Bank, Fourth and Nebraska Streets, Sioux City, Iowa 51102, attention of Vice President Investments; and Comdisco Financial Services, Inc., 530 Bush Street, San Francisco, California 94108.

(b) to each Builder, at the addresses specified in Item 1 of Annex A hereto,

(c) to any assignee of the Vendor, or of the Owner-Trustee, at such address as may have been furnished in writing to the Owner-Trustee, or the Vendor, as the case may be, by such assignee,

or at such other address as may have been furnished in writing by such party to the other parties to this Agreement.

ARTICLE 23

IMMUNITIES; SATISFACTION OF UNDERTAKINGS

23.1. *No Recourse Against Certain Persons.* No recourse shall be had in respect of any obligation due under this Agreement, or referred to herein, against any incorporator, stockholder, director or officer, as such, past, present or future, of the parties hereto or the Owners, whether by virtue of any constitutional provision, statute or rule of law, or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of such incorporators, stockholders, directors or officers, as such, being forever released as a condition of and as consideration for the execution of this Agreement.

23.2. *Satisfaction of Certain Covenants.* The obligations of the Owner-Trustee under paragraph 7.1 of Article 7, paragraphs 17.2, 17.7 and 17.8 of Article 17, and under Articles 6, 9, 10, 11, 13, 14 and 19

hereof and any and all obligations at any time arising thereunder shall be deemed satisfied in full in all respects (except, in the case of Article 13 hereof, as set forth in paragraph 13.3 thereof), and be of no further force or effect in so far as they involve personal liability for money or performance or otherwise of the Owner-Trustee, other than out of "income and proceeds from the Equipment" (as defined in paragraph 4.8 of Article 4 hereof), upon the execution and delivery of the Lease (whether or not the Lease shall thereafter be amended, terminated or otherwise modified and irrespective of the genuineness, validity, regularity or enforceability of the Lease); *provided, however,* that such covenants and obligations shall be deemed covenants of the Owner-Trustee within the meaning of subparagraphs (a) and (b) of paragraph 16.1 of Article 16 hereof (it being the intention of the parties hereto that neither the Owner-Trustee nor any of its properties shall be subject to any liability for any breach or alleged breach by it of any such covenant or obligation except out of the "income and proceeds from the Equipment", but that any such breach may be made the basis of an event of default under said Article 16). No waiver or amendment of the Lessee's undertakings under the Lease shall be effective unless joined in by the Vendor; *provided, however,* that the Vendor shall consent to any agreement in writing between the Lessee and the Owner-Trustee increasing or decreasing the rentals or casualty values payable pursuant to §§3 and 7 of the Lease so long as the amounts payable thereunder are not reduced below those necessary to satisfy the obligations of the Owner-Trustee hereunder, such consent to be given by the Vendor within 30 days of delivery of a copy of any such agreement to the Vendor.

23.3. *No Personal Liability of Owner-Trustee.* 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 Owner-Trustee are each and every one of them made and intended not as personal representations, undertakings and agreements by First Security Bank of Utah, National Association, including its successors and assigns, 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 Trust Estate as such term is used in 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 trust company as trustee under the Trust Agreement; and that no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against said bank or the Owners except as provided in paragraph 13.3 of Article 13 hereof and Section 1.04 of the Trust Agreement or on account of any representation, undertaking or agreement of the Owner-Trustee or the Owners except as provided in paragraph 13.3 of Article 13 hereof and Section 1.04 of the Trust Agreement, either expressed or implied, all such personal liability, if any, being expressly waived and released by the Vendor and by all persons claiming by, through or under the Vendor; *provided, however,* that the Vendor or any person claiming by, through or under any of them, making claim hereunder, may look to said Trust Estate for satisfaction of the same. Nothing contained in this Section 23.3 shall limit, restrict or impair the rights of the Vendor to take all actions to enforce the rights and remedies provided for herein and to bring suit and obtain a judgment against the Owner-Trustee (provided that neither the Owner-Trustee in its fiduciary or individual capacity nor the Owners shall have any personal liability on any such judgment and the satisfaction thereof shall be limited to the Trust Estate, including any interest therein of the Owner-Trustee or the Owners) or to foreclose the lien and security interest created by this Agreement or otherwise realize upon the Trust Estate, including the right to proceed against the Equipment or the Lessee under the Lease.

The Owner-Trustee agrees not to enter into any supplement or amendment of the Trust Agreement except as provided in Section 8.01 thereof as in effect on the date of execution and delivery hereof.

ARTICLE 24

LAW GOVERNING

The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Utah; *provided, however,* that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and Section 86 of the Railway Act of Canada, such additional rights, if any, arising out of the filing, recording or deposit hereof and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited or in which any unit of Equipment shall be located, and such rights, if any, arising out of the marking of Equipment.

ARTICLE 25

EXECUTION

This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. It shall not be necessary that any counterpart be signed by all the parties so long as any counterpart be signed by the Owner-Trustee and one or more Builders. Each Builder shall be bound hereunder, notwithstanding the failure of any other Builder to execute and deliver this Agreement, or perform its obligations hereunder, and this Agreement shall be deemed to be a separate Agreement between the Owner-Trustee and each of the respective Builders. Although this Agreement is dated, for convenience, 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.

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

GENERAL MOTORS CORPORATION
(Electro-Motive Division),

by P.K. Hoglund
Vice President

[CORPORATE SEAL]

Attest: W.A. Thomas
Assistant Secretary

GENERAL ELECTRIC COMPANY,

by

General Manager—Domestic
Locomotive Marketing
Department

[CORPORATE SEAL]

Attest:

Attesting Secretary

FIRST SECURITY BANK OF UTAH,
National Association, not in its individual capacity, but solely as Trustee as aforesaid,

by

Authorized Officer

[SEAL]

Attest:

Authorized Officer

STATE OF UTAH,
COUNTY OF SALT LAKE, } ss.:

On this day of September, 1977, before me personally appeared to me personally known, who, being by me duly sworn, says that he is an Authorized Officer of FIRST SECURITY BANK OF UTAH, National Association, that one of the seals affixed to the foregoing instrument is the seal of said national banking association, that said instrument was signed and sealed on behalf of said national banking association by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said national banking association.

Notary Public

[Notarial Seal]
My Commission expires

STATE OF PENNSYLVANIA,
COUNTY OF ERIE, } ss.:

On this day of September, 1977, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is the General Manager—Domestic Locomotive Marketing Department of GENERAL ELECTRIC COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]
My commission expires

STATE OF ILLINOIS, }
COUNTY OF COOK, } ss.:

On this 23RD day of September, 1977, before me personally appeared R. K. HOGLUND to me personally known, who, being by me duly sworn, says that he is a Vice President of GENERAL MOTORS CORPORATION (Electro-Motive Division), that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]
My Commission expires January 17, 1979

SCHEDULE I

Allocation Schedule of Each $1,000,000 of Conditional Sale Indebtedness Payable In (i) One Interim Payment of Interest Only on January 5, 1978, and (ii) 30 Semi-Annual Instalments Commencing July 5, 1978

Instalment No.		Principal Balance (Before Payment)	Interest Payment	Principal Recovery	Ending Principal
		$	$	$	$
(Interim Payment)	(1/5/78)	1,000,000.00	*	-0-	1,000,000.00
1	(7/5/78)	1,000,000.00	40,625.00**	14,966.86	985,033.14
2	(1/5/79)	985,033.14	40,016.97	15,574.89	969,458.25
3	(7/5/79)	969,458.25	39,384.24	16,207.62	953,250.63
4	(1/5/80)	953,250.63	38,725.81	16,866.05	936,384.58
5	(7/5/80)	936,384.58	38,040.62	17,551.24	918,833.34
6	(1/5/81)	918,833.34	37,327.60	18,264.26	900,569.08
7	(7/5/81)	900,569.08	36,585.62	19,006.24	881,562.84
8	(1/5/82)	881,562.84	35,813.49	19,778.37	861,784.47
9	(7/5/82)	861,784.47	35,009.99	20,581.87	841,202.60
10	(1/5/83)	841,202.60	34,173.85	21,418.01	819,784.59
11	(7/5/83)	819,784.59	33,303.75	22,288.11	797,496.48
12	(1/5/84)	797,496.48	32,398.29	23,193.57	774,302.91
13	(7/5/84)	774,302.91	31,456.05	24,135.81	750,167.10
14	(1/5/85)	750,167.10	30,475.54	25,116.32	725,050.78
15	(7/5/85)	725,050.78	29,455.19	26,136.67	698,914.11
16	(1/5/86)	698,914.11	28,393.38	27,198.48	671,715.63
17	(7/5/86)	671,715.63	27,288.45	28,303.41	643,412.22
18	(1/5/87)	643,412.22	26,138.62	29,453.24	613,958.98
19	(7/5/87)	613,958.98	24,942.08	43,000.06	570,958.92
20	(1/5/88)	570,958.92	23,195.21	44,746.93	526,211.99
21	(7/5/88)	526,211.99	21,377.36	46,564.78	479,647.21
22	(1/5/89)	479,647.21	19,485.67	48,456.47	431,190.74
23	(7/5/89)	431,190.74	17,517.12	50,425.02	380,765.72
24	(1/5/90)	380,765.72	15,468.61	52,473.53	328,292.19
25	(7/5/90)	328,292.19	13,336.87	54,605.27	273,686.92
26	(1/5/91)	273,686.92	11,118.53	56,823.61	216,863.31
27	(7/5/91)	216,863.31	8,810.07	59,132.07	157,731.24
28	(1/5/92)	157,731.24	6,407.83	61,534.31	96,196.93
29	(7/5/92)	96,196.93	3,908.00	64,034.14	32,162.79
30	(1/5/93)	32,162.79	1,306.61	32,162.79	0.00

* Interest only on the Conditional Sale Indebtedness shall be payable at the rate of 8.125% per annum to the extent accrued on January 5, 1978.

** This amount will be lower if all the Equipment is not delivered and settled for on or before January 5, 1978.

Item 1: General Motors Corporation (Electro-Motive Division), a Delaware corporation, having an address at La Grange, Illinois 60525 (hereinafter called EMD). General Electric Company, a New York corporation, having an address at 2901 East Lake Road, Erie, Pennsylvania 16531 (hereinafter called GE) (EMD and GE hereinafter being collectively called the Builders).

Item 2: The Schedule A Equipment shall be settled for in no more than three Groups: the first Group shall be settled for on or after December 7, 1977; the second Group on or after December 21, 1977; and the third Group on January 5, 1978.

The Schedule B Equipment shall be settled for in one Group of Equipment on or after January 5, 1978, and on or before June 30, 1978.

Item 3: (a) EMD warrants that the Equipment manufactured by it hereunder is of the kind and quality described in, or will be built in accordance with, the Specifications referred to in Article 2 of the Conditional Sale Agreement to which this Annex A is attached (hereinafter in this Annex A called this Agreement) and is suitable for the ordinary purposes for which such Equipment is used and warrants each unit of such Equipment to be free from defects in material and workmanship which may develop under normal use and service within two years from date of delivery of such unit or before such unit has been operated 250,000 miles, whichever event shall first occur. EMD agrees to correct such defects, which examination shall disclose to EMD's satisfaction to be defective, by repair or replacement F.O.B. factory and such correction shall constitute fulfillment of EMD's obligation with respect to such defect under this warranty.

EMD warrants specialties not of its own specification or design to the same extent that the suppliers of such specialties warrant such items to EMD.

EMD further agrees with the Owner-Trustee that neither the inspection as provided in Article 3 of this Agreement, nor any examination, nor the acceptance of any units of the Equipment as provided in said Article 3 shall be deemed a waiver or modification by the Owner-Trustee of any of its rights under this Item 3(a).

(b) GE warrants to the Owner-Trustee that each unit of Equipment manufactured by it hereunder will be free from defects in material, workmanship and title under normal use and service, and will be of the kind and quality designated or described in the Specifications referred to in Article 2 of this Agreement. The foregoing warranty is exclusive and in lieu of all other warranties, whether written, oral, implied or statutory (except as to title). NO WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR PURPOSE SHALL APPLY. If it appears within two (2) years from the date of shipment by GE, or within 250,000 miles of operation, whichever event shall first occur, that the Equipment delivered by GE under this Agreement does not meet the warranties specified above, and the Owner-Trustee notifies GE promptly, GE, after verification as to condition and usage, shall correct any defect including nonconformance with the Specifications, at its option, either by repairing any defective part or parts made available to GE, or by making available at GE's plant or warehouse, a repaired or replacement part. If requested by GE, the Owner-Trustee will ship the defective part or parts, with shipping charges prepaid, to the plant or warehouse designated by GE. The foregoing shall constitute the sole remedy of the Owner-Trustee and the sole liability of GE.

The liability of GE to the Owner-Trustee (except as to title) arising out of the supplying of any unit of Equipment hereunder, or its use, whether on warranty, contract or negligence, shall not in any case exceed the cost of correcting defects in the Equipment as herein provided, and upon the expiration of the warranty period specified above, all such liability shall terminate. GE shall

have no liability for any unit of Equipment or part thereof which becomes defective by reason of improper storage or application, misuse, negligence, accident or improper operation, maintenance, repairs or alterations on the part of the Owner-Trustee, or any third party other than GE. In no event, whether as a result of breach of contract, warranty, tort (including negligence) or otherwise, shall the Builder or its suppliers be liable for any special, consequential, incidental or penal damages including, but not limited to, loss of profits or revenues, loss of the use of the Equipment or any associated equipment, damage to the associated equipment, cost of capital, cost of substitute products, facilities, services or replacements, downtime costs, or claims of customers of the Owner-Trustee, the Owners or the Lessee for such damages.

It is understood that GE has the right to make any changes in design and add improvements to equipment at any time without incurring any obligations to install, at GE's expense, the same on other equipment sold by GE.

THERE ARE NO WARRANTIES WITH RESPECT TO MATERIAL AND WORKMANSHIP, EXPRESSED OR IMPLIED, MADE BY THE BUILDERS EXCEPT THE WARRANTIES SET OUT ABOVE.

Item 4: (a) EMD shall defend any suit or proceeding brought against the Owner-Trustee, the Lessee and/or each assignee of EMD's rights under this Agreement so far as the same is based on a claim that the Equipment of EMD's specification, or any part thereof, furnished under this Agreement constitutes an infringement of any patent, if notified promptly in writing and given authority, information and assistance (at EMD's expense) for the defense of same, and EMD shall pay all damages and costs awarded therein against the Owner-Trustee, the Lessee and/or any such assignee.

In case any unit of such Equipment, or any part thereof, is in such suit held to constitute infringement and the use of such unit or part is enjoined, EMD shall at its option and at its own expense either procure for the Owner-Trustee, the Lessee and any such assignee the right to continue using such unit or part, or replace the same with noninfringing equipment subject to this Agreement, or modify it so it becomes noninfringing, or remove such unit and refund the Purchase Price and the transportation and installation costs thereof. If the Purchase Price is so refunded, such refund shall be made to the assignee of EMD's rights under this Agreement if this Agreement has been so assigned, which refund, to the extent of the unpaid Conditional Sale Indebtedness, shall be applied in like manner as payments in respect of Casualty Occurrences under Article 7 of this Agreement and, as long as no event of default or event which with the lapse of time and/or demand could constitute an event of default under this Agreement shall have occurred and be continuing, the balance shall be paid by such assignee to the Owner-Trustee.
EMD will assume no liability for patent infringement by reason of purchase, manufacture, sale or use of devices not included in and covered by its specification.

(b) Except in cases of designs specified by the Owner-Trustee and/or the Lessee and not developed or purported to be developed by GE, and articles and materials specified by the Owner-Trustee and/or Lessee and not manufactured by GE, GE warrants for itself that Equipment furnished hereunder, and any part thereof, shall be delivered free of any rightful claim of any third party for infringement of any United States patent. If notified promptly in writing and given authority, information and assistance, GE shall defend, or may settle, at its expense, any suit or proceeding against the Owner-Trustee or Lessee so far as based on a claimed infringement which would result in a breach of this warranty and GE shall pay all damages and costs awarded therein against Owner-Trustee or Lessee due to such breach. In case any Equipment or part thereof is in such suit or proceeding found to constitute such an infringement and the use of such Equipment or part thereof is enjoined, GE shall, at its expense and option, either procure for the Owner-Trustee and the Lessee the right to continue using said Equipment or part thereof, or replace same within six months of such injunction with non-infringing Equipment or part thereof acceptable to the Owner-Trustee, or modify

same so it becomes non-infringing, or remove the Equipment or part thereof and refund the Purchase Price (less reasonable depreciation for any period of use) and any transportation costs separately paid by the Owner-Trustee or Lessee, but in each case without impairing the operational capability of such Equipment. The preceding shall not apply to the use of any Equipment or part thereof furnished hereunder in conjunction with any other product in a combination not furnished by GE as a part of this transaction. As to any such combination, GE assumes no liability whatsoever for patent infringement and the Owner-Trustee and Lessee will hold GE harmless against any infringement claims arising therefrom. GE will give notice to the Owner-Trustee and Lessee of any claim known to GE from which liability may be charged against the Owner-Trustee or Lessee hereunder and the Owner-Trustee and Lessee will give notice to GE of any claim known to them from which liability may be charged against GE hereunder.

The foregoing states the entire liability of each of the Builders for patent infringement by the Equipment or any part thereof.

Item 5: The Maximum Purchase Price referred to in Article 4 of the Conditional Sale Agreement to which this Annex A is attached is $15,773,625.

ANNEX B

TO

CONDITIONAL SALE AGREEMENT

Type	Builder	Builder's Specifications	Builder's Plant	Quantity	Lessee's Road Numbers (Both Inclusive)	Estimated Unit Base Price	Estimated Total Base Price	Estimated Time and Place of Delivery
3,000 h.p. Model SD 40-2 diesel-electric locomotive	EMD	8087	La Grange, Illinois	10	BN 6781-6790	$584,700	$ 5,847,000	Prior to December 31, 1977 at Fridley, Minnesota.
3,000 h.p. Model C-30-7 diesel-electric locomotive	GE	3390-F	Erie, Pennsylvania	15	BN 5530-5544	$611,700	$ 9,175,500	Prior to December 31, 1977 at Erie, Pennsylvania.
							$15,022,500	

ANNEX C
to Conditional
Sale Agreement

LEASE OF RAILROAD EQUIPMENT

Dated as of September 1, 1977

Between

BURLINGTON NORTHERN INC.,
as Lessee,

and

FIRST SECURITY BANK OF UTAH, NATIONAL ASSOCIATION,
not in its individual capacity but solely
as Trustee under a Trust Agreement dated as of
September 1, 1977, with BWL, Inc.,
Westinghouse Credit Corporation and Toy National Bank,
as Lessor.

LEASE OF RAILROAD EQUIPMENT

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* This table of Contents has been included in this document for convenience only and does not form a part of, or affect any construction or interpretation of this document.

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LEASE OF RAILROAD EQUIPMENT dated as of September 1, 1977, between BURLINGTON NORTHERN INC., a Delaware corporation (hereinafter called the Lessee), and FIRST SECURITY BANK OF UTAH, National Association, a national banking association, acting not in its individual capacity but solely as Trustee (hereinafter called the Owner-Trustee) under a Trust Agreement dated as of the date hereof (hereinafter called the Trust Agreement) with BWL, Inc., Westinghouse Credit Corporation and Toy National Bank (the latter two corporations and said bank hereinafter called severally the Owner and collectively the Owners).

WHEREAS the Owner-Trustee is entering into a Conditional Sale Agreement dated as of the date hereof with General Motors Corporation (Electro-Motive Division) and General Electric Company (each corporation being hereinafter severally called the Builder and collectively the Builders) (such agreement being hereinafter called the Security Documentation), wherein the Builders have severally agreed to manufacture, sell and deliver to the Owner-Trustee the units of railroad equipment described in Appendix A hereto;

WHEREAS each Builder is assigning its interests in the Security Documentation pursuant to an Agreement and Assignment dated the date hereof (hereinafter called the Assignment) to Mercantile-Safe Deposit and Trust Company, acting as agent for certain investors under a Participation Agreement dated as of the date hereof (hereinafter called the Participation Agreement) among said agent, the Lessee, the Owner-Trustee, the Owners and the parties named in Appendix I thereto (hereinafter called the Investors) (said agent as so acting, being hereinafter, together with its successors and assigns, called the Vendor);

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

WHEREAS the Owner-Trustee will assign this Lease for security to the Vendor pursuant to an Assignment of Lease and Agreement (hereinafter called the Lease Assignment) dated as of the date hereof and the Lessee will acknowledge and consent thereto pursuant to the Consent and Agreement (hereinafter called the Consent) in the form attached to the Lease Assignment;

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 Owner-Trustee hereby leases the Units to the Lessee upon the following terms and conditions:

§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 setoff against rent, including, but not limited to, abatements, reductions or setoffs due or alleged to be due by reason of any past, present or future claims of the Lessee against the Owner-Trustee or the Owners under this Lease or the Security Documentation including the Lessee's rights by subrogation thereunder to the Builders or the Vendor or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Owner-Trustee or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency of or any bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter

may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Owner-Trustee, the Owners or the Vendor for any reason whatsoever.

§2. DELIVERY

2.1. *Delivery and Acceptance of Units.* The Owner-Trustee hereby appoints the Lessee its agent for inspection and acceptance of the Units pursuant to the Security Documentation. Each delivery of a Unit to the Owner-Trustee under the Security Documentation shall be deemed to be a delivery hereunder to the Lessee at the point or points within the the United States of America at which such Unit is so delivered to the Owner-Trustee. Upon such delivery, the Lessee will cause an employee of the Lessee to inspect the same, and if such Unit is found to be acceptable, to accept delivery of such Unit on behalf of the Owner-Trustee under the Security Documentation and on behalf of itself hereunder and execute and deliver to the Owner-Trustee a certificate of acceptance (hereinafter called the Certificate of Acceptance) in accordance with the provisions of Article 3 of the Security Documentation, stating that such Unit has been inspected and accepted on behalf of the Lessee and the Owner-Trustee on the date of such Certificate of Acceptance and is marked in accordance with §5.1 hereof, whereupon such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease.

2.2. *Designation of Schedule A and Schedule B Units.* All Units which are delivered and accepted hereunder pursuant to the Security Documentation on or prior to December 31, 1977, shall be called Schedule A Units; all Units which may be delivered and accepted hereunder pursuant to the Security Documentation after December 31, 1977, and on or prior to June 30, 1978, shall be called Schedule B Units. If there are in fact any Schedule B Units, the Owner-Trustee and the Lessee agree that they shall enter into a supplement hereto promptly after final settlement for all Units (i) setting forth the road numbers of the Units which are designated Schedule A and Schedule B Units, and (ii) setting forth the actual rentals and Casualty Values for the Schedule B Units determined as provided in §3.1(2) and §7.6 hereof.

§3. RENTALS

3.1. *Amount and Date of Payment.* (1) The Lessee agrees to pay to the Owner-Trustee, as rental for each Schedule A Unit subject to this Lease, one interim rental payment on January 5, 1978, and 36 consecutive semiannual payments payable, in arrears, on January 5 and July 5 in each year, commencing July 5, 1978, to and including January 5, 1996. In respect of each Schedule A Unit subject to this Lease, (a) the interim rental payment shall be in an amount equal to the product of the Purchase Price (as defined in the Security Documentation) for each such Schedule A Unit subject to this Lease multiplied by 0.014434% for each day (computed on the basis of a 360-day year of twelve 30-day months) elapsed from the Closing Date (as defined in the Security Documentation) for such Unit to, but not including, January 5, 1978, and (b) the 36 semiannual rental payments shall each be in an amount equal to the applicable basic lease rate therefor set forth in Appendix B hereto for the applicable payment date multiplied by the Purchase Price of each such Schedule A Unit.

(2) The Lessee agrees to pay to the Owner-Trustee, as rental for each Schedule B Unit subject to this Lease, one interim rental payment on July 5, 1978, and 35 consecutive semiannual payments payable, in arrears, on January 5 and July 5 in each year, commencing January 5, 1979, to and including January 5, 1996. In respect of each Schedule B Unit subject to this Lease, (a) the interim rental payment shall be an amount equal to (i) the product of the Purchase Price for each such Schedule B Unit subject to this Lease multiplied by 0.014434% for each day (computed on the basis of a 360-day year of twelve 30-day months) elapsed from the Closing Date (as defined in the Security Documentation) for such Unit to, but not including, July 5, 1978, plus (ii) an amount equal to 0.9571307% of the Purchase Price of each such Schedule B Unit, and (b) the 35 semiannual payments shall be in a sum equal to the amount as shall, in

the reasonable opinion of each Owner, cause such Owner's after-tax economic yields and cash flows (computed on the same assumptions, including tax rates, as were utilized by such Owner in originally evaluating this transaction) to equal the after-tax economic yields and cash flows (such economic yields and cash flows hereinafter called the Net Economic Return) that would have been realized by such Owner if such Schedule B Unit had been delivered and accepted on or prior to December 31, 1977; *provided, however,* that no such computation shall reduce the amount of rentals below that which is necessary to satisfy the obligations of the Owner-Trustee under the Security Documentation and that such schedule of rentals be provided to the Lessee and the Vendor promptly after the Closing Date for the Schedule B Units. In the event that any dispute should arise as to the calculation of such rentals (or the Casualty Value of the Schedule B Units under §7.6 hereof), the Lessee agrees, pending resolution of such dispute, to pay on account of such rentals (or such Casualty Value), on the dates due hereunder, amounts at least sufficient to satisfy the obligations of the Owner-Trustee under the Security Documentation and no such payment shall, as between the Owner-Trustee and the Lessee, prejudice the right of the Owner-Trustee to receive from the Lessee any amount in addition thereto, due and payable hereunder.

(3) In the event that there are any losses or liabilities arising out of or resulting from the Investments made pursuant to Paragraph 2 of the Participation Agreement, including, but not limited to, any deficiency in respect thereof, the rentals thereafter payable by the Lessee in respect of Units settled for concurrently with or after such loss, liabilities, or deficiency arose shall be increased by such amount as shall, in the reasonable opinion of each Owner, cause such Owner's Net Economic Return to equal the Net Economic Return that would have been realized by such Owner if such loss or liability had not occurred.

(4) In addition to the foregoing rentals, the Lessee hereby agrees to pay to the Owner-Trustee as rent amounts equal to the amounts required by the Owner-Trustee to make the payments provided for in the last sentence of the penultimate paragraph and in the last paragraph of Paragraph 9 of the Participation Agreement on the dates required for such payments in said Paragraph 9 (without regard to the limitation of the obligation of the Owner-Trustee set forth therein) and the Owner-Trustee agrees to apply such rentals for such purposes.

3.2. *Payments on Nonbusiness Days.* If any of the semiannual rental payment dates referred to in §3.1 is not a business day the semiannual rental payment otherwise payable on such date shall be payable on the next succeeding business day, and no interest shall be payable thereon for the period from and after the nominal date for payment thereof to such next succeeding business day. The term "business day" as used herein means a calendar day, excluding Saturdays, Sundays and any other day on which banking institutions in New York, New York, Salt Lake City, Utah, or Baltimore, Maryland, are authorized or obligated to remain closed.

3.3. *Instructions To Pay Vendor and Owner-Trustee.* If the Lease Assignment is executed and delivered, until the Vendor shall have advised the Lessee in writing that all sums due from the Owner-Trustee under the Security Documentation have been fully satisfied and discharged, the Owner-Trustee irrevocably instructs the Lessee to make all the payments provided for in this Lease to the Vendor, for the account of the Owner-Trustee, in care of the Vendor, with instructions to the Vendor (a) first to apply such payments to satisfy the obligations of the Owner-Trustee under the Security Documentation known to the Vendor to be due and payable on the date such payments are due and payable hereunder and (b) second, so long as no event of default under the Security Documentation shall have occurred and be continuing, to pay any balance promptly to the Owner-Trustee or to the order of the Owner-Trustee in immediately available funds at such place as the Owner-Trustee shall specify in writing. If the Lease Assignment is not executed and delivered, or if the Lessee shall have been advised by the Vendor in writing that all sums due from the Owner-Trustee under the Security Documentation have been fully discharged and satisfied, the semi-annual instalments of rental due hereunder and any Casualty Payments thereafter due pursuant to Section 7 hereof shall be made to the Owner-Trustee in immediately available funds in the manner provided in Section 3.4 hereof.

3.4. *Payment in Immediately Available Funds.* The Lessee agrees to make each payment provided for herein as contemplated by §3.1 in immediately available funds at or prior to 11:00 a.m. in the city where such payment is to be made.

§4. TERM OF LEASE

4.1. *Beginning and Termination; Survival.* The term of this Lease as to each Unit shall begin on the date of delivery of such Unit under the Security Documentation and, subject to the provisions of §§7, 13 and 16 hereof, shall terminate on the date on which the final payment of rent in respect thereof is due pursuant to §3.1 hereof. The obligations of the Lessee hereunder (including, but not limited to, the obligations under §6, 7, 10, 11, 12 and 17 hereof) shall survive the expiration of the term of this Lease.

4.2. *Rights and Obligations of Lessee Subject to Security Documentation.* 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 without affecting the indemnities which by the provisions of this Lease survive the termination of its term (or rescind its termination), all as provided therein; *provided, however,* that so long as (i) no Event of Default exists hereunder, (ii) the Lessee is complying with the provisions of the Consent and (iii) the Vendor is entitled to apply the Payments as defined in the Lease Assignment in accordance with the Lease Assignment, this Lease may not be terminated and the Lessee shall be entitled to the rights of possession, use and assignment provided under §15 hereof.

§5. IDENTIFICATION MARKS

5.1. *Identifying Numbers; Legend; Changes.* The Lessee will cause each Unit to be kept numbered with the road number set forth in Appendix A hereto, or in the case of any Unit not there listed such road 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 Security Agreement Filed under the Interstate Commerce Act, Section 20c", or other appropriate words designated by the Owner-Trustee, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Owner-Trustee's and Vendor's title to and property in such Unit and the rights of the Owner-Trustee 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 on both sides thereof and will replace promptly any such words which may be removed, obliterated, defaced or destroyed. The Lessee will not change the road 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 Owner-Trustee and 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 Owner-Trustee an opinion of counsel to the effect that such statement has been so filed, recorded and deposited, such filing, recordation and deposit will protect the Vendor's and the Owner-Trustee's interests in such Units and no 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 Vendor and the Owner-Trustee in such Units. The Units may be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates.

5.2. *Insignia of Lessee.* Except as provided in §5.1, 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.

§6. TAXES

6.1. *Indemnification for Nonincome Taxes.* Whether or not any of the transactions contemplated hereby are consummated, the Lessee agrees to pay, and to indemnify and hold the Owner-Trustee and the Vendor harmless from, all taxes, assessments, fees and charges of any nature whatsoever, together with any penalties, fines, additions to tax or interest thereon, howsoever imposed, whether levied or imposed upon the Owner-Trustee, the Vendor, the Lessee, the trust estate created by the Trust Agreement or

otherwise, by any Federal, state or local government or governmental subdivision in the United States or by any foreign country or subdivision thereof, upon or with respect to, any Unit or any part thereof; the purchase, ownership, delivery, leasing, possession, use, operation, transfer of title, return or other disposition thereof; the indebtedness with respect thereto; the rentals, receipts or earnings arising therefrom; or this Lease, the Trust Agreement, the Participation Agreement, the Security Documentation, the Assignment, the Lease Assignment, any payment made pursuant to any such agreement, or the property, the income or other proceeds received with respect to property held in trust by the Owner-Trustee under the Trust Agreement (all such taxes, assessments, fees, charges, penalties, fines, additions to tax and interest imposed as aforesaid being hereinafter called "Taxes"); *excluding, however:* (i) Taxes of the United States or of any state or political subdivision thereof and (if and to the extent that any person indemnified hereunder is entitled to a credit therefor against its United States Federal income taxes or is indemnified by the Lessee pursuant to the Indemnity Agreements) of any foreign country or subdivision thereof, imposed on or measured solely by the net income or excess profits of the Owner-Trustee (in its individual capacity), the Owners or the Vendor or franchise taxes measured by net income of the Owner-Trustee, or gross receipts taxes other than gross receipts taxes in the nature of sales or use taxes, and other than Taxes arising out of or imposed in respect of the receipt of indemnification payments pursuant to this Lease, provided that Taxes of any foreign country or subdivision thereof incurred as a result of the indemnified party being taxed by such foreign country or subdivision on its world-wide income without regard to the transactions contemplated by this Lease shall be excluded in all cases, whether or not the indemnified party is entitled to a credit against its United States Federal income taxes; (ii) any Taxes imposed as a direct result of a voluntary transfer or other voluntary disposition by an Owner or any transfer or disposition by such Owner resulting from bankruptcy or other proceedings for the relief of creditors in which such Owner is the debtor, whether voluntary or involuntary, of any interest in any Unit or interest in rentals under this Lease; (iii) any Taxes imposed on or measured by any fees or compensation received by the Owner-Trustee or the Vendor; and (iv) Taxes which are imposed on or measured solely by the net income of the Owner-Trustee or the Vendor if and to the extent that such Taxes are in substitution for or reduce the Taxes payable by any other person which the Lessee has not agreed to pay or indemnify against pursuant to this §6.1; *provided, however,* that the Lessee shall not be required to pay any Taxes during the period it may be contesting the same in the manner provided in the next succeeding paragraph. The Lessee further agrees to pay on or before the time or times prescribed by law any tax imposed on or measured solely by the net income of the Lessee under the laws of the United States or of any state or political subdivision thereof, or of any foreign country or subdivision thereof which, if unpaid, might result in a lien or other encumbrance upon any Unit; *provided, however,* that the Lessee shall not be required to pay any such tax during the period it may be contesting the same.

6.2. *Claims; Contests; Refunds.* If claim is made against the Owner-Trustee, or the Vendor for any Taxes indemnified against under this Section 6, such party shall promptly notify the Lessee. If reasonably requested by the Lessee in writing, the Owner-Trustee or the Vendor, as the case may be, shall, upon receipt of any indemnity satisfactory to it for all its reasonable charges for its services rendered in connection therewith and for all costs, expenses, losses, legal and accountants' fees and disbursements, penalties, fines, additions to tax and interest, and at the expense of the Lessee, contest in good faith the validity, applicability or amount of such Taxes by (a) resisting payment thereof if possible, (b) not paying the same except under protest, if protest is necessary and proper, and (c) if payment is made, using reasonable efforts to obtain a refund thereof in appropriate administrative or judicial proceedings, or both. The Lessee may also contest, at its own expense, the validity, applicability or amount of such Taxes in the name of the Owner-Trustee, the Owners or the Vendor; provided that, no proceeding or actions relating to such contest shall be commenced (nor shall any pleading, motion, brief or other paper be submitted or filed in the name of the Owner-Trustee, the Owners or the Vendor in any such proceeding or action) if in the opinion of the Owner-Trustee and the Owners or the Vendor such contest or the nonpayment of the Taxes would adversely affect the title, property or rights of the Owner-Trustee hereunder or of the Vendor under the Security Documentation. The Lessee agrees to give the Owner-Trustee notice of such contest within 30 days thereof. If the Owner-Trustee or the Vendor shall obtain a refund of all or any part of such Taxes previously reimbursed by the Lessee in connection with any such contest or an amount representing interest thereon, the Owner-Trustee or the Vendor, as the case may be, shall pay the Lessee the amount of

such refund or interest net of expenses; *provided, however,* that no Event of Default and no event which with notice or lapse of time or both would constitute an Event of Default shall have occurred and be continuing.

6.3. *Reports or Returns.* In case any report or return is required to be made with respect to any obligation of the Lessee under or arising out of this Section 6 (except obligations resulting from the second sentence of §6.1), the Lessee will, where permitted to do so under applicable rules and regulations, make and timely file such reports and returns in such manner as to show the interest of the Owner-Trustee and the Vendor in the Units as shall be satisfactory to the Owner-Trustee and the Vendor or, where not so permitted, will notify the Owner-Trustee, the Vendor and the Owners of such requirement and will prepare and deliver such reports to the Owner-Trustee and the Vendor within a reasonable time prior to the time such reports are to be filed, or in such manner as shall be reasonably satisfactory to the Owner-Trustee, the Vendor and the Owners. All costs and expenses (including legal and accountants' fees) of preparing any such return or report shall be borne by the Lessee.

6.4. *Survival.* All the obligations of the Lessee under this §6 shall survive and continue, but only with respect to periods included in the term of this Lease, notwithstanding payment in full of all amounts due under the Security Documentation or the termination of this Lease. Payments due from the Lessee to the Owner-Trustee or the Vendor under this §6 shall be made directly to the party indemnified.

§7. PAYMENT FOR CASUALTY OCCURRENCES; INSURANCE

7.1. *Definitions of Casualty Occurrence; Payments.* In the event that any Unit of Equipment shall be or become worn out, lost, stolen, destroyed, or, in the opinion of the Lessee, irreparably damaged, from any cause whatsoever during the term of this Lease or any renewal term hereof or until such Unit is returned pursuant to §§14 or 17 hereof, or the Purchase Price of any Unit shall have been refunded by the Builder of such Unit pursuant to the terms of its patent indemnity therefor or any Unit shall be taken or requisitioned by condemnation or otherwise by the United States Government for a stated 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 during the term of this Lease or during any renewal term hereof (such occurrences being hereinafter called Casualty Occurrences), the Lessee shall promptly and fully notify the Owner-Trustee and the Vendor with respect thereto. On the next succeeding fifth day of a month occurring at least ten days after such notice from the Lessee has been received or, at the option of the Lessee, if such next succeeding fifth day does not coincide with a rental payment date, on the next succeeding rental payment date (but in no event earlier than January 5, 1978) (each such date being hereinafter called a Casualty Payment Date), the Lessee shall pay to the Owner-Trustee a sum equal to the Casualty Value (as hereinafter defined) of any such Unit as of such Casualty Payment Date, plus in the case of any Casualty Payment Date coinciding with a rental payment date, the semiannual rental in respect of such Unit accrued as of such rental payment date; *provided, however,* that in the event of a Casualty Occurrence during the period any Unit is being returned pursuant to §§14 and 17 hereof and the 10 days prior thereto, the Lessee shall make such payment to the Owner-Trustee on a date 30 days after such 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 Owner-Trustee shall be entitled to recover possession of such Unit.

In addition to the occurrences constituting a Casualty Occurrence under the preceding paragraph, if any Unit shall have been taken or requisitioned by the United States Government or any other governmental entity and such taking or requisition shall not theretofore constitute a Casualty Occurrence as aforesaid, such taking or requisition shall be deemed a Casualty Occurrence if the same shall be continuing at the end of the term of this Lease, in which event the Lessee shall promptly and fully notify the Owner-Trustee with respect thereto and pay the Owner-Trustee, as the Casualty Value therefor, an amount equal to 20% of the Purchase Price of such Unit. Following such payment, the Lessee shall be entitled to receive condemnation payments in respect of such Unit up to an amount equal to such Casualty Value and any balance of such payments shall be the property of the Owner-Trustee. In the event such Unit shall be returned by the governmental entity prior to the time the Lessee shall have been reimbursed

by such application of condemnation payments in an amount equal to such Casualty Value, then the Lessee shall dispose of such Unit as Agent for the Owner-Trustee, and shall retain the proceeds of such disposition to the extent that the aggregate of the amounts so retained and the condemnation payments theretofore received by the Lessee shall equal such Casualty Value, and the balance of such proceeds shall be promptly paid to the Owner-Trustee. In the event such Unit shall be returned by the governmental entity following the time the Lessee shall have been reimbursed by such application of condemnation payments in an amount equal to such Casualty Value, such Unit shall be returned by the Lessee to the Owner-Trustee in the manner provided in Section 17 hereof.

7.2. *Requisition by United States Government.* In the event of the requisition for use by the United States Government of any Unit for a period which does not exceed the term of this Lease or for an indefinite period (except where deemed a Casualty Occurrence pursuant to the last paragraph of Section 7.1 hereof), 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. All payments received by the Owner-Trustee or the Lessee from the United States Government for the use of such Unit during the term of this Lease shall be paid over to, or retained by, the Lessee provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing.

7.3. *Lessee Agent for Disposal.* The Owner-Trustee hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof before and after expiration of the Lease, at the best price obtainable on an "as is, where is" basis. Provided that the Lessee has previously paid the Casualty Value to the Owner-Trustee (i) 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 Owner-Trustee and (ii) the Lessee shall be entitled to credit against the Casualty Value payable in respect of any Unit returned to a Builder pursuant to the patent indemnity provisions of the Security Documentation an amount equal to any payment made by such Builder to the Owner-Trustee in respect thereof under the Security Documentation.

7.4. *Payments After Expiration of Lease.* If the date upon which the making of the payment by the Lessee in Section 7.1 hereof in respect of any Unit is required as aforesaid shall be after the term of this Lease or any renewal term thereof in respect of such Unit has expired, no rental for such Unit shall accrue after the end of such term.

7.5. *Amount of Casualty Value of Schedule A Units.* The Casualty Value of each Schedule A Unit as of the Casualty Payment Date on which payment is made shall be:

(a) if the Casualty Payment Date coincides with a date on which rental is to be paid pursuant to §3.1 hereof, an amount equal to that percentage of the Purchase Price of such Unit as is set forth in Appendix C hereto opposite such Casualty Payment Date, or

(b) if the Casualty Payment Date coincides with a date other than on which rental is to be paid pursuant to §3.1 hereof, the Casualty Value shall be an amount equal to (i) that percentage of the Purchase Price of such Unit as is set forth opposite the date which coincides with the next preceding rent payment date in Appendix C hereto (the "Semi-Annual Casualty Payment Date") plus (ii) .8833% of the amount described in clause (i) hereof for each month elapsed from and including such Semi-Annual Casualty Payment Date to the Casualty Payment Date upon which payment is to be made,

plus, on any Casualty Payment Date with respect to a Casualty Occurrence occurring before the third, fifth or seventh anniversary of the date of the Certificate of Acceptance for such Unit an amount equal to the percentage of the Purchase Price of such Unit suffering a Casualty Occurrence set forth below:

Anniversary of the date of the Certificate of Acceptance	Percentage of Purchase Price to be added
Third	20.1006%
Fifth	13.4004%
Seventh	6.7002%

7.6. *Amount of Casualty Value for Schedule B Units.* The Casualty Values for each Schedule B Unit shall be determined in like manner as the computation of the rental for such Schedule B Unit as set forth in §3.1(2) hereof, *provided* that no such computation shall provide for Casualty Values below those which are necessary to satisfy the obligations of the Owner-Trustee under the Security Documentation.

7.7. *No Release.* 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.

7.8. *Insurance To Be Maintained.* (1) The Lessee will, at all times prior to the return of the Units to the Owner-Trustee at its own expense, cause to be carried and maintained (i) property insurance in respect of the Units at the time subject hereto; *provided, however,* that the Lessee may self-insure such Units to the extent it self-insures equipment similar to the Units and to the extent such self-insurance is consistent with prudent industry practice, and (ii) public liability insurance with respect to third party personal and property damage and the Lessee will continue to carry such insurance in such amounts and for such risks and with such insurance companies as is consistent with prudent industry practice but in any event at least, comparable in amounts and against risks customarily insured against by the Lessee in respect of equipment owned or leased by it similar in nature to the Units, in each case satisfactory to the Owners. The proceeds thereof shall be payable to the Vendor, the Owner-Trustee and the Lessee, as their interests may appear, so long as the indebtedness, if any, evidenced by the Security Documentation shall not have been paid in full, and thereafter to the Owner-Trustee and the Lessee as their interests may appear. Any policies of insurance carried in accordance with this paragraph shall (i) require 30 days' prior notice of cancelation or material change in coverage to the Owners and the Vendor and (ii) name the Owner-Trustee and the Vendor as additional named insureds as their respective interests may appear and in the event such policies shall contain breach of warranty provisions such policies shall provide that in respect of the interests of the Owner-Trustee and the Vendor in such policies the insurance shall not be invalidated by any action or inaction of the Lessee or any other person (other than the Owner-Trustee and the Vendor) and shall insure the Owner-Trustee and the Vendor regardless of any breach or violation of any warranty, declaration or condition contained in such policies by the Lessee or by any other person (other than the Owner-Trustee or the Vendor). Prior to the first date of delivery of any Unit pursuant to the Security Documentation, and thereafter not less than 15 days prior to the expiration dates of the expiring policies theretofore delivered pursuant to this §7, the Lessee shall deliver to the Owners duplicate originals of all policies (or in the case of blanket policies, certificates thereof issued by the insurers thereunder) for the insurance maintained pursuant to this §7; *provided, however,* that if the delivery of a formal policy or certificate, as the case may be, is delayed, the Lessee shall deliver an executed binder with respect thereto and shall deliver the formal policy or certificate, as the case may be, upon receipt thereof.

(2) In the event that the Lessee shall fail to maintain insurance as herein provided, the Owners may at their 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 Owners for the cost thereof together with interest, on the amount of the cost to the Owners of such insurance which the Lessee shall have failed to maintain, at the rate per annum specified in §19 hereof.

7.9. *Insurance Proceeds and Condemnation Payments.* If the Owner-Trustee shall receive (directly or from the Vendor) any insurance proceeds or condemnation payments in respect of such Units suffering a Casualty Occurrence, the Owner-Trustee shall 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 Owner-Trustee; *provided, however,* that no Event of Default shall have occurred and be continuing and the Lessee shall have made payment of the Casualty Value thereof, and accrued rentals in respect of such Units, to the Owner-Trustee. All insurance proceeds received by the Owner-Trustee (directly or from the Vendor) in respect of any Unit not suffering a Casualty Occurrence shall be paid to the Lessee upon proof satisfactory to the Owner-Trustee that any damage to such Unit in respect of which such proceeds were paid has been fully repaired.

§8. REPORTS

On or before March 31 in each year, commencing with the calendar year 1979, the Lessee will furnish to the Owner-Trustee and the Vendor an accurate statement (a) setting forth as at the preceding December 31 the total number, description and road numbers of all Units then leased hereunder and covered by the Security Documentation, the total number, description and road 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 repair (other than running repairs) and setting forth such other information regarding the condition and state of repair of the Units as the Owner-Trustee or the Vendor may reasonably request and (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and markings required by §5.1 hereof and by the Security Documentation have been preserved or replaced. The Owner-Trustee, the Vendor and the Owners shall each have the right by its agents, to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Owner-Trustee, the Vendor or the Owners may request during the continuance of this Lease.

§9. DISCLAIMER OF WARRANTIES

THE OWNER-TRUSTEE DOES NOT MAKE, HAS NOT MADE AND SHALL NOT BE DEEMED TO MAKE OR HAVE MADE ANY 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 OWNER-TRUSTEE DOES NOT MAKE ANY WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE NOR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, NOR 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 Owner-Trustee and the Lessee, are to be borne by the Lessee; but the Owner-Trustee 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 Owner-Trustee and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Owner-Trustee may have against a Builder under the provisions of Items 3 and 4 of Annex A of the Security Documentation; *provided, however,* that if at any time an Event of Default shall have occurred and be continuing, the Owner-Trustee may assert and enforce, at the Lessee's sole cost and expense, such claims and rights. The Owner-Trustee shall have no responsibility or liability to the Lessee or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Units or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of any Units or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Units. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Owner-Trustee 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 Owner-Trustee or the Vendor based on any of the foregoing matters.

§10. LAWS AND RULES

10.1. *Compliance.* The Lessee agrees, for the benefit of the Owner-Trustee and the Vendor, to comply in all respects (including without limitation, with respect to the use, maintenance and operation of each Unit) with all laws of the jurisdictions in which its operations involving the Units may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the 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 such laws or rules require

any alteration, replacement or addition 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 Owner-Trustee or the Vendor, adversely affect the property or rights of the Owner-Trustee or the Vendor under this Lease or under the Security Documentation.

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

§11. MAINTENANCE

11.1 *Units in Good Operating Order.* The Lessee agrees that, at its own cost and expense, it will maintain and keep each Unit (including any parts installed on or replacements made to any Unit and considered an accession thereto as hereinbelow provided) which is subject to this Lease in good operating order, repair and condition, ordinary wear and tear excepted.

11.2. *Additions and Accessions.* (1) Except as set forth in §§10.1 and 11.1 hereof, 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 second paragraph hereof.

(2) 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 in §11.2(1) hereof, (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 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 Owner-Trustee and the Vendor as their respective interests may appear in the Unit itself.

§12. INDEMNIFICATION

12.1. *Indemnified Persons.* The Lessee shall pay, and shall protect, indemnify and hold the Owner-Trustee, the Vendor and any assignee thereof, and their respective successors, assigns, agents and servants (hereinafter called Indemnified Persons), harmless from and against any and all causes of action, suits, penalties, claims, demands or judgments, of any nature whatsoever which may be imposed on, incurred by or asserted against any Indemnified Person (including any or all liabilities, obligations, damages, costs, disbursements, expenses (including without limitation attorneys' fees and expenses of any Indemnified Person) relating thereto) in any way relating to or arising, or alleged to arise out of this Lease, the Security Documentation or the Units, including without limitation those in any way relating to or arising or alleged to arise out of (i) the manufacture, construction, purchase, acceptance, rejection, ownership, delivery, nondelivery, lease, possession, use, operation, condition, sale, return or other disposition of any Unit or portion thereof, (ii) any latent and other defects whether or not discoverable by the Owner-Trustee, the Vendor or the Lessee, (iii) any claim for patent, trademark or copyright infringement, (iv) any claims based on strict liability in tort, (v) any injury to or the death of any person or any damage to or loss of property on or near the Units or in any manner growing out of or concerned with, or alleged to grow out of

or be connected with, the ownership, use, replacement, adaptation or maintenance of the Units or of any other equipment in connection with the Units (whether owned or under the control of the Owner-Trustee, the Lessee or any other person) or resulting or alleged to result from the condition of any thereof; (vi) any violation, or alleged violation, of any provision of this Lease (except by the Owner-Trustee) or of any agreement, law, rule, regulation, ordinance or restriction, affecting or applicable to the Units or the leasing, ownership, use, replacement, adaptation or maintenance thereof; or (vii) any claim arising out of any of the Owner-Trustee's obligations under the Lease Assignment or the Vendor's retention of a security interest under the Security Documentation or the Lease Assignment or the Participation Agreement, except to the extent such claim arises from an act or omission of the Owner-Trustee. The Lessee shall be obligated under this §12.1, irrespective of whether any Indemnified Person shall also be indemnified with respect to the same matter under any other agreement by any other person, and the Indemnified Person seeking to enforce the indemnification may proceed directly against the Lessee under this §12.1 without first resorting to any such other rights of indemnification. In case any action, suit or proceeding is brought against any Indemnified Person in connection with any claim indemnified against hereunder, the Lessee may and, upon such Indemnified Person'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 such Indemnified Person 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 such Indemnified Person in connection with such action, suit or proceeding. In the event the Lessee is required to make any payment under this §12, the Lessee shall pay such Indemnified Person an amount which, after deduction of all taxes required to be paid by such Indemnified Person 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 in the sole discretion of the Indemnified Person), shall be equal to the amount of such payment. The Lessee and the Owner-Trustee 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 any indemnities as contained in this §12 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 such Indemnified Person (except against another Indemnified Person) in respect of the matter against which indemnity has been given. Any payments received by such Indemnified Person from any person (except the Lessee) as a result of any matter with respect to which such Indemnified Person has been indemnified by the Lessee pursuant to this Section 12.1 shall be paid over to the Lessee to the extent necessary to reimburse the Lessee for indemnification payments previously made. Nothing in this Section 12.1 shall constitute a guaranty by the Lessee of the Conditional Sale Indebtedness of the Owner-Trustee under the Conditional Sale Agreement or a guaranty of the residual value of any Unit.

12.2. *Indemnification of Builders.* The Lessee further agrees to indemnify, protect and hold harmless each Builder as a third party beneficiary hereof from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against such Builder because of the use in or about the construction or operation of any of the Equipment of any article or material specified by the Lessee and not manufactured by such Builder or of any design, system, process, formula or combination specified by the Lessee and not developed or purported to be developed by such Builder which infringes or is claimed to infringe on any patent or other right. The Lessee will give notice to each Builder of any claim known to the Lessee from which liability may be charged against such Builder hereunder.

12.3. *Survival.* The indemnities contained in this §12 shall survive the expiration or termination of this Lease with respect to all events, facts, conditions or other circumstances occurring or existing prior to such expiration or termination and are expressly made for the benefit of, and shall be enforceable by, any Indemnified Person. None of the indemnities in this §12 shall be deemed to create any rights of subrogation in any insurer or third party against the Lessee therefor, from or under any Indemnified Person, whether because of any claim paid or defense provided for the benefit thereof or otherwise.

§13. DEFAULT

13.1. *Events of Default; Remedies.* If, during the continuance of this Lease or any extension or renewal thereof, 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 16 hereof, and such default shall continue for 15 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, in the Participation Agreement or the Indemnity Agreements (as defined in the Participation Agreement) and such default shall continue for 30 days after written notice from the Owner-Trustee or the Vendor to the Lessee specifying the default and demanding that the same be remedied;

D. any representation or warranty made by the Lessee herein, in the Participation Agreement or the Indemnity Agreements or in any certificate or statement furnished to the Owner-Trustee or any Owner pursuant to or in connection with any such agreements proves untrue in any material respect as of the date of issuance or making thereof;

E. a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may hereafter be amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under 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 a trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

G. an event of default set forth in Article 16 of the Security Documentation shall have occurred arising out of any default by the Lessee in performing any of its obligations hereunder;

then, in any such case, the Owner-Trustee, at its option, may:

(a) proceed by appropriate court action or actions either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; or

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as herein provided; and thereupon the Owner-Trustee may by its

agents enter upon the premises of the Lessee or other premises, in so far as the Lessee may be lawfully authorized to so permit, where any of the Units may be located, without judicial process if this can be done without breach of the peace and in accordance with due process of law, and take possession of all or any of such Units and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever; but the Owner-Trustee 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 that the Owners, in their sole discretion shall specify, (i) a sum, with respect to each Unit, which represents (x) the excess of the present value, at the time of such termination, of the entire unpaid balance of all rentals 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, such present value to be computed on the basis of a 6% per annum discount, compounded semiannually from the respective dates upon which rental would have been payable hereunder had this Lease not been terminated over the then present value of the rental which the Owner-Trustee reasonably estimates to be obtainable for each Unit during such period, such present value to be computed on the basis of a 6% per annum discount, compounded semiannually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated or, if such Unit is sold, the net proceeds of the sale plus (y) any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Owner-Trustee shall have sustained by reason of the breach of any covenant, representation or warranty of this Lease other than for the payment of rental or (ii) an amount equal to the excess, if any, of the Casualty Value as of the Casualty Payment Date on or next preceding the date of termination over the amount the Owners and the Owner-Trustee reasonably estimate to be the sales value of such Unit at such time; *provided, however,* that in the event the Owners and the Owner-Trustee shall have sold any unit, the Owners and the Owner-Trustee, in lieu of collecting any amounts payable by the Lessee pursuant to the preceding clause (ii) with respect to such Unit, may, if it shall so elect, demand that the Lessee pay the Owners and the Owner-Trustee and the Lessee shall pay to the Owners and the Owner-Trustee 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 Casualty Payment Date on or next preceding the date of termination over the net proceeds of such sale.

13.2. *Remedies Not Exclusive; Waiver.* The remedies in this Lease provided in favor of the Owner-Trustee 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.

13.3. *Failure To Exercise Rights Is Not Waiver.* The failure of the Owner-Trustee to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

13.4. *Notice of Event of Default.* The Lessee also agrees to furnish the Owner-Trustee, the Owners and the Vendor, promptly upon any responsible officer becoming aware of any condition which constituted or constitutes an Event of Default under this Lease or which, after notice or 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 §13.4, a "responsible officer" shall mean, with respect to the subject matter of any covenant, agreement or obligation of the Lessee in this Lease contained, 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.

§14. RETURN OF UNITS UPON DEFAULT

14.1. *Return of Units.* If this Lease shall terminate pursuant to §13 hereof or pursuant to Article 16 of the Security Documentation, the Lessee shall forthwith deliver possession of the Units to the Owner-Trustee. 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 and shall have attached or affixed thereto any special device considered an accession thereto as provided in §11 and shall have removed therefrom at the Lessee's expense any addition, modification or improvement which, as provided in §11, is owned by the Lessee. For the purpose of delivering possession of any Unit or Units 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 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 Owner-Trustee reasonably may designate;

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

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 Owner-Trustee 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 Owner-Trustee 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 amounts earned in respect of the Units after the date of termination of this Lease shall belong to the Owner-Trustee and, if received by the Lessee, shall be promptly turned over to the Owner-Trustee. 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 Owner-Trustee for each day thereafter an amount equal to the amount, if any, by which that percentage of the Purchase Price of such Unit for each such day obtained by dividing the basic lease rate as set forth in §3.1 hereof for each semiannual payment for such Unit by 180 exceeds the actual earnings received by the Owner-Trustee on such Unit for each such day.

14.2. *Owner-Trustee Appointed Agent of Lessee.* Without in any way limiting the obligation of the Lessee under the foregoing provisions of this §14, the Lessee hereby irrevocably appoints the Owner-Trustee 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 Owner-Trustee, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

§15. ASSIGNMENT, POSSESSION AND USE

15.1. *Assignment; Consent.* This Lease shall be assignable in whole or in part by the Owner-Trustee upon prior written consent of the Lessee, which consent shall not be unreasonably withheld. The Lessee hereby consents to the assignment of this Lease pursuant to the Lease Assignment.

15.2. *Lessee's Rights To Use the Units, To Permit Use Thereof by Others and To Sublease the Units.* (1) So long as (i) no Event of Default exists hereunder, (ii) the Lessee is complying with the provisions of the Consent and (iii) the Vendor is entitled to apply the Payments as defined in the Lease Assignment in accordance with the Lease Assignment, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease and the Security Documentation. Without the prior written consent of the Owner-Trustee and the Vendor, the Lessee shall not assign or transfer its leasehold interest under this Lease in the Units or any of them except as provided in paragraph (2) below of this §15.2; and the Lessee shall not, without the prior written consent of the Owner-Trustee and the Vendor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provisions of paragraph (2) of this §15.2. 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 Owner-Trustee or the Vendor or resulting from claims against the Owner-Trustee or the Vendor not related to the ownership of the Units or any encumbrance on the leasehold estate of the Lessee which is subject and subordinate to the interests of the Owner-Trustee and the Vendor) upon or with respect to any Unit, including any accession thereto, or the interest of the Owner-Trustee, the Vendor or the Lessee therein, and will promptly discharge any such lien, claim, security interest or other encumbrance which arises.

(2) So long as (i) no Event of Default exists hereunder, (ii) the Lessee is complying with the provisions of the Consent and (iii) the Vendor is entitled to apply the Payments as defined in the Lease Assignment in accordance with the Lease Assignment, the Lessee shall be entitled to the possession of the Units and to the use of the Units by it or any affiliate upon lines of railroad owned or operated by it or any such affiliate or upon lines of railroad over which the Lessee or any such affiliate has trackage or other operating rights or over which railroad equipment of the Lessee or any such affiliate is regularly operated pursuant to contract and shall be entitled to permit the use of the Units upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements and to assign its rights to the Units or to sublease the Units to any of its affiliates, but only upon and subject to all the terms and conditions of this Lease and the Security Documentation; *provided, however,* that the Lessee shall not assign, sublease or permit the assignment, sublease or use of any Unit predominantly outside the United States of America within the meaning of Section 48(a) of the Internal Revenue Code of 1954, as amended to the date hereof, nor shall the Lessee assign or sublease to, or permit the sublease or use of the Units by, any person in whose hands such Units would not qualify as "section 38 property" within the meaning of said Code. The Lessee may receive and retain compensation for the use of any of the Units from other railroads so using such Units. Any sublease permitted by this paragraph may provide that the sublessee, so long as it shall not be in default under such sublease, shall be entitled to the possession of the Units included in such sublease and the use thereof; *provided, however,* that every such sublease shall be subject to the rights and remedies of the Vendor under the Security Documentation and the Owner-Trustee under this Lease in respect of the Units covered by such sublease upon the occurrence of an Event of Default thereunder or hereunder.

15.3. *Transfers by Lessee Through Merger, Acquisition or Consolidation.* Nothing in this §15 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.

§16. RENEWAL OPTIONS AND RIGHT OF FIRST REFUSAL

16.1. *Renewal for Successive Period.* 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 Owner-Trustee not less than 180 days prior to the end of the original term of this Lease in respect of the Units still subject to this Lease, elect to extend such original term of this Lease in respect of all but not less than all the Units

then covered by this Lease for a period of two years or such other time acceptable to both the Lessee and Owner-Trustee commencing on the scheduled expiration of such original term of this Lease, at a "Fair Market Rental" payable, in arrears, in semiannual payments on the month and day such rentals were payable for the Units in each year of the original term.

16.2. *Determination of Fair Market Rental.* (1) Fair Market Rental shall be determined for each extended term of this Lease on the basis of, and shall be equal in amount to, the rental which would obtain in an arm's-length transaction between an informed and willing lessee (other than a lessee currently in possession) and an informed and willing lessor under no compulsion to lease and, in such determination, costs of removal from the location of current use shall not be a deduction from such rental.

(2) If, after 50 days from the giving of notice by the Lessee of the Lessee's election to extend the term of this Lease, the Owner-Trustee and the Lessee are unable to agree upon a determination of the Fair Market Rental of the Units, such rental shall be determined in accordance with the foregoing definition by the following procedure: If either party to such determination shall have given written notice to the other requesting determination of such value by this appraisal procedure, the parties shall consult for the purpose of appointing a qualified independent appraiser by mutual agreement. If no such appraiser is so appointed within 20 days after such notice is given, each party shall appoint an independent appraiser within 25 days after such notice is given, and the two appraisers so appointed shall within 35 days after such notice is given appoint a third independent appraiser. If no such third appraiser is appointed within 35 days after such notice is given, either party may apply, to make such appointment, to the American Arbitration Association, and both parties shall be bound by any appointment so made. Any appraiser or appraisers appointed pursuant to the foregoing procedure shall be instructed to determine the Fair Market Rental of the Units subject to the proposed extended term within 90 days after his or their appointment. If the parties shall have appointed a single appraiser or if either party shall have failed to appoint an appraiser, the determination of Fair Market Rental of the single appraiser appointed shall be final. If three appraisers shall be appointed, the determination of the appraiser which differs most from the other two appraisers shall be excluded, the remaining two determinations shall be averaged and such latter average shall be final and binding upon the parties hereto as the Fair Market Rental. The appraisal proceedings shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association as in effect on the date hereof, except as modified hereby. The provision for this appraisal procedure shall be the exclusive means of determining Fair Market Rental and shall be in lieu of any judicial or other procedure for the determination thereof, and each party hereto hereby consents and agrees not to assert any judicial or other procedures. The expenses of the appraisal procedure shall be borne by the Lessee.

16.3. *Right of First Refusal.* Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, in the event the Owner-Trustee elects to sell any Units to third parties at the expiration of the original or extended term of this Lease, the Lessee shall be given written notice of such intention prior to the expiration of such term. In the event that the Owner-Trustee shall receive, prior to removal of the Units at the end of such term of the Lease, a bona fide offer in writing from another party unrelated to the Lessee to purchase the Units and the Owner-Trustee elects to sell the Units pursuant to such offer at the expiration of such term of this Lease, the Owner-Trustee shall give written notice to the Lessee of such offer. Such notice shall include the price and the terms and conditions of payment offered by the other party in writing to the Owner-Trustee. The Lessee shall have the sole right and option to purchase the Units for cash at the price at which the Units are proposed to be sold or under the other terms and conditions of payment offered by the other party, as hereinafter provided. Within 10 business days of receipt of notice from the Owner-Trustee, the Lessee shall exercise such purchase right by delivery to the Owner-Trustee of a written notice specifying a date of purchase, which date shall not be later than the later of (i) 15 days after the date of delivery of such notice by the Lessee to the Owner-Trustee or (ii) 90 days after the expiration of such term of this Lease. In the event that the Lessee shall have delivered a notice of its election to purchase the Units, this Lease (including the obligation to pay rent) shall be further extended upon the same terms and conditions set forth herein from the date such notice is delivered to the Owner-Trustee until the date of such purchase.

§17. RETURN OF UNITS UPON EXPIRATION OF TERM

As soon as practicable on or after the expiration of the original or extended term of this Lease with respect to any Unit and in any event not later than 90 days thereafter, the Lessee will, at its own cost and expense, at the request of the Owner-Trustee, deliver possession of such Unit to the Owner-Trustee upon such storage tracks of the Lessee as the Owner-Trustee may reasonably designate, or, in the absence of such designation, as the Lessee may select, and permit the Owner-Trustee to store such Unit on such tracks for a period not exceeding three months and transport the same upon disposition of the Units, at any time within such three-month period, to any reasonable place on the lines of railroad operated by the Lessee, or to any connecting carrier for shipment, all as directed by the Owner-Trustee, the movement and storage of such Units to be at the expense and risk of the Lessee. During any such storage period the Lessee will permit the Owner-Trustee or any person designated by it, including the authorized representative or representatives of any prospective purchaser of such Unit, to inspect the same; *provided, however,* that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Owner-Trustee or any prospective purchaser, the rights of inspection granted under this sentence. Each Unit returned to the Owner-Trustee pursuant to this §17 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted, (ii) meet the standards then in effect under the Interchange Rules of the Association of American Railroads and/or the applicable rules of any governmental agency or other organization with jurisdiction and (iii) have attached or affixed thereto any special device considered an accession thereto as provided in §11 hereof and have removed therefrom any such device not so considered an accession. During any such storage period the Lessee shall maintain the Units in such manner as the Lessee normally maintains similar units of railroad equipment owned or leased by it in similar storage circumstances. 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 Owner-Trustee 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.

§18. RECORDING

The Lessee, at its own expense, will cause this Lease, the Security Documentation, the Assignment and the Lease Assignment 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 forthwith given 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 Owner-Trustee under the Security Documentation. The Lessee in addition 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 Owner-Trustee or the Vendor for the purpose of proper protection, to their satisfaction, of the Vendor's and the Owner-Trustee's respective interests in the Units, or for the purpose of carrying out the intention of this Lease, the Security Documentation, the Assignment and the Lease Assignment; and the Lessee will promptly furnish to the Vendor and the Owner-Trustee 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 Owner-Trustee, *provided, however,* that no such opinion of counsel need be furnished in respect of the filing of the Security Documentation or the Assignment in Canada. This Lease, the Security Documentation, the Assignment and the Lease Assignment shall be filed and recorded with the Interstate Commerce Commission and deposited with the Registrar General of Canada pursuant to Section 86 of the Railway Act of Canada and provision will have been made for publication of notice of such deposit in *The Canada Gazette* prior to the delivery and acceptance hereunder of any Unit.

§19. 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 interest at 9.2% per annum of the overdue rentals and other obligations for the period of time during which they are overdue or such lesser amount as may be legally enforceable.

§20. OWNER-TRUSTEE'S RIGHT TO PERFORM FOR THE LESSEE

If the Lessee fails to perform or comply with any of its agreements contained herein, the Owner-Trustee may upon notice to the Lessee itself perform or comply with such agreement, and the amount of the reasonable cost and expenses of the Owner-Trustee incurred in connection with such performance or compliance, together with interest on such amount at the rate per annum which Manufacturers Hanover Trust Company, New York, New York, charges for unsecured 90-day loans to large corporate borrowers at the time in effect shall be payable by the Lessee upon demand except as otherwise provided in this Lease. No such performance or compliance by the Owner-Trustee shall be deemed a waiver of the rights and remedies of the Owner-Trustee or any assignee of the Owner-Trustee against the Lessee hereunder.

§21. 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 Owner-Trustee, at 79 South Main Street, Salt Lake City, Utah 84111, attention of Trust Department, Corporate Trust Division, with copies to BWL, Inc., One IBM Plaza, Suite 2700, Chicago, Illinois 60611, attention: Manager, Leveraged Leasing, Westinghouse Credit Corporation, 3 Gateway Center, Pittsburgh, Pennsylvania 15222, attention: Manager, Leveraged Leasing, Toy National Bank, Fourth and Nebraska Streets, Sioux City, Iowa 51102, attention: Vice President Investments, and Comdisco Financial Services, Inc., 530 Bush Street, San Francisco, California 94108; and

(b) if to the Lessee, at 176 East Fifth Street, St. Paul, Minnesota 55101, attention: Assistant Vice President, Financial Planning,

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

§22. SEVERABILITY

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.

§23. EFFECT AND MODIFICATION OF LEASE

Except for the Participation Agreement and the Indemnity Agreements (as defined in the Participation Agreement), this Lease exclusively and completely states the rights of the Owner-Trustee 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 Owner-Trustee and the Lessee.

§24. THIRD PARTY BENEFICIARIES

Nothing in this Lease shall be deemed to create any right in any person not a party hereto (other than the Owners, the Vendor and the permitted successors and assigns of a party) and this instrument shall not be construed in any respect to be a contract in whole or in part for the benefit of a third party except as aforesaid.

§25. EXECUTION

This Lease may be executed in several counterparts, such counterparts together constituting but one and the same instrument, but the counterpart delivered to the Vendor pursuant to the Lease Assignment 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.

§26. LAW GOVERNING

The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of Minnesota; *provided, however,* that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and Section 86 of the Railway Act of Canada.

§27. IMMUNITIES; NO RECOURSE

(1) No recourse shall be had in respect of any obligation due under this Lease, or referred to herein, against any incorporator, stockholder, director or officer, as such, past, present or future, of the parties hereto or the Owners, whether by virtue of any constitutional provision, statute or rule of law, or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of such incorporators, stockholders, directors or officers, as such, being forever released as a condition of and as consideration for the execution of this Lease.

(2) 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 Owner-Trustee are each and every one of them made and intended not as personal representations, undertakings and agreements by First Security Bank of Utah, National Association, including its successors and assigns, or for the purpose or with the intention of binding said trust company personally, but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement, and this Lease is executed and delivered by the Owner-Trustee solely in the exercise of the powers expressly conferred upon the Owner-Trustee as trustee under the Trust Agreement; and that no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against the Owner-Trustee or the Owners (except as provided in paragraph 13.3 of Article 13 hereof and Section 1.04 of the Trust Agreement) or on account of any representation, undertaking or agreement of the Owner-Trustee or the Owners, 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.

§28. AGREEMENTS FOR BENEFIT OF OWNERS AND OWNER-TRUSTEE'S ASSIGNS

All rights of the Owner-Trustee hereunder (including, but not limited to, its rights under §§7, 9, 13, 14 and 17 and the right to receive the rentals payable under this Lease) shall inure to the benefit of the Owners and any of the Owners' assigns under the Trust Agreement and the Owner-Trustee's assigns (including the Vendor).

§29. TERM OWNER-TRUSTEE

Whenever the term Owner-Trustee is used in this Lease it shall apply and refer to the Owner-Trustee and any assignee of the Owner-Trustee (including, so long as any Conditional Sale Indebtedness under the Security Documentation or interest thereon shall remain unpaid or any other obligation thereunder be continuing, the Vendor).

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

BURLINGTON NORTHERN INC.,

by .....
Assistant Vice President,
Financial Planning

[Corporate Seal]

Attest:

.....
Assistant Secretary

FIRST SECURITY BANK OF UTAH,
National Association, not in its individual capacity, but solely as Trustee,

by .....
Authorized Officer

[Seal]

Attest:

.....
Authorized Officer

STATE OF MINNESOTA,
COUNTY OF RAMSEY, } ss:

On this day of September, 1977, before me personally appeared R. C. BURTON, JR., to me personally known, who, being by me duly sworn, says that he is the Assistant Vice President, Financial Planning of BURLINGTON NORTHERN INC., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

.....
Notary Public

[Notarial Seal]

My Commission expires

STATE OF UTAH,
COUNTY OF SALT LAKE, } ss:

On this day of September, 1977, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is an Authorized Officer of FIRST SECURITY BANK OF UTAH, National Association, that one of the seals affixed to the foregoing instrument is the seal of said national banking association, that said instrument was signed and sealed on behalf of said national banking association by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said national banking association.

.....
Notary Public

[Notarial Seal]

My Commission expires

APPENDIX A TO LEASE

Type	Quantity	Lessee's Road Numbers (Both Inclusive)
3,000 hp Model SD-40-2 diesel-electric locomotives	10	BN 6781-6790
3,000 hp Model C-30-7 diesel-electric locomotives	15	BN 5530-5544

APPENDIX B TO LEASE
Schedule A Units

Rental Payments	Percentage of Purchase Price*
Basic Lease Rate for Semiannual Rental Payments:	
1-18	3.55510%
19-36	4.34490%

* As defined in the Security Documentation.

APPENDIX C TO LEASE

Schedule A Units

Casualty Payment Dates	Percentage of Purchase Price*
January 5, 1978	86.4644
July 5, 1978	86.6870
January 5, 1979	87.7173
July 5, 1979	88.0772
January 5, 1980	88.3066
July 5, 1980	88.4155
January 5, 1981	88.3604
July 5, 1981	88.0770
January 5, 1982	87.5035
July 5, 1982	86.8259
January 5, 1983	85.9602
July 5, 1983	84.9344
January 5, 1984	83.7401
July 5, 1984	82.4066
January 5, 1985	80.9699
July 5, 1985	79.4475
January 5, 1986	77.8407
July 5, 1986	76.1550
January 5, 1987	74.3940
July 5, 1987	71.7736
January 5, 1988	69.0629
July 5, 1988	66.2633
January 5, 1989	63.3894
July 5, 1989	60.4393
January 5, 1990	57.4663
July 5, 1990	54.4903
January 5, 1991	51.5501
July 5, 1991	48.6272
January 5, 1992	45.7559
July 5, 1992	42.9167
January 5, 1993	40.1473
July 5, 1993	37.3290
January 5, 1994	34.4027
July 5, 1994	31.3339
January 5, 1995	28.1485
July 5, 1995	24.8107
January 5, 1996 and thereafter	20.0000

* As defined in Security Documentation.

ANNEX D

ASSIGNMENT OF LEASE AND AGREEMENT dated as of September 1, 1977, (hereinafter called this Assignment), by and between FIRST SECURITY BANK OF UTAH, National Association, acting solely in its capacity as Trustee (hereinafter called the Owner-Trustee) under a Trust Agreement (hereinafter called the Trust Agreement) dated as of the date hereof with the parties named therein (hereinafter severally called the Owner and collectively the Owners), and MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, as Agent (hereinafter called the Vendor) under a Participation Agreement dated as of the date hereof.

WHEREAS the Owner-Trustee is entering into a Conditional Sale Agreement dated as of the date hereof (hereinafter called the Security Documentation) with each of General Motors Corporation (Electro-Motive Division) and General Electric Company (said corporations being hereinafter called collectively the Builders and severally the Builder), providing for the sale to the Owner-Trustee of such units of railroad equipment (hereinafter called the Units) described in the Annexes thereto as are delivered to and accepted by the Owner-Trustee thereunder;

WHEREAS the Owner-Trustee and Burlington Northern Inc. (hereinafter called the Lessee) have entered into a Lease of Railroad Equipment dated as of the date hereof (hereinafter called the Lease), providing for the leasing by the Owner-Trustee to the Lessee of the Units;

WHEREAS, in order to provide security for the obligations of the Owner-Trustee under the Security Documentation and as an inducement to the Vendor to invest in the Conditional Sale Indebtedness (as that term is defined in the Security Documentation), the Owner-Trustee agrees to assign for security purposes its rights in, to and under the Lease to the Vendor;

NOW, THEREFORE, in consideration of the premises and of the payments to be made and the covenants hereinafter mentioned to be kept and performed, the parties hereto agree as follows:

1. The Owner-Trustee hereby assigns, transfers and sets over unto the Vendor, as collateral security for the payment and performance of the obligations of the Owner-Trustee under the Security Documentation, all the Owner-Trustee's right, title and interest, powers, privileges, and other benefits under the Lease, including, without limitation, the immediate right to receive and collect all rentals, profits and other sums payable to or receivable by the Owner-Trustee from the Lessee under or pursuant to the provisions of the Lease whether as rent, casualty payment, indemnity, liquidated damages, or otherwise (such moneys being hereinafter called the Payments), and the right to make all waivers and agreements, to give all notices, consents and releases, to take all action upon the happening of an Event of Default specified in the Lease, and to do any and all other things whatsoever which the Owner-Trustee is or may become entitled to do under the Lease. In furtherance of the foregoing assignment, the Owner-Trustee hereby irrevocably authorizes and empowers the Vendor in its own name, or in the name of its nominee, or in the name of the Owner-Trustee or as its attorney, to ask, demand, sue for, collect and receive any and all Payments to which the Owner-Trustee is or may become entitled under the Lease and to enforce compliance by the Lessee with all the terms and provisions thereof.

The Vendor agrees to accept any Payments made by the Lessee for the account of the Owner-Trustee pursuant to the Lease. To the extent received, the Vendor will apply such Payments to satisfy the obligations of the Owner-Trustee under the Security Documentation, and, so long as no event of default or event which with the lapse of time and/or demand provided for in the Security Documentation could constitute an event of default thereunder, shall have occurred and be continuing, any balance shall be paid to the Owner-Trustee on the same date such Payment is applied to satisfy such obligations of the Owner-Trustee, by check mailed to the Owner-Trustee on such date or, upon written request of the Owner-Trustee, by bank wire to the Owner-Trustee at such address as may be specified to the Vendor in writing, and such balance shall be retained by the Owner-Trustee. If the Vendor shall not receive any rental payment under §3.1 of the Lease when due, the Vendor shall notify the Owner-Trustee and each Owner by registered mail, return receipt requested at the address set forth in the Lease; *provided, however,* that the failure of the Vendor to so notify the Owner-Trustee and each Owner by registered mail, return receipt

requested shall not affect the obligations of the Owner-Trustee hereunder or under the Security Documentation.

2. This Assignment is executed only as security and, therefore, the execution and delivery of this Assignment shall not subject the Vendor to, or transfer, or pass, or in any way affect or modify the liability of the Owner-Trustee under the Lease, it being understood and agreed that notwithstanding this Assignment or any subsequent assignment, all obligations of the Owner-Trustee to the Lessee shall be and remain enforceable by the Lessee, its successors and assigns, against, and only against, the Owner-Trustee or persons other than the Vendor.

3. The Owner-Trustee will faithfully abide by, perform and discharge each and every obligation, covenant and agreement which the Lease provides are to be performed by the Owner-Trustee; without the written consent of the Vendor, the Owner-Trustee will not anticipate the rents under the Lease or waive, excuse, condone, forgive or in any manner release or discharge the Lessee thereunder of or from the obligations, covenants, conditions and agreements to be performed by the Lessee, including, without limitation, the obligation to pay the rents in the manner and at the time and place specified therein or enter into any agreement amending, modifying or terminating the Lease and the Owner-Trustee agrees that any amendment, modification or termination thereof without such consent shall be void.

4. The Owner-Trustee does hereby constitute the Vendor the Owner-Trustee's true and lawful attorney, irrevocably, with full power (in the name of the Owner-Trustee, or otherwise), to ask, require, demand, receive, compound and give acquittance for any and all Payments due and to become due under or arising out of the Lease to which the Owner-Trustee is or may become entitled, to enforce compliance by the Lessee with all the terms and provisions of the Lease, to endorse any checks or other instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings which to the Vendor may seem to be necessary or advisable in the premises.

5. Upon the full discharge and satisfaction of all sums due from the Owner-Trustee under the Security Documentation, this Assignment and all rights herein assigned to the Vendor shall terminate, and all estate, right, title and interest of the Vendor in and to the Lease shall revert to the Owner-Trustee. Promptly following such full discharge and satisfaction, the Vendor agrees that it will advise the Lessee in writing that all sums due from the Owner-Trustee under the Security Documentation have been fully discharged and satisfied and instruct the Lessee that no further payments under the Lease are to be made to the Vendor.

6. The Owner-Trustee will, from time to time, execute, acknowledge and deliver any and all further instruments required by law or reasonably requested by the Vendor in order to confirm or further assure, the interest of the Vendor hereunder.

7. The Vendor may assign all or any of the rights assigned to it hereby or arising under the Lease, including, without limitation, the right to receive any Payments due or to become due. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Vendor hereunder.

8. This Assignment shall be governed by the laws of the State of Utah, but the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and Section 86 of the Railway Act of Canada.

9. The Owner-Trustee shall cause copies of all notices received in connection with the Lease and all payments hereunder to be promptly delivered or made to the Vendor.

10. The Vendor hereby agrees with the Owner-Trustee that the Vendor will not, so long as no event of default under the Security Documentation has occurred and is continuing, exercise or enforce, or seek to

exercise or enforce, or avail itself of, any of the rights, powers, privileges, authorizations or benefits which are assigned and transferred by the Owner-Trustee to the Vendor by this Assignment and which are for the sole benefit of the Owner-Trustee, without the prior consent of the Owner-Trustee.

11. It is expressly understood and agreed by and between the parties hereto, anything in this Agreement to the contrary notwithstanding, that each and all of the representations, undertakings and agreements in this Agreement made on the part of the Owner-Trustee are each and every one of them made and intended not as personal representations, undertakings and agreements by First Security Bank of Utah, National Association, 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 Trust Estate as such term is used in 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 or shall at any time be asserted or enforceable against the said bank or the Owners or on account of any representation, undertaking or agreement of the Owner-Trustee or the Owners, except as provided in paragraph 13.3 of Article 13 of the Security Documentation and Section 1.04 of the Trust Agreement, either expressed or implied, all such personal liability, if any, being expressly waived and released by the Vendor and by all persons claiming by, through or under the Vendor; *provided, however,* that the Vendor or any person claiming by, through or under the Vendor, making claim hereunder, may look to said Trust Estate for the satisfaction of the same.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective corporate names by officers thereunto duly authorized and their respective corporate seals to be affixed and duly attested, all as of the date first above written.

FIRST SECURITY BANK OF UTAH,
National Association, as Trustee as aforesaid,

By
Authorized Officer

[Seal]

Attest:

Authorized Officer

MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, as Agent,

By
Assistant Vice President

[Corporate Seal]

Attest:

Corporate Trust Officer

STATE OF UTAH,
COUNTY OF SALT LAKE, } ss.:

On this day of September, 1977, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is an Authorized Officer of FIRST SECURITY BANK OF UTAH, National Association, that one of the seals affixed to the foregoing instrument is the seal of said national banking association and that said instrument was signed and sealed on behalf of said national banking association by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said national banking association.

Notary Public

[Notarial Seal]

My Commission expires

STATE OF MARYLAND,
CITY OF BALTIMORE, } ss.:

On this day of September, 1977, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is an Assistant Vice President of MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]

My Commission expires

CONSENT AND AGREEMENT

The undersigned, BURLINGTON NORTHERN INC., a Delaware corporation (hereinafter called the Lessee), the lessee named in the Lease (hereinafter called the Lease) referred to in the foregoing Assignment of Lease and Agreement (hereinafter called the Lease Assignment), hereby (a) acknowledges receipt of a copy of the Lease Assignment and (b) consents to all the terms and conditions of the Lease Assignment and agrees that so long as said Lease Assignment is effective:

(1) it will pay all rentals, casualty payments, liquidated damages, indemnities and other moneys provided for in the Lease (which moneys are hereinafter called the Payments) due and to become due under the Lease directly to Mercantile-Safe Deposit and Trust Company, as Agent (hereinafter called the Vendor), the assignee named in the Lease Assignment, at P. O. Box 2258, Baltimore, Maryland 21203, attention of Corporate Trust Department, (or at such other address as may be furnished in writing to the Lessee by the Vendor);

(2) the Vendor shall be entitled to the benefits of, and to receive and enforce performance of, all the covenants to be performed by the Lessee under the Lease as though the Vendor were named therein as the Owner-Trustee;

(3) the Vendor shall not, by virtue of the Lease Assignment, be or become subject to any liability or obligation under the Lease or otherwise; and

(4) the Lease shall not, without the prior written consent of the Vendor, be terminated or modified, nor shall any action be taken or omitted by the Lessee the taking or omission of which might result in an alteration or impairment of the Lease or the Lease Assignment or this Consent and Agreement or of any of the rights created by any thereof.

This Consent and Agreement, when accepted by the Vendor by signing the acceptance at the foot hereof, shall be deemed to be a contract under the laws of the State of Minnesota and, for all purposes, shall be construed in accordance with the laws of said State.

BURLINGTON NORTHERN INC.,

By

Assistant Vice President,
Financial Planning

[Corporate Seal]

Attest:

Assistant Secretary

The foregoing Consent and Agreement is hereby accepted, as of the 1st day of September, 1977.

MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, as Agent,

By

Assistant Vice President

[Corporate Seal]

Attest:

Corporate Trust Officer