

CRAVATH, SWAINE & MOORE 11578

ONE CHASE MANHATTAN PLAZA

NEW YORK, N. Y. 10005

212 HANOVER 2-3000

RECORDATION NO. Filed 1425

11578

MAR 12 1980 - 3 20 PM

INTERSTATE COMMERCE COMMISSION

MAURICE T. MOORE
WILLIAM B. MARSHALL
RALPH L. McAFEE
ROYALL VICTOR
HENRY W. deKOSMIAN
ALLEN F. MAULSBY
STEWART R. BROSS, JR.
HENRY P. RIORDAN
JOHN R. HUPPER
SAMUEL C. BUTLER
WILLIAM J. SCHRENK, JR.
BENJAMIN F. CRANE
FRANCIS F. RANDOLPH, JR.
JOHN F. HUNT
GEORGE J. GILLESPIE, III
RICHARD S. SIMMONS
WAYNE E. CHAPMAN
THOMAS D. BARR
MELVIN L. BEDRICK
GEORGE T. LOWY
ROBERT ROSENMAN
JAMES H. DUFFY
ALAN J. HRUSKA
JOHN E. YOUNG

JAMES M. EDWARDS
DAVID G. ORMSBY
DAVID L. SCHWARTZ
RICHARD J. HIEGEL
FREDERICK A. O. SCHWARZ, JR.
CHRISTINE BESHAR
ROBERT S. RIFKIND
DAVID BOIES
DAVID O. BROWNWOOD
PAUL M. DODYK
RICHARD M. ALLEN
THOMAS R. BROME
ROBERT D. JOFFE
ROBERT F. MULLEN
ALLEN FINKELSON
RONALD S. ROLFE
JOSEPH R. SAHID
PAUL C. SAUNDERS
MARTIN L. SENZEL
DOUGLAS D. BROADWATER
ALAN C. STEPHENSON
RICHARD L. HOFFMAN
JOSEPH A. MULLINS
MAXER SHULMAN

RECORDATION NO. Filed 1425
MAR 12 1980 - 3 20 PM

INTERSTATE COMMERCE COMMISSION

TELEX
RCA 233663
WUD 125547
WUI 620976

RECORDATION NO. Filed 1425

MAR 12 1980 - 3 20 PM

INTERSTATE COMMERCE COMMISSION

No. **0-072A069**
Date MAR 12 1980
Fee \$ 100.00
ICC Washington, D. C.

COUNSEL
CARYL E. MAW
ALBERT McCONNELLY
FRANK H. DEWEILER
GEORGE G. DYLER
ROSWELL L. McPATRICK
L. R. BRERLIN, JR.
GEORGE S. TURNER
JOHN H. MORSE
HAROLD S. MEDINA, JR.
CHARLES W. LINTON
ALLEN H. MERRILL
PLACE DE LA CONCORDE
75008 PARIS, FRANCE
TELEPHONE: 265-81-54
TELEX: 290530
33 THROGMORTON STREET
LONDON, EC2N 2BR, ENGLAND
TELEPHONE 01-606-1421
TELEX: 8814901
CABLE ADDRESSES
CRAVATH, N. Y.
CRAVATH, PARIS
CRAVATH, LONDON E. C. 2

March 12, 1980

Dear Ms. Mergenovich:

Pursuant to 49 U.S.C. § 11303 and the Commission's rules and regulations thereunder, as amended, I enclose herewith on behalf of Louisville and Nashville Railroad Company for filing and recordation counterparts of the following documents:

- (1) (a) Conditional Sale Agreement dated as of February 15, 1980, between Cargill Leasing Corporation and Whitehead & Kales Company; and
- A** (b) Agreement and Assignment dated as of February 15, 1980, between Mercantile-Safe Deposit and Trust Company and Whitehead & Kales Company.
- B** (2) (a) Lease of Equipment dated as of February 15, 1980, between Louisville and Nashville Railroad Company and Cargill Leasing Corporation; and
- C** (b) Assignment of Lease and Agreement dated as of

Clyde M. Wheeler
Robert D. Barr

RECORDATION NO. Filed 1425
MAR 12 1980 - 3 20 PM
INTERSTATE COMMERCE COMMISSION

February 15, 1980, between Cargill Leasing Corporation and Mercantile-Safe Deposit and Trust Company, as Agent.

The names and addresses of the parties to the aforementioned Agreements are as follows:

(1) Vendor-Assignee-Agent:

Mercantile-Safe Deposit and Trust
Company,
P. O. Box 2558,
Baltimore, Maryland 21203.

(2) Vendee-Lessor:

Cargill Leasing Corporation,
2301 Crosby Road,
Wayzata, Minnesota 55391.

(3) Builder-Vendor:

Whitehead & Kales Company,
58 Haltiner,
River Rouge, Michigan 48218.

(4) Lessee:

Louisville and Nashville Railroad
Company,
908 West Broadway,
Louisville, Kentucky 40201.

Please file and record the documents referred to in this letter and cross-index them under the names of the Vendor-Assignee-Agent, the Vendee-Lessor, the Builder-Vendor and the Lessee.

The equipment covered by the aforementioned documents consists of the following:

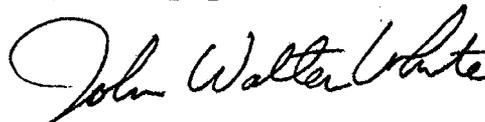
144 fully enclosed, tri-level auto racks bearing identifying numbers LN 2023--LN 2166, both inclusive.

There is also enclosed a check for \$100 payable to the Interstate Commerce Commission, representing the fee for recording the Conditional Sale Agreement and related Agreement

and Assignment (together constituting one document) and the Lease of Railroad Equipment and related Assignment of Lease and Agreement (together constituting one document).

Please stamp all counterparts of the enclosed documents with your official recording stamp. You will wish to retain one copy of the instruments for your files. It is requested that the remaining counterparts be delivered to the bearer of this letter.

Very truly yours,



John W. White
As Agent for
Louisville and Nashville
Railroad Company

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

Encls.

Interstate Commerce Commission
Washington, D.C. 20423

3/12/80

OFFICE OF THE SECRETARY

John W. White
Cravath, Swaine & Moore
One Chase Manhattan Plaza
New York, N.Y. 10005

Dear **Sir:**

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on **3/12/80** at **3:20pm** and assigned re-
recording number(s). **11578, 11578-A, 11578-B, 11578-C**

Sincerely yours,

Agatha L. Mergenovich
Agatha L. Mergenovich
Secretary

Enclosure(s)

RECORDATION NO. 11573 ^B Filed 1425

MAR 12 1980 - 3 22 PM

INTERSTATE COMMERCE COMMISSION

[CS&M Ref.: 2043-978]

LEASE OF EQUIPMENT

Dated as of February 15, 1980

Between

LOUISVILLE AND NASHVILLE RAILROAD COMPANY,

Lessee,

and

CARGILL LEASING CORPORATION,

Lessor 

TABLE OF CONTENTS

	<u>Page</u>
Section 1. Net Lease	L-1
Section 2. Delivery and Acceptance of Units	L-2
Section 3. Rentals	L-3
Section 4. Term of Lease	L-4
Section 5. Marking of the Units	L-5
Section 6. Taxes	L-5
Section 7. Maintenance; Casualty Occurrences; Insurance	L-8
Section 8. Reports	L-11
Section 9. Disclaimer of Warranties; Compliance with Laws and Rules; Indemnification	L-11
Section 10. Default	L-14
Section 11. Return of Units Upon Default	L-18
Section 12. Assignment; Possession and Use	L-19
Section 13. Renewal	L-21
Section 14. Return of Units upon Expiration of Term	L-22
Section 15. Recording	L-24
Section 16. Interest on Overdue Rentals	L-25
Section 17. Notices	L-25
Section 18. Severability; Effect and Modification of Lease	L-25
Section 19. Tax Indemnities	L-26
Section 20. Execution	L-32
Section 21. Law Governing	L-32
Section 22. Obligations of Lessor Under CSA; Additional Rentals	L-33
Section 23. Lessor's Right To Perform for the Lessee	L-33
Section 24. Immunities; Satisfaction of Undertakings	L-33

LEASE OF EQUIPMENT dated as of February 15, 1980, between LOUISVILLE AND NASHVILLE RAILROAD COMPANY, a Kentucky corporation (the "Lessee"), and CARGILL LEASING CORPORATION, a Delaware corporation (the "Lessor").

WHEREAS the Lessor is entering into a Conditional Sale Agreement dated as of the date hereof (the "CSA") with Whitehead & Kales Company (the "Builder"), wherein the Builder has agreed to manufacture, sell and deliver to the Lessor the units of railroad equipment described in Schedule A hereto (the "Equipment");

WHEREAS the Builder is assigning its interests in the CSA pursuant to an Agreement and Assignment dated the date hereof (the "CSA Assignment") to Mercantile-Safe Deposit and Trust Company, acting as agent (hereinafter, together with its successors and assigns and the Investors, as hereinafter defined, called the "Vendor") under a Participation Agreement dated as of the date hereof (the "Participation Agreement") with the Lessee, the Lessor and the party named in Schedule A thereto (such party, together with its successors and assigns, being hereinafter called the "Investors");

WHEREAS the Lessee desires to lease such number of units of the Equipment as are delivered and accepted and settled for under the CSA (the "Units") at the rentals and for the terms and upon the conditions hereinafter provided; and

WHEREAS the Lessor will assign this Lease for security to the Vendor pursuant to an Assignment of Lease and Agreement (the "Lease Assignment") and the Lessee will consent to the Lease Assignment pursuant to a Lessee's Consent and Agreement (the "Consent");

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions:

§ 1. Net Lease. This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent,

reduction thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs due or alleged to be due by reason of any past, present or future claims of the Lessee against the Lessor under this Lease or under the CSA, or against the Builder or the Vendor or otherwise; 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 damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency of or any bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever.

§ 2. Delivery and Acceptance of Units. The Lessor hereby appoints the Lessee its agent for inspection and acceptance of the Units pursuant to the CSA. The Lessor will cause each Unit to be delivered to the Lessee at the point or points within the United States of America at which such Unit is delivered to the Lessor under the CSA. Upon such delivery, the Lessee will cause an authorized representative, who may be an employee of the Lessee, to inspect the same, and if such Unit is found to be acceptable, to accept delivery of such Unit and the Lessee shall execute and deliver to the Lessor a certificate of acceptance (the "Certificate of Acceptance") in accordance with the provisions

of Article 3 of the CSA, stating that such Unit has been inspected and accepted on behalf of the Lessee and the Lessor on the date of such Certificate of Acceptance and is marked in accordance with § 5 hereof, whereupon, except as provided in the next sentence hereof, such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease. The delivery, inspection and acceptance hereunder of any unit of Equipment excluded from the CSA pursuant to the first paragraph of Article 4 thereof shall be null and void and ineffective to subject such unit to this Lease.

§ 3. Rentals. The Lessee agrees to pay to the Lessor, as rental for each Unit subject to this Lease, one interim rental payment on June 1, 1980, and thereafter 24 consecutive semiannual payments payable in arrears on June 1 and December 1 of each year commencing December 1, 1980. The interim rental payable on June 1, 1980, shall be in an amount equal to 112% of the Prime Rate (as defined in the CSA) applied to the Purchase Price (as defined in the CSA) of each such Unit then subject to this Lease from the Closing Date (as defined in the CSA) for that Unit for each actual day elapsed to and including June 2, 1980. The 24 semiannual rental payments thereafter shall each be in an amount equal to 6.334942% of the Purchase Price of each such Unit then subject to this Lease. Notwithstanding anything to the contrary set forth herein, the rental payable on each such date under this § 3 shall in no event be less than the payments due on each such date pursuant to Article 4 of the CSA.

The foregoing rentals shall be subject to adjustment as follows:

(i) if the interest payable on the CSA Indebtedness on any interest payment date immediately following a rental payment date hereunder (including the interim rental payment date) is more or less than 13% per annum for the six months' period in respect of which such interest is payable, the rental payable on such rental payment date shall be appropriately adjusted for such difference;

(ii) if any Closing Date under the CSA shall occur on a date different than set forth in Item 2 of Annex A of the CSA or if more or less than 50% of the Units are settled for on each such date, the rentals and Casualty Values will be adjusted so that the Lessor will realize

such amounts as will result, in the Lessor's reasonable judgment, in preserving for the Lessor both the after-tax rate of return and the after-tax cash flow that would have been realized by the Lessor if such event had not occurred.

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 a calendar day, excluding Saturdays, Sundays and any other day on which banking institutions in Baltimore, Maryland, Louisville, Kentucky, or Minneapolis, Minnesota, are authorized or obligated to remain closed.

Unless the Lease Assignment is not executed and delivered, the Lessor irrevocably instructs the Lessee to make all the payments provided for in this Lease, other than Excluded Payments (as defined in Paragraph 1 of the Lease Assignment), but including without limitation the payments provided for in this § 3 and in § 7 hereof, at the principal office of the Vendor until the Vendor shall have been paid the full indebtedness in respect of the Purchase Price of the Equipment (as defined in the CSA), together with interest and all other payments required by the CSA, for the account of the Lessor in care of the Vendor, with instructions to the Vendor (subject to the provisions of the Consent) first, to apply such payments to satisfy the obligations of the Lessor under the CSA, and second, so long as no event of default or event which with the lapse of time and/or demand provided for in the CSA could constitute an event of default under the CSA shall have occurred and be continuing, to pay any balance promptly to the Lessor at such place as the Lessor shall specify in writing. The Lessee agrees to make each payment provided for herein as contemplated by this paragraph in Baltimore Clearing House funds by 11:00 a.m., Baltimore, Maryland, time on the date such payment is due.

§ 4. Term of Lease. The term of this Lease as to each Unit shall begin on the date of delivery and acceptance of such Unit hereunder and, subject to the provisions of §§ 7, 10 and 13 hereof, shall terminate on the date on which the final payment of rent in respect thereof is due pursuant to § 3 hereof. The obligations of the Lessee hereunder (including, but not limited to, the obligations under §§ 6, 7, 9, 14 and 19 hereof) shall survive the expiration of the term of this Lease.

Notwithstanding anything to the contrary contained herein, all rights and obligations of the Lessee under this Lease and in and to the Units are subject to the rights of the Vendor under the CSA. If an event of default should occur under the CSA and be continuing, the Vendor may terminate this Lease (or rescind its termination), all as provided therein.

§ 5. Marking of the Units. The Lessee will cause each Unit to be kept numbered with its identifying number as set forth in Schedule A hereto, or in the case of Equipment not there listed such identifying number as shall be set forth in any amendment or supplement hereto extending this Lease to cover such Equipment and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the words "Ownership Subject to a Security Agreement filed with the Interstate Commerce Commission", or other appropriate words 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 the Lessor's ownership and the Vendor's security interest in such Unit and the rights of the Lessor under this Lease and the rights of the Vendor under the CSA. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such markings have been made thereon and will replace promptly any such markings which may be removed, defaced, obliterated or destroyed. The Lessee will not change the number of any Unit except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Lessor and the Vendor by the Lessee and filed, recorded and deposited by the Lessee in all public offices where this Lease and the CSA shall have been filed, recorded and deposited.

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

§ 6. Taxes. All payments to be made by the Lessee hereunder will be free of expense to the Lessor and the Vendor for collection or other charges and will be free of expense to the Lessor with respect to the amount of any local, state,

Federal, or foreign taxes (other than gross receipt taxes [except gross receipt taxes in the nature of or in lieu of sales or use or rental taxes], taxes measured by Lessor's net income, Lessor's value added taxes, excess profits taxes and similar taxes or general corporation, franchise or like taxes measured by Lessor's capital, capital stock or net worth) or license fees, assessments, charges, fines or penalties hereafter levied or imposed upon or in connection with or measured by this Lease or any sale, rental, use, terms hereof or the CSA (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called "impositions"), all of which impositions the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. The Lessee will also pay promptly all impositions which may be imposed upon any Unit or for the use or operation thereof (except as provided above) or upon the earnings arising therefrom (except as provided above) or upon the Lessor solely by reason of its ownership thereof (except as provided above) and will keep at all times all and every part of such Unit free and clear of all impositions which might in any way affect the title of the Lessor or the security interest of the Vendor or result in a lien upon any such Unit; provided, however, that the Lessee shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal or administrative proceedings such impositions and the nonpayment thereof is permitted by law and does not, in the reasonable opinion of the Lessor (or, at the Lessee's request, the opinion of Lessor's independent counsel) or the Vendor, adversely affect the title, property, rights or interest of the Lessor hereunder or the Vendor under the CSA. The Lessee agrees to give the Lessor notice of such contest within 30 days after institution thereof and the Lessor agrees to provide such information as may be reasonably requested by the Lessee in furtherance of such contest. If any impositions shall have been charged or levied against the Lessor directly and paid by the Lessor, the Lessee shall reimburse the Lessor on presentation of an invoice therefor; provided, however, that the Lessor shall have given the Lessee written notice of such imposition prior to such payment; provided further that the failure of the Lessor so to notify the Lessee shall not affect the obligations of the Lessee thereunder, it being understood and agreed, however, that the Lessee shall have no obligation to pay or indemnify against payment of any imposition which the Lessee has already paid in full or in respect of which the Lessor was not legally liable to pay.

In the event that the Lessor shall become obligated to make any payment pursuant to Article 6 of the CSA to the Builder or the Vendor or otherwise pursuant to any correlative provision of the CSA, the Lessee shall pay such additional amounts (which shall also be deemed impositions hereunder) to the Lessor as will enable the Lessor to fulfill completely its obligations pursuant to said provision; provided, however, that the Lessor shall have contested (if required to do so under this § 6) such impositions in good faith and to the extent permitted under the CSA.

In the event any returns, statements or reports with respect to impositions are required to be made, the Lessee will make such returns, statements and reports in such manner as to show the interest of the Lessor and the Vendor in such Units and will send copies thereof to the Lessor.

In the event that, during the continuance of this Lease, the Lessee becomes liable for the payment or reimbursement of any imposition, pursuant to this § 6, such liability shall continue, notwithstanding the expiration of this Lease, until all such impositions are paid or reimbursed by the Lessee.

In the event the Lessee may be prohibited by law or is impaired from contesting in its own name any imposition covered by this § 6 in respect of which the Lessee would otherwise be required to make payments to the Lessor pursuant hereto, the Lessor shall, upon request and at the expense of the Lessee, take all legal and other appropriate action reasonably requested by the Lessee to contest such imposition. The Lessor shall not be obligated to take any such legal or other appropriate action unless the Lessee shall first have indemnified the Lessor for all liabilities and expenses which may be entailed therein. Further, the Lessee shall indemnify and hold the Lessor harmless from and against any and all claims, costs, expenses, damages, losses and liabilities incurred in connection therewith as a result of, or incident to, any action taken by the Lessor or Lessee under this § 6. The Lessee shall be entitled to any refund received by the Lessor or the Lessee in respect of any imposition paid by the Lessee provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing.

The Lessee shall, whenever reasonably requested by

the Lessor, submit to the Lessor copies of returns, statements, reports, billings and remittances, or furnish other evidence satisfactory to the Lessor of the Lessee's performance of its duties under this § 6. The Lessee shall also furnish promptly upon request such data as the Lessor reasonably may require to permit the Lessor's compliance with the requirements of taxing jurisdictions.

The amount which the Lessee shall be required to pay with respect to any imposition which is subject to indemnification under this § 6 shall be an amount sufficient to restore the Lessor to the same net after-tax rate of return and after-tax cash position, after considering the effect of such payment on its United States Federal income taxes and state and city income taxes or franchise taxes based on net income, that the Lessor would have been in had such imposition not been imposed.

§ 7. Maintenance; 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, reasonable wear and tear excepted.

In the event that any Unit shall be or become worn out beyond repair, lost, stolen, destroyed, or irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or requisitioned for use or otherwise, except requisition for use by the United States Government for a stated period not in excess of the then remaining term of this Lease (such occurrences being hereinafter called "Casualty Occurrences"), prior to the return of such Unit in the manner set forth in § 14 hereof, the Lessee shall promptly and fully notify the Lessor and the Vendor with respect thereto. On the interim or semiannual rental payment date next succeeding such Casualty Occurrence the Lessee shall pay to the Lessor an amount equal to the rental payment or payments in respect of such Unit due and payable on such date plus a sum equal to the Casualty Value (as hereinafter defined) of such Unit determined as of the date of such payment in accordance with the schedule referred to below. As of the rental payment date on which the Casualty Value is paid, the rental for such Unit shall cease to accrue, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft, complete destruction or return to the Builder of such Unit) the Lessor shall be entitled to recover possession of such Unit. Any Casualty Value not paid when due shall accrue interest as provided in § 16 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 on an "as is, where is" basis. 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 to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Lessor. As used in this § 7, "net proceeds" shall mean the proceeds of any sale less any expenses, costs and fees incurred in connection with such sale, including without limitation, transportation costs, commissions, taxes and attorneys' fees.

The Casualty Value of each Unit as of the payment date on which payment is to be made as aforesaid shall be that percentage of the Purchase Price of such Unit as is set forth in Schedule B hereto opposite the interim or semiannual rental payment date next succeeding the actual date of such Casualty Occurrence, or if there is no such rental payment date, the last rental payment date.

Whenever any Unit shall suffer a Casualty Occurrence after termination of this Lease and before such Unit shall have been returned in the manner provided in § 14 hereof, the Lessee shall promptly and fully notify the Lessor with respect thereto and pay to the Lessor, within 30 days after the Treasury Department of the Lessee receives notice of such Casualty Occurrence, an amount equal to the Casualty Value of such Unit. 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, and the Lessee shall be entitled to the net proceeds of any sale to the extent they do not exceed the Casualty Value of such Unit.

In the event of the requisition for use by the United States Government (the "Government") of any Unit during the term of this Lease or any renewal thereof not constituting a Casualty Occurrence all of the Lessee's obligations under this Lease with respect to such Unit shall continue to the same extent as if such requisition had not occurred, except that if such Unit is returned by the Government at any time after the end of the term of this Lease or any renewal thereof, the Lessee shall be obligated to return such Unit to the Lessor pursuant to § 11 or 14 hereof, as the case may be, promptly upon such return by

§ 8. Reports. On or before April 1 in each year, commencing with the calendar year 1981, the Lessee will furnish to the Lessor and the Vendor an accurate statement (a) setting forth as at the preceding December 31 the amount, description and numbers of all Units then leased hereunder, as to each unit of Equipment, the description and numbers of the railroad equipment to which such unit is attached and the amount, description and numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year (or since the date of this Agreement in the case of the first such statement) or are then undergoing repairs (other than running repairs) or then withdrawn from use pending such repairs (other than running repairs) and such other information regarding the condition, state of repair and use of the Units as the Lessor or the Vendor may reasonably request and (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and markings required by § 5 hereof and by the CSA have been preserved or replaced. The Lessor, at its sole cost and expense, shall have the right by its agents, to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Lessor may request during the continuance of this Lease.

§ 9. Disclaimer of Warranties; Compliance with Laws and Rules; Indemnification. THE LESSEE ACKNOWLEDGES AND AGREES (1) THAT EACH UNIT IS OF A SIZE, DESIGN, CAPACITY AND MANUFACTURE SELECTED BY THE LESSEE, (2) THAT THE LESSEE IS SATISFIED THAT THE SAME IS SUITABLE FOR ITS PURPOSES, (3) THAT THE LESSOR IS NOT A MANUFACTURER OR INSTALLER THEREOF, NOR A DEALER IN PROPERTY OF SUCH KIND, (4) THAT THE LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS DELIVERED TO THE LESSEE HEREUNDER, AND (5) THAT 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; but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for the account of the Lessor and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense,

whatever claims and rights the Lessor may have against the Builder under the provisions of Item 3 of Annex A and the patent infringement and title indemnification provisions of Article 13 of the CSA; provided, however, that if at any time an Event of Default shall have occurred and be continuing, the Lessor may assert and enforce, at the Lessee's sole cost and expense, such claims and rights. The Lessor shall have no responsibility or liability to the Lessee or any other person with respect to any of the following: (i) any liability (including, without limitation, strict liability in tort or otherwise), loss or damage caused or alleged to be caused directly or indirectly by any Unit 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 Unit 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 Unit. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Lessor that the Units described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor 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, with respect to the use, maintenance and operation of each Unit) with all applicable laws of the jurisdictions in which its operations involving the Units may extend, with the interchange rules of the Association of American Railroads 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 (all such laws and rules to such extent being hereinafter called "Applicable Laws"), and in the event that, prior to the expiration of this Lease or any renewal thereof, Applicable Laws require any alteration, replacement or addition of or to any part on any Unit, the Lessee will conform therewith at its own expense (and, within 30 days of completion, give notice thereof to the Lessor) and the Lessor will have title thereto; 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 reasonable opinion of the Lessor or the Vendor, adversely affect the property or rights of the Lessor or the Vendor under this Lease or under the CSA. 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 preceding sentence shall be owned by the Lessee and shall be removed by it upon the return of the Units pursuant to § 14 hereof.

The Lessee assumes the risk of and agrees to indemnify, protect and hold harmless the Lessor and the Vendor from and against all losses, damages, injuries, liabilities, claims (including without limitation claims for strict liability in tort or otherwise) 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 the result of the entering into or the performance of this Lease, the CSA, the Participation Agreement or any sublease entered into pursuant to § 12 hereunder, or the occurrence of a default, an event of default or an Event of Default under any of the above instruments, the ownership of any Unit, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any Unit or any accident in connection with the operation, use, condition, possession, storage or return of any Unit resulting in damage to property or injury or death to any person, except as otherwise provided in § 14 of this Lease, or the transfer of title to or its security interest in the Equipment by the Vendor pursuant to any provision of the CSA. The indemnities arising under this paragraph shall continue in full force and effect notwithstanding the full payment of all obligations under this Lease or the expiration or termination of the term of this Lease. The indemnities arising under this § 9 shall not be deemed to operate as a guarantee of the principal of or interest on the CSA Indebtedness under the CSA.

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 tax returns) to be filed by the Lessor with any Federal, state or other regulatory authority by reason of the ownership by the Lessor of the Units, the security interest of the Vendor in the Units, or the leasing thereof to the Lessee.

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

(A) default shall be made in payment of any amount provided for in §§ 3, 7 or 13 hereof, and such default shall continue for five days; or

(B) the Lessee shall make or permit any unauthorized assignment or transfer of this Lease, or any interest herein, or of the right to possession of the Units, or any thereof; or

(C) default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein, in the Consent, 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, with a copy, in the case of notice by the Vendor, to the Lessor, specifying the default and demanding that the same be remedied; or

(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 or under the Consent shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees, within 60 days after such petition shall have been filed and otherwise in

accordance with the provisions of 11 U.S.C. § 1168, or any successor provision, as the same may hereafter be amended; or

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

(F) an event of default set forth in Article 15 of the CSA shall have occurred arising out of any default by the Lessee in performing any of its obligations hereunder or under the Consent and shall not have been cured as provided for therein; or

(G) the Lessee shall make any representation or warranty herein or in any agreement to which it is a party in this transaction or in a statement or certificate furnished pursuant thereto, which shall be incorrect in any material respect when made, and such condition shall continue unremedied for 10 days after written notice from the Lessor or the Vendor to the Lessee;

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

(a) proceed by appropriate court action or actions either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof including net after-tax losses of Federal and state income tax benefits to which the Lessor would otherwise be entitled under this Lease; or

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units so terminated shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided; and thereupon the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Units so terminated may be and take possession of all or any of such Units and thenceforth hold, possess, sell, operate, lease to others and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee as damages for loss of the bargain and not as a penalty whichever of the following amounts which the Lessor, in its sole discretion, shall specify (x) a sum, with respect to each Unit, which represents (A) the excess of the present value, at the time of such termination, of the entire unpaid balance of all rental for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over the then present value of the rentals 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 semiannually from the respective dates upon which rentals would have been payable

hereunder had this Lease not been terminated, plus (B) any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Lessor shall have sustained by reason of the breach of the covenant, representation or warranty of this Lease other than for the payment of rental, or (y) an amount equal to the excess, if any, of the Casualty Value as of the rental payment date on or next preceding the date of termination over the net proceeds of the sale of the Equipment if sold, or, if not sold at such time, the amount the Lessor reasonably estimates to be the sales value of such Unit at such time.

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

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative and may be exercised concurrently or consecutively, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is not, at the time in question, prohibited by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments or other payments due hereunder, and agrees to make such payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

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

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.

§ 11. Return of Units Upon Default. If this Lease shall terminate pursuant to § 10 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor. Each Unit so delivered shall be in the 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, forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any rolling stock to which any Units are attached have been interchanged to return such rolling stock so interchanged), cause (a) if requested by the Lessor, the Units to be detached from each unit of railroad rolling stock to which it has been attached, (b) the Units to be moved to such point or points on its lines as shall be designated by the Lessor and shall there deliver the Units or cause it to be delivered to the Lessor and (c) the Units to be moved to such interchange point or points of the Lessee as shall be designated by the Lessor upon any sale, lease or other disposal of all or any part of the Units by the Lessor. At the option of the Lessor, the Lessor may keep the Units on any of the lines or premises of the Lessee until the Lessor shall have leased, sold or otherwise disposed of the same, and for such purpose the Lessee agrees to furnish, without charge for rent or storage, the necessary facilities at any point or points selected by the Lessor reasonably convenient to the Lessee and, at the Lessee's risk, to permit inspection of the Units by the Lessor, the Lessor's representatives and prospective purchasers and users, the movement and storage of such Units to be at the expense and risk of the Lessee without charge to the Lessor for insurance, which shall be provided by Lessee until expiration of Lessee's obligations under this § 11 in amounts and pursuant to the requirements of § 7 of this Lease. During any storage period, the Lessee will, at its own cost and expense, maintain and keep the Units in good order and repair. This agreement to detach and deliver the Units and furnish facilities as hereinbefore provided is of the essence of the agreement between the

parties, and, upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance hereof. The Lessee hereby expressly waives any and all claims against the Lessor and its agent or agents for damages of whatever nature in connection with any retaking of any Units in any reasonable manner. All gross 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 detached, delivered and stored, as hereinabove provided, on the date of 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 .035194% 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 the foregoing provisions of this § 11, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

§ 12. Assignment; Possession and Use. This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. All the rights of the Lessor hereunder shall inure to the benefit of the Lessor's assigns (including the Vendor except, as to the Vendor, such rights hereunder that are not assigned to the Vendor pursuant to the Lease Assignment).

So long as the Lessee shall not be in default under this Lease and no event of default shall exist under the CSA, 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 the Units or any of them. The Lessee, at its own expense, will promptly pay or discharge any and all sums claimed by any party which, if unpaid, might become a lien, charge or security interest (other than an

encumbrance created by the Lessor or the Vendor 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, including any accession thereto or the interest of the Lessor, the Vendor or the Lessee therein, and will promptly discharge any such lien, charge or security interest which arises, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal or administrative proceedings in any reasonable manner and the nonpayment thereof does not, in the reasonable opinion of the Lessor and of the Vendor, adversely affect the title of the Lessor or the security interest of the Vendor in or to the Units or otherwise under this Lease or the CSA. Any amounts paid by the Lessor or the Vendor in discharge of such liens, charges or security interests upon the Units shall be secured by and under this Lease.

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

So long as the Lessee shall not be in default under this Lease and no event of default shall exist under the CSA, the Lessee shall be entitled to the possession of the Units and to the use of the Units by it or any affiliate upon lines of railroad owned or operated by it or any such affiliate or upon 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 or pursuant to run-through agreements, or a written sublease for a term not exceeding one year, but only upon and subject to all the terms and conditions of this Lease and the CSA; provided, however, that the Lessee shall not assign or permit the assignment of any Unit to service involving the regular operation and maintenance thereof outside the United States of America. The Lessee may receive and retain compensation for such use from other railroads so using any of the Units.

Nothing in this § 12 shall be deemed to restrict

the right of the Lessee to assign or transfer its interest under this Lease in the Units or possession of the Units to any railroad 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 Participation Agreement and the Consent) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property 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.

§ 13. Renewal. Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may by written notice delivered to the Lessor not less than six months prior to the end of the original or a first extended term of this Lease elect to extend the term of this Lease in respect of all but not fewer than all of the Units then covered by this Lease, for an additional two-year period commencing on the scheduled expiration of the original term or such first extended term, as the case may be, of this Lease at a rental payable in semiannual payments on June 1 and December 1 in each year. Each semiannual rental payment shall be in an amount equal to the "Fair Market Rental" (as such term is hereinafter defined).

Fair Market Rental shall be determined on the basis of, and shall be equal in amount to, the rental which would obtain in an arm's-length transaction between an informed and willing lessee (other than a lessee currently in possession) and an informed and willing lessor under no compulsion to lease and, in such determination, costs of removal from the location of current use shall not be a deduction from such rental but there shall be excluded any rental value attributable to additions, modifications and improvements which the Lessee is entitled to remove pursuant to § 9 hereof; provided, however, that Fair Market Rental shall be determined as hereinabove provided on the basis of the term and other terms and conditions of the lease being considered.

If, after 35 days from the giving of notice by the Lessee of the Lessee's election to extend the term of this Lease, as provided in the first paragraph of this

§ 13, the Lessee and the Lessor are unable to agree upon a determination of Fair Market Rental, such rental shall be determined in accordance with the foregoing definition by the following procedure: If either party to such determination shall have given written notice to the other requesting determination of such value by this appraisal procedure, the parties shall consult for the purpose of appointing a qualified independent appraiser by mutual agreement. If no such appraiser is so appointed within 20 business days after such notice is given, each party shall appoint an independent appraiser within 25 business days after such notice is given, and the two appraisers so appointed shall within 30 business days after such notice is given appoint a third independent appraiser. If no such third appraiser is appointed within 30 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 the Fair Market Rental of the Units subject to the proposed extended term within 90 days after his or their appointment. If the parties shall have appointed a single appraiser or if either party shall have failed to appoint an appraiser, the determination of the 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 latter 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 provisions for this appraisal procedure shall be the exclusive means of determining Fair Market Rental and shall be in lieu of any judicial or other procedure for the determination thereof, and each party hereto hereby consents and agrees not to assert any judicial or other procedures. The expenses of the appraisal procedure shall be borne equally by the Lessee and the Lessor.

§ 14. Return of Units upon Expiration of Term.

The Lessor intends to retain the Units for re-lease at the expiration of the term of this Lease. As soon as practicable on or after the expiration of the original or extended term of this Lease with respect to any Unit not purchased by the

Lessee the Lessee will, at its own cost and expense, at the request of the Lessor, detach each Unit from the unit of railroad rolling stock to which it had been attached, and deliver possession of such Unit to the Lessor at such point or points on its lines as the Lessor may designate, or, in the absence of such designation, as the Lessee may select, and permit the Lessor to store such Unit at such point or points on the Lessee's lines as the Lessee may select, in facilities furnished by the Lessee for a period not exceeding 90 days after the delivery of the last Unit to the Lessor and transport all such Units, on a one time basis, at any time within such 90-day period, to any reasonable place on the lines of railroads operated by the Lessee, or to any connecting carrier for shipment, all as directed by the Lessor, the movement and storage of such Units to be at the expense and risk of the Lessee without charge to the Lessor for insurance, which shall be provided by Lessee until expiration of Lessee's obligations under this § 14 in amounts and pursuant to the requirements of § 7 of this Lease. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser, lessee or user of such Unit, to inspect the same. Each Unit returned to the Lessor pursuant to this § 14 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted, (ii) meet the standards then in effect under any applicable rules of any governmental agency or other organization with jurisdiction and (iii) have removed from it, at the Lessee's expense, all additions, modifications and improvements owned by the Lessee. The detaching, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to detach, deliver, store and transport the Units, and the Lessee shall defend and indemnify the Lessor against any damages, cost or liability incurred by the Lessor as a consequence of Lessee's failure to perform in accordance with the terms of this Section. All gross 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 detached, delivered and stored, as hereinabove provided, upon 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 .035194% of the Purchase Price of such Unit exceeds the actual earnings received by the Lessor on such Unit for each such day.

§ 15. Recording. The Lessee will cause this Lease, the Lease Assignment, the CSA and the CSA Assignment to be filed and recorded with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303. The Lessee will further cause this Lease and/or appropriate financing statements or continuation statements to be filed and recorded, and, from time to time when required, refiled and rerecorded, in accordance with the applicable provisions of the Uniform Commercial Code as in effect in the Commonwealth of Kentucky (and, if the Lessee changes its chief place of business, in any other state) in like manner as if the Lessor's interest in this Lease represented a security interest or in any other state of the United States of America or the District of Columbia where filing is reasonably requested by the Lessor or the Vendor for the purpose of proper protection, to the satisfaction of counsel of the Lessor and Vendor, of their interests and rights under this Lease or the purpose of carrying out the intention of this Lease. The Lessee will undertake, at its expense, or cause to be undertaken, the filing, registering, deposit, and recording required of the Lessor under the CSA and will from time to time do and perform, or cause to be done and performed, any other act, and will execute, acknowledge, deliver, file, register, record (and will refile, reregister, deposit and redeposit or rerecord whenever required) any and all further instruments, required by law or reasonably requested by the Lessor or the Vendor for the purpose of proper protection, to their satisfaction, of the Vendor's and the Lessor's respective interests in the Units, or for the purpose of carrying out the intention of this Lease, the CSA, the CSA Assignment and the Lease Assignment; and the Lessee will promptly furnish, or cause to be furnished, to the Vendor and the Lessor evidence of all such filing, registering, depositing or recording, and in connection with other than the initial filings with respect thereto an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Vendor and the Lessor. This Lease and the CSA shall be filed and recorded with the Interstate Commerce Commission and financing statements in respect of the interests of the Vendor in the Units, the CSA and the Lease shall have been filed in accordance with the

Uniform Commercial Code as in effect in the State of Minnesota and the Commonwealth of Kentucky prior to the delivery and acceptance hereunder of any Unit.

§ 16. Interest on Overdue Rentals. Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder, including without limitation, §§ 3, 6, 7, 9 and 10 hereof, shall result in the obligation on the part of the Lessee promptly to pay, to the extent legally enforceable, an amount equal to the rate per annum payable on overdue amounts specified in Article 4 of the CSA on the overdue rentals and other obligations for the period of time during which they are overdue or such lesser amount as may be legally enforceable.

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

(a) if to the Lessor, at 2301 Crosby Road, Wayzata, Minnesota 55391, Attention of Controller; and

(b) if to the Lessee, at P. O. Box 32290, Louisville, Kentucky 40232;

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing.

§ 18. Severability; Effect and Modification of Lease. Any provision of this Lease which is prohibited or unenforceable in any jurisdiction, shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

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

§ 19. Tax Indemnities. (a) Loss of Assumed Tax Benefits. If:

(i) the Lessor is not allowed for its fiscal year ending May 31, 1980, an investment credit under Section 38 and related sections of the Code with respect to any one or more of the Units of not less than 10% of the entire Purchase Price of such Unit or Units; or

(ii) the Lessor is not allowed the benefit of current deductions for depreciation with respect to the entire Purchase Price, commencing with its fiscal year ending May 31, 1980, on any one or more of the Units under Section 167(a) of the Code (x) computed pursuant to the asset depreciation range system of Section 167(m) of the Code and Section 1.167(a)-11 of the income tax regulations, (y) computed on the basis (A) of a net salvage value of zero, (B) that the basis of such Unit or Units under Section 167(g) of the Code is not less than the Purchase Price with respect to such Unit or Units, and (C) that such Unit or Units have an asset depreciation period of 12 years, and (z) computed pursuant to the double declining balance method of depreciation, switching to the sum of the years-digits method of depreciation and using the half-year convention described in Section 1.167(a)-11(c)(2)(iii) of the income tax regulations; or

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

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

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

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

(any such failure to allow such recapture, such treatment of income or deductions as derived from or allocable to sources without the United States, or such inclusion in gross income as a result of a Capital Expenditure being herein called a "Loss"), then, to the extent provided in paragraph (b) of this § 19, the Lessee shall pay to the Lessor as an indemnity the amount or amounts set forth in paragraph (d) of this § 19 at the time or times set forth therein.

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

(i) a Loss described in clause (i) or (ii) of paragraph (a) of this § 19, if such Loss results from the use of a Unit by any person prior to its delivery to the Lessor pursuant to the CSA and leased to the Lessee pursuant to this Lease;

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

(iii) the Lessee's use of a Unit or Units in such a manner as to result in a Loss described in clause (iv) or (v) of paragraph (a) of this § 19;

(iv) a Capital Expenditure; or

(v) any act, failure to act or misrepresentation, at any time, by the Lessee or any of its officers, employees or agents or by any permitted sublessee or any of its of its officers, employees or agents (including, without limitation, any act, failure to act or misrepresentation, in respect of the income tax returns of the Lessee insofar as they relate to the transaction contemplated by this Lease and related documents, it being

understood that the Lessee will not take or fail to take any action that is inconsistent with the Lessor being treated as the owner, and the Lessee being treated as the lessee, of the Units for Federal, state and local income tax purposes).

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

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

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

(iii) the failure of the Lessor to claim in a timely and proper manner on its income tax returns for the appropriate years any credits or deductions contemplated by paragraph (a) of this § 19, unless the Lessor shall have been advised by independent tax counsel selected by the Lessor and approved by the Lessee (which approval shall not be unreasonably withheld), that there is no reasonable basis for claiming any such deduction or credit;

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

(v) the failure of the Lessor to take timely action in contesting a claim made by the Internal Revenue Service, but only if such action is required by the terms of paragraph (c) of this § 19;

(vi) any amendment to, or change in, the Code, the income tax regulations thereunder or published administrative or judicial interpretations of the

Code or such regulations, which change or amendment is not enacted and does not have an effective date on or prior to June 1, 1980; or

(vii) any act, or failure to act, at any time, by the Lessor or any of its officers, employees or agents, which is inconsistent with the Lessor's obligations under the Participation Agreement and this Lease, except at a time when an Event of Default (or an event that, with the lapse of time or the giving of notice, or both, would constitute an Event of Default) has occurred and is continuing.

(c) Proceedings. If at the conclusion of any audit the Lessor receives a preliminary or "30 day" letter from the Internal Revenue Service proposing an adjustment in any item that, if agreed to by the Lessor, would result in a Loss with respect to which the Lessee would be required to indemnify the Lessor pursuant to this § 19, the Lessor shall promptly notify the Lessee of such proposed adjustment and shall furnish to the Lessee a statement describing such Loss in reasonable detail. If requested to do so by the Lessee, within 20 days after receipt of such statement, the Lessor shall promptly request from such independent tax counsel as may be selected by the Lessor and approved by the Lessee (which approval shall not be unreasonably withheld) (the "Special Tax counsel"), their opinion as to whether there is a meritorious basis for contesting such proposed adjustment. If the opinion is to the effect that there is a meritorious basis for contesting such proposed adjustment, the Lessor shall contest such proposed adjustment beyond the level of the Internal Revenue Service auditing agent by such administrative proceedings, if any, as may be determined by the Lessor in its sole discretion. Upon the conclusion of such administrative proceedings, if any, the Lessor shall promptly notify the Lessee of the final adjustment proposed by the Internal Revenue Service and, if the Lessor receives within 30 days after such notice a written request to do so from the Lessee, the Lessor shall contest such final adjustment in a court of competent jurisdiction. If the Lessee requests the Lessor to appeal the decision of such a court or of any intermediate appellate court, the Lessor shall promptly request from Special Tax Counsel their opinion as to whether there is a meritorious basis for appealing such decision. If the opinion is to the effect that there is a meritorious basis for appealing such decision, the Lessor

shall appeal such decision. The Lessor, in its sole discretion, shall determine the initial and any appellate court and shall determine whether the proceedings shall be for redetermination of the deficiency proposed to be assessed by the Internal Revenue Service or for refund of taxes paid based on such deficiency. The Lessor shall not be required to take any action as set forth in this paragraph (c) unless and until the Lessee shall have agreed to pay to the Lessor on demand all reasonable out-of-pocket costs and expenses, including without limitation attorneys' fees and expenses incurred by it in connection with the taking of such action. If the Lessor elects to pay taxes based on a proposed deficiency and sue for a refund thereof, and if the proposed deficiency would be a Loss with respect to which the Lessee would be required to indemnify the Lessor, then the Lessee shall pay to the Lessor on demand the amount of such taxes and interest and penalties thereon which the Lessor shall have paid, and if the Lessor subsequently receives a refund of all or any part of such taxes and interest, it shall promptly pay to the Lessee the amount of such refunded taxes and interest plus the amount of any interest received by the Lessor from the United States Government with respect to such refunded taxes and interest. Notwithstanding anything to the contrary contained in this paragraph (c), the Lessor may at any time, whether before or after commencing to take any action with respect to a proposed adjustment, decline to take any further action with respect thereto, provided that, if the Lessee has properly requested such action pursuant to this paragraph (c), the Lessor notifies the Lessee that it waives its right to any indemnity with respect to any Loss that will result from acceptance of such proposed adjustment.

(d) Amount and Time of Payment of Indemnity. The amount of indemnity payable by the Lessee pursuant to this § 19 with respect to a Loss shall be such amount as will result, in the Lessor's reasonable judgment, in preserving for the Lessor both the after-tax rate of return and the after-tax cash flow that would have been realized by Lessor if such Loss had not occurred, based on the assumptions and methods of calculation utilized by the Lessor in originally evaluating the transaction described in this Lease and related documents. The amount of such payment of indemnity shall reflect (A) the amount of interest, additions to tax and penalties payable by the Lessor with respect to such Loss, (B) the amount of Federal, state and local taxes on, or

measured by, net income (at the rates in effect on June 1, 1980), interest, additions to tax and penalties incurred by the Lessor as a result of the receipt of such indemnity payment, and (C) any amount paid by the Lessee to the Lessor pursuant to the next-to-last sentence of paragraph (c) of this § 19 which is not repaid by the Lessor to the Lessee pursuant to such sentence. The Lessor shall furnish the Lessee with a notice setting forth in reasonable detail the computations and methods used in computing such amount of indemnity.

In determining the amount of indemnity payable by the Lessee pursuant to this § 19 with respect to a Loss which results from a Capital Expenditure, there shall be taken into account any investment credits and depreciation deductions to which the Lessor is or expects to be entitled, pursuant to § 19(a) hereof, with respect to such Capital Expenditure in the year in which the Capital Expenditure is made and in subsequent years, but if any such investment credits or depreciation deductions are subsequently disallowed, recaptured or treated as derived from or allocable to sources outside the United States, such disallowance, recapture or allocation shall be treated as a Loss described in clause (i), (ii), (iv) or (v) of paragraph (a) of this § 19, as the case may be.

The Lessee's obligation to pay any indemnity payable pursuant to this § 19 with respect to a Loss shall become unconditional (1) in the case of a Loss that is required to be reflected on a tax return of the Lessor, 30 days after the date such tax return is filed; (2) in the case of a Loss that results from a proposed adjustment of the Internal Revenue Service that is not contested pursuant to paragraph (c) of this § 19, 30 days after the Lessee's receipt of the statement referred to in the first sentence of paragraph (c) of this § 19; and (3) in the case of a Loss that results from a proposed adjustment of the Internal Revenue Service that is contested pursuant to paragraph (c) of this § 19, 30 days after the day on which such contest is finally concluded.

If the Lessee's obligation to pay indemnity pursuant to this § 19 becomes unconditional on or after the termination of this Lease, the Lessee shall pay to the Lessor a lump sum indemnity at the time its obligation to pay indemnity pursuant to this § 19 becomes unconditional. With respect to any other Loss or indemnity payable pursuant to this § 19, the Lessor shall have the option of a lump sum

indemnity at the time the Lessee's obligation to pay indemnity pursuant to this § 19 becomes unconditional or payments structured as level future rent increases commencing on the first rental payment date after the Lessee's obligation to pay indemnity pursuant to this § 19 becomes unconditional. The amount of increased rental resulting from any one Loss shall be adjusted from time to time for each change in the rates of Federal, state and local taxes on, based on, or measured by, net income which affects the Lessor's net after-tax rate of return and after-tax cash flow.

(e) Adjustment of Casualty Values. In the event that the Lessee shall be required to indemnify the Lessor pursuant to this § 19 with respect to a Loss relating to a Unit or Units, the Casualty Value of such Unit or Units shall be appropriately reduced to reflect the reduction, if any, in taxes that will be payable by the Lessor with respect to such Unit or Units upon a Casualty Occurrence with respect thereto; provided, however, that such Casualty Values shall not be reduced below the amounts required to satisfy the obligations of the Lessor under the CSA.

(f) Definition of Lessor. For purposes of this § 19, the term "Lessor" shall include any affiliated group, within the meaning of Section 1504 of the Code, of which the Lessor is a member, if consolidated returns are filed for such affiliated group for Federal income tax purposes.

§ 20. Execution. This Lease may be executed in several counterparts, such counterparts together constituting but one and the same instrument, but the counterpart marked "Original Counterpart" delivered to the Vendor pursuant to the Lease Assignment shall be deemed to be the original and all other counterparts shall be deemed duplicates thereof. It shall not be necessary that the parties hereto all sign the same counterpart as long as each party shall sign a counterpart and such counterpart is delivered to the Vendor or its counsel, whereupon this Agreement shall become effective. Although for convenience this Lease is dated as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

§ 21. Law Governing. The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the Commonwealth of Kentucky.

§ 22. Obligations of Lessor Under CSA; Additional Rentals. In the event that the Lessor shall become obligated to make any payment (other than payments for Equipment pursuant to paragraphs 3 and 4 of Article 4 of the CSA) or to perform any obligations pursuant to the CSA not covered by the provisions of this Lease (other than the proviso to the third paragraph of Article 12 of the CSA), the Lessee shall pay such additional rentals hereunder and perform such obligations so that all of the Lessor's obligations (other than as aforesaid) pursuant to the CSA shall be fully complied with, without regard for any limitation of liability of the Lessor contained in the CSA. This § 22 is not to be construed as a guarantee of the CSA Indebtedness (as defined in the CSA).

§ 23. Lessor's Right To Perform for the Lessee. If the Lessee fails to perform or comply with any of its agreements contained herein, the Lessor may upon notice to the Lessee itself perform or comply with such agreement, and the amount of the reasonable cost and expenses of the Lessor incurred in connection with such performance or compliance, together with interest on such amount at the rate per annum payable on overdue amounts specified in Article 4 of the CSA, accruing from the date payment, shall be payable by the Lessee upon demand.

§ 24. Immunities; Satisfaction of Undertakings. No recourse shall be had in respect of any obligation due under this Lease, or referred to herein, against any incorporator, stockholder, director or officer, as such, past, present or future, of the parties hereto, whether by virtue of any constitutional provision, statute or rule of law, or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of such incorporators, stockholders, directors or officers, as such, being forever released as a condition of and as consideration for the execution of this Lease.

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

LOUISVILLE AND NASHVILLE
RAILROAD COMPANY,

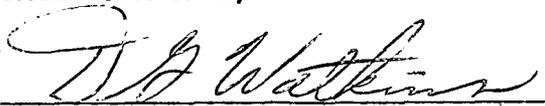
[Corporate Seal]

Attest:



ATTESTING OFFICER

by



Assistant Vice President

CARGILL LEASING CORPORATION,

by _____

[Corporate Seal]

Attest:

COMMONWEALTH OF KENTUCKY,)
) ss.:
COUNTY OF JEFFERSON,)

On this *11th* day of March 1980, before me personally appeared *D. G. Watkins*, to me personally known, who, being by me duly sworn, says that he is *Assistant Vice President* of LOUISVILLE AND NASHVILLE RAILROAD COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation and that said instrument was signed and sealed on behalf of said Corporation by authority of its President and Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

Pamela M. Wright

Notary Public

Pamela M. Wright
Notary Public, State at Large
My commission expires August 28, 1983.

[Notarial Seal]

STATE OF MINNESOTA,)
) ss.:
COUNTY OF HENNEPIN,)

On this _____ day of March 1980, before me personally appeared _____, to me personally known, who, being by me duly sworn, says that he is _____ of CARGILL LEASING CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation and that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

Notary Public

[Notarial Seal]

SCHEDULE A TO LEASE

<u>Type</u>	<u>Quantity</u>	<u>Lessee's Numbers (Inclusive)</u>
Auto Racks, Fully Enclosed, Tri-Level	144	LN-2023 through LN-2166

SCHEDULE B TO LEASE

Table 1

<u>Date</u>	<u>Percentage</u>
June 1, 1980	91.14768
December 1, 1980	90.8210
June 1, 1981	91.4462
December 1, 1981	90.0189
June 1, 1982	89.7068
December 1, 1982	88.0599
June 1, 1983	86.8515
December 1, 1983	85.1479
June 1, 1984	83.3495
December 1, 1984	80.9469
June 1, 1985	78.4313
December 1, 1985	75.8794
June 1, 1986	72.8858
December 1, 1986	69.6467
June 1, 1987	66.1060
December 1, 1987	62.6659
June 1, 1988	58.7687
December 1, 1988	54.6646
June 1, 1989,	50.2943
December 1, 1989	45.8145
June 1, 1990	40.9971
December 1, 1990	36.1194
June 1, 1991	30.8991
December 1, 1991	25.5937
June 1, 1992, and 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 credit (as referred to in § 19 of the Lease). Consequently, the Casualty Value of the Equipment suffering a Casualty Occurrence on or before the third, fifth or seventh anniversary of the date of delivery and acceptance of the Equipment shall be increased by the applicable percentage of the Purchase Price set forth below:

<u>Anniversary of Delivery and Acceptance</u>	<u>Percentage of Purchase Price</u>
Third	18.5185
Fifth	12.3457
Seventh	6.1728

[CS&M Ref.: 2043-978]

LEASE OF EQUIPMENT

Dated as of February 15, 1980

Between

LOUISVILLE AND NASHVILLE RAILROAD COMPANY,

Lessee,

and

CARGILL LEASING CORPORATION,

Lessor

TABLE OF CONTENTS

	<u>Page</u>
Section 1. Net Lease	L-1
Section 2. Delivery and Acceptance of Units	L-2
Section 3. Rentals	L-3
Section 4. Term of Lease	L-4
Section 5. Marking of the Units	L-5
Section 6. Taxes	L-5
Section 7. Maintenance; Casualty Occurrences; Insurance	L-8
Section 8. Reports	L-11
Section 9. Disclaimer of Warranties; Compliance with Laws and Rules; Indemnification	L-11
Section 10. Default	L-14
Section 11. Return of Units Upon Default	L-18
Section 12. Assignment; Possession and Use	L-19
Section 13. Renewal	L-21
Section 14. Return of Units upon Expiration of Term	L-22
Section 15. Recording	L-24
Section 16. Interest on Overdue Rentals	L-25
Section 17. Notices	L-25
Section 18. Severability; Effect and Modification of Lease	L-25
Section 19. Tax Indemnities	L-26
Section 20. Execution	L-32
Section 21. Law Governing	L-32
Section 22. Obligations of Lessor Under CSA; Additional Rentals	L-33
Section 23. Lessor's Right To Perform for the Lessee	L-33
Section 24. Immunities; Satisfaction of Undertakings	L-33

LEASE OF EQUIPMENT dated as of February 15, 1980, between LOUISVILLE AND NASHVILLE RAILROAD COMPANY, a Kentucky corporation (the "Lessee"), and CARGILL LEASING CORPORATION, a Delaware corporation (the "Lessor").

WHEREAS the Lessor is entering into a Conditional Sale Agreement dated as of the date hereof (the "CSA") with Whitehead & Kales Company (the "Builder"), wherein the Builder has agreed to manufacture, sell and deliver to the Lessor the units of railroad equipment described in Schedule A hereto (the "Equipment");

WHEREAS the Builder is assigning its interests in the CSA pursuant to an Agreement and Assignment dated the date hereof (the "CSA Assignment") to Mercantile-Safe Deposit and Trust Company, acting as agent (hereinafter, together with its successors and assigns and the Investors, as hereinafter defined, called the "Vendor") under a Participation Agreement dated as of the date hereof (the "Participation Agreement") with the Lessee, the Lessor and the party named in Schedule A thereto (such party, together with its successors and assigns, being hereinafter called the "Investors");

WHEREAS the Lessee desires to lease such number of units of the Equipment as are delivered and accepted and settled for under the CSA (the "Units") at the rentals and for the terms and upon the conditions hereinafter provided; and

WHEREAS the Lessor will assign this Lease for security to the Vendor pursuant to an Assignment of Lease and Agreement (the "Lease Assignment") and the Lessee will consent to the Lease Assignment pursuant to a Lessee's Consent and Agreement (the "Consent");

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions:

§ 1. Net Lease. This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent,

reduction thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs due or alleged to be due by reason of any past, present or future claims of the Lessee against the Lessor under this Lease or under the CSA, or against the Builder or the Vendor or otherwise; 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 damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency of or any bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever.

§ 2. Delivery and Acceptance of Units. The Lessor hereby appoints the Lessee its agent for inspection and acceptance of the Units pursuant to the CSA. The Lessor will cause each Unit to be delivered to the Lessee at the point or points within the United States of America at which such Unit is delivered to the Lessor under the CSA. Upon such delivery, the Lessee will cause an authorized representative, who may be an employee of the Lessee, to inspect the same, and if such Unit is found to be acceptable, to accept delivery of such Unit and the Lessee shall execute and deliver to the Lessor a certificate of acceptance (the "Certificate of Acceptance") in accordance with the provisions

of Article 3 of the CSA, stating that such Unit has been inspected and accepted on behalf of the Lessee and the Lessor on the date of such Certificate of Acceptance and is marked in accordance with § 5 hereof, whereupon, except as provided in the next sentence hereof, such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease. The delivery, inspection and acceptance hereunder of any unit of Equipment excluded from the CSA pursuant to the first paragraph of Article 4 thereof shall be null and void and ineffective to subject such unit to this Lease.

§ 3. Rentals. The Lessee agrees to pay to the Lessor, as rental for each Unit subject to this Lease, one interim rental payment on June 1, 1980, and thereafter 24 consecutive semiannual payments payable in arrears on June 1 and December 1 of each year commencing December 1, 1980. The interim rental payable on June 1, 1980, shall be in an amount equal to 112% of the Prime Rate (as defined in the CSA) applied to the Purchase Price (as defined in the CSA) of each such Unit then subject to this Lease from the Closing Date (as defined in the CSA) for that Unit for each actual day elapsed to and including June 2, 1980. The 24 semiannual rental payments thereafter shall each be in an amount equal to 6.334942% of the Purchase Price of each such Unit then subject to this Lease. Notwithstanding anything to the contrary set forth herein, the rental payable on each such date under this § 3 shall in no event be less than the payments due on each such date pursuant to Article 4 of the CSA.

The foregoing rentals shall be subject to adjustment as follows:

(i) if the interest payable on the CSA Indebtedness on any interest payment date immediately following a rental payment date hereunder (including the interim rental payment date) is more or less than 13% per annum for the six months⁰ period in respect of which such interest is payable, the rental payable on such rental payment date shall be appropriately adjusted for such difference;

(ii) if any Closing Date under the CSA shall occur on a date different than set forth in Item 2 of Annex A of the CSA or if more or less than 50% of the Units are settled for on each such date, the rentals and Casualty Values will be adjusted so that the Lessor will realize

such amounts as will result, in the Lessor's reasonable judgment, in preserving for the Lessor both the after-tax rate of return and the after-tax cash flow that would have been realized by the Lessor if such event had not occurred.

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 a calendar day, excluding Saturdays, Sundays and any other day on which banking institutions in Baltimore, Maryland, Louisville, Kentucky, or Minneapolis, Minnesota, are authorized or obligated to remain closed.

Unless the Lease Assignment is not executed and delivered, the Lessor irrevocably instructs the Lessee to make all the payments provided for in this Lease, other than Excluded Payments (as defined in Paragraph 1 of the Lease Assignment), but including without limitation the payments provided for in this § 3 and in § 7 hereof, at the principal office of the Vendor until the Vendor shall have been paid the full indebtedness in respect of the Purchase Price of the Equipment (as defined in the CSA), together with interest and all other payments required by the CSA, for the account of the Lessor in care of the Vendor, with instructions to the Vendor (subject to the provisions of the Consent) first, to apply such payments to satisfy the obligations of the Lessor under the CSA, and second, so long as no event of default or event which with the lapse of time and/or demand provided for in the CSA could constitute an event of default under the CSA shall have occurred and be continuing, to pay any balance promptly to the Lessor at such place as the Lessor shall specify in writing. The Lessee agrees to make each payment provided for herein as contemplated by this paragraph in Baltimore Clearing House funds by 11:00 a.m., Baltimore, Maryland, time on the date such payment is due.

§ 4. Term of Lease. The term of this Lease as to each Unit shall begin on the date of delivery and acceptance of such Unit hereunder and, subject to the provisions of §§ 7, 10 and 13 hereof, shall terminate on the date on which the final payment of rent in respect thereof is due pursuant to § 3 hereof. The obligations of the Lessee hereunder (including, but not limited to, the obligations under §§ 6, 7, 9, 14 and 19 hereof) shall survive the expiration of the term of this Lease.

Notwithstanding anything to the contrary contained herein, all rights and obligations of the Lessee under this Lease and in and to the Units are subject to the rights of the Vendor under the CSA. If an event of default should occur under the CSA and be continuing, the Vendor may terminate this Lease (or rescind its termination), all as provided therein.

§ 5. Marking of the Units. The Lessee will cause each Unit to be kept numbered with its identifying number as set forth in Schedule A hereto, or in the case of Equipment not there listed such identifying number as shall be set forth in any amendment or supplement hereto extending this Lease to cover such Equipment and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the words "Ownership Subject to a Security Agreement filed with the Interstate Commerce Commission", or other appropriate words 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 the Lessor's ownership and the Vendor's security interest in such Unit and the rights of the Lessor under this Lease and the rights of the Vendor under the CSA. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such markings have been made thereon and will replace promptly any such markings which may be removed, defaced, obliterated or destroyed. The Lessee will not change the number of any Unit except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Lessor and the Vendor by the Lessee and filed, recorded and deposited by the Lessee in all public offices where this Lease and the CSA shall have been filed, recorded and deposited.

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

§ 6. Taxes. All payments to be made by the Lessee hereunder will be free of expense to the Lessor and the Vendor for collection or other charges and will be free of expense to the Lessor with respect to the amount of any local, state,

Federal, or foreign taxes (other than gross receipt taxes [except gross receipt taxes in the nature of or in lieu of sales or use or rental taxes], taxes measured by Lessor's net income, Lessor's value added taxes, excess profits taxes and similar taxes or general corporation, franchise or like taxes measured by Lessor's capital, capital stock or net worth) or license fees, assessments, charges, fines or penalties hereafter levied or imposed upon or in connection with or measured by this Lease or any sale, rental, use, terms hereof or the CSA (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called "impositions"), all of which impositions the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. The Lessee will also pay promptly all impositions which may be imposed upon any Unit or for the use or operation thereof (except as provided above) or upon the earnings arising therefrom (except as provided above) or upon the Lessor solely by reason of its ownership thereof (except as provided above) and will keep at all times all and every part of such Unit free and clear of all impositions which might in any way affect the title of the Lessor or the security interest of the Vendor or result in a lien upon any such Unit; provided, however, that the Lessee shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal or administrative proceedings such impositions and the nonpayment thereof is permitted by law and does not, in the reasonable opinion of the Lessor (or, at the Lessee's request, the opinion of Lessor's independent counsel) or the Vendor, adversely affect the title, property, rights or interest of the Lessor hereunder or the Vendor under the CSA. The Lessee agrees to give the Lessor notice of such contest within 30 days after institution thereof and the Lessor agrees to provide such information as may be reasonably requested by the Lessee in furtherance of such contest. If any impositions shall have been charged or levied against the Lessor directly and paid by the Lessor, the Lessee shall reimburse the Lessor on presentation of an invoice therefor; provided, however, that the Lessor shall have given the Lessee written notice of such imposition prior to such payment; provided further that the failure of the Lessor so to notify the Lessee shall not affect the obligations of the Lessee thereunder, it being understood and agreed, however, that the Lessee shall have no obligation to pay or indemnify against payment of any imposition which the Lessee has already paid in full or in respect of which the Lessor was not legally liable to pay.

In the event that the Lessor shall become obligated to make any payment pursuant to Article 6 of the CSA to the Builder or the Vendor or otherwise pursuant to any correlative provision of the CSA, the Lessee shall pay such additional amounts (which shall also be deemed impositions hereunder) to the Lessor as will enable the Lessor to fulfill completely its obligations pursuant to said provision; provided, however, that the Lessor shall have contested (if required to do so under this § 6) such impositions in good faith and to the extent permitted under the CSA.

In the event any returns, statements or reports with respect to impositions are required to be made, the Lessee will make such returns, statements and reports in such manner as to show the interest of the Lessor and the Vendor in such Units and will send copies thereof to the Lessor.

In the event that, during the continuance of this Lease, the Lessee becomes liable for the payment or reimbursement of any imposition, pursuant to this § 6, such liability shall continue, notwithstanding the expiration of this Lease, until all such impositions are paid or reimbursed by the Lessee.

In the event the Lessee may be prohibited by law or is impaired from contesting in its own name any imposition covered by this § 6 in respect of which the Lessee would otherwise be required to make payments to the Lessor pursuant hereto, the Lessor shall, upon request and at the expense of the Lessee, take all legal and other appropriate action reasonably requested by the Lessee to contest such imposition. The Lessor shall not be obligated to take any such legal or other appropriate action unless the Lessee shall first have indemnified the Lessor for all liabilities and expenses which may be entailed therein. Further, the Lessee shall indemnify and hold the Lessor harmless from and against any and all claims, costs, expenses, damages, losses and liabilities incurred in connection therewith as a result of, or incident to, any action taken by the Lessor or Lessee under this § 6. The Lessee shall be entitled to any refund received by the Lessor or the Lessee in respect of any imposition paid by the Lessee provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing.

The Lessee shall, whenever reasonably requested by

the Lessor, submit to the Lessor copies of returns, statements, reports, billings and remittances, or furnish other evidence satisfactory to the Lessor of the Lessee's performance of its duties under this § 6. The Lessee shall also furnish promptly upon request such data as the Lessor reasonably may require to permit the Lessor's compliance with the requirements of taxing jurisdictions.

The amount which the Lessee shall be required to pay with respect to any imposition which is subject to indemnification under this § 6 shall be an amount sufficient to restore the Lessor to the same net after-tax rate of return and after-tax cash position, after considering the effect of such payment on its United States Federal income taxes and state and city income taxes or franchise taxes based on net income, that the Lessor would have been in had such imposition not been imposed.

§ 7. Maintenance; 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, reasonable wear and tear excepted.

In the event that any Unit shall be or become worn out beyond repair, lost, stolen, destroyed, or irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or requisitioned for use or otherwise, except requisition for use by the United States Government for a stated period not in excess of the then remaining term of this Lease (such occurrences being hereinafter called "Casualty Occurrences"), prior to the return of such Unit in the manner set forth in § 14 hereof, the Lessee shall promptly and fully notify the Lessor and the Vendor with respect thereto. On the interim or semiannual rental payment date next succeeding such Casualty Occurrence the Lessee shall pay to the Lessor an amount equal to the rental payment or payments in respect of such Unit due and payable on such date plus a sum equal to the Casualty Value (as hereinafter defined) of such Unit determined as of the date of such payment in accordance with the schedule referred to below. As of the rental payment date on which the Casualty Value is paid, the rental for such Unit shall cease to accrue, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft, complete destruction or return to the Builder of such Unit) the Lessor shall be entitled to recover possession of such Unit. Any Casualty Value not paid when due shall accrue interest as provided in § 16 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 on an "as is, where is" basis. 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 to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Lessor. As used in this § 7, "net proceeds" shall mean the proceeds of any sale less any expenses, costs and fees incurred in connection with such sale, including without limitation, transportation costs, commissions, taxes and attorneys' fees.

The Casualty Value of each Unit as of the payment date on which payment is to be made as aforesaid shall be that percentage of the Purchase Price of such Unit as is set forth in Schedule B hereto opposite the interim or semiannual rental payment date next succeeding the actual date of such Casualty Occurrence, or if there is no such rental payment date, the last rental payment date.

Whenever any Unit shall suffer a Casualty Occurrence after termination of this Lease and before such Unit shall have been returned in the manner provided in § 14 hereof, the Lessee shall promptly and fully notify the Lessor with respect thereto and pay to the Lessor, within 30 days after the Treasury Department of the Lessee receives notice of such Casualty Occurrence, an amount equal to the Casualty Value of such Unit. 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, and the Lessee shall be entitled to the net proceeds of any sale to the extent they do not exceed the Casualty Value of such Unit.

In the event of the requisition for use by the United States Government (the "Government") of any Unit during the term of this Lease or any renewal thereof not constituting a Casualty Occurrence all of the Lessee's obligations under this Lease with respect to such Unit shall continue to the same extent as if such requisition had not occurred, except that if such Unit is returned by the Government at any time after the end of the term of this Lease or any renewal thereof, the Lessee shall be obligated to return such Unit to the Lessor pursuant to § 11 or 14 hereof, as the case may be, promptly upon such return by

the Government rather than at the end of the term of this Lease or any renewal thereof, but the Lessee shall in all other respects comply with the provisions of said § 11 or 14, as the case may be, with respect to such Unit. All payments received by the Lessor or the Lessee from the Government for the use of such Unit during the term of this Lease or any renewal thereof shall be paid over to, or retained by, the Lessee; provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing; and all payments received by the Lessor or the Lessee from the Government for the use of such Unit after the term of this Lease or any renewal thereof, shall be paid over to, or retained by, the Lessor.

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

The Lessee will, at all times while this Lease is in effect, at its own expense, cause to be carried and maintained types and amounts of insurance 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 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. 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 § 7 and the penultimate paragraph of § 9 hereof in respect of the risk insured against as to which such proceeds are paid and, if there is no Event of Default under § 10 hereof, the Lessee shall be entitled to retain all such proceeds. Lessee will furnish to the Lessor on request a statement of its insurance coverage and furnish to the Lessor 30 days' prior written notice of any substantial change in such coverage.

§ 8. Reports. On or before April 1 in each year, commencing with the calendar year 1981, the Lessee will furnish to the Lessor and the Vendor an accurate statement (a) setting forth as at the preceding December 31 the amount, description and numbers of all Units then leased hereunder, as to each unit of Equipment, the description and numbers of the railroad equipment to which such unit is attached and the amount, description and numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year (or since the date of this Agreement in the case of the first such statement) or are then undergoing repairs (other than running repairs) or then withdrawn from use pending such repairs (other than running repairs) and such other information regarding the condition, state of repair and use of the Units as the Lessor or the Vendor may reasonably request and (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and markings required by § 5 hereof and by the CSA have been preserved or replaced. The Lessor, at its sole cost and expense, shall have the right by its agents, to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Lessor may request during the continuance of this Lease.

§ 9. Disclaimer of Warranties; Compliance with Laws and Rules; Indemnification. THE LESSEE ACKNOWLEDGES AND AGREES (1) THAT EACH UNIT IS OF A SIZE, DESIGN, CAPACITY AND MANUFACTURE SELECTED BY THE LESSEE, (2) THAT THE LESSEE IS SATISFIED THAT THE SAME IS SUITABLE FOR ITS PURPOSES, (3) THAT THE LESSOR IS NOT A MANUFACTURER OR INSTALLER THEREOF, NOR A DEALER IN PROPERTY OF SUCH KIND, (4) THAT THE LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS DELIVERED TO THE LESSEE HEREUNDER, AND (5) THAT 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; but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for the account of the Lessor and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense,

whatever claims and rights the Lessor may have against the Builder under the provisions of Item 3 of Annex A and the patent infringement and title indemnification provisions of Article 13 of the CSA; provided, however, that if at any time an Event of Default shall have occurred and be continuing, the Lessor may assert and enforce, at the Lessee's sole cost and expense, such claims and rights. The Lessor shall have no responsibility or liability to the Lessee or any other person with respect to any of the following: (i) any liability (including, without limitation, strict liability in tort or otherwise), loss or damage caused or alleged to be caused directly or indirectly by any Unit 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 Unit 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 Unit. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Lessor that the Units described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor 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, with respect to the use, maintenance and operation of each Unit) with all applicable laws of the jurisdictions in which its operations involving the Units may extend, with the interchange rules of the Association of American Railroads 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 (all such laws and rules to such extent being hereinafter called "Applicable Laws"), and in the event that, prior to the expiration of this Lease or any renewal thereof, Applicable Laws require any alteration, replacement or addition of or to any part on any Unit, the Lessee will conform therewith at its own expense (and, within 30 days of completion, give notice thereof to the Lessor) and the Lessor will have title thereto; 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 reasonable opinion of the Lessor or the Vendor, adversely affect the property or rights of the Lessor or the Vendor under this Lease or under the CSA. 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 preceding sentence shall be owned by the Lessee and shall be removed by it upon the return of the Units pursuant to § 14 hereof.

The Lessee assumes the risk of and agrees to indemnify, protect and hold harmless the Lessor and the Vendor from and against all losses, damages, injuries, liabilities, claims (including without limitation claims for strict liability in tort or otherwise) 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 the result of the entering into or the performance of this Lease, the CSA, the Participation Agreement or any sublease entered into pursuant to § 12 hereunder, or the occurrence of a default, an event of default or an Event of Default under any of the above instruments, the ownership of any Unit, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any Unit or any accident in connection with the operation, use, condition, possession, storage or return of any Unit resulting in damage to property or injury or death to any person, except as otherwise provided in § 14 of this Lease, or the transfer of title to or its security interest in the Equipment by the Vendor pursuant to any provision of the CSA. The indemnities arising under this paragraph shall continue in full force and effect notwithstanding the full payment of all obligations under this Lease or the expiration or termination of the term of this Lease. The indemnities arising under this § 9 shall not be deemed to operate as a guarantee of the principal of or interest on the CSA Indebtedness under the CSA.

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 tax returns) to be filed by the Lessor with any Federal, state or other regulatory authority by reason of the ownership by the Lessor of the Units, the security interest of the Vendor in the Units, or the leasing thereof to the Lessee.

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

(A) default shall be made in payment of any amount provided for in §§ 3, 7 or 13 hereof, and such default shall continue for five days; or

(B) the Lessee shall make or permit any unauthorized assignment or transfer of this Lease, or any interest herein, or of the right to possession of the Units, or any thereof; or

(C) default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein, in the Consent, 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, with a copy, in the case of notice by the Vendor, to the Lessor, specifying the default and demanding that the same be remedied; or

(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 or under the Consent shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees, within 60 days after such petition shall have been filed and otherwise in

accordance with the provisions of 11 U.S.C. § 1168, or any successor provision, as the same may hereafter be amended; or

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

(F) an event of default set forth in Article 15 of the CSA shall have occurred arising out of any default by the Lessee in performing any of its obligations hereunder or under the Consent and shall not have been cured as provided for therein; or

(G) the Lessee shall make any representation or warranty herein or in any agreement to which it is a party in this transaction or in a statement or certificate furnished pursuant thereto, which shall be incorrect in any material respect when made, and such condition shall continue unremedied for 10 days after written notice from the Lessor or the Vendor to the Lessee;

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

(a) proceed by appropriate court action or actions either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof including net after-tax losses of Federal and state income tax benefits to which the Lessor would otherwise be entitled under this Lease; or

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units so terminated shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided; and thereupon the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Units so terminated may be and take possession of all or any of such Units and thenceforth hold, possess, sell, operate, lease to others and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee as damages for loss of the bargain and not as a penalty whichever of the following amounts which the Lessor, in its sole discretion, shall specify (x) a sum, with respect to each Unit, which represents (A) the excess of the present value, at the time of such termination, of the entire unpaid balance of all rental for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over the then present value of the rentals 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 semiannually from the respective dates upon which rentals would have been payable

hereunder had this Lease not been terminated, plus (B) any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Lessor shall have sustained by reason of the breach of the covenant, representation or warranty of this Lease other than for the payment of rental, or (y) an amount equal to the excess, if any, of the Casualty Value as of the rental payment date on or next preceding the date of termination over the net proceeds of the sale of the Equipment if sold, or, if not sold at such time, the amount the Lessor reasonably estimates to be the sales value of such Unit at such time.

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

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative and may be exercised concurrently or consecutively, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is not, at the time in question, prohibited by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments or other payments due hereunder, and agrees to make such payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

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

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.

§ 11. Return of Units Upon Default. If this Lease shall terminate pursuant to § 10 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor. Each Unit so delivered shall be in the 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, forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any rolling stock to which any Units are attached have been interchanged to return such rolling stock so interchanged), cause (a) if requested by the Lessor, the Units to be detached from each unit of railroad rolling stock to which it has been attached, (b) the Units to be moved to such point or points on its lines as shall be designated by the Lessor and shall there deliver the Units or cause it to be delivered to the Lessor and (c) the Units to be moved to such interchange point or points of the Lessee as shall be designated by the Lessor upon any sale, lease or other disposal of all or any part of the Units by the Lessor. At the option of the Lessor, the Lessor may keep the Units on any of the lines or premises of the Lessee until the Lessor shall have leased, sold or otherwise disposed of the same, and for such purpose the Lessee agrees to furnish, without charge for rent or storage, the necessary facilities at any point or points selected by the Lessor reasonably convenient to the Lessee and, at the Lessee's risk, to permit inspection of the Units by the Lessor, the Lessor's representatives and prospective purchasers and users, the movement and storage of such Units to be at the expense and risk of the Lessee without charge to the Lessor for insurance, which shall be provided by Lessee until expiration of Lessee's obligations under this § 11 in amounts and pursuant to the requirements of § 7 of this Lease. During any storage period, the Lessee will, at its own cost and expense, maintain and keep the Units in good order and repair. This agreement to detach and deliver the Units and furnish facilities as hereinbefore provided is of the essence of the agreement between the

parties, and, upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance hereof. The Lessee hereby expressly waives any and all claims against the Lessor and its agent or agents for damages of whatever nature in connection with any retaking of any Units in any reasonable manner. All gross 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 detached, delivered and stored, as hereinabove provided, on the date of 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 .035194% 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 the foregoing provisions of this § 11, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

§ 12. Assignment; Possession and Use. This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. All the rights of the Lessor hereunder shall inure to the benefit of the Lessor's assigns (including the Vendor except, as to the Vendor, such rights hereunder that are not assigned to the Vendor pursuant to the Lease Assignment).

So long as the Lessee shall not be in default under this Lease and no event of default shall exist under the CSA, 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 the Units or any of them. The Lessee, at its own expense, will promptly pay or discharge any and all sums claimed by any party which, if unpaid, might become a lien, charge or security interest (other than an

encumbrance created by the Lessor or the Vendor 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, including any accession thereto or the interest of the Lessor, the Vendor or the Lessee therein, and will promptly discharge any such lien, charge or security interest which arises, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal or administrative proceedings in any reasonable manner and the nonpayment thereof does not, in the reasonable opinion of the Lessor and of the Vendor, adversely affect the title of the Lessor or the security interest of the Vendor in or to the Units or otherwise under this Lease or the CSA. Any amounts paid by the Lessor or the Vendor in discharge of such liens, charges or security interests upon the Units shall be secured by and under this Lease.

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

So long as the Lessee shall not be in default under this Lease and no event of default shall exist under the CSA, the Lessee shall be entitled to the possession of the Units and to the use of the Units by it or any affiliate upon lines of railroad owned or operated by it or any such affiliate or upon 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 or pursuant to run-through agreements, or a written sublease for a term not exceeding one year, but only upon and subject to all the terms and conditions of this Lease and the CSA; provided, however, that the Lessee shall not assign or permit the assignment of any Unit to service involving the regular operation and maintenance thereof outside the United States of America. The Lessee may receive and retain compensation for such use from other railroads so using any of the Units.

Nothing in this § 12 shall be deemed to restrict

the right of the Lessee to assign or transfer its interest under this Lease in the Units or possession of the Units to any railroad 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 Participation Agreement and the Consent) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property 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.

§ 13. Renewal. Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may by written notice delivered to the Lessor not less than six months prior to the end of the original or a first extended term of this Lease elect to extend the term of this Lease in respect of all but not fewer than all of the Units then covered by this Lease, for an additional two-year period commencing on the scheduled expiration of the original term or such first extended term, as the case may be, of this Lease at a rental payable in semiannual payments on June 1 and December 1 in each year. Each semiannual rental payment shall be in an amount equal to the "Fair Market Rental" (as such term is herein-after defined).

Fair Market Rental shall be determined on the basis of, and shall be equal in amount to, the rental which would obtain in an arm's-length transaction between an informed and willing lessee (other than a lessee currently in possession) and an informed and willing lessor under no compulsion to lease and, in such determination, costs of removal from the location of current use shall not be a deduction from such rental but there shall be excluded any rental value attributable to additions, modifications and improvements which the Lessee is entitled to remove pursuant to § 9 hereof; provided, however, that Fair Market Rental shall be determined as hereinabove provided on the basis of the term and other terms and conditions of the lease being considered.

If, after 35 days from the giving of notice by the Lessee of the Lessee's election to extend the term of this Lease, as provided in the first paragraph of this

§ 13, the Lessee and the Lessor are unable to agree upon a determination of Fair Market Rental, such rental shall be determined in accordance with the foregoing definition by the following procedure: If either party to such determination shall have given written notice to the other requesting determination of such value by this appraisal procedure, the parties shall consult for the purpose of appointing a qualified independent appraiser by mutual agreement. If no such appraiser is so appointed within 20 business days after such notice is given, each party shall appoint an independent appraiser within 25 business days after such notice is given, and the two appraisers so appointed shall within 30 business days after such notice is given appoint a third independent appraiser. If no such third appraiser is appointed within 30 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 the Fair Market Rental of the Units subject to the proposed extended term within 90 days after his or their appointment. If the parties shall have appointed a single appraiser or if either party shall have failed to appoint an appraiser, the determination of the 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 latter 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 provisions for this appraisal procedure shall be the exclusive means of determining Fair Market Rental and shall be in lieu of any judicial or other procedure for the determination thereof, and each party hereto hereby consents and agrees not to assert any judicial or other procedures. The expenses of the appraisal procedure shall be borne equally by the Lessee and the Lessor.

§ 14. Return of Units upon Expiration of Term.

The Lessor intends to retain the Units for re-lease at the expiration of the term of this Lease. As soon as practicable on or after the expiration of the original or extended term of this Lease with respect to any Unit not purchased by the

Lessee the Lessee will, at its own cost and expense, at the request of the Lessor, detach each Unit from the unit of railroad rolling stock to which it had been attached, and deliver possession of such Unit to the Lessor at such point or points on its lines as the Lessor may designate, or, in the absence of such designation, as the Lessee may select, and permit the Lessor to store such Unit at such point or points on the Lessee's lines as the Lessee may select, in facilities furnished by the Lessee for a period not exceeding 90 days after the delivery of the last Unit to the Lessor and transport all such Units, on a one time basis, at any time within such 90-day period, to any reasonable place on the lines of railroads operated by the Lessee, or to any connecting carrier for shipment, all as directed by the Lessor, the movement and storage of such Units to be at the expense and risk of the Lessee without charge to the Lessor for insurance, which shall be provided by Lessee until expiration of Lessee's obligations under this § 14 in amounts and pursuant to the requirements of § 7 of this Lease. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser, lessee or user of such Unit, to inspect the same. Each Unit returned to the Lessor pursuant to this § 14 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted, (ii) meet the standards then in effect under any applicable rules of any governmental agency or other organization with jurisdiction and (iii) have removed from it, at the Lessee's expense, all additions, modifications and improvements owned by the Lessee. The detaching, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to detach, deliver, store and transport the Units, and the Lessee shall defend and indemnify the Lessor against any damages, cost or liability incurred by the Lessor as a consequence of Lessee's failure to perform in accordance with the terms of this Section. All gross 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 detached, delivered and stored, as hereinabove provided, upon 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 .035194% of the Purchase Price of such Unit exceeds the actual earnings received by the Lessor on such Unit for each such day.

§ 15. Recording. The Lessee will cause this Lease, the Lease Assignment, the CSA and the CSA Assignment to be filed and recorded with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303. The Lessee will further cause this Lease and/or appropriate financing statements or continuation statements to be filed and recorded, and, from time to time when required, refiled and rerecorded, in accordance with the applicable provisions of the Uniform Commercial Code as in effect in the Commonwealth of Kentucky (and, if the Lessee changes its chief place of business, in any other state) in like manner as if the Lessor's interest in this Lease represented a security interest or in any other state of the United States of America or the District of Columbia where filing is reasonably requested by the Lessor or the Vendor for the purpose of proper protection, to the satisfaction of counsel of the Lessor and Vendor, of their interests and rights under this Lease or the purpose of carrying out the intention of this Lease. The Lessee will undertake, at its expense, or cause to be undertaken, the filing, registering, deposit, and recording required of the Lessor under the CSA and will from time to time do and perform, or cause to be done and performed, any other act, and will execute, acknowledge, deliver, file, register, record (and will refile, reregister, deposit and redeposit or rerecord whenever required) any and all further instruments, required by law or reasonably requested by the Lessor or the Vendor for the purpose of proper protection, to their satisfaction, of the Vendor's and the Lessor's respective interests in the Units, or for the purpose of carrying out the intention of this Lease, the CSA, the CSA Assignment and the Lease Assignment; and the Lessee will promptly furnish, or cause to be furnished, to the Vendor and the Lessor evidence of all such filing, registering, depositing or recording, and in connection with other than the initial filings with respect thereto an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Vendor and the Lessor. This Lease and the CSA shall be filed and recorded with the Interstate Commerce Commission and financing statements in respect of the interests of the Vendor in the Units, the CSA and the Lease shall have been filed in accordance with the

Uniform Commercial Code as in effect in the State of Minnesota and the Commonwealth of Kentucky prior to the delivery and acceptance hereunder of any Unit.

§ 16. Interest on Overdue Rentals. Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder, including without limitation, §§ 3, 6, 7, 9 and 10 hereof, shall result in the obligation on the part of the Lessee promptly to pay, to the extent legally enforceable, an amount equal to the rate per annum payable on overdue amounts specified in Article 4 of the CSA on the overdue rentals and other obligations for the period of time during which they are overdue or such lesser amount as may be legally enforceable.

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

(a) if to the Lessor, at 2301 Crosby Road, Wayzata, Minnesota 55391, Attention of Controller; and

(b) if to the Lessee, at P. O. Box 32290, Louisville, Kentucky 40232;

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing.

§ 18. Severability; Effect and Modification of Lease. Any provision of this Lease which is prohibited or unenforceable in any jurisdiction, shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

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

§ 19. Tax Indemnities. (a) Loss of Assumed Tax Benefits. If:

(i) the Lessor is not allowed for its fiscal year ending May 31, 1980, an investment credit under Section 38 and related sections of the Code with respect to any one or more of the Units of not less than 10% of the entire Purchase Price of such Unit or Units; or

(ii) the Lessor is not allowed the benefit of current deductions for depreciation with respect to the entire Purchase Price, commencing with its fiscal year ending May 31, 1980, on any one or more of the Units under Section 167(a) of the Code (x) computed pursuant to the asset depreciation range system of Section 167(m) of the Code and Section 1.167(a)-11 of the income tax regulations, (y) computed on the basis (A) of a net salvage value of zero, (B) that the basis of such Unit or Units under Section 167(g) of the Code is not less than the Purchase Price with respect to such Unit or Units, and (C) that such Unit or Units have an asset depreciation period of 12 years, and (z) computed pursuant to the double declining balance method of depreciation, switching to the sum of the years-digits method of depreciation and using the half-year convention described in Section 1.167(a)-11(c)(2)(iii) of the income tax regulations; or

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

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

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

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

(any such failure to allow such recapture, such treatment of income or deductions as derived from or allocable to sources without the United States, or such inclusion in gross income as a result of a Capital Expenditure being herein called a "Loss"), then, to the extent provided in paragraph (b) of this § 19, the Lessee shall pay to the Lessor as an indemnity the amount or amounts set forth in paragraph (d) of this § 19 at the time or times set forth therein.

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

(i) a Loss described in clause (i) or (ii) of paragraph (a) of this § 19, if such Loss results from the use of a Unit by any person prior to its delivery to the Lessor pursuant to the CSA and leased to the Lessee pursuant to this Lease;

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

(iii) the Lessee's use of a Unit or Units in such a manner as to result in a Loss described in clause (iv) or (v) of paragraph (a) of this § 19;

(iv) a Capital Expenditure; or

(v) any act, failure to act or misrepresentation, at any time, by the Lessee or any of its officers, employees or agents or by any permitted sublessee or any of its of its officers, employees or agents (including, without limitation, any act, failure to act or misrepresentation, in respect of the income tax returns of the Lessee insofar as they relate to the transaction contemplated by this Lease and related documents, it being

understood that the Lessee will not take or fail to take any action that is inconsistent with the Lessor being treated as the owner, and the Lessee being treated as the lessee, of the Units for Federal, state and local income tax purposes).

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

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

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

(iii) the failure of the Lessor to claim in a timely and proper manner on its income tax returns for the appropriate years any credits or deductions contemplated by paragraph (a) of this § 19, unless the Lessor shall have been advised by independent tax counsel selected by the Lessor and approved by the Lessee (which approval shall not be unreasonably withheld), that there is no reasonable basis for claiming any such deduction or credit;

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

(v) the failure of the Lessor to take timely action in contesting a claim made by the Internal Revenue Service, but only if such action is required by the terms of paragraph (c) of this § 19;

(vi) any amendment to, or change in, the Code, the income tax regulations thereunder or published administrative or judicial interpretations of the

Code or such regulations, which change or amendment is not enacted and does not have an effective date on or prior to June 1, 1980; or

(vii) any act, or failure to act, at any time, by the Lessor or any of its officers, employees or agents, which is inconsistent with the Lessor's obligations under the Participation Agreement and this Lease, except at a time when an Event of Default (or an event that, with the lapse of time or the giving of notice, or both, would constitute an Event of Default) has occurred and is continuing.

(c) Proceedings. If at the conclusion of any audit the Lessor receives a preliminary or "30 day" letter from the Internal Revenue Service proposing an adjustment in any item that, if agreed to by the Lessor, would result in a Loss with respect to which the Lessee would be required to indemnify the Lessor pursuant to this § 19, the Lessor shall promptly notify the Lessee of such proposed adjustment and shall furnish to the Lessee a statement describing such Loss in reasonable detail. If requested to do so by the Lessee, within 20 days after receipt of such statement, the Lessor shall promptly request from such independent tax counsel as may be selected by the Lessor and approved by the Lessee (which approval shall not be unreasonably withheld) (the "Special Tax counsel"), their opinion as to whether there is a meritorious basis for contesting such proposed adjustment. If the opinion is to the effect that there is a meritorious basis for contesting such proposed adjustment, the Lessor shall contest such proposed adjustment beyond the level of the Internal Revenue Service auditing agent by such administrative proceedings, if any, as may be determined by the Lessor in its sole discretion. Upon the conclusion of such administrative proceedings, if any, the Lessor shall promptly notify the Lessee of the final adjustment proposed by the Internal Revenue Service and, if the Lessor receives within 30 days after such notice a written request to do so from the Lessee, the Lessor shall contest such final adjustment in a court of competent jurisdiction. If the Lessee requests the Lessor to appeal the decision of such a court or of any intermediate appellate court, the Lessor shall promptly request from Special Tax Counsel their opinion as to whether there is a meritorious basis for appealing such decision. If the opinion is to the effect that there is a meritorious basis for appealing such decision, the Lessor

shall appeal such decision. The Lessor, in its sole discretion, shall determine the initial and any appellate court and shall determine whether the proceedings shall be for redetermination of the deficiency proposed to be assessed by the Internal Revenue Service or for refund of taxes paid based on such deficiency. The Lessor shall not be required to take any action as set forth in this paragraph (c) unless and until the Lessee shall have agreed to pay to the Lessor on demand all reasonable out-of-pocket costs and expenses, including without limitation attorneys' fees and expenses incurred by it in connection with the taking of such action. If the Lessor elects to pay taxes based on a proposed deficiency and sue for a refund thereof, and if the proposed deficiency would be a Loss with respect to which the Lessee would be required to indemnify the Lessor, then the Lessee shall pay to the Lessor on demand the amount of such taxes and interest and penalties thereon which the Lessor shall have paid, and if the Lessor subsequently receives a refund of all or any part of such taxes and interest, it shall promptly pay to the Lessee the amount of such refunded taxes and interest plus the amount of any interest received by the Lessor from the United States Government with respect to such refunded taxes and interest. Notwithstanding anything to the contrary contained in this paragraph (c), the Lessor may at any time, whether before or after commencing to take any action with respect to a proposed adjustment, decline to take any further action with respect thereto, provided that, if the Lessee has properly requested such action pursuant to this paragraph (c), the Lessor notifies the Lessee that it waives its right to any indemnity with respect to any Loss that will result from acceptance of such proposed adjustment.

(d) Amount and Time of Payment of Indemnity. The amount of indemnity payable by the Lessee pursuant to this § 19 with respect to a Loss shall be such amount as will result, in the Lessor's reasonable judgment, in preserving for the Lessor both the after-tax rate of return and the after-tax cash flow that would have been realized by Lessor if such Loss had not occurred, based on the assumptions and methods of calculation utilized by the Lessor in originally evaluating the transaction described in this Lease and related documents. The amount of such payment of indemnity shall reflect (A) the amount of interest, additions to tax and penalties payable by the Lessor with respect to such Loss, (B) the amount of Federal, state and local taxes on, or

measured by, net income (at the rates in effect on June 1, 1980), interest, additions to tax and penalties incurred by the Lessor as a result of the receipt of such indemnity payment, and (C) any amount paid by the Lessee to the Lessor pursuant to the next-to-last sentence of paragraph (c) of this § 19 which is not repaid by the Lessor to the Lessee pursuant to such sentence. The Lessor shall furnish the Lessee with a notice setting forth in reasonable detail the computations and methods used in computing such amount of indemnity.

In determining the amount of indemnity payable by the Lessee pursuant to this § 19 with respect to a Loss which results from a Capital Expenditure, there shall be taken into account any investment credits and depreciation deductions to which the Lessor is or expects to be entitled, pursuant to § 19(a) hereof, with respect to such Capital Expenditure in the year in which the Capital Expenditure is made and in subsequent years, but if any such investment credits or depreciation deductions are subsequently disallowed, recaptured or treated as derived from or allocable to sources outside the United States, such disallowance, recapture or allocation shall be treated as a Loss described in clause (i), (ii), (iv) or (v) of paragraph (a) of this § 19, as the case may be.

The Lessee's obligation to pay any indemnity payable pursuant to this § 19 with respect to a Loss shall become unconditional (1) in the case of a Loss that is required to be reflected on a tax return of the Lessor, 30 days after the date such tax return is filed; (2) in the case of a Loss that results from a proposed adjustment of the Internal Revenue Service that is not contested pursuant to paragraph (c) of this § 19, 30 days after the Lessee's receipt of the statement referred to in the first sentence of paragraph (c) of this § 19; and (3) in the case of a Loss that results from a proposed adjustment of the Internal Revenue Service that is contested pursuant to paragraph (c) of this § 19, 30 days after the day on which such contest is finally concluded.

If the Lessee's obligation to pay indemnity pursuant to this § 19 becomes unconditional on or after the termination of this Lease, the Lessee shall pay to the Lessor a lump sum indemnity at the time its obligation to pay indemnity pursuant to this § 19 becomes unconditional. With respect to any other Loss or indemnity payable pursuant to this § 19, the Lessor shall have the option of a lump sum

indemnity at the time the Lessee's obligation to pay indemnity pursuant to this § 19 becomes unconditional or payments structured as level future rent increases commencing on the first rental payment date after the Lessee's obligation to pay indemnity pursuant to this § 19 becomes unconditional. The amount of increased rental resulting from any one Loss shall be adjusted from time to time for each change in the rates of Federal, state and local taxes on, based on, or measured by, net income which affects the Lessor's net after-tax rate of return and after-tax cash flow.

(e) Adjustment of Casualty Values. In the event that the Lessee shall be required to indemnify the Lessor pursuant to this § 19 with respect to a Loss relating to a Unit or Units, the Casualty Value of such Unit or Units shall be appropriately reduced to reflect the reduction, if any, in taxes that will be payable by the Lessor with respect to such Unit or Units upon a Casualty Occurrence with respect thereto; provided, however, that such Casualty Values shall not be reduced below the amounts required to satisfy the obligations of the Lessor under the CSA.

(f) Definition of Lessor. For purposes of this § 19, the term "Lessor" shall include any affiliated group, within the meaning of Section 1504 of the Code, of which the Lessor is a member, if consolidated returns are filed for such affiliated group for Federal income tax purposes.

§ 20. Execution. This Lease may be executed in several counterparts, such counterparts together constituting but one and the same instrument, but the counterpart marked "Original Counterpart" delivered to the Vendor pursuant to the Lease Assignment shall be deemed to be the original and all other counterparts shall be deemed duplicates thereof. It shall not be necessary that the parties hereto all sign the same counterpart as long as each party shall sign a counterpart and such counterpart is delivered to the Vendor or its counsel, whereupon this Agreement shall become effective. Although for convenience this Lease is dated as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

§ 21. Law Governing. The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the Commonwealth of Kentucky.

§ 22. Obligations of Lessor Under CSA; Additional Rentals. In the event that the Lessor shall become obligated to make any payment (other than payments for Equipment pursuant to paragraphs 3 and 4 of Article 4 of the CSA) or to perform any obligations pursuant to the CSA not covered by the provisions of this Lease (other than the proviso to the third paragraph of Article 12 of the CSA), the Lessee shall pay such additional rentals hereunder and perform such obligations so that all of the Lessor's obligations (other than as aforesaid) pursuant to the CSA shall be fully complied with, without regard for any limitation of liability of the Lessor contained in the CSA. This § 22 is not to be construed as a guarantee of the CSA Indebtedness (as defined in the CSA).

§ 23. Lessor's Right To Perform for the Lessee. If the Lessee fails to perform or comply with any of its agreements contained herein, the Lessor may upon notice to the Lessee itself perform or comply with such agreement, and the amount of the reasonable cost and expenses of the Lessor incurred in connection with such performance or compliance, together with interest on such amount at the rate per annum payable on overdue amounts specified in Article 4 of the CSA, accruing from the date payment, shall be payable by the Lessee upon demand.

§ 24. Immunities; Satisfaction of Undertakings. No recourse shall be had in respect of any obligation due under this Lease, or referred to herein, against any incorporator, stockholder, director or officer, as such, past, present or future, of the parties hereto, whether by virtue of any constitutional provision, statute or rule of law, or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of such incorporators, stockholders, directors or officers, as such, being forever released as a condition of and as consideration for the execution of this Lease.

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

LOUISVILLE AND NASHVILLE
RAILROAD COMPANY,

[Corporate Seal]

by

Attest:

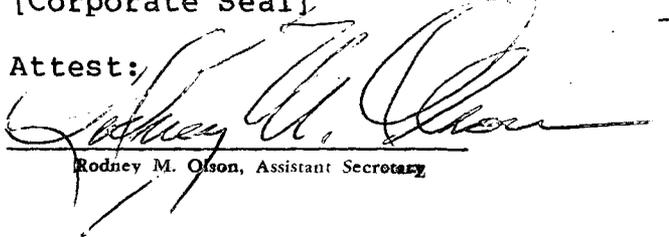
CARGILL LEASING CORPORATION,

by


Lee B. Skold, Controller

[Corporate Seal]

Attest:


Rodney M. Olson, Assistant Secretary



COMMONWEALTH OF KENTUCKY,)
) ss.:
COUNTY OF JEFFERSON,)

On this _____ day of March 1980, before me personally appeared _____, to me personally known, who, being by me duly sworn, says that he is _____ of LOUISVILLE AND NASHVILLE RAILROAD COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation and that said instrument was signed and sealed on behalf of said Corporation by authority of its President and Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

Notary Public

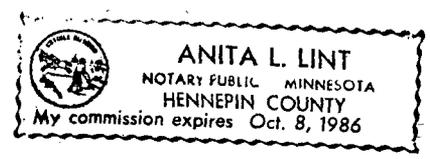
[Notarial Seal]

STATE OF MINNESOTA,)
) ss.:
COUNTY OF HENNEPIN,)

On this 11th day of March 1980, before me personally appeared Lee B. Skold, (, to me personally known, who, being by me duly sworn, says that he is Controller of CARGILL LEASING CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation and that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

Anita L. Lint
Notary Public

[Notarial Seal]



SCHEDULE A TO LEASE

<u>Type</u>	<u>Quantity</u>	<u>Lessee's Numbers (Inclusive)</u>
Auto Racks, Fully Enclosed, Tri-Level	144	LN-2023 through LN-2166

SCHEDULE B TO LEASE

Table 1

<u>Date</u>	<u>Percentage</u>
June 1, 1980	91.14768
December 1, 1980	90.8210
June 1, 1981	91.4462
December 1, 1981	90.0189
June 1, 1982	89.7068
December 1, 1982	88.0599
June 1, 1983	86.8515
December 1, 1983	85.1479
June 1, 1984	83.3495
December 1, 1984	80.9469
June 1, 1985	78.4313
December 1, 1985	75.8794
June 1, 1986	72.8858
December 1, 1986	69.6467
June 1, 1987	66.1060
December 1, 1987	62.6659
June 1, 1988	58.7687
December 1, 1988	54.6646
June 1, 1989,	50.2943
December 1, 1989	45.8145
June 1, 1990	40.9971
December 1, 1990	36.1194
June 1, 1991	30.8991
December 1, 1991	25.5937
June 1, 1992, and 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 credit (as referred to in § 19 of the Lease). Consequently, the Casualty Value of the Equipment suffering a Casualty Occurrence on or before the third, fifth or seventh anniversary of the date of delivery and acceptance of the Equipment shall be increased by the applicable percentage of the Purchase Price set forth below:

<u>Anniversary of Delivery and Acceptance</u>	<u>Percentage of Purchase Price</u>
Third	18.5185
Fifth	12.3457
Seventh	6.1728