

CRAVATH, SWAINE & MOORE

ONE CHASE MANHATTAN PLAZA

NEW YORK, N. Y. 10005

212 HANOVER 2-3000

TELEX  
RCA 233663  
WUD 125547  
WUI 620976

11952 B

RECORDATION NO. .... Filed 1425

JUN 30 1980 - 3 40 PM

INTERSTATE COMMERCE COMMISSION

11952 C

RECORDATION NO. .... Filed 1425

JUN 30 1980 - 3 40 PM

INTERSTATE COMMERCE COMMISSION

Consolidated Rail Corporation ("Conrail")  
Lease Financing Dated as of May 15, 1980  
15-1/2% Conditional Sale Indebtedness Due 1999

[CS&M Ref: 3909-204]

Dear Ms. Mergenovich:

Pursuant to 49 U.S.C. § 11303(a), I enclose herewith on behalf of Consolidated Rail Corporation ("Conrail"), for filing and recordation, counterparts of the following:

*New Number*

*- A*

*- B*

*- C*

(1) (a) Conditional Sale Agreement dated as of May 15, 1980, between The Philadelphia National Bank and Portec, Inc.; and

(b) Agreement and Assignment dated as of May 15, 1980, between Mercantile-Safe Deposit and Trust Company and Portec, Inc.

(2) (a) Lease of Railroad Equipment dated as of May 15, 1980, between Consolidated Rail Corporation and The Philadelphia National Bank; and

(b) Assignment of Lease and Agreement dated as of May 15, 1980, between The Philadelphia National Bank and Mercantile-Safe Deposit and Trust Company.

*Counterpart Eduardo J. Solis*

11952

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INTERSTATE COMMERCE COMMISSION

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INTERSTATE COMMERCE COMMISSION

JUN 26 1980

CB Washington, D.C.

June 30, 1980

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I.C.C.  
OPERATION BR.

COUNSEL  
CARLYLE E. MAW  
ALBERT R. CONNELLY  
FRANK H. DETWEILER  
GEORGE G. TYLER  
ROSWELL L. GILPATRICK  
L. R. BRESLIN, JR.  
GEORGE B. TURNER  
JOHN H. MORSE  
HAROLD R. MEDINA, JR.  
CHARLES R. LINTON  
ALLEN H. MERRILL  
PLACE DE LA CONCORDE  
78008 PARIS, FRANCE  
TELEPHONE: 265-81-54  
TELEX: 290530  
33 THROMMORTON STREET  
LONDON, EC2N 2BR, ENGLAND  
TELEPHONE 01-606-1421  
TELEX: 8814901  
CABLE ADDRESSES  
CRAVATH, N. Y.  
CRAVATH, PARIS  
CRAVATH, LONDON E. C. 2

The addresses of the parties to the aforementioned agreements are:

Lessor-Trustee:

The Philadelphia National Bank,  
1 North 5th Street,  
Philadelphia, Pennsylvania 19106.

Builder-Vendor:

Portec, Inc.,  
(Railcar Division),  
1800 Century Boulevard,  
Atlanta, Georgia 30345.

Lessee:

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

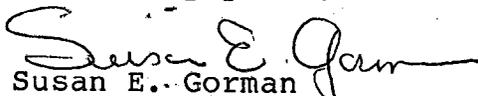
Agent-Vendor-Assignee:

Mercantile-Safe Deposit and Trust Company,  
Two Hopkins Plaza,  
Baltimore, Maryland 21203.

The equipment covered by the aforementioned agreements consists of 285 Bi-level Auto Racks bearing the road numbers of the Lessee CR2090-CR2374, both inclusive, and also bearing the legend "Owned by a Bank or Trust Company. Ownership Subject to a Conditional Sale Agreement Filed with the Interstate Commerce Commission and Subject to a Security Interest Under the Uniform Commercial Code".

Enclosed is our check for \$100 for the required recordation fee. Please accept for recordation one counterpart of each of the enclosed agreements, stamp the remaining counterparts with your recordation number and return them to the delivering messenger along with your fee receipt addressed to the undersigned.

Very truly yours,



Susan E. Gorman  
As Agent for Consolidated  
Rail Corporation.

Agatha Mergenovich, Secretary,  
Interstate Commerce Commission,  
Washington, D. C. 20423

11952 *B*

RECORDATION NO. .... Filed 1425

JUN 30 1980 - 3 40 PM

INTERSTATE COMMERCE COMMISSION

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[CS&M Ref. 3909-204]

LEASE OF RAILROAD EQUIPMENT

Dated as of May 15, 1980

Between

CONSOLIDATED RAIL CORPORATION

and

THE PHILADELPHIA NATIONAL BANK,  
as Trustee

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

LEASE OF RAILROAD EQUIPMENT dated as of May 15, 1980, between CONSOLIDATED RAIL CORPORATION, a Pennsylvania corporation (the "Lessee"), and THE PHILADELPHIA NATIONAL BANK, not individually but solely as Trustee (the "Lessor") under a Trust Agreement dated as of May 15, 1980 (the "Trust Agreement"), with the parties named in Annex A thereto (the "Owners").

WHEREAS the Lessor is entering into a Conditional Sale Agreement dated as of the date hereof (the "CSA") with Portec, Inc. (the "Builder"), wherein the Builder has agreed to sell 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 Investors, as hereinafter defined, called the "Vendor") under a Participation Agreement dated as of the date hereof (the "Participation Agreement") with the Lessee, the Lessor, the Owners, and the party named in Schedule A thereto (said party, together with its successors and assigns, being hereinafter called the "Investors");

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 upon the terms and 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 setoff against or recoupment or reduction of rent or additional 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 against any of the Owners, the Builder or the Vendor or otherwise. The Lessee's obligations hereunder, including its obligations to pay all rentals, additional rentals and other amounts hereunder, 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 the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever.

§ 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 (the "Certificate of Acceptance") substantially in the form annexed hereto as Schedule C, whereupon, except as provided in the next sentence of this Section, 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. The Lessee agrees to pay to the Lessor, as rental for each Unit, one interim and 20 consecutive semiannual payments in advance. The interim payment is payable on July 2, 1980 (such date being hereinafter called the "Basic Rent Commencement Date"). The 20 semiannual payments are payable on January 2 and July 2 in each year, commencing July 2, 1980, to and including January 2, 1990 (or if any such date is not a business day, on the next preceding business day) (each of such 20 consecutive semiannual dates being hereinafter called a "Rental Payment Date"). The interim rental payable on the Basic Rent Commencement Date for each Unit shall be in an amount equal to the product of (a) the number of calendar days elapsed from and including the Closing Date for such Unit to, but not including, the Basic Rent Commencement Date, times (b) .042466% of the Purchase Price of such Unit. The 20 semiannual rental payments shall each be in an amount equal to the Semiannual Lease Factor (as hereinafter defined) of the Purchase Price of each Unit then subject to this Lease. As used herein, the term "Semiannual Lease Factor" means 7.131103% or such percentage as it may be adjusted pursuant to the next succeeding paragraph or § 16 hereof.

The Lessee and the Lessor agree that the rentals payable hereunder and the Casualty Value percentages set forth in Schedule B hereto will be adjusted upward or downward in the event that any amendment to, or change in, the Internal Revenue Code of 1954, as amended (the "Code"), the income tax regulations thereunder or published administrative or judicial

interpretations of the Code or such regulations is enacted or has an effective date on or prior to the First Delivery Date (as defined in the Participation Agreement). The Lessee agrees that the rentals payable hereunder and the Casualty Value percentages set forth in Schedule B hereto will be appropriately adjusted so that the Owners will realize such amounts as will, in the Owners' reasonable judgment, preserve for the Owners both the after-tax rate of return and the after-tax cash flow that would have been realized by the Owners if such event had not occurred, based on the assumptions and methods of calculation utilized by the Owners in originally evaluating the transaction described in this Lease and related documents. Notwithstanding anything to the contrary set forth herein, the rentals and Casualty Value percentages, as adjusted pursuant to the next preceding sentence or § 16 hereof, shall be sufficient to satisfy the obligations of the Lessor under the CSA, regardless of any limitation of liability set forth therein.

In addition to the foregoing rentals, the Lessee agrees to pay to the Lessor as additional rentals amounts which, after deduction of any taxes payable by the Owners or the Lessor in respect of such amounts, will be equal to the amounts required by the Lessor to make the payments provided for (a) in the third from last sentence of the third paragraph of Paragraph 2 of the Participation Agreement and (b) in Paragraph 9 of the Participation Agreement to the extent that the remaining cash and proceeds of the Investments (as defined therein) available to the Lessor as specified in said Paragraph is insufficient to enable the Lessor to make such payment, in each case on the dates the Lessor is required to make such payments (without regard to any limitation of the obligation of the Lessor set forth therein) and the Lessor agrees to apply such rentals for such purposes.

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 Philadelphia, Pennsylvania, Baltimore, Maryland or New York, New York, are authorized or obligated to remain closed.

The Lessor irrevocably instructs the Lessee to make all 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 payments not assigned to the Vendor pursuant to 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 or event which with the lapse of time and/or demand provided for in the CSA could constitute an 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. The Lessee agrees to make each payment provided for herein as contemplated by this paragraph in Federal or other funds immediately available to the Vendor by 11:00 a.m., Baltimore time, on the date such payment is due.

§ 4. Term of Lease. The term of this Lease as to each Unit shall begin on the date of delivery and acceptance of such Unit hereunder and, subject to the provisions of §§ 7, 8, 10 and 13 hereof, shall terminate six months after the date on which the final payment of rent in respect thereof is due pursuant to § 3 hereof. The obligations of the Lessee hereunder (including, but not limited to, the obligations under §§ 3, 6, 7, 9, 14 and 16 hereof) shall survive the expiration or termination of the term of this Lease and the full payment of all amounts payable under this Lease.

Notwithstanding anything to the contrary contained herein, all rights and obligations of the Lessee under this Lease and in and to the Units are subject to the rights of the Vendor under the 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. 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 word "OWNED BY A BANK OR TRUST COMPANY. OWNERSHIP SUBJECT TO A CONDITIONAL SALE AGREEMENT FILED WITH THE INTER-STATE COMMERCE COMMISSION AND TO A SECURITY INTEREST UNDER

THE UNIFORM COMMERCIAL CODE", 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 security 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, defaced, obliterated 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.

Except as provided in the immediately preceding paragraph, the Lessee will not allow the name of any person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership; provided, however, that the Units may be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates.

§ 6. Taxes. The Lessee assumes responsibility for, and agrees to pay, hold harmless and indemnify on an after-tax basis the Lessor (both in its individual and trust capacity), the Vendor and the Owners and their successors and assigns (the "Indemnified Persons") against, all taxes, fees, 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, 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, this Lease or the CSA or any document referred to herein or therein or any of the transac-

tions contemplated hereby or thereby or the manufacture, purchase, acquisition, acceptance or rejection of the Units or any thereof or the ownership, delivery, nondelivery, leasing, re-leasing, subleasing, possession, 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 persons who are the Lessor or the Vendor, and (ii) Federal income Taxes and income or franchise Taxes imposed on an Owner or an Investor or their successors and assigns by any jurisdiction in which such Owner, such Investor or their successors and assigns has an office, except to the extent that indemnification is provided for in § 16 hereof. 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 10 days after receipt of a written request by such Indemnified Person for indemnification specifying the amount to be paid, the basis on which such amount was determined and the nature of the Taxes in question; provided, however, that any Taxes may be contested in accordance with the provisions of § 16 hereof and if so contested any payment shall be made at the time therein provided.

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 interests 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 or Owners' 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 authorizes the Lessee to act in its own name and on its behalf; provided, however, that the Lessee shall indemnify and hold the Lessor and the Owners 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, 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 anticipated after-tax rate of return on equity and periodic recovery of net cash flow as such Indemnified Person would have realized 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 reim-

bursement 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.

§ 7. Maintenance; Casualty Occurrences; Insurance.

The Lessee at its own expense will maintain and service each Unit so that each Unit will remain (a) in as good operating order, repair and condition as when delivered (ordinary wear and tear excepted), (b) in compliance with any and all applicable laws and regulations and eligible for railroad interchange in accordance with the rules of the American Association of Railroads, and (c) desirable to and suitable for immediate purchase or lease and use by a Class I line-haul railroad (not then or prospectively a debtor in any insolvency or reorganization proceedings) in the event of resale or re-lease upon an Event of Default hereunder. In no event shall any Unit be maintained or scheduled for maintenance on a basis less frequent than the maintenance or maintenance scheduling basis employed as of the date hereof by the Lessee for similar equipment.

In the event that any Unit shall be or become worn out, lost, stolen or destroyed or, in the reasonable opinion of the Lessee, damaged beyond the economic limit of repair, from any cause whatsoever, permanently returned to the Builder pursuant to any patent indemnity provision of the CSA, or taken or requisitioned by condemnation or otherwise by the United States Government for a period which shall exceed the then remaining term of this Lease (or, if such taking, requisition or condemnation shall occur during a renewal term, for a period which shall exceed the then remaining renewal term), or by any other government or governmental entity resulting in loss of possession by the Lessee for a period of 90 consecutive days (such occurrences being hereinafter called "Casualty Occurrences"), prior to the return of such Unit in the manner set forth in § 14 hereof, the Lessee shall promptly (but in any event within 30 days after such Casualty Occurrence) and fully notify the Lessor, the Owners and the Vendor with respect thereto. On the date for the payment of rent hereunder next succeeding such notice (the "Casualty Payment Date") the Lessee shall pay to the Lessor in lieu of the rental payment or payments in respect of such Unit then due and payable an amount equal to the Casualty Value (as hereinafter defined) of such Unit as of such Casualty Payment Date in accordance with Schedule B hereto referred to below. Upon the making of such rental and Casualty Value payments 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. The Lessor hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof, at the best price obtainable on an "as is, where is" basis and the Lessee shall notify the Lessor prior to any such sale; provided, however, that if it shall be necessary for the Lessee immediately to dispose of any Unit which shall have been completely destroyed or irreparably damaged, the Lessee may notify the Lessor of any sale of such Unit to a scrap dealer promptly after such sale; provided further, however, that if the Lessee is not in default hereunder, the Lessee may, by written notice delivered to the Lessor concurrently with the notice of such Casualty Occurrence, elect to purchase the Unit or Units suffering such Casualty Occurrence at the higher of the Casualty Value or Fair Market Purchase Price (determined in accordance with the provisions of § 13 hereof), thereof, such price to be payable promptly after the determination of the amount thereof. 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 have no interest in the proceeds of insurance on the Units paid for by the Lessor or in any other payments in respect of Units suffering a Casualty Occurrence made by any person in excess of the Casualty Value of such Units. 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.

The Casualty Value of each Unit as of any Casualty Payment Date shall be that percentage of the Purchase Price of such Unit as is set forth in Schedule B hereto opposite such date.

Whenever any Unit shall suffer a Casualty Occurrence after the final payment of rent in respect thereof

is due pursuant to § 3 hereof and before such Unit shall have been returned in the manner provided in § 14 hereof, the Lessee shall promptly (as provided above) and fully notify the Lessor with respect thereto and pay to the Lessor an amount equal to the Casualty Value of such Unit, which shall be an amount equal to 20% of the Purchase Price of such Unit; provided, however, that if the term of this Lease shall have been extended pursuant to § 13 hereof, then the applicable Casualty Value shall, unless the parties hereto shall have otherwise agreed, be the fair market value of such Unit, as of the rental payment date on or next preceding the date of such Casualty Occurrence, determined as provided in the following sentence. For the purposes of the preceding sentence, the term "fair market value" of a Unit shall, at the beginning of any renewal term, be equal to the Fair Market Purchase Price of such Unit at such time determined in accordance with the provisions of § 13 hereof and shall decline or increase on a straight-line basis (computed on the basis of a 360-day year of 12 30-day months) to the estimated Fair Market Purchase Price of such Unit at the end of such renewal term determined in accordance with the provisions of § 13 hereof. Upon the making of any such payment by the Lessee in respect of any Unit (except in the case of the loss, theft or complete destruction of such Unit or return to the Builder of such Unit), the Lessor shall be entitled to recover possession of such Unit. The Lessor hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence, or any component thereof, at the best price obtainable on an "as is, where is" basis and the Lessee shall notify the Lessor prior to any such sale; provided further, however, that if the Lessee is not in default hereunder, the Lessee may, by written notice delivered to the Lessor concurrently with the notice of such Casualty Occurrence, elect to purchase the Unit or Units suffering such Casualty Occurrence at the higher of the Casualty Value or Fair Market Purchase Price (determined in accordance with the provisions of § 13 hereof) thereof, such price to be payable promptly after the determination of the amount thereof. Provided that the Lessee has previously paid the Casualty Value to the Lessor and provided that no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing, the Lessee shall be entitled to the proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Lessor.

In the event of the requisition (other than a requisition which constitutes a Casualty Occurrence) for use

by the United States Government or by any other government or governmental entity (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 shall be paid over to, or retained by, the Lessee, provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing; and all payments received by the Lessor or the Lessee from the Government for the use of such Unit after the term of this Lease or any renewal thereof, shall be paid over to, or retained by, the Lessor.

Except as hereinabove in this § 7 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit from and after delivery and acceptance thereof by the Lessee hereunder.

The Lessee will from and including the date of delivery and acceptance of each unit of Equipment and at all times prior to the return of the Units to the Lessor (including during storage periods), at its own expense, cause to be carried and maintained casualty insurance and public liability insurance in respect of the Units at the time subject hereto, against such risks, in such amounts and on such terms and conditions as are satisfactory to the Lessor and 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 industry standard for major Class I line-haul railroads. If the Casualty Value of all the Units at any given time is less than what the deductible would be

under the foregoing standard, then no casualty insurance need be carried. All policies with respect to such insurance shall name the Lessor (both in its individual and trust capacity), the Owners and the Vendor as additional named 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, the Owners and the Vendor in the event of cancelation, expiration or amendment (and the Lessee shall provide 30 days' prior written notice to the Lessor, the Owners and the Vendor in any such event), shall include waivers by the insurer of all claims for premiums against the Lessor, the Owners and the Vendor and shall provide that losses are payable notwithstanding, among other things, any act of negligence of the Lessee, the Lessor, the Owners or the Vendor, more hazardous use or occupation of the Units than that permitted by such policies, any breach or violation by the Lessee, the Lessor, the Owners 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, or any change in the title to or ownership of any of the Units. Each such insurance policy shall expressly provide that all the provisions thereof except the limits of liability (which shall be applicable to all insureds as a group) and liability for premiums (which shall be solely a liability of the Lessee) shall operate in the same manner as if they were a separate policy covering each insured and shall be primary without right of contribution from any insurance carried by the Lessor, the Owners or the Vendor. The Lessee shall furnish to the Lessor and the Vendor a certificate of an independent insurance broker or company acceptable to the Lessor and the Vendor evidencing the renewal of insurance policies required to be maintained hereunder at least 10 days prior to the expiration date of such policy or policies. If the Lessor shall receive any insurance proceeds (other than proceeds of insurance paid for by the Lessor) or condemnation payments in respect of a Unit suffering a Casualty Occurrence, the Lessor shall, subject to the Lessee's having made payment of the Casualty Value in respect of such Unit 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 condemnation payments to the Lessee up to an amount equal to the Casualty Value with respect to a Unit paid by the Lessee and any balance of such proceeds or condemnation payments shall remain the property of the Lessor. All insurance proceeds (other than proceeds of insurance paid for by the Lessor) received

by the Lessor in respect of any Unit not suffering a Casualty Occurrence shall be paid to the Lessee upon proof satisfactory to the Lessor that any damage to such Unit in respect of which such proceeds were paid has been fully repaired so as to comply with the provisions of the first paragraph of this § 7, 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.

§ 7A. Flatcars. At all times prior to the expiration of this Lease or any renewal thereof, the Lessee will cause each Unit to be and remain attached or affixed to a flatcar leased from Trailer Train Company, a Delaware corporation ("Trailer Train"), under the Form A Car Contract, as supplemented to the date hereof, between Trailer Train and carriers to whose interests the Lessee has succeeded as assignee (the "Form A Car Contract"). If for any reason the Form A Car Contract shall be in default or shall terminate as to any flatcar to which a Unit is attached or affixed, the Lessee will promptly notify the Lessor of such default or termination, and, upon the request of the Lessor, will promptly cause such Unit to be removed from such flatcar and to be and remain attached or affixed to another flatcar which is either (i) leased under another lease which is not in default or (ii) owned by the Lessee free and clear of all liens. In the event that any Unit is to be attached or affixed to a flatcar pursuant to clause (i) of the next preceding sentence or to another flatcar leased under the Form A Car Contract other than the flatcar to which such Unit was attached at the commencement of the term of this Lease for such Unit, the Lessee will furnish to the Lessor, as soon as practicable but in any event not later than 30 days after such Unit is so attached or affixed, written agreements of the lessor of such flatcar, of like substance to the written agreements with respect to such Unit furnished by Trailer Train prior to or at the commencement of the term of this Lease for such Unit and the Lessee agrees to use its best efforts to furnish to the Lessor, as soon as practicable but in any event not later than 30 days after such Unit is so attached or affixed copies of all financing documents relating to any such flatcar which is not leased from Trailer Train. In the event that any Unit shall fail to be attached to a flatcar in accordance with the provisions of the first or second sentence of this paragraph (other than by reason of maintenance being performed in accordance with § 7 hereof) and such failure shall continue for 90 consecutive days, or in the event that the written agreement or financing documents

referred to in the third sentence of this paragraph with respect to any Unit shall not be furnished for any reason prior to the time provided in said sentence, or in the event that the financing documents furnished by the Lessee do not establish to the satisfaction of the Lessor that the Unit shall not constitute an accession to the flatcar and that the Unit shall not become subject to any security interest or other interest of any party to such financing, then, in any such case, such Unit, at the option of the Lessor, shall be deemed to have suffered a Casualty Occurrence under § 7 hereof.

At all times prior to the expiration of this Lease or any renewal thereof, the Lessee will perform its obligations under, and will exercise any and all rights or options to renew the the term of, and will not cancel or otherwise terminate, the Form A Car Contract or any other lease or leases covering the flatcars to which the Units are attached.

§ 8. Reports. On or before April 30 in each year, commencing with the calendar year 1981, the Lessee will furnish to the Lessor and the Vendor a certificate signed by the Chief Mechanical Officer of the Lessee or such other qualified engineer 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 or are then undergoing repairs (other than running repairs) or then withdrawn from use pending such repairs (other than running repairs) and such other information regarding the condition and state of repair of the Units as the Lessor or the Vendor may reasonably request (including a description and the cost of all additions, modifications or improvements made to the Units in the preceding year), (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) setting forth the identification numbers of all Units which are then in the condition required by clauses (a), (b) and (c) of the first sentence of § 7 hereof and certifying that all such Units are in such condition, and (d) setting forth the identification numbers of all Units which are not in such condition. No later than 60 days after the delivery of such annual certificate, the Lessee will furnish the Lessor with a supplemental certificate of the Chief Mechanical Officer of the Lessee or

other qualified engineer satisfactory to the Lessor and the Vendor setting forth the identification number of each Unit that was not certified in the preceding annual certificate as being in the condition required by clauses (a), (b) and (c) of the first sentence of § 7 hereof, and, as to each such Unit, (i) certifying that such Unit is in such condition as of the date of such supplemental certificate, or (ii) stating that such Unit is not in such condition. If such supplemental certificate shall not be delivered on or prior to the last date specified for such delivery in the preceding sentence (or within 10 days after written notice of such failure to deliver by the Lessor to the Lessee) or shall state that such Unit is not in the required condition, such Unit shall (upon written notice by the Lessor or the Vendor) be deemed to have suffered a Casualty Occurrence under § 7 hereof. The Lessor, at its sole expense, shall have the right by its agents to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Lessor may request during the continuance of this Lease but the Lessor shall have no obligation to do so.

The Lessee shall promptly notify the Lessor, the Owner 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 Laws and Rules; Indemnification. NEITHER THE LESSOR NOR ANY OWNER MAKES, HAS MADE NOR SHALL BE DEEMED TO MAKE, 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 OR ANY COMPONENT DELIVERED TO THE LESSEE HEREUNDER, AND NEITHER THE LESSOR NOR ANY OWNER MAKES 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 ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT, EITHER UPON DELIVERY THEREOF TO THE LESSEE OR OTHERWISE, it being agreed that all such risks, as between the Lessor, the Owners 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. Neither the Lessor nor any Owner shall 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's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Lessor and the Owners that the Units described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

The Lessee agrees, for the benefit of the Lessor and the Vendor, 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 (such laws and rules being hereinafter called "Applicable Rules") and in the event that, prior to the expiration of this Lease or any renewal thereof, such Applicable Rules require any alteration, replacement, addition or modification of or to any part on any Unit, the Lessee will conform therewith at its own expense; provided, however, that the Lessee may at its own expense, in good faith, contest the validity or application of any such Applicable Rules in any reasonable manner which does not, in the opinion of the Lessor, any Owner or the Vendor, adversely affect the property or rights of the Lessor, such Owner or the Vendor under this Lease or under the CSA. The Lessee, at its own cost and expense, may from time to time make such other additions, modifications and improvements to the Units during the term of this Lease as are readily

removable without causing material damage to the Units (and do not adversely and materially affect the value of the Units). The additions, modifications and improvements made by the Lessee under the preceding sentence shall be owned by the Lessee (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 or which are not removed by the Lessee prior to surrendering possession thereof pursuant to the provisions of § 11 or § 14 hereof, (ii) the cost of which is included in the Purchase Price of such Unit, (iii) in the course of ordinary maintenance of the Units or (iv) which are required for the operation or use of such Unit by the Applicable Rules, 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.

The Lessee shall pay, and shall protect, indemnify and hold the Lessor (both individually and in its trust capacity), the Owners and the Vendor, and their respective successors, assigns, agents and servants (hereinafter called "Indemnified Persons"), harmless from and against any and all losses, injuries, causes of action, suits, penalties, interest, claims, demands or judgments, of any nature whatsoever which may be imposed on, incurred by or asserted against any Indemnified Person (including any or all liabilities, obligations, damages, costs, disbursements, expenses [including without limitation attorneys' fees and expenses of any Indemnified Person] relating thereto) in any way relating to or arising or alleged to arise out of this Lease or the Units, including without limitation those in any way relating to or arising or alleged to arise out of (i) the ordering, acquisition, 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 or imposed by statute or any claims in which the negligence of an Indemnified Person, whether passive or active, is alleged; (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, operation, condition, use, replacement, adaptation, maintenance, possession, storage or return 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 (except by the Lessor) 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 or as the result of the entering into or the performance of the Lease Assignment, the CSA or the Participation Agreement, including without limitation any claim arising out of any of the Lessor's obligations under the Lease Assignment, the CSA or the Participation Agreement, except to the extent such claim arises from an act or omission of the Lessor not related to the transactions contemplated by this Lease and the Participation Agreement. The Lessee shall be obligated under this § 9, irrespective of whether any Indemnified Person shall also be indemnified with respect to the same matter under any other agreement by any other person, and the Indemnified Person seeking to enforce the indemnification may proceed directly against the Lessee under this § 9 without first resorting to any such other rights of indemnification. In case any action, suit or proceeding is brought against any Indemnified Person in connection with any claim indemnified against hereunder, the Lessee may and, upon such Indemnified Person's request, will at the Lessee's expense resist and defend such action, suit or proceeding, or cause the same to be resisted or defended by counsel selected by the Lessee and approved by such Indemnified Person, as the case may be, and, in the event of any failure by the Lessee so to do, the Lessee shall pay all costs and expenses (including without limitation attorneys' fees and expenses) incurred by such Indemnified Person in connection with such action, suit or proceeding. In the event the Lessee is required to make any payment under this § 9, the Lessee shall pay such Indemnified Person an amount which, after deduction of all taxes required to be paid by such Indemnified Person in respect of the receipt thereof under the laws of the United States or of any political subdivision thereof (after giving credit for any savings in respect of any such taxes by reason of deductions, credits or allowances in respect of the payment of the expense

indemnified against, and of any other such taxes as determined in the sole discretion of the Indemnified Person), shall be equal to the amount of such payment. The Lessee and the Lessor each agree to give each other promptly upon obtaining knowledge thereof written notice of any claim or liability hereby indemnified against. Upon the payment in full of any indemnities as contained in this § 9 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 given. Any payments received by such Indemnified Person from any person (except the Lessee) as a result of any matter with respect to which such Indemnified Person has been indemnified by the Lessee pursuant to this § 9 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.

The Lessee further agrees to indemnify, protect and hold harmless the Vendor, the Owners and the Lessor (both individually and in its trust capacity), as third party beneficiaries hereof, 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 the Vendor, the Owners and the Lessor 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 will give notice to the Builder of any claim known to the Lessee from which liability may be charged against the Builder hereunder.

The Lessee shall bear the responsibility and risk for, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of any or all of the Units of equipment.

The Lessee agrees to prepare and deliver to the Lessor within a reasonable time prior to the required filing date (or, to the extent permissible, file on behalf of the Lessor) any and all reports (other than income tax returns) to be filed by the Lessor with any Federal, state, local 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 shall survive the expiration or termination of this Lease with respect to all events, facts, conditions or other circumstances occurring or existing prior to such expiration or termination and are expressly made for the benefit of and shall be enforceable by any Indemnified Person. Any indemnity payment pursuant to this § 9 shall be made directly to the Indemnified Person. None of the indemnities in this § 9 shall be deemed to create any rights of subrogation, from or under any Indemnified Person, in any insurer or third party against the Lessee or the Lessor therefor, whether because of any claim paid or defense provided for the benefit thereof or otherwise.

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

(A) default shall be made in payment of any amount provided for in § 3, 7 or 13 hereof, and such default shall continue for 10 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 and the Lessee shall, for more than 30 days after demand in writing by the Lessor, fail to secure a reassignment or retransfer to the Lessee of such Lease, interest or right;

(C) default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein or in 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) a petition for reorganization under Title 11 of the United States Code (as now or hereafter constituted) 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 and the Consent shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees, within 60 days after such petition shall have been filed and otherwise in accordance with the provisions of 11 U.S.C. § 1168, or any successor provision, as the same may hereafter be amended; or

(E) 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 hereunder, under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of the Lessee hereunder), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease and the Consent shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Lessee, or for the property of the Lessee, in connection with any such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees or receiver or receivers, within 60 days after such proceedings shall have been commenced;

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 including net after-tax losses of Federal and state income tax benefits to which the Lessor or any Owner would otherwise be entitled under this Lease; 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, subject to compliance with all mandatory requirements of law, enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any such Units and thenceforth hold, possess, sell, operate, lease to others and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever and without any duty to account to the Lessee for such action or inaction or for any proceeds arising therefrom; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee as damages for loss of the bargain and not as a penalty whichever of the following amounts the Lessor, in its sole discretion, shall specify:

(x) a sum, with respect to each Unit, equal to (A) the excess of the present value, at the time of such termination, of the entire unpaid balance of all rental for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over the then present value of the rental which the Lessor reasonably estimates to be obtainable for the Unit during such period, such present value to be computed in each case on the basis of a 6% per annum discount, compounded semi-annually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated plus (B) an amount which, after deduction of all taxes required to be paid by the Lessor or any Owner in respect of the receipt thereof under the laws of any Federal, state or local government or taxing authority of the United States of America or under the laws of any taxing authority or governmental subdivision of a foreign country, shall, in the reasonable opinion of the Lessor or any Owner, be equal to all or such portion of the investment tax credit (referred to in § 16 hereof) lost, not claimed, not available for claim,

disallowed or recaptured by or from the Lessor or any Owner as a direct or indirect result of the breach of one or more of the representations, warranties and covenants made by the Lessee in § 16 or any other provision of this Lease the inaccuracy of any statement in any letter or document furnished to the Lessor by the Lessee, the termination of this Lease, the Lessee's loss of the right to use such Unit, any action or inaction by the Lessee or the sale or other disposition of the Lessor's interest in any Unit after the occurrence of an Event of Default, plus such sum as shall cause the Lessor's net return under this Lease to be equal to the net return that would have been available to the Lessor or any Owner if they had been entitled to utilization of all or such portion of the deductions in respect of depreciation and interest (referred to in § 16 hereof) which was lost, not claimed, not available for claim or disallowed or recaptured in respect of a Unit as a direct or indirect result of the breach of one or more of the representations, warranties and covenants made by the Lessee in § 16 or any other provision of this Lease, the inaccuracy of any statement in any letter or document furnished to the Lessor by the Lessee, the termination of this Lease, the Lessee's loss of the right to use such Unit, any action or inaction by the Lessee or the sale or other disposition of the Lessor's or any Owners' interest in such Unit after the occurrence of an Event of Default plus such sum as will pay or reimburse the Lessor or any Owner for any interest, penalties or additions to tax incurred in connection with such loss, failure to claim, inability to claim, disallowance or recapture; or (y) an amount equal to the excess, if any, of the Casualty Value as of the rental payment date on or next preceding the date of termination over the amount the Lessor reasonably estimates to be the sales value of such Unit at such time; provided, however, that in the event the Lessor shall have sold any Unit, the Lessor, in lieu of collecting any amounts payable to the Lessor by the Lessee pursuant to the preceding clauses (x) and (y) of this part (b) with respect to such Unit, may, if it shall so elect, demand that the Lessee pay the Lessor and the Lessee shall pay to the Lessor on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty Value for such Unit, as of the rental payment date on or next preceding the date of termination, over the net proceeds of such sale.

In addition, the Lessee shall be liable, except as otherwise provided above, for any and all unpaid amounts due hereunder before, during or after the exercise of any of the foregoing

remedies and for all reasonable attorneys' fees and other costs and expenses incurred by reason of the occurrence of any Event of Default or the exercise of the Lessor's remedies with respect thereto, including all costs and expenses incurred in connection with the return of any Unit.

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative and may be exercised concurrently or consecutively, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is not, at the time in question, prohibited by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make such payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf. The 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 in any reasonable manner. The Lessor and the Lessee agree that the Lessor shall be entitled to all rights (such rights being fundamental to the willingness of the Lessor to enter into this Lease) provided for in 11 U.S.C. § 1168 or any comparable provision of any amendment thereto, or of any other bankruptcy act, so that the Lessor shall have the right to take possession of the Equipment upon an Event of Default under this Lease regardless of whether the Lessee is in reorganization, subject to the provisions of 11 U.S.C. § 1168.

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.

If the Lessee fails to perform or comply with any agreement, covenant or condition contained in this Lease, and such nonperformance or noncompliance could, with the lapse of time and/or demand or failure to take action, result in an Event of Default under clause (A) or (C) of this § 10, the Lessor may, upon notice to the Lessee, itself perform or comply with such agreement, covenant or condition to the extent provided in Article 15(f) of the CSA, and the amount

of the reasonable costs and expenses of the Lessor incurred in connection with such performance or compliance, together with interest on such amounts at the rate of 16-1/2% per annum, or such lesser amount as may be legally enforceable, shall be payable to the Lessor by the Lessee upon demand.

§ 11. Return of Units upon Default. If this Lease shall terminate pursuant to § 10 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor. Each Unit so delivered shall be in the condition required by clauses (a), (b) and (c) of the first sentence of § 7 hereof. For the purpose of delivering possession, the Lessee shall:

(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 rolling stock to which any Units are attached have been interchanged to return such Equipment so interchanged) place such Units upon such storage tracks of the Lessee or any of its affiliates as the Lessor reasonably may designate;

(b) if so requested by the Lessor, detach each Unit from the Unit of railroad rolling stock to which it has been attached;

(c) permit the Lessor to store such Units on such tracks at the risk of the Lessee without charge for insurance (which shall conform to the provisions of § 7 hereof), rent or storage until such Units have been sold, leased or otherwise disposed of by the Lessor; and

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

The detaching, 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 detach, assemble, deliver, store and transport the Units. During any storage period, the Lessee will, at its own expense, maintain and keep the Equipment in the condition

required by clauses (a), (b) and (c) of the first sentence of § 7 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 rent and per diem charges earned in respect of the Units after the date of termination of this Lease shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor. The Lessee shall, in addition, pay to the Lessor for each day after such termination and prior to the assembly, delivery and storage of each Unit an amount equal to the amount, if any, by which 1/180 of the next preceding rental payment applicable to such Unit for each such day exceeds the actual earnings received by the Lessor with respect to such Unit for each such day.

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 obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

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

So long as (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 hereby represents and warrants that whenever a unit of Equipment is in Canada it shall at all times be permanently affixed to a flatcar pursuant to § 7A hereof. The Lessee may, without the prior written consent of the Lessor and the Vendor, sublease (which sublease shall be subject to the rights and remedies of the Lessor and the Vendor hereunder) the Units to, or permit their use by, a user incorporated in the United States of America (or any state thereof or the District of Columbia), upon lines of railroad owned or operated by the

Lessee or such user or by a railroad company or companies incorporated in the United States of America (or any state thereof or the District of Columbia), or over which the Lessee, such user, or such railroad company or companies have trackage rights or rights for operation of their trains, and upon the 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 consent, not to be unreasonably withheld, must be obtained for any sublease that is for a term longer than six months or is renewable for a term more than six months; 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 except that occasional service in Canada shall be permitted so long as such service in Canada does not involve regular operation and maintenance outside the United States of America and is subject to the provisions of the second sentence of this paragraph; and provided further, however, that any such sublease or use shall be consistent with the provisions of § 16 hereof. No such assignment or sublease shall relieve the Lessee of its obligations hereunder which shall be and remain those of a principal and not a surety.

The Lessee, at its own expense, will promptly pay or discharge any and all sums claimed by any party which, if unpaid, might become a lien, charge, security interest or other encumbrance (other than an encumbrance created by the Lessor, the Owners or the Vendor or resulting from claims against the Lessor, the Owners or the Vendor not related to the ownership of the Units) upon or with respect to any Unit or the interest of the Lessor, the Vendor or the Lessee therein, and will promptly discharge any such lien, claim, security interest or other encumbrance which arises.

§ 13. Renewal; Right of First Refusal; and Purchase Option. Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may by written notice delivered to the Lessor not less than six months prior to the end of the original term or any extended term of this Lease, as the case may be, elect to extend the term of this Lease in respect of all but not fewer than all the Units then covered by this Lease, for up to two additional periods, each commencing on the scheduled expiration of the original term or extended term of this Lease, as the case may be, provided that such renewal periods shall each

be two years and (ii) no such extended term shall extend beyond a date 14 years after the Basic Rent Commencement Date, at a Fair Market Rental (as defined below) payable in semiannual payments in advance, commencing six months after the next preceding rental payment date, in each year of such extended term.

Provided that the Lessee is not in default hereunder, the Lessee may, by written notice delivered to the Lessor not less than six months prior to the end of the original or any extended term, purchase at the end of the original or such extended term all, but not fewer than all, the Units then subject to this Lease, at a Fair Market Purchase Price (as defined below), payable at the end of such original or extended term.

The 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 the applicable renewal period or the purchase price (as of such date as the context herein requires), 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 assuming that the Units have been collected in one place on the lines of the Lessee as directed by the Lessor. If, after 60 days from the giving of notice by the Lessee of the Lessee's election to extend the term of this Lease or to exercise any purchase option hereunder, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Rental or Fair Market Purchase Price of the Units, such rental or purchase price shall be determined in accordance with the foregoing definition by the following procedure: If either party to such determination shall have given written notice to the other requesting determination of such rental or purchase price by this appraisal procedure, the parties shall consult for the purpose of appointing a qualified independent appraiser by mutual agreement. If no such appraiser is so appointed within 20 business days after such notice is given, each party shall appoint an independent appraiser within 25 business days after such notice is given, and the two appraisers so appointed shall within 35 business days after such notice is given appoint a third independent appraiser. If no such third appraiser is appointed within 35 business

days after such notice is given, either party may request the American Arbitration Association to make such appointment, and both parties shall be bound by any appointment so made. Any appraiser or appraisers appointed pursuant to the foregoing procedure shall be instructed to determine the Fair Market Rental or Fair Market Purchase Price, as the case may be (and, in the case of any renewal term, the Fair Market Rental and Fair Market Purchase Price at the beginning and end of such renewal term), of the Units then subject to this Lease or any extended term thereof, within 70 days after his or their appointment. If the parties shall have appointed a single appraiser or if either party shall have failed to appoint an appraiser, the determination of Fair Market Rental or Fair Market Purchase Price, as the case may be, of the single appraiser appointed shall be final. If three appraisers shall be appointed, the determination of the appraiser which differs most from that of the other two appraisers shall be excluded, the remaining two determinations shall be averaged and such latter average shall be final and binding upon the parties hereto as the Fair Market Rental or Fair Market Purchase Price, as the case may be. The appraisal proceedings shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association as in effect on the date hereof, except as modified hereby. The provision for this appraisal procedure shall be the exclusive means of determining Fair Market Rental or Fair Market Purchase Price, as the case may be, and shall be in lieu of any judicial or other procedure for the determination thereof, and each party hereto hereby consents and agrees not to assert any judicial or other procedures. The Lessee shall bear all appraisal procedure expenses; provided, however, that, if the Lessee shall exercise the option to renew or purchase with respect to which any such appraisal was requested, such appraisal procedure expenses shall be borne equally by the Lessee and the Lessor.

Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder and has not elected to extend the term of this Lease or purchase the Equipment pursuant to this Section 13, then if the Lessor elects to sell any Units to third parties at the expiration of the original, or if extended, any extended term of this Lease, the Lessee shall be given written notice of such intention prior to the expiration of such term. In the event that the Lessor shall receive, prior to removal of the Units at the end of such original or extended term of the Lease, a bona fide offer in writing from another party unrelated to the Lessee to purchase the Units and Lessor elects to sell

the Units pursuant to such offer at the expiration of such term of this Lease, the Lessor shall give written notice to the Lessee of such offer. Such notice shall include the price and the terms and conditions of payment offered by the other party in writing to the Lessor. The Lessee shall have the right and option to purchase the Units at the price at which the Units are proposed to be sold, payable in accordance with the terms and conditions of payment offered by the other party, as hereinafter provided. Within 10 business days of receipt of notice from the Lessor, the Lessee shall exercise such purchase right by delivery to the Lessor of a written notice specifying a date of purchase, which date shall not be later than the later of (i) 15 days after the date of delivery of such notice by the Lessee to the Lessor, or (ii) 90 days after the expiration of such term of this Lease. In the event that the Lessee shall have delivered a notice of its election to purchase the Units, this Lease (including the obligation to pay rent) shall be further extended upon the same terms and conditions set forth herein from the date such notice is delivered to the Lessor until the date of such purchase.

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

§ 14. Return of Units upon Expiration of Term.

The Lessor intends to retain the Units for re-lease at the expiration of the term of this Lease. As soon as practicable on or after the expiration of the original or any extended term of this Lease with respect to any Unit, the Lessee will, at its own cost and expense, at the request of the Lessor, detach each Unit from the unit of railroad rolling stock to which it had been attached, and deliver possession of such Unit to the Lessor upon such storage tracks of the Lessee as the Lessor may designate, or, in the absence of such designation, as the Lessee may select, and permit the Lessor to store such Unit on such tracks for a period not exceeding 120 days following notification to the Lessor by the Lessee that all the Units have been assembled and delivered for storage and transport the same, at any time within such 120-day period, to any reasonable place on the lines of railroad

operated by the Lessee, or to any connecting carrier for shipment, all as directed by the Lessor, the movement and storage of such Units to be at the expense and risk of the Lessee (including the insurance required by § 7 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 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 at the expense of the Lessor; provided, however, that the Lessee shall not be liable, except in the case of negligence or strict liability of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, on behalf of either the Lessor or any prospective purchaser, lessee or user, such rights of inspection. Each Unit returned to the Lessor pursuant to this § 14 shall be in the condition required by clauses (a), (b) and (c) of the first sentence of § 7 hereof. The detaching, 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 required by clauses (a), (b) and (c) of the first sentence of § 7 hereof 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. The Lessee shall pay to the Lessor for each day from the date of such expiration until such Unit is returned an amount equal to 1/180 of the next preceding rental payment applicable to such Unit.

§ 15. Recording. The Lessee, at its own expense, will cause this Lease, the CSA and any assignment hereof or deposited with the Registrar General of Canada (notice of such deposit to be forthwith given in The Canada Gazette) pursuant to Section 86 of the Railway Act of Canada. The Lessee will further cause this Lease and/or appropriate financing statements or continuation statements to be filed and recorded, and, from time to time when required, refiled and rerecorded, in accordance with the applicable provisions of the Uniform Commercial Code as in effect in the Commonwealth of Pennsylvania (and, if the Lessee changes its chief place of business, in any other state) in manner as if the Lessor's

interest in this Lease represented a security interest or in any other state of the United States of America or the District of Columbia or province of Canada where filing is reasonably requested by the Lessor or the Vendor for the purpose of proper protection, to the satisfaction of counsel of the Lessor and Vendor, of their interests and rights under this Lease or the purpose of carrying out the intention of this Lease. The Lessee will undertake, at its expense, or cause to be undertaken, the filing, registering, deposit, and recording required of the Lessor under the CSA and will from time to time do and perform, or cause to be done and performed, any other act, and will execute, acknowledge, deliver, file, register, record (and will refile, reregister, deposit and redeposit or rerecord whenever required) any and all further instruments, required by law or reasonably requested by the Lessor or the Vendor for the purpose of proper protection, to their satisfaction, of the Vendor's and the Lessor's respective interests in the Units, or for the purpose of carrying out the intention of the Lease, the CSA, the CSA Assignment and the Lease Assignment; and the Lessee will promptly furnish, or cause to be furnished, to the Vendor and the Lessor evidence of all such filing, registering, depositing or recording, and in connection with other than the initial filings with respect thereto an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Vendor and the Lessor; provided, however, that no such opinion of counsel need be furnished in respect of the filings of the CSA or the assignment thereof in Canada. This Lease and the CSA shall be filed and recorded with the Interstate Commerce Commission and financing statements in respect of the interests of the Vendor in the Units, the CSA and the Lease shall have been filed in accordance with the Uniform Commercial Code as in effect in the Commonwealth of Pennsylvania described in this § 15 shall be made prior to the delivery hereunder of any Unit.

§ 16. Indemnity for Federal and Other Income Tax Benefits. (a) Loss of Assumed Tax Benefits. If:

(i) any Owner is not allowed for the fiscal year in which any Unit is delivered and accepted under the CSA an investment credit under Section 38 and related sections of the Internal Revenue Code of 1954, as amended (the "Code"), with respect to such Unit of not less than 10% of the entire Purchase Price of such Unit; or

(ii) any Owner is not allowed the benefit of cur-

rent deductions for depreciation with respect to the entire Purchase Price of any Unit, commencing with the fiscal year in which such Unit is delivered and accepted under the CSA, on such Unit under Section 167(a) of the Code (x) computed pursuant to the asset depreciation range system of Section 167(m) of the Code and Section 1.167(a)-11 of the income tax regulations, (y) computed on the basis (A) of a net salvage value of zero, (B) that the basis of such Unit under Section 167(g) of the Code is not less than the Purchase Price with respect to such Unit, and (C) that such Unit has an asset depreciation period of 11 years, and (z) computed pursuant to the double declining balance method of depreciation, switching to the sum-of-the-years-digits method of depreciation and using the modified half-year convention described in Section 1.167(a)-11(c) (2)(iii) of the income tax regulations; or

(iii) any Owner is not allowed the benefit of current deductions under Section 163 of the Code for interest payable under the CSA; or

(iv) any investment credits or deductions for depreciation with respect to any one or more of the Units are recaptured in whole or in part pursuant to Section 47 or Section 1245 of the Code or any successor provision or provisions thereto; or

(v) any amount includible in the gross income of any Owner with respect to any one or more of the Units or any deduction allowable to such Owner with respect to such Unit or Units or with respect to any interest payable under the CSA shall be treated as derived from, or allocable to, sources outside the United States; or

(vi) any amount is included in or attributed to the gross income of any Owner as a result of any repair, improvement, alteration, modification or addition (including replacement of parts) to such Unit or Units made by the Lessee (herein called a "Capital Expenditure"), for any time prior to the end of the term of this Lease (including any renewal term);

(any failure to allow the investment credit as described in clause (i) above, any failure to allow current deductions for depreciation as described in clause (ii) above, any failure to allow current deductions for interest as described in clause (iii) above, any recapture of investment credits or depreciation deductions as described in clause (iv) above,

any such treatment of income or deductions as derived from or allocable to sources without the United States as described in clause (v) above, or any such inclusion in gross income as a result of a Capital Expenditure as described in clause (vi) above being herein called a "Loss"), then, to the extent provided in paragraph (b) of this § 16, the Lessee shall pay to the Lessor as an indemnity the amount or amounts set forth in paragraph (d) of this § 16 at the time or times set forth therein.

(b) Indemnification and Exceptions. Except as hereinafter provided, the Lessee shall be required to indemnify any Owner with respect to any Loss that results from:

(i) a Loss described in clause (i) or (ii) of paragraph (a) of this § 16, if such Loss results from the use of a Unit by any person prior to its delivery to the Lessor pursuant to the CSA and leased to the Lessee pursuant to this Lease;

(ii) the failure of an amount not less than the entire Purchase Price of any Unit or Units to qualify for the 10% investment credit and double declining balance depreciation in the hands of any Owner;

(iii) the Lessee's use of a Unit or Units in such a manner as to result in a Loss described in clause (iv) or (v) of paragraph (a) of this § 16, including any Loss described in clause (i) or (ii) (including any Loss of any portion of the 10% investment credit) of paragraph (a) of this § 16 as a direct or indirect result of a Loss described in clause (v) of paragraph (a) of this § 16;

(iv) a Capital Expenditure; or

(v) any act, failure to act or misrepresentation, at any time, by the Lessee or any of its officers, employees or agents or by any permitted sublessee or any of its of its officers, employees or agents (including, without limitation, any act, failure to act or misrepresentation, in respect of the income tax returns of the Lessee insofar as they relate to the transaction contemplated by this Lease and related documents, it being understood that the Lessee will not take or fail to take any action that is inconsistent with any Owner being treated as the owner, and the Lessee being treated as the lessee, of the Units for Federal, state and local income tax purposes).

However, the Lessee shall not be required to indemnify any Owner with respect to any Loss that results solely and directly from:

(i) a Casualty Occurrence, if the Lessee has made all payments with respect thereto that are required to be made pursuant to § 7 hereof;

(ii) a voluntary disposition by such Owner of its beneficial interest in any Unit or Units, if such disposition (x) shall be the direct cause of such Loss with respect to such Unit or Units, (y) shall occur at a time while no Event of Default (as hereinabove defined), and no event that, with the lapse of time or the giving of notice, or both, would constitute an Event of Default, has occurred and is continuing and (z) shall not be pursuant to the written consent of the Lessee;

(iii) the failure of such Owner to claim in a timely and proper manner on its income tax returns for the appropriate years any credits or deductions contemplated by paragraph (a) of this § 16, unless the Owner shall have been advised by independent tax counsel selected by such Owner and approved by the Lessee (which approval shall not be unreasonably withheld), that there is no reasonable basis for claiming any such deduction or credit;

(iv) the failure of such Owner to have sufficient Federal income tax liability against which to apply such credits or sufficient income to benefit from such depreciation or interest deductions;

(v) the failure of such Owner to take the action required by the terms of paragraph (c) of this § 16;

(vi) any amendment to, or change in, the Code, the income tax regulations thereunder or published administrative or judicial interpretations of the Code or such regulations, which change or amendment is not enacted and does not have an effective date on or prior to the date of execution hereof by the Lessor; or

(vii) the payment by the Lessee of any freight, switching or storage charges in respect of any Units incurred prior to the delivery and acceptance of such Units hereunder.

(c) Proceedings. If at the conclusion of any Federal, state or local audit any Owner receives a preliminary or "30 day" letter from the Internal Revenue Service or any similar letter from any state or local taxing authority, proposing an adjustment in any item that, if agreed to by such Owner, would result in a Loss with respect to which the Lessee would be required to indemnify such Owner pursuant to this § 16, such Owner shall promptly notify the Lessee of such proposed adjustment and shall furnish to the Lessee a statement describing such Loss in reasonable detail. If requested to do so by the Lessee, within 20 days after receipt of such statement, such Owner shall promptly request from such independent tax counsel as may be selected by such Owner and approved by the Lessee (which approval shall not be unreasonably withheld) (the "Special Tax counsel"), their opinion as to whether there is a meritorious basis for contesting such proposed adjustment. If the opinion is to the effect that there is a meritorious basis for contesting such proposed adjustment, such Owner shall contest such proposed adjustment by such administrative proceedings, if any, as may be determined by such Owner in its sole discretion. Upon the conclusion of such administrative proceedings, if any, such Owner shall promptly notify the Lessee of the final adjustment proposed by the Internal Revenue Service or any state or local taxing authority, as the case may be, and if such Owner receives within 30 days after such notice a written request to do so from the Lessee, such Owner shall contest such final adjustment in a court of competent jurisdiction. If the Lessee requests such Owner to appeal the decision of such a court or of any intermediate appellate court, such Owner shall promptly request from Special Tax Counsel their opinion as to whether there is a meritorious basis for appealing such decision. If the opinion is to the effect that there is a meritorious basis for appealing such decision, such Owner shall appeal such decision. Such Owner, in its sole discretion, shall determine the initial and any appellate court and shall determine whether the proceedings shall be for redetermination of the deficiency proposed to be assessed or for refund of taxes paid based on such deficiency. Such Owner shall not be required to take any action as set forth in this paragraph (c) unless and until the Lessee shall have agreed to pay to such Owner on demand all reasonable out-of-pocket costs and expenses, including without limitation attorneys' fees and expenses incurred by it in connection with the taking of such action. If such Owner elects to pay taxes based on a proposed deficiency and sue for a refund thereof, and if the proposed

deficiency would be a Loss with respect to which the Lessee would be required to indemnify such Owner, then the Lessee shall pay to such Owner on demand the amount of such taxes and interest and penalties thereon which such Owner shall have paid, and if such Owner subsequently receives a refund of all or any part of such taxes and interest, it shall promptly pay to the Lessee the amount of such refunded taxes and interest plus the amount of any interest received by such Owner from the United States Government or any state or local taxing authority, as the case may be, with respect to such refunded taxes and interest. Notwithstanding anything to the contrary contained in this paragraph (c), such Owner may at any time, whether before or after commencing to take any action with respect to a proposed adjustment, decline to take any further action with respect thereto, provided that, if the Lessee has properly requested such action pursuant to this paragraph (c), such Owner notifies the Lessee that it waives its right to any indemnity with respect to any Loss that will result from acceptance of such proposed adjustment.

(d) Amount and Time of Payment of Indemnity. The amount of indemnity payable by the Lessee pursuant to this § 16 with respect to a Loss shall be such amount as will, in any Owner's reasonable judgment, preserve for the Owner both the after-tax rate of return and the after-tax cash flow that would have been realized by such Owner if such Loss had not occurred, based on the assumptions and methods of calculation utilized by such Owner in originally evaluating the transaction described in this Lease and related documents. The amount of such payment of indemnity shall reflect (A) the amount of interest, additions to tax and penalties payable by such Owner with respect to such Loss, (B) the amount of Federal, state and local taxes on, or measured by, net income (at the rates in effect on the date hereof), interest, additions to tax and penalties incurred by such Owner as a result of the receipt of such indemnity payment, and (C) any amount paid by the Lessee to such Owner pursuant to the penultimate sentence of paragraph (c) of this § 16 which is not repaid by such Owner to the Lessee pursuant to such sentence. Such Owner shall furnish the Lessee with a notice setting forth in reasonable detail the computations and methods used in computing such amount of indemnity.

In determining the amount of indemnity payable by the Lessee pursuant to this § 16 with respect to a Loss which results from a Capital Expenditure, there shall be taken into account any investment credits and depreciation deductions to

which any Owner is or expects to be entitled, pursuant to § 16(a) hereof, with respect to such Capital Expenditure in the year in which the Capital Expenditure is made and in subsequent years, but if any such investment credits or depreciation deductions are subsequently disallowed, recaptured or treated as derived from or allocable to sources outside the United States, such disallowance, recapture or allocation shall be treated as a Loss described in clause (i), (ii), (iv) or (v) of paragraph (a) of this § 16, as the case may be.

The Lessee's obligation to pay any indemnity payable pursuant to this § 16 with respect to a Loss shall become unconditional (1) in the case of a Loss that is required to be reflected on a tax return of any Owner, 30 days after the date such tax return is filed; (2) in the case of a Loss that results from a proposed adjustment of the Internal Revenue Service or any state or local taxing authority, as the case may be, that is not contested pursuant to paragraph (c) of this § 16, 30 days after the Lessee's receipt of the statement referred to in the first sentence of paragraph (c) of this § 16; and (3) in the case of a Loss that results from a proposed adjustment of the Internal Revenue Service or any state or local taxing authority, as the case may be, that is contested pursuant to paragraph (c) of this § 16, 30 days after the day on which such contest is finally concluded.

If the Lessee's obligation to pay indemnity pursuant to this § 16 becomes unconditional on or after the termination of this Lease, the Lessee shall pay to such Owner a lump sum indemnity at the time its obligation to pay indemnity pursuant to this § 16 becomes unconditional. With respect to any other Loss or indemnity payable pursuant to this § 16, such Owner shall receive as indemnity payments structured as level future rent increases commencing on the first rental payment date after the Lessee's obligation to pay indemnity pursuant to this § 16 becomes unconditional. The amount of increased rental resulting from any one Loss shall be adjusted from time to time for each change in the rates of Federal, state and local taxes on, based on, or measured by, net income which affects the Owner's net after-tax rate of return and after-tax cash flow.

(e) Adjustment of Casualty Values. In the event that the Lessee shall be required to indemnify the Lessor pursuant to this § 16 with respect to a Loss relating to a Unit or Units, the Casualty Value of such Unit or Units

shall be appropriately reduced to reflect the reduction, if any, in taxes that will be payable by any Owner with respect to such Unit or Units upon a Casualty Occurrence with respect thereto; provided, however, that such Casualty Values shall not be reduced below the amounts required to satisfy the obligations of the Lessor under the CSA.

(f) Definition of Owner. For purposes of this § 16, the term "Owner" shall include any affiliated group, within the meaning of Section 1504 of the Code, of which the Owner is a member, if consolidated returns are filed for such affiliated group for Federal income tax purposes.

§ 17. Interest on Overdue Rentals. Anything to the contrary herein 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 16-1/2%, or such lesser amount as may be legally enforceable. Interest hereunder shall be determined on the basis of a 360-day year of 12 30-day months.

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

(a) if to the Lessor, at 1 North 5th Street, Philadelphia, Pennsylvania 19106, Attention of Corporate Trust Administration; and

(b) if to the Lessee, at 1310 Six Penn Center Plaza, Philadelphia, Pennsylvania 19104, Attention of Vice President & Treasurer;

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, Baltimore, Maryland 21203, Attention of

Corporate Trust Department, and to the Owner at its address appearing in the Participation Agreement.

§ 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 and the exhibits thereto, this Lease exclusively 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. Immunities; Satisfaction of Undertakings. Anything herein to the contrary notwithstanding, each and all of the representations, undertakings and agreements herein made on the part of the Lessor are made and intended not as personal representations, undertakings and agreements by Philadelphia National Bank or for the purpose or with the intention of binding it personally but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement, and this Lease is executed and delivered by the said bank solely in the exercise of the powers expressly conferred upon it as trustee under the Trust Agreement; and no personal liability or responsibility is assumed hereunder by or shall at any time be enforceable against the said bank or any Owner on account of any representation, undertaking or agreement hereunder ~~(except as provided in the Trust Agreement)~~ of the Lessor or the Owners, either expressed or implied, all such personal liability, if any, being expressly waived by the Lessee and by all persons claiming by, through or under the Lessee; provided, however, that the Lessee or any person claiming by, through or under it, making claim hereunder, may look to said Trust Estate for satisfaction of the same.

§ 21. 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 acknowledgments hereto annexed.

§ 22. Law Governing. The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the Commonwealth of Pennsylvania; provided, however, that the parties shall be entitled to any additional rights arising out of the filing, recording or deposit hereof, if any, and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited.

§ 23. Agreements for Benefit of Owners. In addition to obligations of the Lessee hereunder which are stated as obligations to the Owners (including, but not limited to, obligations under Sections 6, 7, 8, 9 and 16) as to which the Owners are constituted third-party beneficiaries, all rights of the Lessor hereunder shall inure to the benefit of the Owners and their successors and assigns under the Trust Agreement.

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

CONSOLIDATED RAIL CORPORATION,

by   
Vice President and Treasurer

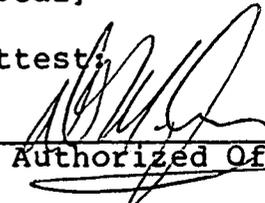
[Corporate Seal]

Attest:  
  
Assistant Secretary

THE PHILADELPHIA NATIONAL BANK,  
not individually but solely as  
Trustee,

by   
Authorized Officer

[Seal]

Attest:  
  
Authorized Officer



## SCHEDULE A

Specifications of the Equipment

<u>Type</u>	<u>Builder</u>	<u>Quantity</u>	<u>Lessee's Identification Numbers (Both Inclusive)</u>
Bi-Level Auto Racks	Portec, Inc.	285	CR 2090- CR 2374

## SCHEDULE B TO LEASE

Casualty Values

<u>Rental Payment Date</u>	<u>Percentage</u>
July 2, 1980 (Interim Date)	94.6499
January 2, 1981	96.4421
July 2, 1981	96.7906
January 2, 1982	96.4330
July 2, 1982	95.5124
January 2, 1983	93.9478
July 2, 1983	88.2707
January 2, 1984	85.6216
July 2, 1984	82.7309
January 2, 1985	79.6126
July 2, 1985	72.6850
January 2, 1986	69.0562
July 2, 1986	65.1416
January 2, 1987	60.9187
July 2, 1987	52.7997
January 2, 1988	47.8855
July 2, 1988	42.5844
January 2, 1989	36.8658
July 2, 1989	31.1013
January 2, 1990	27.1311
July 2, 1990	20.0000

The percentages set forth above have been computed without regard to recapture of the investment tax credit (as referred to in § 16 relating to certain tax indemnities). Consequently, the Casualty Value of any Unit suffering a Casualty Occurrence on or before the third, fifth or seventh anniversary of the date of delivery and acceptance of such Unit shall be increased by the applicable percentage of the Purchase Price set forth below:

<u>Anniversary of Delivery and Acceptance</u>	<u>Percentage of Purchase Price</u>
Third	10.00%
Fifth	6.667%
Seventh	3.334%

## SCHEDULE C

Certificate of Acceptance

To: The Philadelphia National Bank, as Trustee  
 (the "Trustee") under a Trust Agreement  
 P.O. Box 13834  
 1 North 5th Street  
 Philadelphia, Pennsylvania 19106

Attention of Corporate Trust Department.

I, the duly authorized representative for the Trustee and Consolidated Rail Corporation (the "Lessee") under the Conditional Sale Agreement and the Lease of Railroad Equipment, both dated as of May 15, 1980, respectively, do hereby certify that I inspected, approved and accepted delivery thereunder on behalf of the Trustee, of the following Units of Equipment:

TYPE OF EQUIPMENT: Bi-level Auto Racks  
 DATE ACCEPTED:  
 NUMBER OF UNITS:  
 RAILROAD ROAD NUMBERS:

I do further certify that the foregoing Units are in good order and condition, and conform to the specifications and requirements 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:

"OWNED BY A BANK OR TRUST COMPANY. OWNERSHIP SUBJECT TO A CONDITIONAL SALE AGREEMENT FILED WITH THE INTERSTATE COMMERCE COMMISSION AND TO A SECURITY INTEREST UNDER THE UNIFORM COMMERCIAL CODE."

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

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Authorized Representative  
 of Trustee and Lessee

BUILDER:  
 Portec, Inc.