

RECORDATION NO. **11661** C
Filed 1425

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Filed 1425

APR 9 1980 - 4 05 PM

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CRAVATH, SWAINE & MOORE

INTERSTATE COMMERCE COMMISSION

INTERSTATE COMMERCE COMMISSION

ONE CHASE MANHATTAN PLAZA

NEW YORK, N. Y. 10005

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11661 B
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11661 A
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INTERSTATE COMMERCE COMMISSION

RECORDATION NO. Filed 1425

APR 9 1980 - 4 05 PM

INTERSTATE COMM **0-100A150**

Date **APR 9 1980**
Fee \$ **200.00**

ICE Washington, D. C.

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April 8, 1980

INTERSTATE COMMERCE COMMISSION
(Flight ~~document~~ cover)

The Chesapeake and Ohio Railway Company
Reconstruction and Conditional Sale Financing
Dated as of March 1, 1980
Conditional Sale Indebtedness
Due June 30, 1990

Dear Ms. Mergenovich:

Pursuant to 49 U.S.C. § 11303 and the Commission's rules and regulations thereunder, enclosed for filing and recordation on behalf of The Chesapeake and Ohio Railway Company are counterparts of the following:

New Number

(1) Reconstruction and Conditional Sale Agreement dated as of March 1, 1980, between Mercantile-Safe Deposit and Trust Company, as Agent, The Chesapeake and Ohio Railway Company and The Connecticut Bank and Trust Company, as Trustee;

- A

(2) Transfer Agreement dated as of March 1, 1980, between The Connecticut Bank and Trust Company, as Trustee, and Mercantile-Safe Deposit and Trust Company, as Agent;

- B

(3) (a) Lease of Railroad Equipment dated as of March 1, 1980, between The Chesapeake and Ohio Railway Company and The Connecticut Bank and Trust Company, as Trustee;

- C next page

- D next page

Carlyle E. Maw

- C
 (b) Assignment of Lease and Agreement dated as of March 1, 1980, between The Connecticut Bank and Trust Company, as Trustee,, and Mercantile-Safe Deposit and Trust Company, as Agent; and

- D
 (4) Hulk Purchase Agreement dated as of March 1, 1980, between The Connecticut Bank and Trust Company, as Trustee, and The Chesapeake and Ohio Railway Company.

The addresses of the parties to the above documents are:

Vendee-Lessor-Buyer:

The Connecticut Bank and Trust Company
 One Constitution Plaza
 Hartford, Connecticut 06115

Builder-Lessee-Seller:

The Chesapeake and Ohio Railway Company
 100 North Charles Street
 Baltimore, Maryland 21201

Vendor:

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

Please file and record the above documents and cross-index them under the names of the Vendee-Lessor-Buyer, the Builder-Lessee-Seller and the Vendor.

The equipment covered by the above documents is listed in Exhibit A hereto.

Enclosed also is our check in the amount of \$200 for the required recordation fee. Please stamp all copies of the enclosed documents with your recordation number, retain one copy of each for your files and return the remaining copies to me.

RECEIVED

APR 9 4 00 PM '80

Thank you for your assistance.

I. C. C.
FEE OPERATION BR.

Sincerely,



Jacqueline B. Goodyear
as agent for The Chesapeake
and Ohio Railway Company

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

Encls.
EM

11661/B

RECORD NO. FILED 1125

INDUSTRIAL COMMERCE COMMISSION

[CS&M Ref. 2043-981]

LEASE OF RAILROAD EQUIPMENT

Dated as of March 1, 1980

Between

THE CHESAPEAKE AND OHIO RAILWAY COMPANY,
Lessee,

and

THE CONNECTICUT BANK AND TRUST COMPANY,
not in its individual capacity but
solely as Trustee.

[Covering Reconstructed Cars]

LEASE OF RAILROAD EQUIPMENT

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* This Table of Contents has been provided for convenience only and does not affect any interpretation of this document.

LEASE OF RAILROAD EQUIPMENT dated as of March 1, 1980, between THE CHESAPEAKE AND OHIO RAILWAY COMPANY, a Virginia corporation (the "Lessee"), and THE CONNECTICUT BANK AND TRUST COMPANY, a Connecticut banking corporation, not in its individual capacity but solely as trustee (the "Lessor") under a trust agreement dated as of the date hereof (the "Trust Agreement") with GENERAL ELECTRIC CREDIT CORPORATION ("G. E. Credit") and J. P. MORGAN INTERFUNDING CORP. ("Morgan" and, with G. E. Credit, the "Owners").

The Lessee and the Lessor are entering into a Reconstruction and Conditional Sale Agreement dated as of the date hereof (the "RCSA") with MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, not in its individual capacity but solely as Agent (said Trust Company, as Agent, together with the Investors for whom it is acting, being hereinafter called the "Vendor") under a Participation Agreement dated as of the date hereof (the "Participation Agreement") with the Lessee, the Owners, the Lessor and said Investors, wherein the Vendor has agreed to sell to the Lessor its interest in the railroad equipment described in Schedule A thereto (the "Equipment") after it has been reconstructed (pursuant to the terms of the RCSA) from the hulks (the "Hulks") delivered to the Lessor pursuant to a Hulk Purchase Agreement dated as of the date hereof (the "Hulk Purchase Agreement") between the Lessor and the Lessee.

The Lessee desires to lease all the units of the Equipment as are delivered, accepted and settled for under the RCSA (the "Units"). The Lessor will assign certain rights in this Lease for security to the Vendor pursuant to an Assignment of Lease and Agreement dated as of the date hereof (the "Lease Assignment") and the Lessee will consent thereto pursuant to the Consent and Agreement attached to the Lease Assignment (the "Consent"). The Owners and the Lessee will agree with the Lessor to make certain payments due under the RCSA pursuant to a Funding Agreement dated as of the date hereof (the "Funding Agreement").

In consideration of the agreements hereinafter set forth, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions, but subject to all the rights and remedies of the Vendor under the RCSA:

Section 1. Delivery and Acceptance of Units. Sub-

ject to the rights of the Owners to inspect the Hulks and the Equipment as provided in the RCSA, the Lessor hereby appoints the Lessee (and any employee thereof designated by the Lessee) as its agent and the agent for the Owners for inspection and acceptance of the Units pursuant to the RCSA. The Lessor will cause each Unit to be tendered 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 RCSA. Upon such tender, the Lessee will cause an authorized representative of the Lessee to inspect the same, and if such Unit is found to be in good order, to accept delivery of such Unit and execute and deliver to the Lessor a certificate of acceptance and delivery (the "Certificate of Acceptance"), whereupon 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.

Section 2. Rental. The Lessee agrees to pay to the Lessor as rental for each Unit subject to this Lease 10 consecutive annual payments, in arrears, payable on June 30 in each year, commencing June 30, 1982. The first 5 annual rental payments with respect to each Unit then ~~subject to~~ this Lease shall each be in an amount equal to 14.69796290% of the Purchase Price (as defined in the RCSA) of such Unit. The ~~second~~ 5 annual rental payments with respect to each Unit then ~~subject to~~ this Lease shall each be in an amount equal to 17.96417690% of the Purchase Price of such Unit.

If and to the extent that the Vendor shall not receive the funds due under the Funding Agreement on the dates due thereunder, the Lessee agrees to pay to the Lessor, as additional rental for each Unit subject to this Lease, on each such date an amount equal to the applicable basic lease rate therefor set forth in Schedule C hereto for such date multiplied by the Purchase Price of each such Unit, and the Lessee shall be entitled to an offset against the next following June 30 rental payment or payments (to the extent such payments are not required to satisfy the payment of principal and interest on the CSA Indebtedness, as defined in the RCSA) of an amount equal to the amount so paid by the Lessee plus interest thereon for six months at the rate of 13% per annum.

In addition to the foregoing rental, the Lessee agrees to pay the Lessor as additional rental an amount equal to any excess of the interest paid to the Interim Investor under the Participation Agreement pursuant to the fourth paragraph of Paragraph 10 thereof over interest at the rate of 13% per annum for the period for which such interest is

paid, payable on the date such interest is paid.

The Lessee and the Lessor agree that the rentals payable hereunder and the Casualty Value percentages set forth in Schedule B hereto will be adjusted in the event that (A) any change in the Internal Revenue Code of 1954 (the "Code"), the income tax regulations thereunder or published administrative or judicial interpretations of the Code or such regulations is enacted or has an effective date on or prior to June 30, 1981, or prior to such date any income tax regulations or published administrative or judicial interpretations of the Code are issued, the effect of which is to deny to the Owners the ability to put into practice with respect to this transaction any of the tax assumptions utilized by the Owners in originally evaluating this transaction, if such assumptions were reasonably consistent with industry practice at the time made; (B) the aggregate Reconstruction Cost (as defined in the RCSA) of the Units is more or less than 68.37% of the aggregate Purchase Price of the Units or the Lessor pays more than 24.93% of the Purchase Price of any Unit pursuant to clause (b) of the third paragraph of Article 3 of the RCSA; (C) less than 21% of the Units have roller bearings (rather than friction bearings); (D) any Closing Date is held on a date other than the date specified therefor in Schedule B of the RCSA; (E) the amount settled for on any Closing Date is different from the amount specified therefor in Schedule B of the RCSA; (F) any Unit is delivered and accepted after June 30, 1980; (G) the aggregate amount paid to the Lessor on the sale of noncompleted Hulks pursuant to Section 2 of the Hulk Purchase Agreement is less than the aggregate Purchase Price of such Units; (H) there is any deficiency payable in respect of Investments (as defined in the Participation Agreement) pursuant to the Participation Agreement; (I) the Interim Investor under the Participation Agreement holds any interest in the CSA Indebtedness after the Settlement Date under PA-2 (as defined in the Participation Agreement); (J) the Owners expend funds to obtain a replacement Investor (pursuant to Paragraph 10 of the Participation Agreement); or (K) no Units are delivered and accepted under the Lease of Railroad Equipment dated as of March 15, 1980 ("Lease-2"), between the parties hereto. Any such adjustment shall be effective as of the first rental payment date following the event giving rise to such adjustment, and shall be made in such manner as will result, in the Owners' reasonable judgment, in preserving for the Owners both the after-tax rate of return and the after-tax cash flow that would have been realized by the Owners had such event not occurred, based on the rates of Federal, state and local taxes on or measured by net income in effect from time to

time and in all other respects based on the assumptions and methods of calculation utilized by the Owners in originally evaluating the transaction described in this Lease, Lease-2 and related documents (the "Net Economic Return"). Notwithstanding the foregoing, the rentals payable and Casualty Value percentages will never be less than those amounts and percentages required to enable the Lessor to satisfy its obligations under the RCSA and to enable the Owners to satisfy the profit and positive cash flow requirements set forth in Section 4(6) of Rev. Proc. 75-21, 1975-1 C. B. 715, as such requirements may be modified or adjusted as of the applicable rental payment date. The Owners shall furnish the Lessee and the Vendor prior to the effective date of any such adjustment with a notice setting forth in reasonable detail the computations and methods used in computing such adjustment.

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

This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent, reduction thereof or setoff against rent, including but not limited to abatements, reductions or setoffs due or alleged to be due to or by reason of any past, present or future claims of the Lessee against the Lessor under this Lease or under the RCSA, or the Vendor or the Owners or otherwise (except as provided in the second paragraph of this Section 2); nor, except as otherwise expressly provided herein, shall this Lease terminate or the respective obligations of the Lessor or the Lessee be otherwise affected by reason of any defect in or failure of title of the Lessor to any of the Units 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, any prohibition of or other restriction against Lessee's use of all or any of the Units, the taking or requisitioning of any of the Units by condemnation or otherwise, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency, 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 par-

ties 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 the lease of any of the Units, except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever. All payments under the Lease shall be made by bank wire transfer of Federal or other immediately available funds no later than 10:00 a.m. Baltimore time in the city where such payments are due.

Section 3. Term of Lease. The term of this Lease as to each Unit shall begin on the date of the delivery to and acceptance by the Lessee of such Unit and, subject to the provisions of Sections 6, 9, 12 and 13 hereof, shall terminate on the date on which the final payment of rent in respect thereof is due hereunder; provided, however, that all obligations of the Lessee, except for the payment of rent and the furnishing of annual reports, shall continue until surrender of the Units in accordance with Section 13 hereof.

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 RCSA. If an event of default should occur under the RCSA, the Vendor may terminate this Lease (or rescind its termination), all as provided therein.

Section 4. Identification Marks. So long as this Lease shall remain in effect, the Lessee will cause each Unit to be kept numbered with the road number set forth in Schedule A hereto and will keep and maintain, conspicuously marked on each side of such Unit, in letters not less than one inch in height, the words "Ownership Subject to a Security Agreement Filed with the Interstate Commerce Commission" or other appropriate markings designated by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect Lessor's and Vendor's title to and property in such Unit and the rights of the Lessor under this Lease and of the Vendor under the RCSA. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such legend shall have been so marked on both sides thereof and will

replace promptly any such legend which may be removed, obliterated or destroyed. The Lessee will not change the road 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 filed by the Lessee in all public offices where this Lease and the RCSA shall have been filed and (ii) the Lessee shall have furnished the Vendor and the Lessor an opinion of counsel to that effect and to the further effect that such filing will protect the Vendor's and the Lessor's interests in such Units and that no other filing or giving of notice is necessary to protect the interests of the Vendor and the Lessor in such Units.

So long as this Lease shall remain in effect, the Lessee will not allow any name to be placed on the Units as a designation that might be interpreted as a claim of ownership (except as above provided); provided, however, that the Lessee may cause the Units to be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates on railroad equipment used by them of the same or a similar type for convenience of identification of their rights to use the Units as permitted under this Lease.

Section 5. Taxes. The Lessee agrees for the benefit of the Lessor and the Owners to pay and on written demand to indemnify and hold each Indemnitee (which for the purposes of this Section 5 shall mean the Lessor (in both its individual and fiduciary capacities), the Owners, the Trust Estate (as defined in the Trust Agreement) and any affiliate of any of them) harmless from all license and registration fees and all taxes (including income, gross receipts, franchise, sales, use, property, stamp and other taxes), assessments, levies, imposts, duties, charges or withholdings of any nature whatsoever, together with any penalties, additions to tax, fines or interest thereon (collectively, "taxes, fees or other charges"), imposed against any Indemnitee, the Lessee, any Unit or any part thereof by any Federal, state or local government or taxing authority in the United States of America or by any taxing authority or governmental subdivision of a foreign country upon or with respect to any Unit or any part thereof or upon the manufacture, purchase, ownership, delivery, leasing, possession, use, operation, sublease, return or other disposition thereof or upon the rentals, receipts or earnings arising therefrom or upon or with respect to this Lease or any other document contemplated in the Participation Agreement; excluding, however, (i) United States Federal income taxes imposed on the Owners, whether or not the Lessee is required to indemnify therefor pursuant to Section 15

hereof and (ii) any corporate franchise or doing business tax or tax, fee or charge on, based on or measured by the net income of either Owner, other than such tax as may be imposed by any taxing jurisdiction as a result of the use or operation of the Units by the Lessee within such jurisdiction and which would not otherwise be imposed but for such use or operation of the Units; further excluding, any taxes, fees or other charges on, based on or measured by any fees or compensation received by the Lessor for services rendered in connection with the transactions contemplated hereby; further excluding, any taxes, fees or other charges imposed on or for the account of any Indemnitee by reason of any transfer of any interest in the Units or the Trust Estate voluntarily by such Indemnitee while no Event of Default shall have occurred and then be continuing; provided however, that there shall not be excluded any taxes, fees or other charges imposed by any jurisdiction on, based on or measured by net income resulting directly or indirectly (whether by inclusion of an item in gross income, disallowance of a credit against tax, disallowance of a deduction for depreciation or otherwise) from the Lessee's receipt of any payment by any manufacturer of any component of any Unit in satisfaction of a claim against such manufacturer with respect to any Unit under any warranty or indemnity provision of any purchase agreement, unless, and only to the extent that, any such tax, fee or other charge is being contested by the Lessee in good faith (and for the payment of which adequate reserves have been provided) by appropriate proceedings so long as such proceedings do not involve any danger of the sale, forfeiture or loss of any Unit or any interest therein. The Lessee further agrees that any payment of indemnity hereunder shall include any amount necessary to hold the Indemnitee harmless on an after-tax basis from all taxes required to be paid by such Indemnitee with respect to such payment of indemnity under the laws of any Federal, state or local governmental or taxing authority in the United States of America or under the laws of any taxing authority or governmental subdivision of a foreign country; provided, however, that if any Indemnitee realizes a tax benefit by reason of such payment of indemnity (whether such tax benefit shall be by means of investment tax credit, depreciation deduction or otherwise), such Indemnitee shall pay the Lessee an amount equal to the sum of such tax benefit plus any tax benefit realized as the result of any payment made pursuant to this proviso, when, as, if and to the extent realized; but not before the Lessee shall have made all payments of indemnities to such Indemnitee thereto-

fore required and then due and payable pursuant to this Section 5 and no Event of Default (or event which with notice or lapse of time or both would constitute an Event of Default) shall have occurred and be continuing. Each Indemnitee shall in good faith use reasonable efforts in filing its tax returns and in dealing with taxing authorities to seek and claim any such tax benefit.

The Lessee shall not be responsible under this Section for any tax upon or with respect to any Unit imposed with respect to any period following the return of such Unit (and after Lessee has fully complied with Section 13 with respect to such return) at the end of the term of this Lease or, except as otherwise specifically provided herein, payment in full of the Casualty Value for such Unit in accordance with the provisions hereof.

In the event that the Lessor shall become obligated to make any payment to the Vendor pursuant to Article 5 of the RCSA not covered by the foregoing paragraph of this Section 5, the Lessee shall pay such additional amounts (which shall also be deemed taxes, fees or other charges hereunder) to the Lessor as will enable the Lessor to fulfill completely its obligations pursuant to said Article 5.

In the event any reports with regard to taxes, fees or other charges are required to be made on the basis of individual Units or otherwise, the Lessee will, where permitted to do so under applicable rules or regulations, make and timely file such reports in such manner as to show the interest of the Lessor and the Vendor in the Units as shall be satisfactory to the Lessor and the Vendor or, where not so permitted, will notify the Lessor and the Vendor of such requirement and will prepare and deliver such reports to the Lessor and the Vendor within a reasonable time prior to the time such reports are to be filed in such manner as shall be satisfactory to the Lessor and the Vendor.

In the event that the Lessee becomes liable for the payment or reimbursement of any taxes, fees or other charges pursuant to this Section 5 during the continuance of this Lease, such liability shall continue, notwithstanding the expiration of this Lease, until all such taxes, fees or other charges are paid or reimbursed by the Lessee.

The Lessee shall, whenever reasonably requested by the Lessor, submit to the Lessor copies of returns, state-

ments, reports, billings and remittances or furnish other evidence satisfactory to the Lessor of the Lessee's performance of its duties under this Section 5. 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, including but not limited to information relating to the use of any Unit or Units outside the United States of America.

The parties hereto acknowledge that the Units become a part of the mass of property used by the Lessee in its operations as a common carrier by rail. Consequently, the parties agree that the Lessee shall include the Units in the ad valorem tax returns to be filed by the Lessee in the applicable states or localities and that neither the Vendor nor the Lessor shall include the Units in any ad valorem tax returns filed by them in such states or localities.

Section 6. Maintenance; Payment for Casualty Occurrences; Insurance. The Lessee agrees that, at its own cost and expense, it will maintain and keep each Unit which is subject to this Lease in good operating order, repair and condition, ordinary wear and tear excepted.

In the event that any Unit shall be or become worn out, lost, stolen, destroyed or, in the good faith and reasonable opinion of the Lessee, irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise by the United States Government for a period which shall exceed the then remaining term of this Lease or by any other governmental entity resulting in loss of possession by the Lessee for a period of 90 consecutive days or until the end of the term of this Lease (each such occurrence is called a "Casualty Occurrence") prior to the return of such Unit in the manner set forth in Section 13 hereof and the expiration of the storage period provided therein, the Lessee shall, within 30 days after it shall have determined that such Unit has suffered a Casualty Occurrence, fully notify the Lessor and the Vendor in writing with respect thereto. Notwithstanding any such Casualty Occurrence, the Lessee shall continue making all payments provided for in this Lease in respect of such Unit to and including the date listed in Table 1 of Schedule B hereto next succeeding such notice (the "Casualty Payment Date"). On the Casualty Payment Date the Lessee shall, in addition to other amounts due, pay to the

Lessor the Casualty Value (as hereinafter defined) of such Unit as of the date of such payment in accordance with Schedule B hereto. Upon the making of all such payments by the Lessee in respect of any Unit, the rental for such Unit shall thereafter cease to accrue, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft or complete destruction of such Unit) the Lessor shall be entitled to recover possession of such Unit, and, subject to the next succeeding sentence, the Lessee shall pay all costs of removal of such Unit and of freight to the place designated pursuant to Section 13 hereof. The Lessor hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof at the best price obtainable under the circumstances on an "as is, where is, and with all faults" basis in accordance with the Lessee's normal procedures; provided, however, that, except in the case of the loss, theft or complete destruction of such unit, the Lessee shall give notice of such Casualty Occurrence to the Lessor and the Lessor may revoke such appointment upon written notice received by the Lessee within 15 days after the date of the notice given by the Lessee to the Lessor. Provided that the Lessee has previously paid the Casualty Value to the Lessor, the Lessee shall be entitled to the net proceeds of such sale after deductions of any cost or expense incurred in disposing of such Unit to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Lessor.

The Casualty Value of each Unit as of the payment date on which payment is to be made as aforesaid shall be an amount equal to the sum of (a) that percentage of the Purchase Price of such Unit as is set forth in Table 1 of Schedule B hereto opposite such date with respect to such Unit plus (b) if applicable to such Unit, that percentage of the Reconstruction Cost thereof as set forth in Table 2 of said Schedule B with respect to such Unit; provided, however, that the Casualty Value percentages set forth in Schedule B hereto apply only to Units delivered and accepted under the RCSA on or prior to June 30, 1980. With respect to any Unit delivered and accepted after June 30, 1980, the Lessor and the Lessee agree that the Casualty Value percentages set forth in Schedule B hereto will be appropriately adjusted in order that the Owners' after-tax rate of return and after-tax cash flow (based on the rates of Federal, state and local taxes on or measured by net income in effect from time to time and in all other respects based on the assumptions and methods of calculation utilized by the Owners in originally

evaluating the transaction described in this Lease and related documents) will not be increased or decreased by reason thereof; provided, however, that the Casualty Value percentages, as so adjusted, shall be sufficient to satisfy the obligations of the Lessor under the RCSA, notwithstanding any limitation of liability contained therein.

Whenever any Unit shall suffer a Casualty Occurrence at the end of the term or after termination of this Lease and before such Unit shall have been returned in the manner provided in Section 13 hereof, the Lessee shall promptly and fully notify the Lessor with respect thereto and pay to the Lessor an amount equal to the Casualty Value of such Unit as of the rental payment date immediately preceding such termination. 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), the Lessor shall be entitled to recover possession of such Unit. The Lessor hereby appoints the Lessee its agent to dispose of any Unit suffering such Casualty Occurrence or any component thereof at the best price obtainable on an "as is, where is, and with all faults" basis; provided, however, that, except in the case of the loss, theft or complete destruction of such Unit, the Lessee shall give notice of such Casualty Occurrence to the Lessor and the Lessor may revoke such appointment upon written notice received by the Lessee within 15 days after the date of the notice given by the Lessee to the Lessor. Provided that the Lessee has previously paid the Casualty Value to the Lessor, the Lessee shall be entitled to the proceeds of such sale and all payments made by other carriers to or for the account of the Lessee and attributable to the loss or destruction of such Unit, to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Lessor.

Except as provided above in this Section 6, the Lessee shall not be released from its obligations hereunder in the event of any Casualty Occurrence to any Unit after delivery to and acceptance thereof by the Lessee hereunder and shall bear the responsibility for and risk of the same.

The Lessee will, at all times while this Lease is in effect, at its own expense, cause to be carried and maintained types and amounts of insurance that are satisfactory to the Lessor in respect of the Units at the time subject hereto and the use and operation thereof, including

without limitation property insurance and public liability insurance, in such amounts and for such risks and with such insurance companies as are consistent with prudent industry practice, but in any event at least comparable to insurance coverage carried by the Lessee in respect of similar equipment owned or leased by it; provided, however, that, in respect of property insurance, the Lessee may self-insure any Unit to the extent that it self-insures similar equipment owned by it and as is consistent with prudent industry practice. The Lessee hereby assigns and transfers to the Lessor and the Vendor, as their interests may appear, all right, title, and interest in and to any insurance proceeds paid under any policy of insurance to the extent such proceeds relate to the Units or the use and operation thereof as aforesaid; provided, however, if the Lessee fully complies with all the provisions of this Section 6 and the third paragraph of Section 8 hereof in respect of the risk insured against as to which such proceeds are paid and, if there is no Event of Default under Section 9 hereof, the Lessee shall be entitled to retain all such proceeds.

Section 7. Annual Reports. On or before November 30 in each year, commencing with the year 1981, the Lessee will cause to be furnished to the Lessor, the Owners and the Vendor an accurate statement as of the preceding June 30 showing the amount, description and numbers of all Units (a) then leased hereunder or covered by the RCSA, (b) that have suffered a Casualty Occurrence during the preceding 12 months (or since the date of this Lease in the case of the first such statement) and (c) then undergoing repairs (other than running repairs) or then withdrawn from use pending such repairs, and setting forth such other information regarding the condition and state of repair of the Units as the Lessor or the Vendor may reasonably request, and stating that in the case of all Units repainted or repaired during the period covered by such statement, the markings required by Section 4 hereof have been preserved or replaced. The Lessor shall have the right (but not the obligation), at its sole cost, risk and expense, by its authorized representatives, to inspect the Units and the Lessee's records with respect thereto (including those relating to any use of the Units outside the United States of America) at such reasonable times as the Lessor may request during the continuance of this Lease.

Section 8. Warranties; Compliance with Applicable Laws; Indemnification. THE LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN

OR CONDITION OF OR AS TO QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN THE UNITS 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 ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT, EITHER UPON DELIVERY THEREOF TO THE LESSEE OR OTHERWISE, it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee. The Lessor shall have no responsibility or liability to the Lessee or any other person with respect to (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Units or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of any Units or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, 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 all Units described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

The Lessee agrees, for the benefit of the Lessor and the Vendor, to comply in all respects (including without limitation the use, maintenance and operation of each Unit) with all applicable laws of the jurisdictions in which its operations involving the Units may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the United States Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units (the "Applicable Laws"), and in the event that, prior to the expiration of this Lease or any renewal thereof or the return of all the Units as provided in Section 10 or 13 hereof, any Applicable Law requires any replacement, modification or addition of or to any part of any Unit, the Lessee will conform therewith at its own expense; provided, however, that the Lessee may at its own expense, in good faith, contest the validity or application of any Applicable Law in any reasonable manner which does not, in the advance opinion of the Lessor or the

Vendor, adversely affect the property or rights of the Lessor or the Vendor under this Lease or the RCSA. The Lessee, at its own cost and expense, may furnish other additions, modifications and improvements to the Units during the term of this Lease provided that such additions, modifications and improvements are readily removable without causing material damage to the Units. The additions, modifications and improvements made by the Lessee under the first sentence of this paragraph shall be owned by the Lessor, and those made by the Lessee under the second sentence of this paragraph shall be owned by the Lessee.

The Lessee agrees to indemnify, protect and hold harmless the Lessor (individually and in its fiduciary capacity), the Owners and the Vendor from and against all losses, expenses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including but not limited to counsel fees and expenses, patent liabilities, penalties and interest, arising out of or as a result of (i) the entering into or the performance of the RCSA, the Participation Agreement, the Hulk Purchase Agreement, or this Lease or any sublease, or any of the instruments or agreements referred to therein or herein or contemplated thereby or hereby or the occurrence of a default, an event of default or an Event of Default under any of such documents, (ii) the ownership of any Hulk or any Unit, (iii) the ordering, acquisition, use, operation, maintenance, condition, reconstruction, purchase, delivery, rejection, storage or return of any Hulk or any Unit, (iv) any accident in connection with the operation, use, condition, reconstruction, possession, storage or return of any Hulk or any Unit resulting in damage to property or injury or death to any person, except as otherwise provided in Section 13 of this Lease, including without limitation any claim based upon the doctrines of product liability or strict or absolute liability in tort or by statute imposed, or (v) the transfer by the Vendor of its interests in the Equipment pursuant to any provision of the RCSA. The Lessor agrees to give the Lessee written notice of any claim or liability to be indemnified against hereunder promptly upon an officer or employee in the corporate trust department of the Lessor having received actual knowledge thereof. The indemnities arising under this paragraph shall continue in full force and effect notwithstanding the delivery of the Equipment or the full payment and performance of all obligations under this Lease and the Hulk Purchase Agreement or the expiration or termination of the term of

this Lease and the Hulk Purchase Agreement; provided, however, that the foregoing indemnification shall not apply to any failure of payment of any of the principal of or interest on the CSA Indebtedness. Nothing in this Section 8 shall constitute a guarantee by the Lessee of the principal of or interest on the CSA Indebtedness or a guarantee of the residual value of any Unit. The amount the Lessee shall be required to pay with respect to any of its obligations under this paragraph shall include a payment to the indemnified party sufficient to restore such party to the same position (after considering the effect of such payment on its United States Federal income taxes and state and local income taxes or franchise taxes based on net income) that the indemnified party would have been in had the liability or expense indemnified against not been incurred.

The indemnities made by the Lessee in this Section 8 shall not be modified, abated, postponed or in any other way diminished or reduced as a consequence of any action or inaction of the Owners in connection with, relating to or arising out of the rights (whether or not exercised) of any such party to inspect or approve the reconstruction to be performed by the Lessee pursuant to the RCSA. In addition to the agreements contained elsewhere in this Section 8, said indemnities shall in all events extend to and apply to any allegation against any indemnified party that it has been negligent, either actively or passively, or is guilty of a breach of other duty (including without limitation any breach of warranty or breach of contract) to anyone.

The Lessee agrees to prepare and deliver 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 regulatory authority by reason of the ownership by the Lessor or the Vendor of the Units or the leasing thereof to the Lessee.

Section 9. Default. If during the continuance of this Lease any of the following events (an "Event of Default") shall occur:

(a) default shall be made in the payment of any amount provided for in Section 2, 6 or 12 hereof and such default shall continue for 10 days;

(b) the Lessee shall make or permit any unautho-

rized assignment or transfer of this Lease or any interest therein or of the right to possession of any Unit and shall fail or refuse to cause such assignment or transfer to be canceled and to recover possession of such Unit within 15 days after written notice from the Lessor or the Vendor to the Lessee demanding the same;

(c) default shall be made in the observance or performance of any other covenant, condition and agreement on the part of the Lessee contained herein or in the Participation Agreement and such default shall continue for 30 days after written notice from the Lessor or the Vendor to the Lessee specifying the default and demanding that the same be remedied;

(d) a petition for reorganization under Title 11 of the United States Code, as now constituted or as hereafter amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been and shall not continue to be duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed in such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees, or in accordance with the provisions of 11 U.S.C. § 1168, within 60 days after the filing of the petition or the commencement of the case;

(e) any proceedings shall be commenced by or against the Lessee for any relief which includes or might result in any modification of the obligations of the Lessee under this Lease, the Participation Agreement or the Consent under any bankruptcy or insolvency laws or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of such obligations), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all such obligations shall not have been and shall not continue to be duly assumed in writing, pursuant to a court order

or decree, by a trustee or trustees or receiver or receivers appointed for the Lessee or for the property of the Lessee in connection with any such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such a trustee or trustees or receiver or receivers, within 60 days after such proceedings shall have been commenced; or

(f) any of the Lessee's representations or warranties made in the Participation Agreement, herein or in any statement or certificate at any time given in writing pursuant hereto or thereto or in connection herewith or therewith shall be breached or found to be false or misleading in any material respect;

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

(a) proceed by appropriate court action, 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 amounts sufficient to restore the Owners to the same net after-tax rate of return and after-tax cash position (after considering the effect of the receipt of such damages and amounts on their United States Federal income tax and state and local taxes or franchise taxes based on net income) that the Owners would have realized or would have been in had such breach not occurred; 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 as though this Lease had never been made, but the Lessee shall remain liable as herein provided; and thereupon the Lessor may by its agents or employees 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 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 a bargain and not as a penalty, whichever of the following amounts the Lessor, in its sole discretion, shall specify: (x) a sum, with respect to each Unit, equal to the excess of the present value at the time of such termination of the entire unpaid balance of all rental for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over the then present value of the rental which the Lessor reasonably estimates to be obtainable for the Unit during such period (such present value to be computed in each case on the basis of a 6% per annum discount, compounded annually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated); 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 net proceeds realizable upon the sale of such Unit at such time; provided, however, that in the event the Lessor shall have sold any Unit, the Lessee shall, if the Lessor shall so elect, pay the Lessor on the date of such sale (in addition to the amounts payable pursuant to Sections 5 and 8 hereof) 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 lieu of paying any amounts payable to the Lessor by the Lessee pursuant to the preceding clauses (x) and (y) of this part (b) with respect to such Unit.

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

Should the Lessee fail to make any payment or to do any act as provided by this Lease, the Lessor shall have the right (but not the obligation), without notice to the Lessee of its intention to do so and without releasing the Lessee from any obligation hereunder to make or to do the same, to make advances to preserve the Equipment or the Lessor's title thereto, and to pay, purchase, contest or compromise any insurance premium, encumbrance, charge, tax, lien or other sum which in the judgment of the Lessor appears to affect the Equipment, and in exercising any such rights, the Lessor may insure any liability and expend whatever amounts in its absolute discretion it may deem necessary therefor. All sums so incurred or expended by the Lessor shall be due and payable by the Lessee within 10 days of notice thereof, together with interest thereon from the date of expenditure at the rate of 14% per annum or at the rate charged by Citibank, N.A., from time to time to its prime commercial borrowers for loans of 90-day maturities, whichever is greater.

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative, 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 failure of the Lessor to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

Section 10. Return of Units upon Default. If this Lease shall terminate pursuant to Section 9 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor. Each Unit so delivered shall be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted. For the purpose of delivering possession of any Unit or Units to the Lessor as above required, the Lessee shall at its own cost, expense and risk:

(a) forthwith and in the usual manner (including without limitation giving prompt telegraphic and

written notice to the Association of American Railroads and all railroads to which any Unit or Units have been interchanged to return the Unit or Units so interchanged) place such Units upon such storage tracks of the Lessee or its affiliates as the Lessor reasonably may designate;

(b) permit the Lessor to store such Units on such tracks at the risk of the Lessee without charge for insurance, rent or storage until such Units have been sold, leased or otherwise disposed of by the Lessor; and

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

The assembling, delivery, storage 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 competent jurisdiction, 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 cost and expense, insure, maintain and keep the Equipment in good running order and repair and will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Unit, to inspect the same.

The Lessee hereby waives any and all claims against the Vendor or the Lessor and their agents for damages of whatever nature in connection with any retaking of the Units in any reasonable manner.

All amounts earned in respect of the Units after the date of termination of this Lease shall belong to the Lessor and if received by the Lessee shall be promptly turned over to the Lessor. In the event any Unit is not assembled, delivered and stored, as hereinabove provided, within 60 days after such termination, the Lessee shall, in addition, pay to the Lessor for each day thereafter an amount equal to the amount, if any, by which 0.0499005% of the Purchase Price of such Unit exceeds the actual earnings received by the Lessor on such Unit for each such day.

Without in any way limiting the obligation of the Lessee under this Section 10, 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 11. 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. The rights of the Lessor hereunder (including but not limited to the rights under Sections 5, 6, 8 and 9 and the rights to receive the rentals and Casualty Value payments payable under this Lease) shall inure to the benefit of the Vendor as assignee under the Lease Assignment in the manner and to the extent therein provided.

So long as the Lessee shall not be in default under this Lease and no event of default exists under the RCSA, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease but, without the prior written consent of the Lessor and the Vendor, the Lessee shall not assign or transfer its leasehold interest under this Lease in any of the Units or sublease any of the Units, except to the extent permitted by the provisions of the next succeeding paragraph hereof; and any such assignment, transfer or sublease without said consent shall be void. The Lessee, at its own expense, will promptly discharge or cause to be duly discharged 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 or the Vendor after the date hereof or resulting from claims against the Lessor 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, charge, security interest or other encumbrance which arises. The Lessee shall not, without the prior written consent of the Lessor and the Vendor, part with the possession or control of any Unit or allow any Unit to pass out of its possession or control, except to the extent permitted by the provisions of the next succeeding paragraph hereof.

Subject to the terms of this Lease, the Lessee shall be entitled to the possession and use of the Units by it or any affiliate upon lines of railroad owned or operated by it or any such affiliate or upon the lines of railroad over which the Lessee or any such affiliate has trackage or other operating rights or over which railroad equipment of the Lessee or any such affiliate is regularly operated pursuant to contract, and also to permit the use of the Units upon connecting and other carriers in the usual interchange of traffic and equipment, and to assign its rights to the Units or to sublease the Units to any of its affiliates, but only upon and subject to all the terms and conditions of this Lease (including the last paragraph of this Section 11) and the RCSA; provided, however, that the Lessee shall in any such event remain primarily liable for all its obligations hereunder. The Lessee may receive and retain compensation for such use from other railroads so using any of the Units. Every such sublease shall be subject to the rights and remedies of the Vendor under the RCSA and the Lessor under this Lease in respect of the Units covered by such sublease upon the occurrence of an event of default or Event of Default thereunder or hereunder.

Nothing in this Section 11 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any corporation incorporated under the laws of any state of the United States of America or the District of Columbia (which shall have duly assumed the obligations of the Lessee hereunder and under the Consent) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the railroad properties of the Lessee as an entirety or substantially as an entirety; provided that such assignee or transferee will not upon the effectiveness of such merger, consolidation or acquisition be in default under any provision of this Lease.

The Lessee agrees that during the term of this Lease it will not assign any Unit to service involving the regular operation and maintenance thereof outside the United States of America.

Section 12. Renewal Option; Duty to First Offer. 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 180 days prior to the end of the original term or the first extended

term of this Lease, elect to extend such original or extended term of this Lease, as the case may be, in respect of all but not less than all the Units then covered by this Lease for an additional two-year period commencing on the scheduled expiration of such term.

Each such extended term of the Lease shall be on the same terms and conditions as are contained in the Lease, except that (x) the amount of rentals shall be at Fair Market Rental (as hereinafter defined) payable, in arrears, in annual payments on the day such rentals were payable for the Units in each year of the original term and (y) the Casualty Value of each Unit on the first day of such extended term shall be equal to the lesser of 30% of the Purchase Price of such Unit or the Fair Market Value (as hereinafter defined) of such Unit on such date and thereafter such Casualty Value shall be reduced on a straight line basis over the estimated remaining useful life of such Unit, all as determined by the procedures hereinafter established.

Fair Market Rental, Fair Market Value and estimated remaining useful life shall be agreed upon by the Lessor and the Lessee or determined as provided in the next paragraph. Fair Market Rental and Fair Market Value shall be equal in amount to the rental or sale value which would be obtained in an arm's-length transaction between an informed and willing lessee or vendee (other than a lessee currently in possession or a used equipment dealer) and an informed and willing lessor or vendor under no compulsion to lease or sell and, in such determination, costs of removal from the location of current use shall not be a deduction from such rental or sale value but there shall be excluded any rental value or sale value attributable to additions, modifications and improvements which the Lessee is entitled to remove pursuant to Section 8 hereof; provided, however, that Fair Market Rental shall be determined as provided in this sentence on the basis of the term and other terms and conditions of the lease being considered. Fair Market Rental, Fair Market Value and estimated remaining useful life of the Units shall be determined upon the assumption that the Units shall have been maintained in accordance with the provisions of Section 6 hereof.

If after 45 days from the giving of notice by the Lessee of the Lessee's election to extend the term of this Lease, the Lessor and the Lessee are unable to agree upon a determination of Fair Market Rental, Fair Market Value or

estimated remaining useful life, as the case may be, either party to such determination may give written notice to the other requesting determination of Fair Market Rental, Fair Market Value or estimated remaining useful life by the following appraisal procedure, and 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 apply to make such appointment to the American Arbitration Association, 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 Fair Market Rental, Fair Market Value or estimated remaining useful life, as the case may be, of the Units subject to the proposed extended lease term or sale within 90 days after appointment. If the parties shall have appointed a single appraiser or if either party shall have failed to appoint an appraiser, the determination of a single appraiser appointed shall be final. If three appraisers shall be appointed, the determination of the appraiser which differs most from the other two appraisers shall be excluded, the remaining two determinations shall be averaged and such average shall be final and binding upon the parties hereto. 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, Fair Market Value and estimated remaining useful life, unless these are agreed upon by the Lessor and the Lessee as provided for herein, 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 by the Lessee.

Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, in the event the Lessor elects to sell any Units to third parties at the expiration of the original or any extended

term of this Lease, the Lessee shall be given written notice of such intention prior to the expiration of such term. The Lessee shall have the sole right and option to purchase all but not less than all the Units then subject to this Lease at the Fair Market Value of such Units. The Lessee shall exercise such purchase right by delivery to the Lessor of a written notice within 10 business days of receipt of notice from the Lessor, specifying a date of purchase not later than the later of 15 days after the date of delivery of such notice by the Lessee to the Lessor or 90 days after the expiration of such term of this Lease. In the event that the Lessee shall have delivered a notice of its election to purchase the Units, this Lease (including the obligation to pay rent) shall be further extended upon the same terms and conditions set forth herein from the date such notice is delivered to the Lessor until the date of such purchase. If the Lessee does not deliver such notice to the Lessor, all obligations of the Lessor under this paragraph shall terminate.

Section 13. Return of Units upon Expiration of Term. Upon the expiration of the original or any extended term of this Lease, the Lessee will, at its own expense, deliver the Units to the Lessor; provided, however, that if so instructed in writing by the Lessor at least 30 days prior to such expiration, the Lessee will, on or prior to the last business day of each consecutive calendar month following such expiration, deliver to the Lessor not more than 225 Units (or such other number as may be agreed to by the Lessor) under this Lease; provided further, however, that the Lessee shall incur no liability to the Lessor or to any person claiming by, through or under the Lessor if the Lessee is unable to deliver Units for delivery in each consecutive calendar month as a result of circumstances constituting force majeure. Any Units delivered to the Lessor pursuant to the preceding sentence shall be delivered upon such storage tracks of the Lessee as the Lessee may designate, and the Lessee shall permit the Lessor to store such Units on such tracks for a period not exceeding 150 days after delivery to such storage tracks, and shall transport the same, on a one-time basis per Unit at any time within such 150-day period, to any connecting carrier for shipment, all as directed by the Lessor, the movement and storage of such Unit to be at the expense and risk of the Lessee until such time as such Unit shall have been delivered to such connecting carrier. Subsequent to the expiration of the term of this

Lease and prior to delivery of any Unit to the Lessor, all terms and conditions of this Lease (other than term and the amount of rental and period of payment therefor) shall continue to apply to such Unit. If the Lessor gives to the Lessee the instruction referred to in the first proviso to the first sentence of this paragraph, then on the 10th day after delivery of the last Unit to be delivered to the Lessor as hereinabove provided or on the 270th day following expiration of the original or any extended term of this Lease, whichever shall first occur (the "Date of Payment"), the Lessee shall pay as rent to the Lessor for each Unit not so delivered to the Lessor upon such expiration a sum equal to one-twelfth of 50% of the average rental rate per Unit prevailing during the term or extended term of the Lease so expired, as the case may be, for each month (or part thereof) subsequent to such expiration and prior to such delivery. If any Unit is not returned by the Date of Payment, then the Lessee shall continue to pay the monthly rent provided for in the preceding sentence with respect to such Unit, except that such rent shall be payable on the last business day of each month, to and including the month in which the Unit is returned. During any storage period provided for in this paragraph, the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any Unit, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence. Each Unit returned to the Lessor pursuant to this Section 13 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, ordinary wear and tear excepted, (ii) be capable of being moved unloaded by the Lessee to any purchaser or subsequent lessee and (iii) have removed therefrom by the Lessee without cost or expense to the Lessor all additions, modifications and improvements which the Lessee owns pursuant to Section 8 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 having competent jurisdiction the Lessor shall be entitled to a decree against the Lessee requiring specific performance thereof.

If the Lessor does not deliver the instructions referred to in the first sentence of the first paragraph of

this Section 13, then in the event any Unit is not assembled, delivered and stored, as hereinabove provided, within 90 days after the end of the term or any extended term of this Lease, the Lessee shall promptly pay to the Lessor an amount for each day after such 90-day period, equal to the greater of (i) all per diem, incentive per diem and mileage charges earned by such Unit (including, to the extent any Unit is used by the Lessee during this period, the per diem, incentive per diem and mileage charges that would have been payable by the Lessee to another carrier for a carrier car for each such day of use in revenue service) or (ii) 0.0499005% of the Purchase Price of such Unit. If the Lessor has not given the Lessee notice to transport any Unit to a connecting carrier for shipment within the 150-day storage period, the Lessor will pay to the Lessee for storage a reasonable storage rate for such Unit, beginning the first day after the 150-day storage period.

In the event that the Lessor elects, prior to the return of any Units or during the storage period provided for in the preceding paragraph, to re-lease all or any of the Units to a third party, then upon written request from the Lessor to the Lessee, the Lessee agrees that, in order to keep such Units eligible for interchange, it will continue to lease such Units from the Lessor at a rental equal to the rental to be paid by such third party and will sublease such Units to such third party; provided, however, that such third party and the Lessor enter into an agreement reasonably satisfactory to the Lessee (A) to indemnify and hold harmless the Lessee from all liability and obligations arising under the Lease and such sublease (other than to pay to the Lessor an amount equal to any rental paid under such sublease) and (B) to reimburse the Lessee in full for all out-of-pocket costs and expenses connected with the continued lease and sublease of such Units, plus reasonable reimbursement for administrative costs relating directly thereto; provided further, however, that the Lessee shall not be obligated to enter into or carry out any such agreement to the extent that the Lessee is advised by counsel that such agreement would violate the provisions of any applicable law, rule or regulation, including without limitation rules and regulations of the Interstate Commerce Commission and the Association of American Railroads.

Section 14. Filing; Expenses. The Lessee will cause this Lease, the Lease Assignment, the Transfer Agreement (as defined in the Participation Agreement), the RCSA

and any assignment hereof or thereof to be filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303. The Lessee will undertake the filing and refiling required of the Lessor under the RCSA and will from time to time perform any other act and will execute and file (and will refile whenever required) any and all further instruments or supplements required by law or reasonably requested by the Lessor or the Vendor for the purpose of proper protection, to their satisfaction, of the Vendor's and the Lessor's respective interests in the Units, or for the purpose of carrying out the intention of this Lease or the RCSA; and the Lessee will promptly furnish to the Vendor and the Lessor evidences of all such filing and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Vendor and the Lessor. This Lease, the Lease Assignment, the Transfer Agreement and the RCSA shall be filed with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Unit.

Section 15. Income Tax Indemnity. (a) Assump-
tions. (1) The parties hereto agree that the Owners, as the beneficial owners of each Unit, shall be entitled to such deductions, credits and other benefits as are provided by the Code and state and local taxing statutes to an owner of property, including without limitation (i) deductions for depreciation of each Unit under section 167 of the Code computed on the basis (A) that each such Unit will have a basis under section 167(g) of the Code at least equivalent to the Purchase Price in respect of such Unit, (B) with respect to the amount of the Reconstruction Cost, of the double-declining balance method of depreciation authorized by section 167(b)(2) of the Code, switching to the sum-of-the-years digits method of depreciation authorized by section 167(b)(3) of the Code when most beneficial to the Owners without obtaining the consent of the Commissioner of Internal Revenue in accordance with Treasury Regulation § 1.167(a)-11(c)(1)(iii), (C) with respect to the amount of the Hulk Purchase Price (as defined in the RCSA), of the 150 percent declining balance method authorized by Treasury Regulation § 1.167(a)-11(c)(1)(iv)(b)(2), switching to the straight line method without obtaining the consent of the Commissioner of Internal Revenue, (D) with respect to both the Hulk Purchase Price and the Reconstruction Cost, of the asset depreciation range system of Treasury Regulation § 1.167(a)-11, (E) with respect to both the Hulk Purchase Price and the Reconstruction Cost, of an asset depreciation period of 12 years,

(F) with respect to both the Hulk Purchase Price and the Reconstruction Cost, of a net salvage value of zero after the reduction permitted by section 167(f) of the Code and (G) that the entire Reconstruction Cost shall be treated as basis which is properly attributable to reconstruction after December 31, 1953, pursuant to section 167(c)(1) of the Code (the "ADR Deductions"); (ii) deductions with respect to interest payable on the CSA Indebtedness (the "Interest Deductions"); and (iii) investment credit pursuant to section 38 of the Code at least equal to 10% of the Reconstruction Cost in respect of each Unit (the "Investment Credit").

(2) It is further agreed by the parties hereto that they have assumed in their negotiation of the terms of the Participation Agreement, the RCSA and this Lease that (i) the Federal rate of tax imposed on taxable income of corporations in excess of \$100,000 during the year 1980 is 46%, (ii) the applicable rate of tax imposed by any state or local taxing authority on the taxable income of the Owners in 1980 will be the same as that prevailing on March 1, 1980, (iii) for purposes of computing the ADR Deductions with respect to the Units for the calendar year in which the Units were first placed in service, the Owners will be entitled to elect the modified half-year convention (including, as to each Unit, twelve months of depreciation for the calendar year in which the date of acceptance of such Unit occurs under this Lease), and (iv) for Federal income tax purposes, all amounts includible in the gross income of the Owners with respect to the Units and all deductions allowable to the Owners with respect to the Units will be treated as derived from or allocable to sources within the United States of America.

(3) 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 clauses (1) and (2) of this subsection (a) and that the Lessee and any corporation controlled by it, in control of it or under common control with it, directly or indirectly, will file such returns, take such actions and execute such documents as may be reasonable and necessary to facilitate accomplishment of the intent hereof.

(b) Representations and Warranties of Lessee.

(1) The Lessee represents and warrants that

(A) immediately upon delivery and acceptance of the Hulks under the RCSA and related documents, the Owners will be treated as the taxpayers for purposes of section 48(b)(1) of the Code and such taxpayers will be treated as having directed the reconstruction of the Hulks;

(B) the entire Reconstruction Cost of each Unit will constitute an investment in "new section 38 property" within the meaning of section 48(b) of the Code and will be deemed to have been placed into service by the Owners in the taxable year of the Owners during which the date of acceptance of such Unit occurs under this Lease;

(C) every Unit constitutes property the entire Reconstruction Cost of which qualifies for the Investment Credit under subpart B of Part IV, Subchapter A of the Code;

(D) the entire Reconstruction Cost of each Unit shall qualify as basis which is properly attributable to reconstruction (i) after December 31, 1953, as provided in section 167(c)(1) of the Code and (ii) after December 31, 1961, as provided in section 48(b) of the Code;

(E) when each Unit is delivered and accepted under the RCSA and related documents, no other person will have claimed or intends to claim the Investment Credit or the ADR Deductions with respect thereto;

(F) at all times during the original term of this Lease and renewal periods thereof, the entire Reconstruction Cost will constitute a qualified investment in "section 38 property" within the meaning of section 48(a) of the Code;

(G) at all times during the original term of this Lease and renewal periods thereof, the Owners will be entitled to treat, for Federal income tax purposes, each item of income, deduction and credit relating to all Units subject to the RCSA and this Lease as being derived from or allocable to sources within the United States of America.

(2) In the opinion of the Lessee, each Unit will have an estimated useful life of not less than 15 years and residual value at the end of the original lease term equal to at least twenty percent of the Purchase Price of such Unit and each Unit will be useful and usable by a party other than the Lessee at the end of the original term and capable of continued leasing and transfer to another party at that time and commercially feasible to do so.

(c) Indemnity for Acts, Omissions or Misrepresentations. (1) If by reason of any act of commission or omission, misrepresentation, breach of any agreement, covenant or warranty contained in this Lease or any other agreement relating to the reconstruction or lease of the Units on the part of the Lessee or any party referred to in clause (3) of subsection (a) of this Section 15 or by any sublessee or assignee of the Lessee, an Owner shall lose the right to claim, shall not claim (as the result of a good faith determination of tax counsel of General Electric Company (the "Tax Counsel") that such claim is not allowable), shall suffer a disallowance of or shall be required to recapture all or any portion of its proportionate share of the Investment Credit, the Interest Deductions or the ADR Deductions (any such event is called a "Loss"), then the Lessee shall pay to such Owner as an indemnity, on the next succeeding rental payment date hereunder after written notice to the Lessee by the Owner of such Loss (or, if this Lease is terminated, within 30 days after demand), and on each rental payment date thereafter during the remaining term of this Lease, such amount or amounts as shall cause such Owner's Net Economic Return to equal the Net Economic Return that would have been realized by such Owner if such Loss had not occurred.

(2) In the event that an Owner suffers a Loss and the Owner and the Lessee are unable to agree on the indemnity amount required to restore the Owner's Net Economic Return, as aforesaid, then the Lessee shall pay to such Owner, in lieu of the amount provided for in clause (1) of this subsection (c), such amount or amounts from time to time as, after deduction of all taxes required to be paid by such Owner in respect of the receipt of such amounts under the laws of any Federal, state, local or foreign government or taxing authority, shall be equal to the sum of the aggregate additional Federal, state or local income taxes payable by such Owner from time to time as a result of any such Loss plus the amount of any interest, penalties or additions to

tax payable as a result of any such Loss. If, as a result of a Loss, the aggregate Federal, state or local income taxes paid by an Owner for any taxable year shall be less than the amount of such taxes which would have been payable by such Owner had no such Loss occurred, then such Owner shall pay the Lessee the amount of such difference in taxes plus any additional tax benefits realized by such Owner as the result of such payment; provided, however, that such 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 such Owner pursuant to this clause (2) in respect of a Loss less (y) the amount of all prior payments by such Owner to the Lessee hereunder. The amount payable to an Owner pursuant to this clause (2) shall be paid within 30 days after receipt of a written demand therefor from such Owner accompanied by a written statement describing in reasonable detail such Loss and the computation of the amount so payable (but not prior to the earlier of (i) the filing of a return or the acceptance of an audit report in which such Loss is reflected and (ii) the payment of the additional income tax that becomes due as the result of the Loss and, in the case of amounts which are being contested in accordance with subsection (d) of this Section 15, not prior to the time provided in subsection (d)). Any payment due to the Lessee from an Owner pursuant to this clause (2) shall be paid within 30 days after such Owner realized any such savings in its income taxes or additional tax benefits, as the case may be.

(3) If an Owner is required by the Internal Revenue Service to include in its gross income an amount in respect of any replacement, improvement and/or addition to any Unit or as the result of any action taken by the Lessee or any sublessee or assignee of the Lessee ("Capital Expenditures"), then the Lessee shall pay directly to such Owner, as an indemnity, in immediately available funds, such amount or amounts which, after deduction of all taxes required to be paid by such 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 of America, shall be equal to the sum of the aggregate additional Federal, state or local income taxes payable by such 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. If as a result of any such Capital Expenditure the aggregate

Federal, state or local income taxes paid by an Owner for any taxable year shall be less than the amount of such taxes which would have been payable by such Owner had no such Capital Expenditure been made, then such 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 such 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 such Owner pursuant to this clause (3) in respect of any Capital Expenditures less (y) the amount of all prior payments by such Owner to the Lessee hereunder. The amount payable to an Owner pursuant to this clause (3) shall be paid within 30 days after receipt of a written demand therefor from such Owner (but not prior to payment by such 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 an Owner pursuant to this clause (3) shall be paid within 30 days after such Owner realizes any such savings in its income taxes or additional tax benefits, as the case may be. The Lessee agrees to give each Owner, within 30 days after request therefor, written notice describing in reasonable detail Capital Expenditures made and specifying the cost thereof with respect to each Unit if such information is required in connection with an audit by the Internal Revenue Service of the tax returns of an Owner.

(d) Contest Provisions. (1) If the Internal Revenue Service shall propose an adjustment in the Federal income taxes of an Owner for which the Lessee would be required to indemnify such Owner pursuant to subsection (c) of this Section 15 and the amount of the indemnity which the Lessee would be required to pay would exceed \$100,000 then, if requested by the Lessee in a timely written request, such Owner shall request an opinion from Tax Counsel 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 such Owner to do so, such Owner shall contest the proposed adjustment; provided, however, that Tax Counsel shall determine in its sole and reasonable discretion 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 such Owner shall undertake judicial action with respect to such proposed adjustment, the court or other judicial body before which such action shall be commenced. Such Owner shall have full control over any contest pursuant to this subsection (d) and shall not be obligated to appeal an adverse determination by any court. At any time, whether before or after commencing to take the action set forth in this subsection (d), an Owner may decline to take such action by notifying the Lessee in writing that the Lessee is relieved of its obligation to indemnify such Owner with respect to the adjustment proposed by the Internal Revenue Service or such portion thereof as may be specified in such notice.

(2) An Owner shall not be required to take any action pursuant to this subsection (d) unless and until the Lessee shall have agreed to indemnify such Owner in a manner reasonably satisfactory to such Owner for any liability or loss which such Owner may incur as a result of contesting the validity of any proposed adjustment and shall have agreed to pay to such Owner on demand all costs and expenses which such Owner may incur in connection with contesting such proposed adjustment (including reasonable fees and disbursements of counsel selected by the Owner). If an Owner determines to contest any adjustment by paying the additional tax and suing for a refund, the Lessee shall pay to such 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 an Owner of a refund of any amounts paid by it in respect of which amounts it shall have been paid an equivalent amount by the Lessee, such Owner shall pay to the Lessee the amount of such refund together with any interest received by it on such amount. The Lessee shall be obligated to pay to an Owner the amount specified in subsection (c) of this Section 15 promptly after such Owner has taken all the action that it has agreed in this Section 15 to take.

(e) Foreign Tax Credit Indemnity. If any item of income or deduction with respect to the Units shall not be treated as derived from or allocable to sources within the United States of America for a given taxable year (any

such event is called a "Foreign Loss"), then the Lessee shall pay to an Owner as an indemnity, on the next succeeding rental payment date after written notice to the Lessee by such Owner, such amount which after deduction of all taxes required to be paid by such 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 of America shall equal the sum of (1) the excess of (x) the foreign tax credits which such Owner would have been entitled to for such year had no such Foreign Loss occurred over (y) the foreign tax credit to which such Owner was limited as a result of such Foreign Loss and (2) the amount of any interest, penalties or additions to tax payable as a result of such Foreign Loss.

(f) Exceptions. Notwithstanding the foregoing provisions, the Lessee shall not be required to indemnify the Owners with respect to any Loss or Foreign Loss that results solely and directly from (i) a Casualty Occurrence, if the Lessee has made all payments with respect thereto that are required to be made pursuant to Section 6 hereof; (ii) a voluntary disposition by the Owners of their beneficial interest in any Unit, if such disposition (x) shall be the direct cause of such Loss or Foreign Loss with respect to such Unit, (y) shall occur at a time while no Event of Default (and no event that with notice or lapse of time or both would constitute an event of Default) has occurred and is continuing, and (z) shall not be pursuant to the written consent of the Lessee; (iii) the failure of the Owners to claim the proper credit or deductions contemplated by subsection (a) of this Section 15, unless the Owners shall have been so advised by Tax Counsel; (iv) the failure of the Owners to have sufficient Federal income tax liability against which to apply such credits or sufficient income to benefit from such depreciation or interest deductions; or (v) any change in the Code, the income tax regulations thereunder or published administrative or judicial interpretations of the Code or such regulations which is not enacted or does not have an effective date on or prior to June 30, 1981.

(g) Records and Statements. The Lessee agrees to maintain sufficient records to verify the amount of income, deductions and credits in respect of the Units so as to provide each Owner with such data as may be required to confirm amounts covered by this Section.

(h) Recomputation of Casualty Value. If any

amount is paid by the Lessee to an Owner pursuant to this Section 15, G. E. Credit shall recompute the Casualty Values with respect to the Units in accordance with the manner in which such Casualty Values were originally computed to reflect such payment, and an officer of G. E. Credit shall certify to the Lessee either that such Casualty Values as are set forth in this Lease do not require change or, as the case may be, the new Casualty Values necessary to reflect such payment, describing in reasonable detail the basis for computing such new Casualty Values. Upon such certification, any such new Casualty Values shall be substituted for the Casualty Values appearing in this Lease; provided, however, that such new Casualty Values shall not be less than the amounts required to enable the Lessor to satisfy its obligations under the RCSA.

(i) Additional Definitions. For purposes of this Section 15, the term "Owner" shall include G. E. Credit and Morgan and shall also include any member of an affiliated group, within the meaning of section 1504 of the Code, of which an Owner is or may become a member, if consolidated returns are filed for such affiliated group for Federal income tax purposes.

(j) Survival of Indemnities. Notwithstanding any expiration or termination of this Lease, the liability of the Lessee to make indemnification payments pursuant to this Section 15 shall continue to exist until such indemnity payments are made by the Lessee.

(k) Payments. Any payments made pursuant to this Agreement shall be made directly to the Owner entitled thereto by wire transfer of immediately available funds to the account set forth in Section 2.01 of the Trust Agreement or to such other account or in such other manner as such Owner may direct.

(l) No Setoff. No payment required to be made by the Lessee pursuant to this Section 15 shall be subject to any right of setoff, counterclaim, defense, abatement, suspension, deferment or reduction, and the Lessee shall have no right to terminate its obligation under this Section 15 or to be released, relieved or discharged from any obligation or liability under this Section 15 for any reason whatsoever, except in accordance with the express terms hereof.

(m) Tax Indemnity Provisions Attach at Date of Execution. The provisions of this Section 15 shall apply

from the time of execution of this Lease, the Participation Agreement and the RCSA whether or not the other provisions of this Lease come into effect.

Section 16. Interest on Overdue Rentals. The Lessee shall promptly pay an amount equal to interest at the rate of 14% per annum on any overdue rentals or other obligations hereunder for the period of time during which they are overdue, or such lesser amount as may be legally enforceable.

Section 17. Notices. Any instruction, notice or report required or permitted to be given hereunder shall be deemed to have been given when deposited in the United States mails, first-class postage prepaid, addressed as follows:

(a) if to the Lessor, at One Constitution Plaza, Hartford, Connecticut 06115, attention of Corporate Trust Department;

(b) if to the Lessee, at 100 North Charles Street, Baltimore, Maryland 21201, attention of Senior Assistant Treasurer;

(c) if to the Vendor, at P. O. Box 2258, Two Hopkins Plaza, Baltimore, Maryland 21203, attention of Corporate Trust Department;

(d) if to the Owners, at the addresses specified in Section 2.02 of the Trust Agreement;

or addressed at such other address as any party shall hereafter furnish to the other parties in writing. Copies of each such notice shall be given to the Lessor and the Vendor.

Section 18. Effect and Modification of Lease. Except for the Participation Agreement, this Lease exclusively states the rights of the Lessor and the Lessee with respect to the leasing of the Units and supersedes all other agreements, oral or written, with respect thereto. No variation or modification of this Lease and no waiver of any of its provisions shall be valid unless in writing and signed by duly authorized officers of the Lessor and the Lessee.

Section 19. Definitions. If and so long as this Lease is assigned to the Vendor (or any successor thereto) for collateral purposes, wherever the term "Lessor" is used

in this Lease it shall include the Vendor and any successors thereto (unless the context shall otherwise require) but the Vendor shall not be subject to any liabilities or obligations under this Lease; and the fact that the Vendor is specifically named in certain provisions shall not be construed to mean that the Vendor (or any successor thereto) is not entitled to the benefits of other provisions where only the Lessor is named. Whenever the term "Lessor" is used in this Lease, it shall also include the Owners and any assignee of the Owners.

Section 20. Execution. This Lease may be executed in several counterparts, all of which together shall constitute a single instrument, but the counterpart delivered to the Vendor shall be deemed to be the original counterpart. Although for convenience this Lease is dated as of the date first set forth above, the actual dates of execution are the dates stated in the acknowledgments hereto. The schedules and the footnotes thereto annexed to this Lease are an integral part of this Lease and are incorporated herein by reference.

Section 21. Governing Law. The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of Ohio; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303.

Section 22. Immunities; No Recourse; Severability. Notwithstanding anything herein to the contrary, each and all of the representations, warranties, undertakings and agreements herein made on the part of the Lessor are made and intended not as personal representations, warranties, undertakings and agreements by The Connecticut Bank and Trust Company or for the purpose or with the intention of binding said bank personally but are made and intended for the purpose of binding only the Trust Estate (as such term is used in the Trust Agreement); and this Lease is executed and delivered by said bank not in its own right but solely in the exercise of the powers expressly conferred upon it as trustee under the Trust Agreement; and except in the case of wilful misconduct or gross negligence by said bank, no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against said bank or the Owners hereunder (except, with respect to the Owners, pursuant to Section 1.03 and the last paragraph of Section 5.01 of the Trust Agreement), on account of this Lease or the

Trust Agreement or on account of any representation, warranty, undertaking or agreement of said bank or the Owners hereunder, either expressed or implied, all such personal liability (except as aforesaid), if any, being expressly waived and released by the Lessee and by all persons claiming by, through or under the Lessee.

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.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by duly authorized officers as of the date first set forth above.

THE CHESAPEAKE AND OHIO RAILWAY COMPANY,

by *L.C. Fright*
Assistant Vice President and Treasurer

[Corporate Seal]

Attest:

Patricia J. Hunady
Deputy Corporate Assistant Secretary

THE CONNECTICUT BANK AND TRUST COMPANY, not in its individual capacity but solely as Trustee,

by _____
Authorized Officer

[Corporate Seal]

Attest:

Authorized Officer

STATE OF OHIO,)
) ss.:
COUNTY OF CUYAHOGA,)

On this 7th day of April, 1980, before me personally appeared L.C. Roy, Jr., to me personally known, who, being by me duly sworn, says that he is an Assistant Vice President and the Treasurer of THE CHESAPEAKE AND OHIO RAILWAY COMPANY, a Virginia corporation, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that such 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.

[Notarial Seal]

My Commission expires

H. Marlene Winchell
Notary Public
H. MARLENE WINCHELL, Notary Public
State of Ohio, (Lorain)
My commission expires Nov. 24, 1984

STATE OF CONNECTICUT,)
) ss.:
COUNTY OF HARTFORD,)

On this day of 1980, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is of THE CONNECTICUT BANK AND TRUST COMPANY, a Connecticut banking corporation, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, 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.

[Notarial Seal]

My Commission expires

Notary Public

Lease of Railroad Equipment

SCHEDULE A

Specifications of the Equipment*

<u>Quantity</u>	<u>AAR Mechanical Designation</u>	<u>Description</u>	<u>Railroad Road Numbers</u>
507	XL	50' Box Cars	CO 22001-22249 CO 22250-22649 CO 23000-23324 CO 27750-28999
96	HM	60-Ton Open Top Hopper Cars	CO 336000-336749
1131	HT	70-Ton Open Top Hopper Cars	CO 103000-103999 CO 110000-115241 CO 150000-151999 BO 10000-15249 WM 70001-71500 WM 72001-72400 WM 80001-80500
144	HT	80-Ton Open Top Hopper Cars	CO 152000-153998 CO 154009-155985 BO 152000-153999 BO 154000-155999
69	HT	85-Ton Open Top Hopper Cars	CO 85000-86999
48	--	30-Ton Steel Cupola Cabooses	CO 90200-90348

* Notwithstanding anything herein to the contrary, this Lease will only cover those Units that are reconstructed by the Lessee from Hulks delivered pursuant to the Hulk Purchase Agreement and that are accepted by the Lessor on or before August 15, 1980, under the RCSA and that have an aggregate Purchase Price not in excess of the Maximum Purchase Price specified in Article 3 of the RCSA. After delivery of all Units covered by this Lease, this Schedule A will be amended (and a supplement will be filed with the Interstate Commerce Commission) to describe only those Units covered by this Lease and to designate the particular Railroad Road Numbers thereof.

Lease of Railroad Equipment

SCHEDULE B

Casualty Value Percentages ScheduleTable 1

<u>Casualty Payment Date</u>	<u>Percentage of Purchase Price</u>
2/01/81	105.7076
6/30/81	113.2944
6/30/82	112.6465
6/30/83	98.1500
6/30/84	93.8500
6/30/85	88.5800
6/30/86	82.3600
6/30/87	72.2148
6/30/88	60.7540
6/30/89	48.0600
6/30/90	35.5475
6/30/91 (and for any applicable period, including any storage period, thereafter)	20.0000

Table 2

The percentages set forth in Table 1 of this Schedule B have been computed without regard to recapture of the investment tax credit (as referred to in Section 15 relating to certain tax indemnities). Consequently, the Casualty Value of any Unit suffering a Casualty Occurrence on or before the third, fifth or seventh anniversary of the date of delivery and acceptance of such Unit shall be increased by the applicable percentage of the Reconstruction Cost set forth below:

<u>Anniversary of Delivery and Acceptance</u>	<u>Percentage of Reconstruction Cost</u>
Third	16.6784573
Fifth	11.1189715
Seventh	5.5594858

LEASE OF RAILROAD EQUIPMENT

Dated as of March 1, 1980

Between

THE CHESAPEAKE AND OHIO RAILWAY COMPANY,
Lessee,

and

THE CONNECTICUT BANK AND TRUST COMPANY,
not in its individual capacity but
solely as Trustee.

[Covering Reconstructed Cars]

LEASE OF RAILROAD EQUIPMENT

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* This Table of Contents has been provided for convenience only and does not affect any interpretation of this document.

LEASE OF RAILROAD EQUIPMENT dated as of March 1, 1980, between THE CHESAPEAKE AND OHIO RAILWAY COMPANY, a Virginia corporation (the "Lessee"), and THE CONNECTICUT BANK AND TRUST COMPANY, a Connecticut banking corporation, not in its individual capacity but solely as trustee (the "Lessor") under a trust agreement dated as of the date hereof (the "Trust Agreement") with GENERAL ELECTRIC CREDIT CORPORATION ("G. E. Credit") and J. P. MORGAN INTERFUNDING CORP. ("Morgan" and, with G. E. Credit, the "Owners").

The Lessee and the Lessor are entering into a Reconstruction and Conditional Sale Agreement dated as of the date hereof (the "RCSA") with MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, not in its individual capacity but solely as Agent (said Trust Company, as Agent, together with the Investors for whom it is acting, being hereinafter called the "Vendor") under a Participation Agreement dated as of the date hereof (the "Participation Agreement") with the Lessee, the Owners, the Lessor and said Investors, wherein the Vendor has agreed to sell to the Lessor its interest in the railroad equipment described in Schedule A thereto (the "Equipment") after it has been reconstructed (pursuant to the terms of the RCSA) from the hulks (the "Hulks") delivered to the Lessor pursuant to a Hulk Purchase Agreement dated as of the date hereof (the "Hulk Purchase Agreement") between the Lessor and the Lessee.

The Lessee desires to lease all the units of the Equipment as are delivered, accepted and settled for under the RCSA (the "Units"). The Lessor will assign certain rights in this Lease for security to the Vendor pursuant to an Assignment of Lease and Agreement dated as of the date hereof (the "Lease Assignment") and the Lessee will consent thereto pursuant to the Consent and Agreement attached to the Lease Assignment (the "Consent"). The Owners and the Lessee will agree with the Lessor to make certain payments due under the RCSA pursuant to a Funding Agreement dated as of the date hereof (the "Funding Agreement").

In consideration of the agreements hereinafter set forth, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions, but subject to all the rights and remedies of the Vendor under the RCSA:

Section 1. Delivery and Acceptance of Units. Sub-

ject to the rights of the Owners to inspect the Hulks and the Equipment as provided in the RCSA, the Lessor hereby appoints the Lessee (and any employee thereof designated by the Lessee) as its agent and the agent for the Owners for inspection and acceptance of the Units pursuant to the RCSA. The Lessor will cause each Unit to be tendered 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 RCSA. Upon such tender, the Lessee will cause an authorized representative of the Lessee to inspect the same, and if such Unit is found to be in good order, to accept delivery of such Unit and execute and deliver to the Lessor a certificate of acceptance and delivery (the "Certificate of Acceptance"), whereupon 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.

Section 2. Rental. The Lessee agrees to pay to the Lessor as rental for each Unit subject to this Lease 10 consecutive annual payments, in arrears, payable on June 30 in each year, commencing June 30, 1982. The first 5 annual rental payments with respect to each Unit then subject to this Lease shall each be in an amount equal to 14.69796290% of the Purchase Price (as defined in the RCSA) of such Unit. The second 5 annual rental payments with respect to each Unit then subject to this Lease shall each be in an amount equal to 17.96417690% of the Purchase Price of such Unit.

If and to the extent that the Vendor shall not receive the funds due under the Funding Agreement on the dates due thereunder, the Lessee agrees to pay to the Lessor, as additional rental for each Unit subject to this Lease, on each such date an amount equal to the applicable basic lease rate therefor set forth in Schedule C hereto for such date multiplied by the Purchase Price of each such Unit, and the Lessee shall be entitled to an offset against the next following June 30 rental payment or payments (to the extent such payments are not required to satisfy the payment of principal and interest on the CSA Indebtedness, as defined in the RCSA) of an amount equal to the amount so paid by the Lessee plus interest thereon for six months at the rate of 13% per annum.

In addition to the foregoing rental, the Lessee agrees to pay the Lessor as additional rental an amount equal to any excess of the interest paid to the Interim Investor under the Participation Agreement pursuant to the fourth paragraph of Paragraph 10 thereof over interest at the rate of 13% per annum for the period for which such interest is

paid, payable on the date such interest is paid.

The Lessee and the Lessor agree that the rentals payable hereunder and the Casualty Value percentages set forth in Schedule B hereto will be adjusted in the event that (A) any change in the Internal Revenue Code of 1954 (the "Code"), the income tax regulations thereunder or published administrative or judicial interpretations of the Code or such regulations is enacted or has an effective date on or prior to June 30, 1981, or prior to such date any income tax regulations or published administrative or judicial interpretations of the Code are issued, the effect of which is to deny to the Owners the ability to put into practice with respect to this transaction any of the tax assumptions utilized by the Owners in originally evaluating this transaction, if such assumptions were reasonably consistent with industry practice at the time made; (B) the aggregate Reconstruction Cost (as defined in the RCSA) of the Units is more or less than 68.37% of the aggregate Purchase Price of the Units or the Lessor pays more than 24.93% of the Purchase Price of any Unit pursuant to clause (b) of the third paragraph of Article 3 of the RCSA; (C) less than 21% of the Units have roller bearings (rather than friction bearings); (D) any Closing Date is held on a date other than the date specified therefor in Schedule B of the RCSA; (E) the amount settled for on any Closing Date is different from the amount specified therefor in Schedule B of the RCSA; (F) any Unit is delivered and accepted after June 30, 1980; (G) the aggregate amount paid to the Lessor on the sale of noncompleted Hulks pursuant to Section 2 of the Hulk Purchase Agreement is less than the aggregate Purchase Price of such Units; (H) there is any deficiency payable in respect of Investments (as defined in the Participation Agreement) pursuant to the Participation Agreement; (I) the Interim Investor under the Participation Agreement holds any interest in the CSA Indebtedness after the Settlement Date under PA-2 (as defined in the Participation Agreement); (J) the Owners expend funds to obtain a replacement Investor (pursuant to Paragraph 10 of the Participation Agreement); or (K) no Units are delivered and accepted under the Lease of Railroad Equipment dated as of March 15, 1980 ("Lease-2"), between the parties hereto. Any such adjustment shall be effective as of the first rental payment date following the event giving rise to such adjustment, and shall be made in such manner as will result, in the Owners' reasonable judgment, in preserving for the Owners both the after-tax rate of return and the after-tax cash flow that would have been realized by the Owners had such event not occurred, based on the rates of Federal, state and local taxes on or measured by net income in effect from time to

time and in all other respects based on the assumptions and methods of calculation utilized by the Owners in originally evaluating the transaction described in this Lease, Lease-2 and related documents (the "Net Economic Return"). Notwithstanding the foregoing, the rentals payable and Casualty Value percentages will never be less than those amounts and percentages required to enable the Lessor to satisfy its obligations under the RCSA and to enable the Owners to satisfy the profit and positive cash flow requirements set forth in Section 4(6) of Rev. Proc. 75-21, 1975-1 C. B. 715, as such requirements may be modified or adjusted as of the applicable rental payment date. The Owners shall furnish the Lessee and the Vendor prior to the effective date of any such adjustment with a notice setting forth in reasonable detail the computations and methods used in computing such adjustment.

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

This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent, reduction thereof or setoff against rent, including but not limited to abatements, reductions or setoffs due or alleged to be due to or by reason of any past, present or future claims of the Lessee against the Lessor under this Lease or under the RCSA, or the Vendor or the Owners or otherwise (except as provided in the second paragraph of this Section 2); nor, except as otherwise expressly provided herein, shall this Lease terminate or the respective obligations of the Lessor or the Lessee be otherwise affected by reason of any defect in or failure of title of the Lessor to any of the Units 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, any prohibition of or other restriction against Lessee's use of all or any of the Units, the taking or requisitioning of any of the Units by condemnation or otherwise, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency, 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 par-

ties 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 the lease of any of the Units, except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever. All payments under the Lease shall be made by bank wire transfer of Federal or other immediately available funds no later than 10:00 a.m. Baltimore time in the city where such payments are due.

Section 3. Term of Lease. The term of this Lease as to each Unit shall begin on the date of the delivery to and acceptance by the Lessee of such Unit and, subject to the provisions of Sections 6, 9, 12 and 13 hereof, shall terminate on the date on which the final payment of rent in respect thereof is due hereunder; provided, however, that all obligations of the Lessee, except for the payment of rent and the furnishing of annual reports, shall continue until surrender of the Units in accordance with Section 13 hereof.

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 RCSA. If an event of default should occur under the RCSA, the Vendor may terminate this Lease (or rescind its termination), all as provided therein.

Section 4. Identification Marks. So long as this Lease shall remain in effect, the Lessee will cause each Unit to be kept numbered with the road number set forth in Schedule A hereto and will keep and maintain, conspicuously marked on each side of such Unit, in letters not less than one inch in height, the words "Ownership Subject to a Security Agreement Filed with the Interstate Commerce Commission" or other appropriate markings designated by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect Lessor's and Vendor's title to and property in such Unit and the rights of the Lessor under this Lease and of the Vendor under the RCSA. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such legend shall have been so marked on both sides thereof and will

replace promptly any such legend which may be removed, obliterated or destroyed. The Lessee will not change the road 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 filed by the Lessee in all public offices where this Lease and the RCSA shall have been filed and (ii) the Lessee shall have furnished the Vendor and the Lessor an opinion of counsel to that effect and to the further effect that such filing will protect the Vendor's and the Lessor's interests in such Units and that no other filing or giving of notice is necessary to protect the interests of the Vendor and the Lessor in such Units.

So long as this Lease shall remain in effect, the Lessee will not allow any name to be placed on the Units as a designation that might be interpreted as a claim of ownership (except as above provided); provided, however, that the Lessee may cause the Units to be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates on railroad equipment used by them of the same or a similar type for convenience of identification of their rights to use the Units as permitted under this Lease.

Section 5. Taxes. The Lessee agrees for the benefit of the Lessor and the Owners to pay and on written demand to indemnify and hold each Indemnitee (which for the purposes of this Section 5 shall mean the Lessor (in both its individual and fiduciary capacities), the Owners, the Trust Estate (as defined in the Trust Agreement) and any affiliate of any of them) harmless from all license and registration fees and all taxes (including income, gross receipts, franchise, sales, use, property, stamp and other taxes), assessments, levies, imposts, duties, charges or withholdings of any nature whatsoever, together with any penalties, additions to tax, fines or interest thereon (collectively, "taxes, fees or other charges"), imposed against any Indemnitee, the Lessee, any Unit or any part thereof by any Federal, state or local government or taxing authority in the United States of America or by any taxing authority or governmental subdivision of a foreign country upon or with respect to any Unit or any part thereof or upon the manufacture, purchase, ownership, delivery, leasing, possession, use, operation, sublease, return or other disposition thereof or upon the rentals, receipts or earnings arising therefrom or upon or with respect to this Lease or any other document contemplated in the Participation Agreement; excluding, however, (i) United States Federal income taxes imposed on the Owners, whether or not the Lessee is required to indemnify therefor pursuant to Section 15

hereof and (ii) any corporate franchise or doing business tax or tax, fee or charge on, based on or measured by the net income of either Owner, other than such tax as may be imposed by any taxing jurisdiction as a result of the use or operation of the Units by the Lessee within such jurisdiction and which would not otherwise be imposed but for such use or operation of the Units; further excluding, any taxes, fees or other charges on, based on or measured by any fees or compensation received by the Lessor for services rendered in connection with the transactions contemplated hereby; further excluding, any taxes, fees or other charges imposed on or for the account of any Indemnitee by reason of any transfer of any interest in the Units or the Trust Estate voluntarily by such Indemnitee while no Event of Default shall have occurred and then be continuing; provided however, that there shall not be excluded any taxes, fees or other charges imposed by any jurisdiction on, based on or measured by net income resulting directly or indirectly (whether by inclusion of an item in gross income, disallowance of a credit against tax, disallowance of a deduction for depreciation or otherwise) from the Lessee's receipt of any payment by any manufacturer of any component of any Unit in satisfaction of a claim against such manufacturer with respect to any Unit under any warranty or indemnity provision of any purchase agreement, unless, and only to the extent that, any such tax, fee or other charge is being contested by the Lessee in good faith (and for the payment of which adequate reserves have been provided) by appropriate proceedings so long as such proceedings do not involve any danger of the sale, forfeiture or loss of any Unit or any interest therein. The Lessee further agrees that any payment of indemnity hereunder shall include any amount necessary to hold the Indemnitee harmless on an after-tax basis from all taxes required to be paid by such Indemnitee with respect to such payment of indemnity under the laws of any Federal, state or local governmental or taxing authority in the United States of America or under the laws of any taxing authority or governmental subdivision of a foreign country; provided, however, that if any Indemnitee realizes a tax benefit by reason of such payment of indemnity (whether such tax benefit shall be by means of investment tax credit, depreciation deduction or otherwise), such Indemnitee shall pay the Lessee an amount equal to the sum of such tax benefit plus any tax benefit realized as the result of any payment made pursuant to this proviso, when, as, if and to the extent realized; but not before the Lessee shall have made all payments of indemnities to such Indemnitee thereto-

fore required and then due and payable pursuant to this Section 5 and no Event of Default (or event which with notice or lapse of time or both would constitute an Event of Default) shall have occurred and be continuing. Each Indemnitee shall in good faith use reasonable efforts in filing its tax returns and in dealing with taxing authorities to seek and claim any such tax benefit.

The Lessee shall not be responsible under this Section for any tax upon or with respect to any Unit imposed with respect to any period following the return of such Unit (and after Lessee has fully complied with Section 13 with respect to such return) at the end of the term of this Lease or, except as otherwise specifically provided herein, payment in full of the Casualty Value for such Unit in accordance with the provisions hereof.

In the event that the Lessor shall become obligated to make any payment to the Vendor pursuant to Article 5 of the RCSA not covered by the foregoing paragraph of this Section 5, the Lessee shall pay such additional amounts (which shall also be deemed taxes, fees or other charges hereunder) to the Lessor as will enable the Lessor to fulfill completely its obligations pursuant to said Article 5.

In the event any reports with regard to taxes, fees or other charges are required to be made on the basis of individual Units or otherwise, the Lessee will, where permitted to do so under applicable rules or regulations, make and timely file such reports in such manner as to show the interest of the Lessor and the Vendor in the Units as shall be satisfactory to the Lessor and the Vendor or, where not so permitted, will notify the Lessor and the Vendor of such requirement and will prepare and deliver such reports to the Lessor and the Vendor within a reasonable time prior to the time such reports are to be filed in such manner as shall be satisfactory to the Lessor and the Vendor.

In the event that the Lessee becomes liable for the payment or reimbursement of any taxes, fees or other charges pursuant to this Section 5 during the continuance of this Lease, such liability shall continue, notwithstanding the expiration of this Lease, until all such taxes, fees or other charges are paid or reimbursed by the Lessee.

The Lessee shall, whenever reasonably requested by the Lessor, submit to the Lessor copies of returns, state-

ments, reports, billings and remittances or furnish other evidence satisfactory to the Lessor of the Lessee's performance of its duties under this Section 5. 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, including but not limited to information relating to the use of any Unit or Units outside the United States of America.

The parties hereto acknowledge that the Units become a part of the mass of property used by the Lessee in its operations as a common carrier by rail. Consequently, the parties agree that the Lessee shall include the Units in the ad valorem tax returns to be filed by the Lessee in the applicable states or localities and that neither the Vendor nor the Lessor shall include the Units in any ad valorem tax returns filed by them in such states or localities.

Section 6. Maintenance; Payment for Casualty Occurrences; Insurance. The Lessee agrees that, at its own cost and expense, it will maintain and keep each Unit which is subject to this Lease in good operating order, repair and condition, ordinary wear and tear excepted.

In the event that any Unit shall be or become worn out, lost, stolen, destroyed or, in the good faith and reasonable opinion of the Lessee, irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise by the United States Government for a period which shall exceed the then remaining term of this Lease or by any other governmental entity resulting in loss of possession by the Lessee for a period of 90 consecutive days or until the end of the term of this Lease (each such occurrence is called a "Casualty Occurrence") prior to the return of such Unit in the manner set forth in Section 13 hereof and the expiration of the storage period provided therein, the Lessee shall, within 30 days after it shall have determined that such Unit has suffered a Casualty Occurrence, fully notify the Lessor and the Vendor in writing with respect thereto. Notwithstanding any such Casualty Occurrence, the Lessee shall continue making all payments provided for in this Lease in respect of such Unit to and including the date listed in Table 1 of Schedule B hereto next succeeding such notice (the "Casualty Payment Date"). On the Casualty Payment Date the Lessee shall, in addition to other amounts due, pay to the

Lessor the Casualty Value (as hereinafter defined) of such Unit as of the date of such payment in accordance with Schedule B hereto. Upon the making of all such payments by the Lessee in respect of any Unit, the rental for such Unit shall thereafter cease to accrue, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft or complete destruction of such Unit) the Lessor shall be entitled to recover possession of such Unit, and, subject to the next succeeding sentence, the Lessee shall pay all costs of removal of such Unit and of freight to the place designated pursuant to Section 13 hereof. The Lessor hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof at the best price obtainable under the circumstances on an "as is, where is, and with all faults" basis in accordance with the Lessee's normal procedures; provided, however, that, except in the case of the loss, theft or complete destruction of such unit, the Lessee shall give notice of such Casualty Occurrence to the Lessor and the Lessor may revoke such appointment upon written notice received by the Lessee within 15 days after the date of the notice given by the Lessee to the Lessor. Provided that the Lessee has previously paid the Casualty Value to the Lessor, the Lessee shall be entitled to the net proceeds of such sale after deductions of any cost or expense incurred in disposing of such Unit to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Lessor.

The Casualty Value of each Unit as of the payment date on which payment is to be made as aforesaid shall be an amount equal to the sum of (a) that percentage of the Purchase Price of such Unit as is set forth in Table 1 of Schedule B hereto opposite such date with respect to such Unit plus (b) if applicable to such Unit, that percentage of the Reconstruction Cost thereof as set forth in Table 2 of said Schedule B with respect to such Unit; provided, however, that the Casualty Value percentages set forth in Schedule B hereto apply only to Units delivered and accepted under the RCSA on or prior to June 30, 1980. With respect to any Unit delivered and accepted after June 30, 1980, the Lessor and the Lessee agree that the Casualty Value percentages set forth in Schedule B hereto will be appropriately adjusted in order that the Owners' after-tax rate of return and after-tax cash flow (based on the rates of Federal, state and local taxes on or measured by net income in effect from time to time and in all other respects based on the assumptions and methods of calculation utilized by the Owners in originally

evaluating the transaction described in this Lease and related documents) will not be increased or decreased by reason thereof; provided, however, that the Casualty Value percentages, as so adjusted, shall be sufficient to satisfy the obligations of the Lessor under the RCSA, notwithstanding any limitation of liability contained therein.

Whenever any Unit shall suffer a Casualty Occurrence at the end of the term or after termination of this Lease and before such Unit shall have been returned in the manner provided in Section 13 hereof, the Lessee shall promptly and fully notify the Lessor with respect thereto and pay to the Lessor an amount equal to the Casualty Value of such Unit as of the rental payment date immediately preceding such termination. 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), the Lessor shall be entitled to recover possession of such Unit. The Lessor hereby appoints the Lessee its agent to dispose of any Unit suffering such Casualty Occurrence or any component thereof at the best price obtainable on an "as is, where is, and with all faults" basis; provided, however, that, except in the case of the loss, theft or complete destruction of such Unit, the Lessee shall give notice of such Casualty Occurrence to the Lessor and the Lessor may revoke such appointment upon written notice received by the Lessee within 15 days after the date of the notice given by the Lessee to the Lessor. Provided that the Lessee has previously paid the Casualty Value to the Lessor, the Lessee shall be entitled to the proceeds of such sale and all payments made by other carriers to or for the account of the Lessee and attributable to the loss or destruction of such Unit, to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Lessor.

Except as provided above in this Section 6, the Lessee shall not be released from its obligations hereunder in the event of any Casualty Occurrence to any Unit after delivery to and acceptance thereof by the Lessee hereunder and shall bear the responsibility for and risk of the same.

The Lessee will, at all times while this Lease is in effect, at its own expense, cause to be carried and maintained types and amounts of insurance that are satisfactory to the Lessor in respect of the Units at the time subject hereto and the use and operation thereof, including

without limitation property insurance and public liability insurance, in such amounts and for such risks and with such insurance companies as are consistent with prudent industry practice, but in any event at least comparable to insurance coverage carried by the Lessee in respect of similar equipment owned or leased by it; provided, however, that, in respect of property insurance, the Lessee may self-insure any Unit to the extent that it self-insures similar equipment owned by it and as is consistent with prudent industry practice. The Lessee hereby assigns and transfers to the Lessor and the Vendor, as their interests may appear, all right, title, and interest in and to any insurance proceeds paid under any policy of insurance to the extent such proceeds relate to the Units or the use and operation thereof as aforesaid; provided, however, if the Lessee fully complies with all the provisions of this Section 6 and the third paragraph of Section 8 hereof in respect of the risk insured against as to which such proceeds are paid and, if there is no Event of Default under Section 9 hereof, the Lessee shall be entitled to retain all such proceeds.

Section 7. Annual Reports. On or before November 30 in each year, commencing with the year 1981, the Lessee will cause to be furnished to the Lessor, the Owners and the Vendor an accurate statement as of the preceding June 30 showing the amount, description and numbers of all Units (a) then leased hereunder or covered by the RCSA, (b) that have suffered a Casualty Occurrence during the preceding 12 months (or since the date of this Lease in the case of the first such statement) and (c) then undergoing repairs (other than running repairs) or then withdrawn from use pending such repairs, and setting forth such other information regarding the condition and state of repair of the Units as the Lessor or the Vendor may reasonably request, and stating that in the case of all Units repainted or repaired during the period covered by such statement, the markings required by Section 4 hereof have been preserved or replaced. The Lessor shall have the right (but not the obligation), at its sole cost, risk and expense, by its authorized representatives, to inspect the Units and the Lessee's records with respect thereto (including those relating to any use of the Units outside the United States of America) at such reasonable times as the Lessor may request during the continuance of this Lease.

Section 8. Warranties; Compliance with Applicable Laws; Indemnification. THE LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN

OR CONDITION OF OR AS TO QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN THE UNITS 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 ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT, EITHER UPON DELIVERY THEREOF TO THE LESSEE OR OTHERWISE, it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee. The Lessor shall have no responsibility or liability to the Lessee or any other person with respect to (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Units or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of any Units or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, 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 all Units described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

The Lessee agrees, for the benefit of the Lessor and the Vendor, to comply in all respects (including without limitation the use, maintenance and operation of each Unit) with all applicable laws of the jurisdictions in which its operations involving the Units may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the United States Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units (the "Applicable Laws"), and in the event that, prior to the expiration of this Lease or any renewal thereof or the return of all the Units as provided in Section 10 or 13 hereof, any Applicable Law requires any replacement, modification or addition of or to any part of any Unit, the Lessee will conform therewith at its own expense; provided, however, that the Lessee may at its own expense, in good faith, contest the validity or application of any Applicable Law in any reasonable manner which does not, in the advance opinion of the Lessor or the

Vendor, adversely affect the property or rights of the Lessor or the Vendor under this Lease or the RCSA. The Lessee, at its own cost and expense, may furnish other additions, modifications and improvements to the Units during the term of this Lease provided that such additions, modifications and improvements are readily removable without causing material damage to the Units. The additions, modifications and improvements made by the Lessee under the first sentence of this paragraph shall be owned by the Lessor, and those made by the Lessee under the second sentence of this paragraph shall be owned by the Lessee.

The Lessee agrees to indemnify, protect and hold harmless the Lessor (individually and in its fiduciary capacity), the Owners and the Vendor from and against all losses, expenses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including but not limited to counsel fees and expenses, patent liabilities, penalties and interest, arising out of or as a result of (i) the entering into or the performance of the RCSA, the Participation Agreement, the Hulk Purchase Agreement, or this Lease or any sublease, or any of the instruments or agreements referred to therein or herein or contemplated thereby or hereby or the occurrence of a default, an event of default or an Event of Default under any of such documents, (ii) the ownership of any Hulk or any Unit, (iii) the ordering, acquisition, use, operation, maintenance, condition, reconstruction, purchase, delivery, rejection, storage or return of any Hulk or any Unit, (iv) any accident in connection with the operation, use, condition, reconstruction, possession, storage or return of any Hulk or any Unit resulting in damage to property or injury or death to any person, except as otherwise provided in Section 13 of this Lease, including without limitation any claim based upon the doctrines of product liability or strict or absolute liability in tort or by statute imposed, or (v) the transfer by the Vendor of its interests in the Equipment pursuant to any provision of the RCSA. The Lessor agrees to give the Lessee written notice of any claim or liability to be indemnified against hereunder promptly upon an officer or employee in the corporate trust department of the Lessor having received actual knowledge thereof. The indemnities arising under this paragraph shall continue in full force and effect notwithstanding the delivery of the Equipment or the full payment and performance of all obligations under this Lease and the Hulk Purchase Agreement or the expiration or termination of the term of

this Lease and the Hulk Purchase Agreement; provided, however, that the foregoing indemnification shall not apply to any failure of payment of any of the principal of or interest on the CSA Indebtedness. Nothing in this Section 8 shall constitute a guarantee by the Lessee of the principal of or interest on the CSA Indebtedness or a guarantee of the residual value of any Unit. The amount the Lessee shall be required to pay with respect to any of its obligations under this paragraph shall include a payment to the indemnified party sufficient to restore such party to the same position (after considering the effect of such payment on its United States Federal income taxes and state and local income taxes or franchise taxes based on net income) that the indemnified party would have been in had the liability or expense indemnified against not been incurred.

The indemnities made by the Lessee in this Section 8 shall not be modified, abated, postponed or in any other way diminished or reduced as a consequence of any action or inaction of the Owners in connection with, relating to or arising out of the rights (whether or not exercised) of any such party to inspect or approve the reconstruction to be performed by the Lessee pursuant to the RCSA. In addition to the agreements contained elsewhere in this Section 8, said indemnities shall in all events extend to and apply to any allegation against any indemnified party that it has been negligent, either actively or passively, or is guilty of a breach of other duty (including without limitation any breach of warranty or breach of contract) to anyone.

The Lessee agrees to prepare and deliver 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 regulatory authority by reason of the ownership by the Lessor or the Vendor of the Units or the leasing thereof to the Lessee.

Section 9. Default. If during the continuance of this Lease any of the following events (an "Event of Default") shall occur:

(a) default shall be made in the payment of any amount provided for in Section 2, 6 or 12 hereof and such default shall continue for 10 days;

(b) the Lessee shall make or permit any unautho-

rized assignment or transfer of this Lease or any interest therein or of the right to possession of any Unit and shall fail or refuse to cause such assignment or transfer to be canceled and to recover possession of such Unit within 15 days after written notice from the Lessor or the Vendor to the Lessee demanding the same;

(c) default shall be made in the observance or performance of any other covenant, condition and agreement on the part of the Lessee contained herein or in the Participation Agreement and such default shall continue for 30 days after written notice from the Lessor or the Vendor to the Lessee specifying the default and demanding that the same be remedied;

(d) a petition for reorganization under Title 11 of the United States Code, as now constituted or as hereafter amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been and shall not continue to be duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed in such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees, or in accordance with the provisions of 11 U.S.C. § 1168, within 60 days after the filing of the petition or the commencement of the case;

(e) any proceedings shall be commenced by or against the Lessee for any relief which includes or might result in any modification of the obligations of the Lessee under this Lease, the Participation Agreement or the Consent under any bankruptcy or insolvency laws or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of such obligations), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all such obligations shall not have been and shall not continue to be duly assumed in writing, pursuant to a court order

or decree, by a trustee or trustees or receiver or receivers appointed for the Lessee or for the property of the Lessee in connection with any such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such a trustee or trustees or receiver or receivers, within 60 days after such proceedings shall have been commenced; or

(f) any of the Lessee's representations or warranties made in the Participation Agreement, herein or in any statement or certificate at any time given in writing pursuant hereto or thereto or in connection herewith or therewith shall be breached or found to be false or misleading in any material respect;

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

(a) proceed by appropriate court action, 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 amounts sufficient to restore the Owners to the same net after-tax rate of return and after-tax cash position (after considering the effect of the receipt of such damages and amounts on their United States Federal income tax and state and local taxes or franchise taxes based on net income) that the Owners would have realized or would have been in had such breach not occurred; 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 as though this Lease had never been made, but the Lessee shall remain liable as herein provided; and thereupon the Lessor may by its agents or employees 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 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 a bargain and not as a penalty, whichever of the following amounts the Lessor, in its sole discretion, shall specify: (x) a sum, with respect to each Unit, equal to the excess of the present value at the time of such termination of the entire unpaid balance of all rental for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over the then present value of the rental which the Lessor reasonably estimates to be obtainable for the Unit during such period (such present value to be computed in each case on the basis of a 6% per annum discount, compounded annually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated); 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 net proceeds realizable upon the sale of such Unit at such time; provided, however, that in the event the Lessor shall have sold any Unit, the Lessee shall, if the Lessor shall so elect, pay the Lessor on the date of such sale (in addition to the amounts payable pursuant to Sections 5 and 8 hereof) 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 lieu of paying any amounts payable to the Lessor by the Lessee pursuant to the preceding clauses (x) and (y) of this part (b) with respect to such Unit.

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

Should the Lessee fail to make any payment or to do any act as provided by this Lease, the Lessor shall have the right (but not the obligation), without notice to the Lessee of its intention to do so and without releasing the Lessee from any obligation hereunder to make or to do the same, to make advances to preserve the Equipment or the Lessor's title thereto, and to pay, purchase, contest or compromise any insurance premium, encumbrance, charge, tax, lien or other sum which in the judgment of the Lessor appears to affect the Equipment, and in exercising any such rights, the Lessor may insure any liability and expend whatever amounts in its absolute discretion it may deem necessary therefor. All sums so incurred or expended by the Lessor shall be due and payable by the Lessee within 10 days of notice thereof, together with interest thereon from the date of expenditure at the rate of 14% per annum or at the rate charged by Citibank, N.A., from time to time to its prime commercial borrowers for loans of 90-day maturities, whichever is greater.

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative, 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 failure of the Lessor to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

Section 10. Return of Units upon Default. If this Lease shall terminate pursuant to Section 9 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor. Each Unit so delivered shall be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted. For the purpose of delivering possession of any Unit or Units to the Lessor as above required, the Lessee shall at its own cost, expense and risk:

(a) forthwith and in the usual manner (including without limitation giving prompt telegraphic and

written notice to the Association of American Railroads and all railroads to which any Unit or Units have been interchanged to return the Unit or Units so interchanged) place such Units upon such storage tracks of the Lessee or its affiliates as the Lessor reasonably may designate;

(b) permit the Lessor to store such Units on such tracks at the risk of the Lessee without charge for insurance, rent or storage until such Units have been sold, leased or otherwise disposed of by the Lessor; and

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

The assembling, delivery, storage 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 competent jurisdiction, 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 cost and expense, insure, maintain and keep the Equipment in good running order and repair and will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Unit, to inspect the same.

The Lessee hereby waives any and all claims against the Vendor or the Lessor and their agents for damages of whatever nature in connection with any retaking of the Units in any reasonable manner.

All amounts earned in respect of the Units after the date of termination of this Lease shall belong to the Lessor and if received by the Lessee shall be promptly turned over to the Lessor. In the event any Unit is not assembled, delivered and stored, as hereinabove provided, within 60 days after such termination, the Lessee shall, in addition, pay to the Lessor for each day thereafter an amount equal to the amount, if any, by which 0.0499005% of the Purchase Price of such Unit exceeds the actual earnings received by the Lessor on such Unit for each such day.

Without in any way limiting the obligation of the Lessee under this Section 10, 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 11. 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. The rights of the Lessor hereunder (including but not limited to the rights under Sections 5, 6, 8 and 9 and the rights to receive the rentals and Casualty Value payments payable under this Lease) shall inure to the benefit of the Vendor as assignee under the Lease Assignment in the manner and to the extent therein provided.

So long as the Lessee shall not be in default under this Lease and no event of default exists under the RCSA, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease but, without the prior written consent of the Lessor and the Vendor, the Lessee shall not assign or transfer its leasehold interest under this Lease in any of the Units or sublease any of the Units, except to the extent permitted by the provisions of the next succeeding paragraph hereof; and any such assignment, transfer or sublease without said consent shall be void. The Lessee, at its own expense, will promptly discharge or cause to be duly discharged 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 or the Vendor after the date hereof or resulting from claims against the Lessor 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, charge, security interest or other encumbrance which arises. The Lessee shall not, without the prior written consent of the Lessor and the Vendor, part with the possession or control of any Unit or allow any Unit to pass out of its possession or control, except to the extent permitted by the provisions of the next succeeding paragraph hereof.

Subject to the terms of this Lease, the Lessee shall be entitled to the possession and use of the Units by it or any affiliate upon lines of railroad owned or operated by it or any such affiliate or upon the lines of railroad over which the Lessee or any such affiliate has trackage or other operating rights or over which railroad equipment of the Lessee or any such affiliate is regularly operated pursuant to contract, and also to permit the use of the Units upon connecting and other carriers in the usual interchange of traffic and equipment, and to assign its rights to the Units or to sublease the Units to any of its affiliates, but only upon and subject to all the terms and conditions of this Lease (including the last paragraph of this Section 11) and the RCSA; provided, however, that the Lessee shall in any such event remain primarily liable for all its obligations hereunder. The Lessee may receive and retain compensation for such use from other railroads so using any of the Units. Every such sublease shall be subject to the rights and remedies of the Vendor under the RCSA and the Lessor under this Lease in respect of the Units covered by such sublease upon the occurrence of an event of default or Event of Default thereunder or hereunder.

Nothing in this Section 11 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any corporation incorporated under the laws of any state of the United States of America or the District of Columbia (which shall have duly assumed the obligations of the Lessee hereunder and under the Consent) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the railroad properties of the Lessee as an entirety or substantially as an entirety; provided that such assignee or transferee will not upon the effectiveness of such merger, consolidation or acquisition be in default under any provision of this Lease.

The Lessee agrees that during the term of this Lease it will not assign any Unit to service involving the regular operation and maintenance thereof outside the United States of America.

Section 12. Renewal Option; Duty to First Offer. 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 180 days prior to the end of the original term or the first extended

term of this Lease, elect to extend such original or extended term of this Lease, as the case may be, in respect of all but not less than all the Units then covered by this Lease for an additional two-year period commencing on the scheduled expiration of such term.

Each such extended term of the Lease shall be on the same terms and conditions as are contained in the Lease, except that (x) the amount of rentals shall be at Fair Market Rental (as hereinafter defined) payable, in arrears, in annual payments on the day such rentals were payable for the Units in each year of the original term and (y) the Casualty Value of each Unit on the first day of such extended term shall be equal to the lesser of 30% of the Purchase Price of such Unit or the Fair Market Value (as hereinafter defined) of such Unit on such date and thereafter such Casualty Value shall be reduced on a straight line basis over the estimated remaining useful life of such Unit, all as determined by the procedures hereinafter established.

Fair Market Rental, Fair Market Value and estimated remaining useful life shall be agreed upon by the Lessor and the Lessee or determined as provided in the next paragraph. Fair Market Rental and Fair Market Value shall be equal in amount to the rental or sale value which would be obtained in an arm's-length transaction between an informed and willing lessee or vendee (other than a lessee currently in possession or a used equipment dealer) and an informed and willing lessor or vendor under no compulsion to lease or sell and, in such determination, costs of removal from the location of current use shall not be a deduction from such rental or sale value but there shall be excluded any rental value or sale value attributable to additions, modifications and improvements which the Lessee is entitled to remove pursuant to Section 8 hereof; provided, however, that Fair Market Rental shall be determined as provided in this sentence on the basis of the term and other terms and conditions of the lease being considered. Fair Market Rental, Fair Market Value and estimated remaining useful life of the Units shall be determined upon the assumption that the Units shall have been maintained in accordance with the provisions of Section 6 hereof.

If after 45 days from the giving of notice by the Lessee of the Lessee's election to extend the term of this Lease, the Lessor and the Lessee are unable to agree upon a determination of Fair Market Rental, Fair Market Value or

estimated remaining useful life, as the case may be, either party to such determination may give written notice to the other requesting determination of Fair Market Rental, Fair Market Value or estimated remaining useful life by the following appraisal procedure, and 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 apply to make such appointment to the American Arbitration Association, 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 Fair Market Rental, Fair Market Value or estimated remaining useful life, as the case may be, of the Units subject to the proposed extended lease term or sale within 90 days after appointment. If the parties shall have appointed a single appraiser or if either party shall have failed to appoint an appraiser, the determination of a single appraiser appointed shall be final. If three appraisers shall be appointed, the determination of the appraiser which differs most from the other two appraisers shall be excluded, the remaining two determinations shall be averaged and such average shall be final and binding upon the parties hereto. 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, Fair Market Value and estimated remaining useful life, unless these are agreed upon by the Lessor and the Lessee as provided for herein, 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 by the Lessee.

Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, in the event the Lessor elects to sell any Units to third parties at the expiration of the original or any extended

term of this Lease, the Lessee shall be given written notice of such intention prior to the expiration of such term. The Lessee shall have the sole right and option to purchase all but not less than all the Units then subject to this Lease at the Fair Market Value of such Units. The Lessee shall exercise such purchase right by delivery to the Lessor of a written notice within 10 business days of receipt of notice from the Lessor, specifying a date of purchase not later than the later of 15 days after the date of delivery of such notice by the Lessee to the Lessor or 90 days after the expiration of such term of this Lease. In the event that the Lessee shall have delivered a notice of its election to purchase the Units, this Lease (including the obligation to pay rent) shall be further extended upon the same terms and conditions set forth herein from the date such notice is delivered to the Lessor until the date of such purchase. If the Lessee does not deliver such notice to the Lessor, all obligations of the Lessor under this paragraph shall terminate.

Section 13. Return of Units upon Expiration of Term. Upon the expiration of the original or any extended term of this Lease, the Lessee will, at its own expense, deliver the Units to the Lessor; provided, however, that if so instructed in writing by the Lessor at least 30 days prior to such expiration, the Lessee will, on or prior to the last business day of each consecutive calendar month following such expiration, deliver to the Lessor not more than 225 Units (or such other number as may be agreed to by the Lessor) under this Lease; provided further, however, that the Lessee shall incur no liability to the Lessor or to any person claiming by, through or under the Lessor if the Lessee is unable to deliver Units for delivery in each consecutive calendar month as a result of circumstances constituting force majeure. Any Units delivered to the Lessor pursuant to the preceding sentence shall be delivered upon such storage tracks of the Lessee as the Lessee may designate, and the Lessee shall permit the Lessor to store such Units on such tracks for a period not exceeding 150 days after delivery to such storage tracks, and shall transport the same, on a one-time basis per Unit at any time within such 150-day period, to any connecting carrier for shipment, all as directed by the Lessor, the movement and storage of such Unit to be at the expense and risk of the Lessee until such time as such Unit shall have been delivered to such connecting carrier. Subsequent to the expiration of the term of this

Lease and prior to delivery of any Unit to the Lessor, all terms and conditions of this Lease (other than term and the amount of rental and period of payment therefor) shall continue to apply to such Unit. If the Lessor gives to the Lessee the instruction referred to in the first proviso to the first sentence of this paragraph, then on the 10th day after delivery of the last Unit to be delivered to the Lessor as hereinabove provided or on the 270th day following expiration of the original or any extended term of this Lease, whichever shall first occur (the "Date of Payment"), the Lessee shall pay as rent to the Lessor for each Unit not so delivered to the Lessor upon such expiration a sum equal to one-twelfth of 50% of the average rental rate per Unit prevailing during the term or extended term of the Lease so expired, as the case may be, for each month (or part thereof) subsequent to such expiration and prior to such delivery. If any Unit is not returned by the Date of Payment, then the Lessee shall continue to pay the monthly rent provided for in the preceding sentence with respect to such Unit, except that such rent shall be payable on the last business day of each month, to and including the month in which the Unit is returned. During any storage period provided for in this paragraph, the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any Unit, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence. Each Unit returned to the Lessor pursuant to this Section 13 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, ordinary wear and tear excepted, (ii) be capable of being moved unloaded by the Lessee to any purchaser or subsequent lessee and (iii) have removed therefrom by the Lessee without cost or expense to the Lessor all additions, modifications and improvements which the Lessee owns pursuant to Section 8 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 having competent jurisdiction the Lessor shall be entitled to a decree against the Lessee requiring specific performance thereof.

If the Lessor does not deliver the instructions referred to in the first sentence of the first paragraph of

this Section 13, then in the event any Unit is not assembled, delivered and stored, as hereinabove provided, within 90 days after the end of the term or any extended term of this Lease, the Lessee shall promptly pay to the Lessor an amount for each day after such 90-day period, equal to the greater of (i) all per diem, incentive per diem and mileage charges earned by such Unit (including, to the extent any Unit is used by the Lessee during this period, the per diem, incentive per diem and mileage charges that would have been payable by the Lessee to another carrier for a carrier car for each such day of use in revenue service) or (ii) 0.0499005% of the Purchase Price of such Unit. If the Lessor has not given the Lessee notice to transport any Unit to a connecting carrier for shipment within the 150-day storage period, the Lessor will pay to the Lessee for storage a reasonable storage rate for such Unit, beginning the first day after the 150-day storage period.

In the event that the Lessor elects, prior to the return of any Units or during the storage period provided for in the preceding paragraph, to re-lease all or any of the Units to a third party, then upon written request from the Lessor to the Lessee, the Lessee agrees that, in order to keep such Units eligible for interchange, it will continue to lease such Units from the Lessor at a rental equal to the rental to be paid by such third party and will sublease such Units to such third party; provided, however, that such third party and the Lessor enter into an agreement reasonably satisfactory to the Lessee (A) to indemnify and hold harmless the Lessee from all liability and obligations arising under the Lease and such sublease (other than to pay to the Lessor an amount equal to any rental paid under such sublease) and (B) to reimburse the Lessee in full for all out-of-pocket costs and expenses connected with the continued lease and sublease of such Units, plus reasonable reimbursement for administrative costs relating directly thereto; provided further, however, that the Lessee shall not be obligated to enter into or carry out any such agreement to the extent that the Lessee is advised by counsel that such agreement would violate the provisions of any applicable law, rule or regulation, including without limitation rules and regulations of the Interstate Commerce Commission and the Association of American Railroads.

Section 14. Filing; Expenses. The Lessee will cause this Lease, the Lease Assignment, the Transfer Agreement (as defined in the Participation Agreement), the RCSA

and any assignment hereof or thereof to be filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303. The Lessee will undertake the filing and refiling required of the Lessor under the RCSA and will from time to time perform any other act and will execute and file (and will refile whenever required) any and all further instruments or supplements required by law or reasonably requested by the Lessor or the Vendor for the purpose of proper protection, to their satisfaction, of the Vendor's and the Lessor's respective interests in the Units, or for the purpose of carrying out the intention of this Lease or the RCSA; and the Lessee will promptly furnish to the Vendor and the Lessor evidences of all such filing and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Vendor and the Lessor. This Lease, the Lease Assignment, the Transfer Agreement and the RCSA shall be filed with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Unit.

Section 15. Income Tax Indemnity. (a) Assump-
tions. (1) The parties hereto agree that the Owners, as the beneficial owners of each Unit, shall be entitled to such deductions, credits and other benefits as are provided by the Code and state and local taxing statutes to an owner of property, including without limitation (i) deductions for depreciation of each Unit under section 167 of the Code computed on the basis (A) that each such Unit will have a basis under section 167(g) of the Code at least equivalent to the Purchase Price in respect of such Unit, (B) with respect to the amount of the Reconstruction Cost, of the double-declining balance method of depreciation authorized by section 167(b)(2) of the Code, switching to the sum-of-the-years digits method of depreciation authorized by section 167(b)(3) of the Code when most beneficial to the Owners without obtaining the consent of the Commissioner of Internal Revenue in accordance with Treasury Regulation § 1.167(a)-11(c)(1)(iii), (C) with respect to the amount of the Hulk Purchase Price (as defined in the RCSA), of the 150 percent declining balance method authorized by Treasury Regulation § 1.167(a)-11(c)(1)(iv)(b)(2), switching to the straight line method without obtaining the consent of the Commissioner of Internal Revenue, (D) with respect to both the Hulk Purchase Price and the Reconstruction Cost, of the asset depreciation range system of Treasury Regulation § 1.167(a)-11, (E) with respect to both the Hulk Purchase Price and the Reconstruction Cost, of an asset depreciation period of 12 years,

(F) with respect to both the Hulk Purchase Price and the Reconstruction Cost, of a net salvage value of zero after the reduction permitted by section 167(f) of the Code and (G) that the entire Reconstruction Cost shall be treated as basis which is properly attributable to reconstruction after December 31, 1953, pursuant to section 167(c)(1) of the Code (the "ADR Deductions"); (ii) deductions with respect to interest payable on the CSA Indebtedness (the "Interest Deductions"); and (iii) investment credit pursuant to section 38 of the Code at least equal to 10% of the Reconstruction Cost in respect of each Unit (the "Investment Credit").

(2) It is further agreed by the parties hereto that they have assumed in their negotiation of the terms of the Participation Agreement, the RCSA and this Lease that (i) the Federal rate of tax imposed on taxable income of corporations in excess of \$100,000 during the year 1980 is 46%, (ii) the applicable rate of tax imposed by any state or local taxing authority on the taxable income of the Owners in 1980 will be the same as that prevailing on March 1, 1980, (iii) for purposes of computing the ADR Deductions with respect to the Units for the calendar year in which the Units were first placed in service, the Owners will be entitled to elect the modified half-year convention (including, as to each Unit, twelve months of depreciation for the calendar year in which the date of acceptance of such Unit occurs under this Lease), and (iv) for Federal income tax purposes, all amounts includible in the gross income of the Owners with respect to the Units and all deductions allowable to the Owners with respect to the Units will be treated as derived from or allocable to sources within the United States of America.

(3) 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 clauses (1) and (2) of this subsection (a) and that the Lessee and any corporation controlled by it, in control of it or under common control with it, directly or indirectly, will file such returns, take such actions and execute such documents as may be reasonable and necessary to facilitate accomplishment of the intent hereof.

- (b) Representations and Warranties of Lessee.
(1) The Lessee represents and warrants that

(A) immediately upon delivery and acceptance of the Hulks under the RCSA and related documents, the Owners will be treated as the taxpayers for purposes of section 48(b)(1) of the Code and such taxpayers will be treated as having directed the reconstruction of the Hulks;

(B) the entire Reconstruction Cost of each Unit will constitute an investment in "new section 38 property" within the meaning of section 48(b) of the Code and will be deemed to have been placed into service by the Owners in the taxable year of the Owners during which the date of acceptance of such Unit occurs under this Lease;

(C) every Unit constitutes property the entire Reconstruction Cost of which qualifies for the Investment Credit under subpart B of Part IV, Subchapter A of the Code;

(D) the entire Reconstruction Cost of each Unit shall qualify as basis which is properly attributable to reconstruction (i) after December 31, 1953, as provided in section 167(c)(1) of the Code and (ii) after December 31, 1961, as provided in section 48(b) of the Code;

(E) when each Unit is delivered and accepted under the RCSA and related documents, no other person will have claimed or intends to claim the Investment Credit or the ADR Deductions with respect thereto;

(F) at all times during the original term of this Lease and renewal periods thereof, the entire Reconstruction Cost will constitute a qualified investment in "section 38 property" within the meaning of section 48(a) of the Code;

(G) at all times during the original term of this Lease and renewal periods thereof, the Owners will be entitled to treat, for Federal income tax purposes, each item of income, deduction and credit relating to all Units subject to the RCSA and this Lease as being derived from or allocable to sources within the United States of America.

(2) In the opinion of the Lessee, each Unit will have an estimated useful life of not less than 15 years and residual value at the end of the original lease term equal to at least twenty percent of the Purchase Price of such Unit and each Unit will be useful and usable by a party other than the Lessee at the end of the original term and capable of continued leasing and transfer to another party at that time and commercially feasible to do so.

(c) Indemnity for Acts, Omissions or Misrepresentations. (1) If by reason of any act of commission or omission, misrepresentation, breach of any agreement, covenant or warranty contained in this Lease or any other agreement relating to the reconstruction or lease of the Units on the part of the Lessee or any party referred to in clause (3) of subsection (a) of this Section 15 or by any sublessee or assignee of the Lessee, an Owner shall lose the right to claim, shall not claim (as the result of a good faith determination of tax counsel of General Electric Company (the "Tax Counsel") that such claim is not allowable), shall suffer a disallowance of or shall be required to recapture all or any portion of its proportionate share of the Investment Credit, the Interest Deductions or the ADR Deductions (any such event is called a "Loss"), then the Lessee shall pay to such Owner as an indemnity, on the next succeeding rental payment date hereunder after written notice to the Lessee by the Owner of such Loss (or, if this Lease is terminated, within 30 days after demand), and on each rental payment date thereafter during the remaining term of this Lease, such amount or amounts as shall cause such Owner's Net Economic Return to equal the Net Economic Return that would have been realized by such Owner if such Loss had not occurred.

(2) In the event that an Owner suffers a Loss and the Owner and the Lessee are unable to agree on the indemnity amount required to restore the Owner's Net Economic Return, as aforesaid, then the Lessee shall pay to such Owner, in lieu of the amount provided for in clause (1) of this subsection (c), such amount or amounts from time to time as, after deduction of all taxes required to be paid by such Owner in respect of the receipt of such amounts under the laws of any Federal, state, local or foreign government or taxing authority, shall be equal to the sum of the aggregate additional Federal, state or local income taxes payable by such Owner from time to time as a result of any such Loss plus the amount of any interest, penalties or additions to

tax payable as a result of any such Loss. If, as a result of a Loss, the aggregate Federal, state or local income taxes paid by an Owner for any taxable year shall be less than the amount of such taxes which would have been payable by such Owner had no such Loss occurred, then such Owner shall pay the Lessee the amount of such difference in taxes plus any additional tax benefits realized by such Owner as the result of such payment; provided, however, that such 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 such Owner pursuant to this clause (2) in respect of a Loss less (y) the amount of all prior payments by such Owner to the Lessee hereunder. The amount payable to an Owner pursuant to this clause (2) shall be paid within 30 days after receipt of a written demand therefor from such Owner accompanied by a written statement describing in reasonable detail such Loss and the computation of the amount so payable (but not prior to the earlier of (i) the filing of a return or the acceptance of an audit report in which such Loss is reflected and (ii) the payment of the additional income tax that becomes due as the result of the Loss and, in the case of amounts which are being contested in accordance with subsection (d) of this Section 15, not prior to the time provided in subsection (d)). Any payment due to the Lessee from an Owner pursuant to this clause (2) shall be paid within 30 days after such Owner realized any such savings in its income taxes or additional tax benefits, as the case may be.

(3) If an Owner is required by the Internal Revenue Service to include in its gross income an amount in respect of any replacement, improvement and/or addition to any Unit or as the result of any action taken by the Lessee or any sublessee or assignee of the Lessee ("Capital Expenditures"), then the Lessee shall pay directly to such Owner, as an indemnity, in immediately available funds, such amount or amounts which, after deduction of all taxes required to be paid by such 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 of America, shall be equal to the sum of the aggregate additional Federal, state or local income taxes payable by such 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. If as a result of any such Capital Expenditure the aggregate

Federal, state or local income taxes paid by an Owner for any taxable year shall be less than the amount of such taxes which would have been payable by such Owner had no such Capital Expenditure been made, then such 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 such 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 such Owner pursuant to this clause (3) in respect of any Capital Expenditures less (y) the amount of all prior payments by such Owner to the Lessee hereunder. The amount payable to an Owner pursuant to this clause (3) shall be paid within 30 days after receipt of a written demand therefor from such Owner (but not prior to payment by such 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 an Owner pursuant to this clause (3) shall be paid within 30 days after such Owner realizes any such savings in its income taxes or additional tax benefits, as the case may be. The Lessee agrees to give each Owner, within 30 days after request therefor, written notice describing in reasonable detail Capital Expenditures made and specifying the cost thereof with respect to each Unit if such information is required in connection with an audit by the Internal Revenue Service of the tax returns of an Owner.

(d) Contest Provisions. (1) If the Internal Revenue Service shall propose an adjustment in the Federal income taxes of an Owner for which the Lessee would be required to indemnify such Owner pursuant to subsection (c) of this Section 15 and the amount of the indemnity which the Lessee would be required to pay would exceed \$100,000 then, if requested by the Lessee in a timely written request, such Owner shall request an opinion from Tax Counsel 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 such Owner to do so, such Owner shall contest the proposed adjustment; provided, however, that Tax Counsel shall determine in its sole and reasonable discretion 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 such Owner shall undertake judicial action with respect to such proposed adjustment, the court or other judicial body before which such action shall be commenced. Such Owner shall have full control over any contest pursuant to this subsection (d) and shall not be obligated to appeal an adverse determination by any court. At any time, whether before or after commencing to take the action set forth in this subsection (d), an Owner may decline to take such action by notifying the Lessee in writing that the Lessee is relieved of its obligation to indemnify such Owner with respect to the adjustment proposed by the Internal Revenue Service or such portion thereof as may be specified in such notice.

(2) An Owner shall not be required to take any action pursuant to this subsection (d) unless and until the Lessee shall have agreed to indemnify such Owner in a manner reasonably satisfactory to such Owner for any liability or loss which such Owner may incur as a result of contesting the validity of any proposed adjustment and shall have agreed to pay to such Owner on demand all costs and expenses which such Owner may incur in connection with contesting such proposed adjustment (including reasonable fees and disbursements of counsel selected by the Owner). If an Owner determines to contest any adjustment by paying the additional tax and suing for a refund, the Lessee shall pay to such 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 an Owner of a refund of any amounts paid by it in respect of which amounts it shall have been paid an equivalent amount by the Lessee, such Owner shall pay to the Lessee the amount of such refund together with any interest received by it on such amount. The Lessee shall be obligated to pay to an Owner the amount specified in subsection (c) of this Section 15 promptly after such Owner has taken all the action that it has agreed in this Section 15 to take.

(e) Foreign Tax Credit Indemnity. If any item of income or deduction with respect to the Units shall not be treated as derived from or allocable to sources within the United States of America for a given taxable year (any

such event is called a "Foreign Loss"), then the Lessee shall pay to an Owner as an indemnity, on the next succeeding rental payment date after written notice to the Lessee by such Owner, such amount which after deduction of all taxes required to be paid by such 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 of America shall equal the sum of (1) the excess of (x) the foreign tax credits which such Owner would have been entitled to for such year had no such Foreign Loss occurred over (y) the foreign tax credit to which such Owner was limited as a result of such Foreign Loss and (2) the amount of any interest, penalties or additions to tax payable as a result of such Foreign Loss.

(f) Exceptions. Notwithstanding the foregoing provisions, the Lessee shall not be required to indemnify the Owners with respect to any Loss or Foreign Loss that results solely and directly from (i) a Casualty Occurrence, if the Lessee has made all payments with respect thereto that are required to be made pursuant to Section 6 hereof; (ii) a voluntary disposition by the Owners of their beneficial interest in any Unit, if such disposition (x) shall be the direct cause of such Loss or Foreign Loss with respect to such Unit, (y) shall occur at a time while no Event of Default (and no event that with notice or lapse of time or both would constitute an event of Default) has occurred and is continuing, and (z) shall not be pursuant to the written consent of the Lessee; (iii) the failure of the Owners to claim the proper credit or deductions contemplated by subsection (a) of this Section 15, unless the Owners shall have been so advised by Tax Counsel; (iv) the failure of the Owners to have sufficient Federal income tax liability against which to apply such credits or sufficient income to benefit from such depreciation or interest deductions; or (v) any change in the Code, the income tax regulations thereunder or published administrative or judicial interpretations of the Code or such regulations which is not enacted or does not have an effective date on or prior to June 30, 1981.

(g) Records and Statements. The Lessee agrees to maintain sufficient records to verify the amount of income, deductions and credits in respect of the Units so as to provide each Owner with such data as may be required to confirm amounts covered by this Section.

(h) Recomputation of Casualty Value. If any

amount is paid by the Lessee to an Owner pursuant to this Section 15, G. E. Credit shall recompute the Casualty Values with respect to the Units in accordance with the manner in which such Casualty Values were originally computed to reflect such payment, and an officer of G. E. Credit shall certify to the Lessee either that such Casualty Values as are set forth in this Lease do not require change or, as the case may be, the new Casualty Values necessary to reflect such payment, describing in reasonable detail the basis for computing such new Casualty Values. Upon such certification, any such new Casualty Values shall be substituted for the Casualty Values appearing in this Lease; provided, however, that such new Casualty Values shall not be less than the amounts required to enable the Lessor to satisfy its obligations under the RCSA.

(i) Additional Definitions. For purposes of this Section 15, the term "Owner" shall include G. E. Credit and Morgan and shall also include any member of an affiliated group, within the meaning of section 1504 of the Code, of which an Owner is or may become a member, if consolidated returns are filed for such affiliated group for Federal income tax purposes.

(j) Survival of Indemnities. Notwithstanding any expiration or termination of this Lease, the liability of the Lessee to make indemnification payments pursuant to this Section 15 shall continue to exist until such indemnity payments are made by the Lessee.

(k) Payments. Any payments made pursuant to this Agreement shall be made directly to the Owner entitled thereto by wire transfer of immediately available funds to the account set forth in Section 2.01 of the Trust Agreement or to such other account or in such other manner as such Owner may direct.

(l) No Setoff. No payment required to be made by the Lessee pursuant to this Section 15 shall be subject to any right of setoff, counterclaim, defense, abatement, suspension, deferment or reduction, and the Lessee shall have no right to terminate its obligation under this Section 15 or to be released, relieved or discharged from any obligation or liability under this Section 15 for any reason whatsoever, except in accordance with the express terms hereof.

(m) Tax Indemnity Provisions Attach at Date of Execution. The provisions of this Section 15 shall apply

from the time of execution of this Lease, the Participation Agreement and the RCSA whether or not the other provisions of this Lease come into effect.

Section 16. Interest on Overdue Rentals. The Lessee shall promptly pay an amount equal to interest at the rate of 14% per annum on any overdue rentals or other obligations hereunder for the period of time during which they are overdue, or such lesser amount as may be legally enforceable.

Section 17. Notices. Any instruction, notice or report required or permitted to be given hereunder shall be deemed to have been given when deposited in the United States mails, first-class postage prepaid, addressed as follows:

(a) if to the Lessor, at One Constitution Plaza, Hartford, Connecticut 06115, attention of Corporate Trust Department;

(b) if to the Lessee, at 100 North Charles Street, Baltimore, Maryland 21201, attention of Senior Assistant Treasurer;

(c) if to the Vendor, at P. O. Box 2258, Two Hopkins Plaza, Baltimore, Maryland 21203, attention of Corporate Trust Department;

(d) if to the Owners, at the addresses specified in Section 2.02 of the Trust Agreement;

or addressed at such other address as any party shall hereafter furnish to the other parties in writing. Copies of each such notice shall be given to the Lessor and the Vendor.

Section 18. Effect and Modification of Lease. Except for the Participation Agreement, this Lease exclusively states the rights of the Lessor and the Lessee with respect to the leasing of the Units and supersedes all other agreements, oral or written, with respect thereto. No variation or modification of this Lease and no waiver of any of its provisions shall be valid unless in writing and signed by duly authorized officers of the Lessor and the Lessee.

Section 19. Definitions. If and so long as this Lease is assigned to the Vendor (or any successor thereto) for collateral purposes, wherever the term "Lessor" is used

in this Lease it shall include the Vendor and any successors thereto (unless the context shall otherwise require) but the Vendor shall not be subject to any liabilities or obligations under this Lease; and the fact that the Vendor is specifically named in certain provisions shall not be construed to mean that the Vendor (or any successor thereto) is not entitled to the benefits of other provisions where only the Lessor is named. Whenever the term "Lessor" is used in this Lease, it shall also include the Owners and any assignee of the Owners.

Section 20. Execution. This Lease may be executed in several counterparts, all of which together shall constitute a single instrument, but the counterpart delivered to the Vendor shall be deemed to be the original counterpart. Although for convenience this Lease is dated as of the date first set forth above, the actual dates of execution are the dates stated in the acknowledgments hereto. The schedules and the footnotes thereto annexed to this Lease are an integral part of this Lease and are incorporated herein by reference.

Section 21. Governing Law. The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of Ohio; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303.

Section 22. Immunities; No Recourse; Severability. Notwithstanding anything herein to the contrary, each and all of the representations, warranties, undertakings and agreements herein made on the part of the Lessor are made and intended not as personal representations, warranties, undertakings and agreements by The Connecticut Bank and Trust Company or for the purpose or with the intention of binding said bank personally but are made and intended for the purpose of binding only the Trust Estate (as such term is used in the Trust Agreement); and this Lease is executed and delivered by said bank not in its own right but solely in the exercise of the powers expressly conferred upon it as trustee under the Trust Agreement; and except in the case of wilful misconduct or gross negligence by said bank, no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against said bank or the Owners hereunder (except, with respect to the Owners, pursuant to Section 1.03 and the last paragraph of Section 5.01 of the Trust Agreement), on account of this Lease or the

Trust Agreement or on account of any representation, warranty, undertaking or agreement of said bank or the Owners hereunder, either expressed or implied, all such personal liability (except as aforesaid), if any, being expressly waived and released by the Lessee and by all persons claiming by, through or under the Lessee.

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.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by duly authorized officers as of the date first set forth above.

THE CHESAPEAKE AND OHIO RAILWAY COMPANY,

by

Assistant Vice President and Treasurer

[Corporate Seal]

Attest:

Assistant Secretary

THE CONNECTICUT BANK AND TRUST COMPANY, not in its individual capacity but solely as Trustee,

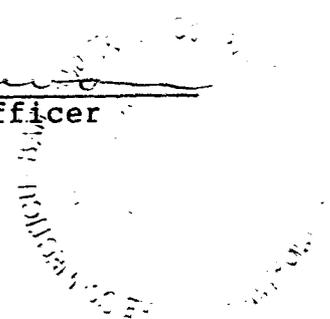
by

Authorized Officer

[Corporate Seal]

Attest:

Authorized Officer



STATE OF OHIO,)
) ss.:
COUNTY OF CUYAHOGA,)

On this _____ day of _____ 1980, before me personally appeared _____, to me personally known, who, being by me duly sworn, says that he is an Assistant Vice President and the Treasurer of THE CHESAPEAKE AND OHIO RAILWAY COMPANY, a Virginia corporation, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that such 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.

[Notarial Seal]

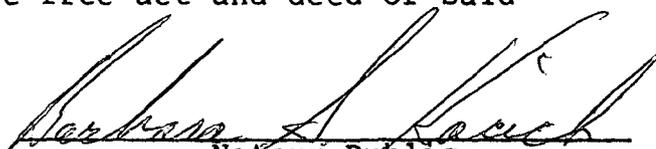
Notary Public

My Commission expires _____

STATE OF CONNECTICUT,)
) ss.:
COUNTY OF HARTFORD,)

On this 7th day of April 1980, before me personally appeared F. W. KAWAM, to me personally known, who, being by me duly sworn, says that he is **VICE PRESIDENT** of THE CONNECTICUT BANK AND TRUST COMPANY, a Connecticut banking corporation, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, 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.

[Notarial Seal]



Notary Public

My Commission expires _____

BARBARA S. KACICH
NOTARY PUBLIC
MY COMMISSION EXPIRES MARCH 31, 1982

Lease of Railroad Equipment

SCHEDULE A

Specifications of the Equipment*

<u>Quantity</u>	<u>AAR Mechanical Designation</u>	<u>Description</u>	<u>Railroad Road Numbers</u>
507	XL	50' Box Cars	CO 22001-22249 CO 22250-22649 CO 23000-23324 CO 27750-28999
96	HM	60-Ton Open Top Hopper Cars	CO 336000-336749
1131	HT	70-Ton Open Top Hopper Cars	CO 103000-103999 CO 110000-115241 CO 150000-151999 BO 10000-15249 WM 70001-71500 WM 72001-72400 WM 80001-80500
144	HT	80-Ton Open Top Hopper Cars	CO 152000-153998 CO 154009-155985 BO 152000-153999 BO 154000-155999
69	HT	85-Ton Open Top Hopper Cars	CO 85000-86999
48	--	30-Ton Steel Cupola Cabooses	CO 90200-90348

* Notwithstanding anything herein to the contrary, this Lease will only cover those Units that are reconstructed by the Lessee from Hulks delivered pursuant to the Hulk Purchase Agreement and that are accepted by the Lessor on or before August 15, 1980, under the RCSA and that have an aggregate Purchase Price not in excess of the Maximum Purchase Price specified in Article 3 of the RCSA. After delivery of all Units covered by this Lease, this Schedule A will be amended (and a supplement will be filed with the Interstate Commerce Commission) to describe only those Units covered by this Lease and to designate the particular Railroad Road Numbers thereof.

Lease of Railroad Equipment

SCHEDULE B

Casualty Value Percentages ScheduleTable 1

<u>Casualty Payment Date</u>	<u>Percentage of Purchase Price</u>
2/01/81	105.7076
6/30/81	113.2944
6/30/82	112.6465
6/30/83	98.1500
6/30/84	93.8500
6/30/85	88.5800
6/30/86	82.3600
6/30/87	72.2148
6/30/88	60.7540
6/30/89	48.0600
6/30/90	35.5475
6/30/91 (and for any applicable period, including any storage period, thereafter)	20.0000

Table 2

The percentages set forth in Table 1 of this Schedule B have been computed without regard to recapture of the investment tax credit (as referred to in Section 15 relating to certain tax indemnities). Consequently, the Casualty Value of any Unit suffering a Casualty Occurrence on or before the third, fifth or seventh anniversary of the date of delivery and acceptance of such Unit shall be increased by the applicable percentage of the Reconstruction Cost set forth below:

<u>Anniversary of Delivery and Acceptance</u>	<u>Percentage of Reconstruction Cost</u>
Third	16.6784573
Fifth	11.1189715
Seventh	5.5594858

Lease of Railroad Equipment

SCHEDULE C

Rentals Due Pursuant to Funding Agreement

<u>Date</u>	<u>Percentage of Purchase Price</u>
12/30/80	4.8797
6/30/81	4.8797
12/30/81	4.8797
12/30/82	4.8454
12/30/83	4.5443
12/30/84	4.2040
12/30/85	3.8194
12/30/86	3.3849
12/30/87	2.6869
12/30/88	1.8983
12/30/89	1.0071