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INTERSTATE COMMERCE COMMISSION

[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.

Rec. No 11633-B
(recorded on April 8, 1980) L-1

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 Ocurrence) 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 Occurence) 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 occurence, 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 occurence). 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 Occurence 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 Transporation, 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 Transporation, 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 liabiities, 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 Indenified 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 prson) 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 obligatons 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 specifiying 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 threto, 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 threof, 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 Comerce 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 if 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 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 W. W. Collins

VICE PRESIDENT-ADMINISTRATION AND STRATEGIC PLANNING

[Corporate Seal]

Attest:

Secretary

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

by _____

[Corporate Seal]

Attest:

_____

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

On this 7th day of April, 1980, before me personally appeared W. W. Collins, to me personally known, who, being by me duly sworn, says that he is Vice President of DELAWARE AND HUDSON RAILWAY COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, and that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

Notary Public

[Notarial Seal]

GEORGE H. KLEINBERGER
Notary Public - State of New York
Qualified in Schenectady County
Reg. No. 2144350
Commission Expires March 30, 19[illegible]

My Commission Expires

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

On this day of , before me personally appeared , to me personally known, who, being by me duly sworn, says that he is of FIRST SECURITY STATE BANK, that one of the seals affixed to the foregoing 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 A TO LEASE

Description of Equipment

Type	Manufacturer	Quantity	Lessee's Identification Numbers
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

Rental Payment Date	Percentage of Aggregate Purchase Price
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

Rental Payment Date	Percentage of Aggregate Purchase Price
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