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INTERSTATE COMMERCE COMMISSION

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[CS&M Ref. 1696-046]

LEASE OF RAILROAD EQUIPMENT

Dated as of October 1, 1985

between

THE DETROIT EDISON COMPANY, Lessee

and

THE BANK OF NEW YORK, Lessor

[Covering 610 Greenville Rotary Dump Gondola Cars]

The rights and interests of the Lessor under this Lease are subject to a security interest in favor of Mercantile-Safe Deposit and Trust Company, as agent for a certain investor. The original of this Lease is held by said Agent.

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

LEASE OF RAILROAD EQUIPMENT dated as of October 1, 1985, between THE DETROIT EDISON COMPANY, a Michigan corporation (the "Lessee"), and THE BANK OF NEW YORK, a New York corporation (the "Lessor").

WHEREAS the Lessor is entering into a Conditional Sale Agreement dated as of the date hereof (the "CSA") with Greenville Steel Car Company (the "Builder"), pursuant to such the Builder has agreed to manufacture, conditionally sell and deliver to the Lessor the units of railroad equipment described in Schedule A hereto (the "Equipment");

WHEREAS the Builder under an Agreement and Assignment dated as of the date hereof (the "CSA Assignment") is assigning its interests in the CSA to Mercantile-Safe Deposit and Trust Company acting as Agent (hereinafter, together with its successors and assigns and the Investor, as hereinafter defined, called the "Vendor") under a Participation Agreement dated as of the date hereof (the "Participation Agreement") with the Lessee, the Lessor and the Investor named therein (said investor, together with its successors and assigns, being hereinafter called the "Investor");

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

WHEREAS the parties contemplate that the Lessor will assign for security purposes certain of its rights in this Lease to the Vendor by an Assignment of Lease and Agreement dated as of the date hereof (the "Lease Assignment"), and the Lessee will consent thereto by a Consent and Agreement (the "Consent");

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions:

§ 1. NET LEASE

This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent or additional rent or any other amounts payable by it hereunder (all such rent, additional rent and other amounts are referred to collectively in this § 1 as "Rent"), or setoff against or recoupment or reduction of Rent, including, but not limited to, abatements, setoffs, reductions or recoupments due or alleged to be due by reason of any past, present or future claims or counterclaims of the Lessee against the Lessor under this Lease or the CSA or otherwise, or against the builder or the Vendor or any other person or for any other reason whatsoever. The Lessee's obligations hereunder, including its obligations to pay all Rent, shall be absolute and unconditional under any and all circumstances, and except as otherwise expressly provided herein, this Lease shall not terminate, nor shall the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person, 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 all Rent 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 payment of Rent made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever except manifest error.

## § 2. DELIVERY AND ACCEPTANCE OF UNITS

The Lessor hereby appoints the Lessee its agent for inspection and acceptance of the Units pursuant to the CSA. The Lessor will cause each Unit to be delivered to the Lessee at the point or points within the United States of America at which such Unit is delivered to the Lessor under the CSA. Upon such delivery, the Lessee will cause an employee of the Lessee to inspect the same and, if such Unit is found to be acceptable, to accept delivery of such Unit, and the Lessee shall execute and deliver to the Lessor a certificate of acceptance ("Certificate of Acceptance") substantially in the form annexed hereto as Schedule D, whereupon, except as provided in the next sentence hereof, such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease. The delivery, inspection and acceptance hereunder of any unit of Equipment excluded from the CSA pursuant to the first paragraph of Article 4 thereof shall be null and void and ineffective to subject such unit to this Lease or to constitute acceptance thereof on behalf of the Lessor for any purpose whatsoever.

## § 3. RENTALS

(1) The Lessee agrees to pay the Lessor, as rental for each Unit subject to this Lease, 32 consecutive payments, payable in arrears, commencing January 2, 1987, to and including July 2, 2002. The 32 rental payments shall each be in an amount equal to the basic lease rate set forth in Schedule B hereto for the applicable payment date multiplied by the Purchase Price (as defined in Article 4 of the CSA) of each Unit subject to this Lease. In addition, if the Vendee shall fail to pay to the Agent on July 2, 1986, an amount equal to interest accrued to said date on the CSA Indebtedness as required by the first sentence of Paragraph 10 of the Participation Agreement, the Lessee shall on July 2, 1986, pay to the Agent an amount equal to said accrued interest, in which event the Lessee shall have a right to sue the Vendee for the amount so paid to the Agent plus interest thereon at the Prime Rate (as defined in § 16 hereof) plus 1% per annum until repaid or withhold an amount equal to the same plus such interest thereon from rentals hereunder but only to the extent such withholdings are not required to satisfy the obligations of the Vendee under the CSA.

(2) The basic lease rates set forth in Schedule B hereto and the related Casualty Values and Termination

Values set forth in Schedule C hereto have been calculated on the assumptions that the Units will have been delivered and settled for by the Lessor and the Agent on the dates and in the amounts as follows:

<u>Number of Units</u>	<u>Assumed Delivery Date</u>	<u>Assumed Settlement Date</u>	<u>Assumed Settlement Amount</u>
200	October 1985	10/30/85	\$7,760,000
205	November 1985	11/30/85	7,954,000
205	December 1985	12/30/85	7,954,000
			<u>\$23,668,000</u>

If for any reason such assumptions are not correct, then such basic lease rates and such Casualty values and Termination Values payable by the Lessee hereunder in respect of the Units on and after January 2, 1987, shall be increased or decreased, as the case may be, by such amount as shall, in the reasonable opinion of the Lessor, cause the Lessor's nominal after-tax yield and net after-tax cash flows as were originally anticipated by the Lessor in evaluating this transaction (such yield and cash flow being hereinafter called "Net Economic Return") to be the same as if such assumptions had been correct. The Lessor shall provide a schedule of such rentals and Casualty Values to the Lessee and the Agent promptly after the facts have been determined and the calculations have been made by the Lessor. If the Lessee so requests, such calculations will, at the expense of the Lessee, be verified by the Lessor's independent auditors and the determination of such auditors shall be binding on the parties hereto.

Notwithstanding anything to the contrary set forth herein, the rentals and Casualty Value and Termination percentages, as adjusted pursuant to this § 3, shall always be sufficient to satisfy the obligations of the Lessor under the CSA regardless of any limitation of liability set forth therein and the date on which rental is payable shall in any event be consistent with the Lessor's payment obligations under the CSA.

If any of the rental payment dates referred to above is not a business day the rental payment otherwise payable on such date shall be payable on the next preceding business day. The term "business day" as used herein means a calendar day, excluding Saturdays, Sundays and any other day on which banking institutions in New York City, New York, Detroit, Michigan, or Baltimore, Maryland, are authorized or obligated to remain closed.

The Lessor irrevocably instructs the Lessee to make all the payments provided for in this Lease, including, but not limited to, the payments provided for in this § 3 and in § 7 hereof, but excluding all Excluded Payments as defined in the Lease Assignment, at the principal office of the Vendor, for the account of the Lessor in care of the Vendor, with instructions to the Vendor, first, to apply such payments to satisfy the obligations of the Lessor under the CSA, and, second, so long as no event of default under the CSA shall have occurred and be continuing, to pay any balance promptly to the Lessor at such place as the Lessor shall specify in writing. If the Lease Assignment is not executed and delivered, or if the Lessee shall have been advised by the Agent in writing that all sums due from the Vendee under the CSA have been fully discharged and satisfied, payments thereafter due shall be made to the Lessor. The Lessee agrees to make each payment provided for herein as contemplated by this paragraph by wire transfer of immediately available funds to the Vendor or the Lessor, as the case may be, by 11:00 a.m., New York City time, on the date such payment is due.

#### § 4. TERM OF LEASE

4.1. Beginning and Termination. The term of this Lease as to each Unit shall begin on the date of delivery and acceptance of such Unit hereunder and, subject to the provisions of §§ 7, 10 and 13 hereof, shall terminate on the date on which the final payment of rent in respect thereof is due pursuant to § 3.1 hereof. The obligations of the Lessee hereunder (including, but not limited to, the obligations under §§ 3, 6, 7, 9 and 14 hereof) shall survive the expiration or termination of the term of this Lease.

4.2. Rights and Obligations of Lessee Subject to CSA. 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 CSA. If an event of default should occur under the CSA, the Vendor may terminate this Lease (or rescind its termination), all as provided therein; provided, however, that, so long as (i) no Event of Default exists hereunder, (ii) the Lessee is complying with the provisions of the Consent and (iii) the Vendor is entitled to apply the Payments (as defined in the Lease Assignment) in accordance with the Lease Assignment, this Lease may not be terminated and the Lessee shall be entitled to the rights of possession, use and assignment provided under § 12 hereof.

## § 5. IDENTIFICATION MARKS

5.1. Identifying Numbers; Legend, Changes. The Lessee will cause each Unit to be kept numbered with the identification number set forth in Schedule A hereto, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the words "OWNERSHIP SUBJECT TO A SECURITY AGREEMENT FILED WITH THE INTERSTATE COMMERCE COMMISSION", with appropriate changes thereof as from time to time may be required by law, in the opinion of the Vendor and the Lessor, in order to protect the Lessor's and the Vendor's title to and interest in such Unit and the rights of the Lessor under this Lease and the rights of the Vendor under the CSA. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such words shall have been so marked and will replace promptly any such markings which may be removed, obliterated, defaced or destroyed. The Lessee will not change the identification number of any Unit unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with the Vendor and the Lessor and duly filed and deposited by the Lessee in all public offices where this Lease and the CSA shall have been filed and deposited and (ii) the Lessee shall have furnished the Vendor and the Lessor an opinion of counsel to the effect that such statement has been so filed and deposited, that such filing and deposit will protect the Vendor's and the Lessor's rights in such Units and that no other filing, deposit or giving of notice with or to any Federal, state or local government or agency thereof is necessary to protect the rights of the Vendor and the Lessor in such Units.

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; provided, however, that the Units may be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates.

## § 6. TAXES

The Lessee assumes responsibility for, and agrees to pay, hold harmless and indemnify on an after-tax basis the Lessor, the Investor and the Vendor and their servants, agents, employees, officers, directors, successors and assigns (the "Indemnified Persons") against, all taxes,

fees, assessments, withholdings, levies, imposts, duties, license and registration fees and other governmental charges of any nature whatsoever, including without limitation penalties, additions to tax and interest (all such taxes, fees, assessments, withholdings, levies, imposts, duties, license and registration fees, other governmental charges, penalties, additions to tax and interest being hereinafter called "Taxes"), imposed on, incurred by or asserted against any Indemnified Person or the Units or any thereof on account of, or with respect to or in any way relating to or arising out of, this Lease or the CSA or any document referred to herein or therein or any of the transactions contemplated hereby or thereby or the manufacture, purchase, acquisition, acceptance or rejection of the Units or any thereof or the ownership, delivery, non-delivery, leasing, subleasing, transfer of title, use, operation, maintenance, repair, condition, sale, return, abandonment or other application or disposition of the Units or any thereof or any indebtedness with respect thereto or the rentals, receipts, earnings or gains arising therefrom; provided, however, that there shall be no indemnification hereunder for (i) any Taxes imposed on or measured by any fees or compensation received by the institution who is the Vendor, (ii) Federal income taxes and income or franchise taxes imposed on the Investor or its successors and assigns with respect to interest paid on the CSA Indebtedness, (iii) Federal income taxes and income or franchise taxes imposed on the Lessor or its successors or assigns by the State of its incorporation or, if different, by the state in which its principal office is located or any taxing authority or jurisdiction therein or by any other taxing jurisdiction not related to: (w) the execution, delivery and performance of this Lease, the Participation Agreement or the CSA or any document referred to herein or hereof or any of the transactions contemplated hereby or thereby or (x) the manufacture, purchase, acquisition, acceptance, or rejection of the Units or any thereof, or (y) the ownership, delivery, non-delivery, leasing, subleasing, transfer of title, use, operation, maintenance, repair, condition, sale, return, abandonment or other application or disposition of the Units or any thereof or any indebtedness with respect thereto, or (z) the rentals, receipts, earnings or gains arising therefrom, and (iv) Taxes payable by the Lessor as a result of any transfer of any of its interest in the Equipment unless such transfer is made during the continuance of an Event of Default hereunder. The Lessee shall pay all Taxes for which it assumes liability hereunder when such Taxes are due and will indemnify each Indemnified Person to the extent required by this § 6 within thirty (30) days after receipt of a written demand for indemnification

from the Indemnified Person specifying the amount to be paid, the basis on which such amount was determined and the nature of the Taxes in question.

In the event that the Lessor shall become obligated to make any payment to the Builder or the Vendor or otherwise pursuant to any corresponding provision of the CSA (other than the proviso to the third paragraph of Article 12 thereof) not covered by the foregoing paragraph of this § 6, the Lessee shall pay such additional amounts (which shall also be deemed Taxes hereunder) to the Lessor as will enable the Lessor to fulfill completely its obligations pursuant to said provision.

In the event any returns, statements or reports with respect to Taxes are required to be made, the Lessee will make such returns, statements and reports in such manner as to show the interest of the Lessor and the Vendor in the Units; provided, however, that the Lessor shall, with respect to any State or political subdivision thereof of the United States of America, file such returns, statements, and reports relating to sales or use taxes, and taxes, fees, and charges on or measured by the Lessor's earnings or gross receipts arising from the Units, or the value added by the Lessor thereto, as the Lessee shall determine are required to be filed, and as shall be prepared by the Lessee, and the Lessor shall remit the amount thereof upon payment by the Lessee to the Lessor (such payment to be made forthwith upon demand by the Lessor therefor) of such taxes, fees and charges except as provided above. To the extent that the Lessor has information necessary to the preparation of such returns, statements and reports, it will furnish such information to the Lessee.

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

The Lessee shall, whenever reasonably requested by the Lessor, submit to the Lessor copies of returns, statements, reports, billings and remittances, or furnish other evidence satisfactory to the Lessor, of the Lessee's performance of its duties under this § 6. The Lessee shall also

furnish promptly upon request such data as the Lessor reasonably may require to permit the Lessor's compliance with the requirements of taxing jurisdictions.

The Lessee agrees to pay all amounts due under this § 6 free of any Taxes and to indemnify each Indemnified Person against any Taxes imposed by reason of any payment made by the Lessee so that the Indemnified Person to whom or for whose benefit the payment is made shall receive an amount which, net of any Taxes or other charges required to be paid by such Indemnified Person in respect thereof (calculated at the maximum statutory rates then in effect), shall be equal to the amount of payment otherwise required hereunder. Without limiting the foregoing, the amount which the Lessee shall be required to pay with respect to any Taxes subject to indemnification under this § 6 shall be an amount sufficient so that, after considering the tax and other effects of the Taxes in question and the receipt of indemnification payments hereunder, the Indemnified Person will have the same Net Economic Return had such Taxes not been incurred or imposed.

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

If any claim is made against any Indemnified Person or if any proceeding is commenced against any Indemnified Person for any Taxes as to which the Lessee has an indemnity obligation pursuant to this § 6, such Indemnified Person shall promptly notify the Lessee, but the failure to provide such notice shall not affect the Lessee's obligations hereunder to any Indemnified Person except that the Lessee shall not be obligated to indemnify such Indemnified Person for any additional Taxes or penalties or interest thereon to the extent resulting solely from such failure. If reasonably requested by the Lessee in writing, upon determination by such Indemnified Person (which determination shall be reasonable) that the action to be taken will not result in any substantial risk or consequences materially adverse to it and that the action to be taken will not result in any material danger of sale, forfeiture or loss of, or the creation of any liens (except if the Lessee shall have adequately bonded such lien or otherwise made provision to protect the interests of such Indemnified Person in respect of such lien in a manner satisfactory to such Indemnified Person) on the Units or any thereof, such Indemnified Person shall upon receipt of indemnity satisfactory to it and at the expense of the

Lessee (including, without limitation, all costs, expenses, attorneys' and accountants' fees and disbursements, penalties and interest) in good faith contest the validity, applicability or amount of such Taxes by, in such Indemnified Person's sole discretion, (A) resisting payment thereof, (B) not paying the same except under protest, if protest is necessary and proper, or (C) if payment is made, using reasonable efforts to obtain a refund thereof in appropriate administrative and judicial proceedings. Such Indemnified Person shall not be required to take any action pursuant to this paragraph unless and until the Lessee shall have agreed to indemnify such Indemnified Person in a manner reasonably satisfactory to such Indemnified person for any liability or loss which such Indemnified Person may reasonably incur as a result of such contest and shall have agreed to pay such Indemnified Person on demand all costs and expenses which such Indemnified Person may reasonably incur in connection with such contest (including fees and disbursements of counsel). Any contest required pursuant to the preceding sentence shall, at the option of such Indemnified Person, be conducted by such Indemnified Person or the Lessee in the name of the Lessee or such Indemnified Person. With respect to property taxes, sales and use taxes, and other similar taxes levied or imposed directly on the Equipment or the use or value thereof (other than income or franchise taxes on or based on income), at the request of the Lessee, the Indemnified Person will permit the Lessee to conduct the contest so long as the contested liability is the only contested liability of the Indemnified Person then pending or threatened before the respective taxing authorities. In the case of any contest conducted by the Lessee the Indemnified Person will take or join in any action reasonably requested by the Lessee with respect thereto. If any such contest involves payment of the Tax in question, the Lessee shall either make such payment directly to the appropriate authority or furnish to such Indemnified Person sufficient funds to make such payment. The Lessee agrees to give such Indemnified Person reasonable notice of any contest prior to the date by which it must be commenced. If any Indemnified Person obtains a refund of all or any part of any Tax paid or reimbursed by the Lessee and if no Event of Default or event with which the giving of notice and/or passage of time would become an Event of Default shall have occurred and be continuing, such Indemnified Person shall promptly pay to the Lessee the amount of such refund net of expenses not already paid or reimbursed by the Lessee; provided, however, that the aggregate amount of all payments with respect to any Taxes made by the Indemnified Person to the Lessee pursuant to this sentence shall not exceed the aggregate amount of all payments made by the Lessee to such Indemnified Person pursuant to this § 6 with respect to such

addition to such refund such Indemnitee shall receive an amount representing interest on the amount of such refund, the Lessee shall promptly be paid that portion of such interest that is fairly attributable to Taxes paid or reimbursed by the Lessee prior to the receipt of such refund. Nothing contained herein shall require any Indemnified Person to contest or permit the Lessee to contest a claim which it would otherwise be required to contest if such Indemnified Person shall waive payment by the Lessee of any amount that might otherwise be payable by the Lessee under this § 6 by way of indemnity in respect of such claim, or if an Event of Default shall have occurred and be continuing hereunder.

§ 7. MAINTENANCE, CASUALTY OCCURRENCE,  
INSURANCE, ECONOMIC OBSOLESCENCE

7.1. Maintenance. The Lessee at its own expense will maintain, service, repair and/or overhaul, as necessary, each Unit (including any parts installed on or replacements made to any Unit which are considered an accession thereto pursuant to § 9.3) so that each Unit will remain (a) in good operating condition (ordinary wear and tear excepted) for its intended purpose, (b) in compliance with any and all applicable laws and regulations and all mandatory safety bulletins issued by the Builder applicable to the Equipment, (c) meet the standards then in effect under the interchange rules of the American Association of Railroads and (d) in compliance with the Lessee's insurance policies and not in violation of any of the Builder's warranties. The Lessee shall not discriminate between the Equipment and such other similar equipment to the detriment of the Equipment in its maintenance procedures and practices.

7.2. Casualty Occurrences. In the event that any Unit shall be or become worn out, lost, stolen, destroyed or, in the good faith and reasonable opinion of the Lessee, irreparably damaged, or remains in an inoperable condition for six (6) consecutive months (excluding any period during which the Lessee is unable to repair same or make same operable due to labor strikes or other work stoppages, lockouts, or events beyond the reasonable control of the Lessee) from any cause whatsoever, or permanently returned to the Builder pursuant to any patent indemnity provision of the CSA prior to the return of such Unit in the manner set forth in § 14 hereof, or should title to any Unit be taken or requisitioned by condemnation or otherwise by any governmental authority, or should use of any Unit be taken or requisitioned by any governmental authority for a period

exceeding six (6) consecutive months (such occurrences being hereinafter called "Casualty Occurrences"), the Lessee shall promptly (but in any event within 30 days after such Casualty Occurrence) and fully notify the Lessor and the Vendor with respect thereto. On the date set forth in Schedule C hereto next succeeding such notice (each such date being herein called a "Casualty Payment Date") the Lessee shall pay to the Lessor an amount equal to the rental payment or payments in respect of such Unit then due and payable plus a sum equal to the Casualty Value (as defined in § 7.4 hereof) of such Unit as of such rental payment date. 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 permanent return to the Builder of such Unit) the Lessor shall be entitled to recover possession of such Unit.

Whenever any Unit shall suffer a Casualty Occurrence after termination of this Lease at the expiration of the original or extended term hereof and before such Unit shall have been returned in the manner provided in § 14 hereof, the Lessee shall promptly and fully notify the Lessor with respect thereto and pay to the Lessor (in addition to any amounts due pursuant to § 14 hereof) an amount equal to the Casualty Value as of the end of such original or extended term of this Lease, as the case may be.

7.3. Lessee Agent for Disposal. The Lessor hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof, at the best price obtainable on an "as is, where is" basis. Provided that the Lessee has previously paid the Casualty Value to the Lessor and provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing, the Lessee shall be entitled to the net proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Lessor. The Lessee shall be entitled to credit against the Casualty Value payable in respect of any Unit permanently returned to the Builder pursuant to any patent indemnity provision of the CSA an amount equal to any net patent indemnity payment in respect of such Unit made by the Builder to the Vendor under the CSA. The Lessee will pay all costs and expenses in connection with the sale of any Unit pursuant to a Casualty Occurrence.

7.4. Casualty Value. During the original term of this Lease, the Casualty Value of each Unit as of any Casualty Payment Date shall an amount equal to the

percentage of the Purchase Price of such Unit as is set forth in Schedule C hereto opposite such Casualty Payment Date. During any renewal term hereof the Casualty Value of each Unit as of any Casualty Payment Date shall be an amount equal to the Fair Market Value of such Unit at the beginning of such renewal term.

7.5. Requisition. In the event of the requisition (except after such requisition has become a Casualty Occurrence) of use by any governmental authority (hereinafter collectively called the "Government") of any Unit during the term of this Lease or any renewal thereof, all of the Lessee's obligations (including without limitation the obligation to pay rent) under this Lease with respect to such Unit shall continue to the same extent as if such requisition had not occurred, except that if such Unit is returned by the Government at any time after the end of the term of this Lease or any renewal thereof, the Lessee shall be obligated to return such Unit to the Lessor pursuant to § 11 or 14 hereof, as the case may be, promptly upon such return by the Government rather than at the end of the term of this lease or any renewal thereof, but the Lessee shall in all other respects comply with the provisions of said § 11 or 14, as the case may be, with respect to such Unit. All payments received by the Lessor or the Lessee from the Government for the use of such Unit during the term of this Lease or any renewal thereof and prior to such use having become a Casualty Occurrence shall, to the extent such payments are equal to or less than the rent payable by the Lessee hereunder in respect of such Unit, be paid over to, or retained by, the Lessee, provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing, and all payments in excess thereof shall be paid over, or retained by, the Lessor. All payments received by the Lessor or the Lessee from the Government for the use of such Unit after such use shall have become a Casualty Occurrence, shall be paid over to, or retained by, the Lessee, up to an amount equal to the Casualty Value actually paid by the Lessee in respect thereof, and all such payments in excess thereof shall be paid over to, or retained by, the Lessor. All payments received by the Lessor or the Lessee for the use of such Unit after the original term of this Lease or any renewal thereof shall be paid over to, or retained by, the Lessor.

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

7.6. Insurance. The Lessee will, at all times prior to the return of the Units to the Lessor, at its own expense, cause to be carried and maintained with insurance carriers reasonably satisfactory to the Lessor and the Vendor physical damage insurance and public liability insurance in respect of the Units at the time subject hereto, against such reasonable risks, in such reasonable amounts and on such reasonable terms and conditions as are satisfactory to the Lessor and the Vendor, and, in any event, not less comprehensive in amounts and against risks customarily insured against by the Lessee in respect of similar equipment owned or leased by it, but in no event shall such coverage be for amounts or against risks less than the prudent public utility industry standards for such leased equipment, nor shall the amount of physical damage insurance for any Unit be less than the Casualty Value payable from time to time for such Unit. All policies with respect to such insurance shall name the Lessor and the Vendor as additional insureds or loss payees, as their interests may appear, shall provide for at least 30 days' prior written notice by the insurance carrier to the Lessor and the Vendor in the event of cancellation, expiration or amendment, shall include waivers by the insurer of all claims for premiums against the Lessor and the Vendor, shall provide that losses are payable notwithstanding, among other things, any act, omission or neglect of the Lessee, the Lessor or the Vendor (except for the sole negligence of the Lessor or the Vendor), any breach or violation by the Lessee, the Lessor or the Vendor of any warranty, declaration, condition or other provision contained in any such policy, or foreclosure, notice of sale or any other proceeding in respect of the Units (except for the sole negligence of the Lessor or the Vendor), or any change in the title to or ownership of any of the Units and shall contain provisions whereby the insurance carrier waives all rights of subrogation which it may have against any named insured therein or loss payee thereunder. Each such insurance policy shall expressly provide that all of the provisions thereof except the limits of liability (which shall be applicable to all insureds as a group) and liability for premiums (which shall be solely a liability of the Lessee) shall operate in the same manner as if they were a separate policy covering each insured and shall be primary without right of contribution from any insurance carried by the Lessor or the Vendor. The Lessee shall furnish to the Lessor and the Vendor a certificate of an independent insurance broker reasonably acceptable to Lessor evidencing the maintenance of the insurance required hereunder and

shall furnish certificates evidencing renewal 15 days prior to the expiration date of such policy or policies. Notwithstanding anything to the contrary contained herein, the Lessee agrees that it will not, without the prior written consent of the Lessor, reduce the amount of the physical damage insurance required to be maintained hereby or public liability insurance required to be maintained hereby below the dollar limits set forth in an officer's certificate provided by the Lessee at the First Delivery Date Closing, or reduce the risks covered by such insurance below those insured against as of the First Delivery Date, or retain self-insurance in excess of \$1,000,000 in respect of such physical damage insurance or \$2,500,000 in respect of such public insurance.

In the event of the failure of the Lessee to provide and furnish any of the aforesaid insurance, the Lessor or the Agent, upon notice to the Lessee, may, but shall not be obligated to, procure such insurance and the Lessee shall, upon demand, reimburse the Lessor and the Agent for all expenditures made by the Lessor or the Agent for such insurance, together with interest thereon computed at the rate set forth in § 16 in respect of overdue rentals from the date of the Agent's or the Lessor's payment until reimbursed by the Lessee.

7.7. Insurance Proceeds and Condemnation Payments. If the Lessor shall receive any insurance proceeds or condemnation payments or any payments from the American Association of Railroads in respect of a Unit suffering a Casualty Occurrence, the Lessor shall, subject to the Lessee's having made payment of the Casualty Value in respect of such Unit and provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing, pay such proceeds or 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 payments shall remain the property of the Lessor. If the Lessor shall receive any insurance proceeds in respect of any Unit not suffering a Casualty Occurrence, all such proceeds shall be paid to the Lessee upon proof to the Lessor that any damage to such Unit in respect of which such proceeds were paid has been fully repaired so as to comply with the provisions of § 7.1 hereof, 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.

7.8. Economic Obsolescence. In the event that the Lessee shall during the original term hereof, in its

reasonable judgment, determine that the Units remaining under this Lease have become economically obsolete or surplus to the Lessee's requirements in the Lessee's business, as determined in good faith by the Vice President of Operations of the Lessee, the Lessee shall have the right, at its option and on at least 180 days' prior written notice to the Lessor and the Vendor, to terminate (which act shall hereinafter be called the "Termination") this Lease as to all or not less than 244 of such Units as of any succeeding January 2 or July 2 specified in such notice (such termination date so specified being hereinafter called the "Termination Date"); provided, however, that (i) the Termination Date shall not be earlier than January 2, 1996, (ii) no Event of Default or other event which after the lapse of time or the giving of notice or both would become an Event of Default shall have occurred and be continuing on such date or on the date on which the notice of such Termination shall be given, (iii) on the Termination Date all Units shall be in the condition required for redelivery pursuant to § 14 hereof and (iv) such right of Termination shall be available only once.

During the period after the giving of such notice until the fifth business day preceding the Termination Date, the Lessee shall use its best efforts to obtain bids (and the Lessor may at its option obtain additional bids) for the purchase of each such Unit, and the Lessee shall at least five business days prior to such Termination Date certify to the Lessor the amount of each such bid and the name and address of the party (which shall not be a corporation, other entity or individual affiliated with the Lessee or any other party from whom the Lessee or any such affiliate intends thereafter to lease such Unit) submitting such bid. On the Termination Date, the Lessor shall sell each such Unit for cash to the bidder who shall have submitted the highest bid prior to the Termination Date. The total sale price realized at each such sale shall be retained by the Lessor.

On such Termination Date, the Lessee shall pay to the Lessor with respect to the Units an amount equal to the sum of (i) the amount, if any, by which the Termination Value (as hereinafter defined) for the Units computed as of such date exceeds the sale price of the Units so sold after the deduction of all expenses incurred by the Lessor in connection with such sale plus (ii) the rental payment with respect to the Units due on such Termination Date plus (iii) an amount equal to the premium payable under Article 7 of the CSA in respect of the prepayment of the principal of

the CSA Indebtedness resulting from such Termination. The Termination Value of each such Unit as of the Termination Date shall be the percentage of Purchase Price of such Unit set forth in Schedule C hereto opposite such date. In no event shall the aggregate amount of sale proceeds retained by the Lessor and payments of rental and Termination Value received by the Lessor as aforesaid be less than the Termination Value (as defined in the CSA) with respect to the Units as of such Termination Date.

Except as is provided in the last paragraph of this § 7.8, if no sale of all the Units shall occur on the Termination Date with respect thereto as provided above, no Termination shall occur with respect to any of the Units and this Lease shall continue in full force and effect without change.

Upon the receipt by the Lessor of the amounts above described, the obligation of the Lessee to pay rent pursuant to § 3 hereof in respect of such Units on each rental payment date shall continue to and including the Termination Date but shall then terminate. The Lessor shall be under no duty to solicit bids, to inquire into the efforts of the Lessee to obtain bids or otherwise to take any action or incur any cost or expense in connection with any sale other than to transfer or to cause to be transferred all the Lessor's right, title and interest in and to such Unit to the purchaser named in the highest bid certified by the Lessee to the Lessor as above provided. Any such sale shall be free and clear of all the Lessee's rights to such Unit, but otherwise shall be made without recourse or warranties other than against Lessor's Liens as defined in § 13.3.

If the Lessee shall exercise its option to effect a Termination, the Lessor may, notwithstanding such election by the Lessee, by written notice to the Lessee given within 90 days after the termination notice is given to the Lessor and upon satisfaction and discharge of the Lessor's obligations under the CSA with respect to the Units, elect to retain such Units, in which case the Lessee shall not be obligated to pay the Termination Value to the Lessor. In the event the Lessor shall so elect to retain such Units and delivers to the Lessee evidence of the satisfaction and discharge of the Lessor's obligations under the CSA with respect to the Units, the Lessee shall deliver such Units to the Lessor in accordance with the provisions of § 14 hereof.

§ 8. REPORTS

On or before April 30 in each year, commencing with the calendar year 1986, the Lessee will furnish to the Lessor and the Vendor a certificate signed by the Vice President-Operations of the Lessee or another qualified person satisfactory to the Lessor and the Vendor (a) setting forth as of the preceding December 31 the amount, description and numbers of all Units then leased hereunder and covered by the CSA, the amount, description and numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year and such other information regarding the condition and state of repair of any Units as the Lessor or the Vendor may reasonably request, (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and markings required by § 5 hereof have been preserved or replaced, (c) further stating that the Lessee is in compliance under the Lease and has performed or has caused to be performed the required maintenance of the Unit and that no event has occurred which with the lapse of time or notice or both would constitute an Event of Default or, if such an event has occurred, the nature and status thereof. The Lessor and the Vendor 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 Lessor or the Vendor may request during the continuance of this Lease. The Lessee shall promptly notify the Lessor and the Vendor of any occurrence of an Event of Default or other event which after notice or lapse of time or both would become an Event of Default, specifying such Event of Default and all such events and the nature and status thereof.

§ 9. DISCLAIMER OF WARRANTIES, COMPLIANCE WITH APPLICABLE LAWS, ADDITIONS, MODIFICATIONS AND IMPROVEMENTS, INDEMNIFICATION

9.1. Disclaimer of Warranties. THE LESSOR 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 LESSOR DOES NOT MAKE ANY WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE OR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, OR AS TO THE LESSEE'S RIGHT TO QUIET ENJOYMENT THEREOF OR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT,

EITHER UPON DELIVERY THEREOF TO THE LESSEE OR OTHERWISE, it being agreed that all such risks, as among the Lessor and the Lessee, are to be borne by the Lessee; but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for the account of the Lessor and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Lessor may have against the Builder under the provisions of Items 3 and 4 of Annex A to the CSA; provided, however, that if at any time an Event of Default shall have occurred and be continuing, the Lessor may assert and enforce, at the Lessee's sole cost and expense, such claims and rights. The Lessor shall not have any responsibility or liability to the Lessee or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Units or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of any Units or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, subleasing, servicing, maintenance, repair, improvement or replacement of any Units. The Lessee acknowledges and agrees that each Unit upon acceptance will be of a size, design, capacity and manufacture selected by the Lessee and that the Lessee is satisfied that the same is suitable for its purpose. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Lessor that the Units described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

9.2. Compliance with Applicable Laws. The Lessee agrees, for the benefit of the Lessor and the Vendor, at all times to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each Unit) with all applicable laws of the jurisdictions in which its operations involving the Units may extend, with the interchange rules of the Association of American Railroads, if applicable, and with all lawful rules of the United States Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units

(all such laws and rules to such extent called "Applicable Law"), and in the event that, prior to the expiration of this Lease or any renewal thereof, Laws require any alteration, replacement, addition or modification of or to any part on any Unit, the Lessee will conform therewith at its own expense; provided, however, that the Lessee may at its own expense, in good faith, contest the validity or application of any Law in any reasonable manner which does not, in the opinion of the Lessor or the Vendor, adversely affect the property or rights of the Lessor or the Vendor under this Lease or under the CSA.

9.3. Additions, Modifications and Improvements.

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 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 (or such other party as may have title thereto), except to the extent such additions, modifications or improvements are described in the following sentence. Any and all parts installed on and additions and replacements made to any Unit (i) which are not readily removable without causing material damage to such Unit and were installed or were added to such Unit in contravention of the provisions contained hereinabove, (ii) the cost of which is included in the Purchase Price of such Unit, (iii) in the course of ordinary maintenance of the Units or (iv) which are required for the operation or use of such Unit by the interchange rules of the Association of American Railroads or by the regulations of the Interstate Commerce Commission, the United States Department of Transportation or any other 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 CSA) shall immediately be vested in the Lessor.

9.4. Indemnification. The Lessee shall pay, and shall protect, indemnify and hold each Indemnified Person 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, reasonable costs, reasonable disbursements, reasonable 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 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, storage, return or other disposition of any Unit or portion thereof; (ii) any latent or other defects whether or not discoverable by any Indemnified Person 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 Lessor, 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 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 Lessor's or the Vendor's obligations under the Lease Assignment, the CSA or the Participation Agreement, except to the extent such claim arises from the gross negligence or wilful misconduct of the person otherwise to be indemnified hereunder (all such matters called "Indemnified Matters"). The Lessee shall be obligated under this § 9.4, irrespective of whether any Indemnified Person shall also be indemnified with respect to the same Indemnified 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 § 9.4 without first resorting to any such other rights of indemnification. In case any action, suits or proceeding is brought against any Indemnified Person, in connection with any Indemnified Matter, 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, as the case may be, and, in the event of any failure by the Lessee to so do, the Lessee shall pay all reasonable 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

§ 9.4, 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 each Indemnified Person agree to give each other promptly upon obtaining knowledge thereof written notice of any claim or liability hereby indemnified against; provided, however, that any failure of any Indemnified Person to furnish such notice in a prompt manner shall not relieve the Lessee from its obligation to indemnify pursuant to this § 9.4. Upon the payment in full of any indemnities as contained in this § 9.4 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, it shall be subrogated to any right of such Indemnified Person in respect of the matter against which indemnity has been paid as aforesaid. 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 § 9.4 shall be paid over to the Lessee to the extent necessary to reimburse the Lessee for indemnification payments previously made in respect of such matter. Nothing herein contained shall constitute a guaranty by the Lessee of the CSA Indebtedness under the CSA or a guaranty of the residual value of any Unit.

The Lessee further agrees to indemnify, protect and hold harmless each Indemnified Person from and against any and all liabilities, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against such Indemnified Person because of the use in or about the construction or operation of any of the Units of any article or material specified by the Lessee and not manufactured by the Builder or of any design, system, process, formula or combination specified by the Lessee and not developed or purported to be developed by the Builder which infringes or is claimed to infringe on any patent or other right.

The Lessee shall bear the responsibility and risk for, and shall not be released from its obligations here-

under in the event of, any damage to or the destruction or loss of any or all of the Units of Equipment.

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

The indemnities contained in this § 9.4 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 and collectible directly from the Lessee by any Indemnified Person notwithstanding the provisions of the Lease Assignment or the Consent. None of the indemnities in this § 9.4 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.

## § 10. DEFAULT

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

(A) default shall be made in payment of any amount provided for in § 3, 6, 7, 9, 13 or 16 hereof, and such default shall continue for five business days;

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

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

Vendor to the Lessee specifying the default and demanding that the same be remedied and (ii) the date on which such default shall first become known to any officer of the Lessee;

(D) any representation or warranty made by the Lessee herein or in the Consent or in the Participation Agreement or in any agreement, document or certificate delivered by the Lessee in connection herewith or therewith (other than the Indemnity Agreement) shall prove to have been incorrect in any material respect when made or given;

(E) a petition for reorganization under Title 11 of the United States Code, as now constituted or as 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 this Lease, the Consent and the Indemnity Agreement shall not have been and shall not continue to be duly assumed in writing within 60 days after such petition shall have been filed, 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 expenses of administration and obligations incurred by such trustee or trustees; or

(F) any other proceeding 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 under this Lease, the Consent and the Indemnity Agreement 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 such obligations), 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 such obligations shall not have been and shall not continue to be duly assumed in writing within 60 days after such proceedings shall have been commenced, 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 expenses of administration and obligations incurred by such trustee or trustees or receiver or receivers;

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

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

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as herein provided; and thereupon the Lessor may by its agents enter upon the premises of the Lessee or other premises, insofar 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, sell, operate, lease and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever and without any duty to account to the Lessee for such action or inaction or for any proceeds arising therefrom; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee as damages for loss of the bargain and not as a penalty whichever of the following amounts that the Lessor, in its sole discretion, shall specify, (i) a sum, with respect to each Unit, which represents (w) the excess of the present value, at the time of such termination, of the entire unpaid balance of all rental for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term as to such Units

such present value to be computed on the basis of 10% 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 Lessor reasonably estimates to be obtainable for each Unit during such period, such present value to be 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 (x) any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Lessor 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) the sum of (y) an amount equal to the excess, if any, of the Casualty Value as of the Casualty Payment Date on or next preceding date of termination over the amount the Lessor reasonably estimates to be fair market sales value of such Unit at such time plus (z) any amounts described in clause (x) above; provided, however, that in the event the Lessor shall have sold any Unit, the Lessor, in lieu of collecting any amounts payable by the Lessee pursuant to the preceding clause (ii) (y) with respect to such Unit, may demand that the Lessee pay to the Lessor and the Lessee shall pay to the Lessor on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty Value for such Unit as of the Casualty Payment Date on or next preceding the date of termination over the net proceeds of such sale.

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

10.2. Remedies Not Exclusive, Waiver. The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative and may be exercised concurrently or consecutively, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory re-

quirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is not, at the time in question, prohibited by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make such payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf. The Lessee hereby waives any and all claims against the Lessor and the Vendor and their agent or agents for damages of whatever nature in connection with any retaking of any Unit pursuant to this § 10.2.

10.3. Failure to Exercise Rights is not Waiver. No failure by the Lessor to exercise, and no delay by the Lessor in exercising, any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege by the Lessor preclude any other or further exercise thereof, or the exercise of any other right, power or privilege.

#### § 11. RETURN OF UNITS UPON DEFAULT

11.1. Return of Units. If this Lease shall terminate pursuant to § 10 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor. Each Unit so delivered shall be in the condition required by § 7.1 hereof and shall have attached or affixed thereto any special device considered an accession thereto as provided in § 9 and shall have removed therefrom at the Lessee's expense any addition, modification or improvement which, as provided in § 9, is owned by the Lessee. For the purpose of delivering possession, the Lessee shall at its own cost, expense and (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 Units have been interchanged or which may have possession thereof to return such Unit so interchanged) cause such Units to be placed upon such storage tracks at such site or sites as the Lessor reasonably may designate; and (b) permit the Lessor to store such Units on such tracks at the risk of the Lessee without charge for insurance, rent or storage until all such Units have been sold, leased or otherwise disposed of by the Lessor.

The assembling, delivery, storage, insurance and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence

of this Lease and, upon application to any court of equity having jurisdiction, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver and store the Units. During any storage period, the Lessee will, at its own expense, maintain and keep the Equipment in the condition required by § 7.1 hereof and will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser, lessee or user 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 Lessor and, if received by the Lessee, shall be held in trust for the benefit of the Lessor and promptly turned over to the Lessor. In the event any Unit is not assembled, delivered and stored, as hereinabove provided, within 30 days after such termination, the Lessee shall, in addition, pay to the Lessor for each day thereafter an amount equal to the amount, if any, by which 0.052894% of the Purchase Price for such Unit for each such day exceeds the actual earnings received by the Lessor with respect to such Unit for each such day.

11.2. Lessor Appointed Agent of Lessee. Without in any way limiting the foregoing obligations of the Lessee under this § 11, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is in default hereunder and is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

## § 12. ASSIGNMENT, POSSESSION AND USE

12.1. Assignment; Consent. This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. The Lessee hereby consents to the assignment of this Lease pursuant to the Lease Assignment. All the rights of the Lessor hereunder shall inure to the benefit of the Lessor's successors and assigns.

12.2 Lessee's Rights to Use the Units; To Permit Use Thereof by Others and to Sublease the Units. 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. The Lessee shall not assign or transfer its leasehold interest under this Lease in the Units or any of them without the prior written consent of the Lessor and the Vendor, except as provided in this § 12.2; and the Lessee shall not part with possession or control of, or suffer or allow to pass out of its possession or control, any of the Units without the prior written consent of the Lessor and the Vendor, except as provided in this § 12.2. Without the prior written consent of the Lessor and the Vendor, the Lessee may sublease (which sublease shall be expressly subject and subordinate to the rights and remedies of the Lessor and the Vendor hereunder and under the CSA) the Units to, or permit their use by, any person controlling, controlled by, or under common control with the Lessee or a user incorporated in the United States of America (or any State thereof or the District of Columbia) upon lines of a railroad company or companies incorporated in the United States of America (or any State thereof or the District of Columbia) or over which the Lessee, such user, or such railroad company or companies have trackage rights or rights for operation of their trains and upon the lines of railroad of connecting and other carriers in the usual interchange of traffic or in through or run-through service, but only upon and subject to all the terms and conditions of this Lease; provided, however, that the Vendor's and the Lessor's prior written consent, not to be unreasonably withheld, must be obtained for any sublease (other than to an entity controlling, controlled by, or under common control with, the Lessee) that is for a term longer than one year or is renewable for a term more than one year; provided further, however, that the Lessee shall not sublease or permit the sublease or use of any Unit to service involving operation or maintenance outside the United States of America or use or permit the use of any Unit for purposes other than the transport of coal without the consent of the Lessor; and provided further, however, that any such sublease or use shall be consistent with the provisions of the Indemnity Agreement and not result in any adverse income tax consequences to the Lessor. The Lessee may not assign any of its rights or obligations hereunder to any person, firm or entity without the Vendor's and the Lessor's prior written consent except to a person, firm or entity acquiring substantially all of the Lessee's assets or merging or consolidating with the Lessee, provided that the net worth of the person, firm or entity incorporated in the

United States of America (or in any state thereof or the District of Columbia) and acquiring such assets or surviving such merger or consolidation is at least equal to the net worth of the Lessee immediately prior to such acquisition, merger or consolidation and provided further, that no Event of Default hereunder shall exist immediately after completion of such acquisition, merger or consolidation. No such assignment or sublease shall relieve the Lessee of its obligations hereunder which shall be and remain those of a principal and not a surety. The Lessee shall not use, or permit any other person to use, the Equipment in a manner inconsistent with the purposes for which it was designed.

12.3. Discharge of Liens. 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 Lessor Liens and other than encumbrances created by the Vendor or resulting from claims against the Vendor not related to the ownership of the Units) upon or with respect to any Unit or the interest of the Lessor, the Vendor or the Lessee therein, and will promptly discharge any such lien, claim, security interest or other encumbrance which arises.

### § 13. RENEWAL OPTIONS, PURCHASE OPTION

13.1. Renewal Options. Provided that this Lease has not been earlier terminated and no Event of Default or event which with lapse of time and/or demand provided for herein could constitute an Event of Default shall have occurred and be continuing, the Lessee may by written notice delivered to the Lessor not less than 180 days prior to the end of the original term or any extended term of this Lease, as the case may be, elect to extend the term of this Lease in respect of all or not fewer than 244 of the Units then covered by this Lease, for an additional one-year period commencing on the scheduled expiration of the original term or extended term of this Lease, as the case may be, at a Fair Market Rental (as defined below) payable in semiannual payments in arrears during such extended term; provided, however, that no option to extend the term of this Lease may be exercised by the Lessee under this § 13.1 more than seven times.

13.2. Purchase Option. Provided that this Lease has not been earlier terminated and no Event of Default or event which with lapse of time and/or demand provided for herein could constitute an Event of Default shall have

occurred and be continuing, at the end of the original or any extended term of this Lease the Lessee may by written notice delivered to the Lessor not less than 180 days prior to the end of such term of this Lease, elect to purchase all or not fewer than 244 of the Units then covered by this Lease for the then "Fair Market Purchase Price" thereof.

13.3. Fair Market Rental and Fair Market Purchase Price. Fair Market Rental and Fair Market Purchase Price shall be determined on the basis of, and shall be equal in amount to, the cash rental for a one-year period or the purchase price, as the case may be, which would obtain in an arm's-length transaction between an informed and willing lessee or purchaser and an informed and willing lessor or seller, as the case may be, under no compulsion to lease or sell and, in such determination, costs of removal from the location of current use shall not be a deduction from such rental or purchase price and it shall be assumed that all of the Units for which such determination is being made have been collected in one place and have been maintained in full compliance with all of the provisions of § 7.1 hereof. If, after 10 days from the giving of notice by the Lessee of the Lessee's election to extend the term of this Lease or to exercise its purchase option, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Rental or Fair Market Purchase Price of the Units, such rental or purchase price shall be determined in accordance with the foregoing definition by the following procedure: If either party to such determination shall have given written notice to the other requesting determination of such rental or purchase price by this appraisal procedure, the parties shall consult for the purpose of appointing a qualified independent appraiser by mutual agreement. If no such appraiser is so appointed within 5 days after such notice is given, each party shall appoint an independent appraiser within 10 days after such notice is given, and the two appraisers so appointed shall within 20 days after such notice is given appoint a third independent appraiser. If no such third appraiser is appointed within 20 days after such notice is given, either party may request the American Arbitration Association to make such appointment, and both parties shall be bound by any appointment so made. Any appraiser or appraisers appointed pursuant to the foregoing procedure shall be instructed to determine the Fair Market Rental (and, in the case of each renewal period, the Fair Market Purchase Price at the beginning of such renewal period) of the Units subject to the proposed extended term, or the Fair Market Purchase Price, as the case may be, within 30 days after his or their appointment. If the

parties shall have appointed a single appraiser or if either party shall have failed to appoint an appraiser, the determination of Fair Market Rental or Fair Market Purchase Price, as the case may be, of the single appraiser appointed shall be final. If three appraisers shall be appointed, the determination of the appraiser which differs most from that of the other two appraisers shall be excluded, the remaining two determinations shall be averaged and such latter average shall be final and binding upon the parties hereto as the Fair Market Rental or Fair Market Purchase Price, as the case may be. The appraisal proceedings shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association as in effect on the date hereof, except as modified hereby. The provision for this appraisal procedure shall be the exclusive means of determining Fair Market Rental or Fair Market Purchase Price, as the case may be, and shall be in lieu of any judicial or other procedure for the determination thereof, and each party hereto hereby consents and agrees not to assert any judicial or other procedures. The Lessee shall bear all appraisal procedure expenses.

Upon payment of the purchase price of any Unit, pursuant to an election by the Lessee to purchase the Units, the Lessor shall upon request of the Lessee execute and deliver to the Lessee, or to the Lessee's assignee or nominee, a bill of sale (without representations or warranties) for such Unit such as will transfer to the Lessee such title to such Unit as the Lessor derived from the Vendor, free and clear of all Lessor Liens. "Lessor Liens" shall mean all liens, security interests and encumbrances created by or arising through the Lessor, and not related to the transactions contemplated hereby or by the Participation Agreement, other than liens, security interests and encumbrances which the Lessee is obligated to pay or discharge under or pursuant to this Lease or Participation Agreement.

#### § 14. RETURN OF UNITS UPON EXPIRATION OF TERM

As soon as practicable on or after the expiration of the original or any extended term of this Lease with respect to any Unit or on or after a Termination of this Lease pursuant to § 7.9 hereof, the Lessee will, at its own cost and expense, at the request of the Lessor, deliver possession of such Unit to the Lessor upon such storage tracks at such site or sites (not exceeding three sites) within a 750-mile radius of Superior, Wisconsin, or Decker,

Montana, as the Lessor may designate, or, in the absence of such designation, as the Lessee may select, and permit the Lessor to store such Unit on such tracks for a period not exceeding 180 days following notification to the Lessor by the Lessee that all the Units have been so assembled and delivered for storage, all as directed by the Lessor, the movement and storage of such Units to be at the expense and risk of the Lessee (including the insurance required by § 7.8 hereof); and in the event that any Unit shall suffer a Casualty Occurrence during such storage period, the Lessee shall pay the Lessor the Casualty Value thereof as provided in § 7.4 hereof. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representatives of any prospective purchaser, lessee or user of such Unit, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence or strict liability of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, on behalf of either the Lessor any prospective purchaser, lessee or user, such rights of inspection. Each Unit returned to the Lessor pursuant to this § 14 shall be in the condition required by the maintenance provisions of § 7 hereof and shall have attached or affixed thereto any special device considered an accession thereto as provided in § 9 and shall have removed therefrom at the Lessee's expense any addition, modification or improvement which, as provided in § 9, is owned by the Lessee. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and, upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance thereof. During any storage period, the Lessee will, at its own expense, maintain and keep the Units in the condition in which Lessee normally maintains similar equipment while in a similar storage state and will permit the Lessor or any person designated by it, including the authorized representatives of any prospective purchaser, lessee or user of any such Unit, to inspect the same. In the event any Unit is not assembled, delivered and stored, as hereinabove provided, within 30 days after such termination, the Lessee shall pay to the Lessor for each day from the date of such termination during which such Unit is being used by or with the consent of the Lessee an amount equal to the amount, if any, by which .026447% of the Purchase Price of such Unit for each such day exceeds the actual earnings received by the Lessor with respect to such Unit for each such day.

#### § 15. RECORDING

The Lessee, at its own expense, will cause this Lease, the CSA and any assignment hereof or thereof to be filed in accordance with 49 U.S.C. § 11303. The Lessee will undertake the filing, registering, deposit, and recording required of the Lessor under the CSA and will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, reregister, deposit and redeposit or rerecord whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Vendor for the purpose of proper protection, to their satisfaction, of the Vendor's and the Lessor's respective rights in the Units, or for the purpose of carrying out the intention of this Lease, the CSA and the assignments thereof to the Vendor; and the Lessee will promptly furnish to the Vendor and the Lessor evidence of all such filing, registering, depositing, recording and other acts which may be required under this § 15, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Vendor and the Lessor. This Lease and the CSA, and the assignments thereof, shall be filed with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Unit.

#### § 16. INTEREST ON OVERDUE RENTALS

Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay, to the extent legally enforceable, an amount on the overdue rentals and other obligations for the period of time during which they are overdue at a rate per annum equal to 12.67% in the case of amounts assigned and payable to the Agent and at the Prime Rate plus 1% in the case of amounts payable to the Vendee, or such lesser amount as may be legally enforceable. Interest shall be determined on the basis of a 360-day year for the actual number of days elapsed. For the purposes hereof, the "Prime Rate" shall mean the prime commercial lending rate of The Bank of New York as publicly announced to be in effect from time to time.

§ 17. NOTICES

Any notice required or permitted hereunder shall be deemed to have been received by the addressee on the date of actual receipt (if such date is a business day, otherwise on the next business day), if transmitted by mail, telex, telecopy or similar transmission, or by hand, addressed as follows:

(a) if to the Lessor, at 48 Wall Street, New York, N.Y. 10015, Attention of Equipment Leasing Group; and

(b) if to the Lessee, at 2000 Second Avenue, Detroit, Michigan 48226, Attention of Secretary

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing. Copies of each such notice shall be given to the Vendor at P.O. Box 2258 (2 Hopkins Plaza, if by hand), Baltimore, Maryland 21203, Attention of Corporate Trust Department.

SECTION 18. LESSOR'S RIGHT TO PERFORM FOR LESSEE

If the Lessee fails to perform any of its agreements contained herein, the Lessor may upon notice to the Lessee perform such agreement, and the amount of the reasonable cost and expenses of the Lessor incurred in connection with such performance, together with interest on such amount at the rate of 12.67% per annum shall be payable by the Lessee upon demand, except as otherwise provided in this Lease. No such performance or compliance by the Lessor shall be deemed a waiver of the rights and remedies of the Lessor or any assignee of the Lessor against the Lessee hereunder, including, without limitation, the right of the Vendor to terminate this Lease pursuant to Article 15 of the CSA and the Lease Assignment, and no such performance or compliance by the Lessor shall be deemed to cure an Event of Default hereunder for purposes of Article 15 of the CSA except as otherwise provided in Section 15(f) of the CSA.

§ 19. SEVERABILITY; EFFECT AND MODIFICATION OF LEASE

Any provision of this lease which is prohibited or unenforceable in any jurisdiction shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining

provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

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

#### § 20. EXECUTION

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

#### § 21. LAW GOVERNING

The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of New York; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303 and such additional rights arising out of the filing or hereof, if any, and of any assignment hereof as shall be conferred by the law of the several jurisdictions in which this Lease or any assignment hereof shall be filed. This Agreement is being delivered in the City and State of New York and shall be effective when one or more counterparts which together have been executed by both parties shall be delivered to Cravath, Swaine & Moore in the City of New York. The parties hereto hereby irrevocably consent to the jurisdiction of any federal or state court sitting in the City and State of New York in respect of any claim or dispute arising hereunder (except as to which arbitration is provided for in § 7 hereof).

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

THE DETROIT EDISON COMPANY,

by

*J. L. Long*  
Title: *Vice Chairman of the Board*

[Corporate Seal]

Attest:

*Clara M. Sawyer*  
Assistant Secretary

THE BANK OF NEW YORK,

by

\_\_\_\_\_  
Title:

STATE OF MICHIGAN, )  
 ) ss.:  
COUNTY OF WAYNE )

On this *18th* day of October 1985, before me personally appeared *ERNEST L. GROVE, JR.*, to me personally known, who, being by me duly sworn, says that he/she is *VICE CHAIRMAN OF THE BOARD* of THE DETROIT EDISON 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.

*Janet A. Scullen*  
\_\_\_\_\_  
Notary Public  
*Acting in Wayne County*  
JANET A. SCULLEN  
Notary Public, Macomb County, MI  
My Commission Expires July 31, 1989

[Notarial Seal]  
My Commission Expires \_\_\_\_\_

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

On this \_\_\_\_\_ day of October 1985, before me personally appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, says that he/she is \_\_\_\_\_ of The Bank of New York, that said instrument was signed on behalf of said corporation by authority of its Board of Directors, and he/she 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 A TO LEASE

<u>Builder</u>	<u>Type</u>	<u>Builder's Plant</u>	<u>Quantity</u>	<u>Lessee's Identification Numbers (Both Inclusive)</u>	<u>Unit Base Price</u>	<u>Total Base Price</u>	<u>Estimated Time and Place of Delivery</u>
Greenville Steel Car Company	108 Ton, 4,320 cu. ft. Aluminum bodied-steel underframed, rotary dump, gondola rail cars	Greenville, Pennsylvania	610	DEEX 8101-8710	\$38,651.88	\$23,577,646.80	Oct-Dec, 1985, at Builder's.

SCHEDULE B TO LEASE

RENTALS

<u>Rental Payment Dates</u>	<u>Percentage of Purchase Price</u>
1/2/87	3.2082143
7/2/87	5.2548105
1/2/88	3.0887954
7/2/88	5.3742294
1/2/89	2.9554403
7/2/89	5.5075844
1/2/90	2.8065227
7/2/90	5.65650281
1/2/91	2.6402264
7/2/91	5.8227983
1/2/92	2.5000710
7/2/92	5.9629537
1/2/93	2.3698942
7/2/93	6.0931332
1/2/94	2.2379703
7/2/94	8.1057266
1/2/95	2.0202552
7/2/95	8.3234417
1/2/96	1.8258758
7/2/96	8.5178210
1/2/97	1.6267800
7/2/97	8.7169169
1/2/98	1.4217260
7/2/98	8.9219709
1/2/99	1.0978916
7/2/99	9.2458052
1/2/00	0.6224609
7/2/00	9.7212360
1/2/01	0.0915474
7/2/01	10.2521495
1/2/02	0.0000000
7/2/02	10.3436969
	<hr/> 152.3344479

SCHEDULE C TO LEASE

Table 1

<u>Rental Payment Dates</u>	<u>Casualty Values and Termination Values As A Percentage of Purchase Price*</u>
1/2/87	94.5652
7/2/87	94.3705
1/2/88	95.8991
7/2/88	94.8497
1/2/89	95.7565
7/2/89	93.8036
1/2/90	94.0591
7/2/90	91.2827
1/2/91	91.3569
7/2/91	88.2696
1/2/92	88.3584
7/2/92	85.0278
1/2/93	85.1299
7/2/93	81.5610
1/2/94	81.6774
7/2/94	75.9983
1/2/95	76.1446
7/2/95	70.0957
1/2/96	70.2606
7/2/96	63.8535
1/2/97	64.0383
7/2/97	57.2645
1/2/98	57.4713
7/2/98	50.3208
1/2/99	50.6928
7/2/99	43.0834
1/2/00	43.8168
7/2/00	35.6463
1/2/01	36.8042
7/2/01	28.0319
1/2/02	29.0222
7/2/02	20.0000

Table 2

The percentages set forth in Table 1 of this Schedule C have been computed without regard to recapture of the Investment Tax Credit. Consequently, the Casualty Value of any Unit suffering a Casualty Occurrence on or before December 31, 1990, shall be increased by the applicable percentage of the Purchase Price set forth below:

<u>Date</u>	<u>Percentage of Purchase Price</u>
On or prior to 12/31/86	16.8121
On or prior to 12/31/87	13.4497
On or prior to 12/31/88	10.0873
On or prior to 12/31/89	6.7249
On or prior to 12/31/90	3.3624

SCHEDULE C TO LEASE

Table 1

<u>Rental Payment Dates</u>	<u>Casualty Values and Termination Values As A Percentage of Purchase Price*</u>
1/2/87	94.5652
7/2/87	94.3705
1/2/88	95.8991
7/2/88	94.8497
1/2/89	95.7565
7/2/89	93.8036
1/2/90	94.0591
7/2/90	91.2827
1/2/91	91.3569
7/2/91	88.2696
1/2/92	88.3584
7/2/92	85.0278
1/2/93	85.1299
7/2/93	81.5610
1/2/94	81.6774
7/2/94	75.9983
1/2/95	76.1446
7/2/95	70.0957
1/2/96	70.2606
7/2/96	63.8535
1/2/97	64.0383
7/2/97	57.2645
1/2/98	57.4713
7/2/98	50.3208
1/2/99	50.6928
7/2/99	43.0834
1/2/00	43.8168
7/2/00	35.6463
1/2/01	36.8042
7/2/01	28.0319
1/2/02	29.0222
7/2/02	20.0000

Table 2

The percentages set forth in Table 1 of this Schedule C have been computed without regard to recapture of the Investment Tax Credit. Consequently, the Casualty Value of any Unit suffering a Casualty Occurrence on or before December 31, 1990, shall be increased by the applicable percentage of the Purchase Price set forth below:

<u>Date</u>	<u>Percentage of Purchase Price</u>
On or prior to 12/31/86	16.8121
On or prior to 12/31/87	13.4497
On or prior to 12/31/88	10.0873
On or prior to 12/31/89	6.7249
On or prior to 12/31/90	3.3624

SCHEDULE C TO LEASE

<u>Rental Payment Dates</u>	<u>Casualty Values as a Percentage of Purchase Price</u>	<u>Termination Values as a Percentage of Purchase Price</u>
1/2/87		
7/2/87		
1/2/88		
7/2/88		
1/2/89		
7/2/89		
1/2/90		
7/2/90		
1/2/91		
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7/2/00		
1/2/01		
7/2/01		
1/2/02		
7/2/02		

[TO BE SUPPLIED AT  
A LATER DATE]

Certificate of Acceptance

To: The Bank of New York  
Mercantile-Safe Deposit and Trust Company  
Greenville Steel Car Company

I, the duly authorized representative for GREENVILLE STEEL CAR COMPANY and THE DETROIT EDISON COMPANY (the "Lessee") under the Conditional Sale Agreement and the Lease of Railroad Equipment, both dated as of October 1, 1985, respectively, do hereby certify that I inspected or have caused to be inspected and have accepted delivery thereunder of the following Units of Equipment:

TYPE OF EQUIPMENT:  
DATE ACCEPTED:  
NUMBER OF UNITS  
NUMBERED:

I do hereby certify that the foregoing Units are in good order and condition, and appear to conform to the specifications, requirements and standards applicable thereto as provided in Article 2 of the aforesaid Conditional Sale Agreement. I do further certify that each of the foregoing Units has been marked by means of a stencil printed in contrasting colors upon each side of each such Unit in letters not less than one inch in height as follows:

"Ownership subject to a Security Agreement filed with the Interstate Commerce Commission."

The execution of this Certificate will in no way relieve or decrease the responsibility of the Builder named below for any warranties it has made with respect to the Equipment.

BUILDER:  
Greenville Steel Car Company

---

Authorized Representative of  
Vendee and Lessee

LEASE OF RAILROAD EQUIPMENT

Dated as of October 1, 1985

between

THE DETROIT EDISON COMPANY, Lessee

and

THE BANK OF NEW YORK, Lessor

[Covering 610 Greenville Rotary Dump Gondola Cars]

The rights and interests of the Lessor under this Lease are subject to a security interest in favor of Mercantile-Safe Deposit and Trust Company, as agent for a certain investor. The original of this Lease is held by said Agent.

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

LEASE OF RAILROAD EQUIPMENT dated as of October 1, 1985, between THE DETROIT EDISON COMPANY, a Michigan corporation (the "Lessee"), and THE BANK OF NEW YORK, a New York corporation (the "Lessor").

WHEREAS the Lessor is entering into a Conditional Sale Agreement dated as of the date hereof (the "CSA") with Greenville Steel Car Company (the "Builder"), pursuant to such the Builder has agreed to manufacture, conditionally sell and deliver to the Lessor the units of railroad equipment described in Schedule A hereto (the "Equipment");

WHEREAS the Builder under an Agreement and Assignment dated as of the date hereof (the "CSA Assignment") is assigning its interests in the CSA to Mercantile-Safe Deposit and Trust Company acting as Agent (hereinafter, together with its successors and assigns and the Investor, as hereinafter defined, called the "Vendor") under a Participation Agreement dated as of the date hereof (the "Participation Agreement") with the Lessee, the Lessor and the Investor named therein (said investor, together with its successors and assigns, being hereinafter called the "Investor");

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

WHEREAS the parties contemplate that the Lessor will assign for security purposes certain of its rights in this Lease to the Vendor by an Assignment of Lease and Agreement dated as of the date hereof (the "Lease Assignment"), and the Lessee will consent thereto by a Consent and Agreement (the "Consent");

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions:

§ 1. NET LEASE

This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent or additional rent or any other amounts payable by it hereunder (all such rent, additional rent and other amounts are referred to collectively in this § 1 as "Rent"), or setoff against or recoupment or reduction of Rent, including, but not limited to, abatements, setoffs, reductions or recoupments due or alleged to be due by reason of any past, present or future claims or counterclaims of the Lessee against the Lessor under this Lease or the CSA or otherwise, or against the builder or the Vendor or any other person or for any other reason whatsoever. The Lessee's obligations hereunder, including its obligations to pay all Rent, shall be absolute and unconditional under any and all circumstances, and except as otherwise expressly provided herein, this Lease shall not terminate, nor shall the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person, 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 all Rent 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 payment of Rent made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever except manifest error.

## § 2. DELIVERY AND ACCEPTANCE OF UNITS

The Lessor hereby appoints the Lessee its agent for inspection and acceptance of the Units pursuant to the CSA. The Lessor will cause each Unit to be delivered to the Lessee at the point or points within the United States of America at which such Unit is delivered to the Lessor under the CSA. Upon such delivery, the Lessee will cause an employee of the Lessee to inspect the same and, if such Unit is found to be acceptable, to accept delivery of such Unit, and the Lessee shall execute and deliver to the Lessor a certificate of acceptance ("Certificate of Acceptance") substantially in the form annexed hereto as Schedule D, whereupon, except as provided in the next sentence hereof, such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease. The delivery, inspection and acceptance hereunder of any unit of Equipment excluded from the CSA pursuant to the first paragraph of Article 4 thereof shall be null and void and ineffective to subject such unit to this Lease or to constitute acceptance thereof on behalf of the Lessor for any purpose whatsoever.

## § 3. RENTALS

(1) The Lessee agrees to pay the Lessor, as rental for each Unit subject to this Lease, 32 consecutive payments, payable in arrears, commencing January 2, 1987, to and including July 2, 2002. The 32 rental payments shall each be in an amount equal to the basic lease rate set forth in Schedule B hereto for the applicable payment date multiplied by the Purchase Price (as defined in Article 4 of the CSA) of each Unit subject to this Lease. In addition, if the Vendee shall fail to pay to the Agent on July 2, 1986, an amount equal to interest accrued to said date on the CSA Indebtedness as required by the first sentence of Paragraph 10 of the Participation Agreement, the Lessee shall on July 2, 1986, pay to the Agent an amount equal to said accrued interest, in which event the Lessee shall have a right to sue the Vendee for the amount so paid to the Agent plus interest thereon at the Prime Rate (as defined in § 16 hereof) plus 1% per annum until repaid or withhold an amount equal to the same plus such interest thereon from rentals hereunder but only to the extent such withholdings are not required to satisfy the obligations of the Vendee under the CSA.

(2) The basic lease rates set forth in Schedule B hereto and the related Casualty Values and Termination

Values set forth in Schedule C hereto have been calculated on the assumptions that the Units will have been delivered and settled for by the Lessor and the Agent on the dates and in the amounts as follows:

<u>Number of Units</u>	<u>Assumed Delivery Date</u>	<u>Assumed Settlement Date</u>	<u>Assumed Settlement Amount</u>
200	October 1985	10/30/85	\$7,760,000
205	November 1985	11/30/85	7,954,000
205	December 1985	12/30/85	7,954,000
			<u>\$23,668,000</u>

If for any reason such assumptions are not correct, then such basic lease rates and such Casualty values and Termination Values payable by the Lessee hereunder in respect of the Units on and after January 2, 1987, shall be increased or decreased, as the case may be, by such amount as shall, in the reasonable opinion of the Lessor, cause the Lessor's nominal after-tax yield and net after-tax cash flows as were originally anticipated by the Lessor in evaluating this transaction (such yield and cash flow being hereinafter called "Net Economic Return") to be the same as if such assumptions had been correct. The Lessor shall provide a schedule of such rentals and Casualty Values to the Lessee and the Agent promptly after the facts have been determined and the calculations have been made by the Lessor. If the Lessee so requests, such calculations will, at the expense of the Lessee, be verified by the Lessor's independent auditors and the determination of such auditors shall be binding on the parties hereto.

Notwithstanding anything to the contrary set forth herein, the rentals and Casualty Value and Termination percentages, as adjusted pursuant to this § 3, shall always be sufficient to satisfy the obligations of the Lessor under the CSA regardless of any limitation of liability set forth therein and the date on which rental is payable shall in any event be consistent with the Lessor's payment obligations under the CSA.

If any of the rental payment dates referred to above is not a business day the rental payment otherwise payable on such date shall be payable on the next preceding business day. The term "business day" as used herein means a calendar day, excluding Saturdays, Sundays and any other day on which banking institutions in New York City, New York, Detroit, Michigan, or Baltimore, Maryland, are authorized or obligated to remain closed.

The Lessor irrevocably instructs the Lessee to make all the payments provided for in this Lease, including, but not limited to, the payments provided for in this § 3 and in § 7 hereof, but excluding all Excluded Payments as defined in the Lease Assignment, at the principal office of the Vendor, for the account of the Lessor in care of the Vendor, with instructions to the Vendor, first, to apply such payments to satisfy the obligations of the Lessor under the CSA, and, second, so long as no event of default under the CSA shall have occurred and be continuing, to pay any balance promptly to the Lessor at such place as the Lessor shall specify in writing. If the Lease Assignment is not executed and delivered, or if the Lessee shall have been advised by the Agent in writing that all sums due from the Vendee under the CSA have been fully discharged and satisfied, payments thereafter due shall be made to the Lessor. The Lessee agrees to make each payment provided for herein as contemplated by this paragraph by wire transfer of immediately available funds to the Vendor or the Lessor, as the case may be, by 11:00 a.m., New York City time, on the date such payment is due.

#### § 4. TERM OF LEASE

4.1. Beginning and Termination. The term of this Lease as to each Unit shall begin on the date of delivery and acceptance of such Unit hereunder and, subject to the provisions of §§ 7, 10 and 13 hereof, shall terminate on the date on which the final payment of rent in respect thereof is due pursuant to § 3.1 hereof. The obligations of the Lessee hereunder (including, but not limited to, the obligations under §§ 3, 6, 7, 9 and 14 hereof) shall survive the expiration or termination of the term of this Lease.

4.2. Rights and Obligations of Lessee Subject to CSA. 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 CSA. If an event of default should occur under the CSA, the Vendor may terminate this Lease (or rescind its termination), all as provided therein; provided, however, that, so long as (i) no Event of Default exists hereunder, (ii) the Lessee is complying with the provisions of the Consent and (iii) the Vendor is entitled to apply the Payments (as defined in the Lease Assignment) in accordance with the Lease Assignment, this Lease may not be terminated and the Lessee shall be entitled to the rights of possession, use and assignment provided under § 12 hereof.

## § 5. IDENTIFICATION MARKS

5.1. Identifying Numbers; Legend, Changes. The Lessee will cause each Unit to be kept numbered with the identification number set forth in Schedule A hereto, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the words "OWNERSHIP SUBJECT TO A SECURITY AGREEMENT FILED WITH THE INTERSTATE COMMERCE COMMISSION", with appropriate changes thereof as from time to time may be required by law, in the opinion of the Vendor and the Lessor, in order to protect the Lessor's and the Vendor's title to and interest in such Unit and the rights of the Lessor under this Lease and the rights of the Vendor under the CSA. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such words shall have been so marked and will replace promptly any such markings which may be removed, obliterated, defaced or destroyed. The Lessee will not change the identification number of any Unit unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with the Vendor and the Lessor and duly filed and deposited by the Lessee in all public offices where this Lease and the CSA shall have been filed and deposited and (ii) the Lessee shall have furnished the Vendor and the Lessor an opinion of counsel to the effect that such statement has been so filed and deposited, that such filing and deposit will protect the Vendor's and the Lessor's rights in such Units and that no other filing, deposit or giving of notice with or to any Federal, state or local government or agency thereof is necessary to protect the rights of the Vendor and the Lessor in such Units.

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; provided, however, that the Units may be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates.

## § 6. TAXES.

The Lessee assumes responsibility for, and agrees to pay, hold harmless and indemnify on an after-tax basis the Lessor, the Investor and the Vendor and their servants, agents, employees, officers, directors, successors and assigns (the "Indemnified Persons") against, all taxes,

fees, assessments, withholdings, levies, imposts, duties, license and registration fees and other governmental charges of any nature whatsoever, including without limitation penalties, additions to tax and interest (all such taxes, fees, assessments, withholdings, levies, imposts, duties, license and registration fees, other governmental charges, penalties, additions to tax and interest being hereinafter called "Taxes"), imposed on, incurred by or asserted against any Indemnified Person or the Units or any thereof on account of, or with respect to or in any way relating to or arising out of, this Lease or the CSA or any document referred to herein or therein or any of the transactions contemplated hereby or thereby or the manufacture, purchase, acquisition, acceptance or rejection of the Units or any thereof or the ownership, delivery, non-delivery, leasing, subleasing, transfer of title, use, operation, maintenance, repair, condition, sale, return, abandonment or other application or disposition of the Units or any thereof or any indebtedness with respect thereto or the rentals, receipts, earnings or gains arising therefrom; provided, however, that there shall be no indemnification hereunder for (i) any Taxes imposed on or measured by any fees or compensation received by the institution who is the Vendor, (ii) Federal income taxes and income or franchise taxes imposed on the Investor or its successors and assigns with respect to interest paid on the CSA Indebtedness, (iii) Federal income taxes and income or franchise taxes imposed on the Lessor or its successors or assigns by the State of its incorporation or, if different, by the state in which its principal office is located or any taxing authority or jurisdiction therein or by any other taxing jurisdiction not related to: (w) the execution, delivery and performance of this Lease, the Participation Agreement or the CSA or any document referred to herein or hereof or any of the transactions contemplated hereby or thereby or (x) the manufacture, purchase, acquisition, acceptance, or rejection of the Units or any thereof, or (y) the ownership, delivery, non-delivery, leasing, subleasing, transfer of title, use, operation, maintenance, repair, condition, sale, return, abandonment or other application or disposition of the Units or any thereof or any indebtedness with respect thereto, or (z) the rentals, receipts, earnings or gains arising therefrom, and (iv) Taxes payable by the Lessor as a result of any transfer of any of its interest in the Equipment unless such transfer is made during the continuance of an Event of Default hereunder. The Lessee shall pay all Taxes for which it assumes liability hereunder when such Taxes are due and will indemnify each Indemnified Person to the extent required by this § 6 within thirty (30) days after receipt of a written demand for indemnification

from the Indemnified Person specifying the amount to be paid, the basis on which such amount was determined and the nature of the Taxes in question.

In the event that the Lessor shall become obligated to make any payment to the Builder or the Vendor or otherwise pursuant to any corresponding provision of the CSA (other than the proviso to the third paragraph of Article 12 thereof) not covered by the foregoing paragraph of this § 6, the Lessee shall pay such additional amounts (which shall also be deemed Taxes hereunder) to the Lessor as will enable the Lessor to fulfill completely its obligations pursuant to said provision.

In the event any returns, statements or reports with respect to Taxes are required to be made, the Lessee will make such returns, statements and reports in such manner as to show the interest of the Lessor and the Vendor in the Units; provided, however, that the Lessor shall, with respect to any State or political subdivision thereof of the United States of America, file such returns, statements, and reports relating to sales or use taxes, and taxes, fees, and charges on or measured by the Lessor's earnings or gross receipts arising from the Units, or the value added by the Lessor thereto, as the Lessee shall determine are required to be filed, and as shall be prepared by the Lessee, and the Lessor shall remit the amount thereof upon payment by the Lessee to the Lessor (such payment to be made forthwith upon demand by the Lessor therefor) of such taxes, fees and charges except as provided above. To the extent that the Lessor has information necessary to the preparation of such returns, statements and reports, it will furnish such information to the Lessee.

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

The Lessee shall, whenever reasonably requested by the Lessor, submit to the Lessor copies of returns, statements, reports, billings and remittances, or furnish other evidence satisfactory to the Lessor, of the Lessee's performance of its duties under this § 6. The Lessee shall also

furnish promptly upon request such data as the Lessor reasonably may require to permit the Lessor's compliance with the requirements of taxing jurisdictions.

The Lessee agrees to pay all amounts due under this § 6 free of any Taxes and to indemnify each Indemnified Person against any Taxes imposed by reason of any payment made by the Lessee so that the Indemnified Person to whom or for whose benefit the payment is made shall receive an amount which, net of any Taxes or other charges required to be paid by such Indemnified Person in respect thereof (calculated at the maximum statutory rates then in effect), shall be equal to the amount of payment otherwise required hereunder. Without limiting the foregoing, the amount which the Lessee shall be required to pay with respect to any Taxes subject to indemnification under this § 6 shall be an amount sufficient so that, after considering the tax and other effects of the Taxes in question and the receipt of indemnification payments hereunder, the Indemnified Person will have the same Net Economic Return had such Taxes not been incurred or imposed.

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

If any claim is made against any Indemnified Person or if any proceeding is commenced against any Indemnified Person for any Taxes as to which the Lessee has an indemnity obligation pursuant to this § 6, such Indemnified Person shall promptly notify the Lessee, but the failure to provide such notice shall not affect the Lessee's obligations hereunder to any Indemnified Person except that the Lessee shall not be obligated to indemnify such Indemnified Person for any additional Taxes or penalties or interest thereon to the extent resulting solely from such failure. If reasonably requested by the Lessee in writing, upon determination by such Indemnified Person (which determination shall be reasonable) that the action to be taken will not result in any substantial risk or consequences materially adverse to it and that the action to be taken will not result in any material danger of sale, forfeiture or loss of, or the creation of any liens (except if the Lessee shall have adequately bonded such lien or otherwise made provision to protect the interests of such Indemnified Person in respect of such lien in a manner satisfactory to such Indemnified Person) on the Units or any thereof, such Indemnified Person shall upon receipt of indemnity satisfactory to it and at the expense of the

Lessee (including, without limitation, all costs, expenses, attorneys' and accountants' fees and disbursements, penalties and interest) in good faith contest the validity, applicability or amount of such Taxes by, in such Indemnified Person's sole discretion, (A) resisting payment thereof, (B) not paying the same except under protest, if protest is necessary and proper, or (C) if payment is made, using reasonable efforts to obtain a refund thereof in appropriate administrative and judicial proceedings. Such Indemnified Person shall not be required to take any action pursuant to this paragraph unless and until the Lessee shall have agreed to indemnify such Indemnified Person in a manner reasonably satisfactory to such Indemnified person for any liability or loss which such Indemnified Person may reasonably incur as a result of such contest and shall have agreed to pay such Indemnified Person on demand all costs and expenses which such Indemnified Person may reasonably incur in connection with such contest (including fees and disbursements of counsel). Any contest required pursuant to the preceding sentence shall, at the option of such Indemnified Person, be conducted by such Indemnified Person or the Lessee in the name of the Lessee or such Indemnified Person. With respect to property taxes, sales and use taxes, and other similar taxes levied or imposed directly on the Equipment or the use or value thereof (other than income or franchise taxes on or based on income), at the request of the Lessee, the Indemnified Person will permit the Lessee to conduct the contest so long as the contested liability is the only contested liability of the Indemnified Person then pending or threatened before the respective taxing authorities. In the case of any contest conducted by the Lessee the Indemnified Person will take or join in any action reasonably requested by the Lessee with respect thereto. If any such contest involves payment of the Tax in question, the Lessee shall either make such payment directly to the appropriate authority or furnish to such Indemnified Person sufficient funds to make such payment. The Lessee agrees to give such Indemnified Person reasonable notice of any contest prior to the date by which it must be commenced. If any Indemnified Person obtains a refund of all or any part of any Tax paid or reimbursed by the Lessee and if no Event of Default or event with which the giving of notice and/or passage of time would become an Event of Default shall have occurred and be continuing, such Indemnified Person shall promptly pay to the Lessee the amount of such refund net of expenses not already paid or reimbursed by the Lessee; provided, however, that the aggregate amount of all payments with respect to any Taxes made by the Indemnified Person to the Lessee pursuant to this sentence shall not exceed the aggregate amount of all payments made by the Lessee to such Indemnified Person pursuant to this § 6 with respect to such

addition to such refund such Indemnitee shall receive an amount representing interest on the amount of such refund, the Lessee shall promptly be paid that portion of such interest that is fairly attributable to Taxes paid or reimbursed by the Lessee prior to the receipt of such refund. Nothing contained herein shall require any Indemnified Person to contest or permit the Lessee to contest a claim which it would otherwise be required to contest if such Indemnified Person shall waive payment by the Lessee of any amount that might otherwise be payable by the Lessee under this § 6 by way of indemnity in respect of such claim or if an Event of Default shall have occurred and be continuing hereunder.

§ 7. MAINTENANCE, CASUALTY OCCURRENCE,  
INSURANCE, ECONOMIC OBSOLESCENCE

7.1. Maintenance. The Lessee at its own expense will maintain, service, repair and/or overhaul, as necessary, each Unit (including any parts installed on or replacements made to any Unit which are considered an accession thereto pursuant to § 9.3) so that each Unit will remain (a) in good operating condition (ordinary wear and tear excepted) for its intended purpose, (b) in compliance with any and all applicable laws and regulations and all mandatory safety bulletins issued by the Builder applicable to the Equipment, (c) meet the standards then in effect under the interchange rules of the American Association of Railroads and (d) in compliance with the Lessee's insurance policies and not in violation of any of the Builder's warranties. The Lessee shall not discriminate between the Equipment and such other similar equipment to the detriment of the Equipment in its maintenance procedures and practices.

7.2. Casualty Occurrences. In the event that any Unit shall be or become worn out, lost, stolen, destroyed or, in the good faith and reasonable opinion of the Lessee, irreparably damaged, or remains in an inoperable condition for six (6) consecutive months (excluding any period during which the Lessee is unable to repair same or make same operable due to labor strikes or other work stoppages, lockouts, or events beyond the reasonable control of the Lessee) from any cause whatsoever, or permanently returned to the Builder pursuant to any patent indemnity provision of the CSA prior to the return of such Unit in the manner set forth in § 14 hereof, or should title to any Unit be taken or requisitioned by condemnation or otherwise by any governmental authority, or should use of any Unit be taken or requisitioned by any governmental authority for a period

exceeding six (6) consecutive months (such occurrences being hereinafter called "Casualty Occurrences"), the Lessee shall promptly (but in any event within 30 days after such Casualty Occurrence) and fully notify the Lessor and the Vendor with respect thereto. On the date set forth in Schedule C hereto next succeeding such notice (each such date being herein called a "Casualty Payment Date") the Lessee shall pay to the Lessor an amount equal to the rental payment or payments in respect of such Unit then due and payable plus a sum equal to the Casualty Value (as defined in § 7.4 hereof) of such Unit as of such rental payment date. 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 permanent return to the Builder of such Unit) the Lessor shall be entitled to recover possession of such Unit.

Whenever any Unit shall suffer a Casualty Occurrence after termination of this Lease at the expiration of the original or extended term hereof and before such Unit shall have been returned in the manner provided in § 14 hereof, the Lessee shall promptly and fully notify the Lessor with respect thereto and pay to the Lessor (in addition to any amounts due pursuant to § 14 hereof) an amount equal to the Casualty Value as of the end of such original or extended term of this Lease, as the case may be.

7.3. Lessee Agent for Disposal. The Lessor hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof, at the best price obtainable on an "as is, where is" basis. Provided that the Lessee has previously paid the Casualty Value to the Lessor and provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing, the Lessee shall be entitled to the net proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Lessor. The Lessee shall be entitled to credit against the Casualty Value payable in respect of any Unit permanently returned to the Builder pursuant to any patent indemnity provision of the CSA an amount equal to any net patent indemnity payment in respect of such Unit made by the Builder to the Vendor under the CSA. The Lessee will pay all costs and expenses in connection with the sale of any Unit pursuant to a Casualty Occurrence.

7.4. Casualty Value. During the original term of this Lease, the Casualty Value of each Unit as of any Casualty Payment Date shall an amount equal to the

percentage of the Purchase Price of such Unit as is set forth in Schedule C hereto opposite such Casualty Payment Date. During any renewal term hereof the Casualty Value of each Unit as of any Casualty Payment Date shall be an amount equal to the Fair Market Value of such Unit at the beginning of such renewal term.

7.5. Requisition. In the event of the requisition (except after such requisition has become a Casualty Occurrence) of use by any governmental authority (hereinafter collectively called the "Government") of any Unit during the term of this Lease or any renewal thereof, all of the Lessee's obligations (including without limitation the obligation to pay rent) under this Lease with respect to such Unit shall continue to the same extent as if such requisition had not occurred, except that if such Unit is returned by the Government at any time after the end of the term of this Lease or any renewal thereof, the Lessee shall be obligated to return such Unit to the Lessor pursuant to § 11 or 14 hereof, as the case may be, promptly upon such return by the Government rather than at the end of the term of this lease or any renewal thereof, but the Lessee shall in all other respects comply with the provisions of said § 11 or 14, as the case may be, with respect to such Unit. All payments received by the Lessor or the Lessee from the Government for the use of such Unit during the term of this Lease or any renewal thereof and prior to such use having become a Casualty Occurrence shall, to the extent such payments are equal to or less than the rent payable by the Lessee hereunder in respect of such Unit, be paid over to, or retained by, the Lessee, provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing, and all payments in excess thereof shall be paid over, or retained by, the Lessor. All payments received by the Lessor or the Lessee from the Government for the use of such Unit after such use shall have become a Casualty Occurrence, shall be paid over to, or retained by, the Lessee, up to an amount equal to the Casualty Value actually paid by the Lessee in respect thereof, and all such payments in excess thereof shall be paid over to, or retained by, the Lessor. All payments received by the Lessor or the Lessee for the use of such Unit after the original term of this Lease or any renewal thereof shall be paid over to, or retained by, the Lessor.

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

7.6. Insurance. The Lessee will, at all times prior to the return of the Units to the Lessor, at its own expense, cause to be carried and maintained with insurance carriers reasonably satisfactory to the Lessor and the Vendor physical damage insurance and public liability insurance in respect of the Units at the time subject hereto, against such reasonable risks, in such reasonable amounts and on such reasonable terms and conditions as are satisfactory to the Lessor and the Vendor, and, in any event, not less comprehensive in amounts and against risks customarily insured against by the Lessee in respect of similar equipment owned or leased by it, but in no event shall such coverage be for amounts or against risks less than the prudent public utility industry standards for such leased equipment, nor shall the amount of physical damage insurance for any Unit be less than the Casualty Value payable from time to time for such Unit. All policies with respect to such insurance shall name the Lessor and the Vendor as additional insureds or loss payees, as their interests may appear, shall provide for at least 30 days' prior written notice by the insurance carrier to the Lessor and the Vendor in the event of cancellation, expiration or amendment, shall include waivers by the insurer of all claims for premiums against the Lessor and the Vendor, shall provide that losses are payable notwithstanding, among other things, any act, omission or neglect of the Lessee, the Lessor or the Vendor (except for the sole negligence of the Lessor or the Vendor), any breach or violation by the Lessee, the Lessor or the Vendor of any warranty, declaration, condition or other provision contained in any such policy, or foreclosure, notice of sale or any other proceeding in respect of the Units (except for the sole negligence of the Lessor or the Vendor), or any change in the title to or ownership of any of the Units and shall contain provisions whereby the insurance carrier waives all rights of subrogation which it may have against any named insured therein or loss payee thereunder. Each such insurance policy shall expressly provide that all of the provisions thereof except the limits of liability (which shall be applicable to all insureds as a group) and liability for premiums (which shall be solely a liability of the Lessee) shall operate in the same manner as if they were a separate policy covering each insured and shall be primary without right of contribution from any insurance carried by the Lessor or the Vendor. The Lessee shall furnish to the Lessor and the Vendor a certificate of an independent insurance broker reasonably acceptable to Lessor evidencing the maintenance of the insurance required hereunder and

shall furnish certificates evidencing renewal 15 days prior to the expiration date of such policy or policies. Notwithstanding anything to the contrary contained herein, the Lessee agrees that it will not, without the prior written consent of the Lessor, reduce the amount of the physical damage insurance required to be maintained hereby or public liability insurance required to be maintained hereby below the dollar limits set forth in an officer's certificate provided by the Lessee at the First Delivery Date Closing, or reduce the risks covered by such insurance below those insured against as of the First Delivery Date, or retain self-insurance in excess of \$1,000,000 in respect of such physical damage insurance or \$2,500,000 in respect of such public insurance.

In the event of the failure of the Lessee to provide and furnish any of the aforesaid insurance, the Lessor or the Agent, upon notice to the Lessee, may, but shall not be obligated to, procure such insurance and the Lessee shall, upon demand, reimburse the Lessor and the Agent for all expenditures made by the Lessor or the Agent for such insurance, together with interest thereon computed at the rate set forth in § 16 in respect of overdue rentals from the date of the Agent's or the Lessor's payment until reimbursed by the Lessee.

7.7. Insurance Proceeds and Condemnation Payments. If the Lessor shall receive any insurance proceeds or condemnation payments or any payments from the American Association of Railroads in respect of a Unit suffering a Casualty Occurrence, the Lessor shall, subject to the Lessee's having made payment of the Casualty Value in respect of such Unit and provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing, pay such proceeds or 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 payments shall remain the property of the Lessor. If the Lessor shall receive any insurance proceeds in respect of any Unit not suffering a Casualty Occurrence, all such proceeds shall be paid to the Lessee upon proof to the Lessor that any damage to such Unit in respect of which such proceeds were paid has been fully repaired so as to comply with the provisions of § 7.1 hereof, 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.

7.8. Economic Obsolescence. In the event that the Lessee shall during the original term hereof, in its

reasonable judgment, determine that the Units remaining under this Lease have become economically obsolete or surplus to the Lessee's requirements in the Lessee's business, as determined in good faith by the Vice President of Operations of the Lessee, the Lessee shall have the right, at its option and on at least 180 days' prior written notice to the Lessor and the Vendor, to terminate (which act shall hereinafter be called the "Termination") this Lease as to all or not less than 244 of such Units as of any succeeding January 2 or July 2 specified in such notice (such termination date so specified being hereinafter called the "Termination Date"); provided, however, that (i) the Termination Date shall not be earlier than January 2, 1996, (ii) no Event of Default or other event which after the lapse of time or the giving of notice or both would become an Event of Default shall have occurred and be continuing on such date or on the date on which the notice of such Termination shall be given, (iii) on the Termination Date all Units shall be in the condition required for redelivery pursuant to § 14 hereof and (iv) such right of Termination shall be available only once.

During the period after the giving of such notice until the fifth business day preceding the Termination Date, the Lessee shall use its best efforts to obtain bids (and the Lessor may at its option obtain additional bids) for the purchase of each such Unit, and the Lessee shall at least five business days prior to such Termination Date certify to the Lessor the amount of each such bid and the name and address of the party (which shall not be a corporation, other entity or individual affiliated with the Lessee or any other party from whom the Lessee or any such affiliate intends thereafter to lease such Unit) submitting such bid. On the Termination Date, the Lessor shall sell each such Unit for cash to the bidder who shall have submitted the highest bid prior to the Termination Date. The total sale price realized at each such sale shall be retained by the Lessor.

On such Termination Date, the Lessee shall pay to the Lessor with respect to the Units an amount equal to the sum of (i) the amount, if any, by which the Termination Value (as hereinafter defined) for the Units computed as of such date exceeds the sale price of the Units so sold after the deduction of all expenses incurred by the Lessor in connection with such sale plus (ii) the rental payment with respect to the Units due on such Termination Date plus (iii) an amount equal to the premium payable under Article 7 of the CSA in respect of the prepayment of the principal of

the CSA Indebtedness resulting from such Termination. The Termination Value of each such Unit as of the Termination Date shall be the percentage of Purchase Price of such Unit set forth in Schedule C hereto opposite such date. In no event shall the aggregate amount of sale proceeds retained by the Lessor and payments of rental and Termination Value received by the Lessor as aforesaid be less than the Termination Value (as defined in the CSA) with respect to the Units as of such Termination Date.

Except as is provided in the last paragraph of this § 7.8, if no sale of all the Units shall occur on the Termination Date with respect thereto as provided above, no Termination shall occur with respect to any of the Units and this Lease shall continue in full force and effect without change.

Upon the receipt by the Lessor of the amounts above described, the obligation of the Lessee to pay rent pursuant to § 3 hereof in respect of such Units on each rental payment date shall continue to and including the Termination Date but shall then terminate. The Lessor shall be under no duty to solicit bids, to inquire into the efforts of the Lessee to obtain bids or otherwise to take any action or incur any cost or expense in connection with any sale other than to transfer or to cause to be transferred all the Lessor's right, title and interest in and to such Unit to the purchaser named in the highest bid certified by the Lessee to the Lessor as above provided. Any such sale shall be free and clear of all the Lessee's rights to such Unit, but otherwise shall be made without recourse or warranties other than against Lessor's Liens as defined in § 13.3.

If the Lessee shall exercise its option to effect a Termination, the Lessor may, notwithstanding such election by the Lessee, by written notice to the Lessee given within 90 days after the termination notice is given to the Lessor and upon satisfaction and discharge of the Lessor's obligations under the CSA with respect to the Units, elect to retain such Units, in which case the Lessee shall not be obligated to pay the Termination Value to the Lessor. In the event the Lessor shall so elect to retain such Units and delivers to the Lessee evidence of the satisfaction and discharge of the Lessor's obligations under the CSA with respect to the Units, the Lessee shall deliver such Units to the Lessor in accordance with the provisions of § 14 hereof.

## § 8. REPORTS

On or before April 30 in each year, commencing with the calendar year 1986, the Lessee will furnish to the Lessor and the Vendor a certificate signed by the Vice President-Operations of the Lessee or another qualified person satisfactory to the Lessor and the Vendor (a) setting forth as of the preceding December 31 the amount, description and numbers of all Units then leased hereunder and covered by the CSA, the amount, description and numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year and such other information regarding the condition and state of repair of any Units as the Lessor or the Vendor may reasonably request, (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and markings required by § 5 hereof have been preserved or replaced, (c) further stating that the Lessee is in compliance under the Lease and has performed or has caused to be performed the required maintenance of the Unit and that no event has occurred which with the lapse of time or notice or both would constitute an Event of Default or, if such an event has occurred, the nature and status thereof. The Lessor and the Vendor 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 Lessor or the Vendor may request during the continuance of this Lease. The Lessee shall promptly notify the Lessor and the Vendor of any occurrence of an Event of Default or other event which after notice or lapse of time or both would become an Event of Default, specifying such Event of Default and all such events and the nature and status thereof.

## § 9. DISCLAIMER OF WARRANTIES, COMPLIANCE WITH APPLICABLE LAWS, ADDITIONS, MODIFICATIONS AND IMPROVEMENTS, INDEMNIFICATION

9.1. Disclaimer of Warranties. THE LESSOR 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 LESSOR DOES NOT MAKE ANY WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE OR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, OR AS TO THE LESSEE'S RIGHT TO QUIET ENJOYMENT THEREOF OR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT,

EITHER UPON DELIVERY THEREOF TO THE LESSEE OR OTHERWISE, it being agreed that all such risks, as among the Lessor and the Lessee, are to be borne by the Lessee; but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for the account of the Lessor and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Lessor may have against the Builder under the provisions of Items 3 and 4 of Annex A to the CSA; provided, however, that if at any time an Event of Default shall have occurred and be continuing, the Lessor may assert and enforce, at the Lessee's sole cost and expense, such claims and rights. The Lessor shall not have any responsibility or liability to the Lessee or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Units or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of any Units or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, subleasing, servicing, maintenance, repair, improvement or replacement of any Units. The Lessee acknowledges and agrees that each Unit upon acceptance will be of a size, design, capacity and manufacture selected by the Lessee and that the Lessee is satisfied that the same is suitable for its purpose. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Lessor that the Units described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

9.2. Compliance with Applicable Laws. The Lessee agrees, for the benefit of the Lessor and the Vendor, at all times to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each Unit) with all applicable laws of the jurisdictions in which its operations involving the Units may extend, with the interchange rules of the Association of American Railroads, if applicable, and with all lawful rules of the United States Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units

(all such laws and rules to such extent called "Applicable Law"), and in the event that, prior to the expiration of this Lease or any renewal thereof, Laws require any alteration, replacement, addition or modification of or to any part on any Unit, the Lessee will conform therewith at its own expense; provided, however, that the Lessee may at its own expense, in good faith, contest the validity or application of any Law in any reasonable manner which does not, in the opinion of the Lessor or the Vendor, adversely affect the property or rights of the Lessor or the Vendor under this Lease or under the CSA.

9.3. Additions, Modifications and Improvements.

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 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 (or such other party as may have title thereto), except to the extent such additions, modifications or improvements are described in the following sentence. Any and all parts installed on and additions and replacements made to any Unit (i) which are not readily removable without causing material damage to such Unit and were installed or were added to such Unit in contravention of the provisions contained hereinabove, (ii) the cost of which is included in the Purchase Price of such Unit, (iii) in the course of ordinary maintenance of the Units or (iv) which are required for the operation or use of such Unit by the interchange rules of the Association of American Railroads or by the regulations of the Interstate Commerce Commission, the United States Department of Transportation or any other 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 CSA) shall immediately be vested in the Lessor.

9.4. Indemnification. The Lessee shall pay, and shall protect, indemnify and hold each Indemnified Person 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, reasonable costs, reasonable disbursements, reasonable 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 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, storage, return or other disposition of any Unit or portion thereof; (ii) any latent or other defects whether or not discoverable by any Indemnified Person 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 Lessor, 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 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 Lessor's or the Vendor's obligations under the Lease Assignment, the CSA or the Participation Agreement, except to the extent such claim arises from the gross negligence or wilful misconduct of the person otherwise to be indemnified hereunder (all such matters called "Indemnified Matters"). The Lessee shall be obligated under this § 9.4, irrespective of whether any Indemnified Person shall also be indemnified with respect to the same Indemnified 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 § 9.4 without first resorting to any such other rights of indemnification. In case any action, suits or proceeding is brought against any Indemnified Person, in connection with any Indemnified Matter, 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, as the case may be, and, in the event of any failure by the Lessee to so do, the Lessee shall pay all reasonable 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

§ 9.4, 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 each Indemnified Person agree to give each other promptly upon obtaining knowledge thereof written notice of any claim or liability hereby indemnified against; provided, however, that any failure of any Indemnified Person to furnish such notice in a prompt manner shall not relieve the Lessee from its obligation to indemnify pursuant to this § 9.4. Upon the payment in full of any indemnities as contained in this § 9.4 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, it shall be subrogated to any right of such Indemnified Person in respect of the matter against which indemnity has been paid as aforesaid. 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 § 9.4 shall be paid over to the Lessee to the extent necessary to reimburse the Lessee for indemnification payments previously made in respect of such matter. Nothing herein contained shall constitute a guaranty by the Lessee of the CSA Indebtedness under the CSA or a guaranty of the residual value of any Unit.

The Lessee further agrees to indemnify, protect and hold harmless each Indemnified Person from and against any and all liabilities, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against such Indemnified Person because of the use in or about the construction or operation of any of the Units of any article or material specified by the Lessee and not manufactured by the Builder or of any design, system, process, formula or combination specified by the Lessee and not developed or purported to be developed by the Builder which infringes or is claimed to infringe on any patent or other right.

The Lessee shall bear the responsibility and risk for, and shall not be released from its obligations here-

under in the event of, any damage to or the destruction or loss of any or all of the Units of Equipment.

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

The indemnities contained in this § 9.4 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 and collectible directly from the Lessee by any Indemnified Person notwithstanding the provisions of the Lease Assignment or the Consent. None of the indemnities in this § 9.4 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.

#### § 10. DEFAULT

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

(A) default shall be made in payment of any amount provided for in § 3, 6, 7, 9, 13 or 16 hereof, and such default shall continue for five business days;

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

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

Vendor to the Lessee specifying the default and demanding that the same be remedied and (ii) the date on which such default shall first become known to any officer of the Lessee;

(D) any representation or warranty made by the Lessee herein or in the Consent or in the Participation Agreement or in any agreement, document or certificate delivered by the Lessee in connection herewith or therewith (other than the Indemnity Agreement) shall prove to have been incorrect in any material respect when made or given;

(E) a petition for reorganization under Title 11 of the United States Code, as now constituted or as 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 this Lease, the Consent and the Indemnity Agreement shall not have been and shall not continue to be duly assumed in writing within 60 days after such petition shall have been filed, 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 expenses of administration and obligations incurred by such trustee or trustees; or

(F) any other proceeding 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 under this Lease, the Consent and the Indemnity Agreement 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 such obligations), 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 such obligations shall not have been and shall not continue to be duly assumed in writing within 60 days after such proceedings shall have been commenced, 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 expenses of administration and obligations incurred by such trustee or trustees or receiver or receivers;

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

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

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as herein provided; and thereupon the Lessor may by its agents enter upon the premises of the Lessee or other premises, insofar 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, sell, operate, lease and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever and without any duty to account to the Lessee for such action or inaction or for any proceeds arising therefrom; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee as damages for loss of the bargain and not as a penalty whichever of the following amounts that the Lessor, in its sole discretion, shall specify, (i) a sum, with respect to each Unit, which represents (w) the excess of the present value, at the time of such termination, of the entire unpaid balance of all rental for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term as to such Units

such present value to be computed on the basis of 10% 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 Lessor reasonably estimates to be obtainable for each Unit during such period, such present value to be 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 (x) any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Lessor 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) the sum of (y) an amount equal to the excess, if any, of the Casualty Value as of the Casualty Payment Date on or next preceding date of termination over the amount the Lessor reasonably estimates to be fair market sales value of such Unit at such time plus (z) any amounts described in clause (x) above; provided, however, that in the event the Lessor shall have sold any Unit, the Lessor, in lieu of collecting any amounts payable by the Lessee pursuant to the preceding clause (ii) (y) with respect to such Unit, may demand that the Lessee pay to the Lessor and the Lessee shall pay to the Lessor on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty Value for such Unit as of the Casualty Payment Date on or next preceding the date of termination over the net proceeds of such sale.

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

10.2. Remedies Not Exclusive, Waiver. The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative and may be exercised concurrently or consecutively, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory re-

quirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is not, at the time in question, prohibited by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make such payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf. The Lessee hereby waives any and all claims against the Lessor and the Vendor and their agent or agents for damages of whatever nature in connection with any retaking of any Unit pursuant to this § 10.2.

10.3. Failure to Exercise Rights is not Waiver. No failure by the Lessor to exercise, and no delay by the Lessor in exercising, any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege by the Lessor preclude any other or further exercise thereof, or the exercise of any other right, power or privilege.

#### § 11. RETURN OF UNITS UPON DEFAULT

11.1. Return of Units. If this Lease shall terminate pursuant to § 10 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor. Each Unit so delivered shall be in the condition required by § 7.1 hereof and shall have attached or affixed thereto any special device considered an accession thereto as provided in § 9 and shall have removed therefrom at the Lessee's expense any addition, modification or improvement which, as provided in § 9, is owned by the Lessee. For the purpose of delivering possession, the Lessee shall at its own cost, expense and (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 Units have been interchanged or which may have possession thereof to return such Unit so interchanged) cause such Units to be placed upon such storage tracks at such site or sites as the Lessor reasonably may designate; and (b) permit the Lessor to store such Units on such tracks at the risk of the Lessee without charge for insurance, rent or storage until all such Units have been sold, leased or otherwise disposed of by the Lessor.

The assembling, delivery, storage, insurance and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence

of this Lease and, upon application to any court of equity having jurisdiction, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver and store the Units. During any storage period, the Lessee will, at its own expense, maintain and keep the Equipment in the condition required by § 7.1 hereof and will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser, lessee or user 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 Lessor and, if received by the Lessee, shall be held in trust for the benefit of the Lessor and promptly turned over to the Lessor. In the event any Unit is not assembled, delivered and stored, as hereinabove provided, within 30 days after such termination, the Lessee shall, in addition, pay to the Lessor for each day thereafter an amount equal to the amount, if any, by which 0.052894% of the Purchase Price for such Unit for each such day exceeds the actual earnings received by the Lessor with respect to such Unit for each such day.

11.2. Lessor Appointed Agent of Lessee. Without in any way limiting the foregoing obligations of the Lessee under this § 11, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is in default hereunder and is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

## § 12. ASSIGNMENT, POSSESSION AND USE

12.1. Assignment; Consent. This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. The Lessee hereby consents to the assignment of this Lease pursuant to the Lease Assignment. All the rights of the Lessor hereunder shall inure to the benefit of the Lessor's successors and assigns.

12.2 Lessee's Rights to Use the Units; To Permit Use Thereof by Others and to Sublease the Units. 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. The Lessee shall not assign or transfer its leasehold interest under this Lease in the Units or any of them without the prior written consent of the Lessor and the Vendor, except as provided in this § 12.2; and the Lessee shall not part with possession or control of, or suffer or allow to pass out of its possession or control, any of the Units without the prior written consent of the Lessor and the Vendor, except as provided in this § 12.2. Without the prior written consent of the Lessor and the Vendor, the Lessee may sublease (which sublease shall be expressly subject and subordinate to the rights and remedies of the Lessor and the Vendor hereunder and under the CSA) the Units to, or permit their use by, any person controlling, controlled by, or under common control with the Lessee or a user incorporated in the United States of America (or any State thereof or the District of Columbia) upon lines of a railroad company or companies incorporated in the United States of America (or any State thereof or the District of Columbia) or over which the Lessee, such user, or such railroad company or companies have trackage rights or rights for operation of their trains and upon the lines of railroad of connecting and other carriers in the usual interchange of traffic or in through or run-through service, but only upon and subject to all the terms and conditions of this Lease; provided, however, that the Vendor's and the Lessor's prior written consent, not to be unreasonably withheld, must be obtained for any sublease (other than to an entity controlling, controlled by, or under common control with, the Lessee) that is for a term longer than one year or is renewable for a term more than one year; provided further, however, that the Lessee shall not sublease or permit the sublease or use of any Unit to service involving operation or maintenance outside the United States of America or use or permit the use of any Unit for purposes other than the transport of coal without the consent of the Lessor; and provided further, however, that any such sublease or use shall be consistent with the provisions of the Indemnity Agreement and not result in any adverse income tax consequences to the Lessor. The Lessee may not assign any of its rights or obligations hereunder to any person, firm or entity without the Vendor's and the Lessor's prior written consent except to a person, firm or entity acquiring substantially all of the Lessee's assets or merging or consolidating with the Lessee, provided that the net worth of the person, firm or entity incorporated in the

United States of America (or in any state thereof or the District of Columbia) and acquiring such assets or surviving such merger or consolidation is at least equal to the net worth of the Lessee immediately prior to such acquisition, merger or consolidation and provided further, that no Event of Default hereunder shall exist immediately after completion of such acquisition, merger or consolidation. No such assignment or sublease shall relieve the Lessee of its obligations hereunder which shall be and remain those of a principal and not a surety. The Lessee shall not use, or permit any other person to use, the Equipment in a manner inconsistent with the purposes for which it was designed.

12.3. Discharge of Liens. 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 Lessor Liens and other than encumbrances created by the Vendor or resulting from claims against the Vendor not related to the ownership of the Units) upon or with respect to any Unit or the interest of the Lessor, the Vendor or the Lessee therein, and will promptly discharge any such lien, claim, security interest or other encumbrance which arises.

### § 13. RENEWAL OPTIONS, PURCHASE OPTION

13.1. Renewal Options. Provided that this Lease has not been earlier terminated and no Event of Default or event which with lapse of time and/or demand provided for herein could constitute an Event of Default shall have occurred and be continuing, the Lessee may by written notice delivered to the Lessor not less than 180 days prior to the end of the original term or any extended term of this Lease, as the case may be, elect to extend the term of this Lease in respect of all or not fewer than 244 of the Units then covered by this Lease, for an additional one-year period commencing on the scheduled expiration of the original term or extended term of this Lease, as the case may be, at a Fair Market Rental (as defined below) payable in semiannual payments in arrears during such extended term; provided, however, that no option to extend the term of this Lease may be exercised by the Lessee under this § 13.1 more than seven times.

13.2. Purchase Option. Provided that this Lease has not been earlier terminated and no Event of Default or event which with lapse of time and/or demand provided for herein could constitute an Event of Default shall have

occurred and be continuing, at the end of the original or any extended term of this Lease the Lessee may by written notice delivered to the Lessor not less than 180 days prior to the end of such term of this Lease, elect to purchase all or not fewer than 244 of the Units then covered by this Lease for the then "Fair Market Purchase Price" thereof.

13.3. Fair Market Rental and Fair Market Purchase Price. Fair Market Rental and Fair Market Purchase Price shall be determined on the basis of, and shall be equal in amount to, the cash rental for a one-year period or the purchase price, as the case may be, which would obtain in an arm's-length transaction between an informed and willing lessee or purchaser and an informed and willing lessor or seller, as the case may be, under no compulsion to lease or sell and, in such determination, costs of removal from the location of current use shall not be a deduction from such rental or purchase price and it shall be assumed that all of the Units for which such determination is being made have been collected in one place and have been maintained in full compliance with all of the provisions of § 7.1 hereof. If, after 10 days from the giving of notice by the Lessee of the Lessee's election to extend the term of this Lease or to exercise its purchase option, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Rental or Fair Market Purchase Price of the Units, such rental or purchase price shall be determined in accordance with the foregoing definition by the following procedure: If either party to such determination shall have given written notice to the other requesting determination of such rental or purchase price by this appraisal procedure, the parties shall consult for the purpose of appointing a qualified independent appraiser by mutual agreement. If no such appraiser is so appointed within 5 days after such notice is given, each party shall appoint an independent appraiser within 10 days after such notice is given, and the two appraisers so appointed shall within 20 days after such notice is given appoint a third independent appraiser. If no such third appraiser is appointed within 20 days after such notice is given, either party may request the American Arbitration Association to make such appointment, and both parties shall be bound by any appointment so made. Any appraiser or appraisers appointed pursuant to the foregoing procedure shall be instructed to determine the Fair Market Rental (and, in the case of each renewal period, the Fair Market Purchase Price at the beginning of such renewal period) of the Units subject to the proposed extended term, or the Fair Market Purchase Price, as the case may be, within 30 days after his or their appointment. If the

parties shall have appointed a single appraiser or if either party shall have failed to appoint an appraiser, the determination of Fair Market Rental or Fair Market Purchase Price, as the case may be, of the single appraiser appointed shall be final. If three appraisers shall be appointed, the determination of the appraiser which differs most from that of the other two appraisers shall be excluded, the remaining two determinations shall be averaged and such latter average shall be final and binding upon the parties hereto as the Fair Market Rental or Fair Market Purchase Price, as the case may be. The appraisal proceedings shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association as in effect on the date hereof, except as modified hereby. The provision for this appraisal procedure shall be the exclusive means of determining Fair Market Rental or Fair Market Purchase Price, as the case may be, and shall be in lieu of any judicial or other procedure for the determination thereof, and each party hereto hereby consents and agrees not to assert any judicial or other procedures. The Lessee shall bear all appraisal procedure expenses.

Upon payment of the purchase price of any Unit, pursuant to an election by the Lessee to purchase the Units, the Lessor shall upon request of the Lessee execute and deliver to the Lessee, or to the Lessee's assignee or nominee, a bill of sale (without representations or warranties) for such Unit such as will transfer to the Lessee such title to such Unit as the Lessor derived from the Vendor, free and clear of all Lessor Liens. "Lessor Liens" shall mean all liens, security interests and encumbrances created by or arising through the Lessor, and not related to the transactions contemplated hereby or by the Participation Agreement, other than liens, security interests and encumbrances which the Lessee is obligated to pay or discharge under or pursuant to this Lease or Participation Agreement.

#### § 14. RETURN OF UNITS UPON EXPIRATION OF TERM

As soon as practicable on or after the expiration of the original or any extended term of this Lease with respect to any Unit or on or after a Termination of this Lease pursuant to § 7.9 hereof, the Lessee will, at its own cost and expense, at the request of the Lessor, deliver possession of such Unit to the Lessor upon such storage tracks at such site or sites (not exceeding three sites) within a 750-mile radius of Superior, Wisconsin, or Decker,

Montana, as the Lessor may designate, or, in the absence of such designation, as the Lessee may select, and permit the Lessor to store such Unit on such tracks for a period not exceeding 180 days following notification to the Lessor by the Lessee that all the Units have been so assembled and delivered for storage, all as directed by the Lessor, the movement and storage of such Units to be at the expense and risk of the Lessee (including the insurance required by § 7.8 hereof); and in the event that any Unit shall suffer a Casualty Occurrence during such storage period, the Lessee shall pay the Lessor the Casualty Value thereof as provided in § 7.4 hereof. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representatives of any prospective purchaser, lessee or user of such Unit, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence or strict liability of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, on behalf of either the Lessor any prospective purchaser, lessee or user, such rights of inspection. Each Unit returned to the Lessor pursuant to this § 14 shall be in the condition required by the maintenance provisions of § 7 hereof and shall have attached or affixed thereto any special device considered an accession thereto as provided in § 9 and shall have removed therefrom at the Lessee's expense any addition, modification or improvement which, as provided in § 9, is owned by the Lessee. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and, upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance thereof. During any storage period, the Lessee will, at its own expense, maintain and keep the Units in the condition in which Lessee normally maintains similar equipment while in a similar storage state and will permit the Lessor or any person designated by it, including the authorized representatives of any prospective purchaser, lessee or user of any such Unit, to inspect the same. In the event any Unit is not assembled, delivered and stored, as hereinabove provided, within 30 days after such termination, the Lessee shall pay to the Lessor for each day from the date of such termination during which such Unit is being used by or with the consent of the Lessee an amount equal to the amount, if any, by which .026447% of the Purchase Price of such Unit for each such day exceeds the actual earnings received by the Lessor with respect to such Unit for each such day.

#### § 15. RECORDING

The Lessee, at its own expense, will cause this Lease, the CSA and any assignment hereof or thereof to be filed in accordance with 49 U.S.C. § 11303. The Lessee will undertake the filing, registering, deposit, and recording required of the Lessor under the CSA and will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, reregister, deposit and redeposit or rerecord whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Vendor for the purpose of proper protection, to their satisfaction, of the Vendor's and the Lessor's respective rights in the Units, or for the purpose of carrying out the intention of this Lease, the CSA and the assignments thereof to the Vendor; and the Lessee will promptly furnish to the Vendor and the Lessor evidence of all such filing, registering, depositing, recording and other acts which may be required under this § 15, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Vendor and the Lessor. This Lease and the CSA, and the assignments thereof, shall be filed with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Unit.

#### § 16. INTEREST ON OVERDUE RENTALS

Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay, to the extent legally enforceable, an amount on the overdue rentals and other obligations for the period of time during which they are overdue at a rate per annum equal to 12.67% in the case of amounts assigned and payable to the Agent and at the Prime Rate plus 1% in the case of amounts payable to the Vendee, or such lesser amount as may be legally enforceable. Interest shall be determined on the basis of a 360-day year for the actual number of days elapsed. For the purposes hereof, the "Prime Rate" shall mean the prime commercial lending rate of The Bank of New York as publicly announced to be in effect from time to time.

§ 17. NOTICES

Any notice required or permitted hereunder shall be deemed to have been received by the addressee on the date of actual receipt (if such date is a business day, otherwise on the next business day), if transmitted by mail, telex, telecopy or similar transmission, or by hand, addressed as follows:

(a) if to the Lessor, at 48 Wall Street, New York, N.Y. 10015, Attention of Equipment Leasing Group; and

(b) if to the Lessee, at 2000 Second Avenue, Detroit, Michigan 48226, Attention of Secretary

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing. Copies of each such notice shall be given to the Vendor at P.O. Box 2258 (2 Hopkins Plaza, if by hand), Baltimore, Maryland 21203, Attention of Corporate Trust Department.

SECTION 18. LESSOR'S RIGHT TO PERFORM FOR LESSEE

If the Lessee fails to perform any of its agreements contained herein, the Lessor may upon notice to the Lessee perform such agreement, and the amount of the reasonable cost and expenses of the Lessor incurred in connection with such performance, together with interest on such amount at the rate of 12.67% per annum shall be payable by the Lessee upon demand, except as otherwise provided in this Lease. No such performance or compliance by the Lessor shall be deemed a waiver of the rights and remedies of the Lessor or any assignee of the Lessor against the Lessee hereunder, including, without limitation, the right of the Vendor to terminate this Lease pursuant to Article 15 of the CSA and the Lease Assignment, and no such performance or compliance by the Lessor shall be deemed to cure an Event of Default hereunder for purposes of Article 15 of the CSA except as otherwise provided in Section 15(f) of the CSA.

§ 19. SEVERABILITY; EFFECT AND MODIFICATION OF LEASE

Any provision of this lease which is prohibited or unenforceable in any jurisdiction shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining

provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

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

#### § 20. EXECUTION

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

#### § 21. LAW GOVERNING

The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of New York; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303 and such additional rights arising out of the filing or hereof, if any, and of any assignment hereof as shall be conferred by the law of the several jurisdictions in which this Lease or any assignment hereof shall be filed. This Agreement is being delivered in the City and State of New York and shall be effective when one or more counterparts which together have been executed by both parties shall be delivered to Cravath, Swaine & Moore in the City of New York. The parties hereto hereby irrevocably consent to the jurisdiction of any federal or state court sitting in the City and State of New York in respect of any claim or dispute arising hereunder (except as to which arbitration is provided for in § 7 hereof).

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

THE DETROIT EDISON COMPANY,

by

\_\_\_\_\_  
Title:

[Corporate Seal]

Attest:

\_\_\_\_\_  
Assistant Secretary

THE BANK OF NEW YORK,

by

*R. G. Hub*  
\_\_\_\_\_  
Title: *VP*

STATE OF MICHIGAN, )  
 ) ss.:  
COUNTY OF WAYNE )

On this \_\_\_\_\_ day of October 1985, before me personally appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, says that he/she is \_\_\_\_\_ of THE DETROIT EDISON 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 \_\_\_\_\_

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

On this 17<sup>th</sup> day of October 1985, before me personally appeared Deborah Perkins, to me personally known, who, being by me duly sworn, says that he/she is Vice President of The Bank of New York, that said instrument was signed on behalf of said corporation by authority of its Board of Directors, and he/she acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

*Kathleen A. Cooney*  
\_\_\_\_\_  
Notary Public

[Notarial Seal]  
My Commission Expires \_\_\_\_\_

KATHLEEN A. COONEY  
Notary Public, State of New York  
No. 43-4817439  
Qualified in Richmond County  
Commission Expires March 30, 1986

SCHEDULE A TO LEASE

<u>Builder</u>	<u>Type</u>	<u>Builder's Plant</u>	<u>Quantity</u>	<u>Lessee's Identification Numbers (Both Inclusive)</u>	<u>Unit Base Price</u>	<u>Total Base Price</u>	<u>Estimated Time and Place of Delivery</u>
Greenville Steel Car Company	108 Ton, 4,320 cu. ft. Aluminum bodied-steel underframed, rotary dump, gondola rail cars	Greenville, Pennsylvania	610	DEEX 8101-8710	\$38,651.88	\$23,577,646.80	Oct-Dec, 1985, at Builder's.

SCHEDULE B TO LEASE

RENTALS

<u>Rental Payment Dates</u>	<u>Percentage of Purchase Price</u>
1/2/87	3.2082143
7/2/87	5.2548105
1/2/88	3.0887954
7/2/88	5.3742294
1/2/89	2.9554403
7/2/89	5.5075844
1/2/90	2.8065227
7/2/90	5.6565024
1/2/91	2.6402264
7/2/91	5.8227983
1/2/92	2.5000710
7/2/92	5.9629537
1/2/93	2.3698942
7/2/93	6.0931332
1/2/94	2.2379703
7/2/94	8.1057266
1/2/95	2.0202552
7/2/95	8.3234417
1/2/96	1.8258758
7/2/96	8.5178210
1/2/97	1.6267800
7/2/97	8.7169169
1/2/98	1.4217260
7/2/98	8.9219709
1/2/99	1.0978916
7/2/99	9.2458052
1/2/00	0.6224609
7/2/00	9.7212360
1/2/01	0.0915474
7/2/01	10.2521495
1/2/02	0.0000000
7/2/02	10.3436969
	<hr/> 152.3344479

SCHEDULE C TO LEASE

Table 1

<u>Rental Payment Dates</u>	<u>Casualty Values and Termination Values As A Percentage of Purchase Price*</u>
1/2/87	94.5652
7/2/87	94.3705
1/2/88	95.8991
7/2/88	94.8497
1/2/89	95.7565
7/2/89	93.8036
1/2/90	94.0591
7/2/90	91.2827
1/2/91	91.3569
7/2/91	88.2696
1/2/92	88.3584
7/2/92	85.0278
1/2/93	85.1299
7/2/93	81.5610
1/2/94	81.6774
7/2/94	75.9983
1/2/95	76.1446
7/2/95	70.0957
1/2/96	70.2606
7/2/96	63.8535
1/2/97	64.0383
7/2/97	57.2645
1/2/98	57.4713
7/2/98	50.3208
1/2/99	50.6928
7/2/99	43.0834
1/2/00	43.8168
7/2/00	35.6463
1/2/01	36.8042
7/2/01	28.0319
1/2/02	29.0222
7/2/02	20.0000

Table 2

The percentages set forth in Table 1 of this Schedule C have been computed without regard to recapture of the Investment Tax Credit. Consequently, the Casualty Value of any Unit suffering a Casualty Occurrence on or before December 31, 1990, shall be increased by the applicable percentage of the Purchase Price set forth below:

<u>Date</u>	<u>Percentage of Purchase Price</u>
On or prior to 12/31/86	16.8121
On or prior to 12/31/87	13.4497
On or prior to 12/31/88	10.0873
On or prior to 12/31/89	6.7249
On or prior to 12/31/90	3.3624

Certificate of Acceptance

To: The Bank of New York  
Mercantile-Safe Deposit and Trust Company  
Greenville Steel Car Company

I, the duly authorized representative for GREENVILLE STEEL CAR COMPANY and THE DETROIT EDISON COMPANY (the "Lessee") under the Conditional Sale Agreement and the Lease of Railroad Equipment, both dated as of October 1, 1985, respectively, do hereby certify that I inspected or have caused to be inspected and have accepted delivery thereunder of the following Units of Equipment:

TYPE OF EQUIPMENT:  
DATE ACCEPTED:  
NUMBER OF UNITS  
NUMBERED:

I do hereby certify that the foregoing Units are in good order and condition, and appear to conform to the specifications, requirements and standards applicable thereto as provided in Article 2 of the aforesaid Conditional Sale Agreement. I do further certify that each of the foregoing Units has been marked by means of a stencil printed in contrasting colors upon each side of each such Unit in letters not less than one inch in height as follows:

"Ownership subject to a Security Agreement filed with the Interstate Commerce Commission."

The execution of this Certificate will in no way relieve or decrease the responsibility of the Builder named below for any warranties it has made with respect to the Equipment.

BUILDER:  
Greenville Steel Car Company

\_\_\_\_\_  
Authorized Representative of  
Vendee and Lessee

SCHEDULE C TO LEASE

<u>Rental Payment Dates</u>	<u>Casualty Values as a Percentage of Purchase Price</u>	<u>Termination Values as a Percentage of Purchase Price</u>
1/2/87		
7/2/87		
1/2/88		
7/2/88		
1/2/89		
7/2/89		
1/2/90		
7/2/90		
1/2/91		
7/2/91		
1/2/92		
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1/2/99		
7/2/99		
1/2/00		
7/2/00		
1/2/01		
7/2/01		
1/2/02		
7/2/02		

[TO BE SUPPLIED AT

A LATER DATE]