



**Illinois
Central
Gulf**

An **IC Industries** Company

William H. Sanders
Corporate Counsel

Illinois Central
Gulf Railroad
Two Illinois Center
233 North Michigan Avenue
Chicago, IL 60601
(312) 565 1600

RECORDATION NO. **11626** Filed 1425

APR 3 - 1980 - 11 32 AM

INTERSTATE COMMERCE COMMISSION

April 2, 1980

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FEE OPERATION BR.

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

No. **0-094A029**

Date **APR 3 1980**

Fee \$ **50.00**

ICC Washington, D. C.

Dear Ms. Mergenovich:

Pursuant to the provisions of former Section 20 (c) of the Interstate Commerce Act (now 49 U.S.C. Sec. 11303) and the applicable regulations of the Interstate Commerce Commission, there are herewith transmitted for filing and recording a number of counterparts of a Lease Agreement dated as of April 2, 1980 between the Texas Commerce Leasing Company and Illinois Central Gulf Railroad Company.

A draft payable to the order of the Interstate Commerce Commission for the recording fee applicable to this filing is enclosed herewith. The name of the Lessor is:

Texas Commerce Leasing Company
P. O. Box 2558
Houston, Texas 77001

The name of the Lessee is:

Illinois Central Gulf Railroad Company
233 North Michigan Avenue
Chicago, Illinois 60601

The equipment covered by this Agreement is 8 remanufactured diesel locomotives, Model GP-11, Nos. ICG 8731-8738, both inclusive. This Agreement has not previously been recorded with the Interstate Commerce Commission.

It is respectfully requested that all counterparts not needed for the Commission's files be returned to the bearer of this letter with the Commission's recordation stamp shown thereon.

Very truly yours,
William H. Sanders
William H. Sanders

Agatha L. Mergenovich
William H. Sanders

Interstate Commerce Commission
Washington, D.C. 20423

OFFICE OF THE SECRETARY

William H. Sanders
Illinois Central Gulf RR
Two Illinois Center
233 North Michigan Avenue
Chicago, Illinois 60601

Dear Sir:

The enclosed document (s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 4/3/80 at 11:35AM, and assigned re-
recording number (s). 11626

Sincerely yours,

Agatha L. Mergenovich
Agatha L. Mergenovich
Secretary

Enclosure (s)

APR 3 - 1980 - 11 35 AM

LEASE AGREEMENT

INTERSTATE COMMERCE COMMISSION

Lease Agreement dated as of April 2, 1980, between ILLINOIS CENTRAL GULF RAILROAD COMPANY, a Delaware corporation (the "Lessee") and TEXAS COMMERCE LEASING COMPANY, a Texas corporation (the "Lessor").

1. LEASE OF EQUIPMENT.

Lessor hereby agrees to lease to Lessee, and Lessee hereby agrees to lease from Lessor, upon the terms and conditions hereinafter set forth:

Eight (8) Model GP-11 Locomotives

(the "Locomotives") (the Locomotives are sometimes referred to as the "Equipment" and each such Locomotive is sometimes referred to as a "unit" or a "unit of Equipment") described on annexed Exhibit A. The aggregate cost for the acquisition, remanufacture and delivery of all the Locomotives ("Lessor's Cost of Locomotives") shall not exceed \$3,728,000.

2. REMANUFACTURE OF LOCOMOTIVES.

A. Lessor has agreed under a Remanufacture Agreement dated as of the date hereof (the "Remanufacture Agreement") between Lessee and Lessor to purchase from the owners thereof, in order to secure reusable components, the following used Locomotives at purchase prices not to exceed the following maximum amounts:

<u>No. of Locomotives</u>	<u>Types of Locomotives</u>	<u>Aggregate Purchase Price for Locomotives</u>
Eight (8)	General Motors Corporation Electro-Motive Division Locomotives	\$448,000

The actual purchase prices of the Locomotives shall hereinafter be referred to as the "Locomotives Acquisition Cost". Such reusable components will be conveyed to Lessor by bills of sale (the "Bills of Sale").

B. Lessee has also agreed under the Remanufacture Agreement to remanufacture for Lessor Locomotives using,

where possible, such parts as may be obtained from the used Locomotives referred to in Section 2.A hereof in order to produce the following Locomotives at remanufacture prices not to exceed the following maximum amounts:

<u>Number</u>	<u>Types of Locomotives</u>	<u>Remanufacture Price for Locomotives</u>
Eight (8)	Model GP-11 Locomotives	\$3,280,000

The actual remanufacture prices for the Locomotives shall hereinafter be referred to as the "Remanufacture Cost".

3. LEASE TERM.

A. Basic Lease Term. The basic term of lease under this Lease Agreement of each Locomotive shall end one hundred eighty (180) months after the date (the "Commencement Date") which is the earlier of (i) the date as of which all Locomotives have been remanufactured in accordance with the Remanufacture Agreement and accepted by Lessee for lease hereunder or (ii) June 30, 1980.

B. Interim Lease Term. The interim term of lease under this Lease Agreement of each Locomotive shall commence on the date Lessor purchases such Locomotive from the owners thereof pursuant to the Remanufacture Agreement and shall end on the Commencement Date.

4. RENT, NET LEASE.

Lessee shall pay to Lessor rent during the basic lease term (as defined in Section 3.A), quarterly in arrears, for the Locomotives in sixty (60) installments, each of which shall be in an amount equal to 2.88646% of Lessor's Cost of Locomotives. The first installment of rent shall be payable on the first quarterly anniversary of the Commencement Date. Subsequent installments of rent shall be payable thereafter on each successive quarterly anniversary of the Commencement Date.

Lessee shall also pay Lessor interim rent quarterly for the period commencing with the date of payment by Lessor of any part of Lessor's Cost of Locomotives and ending on the last day of each calendar quarter and on the Commencement Date. Such interim rent shall also be payable

for Locomotives which are repurchased as provided in Section 6 hereof. Interim rent shall be an amount equal to the product of the Interim Rate (as hereinafter defined) multiplied by that part of the Lessor's Cost of Locomotives paid by Lessor prior to the Commencement Date computed from the dates so paid to the date of payment of such interim rent, and computed on a daily basis for the actual number of days elapsed. The "Interim Rate" shall mean the rate per annum equal to two percent (2%) above the large business prime interest rate on 90-day loans to large businesses with the highest credit standing in effect at Texas Commerce Bank National Association, Houston, Texas, such Interim Rate to change automatically from time to time effective as of the date of each change in such prime interest rate.

The foregoing rents have been computed to produce for the Lessor a net after-tax yield in respect of this Lease Agreement on the assumption that the weighted dollar average of Remanufacture Costs is 87.98% of Lessor's Cost of Locomotives for all of the Equipment subject to this Lease Agreement; if at the Commencement Date such average of Remanufacture Costs is for any reason less than 87.98% of Lessor's Cost of Locomotives for all Equipment then leased under this Lease Agreement, the rent shall be adjusted to cause the net after-tax yield to Lessor in respect of this Lease Agreement to be equal to the net after-tax yield which the Lessor would have realized had such assumption been correct.

All rent and other amounts due from Lessee to Lessor shall be paid to Lessor at P. O. Box 200545, Houston, Texas 77216, or at such other place as Lessor shall specify in writing. In the event any rent or other amounts due hereunder shall not be made promptly when due, Lessee shall pay Lessor, as additional rent hereunder, interest on such overdue amount from the due date thereof to the date of payment thereof at the maximum rate permitted by applicable law.

This Lease Agreement provides for a net lease and the rent and other amounts due hereunder from Lessee to Lessor shall not be subject to any defense, claim, reduction, setoff, abatement or adjustment for any reason whatsoever. Lessee shall promptly pay all costs, expenses and obligations of every kind and nature incurred in connection with the use or operation of the Equipment which

may arise or be payable during the lease term of such Equipment hereunder, whether or not such cost, expense or obligation is specifically referred to herein.

This Lease Agreement shall not, except as otherwise expressly provided herein, terminate, 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 Agreement.

5. PAYMENTS FOR EQUIPMENT.

Lessor shall prior to the Commencement Date make payment for the purchase of the used Locomotives in accordance with the Remanufacture Agreement. Lessor shall also from time to time, but not more than once in any week, prior to the Commencement Date make such payments as Lessee may request under a Certificate of Acceptance in the form of annexed Exhibit B (a "Certificate of Acceptance").

6. ACCEPTANCE OF EQUIPMENT.

Acceptance of a unit of Equipment by Lessee under a Certificate of Acceptance shall constitute Lessee's acknowledgment that a unit of Equipment is in good order and condition; is of the manufacture, design and capacity selected by Lessee; and is suitable for Lessee's purposes. If Lessee has not accepted all of the Locomotives by the Commencement Date, then this Lease Agreement shall cover only those units of Equipment which have theretofore been so accepted and on the Commencement Date Lessee shall repurchase from Lessor (i) all Locomotives which have not theretofore been so accepted at a price equal to the Locomotives Acquisition Cost for such Locomotives and (ii) all unused materials purchased and paid for by Lessor for remanufacture pursuant to the Remanufacture Agreement.

7. DISCLAIMER OF LESSOR'S WARRANTIES.

Lessee agrees and acknowledges that all units of Equipment have been or will be ordered and remanufactured by Lessee in accordance with Lessee's specifications, that Lessee leases all of the units of Equipment in their "as is"

condition and that LESSOR DOES NOT MAKE ANY EXPRESS OR IMPLIED WARRANTY WHATSOEVER OF TITLE, MERCHANTABILITY, FITNESS FOR ANY PURPOSE, DESIGN OR CONDITION, OR OTHERWISE REGARDING THE EQUIPMENT OR ANY UNIT THEREOF. Lessor shall, at Lessee's sole expense, take all action reasonably requested by Lessee to make available to Lessee to the fullest extent possible any rights of Lessor with respect to the Locomotives under any express or implied warranties it may have under the Remanufacture Agreement (including any warranties relating to any material acquired for the remanufacture of the Locomotives).

8. LESSEE'S WARRANTIES.

Lessee represents and warrants that:

A. Lessee is a corporation duly organized and existing in good standing under the laws of the State of Delaware.

B. Lessee is duly authorized to execute and deliver the Remanufacture Agreement and this Lease Agreement, and is and will continue to be duly authorized to lease Equipment hereunder and to perform its obligations hereunder and thereunder.

C. The execution and delivery of the Bills of Sale by the owners of the Locomotives, the Remanufacture Agreement and this Lease Agreement by Lessee, and the performance by Lessee of its obligations hereunder and thereunder, do not and will not conflict with any provision of law (including without limitation the provisions of 15 U.S.C. § 20) or of the charter or bylaws of Lessee or of any indenture, mortgage, deed of trust or agreement or instrument binding upon Lessee or to which Lessee is a party.

D. The execution, delivery and performance of the Bills of Sale by the owners of the Locomotives, the Remanufacture Agreement and this Lease Agreement by Lessee and the consummation by Lessee of the transactions contemplated hereby and thereby do not require the consent, approval of authorization of, or notice to, any Federal or State governmental authority or public regulatory body.

E. Lessee's financial statement as at September 30, 1979, a copy of which has been furnished to Lessor, has been prepared in conformity with the Uniform System of Accounts for Railroad Companies prescribed by the Interstate Commerce Commission (the "ICC") applied on a basis consistent with that of the preceding fiscal year and presents fairly the financial condition of Lessee as at the date thereof, and the results of its operations for the period then ended, and since such date there has been no material adverse change in its financial condition.

F. The Remanufacture Agreement, the Bills of Sale and this Lease Agreement are legal, valid and binding obligations enforceable in accordance with their respective terms.

G. There are no pending or threatened actions or proceedings before any court or administrative agency which will to a material extent adversely affect the financial condition or continued operation of Lessee and its subsidiaries on a consolidated basis (except as previously disclosed in writing by Lessee to Lessor).

H. The fair market value of the reusable component parts included in each used Locomotive to be purchased by Lessor under the Remanufacture Agreement and the Bills of Sale is not in excess of the Locomotives Acquisition Cost for such Locomotive and the fair market value of each Locomotive after the remanufacture thereof shall be at least equal to the total of the Locomotives Acquisition Cost plus Remanufacture Cost for such Locomotive.

I. Each Locomotive will constitute "new Section 38 property" within the meaning of Section 48(b) of the Internal Revenue Code of 1954, as amended, to the extent of the Remanufacture Cost therefor.

J. Each Locomotive on the date of delivery thereof will have an estimated useful life of at least four (4) years beyond the expiration of the term of lease under this Lease Agreement for such unit of Equipment and an estimated fair market value at the end of such lease term of at least twenty percent (20%) of Lessor's Costs of Locomotives for such Locomotive, without including in such fair market value any increase or decrease for inflation or

deflation during the term of the lease for such unit of Equipment.

K. The Equipment will not be used in connection with the performance of any prime government contract, or subcontract or purchase order thereunder, with respect to which the provisions of the Renegotiation Act of 1951, as amended, are applicable.

L. Upon the purchase by the Lessor of the used Locomotives pursuant to Section 2, no mortgage, deed of trust, indenture, lease or other lien or security interest of any nature whatsoever which now covers or affects any property or interest will attach or thereafter will attach to the Equipment or in any manner affects or will affect adversely Lessor's right, title and interest herein, provided, that this representation and warranty shall not be considered breached by any lien attaching to the leasehold interest of Lessee under this Lease Agreement by reason of any existing or future mortgage to which Lessee is a party covering substantially all of Lessee's railroad property.

9. OWNERSHIP, LOCATION, USE OF AND LIENS ON EQUIPMENT.

A. The Equipment shall be the exclusive property of Lessor, and Lessee shall have no rights therein except the right to use it so long as Lessee is not in default hereunder. It is the intention of the parties hereto that the Equipment shall be and remain personal property and Lessee shall not permit the Equipment to become or remain a fixture to any real estate or an accession to any personalty not leased hereunder.

B. Lessee agrees that the Equipment will be used solely in the conduct of its business, with due care to prevent injury thereto or to any person or property and in conformity with all applicable laws, ordinances, rules, regulations and other requirements of any insurer or governmental body (including, without limitation, any requirements regarding licensing or registration, or evidencing title to the Equipment, all of which shall be done in such manner as shall have previously been approved in writing by Lessor). Lessor, or any duly authorized representative thereof, may during reasonable business hours

from time to time inspect the Equipment and Lessee's records with respect thereto wherever the same may be located.

C. Lessee agrees to comply in all respects with all laws of the jurisdictions in which the units may be operated, with the interchange rules of the Association of American Railroads, if applicable, and with all lawful rules of the Department of Transportation and the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the units. In the event that such laws or rules require the alteration of the units, or in case any equipment or appliance on any such unit shall be required to be changed or replaced, or in case any additional or other equipment or appliance is required to be installed on such unit in order to comply with such laws, regulations, requirements and rules, Lessee agrees to make such alterations, changes, additions and replacements at its own expense; and Lessee agrees at its own expense to use, maintain and operate such unit in full compliance with such laws, regulations, requirements and rules so long as the units are subject to this Lease Agreement; provided, however, that Lessee may, in good faith, contest the validity or application of any such law, regulation, requirement or rule in any reasonable manner which does not adversely affect the property or rights of the Lessor hereunder; and further provided, that, subject to the provisions of Section 15 hereof, any such additions to the units made by Lessee which can be removed without material damage to the units shall become the property of Lessee on the termination of this Lease Agreement.

D. Lessee shall not permit any lien, charge, encumbrance, security interest, or other similar interest to arise or remain on any Equipment other than (i) liens placed by Lessor or liens of persons claiming against Lessor but not Lessee, which arise out of obligations to which Lessee is not required by this Lease Agreement to pay or discharge, (ii) liens of current taxes not delinquent, (iii) inchoate materialmen's or mechanics' liens arising in the ordinary course of business and not delinquent, and (iv) any liens attaching to the leasehold interest of Lessee under this Lease Agreement by reason of any existing or future mortgage to which Lessee is a party covering substantially all of Lessee's railroad property.

E. Lessee shall place and maintain on each side of each Locomotive a notice (in letters not less than one inch in height) conspicuously disclosing Lessor's ownership thereof as follows:

"TEXAS COMMERCE LEASING COMPANY, OWNER-LESSOR"

or other appropriate words designated by Lessor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the title of Lessor to such unit and the rights of Lessor under this Lease Agreement. Lessee will not place any such unit in operation or exercise any control or dominion over the same until such names and words shall have been so marked on both sides thereof and will replace promptly any such names and word or words which may be removed, defaced or destroyed. Lessee shall maintain on each unit of Equipment the serial and other identifying numbers, if any, set forth on the applicable Certificate of Acceptance. Lessee will not change the identifying number of any Locomotive except in accordance with a statement of new identifying numbers to be substituted therefor, which statement previously shall have been filed with Lessor by Lessee and filed, recorded or deposited by Lessee in all public offices where this Lease Agreement shall have been filed, recorded or deposited. Except as above provided, Lessee, so long as this Lease Agreement shall remain in effect, will not allow the name of any person, association or corporation to be placed on the units as a designation that might be interpreted as a claim of ownership; provided, however, that Lessee may cause the units to be lettered with the names or initials or other insignia customarily used by Lessee or its affiliates on railroad equipment used by them of the same or a similar type for convenience of identification of their right to use the units as permitted under this Lease Agreement.

10. MAINTENANCE OF EQUIPMENT.

Lessee shall at all times keep the Equipment in good repair and efficient condition and working order, reasonable wear and tear excepted. Lessee shall supply all parts, service, and other items required in the operation and maintenance of the Equipment. Lessee shall not, without the written consent of Lessor, make any additions to the Equipment. All parts, replacements, substitutions and additions to or for any Equipment shall immediately become

Equipment and the property of Lessor; provided, however, that, subject to the provisions of Section 15 hereof, any additions to the Equipment which can be removed without material damage to the Equipment shall become the property of Lessee on the termination of this Lease Agreement. Lessee assumes all risk of, and Lessee's obligations under this Lease Agreement shall continue unmodified despite any loss, theft, destruction, damage, condemnation, requisition or taking by eminent domain or other interruption or termination of use of any Equipment regardless of the cause thereof.

11. EVENT OF LOSS.

A. Upon the happening of any loss, theft, destruction, damage, condemnation, requisition, taking by eminent domain or other interruption or termination of use of any unit of Equipment regardless of the cause thereof (herein collectively called an "Event of Loss"), Lessee shall promptly make all repairs and replacements necessary to restore or repair such unit of Equipment so that the Equipment thereafter subject to lease hereunder is substantially equivalent to, and of a value not less than, the Equipment subject to lease hereunder prior to such Event of Loss; provided, however, that Lessee may instead on the next quarterly rent payment date following such Event of Loss, furnish Lessor with an affidavit of an officer of Lessee setting forth the fact of such Event of Loss and pay to Lessor the Stipulated Loss Value (as defined in annexed Exhibit C, determined as of such next subsequent rent payment date) of such unit of Equipment. Upon payment of (i) such Stipulated Loss Value, (ii) any rent accrued and unpaid on such unit of Equipment to and including such next rent payment date and (iii) any other amounts owing by Lessee hereunder, whether as additional rent, indemnification or otherwise, Lessor shall transfer to Lessee, without any representation or warranty of any kind, express or implied, whatever title to such unit of Equipment it may have. Upon such transfer the lease of such unit of Equipment hereunder shall end.

B. When Lessee has fulfilled the requirements of Paragraph A regarding an Event of Loss, Lessor shall (if no event of default has occurred and is continuing), reimburse Lessee for its costs thus incurred to the extent of any proceeds received by Lessor because of such Event of Loss

either under any policies of insurance provided for in Section 12 or as satisfaction of any claim (other than one to which an insurer is or may be subrogated) by Lessor against any person or persons liable in respect of such Event of Loss, after subtracting in each instance all costs and expenses, including (without limitation) reasonable legal fees and expenses, incurred by Lessor and not otherwise reimbursed by Lessee in respect thereto.

12. INSURANCE.

A. Lessee will cause to be carried and maintained at all times during the term of this Lease Agreement physical damage and liability insurance covering the Equipment in the name of Lessor and Lessee in such amounts and in such form as is commonly maintained on comparable equipment by companies similarly situated. Lessee currently maintains the insurance coverage described in annexed Exhibit D. Such insurance policy or policies shall provide that all losses thereunder will be adjusted with Lessee and Lessor and will be payable to Lessor and Lessee as their respective interests shall appear.

B. The policies of insurance required under this Section 12 shall be valid and enforceable policies issued by insurers of recognized responsibility comparable to Lessee's present insurers. Upon the execution of the first Certificate of Acceptance, and thereafter not less than thirty (30) days (if insurance industry practice so allows) prior to the expiration dates of any expiring policies theretofore furnished under this Section 12, originals of the policies and satisfactory evidence of the payment of premiums thereon shall be delivered by Lessee to Lessor except that Lessor may accept copies of the policies and certificates of insurance in lieu of original policies. Such policies may be blanket policies covering other equipment not covered by this Lease Agreement, provided that any blanket policy shall in an accompanying certificate of insurance or rider specifically designate the units of Equipment described in such Certificate of Acceptance as being included therein and covered thereby to the full extent of the amounts herein required and shall name Lessor as an additional insured party thereunder with respect to such units of Equipment. All such policies shall contain an agreement by the insurers that such policies shall not be

cancelled without at least thirty (30) days' (if insurance industry practice so allows) prior written notice to Lessor.

13. TAXES.

Lessee agrees to pay and discharge (and does hereby agree to indemnify and hold Lessor harmless from and against) all sales, use, personal property, leasing, leasing use, stamp or other taxes, levies, imposts, duties, charges or withholdings of any nature (together with any penalties, fines or interest thereon) imposed against Lessor, Lessee or the Equipment by any Federal, state or local government or taxing authority upon or with respect to the Equipment or upon the purchase, remanufacture, ownership, delivery, lease, possession, use, operation, return, sale or other disposition thereof hereunder or in connection herewith, or upon the rentals, receipts, or earnings arising therefrom, or upon or with respect to this Lease Agreement (excluding, however, taxes on, or measured by, the net income of Lessor imposed by the United States or the jurisdiction in which the principal office of Lessor is located) unless, and to the extent only that, any such tax, levy, impost, duty, charge or withholding is being contested by Lessee in good faith and by appropriate proceedings which do not adversely affect the property or rights of the Lessor hereunder. In addition, Lessee shall pay on demand the amount of any Federal, state and local taxes required to be paid by Lessor in respect of the receipt of amounts referred to in this Section 13. Lessee agrees to file, on behalf of Lessor, all required tax returns and reports concerning the Equipment with all appropriate governmental agencies and to furnish Lessor upon request a copy of each such return or report, including evidence of payment, within thirty (30) days after the due date of such filing. To the extent that any taxes hereinabove referred to in this Section 13 are included in Lessor's Cost of Locomotives for any unit, Lessee shall not be obligated under this Section 13 for indemnification with respect to such taxes.

14. INDEMNIFICATION AND EXPENSES.

A. Lessee agrees to and does hereby indemnify and hold Lessor and its agents, employees, stockholders, officers and directors, harmless from and against any and all expense, liability or loss whatsoever, including (without limitation) reasonable legal fees and expenses,

relating to or in any way arising out of the Remanufacture Agreement, the Bills of Sale or this Lease Agreement, or the purchase, ownership, delivery, lease, possession, rental, use, operation, return, sale or disposition of the Equipment hereunder or in connection herewith (including without limitation, expense, liability or loss relating to or in any way arising out of injury to persons or property, patent or invention rights or strict liability in tort). Lessor shall give Lessee and Lessee shall give Lessor notice of any event or condition which requires indemnification by Lessee hereunder, or any allegation of such event or condition, promptly upon obtaining knowledge thereof, and, to the extent that Lessee makes or provides to the satisfaction of Lessor for payment under the indemnity provisions hereof, Lessee shall be subrogated to Lessor's rights with respect to such event or condition and shall have the right to determine the settlement of claims thereon, it being agreed that except to the foregoing extent, Lessor shall have the right to determine such settlement. Lessee shall pay all amounts due hereunder promptly on notice thereof from Lessor.

B. If as to any Locomotive Lessor shall not be entitled under any circumstances (including any Change in Tax Law, as hereinafter defined), other than as set forth in Paragraph D below, to any portion or all of the maximum ten percent (10%) investment credit presently allowable under Section 38(a) of the Internal Revenue Code of 1954, as amended, for property with a useful life of more than seven (7) years on not less than the Remanufacture Cost for such unit of Equipment, or if at any time Lessor shall lose, have recaptured or be deemed not to be entitled to any portion or all of said maximum investment credit on the Remanufacture Cost for each such unit of Equipment under any circumstances (including any Change in Tax Law), other than as set forth in such Paragraph D, then, Lessee shall pay Lessor upon demand, the sum of (1) the amount of said maximum investment credit which Lessor shall have so lost, had recaptured or failed to receive; (2) the amount of any interest (net of any actual decrease in Federal income tax caused by any allowable deduction of such interest from taxable income) or penalties, including any additions to tax because of underpayment of estimated tax which may be assessed against Lessor in connection therewith; and (3) the amount of any Federal, state and local taxes required to be paid by Lessor in respect of the receipt of amounts referred to in clauses

(1) and (2) above and the receipt of amounts pursuant to this clause (3). If, at any subsequent time, Lessor shall be allowed and receive a refund with respect to any portion or all of said maximum investment credit which it lost, had recaptured or failed to receive at any time previous and for which payment had been made to Lessor by Lessee pursuant to this Paragraph B, then, promptly after receipt of said refund, Lessor shall pay Lessee the sum of (i) all amounts with respect to such allowance paid to Lessor by the Federal government (including refunds of investment credit, interest, and penalties and any additional interest paid to Lessor by the Federal government on such refunds) reduced by all taxes required to be paid by Lessor in respect of the receipt of such amounts from the Federal government, and (ii) the amount of any taxes saved by Lessor in respect of its payment to Lessee of amounts referred to in clause (i) above and its payment to Lessee of amounts pursuant to this clause (ii). Lessor agrees to use its best efforts to take the maximum investment credit to which it shall reasonably deem itself entitled with respect to the Locomotives on its Federal income tax return for the earliest possible year for which it can be taken.

C. If Lessor in computing its Federal taxable income or its taxable income for purpose of computing its liability to any state or local taxing authority in which the principal office of Lessor is located, for any part of the lease term of any unit of Equipment shall under any circumstances (including any Change in Tax Law), other than as set forth in Paragraph D below, lose the benefit of or the right to claim or there shall be disallowed or recaptured all or any portion of depreciation deductions for Federal, state or local income tax purposes for such unit of Equipment based on depreciation of the Lessor's Cost of Locomotives for such unit over a depreciable life of twelve (12) years to a net salvage value of ten percent (10%) using any of the depreciation methods described in Section 167(b) of the Internal Revenue Code of 1954, as amended (to the extent of the methods referred to in clauses (y) and (z) of Section 27 hereof) which Lessor, in its complete discretion, may select, with the annual allowance determined without reduction for salvage, then, Lessee shall pay Lessor on each rent payment date during the remaining lease term of such unit, as additional rent hereunder, an amount which, after deduction of all Federal, state and local taxes required to be paid by Lessor in respect of the receipt thereof, shall

be sufficient to yield to Lessor the same after-tax cash flow as of each rent payment date as would have been realized by Lessor in respect of this Lease Agreement if such loss, disallowance, or recapture of depreciation deductions or the right to claim the same had not occurred, which amount shall, if subsequent circumstances require, be thereafter adjusted (or further appropriate adjustments shall be made in respect thereof) when and to the extent necessary so that Lessor's after-tax cash flow as of each rent payment date shall be as aforesaid. In addition, Lessee shall also pay Lessor on demand, as additional rent hereunder, an amount which, after deduction of all Federal, state and local taxes required to be paid by Lessor in respect of the receipt thereof, shall be equal to the amount of any interest (net of any actual decrease in Federal, state or local income tax caused by any allowable deduction of such interest from taxable income) or penalties, including any additions to tax because of underpayment of estimated tax, which may be assessed against Lessor in connection with such loss, disallowance, or recapture of depreciation deductions or the right to claim the same.

D. Lessee shall not be required to pay Lessor the amounts provided for in Paragraphs B and C above if the loss or disallowance of investment credit or depreciation deductions, as the case may be, or the right to claim the same, shall result from the occurrence of any of the following events:

(i) Lessor shall fail to claim such investment credit or depreciation deductions in its income tax returns for the appropriate years or shall fail to follow the proper procedures in claiming such investment credit or depreciation deductions and such failure to claim or follow such procedures, as the case may be, shall preclude Lessor from claiming such investment credit or depreciation deductions;

(ii) Lessor shall not have sufficient income to benefit from such investment credit or depreciation deductions;

(iii) Lessor shall voluntarily transfer legal title to the Equipment (other than a

transfer pursuant to Section 11.A hereof) or Lessor shall dispose of or reduce its interest in such Equipment, if such transfer, disposal or reduction (A) shall be the direct cause of such loss, (B) shall occur at any time when no event of default has occurred and is continuing, and (C) shall not be pursuant to the written consent of Lessee;

(iv) Lessor shall fail to take timely action in contesting a claim made by the Internal Revenue Service or any state or local taxing authority with respect to the disallowance of the investment credit or depreciation deductions pursuant to Paragraph E below and the failure to take such action in a timely manner shall preclude all rights to contest such claim, unless Lessee shall agree to such failure; or

(v) Lessee shall have paid Lessor the Stipulated Loss Value of such unit of Equipment pursuant to Section 11.A hereof, except as provided in Paragraph G of this Section 14.

E. In the event a claim shall be made by the Internal Revenue Service or any state or local taxing authority which, if successful, would result in a loss of such investment credit or depreciation deductions under circumstances which would require Lessee to indemnify Lessor for such loss, Lessor hereby agrees to notify Lessee promptly of such claim, to not make payment of the tax claimed for at least thirty (30) days after giving such notice, to give to Lessee any relevant information requested by it relating to such claim which may be particularly within the knowledge of Lessor and, if Lessee shall request within thirty (30) days after the giving of such notice that such claim be contested, to take such action in connection with contesting such claim, including appropriate appeals from lower court decisions, as Lessee shall reasonably request in writing from time to time, but only if Lessee shall, contemporaneously with such initial request, have (i) made provision for Lessor's indemnification in a manner satisfactory to Lessor for any liability or loss which Lessor may from time to time incur as the result of

contesting such claim and reimbursement for all costs and expenses, including legal fees and disbursements, which Lessor may incur in connection with the contesting of such claim and (ii) furnished Lessor with an opinion of independent tax counsel satisfactory to Lessor to the effect that a meritorious defense exists to such claim; provided, however, that at any time after having received such request from Lessee, Lessor at its sole option, may forego any and all administrative appeals, proceedings, hearings and conferences with the Internal Revenue Service or any state or local taxing authority, as the case may be, in respect of such claim and may, at its sole option, either pay the tax claimed and sue for a refund in the appropriate United States District Court, the United States Court of Claims, or appropriate state courts, as the case may be, as Lessor shall elect, or contest such claim in the United States Tax Court, or appropriate state court, as the case may be, considering, however, in good faith such request as Lessee shall make concerning the most appropriate forum in which to proceed.

F. References in Section 13 and this Section 14 and in Paragraph A of Section 27 to "Lessor" shall be deemed to include any affiliated group of which Lessor is a part which files a consolidated or combined return for Federal, state or local income tax purposes, provided that only Lessor shall be obligated with respect to the covenants and duties therein expressed to be imposed on Lessor.

G. All of the indemnities and agreements of Lessee contained in Section 13 and in this Section 14 shall survive and continue in full force and effect notwithstanding termination of this Lease Agreement or of the lease of any or all units of Equipment hereunder.

H. Any payments required to be made by Lessee pursuant to this Section 14 as a result of a Change in Tax Law shall be reduced by all tax savings which have theretofore been or in the current taxable year will be realized by Lessor on account of any Change in Tax Law resulting in Federal income tax consequences to Lessor more favorable than the tax benefits presently existing on the date hereof.

I. Any amount payable in accordance with this Section 14 shall be payable on Lessee's receipt of the

invoice of Lessor. Each such invoice shall be accompanied by a statement from an officer of the tax department of Lessor that he has examined the determination of the amount due and that, in his opinion, such amount due has been properly calculated pursuant to this Section 14.

15. RETURN OF EQUIPMENT.

Upon final termination of the lease term hereunder of any unit of Equipment (other than a termination under Section 11.A), Lessee shall forthwith deliver possession of the units to Lessor in the same condition as when received, ordinary wear and tear excepted, and such units shall meet the standards then in effect under the applicable rules of any governmental agency or other organization with jurisdiction over such units and the applicable standards then in effect for such units under the interchange rules of the Association of American Railroads, subject to Lessee's good faith contest, pursuant to Section 9(c) hereof, of the validity or application of any standard, law, regulation, requirement or rule, which contest is made in a reasonable manner and does not adversely affect the property or rights of Lessor. For the purposes of delivering possession of any unit or units to Lessor as above required, Lessee shall at its own cost, expense and risk:

(i) Forthwith place such units upon such storage tracks of Lessee as Lessor reasonably may designate;

(ii) Permit Lessor to store such units on such tracks at the risk of Lessee until such units have been sold, leased or otherwise disposed of by Lessor, provided that Lessor agrees to pay Lessee's reasonable storage charges for any storage after one hundred eighty (180) days; and

(iii) Transport the same to any place on the lines of railroad operated by it or any of its affiliates or to any connecting carrier for shipment, all as directed by Lessor; and

the removal, assembling, delivery, storage (except as above provided) and transporting of the units as hereinabove

provided shall be at the expense and risk of Lessee and are of the essence of this Lease Agreement, and upon application to any court of equity having jurisdiction in the premises Lessor shall be entitled to a decree against Lessee requiring specific performance of the covenants of Lessee so to remove, assemble, deliver, store and transport the units. During any storage period, Lessee shall maintain insurance on the units of Equipment in accordance with Section 12 hereof and shall upon notice permit Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such unit, to inspect the same; provided, however, that Lessee shall not be liable, except in the case of negligence of Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of Lessor or any prospective purchaser, the rights of inspection granted under this sentence.

Without in any way limiting the obligation of Lessee under the foregoing provisions of this Section 15, Lessee hereby irrevocably appoints Lessor as the agent and attorney-in-fact of Lessee, with full power and authority, at any time while Lessee is obligated to deliver possession of any unit to Lessor, to demand and take possession of such unit in the name and on behalf of Lessee from whomsoever shall be in possession of such unit at the time.

16. FINANCIAL STATEMENTS.

Lessee shall furnish or cause to be furnished to Lessor (i) within one hundred twenty (120) days after each fiscal year of Lessee, a copy of the annual audited report of Lessee and any consolidated subsidiaries, prepared in conformity with generally accepted accounting principles and signed by nationally recognized independent certified public accountants, (ii) within one hundred twenty (120) days after each fiscal year of Lessee, a copy of the ICC Rail Form R1 of Lessee for such year, prepared on an unconsolidated basis and in conformity with the Uniform System of Accounts for Railroad Companies prescribed by the ICC applied on a basis consistent with that of the preceding fiscal year, and signed by a proper accounting officer of the Lessee, (iii) within sixty (60) days after each quarter (except the last quarter) of each fiscal year of Lessee, a copy of its unaudited unconsolidated financial statement, prepared in conformity with the Uniform System of Accounts for Railroad

Companies prescribed by the ICC and consisting of at least a balance sheet as at the close of such quarter and a profit and loss statement and analysis of surplus for such quarter and for the period from the beginning of such fiscal year to the close of such quarter, and signed by a proper accounting officer of Lessee, (iv) with the annual audited report each year, a certificate of a responsible officer of Lessee to the effect that, except as otherwise specified therein, (x) all units of Equipment are in existence and in good and efficient condition and have been marked as required by Section 9.E hereof and (y) no event of default, or event which might mature into an event of default, has occurred and is continuing under this Lease Agreement, and (v) from time to time, such other information as Lessor may reasonably request.

17. EVENTS OF DEFAULT.

A. The following shall be events of default hereunder:

(i) Default, and continuance thereof for ten (10) days, in the payment of any rent or other amount hereunder;

(ii) Any obligation of Lessee or any material subsidiary of Lessee for borrowed money or payment of rent (other than any such obligation of any such subsidiary to Lessee or any other subsidiary) becomes or is declared to be due and payable prior to its express maturity by reason of default by Lessee or any such subsidiary in the performance or observation of any obligation or condition;

(iii) Default in the performance of any of Lessee's agreements herein set forth (and not constituting an event of default under either of the preceding clauses of this Paragraph A) and continuance of such default for thirty (30) days after notice thereof from Lessor to Lessee;

(iv) Any representation or warranty made by Lessee in this Lease Agreement is

untrue in any material respect, or any statement, report, schedule, notice or other writing furnished by Lessee to Lessor in connection herewith is untrue in any material respect on the date as of which the facts set forth are stated or certified; or

(v) Lessee or any subsidiary of Lessee becomes insolvent or admits in writing its inability to pay its debts as they mature, or applies for, consents to or acquiesces in the appointment of a trustee or a receiver for Lessee or any such subsidiary or any property of either thereof; or, in the absence of such application, consent or acquiescence, a trustee or receiver is appointed for Lessee or any such subsidiary, or for a substantial part of the property of any thereof, and is not discharged within sixty (60) days; or any bankruptcy, reorganization, debt arrangement or other proceeding under any bankruptcy or insolvency law or any dissolution or liquidation proceeding is instituted by or against Lessee or any material subsidiary of Lessee, and, if instituted against Lessee or any material subsidiary of Lessee is consented to or acquiesced in by Lessee or any material subsidiary of Lessee or remains for sixty (60) days undismissed.

When used herein, unless the context otherwise requires, the term "event of default" shall mean any event described in the foregoing clauses (i) through (v) and the term "event which might mature into an event of default" shall mean any event which with the lapse of time, or with notice to Lessee and lapse of time, would constitute an event of default. Lessee shall give Lessor prompt notice of any event of default or of any event which might mature into an event of default.

B. Upon the happening of an event of default, Lessor shall (except to the extent otherwise required by law) be entitled to:

(i) Proceed by appropriate court action or actions to enforce performance by Lessee

of the applicable covenants and terms of this Lease Agreement or to recover damages for the breach thereof;

(ii) Repossess any or all units of Equipment without prejudice to any remedy or claim hereinafter referred to;

(iii) Elect to sell any or all units of Equipment, after giving fifteen (15) days' notice to Lessee, at one or more public or private sales and recover from Lessee as liquidated damages for Lessee's default hereunder an amount equal to the amount, if any, by which (A) the sum of (i) the aggregate Stipulated Loss Value of such units of Equipment on the date such notice is given, (ii) all rent owing hereunder to and including the rent payment date immediately following the date such notice is given, (iii) all costs and expenses incurred in searching for, taking, removing, keeping, storing, repairing, restoring, and selling such units of Equipment, (iv) all other amounts owing by Lessee hereunder, whether as additional rent, indemnification or otherwise, and (v) all costs and expenses, including (without limitation) reasonable legal fees and expenses, incurred by Lessor as a result of Lessee's default hereunder, exceeds (B) the amount received by Lessor upon such public or private sales of such units of Equipment;

(iv) Upon notice to Lessee receive prompt payment from Lessee of an amount equal to the aggregate Stipulated Loss Value on the date such notice is given of all units of Equipment which have not been sold by Lessor pursuant to clause (iii) above plus, to the extent not otherwise recovered from Lessee pursuant to said clause (iii) above, (1) any rent and other amounts owing hereunder to and including the rent payment date immediately following the date such notice is given, (2) all costs and expenses incurred in searching

for, taking, removing, keeping, storing, repairing and restoring such units of Equipment, (3) all other amounts owing by Lessee hereunder whether as additional rent, indemnification or otherwise, and (4) all costs and expenses, including (without limitation) reasonable legal fees and expenses, incurred by Lessor as a result of Lessee's default hereunder; provided that upon receipt of payment in full of such amount, Lessor shall transfer to Lessee, without any representation or warranty of any kind, express or implied, whatever title to such units of Equipment it may have;

(v) By notice to Lessee, declare this Lease Agreement terminated without prejudice to Lessor's rights in respect of obligations then accrued and remaining unsatisfied; or

(vi) Avail itself of any other remedy or remedies provided for by any statute or otherwise available at law, in equity, or in bankruptcy or insolvency proceedings.

The remedies herein set forth or referred to shall be cumulative. The references to additional rent in clauses iii and iv of this Paragraph B shall each include, without limitation, interest at the applicable rate specified in the fourth paragraph of Section 4, to the date of receipt by Lessor of the amount payable under said clause, on installments of rent owing hereunder to and including the rent payment date immediately following the date on which notice is given under said clause, from the respective due dates of such installments, and interest on all other costs, expenses and losses for which Lessor is entitled to payment under said clause from the respective dates incurred by Lessor.

18. SUBLEASE, ASSIGNMENT, MERGER, ETC. BY LESSEE.

A. So long as Lessee shall not be in default under this Lease Agreement, Lessee shall be entitled to the possession and use of the units of Equipment in accordance with the terms of this Lease Agreement, but, without the prior written consent of Lessor, Lessee shall not assign,

transfer or sublet its leasehold interest under this Lease Agreement in any of the units. Lessee shall not, without the prior written consent of Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the units, except to the extent permitted by the provisions of Paragraph B below.

B. So long as Lessee shall not be in default under this Lease Agreement, Lessee shall be entitled to the possession of the units and to the use thereof upon the lines of railroad or upon the lines of any affiliate or upon lines of railroad over which Lessee has trackage or other operating rights or over which railroad equipment of Lessee is regularly operated pursuant to contract, and also to permit the use of the units upon other railroads in the usual interchange of traffic, if customary at the time, but only upon and subject to all the terms and conditions of this Lease Agreement. Lessee may receive and retain compensation for such use from other railroads to using any of the Locomotives. Lessee agrees that during the term of this Lease Agreement Lessee will use its best efforts to prevent the use of any Locomotive outside the United States of America. No assignment, sublease or interchange entered into by Lessee hereunder shall relieve Lessee of any liability or obligations hereunder which shall be and remain those of a principal and not a surety.

C. Nothing in this Section 18 shall be deemed to restrict the right of Lessee to assign or transfer its leasehold interest under this Lease Agreement in the Equipment or possession of the Equipment to any corporation (which shall have expressly assumed in writing the due and punctual payment and performance of all obligations hereunder of Lessee) into or with which Lessee shall have become merged or consolidated or which shall have acquired the property of Lessee as an entirety or substantially as an entirety.

19. ASSIGNMENT BY LESSOR.

Lessor and any direct or remote assignee of any right, title or interest of Lessor hereunder shall have the right at any time or from time to time to assign part or all of its right, title and interest in and to this Lease Agreement. Without limiting the foregoing, Lessor and any such assignee shall have the right at any time or from time

to time to transfer, subject to Lessee's rights under this Lease Agreement, any unit or units of Equipment.

Lessor may obtain financing through a financial institution and secure such financial institution ("Secured Party") by granting a security interest or other lien on any or all of the Equipment, this Lease Agreement and sums due under this Lease Agreement. In such event (a) the security agreement or lien instrument will specifically provide that it is subject to Lessee's rights as herein provided; (b) such assignment of this Lease Agreement will not relieve Lessor from its obligations hereunder or be construed to be an assumption by Secured Party of such obligations (but Secured Party may perform, at its option, some or all of Lessor's obligations); (c) upon request by Secured Party, Lessee will make all payments of rental and other amounts due hereunder directly to Secured Party; (d) Lessee's obligations hereunder, including (without limitation) its obligation to pay rent and other amounts due hereunder, shall not be subject to any reduction, abatement, defense, setoff, counterclaim or recoupment for any reason whatsoever, which, however, shall not prevent Lessee from asserting any claim separately against Lessor; and (e) Lessee will not, after obtaining knowledge of any such assignment, consent to any modification of this Lease Agreement without the consent of Secured Party.

20. LESSOR'S RIGHT TO PERFORM.

If Lessee fails to make any payments required by this Lease Agreement, or to perform any of its other agreements contained herein, Lessor may itself, but shall not be required to, make any such payments or perform any such obligations. The amount of any such payment and Lessor's expenses, including (without limitation) reasonable legal fees and expenses in connection therewith and with such performance, shall thereupon be and become payable by Lessee to Lessor upon demand as additional rent hereunder.

21. RECORDING; FURTHER ASSURANCES.

Lessee will, at its expense, prior to the delivery and acceptance hereunder of any unit of Equipment (i) execute and file such Uniform Commercial Code financing statements as Lessor may reasonably request from time to time, (ii) cause this Lease Agreement and any assignment

hereto to be filed and recorded with the Interstate Commerce Commission in accordance with Section 11303(a) of the Revised Interstate Commerce Act, and (iii) provide to Lessor such Uniform Commercial code searches and Interstate Commerce Commission searches with respect to Lessee and/or the manufacturer of the Equipment, as Lessor may reasonably request. Lessee will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record and deposit (and will refile, reregister, rerecord or redeposit whenever required) any and all further instruments required by law or reasonably requested by Lessor for the purpose of proper protection, to Lessor's satisfaction, of Lessor's interest in the units, or for the purpose of carrying out the intention of this Lease Agreement or the assignment thereof by Lessor; and Lessee will promptly furnish to Lessor evidences of all such filing, registering, recording or depositing, and an opinion or opinions of counsel for Lessee with respect thereto satisfactory to Lessor.

22. PURCHASE OPTION.

Lessee shall have an option (the "Purchase Option") to purchase for cash all of the Locomotives then under lease upon the last business day of or prior to the expiration of the lease term hereunder for such units of Equipment provided no event of default or event which might mature into an event of default has occurred and is then continuing hereunder. If Lessee desires to exercise the Purchase Option, it shall give to Lessor written notice of its election to purchase at least ninety (90) days (and not more than one hundred eighty (180) days) before the expiration of the lease term for such units of Equipment, stating Lessee's opinion as to the fair market value of the Equipment to be purchased, and upon expiration of such lease term, Lessee shall purchase such Equipment and shall pay to Lessor in immediately available funds the purchase price for such Equipment, determined as hereinafter provided. The purchase price of the Equipment shall be the fair market value thereof as of the date of purchase. If Lessee and Lessor are unable to agree upon the fair market value of the Equipment within thirty (30) days after receipt by Lessor of such notice, such fair market value shall be determined by an independent appraiser selected by mutual agreement of Lessor and Lessee. The fee of such appraiser shall be paid by Lessee. Upon payment by Lessee to Lessor of the purchase

price for the Equipment at such expiration, and upon payment by Lessee of all rent and other amounts owing to Lessor under this Lease Agreement, Lessor shall transfer to Lessee, without any representation or warranty of any kind, express or implied, whatever title to such Equipment Lessor may have free and clear of any lien or encumbrance created by or through Lessor.

23. RENEWAL OPTION.

Lessee shall have an option to renew for two (2) additional terms of one (1) year each the lease term of all of the Locomotives then under lease provided no event of default or event which might mature into an event of default has occurred and is then continuing immediately prior to the commencement of the renewal term being then elected by Lessee. If Lessee desires to exercise such option to renew, it shall give Lessor written notice of its election to renew at least ninety (90) days (and not more than one hundred eighty (180) days) prior to the commencement of the renewal term then being elected stating Lessee's opinion as to the fair market rental value for the Equipment to be leased during such renewal term, and upon the expiration of the then current term the lease of such Equipment shall be renewed for such renewal term at the fair market rental value as hereinafter provided. A determination shall be made of the fair market rental value of the Equipment as of the date of the expiration of such current term. If Lessee and Lessor are unable to agree upon such fair market rental value within thirty (30) days after receipt by Lessor of such notice, such fair market rental value shall be determined by an independent appraiser selected by mutual agreement of Lessor and Lessee. The fee of such appraiser shall be paid by Lessee. All of the provisions of the Lease shall be applicable during any such renewal term except for the amount of each installment of rent which shall be as hereinabove provided. "Lease Term" as used in the Lease shall, except where the context otherwise requires, be deemed to include any renewal terms.

24. CERTAIN DEFINITIONS.

When used herein, the term "subsidiary" shall mean a corporation of which Lessee or its other subsidiaries own, directly or indirectly, such number of outstanding shares as have the power (disregarding any voting power, solely by

reason of the happening of any default, of shares of any class) to elect a majority of the board of directors.

25. CONDITIONS TO LESSOR'S OBLIGATIONS.

Lessor shall not be obligated to make payment for any unit of Equipment hereunder unless at the date such payment is requested by Lessee:

A. All of Lessee's representations and warranties in Section 8 of this Lease Agreement shall be true and correct as though made as of such date;

B. No litigation or governmental proceedings shall be threatened or pending against Lessee or any material subsidiary of Lessee which in Lessor's reasonable opinion will to a material extent adversely affect the financial condition or continued operation of Lessee and its subsidiaries on a consolidated basis;

C. No event of default, or event which might mature into an event of default, shall have occurred or be continuing hereunder;

D. Lessee shall have furnished to Lessor, in form and substance satisfactory to Lessor, the following on or prior to the date of the first requested payment hereunder:

i. Resolutions of the Board of Directors of Lessee, certified by its Secretary or an Assistant Secretary, authorizing the lease of such Equipment hereunder, the execution, delivery and performance by Lessee of the Remanufacture Agreement and this Lease Agreement, and the execution and delivery of the Certificates of Acceptance, designating the title of the officers of Lessee authorized to execute and deliver the Certificates of Acceptance;

ii. A favorable opinion of counsel for Lessee, acceptable to Lessor, to the effect that:

a. Lessee is a corporation duly organized and existing in good standing under the laws of the State of Delaware.

b. Lessee is duly authorized to execute and deliver the Remanufacture Agreement and this Lease Agreement, and is duly authorized to lease Equipment hereunder and to perform its obligations hereunder and thereunder.

c. The execution and delivery of the Remanufacture Agreement, the Bills of Sale and this Lease Agreement, and the performance by Lessee and the owners of the used Locomotives of their obligations hereunder and thereunder do not and will not conflict with any provision of law (including without limitation the provisions of 15 U.S.C. § 20) or of the charter or bylaws of Lessee or of any indenture, mortgage, deed of trust or agreement or instrument binding upon Lessee or to which Lessee is a party.

d. The execution, delivery and performance of the Remanufacture Agreement, the Bills of Sale and this Lease Agreement and the consummation by Lessee of the transaction contemplated hereby and thereby does not require the consent, approval or authorization of, or notice to, any Federal or state governmental authority or public regulatory body.

e. The Remanufacture Agreement, the Bills of Sale and this Lease Agreement are legal, valid, and binding obligations enforceable in accordance with their respective terms (except as may be affected by bankruptcy, reorganization, insolvency and similiar laws affecting the rights of creditors generally).

f. There are to the knowledge of such counsel no pending or threatened actions or proceedings before any court

or administrative agency which will, in the opinion of such counsel, to a material extent adversely affect the financial condition or continued operation of Lessee and its subsidiaries on a consolidated basis.

g. Uniform Commercial Code financing statements have been executed and filed as required under the laws of Illinois, this Lease Agreement has been duly filed and recorded with the ICC pursuant to Section 11303(a) of the Revised Interstate Commerce Act, and such filings and recordings will protect Lessor's interests in and to the units of Equipment, and no further filing or recording (or giving of notice) with any other federal, state or local government is necessary in order to protect the interests of Lessor in and to the units;

iii. An appraisal certificate (required with the first payment requested hereunder for Locomotives) issued by Mr. Alex Kerr, an independent appraiser, to the effect that (a) the fair market value of the reusable component parts included in the used Locomotives purchased by Lessor under the Remanufacture Agreement does not exceed the Locomotives Acquisition Cost for such Locomotives (set forth in Section 2.A), (b) the fair market value of the Locomotives upon completion of their remanufacture under the Remanufacture Agreement was at least equal to the following:

<u>Type of Locomotive</u>	<u>Fair Market Value Upon Completion of Remanufacture</u>
Eight (8) Model GP-11 Locomotives	\$3,728,000

(c) the Locomotives on the date of delivery thereof to Lessor upon completion of their remanufacture under the Remanufacture Agreement will have an estimated useful life of at least four (4) years beyond the expiration of the Lease

Term (excluding any renewal terms) for the Locomotives under this Lease Agreement and an estimated fair market value at the end of such term of at least twenty percent (20%) of Lessor's Cost of Locomotives for such Locomotives, without including in such fair market value any increase or decrease for inflation or deflation during such term of the Lease, and (d) setting forth the manner in which such fair market value and useful life were determined.

iv. Original or true and accurate copies of policies, certificates or riders of insurance required by Section 12 hereof.

E. Lessee shall have furnished to Lessor, in form and substance satisfactory to Lessor, the following on or prior to the date of each requested payment hereunder:

i. An invoice covering the units of Equipment for which such payment is requested;

ii. A Certificate of Acceptance signed by an officer of Lessee (as the authorized representative of Lessor hereunder and under the Remanufacture Agreement) confirming delivery to, and acceptance by, Lessor of the units of Equipment for which such payment is requested;

iii. A Certificate of Acceptance of Lessee covering the units of Equipment for such payment is requested after completion of the remanufacture of such units in accordance with the Remanufacture Agreement;

iv. An opinion of Lessee's counsel, satisfactory to Lessor, that acceptance by Lessor of the units of Equipment for which such payment is requested and payment therefor by Lessor shall be effective to transfer to Lessor good title to such units of Equipment, free of all claims, liens or encumbrances of any nature; and

v. Such other releases, financing statements, waivers and other documents as Lessor may reasonably request to insure that the Equipment will not be subject to any lien, charge, encumbrance, security interest or other similar interest.

26. COMMENCEMENT DATE.

On or prior to the Commencement Date Lessee shall furnish to Lessor in form and substance satisfactory to Lessor:

A. A certificate of the President or a Vice President of the Lessee, dated such Commencement Date, to the effect that:

i. All of Lessee's representations and warranties in Section 8 of this Lease Agreement are true and correct as though made as of such date;

ii. No litigation or governmental proceedings are threatened or pending against Lessee or any material subsidiary of Lessee which will, in the opinion of such officers, to a material extent adversely affect the financial condition or continued operation of Lessee and its subsidiaries on a consolidated basis;

iii. No event of default, or event which might mature into an event of default, has occurred and is continuing hereunder;

iv. Since the date of this Lease Agreement, there has been no material adverse change in the financial condition of Lessee from that shown by the financial statement referred to in Section 8.E. hereof; and

v. The Locomotives have been delivered to and accepted by Lessee for lease under this Lease Agreement, and the Lease Agreement is in full force and effect.

B. Resolutions of the Board of Directors of Lessee, certified by its Secretary or an Assistant Secretary, authorizing the lease of such Equipment hereunder and the execution, delivery and performance by Lessee of this Lease Agreement;

C. An opinion of counsel for Lessee, acceptable to Lessor, dated such Commencement Date and addressed to Lessor, to the same effect as the opinion given to Lessor pursuant to Section 25.D.ii hereof on the first payment date hereunder; and

D. Such other documents and evidence with respect to the Remanufacture Agreement, the Bill of Sale and this Lease Agreement as Lessor may reasonably request in order to establish the consummation of the transactions contemplated by the Remanufacture Agreement, the Bill of Sale and this Lease Agreement, the taking of all corporate proceedings in connection herewith and compliance with all conditions set forth in the Remanufacture Agreement, the Bill of Sale and this Lease Agreement.

27. MISCELLANEOUS.

A. Notwithstanding any other provisions of this Lease Agreement, Lessor shall not be obligated to make payment of all or any portion of Lessor's Cost of Locomotives for such Locomotives if on or prior to the requested date of payment there shall have been (i) an amendment to the Internal Revenue Code of 1954, as amended (the "Code"), which changes the federal income tax rate (in excess of the corporate surtax exemption) of Lessor from 46%, or (ii) any amendment, modification, addition or change made in or to the provisions of the Code, the Treasury Regulations under the Code (including the Treasury Regulations relating to the Asset Depreciation Range System of depreciation under Section 167(m) of the Code), published Internal Revenue Service Revenue Procedures, Revenue Rulings or other administrative interpretations, or applicable judicial precedents (all of the foregoing amendments, modifications, additions or changes referred to in this clause (ii) being hereinafter collectively referred to as a "Change in Tax Law"), which Change in Tax Law in the opinion of Lessor or in the opinion of its counsel might preclude Lessor from taking (x) investment credit on a Locomotive at the rate of 10% on Lessor's Remanufacture Cost of

Locomotives on the basis that the following percentages of Lessor's Cost of Locomotives are "new Section 38 property:

<u>Type of Locomotive</u>	<u>Percentage</u>
Model GP-11 Locomotives	87.98%

or (y) depreciation deduction on Lessor's Remanufacture Cost represented by the following percentages of Lessor's Cost of Locomotives:

<u>Type of Locomotive</u>	<u>Percentage</u>
Model GP-11 Locomotives	87.98%

over a depreciable life of twelve (12) years to a net salvage value of ten percent (10%) thereof, computed initially under the double declining balance method of depreciation provided in Section 167(b)(2) of the Code and then changing to the sum of the years-digits method of depreciation provided in Section 167(b)(1) of the Code, all without the consent of the Commissioner, with the annual allowance determined without reduction for salvage and the with the first year's depreciation deduction being maximized by the election of either the "half year convention" or the "modified half year convention" pursuant to Treasury Regulation Section 1.167(a)-11(c)(2) (as in effect on the date of execution of this Lease Agreement), or (z) depreciation deductions with respect to the remaining percentage of Lessor's Cost of Locomotives (the Locomotives Acquisition Cost) over a depreciable life of twelve (12) years to a net salvage value of ten percent (10%) thereof, computing initially using the one hundred fifty percent (150%) declining balance method of depreciation provided in Section 167(b)(2) of the Code and then changing to the straight-line method of depreciation provided in Section 167(b)(1) of the Code, with the annual allowance determined without reduction for salvage and with the first year's depreciation deduction being maximized by the election of either the "half year convention" or the "modified half year convention" pursuant to Treasury Regulation Section 1.167(a)-11(c)(2) (as in effect on the date of execution of this Lease Agreement).

B. Any provision in this Lease Agreement that Lessee shall take any action shall require Lessee to do so at its sole cost and expense.

C. Any notice hereunder shall be in writing and, if mailed, shall be deemed to be given when sent by registered or certified mail, postage prepaid, and addressed: (i) if to Lessee, at its address shown below, (ii) if to Lessor, to Texas Commerce Leasing Company, P. O. Box 2558, Houston, Texas 77001, or to either party at such other address as it may, by written notice received by the other, designate as its address for purposes of notice hereunder.

D. If this Lease Agreement or any provision hereof shall be deemed invalid, illegal, or unenforceable in any respect or in any jurisdiction, the validity, legality and enforceability of this Lease Agreement in other respects and other jurisdictions shall not be in any way impaired or affected thereby. Each of the parties hereto acknowledges that the other party shall not by act, delay, omission or otherwise be deemed to have waived any of its rights or remedies under this Lease Agreement unless such waiver is in writing, and such writing shall be binding only to the extent therein provided and only upon the party signing it. A waiver on any one occasion shall not be construed as a waiver on any future occasion. Without limiting the foregoing, Lessor's rights and Lessee's duties shall in no way be affected by Lessor's inspection of, or failure to inspect, the Equipment or any of the documents referred to in this Lease Agreement or by Lessor's failure to inform Lessee of any failure to comply with any of Lessee's obligations under this Lease Agreement. Lessee hereby waives any right to assert that Lessor cannot enforce this Lease Agreement or that this Lease Agreement is invalid because of any failure of Lessor to qualify to do business in any jurisdiction. This Lease Agreement has been delivered for acceptance by Lessor in Houston, Texas, shall be governed by the laws of the State of Texas, shall be binding upon Lessor and Lessee and their respective successors and assigns, and shall inure to the benefit of Lessor and Lessee and the successors and assigns of Lessor.

E. The section headings in this Lease Agreement are for convenience of reference only and shall not be considered to be a part of this Lease Agreement.

F. This Lease Agreement may be signed in any number of copies, any one of which shall be considered as the original Lease Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed and their corporate seals to be affixed hereto all as of the date first above written.

ILLINOIS CENTRAL GULF RAILROAD
COMPANY

By *D. M. Klein*
Title Treasurer

[CORPORATE SEAL]

ATTEST:

By *W. H. Sanders*
Title Asst. Secretary

Address: 233 North Michigan Ave.
Chicago, Illinois 60601

TEXAS COMMERCE LEASING COMPANY

By *Carol Cody Herder*
Title Vice President

[CORPORATE SEAL]

ATTEST:

By *Lee Strauss*
Title Vice President

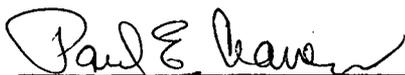
Address: P.O. Box 2558
Houston, Texas 77001

STATE OF TEXAS §
 § ss.
COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, on this day personally appeared D.N. Melin, Treasurer of ILLINOIS CENTRAL GULF RAILROAD COMPANY, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same as the act and deed of said corporation for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN under my hand and seal of office this 2nd day of April, 1980.

[SEAL]



NOTARY PUBLIC in and for
Harris County, Texas

My commission expires:

July 31, 1980

STATE OF TEXAS §
 § ss.
COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, on this day personally appeared Carol Cody Herder, Vice President of TEXAS COMMERCE LEASING COMPANY, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same as the act and deed of said corporation for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN under my hand and seal of office this 2nd day of April, 1980.

[SEAL]



NOTARY PUBLIC in and for
Harris County, Texas

My commission expires:

July 31, 1980

EXHIBIT A

Model GP-11 Diesel Locomotives -- Total: Eight (8)

Illinois Central Gulf Railroad Locomotive Numbers:

8731

8732

8733

8734

8735

8736

8737

8738

EXHIBIT B

CERTIFICATE OF ACCEPTANCE

Texas Commerce Leasing Company
P.O. Box 2558
Houston, Texas 77001

Gentlemen:

1. The undersigned officer of Illinois Central Gulf Railroad Company is your authorized representative designated under the Remanufacture Agreement dated as of April 2, 1980 (the "Remanufacture Agreement") between you and Illinois Central Gulf Railroad Company (the "Railroad Company"). As such authorized representative, the undersigned hereby represents and certifies to you as follows:

(a) That the locomotives described below have been duly delivered in good order by the Railroad Company under the Remanufacture Agreement, have been duly inspected and accepted on the respective dates there shown by the undersigned as your authorized representative and conform in all respects to the requirements and specifications of the Remanufacture Agreement; and

(b) That each such locomotive was at its delivery properly marked on each side thereof with the legend provided in Section 9.E of the Lease Agreement between you and the Railroad Company hereinafter referred to.

2. The undersigned, Illinois Central Gulf Railroad Company ("Lessee"), is the Lessee under the Lease Agreement dated as of April 2, 1980 (the "Lease Agreement") between you and the Lessee. As such Lessee, we hereby request you to pay the attached invoices for the remanufacture and delivery of the locomotives described below. We hereby represent and certify to you as follows:

(a) That all of our representations and warranties set forth in Section 8 of the Lease Agreement are true and correct as of the date hereof as though made on this date;

(b) That the locomotives described below have been delivered to us, as Lessee under the Lease Agreement, on the dates indicated and have been duly inspected and are hereby accepted by us for lease under the Lease Agreement; and

(c) That no event of default, or event which might mature into an event of default, has occurred and is continuing under the Lease Agreement.

3. This Certificate of Acceptance shall be and become a part of the Lease Agreement, and the locomotives described below are hereby declared to be leased by us thereunder. The Lease Agreement was filed and recorded with the Interstate Commerce Commission on _____, ____ at _____ .m. with Recordation No. _____.

Officer and authorized representative, as aforesaid, and signing as to the matters in Paragraph 1 above

Dated _____, _____

ILLINOIS CENTRAL GULF RAILROAD
COMPANY, Lessee, and signing as
to the matters in Paragraphs 2
and 3 above

By _____
Its _____

Dated _____, _____

EXHIBIT D

LESSEE'S INSURANCE COVERAGE

Liability Coverage provides Bodily Injury, Property Damage, Federal Employers Liability Act, including Care, Custody and Control and including Contractual Liability.

Blanket Fire Coverage provides coverage for fire, lightning and extended coverage including collision and overturn and derailment of diesels.

DESCRIPTION OF LOCOMOTIVES

<u>Total No.</u> <u>of items</u>	<u>Locomotive</u> <u>Type</u>	<u>Lessee's Identifying</u> <u>Nos.</u>	<u>Invoice</u> <u>Amount</u>
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EXHIBIT C

STIPULATED LOSS VALUE FOR LOCOMOTIVES

"Stipulated Loss Value" of any Locomotive as of a particular date shall mean the amount derived by multiplying (i) the percentage figure opposite the notation for the appropriate rental period set forth in the table appearing below by (ii) Lessor's Cost of Locomotives applicable to such Locomotive. Stipulated Loss Value does not include any amounts for which Lessor may be entitled to indemnification under Sections 13 and 14 of the Lease Agreement other than amounts in respect of investment tax credit.

STIPULATED LOSS VALUE TABLE

	<u>Percentage</u>
On or before Commencement Date . . .	100% + expenses + interim rent

STIPULATED VALUE SCHEDULE

<u>Rent Payment No.</u>	<u>% of Equipment Cost</u>	<u>Rent Payment No.</u>	<u>% of Equipment Cost</u>
1	102.375	31	70.582
2	103.058	32	69.307
3	103.707	33	67.997
4	104.123	34	66.640
5	104.102	35	65.232
6	103.834	36	63.776
7	103.395	37	62.298
8	103.007	38	60.779
9	102.776	39	59.209
10	102.562	40	57.609
11	102.288	41	56.022
12	101.970	42	54.412
13	96.181	43	52.768
14	95.774	44	51.076
15	95.312	45	49.363
16	94.801	46	47.615
17	94.249	47	45.831
18	93.646	48	44.001
19	92.990	49	42.158
20	92.285	50	40.283
21	86.109	51	38.373
22	85.315	52	36.411
23	84.468	53	34.429
24	83.571	54	32.409
25	82.636	55	30.352
26	81.653	56	28.241
27	80.617	57	26.106
28	79.530	58	23.911
29	72.976	59	21.715
30	71.805	60	20.000
		Thereafter	20.000