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INTERSTATE COMMERCE COMMISSION

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[CS&M Ref:5471-003]

CONDITIONAL SALE AGREEMENT

Dated as of February 15, 1980

Between

FIRST SECURITY STATE BANK,  
not in its individual capacity  
but solely as Owner-Trustee  
for The Provident Bank

And

BETHLEHEM STEEL CORPORATION,  
Builder

14.5% Conditional Sale Indebtedness Due 1995  
[covering 200 Gondola Cars]

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Rec. No. 116 33  
(recorded April 8, 1980)

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CONDITIONAL SALE AGREEMENT dated as of February 15, 1980, between BETHLEHEM STEEL CORPORATION, a Delaware corporation (the "Builder" or the "Vendor", as the context may require, as more particularly set forth in Article 1 hereof), and FIRST SECURITY STATE BANK, a Utah corporation, acting not in its individual capacity but solely as Trustee (hereinafter, together with its successors and assigns, called the "Owner-Trustee") under a Trust Agreement dated as of the date hereof (the "Trust Agreement"), with The Provident Bank (hereinafter called the "Owner").

The Builder has agreed to construct, sell and deliver to the Owner-Trustee, and the Owner-Trustee has agreed to purchase, the railroad equipment described in Annex B hereto (the "Equipment").

The Owner-Trustee is entering into a Lease of Railroad Equipment dated as of the date hereof (the "Lease") with The Delaware and Hudson Railway Company (hereinafter the "Lessee"), in substantially the form annexed as Annex C hereto.

The First Security Bank of Utah, N.A. (the "Assignee" or the "Vendor"), is acting as agent for certain investors (the "Investors") pursuant to the Participation Agreement dated as of the date hereof (the "Participation Agreement") with the Owner-Trustee, the Lessee, the Owner and the Investors.

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

ARTICLE 1. Assignment; Definitions. The parties hereto contemplate that the Owner-Trustee will furnish that portion of the Purchase Price (as defined in Article 4 hereof) for the Equipment as is required under subparagraph (a) of the third paragraph of Article 4 hereof and that an amount equal to the balance of such Purchase Price shall be paid to the Builder by the Assignee pursuant to an Agreement and Assignment dated as of the date hereof (the "Assignment") between the Builder and the Assignee, as agent.

The term "Vendor", whenever used in this Agreement, means, before any assignment of its rights hereunder, the party hereto which has manufactured the Equipment and any successor or successors for the time being to its manufacturing properties and business, and, after any such assignment, both any assignee or assignees for the time being of such particular assigned rights as regard such rights, and also any assignor as regard any rights hereunder that are retained or excluded from any assignment; and the term "Builder", whenever used in this Agreement, means, both before and after any such assignment, the party hereto which has manufactured the Equipment and any successor or successors for the time being to its manufacturing properties and business.

In case of such assignment, the Owner-Trustee will assign to the Vendor, as security for the payment and performance of all the Owner-Trustee's obligations hereunder, all right, title and interest of the Owner-Trustee in and to the Lease, pursuant to an Assignment of Lease, substantially in the form of Annex D hereto (the "Lease Assignment") and the Lessee shall consent thereto pursuant to a Consent and Agreement in substantially the form attached to Annex D hereto (the "Consent").

ARTICLE 2. Construction and Sale. Pursuant to this Agreement, the Builder shall construct the Equipment at its plant or plants set forth in Annex B hereto, and will sell and deliver to the Owner-Trustee, and the Owner-Trustee will purchase from the Builder and accept delivery of and pay for (as hereinafter provided), such Equipment, each unit of which shall be constructed in accordance with the specifications referred to in Annex B hereto and in accordance with such modification thereof as may be agreed upon in writing among the Builder, the Owner-Trustee and Lessee (which specifications and modification, if any, are hereinafter called the "Specifications"). The design, quality and component parts of each unit of the Equipment shall conform, on the date of completion of manufacture thereof, to the United States Department of Transportation and Interstate Commerce Commission requirements and specifications and to all standards, if any, recommended by the Association of American Railroad reasonably interpreted as then being applicable to each such unit of Equipment, and each such unit will be new railroad equipment when delivered to the Owner-Trustee and the original use thereof shall commence with the Owner-Trustee.

ARTICLE 3. Inspection and Delivery. The Builder will deliver the units of the Equipment to the Owner-Trustee at the place or places specified in Annex B hereto (or if Annex B does not specify a place or places, at the place or places designated from time to time by the Owner-Trustee), freight, if any, prepaid, in accordance with the delivery schedule set forth in Annex B hereto; provided, however, that delivery of any unit of the Equipment shall not be made until the filings and recordings referred to in Article 18 hereof have been made; provided further, that the Builder shall have no obligation to deliver any unit of Equipment hereunder subsequent to the commencement of any proceedings specified in clause (c) of Article 15 hereof or clause (E) of § 10 of the Lease or the occurrence of any event of default (as described in Article 15 hereof), or any event which with notice or lapse of time or both would constitute an event of default. The Builder agrees not to deliver any unit of Equipment hereunder (a) following receipt of written notice from the Owner-Trustee or the Assignee of the commencement of any such proceedings or the occurrence of any such event of default or event, as aforesaid, and (b) until it receives notice from the Assignee and the Owner-Trustee, respectively, that the conditions contained in Paragraphs 7 and 8, respectively, of the Participation Agreement have been met (c) following receipt of written notice from the Assignee of its determination that there has been since December 31, 1979, a material adverse change in the assets, liabilities, business or condition (financial or otherwise) of the Lessee until such written notice may be canceled by a further written notice.

Notwithstanding the next succeeding paragraph, any Equipment not delivered as a result of the first paragraph of this Article 3, and any Equipment not delivered and accepted hereunder on or prior to May 9, 1980, shall be excluded from this Agreement and the Owner-Trustee shall be relieved of its obligation to purchase and pay for such Equipment. If any Equipment shall be excluded herefrom pursuant to the immediately preceding sentence, the parties hereto shall execute an agreement supplemental hereto limiting this Agreement to the Equipment not so excluded herefrom. Pursuant to Paragraph 1 of the Participation Agreement, the Lessee has agreed to purchase such excluded Equipment and any Equipment excluded from this Agreement pursuant to the first paragraph of Article 4 hereof from the Builder. The Owner-Trustee agrees, upon any such exclusion, to take such steps, including the execution of instruments of transfer, as may be reasonably requested by the Lessee for the purpose of acknowledging and perfecting the interest of the Lessee

in any unit of Equipment so excluded from this Agreement; and the Vendee shall have no further obligation or liability in respect of units so excluded.

The Builder's obligation as to the time of delivery set forth in Annex B is subject, however, to delays resulting from causes beyond such Builder's reasonable control, including but not limited to acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, delays in receiving necessary materials or delays of carriers or subcontractors, but such Equipment shall be delivered and accepted not later than May 9, 1980, notwithstanding such delays, or such Equipment shall be excluded herefrom in accordance with the immediately preceding paragraph.

During construction, the Equipment shall be subject to inspection and approval by the authorized inspectors of the Owner-Trustee (who may be employees of the Lessee) and the Builder shall grant to such authorized inspectors reasonable access to its plant or plants. The Builder will inspect the materials used in the construction of the Equipment in accordance with the standard quality control practices of the Builder. Prior to delivery each unit of the Equipment shall be presented to an inspector of the Owner-Trustee for inspection at the place specified for delivery of such unit or units, and if each such unit conforms to the Specifications, requirements and standards applicable thereto, such inspector or an authorized representative of the Owner Trustee (who may be an employee of the Lessee) shall execute and deliver to the Builder a certificate of acceptance (the "Certificate of Acceptance") stating that such unit or units have been inspected and accepted on behalf of the Owner-Trustee and are marked in accordance with Article 9 hereof; provided, however, that the Builder shall not thereby be relieved of its warranties contained or referred to in Article 13 hereof.

Upon acceptance of delivery of each unit hereunder at the place specified for delivery, the Builder shall have no further responsibility for, nor bear any risk of, any damage to or the destruction or loss of such unit; provided, however, that the Builder shall not thereby be relieved of its warranties contained or referred to in Article 13 hereof.

Notwithstanding the foregoing or any other provision of this Agreement to the contrary, the delivery to and acceptance by or on behalf of the Owner-Trustee of

any unit of Equipment excluded from this Agreement pursuant to the second or third paragraph of Article 3 hereof or the first paragraph of Article 4 hereof shall be ineffective, ab initio, to create in or transfer to the Owner-Trustee any legal or beneficial right or interest in such unit or (except as provided in the first paragraph of Article 4 hereof) to impose on the Owner-Trustee any liability, obligation or responsibility with respect thereto.

ARTICLE 4. Purchase Price and Payment. The base price or prices per unit of the Equipment are set forth in Annex B hereto. Such base price or prices are subject to such increase or decrease as is agreed to by the Builder, the Owner-Trustee and the Lessee. The term "Purchase Price" as used herein shall mean the base price or prices as so increased or decreased, as set forth in such Builder's invoice or invoices delivered to the Owner-Trustee (which shall include any applicable freight charges) and, if the Purchase Price is other than the base price or prices set forth in Annex B, the invoice or invoices shall be accompanied by, or have endorsed thereon, the agreement or approval of the Lessee and the Owner-Trustee (such invoice or invoices being hereinafter called the "Invoices"). If on the Closing Date (as hereinafter defined in this Article) the aggregate Purchase Price of Equipment for which settlement is then being made would exceed the Maximum Purchase Price specified in Item 5 of Annex A hereto, the Builder (and any assignee of the Builder) and the Owner-Trustee will enter into an agreement excluding from this Agreement such unit or units of Equipment then proposed to be settled for and specified by the Owner-Trustee, as will, after giving effect to such exclusion, reduce such aggregate Purchase Price under this Agreement to not more than the Maximum Purchase Price specified in Item 5 of Annex A hereto and the Owner-Trustee shall take such other steps, including the execution of instruments of transfer, as may be reasonably requested by the Builder for the purpose of acknowledging and perfecting the interest of the Builder in any unit of Equipment so excluded from this Agreement, and the Owner-Trustee shall have no further obligation or liability in respect of units so excluded.

The Equipment shall be settled for in one group of units of the Equipment delivered to and accepted by the Owner-Trustee (a "Group"). The term "Closing Date" with respect to the Group shall mean the date not later than May 15, 1980, fixed by the Lessee, by written notice delivered to the Owner-Trustee and the Agent at least 10 business days prior to the Closing Date designated therein. The notice shall specify the Purchase Price of the Group to be settled

for on such date. At least five business days prior to the Closing Date with respect to a Group of Equipment, the Builder shall present to the Owner-Trustee and the Lessee the Invoices and Certificate or Certificates of Acceptance for such Group. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in New York, New York, Cincinnati, Ohio, or Salt Lake City, Utah, are authorized or obligated to remain closed.

The Owner-Trustee hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay in cash to the Vendor at such place as the Vendor may designate, the Purchase Price of the Equipment, as follows:

(a) on the Closing Date an amount equal to 35% of the aggregate Purchase Price of such Group; and

(b) in 60 equal quarterly installments, as hereinafter provided, an amount equal to the aggregate Purchase Price of the units of Equipment for which settlement is then being made, less the aggregate amount paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph.

The portion of the Purchase Price payable pursuant to subparagraph (b) of the preceding paragraph (herein called the "Conditional Sale Indebtedness") shall be payable on each March 15, June 15, September 15 and December 15, commencing September 15, 1980, to and including June 15, 1995 (or if any such date is not a business day, on the immediately preceding business day), each such date being hereinafter called a "Payment Date". The unpaid balance of the Conditional Sale Indebtedness shall bear interest from the Closing Date in respect of which such indebtedness was incurred at the rate of 14.5% per annum. Such interest shall be payable, to the extent accrued, on June 15, 1980, and on each Payment Date thereafter. The installments of principal payable on each Payment Date shall be calculated so that the amount and allocation of principal and interest payable on each Payment Date shall be substantially in proportion to the amount and allocation of principal and interest on such Payment Date set forth in Schedule I hereto (subject to the provisions of Article 7 hereof) and the aggregate of such installments of principal will completely amortize the remaining Conditional Sale Indebtedness at maturity. The Owner-Trustee will furnish to the Vendor and the Lessee promptly after the Closing Date a schedule, in such number of counterparts as shall be

requested by the Vendor, showing the respective amounts of principal and interest payable on each Payment Date.

Interest under this Agreement shall be determined on the basis of a 360-day year of 12 30-day months, except that the interest payment due on June 15, 1980, shall be determined on an actual elapsed day, 365-day year, basis.

The Owner-Trustee will pay, to the extent legally enforceable, interest upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof at the rate of 15.5% per annum.

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

Notwithstanding any other provisions of this Agreement (including, but not limited to, any provision of Articles 15 and 16 hereof), but not limiting the effect of Article 21 hereof, the liability of Owner-Trustee or any assignee of Owner-Trustee for all payments to be made by it under and pursuant to this Agreement, including any liability arising out of or in connection with the performance of its obligations hereunder (with the exception only of the obligations set forth in subparagraph (a) of the third paragraph of this Article and the proviso in the last paragraph of Article 12 hereof), shall not exceed an amount equal to, and shall be payable only out of, the "income and proceeds from the Equipment", and such payments shall be made by the Owner-Trustee only to the extent that the Owner-Trustee or any assignee of the Owner-Trustee shall have actually received sufficient "income and proceeds from the Equipment" to make such payments. Except as provided in the preceding sentence, Owner-Trustee shall have no personal liability to make any payments under this Agreement except from the "income and proceeds from the Equipment". In addition, the Owner-Trustee (1) makes no representation or warranty, and is not responsible for, the execution, validity, sufficiency or enforceability of the Lease insofar as it relates to Lessee (or any document relative thereto) or of any of Lessee's obligations

thereunder and (2) shall not be responsible for the performance or observance by Lessee of any of its agreements, representations, indemnities, obligations or other undertakings under the Lease or the Consent; it being understood that as to all such matters Vendor shall look solely to Vendor's rights under this Agreement against the Equipment and to Vendor's rights under the Lease against Lessee and the Equipment. As used herein the term "income and proceeds from the Equipment" shall mean:

(i) if one of the events of default specified in Article 15 hereof shall have occurred and while it shall be continuing, so much of the following amounts as are indefeasibly received by the Owner-Trustee or any assignee of the Owner-Trustee at any time after any such event and during the continuance thereof: (a) all amounts of rental and amounts in respect of Casualty Occurrences (as defined in Article 7 hereof) paid for or with respect to the Equipment pursuant to the Lease and any and all other payments received under § 10 or any other provision of the Lease; and (b) any and all payments or proceeds received for or with respect to the Equipment as the result of the sale, lease or other disposition thereof, after deducting all costs and expenses of such sale, lease or other disposition; and

(ii) at any other time only that portion of the amounts referred to in the foregoing clauses (a) and (b) as are indefeasibly received by the Owner-Trustee or any assignee of the Owner-Trustee and as shall equal the portion of the Conditional Sale Indebtedness (including prepayments thereof required in respect of Casualty Occurrences) and/or interest thereon due and payable on the date such amounts were required to be paid pursuant to the Lease or as shall equal any other payments then due and payable under this Agreement;

it being understood that "income and proceeds from the Equipment" shall in no event include (A) amounts referred to in the foregoing clauses (a) and (b) which were received by the Owner-Trustee or any assignee of the Owner-Trustee prior to the existence of such an event of default which exceeded the amounts required to discharge that portion of the Conditional Sale Indebtedness (including prepayments thereof required in respect of Casualty Occurrences) and/or interest thereon due and payable on the date on which amounts with respect thereto received by the Owner-Trustee or any assignee

of the Owner-Trustee were required to be paid to it pursuant to the Lease or which exceeded any other payments due and payable under this Agreement at the time such amounts were payable under the Lease or (B) amounts excluded from the Lease Assignment pursuant to Paragraph 1 thereof. Notwithstanding anything to the contrary contained in Article 15 or 16 hereof, Vendor agrees that in the event it shall obtain a judgment against the Owner-Trustee for an amount in excess of the amounts payable by the Owner-Trustee pursuant to the limitations set forth in this paragraph, it will, accordingly, limit its execution of such judgment to amounts payable pursuant to the limitations set forth in this paragraph. Nothing contained herein limiting the liability of Owner-Trustee shall derogate from the right of the Vendor to proceed against the Equipment or Owner-Trustee's interest in the Lease for the full unpaid Purchase Price of the Equipment and interest thereon and all other payments and obligations hereunder.

ARTICLE 5. Security Interest in the Equipment.

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

Except as otherwise specifically provided in Article 7 hereof, when and only when Vendor shall have been paid the full indebtedness in respect of the Purchase Price

of the Equipment, together with accrued interest and all other payments as herein provided, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in Owner-Trustee without further transfer or action on the part of Vendor. However, the Vendor, if so requested by Owner-Trustee at that time, will, at Owner-Trustee's expense, (a) execute an instrument releasing its security interest in the Equipment to the Owner-Trustee or upon its order, free of all liens, security interests and other encumbrances created or retained hereby and deliver such instrument to the Owner-Trustee at its address referred to in Article 20 hereof, (b) execute and deliver at the same place, for filing, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of Owner-Trustee to the Equipment and (c) pay to Owner-Trustee any money paid to Vendor pursuant to Article 7 hereof and not theretofore applied as therein provided. Owner-Trustee hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such instrument or instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such instrument or instruments or to file such certificate within a reasonable time after written demand by Owner-Trustee.

ARTICLE 6. Taxes. The Owner-Trustee agrees to pay, and to indemnify and hold harmless the Vendor, the Builder and the trust estate held by the Owner-Trustee under the Trust Agreement and by the Vendor under this Agreement and the Participation Agreement from all Taxes (as defined in § 6 of the Lease), except as provided in the proviso to the first sentence of § 6 of the Lease; provided, however, that the Owner-Trustee shall not be required to pay any Taxes during the period the Owner-Trustee or any indemnified party may be contesting the same in the manner provided in the third paragraph of this Article 6.

The amount which the Owner-Trustee shall be required to pay with respect to any Taxes indemnified against pursuant to this Article 6, shall be an amount sufficient to restore the indemnified party to the same after-tax position, after considering the effect of such payment on its United States Federal income taxes and state and city income taxes or franchise taxes based on net income, that such indemnified party would have been in had such Taxes not been imposed.

If claim is made against any indemnified party for any Taxes indemnified against under this Article 6, such party shall promptly notify the Owner-Trustee and the Lessee. If reasonably requested by the Owner-Trustee in writing, such indemnified party shall, upon receipt of any indemnity satisfactory to it for all costs, expenses, losses, reasonable legal and accountants' fees and disbursements, penalties, fines, additions to tax and interest, and at the expense of the Owner-Trustee, contest in good faith the validity, applicability or amount of such Taxes by (a) resisting payment thereof if possible (provided that the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the interests of the Vendor in and to the Equipment hereunder), (b) not paying the same except under protest, if protest is necessary and proper, and (c) if payment is made, using reasonable efforts to obtain a refund thereof in appropriate administrative or judicial proceedings, or both. The Owner-Trustee may also contest, at its own expense, the validity, applicability or amount of such Taxes in the name of such indemnified party; provided that no proceeding or action relating to such contest shall be commenced (nor shall any pleading, motion, brief or other paper be submitted or filed in the name of such indemnified party in any such proceeding or action) without the prior written consent of such indemnified party, which consent cannot be unreasonably withheld. If such indemnified party shall obtain a refund of all or any part of such Taxes previously reimbursed by the Owner-Trustee in connection with any such contest or an amount representing interest thereon, such indemnified party shall pay the Owner-Trustee the amount of such refund or interest net of expenses; provided, however, that no event of default set forth in Article 15 hereof and no event which with notice or lapse of time or both would constitute such an event of default shall have occurred and be continuing.

In case any report or return is required to be made with respect to any obligation of the Owner-Trustee under or arising out of this Article 6, the Owner-Trustee shall either make such report or return in such manner as will show the interests of the Vendor in the Equipment or shall promptly notify the Vendor of such requirement and shall make such report or return in such manner as shall be satisfactory to the Vendor. All costs and expenses (including reasonable legal and accountants' fees) of preparing any such return or report shall be borne by the Owner-Trustee.

All the obligations of the Owner-Trustee under

this Article 6 shall survive and continue, notwithstanding payment in full of all amounts due under this Agreement. Payments due from the Owner-Trustee under this Article 6 shall be made directly to the indemnified party, except to the extent paid to a governmental agency or taxing authority.

The obligations of the Owner-Trustee under this Article 6 are subject to the limitations contained in the last paragraph of Article 4 hereof and in Article 21 hereof.

The Owner-Trustee shall furnish or cause to be furnished promptly, upon request, such information and data as are normally available to the Owner-Trustee and which the Vendor reasonably may require to permit compliance with the requirements of any taxing authorities.

ARTICLE 7. Maintenance; Casualty Occurrences; Insurance. The Owner-Trustee shall, at its own cost and expense, maintain and service each unit of the Equipment which will include testing, repair and overhaul of each unit of Equipment so that each unit of Equipment will remain (a) in as good operating condition as when delivered (ordinary wear and tear excepted), (b) in compliance with any and all applicable laws and regulations and (c) eligible for railroad interchange in accordance with the interchange rules of the Association of American Railroads, if such rules are applicable.

In the event that any unit of Equipment shall be or become lost, stolen, destroyed, irreparably damaged or permanently rendered unfit for use from any cause whatsoever, or taken or requisitioned by condemnation or otherwise resulting in loss of possession thereof by the Lessee, for a period of 90 consecutive days, except requisition for use by the United States Government for a period not in excess of the then remaining term of this Agreement (any such occurrences being herein called "Casualty Occurrence") during the term of this Agreement, the Owner-Trustee shall, promptly after it shall have received notice from the Lessee thereof or otherwise been notified that such unit has suffered a Casualty Occurrence, cause the Vendor to be fully informed in regard thereto. On the Payment Date next succeeding such notice or notification (or, in the event such Payment Date will occur within 15 days after delivery of such notice or notification to the Owner-Trustee, on the following Payment Date) (each such date being hereinafter called a "Casualty Payment Date"), the Owner-Trustee shall, subject to

the limitations contained in the last paragraph of Article 4 hereof, pay to the Vendor an amount equal to the Casualty Value, as hereinafter defined in this Article, of such unit suffering a Casualty Occurrence as of the date of such payment. On the date of any such payment, the Owner-Trustee shall file, or cause to be filed, with the Vendor a certificate setting forth the Casualty Value of such unit. In the event of the requisition for use by the United States Government of any unit of Equipment not constituting a Casualty Occurrence, all the Owner-Trustee's obligations hereunder with respect to such unit shall continue to the same extent as if such requisition had not occurred.

Upon payment by the Owner-Trustee to the Vendor of the Casualty Value of any unit of the Equipment having suffered a Casualty Occurrence, absolute right to the possession of, title to, and property in such unit, shall pass to and vest in the Owner-Trustee and the security interest of the Vendor in such unit shall terminate without further transfer or action on the part of the Vendor, except that the Vendor, if requested by the Owner-Trustee, will execute and deliver, to the Owner-Trustee, a certificate in recordable form in order that the Owner-Trustee may make clear upon the public records the full title of the Owner-Trustee to such unit.

Any money paid to the Vendor pursuant to this Article shall be applied (after the payment of the interest and principal due on such date) to prepay without penalty or premium, ratably in accordance with the unpaid balance of each installment, the Conditional Sale Indebtedness, together with all interest accrued on the portion of the Conditional Sale Indebtedness being prepaid. The Owner-Trustee will promptly furnish to the Vendor and the Lessee a revised schedule of payments of principal and interest thereafter to be made, in such number of counterparts as they may request.

The "Casualty Value" of any unit of Equipment on any date shall be deemed to be an amount computed by multiplying the unpaid principal amount of the Conditional Sale Indebtedness outstanding on such date (after giving effect to any payment in respect thereof due on such date pursuant to Article 4 hereof) by a fraction of which the numerator shall be the Purchase Price of such unit and the denominator shall be the Purchase Price of all units (including such unit) subject to this Agreement on such date.

Any insurance proceeds or condemnation payments received and retained by the Vendor in respect of units suffering a Casualty Occurrence shall be deducted from the amounts payable by the Owner-Trustee to the Vendor in respect of Casualty Occurrences pursuant to this Article. If the Vendor shall receive any insurance proceeds or condemnation payments in respect of such units suffering a Casualty Occurrence either after the Owner-Trustee shall have made payments pursuant to this Article without deduction for such insurance proceeds or condemnation payments, or in excess of the Casualty Value (after taking into account payments by the Owner-Trustee under this Article) of such units, the Vendor shall promptly pay such insurance proceeds or condemnation payments to the Owner-Trustee. All insurance proceeds or condemnation payments or such excess received by the Vendor in respect of any unit or units of Equipment not suffering a Casualty Occurrence shall be paid to the Owner-Trustee upon proof satisfactory to the Vendor that the damage to such unit in respect of which such proceeds were paid has been fully repaired.

The Owner-Trustee will at all times prior to the payment of the Conditional Sale Indebtedness, together with interest thereon and all other payments required hereby, at its own expense, carry and maintain or cause to be carried and maintained public liability insurance, naming the Vendor as additional named insured as its interests may appear, at least in amounts and against risks customarily insured against by railroad companies on similar equipment owned by them and in amounts and against risks customarily insured against by the Lessee or any other user of the Equipment in respect of similar equipment owned by it. The proceeds of such insurance shall be payable to the Vendor, the Owner-Trustee, the Lessee or any other sublessee permitted under the Lease as their respective interests may appear.

ARTICLE 8. Reports and Inspections. On or before December 1 in each year, commencing with the year 1980, the Owner-Trustee shall furnish to the Vendor an accurate statement to the effect set forth in § 8 of the Lease. The Vendor shall have the right to inspect the Equipment and the Owner-Trustee's and the Lessee's records with respect thereto at such reasonable times as the Vendor may request during the term of this Agreement.

ARTICLE 9. Marking of Equipment. The Owner-Trustee agrees that it will cause each unit of the Equipment to be kept numbered and marked as provided in § 5 of the Lease. The Owner-Trustee will not place or permit any unit of the Equipment to be placed in operation or exercise any control or dominion over the same until such markings shall have been made on both sides thereof and will replace or cause to be replaced promptly any such markings which may be removed, defaced, obliterated or destroyed. The Owner-Trustee shall not change, or permit to be changed, the identifying number of any unit of the Equipment unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with the Vendor and duly filed, recorded and deposited by the Owner-Trustee in all public offices where this Agreement shall have been filed, recorded and deposited and (ii) the Owner-Trustee shall have furnished the Vendor an opinion of counsel to the effect that such statement has been so filed, recorded and deposited, such filing, recordation and deposit will protect the Vendor's interest in such units of Equipment and no filing, recording, deposit or giving of notice with or to any other Federal, state or local government or agency thereof is necessary to protect the interests of the Vendor in such Units.

Except as above provided, the Owner-Trustee will not allow the name of any person, association or corporation to be placed on any unit of the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Owner-Trustee may permit the Equipment to be lettered with the names, trademarks, initials or other insignia customarily used by the Lessee, or its affiliates, so long as the Lease shall remain in effect.

ARTICLE 10. Compliance with Laws and Rules. During the term of this Agreement, the Owner-Trustee will comply, and will cause every lessee or user of the Equipment to comply, in all respects (including, without limitation, with respect to the use, maintenance and operation of the Equipment) with all laws of the jurisdictions in which its or such lessee's or user's operations involving the Equipment may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the United States Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the title, operation or use of the Equipment, and in

the event that such laws or rules require any alteration, replacement, addition or modification of or to any part of any unit of the Equipment, the Owner-Trustee will, or will cause the Lessee to, conform therewith at no expense to the Vendor; provided, however, that the Owner-Trustee or the Lessee may, in good faith, contest or cause to be contested the validity or application of any such law or rule in any reasonable manner which does not, in the reasonable opinion of the Vendor, adversely affect the property or rights of the Vendor under this Agreement.

The obligations of the Owner-Trustee under this Article are subject to the limitations contained in the last paragraph of Article 4 and in Article 21 hereof.

ARTICLE 11. Possession of Equipment. So long as no event of default has occurred and is continuing hereunder, the Owner-Trustee shall be entitled from and after delivery of the Equipment by the Builder to the Owner-Trustee, to the possession and use of the Equipment and the use thereof, but only upon and subject to all the terms and conditions of this Agreement. The Owner-Trustee simultaneously is leasing the Equipment to the Lessee as provided in the Lease and the rights of the Lessee and its permitted assigns under the Lease shall be subordinated and junior in rank to the rights, and shall be subject to the remedies, of the Vendor under this Agreement.

The Owner-Trustee will not amend or consent to any change in the Trust Agreement without the prior written consent of the Vendor, except as specifically provided therein.

ARTICLE 12. Discharge of Liens. The Owner-Trustee will pay or discharge any and all sums claimed by any party from, through or under the Owner-Trustee, the Owner or their successors or assigns which, if unpaid, might become a lien, charge or security interest on or with respect to the Equipment, or any unit thereof, or the Owner-Trustee's interest in the Lease and the payments to be made thereunder and will promptly discharge any such lien, charge or security interest which arises, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the reasonable opinion of the Vendor, adversely affect the interest of the Vendor in the Equipment, or otherwise under this Agreement. Any amounts paid by the Vendor in discharge

of liens, charges or security interests upon the Equipment shall be secured by and under this Agreement.

This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

The obligations of the Owner-Trustee under this Article are subject to the limitations contained in the last paragraph of Article 4 and in Article 21 hereof; provided, however, that the Owner-Trustee will pay or discharge any and all claims, liens, charges or security interests claimed by any party from, through or under the Owner-Trustee or the Owner or their successors or assigns, not arising out of the transactions contemplated hereby (including any tax liens arising out of the receipt of rentals and other payments under the Lease or the Participation Agreement), which, if unpaid, might become a lien, charge or security interest on or with respect to the Equipment, or any unit thereof, or the Owner-Trustee's or Owner's interest in the Lease and the payments to be made thereunder, but the Owner-Trustee shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not adversely affect the security interest of the Vendor in or to the Equipment, its interest in and to the Lease and the payments to be made thereunder or otherwise under this Agreement.

ARTICLE 13. Indemnity; Builder's Representations and Warranties. The Owner-Trustee shall pay, and shall protect, indemnify and hold the Vendor, the Investors and any respective assignee thereof, and their respective successors, assigns, principals, agents and servants ("Indemnified Persons"), harmless from and against any and all causes of action, suits, penalties, claims, demands or judgments, with respect to Indemnified Matters (as defined in § 9 of the Lease); provided, however, that the Owner-Trustee shall not be required to pay, protect, indemnify or hold harmless the Builder for (i) any losses, damages, injuries, liabilities, claims and demands whatsoever arising out of any tort by the Builder, or out of any breach of warranty or failure to perform any covenant hereunder by the Builder and (ii) any matter covered by the Builder's warranty of material and

workmanship and patent indemnification set forth in Annex A hereto. The Owner-Trustee shall be obligated under this Article, 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 Owner-Trustee under this Article without first resorting to any such other rights of indemnification. In case any action, suit or proceeding is brought against any Indemnified Person in connection with any claim indemnified against hereunder, the Owner-Trustee may and, upon such Indemnified Person's reasonable request will, at the Owner-Trustee's expense, resist and defend such action, suit or proceeding, or cause the same to be resisted or defended by counsel selected by the Owner-Trustee and approved by such Indemnified Person and, in the event of any failure by the Owner-Trustee to do so, the Owner-Trustee shall pay all costs and expenses (including without limitation reasonable attorneys' fees and expenses) incurred by such Indemnified Person in connection with such action, suit or proceeding. In the event the Owner-Trustee is required to make any payment under this Article, the Owner-Trustee shall pay such Indemnified Person an amount which, after deduction of all taxes required to be paid by such Indemnified Person in respect of the receipt thereof under the laws of the United States or of any political subdivision thereof (after giving credit for any savings in respect of any such taxes by reason of deductions, credits or allowances in respect of the payment of the expense indemnified against, and of any other such taxes), shall be equal to the amount of such payment. The Vendor and the Owner-Trustee 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 Article by the Owner-Trustee, or the making of provision satisfactory to the Indemnified Person for the full payment thereof, and provided that no event of default described in Article 15 hereof (or other event which with lapse of time or the giving of notice or both would constitute such an event of default) shall have occurred and be continuing, the Owner-Trustee 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 as a result of any matter with respect to which such Indemnified Person has been indemnified by the Lessee pursuant to the Lease shall be paid over to the Owner-Trustee to the extent necessary to

reimburse the Owner-Trustee for indemnification payments previously made in respect of such matter.

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

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

The obligations of the Owner-Trustee under this Article 13 are subject to the limitations contained in the last paragraph of Article 4 and in Article 21 hereof.

The Builder represents and warrants to the Owner-Trustee and the Assignee that, immediately prior to delivery and acceptance of each unit of the Equipment under this Agreement, the Builder had good and marketable title to such unit, free and clear of all claims, liens, security interests and other encumbrances of any nature except only the rights created by this Agreement, the Assignment and the Lease and that at such time each such unit will be new railroad equipment the original use of which will commence with the Owner-Trustee.

The Builder represents that it is not entering into this Agreement, or entering into any assignment of this Agreement, directly or indirectly in connection with any arrangement or understanding in any way involving any employee benefit plan (other than a governmental plan) with respect to which it is a party in interest, all within the meaning of the Employee Retirement Income Security Act of 1974.

The agreements of the parties relating to the Builder's warranty of material and workmanship and the agreement of the parties relating to patent indemnification are set forth in Items 3 and 4 of Annex A hereto.

ARTICLE 14. Assignments. Without the prior consent of the Vendor, the Owner-Trustee will not (a) transfer the right to possession of any unit of the Equipment, except as provided in Article 11 hereof, or (b) sell, assign, transfer or otherwise dispose of its rights under this Agreement, except as provided in the Trust Agreement.

All or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Owner-Trustee, may be assigned by the Vendor and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve the Builder from, any of the obligations of the Builder to construct and deliver the Equipment in accordance herewith or to respond to its warranties and indemnities contained or referred to in Article 13 hereof, or relieve the Owner-Trustee of its respective obligations to the Builder contained in Articles 2, 3, 4, 6 and 13 hereof, Annex A hereto and this Article 14, or any other obligation which, according to its terms or context, is intended to survive an assignment.

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

The Owner-Trustee recognizes that this Agreement will be assigned to the Assignee as provided in the Assignment. The Owner-Trustee expressly represents, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Vendor hereunder, and for the purpose of inducing such acquisition, that the rights of the Assignee to the entire unpaid indebtedness in respect of the Purchase Price of the Equipment or such part thereof as may be assigned together with interest thereon, as well

as any other rights hereunder which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Builder with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Owner-Trustee or the Lessee by the Builder. Any and all such obligations, howsoever arising shall be and remain enforceable by the Owner-Trustee or the Lessee, as the case may be, against and only against the Builder.

ARTICLE 15. Defaults. In the event that any one or more of the following events of default shall occur and be continuing, to wit:

(a) the Owner-Trustee shall fail to pay or cause to be paid in full any sum payable by the Owner-Trustee when payment thereof shall be due hereunder (irrespective of the provisions of Article 4 or 21 hereof or any other provision of this Agreement limiting the liability of the Owner-Trustee) and such default shall continue for 15 business days after the date such payment is due and payable; or

(b) the Owner-Trustee (irrespective of the provisions of Article 4 or 21 hereof or any other provision of this Agreement limiting the liability of the Owner-Trustee) or the Lessee shall, for more than 30 days after the Vendor shall have demanded in writing performance thereof, fail or refuse to comply with any other covenant, agreement, term or provision of this Agreement, the CSA Assignment, the Lease or the Lease Assignment or any covenant, agreement, term or provision of the Participation Agreement made for the benefit of Vendor on its part to be kept and performed, or to make provision satisfactory to Vendor for such compliance; or

(c) any proceeding shall be commenced by or against the Owner-Trustee, Owner or Lessee for any relief which includes, or might result in, any modification of the obligations of the Owner-Trustee hereunder or of the Lessee under the Lease under any bankruptcy or insolvency laws, or laws relating to the relief of

debtors, readjustment of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the obligations hereunder or under the Lease, the Lease Assignment, the Consent or the Participation Agreement of the Owner-Trustee, the Owner or the Lessee, as the case may be), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Owner-Trustee, the Owner or the Lessee under this Agreement, the Lease, the Lease Assignment, the Consent and/or the Participation Agreement, as the case may be, shall not have been (and shall not continue to be), duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Owner-Trustee, the Owner or the Lessee, as the case may be, or for its or their respective property in connection with any such proceedings in such manner that such obligations 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; or

(d) the Owner-Trustee shall make or permit any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession of any unit of the Equipment; or

(e) an Event of Default shall have occurred under the Lease; provided, however, that an Event of Default under § 10(A)(i) of the Lease shall not be deemed to be an event of default hereunder if such default under the Lease causing such Event of Default thereunder is cured by the Owner-Trustee's remedying such default prior to the expiration of the 15 business day period provided by Paragraph 15(a) hereof by making payment of the amount in default under Paragraph 15(a) hereof; and provided further that the Owner-Trustee shall not have the right to remedy more than 6 such defaults, no more than 4 of which shall be consecutive, and any additional Events of Default under the Lease shall constitute events of default hereunder whether or not so remedied;

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Owner-

Trustee and the Lessee and upon compliance with any legal requirements then in force and applicable to such action by the Vendor, (i) subject to Lessee's right of possession and use under the second paragraph of § 4 of the Lease, cause the Lease immediately upon such notice to terminate (and the Owner-Trustee acknowledges the right of the Vendor to terminate the Lease), but without affecting the indemnities which by the provisions of the Lease survive its termination and/or (ii) declare the entire unpaid Conditional Sale Indebtedness, together with the interest thereon then accrued and unpaid, immediately due and payable (a "Declaration of Default") without further demand, and thereafter the aggregate of the unpaid balance of the Conditional Sale Indebtedness and interest shall bear interest from the date of such Declaration of Default at the rate per annum specified in Article 4 hereof as being applicable to amounts remaining unpaid after becoming due and payable, to the extent legally enforceable. Upon a Declaration of Default, subject to Articles 4 and 21 hereof, the Vendor shall be entitled to recover judgment for the entire unpaid balance of the Conditional Sale Indebtedness so payable with interest as aforesaid, and to collect such judgment out of any property of the Owner-Trustee, subject to the provisions of Articles 4 and 21 hereof, wherever situated. The Owner-Trustee shall promptly notify the Vendor of any event which has come to its attention which constitutes, or with the giving of notice and/or lapse of time would constitute, an event of default under this Agreement.

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

ARTICLE 16. Remedies. At any time during the continuance of a Declaration of Default, the Vendor may, and upon such further notice, if any, as may be required for compliance with any mandatory legal requirements then in

force and applicable to the action to be taken by the Vendor, take or cause to be taken, by its agent or agents, immediate possession of the Equipment, or one or more of the units thereof, without liability to return to the Owner-Trustee any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 16 expressly provided, and may remove the same from possession and use of the Owner-Trustee or any other person and for such purpose may enter upon the premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Owner-Trustee, subject to all mandatory requirements of due process of law.

In case the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall designate a reasonable point or points for the delivery of the Equipment to the Vendor, the Owner-Trustee shall, at its own expense and risk:

(a) forthwith and in the usual manner (including, but not by way of limitation, causing prompt telegraphic and written notice to be given to all railroads which may have possession of any unit or units of the Equipment to return the unit or units) cause the Equipment to be placed upon such storage tracks of the Lessee as the Vendor reasonably may designate;

(b) permit the Vendor to store the Equipment on such tracks at the risk of the Owner-Trustee without charge for insurance, rent or storage until the Equipment has been sold, leased or otherwise disposed of by the Vendor; and

(c) cause the Equipment to be transported to such interchange point or points as directed by the Vendor upon any sale, lease or other disposal of all or any of the Equipment.

During any storage period, the Owner-Trustee will, at its own cost and expense, insure, maintain and keep each such unit in good order and repair and will permit the inspection of the Equipment by the Vendor, the Vendor's representatives and prospective purchasers, lessees and users. This agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and upon the application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled to a decree of specific performance hereof. The

Lessee and any other lessee or sublessee of the Equipment hereby expressly waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 16 provided) may, upon the notice and procedures as are hereinafter set forth, retain the Equipment in satisfaction of the entire Conditional Sale Indebtedness and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Owner-Trustee, the Owner and the Lessee by telegram or registered mail, addressed as provided in Article 20 hereof, and to any other persons to whom the law may require notice, within thirty (30) days after such Declaration of Default. In the event that the Vendor shall elect to retain the Equipment and the Owner-Trustee and the Owner do not object thereto in writing as described in the second proviso below, all the Owner-Trustee's rights in the Equipment shall thereupon terminate and all payments made by the Owner-Trustee or for its account may be retained by the Vendor as compensation for the use of the Equipment; provided, however, that if the Owner-Trustee, before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to the Vendor the total unpaid balance of the Conditional Sale Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Owner-Trustee; provided further, however, that if the Owner-Trustee, the Owner, the Lessee or any other persons notified under the terms of this paragraph object in writing to the Vendor within thirty (30) days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall not have given notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 16.

At any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon thirty (30) days' notice to

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

Any sale hereunder may be held or conducted at New York, New York, at such time or times as the Vendor may specify (unless the Vendor shall specify a different place or places, in which case the sale shall be held at such place or places as the Vendor may specify), on one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine, so long as such sale shall be conducted in a commercially reasonable manner. The Vendor, the Owner-Trustee or the Owner may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. The Owner, the Owner-Trustee and the Lessee shall be given written notice of such sale or the making of a contract for such sale not less than thirty (30) days prior thereto, by telegram or registered mail addressed as provided in Article 20 hereof. If such sale shall be a private sale (which shall be deemed to mean only a sale where an advertisement for bids has not been published in a newspaper of general circulation or a sale where less than forty (40) offerees have been solicited in writing to submit bids), it shall be subject to the

rights of the Owner-Trustee to purchase or provide a purchaser, within fifteen (15) days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. In the event that the Vendor shall be the purchaser of the Equipment, it shall not be accountable to the Owner-Trustee or the Lessee (except to the extent of surplus money received as hereinafter provided in this Article 16), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all or any part of sums due to the Vendor hereunder.

Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor except that the Vendor shall not be deemed to have the power or remedy to retain the Equipment in satisfaction of the Conditional Sale Indebtedness except as specifically provided in this Article 16. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgences duly granted to the Owner-Trustee or the Lessee shall not otherwise alter or affect the Vendor's right or the Owner-Trustee's obligations hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Owner-Trustee's obligations or the Vendor's rights hereunder with respect to any subsequent payments or default therein.

If, after applying all sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Owner-Trustee shall, subject to the limitations of the last paragraph of Article 4 and Article 21 hereof, pay the amount of such deficiency to the Vendor upon demand, together with interest thereon from the date of such demand to the date of payment at the rate per annum specified in Article 4 hereof as being applicable to amounts remaining unpaid after becoming due and payable, and, if the Owner-Trustee shall fail to pay such deficiency, the Vendor may bring suit

therefor and shall, subject to the limitations of the last paragraph of Article 4 hereof, be entitled to recover a judgment therefor against the Owner-Trustee. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Owner-Trustee.

The Owner-Trustee will pay all reasonable compensation and expenses, including reasonable attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable compensation and expenses, including reasonable attorneys' fees, and the amount thereof shall be included in such judgment. The foregoing provisions of this paragraph shall be subject to the limitations of the last paragraph of Article 4 and Article 21 hereof.

The foregoing provisions of this Article 16 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

ARTICLE 17. Applicable State Laws. Any provision of this Agreement prohibited by any applicable law or any jurisdiction shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Owner-Trustee to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

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

ARTICLE 18. Recording. Owner-Trustee will cause this Agreement, the Assignment, the Lease and the Lease Assignment, and any further assignments hereof or thereof and any amendments or supplements hereto or thereto to be filed and recorded as provided in § 15 of the Lease.

ARTICLE 19. Article Headings; Effect and Modification of Agreement. All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

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

ARTICLE 20. Notice. Any notice hereunder to any of the parties designed below shall be deemed to be properly served if delivered or mailed to it by registered mail, postage prepaid, at the following addresses:

(a) to the Owner-Trustee, at 79 South Main Street (Suite 310), Salt Lake City, Utah, 84111, Attention of Trust Division, Corporate Trust Department;

(b) to the Builder, as the Builder or as the Vendor, at its address specified in Item 1 of Annex A hereto;

(c) to the Owner, at One East Fourth Street, Cincinnati, Ohio, 45202, Attention of Allen L. Davis with a separate copy to Messrs. Keating, Muething & Klekamp, One East Fourth Street, Cincinnati, Ohio 45202, Attention of Richard D. Siegel;

(d) to the Lessee, at 40 Beaver Street, Albany, New York 12207, Attention of Vice President-Finance; and

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

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

ARTICLE 21. Immunities; Satisfaction of Undertakings. No recourse shall be had in respect of any obligation due under

this Agreement, or referred to herein, against any incorporator, stockholder, director or officer, as such, past, present or future, of the parties hereto, whether by virtue of any constitutional provision, statute or rule of law, or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of such incorporators, stockholders, directors or officers, as such, being forever released as a condition of and as consideration for the execution of this Agreement.

The obligations of the Owner-Trustee under the second, seventh and eighth paragraphs of Article 16 and under Articles 3, 6, 7, 8, 9, 10, 12 (other than the proviso to the last paragraph thereof), 13 and 18 hereof shall be deemed in all respects satisfied by the Lessee's undertakings contained in the Lease. The Owner-Trustee shall not have any responsibility for the Lessee's failure to perform obligations, but if the same shall not be performed or cured as permitted hereby, they shall constitute the basis for an event of default hereunder pursuant to Article 15 hereof. So long as any Conditional Sale Indebtedness remains outstanding, no waiver or amendment by the Owner-Trustee of the Lessee's undertakings under the Lease shall be effective unless joined in by the Vendor.

It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, undertakings and agreements herein made on the part of the Owner-Trustee are each and every one of them made and intended not as personal representations, undertakings and agreements by First Security State Bank, or for the purpose or with the intention of binding the said bank personally but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement, and this Agreement is executed and delivered by the said bank solely in the exercise of the powers expressly conferred upon the said bank as trustee under the Trust Agreement; and that no personal liability or personal responsibility is assumed by said bank or the Owner on account of any representation, undertaking or agreement hereunder of said bank acting in its capacity as Owner-Trustee, or the Owner either expressed or implied, except for their respective obligations under the proviso to the last paragraph of Article 12 hereof and subparagraph (a) of the third paragraph of Article 4 hereof; all such personal liability, if any being expressly waived

and released by the Vendor and by all persons claiming by, through or under the Vendor; provided, however, that the Vendor or any person claiming by, through or under the Vendor, making claim hereunder, may look to said Trust Estate for satisfaction of the same.

ARTICLE 22. Law Governing. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Utah; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303.

ARTICLE 23. Execution. This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. Although this Agreement is dated, for convenience, as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

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

BETHLEHEM STEEL CORPORATION,

by

\_\_\_\_\_  
Vice President

Attest:

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



FIRST SECURITY STATE BANK,  
not in its individual capacity,  
but solely as Owner-Trustee,

by

Attest:

COMMONWEALTH OF PENNSYLVANIA, )  
 ) ss.:  
COUNTY OF LEHIGH, )

On this \_\_\_\_\_ day of \_\_\_\_\_, 1980, before me personally appeared \_\_\_\_\_, to me personally known, who being by me duly sworn, says that he is a Vice President of Bethlehem Steel Corporation, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation and that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

\_\_\_\_\_  
Notary Public

(Notarial Seal)

My commission expires \_\_\_\_\_

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

On this 4<sup>th</sup> day of April, 1980, before me personally appeared John R. Sager, to me personally known, who, being by me duly sworn, says that he is an Authorized Officer of First Security State Bank, that one of the seals affixed to the foregoing instrument is the Corporate seal of said Corporation and that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

Bandy R. Maurant  
Notary Public

(Notarial Seal)

My commission expires 2-8-82

## SCHEDULE I

Allocation Schedule of Each 1,000,000  
of 14.5% Conditional Sale Indebtedness\*

<u>Payment Date</u>	<u>Debt Service</u>	<u>Interest Payment</u>	<u>Principal Repayment</u>	<u>Remaining Principal Balance</u>
6/1980	**	**	**	\$1,000,000.00
9/1980	\$41,102.88	\$36,250.00	\$ 4,852.88	995,147.12
12/1980	41,102.88	36,074.08	5,028.80	990,118.32
3/1981	41,102.88	35,891.79	5,211.09	984,907.23
6/1981	41,102.88	35,702.89	5,399.99	979,507.24
9/1981	41,102.88	35,507.14	5,595.74	973,911.50
12/1981	41,102.88	35,304.29	5,798.59	968,112.91
3/1982	41,102.88	35,094.09	6,008.79	962,104.12
6/1982	41,102.88	34,876.27	6,226.61	955,877.51
9/1982	41,102.88	34,650.56	6,452.32	949,425.19
12/1982	41,102.88	34,416.66	6,686.22	942,738.97
3/1983	41,102.88	34,174.29	6,928.59	935,810.38
6/1983	41,102.88	33,923.13	7,179.75	928,630.63
9/1983	41,102.88	33,662.86	7,440.02	921,190.61
12/1983	41,102.88	33,393.16	7,709.72	913,480.89
3/1984	41,102.88	33,113.68	7,989.20	905,491.69
6/1984	41,102.88	32,824.07	8,278.81	897,212.88
9/1984	41,102.88	32,523.97	8,578.91	888,633.97
12/1984	41,102.88	32,212.98	8,889.90	879,744.07
3/1985	41,102.88	31,890.72	9,212.16	870,531.91
6/1985	41,102.88	31,556.78	9,546.10	860,985.81
9/1985	41,102.88	31,210.74	9,892.14	851,093.67
12/1985	41,102.88	30,852.15	10,250.73	840,842.94
3/1986	41,102.88	30,480.56	10,622.32	830,220.62
6/1986	41,102.88	30,095.50	11,007.38	819,213.24
9/1986	41,102.88	29,696.48	11,406.40	807,806.84
12/1986	41,102.88	29,283.00	11,819.88	795,986.96
3/1987	41,102.88	28,854.53	12,248.35	783,738.61
6/1987	41,102.88	28,410.52	12,692.36	771,046.25
9/1987	41,102.88	27,950.43	13,152.45	757,893.80
12/1987	41,102.88	27,473.65	13,629.23	744,264.57

\* Interest payment to be calculated in accordance with Article 4 of the Conditional Sale Agreement.

\*\* Interest only on the Conditional Sale Indebtedness shall be payable to the extent accrued on this date.

<u>Payment Date</u>	<u>Debt Service</u>	<u>Interest Payment</u>	<u>Principal Repayment</u>	<u>Remaining Principal Balance</u>
3/1988	\$41,102.88	\$26,979.59	\$14,123.29	\$ 730,141.28
6/1988	41,102.88	26,467.62	14,635.26	715,506.02
9/1988	41,102.88	25,937.09	15,165.79	700,340.23
12/1988	41,102.88	25,387.33	15,715.55	684,624.68
3/1989	41,102.88	24,817.64	16,285.24	668,339.44
6/1989	41,102.88	24,227.30	16,875.58	651,463.86
9/1989	41,102.88	23,615.56	17,487.32	633,976.54
12/1989	41,102.88	22,981.65	18,121.23	615,855.31
3/1990	41,102.88	22,324.76	18,778.12	597,077.19
6/1990	41,102.88	21,644.05	19,458.83	577,618.36
9/1990	41,102.88	20,938.67	20,164.21	557,454.15
12/1990	41,102.88	20,207.71	20,895.17	536,558.98
3/1991	41,102.88	19,450.26	21,652.62	514,906.36
6/1991	41,102.88	18,665.36	22,437.52	492,468.84
9/1991	41,102.88	17,852.00	23,250.88	469,217.96
12/1991	41,102.88	17,009.15	24,093.73	445,124.23
3/1992	41,102.88	16,135.75	24,967.13	420,157.10
6/1992	41,102.88	15,230.69	25,872.19	394,284.91
9/1992	41,102.88	14,292.83	26,810.05	367,474.86
12/1992	41,102.88	13,320.96	27,781.92	339,692.94
3/1993	41,102.88	12,313.87	28,789.01	310,903.93
6/1993	41,102.88	11,270.27	29,832.61	281,071.32
9/1993	41,102.88	10,188.84	30,914.04	250,157.28
12/1993	41,102.88	9,068.20	32,034.68	218,122.60
3/1994	41,102.88	7,906.94	33,195.94	184,926.66
6/1994	41,102.88	6,703.59	34,399.29	150,527.37
9/1994	41,102.88	5,456.62	35,646.26	114,881.11
12/1994	41,102.88	4,164.44	36,938.44	77,942.67
3/1995	41,102.88	2,825.42	38,277.46	39,665.21
6/1995	<u>41,103.07</u>	<u>1,437.86</u>	<u>39,665.21</u>	0.00
	<u>\$2,466,172.99</u>	<u>\$1,466,172.99</u>	<u>\$1,000,000</u>	

## ANNEX A

to

## Conditional Sale Agreement

- Item 1: Bethlehem Steel Corporation, at Bethlehem, Pennsylvania 18016, attention of Manager of Railroad Products Sales.
- Item 2: The Equipment shall be settled for in one Group of units of Equipment, delivered to and accepted by the Owner-Trustee, on May 15, 1980, or on such other date fixed by the Lessee pursuant to Article 4 hereof, but in no case earlier than April 1, 1980.
- Item 3: The Builder warrants that the Equipment will be built in accordance with the requirements, specifications and standards set forth in Article 2 of this Agreement and warrants that the Equipment will be free from defects in material (except as to specialties incorporated therein which were specified or supplied by the Lessee and not manufactured by the Builder) and workmanship under normal use and service, the Builder's obligation under this Item 3 being limited to making good at its plant any part or parts of any unit of such Equipment which shall be returned to the Builder with transportation charges prepaid, within one year after the delivery of such unit to the Vendee, and which the Builder's examination shall disclose to its satisfaction to have been thus defective. EXCEPT FOR THE OBLIGATIONS AND LIABILITIES OF THE BUILDER UNDER ARTICLES 2, 3 AND 4 OF THIS AGREEMENT AND ITEM 4 OF THIS ANNEX A, THE FOREGOING WARRANTY OF THE BUILDER IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND OF ALL OTHER OBLIGATIONS OR LIABILITIES ON THE PART OF THE BUILDER, and the Builder does not assume or authorize any person to assume for it any other liability in connection with the construction and delivery of the Equipment except as aforesaid. It is further agreed that in no event shall the Builder be liable for indirect or consequential damages of any kind.

The Builder further agrees that neither the inspection as provided in Article 3 of this Agreement nor any examination nor the acceptance of any units of the Equipment as provided in said Article 3 shall be deemed a waiver or a modification by the Vendee of any of its rights under this Item 3.

Item 4: The Builder agrees (except in cases of articles or materials specified by the Lessee and not manufactured by the Builder and in cases of designs, systems, processes, formulae or combinations specified by the Lessee and not developed or purported to be developed by the Builder) to indemnify, protect and hold harmless the Vendee and, as third-party beneficiary hereof, the Lessee from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendee, the Lessee, or its or their assigns, because of the use in or about the construction or operation of any of such equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. Pursuant to § 9 of the Lease the Lessee likewise will indemnify, protect and hold harmless the Builder and the Vendor from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Builder and the Vendor because of the use in or about the construction or operation of any of the Equipment of any article or material specified by the Lessee and not manufactured by 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 Builder agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, assign, set over and deliver to the Lessee every claim, right and cause of action which the Builder has or hereafter shall have against the seller or sellers of any designs, systems, processes, formulae, combinations, articles or materials specified by the Lessee and purchased or otherwise acquired by

the Builder for use in or about the construction or operation of any of the Equipment on the ground that any such design, system, process, formula, combination, article or material or operation thereof infringes or is claimed to infringe on any patent or other right. The Builder further agrees to execute and deliver to the Lessee or the Vendee or the users of the Equipment all and every such further assurance as may be reasonably requested by the Lessee or the Vendee to more fully effectuate the assignment and delivery of every such claim, right and cause of action. The Builder will give notice to the Lessee of any claim known to the Builder as a result of which liability may be charged against the Lessee hereunder and the Vendee will give notice to the Builder of any claim known to the Vendee from which liability may be charged against the Builder hereunder. The undertakings set forth herein shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement or the satisfaction, discharge or the termination of this Agreement in any manner whatsoever.

- Item 5: The Maximum Purchase Price referred to in Article 4 of this Agreement is \$8,190,000.
- Item 6: The Maximum Conditional Sale Indebtedness referred to in Article 4 of this Agreement is \$5,323,500.

ANNEX B  
to  
Conditional Sale Agreement

<u>Type</u>	<u>Builder's Specification</u>	<u>Builder's Plant</u>	<u>Quantity</u>	<u>Estimated Unit Base Price</u>	<u>Estimated Total Base Price</u>	<u>Road Numbers Inclusive</u>	<u>Estimated Time and Place of Delivery</u>
52 foot, 6 inch standard GB Gondola cars	DF 3400-506	Johnstown, PA	200	\$40,000	\$8,000,000	D&H 15000- 15149 D&H 15200- 15249	March 27, 1980- April 23, 1980 F.O.B. Builder's Plant

*Rec No 11633  
(revised 4/8/80)*

Annex C to  
Conditional Sale Agreement

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[CS&M Ref: 5471-003]

LEASE OF RAILROAD EQUIPMENT

Dated as of February 15, 1980

Between

DELAWARE AND HUDSON RAILWAY COMPANY,  
as Lessee

and

FIRST SECURITY STATE BANK,  
not in its individual capacity  
but solely as Owner Trustee for  
THE PROVIDENT BANK,  
as Lessor

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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 February 15, 1980, between DELAWARE AND HUDSON RAILWAY COMPANY, a Delaware corporation ("the Lessee"), and FIRST SECURITY STATE BANK, a Utah banking corporation, not individually but solely as Owner Trustee (together with its successors and assigns, called the "Lessor") under a Trust Agreement dated as of the date hereof (the "Trust Agreement") with THE PROVIDENT BANK, an Ohio banking corporation, in its capacity as Owner (the "Owner").

The Lessor has entered into a Conditional Sale Agreement dated as of the date hereof (the "Conditional Sale Agreement" or "CSA") with Bethlehem Steel Corporation (the "Builder"), pursuant to which the Lessor has agreed or will agree to purchase and take delivery of the railroad equipment described in Schedule A hereto (the "Equipment").

The Lessee agrees to lease such number of units of Equipment as are delivered and accepted and settled for under the CSA at the rentals and for the term and upon the conditions hereinafter provided (a "Unit").

The Builder is assigning its interests in the CSA pursuant to an Agreement and Assignment (hereinafter called the "Assignment") to First Security Bank of Utah, N.A., acting as Agent (hereinafter together with its successors and assigns called the "Vendor") under a Participation Agreement dated as of the date hereof (the "Participation Agreement") among the Lessee, the Lessor, the Owner, the Agent and the party or parties named in Schedule A thereto (the "Investors").

The Lessor will assign certain of its rights under this Lease as security to the Vendor pursuant to an Assignment of Lease dated as of the date hereof (the "Lease Assignment") and the Lessee will consent to the Lease Assignment pursuant to a Consent and Agreement substantially in the form attached thereto (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:

SECTION 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 the Owner, 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, or entity the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency of or any bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor, the Owner or the Vendor for any reason whatsoever.

SECTION 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; provided,

however, that such acceptance shall be in accordance with the provisions of Article 3 of 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 hereof, such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease. The delivery, inspection and acceptance hereunder of any unit of Equipment excluded from the CSA pursuant to the second paragraph of Article 3 or 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. The Lessee hereby represents and warrants to the Lessor that no Unit shall be put into service earlier than the date of delivery to and acceptance by the Lessee or its agent as agent for the Lessor hereunder.

SECTION 3. Rentals. The Lessee agrees to pay to the Lessor, as rental for each Unit subject to this Lease, one interim payment and 60 consecutive quarterly payments payable in arrears. The interim payment for each Unit is payable on June 15, 1980 (such date being hereinafter called the "Basic Rent Commencement Date"). The 60 quarterly payments are payable on March 15, June 15, September 15 and December 15 in each year commencing September 15, 1980, to and including June 15, 1995 (each of such 60 consecutive dates being hereinafter called a "Rental Payment Date"). The 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 (as defined in the CSA) for such Unit to, but not including, the Basic Rent Commencement Date, times (b) .040277% of the Aggregate Purchase Price (as herein defined) of such Unit. The 60 quarterly rental payments shall each be in an amount equal to 3.23534% (the "Quarter-Annual Lease Factor") of the Aggregate Purchase Price of each Unit then subject to this Lease. The Aggregate Purchase Price of a Unit of the Equipment shall be an amount equal to the sum of the Purchase Price of such Unit (as defined in the CSA) and an amount expressed as a fraction of which the numerator

shall be the Transaction Expenses paid by the Owner pursuant to the Participation Agreement and the denominator shall be the number of units of Equipment subject to this Lease as of the Closing Date. At such time as the full amount of such Transaction Expenses are known to the Owner, but not later than the Closing Date, the Lessor shall deliver to the Lessee a certificate itemizing such Transaction Expenses. The rental payments hereinbefore provided and the Casualty Values (as defined in Section 7 hereof) are subject to adjustment pursuant to Section 16 hereof. Such rental payments shall in all events be in amounts at least equal to payments of principal and interest of the CSA Indebtedness (as defined in the CSA) due from the Lessor to the Vendor under the CSA on the corresponding Rental Payment Dates and such Casualty Values shall in all cases be in such amounts at least equal to the then outstanding principal amount of the CSA Indebtedness.

If any of the dates for the payment of rent 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 Salt Lake City, Utah, Cincinnati, Ohio, or New York, New York, are authorized or obligated to remain closed.

The Lessor irrevocably instructs the Lessee to make, and the Lessee agrees to make, all the payments (other than the payments under Section 6 and Section 16 hereof) provided for in this Lease including, but not limited to, the payments provided for in this Section 3 and Section 7 hereof, but excluding all payments not assigned to the Vendor pursuant to the Lease Assignment, (i) for so long as the CSA shall remain in effect at the principal office of the Vendor, for the account of the Lessor in care of the Vendor, with instructions to the Vendor (a) first, to apply such payments to satisfy the obligations of the Lessor under the Conditional Sale Agreement, and (b) second, so long as no event of default or event which, after the lapse of time or demand provided for in the CSA, or both, would 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 the Lessor shall specify in writing, and (ii) if the CSA shall no longer be in effect, 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., Salt Lake City time, on the date such payment is due.

SECTION 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 as determined by the Lessee's execution of a Certificate of Acceptance in the form of Schedule C hereto and, subject to the provisions of Sections 7, 10 and 13 hereof, shall terminate on the date on which the final payment of rent in respect thereof is due pursuant to Section 3 hereof. The obligations of the Lessee hereunder (including, but not limited to, the obligations under Sections 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 Section 12 hereof.

SECTION 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 words "OWNERSHIP SUBJECT TO A CONDITIONAL SALE AGREEMENT FILED WITH THE INTERSTATE COMMERCE COMMISSION", with appropriate changes thereof as from time to time may be required by law, in the opinion of the Vendor and the Lessor, in order to protect the Lessor's and the Vendor's title to and interest in such Unit and the rights of the Lessor under this Lease and the rights of the Vendor under the CSA. The Lessee will not place any such unit in operation or exercise any control or dominion over the same until such words shall have been so marked and will replace promptly any such markings which may be removed, defaced, obliterated or destroyed. The Lessee will not change or permit to be changed 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.

SECTION 6. Taxes. Whether or not any of the transactions contemplated hereby are consummated, the Lessee assumes responsibility for, and agrees to pay or caused to be paid, hold harmless and indemnify the Lessor (both in its individual and trust capacity), the Vendor, the Owner and the Investors and their successors and assigns (the "Indemnified Persons") and the trust estate held by the Lessor under the Trust Agreement and by the Vendor under the CSA and the Participation Agreement against, all local, state, Federal or foreign taxes, fees, withholdings, levies, imposts, duties, assessments, charges, license and registration fees and other governmental charges of any nature whatsoever, including, without limitation, penalties, fines or additions to tax and interest thereon, hereafter levied, imposed on, incurred by or asserted against any Indemnified Person or the Units or any part or portion thereof or the estate held by the Vendor under the CSA and the Participation Agreement on account of, or with respect to, this Lease, the CSA, the Lease Assignment, the Consent, or the Participation Agreement or any document referred to herein or therein or any of the transactions contemplated hereby or thereby or the manufacture, purchase, acquisition, acceptance or rejection of the Units or any part or portion, 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 (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"); provided, however, that there shall be no indemnification hereunder for (i) any Taxes imposed on or measured by any trustee or agency fees received by the persons who are the Lessor or the Vendor, (ii) Federal income taxes measured solely by net income or excess profits of the Lessor (in its individual capacity), the Owner, the Vendor or the Investors or (iii) Taxes measured solely by net income or excess profits of, and franchise taxes imposed on, the Lessor (in its individual capacity), the Owner or the Investors or their successors and assigns by the respective entity's state of incorporation or state where its principal place of business is located; provided, however, that, notwithstanding the preceding proviso, the Lessee will indemnify the Owner for any Taxes arising out of or imposed in respect of indemnification payments pursuant to this Lease or to the extent that indemnification is otherwise 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 the Lessee shall be under no obligation to pay such tax so long as the Lessee is contesting such tax in good faith by appropriate legal proceedings and the nonpayment thereof does not, in the reasonable opinion of the Lessor and the Vendor, adversely affect the title, property or interest of the Lessor or the Vendor, as the case may be, under this Lease. The Lessee will keep at all times all and every part of the Equipment free and clear of all taxes (other than those which are covered by the obligations of the Lessor set forth in the proviso to the last paragraph of Article 12 of the CSA) which might in any way adversely affect the title or interests of the Owner or Vendor or result in a lien upon any part of the Equipment.

In the event that the Lessor shall become obligated to make any payment to the Builder, the Investors, the Vendor or the estate held by the Vendor under the CSA and the Participation Agreement or otherwise pursuant to any corresponding provision of the CSA not covered by the foregoing paragraph of this § 6, or the Owner shall become obligated to make any payment to the Lessor pursuant to any correlative provision of the Trust Agreement, the Lessee shall pay such additional amounts (which shall also be deemed Taxes hereunder) to the Lessor as

will enable the Lessor or the Owner to fulfill completely its obligations pursuant to said provisions.

In the event any returns, statements or reports with respect to Taxes are required to be made, the Lessee will make such returns, statements and reports in such manner as to show the interest of the Lessor and the Vendor in the Units; provided, however, that the Lessor shall, with respect to any state or political subdivision thereof of the United States of America, file such returns, statements and reports relating to sales or use taxes, and taxes, fees and charges on or measured by the Lessor's earnings or gross receipts arising from the Units, or the value added by the Lessor thereto, as the Lessee shall determine are required to be filed, and as shall be prepared by the Lessee, and the Lessor shall remit the amount thereof upon payment by the Lessee to the Lessor (such payment to be made forthwith upon demand by the Lessor therefor) of such taxes, fees and charges except as provided above. All costs and expenses (including legal and accounting fees) of preparing such returns or reports shall be borne by the Lessee. 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 the Lessor's own name and on its behalf; provided, however, that the Lessee shall indemnify and hold the Lessor and the Owner 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, within thirty (30) days of filing or submission thereof, 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 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.

All the obligations of the Lessee under this § 6 shall survive and continue, notwithstanding payment of all amounts under the CSA and the termination of this Lease, but only with respect to periods included in the term of this Lease. The foregoing indemnities by the Lessee shall not constitute a guarantee by the Lessee or any subsidiary or affiliated corporation of the Lessee of the payment of any installments of principal or interest payable under the CSA, or a guarantee of any residual value of the Units following the expiration of the term hereof as such term may or may not be renewed.

SECTION 7. Maintenance; Casualty Occurrences; Insurance. The Lessee at its own expense will maintain and service each Unit and comply with a preventive maintenance schedule consistent with the Builder's then current preventive maintenance schedule and which will include testing, repair and overhaul of each Unit so that each Unit will remain (a) in as good operating condition as when delivered (ordinary wear and tear excepted), (b) in compliance with any and all applicable laws and regulations including, but not limited to, any applicable rules of the Association of American Railroads and regulations of the Interstate Commerce Commission and (c) suitable for immediate purchase or lease and use by a Class I line-haul railroad (not then or prospectively a debtor in any insolvency, bankruptcy 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 practices employed as of the date hereof by the Lessee for similar equipment owned by the Lessee.

The Lessee agrees to give the Lessor immediate

notice of any defect in any Unit which would give rise to a claim by the Lessor against the Builder pursuant to Article 13 of the CSA.

In the event that any Unit shall be or become lost, stolen, destroyed or irreparably damaged (excluding such damages resulting from Lessee's failure to maintain such unit in accordance with the provisions of this Lease), from any cause whatsoever, permanently returned to the Builder pursuant to any patent indemnity provision of the CSA, or taken or requisitioned by a 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 ninety (90) consecutive days (such occurrences being hereinafter called "Casualty Occurrences") prior to the return of such Unit in the manner set forth in § 11 or § 14 hereof, the Lessee shall promptly (but in any event within fifteen (15) days after such Casualty Occurrence) and fully notify the Lessor, the Owner and the Vendor with respect thereto. On the date for the payment of rent hereunder with respect to such Unit next succeeding the delivery of such notice the Lessee shall pay to the Lessor an amount equal to the Casualty Value (as hereinafter defined) of such Unit then due and payable, plus the rental payment or payments in respect of such Unit then due and payable on such Rental Payment Date. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft, complete destruction or permanent return to the Builder of such Unit) the Lessor shall be entitled to recover possession of such Unit. The Lessor hereby appoints the Lessee its agent (in a fiduciary capacity) to dispose of any Unit suffering a Casualty Occurrence or any component thereof, on such terms and conditions as the Lessor may agree to. 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. If any such Event of Default (or event which after notice or lapse of time or both would become an Event of Default) has occurred and is continuing, the Lessee shall promptly pay all such proceeds to

the Lessor. The Lessee shall be entitled to credit against the Casualty Value payable in respect of any Unit permanently returned to the Builder pursuant to any patent indemnity provision of the CSA an amount equal to any net patent indemnity payment in respect of such Unit made by the Builder to the Vendor under the CSA. The Lessee will pay all costs and expenses in connection with the sale of any Unit following a Casualty Occurrence.

The Casualty Value of each Unit as of the Basic Rent Commencement Date and as of any Rental Payment Date shall be that percentage of the Aggregate 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 or § 13 hereof and before such Unit shall have been returned in the manner provided in § 14 hereof, the Lessee shall promptly (but in any event within thirty (30) days of such Casualty Occurrence) and fully notify the Lessor with respect thereto and shall pay to the Lessor on the Rental Payment Date next succeeding such notice an amount equal to the Casualty Value of such Unit, which shall be an amount equal to 30% 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 be the fair market value of such Unit, as of the rental payment date on or next preceding the date of such Casualty Occurrence, as determined by the Lessor and the Lessee. 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 (in a fiduciary capacity) to dispose of any Unit suffering a Casualty Occurrence or any component thereof, on such terms and conditions as the Lessor may agree to. Provided that the Lessee has previously paid the Casualty Value to the Lessor and provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing, the Lessee shall be entitled to the proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Lessor.

In the event of the requisition (other than a requisition which constitutes a Casualty Occurrence) for use by the United States Government or 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 renewal thereof shall be paid over to, or retained by, the Lessee, provided no Event of Default (or other event which after notice of 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, at all times prior to the return of the Units to the Lessor, in accordance with the terms of this Lease (including the storage period provided under § 11 and § 14 hereof), 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. Such policies may be issued by or through Lloyd's of London; provided, however, that the amount of coverage under casualty insurance shall not, at any time, be less than the Casualty Value of the Equipment (with a deductible of not greater than \$250,000 per occurrence, subject to availability); provided further that, subject to availability the amount of coverage under public liability insurance shall not, at any

time, be less than \$20,000,000 (with a deductible not greater than \$250,000 per occurrence). All policies with respect to such insurance shall name the Lessor (both in its individual and fiduciary capacity), the Owner and the Vendor as additional name insureds and loss payees, as their interests may appear, shall provide for at least thirty (30) days' prior written notice to the Lessor, the Owner and the Vendor in the event of cancelation, shall include waivers by the insurer of all claims for premiums against the Lessor, the Owner and the Vendor during such thirty (30) day period, and shall include waivers of all subrogation rights with respect to the Lessor, the Owner and the Vendor. The Lessee shall, not later than April 1 of each year, commencing April 1, 1981, furnish to the Lessor, the Owner and the Vendor a certificate of an independent insurance broker acceptable to the Vendor and the Lessor evidencing the maintenance of the insurance required hereunder and shall furnish certificates evidencing renewal fifteen (15) days prior to the expiration date of such policy or policies. If the Lessor shall receive any insurance proceeds or condemnation payments in respect of a Unit suffering a Casualty Occurrence, the Lessor shall, subject to the Lessee's having made payment of the Casualty Value in respect of such Unit 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 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.

SECTION 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 Executive Officer, the Chief Operating Officer or the Chief Mechanical Officer of the Lessee or another 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) and (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and markings required by § 5 hereof have been preserved or replaced. No later than the last business day of April in each calendar year, commencing with the calendar year 1981, the Lessee will furnish to the Lessor and the Vendor a certificate dated no earlier than December 31 of the preceding calendar year of the Chief Mechanical Officer of the Lessee (i) setting forth the identification numbers of all Units as to which the Lessee is complying with the preventive maintenance schedule required by the first paragraph of § 7 of this Lease and are then in the condition required by clauses (a), (b) and (c) of the first paragraph of § 7 of this Lease, and (ii) setting forth the identification numbers of all Units as to which the Lessee is not complying with the preventive maintenance schedule required by § 7 of this Lease or which are not in such condition, together with a statement as to what repairs or other maintenance action are necessary to restore such Units to the condition required by § 7 hereof and a representation that Lessee will commence such necessary repairs or other maintenance action as soon as possible after furnishing such certificate. Upon expiration of such thirty (30) days, Lessee shall furnish Lessor with a statement as to whether or not such repairs or other maintenance action have commenced and when such repairs or other maintenance will be completed.

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

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 of 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.

SECTION 9. Disclaimer of Warranties; Compliance with Laws and Rules; Indemnification. NEITHER LESSOR NOR THE OWNER MAKES, HAS MADE NOR SHALL BE DEEMED TO MAKE, ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN COMPLIANCE WITH SPECIFICATIONS, OPERATION 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 THE LESSOR MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE OR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, OR AS TO THE LESSEE'S RIGHT TO QUIET ENJOYMENT THEREOF (EXCEPT AS TO ACTS OF THE LESSOR), OR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT OR ANY COMPONENT, EITHER UPON DELIVERY THEREOF TO THE LESSEE OR OTHERWISE, it being agreed that all such risks, as between the Lessor and the Lessee are to be borne by the Lessee; but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for the account of the Lessor and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Lessor may have against the Builder including, but not limited to, claims under the provisions of Items 3 and 4 of Annex A of the CSA; provided, however, that if at any time an Event of Default shall have occurred and be continuing, the Lessor may assert and enforce, at the Lessee's sole cost and expense, such claims and rights. The Lessor and the Owner shall have no responsibility or liability to the Lessee or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Units or by an 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 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 or the Owner based on any of the foregoing matters.

The Lessee agrees, for the benefit of the Lessor, the Owner 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, and with all lawful rules of the United States Department of Transportation, the Interstate Commerce Commission, the Association of American Railroads and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units (all such laws and rules to such extent hereinafter called "Applicable Laws"), to the extent that such Applicable Laws affect the title, operation or use of the Units, and in the event that, prior to the expiration of this Lease or any renewal thereof, any Applicable Laws require any alteration, replacement, addition or modification of or to any part on any Unit, the Lessee will fully conform therewith at its own expense; provided, however, that the Lessee may upon written notice to the Lessor and the Vendor, in good faith and at its own expense, contest the validity or application of any Applicable Laws in any reasonable manner which does not, in the reasonable opinion of the Lessor, the Owner or the Vendor, adversely affect the property or rights of the Lessor, the Owner or the Vendor, as the case may be, 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 as Lessee may deem desirable in the proper conduct of its business during the term of this Lease so long as such additions, modifications and improvements are readily removable without causing material damage to the Units and do not diminish the value, utility and condition of the Units below the value, utility and condition immediately prior to such additions, modification and improvements, assuming the Units were then in the condition required to be maintained by the terms of this Lease. 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, (ii) the cost of which is included in the Purchase Price of such Unit, (iii) in the course of ordinary maintenance of the Units (including, but not limited to, parts in replacement of or in substitution for, and not in addition to, any parts originally incorporated in or installed as part of such Unit at time of acceptance hereunder or any part in

replacement of, or substitution for, such replacement part) or (iv) which are required for the operation or use of such Unit by the regulations of the Interstate Commerce Commission, the United States Department of Transportation, the Association of American Railroads or any other regulatory body, shall constitute accessions to such Unit and full ownership thereof free from any lien, charge, security interest or encumbrance (except for those created by the CSA) shall immediately be vested in the Lessor.

The Lessee shall pay, and shall protect, indemnify and hold the Lessor (both individually and in its trust capacity), the Owner, the Investors and the Vendor, and their respective successor, assigns, agents and servants (hereinafter called "Indemnified Persons"), harmless from and against any and all causes of action, suits, penalties, claims, demands or judgments, or 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 manufacture, construction, purchase, acceptance, rejection, ownership, delivery, nondelivery, lease, possession, use, operation, condition, sale, return or other disposition of any Unit or portion thereof; (ii) any latent 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; (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 construction, ownership, use, replacement, adaptation or maintenance of the Units or of any other equipment in connection with the Units (whether owned or under the control of the Lessor, the Lessee or any other person) or resulting or alleged to result from the condition of any thereof; (vi) any violation, or alleged violation, (except by any Indemnified Person) of any provision of this Lease or of any agreement, law, rule, regulation, ordinance or restriction, affecting or applicable to the Units or the leasing, ownership, use, replacement, adaptation or maintenance thereof; (vii) any claim (other than for the payment of the principal and interest on the

Conditional Sale Indettedness (as defined in the CSA) arising out of the Vendor's holding a security interest under the CSA or the Lease Assignment; or (viii) any claim arising out of the Lease Assignment, the CSA or the Participation Agreement, except to the extent such claim arises from the gross negligence or wilful misconduct of the Lessor not related to the transactions contemplated by this Lease and the Participation Agreement (all such matters hereinafter referred to as "Indemnified Matters"). The Lessee shall be obligated under this § 9, irrespective of whether any Indemnified Person shall also be indemnified with respect to the same Indemnified Matter under any other agreement by any other person, and the Indemnified Person seeking to enforce the indemnification may proceed directly against the Lessee under this § 9 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 Indemnified Matter, the Lessee may and, upon such Indemnified Person's request, will at the Lessee's expense resist and defend such action, suit or proceeding, or cause the same to be resisted or defended by counsel selected by the Lessee and approved by such Indemnified Person, as the case may be, and, 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 deduction, 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 (and in any event within fifteen (15) days of obtaining knowledge thereof) written notice of any Indemnified Matter. 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, the Lessee shall be subrogated to any right of such Indemnified Person in respect of the Indemnified Matter. In the event the Lessee does become

so subrogated, such Indemnified Person will reasonably cooperate with the Lessee in Lessee's efforts against third parties to recover any payment made for any Indemnified Matter. Any payments received by such Indemnified Person from any person (except the Lessee) as a result of any Indemnified 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 Owner 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 Owner 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 under the CSA.

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 indemnities contained in this § 9 shall survive the full payment and performance of all obligations and 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 Persons. None of the indemnities in this § 9 shall be deemed to create any rights of subrogation in any insurer or third party against the Lessee or the Lessor therefor, from or under any Indemnified Person, whether because of any claim paid or defense provided for the benefit thereof or otherwise. The foregoing indemnities by the Lessee shall not constitute a guarantee by the Lessee of the payment of any installments of principal or interest

payable under the CSA or a guarantee of the residual value of the Equipment following the expiration of the term hereof as such term may or may not be renewed.

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

(A) default shall be made in payment of (i) any amount provided for in § 3, 7 or 13 hereof or (ii) any other amounts due hereunder when due and such default shall continue for five days; or

(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; or

(C) the Lessee shall operate or permit the operation of any of the Units without maintaining the insurance policies required by § 7 hereof; or

(D) 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 thirty (30) days after written notice from the Lessor or the Vendor to the Lessee specifying the default and demanding that the same be remedied; or

(E) a petition for reorganization under Title 11 of the United States Code, as now constituted or as may hereafter be amended, shall be filed by or against 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 Lessee under this Lease and the Consent (as defined in the CSA) 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

(F) any other proceeding shall be commenced by or against Lessee for any relief which includes, or might result in, any modification of the obligations of 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 Lessee hereunder or under the Consent), 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 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 Lessee, or for the property of 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 a trustee or trustees or receiver or receivers, within 60 days after such proceedings shall have been commenced;

then, in any such case, 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, but not limited to, net after-tax losses of Federal and state income tax benefits to which the Lessor 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 pro-

vided; and thereupon the Lessor may by its agents, subject to compliance with all mandatory requirements of law, enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess, sell, operate, lease to others and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever and without any duty to account to the Lessee for such action or inaction or for any proceeds arising therefrom; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee as damages for loss of the bargain and not as a penalty whichever of the following amounts the Lessor in its sole discretion, shall specify: (x) a sum with respect to each Unit which represents the excess of (1) the present value, at the time of such termination, of the entire unpaid balance of all rentals for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit, over (2) the then present value of the rentals which the Lessee reasonably estimates to be obtainable for the Unit during such period, such present value to be computed on the basis of a 6% per annum discount, compounded quarterly from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated together with any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Lessor shall have sustained by reason of the breach of any covenant, representation or warranty of this Lease other than payment of rental, 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 (after deduction of all estimated expenses of sale) 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 clause (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.

No failure by the Lessor to exercise, and no delay by the Lessor in exercising, any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege by the Lessor preclude any other or further exercise thereof, or

the exercise of any other right, power or privilege.

SECTION 11. Return of Units upon Default. If this Lease shall terminate pursuant to § 10 hereof, the Lessee shall forthwith deliver or cause to be delivered possession of the Units to the Lessor and shall give or cause to be given prompt telegraphic and written notice to the Association of American Railroads and all railroads having possession of any Unit to return such Units. Each Unit returned to Lessor under this § 11 shall be (i) in the condition required by clauses (a), (b) and (c) of the first sentence of § 7 hereof and (ii) meet the standards then in effect under the Interchange Rules of the Association of American Railroads, if applicable, or such comparable standards as may then be in effect. For the purpose of delivering possession, the Lessee shall:

(a) forthwith and in the usual manner cause such Units to be transported to such location as shall reasonably be designated by Lessor and there assembled;

(b) furnish and arrange for the Lessor to store such Units on any lines of railroad or premises approved by Lessor 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

(c) cause the Units to be moved to such interchange point or points as shall be designated by the Lessor upon any sale, lease or other disposal of all or any of the Units.

The assembling, delivery, storage, insurance and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and, upon application to any court of equity having jurisdiction, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, 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, maintain insurance on the Units (to the same extent as provided in § 7 hereof) and will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective pur-

chaser, lessee or user of any such Unit, to inspect the same during reasonable business hours. All rent and per diem charges and other revenues of whatsoever kind and nature 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.

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-in-fact 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.

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

So long as (i) no Event of Default hereunder shall have occurred, (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; provided that the Lessee shall use its best efforts not to use or permit the use of any unit of Equipment outside of the United States of America; and provided further that the Lessee shall not assign or transfer its leasehold interest.

The Lessee agrees that at all times during the term of this Lease, the Units will be used in a manner so as to constitute rolling stock of a domestic railroad corporation subject to Part I of the Interstate Commerce Act or any successor provision within the meaning of Section 48(a)(2)(B)(ii) of the Internal Revenue Code of 1954, as amended (the "Code"). The Lessee further agrees that it will not permit the use of the Units by any person in whose hands such Units would not qualify as "section 38 property" within the meaning of the Code.

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 Owner or the Vendor or resulting from claims against the Lessor, the Owner 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.

SECTION 13. Renewal and Fair Market 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 (i) 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 one five-year period commencing on the scheduled expiration of the original term of this Lease. Such extended term shall be on the same terms and conditions as are contained in this Lease, except as to the amount of the rentals which shall be at a "Fair Market Rental" (as such term is defined in § 13) payable quarterly in arrears, and except as to applicable Casualty Values, which shall be agreed upon between the Lessor and the Lessee at the time of such extension.

Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, and provided further that the Lessee has not notified the Lessor of its intention to extend the term of this Lease pursuant to the first paragraph of this § 13, at the expiration of the original or the extended term of this Lease, the Lessee shall have the right to purchase all but not less than all of the Units then leased hereunder at a price equal to the Fair Market Purchase Price of such Units (as hereinafter defined). The Lessee shall give the Lessor written notice at least 180 days prior to the end of the original or extended term of this Lease (as the case may be) of its election to exercise the purchase option provided for herein. In the event that the Lessee shall have delivered a notice of its election to purchase such Units, this Lease (including the obligations 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.

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 a five-year 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 and the cost of returning the Units to the condition required hereunder 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 its right of first refusal, 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 the Fair Market Purchase Price, as the case may be (and, in the case of the renewal term, the 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 expenses of the appraisal procedure shall be borne equally by the Lessee and the Lessor.

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

SECTION 14. Return of Units upon Expiration of Lease Term. As soon as practicable on or after the expiration of the original or the extended term of this Lease with respect to any Unit and in any event not later than ninety (90) days after termination, the Lessee will, at its own cost and expense, at the request of the Lessor, assemble the Units and deliver possession of such Units to the Lessor upon such storage track location of the Lessee or an affiliate of the Lessee as the Lessor may designate, and permit the Lessor to store such Unit on such track location for a period not exceeding 180 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 180-day period, to any reasonable place on the lines of railroad operated by the Lessee, or to any connecting carrier for shipment, within 1,000 miles of such storage track location, 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; 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 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 termination to the date such Unit is placed in storage an amount equal to .040277% of the Purchase Price of such Unit; provided, however, that if any Unit has not suffered a Casualty Occurrence prior to six (6) months after the termination of this Lease and such Unit has not been transported within six (6) months after the termination of this Lease, Lessee shall pay to Lessor an amount equal to the greater of (i) the Casualty Value of such Unit as of such payment date, or (ii) the Fair Market Value of such Unit as of the date this lease terminated, assuming such Unit had not suffered a Casualty Occurrence and was in the condition required to be maintained by the terms of this Lease. If the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Value of such Unit, such value shall be determined in accordance with the appraisal procedure provided for in the third paragraph of § 13 hereof.

SECTION 15. Recording. The Lessee, at its own expense, will cause this Lease, the CSA, the Lease Assignment, the Assignment and any assignment thereof or hereof to be filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303. The Lessee from time to time will do and

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

SECTION 16. Federal Income Taxes. This Lease has been entered into on the basis that an opinion of the Independent Appraiser of the Lessee to the effect described in subsection (iv) of paragraph 8 of the Participation Agreement will be provided to the Owner; and that the Owner, as the beneficial owner of each Unit, shall be entitled to such deductions, credits and other benefits provided by the Code to an owner of property, including, without limitation, (a) deductions for depreciation of each Unit under section 167 of the Code computed on the basis (i) that each Unit will have a basis under section 167(g) of the Code at least equivalent to the Purchase Price of such Unit, (ii) initially of the declining balance method, using a rate equal to 200% of the straight line rate, switching to the sum of the years-digits method authorized by section 167(b)(3) of the Code in the year in which such switch will result in a greater depreciation deduction than would be available under the declining balance method, without obtaining the consent of the Commissioner of Internal Revenue in accordance with Treasury Regulation § 167(a)-11(c)(1)(iii), (iii) of the asset depreciation range and class life system permitted by section 167(m) of the Code and Treasury Regulation § 1.167(a)-11(a)(1), (iv) of an asset depreciation period of 12 years, (v) of a net salvage value of zero after the reduction permitted by section 167(f)(1) of the Code and (vi) that the Units of Equipment shall be treated as having been placed in service on the respective dates on which they are accepted and delivered under this Lease and the CSA (hereinafter called the ADR Deductions), (b) deductions with respect to interest

payable on the Conditional Sale Indebtedness (hereinafter called the Interest Deductions) and (c) investment credit pursuant to section 38 of the Code at least equal to 10% of the aggregate Purchase Price of each Unit (hereinafter called the Investment Credit). This Lease has also been entered into on the assumption that (1) for Federal income tax purposes all amounts includible in the gross income of the Owner with respect to the Equipment and all deductions allowable to the Owner with respect to the Equipment will be treated as derived from, or allocable to, sources within the United States, (2) for purposes of computing the ADR Deductions with respect to the Equipment for the calendar year in which the Units of Equipment were first placed in service, the Owner will be entitled to elect and will elect the half-year convention and (3) the Federal rate of tax imposed on taxable income of corporations in excess of \$100,000 will be 46% through the date of acceptance of the last Unit of Equipment to be accepted pursuant to the Security Document and this Lease.

The Lessee agrees that neither it nor any corporation controlled by it, in control of it, or under common control with it, directly or indirectly, will at any time take any action or file any returns or other documents inconsistent with the foregoing.

The Lessee represents and warrants that (i) all of the Units constitute property the entire Purchase Price of which qualifies for the Investment Credit under section 50 of the Code as it is now constituted; (ii) at the time the Lessor becomes the owner of the Units, the Units will constitute "new section 38 property" within the meaning of section 48(b) of the Code and at the time the Owner-Trustee becomes the owner of the Units, the Units will not have been used or placed in service by any person so as to preclude "the original use of such property" within the meaning of sections 48(b) and 167(c)(2) of the Code; (iii) at all times during the original term of this Lease and all renewal terms, each Unit will constitute "section 38 property" within the meaning of section 48(a) of the Code; and (iv) at all times during the original term of this Lease and the renewal period, the Owner will be entitled to treat, for Federal income tax purposes, each item of income, deduction and credit relating to all Units subject to this Lease as being derived from, or allocable to, sources within the United States.

If, for Federal income tax purposes, as a result of

any reason whatsoever, but excluding any of the specific occurrences or events specified in the eighth paragraph of this § 16, (a) the Owner shall not be entitled to, shall suffer a disallowance or recapture of, shall lose the benefit of, or shall lose the right to claim (including a good faith determination based upon the opinion, to be obtained at the cost of the Lessee, of independent tax counsel of the Owner approved by the Lessee ("Special Tax Counsel"), which approval shall not be unreasonably withheld, that such claim is not allowable), all or any portion of the Investment Credit, the ADR Deductions or the Interest Deductions or (b) any item of income, deduction or credit with respect to the Equipment shall not be treated as derived from, or allocable to, sources within the United States (any such event described in clause (a) or (b) of this paragraph being hereinafter called a Loss), then the Lessee, at Owner's option, after receiving written notice from the Owner of such Loss together with a certificate of an officer of the Owner setting forth in reasonable detail the computations and methods used in calculating such Loss and the amount or amounts of the payments required to be made pursuant to clause (i) or (ii) below (such notice and certificate being hereinafter collectively called the Net Economic Return Notice), shall either (i) commencing with the next rental payment date occurring more than thirty (30) days after receipt by the Lessee of the Net Economic Return Notice, which Net Economic Return Notice may not be delivered more than thirty (30) days prior to payment by the Owner of the tax which becomes due as a result of the Loss, increase the rental payments under this Lease over its remaining term by an amount as shall cause the Owner's after tax economic yield computed on the same assumptions, including tax rates, and utilizing the same methods as were utilized by the Owner in originally evaluating the transaction contemplated by the Participation Agreement (such economic yield called Net Economic Return) to equal the Net Economic Return that would have been realized by the Owner if such Loss had not occurred, such increase in the rental payments to be made directly to the Owner, or (ii) within thirty (30) days of receipt of the Net Economic Return Notice, pay to the Owner in lump sum the amount as shall, in the reasonable opinion of the Owner, be required to provide the Owner with the Net Economic Return that would have been realized by the Owner if such Loss had not occurred. If the option under (ii) above is specified by Owner, then to the extent any Loss results in a later benefit to the Owner which has not been taken into account in determining the lump-sum payment, payment will be made to the Lessee at the time such

benefit is realized; provided, however, that the Owner shall not be obligated to make any payment pursuant to this sentence to the extent that the amount of such payment would exceed (x) the amount of all prior payments by the Lessee to the Owner pursuant to the option specified in (ii) above in respect of a Loss less (y) the amount of all prior payments by the Owner to the Lessee hereunder, and the amount by which such payment would exceed such amounts shall reduce pro tanto any subsequent obligation of the Lessee to make any payments to the Owner pursuant to (ii) above. The adjustments required to be made pursuant to this paragraph shall be made by the Owner and shall be computed using the same method and the same assumptions as were utilized by the Owner in originally evaluating the transaction except for the assumption that has resulted in such adjustments.

In the event that the Owner suffers a Loss and the Owner and the Lessee are unable to agree, within sixty (60) days following the Lessee's receipt of a Net Economic Return Notice, on the indemnity amount or amounts required to restore the Owner's Net Economic Return, then the Lessee shall pay in a lump sum within thirty (30) days after expiration of said sixty (60)-day period, such amount as shall, in the reasonable opinion of the Owner (regardless of whether the Lessee agrees therewith) be required to provide the Owner with the Net Economic Return that would have been realized by the Owner if such Loss had not occurred.

If there is any amendment to, or change in, the Code or any regulation thereunder which is effective on or prior to the acceptance of the last Unit of Equipment to be accepted pursuant to the CSA and this Lease, and if such amendment or change affects the privilege of the Owner to file consolidated Federal, state and local income tax returns with corporations affiliated with it, or the Federal rate of tax on the taxable income of corporations, then the amounts of rentals and the Casualty Values under this Lease will be appropriately adjusted by such amount or amounts as shall, in the reasonable opinion of the Owner, cause the Owner's Net Economic Return to equal the Net Economic Return that would have been realized by the Owner if such amendment or change had not occurred; provided, however, that the rentals and Casualty Values, as so adjusted, shall not be less than amounts sufficient to satisfy the obligations of the Lessor under the CSA.

Any late payment by any party hereto of any of its

obligations under this § 16 shall result in the obligation on the part of such party promptly to pay an amount equal to interest at the rate per annum equal to 18% compounded quarterly on the overdue payment computed in accordance with § 17 of this Lease.

Notwithstanding anything to the contrary set forth hereinabove, no amount shall be payable as an indemnity hereunder to the Owner in respect of any Loss to the extent such Loss is the result of any of the following on the part of the Owner:

(i) a voluntary transfer or voluntary disposition (whether prior to, during or after the term of this Lease, but not including a transfer or disposition as a result of a Casualty Occurrence) of any Units or of the interest of the Owner in any Units or the rentals under this Lease, or any transfer or disposition of any Units or of the interest of the Owner in any Units or the rentals under this Lease, whether voluntary or involuntary, which results from bankruptcy or other proceedings for the relief of debtors in which the Owner is the debtor, unless, in each case, such transfer or disposition is made (A) after an Event of Default, as defined in § 10 of this Lease, has occurred and is continuing; (B) in connection with any alteration, modification or addition to any Unit; or (C) with the consent of the Lessee;

(ii) the failure of the Owner to claim in a timely manner the Investment Credit, the ADR Deductions (including making all appropriate elections under the applicable Income Tax Regulations), the Interest Deductions or any foreign tax credit or to make a timely election, if permitted by the Code, to treat income and deductions with respect to the Equipment as derived from, or allocable to, sources within the United States, unless Special Tax Counsel of the Owner shall have given its opinion to the Owner that such claim is not allowable;

(iii) the failure of the Owner to have sufficient liability for Federal income tax against which to credit Investment Credit or foreign tax credit or sufficient income to benefit from the ADR Deductions or the Interest Deductions, as applicable;

(iv) a change in the form or type of organization or

the taxable status of the Owner or any successor or transferee of the Owner;

(v) a Casualty Occurrence with respect to a Unit, if the Owner-Trustee shall have received all amounts required to be paid in respect of such Casualty Occurrence under this Lease.

If at the conclusion of an audit the Owner receives a preliminary or "30-day" letter from the Internal Revenue Service proposing an adjustment in any item claimed in accordance with the fourth paragraph of this § 16 on a tax return or refund claim of the Owner for which the Lessee would be required to indemnify the Owner pursuant to this § 16 and the amount of the indemnity which the Lessee would be required to pay would exceed \$100,000 or, in the good faith of the Lessee, the adjustment would have a substantial and continuing precedental adverse effect on the Lessee or the railroad industry and the Lessee so advises the Owner in writing, then, if requested by the Lessee in a timely written request, the Owner shall request an opinion from Special Tax Counsel of the Owner as to whether the basis in law and in fact in favor of allowance of the item proposed to be adjusted outweighs the basis in law and in fact to the contrary. If the opinion is to that effect and if the Lessee promptly requests the Owner to do so, the Owner shall contest the proposed adjustment; provided, however, that Special Tax Counsel of the Owner shall determine the nature of all action to be taken to contest such proposed adjustment including (A) whether any action to contest such proposed adjustment shall initially be by way of judicial or administrative proceedings, or both, (B) whether any such proposed adjustment shall be contested by resisting payment thereof or by paying the same and seeking a refund thereof, and (C) if the Owner shall undertake judicial action with respect to such proposed adjustment, the court or other judicial body before which such action shall be commenced. The Owner shall have full control over any contest pursuant to this paragraph and shall not be obligated to appeal an adverse determination by any court if the Owner shall have obtained an opinion from its Special Tax Counsel that the basis in law and in fact in favor of a favorable outcome in the event such determination is appealed outweighs the basis in law and in fact to the contrary. At any time, whether before or after commencing to take the action set forth in this paragraph, the Owner may decline to take such action by notifying the Lessee in writing that the Lessee is relieved of its obligation to

indemnify the Owner with respect to the adjustment proposed by the Internal Revenue Service or such portion thereof as may be specified in such notice.

The Owner shall not be required to take any action pursuant to the preceding paragraph unless and until the Lessee shall have agreed to indemnify the Owner in a manner reasonably satisfactory to the Owner for any liability or loss which the Owner may incur as a result of contesting the validity of any proposed adjustment and shall have agreed to pay to the Owner on demand all costs and expenses which the Owner may incur in connection with contesting such proposed adjustment (including reasonable fees and disbursements of counsel selected by the Owner). If the Owner determines to contest any adjustment by paying the additional tax and suing for a refund, the Lessee shall have paid to the Owner an amount equal to the sum on an after-tax basis of any tax, interest, penalties and additions to tax which are required to be paid. Upon receipt by the Owner of a refund of any amounts paid by it based on the adjustment in respect of which amounts it shall have been paid an equivalent amount by the Lessee, the Owner shall pay to the Lessee the amount of such refund together with any interest received by it on such amount, and if such refund is not taxable income to the Owner, and if payment under this or the preceding paragraph to the Lessee is deductible by the Owner for Federal income tax purposes, then the Owner shall also pay to the Lessee the amount by which the Owner's taxes are reduced as the result of such deduction; provided, however, that in no event shall the total amount paid to the Lessee pursuant to this or the preceding paragraph with respect to a particular refund exceed the amount paid by the Lessee to the Owner in connection with the payments made pursuant to the immediately preceding sentence to which such refund relates.

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.

If the Owner is required by the Internal Revenue Service to include in its gross income an amount in respect of any improvement and/or addition to such Unit of Equipment made by the Lessee, title to which vests in the Owner or the Lessor (which amounts are hereinafter called Capital Expenditures), then the Lessee shall pay directly to the Owner, as

an indemnity, in immediately available funds, such amount or amounts which, after deduction of all taxes required to be paid by the Owner in respect of the receipt of such amounts under the laws of any Federal, state or local government or taxing authority of the United States, shall be equal to the sum of the aggregate additional Federal, state or local income taxes payable by the Owner from time to time as a result of such Capital Expenditure plus the amount of any interest, penalties or additions to tax payable as a result of any such Capital Expenditure (less any Federal, state or local tax benefits resulting from payment of any amounts reimbursed hereunder). If as a result of any such Capital Expenditure the aggregate Federal, state or local income taxes paid by the Owner for any taxable year shall be less than the amount of such taxes which would have been payable by the Owner had no such Capital Expenditure been made, then the Owner shall pay the Lessee the amount of such savings in taxes plus any additional tax benefits realized by the Owner as a result of such payment; provided, however, that the Owner shall not be obligated to make any payment pursuant to this sentence to the extent that the amount of such payment would exceed (x) the amount of all prior payments by the Lessee to the Owner pursuant to this paragraph in respect of any Capital Expenditures less (y) the amount of all prior payments by the Owner to the Lessee hereunder, and the amount by which such payment would exceed such amount shall reduce pro tanto any subsequent obligation of the Lessee to make any payments to the Owner pursuant to the first sentence of this paragraph. The amount payable to the Owner pursuant to this paragraph shall be paid within thirty (30) days after receipt of the written demand therefor from the Owner (but not prior to payment by the Owner of the additional Federal, state or local income tax, as the case may be, which becomes due as a result of the said inclusion) accompanied by a written statement describing in reasonable detail such inclusion and the computation of the amount so payable. Any payment due to the Lessee from the Owner pursuant to this paragraph shall be paid within thirty (30) days after the Owner realizes any such savings in its income of any amount with respect to a Capital Expenditure to the extent, and under the circumstances, set forth in the eighth and ninth paragraphs of this § 16.

The Lessee agrees to give the Owner, within thirty (30) days after request therefor, written notice describing in reasonable detail Capital Expenditures made and specifying the cost thereof with respect to each Unit of Equipment if such information is required in connection with an audit by

the Internal Revenue Service of the tax returns of the Owner.

In the event that any indemnity payments are required to be made by the Lessee, or in the event the amount of rentals under this Lease are adjusted, pursuant to any paragraph of this § 16, the damages and amounts set forth in § 10 of the Lease and the applicable Casualty Value percentages set forth in Schedule B to this Lease shall be appropriately adjusted by the Owner (but in no event shall the applicable Casualty Values be reduced below the amounts required to satisfy the obligations of the Lessor under the CSA). The adjustments required to be made pursuant to this paragraph shall be made by the Owner and shall be computed using the same method and the same assumptions, including, without limitation, tax rates, as were utilized by the Owner in originally evaluating this transaction except for the assumption that has resulted in such adjustment. In connection therewith, the Owner shall provide the Lessee with a certificate of an officer of the Owner setting forth in reasonable detail the figures and methods used in making such calculations. In the case of any such adjustments in the damages and amounts set forth in § 10 of this Lease and the applicable Casualty Value percentages set forth in Schedule B to this Lease, if any payment of such damages, amounts or Casualty Values shall have been made prior to the adjustments made pursuant to this paragraph, (a) the Lessee shall pay to the Owner the excess amount which would have been payable on the due date of such payment by reason of the adjustments pursuant to this paragraph or (b) the Owner shall pay to the Lessee the amount of such payments in excess of the amount of such payments which would have been payable by reason of the adjustments pursuant to this paragraph. The Lessee's and the Owner's agreements to pay any sums which may become payable pursuant to this § 23 shall survive the expiration or other termination of this Lease.

The liability of the Lessee to make indemnification payments pursuant to this § 16 shall, notwithstanding any expiration or termination of this Lease, continue to exist until such indemnity payments are made by the Lessee. All indemnity payments under this § 16 shall be made directly to the Owner.

SECTION 17. Interest on Overdue Rentals. Anything

contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay, to the extent legally enforceable, an amount on the overdue rentals and other obligations for the period of time during which they are overdue at a rate per annum equal to 18%, 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 for the actual days elapsed from the date due.

SECTION 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 79 South Main Street, Salt Lake City, Utah 84111, Attention of Trust Division, Corporate Trust Department, with a copy to the Owner at its address set forth in the Participation Agreement; and

(b) if to the Lessee, at 40 Beaver Street, Albany, New York 12207, Attention of Vice President-Finance;

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 79 South Main Street, Salt Lake City, Utah 84111, Attention of Corporate Trust Department.

SECTION 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 and completely states the rights of the Lessor and the Lessee with respect to the leasing of the Units and supercedes 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 signatures for the Lessor and the Lessee.

SECTION 20. Immunities; No Recourse. It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, undertakings and agreements herein made on the part of the Lessor are each and every one of them made and intended not as personal representations, undertakings and agreements by the Lessor, or for the purpose or with the intention of binding the Lessor 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 Lessor solely in the exercise of the powers expressly conferred upon the Lessor as trustee under the Trust Agreement; and that no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against the Lessor or the Owner (except as provided in the last paragraph of Article 12 of the CSA and Sections 1.03 and 3.04 of the Trust Agreement) on account of any representation, undertaking or agreement herein of the Lessor, either expressed or implied, all such personal liability, if any, being expressly waived and released by the Lessee and by all persons claiming by, through or under the Lessee.

SECTION 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. It shall not be necessary that any counterpart be executed by both parties hereto as long as each party shall have executed one counterpart hereof and delivered it to the other party. Although for convenience this Lease is dated as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

SECTION 22. Lessor's Right To Perform. If the Lessee fails to perform or comply with any of its agreements contained herein, the Lessor may upon notice to the Lessee itself perform or comply with such agreement, and the amount of the reasonable cost and expenses of the Lessor incurred in connection with such performance or compliance, together with interest on such amount at the rate per annum specified in

§ 17 hereof, shall be payable by the Lessee upon demand except as otherwise provided in this Lease. No such performance or compliance by the Lessor shall be deemed a waiver of rights and remedies of the Lessor or any assignee of the Lessor against the Lessee hereunder.

SECTION 23. Law Governing. The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of New York; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303 and such additional rights arising out of the filing or deposit hereof, if any, and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Lease or any assignment hereof shall be filed or deposited.

SECTION 24. Obligations of Lessor Under CSA; Additional Rentals; Expenses. In the event that the Lessor shall become obligated to make any payment (other than payments in settlement for the Purchase Price for any Unit, payments of the principal of or interest on the Conditional Sale Indebtedness in respect thereof pursuant to the CSA and payments made pursuant to the proviso to the third paragraph of Article 12 thereof) or to perform any obligations pursuant to the CSA not covered by the provisions of this Lease, the Lessee shall pay such additional rentals hereunder and perform such obligations so that all of the Lessor's obligations (other than as aforesaid) pursuant to the CSA shall be fully complied with, without regard for any limitation of liability of the Lessor contained in the CSA.

The Lessee shall pay all reasonable fees, costs and disbursements of the Vendor and the Owner-Trustee in performing their duties under the terms of this Lease, the Trust Agreement, the Assignment, the Participation Agreement, or any other agreement to which they are a party relating to the Units.

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

DELAWARE AND HUDSON RAILWAY  
COMPANY,

by \_\_\_\_\_

[Corporate Seal]

Attest:

\_\_\_\_\_

FIRST SECURITY STATE BANK,  
not individually but solely as  
Owner-Trustee,

by

[Corporate Seal]

\_\_\_\_\_

Attest:

\_\_\_\_\_



## SCHEDULE A TO LEASE

Description of Equipment

<u>Type</u>	<u>Manufacturer</u>	<u>Quantity</u>	<u>Lessee's Identifi- cation Numbers</u>
52 foot, 6 inch, Standard GB Gondola Cars	Bethlehem Steel	200	D&H 15000- 15149 D&H 15200- 15249

## SCHEDULE B TO LEASE

Casualty Values

<u>Rental Payment Date</u>	<u>Percentage of Aggregate Purchase Price</u>
June 15, 1980	109.608100
September 15, 1980	110.127260
December 15, 1980	110.583850
March 15, 1981	110.977860
June 15, 1981	111.309290
September 15, 1981	111.578150
December 15, 1981	111.784440
March 15, 1982	111.928150
June 15, 1982	112.009290
September 15, 1982	112.027850
December 15, 1982	111.983830
March 15, 1983	111.877240
June 15, 1983	111.708080
September 15, 1983	111.476340
December 15, 1983	111.182030
March 15, 1984	110.825140
June 15, 1984	110.405670
September 15, 1984	109.923630
December 15, 1984	109.379020
March 15, 1985	108.771830
June 15, 1985	108.102070
September 15, 1985	107.369730
December 15, 1985	106.574810
March 15, 1986	105.717320
June 15, 1986	104.797260
September 15, 1986	103.814620
December 15, 1986	102.769400
March 15, 1987	101.661610
June 15, 1987	100.491250
September 15, 1987	99.258312
December 15, 1987	97.962799
March 15, 1988	96.604710
June 15, 1988	95.184047
September 15, 1988	93.700808
December 15, 1988	92.154995
March 15, 1989	90.546605
June 15, 1989	88.875642
September 15, 1989	87.142103
December 15, 1989	85.345988

<u>Rental Payment Date</u>	<u>Percentage of Aggregate Purchase Price</u>
March 15, 1990	83.487298
June 15, 1990	81.566034
September 15, 1990	79.582195
December 15, 1990	77.535780
March 15, 1991	75.426790
June 15, 1991	73.255225
September 15, 1991	71.021086
December 15, 1991	68.724371
March 15, 1992	66.365081
June 15, 1992	63.943216
September 15, 1992	61.458777
December 15, 1992	58.911762
March 15, 1993	56.302173
June 15, 1993	53.630008
September 15, 1993	50.895268
December 15, 1993	48.097953
March 15, 1994	45.238062
June 15, 1994	42.315598
September 15, 1994	39.330558
December 15, 1994	36.282943
March 15, 1995	33.172753
June 15, 1995	30.000000

The foregoing percentages have been calculated without regard to recapture of the Investment Credit (as defined in § 16 hereof). Consequently, the above Casualty Values shall each be increased by an amount equal to the sum of pretax equivalents of the Investment Credit lost to the Owner computed in accordance with the marginal Federal, state and local income tax rate of the Owner at the date of payment of such Casualty Value. Promptly upon receipt of the notice of Casualty Occurrence pursuant to § 7 hereof, the Lessor, after obtaining the information required from the Owner, shall notify the Lessee and the Vendor of the applicable marginal tax rates and such other information as may be required to compute the increase in Casualty Value pursuant to the preceding sentence.

## SCHEDULE C TO LEASE

Certificate of Acceptance

TO: First Security State Bank, as Trustee (the "Lessor")  
79 Main Street  
Salt Lake City, Utah 84111

Attention of

I, the duly authorized representative for the Lessor and Delaware and Hudson Railway Company (the "Lessee") under the Conditional Sale Agreement and the Lease of Railroad Equipment, both dated as of February 15, 1980, respectively, do hereby certify that I inspected and accepted delivery thereunder of the following Units of Equipment:

TYPE OF EQUIPMENT:  
MODEL:  
DATE ACCEPTED:  
NUMBER OF UNITS:  
NUMBERED:  
MANUFACTURER'S SERIAL NOS.:

I do further certify that the foregoing Units are in good order and condition, and appear to conform to the specifications, requirements and standards applicable thereto as provided in Article 1 of the aforesaid Conditional Sale Agreement.

I do further certify that each of the foregoing Units has been marked by means of a stencil printed in contrasting colors upon each side of each such Unit in letters not less than one inch in height as follows:

"Ownership Subject to a Conditional Sale Agreement filed with the Interstate Commerce Commission."

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

Authorized Representative of  
Lessor and Lessee

BUILDER:

Bethlehem Steel Corporation

Annex D to the  
Conditional Sale Agreement

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[CS&M Ref: 5471-003]

ASSIGNMENT OF LEASE AND AGREEMENT

Dated as of February 15, 1980

between

FIRST SECURITY STATE BANK,  
not in its individual capacity but solely as Owner-Trustee  
as Lessor,

and

FIRST SECURITY BANK OF UTAH, N.A.,  
not in its individual capacity but solely as Agent under  
the Participation Agreement dated as of the date hereof,  
as Agent.

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ASSIGNMENT OF LEASE AND AGREEMENT  
dated as of February 15, 1980 (the "Lease Assignment"), by and between FIRST SECURITY STATE BANK, not in its individual capacity but solely as Owner-Trustee (the "Lessor") under a Trust Agreement dated as of the date hereof with THE PROVIDENT BANK (the "Owner") and FIRST SECURITY BANK OF UTAH, N.A., not in its individual capacity but solely as Agent (the "Agent") for certain institutional investors (the "Investors") under a Participation Agreement dated as of the date hereof among the Lessor, the Owner, the Investors, and Delaware and Hudson Railway Company (the "Lessee").

The Lessor entered into a Conditional Sale Agreement dated as of the date hereof (the "CSA") with Bethlehem Steel Corporation (the "Builder") providing for the sale to the Lessor of such units of railroad equipment (the "Units") described in the Annex B thereto as are delivered to and accepted by the Lessor thereunder, and the CSA is being assigned to the Agent by the Builder;

The Lessor and the Lessee have entered into a Lease of Railroad Equipment dated as of the date hereof (the "Lease"), providing for the leasing by the Lessor to the Lessee of the Units;

In order to provide security for the obligations of the Lessor under the CSA and as an inducement to the Investors to invest in the Conditional Sale Indebtedness as defined in the CSA, the Lessor agrees to assign for security purposes its rights in, to and under the Lease to the Agent.

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

1. Subject to the provisions of Paragraph 10 hereof, the Lessor hereby assigns, transfers and sets over unto the Agent, as collateral security for the payment and performance of the Lessor's obligations under the CSA, all the Lessor's right, title and interest, powers, privileges, and other benefits under the Lease (including those inuring to the benefit of the Owner), including, without limitation, the immediate right to receive and collect all rentals, profits

and other sums payable to or receivable by the Lessor from the Lessee under or pursuant to the provisions of the Lease (other than payments by the Lessee to the Owner under § 16 of the Lease) whether as rent, casualty payment, indemnity, liquidated damages, or otherwise, (such rights, title, interests, powers, privileges, moneys and other benefits, being hereinafter called the "Payments"), and the right to make all waivers and agreements, to give all notices, consents and releases, to take all action upon the happening of an Event of Default specified in the Lease, and to do any and all other things whatsoever which Lessor is or may become entitled to do under the Lease. In furtherance of the foregoing assignment, the Lessor hereby irrevocably authorizes and empowers the Agent in its own name, or in the name of its nominee, or in the name of the Lessor or as its attorney, to ask, demand, sue for, collect and receive any and all Payments to which the Lessor is or may become entitled under the Lease, and to enforce compliance by the Lessee with all the terms and provisions thereof.

The Agent agrees to accept for the account of the Lessor any Payments made by the Lessee pursuant to the Lease. To the extent received, the Agent will apply such Payments, first, to satisfy such obligations of the Lessor under the CSA as are then due and payable 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 default thereunder) shall have occurred and be continuing, any balance shall be paid to the Lessor or such other party as the Lessor may direct in writing, on the first business day following receipt by the Agent of such balance, at the Lessor's address specified in § 18 of the Lease or at such other address as may be specified by the Lessor in writing. If the Agent shall not receive any rental payment under the first paragraph of § 3 of the Lease or any payment of Casualty Values under § 7 of the Lease when due, the Agent shall promptly notify the Lessor and the Owner at their addresses set forth in the Participation Agreement. Failure to so notify the Lessor or the Owner shall not affect the rights and remedies of the Agent hereunder or under the CSA.

2. This Assignment of Lease and Agreement is executed only as security for the obligations of the Lessor under the CSA and, therefore, the execution and delivery of this Lease Assignment shall not subject the Agent to, or transfer, or pass, or in any way affect or modify the liability of the Lessor under the Lease, it being understood and

agreed that notwithstanding this Lease Assignment or any subsequent assignment, all obligations of the Lessor under the Lease to the Lessee shall be and remain enforceable by Lessee, its successors and assigns, against, and only against, the Lessor or persons other than the Agent.

3. To protect the security afforded by this Lease Assignment, subject to the provisions of Paragraph 10 hereof, the Lessor agrees as follows:

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

(b) Should the Lessor fail to make any payment or to do any act which this Lease Assignment requires the Lessor to make or do, then the Agent, but without obligation so to do, after first making written demand upon the Lessor and affording the Lessor a reasonable period of time within which to make such payment or do such act, but without releasing the Lessor from any obligation hereunder, may make or do the same in such manner and to such extent as the Agent may deem necessary to protect the security provided hereby, including specifically, without limiting its general powers, the right to appear in and defend any action or proceeding purporting to affect the security hereof and the rights or powers of the Agent, and also the right to perform and discharge each and every obligation, covenant and agreement of the Lessor contained in the Lease; and in exercising any such powers, the Agent may pay necessary costs and expenses, employ counsel and incur and pay reasonable attorneys' fees, and the Lessor will reimburse the Agent for such costs, expenses and fees; provided, however, that the obligations of the Lessor to

make reimbursements under this Paragraph 3 are subject to the last paragraph of Article 4 of the CSA.

4. Subject to the provisions of Paragraph 10 hereof, the Lessor does hereby constitute the Agent the Lessor's true and lawful attorney, irrevocably, with full power (in the name of the Lessor, or otherwise), to ask, require, demand, receive, compound and give acquittance for any and all Payments due and to become due under or arising out of the Lease to which the Lessor is or may become entitled, to enforce compliance by the Lessee of all the terms and provisions of the Lease, to endorse any checks or other instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings which the Agent may deem to be necessary or advisable in the premises.

5. Upon the full discharge and satisfaction of all the Lessor's obligations under the CSA and Participation Agreement, this Lease Assignment and all rights herein assigned to the Agent shall terminate, and all estate, right, title and interest of the Agent in and to the Lease shall revert to the Lessor without further act or deed, but the Agent shall execute and deliver such documents as the Lessor may reasonably request in order to confirm, or make clear upon public records, such termination and/or reversion.

6. The Lessor will, from time to time, do and perform any other act and will execute, acknowledge, and deliver any and all further instruments required by law or reasonably requested by the Agent in order to confirm or further assure the interests of the Agent hereunder.

7. The Agent may assign all or any of the rights assigned to it hereby or arising under the Lease including, without limitation, the right to receive any Payments due or to become due. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Agent hereunder; provided, however, the Lessor and the Lessee shall not be bound to honor such assignment until they have received written notice thereof from the Agent. Payment to the assignee of any Payments shall constitute full compliance with the terms of this Lease Assignment and the Lease. The Lessor and the Lessee may rely on instruments and documents of assignment which they believe in good faith to be true and authentic.

8. This Assignment shall be governed by the laws of the State of Utah, but the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303.

9. The Lessor shall cause copies of all notices received in connection with the Lease and all Payments thereunder received in connection with the Lease and all Payments thereunder to be promptly delivered or made to the Agent at its address set forth in Paragraph 11 of the Participation Agreement or at such other address as the Agent shall designate.

10. The Agent hereby agrees with the Lessor that (i) so long as no event of default, or any event which with lapse of time or notice or both would constitute such an event of default, under the CSA has occurred and is then continuing, the Agent will not exercise or enforce, or seek to exercise or enforce, or avail itself of, any of the rights, powers, privileges, authorizations or benefits assigned and transferred by the Lessor to the Agent by this Lease Assignment, except the right to receive and apply the Payments as provided in Paragraph 1 hereof, (ii) subject to the terms of the Lease and the CSA, the Lessor may, so long as no event of default or event which with notice or lapse of time or both would constitute such an event of default under the CSA has occurred and is then continuing, exercise or enforce, or seek to exercise or enforce, its rights, powers, privileges, and remedies arising out of subparagraph (a) of the first paragraph of § 10 of the Lease; provided, however, the Lessor shall not, without the prior written consent of the Agent, terminate the Lease or otherwise exercise or enforce, or seek to exercise or enforce, any rights, powers, privileges and remedies arising out of subparagraph (b) of said § 10 of the Lease.

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

It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, undertakings and agreements herein made on the part of the Lessor are each and every one of them made and intended not as personal representations, undertakings and agreements by the Lessor, or for the purpose or with the intention of binding the Lessor personally but are made and intended for the purpose of binding only the Trust Estate (as defined in the Trust Agreement) and this Assignment of Lease and Agreement is executed and delivered by the Lessor solely in the exercise of the powers expressly conferred upon the Lessor as trustee under the Trust Agreement; and that no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against the Lessor or the Owner on account of any representation, undertaking or agreement hereunder of the Lessor, or the Owner, either expressed or implied, except for their respective obligations under the proviso to the last paragraph of Article 12 of the CSA and subparagraph (a) of the third paragraph of Article 4 of the CSA; all such personal liability, if any, being expressly waived and released by the Agent and by all persons claiming by, through or under the Agent; provided, however, that the Agent, making claim hereunder, may look to said Trust Estate for satisfaction of the same.

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

FIRST SECURITY STATE BANK,  
not in its individual capacity,  
but solely as Owner-Trustee  
and Lessor,

by

[CORPORATE SEAL]

\_\_\_\_\_  
Authorized Officer

Attest:

\_\_\_\_\_  
Authorized Officer

FIRST SECURITY BANK OF UTAH, N.A.,  
not in its individual capacity,  
but solely as Agent,

by

\_\_\_\_\_  
Authorized Officer

[SEAL]

Attest:

\_\_\_\_\_  
Authorized Officer



## LESSEE'S CONSENT AND AGREEMENT

The undersigned, DELAWARE AND HUDSON RAILWAY COMPANY, a Delaware corporation (the "Lessee"), the lessee named in the Lease of Railroad Equipment (the "Lease"), referred to in the foregoing Assignment of Lease and Agreement (the "Lease Assignment"), hereby acknowledges receipt of a copy of the Lease Assignment, and consents to all the terms and conditions of the Lease Assignment and agrees:

(1) subject to the terms and conditions of the Lease Assignment, to pay all rentals, casualty payments, liquidated damages, indemnities and other moneys provided for in the Lease and assigned to the Agent by the Lease Assignment (which moneys are hereinafter called the Payments) due and to become due under the Lease or otherwise in respect of the Units (as defined in the Lease) leased thereunder, directly to the First Security Bank of Utah, N.A., as Agent (the "Agent"), the assignee named in the Lease Assignment, at 79 South Main Street (Suite 310), Salt Lake City, Utah 84111, attention of Trust Division, Corporate Trust Department (or to such other address as may be furnished in writing to the Lessee by the Agent);

(2) subject to the terms and conditions of the Lease Assignment, that the Agent shall be entitled to the benefits of, and to receive and enforce performance of, all of the covenants to be performed by the undersigned under the Lease as though the Agent were named therein as the Owner-Trustee;

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

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

This Consent and Agreement may be executed in

several counterparts, each of which when so executed shall be deemed an original, and such counterparts together shall constitute one and the same instrument.

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

Dated as of February , 1980.

DELAWARE AND HUDSON RAILWAY  
COMPANY,

by

\_\_\_\_\_  
Authorized Officer

[CORPORATE SEAL]

Attest:

\_\_\_\_\_  
Authorized Officer

Accepted:

FIRST SECURITY BANK OF UTAH, N.A.,  
not in its individual capacity  
but solely as Agent under the  
Participation Agreement referred  
to above,

by

\_\_\_\_\_  
Authorized Officer

[SEAL]

Attest:

\_\_\_\_\_  
Authorized Officer

CONDITIONAL SALE AGREEMENT

Dated as of February 15, 1980

Between

FIRST SECURITY STATE BANK,  
not in its individual capacity  
but solely as Owner-Trustee  
for The Provident Bank

And

BETHLEHEM STEEL CORPORATION,  
Builder

14.5% Conditional Sale Indebtedness Due 1995  
[covering 200 Gondola Cars]

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CONDITIONAL SALE AGREEMENT dated as of February 15, 1980, between BETHLEHEM STEEL CORPORATION, a Delaware corporation (the "Builder" or the "Vendor", as the context may require, as more particularly set forth in Article 1 hereof), and FIRST SECURITY STATE BANK, a Utah corporation, acting not in its individual capacity but solely as Trustee (hereinafter, together with its successors and assigns, called the "Owner-Trustee") under a Trust Agreement dated as of the date hereof (the "Trust Agreement"), with The Provident Bank (hereinafter called the "Owner").

The Builder has agreed to construct, sell and deliver to the Owner-Trustee, and the Owner-Trustee has agreed to purchase, the railroad equipment described in Annex B hereto (the "Equipment").

The Owner-Trustee is entering into a Lease of Railroad Equipment dated as of the date hereof (the "Lease") with The Delaware and Hudson Railway Company (hereinafter the "Lessee"), in substantially the form annexed as Annex C hereto.

The First Security Bank of Utah, N.A. (the "Assignee" or the "Vendor"), is acting as agent for certain investors (the "Investors") pursuant to the Participation Agreement dated as of the date hereof (the "Participation Agreement") with the Owner-Trustee, the Lessee, the Owner and the Investors.

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

ARTICLE 1. Assignment; Definitions. The parties hereto contemplate that the Owner-Trustee will furnish that portion of the Purchase Price (as defined in Article 4 hereof) for the Equipment as is required under subparagraph (a) of the third paragraph of Article 4 hereof and that an amount equal to the balance of such Purchase Price shall be paid to the Builder by the Assignee pursuant to an Agreement and Assignment dated as of the date hereof (the "Assignment") between the Builder and the Assignee, as agent.

The term "Vendor", whenever used in this Agreement, means, before any assignment of its rights hereunder, the party hereto which has manufactured the Equipment and any successor or successors for the time being to its manufacturing properties and business, and, after any such assignment, both any assignee or assignees for the time being of such particular assigned rights as regard such rights, and also any assignor as regard any rights hereunder that are retained or excluded from any assignment; and the term "Builder", whenever used in this Agreement, means, both before and after any such assignment, the party hereto which has manufactured the Equipment and any successor or successors for the time being to its manufacturing properties and business.

In case of such assignment, the Owner-Trustee will assign to the Vendor, as security for the payment and performance of all the Owner-Trustee's obligations hereunder, all right, title and interest of the Owner-Trustee in and to the Lease, pursuant to an Assignment of Lease, substantially in the form of Annex D hereto (the "Lease Assignment") and the Lessee shall consent thereto pursuant to a Consent and Agreement in substantially the form attached to Annex D hereto (the "Consent").

ARTICLE 2. Construction and Sale. Pursuant to this Agreement, the Builder shall construct the Equipment at its plant or plants set forth in Annex B hereto, and will sell and deliver to the Owner-Trustee, and the Owner-Trustee will purchase from the Builder and accept delivery of and pay for (as hereinafter provided), such Equipment, each unit of which shall be constructed in accordance with the specifications referred to in Annex B hereto and in accordance with such modification thereof as may be agreed upon in writing among the Builder, the Owner-Trustee and Lessee (which specifications and modification, if any, are hereinafter called the "Specifications"). The design, quality and component parts of each unit of the Equipment shall conform, on the date of completion of manufacture thereof, to the United States Department of Transportation and Interstate Commerce Commission requirements and specifications and to all standards, if any, recommended by the Association of American Railroad reasonably interpreted as then being applicable to each such unit of Equipment, and each such unit will be new railroad equipment when delivered to the Owner-Trustee and the original use thereof shall commence with the Owner-Trustee.

ARTICLE 3. Inspection and Delivery. The Builder will deliver the units of the Equipment to the Owner-Trustee at the place or places specified in Annex B hereto (or if Annex B does not specify a place or places, at the place or places designated from time to time by the Owner-Trustee), freight, if any, prepaid, in accordance with the delivery schedule set forth in Annex B hereto; provided, however, that delivery of any unit of the Equipment shall not be made until the filings and recordings referred to in Article 18 hereof have been made; provided further, that the Builder shall have no obligation to deliver any unit of Equipment hereunder subsequent to the commencement of any proceedings specified in clause (c) of Article 15 hereof or clause (E) of § 10 of the Lease or the occurrence of any event of default (as described in Article 15 hereof), or any event which with notice or lapse of time or both would constitute an event of default. The Builder agrees not to deliver any unit of Equipment hereunder (a) following receipt of written notice from the Owner-Trustee or the Assignee of the commencement of any such proceedings or the occurrence of any such event of default or event, as aforesaid, and (b) until it receives notice from the Assignee and the Owner-Trustee, respectively, that the conditions contained in Paragraphs 7 and 8, respectively, of the Participation Agreement have been met (c) following receipt of written notice from the Assignee of its determination that there has been since December 31, 1979, a material adverse change in the assets, liabilities, business or condition (financial or otherwise) of the Lessee until such written notice may be canceled by a further written notice.

Notwithstanding the next succeeding paragraph, any Equipment not delivered as a result of the first paragraph of this Article 3, and any Equipment not delivered and accepted hereunder on or prior to May 9, 1980, shall be excluded from this Agreement and the Owner-Trustee shall be relieved of its obligation to purchase and pay for such Equipment. If any Equipment shall be excluded herefrom pursuant to the immediately preceding sentence, the parties hereto shall execute an agreement supplemental hereto limiting this Agreement to the Equipment not so excluded herefrom. Pursuant to Paragraph 1 of the Participation Agreement, the Lessee has agreed to purchase such excluded Equipment and any Equipment excluded from this Agreement pursuant to the first paragraph of Article 4 hereof from the Builder. The Owner-Trustee agrees, upon any such exclusion, to take such steps, including the execution of instruments of transfer, as may be reasonably requested by the Lessee for the purpose of acknowledging and perfecting the interest of the Lessee

in any unit of Equipment so excluded from this Agreement; and the Vendee shall have no further obligation or liability in respect of units so excluded.

The Builder's obligation as to the time of delivery set forth in Annex B is subject, however, to delays resulting from causes beyond such Builder's reasonable control, including but not limited to acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, delays in receiving necessary materials or delays of carriers or subcontractors, but such Equipment shall be delivered and accepted not later than May 9, 1980, notwithstanding such delays, or such Equipment shall be excluded herefrom in accordance with the immediately preceding paragraph.

During construction, the Equipment shall be subject to inspection and approval by the authorized inspectors of the Owner-Trustee (who may be employees of the Lessee) and the Builder shall grant to such authorized inspectors reasonable access to its plant or plants. The Builder will inspect the materials used in the construction of the Equipment in accordance with the standard quality control practices of the Builder. Prior to delivery each unit of the Equipment shall be presented to an inspector of the Owner-Trustee for inspection at the place specified for delivery of such unit or units, and if each such unit conforms to the Specifications, requirements and standards applicable thereto, such inspector or an authorized representative of the Owner Trustee (who may be an employee of the Lessee) shall execute and deliver to the Builder a certificate of acceptance (the "Certificate of Acceptance") stating that such unit or units have been inspected and accepted on behalf of the Owner-Trustee and are marked in accordance with Article 9 hereof; provided, however, that the Builder shall not thereby be relieved of its warranties contained or referred to in Article 13 hereof.

Upon acceptance of delivery of each unit hereunder at the place specified for delivery, the Builder shall have no further responsibility for, nor bear any risk of, any damage to or the destruction or loss of such unit; provided, however, that the Builder shall not thereby be relieved of its warranties contained or referred to in Article 13 hereof.

Notwithstanding the foregoing or any other provision of this Agreement to the contrary, the delivery to and acceptance by or on behalf of the Owner-Trustee of

any unit of Equipment excluded from this Agreement pursuant to the second or third paragraph of Article 3 hereof or the first paragraph of Article 4 hereof shall be ineffective, ab initio, to create in or transfer to the Owner-Trustee any legal or beneficial right or interest in such unit or (except as provided in the first paragraph of Article 4 hereof) to impose on the Owner-Trustee any liability, obligation or responsibility with respect thereto.

ARTICLE 4. Purchase Price and Payment. The base price or prices per unit of the Equipment are set forth in Annex B hereto. Such base price or prices are subject to such increase or decrease as is agreed to by the Builder, the Owner-Trustee and the Lessee. The term "Purchase Price" as used herein shall mean the base price or prices as so increased or decreased, as set forth in such Builder's invoice or invoices delivered to the Owner-Trustee (which shall include any applicable freight charges) and, if the Purchase Price is other than the base price or prices set forth in Annex B, the invoice or invoices shall be accompanied by, or have endorsed thereon, the agreement or approval of the Lessee and the Owner-Trustee (such invoice or invoices being hereinafter called the "Invoices"). If on the Closing Date (as hereinafter defined in this Article) the aggregate Purchase Price of Equipment for which settlement is then being made would exceed the Maximum Purchase Price specified in Item 5 of Annex A hereto, the Builder (and any assignee of the Builder) and the Owner-Trustee will enter into an agreement excluding from this Agreement such unit or units of Equipment then proposed to be settled for and specified by the Owner-Trustee, as will, after giving effect to such exclusion, reduce such aggregate Purchase Price under this Agreement to not more than the Maximum Purchase Price specified in Item 5 of Annex A hereto and the Owner-Trustee shall take such other steps, including the execution of instruments of transfer, as may be reasonably requested by the Builder for the purpose of acknowledging and perfecting the interest of the Builder in any unit of Equipment so excluded from this Agreement, and the Owner-Trustee shall have no further obligation or liability in respect of units so excluded.

The Equipment shall be settled for in one group of units of the Equipment delivered to and accepted by the Owner-Trustee (a "Group"). The term "Closing Date" with respect to the Group shall mean the date not later than May 15, 1980, fixed by the Lessee, by written notice delivered to the Owner-Trustee and the Agent at least 10 business days prior to the Closing Date designated therein. The notice shall specify the Purchase Price of the Group to be settled

for on such date. At least five business days prior to the Closing Date with respect to a Group of Equipment, the Builder shall present to the Owner-Trustee and the Lessee the Invoices and Certificate or Certificates of Acceptance for such Group. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in New York, New York, Cincinnati, Ohio, or Salt Lake City, Utah, are authorized or obligated to remain closed.

The Owner-Trustee hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay in cash to the Vendor at such place as the Vendor may designate, the Purchase Price of the Equipment, as follows:

(a) on the Closing Date an amount equal to 35% of the aggregate Purchase Price of such Group; and

(b) in 60 equal quarterly installments, as hereinafter provided, an amount equal to the aggregate Purchase Price of the units of Equipment for which settlement is then being made, less the aggregate amount paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph.

The portion of the Purchase Price payable pursuant to subparagraph (b) of the preceding paragraph (herein called the "Conditional Sale Indebtedness") shall be payable on each March 15, June 15, September 15 and December 15, commencing September 15, 1980, to and including June 15, 1995 (or if any such date is not a business day, on the immediately preceding business day), each such date being hereinafter called a "Payment Date". The unpaid balance of the Conditional Sale Indebtedness shall bear interest from the Closing Date in respect of which such indebtedness was incurred at the rate of 14.5% per annum. Such interest shall be payable, to the extent accrued, on June 15, 1980, and on each Payment Date thereafter. The installments of principal payable on each Payment Date shall be calculated so that the amount and allocation of principal and interest payable on each Payment Date shall be substantially in proportion to the amount and allocation of principal and interest on such Payment Date set forth in Schedule I hereto (subject to the provisions of Article 7 hereof) and the aggregate of such installments of principal will completely amortize the remaining Conditional Sale Indebtedness at maturity. The Owner-Trustee will furnish to the Vendor and the Lessee promptly after the Closing Date a schedule, in such number of counterparts as shall be

requested by the Vendor, showing the respective amounts of principal and interest payable on each Payment Date.

Interest under this Agreement shall be determined on the basis of a 360-day year of 12 30-day months, except that the interest payment due on June 15, 1980, shall be determined on an actual elapsed day, 365-day year, basis.

The Owner-Trustee will pay, to the extent legally enforceable, interest upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof at the rate of 15.5% per annum.

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

Notwithstanding any other provisions of this Agreement (including, but not limited to, any provision of Articles 15 and 16 hereof), but not limiting the effect of Article 21 hereof, the liability of Owner-Trustee or any assignee of Owner-Trustee for all payments to be made by it under and pursuant to this Agreement, including any liability arising out of or in connection with the performance of its obligations hereunder (with the exception only of the obligations set forth in subparagraph (a) of the third paragraph of this Article and the proviso in the last paragraph of Article 12 hereof), shall not exceed an amount equal to, and shall be payable only out of, the "income and proceeds from the Equipment", and such payments shall be made by the Owner-Trustee only to the extent that the Owner-Trustee or any assignee of the Owner-Trustee shall have actually received sufficient "income and proceeds from the Equipment" to make such payments. Except as provided in the preceding sentence, Owner-Trustee shall have no personal liability to make any payments under this Agreement except from the "income and proceeds from the Equipment". In addition, the Owner-Trustee (1) makes no representation or warranty, and is not responsible for, the execution, validity, sufficiency or enforceability of the Lease insofar as it relates to Lessee (or any document relative thereto) or of any of Lessee's obligations

thereunder and (2) shall not be responsible for the performance or observance by Lessee of any of its agreements, representations, indemnities, obligations or other undertakings under the Lease or the Consent; it being understood that as to all such matters Vendor shall look solely to Vendor's rights under this Agreement against the Equipment and to Vendor's rights under the Lease against Lessee and the Equipment. As used herein the term "income and proceeds from the Equipment" shall mean:

(i) if one of the events of default specified in Article 15 hereof shall have occurred and while it shall be continuing, so much of the following amounts as are indefeasibly received by the Owner-Trustee or any assignee of the Owner-Trustee at any time after any such event and during the continuance thereof: (a) all amounts of rental and amounts in respect of Casualty Occurrences (as defined in Article 7 hereof) paid for or with respect to the Equipment pursuant to the Lease and any and all other payments received under § 10 or any other provision of the Lease; and (b) any and all payments or proceeds received for or with respect to the Equipment as the result of the sale, lease or other disposition thereof, after deducting all costs and expenses of such sale, lease or other disposition; and

(ii) at any other time only that portion of the amounts referred to in the foregoing clauses (a) and (b) as are indefeasibly received by the Owner-Trustee or any assignee of the Owner-Trustee and as shall equal the portion of the Conditional Sale Indebtedness (including prepayments thereof required in respect of Casualty Occurrences) and/or interest thereon due and payable on the date such amounts were required to be paid pursuant to the Lease or as shall equal any other payments then due and payable under this Agreement;

it being understood that "income and proceeds from the Equipment" shall in no event include (A) amounts referred to in the foregoing clauses (a) and (b) which were received by the Owner-Trustee or any assignee of the Owner-Trustee prior to the existence of such an event of default which exceeded the amounts required to discharge that portion of the Conditional Sale Indebtedness (including prepayments thereof required in respect of Casualty Occurrences) and/or interest thereon due and payable on the date on which amounts with respect thereto received by the Owner-Trustee or any assignee

of the Owner-Trustee were required to be paid to it pursuant to the Lease or which exceeded any other payments due and payable under this Agreement at the time such amounts were payable under the Lease or (B) amounts excluded from the Lease Assignment pursuant to Paragraph 1 thereof. Notwithstanding anything to the contrary contained in Article 15 or 16 hereof, Vendor agrees that in the event it shall obtain a judgment against the Owner-Trustee for an amount in excess of the amounts payable by the Owner-Trustee pursuant to the limitations set forth in this paragraph, it will, accordingly, limit its execution of such judgment to amounts payable pursuant to the limitations set forth in this paragraph. Nothing contained herein limiting the liability of Owner-Trustee shall derogate from the right of the Vendor to proceed against the Equipment or Owner-Trustee's interest in the Lease for the full unpaid Purchase Price of the Equipment and interest thereon and all other payments and obligations hereunder.

ARTICLE 5. Security Interest in the Equipment.

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

Except as otherwise specifically provided in Article 7 hereof, when and only when Vendor shall have been paid the full indebtedness in respect of the Purchase Price

of the Equipment, together with accrued interest and all other payments as herein provided, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in Owner-Trustee without further transfer or action on the part of Vendor. However, the Vendor, if so requested by Owner-Trustee at that time, will, at Owner-Trustee's expense, (a) execute an instrument releasing its security interest in the Equipment to the Owner-Trustee or upon its order, free of all liens, security interests and other encumbrances created or retained hereby and deliver such instrument to the Owner-Trustee at its address referred to in Article 20 hereof, (b) execute and deliver at the same place, for filing, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of Owner-Trustee to the Equipment and (c) pay to Owner-Trustee any money paid to Vendor pursuant to Article 7 hereof and not theretofore applied as therein provided. Owner-Trustee hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such instrument or instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such instrument or instruments or to file such certificate within a reasonable time after written demand by Owner-Trustee.

ARTICLE 6. Taxes. The Owner-Trustee agrees to pay, and to indemnify and hold harmless the Vendor, the Builder and the trust estate held by the Owner-Trustee under the Trust Agreement and by the Vendor under this Agreement and the Participation Agreement from all Taxes (as defined in § 6 of the Lease), except as provided in the proviso to the first sentence of § 6 of the Lease; provided, however, that the Owner-Trustee shall not be required to pay any Taxes during the period the Owner-Trustee or any indemnified party may be contesting the same in the manner provided in the third paragraph of this Article 6.

The amount which the Owner-Trustee shall be required to pay with respect to any Taxes indemnified against pursuant to this Article 6, shall be an amount sufficient to restore the indemnified party to the same after-tax position, after considering the effect of such payment on its United States Federal income taxes and state and city income taxes or franchise taxes based on net income, that such indemnified party would have been in had such Taxes not been imposed.

If claim is made against any indemnified party for any Taxes indemnified against under this Article 6, such party shall promptly notify the Owner-Trustee and the Lessee. If reasonably requested by the Owner-Trustee in writing, such indemnified party shall, upon receipt of any indemnity satisfactory to it for all costs, expenses, losses, reasonable legal and accountants' fees and disbursements, penalties, fines, additions to tax and interest, and at the expense of the Owner-Trustee, contest in good faith the validity, applicability or amount of such Taxes by (a) resisting payment thereof if possible (provided that the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the interests of the Vendor in and to the Equipment hereunder), (b) not paying the same except under protest, if protest is necessary and proper, and (c) if payment is made, using reasonable efforts to obtain a refund thereof in appropriate administrative or judicial proceedings, or both. The Owner-Trustee may also contest, at its own expense, the validity, applicability or amount of such Taxes in the name of such indemnified party; provided that no proceeding or action relating to such contest shall be commenced (nor shall any pleading, motion, brief or other paper be submitted or filed in the name of such indemnified party in any such proceeding or action) without the prior written consent of such indemnified party, which consent cannot be unreasonably withheld. If such indemnified party shall obtain a refund of all or any part of such Taxes previously reimbursed by the Owner-Trustee in connection with any such contest or an amount representing interest thereon, such indemnified party shall pay the Owner-Trustee the amount of such refund or interest net of expenses; provided, however, that no event of default set forth in Article 15 hereof and no event which with notice or lapse of time or both would constitute such an event of default shall have occurred and be continuing.

In case any report or return is required to be made with respect to any obligation of the Owner-Trustee under or arising out of this Article 6, the Owner-Trustee shall either make such report or return in such manner as will show the interests of the Vendor in the Equipment or shall promptly notify the Vendor of such requirement and shall make such report or return in such manner as shall be satisfactory to the Vendor. All costs and expenses (including reasonable legal and accountants' fees) of preparing any such return or report shall be borne by the Owner-Trustee.

All the obligations of the Owner-Trustee under

this Article 6 shall survive and continue, notwithstanding payment in full of all amounts due under this Agreement. Payments due from the Owner-Trustee under this Article 6 shall be made directly to the indemnified party, except to the extent paid to a governmental agency or taxing authority.

The obligations of the Owner-Trustee under this Article 6 are subject to the limitations contained in the last paragraph of Article 4 hereof and in Article 21 hereof.

The Owner-Trustee shall furnish or cause to be furnished promptly, upon request, such information and data as are normally available to the Owner-Trustee and which the Vendor reasonably may require to permit compliance with the requirements of any taxing authorities.

ARTICLE 7. Maintenance; Casualty Occurrences; Insurance. The Owner-Trustee shall, at its own cost and expense, maintain and service each unit of the Equipment which will include testing, repair and overhaul of each unit of Equipment so that each unit of Equipment will remain (a) in as good operating condition as when delivered (ordinary wear and tear excepted), (b) in compliance with any and all applicable laws and regulations and (c) eligible for railroad interchange in accordance with the interchange rules of the Association of American Railroads, if such rules are applicable.

In the event that any unit of Equipment shall be or become lost, stolen, destroyed, irreparably damaged or permanently rendered unfit for use from any cause whatsoever, or taken or requisitioned by condemnation or otherwise resulting in loss of possession thereof by the Lessee, for a period of 90 consecutive days, except requisition for use by the United States Government for a period not in excess of the then remaining term of this Agreement (any such occurrences being herein called "Casualty Occurrence") during the term of this Agreement, the Owner-Trustee shall, promptly after it shall have received notice from the Lessee thereof or otherwise been notified that such unit has suffered a Casualty Occurrence, cause the Vendor to be fully informed in regard thereto. On the Payment Date next succeeding such notice or notification (or, in the event such Payment Date will occur within 15 days after delivery of such notice or notification to the Owner-Trustee, on the following Payment Date) (each such date being hereinafter called a "Casualty Payment Date"), the Owner-Trustee shall, subject to

the limitations contained in the last paragraph of Article 4 hereof, pay to the Vendor an amount equal to the Casualty Value, as hereinafter defined in this Article, of such unit suffering a Casualty Occurrence as of the date of such payment. On the date of any such payment, the Owner-Trustee shall file, or cause to be filed, with the Vendor a certificate setting forth the Casualty Value of such unit. In the event of the requisition for use by the United States Government of any unit of Equipment not constituting a Casualty Occurrence, all the Owner-Trustee's obligations hereunder with respect to such unit shall continue to the same extent as if such requisition had not occurred.

Upon payment by the Owner-Trustee to the Vendor of the Casualty Value of any unit of the Equipment having suffered a Casualty Occurrence, absolute right to the possession of, title to, and property in such unit, shall pass to and vest in the Owner-Trustee and the security interest of the Vendor in such unit shall terminate without further transfer or action on the part of the Vendor, except that the Vendor, if requested by the Owner-Trustee, will execute and deliver, to the Owner-Trustee, a certificate in recordable form in order that the Owner-Trustee may make clear upon the public records the full title of the Owner-Trustee to such unit.

Any money paid to the Vendor pursuant to this Article shall be applied (after the payment of the interest and principal due on such date) to prepay without penalty or premium, ratably in accordance with the unpaid balance of each installment, the Conditional Sale Indebtedness, together with all interest accrued on the portion of the Conditional Sale Indebtedness being prepaid. The Owner-Trustee will promptly furnish to the Vendor and the Lessee a revised schedule of payments of principal and interest thereafter to be made, in such number of counterparts as they may request.

The "Casualty Value" of any unit of Equipment on any date shall be deemed to be an amount computed by multiplying the unpaid principal amount of the Conditional Sale Indebtedness outstanding on such date (after giving effect to any payment in respect thereof due on such date pursuant to Article 4 hereof) by a fraction of which the numerator shall be the Purchase Price of such unit and the denominator shall be the Purchase Price of all units (including such unit) subject to this Agreement on such date.

Any insurance proceeds or condemnation payments received and retained by the Vendor in respect of units suffering a Casualty Occurrence shall be deducted from the amounts payable by the Owner-Trustee to the Vendor in respect of Casualty Occurrences pursuant to this Article. If the Vendor shall receive any insurance proceeds or condemnation payments in respect of such units suffering a Casualty Occurrence either after the Owner-Trustee shall have made payments pursuant to this Article without deduction for such insurance proceeds or condemnation payments, or in excess of the Casualty Value (after taking into account payments by the Owner-Trustee under this Article) of such units, the Vendor shall promptly pay such insurance proceeds or condemnation payments to the Owner-Trustee. All insurance proceeds or condemnation payments or such excess received by the Vendor in respect of any unit or units of Equipment not suffering a Casualty Occurrence shall be paid to the Owner-Trustee upon proof satisfactory to the Vendor that the damage to such unit in respect of which such proceeds were paid has been fully repaired.

The Owner-Trustee will at all times prior to the payment of the Conditional Sale Indebtedness, together with interest thereon and all other payments required hereby, at its own expense, carry and maintain or cause to be carried and maintained public liability insurance, naming the Vendor as additional named insured as its interests may appear, at least in amounts and against risks customarily insured against by railroad companies on similar equipment owned by them and in amounts and against risks customarily insured against by the Lessee or any other user of the Equipment in respect of similar equipment owned by it. The proceeds of such insurance shall be payable to the Vendor, the Owner-Trustee, the Lessee or any other sublessee permitted under the Lease as their respective interests may appear.

ARTICLE 8. Reports and Inspections. On or before December 1 in each year, commencing with the year 1980, the Owner-Trustee shall furnish to the Vendor an accurate statement to the effect set forth in § 8 of the Lease. The Vendor shall have the right to inspect the Equipment and the Owner-Trustee's and the Lessee's records with respect thereto at such reasonable times as the Vendor may request during the term of this Agreement.

ARTICLE 9. Marking of Equipment. The Owner-Trustee agrees that it will cause each unit of the Equipment to be kept numbered and marked as provided in § 5 of the Lease. The Owner-Trustee will not place or permit any unit of the Equipment to be placed in operation or exercise any control or dominion over the same until such markings shall have been made on both sides thereof and will replace or cause to be replaced promptly any such markings which may be removed, defaced, obliterated or destroyed. The Owner-Trustee shall not change, or permit to be changed, the identifying number of any unit of the Equipment unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with the Vendor and duly filed, recorded and deposited by the Owner-Trustee in all public offices where this Agreement shall have been filed, recorded and deposited and (ii) the Owner-Trustee shall have furnished the Vendor an opinion of counsel to the effect that such statement has been so filed, recorded and deposited, such filing, recordation and deposit will protect the Vendor's interest in such units of Equipment and no filing, recording, deposit or giving of notice with or to any other Federal, state or local government or agency thereof is necessary to protect the interests of the Vendor in such Units.

Except as above provided, the Owner-Trustee will not allow the name of any person, association or corporation to be placed on any unit of the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Owner-Trustee may permit the Equipment to be lettered with the names, trademarks, initials or other insignia customarily used by the Lessee, or its affiliates, so long as the Lease shall remain in effect.

ARTICLE 10. Compliance with Laws and Rules. During the term of this Agreement, the Owner-Trustee will comply, and will cause every lessee or user of the Equipment to comply, in all respects (including, without limitation, with respect to the use, maintenance and operation of the Equipment) with all laws of the jurisdictions in which its or such lessee's or user's operations involving the Equipment may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the United States Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the title, operation or use of the Equipment, and in

the event that such laws or rules require any alteration, replacement, addition or modification of or to any part of any unit of the Equipment, the Owner-Trustee will, or will cause the Lessee to, conform therewith at no expense to the Vendor; provided, however, that the Owner-Trustee or the Lessee may, in good faith, contest or cause to be contested the validity or application of any such law or rule in any reasonable manner which does not, in the reasonable opinion of the Vendor, adversely affect the property or rights of the Vendor under this Agreement.

The obligations of the Owner-Trustee under this Article are subject to the limitations contained in the last paragraph of Article 4 and in Article 21 hereof.

ARTICLE 11. Possession of Equipment. So long as no event of default has occurred and is continuing hereunder, the Owner-Trustee shall be entitled from and after delivery of the Equipment by the Builder to the Owner-Trustee, to the possession and use of the Equipment and the use thereof, but only upon and subject to all the terms and conditions of this Agreement. The Owner-Trustee simultaneously is leasing the Equipment to the Lessee as provided in the Lease and the rights of the Lessee and its permitted assigns under the Lease shall be subordinated and junior in rank to the rights, and shall be subject to the remedies, of the Vendor under this Agreement.

The Owner-Trustee will not amend or consent to any change in the Trust Agreement without the prior written consent of the Vendor, except as specifically provided therein.

ARTICLE 12. Discharge of Liens. The Owner-Trustee will pay or discharge any and all sums claimed by any party from, through or under the Owner-Trustee, the Owner or their successors or assigns which, if unpaid, might become a lien, charge or security interest on or with respect to the Equipment, or any unit thereof, or the Owner-Trustee's interest in the Lease and the payments to be made thereunder and will promptly discharge any such lien, charge or security interest which arises, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the reasonable opinion of the Vendor, adversely affect the interest of the Vendor in the Equipment, or otherwise under this Agreement. Any amounts paid by the Vendor in discharge

of liens, charges or security interests upon the Equipment shall be secured by and under this Agreement.

This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

The obligations of the Owner-Trustee under this Article are subject to the limitations contained in the last paragraph of Article 4 and in Article 21 hereof; provided, however, that the Owner-Trustee will pay or discharge any and all claims, liens, charges or security interests claimed by any party from, through or under the Owner-Trustee or the Owner or their successors or assigns, not arising out of the transactions contemplated hereby (including any tax liens arising out of the receipt of rentals and other payments under the Lease or the Participation Agreement), which, if unpaid, might become a lien, charge or security interest on or with respect to the Equipment, or any unit thereof, or the Owner-Trustee's or Owner's interest in the Lease and the payments to be made thereunder, but the Owner-Trustee shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not adversely affect the security interest of the Vendor in or to the Equipment, its interest in and to the Lease and the payments to be made thereunder or otherwise under this Agreement.

ARTICLE 13. Indemnity; Builder's Representations and Warranties. The Owner-Trustee shall pay, and shall protect, indemnify and hold the Vendor, the Investors and any respective assignee thereof, and their respective successors, assigns, principals, agents and servants ("Indemnified Persons"), harmless from and against any and all causes of action, suits, penalties, claims, demands or judgments, with respect to Indemnified Matters (as defined in § 9 of the Lease); provided, however, that the Owner-Trustee shall not be required to pay, protect, indemnify or hold harmless the Builder for (i) any losses, damages, injuries, liabilities, claims and demands whatsoever arising out of any tort by the Builder, or out of any breach of warranty or failure to perform any covenant hereunder by the Builder and (ii) any matter covered by the Builder's warranty of material and

workmanship and patent indemnification set forth in Annex A hereto. The Owner-Trustee shall be obligated under this Article, 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 Owner-Trustee under this Article without first resorting to any such other rights of indemnification. In case any action, suit or proceeding is brought against any Indemnified Person in connection with any claim indemnified against hereunder, the Owner-Trustee may and, upon such Indemnified Person's reasonable request will, at the Owner-Trustee's expense, resist and defend such action, suit or proceeding, or cause the same to be resisted or defended by counsel selected by the Owner-Trustee and approved by such Indemnified Person and, in the event of any failure by the Owner-Trustee to do so, the Owner-Trustee shall pay all costs and expenses (including without limitation reasonable attorneys' fees and expenses) incurred by such Indemnified Person in connection with such action, suit or proceeding. In the event the Owner-Trustee is required to make any payment under this Article, the Owner-Trustee shall pay such Indemnified Person an amount which, after deduction of all taxes required to be paid by such Indemnified Person in respect of the receipt thereof under the laws of the United States or of any political subdivision thereof (after giving credit for any savings in respect of any such taxes by reason of deductions, credits or allowances in respect of the payment of the expense indemnified against, and of any other such taxes), shall be equal to the amount of such payment. The Vendor and the Owner-Trustee 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 Article by the Owner-Trustee, or the making of provision satisfactory to the Indemnified Person for the full payment thereof, and provided that no event of default described in Article 15 hereof (or other event which with lapse of time or the giving of notice or both would constitute such an event of default) shall have occurred and be continuing, the Owner-Trustee 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 as a result of any matter with respect to which such Indemnified Person has been indemnified by the Lessee pursuant to the Lease shall be paid over to the Owner-Trustee to the extent necessary to

reimburse the Owner-Trustee for indemnification payments previously made in respect of such matter.

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

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

The obligations of the Owner-Trustee under this Article 13 are subject to the limitations contained in the last paragraph of Article 4 and in Article 21 hereof.

The Builder represents and warrants to the Owner-Trustee and the Assignee that, immediately prior to delivery and acceptance of each unit of the Equipment under this Agreement, the Builder had good and marketable title to such unit, free and clear of all claims, liens, security interests and other encumbrances of any nature except only the rights created by this Agreement, the Assignment and the Lease and that at such time each such unit will be new railroad equipment the original use of which will commence with the Owner-Trustee.

The Builder represents that it is not entering into this Agreement, or entering into any assignment of this Agreement, directly or indirectly in connection with any arrangement or understanding in any way involving any employee benefit plan (other than a governmental plan) with respect to which it is a party in interest, all within the meaning of the Employee Retirement Income Security Act of 1974.

The agreements of the parties relating to the Builder's warranty of material and workmanship and the agreement of the parties relating to patent indemnification are set forth in Items 3 and 4 of Annex A hereto.

ARTICLE 14. Assignments. Without the prior consent of the Vendor, the Owner-Trustee will not (a) transfer the right to possession of any unit of the Equipment, except as provided in Article 11 hereof, or (b) sell, assign, transfer or otherwise dispose of its rights under this Agreement, except as provided in the Trust Agreement.

All or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Owner-Trustee, may be assigned by the Vendor and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve the Builder from, any of the obligations of the Builder to construct and deliver the Equipment in accordance herewith or to respond to its warranties and indemnities contained or referred to in Article 13 hereof, or relieve the Owner-Trustee of its respective obligations to the Builder contained in Articles 2, 3, 4, 6 and 13 hereof, Annex A hereto and this Article 14, or any other obligation which, according to its terms or context, is intended to survive an assignment.

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

The Owner-Trustee recognizes that this Agreement will be assigned to the Assignee as provided in the Assignment. The Owner-Trustee expressly represents, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Vendor hereunder, and for the purpose of inducing such acquisition, that the rights of the Assignee to the entire unpaid indebtedness in respect of the Purchase Price of the Equipment or such part thereof as may be assigned together with interest thereon, as well

as any other rights hereunder which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Builder with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Owner-Trustee or the Lessee by the Builder. Any and all such obligations, howsoever arising shall be and remain enforceable by the Owner-Trustee or the Lessee, as the case may be, against and only against the Builder.

ARTICLE 15. Defaults. In the event that any one or more of the following events of default shall occur and be continuing, to wit:

(a) the Owner-Trustee shall fail to pay or cause to be paid in full any sum payable by the Owner-Trustee when payment thereof shall be due hereunder (irrespective of the provisions of Article 4 or 21 hereof or any other provision of this Agreement limiting the liability of the Owner-Trustee) and such default shall continue for 15 business days after the date such payment is due and payable; or

(b) the Owner-Trustee (irrespective of the provisions of Article 4 or 21 hereof or any other provision of this Agreement limiting the liability of the Owner-Trustee) or the Lessee shall, for more than 30 days after the Vendor shall have demanded in writing performance thereof, fail or refuse to comply with any other covenant, agreement, term or provision of this Agreement, the CSA Assignment, the Lease or the Lease Assignment or any covenant, agreement, term or provision of the Participation Agreement made for the benefit of Vendor on its part to be kept and performed, or to make provision satisfactory to Vendor for such compliance; or

(c) any proceeding shall be commenced by or against the Owner-Trustee, Owner or Lessee for any relief which includes, or might result in, any modification of the obligations of the Owner-Trustee hereunder or of the Lessee under the Lease under any bankruptcy or insolvency laws, or laws relating to the relief of

debtors, readjustment of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the obligations hereunder or under the Lease, the Lease Assignment, the Consent or the Participation Agreement of the Owner-Trustee, the Owner or the Lessee, as the case may be), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Owner-Trustee, the Owner or the Lessee under this Agreement, the Lease, the Lease Assignment, the Consent and/or the Participation Agreement, as the case may be, shall not have been (and shall not continue to be), duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Owner-Trustee, the Owner or the Lessee, as the case may be, or for its or their respective property in connection with any such proceedings in such manner that such obligations 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; or

(d) the Owner-Trustee shall make or permit any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession of any unit of the Equipment; or

(e) an Event of Default shall have occurred under the Lease; provided, however, that an Event of Default under § 10(A)(i) of the Lease shall not be deemed to be an event of default hereunder if such default under the Lease causing such Event of Default thereunder is cured by the Owner-Trustee's remedying such default prior to the expiration of the 15 business day period provided by Paragraph 15(a) hereof by making payment of the amount in default under Paragraph 15(a) hereof; and provided further that the Owner-Trustee shall not have the right to remedy more than 6 such defaults, no more than 4 of which shall be consecutive, and any additional Events of Default under the Lease shall constitute events of default hereunder whether or not so remedied;

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Owner-

Trustee and the Lessee and upon compliance with any legal requirements then in force and applicable to such action by the Vendor, (i) subject to Lessee's right of possession and use under the second paragraph of § 4 of the Lease, cause the Lease immediately upon such notice to terminate (and the Owner-Trustee acknowledges the right of the Vendor to terminate the Lease), but without affecting the indemnities which by the provisions of the Lease survive its termination and/or (ii) declare the entire unpaid Conditional Sale Indebtedness, together with the interest thereon then accrued and unpaid, immediately due and payable (a "Declaration of Default") without further demand, and thereafter the aggregate of the unpaid balance of the Conditional Sale Indebtedness and interest shall bear interest from the date of such Declaration of Default at the rate per annum specified in Article 4 hereof as being applicable to amounts remaining unpaid after becoming due and payable, to the extent legally enforceable. Upon a Declaration of Default, subject to Articles 4 and 21 hereof, the Vendor shall be entitled to recover judgment for the entire unpaid balance of the Conditional Sale Indebtedness so payable with interest as aforesaid, and to collect such judgment out of any property of the Owner-Trustee, subject to the provisions of Articles 4 and 21 hereof, wherever situated. The Owner-Trustee shall promptly notify the Vendor of any event which has come to its attention which constitutes, or with the giving of notice and/or lapse of time would constitute, an event of default under this Agreement.

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

ARTICLE 16. Remedies. At any time during the continuance of a Declaration of Default, the Vendor may, and upon such further notice, if any, as may be required for compliance with any mandatory legal requirements then in

force and applicable to the action to be taken by the Vendor, take or cause to be taken, by its agent or agents, immediate possession of the Equipment, or one or more of the units thereof, without liability to return to the Owner-Trustee any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 16 expressly provided, and may remove the same from possession and use of the Owner-Trustee or any other person and for such purpose may enter upon the premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Owner-Trustee, subject to all mandatory requirements of due process of law.

In case the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall designate a reasonable point or points for the delivery of the Equipment to the Vendor, the Owner-Trustee shall, at its own expense and risk:

(a) forthwith and in the usual manner (including, but not by way of limitation, causing prompt telegraphic and written notice to be given to all railroads which may have possession of any unit or units of the Equipment to return the unit or units) cause the Equipment to be placed upon such storage tracks of the Lessee as the Vendor reasonably may designate;

(b) permit the Vendor to store the Equipment on such tracks at the risk of the Owner-Trustee without charge for insurance, rent or storage until the Equipment has been sold, leased or otherwise disposed of by the Vendor; and

(c) cause the Equipment to be transported to such interchange point or points as directed by the Vendor upon any sale, lease or other disposal of all or any of the Equipment.

During any storage period, the Owner-Trustee will, at its own cost and expense, insure, maintain and keep each such unit in good order and repair and will permit the inspection of the Equipment by the Vendor, the Vendor's representatives and prospective purchasers, lessees and users. This agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and upon the application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled to a decree of specific performance hereof. The

Lessee and any other lessee or sublessee of the Equipment hereby expressly waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 16 provided) may, upon the notice and procedures as are hereinafter set forth, retain the Equipment in satisfaction of the entire Conditional Sale Indebtedness and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Owner-Trustee, the Owner and the Lessee by telegram or registered mail, addressed as provided in Article 20 hereof, and to any other persons to whom the law may require notice, within thirty (30) days after such Declaration of Default. In the event that the Vendor shall elect to retain the Equipment and the Owner-Trustee and the Owner do not object thereto in writing as described in the second proviso below, all the Owner-Trustee's rights in the Equipment shall thereupon terminate and all payments made by the Owner-Trustee or for its account may be retained by the Vendor as compensation for the use of the Equipment; provided, however, that if the Owner-Trustee, before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to the Vendor the total unpaid balance of the Conditional Sale Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Owner-Trustee; provided further, however, that if the Owner-Trustee, the Owner, the Lessee or any other persons notified under the terms of this paragraph object in writing to the Vendor within thirty (30) days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall not have given notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 16.

At any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon thirty (30) days' notice to

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

Any sale hereunder may be held or conducted at New York, New York, at such time or times as the Vendor may specify (unless the Vendor shall specify a different place or places, in which case the sale shall be held at such place or places as the Vendor may specify), on one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine, so long as such sale shall be conducted in a commercially reasonable manner. The Vendor, the Owner-Trustee or the Owner may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. The Owner, the Owner-Trustee and the Lessee shall be given written notice of such sale or the making of a contract for such sale not less than thirty (30) days prior thereto, by telegram or registered mail addressed as provided in Article 20 hereof. If such sale shall be a private sale (which shall be deemed to mean only a sale where an advertisement for bids has not been published in a newspaper of general circulation or a sale where less than forty (40) offerees have been solicited in writing to submit bids), it shall be subject to the

rights of the Owner-Trustee to purchase or provide a purchaser, within fifteen (15) days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. In the event that the Vendor shall be the purchaser of the Equipment, it shall not be accountable to the Owner-Trustee or the Lessee (except to the extent of surplus money received as hereinafter provided in this Article 16), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all or any part of sums due to the Vendor hereunder.

Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor except that the Vendor shall not be deemed to have the power or remedy to retain the Equipment in satisfaction of the Conditional Sale Indebtedness except as specifically provided in this Article 16. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgences duly granted to the Owner-Trustee or the Lessee shall not otherwise alter or affect the Vendor's right or the Owner-Trustee's obligations hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Owner-Trustee's obligations or the Vendor's rights hereunder with respect to any subsequent payments or default therein.

If, after applying all sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Owner-Trustee shall, subject to the limitations of the last paragraph of Article 4 and Article 21 hereof, pay the amount of such deficiency to the Vendor upon demand, together with interest thereon from the date of such demand to the date of payment at the rate per annum specified in Article 4 hereof as being applicable to amounts remaining unpaid after becoming due and payable, and, if the Owner-Trustee shall fail to pay such deficiency, the Vendor may bring suit

therefor and shall, subject to the limitations of the last paragraph of Article 4 hereof, be entitled to recover a judgment therefor against the Owner-Trustee. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Owner-Trustee.

The Owner-Trustee will pay all reasonable compensation and expenses, including reasonable attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable compensation and expenses, including reasonable attorneys' fees, and the amount thereof shall be included in such judgment. The foregoing provisions of this paragraph shall be subject to the limitations of the last paragraph of Article 4 and Article 21 hereof.

The foregoing provisions of this Article 16 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

ARTICLE 17. Applicable State Laws. Any provision of this Agreement prohibited by any applicable law or any jurisdiction shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Owner-Trustee to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

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

ARTICLE 18. Recording. Owner-Trustee will cause this Agreement, the Assignment, the Lease and the Lease Assignment, and any further assignments hereof or thereof and any amendments or supplements hereto or thereto to be filed and recorded as provided in § 15 of the Lease.

ARTICLE 19. Article Headings; Effect and Modification of Agreement. All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

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

ARTICLE 20. Notice. Any notice hereunder to any of the parties designed below shall be deemed to be properly served if delivered or mailed to it by registered mail, postage prepaid, at the following addresses:

(a) to the Owner-Trustee, at 79 South Main Street (Suite 310), Salt Lake City, Utah, 84111, Attention of Trust Division, Corporate Trust Department;

(b) to the Builder, as the Builder or as the Vendor, at its address specified in Item 1 of Annex A hereto;

(c) to the Owner, at One East Fourth Street, Cincinnati, Ohio, 45202, Attention of Allen L. Davis with a separate copy to Messrs. Keating, Muething & Klekamp, One East Fourth Street, Cincinnati, Ohio 45202, Attention of Richard D. Siegel;

(d) to the Lessee, at 40 Beaver Street, Albany, New York 12207, Attention of Vice President-Finance; and

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

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

ARTICLE 21. Immunities; Satisfaction of Undertakings. No recourse shall be had in respect of any obligation due under

this Agreement, or referred to herein, against any incorporator, stockholder, director or officer, as such, past, present or future, of the parties hereto, whether by virtue of any constitutional provision, statute or rule of law, or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of such incorporators, stockholders, directors or officers, as such, being forever released as a condition of and as consideration for the execution of this Agreement.

The obligations of the Owner-Trustee under the second, seventh and eighth paragraphs of Article 16 and under Articles 3, 6, 7, 8, 9, 10, 12 (other than the proviso to the last paragraph thereof), 13 and 18 hereof shall be deemed in all respects satisfied by the Lessee's undertakings contained in the Lease. The Owner-Trustee shall not have any responsibility for the Lessee's failure to perform obligations, but if the same shall not be performed or cured as permitted hereby, they shall constitute the basis for an event of default hereunder pursuant to Article 15 hereof. So long as any Conditional Sale Indebtedness remains outstanding, no waiver or amendment by the Owner-Trustee of the Lessee's undertakings under the Lease shall be effective unless joined in by the Vendor.

It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, undertakings and agreements herein made on the part of the Owner-Trustee are each and every one of them made and intended not as personal representations, undertakings and agreements by First Security State Bank, or for the purpose or with the intention of binding the said bank personally but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement, and this Agreement is executed and delivered by the said bank solely in the exercise of the powers expressly conferred upon the said bank as trustee under the Trust Agreement; and that no personal liability or personal responsibility is assumed by said bank or the Owner on account of any representation, undertaking or agreement hereunder of said bank acting in its capacity as Owner-Trustee, or the Owner either expressed or implied, except for their respective obligations under the proviso to the last paragraph of Article 12 hereof and subparagraph (a) of the third paragraph of Article 4 hereof; all such personal liability, if any being expressly waived

and released by the Vendor and by all persons claiming by, through or under the Vendor; provided, however, that the Vendor or any person claiming by, through or under the Vendor, making claim hereunder, may look to said Trust Estate for satisfaction of the same.

ARTICLE 22. Law Governing. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Utah; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303.

ARTICLE 23. Execution. This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. Although this Agreement is dated, for convenience, as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

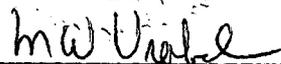
IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed all as of the date first above written.

BETHLEHEM STEEL CORPORATION,

by

  
\_\_\_\_\_  
Vice President

Attest:

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

FIRST SECURITY STATE BANK,  
not in its individual capacity,  
but solely as Owner-Trustee,

by

---

Attest:

---

COMMONWEALTH OF PENNSYLVANIA, )  
 ) SS.:  
COUNTY OF LEHIGH, )

On this 7<sup>th</sup> day of *April*, 1980, before me personally appeared **R.M. HURD**, to me personally known, who being by me duly sworn, says that he is a Vice President of Bethlehem Steel Corporation, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation and that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

*Evelyn S. Meeker*  
\_\_\_\_\_  
Notary Public

(Notarial Seal)

My Commission Expires  
City of Bethlehem  
Lehigh County  
October 13, 1982

My commission expires

STATE OF UTAH, )  
 ) SS.:  
COUNTY OF SALT LAKE, )

On this \_\_\_\_\_ day of \_\_\_\_\_, 1980, before me personally appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, says that he is an Authorized Officer of First Security State Bank, that one of the seals affixed to the foregoing instrument is the Corporate seal of said Corporation and that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

\_\_\_\_\_  
Notary Public

(Notarial Seal)

My commission expires

## SCHEDULE I

Allocation Schedule of Each 1,000,000  
of 14.5% Conditional Sale Indebtedness\*

<u>Payment Date</u>	<u>Debt Service</u>	<u>Interest Payment</u>	<u>Principal Repayment</u>	<u>Remaining Principal Balance</u>
6/1980	**	**	**	\$1,000,000.00
9/1980	\$41,102.88	\$36,250.00	\$ 4,852.88	995,147.12
12/1980	41,102.88	36,074.08	5,028.80	990,118.32
3/1981	41,102.88	35,891.79	5,211.09	984,907.23
6/1981	41,102.88	35,702.89	5,399.99	979,507.24
9/1981	41,102.88	35,507.14	5,595.74	973,911.50
12/1981	41,102.88	35,304.29	5,798.59	968,112.91
3/1982	41,102.88	35,094.09	6,008.79	962,104.12
6/1982	41,102.88	34,876.27	6,226.61	955,877.51
9/1982	41,102.88	34,650.56	6,452.32	949,425.19
12/1982	41,102.88	34,416.66	6,686.22	942,738.97
3/1983	41,102.88	34,174.29	6,928.59	935,810.38
6/1983	41,102.88	33,923.13	7,179.75	928,630.63
9/1983	41,102.88	33,662.86	7,440.02	921,190.61
12/1983	41,102.88	33,393.16	7,709.72	913,480.89
3/1984	41,102.88	33,113.68	7,989.20	905,491.69
6/1984	41,102.88	32,824.07	8,278.81	897,212.88
9/1984	41,102.88	32,523.97	8,578.91	888,633.97
12/1984	41,102.88	32,212.98	8,889.90	879,744.07
3/1985	41,102.88	31,890.72	9,212.16	870,531.91
6/1985	41,102.88	31,556.78	9,546.10	860,985.81
9/1985	41,102.88	31,210.74	9,892.14	851,093.67
12/1985	41,102.88	30,852.15	10,250.73	840,842.94
3/1986	41,102.88	30,480.56	10,622.32	830,220.62
6/1986	41,102.88	30,095.50	11,007.38	819,213.24
9/1986	41,102.88	29,696.48	11,406.40	807,806.84
12/1986	41,102.88	29,283.00	11,819.88	795,986.96
3/1987	41,102.88	28,854.53	12,248.35	783,738.61
6/1987	41,102.88	28,410.52	12,692.36	771,046.25
9/1987	41,102.88	27,950.43	13,152.45	757,893.80
12/1987	41,102.88	27,473.65	13,629.23	744,264.57

\* Interest payment to be calculated in accordance with Article 4 of the Conditional Sale Agreement.

\*\* Interest only on the Conditional Sale Indebtedness shall be payable to the extent accrued on this date.

<u>Payment Date</u>	<u>Debt Service</u>	<u>Interest Payment</u>	<u>Principal Repayment</u>	<u>Remaining Principal Balance</u>
3/1988	\$41,102.88	\$26,979.59	\$14,123.29	\$ 730,141.28
6/1988	41,102.88	26,467.62	14,635.26	715,506.02
9/1988	41,102.88	25,937.09	15,165.79	700,340.23
12/1988	41,102.88	25,387.33	15,715.55	684,624.68
3/1989	41,102.88	24,817.64	16,285.24	668,339.44
6/1989	41,102.88	24,227.30	16,875.58	651,463.86
9/1989	41,102.88	23,615.56	17,487.32	633,976.54
12/1989	41,102.88	22,981.65	18,121.23	615,855.31
3/1990	41,102.88	22,324.76	18,778.12	597,077.19
6/1990	41,102.88	21,644.05	19,458.83	577,618.36
9/1990	41,102.88	20,938.67	20,164.21	557,454.15
12/1990	41,102.88	20,207.71	20,895.17	536,558.98
3/1991	41,102.88	19,450.26	21,652.62	514,906.36
6/1991	41,102.88	18,665.36	22,437.52	492,468.84
9/1991	41,102.88	17,852.00	23,250.88	469,217.96
12/1991	41,102.88	17,009.15	24,093.73	445,124.23
3/1992	41,102.88	16,135.75	24,967.13	420,157.10
6/1992	41,102.88	15,230.69	25,872.19	394,284.91
9/1992	41,102.88	14,292.83	26,810.05	367,474.86
12/1992	41,102.88	13,320.96	27,781.92	339,692.94
3/1993	41,102.88	12,313.87	28,789.01	310,903.93
6/1993	41,102.88	11,270.27	29,832.61	281,071.32
9/1993	41,102.88	10,188.84	30,914.04	250,157.28
12/1993	41,102.88	9,068.20	32,034.68	218,122.60
3/1994	41,102.88	7,906.94	33,195.94	184,926.66
6/1994	41,102.88	6,703.59	34,399.29	150,527.37
9/1994	41,102.88	5,456.62	35,646.26	114,881.11
12/1994	41,102.88	4,164.44	36,938.44	77,942.67
3/1995	41,102.88	2,825.42	38,277.46	39,665.21
6/1995	<u>41,103.07</u>	<u>1,437.86</u>	<u>39,665.21</u>	0.00
	<u>\$2,466,172.99</u>	<u>\$1,466,172.99</u>	<u>\$1,000,000</u>	

## ANNEX A

to

## Conditional Sale Agreement

- Item 1: Bethlehem Steel Corporation, at Bethlehem, Pennsylvania 18016, attention of Manager of Railroad Products Sales.
- Item 2: The Equipment shall be settled for in one Group of units of Equipment, delivered to and accepted by the Owner-Trustee, on May 15, 1980, or on such other date fixed by the Lessee pursuant to Article 4 hereof, but in no case earlier than April 1, 1980.
- Item 3: The Builder warrants that the Equipment will be built in accordance with the requirements, specifications and standards set forth in Article 2 of this Agreement and warrants that the Equipment will be free from defects in material (except as to specialties incorporated therein which were specified or supplied by the Lessee and not manufactured by the Builder) and workmanship under normal use and service, the Builder's obligation under this Item 3 being limited to making good at its plant any part or parts of any unit of such Equipment which shall be returned to the Builder with transportation charges prepaid, within one year after the delivery of such unit to the Vendee, and which the Builder's examination shall disclose to its satisfaction to have been thus defective. EXCEPT FOR THE OBLIGATIONS AND LIABILITIES OF THE BUILDER UNDER ARTICLES 2, 3 AND 4 OF THIS AGREEMENT AND ITEM 4 OF THIS ANNEX A, THE FOREGOING WARRANTY OF THE BUILDER IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND OF ALL OTHER OBLIGATIONS OR LIABILITIES ON THE PART OF THE BUILDER, and the Builder does not assume or authorize any person to assume for it any other liability in connection with the construction and delivery of the Equipment except as aforesaid. It is further agreed that in no event shall the Builder be liable for indirect or consequential damages of any kind.

The Builder further agrees that neither the inspection as provided in Article 3 of this Agreement nor any examination nor the acceptance of any units of the Equipment as provided in said Article 3 shall be deemed a waiver or a modification by the Vendee of any of its rights under this Item 3.

Item 4: The Builder agrees (except in cases of articles or materials specified by the Lessee and not manufactured by the Builder and in cases of designs, systems, processes, formulae or combinations specified by the Lessee and not developed or purported to be developed by the Builder) to indemnify, protect and hold harmless the Vendee and, as third-party beneficiary hereof, the Lessee from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendee, the Lessee, or its or their assigns, because of the use in or about the construction or operation of any of such equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. Pursuant to § 9 of the Lease the Lessee likewise will indemnify, protect and hold harmless the Builder and the Vendor from and against any and all liability, claims, costs, chages and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Builder and the Vendor because of the use in or about the construction or operation of any of the Equipment of any article or material specified by the Lessee and not manufactured by 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 Builder agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, assign, set over and deliver to the Lessee every claim, right and cause of action which the Builder has or hereafter shall have against the seller or sellers of any designs, systems, processes, formulae, combinations, articles or materials specified by the Lessee and purchased or otherwise acquired by

the Builder for use in or about the construction or operation of any of the Equipment on the ground that any such design, system, process, formula, combination, article or material or operation thereof infringes or is claimed to infringe on any patent or other right. The Builder further agrees to execute and deliver to the Lessee or the Vendee or the users of the Equipment all and every such further assurance as may be reasonably requested by the Lessee or the Vendee to more fully effectuate the assignment and delivery of every such claim, right and cause of action. The Builder will give notice to the Lessee of any claim known to the Builder as a result of which liability may be charged against the Lessee hereunder and the Vendee will give notice to the Builder of any claim known to the Vendee from which liability may be charged against the Builder hereunder. The undertakings set forth herein shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement or the satisfaction, discharge or the termination of this Agreement in any manner whatsoever.

- Item 5: The Maximum Purchase Price referred to in Article 4 of this Agreement is \$8,190,000.
- Item 6: The Maximum Conditional Sale Indebtedness referred to in Article 4 of this Agreement is \$5,323,500.

ANNEX B  
to  
Conditional Sale Agreement

<u>Type</u>	<u>Builder's Specification</u>	<u>Builder's Plant</u>	<u>Quantity</u>	<u>Estimated Unit Base Price</u>	<u>Estimated Total Base Price</u>	<u>Road Numbers Inclusive</u>	<u>Estimated Time and Place of Delivery</u>
52 foot, 6 inch standard GB Gondola cars	DF 3400-506	Johnstown, PA	200	\$40,000	\$8,000,000	D&H 15000- 15149 D&H 15200- 15249	March 27, 1980- April 23, 1980 F.O.B. Builder's Plant

Annex C to  
Conditional Sale Agreement

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[CS&M Ref: 5471-003]

LEASE OF RAILROAD EQUIPMENT

Dated as of February 15, 1980

Between

DELAWARE AND HUDSON RAILWAY COMPANY,  
as Lessee

and

FIRST SECURITY STATE BANK,  
not in its individual capacity  
but solely as Owner Trustee for  
THE PROVIDENT BANK,  
as Lessor

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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 February 15, 1980, between DELAWARE AND HUDSON RAILWAY COMPANY, a Delaware corporation ("the Lessee"), and FIRST SECURITY STATE BANK, a Utah banking corporation, not individually but solely as Owner Trustee (together with its successors and assigns, called the "Lessor") under a Trust Agreement dated as of the date hereof (the "Trust Agreement") with THE PROVIDENT BANK, an Ohio banking corporation, in its capacity as Owner (the "Owner").

The Lessor has entered into a Conditional Sale Agreement dated as of the date hereof (the "Conditional Sale Agreement" or "CSA") with Bethlehem Steel Corporation (the "Builder"), pursuant to which the Lessor has agreed or will agree to purchase and take delivery of the railroad equipment described in Schedule A hereto (the "Equipment").

The Lessee agrees to lease such number of units of Equipment as are delivered and accepted and settled for under the CSA at the rentals and for the term and upon the conditions hereinafter provided (a "Unit").

The Builder is assigning its interests in the CSA pursuant to an Agreement and Assignment (hereinafter called the "Assignment") to First Security Bank of Utah, N.A., acting as Agent (hereinafter together with its successors and assigns called the "Vendor") under a Participation Agreement dated as of the date hereof (the "Participation Agreement") among the Lessee, the Lessor, the Owner, the Agent and the party or parties named in Schedule A thereto (the "Investors").

The Lessor will assign certain of its rights under this Lease as security to the Vendor pursuant to an Assignment of Lease dated as of the date hereof (the "Lease Assignment") and the Lessee will consent to the Lease Assignment pursuant to a Consent and Agreement substantially in the form attached thereto (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:

SECTION 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 the Owner, 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, or entity the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency of or any bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor, the Owner or the Vendor for any reason whatsoever.

SECTION 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; provided,

however, that such acceptance shall be in accordance with the provisions of Article 3 of 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 hereof, such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease. The delivery, inspection and acceptance hereunder of any unit of Equipment excluded from the CSA pursuant to the second paragraph of Article 3 or 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. The Lessee hereby represents and warrants to the Lessor that no Unit shall be put into service earlier than the date of delivery to and acceptance by the Lessee or its agent as agent for the Lessor hereunder.

SECTION 3. Rentals. The Lessee agrees to pay to the Lessor, as rental for each Unit subject to this Lease, one interim payment and 60 consecutive quarterly payments payable in arrears. The interim payment for each Unit is payable on June 15, 1980 (such date being hereinafter called the "Basic Rent Commencement Date"). The 60 quarterly payments are payable on March 15, June 15, September 15 and December 15 in each year commencing September 15, 1980, to and including June 15, 1995 (each of such 60 consecutive dates being hereinafter called a "Rental Payment Date"). The 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 (as defined in the CSA) for such Unit to, but not including, the Basic Rent Commencement Date, times (b) .040277% of the Aggregate Purchase Price (as herein defined) of such Unit. The 60 quarterly rental payments shall each be in an amount equal to 3.23534% (the "Quarter-Annual Lease Factor") of the Aggregate Purchase Price of each Unit then subject to this Lease. The Aggregate Purchase Price of a Unit of the Equipment shall be an amount equal to the sum of the Purchase Price of such Unit (as defined in the CSA) and an amount expressed as a fraction of which the numerator

shall be the Transaction Expenses paid by the Owner pursuant to the Participation Agreement and the denominator shall be the number of units of Equipment subject to this Lease as of the Closing Date. At such time as the full amount of such Transaction Expenses are known to the Owner, but not later than the Closing Date, the Lessor shall deliver to the Lessee a certificate itemizing such Transaction Expenses. The rental payments hereinbefore provided and the Casualty Values (as defined in Section 7 hereof) are subject to adjustment pursuant to Section 16 hereof. Such rental payments shall in all events be in amounts at least equal to payments of principal and interest of the CSA Indebtedness (as defined in the CSA) due from the Lessor to the Vendor under the CSA on the corresponding Rental Payment Dates and such Casualty Values shall in all cases be in such amounts at least equal to the then outstanding principal amount of the CSA Indebtedness.

If any of the dates for the payment of rent 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 Salt Lake City, Utah, Cincinnati, Ohio, or New York, New York, are authorized or obligated to remain closed.

The Lessor irrevocably instructs the Lessee to make, and the Lessee agrees to make, all the payments (other than the payments under Section 6 and Section 16 hereof) provided for in this Lease including, but not limited to, the payments provided for in this Section 3 and Section 7 hereof, but excluding all payments not assigned to the Vendor pursuant to the Lease Assignment, (i) for so long as the CSA shall remain in effect at the principal office of the Vendor, for the account of the Lessor in care of the Vendor, with instructions to the Vendor (a) first, to apply such payments to satisfy the obligations of the Lessor under the Conditional Sale Agreement, and (b) second, so long as no event of default or event which, after the lapse of time or demand provided for in the CSA, or both, would 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 the Lessor shall specify in writing, and (ii) if the CSA shall no longer be in effect, 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., Salt Lake City time, on the date such payment is due.

SECTION 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 as determined by the Lessee's execution of a Certificate of Acceptance in the form of Schedule C hereto and, subject to the provisions of Sections 7, 10 and 13 hereof, shall terminate on the date on which the final payment of rent in respect thereof is due pursuant to Section 3 hereof. The obligations of the Lessee hereunder (including, but not limited to, the obligations under Sections 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 Section 12 hereof.

SECTION 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 words "OWNERSHIP SUBJECT TO A CONDITIONAL SALE AGREEMENT FILED WITH THE INTERSTATE COMMERCE COMMISSION", with appropriate changes thereof as from time to time may be required by law, in the opinion of the Vendor and the Lessor, in order to protect the Lessor's and the Vendor's title to and interest in such Unit and the rights of the Lessor under this Lease and the rights of the Vendor under the CSA. The Lessee will not place any such unit in operation or exercise any control or dominion over the same until such words shall have been so marked and will replace promptly any such markings which may be removed, defaced, obliterated or destroyed. The Lessee will not change or permit to be changed 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.

SECTION 6. Taxes. Whether or not any of the transactions contemplated hereby are consummated, the Lessee assumes responsibility for, and agrees to pay or caused to be paid, hold harmless and indemnify the Lessor (both in its individual and trust capacity), the Vendor, the Owner and the Investors and their successors and assigns (the "Indemnified Persons") and the trust estate held by the Lessor under the Trust Agreement and by the Vendor under the CSA and the Participation Agreement against, all local, state, Federal or foreign taxes, fees, withholdings, levies, imposts, duties, assessments, charges, license and registration fees and other governmental charges of any nature whatsoever, including, without limitation, penalties, fines or additions to tax and interest thereon, hereafter levied, imposed on, incurred by or asserted against any Indemnified Person or the Units or any part or portion thereof or the estate held by the Vendor under the CSA and the Participation Agreement on account of, or with respect to, this Lease, the CSA, the Lease Assignment, the Consent, or the Participation Agreement or any document referred to herein or therein or any of the transactions contemplated hereby or thereby or the manufacture, purchase, acquisition, acceptance or rejection of the Units or any part or portion, 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 (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"); provided, however, that there shall be no indemnification hereunder for (i) any Taxes imposed on or measured by any trustee or agency fees received by the persons who are the Lessor or the Vendor, (ii) Federal income taxes measured solely by net income or excess profits of the Lessor (in its individual capacity), the Owner, the Vendor or the Investors or (iii) Taxes measured solely by net income or excess profits of, and franchise taxes imposed on, the Lessor (in its individual capacity), the Owner or the Investors or their successors and assigns by the respective entity's state of incorporation or state where its principal place of business is located; provided, however, that, notwithstanding the preceding proviso, the Lessee will indemnify the Owner for any Taxes arising out of or imposed in respect of indemnification payments pursuant to this Lease or to the extent that indemnification is otherwise 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 the Lessee shall be under no obligation to pay such tax so long as the Lessee is contesting such tax in good faith by appropriate legal proceedings and the nonpayment thereof does not, in the reasonable opinion of the Lessor and the Vendor, adversely affect the title, property or interest of the Lessor or the Vendor, as the case may be, under this Lease. The Lessee will keep at all times all and every part of the Equipment free and clear of all taxes (other than those which are covered by the obligations of the Lessor set forth in the proviso to the last paragraph of Article 12 of the CSA) which might in any way adversely affect the title or interests of the Owner or Vendor or result in a lien upon any part of the Equipment.

In the event that the Lessor shall become obligated to make any payment to the Builder, the Investors, the Vendor or the estate held by the Vendor under the CSA and the Participation Agreement or otherwise pursuant to any corresponding provision of the CSA not covered by the foregoing paragraph of this § 6, or the Owner shall become obligated to make any payment to the Lessor pursuant to any correlative provision of the Trust Agreement, the Lessee shall pay such additional amounts (which shall also be deemed Taxes hereunder) to the Lessor as

will enable the Lessor or the Owner to fulfill completely its obligations pursuant to said provisions.

In the event any returns, statements or reports with respect to Taxes are required to be made, the Lessee will make such returns, statements and reports in such manner as to show the interest of the Lessor and the Vendor in the Units; provided, however, that the Lessor shall, with respect to any state or political subdivision thereof of the United States of America, file such returns, statements and reports relating to sales or use taxes, and taxes, fees and charges on or measured by the Lessor's earnings or gross receipts arising from the Units, or the value added by the Lessor thereto, as the Lessee shall determine are required to be filed, and as shall be prepared by the Lessee, and the Lessor shall remit the amount thereof upon payment by the Lessee to the Lessor (such payment to be made forthwith upon demand by the Lessor therefor) of such taxes, fees and charges except as provided above. All costs and expenses (including legal and accounting fees) of preparing such returns or reports shall be borne by the Lessee. 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 the Lessor's own name and on its behalf; provided, however, that the Lessee shall indemnify and hold the Lessor and the Owner 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, within thirty (30) days of filing or submission thereof, 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 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.

All the obligations of the Lessee under this § 6 shall survive and continue, notwithstanding payment of all amounts under the CSA and the termination of this Lease, but only with respect to periods included in the term of this Lease. The foregoing indemnities by the Lessee shall not constitute a guarantee by the Lessee or any subsidiary or affiliated corporation of the Lessee of the payment of any installments of principal or interest payable under the CSA, or a guarantee of any residual value of the Units following the expiration of the term hereof as such term may or may not be renewed.

SECTION 7. Maintenance; Casualty Occurrences; Insurance. The Lessee at its own expense will maintain and service each Unit and comply with a preventive maintenance schedule consistent with the Builder's then current preventive maintenance schedule and which will include testing, repair and overhaul of each Unit so that each Unit will remain (a) in as good operating condition as when delivered (ordinary wear and tear excepted), (b) in compliance with any and all applicable laws and regulations including, but not limited to, any applicable rules of the Association of American Railroads and regulations of the Interstate Commerce Commission and (c) suitable for immediate purchase or lease and use by a Class I line-haul railroad (not then or prospectively a debtor in any insolvency, bankruptcy 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 practices employed as of the date hereof by the Lessee for similar equipment owned by the Lessee.

The Lessee agrees to give the Lessor immediate

notice of any defect in any Unit which would give rise to a claim by the Lessor against the Builder pursuant to Article 13 of the CSA.

In the event that any Unit shall be or become lost, stolen, destroyed or irreparably damaged (excluding such damages resulting from Lessee's failure to maintain such unit in accordance with the provisions of this Lease), from any cause whatsoever, permanently returned to the Builder pursuant to any patent indemnity provision of the CSA, or taken or requisitioned by a 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 ninety (90) consecutive days (such occurrences being hereinafter called "Casualty Occurrences") prior to the return of such Unit in the manner set forth in § 11 or § 14 hereof, the Lessee shall promptly (but in any event within fifteen (15) days after such Casualty Occurrence) and fully notify the Lessor, the Owner and the Vendor with respect thereto. On the date for the payment of rent hereunder with respect to such Unit next succeeding the delivery of such notice the Lessee shall pay to the Lessor an amount equal to the Casualty Value (as hereinafter defined) of such Unit then due and payable, plus the rental payment or payments in respect of such Unit then due and payable on such Rental Payment Date. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft, complete destruction or permanent return to the Builder of such Unit) the Lessor shall be entitled to recover possession of such Unit. The Lessor hereby appoints the Lessee its agent (in a fiduciary capacity) to dispose of any Unit suffering a Casualty Occurrence or any component thereof, on such terms and conditions as the Lessor may agree to. 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. If any such Event of Default (or event which after notice or lapse of time or both would become an Event of Default) has occurred and is continuing, the Lessee shall promptly pay all such proceeds to

the Lessor. The Lessee shall be entitled to credit against the Casualty Value payable in respect of any Unit permanently returned to the Builder pursuant to any patent indemnity provision of the CSA an amount equal to any net patent indemnity payment in respect of such Unit made by the Builder to the Vendor under the CSA. The Lessee will pay all costs and expenses in connection with the sale of any Unit following a Casualty Occurrence.

The Casualty Value of each Unit as of the Basic Rent Commencement Date and as of any Rental Payment Date shall be that percentage of the Aggregate 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 or § 13 hereof and before such Unit shall have been returned in the manner provided in § 14 hereof, the Lessee shall promptly (but in any event within thirty (30) days of such Casualty Occurrence) and fully notify the Lessor with respect thereto and shall pay to the Lessor on the Rental Payment Date next succeeding such notice an amount equal to the Casualty Value of such Unit, which shall be an amount equal to 30% 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 be the fair market value of such Unit, as of the rental payment date on or next preceding the date of such Casualty Occurrence, as determined by the Lessor and the Lessee. 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 (in a fiduciary capacity) to dispose of any Unit suffering a Casualty Occurrence or any component thereof, on such terms and conditions as the Lessor may agree to. Provided that the Lessee has previously paid the Casualty Value to the Lessor and provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing, the Lessee shall be entitled to the proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Lessor.

In the event of the requisition (other than a requisition which constitutes a Casualty Occurrence) for use by the United States Government or 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 renewal thereof shall be paid over to, or retained by, the Lessee, provided no Event of Default (or other event which after notice of 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, at all times prior to the return of the Units to the Lessor, in accordance with the terms of this Lease (including the storage period provided under § 11 and § 14 hereof), 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. Such policies may be issued by or through Lloyd's of London; provided, however, that the amount of coverage under casualty insurance shall not, at any time, be less than the Casualty Value of the Equipment (with a deductible of not greater than \$250,000 per occurrence, subject to availability); provided further that, subject to availability the amount of coverage under public liability insurance shall not, at any

time, be less than \$20,000,000 (with a deductible not greater than \$250,000 per occurrence). All policies with respect to such insurance shall name the Lessor (both in its individual and fiduciary capacity), the Owner and the Vendor as additional name insureds and loss payees, as their interests may appear, shall provide for at least thirty (30) days' prior written notice to the Lessor, the Owner and the Vendor in the event of cancelation, shall include waivers by the insurer of all claims for premiums against the Lessor, the Owner and the Vendor during such thirty (30) day period, and shall include waivers of all subrogation rights with respect to the Lessor, the Owner and the Vendor. The Lessee shall, not later than April 1 of each year, commencing April 1, 1981, furnish to the Lessor, the Owner and the Vendor a certificate of an independent insurance broker acceptable to the Vendor and the Lessor evidencing the maintenance of the insurance required hereunder and shall furnish certificates evidencing renewal fifteen (15) days prior to the expiration date of such policy or policies. If the Lessor shall receive any insurance proceeds or condemnation payments in respect of a Unit suffering a Casualty Occurrence, the Lessor shall, subject to the Lessee's having made payment of the Casualty Value in respect of such Unit 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 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.

SECTION 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 Executive Officer, the Chief Operating Officer or the Chief Mechanical Officer of the Lessee or another 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) and (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and markings required by § 5 hereof have been preserved or replaced. No later than the last business day of April in each calendar year, commencing with the calendar year 1981, the Lessee will furnish to the Lessor and the Vendor a certificate dated no earlier than December 31 of the preceding calendar year of the Chief Mechanical Officer of the Lessee (i) setting forth the identification numbers of all Units as to which the Lessee is complying with the preventive maintenance schedule required by the first paragraph of § 7 of this Lease and are then in the condition required by clauses (a), (b) and (c) of the first paragraph of § 7 of this Lease, and (ii) setting forth the identification numbers of all Units as to which the Lessee is not complying with the preventive maintenance schedule required by § 7 of this Lease or which are not in such condition, together with a statement as to what repairs of other maintenance action are necessary to restore such Units to the condition required by § 7 hereof and a representation that Lessee will commence such necessary repairs or other maintenance action as soon as possible after furnishing such certificate. Upon expiration of such thirty (30) days, Lessee shall furnish Lessor with a statement as to whether or not such repairs or other maintenance action have commenced and when such repairs or other maintenance will be completed.

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

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 of 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.

SECTION 9. Disclaimer of Warranties; Compliance with Laws and Rules; Indemnification. NEITHER LESSOR NOR THE OWNER MAKES, HAS MADE NOR SHALL BE DEEMED TO MAKE, ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN COMPLIANCE WITH SPECIFICATIONS, OPERATION 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 THE LESSOR MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE OR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, OR AS TO THE LESSEE'S RIGHT TO QUIET ENJOYMENT THEREOF (EXCEPT AS TO ACTS OF THE LESSOR), OR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT OR ANY COMPONENT, EITHER UPON DELIVERY THEREOF TO THE LESSEE OR OTHERWISE, it being agreed that all such risks, as between the Lessor and the Lessee are to be borne by the Lessee; but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for the account of the Lessor and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Lessor may have against the Builder including, but not limited to, claims under the provisions of Items 3 and 4 of Annex A of the CSA; provided, however, that if at any time an Event of Default shall have occurred and be continuing, the Lessor may assert and enforce, at the Lessee's sole cost and expense, such claims and rights. The Lessor and the Owner shall have no responsibility or liability to the Lessee or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Units or by an 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 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 or the Owner based on any of the foregoing matters.

The Lessee agrees, for the benefit of the Lessor, the Owner 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, and with all lawful rules of the United States Department of Transportation, the Interstate Commerce Commission, the Association of American Railroads and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units (all such laws and rules to such extent hereinafter called "Applicable Laws"), to the extent that such Applicable Laws affect the title, operation or use of the Units, and in the event that, prior to the expiration of this Lease or any renewal thereof, any Applicable Laws require any alteration, replacement, addition or modification of or to any part on any Unit, the Lessee will fully conform therewith at its own expense; provided, however, that the Lessee may upon written notice to the Lessor and the Vendor, in good faith and at its own expense, contest the validity or application of any Applicable Laws in any reasonable manner which does not, in the reasonable opinion of the Lessor, the Owner or the Vendor, adversely affect the property or rights of the Lessor, the Owner or the Vendor, as the case may be, 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 as Lessee may deem desirable in the proper conduct of its business during the term of this Lease so long as such additions, modifications and improvements are readily removable without causing material damage to the Units and do not diminish the value, utility and condition of the Units below the value, utility and condition immediately prior to such additions, modification and improvements, assuming the Units were then in the condition required to be maintained by the terms of this Lease. 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, (ii) the cost of which is included in the Purchase Price of such Unit, (iii) in the course of ordinary maintenance of the Units (including, but not limited to, parts in replacement of or in substitution for, and not in addition to, any parts originally incorporated in or installed as part of such Unit at time of acceptance hereunder or any part in

replacement of, or substitution for, such replacement part) or (iv) which are required for the operation or use of such Unit by the regulations of the Interstate Commerce Commission, the United States Department of Transportation, the Association of American Railroads or any other regulatory body, shall constitute accessions to such Unit and full ownership thereof free from any lien, charge, security interest or encumbrance (except for those created by the CSA) shall immediately be vested in the Lessor.

The Lessee shall pay, and shall protect, indemnify and hold the Lessor (both individually and in its trust capacity), the Owner, the Investors and the Vendor, and their respective successor, assigns, agents and servants (hereinafter called "Indemnified Persons"), harmless from and against any and all causes of action, suits, penalties, claims, demands or judgments, or 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 manufacture, construction, purchase, acceptance, rejection, ownership, delivery, nondelivery, lease, possession, use, operation, condition, sale, return or other disposition of any Unit or portion thereof; (ii) any latent 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; (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 construction, ownership, use, replacement, adaptation or maintenance of the Units or of any other equipment in connection with the Units (whether owned or under the control of the Lessor, the Lessee or any other person) or resulting or alleged to result from the condition of any thereof; (vi) any violation, or alleged violation, (except by any Indemnified Person) of any provision of this Lease or of any agreement, law, rule, regulation, ordinance or restriction, affecting or applicable to the Units or the leasing, ownership, use, replacement, adaptation or maintenance thereof; (vii) any claim (other than for the payment of the principal and interest on the

Conditional Sale Indetedness (as defined in the CSA) arising out of the Vendor's holding a security interest under the CSA or the Lease Assignment; or (viii) any claim arising out of the Lease Assignment, the CSA or the Participation Agreement, except to the extent such claim arises from the gross negligence or wilful misconduct of the Lessor not related to the transactions contemplated by this Lease and the Participation Agreement (all such matters hereinafter referred to as "Indemnified Matters"). The Lessee shall be obligated under this § 9, irrespective of whether any Indemnified Person shall also be indemnified with respect to the same Indemnified Matter under any other agreement by any other person, and the Indemnified Person seeking to enforce the indemnification may proceed directly against the Lessee under this § 9 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 Indemnified Matter, the Lessee may and, upon such Indemnified Person's request, will at the Lessee's expense resist and defend such action, suit or proceeding, or cause the same to be resisted or defended by counsel selected by the Lessee and approved by such Indemnified Person, as the case may be, and, 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 deduction, 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 (and in any event within fifteen (15) days of obtaining knowledge thereof) written notice of any Indemnified Matter. 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, the Lessee shall be subrogated to any right of such Indemnified Person in respect of the Indemnified Matter. In the event the Lessee does become

so subrogated, such Indemnified Person will reasonably cooperate with the Lessee in Lessee's efforts against third parties to recover any payment made for any Indemnified Matter. Any payments received by such Indemnified Person from any person (except the Lessee) as a result of any Indemnified 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 Owner 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 Owner 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 under the CSA.

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 indemnities contained in this § 9 shall survive the full payment and performance of all obligations and 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 Persons. None of the indemnities in this § 9 shall be deemed to create any rights of subrogation in any insurer or third party against the Lessee or the Lessor therefor, from or under any Indemnified Person, whether because of any claim paid or defense provided for the benefit thereof or otherwise. The foregoing indemnities by the Lessee shall not constitute a guarantee by the Lessee of the payment of any installments of principal or interest

payable under the CSA or a guarantee of the residual value of the Equipment following the expiration of the term hereof as such term may or may not be renewed.

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

(A) default shall be made in payment of (i) any amount provided for in § 3, 7 or 13 hereof or (ii) any other amounts due hereunder when due and such default shall continue for five days; or

(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; or

(C) the Lessee shall operate or permit the operation of any of the Units without maintaining the insurance policies required by § 7 hereof; or

(D) 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 thirty (30) days after written notice from the Lessor or the Vendor to the Lessee specifying the default and demanding that the same be remedied; or

(E) a petition for reorganization under Title 11 of the United States Code, as now constituted or as may hereafter be amended, shall be filed by or against 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 Lessee under this Lease and the Consent (as defined in the CSA) 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

(F) any other proceeding shall be commenced by or against Lessee for any relief which includes, or might result in, any modification of the obligations of 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 Lessee hereunder or under the Consent), 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 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 Lessee, or for the property of 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 a trustee or trustees or receiver or receivers, within 60 days after such proceedings shall have been commenced;

then, in any such case, 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, but not limited to, net after-tax losses of Federal and state income tax benefits to which the Lessor 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 pro-

vided; and thereupon the Lessor may by its agents, subject to compliance with all mandatory requirements of law, enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess, sell, operate, lease to others and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever and without any duty to account to the Lessee for such action or inaction or for any proceeds arising therefrom; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee as damages for loss of the bargain and not as a penalty whichever of the following amounts the Lessor in its sole discretion, shall specify: (x) a sum with respect to each Unit which represents the excess of (1) the present value, at the time of such termination, of the entire unpaid balance of all rentals for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit, over (2) the then present value of the rentals which the Lessee reasonably estimates to be obtainable for the Unit during such period, such present value to be computed on the basis of a 6% per annum discount, compounded quarterly from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated together with any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Lessor shall have sustained by reason of the breach of any covenant, representation or warranty of this Lease other than payment of rental, 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 (after deduction of all estimated expenses of sale) 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 clause (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.

No failure by the Lessor to exercise, and no delay by the Lessor in exercising, any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege by the Lessor preclude any other or further exercise thereof, or

the exercise of any other right, power or privilege.

SECTION 11. Return of Units upon Default. If this Lease shall terminate pursuant to § 10 hereof, the Lessee shall forthwith deliver or cause to be delivered possession of the Units to the Lessor and shall give or cause to be given prompt telegraphic and written notice to the Association of American Railroads and all railroads having possession of any Unit to return such Units. Each Unit returned to Lessor under this § 11 shall be (i) in the condition required by clauses (a), (b) and (c) of the first sentence of § 7 hereof and (ii) meet the standards then in effect under the Interchange Rules of the Association of American Railroads, if applicable, or such comparable standards as may then be in effect. For the purpose of delivering possession, the Lessee shall:

(a) forthwith and in the usual manner cause such Units to be transported to such location as shall reasonably be designated by Lessor and there assembled;

(b) furnish and arrange for the Lessor to store such Units on any lines of railroad or premises approved by Lessor 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

(c) cause the Units to be moved to such interchange point or points as shall be designated by the Lessor upon any sale, lease or other disposal of all or any of the Units.

The assembling, delivery, storage, insurance and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and, upon application to any court of equity having jurisdiction, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, 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, maintain insurance on the Units (to the same extent as provided in § 7 hereof) and will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective pur-

chaser, lessee or user of any such Unit, to inspect the same during reasonable business hours. All rent and per diem charges and other revenues of whatsoever kind and nature 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.

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-in-fact 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.

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

So long as (i) no Event of Default hereunder shall have occurred, (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; provided that the Lessee shall use its best efforts not to use or permit the use of any unit of Equipment outside of the United States of America; and provided further that the Lessee shall not assign or transfer its leasehold interest.

The Lessee agrees that at all times during the term of this Lease, the Units will be used in a manner so as to constitute rolling stock of a domestic railroad corporation subject to Part I of the Interstate Commerce Act or any successor provision within the meaning of Section 48(a)(2)(B)(ii) of the Internal Revenue Code of 1954, as amended (the "Code"). The Lessee further agrees that it will not permit the use of the Units by any person in whose hands such Units would not qualify as "section 38 property" within the meaning of the Code.

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 Owner or the Vendor or resulting from claims against the Lessor, the Owner 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.

SECTION 13. Renewal and Fair Market 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 (i) 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 one five-year period commencing on the scheduled expiration of the original term of this Lease. Such extended term shall be on the same terms and conditions as are contained in this Lease, except as to the amount of the rentals which shall be at a "Fair Market Rental" (as such term is defined in § 13) payable quarterly in arrears, and except as to applicable Casualty Values, which shall be agreed upon between the Lessor and the Lessee at the time of such extension.

Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, and provided further that the Lessee has not notified the Lessor of its intention to extend the term of this Lease pursuant to the first paragraph of this § 13, at the expiration of the original or the extended term of this Lease, the Lessee shall have the right to purchase all but not less than all of the Units then leased hereunder at a price equal to the Fair Market Purchase Price of such Units (as hereinafter defined). The Lessee shall give the Lessor written notice at least 180 days prior to the end of the original or extended term of this Lease (as the case may be) of its election to exercise the purchase option provided for herein. In the event that the Lessee shall have delivered a notice of its election to purchase such Units, this Lease (including the obligations 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.

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 a five-year 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 and the cost of returning the Units to the condition required hereunder 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 its right of first refusal, 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 the Fair Market Purchase Price, as the case may be (and, in the case of the renewal term, the 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 expenses of the appraisal procedure shall be borne equally by the Lessee and the Lessor.

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

SECTION 14. Return of Units upon Expiration of Lease Term. As soon as practicable on or after the expiration of the original or the extended term of this Lease with respect to any Unit and in any event not later than ninety (90) days after termination, the Lessee will, at its own cost and expense, at the request of the Lessor, assemble the Units and deliver possession of such Units to the Lessor upon such storage track location of the Lessee or an affiliate of the Lessee as the Lessor may designate, and permit the Lessor to store such Unit on such track location for a period not exceeding 180 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 180-day period, to any reasonable place on the lines of railroad operated by the Lessee, or to any connecting carrier for shipment, within 1,000 miles of such storage track location, 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; 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 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 termination to the date such Unit is placed in storage an amount equal to .040277% of the Purchase Price of such Unit; provided, however, that if any Unit has not suffered a Casualty Occurrence prior to six (6) months after the termination of this Lease and such Unit has not been transported within six (6) months after the termination of this Lease, Lessee shall pay to Lessor an amount equal to the greater of (i) the Casualty Value of such Unit as of such payment date, or (ii) the Fair Market Value of such Unit as of the date this lease terminated, assuming such Unit had not suffered a Casualty Occurrence and was in the condition required to be maintained by the terms of this Lease. If the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Value of such Unit, such value shall be determined in accordance with the appraisal procedure provided for in the third paragraph of § 13 hereof.

SECTION 15. Recording. The Lessee, at its own expense, will cause this Lease, the CSA, the Lease Assignment, the Assignment and any assignment thereof or hereof to be filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303. The Lessee from time to time will do and

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

SECTION 16. Federal Income Taxes. This Lease has been entered into on the basis that an opinion of the Independent Appraiser of the Lessee to the effect described in subsection (iv) of paragraph 8 of the Participation Agreement will be provided to the Owner; and that the Owner, as the beneficial owner of each Unit, shall be entitled to such deductions, credits and other benefits provided by the Code to an owner of property, including, without limitation, (a) deductions for depreciation of each Unit under section 167 of the Code computed on the basis (i) that each Unit will have a basis under section 167(g) of the Code at least equivalent to the Purchase Price of such Unit, (ii) initially of the declining balance method, using a rate equal to 200% of the straight line rate, switching to the sum of the years-digits method authorized by section 167(b)(3) of the Code in the year in which such switch will result in a greater depreciation deduction than would be available under the declining balance method, without obtaining the consent of the Commissioner of Internal Revenue in accordance with Treasury Regulation § 167(a)-11(c)(1)(iii), (iii) of the asset depreciation range and class life system permitted by section 167(m) of the Code and Treasury Regulation § 1.167(a)-11(a)(1), (iv) of an asset depreciation period of 12 years, (v) of a net salvage value of zero after the reduction permitted by section 167(f)(1) of the Code and (vi) that the Units of Equipment shall be treated as having been placed in service on the respective dates on which they are accepted and delivered under this Lease and the CSA (hereinafter called the ADR Deductions), (b) deductions with respect to interest

payable on the Conditional Sale Indebtedness (hereinafter called the Interest Deductions) and (c) investment credit pursuant to section 38 of the Code at least equal to 10% of the aggregate Purchase Price of each Unit (hereinafter called the Investment Credit). This Lease has also been entered into on the assumption that (1) for Federal income tax purposes all amounts includible in the gross income of the Owner with respect to the Equipment and all deductions allowable to the Owner with respect to the Equipment will be treated as derived from, or allocable to, sources within the United States, (2) for purposes of computing the ADR Deductions with respect to the Equipment for the calendar year in which the Units of Equipment were first placed in service, the Owner will be entitled to elect and will elect the half-year convention and (3) the Federal rate of tax imposed on taxable income of corporations in excess of \$100,000 will be 46% through the date of acceptance of the last Unit of Equipment to be accepted pursuant to the Security Document and this Lease.

The Lessee agrees that neither it nor any corporation controlled by it, in control of it, or under common control with it, directly or indirectly, will at any time take any action or file any returns or other documents inconsistent with the foregoing.

The Lessee represents and warrants that (i) all of the Units constitute property the entire Purchase Price of which qualifies for the Investment Credit under section 50 of the Code as it is now constituted; (ii) at the time the Lessor becomes the owner of the Units, the Units will constitute "new section 38 property" within the meaning of section 48(b) of the Code and at the time the Owner-Trustee becomes the owner of the Units, the Units will not have been used or placed in service by any person so as to preclude "the original use of such property" within the meaning of sections 48(b) and 167(c)(2) of the Code; (iii) at all times during the original term of this Lease and all renewal terms, each Unit will constitute "section 38 property" within the meaning of section 48(a) of the Code; and (iv) at all times during the original term of this Lease and the renewal period, the Owner will be entitled to treat, for Federal income tax purposes, each item of income, deduction and credit relating to all Units subject to this Lease as being derived from, or allocable to, sources within the United States.

If, for Federal income tax purposes, as a result of

any reason whatsoever, but excluding any of the specific occurrences or events specified in the eighth paragraph of this § 16, (a) the Owner shall not be entitled to, shall suffer a disallowance or recapture of, shall lose the benefit of, or shall lose the right to claim (including a good faith determination based upon the opinion, to be obtained at the cost of the Lessee, of independent tax counsel of the Owner approved by the Lessee ("Special Tax Counsel"), which approval shall not be unreasonably withheld, that such claim is not allowable), all or any portion of the Investment Credit, the ADR Deductions or the Interest Deductions or (b) any item of income, deduction or credit with respect to the Equipment shall not be treated as derived from, or allocable to, sources within the United States (any such event described in clause (a) or (b) of this paragraph being hereinafter called a Loss), then the Lessee, at Owner's option, after receiving written notice from the Owner of such Loss together with a certificate of an officer of the Owner setting forth in reasonable detail the computations and methods used in calculating such Loss and the amount or amounts of the payments required to be made pursuant to clause (i) or (ii) below (such notice and certificate being hereinafter collectively called the Net Economic Return Notice), shall either (i) commencing with the next rental payment date occurring more than thirty (30) days after receipt by the Lessee of the Net Economic Return Notice, which Net Economic Return Notice may not be delivered more than thirty (30) days prior to payment by the Owner of the tax which becomes due as a result of the Loss, increase the rental payments under this Lease over its remaining term by an amount as shall cause the Owner's after tax economic yield computed on the same assumptions, including tax rates, and utilizing the same methods as were utilized by the Owner in originally evaluating the transaction contemplated by the Participation Agreement (such economic yield called Net Economic Return) to equal the Net Economic Return that would have been realized by the Owner if such Loss had not occurred, such increase in the rental payments to be made directly to the Owner, or (ii) within thirty (30) days of receipt of the Net Economic Return Notice, pay to the Owner in lump sum the amount as shall, in the reasonable opinion of the Owner, be required to provide the Owner with the Net Economic Return that would have been realized by the Owner if such Loss had not occurred. If the option under (ii) above is specified by Owner, then to the extent any Loss results in a later benefit to the Owner which has not been taken into account in determining the lump-sum payment, payment will be made to the Lessee at the time such

benefit is realized; provided, however, that the Owner shall not be obligated to make any payment pursuant to this sentence to the extent that the amount of such payment would exceed (x) the amount of all prior payments by the Lessee to the Owner pursuant to the option specified in (ii) above in respect of a Loss less (y) the amount of all prior payments by the Owner to the Lessee hereunder, and the amount by which such payment would exceed such amounts shall reduce pro tanto any subsequent obligation of the Lessee to make any payments to the Owner pursuant to (ii) above. The adjustments required to be made pursuant to this paragraph shall be made by the Owner and shall be computed using the same method and the same assumptions as were utilized by the Owner in originally evaluating the transaction except for the assumption that has resulted in such adjustments.

In the event that the Owner suffers a Loss and the Owner and the Lessee are unable to agree, within sixty (60) days following the Lessee's receipt of a Net Economic Return Notice, on the indemnity amount or amounts required to restore the Owner's Net Economic Return, then the Lessee shall pay in a lump sum within thirty (30) days after expiration of said sixty (60)-day period, such amount as shall, in the reasonable opinion of the Owner (regardless of whether the Lessee agrees therewith) be required to provide the Owner with the Net Economic Return that would have been realized by the Owner if such Loss had not occurred.

If there is any amendment to, or change in, the Code or any regulation thereunder which is effective on or prior to the acceptance of the last Unit of Equipment to be accepted pursuant to the CSA and this Lease, and if such amendment or change affects the privilege of the Owner to file consolidated Federal, state and local income tax returns with corporations affiliated with it, or the Federal rate of tax on the taxable income of corporations, then the amounts of rentals and the Casualty Values under this Lease will be appropriately adjusted by such amount or amounts as shall, in the reasonable opinion of the Owner, cause the Owner's Net Economic Return to equal the Net Economic Return that would have been realized by the Owner if such amendment or change had not occurred; provided, however, that the rentals and Casualty Values, as so adjusted, shall not be less than amounts sufficient to satisfy the obligations of the Lessor under the CSA.

Any late payment by any party hereto of any of its

obligations under this § 16 shall result in the obligation on the part of such party promptly to pay an amount equal to interest at the rate per annum equal to 18% compounded quarterly on the overdue payment computed in accordance with § 17 of this Lease.

Notwithstanding anything to the contrary set forth hereinabove, no amount shall be payable as an indemnity hereunder to the Owner in respect of any Loss to the extent such Loss is the result of any of the following on the part of the Owner:

(i) a voluntary transfer or voluntary disposition (whether prior to, during or after the term of this Lease, but not including a transfer or disposition as a result of a Casualty Occurrence) of any Units or of the interest of the Owner in any Units or the rentals under this Lease, or any transfer or disposition of any Units or of the interest of the Owner in any Units or the rentals under this Lease, whether voluntary or involuntary, which results from bankruptcy or other proceedings for the relief of debtors in which the Owner is the debtor, unless, in each case, such transfer or disposition is made (A) after an Event of Default, as defined in § 10 of this Lease, has occurred and is continuing; (B) in connection with any alteration, modification or addition to any Unit; or (C) with the consent of the Lessee;

(ii) the failure of the Owner to claim in a timely manner the Investment Credit, the ADR Deductions (including making all appropriate elections under the applicable Income Tax Regulations), the Interest Deductions or any foreign tax credit or to make a timely election, if permitted by the Code, to treat income and deductions with respect to the Equipment as derived from, or allocable to, sources within the United States, unless Special Tax Counsel of the Owner shall have given its opinion to the Owner that such claim is not allowable;

(iii) the failure of the Owner to have sufficient liability for Federal income tax against which to credit Investment Credit or foreign tax credit or sufficient income to benefit from the ADR Deductions or the Interest Deductions, as applicable;

(iv) a change in the form or type of organization or

the taxable status of the Owner or any successor or transferee of the Owner;

(v) a Casualty Occurrence with respect to a Unit, if the Owner-Trustee shall have received all amounts required to be paid in respect of such Casualty Occurrence under this Lease.

If at the conclusion of an audit the Owner receives a preliminary or "30-day" letter from the Internal Revenue Service proposing an adjustment in any item claimed in accordance with the fourth paragraph of this § 16 on a tax return or refund claim of the Owner for which the Lessee would be required to indemnify the Owner pursuant to this § 16 and the amount of the indemnity which the Lessee would be required to pay would exceed \$100,000 or, in the good faith of the Lessee, the adjustment would have a substantial and continuing precedential adverse effect on the Lessee or the railroad industry and the Lessee so advises the Owner in writing, then, if requested by the Lessee in a timely written request, the Owner shall request an opinion from Special Tax Counsel of the Owner as to whether the basis in law and in fact in favor of allowance of the item proposed to be adjusted outweighs the basis in law and in fact to the contrary. If the opinion is to that effect and if the Lessee promptly requests the Owner to do so, the Owner shall contest the proposed adjustment; provided, however, that Special Tax Counsel of the Owner shall determine the nature of all action to be taken to contest such proposed adjustment including (A) whether any action to contest such proposed adjustment shall initially be by way of judicial or administrative proceedings, or both, (B) whether any such proposed adjustment shall be contested by resisting payment thereof or by paying the same and seeking a refund thereof, and (C) if the Owner shall undertake judicial action with respect to such proposed adjustment, the court or other judicial body before which such action shall be commenced. The Owner shall have full control over any contest pursuant to this paragraph and shall not be obligated to appeal an adverse determination by any court if the Owner shall have obtained an opinion from its Special Tax Counsel that the basis in law and in fact in favor of a favorable outcome in the event such determination is appealed outweighs the basis in law and in fact to the contrary. At any time, whether before or after commencing to take the action set forth in this paragraph, the Owner may decline to take such action by notifying the Lessee in writing that the Lessee is relieved of its obligation to

indemnify the Owner with respect to the adjustment proposed by the Internal Revenue Service or such portion thereof as may be specified in such notice.

The Owner shall not be required to take any action pursuant to the preceding paragraph unless and until the Lessee shall have agreed to indemnify the Owner in a manner reasonably satisfactory to the Owner for any liability or loss which the Owner may incur as a result of contesting the validity of any proposed adjustment and shall have agreed to pay to the Owner on demand all costs and expenses which the Owner may incur in connection with contesting such proposed adjustment (including reasonable fees and disbursements of counsel selected by the Owner). If the Owner determines to contest any adjustment by paying the additional tax and suing for a refund, the Lessee shall have paid to the Owner an amount equal to the sum on an after-tax basis of any tax, interest, penalties and additions to tax which are required to be paid. Upon receipt by the Owner of a refund of any amounts paid by it based on the adjustment in respect of which amounts it shall have been paid an equivalent amount by the Lessee, the Owner shall pay to the Lessee the amount of such refund together with any interest received by it on such amount, and if such refund is not taxable income to the Owner, and if payment under this or the preceding paragraph to the Lessee is deductible by the Owner for Federal income tax purposes, then the Owner shall also pay to the Lessee the amount by which the Owner's taxes are reduced as the result of such deduction; provided, however, that in no event shall the total amount paid to the Lessee pursuant to this or the preceding paragraph with respect to a particular refund exceed the amount paid by the Lessee to the Owner in connection with the payments made pursuant to the immediately preceding sentence to which such refund relates.

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.

If the Owner is required by the Internal Revenue Service to include in its gross income an amount in respect of any improvement and/or addition to such Unit of Equipment made by the Lessee, title to which vests in the Owner or the Lessor (which amounts are hereinafter called Capital Expenditures), then the Lessee shall pay directly to the Owner, as

an indemnity, in immediately available funds, such amount or amounts which, after deduction of all taxes required to be paid by the Owner in respect of the receipt of such amounts under the laws of any Federal, state or local government or taxing authority of the United States, shall be equal to the sum of the aggregate additional Federal, state or local income taxes payable by the Owner from time to time as a result of such Capital Expenditure plus the amount of any interest, penalties or additions to tax payable as a result of any such Capital Expenditure (less any Federal, state or local tax benefits resulting from payment of any amounts reimbursed hereunder). If as a result of any such Capital Expenditure the aggregate Federal, state or local income taxes paid by the Owner for any taxable year shall be less than the amount of such taxes which would have been payable by the Owner had no such Capital Expenditure been made, then the Owner shall pay the Lessee the amount of such savings in taxes plus any additional tax benefits realized by the Owner as a result of such payment; provided, however, that the Owner shall not be obligated to make any payment pursuant to this sentence to the extent that the amount of such payment would exceed (x) the amount of all prior payments by the Lessee to the Owner pursuant to this paragraph in respect of any Capital Expenditures less (y) the amount of all prior payments by the Owner to the Lessee hereunder, and the amount by which such payment would exceed such amount shall reduce pro tanto any subsequent obligation of the Lessee to make any payments to the Owner pursuant to the first sentence of this paragraph. The amount payable to the Owner pursuant to this paragraph shall be paid within thirty (30) days after receipt of the written demand therefor from the Owner (but not prior to payment by the Owner of the additional Federal, state or local income tax, as the case may be, which becomes due as a result of the said inclusion) accompanied by a written statement describing in reasonable detail such inclusion and the computation of the amount so payable. Any payment due to the Lessee from the Owner pursuant to this paragraph shall be paid within thirty (30) days after the Owner realizes any such savings in its income of any amount with respect to a Capital Expenditure to the extent, and under the circumstances, set forth in the eighth and ninth paragraphs of this § 16.

The Lessee agrees to give the Owner, within thirty (30) days after request therefor, written notice describing in reasonable detail Capital Expenditures made and specifying the cost thereof with respect to each Unit of Equipment if such information is required in connection with an audit by

the Internal Revenue Service of the tax returns of the Owner.

In the event that any indemnity payments are required to be made by the Lessee, or in the event the amount of rentals under this Lease are adjusted, pursuant to any paragraph of this § 16, the damages and amounts set forth in § 10 of the Lease and the applicable Casualty Value percentages set forth in Schedule B to this Lease shall be appropriately adjusted by the Owner (but in no event shall the applicable Casualty Values be reduced below the amounts required to satisfy the obligations of the Lessor under the CSA). The adjustments required to be made pursuant to this paragraph shall be made by the Owner and shall be computed using the same method and the same assumptions, including, without limitation, tax rates, as were utilized by the Owner in originally evaluating this transaction except for the assumption that has resulted in such adjustment. In connection therewith, the Owner shall provide the Lessee with a certificate of an officer of the Owner setting forth in reasonable detail the figures and methods used in making such calculations. In the case of any such adjustments in the damages and amounts set forth in § 10 of this Lease and the applicable Casualty Value percentages set forth in Schedule B to this Lease, if any payment of such damages, amounts or Casualty Values shall have been made prior to the adjustments made pursuant to this paragraph, (a) the Lessee shall pay to the Owner the excess amount which would have been payable on the due date of such payment by reason of the adjustments pursuant to this paragraph or (b) the Owner shall pay to the Lessee the amount of such payments in excess of the amount of such payments which would have been payable by reason of the adjustments pursuant to this paragraph. The Lessee's and the Owner's agreements to pay any sums which may become payable pursuant to this § 23 shall survive the expiration or other termination of this Lease.

The liability of the Lessee to make indemnification payments pursuant to this § 16 shall, notwithstanding any expiration or termination of this Lease, continue to exist until such indemnity payments are made by the Lessee. All indemnity payments under this § 16 shall be made directly to the Owner.

SECTION 17. Interest on Overdue Rentals. Anything

contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay, to the extent legally enforceable, an amount on the overdue rentals and other obligations for the period of time during which they are overdue at a rate per annum equal to 18%, 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 for the actual days elapsed from the date due.

SECTION 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 79 South Main Street, Salt Lake City, Utah 84111, Attention of Trust Division, Corporate Trust Department, with a copy to the Owner at its address set forth in the Participation Agreement; and

(b) if to the Lessee, at 40 Beaver Street, Albany, New York 12207, Attention of Vice President-Finance;

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 79 South Main Street, Salt Lake City, Utah 84111, Attention of Corporate Trust Department.

SECTION 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 and completely states the rights of the Lessor and the Lessee with respect to the leasing of the Units and supersedes all other agreements, oral or written, with respect thereto. No variation or modification of this Lease and no waiver of any of its

provisions or conditions shall be valid unless in writing and signed by duly authorized signatures for the Lessor and the Lessee.

SECTION 20. Immunities; No Recourse. It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, undertakings and agreements herein made on the part of the Lessor are each and every one of them made and intended not as personal representations, undertakings and agreements by the Lessor, or for the purpose or with the intention of binding the Lessor 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 Lessor solely in the exercise of the powers expressly conferred upon the Lessor as trustee under the Trust Agreement; and that no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against the Lessor or the Owner (except as provided in the last paragraph of Article 12 of the CSA and Sections 1.03 and 3.04 of the Trust Agreement) on account of any representation, undertaking or agreement herein of the Lessor, either expressed or implied, all such personal liability, if any, being expressly waived and released by the Lessee and by all persons claiming by, through or under the Lessee.

SECTION 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. It shall not be necessary that any counterpart be executed by both parties hereto as long as each party shall have executed one counterpart hereof and delivered it to the other party. Although for convenience this Lease is dated as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

SECTION 22. Lessor's Right To Perform. If the Lessee fails to perform or comply with any of its agreements contained herein, the Lessor may upon notice to the Lessee itself perform or comply with such agreement, and the amount of the reasonable cost and expenses of the Lessor incurred in connection with such performance or compliance, together with interest on such amount at the rate per annum specified in

§ 17 hereof, shall be payable by the Lessee upon demand except as otherwise provided in this Lease. No such performance or compliance by the Lessor shall be deemed a waiver of rights and remedies of the Lessor or any assignee of the Lessor against the Lessee hereunder.

SECTION 23. Law Governing. The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of New York; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303 and such additional rights arising out of the filing or deposit hereof, if any, and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Lease or any assignment hereof shall be filed or deposited.

SECTION 24. Obligations of Lessor Under CSA; Additional Rentals; Expenses. In the event that the Lessor shall become obligated to make any payment (other than payments in settlement for the Purchase Price for any Unit, payments of the principal of or interest on the Conditional Sale Indebtedness in respect thereof pursuant to the CSA and payments made pursuant to the proviso to the third paragraph of Article 12 thereof) or to perform any obligations pursuant to the CSA not covered by the provisions of this Lease, the Lessee shall pay such additional rentals hereunder and perform such obligations so that all of the Lessor's obligations (other than as aforesaid) pursuant to the CSA shall be fully complied with, without regard for any limitation of liability of the Lessor contained in the CSA.

The Lessee shall pay all reasonable fees, costs and disbursements of the Vendor and the Owner-Trustee in performing their duties under the terms of this Lease, the Trust Agreement, the Assignment, the Participation Agreement, or any other agreement to which they are a party relating to the Units.

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

DELAWARE AND HUDSON RAILWAY  
COMPANY,

by

[Corporate Seal]

Attest:

\_\_\_\_\_

FIRST SECURITY STATE BANK,  
not individually but solely as  
Owner-Trustee,

by

[Corporate Seal]

\_\_\_\_\_

Attest:

\_\_\_\_\_



## SCHEDULE A TO LEASE

Description of Equipment

<u>Type</u>	<u>Manufacturer</u>	<u>Quantity</u>	<u>Lessee's Identifi- cation Numbers</u>
52 foot, 6 inch, Standard GB Gondola Cars	Bethlehem Steel	200	D&H 15000- 15149 D&H 15200- 15249

## SCHEDULE B TO LEASE

Casualty Values

<u>Rental Payment Date</u>	<u>Percentage of Aggregate Purchase Price</u>
June 15, 1980	109.608100
September 15, 1980	110.127260
December 15, 1980	110.583850
March 15, 1981	110.977860
June 15, 1981	111.309290
September 15, 1981	111.578150
December 15, 1981	111.784440
March 15, 1982	111.928150
June 15, 1982	112.009290
September 15, 1982	112.027850
December 15, 1982	111.983830
March 15, 1983	111.877240
June 15, 1983	111.708080
September 15, 1983	111.476340
December 15, 1983	111.182030
March 15, 1984	110.825140
June 15, 1984	110.405670
September 15, 1984	109.923630
December 15, 1984	109.379020
March 15, 1985	108.771830
June 15, 1985	108.102070
September 15, 1985	107.369730
December 15, 1985	106.574810
March 15, 1986	105.717320
June 15, 1986	104.797260
September 15, 1986	103.814620
December 15, 1986	102.769400
March 15, 1987	101.661610
June 15, 1987	100.491250
September 15, 1987	99.258312
December 15, 1987	97.962799
March 15, 1988	96.604710
June 15, 1988	95.184047
September 15, 1988	93.700808
December 15, 1988	92.154995
March 15, 1989	90.546605
June 15, 1989	88.875642
September 15, 1989	87.142103
December 15, 1989	85.345988

<u>Rental Payment Date</u>	<u>Percentage of Aggregate Purchase Price</u>
March 15, 1990	83.487298
June 15, 1990	81.566034
September 15, 1990	79.582195
December 15, 1990	77.535780
March 15, 1991	75.426790
June 15, 1991	73.255225
September 15, 1991	71.021086
December 15, 1991	68.724371
March 15, 1992	66.365081
June 15, 1992	63.943216
September 15, 1992	61.458777
December 15, 1992	58.911762
March 15, 1993	56.302173
June 15, 1993	53.630008
September 15, 1993	50.895268
December 15, 1993	48.097953
March 15, 1994	45.238062
June 15, 1994	42.315598
September 15, 1994	39.330558
December 15, 1994	36.282943
March 15, 1995	33.172753
June 15, 1995	30.000000

The foregoing percentages have been calculated without regard to recapture of the Investment Credit (as defined in § 16 hereof). Consequently, the above Casualty Values shall each be increased by an amount equal to the sum of pretax equivalents of the Investment Credit lost to the Owner computed in accordance with the marginal Federal, state and local income tax rate of the Owner at the date of payment of such Casualty Value. Promptly upon receipt of the notice of Casualty Occurrence pursuant to § 7 hereof, the Lessor, after obtaining the information required from the Owner, shall notify the Lessee and the Vendor of the applicable marginal tax rates and such other information as may be required to compute the increase in Casualty Value pursuant to the preceding sentence.

## SCHEDULE C TO LEASE

Certificate of Acceptance

TO: First Security State Bank, as Trustee (the "Lessor")  
79 Main Street  
Salt Lake City, Utah 84111

Attention of

I, the duly authorized representative for the Lessor and Delaware and Hudson Railway Company (the "Lessee") under the Conditional Sale Agreement and the Lease of Railroad Equipment, both dated as of February 15, 1980, respectively, do hereby certify that I inspected and accepted delivery thereunder of the following Units of Equipment:

TYPE OF EQUIPMENT:  
MODEL:  
DATE ACCEPTED:  
NUMBER OF UNITS:  
NUMBERED:  
MANUFACTURER'S SERIAL NOS.:

I do further certify that the foregoing Units are in good order and condition, and appear to conform to the specifications, requirements and standards applicable thereto as provided in Article 1 of the aforesaid Conditional Sale Agreement.

I do further certify that each of the foregoing Units has been marked by means of a stencil printed in contrasting colors upon each side of each such Unit in letters not less than one inch in height as follows:

"Ownership Subject to a Conditional Sale Agreement filed with the Interstate Commerce Commission."

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

Authorized Representative of  
Lessor and Lessee

BUILDER:

Bethlehem Steel Corporation

Annex D to the  
Conditional Sale Agreement

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[CS&M Ref: 5471-003]

ASSIGNMENT OF LEASE AND AGREEMENT

Dated as of February 15, 1980

between

FIRST SECURITY STATE BANK,  
not in its individual capacity but solely as Owner-Trustee  
as Lessor,

and

FIRST SECURITY BANK OF UTAH, N.A.,  
not in its individual capacity but solely as Agent under  
the Participation Agreement dated as of the date hereof,  
as Agent.

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ASSIGNMENT OF LEASE AND AGREEMENT  
dated as of February 15, 1980 (the "Lease Assignment"), by and between FIRST SECURITY STATE BANK, not in its individual capacity but solely as Owner-Trustee (the "Lessor") under a Trust Agreement dated as of the date hereof with THE PROVIDENT BANK (the "Owner") and FIRST SECURITY BANK OF UTAH, N.A., not in its individual capacity but solely as Agent (the "Agent") for certain institutional investors (the "Investors") under a Participation Agreement dated as of the date hereof among the Lessor, the Owner, the Investors, and Delaware and Hudson Railway Company (the "Lessee").

The Lessor entered into a Conditional Sale Agreement dated as of the date hereof (the "CSA") with Bethlehem Steel Corporation (the "Builder") providing for the sale to the Lessor of such units of railroad equipment (the "Units") described in the Annex B thereto as are delivered to and accepted by the Lessor thereunder, and the CSA is being assigned to the Agent by the Builder;

The Lessor and the Lessee have entered into a Lease of Railroad Equipment dated as of the date hereof (the "Lease"), providing for the leasing by the Lessor to the Lessee of the Units;

In order to provide security for the obligations of the Lessor under the CSA and as an inducement to the Investors to invest in the Conditional Sale Indebtedness as defined in the CSA, the Lessor agrees to assign for security purposes its rights in, to and under the Lease to the Agent.

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

1. Subject to the provisions of Paragraph 10 hereof, the Lessor hereby assigns, transfers and sets over unto the Agent, as collateral security for the payment and performance of the Lessor's obligations under the CSA, all the Lessor's right, title and interest, powers, privileges, and other benefits under the Lease (including those inuring to the benefit of the Owner), including, without limitation, the immediate right to receive and collect all rentals, profits

and other sums payable to or receivable by the Lessor from the Lessee under or pursuant to the provisions of the Lease (other than payments by the Lessee to the Owner under § 16 of the Lease) whether as rent, casualty payment, indemnity, liquidated damages, or otherwise, (such rights, title, interests, powers, privileges, moneys and other benefits, being hereinafter called the "Payments"), and the right to make all waivers and agreements, to give all notices, consents and releases, to take all action upon the happening of an Event of Default specified in the Lease, and to do any and all other things whatsoever which Lessor is or may become entitled to do under the Lease. In furtherance of the foregoing assignment, the Lessor hereby irrevocably authorizes and empowers the Agent in its own name, or in the name of its nominee, or in the name of the Lessor or as its attorney, to ask, demand, sue for, collect and receive any and all Payments to which the Lessor is or may become entitled under the Lease, and to enforce compliance by the Lessee with all the terms and provisions thereof.

The Agent agrees to accept for the account of the Lessor any Payments made by the Lessee pursuant to the Lease. To the extent received, the Agent will apply such Payments, first, to satisfy such obligations of the Lessor under the CSA as are then due and payable 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 default thereunder) shall have occurred and be continuing, any balance shall be paid to the Lessor or such other party as the Lessor may direct in writing, on the first business day following receipt by the Agent of such balance, at the Lessor's address specified in § 18 of the Lease or at such other address as may be specified by the Lessor in writing. If the Agent shall not receive any rental payment under the first paragraph of § 3 of the Lease or any payment of Casualty Values under § 7 of the Lease when due, the Agent shall promptly notify the Lessor and the Owner at their addresses set forth in the Participation Agreement. Failure to so notify the Lessor or the Owner shall not affect the rights and remedies of the Agent hereunder or under the CSA.

2. This Assignment of Lease and Agreement is executed only as security for the obligations of the Lessor under the CSA and, therefore, the execution and delivery of this Lease Assignment shall not subject the Agent to, or transfer, or pass, or in any way affect or modify the liability of the Lessor under the Lease, it being understood and

agreed that notwithstanding this Lease Assignment or any subsequent assignment, all obligations of the Lessor under the Lease to the Lessee shall be and remain enforceable by Lessee, its successors and assigns, against, and only against, the Lessor or persons other than the Agent.

3. To protect the security afforded by this Lease Assignment, subject to the provisions of Paragraph 10 hereof, the Lessor agrees as follows:

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

(b) Should the Lessor fail to make any payment or to do any act which this Lease Assignment requires the Lessor to make or do, then the Agent, but without obligation so to do, after first making written demand upon the Lessor and affording the Lessor a reasonable period of time within which to make such payment or do such act, but without releasing the Lessor from any obligation hereunder, may make or do the same in such manner and to such extent as the Agent may deem necessary to protect the security provided hereby, including specifically, without limiting its general powers, the right to appear in and defend any action or proceeding purporting to affect the security hereof and the rights or powers of the Agent, and also the right to perform and discharge each and every obligation, covenant and agreement of the Lessor contained in the Lease; and in exercising any such powers, the Agent may pay necessary costs and expenses, employ counsel and incur and pay reasonable attorneys' fees, and the Lessor will reimburse the Agent for such costs, expenses and fees; provided, however, that the obligations of the Lessor to

make reimbursements under this Paragraph 3 are subject to the last paragraph of Article 4 of the CSA.

4. Subject to the provisions of Paragraph 10 hereof, the Lessor does hereby constitute the Agent the Lessor's true and lawful attorney, irrevocably, with full power (in the name of the Lessor, or otherwise), to ask, require, demand, receive, compound and give acquittance for any and all Payments due and to become due under or arising out of the Lease to which the Lessor is or may become entitled, to enforce compliance by the Lessee of all the terms and provisions of the Lease, to endorse any checks or other instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings which the Agent may deem to be necessary or advisable in the premises.

5. Upon the full discharge and satisfaction of all the Lessor's obligations under the CSA and Participation Agreement, this Lease Assignment and all rights herein assigned to the Agent shall terminate, and all estate, right, title and interest of the Agent in and to the Lease shall revert to the Lessor without further act or deed, but the Agent shall execute and deliver such documents as the Lessor may reasonably request in order to confirm, or make clear upon public records, such termination and/or reversion.

6. The Lessor will, from time to time, do and perform any other act and will execute, acknowledge, and deliver any and all further instruments required by law or reasonably requested by the Agent in order to confirm or further assure the interests of the Agent hereunder.

7. The Agent may assign all or any of the rights assigned to it hereby or arising under the Lease including, without limitation, the right to receive any Payments due or to become due. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Agent hereunder; provided, however, the Lessor and the Lessee shall not be bound to honor such assignment until they have received written notice thereof from the Agent. Payment to the assignee of any Payments shall constitute full compliance with the terms of this Lease Assignment and the Lease. The Lessor and the Lessee may rely on instruments and documents of assignment which they believe in good faith to be true and authentic.

8. This Assignment shall be governed by the laws of the State of Utah, but the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303.

9. The Lessor shall cause copies of all notices received in connection with the Lease and all Payments thereunder received in connection with the Lease and all Payments thereunder to be promptly delivered or made to the Agent at its address set forth in Paragraph 11 of the Participation Agreement or at such other address as the Agent shall designate.

10. The Agent hereby agrees with the Lessor that (i) so long as no event of default, or any event which with lapse of time or notice or both would constitute such an event of default, under the CSA has occurred and is then continuing, the Agent will not exercise or enforce, or seek to exercise or enforce, or avail itself of, any of the rights, powers, privileges, authorizations or benefits assigned and transferred by the Lessor to the Agent by this Lease Assignment, except the right to receive and apply the Payments as provided in Paragraph 1 hereof, (ii) subject to the terms of the Lease and the CSA, the Lessor may, so long as no event of default or event which with notice or lapse of time or both would constitute such an event of default under the CSA has occurred and is then continuing, exercise or enforce, or seek to exercise or enforce, its rights, powers, privileges, and remedies arising out of subparagraph (a) of the first paragraph of § 10 of the Lease; provided, however, the Lessor shall not, without the prior written consent of the Agent, terminate the Lease or otherwise exercise or enforce, or seek to exercise or enforce, any rights, powers, privileges and remedies arising out of subparagraph (b) of said § 10 of the Lease.

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

It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, undertakings and agreements herein made on the part of the Lessor are each and every one of them made and intended not as personal representations, undertakings and agreements by the Lessor, or for the purpose or with the intention of binding the Lessor personally but are made and intended for the purpose of binding only the Trust Estate (as defined in the Trust Agreement) and this Assignment of Lease and Agreement is executed and delivered by the Lessor solely in the exercise of the powers expressly conferred upon the Lessor as trustee under the Trust Agreement; and that no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against the Lessor or the Owner on account of any representation, undertaking or agreement hereunder of the Lessor, or the Owner, either expressed or implied, except for their respective obligations under the proviso to the last paragraph of Article 12 of the CSA and subparagraph (a) of the third paragraph of Article 4 of the CSA; all such personal liability, if any, being expressly waived and released by the Agent and by all persons claiming by, through or under the Agent; provided, however, that the Agent, making claim hereunder, may look to said Trust Estate for satisfaction of the same.

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

FIRST SECURITY STATE BANK,  
not in its individual capacity,  
but solely as Owner-Trustee  
and Lessor,

by

[CORPORATE SEAL]

\_\_\_\_\_  
Authorized Officer

Attest:

\_\_\_\_\_  
Authorized Officer

FIRST SECURITY BANK OF UTAH, N.A.,  
not in its individual capacity,  
but solely as Agent,

by

\_\_\_\_\_  
Authorized Officer

[SEAL]

Attest:

\_\_\_\_\_  
Authorized Officer

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

On this            day of            1980, before me personally appeared            , to me personally known, who, being by me duly sworn, says that he is an Authorized Officer of FIRST SECURITY STATE BANK, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation and that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

\_\_\_\_\_  
Notary Public

[NOTARIAL SEAL]

My Commission Expires:

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

On this            day of            1980, before me personally appeared            , to me personally known, who, being by me duly sworn, says that he is an Authorized Officer of FIRST SECURITY BANK OF UTAH, N.A., that one of the seals affixed to the foregoing instrument is the seal of said national banking association and that said instrument was signed and sealed on behalf of said national banking association by authority of its By-laws and he acknowledged that the execution of the foregoing instrument was the free act and deed of said national banking association.

\_\_\_\_\_  
Notary Public

[NOTARIAL SEAL]

My Commission Expires:

## LESSEE'S CONSENT AND AGREEMENT

The undersigned, DELAWARE AND HUDSON RAILWAY COMPANY, a Delaware corporation (the "Lessee"), the lessee named in the Lease of Railroad Equipment (the "Lease"), referred to in the foregoing Assignment of Lease and Agreement (the "Lease Assignment"), hereby acknowledges receipt of a copy of the Lease Assignment, and consents to all the terms and conditions of the Lease Assignment and agrees:

(1) subject to the terms and conditions of the Lease Assignment, to pay all rentals, casualty payments, liquidated damages, indemnities and other moneys provided for in the Lease and assigned to the Agent by the Lease Assignment (which moneys are hereinafter called the Payments) due and to become due under the Lease or otherwise in respect of the Units (as defined in the Lease) leased thereunder, directly to the First Security Bank of Utah, N.A., as Agent (the "Agent"), the assignee named in the Lease Assignment, at 79 South Main Street (Suite 310), Salt Lake City, Utah 84111, attention of Trust Division, Corporate Trust Department (or to such other address as may be furnished in writing to the Lessee by the Agent);

(2) subject to the terms and conditions of the Lease Assignment, that the Agent shall be entitled to the benefits of, and to receive and enforce performance of, all of the covenants to be performed by the undersigned under the Lease as though the Agent were named therein as the Owner-Trustee;

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

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

This Consent and Agreement may be executed in

several counterparts, each of which when so executed shall be deemed an original, and such counterparts together shall constitute one and the same instrument.

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

Dated as of February , 1980.

DELAWARE AND HUDSON RAILWAY  
COMPANY,

by

[CORPORATE SEAL]

\_\_\_\_\_  
Authorized Officer

Attest:

\_\_\_\_\_  
Authorized Officer

Accepted:

FIRST SECURITY BANK OF UTAH, N.A.,  
not in its individual capacity  
but solely as Agent under the  
Participation Agreement referred  
to above,

by

[SEAL]

\_\_\_\_\_  
Authorized Officer

Attest:

\_\_\_\_\_  
Authorized Officer