

16303

RECORDATION NO. FILED 1433

APR 21 1989 -9 00 AM

*New number*

RECORDATION NO. 16303-*A* FILED 1433

APR 21 1989 -9 00 AM

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*Date 4-21-89*  
*Fee \$ 52.00*

April 20, 1989

RECORDATION NO. 16303-*B* FILED 1433

9-111A001

16303-*C*

RECORDATION NO. FILED 1433

APR 21 1989 -9 00 AM

INTERSTATE COMMERCE COMMISSION

BY HAND *ICE Washington, D.C.*

APR 21 1989 -9 00 AM

Noretta R. McGee  
Secretary  
Interstate Commerce Commission  
12th Street & Constitution Avenue, N.W.  
Washington, D.C. 20423

Dear Ms. McGee:

Enclosed are an original and one copy of four documents, described below, to be recorded pursuant to Section 11303 of Title 49 of the U.S. Code. The documents to be recorded are: (1) a Lease of Railroad Equipment, a primary document, dated as of April 14, 1989; (2) Supplement No. 1 to the Lease of Railroad Equipment, a secondary document, dated as of April 14, 1989; (3) a Loan and Security Agreement, a primary document, dated as of April 14, 1989; and (4) Supplement No. 1 to the Loan and Security Agreement, a secondary document, dated as of April 14, 1989.

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

Lease of Railroad Equipment:

Lessor: Meridian Trust Company  
35 North 6th Street  
Reading, Pennsylvania 19601  
  
Lessee: Soo Line Railroad Company  
Soo Line Building  
105 South Fifth Street  
Box 530  
Minneapolis, Minnesota 55440

APR 21 8 52 AM '89  
MOTOR OPERATING UNIT

*County part Molly Morgan*

Noreta R. McGee  
April 20, 1989  
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Supplement No. 1 to the Lease of Railroad Equipment:

Lessor: Meridian Trust Company  
35 North 6th Street  
Reading, Pennsylvania 19601

Lessee: Soo Line Railroad Company  
Soo Line Building  
105 South Fifth Street  
Box 530  
Minneapolis, Minnesota 55440

Loan and Security Agreement:

Owner Trustee: Meridian Trust Company  
35 North 6th Street  
Reading, Pennsylvania 19601

Lender: The Prudential Insurance Company  
of America  
c/o Prudential Capital Corporation  
2930 Norwest Center  
90 South Seventh Street  
Minneapolis, Minnesota 55402-3901

Supplement No. 1 to the Loan and Security Agreement:

Owner Trustee: Meridian Trust Company  
35 North 6th Street  
Reading, Pennsylvania 19601

Lender: The Prudential Insurance Company  
of America  
c/o Prudential Capital Corporation  
2930 Norwest Center  
90 South Seventh Street  
Minneapolis, Minnesota 55402-3901

A description of the equipment covered by these documents follows:

21 General Motors EMD 3800 H.P. Model SD-60 Diesel Electric Locomotives bearing manufacturers numbers 877003-01 through 877003-21 inclusive, and Soo Line road numbers 6021 through 6041, inclusive.

Noreta R. McGee  
April 20, 1989  
Page 3

A fee of \$52.00 is enclosed. Please stamp and return to the messenger any documents not needed by the Commission for recordation, along with a stamped copy of this letter.

A short summary of the documents, to appear in the Commission's index, follows:

Lease of Railroad Equipment:

Lease of Railroad Equipment between Meridian Trust Company, 35 North 6th Street, Reading, Pennsylvania 19601, Lessor, and Soo Line Railroad Company, Soo Line Building, 105 South Fifth Street, Box 530, Minneapolis, Minnesota 55440, Lessee, dated as of April 14, 1989, and covering 21 General Motors EMD 3800 H.P. Model SD-60 Diesel Electric Locomotives bearing manufacturers numbers 877003-01 through 877003-21 inclusive, and road numbers 6021 through 6041, inclusive.

Supplement No. 1 to the Lease of Railroad Equipment:

Supplement No. 1 to the Lease of Railroad Equipment between Meridian Trust Company, 35 North 6th Street, Reading, Pennsylvania 19601, Lessor, and Soo Line Railroad Company, Soo Line Building, 105 South Fifth Street, Box 530, Minneapolis, Minnesota 55440, Lessee, dated as of April 14, 1989, and covering 21 General Motors EMD 3800 H.P. Model SD-60 Diesel Electric Locomotives bearing manufacturers numbers 877003-01 through 877003-21 inclusive, and road numbers 6021 through 6041, inclusive.

Loan and Security Agreement:

Loan and Security Agreement between Meridian Trust Company, 35 North 6th Street, Reading, Pennsylvania 19601, Owner Trustee, and The Prudential Insurance Company of America, c/o Prudential Capital Corporation, 2930 Norwest Center, 90 South Seventh Street, Minneapolis, Minnesota 55402-3901, Lender, dated as of April 14, 1989, and covering \$42,000,000.00 Maximum Aggregate Principal Amount Secured Notes.

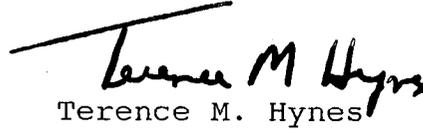
Supplement No. 1 to Loan and Security Agreement:

Supplement No. 1 to Loan and Security Agreement between Meridian Trust Company, 35 North 6th Street, Reading, Pennsylvania 19601, Owner Trustee, and The Prudential Insurance Company of America, c/o Prudential Capital Corporation, 2930 Norwest Center, 90 South Seventh Street, Minneapolis, Minnesota

Noreta R. McGee  
April 20, 1989  
Page 4

55402-3901, Lender, dated as of April 14, 1989, and covering  
\$42,000,000.00 Maximum Aggregate Principal Amount Secured Notes.

Sincerely,

  
Terence M. Hynes

16303

RECORDATION NO \_\_\_\_\_ FILED 1425

APR 21 1989 -9 00 AM

INTERSTATE COMMERCE COMMISSION

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LEASE OF RAILROAD EQUIPMENT

Dated as of April 14, 1989

between

MERIDIAN TRUST COMPANY, not in its  
individual capacity, except as otherwise  
set forth herein, but solely as Owner Trustee  
under the Trust Agreement  
referred to herein,

Lessor

and

SOO LINE RAILROAD COMPANY,

Lessee

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THIRTY-NINE (39) GENERAL MOTORS  
EMD SD-60 LOCOMOTIVES

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EXHIBIT

- A - Form of Certificate of Inspection and Acceptance
- B - Form of Lease Supplement
- C - Form of Liability Release

Schedule I - Definitions

## LEASE OF RAILROAD EQUIPMENT

LEASE OF RAILROAD EQUIPMENT, dated as of April 14, 1989, between MERIDIAN TRUST COMPANY, a Pennsylvania trust company, not in its individual capacity, except as otherwise set forth herein, but solely as Owner Trustee under the Trust Agreement defined in Section 1 hereof (the "Lessor"), and SOO LINE RAILROAD COMPANY, a Minnesota corporation (the "Lessee"). Certain capitalized terms used herein have the respective meanings attributed thereto in Section 1.

WHEREAS, pursuant to the Participation Agreement the Lessor, subject to the terms and conditions thereof, has agreed to purchase the Locomotives, such purchases to be made on each Delivery Date;

WHEREAS, the Lessee desires to lease the Locomotives at the rent and for the term and upon the conditions hereinafter provided; and

WHEREAS, in order to secure certain borrowings to be made by the Lessor to finance the purchase price of the Locomotives, the Lessor has granted a first and prior security interest therein and has assigned this Lease and certain of the payments to be made by the Lessee hereunder to the Lender.

NOW, THEREFORE, in consideration of the premises and of the rent to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Lessor hereby leases to the Lessee the Locomotives upon the following terms and conditions:

### Section 1. DEFINITIONS

Unless the context otherwise requires, capitalized terms herein shall have the meanings specified in Schedule I to this Lease.

### Section 2. NET LEASE

This Lease is a net lease. Each of the Lessee's obligations to pay all rent and other amounts hereunder shall be absolute and unconditional, without notice or demand and the Lessee shall not be entitled to any abatement, reduction or setoff against rent or such other amounts, 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, the Owner Participant, the Lender, the holder from time to time of any Note or any other person or entity, either under this Lease 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 Locomotives from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Locomotives, the prohibition of or other restriction against the Lessee's use of all or any of the Locomotives, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease or any other Operative Document, any defect in the title to, compliance with plans or specifications for, condition, design, fitness for use, operation, damage or destruction of all or any of the Locomotives, any insolvency of or any bankruptcy, reorganization or similar proceeding against the Lessee, the Lessor or any other person 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 Basic Rent, Renewal Rent, Supplemental Rent 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 this Lease of any of the Locomotives except in accordance with the express terms hereof. Each Basic Rent, Renewal Rent, Supplemental Rent 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 (except for any excess payment made in error or for any payment made to a party not entitled to receive such payment) from the Lessor, the Owner Participant, the Lender, or any holder or former holder of a Note for any reason whatsoever; provided, that nothing contained herein shall prevent Lessee from seeking any recovery under the Tax Indemnity Agreement.

### Section 3. DELIVERY AND ACCEPTANCE OF LOCOMOTIVES

The Lessor hereby appoints the Lessee its agent for inspection and acceptance of the Locomotives to be delivered on each Delivery Date pursuant to the Purchase Agreement and the Purchase Agreement Assignment. Upon such delivery, the Lessee will cause a qualified employee of the Lessee to inspect the same and, if such Locomotives are found to be acceptable, to accept delivery of such Locomotives and execute and deliver to the Lessor a Certificate of Inspection and Acceptance substantially in the form of Exhibit A hereto, and a Lease Supplement relating to the Locomotives being acquired on such Delivery Date by the Lessor pursuant to (and in the manner and subject to the conditions set forth in) the Participation Agreement. Upon delivery of the Certificate of Inspection and Acceptance and such Lease Supplement to the Lessor, the Locomotives shall be deemed to have been delivered to and accepted by the Lessee for all purposes of this Lease and thereupon shall be subject to all of the terms and

conditions of this Lease. The Lessee's execution and delivery of a Lease Supplement shall be conclusive proof that the Locomotives listed therein have been leased to Lessee subject to the terms hereof.

#### Section 4. RENT

4.1 Basic Rent. The Lessee agrees to pay to the Lessor, as rent during the Basic Term for each Locomotive subject to this Lease, 40 consecutive semiannual payments of Basic Rent payable in arrears (except as otherwise provided on an applicable Schedule 2 to a Lease Supplement) on January 15 and July 15 of each year (the "Rent Payment Date") commencing on July 15, 1990, to and including January 15, 2010, as set forth on Schedule 2 to each Lease Supplement.

Subject to adjustment in accordance with Section 4.4 hereof, each semiannual payment of Basic Rent in respect of each Locomotive in Equipment Group A subject to this Lease shall be in an amount equal to the product of (i) the percentage set forth in Schedule 2 attached to the Lease Supplement covering and related to such Locomotive applicable to the semiannual rental payment being made multiplied by (ii) the amount of the Purchase Price of such Locomotive designated in such Lease Supplement.

Subject to adjustment in accordance with Section 4.4 hereof, each semiannual payment of Basic Rent in respect of each Locomotive in Equipment Group B subject to this Lease shall be subject to adjustment based on the change in yield to maturity of the Federal Reserve statistical release H.15 (519) Constant Maturity Treasury for a seven (7) year term (the "Base Issue"). A yield of such Base Issue of 8.75% per annum shall serve as the Base Index. For each basis point change from the Base Index, not in excess of 100, in the yield to maturity as of three (3) Business Days prior to the funding of a Locomotive, the rentals will be subject to adjustment, either up or down, to directly result in an increase or decrease by the same number of basis points (not in excess of 100) in the nominal pre-tax yield to the Lessor and to maintain the same aggregate after-tax cash flow as originally determined in the Base Case using a multiple investment sinking fund method and to minimize the net present value of the Lease Payments at the actual Loan Rate applicable to each such Locomotive.

4.2 Minimum Payments. Notwithstanding anything to the contrary contained herein or in any other Operative Document, in all events and irrespective of any adjustment thereto pursuant to Section 4.4 hereof or otherwise, each payment of Basic Rent under Section 4.1 hereof, and each amount of Casualty Value payable under Section 8 or Section 13 hereof or Termination Value payable under Section 8 or Section 16 hereof, shall be at least in an amount such that, as and when received by the Lender it shall be

sufficient to pay the full amount of principal and interest then due and payable in respect of all Notes then outstanding under the Loan and Security Agreement without regard to any acceleration or optional prepayment. Nothing in this Section 4.2 shall be deemed to constitute a guarantee by the Lessee of the indebtedness evidenced by the Notes or a guarantee of the residual value of any Locomotive.

4.3 Supplemental Rent. In addition to its obligation to pay Basic Rent or Renewal Rent hereunder, the Lessee shall pay Supplemental Rent to whomever due as and when the same shall become due and owing in accordance with the provisions of the Operative Document that requires such payment and in the event of any failure on the part of the Lessee to pay the same when due and owing in accordance with the provisions of the Operative Document that requires such payment, the Lessor shall have all rights, powers and remedies provided for herein or at law or in equity or otherwise in the case of nonpayment of Basic Rent or Renewal Rent. The Lessee also agrees to pay to the Lessor or such other person as shall be entitled thereto, upon demand, as Supplemental Rent, to the extent permitted by applicable law, interest at the Overdue Rate on (i) any part of any installment of Basic Rent or Renewal Rent, as the case may be, not paid when due for each day for which the same shall be overdue, computed on the basis of a 360-day year of twelve 30-day months, and (ii) any payment of Supplemental Rent (other than such interest) not paid when due for each day for which the same shall be overdue until the same shall be paid.

4.4 Adjustments to Basic Rent, Casualty Value and Termination Value.

(i) With respect to each Locomotive, the amounts of Basic Rent, Termination Value and Casualty Value shall be appropriately adjusted:

(A) if (a) the Delivery Date or the commencement date of the Basic Term for such Locomotive differs from the delivery date assumed in the Base Case after giving consideration to the total Purchase Price per Delivery Date; (b) the average Purchase Price per Locomotive for all Locomotives subject to the Lease shall be more than 5% higher or lower than \$1,289,000; (c) the aggregate of all Transaction Expenses shall be other than 1.5% of the aggregate Purchase Price of the Locomotives subject to this Lease; (d) the actual Debt Rates, amount and amortization with respect to the group of Locomotives of which such Locomotive is a part differs from the Base Case; (e) any adjustment shall be required pursuant to Section 4.1; or, after giving effect to any changes pursuant to clauses (a) through (e), (f) a Change in Tax Law occurs which is effective on or

before the Delivery Date of such Locomotive (whether such Change in Tax Law occurs before, on or after such Delivery Date);

(B) on the first Rent Payment Date following an election by the Lessee under Section 8 of the Tax Indemnity Agreement, to take into account any such election; or

(C) on the first Rent Payment Date following an election by the Lessee under Section 10(h) of the Participation Agreement to cause the Notes to be refinanced, to take into account the terms of the new debt financing;

by such amount or amounts as will, in the reasonable opinion of the Owner Participant, cause the Owner Participant's Net Economic Return to be equal to the Net Economic Return (computed using the same assumptions other than the changed assumptions giving rise to the adjustment in question originally used by the Owner Participant in computing the Basic Rent, Termination Values and Casualty Values, including, without limitation, the Tax Assumptions) that would have been realized by the Owner Participant if such provision, amendment, correction or regulation had not existed; provided, that in no event shall such adjustment adversely affect the tax assumptions, whether or not described in Section 1 of the Tax Indemnity Agreement, anticipated by the Owner Participant or the Owner Participant's Net Economic Return. Any adjustment to Basic Rent hereunder shall be such that it shall not cause the Lease to fail to satisfy the requirements of Section 467 of the Code, Rev. Proc. 75-21 or Rev. Proc. 75-28.

(ii) Notwithstanding anything in this Lease to the contrary, Lessee shall not be required to enter into a Lease Supplement with respect to Equipment Group B in the event that in Lessee's reasonable judgment the adjustments in Basic Rent anticipated pursuant to Section 4.4(i)(A) hereof may be expected to result in a change in the net present value of Basic Rent for all Locomotives as of the first Delivery Date under this Lease, calculated using a discount rate of 10.5%, to an amount which exceeds by 200 basis points the net present value of such Rent as contemplated by the Base Case.

(iii) Any adjustment required by Section 4.4(i) above shall be effective as soon as possible. Such adjustment shall be evidenced by the execution and delivery by the Lessor and the Lessee of a lease supplement but failure to execute and deliver such lease supplement shall not affect the making of such adjustment pursuant to Section 4.4(i) above. If requested by the Lessee, any computation of the amount payable by the Lessee under Section 4.4(i) above shall be provided by the Owner Participant

to the Lessee in a notice setting forth in reasonable detail the computations and methods used in computing such amount. If requested by the Lessee, such determination shall be verified by an independent certified public accounting firm or other firm designated by the Lessee and acceptable to the Owner Participant, which firm shall advise the Lessee and the Owner Participant as to whether the calculations submitted by the Owner Participant are based on the correct assumptions and are mathematically correct and the results of the verification by such firm shall be final and binding on the parties hereto. The cost of such verification shall be paid by the Lessee unless the adjustment is found to be incorrect in the aggregate for all Locomotives being adjusted by more than five (5) basis points of net present value of the aggregate amounts of Basic Rent for such Locomotives (calculated at the Debt Rate or Rates applicable to the Locomotives for which an adjustment is being proposed), in which case the Owner Participant shall pay the cost of such verification. Any adjustment made pursuant to the foregoing shall, to the extent consistent with Section 4.4(i) above, minimize the net present value of Basic Rent to the Lessee. Lessee and Owner Participant agree and the verifying party will be required to agree to keep confidential any materials furnished to effect the foregoing verifications. The Lessee shall have no right to review any information which the Owner Participant provides to the verifying party. Nothing contained in this Section 4.4(iii) shall modify the manner of any calculation or verification described in the Tax Indemnity Agreement.

4.5 Payments on Non-Business Days. If any payment date referred to in Section 4.1, 4.3 or 16.2 hereof is not a Business Day, the payment of Basic Rent, Supplemental Rent or Renewal Rent, as the case may be, otherwise payable on such date shall be payable on the next preceding Business Day.

4.6 Place of Rent Payment. Except as otherwise provided in Section 15.1, each installment of Basic Rent and Renewal Rent shall be paid to the Lessor and all amounts of Supplemental Rent shall be paid to the person entitled thereto at such address as the Lessor or such person, as the case may be, shall have provided to the Lessee in writing.

4.7 Payment in Immediately Available Funds. The Lessee agrees to make each payment provided for hereunder in immediately available funds at or before 11:00 A.M., local time, in the city to which payment is made.

## Section 5. TERM OF LEASE

5.1 Beginning and Termination; Survival. The interim term of this Lease shall begin on the first Delivery Date of Locomotives hereunder and end on January 14, 1990 (such period being the "Interim Term"), the Basic Term of this Lease shall

begin on January 15, 1990 and, subject to the provisions of Sections 8, 13 and 16 hereof, such Basic Term shall continue until January 15, 2010 or, if renewed, the last day of the Renewal Term. Notwithstanding anything contained in the preceding sentence to the contrary, (i) the obligation of Lessee to pay rent hereunder shall not arise with respect to a Locomotive until the Delivery Date thereof and (ii) the obligations of the Lessee hereunder (including, but not limited to, the obligations under Sections 8, 11, 12, 14 and 17 hereof) shall survive the expiration of the Lease Term and continue in full force and effect until the same shall have been fully performed by the Lessee.

5.2 Rights and Obligations of Lessee Subject to Loan and Security Agreement. Notwithstanding anything to the contrary contained herein, all rights and obligations of the Lessee under this Lease and in and to the Locomotives are subject to the rights of the Lender. If a Loan and Security Agreement Event of Default should occur, the Lender may terminate this Lease (or rescind its termination) without affecting the indemnities which by the provisions of this Lease, the Participation Agreement or any other Operative Document survive the termination of the Lease Term, all as provided therein; provided, that so long as (i) no Event of Default exists hereunder and (ii) the Lessee is complying with the provisions of Section 15.1 hereof, this Lease may not be terminated and the Lessee shall be entitled to the rights of possession and use provided under Section 15 hereof.

## Section 6. IDENTIFICATION MARKS

6.1 Identifying Numbers; Legend; Changes. The Lessee will cause each Locomotive to be kept numbered with the road number and serial number as shall be set forth in any amendment or supplement hereto extending this Lease to cover such Locomotive, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Locomotive, in letters not less than one inch in height, the words "OWNED BY MERIDIAN TRUST COMPANY AS OWNER TRUSTEE AND SUBJECT TO A SECURITY INTEREST RECORDED WITH THE ICC" or other appropriate words designated by the Lessor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Lessor's title to and the Lender's interests in such Locomotive and the rights of the Lessor under this Lease and of the rights of the Lender under the Loan and Security Agreement. The Lessee will replace promptly any such words which may be removed, defaced, obliterated or destroyed. The Lessee will not change the identification number of any Locomotive unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with the Lender and the Lessor and filed, recorded and deposited by the Lessee in all public offices where this Lease and the Loan and Security Agreement shall have been filed, recorded and deposited and (ii)

the Lessee shall have furnished the Lender and the Lessor an opinion of counsel in form and substance reasonably satisfactory to the Lessor and the Lender to the effect that such statement has been so filed, recorded and deposited, such filing, recordation and deposit will protect the Lender's and the Lessor's interests in such Locomotives and that no other filing, recording, deposit or giving of notice with or to any other federal, state, provincial or local government or agency of either the United States or Canada is necessary to protect the interests of the Lender and the Lessor in such Locomotives.

6.2 Insignia of Lessee. The Locomotives may be lettered with the names or initials or other insignia customarily used by the Lessee or its permitted sublessees but the Lessee will not allow the name of any other person, association or corporation to be placed on any Locomotive as a designation that might be interpreted as a claim of ownership.

#### Section 7. PREPAYMENT OF BASIC RENT

The Lessee shall not make any payment of Basic Rent more than ten (10) Business Days before its due date, but in no event during the preceding calendar year.

#### Section 8. PAYMENT FOR CASUALTY OCCURRENCES; INSURANCE

##### 8.1 Casualty Occurrence; Payments.

(i) In the event of any Casualty Occurrence with respect to any Locomotive or Locomotives, the Lessee shall promptly and fully notify the Lessor, the Owner Participant and the Lender with respect thereto, and in any event within fifteen (15) days after Lessee determines that a Casualty Occurrence has occurred. Subject to Section 8.1(ii) hereof, on the Casualty Payment Date with respect to the Locomotive or Locomotives which shall have suffered such Casualty Occurrence, the Lessee shall pay to the Lessor the sum of (A) the Casualty Value of each such Locomotive as of the Casualty Payment Date, (B) any Supplemental Rent due on such Casualty Payment Date and (C) all other amounts due hereunder in respect of such Locomotive as of such date; provided, that if a Casualty Occurrence shall occur during the period that an Event of Default shall be continuing or any Locomotive is being returned pursuant to Section 14 or Section 17 hereof, then notwithstanding anything else in this Section 8.1 contained, the Lessee shall make such payment of Casualty Value (plus all other amounts specified above in this Section 8.1(i)) to the Lessor not later than thirty (30) days from the Casualty Occurrence. Upon the making of such payment of Casualty Value (plus all other amounts specified above in this Section 8.1(i)) by the Lessee in respect of any Locomotive, the Basic Rent or Renewal Rent, as the case may be, for such Locomotive shall cease to accrue, the term of this Lease as to such Locomotive shall

terminate and all of the Lessor's right, title and interest in the applicable Locomotive will transfer to Lessee, free and clear of Lessor's Liens and (upon payment to Lender and the holders of the Notes of the portion of such Casualty Value payment provided in Section 5.03 of the Loan and Security Agreement) free and clear of the Lien of the Loan and Security Agreement; provided, that Lessor shall, at Lessee's request, execute or cause to be executed a bill of sale, lease termination statement or any other confirmatory agreement. Losses will be adjusted with Lessee and any compensation for loss or judgment for damages or insurance proceeds in excess of the sum of (i) Casualty Value plus (ii) any other amounts then due from Lessee, will be for account of the Lessee. If no Default or Event of Default shall have occurred and be continuing, then the Lessee shall be entitled to receive and retain for its own account all condemnation or requisition payments in respect of such Locomotive up to the sum of the amounts set forth in (A) and, to the extent such amounts were paid as a result of or in connection with the condemnation or requisition, (B) and (C) above, but only to the extent such amounts shall have been previously paid to the Lessor, and as consideration for the condemnation or requisition of the Lessee's leasehold interest, one-half of any excess. The remaining portion of such excess shall be paid over to, or retained by, the Lessor for its own account. If under the circumstances contemplated by the preceding sentence such Locomotive shall be returned by a governmental entity prior to the time the Lessee shall have been reimbursed by such application of condemnation or requisition payments in an amount equal to or greater than the sum of the amounts set forth in (A) and, to the extent such amounts were paid as a result of or in connection with the condemnation or requisition, (B) and (C) above, but only to the extent such amounts shall have been previously paid to the Lessor, then, upon notice to the Lessor, the Lessee shall dispose of such Locomotive as agent for the Lessor, and shall retain the proceeds of such disposition to the extent that the aggregate of the amounts so retained and the condemnation or requisition payments theretofore received by the Lessee shall equal the sum of the amounts set forth in (A) and, to the extent such amounts were paid as a result of or in connection with the condemnation or requisition, (B) and (C) above, but only to the extent such amounts shall have been previously paid to the Lessor, and as consideration for the condemnation or requisition of the Lessee's leasehold interest, one-half of any excess. The remaining portion of such proceeds shall be promptly paid to the Lessor.

(ii) In the event of any Casualty Occurrence with respect to any Locomotive or Locomotives, the Lessee may, at its option (instead of complying with Section 8.1(i) hereof with respect to any such Locomotive), duly convey to the Lessor within 180 days of such Casualty Occurrence as replacement for such Locomotive, title to a replacement Locomotive (the "Replacement Locomotive"), free and clear of all liens, encumbrances or rights

of others whatsoever (except the Lien of this Lease and the Loan and Security Agreement) and having a value, utility and remaining useful life at least equal to the Locomotive being replaced (disregarding the occurrence of such Casualty Occurrence and based on the assumption that the subject Locomotive suffering the Casualty Occurrence has been maintained and is otherwise in compliance with Section 12 hereof). In such event, Lessee shall give written notice to the Owner Participant of its intent to convey a Replacement Locomotive within 150 days of such Casualty Occurrence. Within thirty (30) days after receipt of such notice, Owner Participant shall have the right to obtain an appraisal by an appraiser acceptable to Lessee to determine whether any proposed Replacement Locomotive has a value, utility and remaining useful life at least equal to the Locomotive being replaced (disregarding the occurrence of such Casualty Occurrence and based on the assumption that the subject Locomotive has been maintained in accordance with Section 12 hereof). Unless the appraiser concludes and so notifies Lessee within such thirty (30) days that the proposed Replacement Locomotive does not have at least such value, utility and remaining useful life, the proposed Replacement Locomotive will be deemed acceptable to the Owner Participant and the cost of such appraisal shall not be added to Supplemental Rent. If the appraiser does so conclude and notifies Lessee and the Owner Participant rejects the proposed Replacement Locomotive on that basis within such thirty (30) days, Lessee's option to convey the proposed Replacement Locomotive shall terminate and Casualty Value and the costs of such appraisal shall be paid within thirty (30) days after such rejection.

Prior to or at the time of any such conveyance, the Lessee, at its own expense, shall promptly (a) furnish the Lessor with a bill of sale, in form and substance satisfactory to the Owner Participant, the Lessor and the Lender, with respect to such Replacement Locomotive; (b) enter into a supplement hereto, in form and substance satisfactory to the Owner Participant, the Lessor and the Lender, subjecting such Replacement Locomotive to this Lease, and cause such supplement, together with an appropriate supplement to the Loan and Security Agreement and all such other documents and instruments (including Uniform Commercial Code financing statements) to be filed and recorded in such manner and places as shall be necessary or appropriate to confirm the title and interest of the Lessor and lien of the Lender pursuant to the Loan and Security Agreement in respect of such Locomotive; (c) furnish the Owner Participant, the Lessor and the Lender with such evidence of title to such Replacement Locomotive and compliance with the insurance provisions of Section 8.6 hereof as the Owner Participant, the Lessor and the Lender may reasonably request; (d) furnish the Owner Participant, the Lessor and the Lender with an opinion of the Lessee's counsel to the effect that title to such Replacement Locomotive has been duly conveyed to the Lessor free and clear of all liens,

encumbrances and rights of others (except the lien of the Lease and the Loan and Security Agreement) and is duly leased hereunder and subject to the lien of the Loan and Security Agreement; (e) furnish the Owner Participant, the Lessor and the Lender with an Officer's Certificate of Lessee certifying that, upon consummation of such replacement, no Default or Event of Default will exist hereunder; and (f) take such other action as the Lessor may reasonably request in order that such Replacement Locomotive be duly and properly titled in the Lessor, leased hereunder and subjected to the lien of the Loan and Security Agreement to the same extent as the Locomotive being replaced. Upon the completion of the conveyance of a Replacement Locomotive by the Lessee pursuant to this Section 8.1(ii), Lessor shall, at Lessee's reasonable request, execute or cause to be executed a bill of sale, lease termination statement or any other agreement transferring all of Lessor's right, title and interest in and to the Locomotive with respect to which such Casualty Occurrence occurred, free and clear of Lessor's Liens and the lien of the Loan and Security Agreement, but otherwise without recourse, representation or warranty of any character. For all purposes hereof, each such Replacement Locomotive shall be deemed a Locomotive as defined herein. In the event that Lessee's election results in the replacement of any Locomotive pursuant to this Section 8.1(ii), there shall be no reduction or increase in Basic Rent or Renewal Rent.

8.2 Requisition Not Constituting a Casualty Occurrence. In the event of the requisition for use of any Locomotive which does not, or does not yet, constitute a Casualty Occurrence hereunder, all of the Lessee's obligations under this Lease with respect to such Locomotive (including, without limitation, the obligation to make all payments of Basic Rent, Renewal Rent and Supplemental Rent) shall continue to the same extent as if such requisition had not occurred. All payments received by the Lessor or the Lessee from the United States Government or any other governmental entity for the use of such Locomotive during the term of this Lease (other than a use of such Locomotive constituting a Casualty Occurrence) shall be paid over to, or retained by, the Lessee provided no Default or Event of Default shall have occurred and be continuing.

8.3 Payment After Expiration of Lease. If the date upon which the making of the payment by the Lessee in Section 8.1 hereof in respect of any Locomotive as required as aforesaid shall be after the Lease Term in respect of such Locomotive, no Basic Rent or Renewal Rent for such Locomotive shall accrue after the end of the Lease Term.

8.4 Amount of Casualty Value. During the Basic Term the "Casualty Value" of each Locomotive shall be the product of (x) the Purchase Price for such Locomotive and (y) the percentage set forth in Schedule 3 to the Lease Supplement applicable to

such Locomotive opposite the Casualty Value Determination Date for such Casualty Occurrence. During any Renewal Term, the "Casualty Value" of each Locomotive shall be an amount equal to 27.5% of the Lessor's Purchase Price for such Locomotive. Casualty Value may be subject to adjustment during the Basic Term in accordance with Section 13 of the Tax Indemnity Agreement and Section 4.4 herein.

8.5 No Release. Except as provided in Sections 8.1 and 8.3 hereof with respect to payment of Basic Rent and Renewal Rent, 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 Locomotive from and after delivery and acceptance thereof by the Lessee hereunder.

8.6 Insurance to Be Maintained.

(i) The Lessee will, at all times prior to the return of the Locomotives pursuant to the terms hereof and, with respect to Liability Insurance, for three (3) years thereafter, and at the Lessee's own expense, cause the following insurance to be carried and maintained: (a) "all risk" property insurance in respect of the Locomotives at all times; provided, that the Lessee may self-insure (for purposes of this subsection 8.6, "self-insure" shall mean uninsured risk, deductibles, retention, and co-insurance) such Locomotives to the extent that the Lessee customarily self-insures equipment owned or leased by it similar to the Locomotives, but only to the extent such self-insurance is consistent with prudent industry practice for the railroad industry ("Property Insurance"); and (b) Liability Insurance. The Lessee will carry Liability Insurance in such amounts, with such self-insurance deductibles and coinsurance and for such risks and with such insurance companies as is consistent with prudent industry practice for the railroad industry. In any event, such coverage will not be less comprehensive in amounts and against risks customarily insured against by the Lessee in respect of equipment owned or leased by it similar to the Locomotives.

(ii) To the extent that Lessee's insurance policies maintained pursuant to this Section 8.6 from time to time so permit without unreasonable expense, such insurance policies shall (a) require thirty (30) days' prior notice of cancellation (other than for non-payment of premium) or of material change in coverage to the Additional Insureds; (b) name the Additional Insureds and Meridian Trust Company in its individual capacity as additional insureds and loss payees as their respective interests may appear, to the extent permitted under such policies; (c) waive any right to claim any premiums or commission against the Additional Insureds; (d) be in full force and effect throughout any geographical areas at any time traversed by any Locomotive; (e) not require contributions from other policies held by

the Additional Insureds; (f) waive any right of subrogation of the insurers against the Additional Insureds; and (g) in respect of any liability of any of the Additional Insureds, except for salvage rights (with respect to policies covering loss or damage to the Locomotives), waive the right of insurers to set-off, to counterclaim or to any other deduction, whether by attachment or otherwise, to the extent of any moneys due the Additional Insureds; provided, the Lessee shall use its reasonable efforts (which shall not require the Lessee to make any unreasonable out-of-pocket expenditures) to comply with Section 8.6(ii)(a), (b), (c), (e), (f) and (g). Lessee's insurance policies do not currently provide for all of the aforementioned provisions.

(iii) Prior to the commencement of the Lease Term and upon each renewal of the insurance required hereunder during the Lease Term, or as soon after each such renewal date as is practicable but in any event within five (5) days thereafter, the Lessee shall deliver to the Additional Insureds a certified true copy of all insurance binders involving coverage hereunder. Lessee shall deliver to the Additional Insureds promptly, but in any event within five (5) days after the Lessee's receipt thereof, a certified true copy of all insurance certificates involving coverage hereunder. Lessee shall deliver copies of its insurance policies carried hereunder which Lessee has received to any Additional Insured upon their written request.

(iv) In the event that (a) the Lessee fails to maintain the insurance required by this Section 8.6, each of the Additional Insureds may, at its option, but shall not be required to, upon two (2) Business Days' prior written notice to the Lessee and the other Additional Insureds or (b) Lessee shall not have delivered the copies of all insurance binders and certificates as required under subsection (iii) above, each of the Additional Insureds may, at its option, but shall not be required to, provide such insurance (with regard to Liability Insurance, the policy acquired hereunder shall cover only the risks relating to the Locomotives) and in such event, the Lessee shall, upon demand from time to time, reimburse such Additional Insured or Insureds for the cost thereof together with interest at the Overdue Rate, from the date of payment thereon by such Additional Insured or Insureds, on the amount of the cost to such Additional Insured or Insureds of such insurance which the Lessee shall have failed to maintain and which such Additional Insured or Insureds shall have obtained; provided, that if Lessee thereafter provides proof to the Additional Insureds that it has obtained the coverage required by this Lease, Lessee's reimbursement obligation hereunder will be limited to the period ending two (2) Business Days following receipt by the respective Additional Insured of such written proof.

(v) Nothing in this Section 8.6 shall prohibit the Lessor, the Owner Participant or the Lender from obtaining insur-

ance for its own account and any proceeds payable thereunder shall be as provided in the insurance policy relating thereto; provided, that no such insurance may be obtained that would limit or otherwise adversely affect the coverage of any insurance to be obtained or maintained by the Lessee pursuant to this Section 8.6, it being understood that all salvage rights to the Locomotives shall remain with the Lessee's insurers at all times.

(vi) Prior to the commencement of the Lease Term, and each anniversary of the first Delivery Date during the Lease Term, the Lessee shall provide to the Lessor, the Owner Participant and the Lender an Officer's Certificate of the Lessee stating that the insurance carried by the Lessee complies with the provisions of this Section 8.6.

(viii) The Lessee shall notify the Additional Insureds five (5) days in advance of the due date of any payment of insurance premium if it intends either not to pay such premium for insurance required hereunder or not to provide a binder extending or replacing such insurance coverage.

8.7 Insurance Proceeds. Following payment by the Lessee of Casualty Value and all other amounts due and payable under Section 8.1 hereof, and provided that no Event of Default shall have occurred and be continuing, the Lessee shall be entitled to receive and retain for its own account all proceeds of Property Insurance (except under policies described in Section 8.6(v)) and third party payments (including, but not limited to, third party payments and settlements under American Association of Railroads rules and regulations for casualty and damage) in respect of any Locomotives suffering a Casualty Occurrence. All Property Insurance proceeds (except under policies described in Section 8.6(v)) or third party payments in respect of any Locomotive not suffering a Casualty Occurrence received by an Additional Insured shall be paid to the Lessee upon proof satisfactory to the Additional Insureds that any damage to such Locomotive in respect of which such proceeds were paid has been fully repaired, and provided that no Event of Default shall have occurred and be continuing. The proceeds of any Liability Insurance shall be paid to the Lessee and the Additional Insureds as their interests may appear.

## Section 9. REPORTS; INSPECTION

9.1 Reports. On or before April 15 in each year, commencing with the calendar year 1990, the Lessee will furnish to the Owner Participant, the Lessor, the Lender, and each other holder of a Note who specifically so requests in writing, an Officer's Certificate (a) setting forth as at the preceding December 31 the total number, description, road numbers, and serial numbers of all Locomotives then leased hereunder, the total number, description, road numbers and serial numbers of all

Locomotives that have suffered a Casualty Occurrence during such preceding calendar year or are then undergoing repairs (other than running repairs) or are then withdrawn from use pending repairs (other than running repairs), and setting forth such other information regarding the condition and state of repair of the Locomotives as the Lessor, the Owner Participant, the Lender or such holder may reasonably request, (b) stating that, in the case of all Locomotives repainted or repaired during the period covered by such statement, the numbers and markings required by Section 6.1 hereof have been preserved or replaced, (c) stating that the Lessee has caused to be performed the required maintenance of the Locomotives and that no Default or Event of Default exists or, if one exists, describing the Default or Event of Default and any actions taken or proposed to be taken to cure the Default or Event of Default and (d) describing any additions, modifications, removals or improvements made pursuant to Section 12.2 hereof.

9.2 Inspection. The Lessor, the Owner Participant, the Lender and the holder of any Note, or any agent thereof, shall each have the right, at its own risk and expense, to inspect the Locomotives and the Lessee's records with respect thereto at such reasonable times, and without undue interference with Lessee's operations, as the Lessor, the Owner Participant, the Lender or the holder of any Note may request during the continuance of the Lease Term, but the Lessor, the Owner Participant, the Lender or the holder of any Note shall have no obligation to do so; provided, that as a condition precedent to such entry, Lessee may require each individual desiring entry to execute and deliver to Lessee the form of liability release attached hereto as Exhibit C.

Section 10. DISCLAIMER OF WARRANTIES; WARRANTY OF TITLE

NEITHER THE LESSOR, THE OWNER PARTICIPANT NOR THE LENDER MAKES OR HAS MADE, OR SHALL BE DEEMED TO MAKE OR HAVE MADE, ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF, OR THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE LOCOMOTIVES DELIVERED TO THE LESSEE HEREUNDER, AND NEITHER THE LESSOR, THE OWNER PARTICIPANT NOR THE LENDER MAKES ANY WARRANTY OF MERCHANTABILITY OR FITNESS OF THE LOCOMOTIVE FOR ANY PARTICULAR PURPOSE OR OF TITLE TO THE LOCOMOTIVE OR ANY COMPONENT THEREOF, OR ANY OTHER REPRESENTATION OR WARRANTY EXPRESS OR IMPLIED, WITH RESPECT TO ANY LOCOMOTIVE, EITHER UPON DELIVERY THEREOF TO THE LESSEE OR OTHERWISE, it being agreed that all such risks, as between the Lessor, the Owner Participant, the holder of any Note and the Lessee, are to be borne by the Lessee. The Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the Lease Term 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 manufacturer of each Locomotive; provided, 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. Neither the Lessor, the Owner Participant nor the Lender shall have any responsibility or liability to the Lessee or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Locomotive 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 Locomotive 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 Locomotive. The Lessee's delivery of the Certificate of Inspection and Acceptance relating to the Locomotives as described in Section 3 hereof shall be conclusive evidence as between the Lessee and the Lessor that each Locomotive is in all respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor, the Owner Participant or the Lender based on any of the foregoing matters.

The Lessor covenants that, during the Lease Term, the Lessor shall not create or suffer or permit any Lessor's Liens on the Locomotives and, should any such Lessor's Lien arise during the Lease Term, the Lessor shall promptly discharge all such Lessor's Liens.

#### Section 11. LAWS AND RULES

11.1 Compliance. The Lessee agrees, for the benefit of the Lessor, the Owner Participant and the Lender, to comply in all material respects (including, without limitation, with respect to the use, maintenance and operation of each Locomotive), with all laws of the United States and the jurisdictions in which its operations involving the Locomotives may extend, with the Interchange Rules of the Association of American Railroads, if applicable, and with the applicable rules of the United States Department of Transportation, the Federal Railroad Administration, the ICC and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Locomotives, to the extent that such laws and rules affect the title, operation, maintenance or use of the Locomotives. In the event that such laws or rules require any alteration, replacement or addition of or to any part on any Locomotive, the Lessee will conform therewith at its own expense; provided, that the Lessee may at its own expense, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the

Lessor or the Lender, adversely affect the property or rights of the Lessor or the Lender under this Lease or under the Loan and Security Agreement or result in any liability, criminal or otherwise, on the part of the Lessor, the Lender, or the holder of any Note.

11.2 Reports by Lessee. Except as provided pursuant to Section 9 of the Participation Agreement, the Lessee agrees to prepare and deliver to the Lessor, the Owner Participant and the Lender within a reasonable time (or, to the extent permissible, file on behalf of the Lessor and the Lender) any and all reports (other than income tax returns) to be filed by the Lessor, the Owner Participant or the Lender with any federal, state or other regulatory authority by reason of the ownership by the Lessor or the Lender of the Locomotives or the leasing thereof to the Lessee. The Lessor, the Owner Participant and the Lender each agree to inform the Lessee of any such reports of which it has knowledge.

## Section 12. MAINTENANCE

12.1 Maintenance. The Lessee agrees that, at its own cost and expense, it will (i) maintain and service each Locomotive (including any parts installed on or replacements made to any Locomotive and considered an accession thereto as herein below provided) which is subject to this Lease consistent with Lessee's standards for similar owned or leased locomotives, so that each Locomotive, and each component thereof, will remain (a) in good operating order, (b) in compliance with any and all applicable laws, regulations, requirements and rules, including, without limitation, those set forth in Section 11.1 hereof, and (c) in compliance with the Manufacturer's recommendations, maintenance standards, service bulletins, manuals and preventive maintenance schedules relating to the Locomotives, all as in effect on each Delivery Date and published from time to time during the Lease Term; and (ii) maintain all records, logs and other materials required by the Association of American Railroads or the Department of Transportation, or any other governmental authority having jurisdiction over the Locomotives or the Lessee, to be maintained in respect of each Locomotive.

12.2 Additions and Accessions. Subject in all events to Section 12.1 hereof, the Lessee, at its own cost and expense, may from time to time make such other additions, modifications and improvements to the Locomotives during the Lease Term and remove parts and improvements which are not otherwise required to remain affixed thereto, to the extent that the value, utility and remaining useful life of the Locomotives are not materially impaired. The additions, modifications and improvements made by the Lessee under the preceding sentence shall be owned by the Lessee, except title shall vest in the Lessor to the extent such additions, modifications or improvements are made in order to

comply with Section 11.1 and Section 12.1 hereof, or are parts installed on and additions made to any Locomotives (a) which are replacements of existing parts constituting part of the Locomotives owned by Lessor, (b) which are not readily removable without causing material damage to such Locomotive, (c) the cost of which is included in the Purchase Price of such Locomotive, or (d) in the course of ordinary maintenance of the Locomotives.

### Section 13. DEFAULT

13.1 Events of Default; Remedies. 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 (whatsoever the reason for its occurrence, whether the same shall be voluntary or involuntary or come about or be effected by operation of law or pursuant to or in compliance with any judgment, order or decree of any court of any other rule or regulation of any administrative commission, agency or authority):

(1) default shall be made in payment of any amount provided for in Section 4, 8 or 16 (other than as noted in (2) below) hereof or in Section 9 of the Participation Agreement, and such default shall continue for ten (10) Business Days after written notice thereof to the Lessee from the Lessor or the Lender or their respective permitted assigns;

(2) the Lessee shall at any time fail to comply with the provisions of Section 8.6 hereof regarding insurance, and such default shall continue for fifteen (15) days after written notice to the Lessee from the Lessor, the Owner Participant, the Lender or the holder of any Note, specifying the default and demanding the same to be remedied;

(3) 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 (other than those noted in (1) or (2) above), and in the Participation Agreement, and such default shall continue for thirty (30) days after written notice to the Lessee from the Lessor, the Owner Participant, or the holder of any Note, specifying the default and demanding that the same be remedied;

(4) any representation or warranty made by the Lessee herein, in the Participation Agreement or in any certificate or statement furnished to the Lessor, the Owner Participant or the holder of any Note pursuant to or in connection with any such agreements, shall have

been untrue or misleading in any material respect as of the date of making thereof;

(5) the Lessee shall make an assignment for the benefit of creditors or shall fail generally to pay its debts as they become due; or any order, judgment or decree shall be entered adjudicating the Lessee bankrupt or insolvent; or the Lessee shall petition or apply to any tribunal for the appointment of a trustee, receiver, custodian or liquidator of the Lessee or of any substantial part of its assets or shall commence any proceedings relating to the Lessee or any substantial part of its assets under any bankruptcy, reorganization, compromise, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect; or any such petition or application shall be filed, or any such proceedings shall be commenced, against the Lessee and the Lessee by any act shall indicate its approval thereof, consent thereto or acquiescence therein; or

(6) any order, judgment or decree shall be entered appointing any such trustee, receiver, custodian or liquidator or approving a petition in any such proceedings and such order, judgment or decree shall remain unstayed and in effect for more than sixty (60) days; or any order, judgment or decree shall be entered in any proceedings against the Lessee decreeing its dissolution and such order, judgment or decree shall remain unstayed and in effect for more than sixty (60) days;

then, in any such case, the Lessor, at its option, subject to all mandatory provisions of applicable law, may declare this Lease in default, and, at its option, may,

(i) 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;

(ii) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Locomotives shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as herein provided; and thereupon the Lessor may by its agents enter upon the premises of the Lessee or other premises, insofar as the Lessee may be lawfully authorized to so permit, where any of the Locomotives may be located, without judicial process if this can be done without breach of the peace and in accordance with due process of law,

and take possession of all or any of such Locomotives and thenceforth hold, possess, sell, operate, lease and enjoy the same free from any right of the Lessee, its successors or assigns, to use the Locomotives for any purposes whatsoever and without any duty to account to the Lessee for such action or inaction or for any proceeds arising therefrom (any such proceeds to be first applied to the Lessee's obligations hereunder); 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 termination (computing the rent for any period ending prior to January 15, 2010, or during the Renewal Term, for any number of days less than that of the full period by multiplying the rent for such full 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 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 that the Lessor, in its sole discretion, shall specify with respect to each Locomotive (i) all amounts of Basic Rent, Renewal Rent and Supplemental Rent past due and owing under the Lease, plus (ii) any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Lessor shall have sustained by reason of the breach of any covenant, representation or warranty of this Lease other than for the payment of rental, plus (iii) all expenses and costs associated with the Lessor's exercise of its remedies hereunder, including without limitation, all selling, re-leasing, storage, maintenance, repair and insurance costs, and all related attorneys' fees, plus (iv) in the Lessor's sole discretion, either (I) the excess of the then-present value, at the time of such termination, of the entire unpaid balance of all rent hereunder which would, but for the Lessee's default, have accrued hereunder from the date of such termination to the end of the Basic Term or Renewal Term, as the case may be, such present value to be computed on the basis of a discount rate equal to the Federal Reserve Discount Rate, compounded semiannually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated over the then-present value of the rental which the Lessor reasonably estimates to be obtainable for such Locomotive during such period, such present value to be computed on the basis of a discount rate equal to the Federal Reserve Discount Rate, compounded semiannually from the respective dates upon which rents would have been payable hereunder had this Lease not been terminated or, if such Locomotive is

sold, the net proceeds of the sale, or (II) an amount equal to the excess, if any, of the Casualty Value as of the Casualty Payment Date on or next preceding the date of termination over (x) the amount the Lessor reasonably estimates to be the sales value of such Locomotive at such time; provided, however, that in the event the Lessor shall have sold any Locomotive in the commercially reasonable manner, the Lessor, in lieu of collecting any amounts payable by the Lessee based on the preceding clause (x) with respect to such Locomotive, may, if it shall so elect, demand that the Lessee pay to the Lessor and the Lessee shall pay to the Lessor on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty Value for such Locomotive as of the Casualty Payment Date on or next preceding the date of termination over the proceeds of such sale; or

(iii) exercise any other right or remedy available to it by law or by agreement, and in any event may recover, 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 any and 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 Locomotive (including costs of inspection).

13.2 Remedies Not Exclusive; Waiver. The remedies provided in this Lease 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 rent 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, the Lessee, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, any other requirements with respect to the enforcement of the Lessor's rights under this Lease and any and all rights of redemption.

13.3 Failure to Exercise Rights Is Not Waiver. The failure of the Lessor, the Owner Participant, the Lender or any other holder from time to time of any Note 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.

13.4 Notice of Event of Default. The Lessee agrees to furnish the Lessor, the Owner Participant, the Lender, and any other holder from time to time of a Note who shall have requested of the Lessee in writing that notice of the type referred to below be furnished to it, promptly upon any responsible officer becoming aware of any condition which constituted or constitutes a Default or an Event of Default, written notice specifying such condition and the nature and status thereof. For the purposes of this Section 13.4, a "responsible officer" shall mean, with respect to the subject matter of any covenant, agreement or obligation of the Lessee contained in this Lease, any corporate officer of the Lessee who, in the normal performance of his operational responsibilities, would have knowledge of such matter and the requirements of this Lease with respect thereto.

#### Section 14. RETURN OF LOCOMOTIVES UPON DEFAULT

14.1 Return of Locomotives. If this Lease shall terminate pursuant to Section 5.2 or Section 13 hereof, the Lessee shall forthwith deliver possession of the Locomotives to the Lessor. Each Locomotive so delivered shall be in good operating order, shall comply with all laws and rules referred to in Section 11.1 as they apply to the original user of the Locomotives, and shall have attached or affixed thereto any addition, modification or improvement considered an accession thereto as provided in Section 12 hereof and shall have removed therefrom, if so requested by the Lessor or the Lender, at the Lessee's expense, (i) any addition, modification or improvement which, as provided in Section 11 hereof, is owned by the Lessee and (ii) any insignia permitted pursuant to Section 6.2. Notwithstanding the foregoing, each Locomotive shall be in a condition at least as good as such Locomotive would have been in had it been maintained in accordance with all the terms and conditions of this Lease and was ready to be returned in conformity with the provisions of Section 17 hereof. For the purpose of delivering possession of any Locomotive or Locomotives as above required, the Lessee shall at its own cost, expense and risk:

(a) forthwith and in the usual manner (including, but not by way of limitation, to the extent legally required by applicable law, rules or regulations to protect the Lessor's or the Lender's interest in the Locomotives, giving prompt telegraphic and written notice to the Association of American Railroads and all

railroads to which any Locomotive or Locomotives have been interchanged or which may have possession thereof to return the Locomotive or Locomotives) place such Locomotives upon such storage tracks in the continental United States as the Lessee may select (but in no event may more than four (4) such sites be selected);

(b) cause such Locomotives to be stored on such tracks at the risk of the Lessee without charge to the Lessor, the Lender, the Owner Participant or any other holder from time to time of any Note for insurance, rent or storage until all such Locomotives have been sold, leased or otherwise disposed of by the Lessor; and

(c) cause the same to be transported to any railroad interchange point of the Lessee, as directed by the Lessor or the Lender.

The assembly, delivery, storage, insurance and transporting of the Locomotives as hereinbefore provided shall to the extent not otherwise provided be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction 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 assemble, deliver, store and transport the Locomotives. During any storage period, the Lessee will, at its own cost and expense, maintain and keep the Locomotives in the manner set forth in Section 12.1 hereof, insure the Locomotives in accordance with the provisions of Section 8.6 hereof and permit the Lessor, the Lender or any Person designated by either of them, including the authorized representative or representatives of any prospective purchaser, Lessee or other user of any Locomotive, to inspect the same, subject to Section 9.2 hereof. In the event any Locomotive is not assembled, delivered and stored, as hereinabove provided, within fifteen (15) days following Lessor's instructions with respect to the Locomotives, the Lessee shall, in addition, pay to the Lessor for each day an amount equal to the per diem equivalent of the Basic Rent or Renewal Rent, as the case may be, then in effect immediately prior to such termination; provided, such payment shall not affect the obligation of the Lessee to redeliver the Locomotives in accordance with the first sentence of this Section 14.1 and shall not limit the damages the Lessor may seek for the Lessee's breach of this covenant.

14.2 Lessor Appointed Agent of Lessee. Without in any way limiting the obligation of the Lessee under the foregoing provisions of this Section 14, 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 Locomotive to the Lessor, to

demand and take possession of such Locomotive in the name and on behalf of the Lessee from whoever shall then be in possession of such Locomotive.

## Section 15. ASSIGNMENT, POSSESSION AND USE

15.1 Assignment; Consent; Security for the Lessor's Obligations to Holders of Notes. In order to secure the indebtedness evidenced by the Notes, the Loan and Security Agreement provides, among other things, for the assignment, by the Lessor to the Lender, of this Lease to the extent set forth therein and for the creation of a security interest in the Collateral referred to therein for the benefit of the Lender. The Lessee hereby consents to the collateral assignment by the Lessor of the Lessor's right, title and interest in and to this Lease to the Lender pursuant to the terms of, and to the extent set forth in, the Loan and Security Agreement and agrees that it will make all payments payable hereunder to the Lessor by Federal Wire Transfer to the Lessor at Meridian Bank, Philadelphia, PA, ABA No. 0131000095 for the account of Meridian Asset Management, account number 01313851, Attention: Corporate Trust, Reference: Soo Line Railroad, or at such place or to the attention of such person or department as the Lessor may specify from time to time in writing delivered to the Lessee not less than fifteen (15) Business Days prior to the due date of the payment to be made at the place specified in such writing for application by the Lessor in accordance with the Loan and Security Agreement. The Lessee acknowledges that such assignment and security interest provide for the exercise by the Lender (but, except as specified in the Loan and Security Agreement, not to the exclusion of the Lessor) of all rights of the Lessor hereunder (other than rights with respect to Excepted Rights in Collateral and as set forth in the Loan and Security Agreement) to give any consents, approvals, waivers, notices or the like, to make any elections, demands or the like or to take any other discretionary action hereunder and acknowledges receipt of an execution counterpart of the Loan and Security Agreement as in effect as of the date hereof.

## 15.2 Lessee's Rights to Use the Locomotives and to Sublease the Locomotives; No Liens.

(i) So long as no Event of Default shall have occurred and be continuing hereunder, the Lessee shall be entitled to the possession and use of the Locomotives in accordance with the terms of this Lease. The Lessee agrees to use or cause the Locomotives to be used solely within the United States of America and Canada, any such use to be subject to the requirements of Section 18.2 hereof. The Lessee shall be entitled to sublease (but not to assign except as provided in Section 15.3) its leasehold interest under this Lease in the Locomotives or any of them only (a) as provided in paragraph (ii) below or (b) pursuant to such arrangements and to such parties as shall be subject to the

reasonable approval (evidenced by a written instrument) of the Lessor and the Lender. The Lessee, at its own expense, will forthwith pay or discharge any and all sums claimed by any party which, if unpaid, might become a lien, charge, security interest or other encumbrance (other than Permitted Liens and Lessor's Liens) upon or with respect to any Locomotive (including any accession thereto), or the interest of the Lessor, the Owner Participant, the Lender or the Lessee therein, and will promptly discharge any such lien, claim, security interest or other encumbrance which arises.

(ii) So long as no Event of Default shall have occurred and be continuing hereunder, the Lessee shall be entitled to sublease any or all of the Locomotives, without the prior written consent of the Lessor or the Owner Participant; provided, that the Lessee's obligations hereunder shall continue in full force and effect as the obligations of a principal and not of a surety irrespective of any such sublease and, if requested by the Owner Participant or the Lender, the Lessee shall provide opinions of counsel reasonably satisfactory to the Owner Participant and the Lender to the effect that the Locomotives so subleased would, in the event that a petition under the United States Bankruptcy Code were filed by either the Lessee or such sublessee, continue to be rolling stock, subject to Section 1168 of the Bankruptcy Code, or similar successor provision, if any; provided further, that the Lessee shall not, without the Lessor's prior written consent, sublease the Locomotives to, or permit the sublease of the Locomotives to, or by, any Person who shall use any Locomotive in service involving operation or maintenance outside the United States of America except that, subject to compliance with Section 18.2 hereof, service in Canada shall be permitted. Lessee may receive and retain compensation for the use of any of the Locomotives from railroads or other entities so using such Locomotives; provided that should an Event of Default have occurred and be continuing, Lessor shall be entitled to receive such compensation (but shall be required to reimburse Lessee for any portion thereof representing compensation for maintenance actually performed by Lessee) and credit the same against payments due by Lessee hereunder. Each sublease permitted by this paragraph shall (a) be expressly subject and subordinate to all of the provisions of this Lease and to the rights and remedies of the Lender under the Loan and Security Agreement and the Lessor under this Lease in respect of the Locomotives covered by such sublease upon the occurrence of a Default or an Event of Default thereunder or hereunder and (b) expressly require the Locomotives subject thereto to be returned as directed by the Lessor upon notice to such assignee or sublessee that an Event of Default shall have occurred and be continuing. Lessee shall, within twenty (20) days after the execution of any such sublease with a term in excess of sixty (60) days, deliver a true and correct copy thereof to the Owner Participant, the Lessor and the Lender.

15.3 Transfers by Lessee Through Merger, Acquisition or Consolidation. The Lessee may assign or transfer its interests in the Locomotives to any entity with which Lessee shall have merged or consolidated or which shall have acquired all or substantially all of the railroad properties of Lessee; provided, that (i) immediately after giving effect to the consummation of such transaction, no Default or Event of Default under the Lease shall have occurred and be continuing, (ii) the surviving, resulting or transferee entity shall execute and deliver an agreement satisfactory in form and scope to the Lender and the Lessor whereby such entity agrees to be bound by all the terms of, and assumes all of the Lessee's obligations under, each Operative Document to which the Lessee is or is to be a party, and (iii) after giving effect to the consummation of the transaction (except a transaction with a Qualified Affiliate of the Lessee), the Locomotives will continue to be rolling stock, subject to Section 1168 of the Bankruptcy Code, or similar successor provisions, if any.

Within forty-five (45) days following any merger, consolidation or transfer of assets hereunder, the Lessee shall give notice to the Lessor and the Lender specifying the name and address of the Person with whom it is consolidating or merging or to whom it is transferring all or substantially all of its assets and such other additional information and opinions of counsel as may be required by the Lessor or the Lender to demonstrate compliance with this Section 15.3.

15.4 Transfers by Lessor or Owner Participant. Without limiting the Lender's rights under the Participation Agreement, the Lessor and the Owner Participant shall be entitled to transfer their respective interests in this Lease and the Trust Estate only to other sophisticated institutional investors or to members of their respective consolidated tax group without the prior approval of the Lessee. Unless an Event of Default has occurred and is continuing, no such transfer by the Lessor or the Owner Participant shall interfere with the Lessee's rights under this Lease with respect to the Lessee's use of the Locomotives.

## Section 16. OPTIONS-PURCHASE, RENEWAL AND TERMINATION

### 16.1 Purchase Options.

(i) If this Lease has not been earlier terminated and no Event of Default has occurred and is continuing hereunder, then the Lessee may, by written notice delivered to the Lessor not less than 210 days prior to the end of the Basic Term, elect to purchase any (on a random selection basis) or all of the Locomotives then subject to this Lease at a purchase price equal to the lesser of (a) the Fair Market Value thereof (as determined

below) or (b) 37.5% of the Purchase Price thereof, payable on the last day of the Basic Term.

(ii) If this Lease has not been earlier terminated and no Event of Default has occurred and is continuing hereunder, then the Lessee may, by irrevocable written notice delivered to the Lessor not less than 120 days prior to January 15, 2005 or January 15, 2008, elect to purchase all of Equipment Group A and/or Equipment Group B, but not less than all of such Equipment Group then subject to this Lease, at a purchase price equal to the sum of (i) the Termination Value thereof at such date and any other sums then due to the Lender and Owner Participant (which Termination Value shall not include any Yield Maintenance Premium which shall be paid directly by Lessee to Lender pursuant to Section 12 of the Participation Agreement) and (ii) 3.5% of the Purchase Price thereof, payable on January 15, 2005 or January 15, 2008, as the case may be.

(iii) (A) If Lessee shall elect in the notice of purchase delivered pursuant to Section 16.1(ii) to purchase all, but not less than all, the Locomotives then subject to this Lease, then Lessee shall be entitled to elect in the same notice to purchase such Locomotives subject to assumption by Lessee with recourse of all obligations of the Lessor under the Loan and Security Agreement and Notes as hereinafter set forth, in which event the Lessee shall receive credit against the purchase price thereof equal to the amount of outstanding principal of the Notes and interest accrued thereon on such January 15, 2005, or January 15, 2008, as the case may be, before payment of the installment of principal and interest then due which is included in the Termination Value as calculated pursuant to Section 16.1(ii) and shall be paid by Lessor from the cash portion of the purchase price. If the Lessee makes such election, the Lessee shall issue to the Owner Trustee promissory notes of the Lessee ("Lessee Notes") in accordance with Section 16.1(iii)(B) hereof as a condition precedent to such purchase, and the Lender shall accept the Lessee Notes in satisfaction of the obligation of the Owner Trustee to prepay in cash all the Notes pursuant to Section 2.11(ii) of the Loan and Security Agreement, subject to the following terms and conditions:

(1) the Lessee Notes shall be in principal amounts equal to the respective principal amounts of the prepayments, shall respectively bear interest at the same rate as the Notes being prepaid, shall be payable on the same dates and amortized in the same manner as the Notes being prepaid, and shall be substantially in the form of the Notes being prepaid;

(2) the Lender shall have no obligation to accept a Lessee Note if, on the date of prepayment, (A) there

exists a Loan and Security Agreement Default or a Loan and Security Agreement Event of Default, or (B) there shall have occurred an event or there shall exist any circumstance which, upon giving effect to the issuance of the Lessee Note, would constitute an "Event of Default" thereunder or, upon the giving of notice or the passing of time, or both, would constitute an "Event of Default" thereunder;

(3) the Owner Trustee shall have endorsed and delivered the Lessee Notes to the Lender, without recourse, on the date of prepayment, and the Lessee shall have arranged with the Lender on terms satisfactory to the Lender to execute Lessee Notes payable to the Lender in exchange for the Lessee Notes endorsed and delivered to the Lender by the Owner Trustee; and

(4) an amended and restated Loan and Security Agreement and related documents shall have been entered into which incorporate the obligations of Lessee under the Lease and the Participation Agreement.

(B) If this Lease is to be terminated pursuant to this Section 16.1(iii) and the Lessee proposes to issue Lessee Notes to the Owner Trustee so as to permit the Owner Trustee to endorse and deliver such Lessee Note to the Lender in accordance with Section 16.1(iii)(A) hereof, the following procedures, terms and conditions shall apply:

(1) the notice to be given by the Lessee pursuant to Section 16.1(iii) hereof shall specify that the Lessee proposes to issue a Lessee Note upon such termination, and there shall be attached to such notice a draft of the completed form of Lessee Note to be issued;

(2) the obligation of the Owner Trustee to accept such Lessee Note upon such termination shall be conditioned upon the Lessee delivering to the Owner Trustee on the date of prepayment a certificate of the Lender addressed to the Owner Trustee to the effect that the conditions set forth in Section 16.1(iii)(A) hereof to acceptance of Lessee Notes have been satisfied or waived and that the Lender is willing to and will accept such Lessee Notes in full satisfaction of all obligations of the Owner Trustee to the Lender arising by reason of such termination; and

(3) The Lessee shall be required to pay the Owner Trustee in cash all amounts otherwise then required to be paid by the Lessee under this Lease.

(C) Lessee shall pay the reasonable fees, expenses and disbursements of counsel for the Lender, the Lessor and the Owner Participant for services rendered in connection with the transactions contemplated by this subsection, whether or not such transactions are consummated.

(iv) If this Lease has not been earlier terminated and no Event of Default has occurred and is continuing hereunder, then, upon payment of the purchase price of all of the Locomotives to be purchased pursuant to an exercise by the Lessee of its option to purchase such Locomotives under this Section 16.1, and upon payment to Lender by Lessee of any Yield Maintenance Premium then due, the Lessor shall, upon request of the Lessee, execute and deliver to the Lessee, or the Lessee's assignee or nominee, a bill of sale for such Locomotives such as will transfer to the Lessee title to such Locomotives, as-is, where-is and without warranty, express or implied, except that the Locomotives are free and clear of all Lessor's Liens.

16.2 Renewal Option. If this Lease has not been earlier terminated and no Event of Default has occurred and is continuing hereunder, then the Lessee may, by written notice delivered to the Lessor not less than 210 days prior to the end of the Basic Term or Renewal Term, as the case may be, with respect to any (on a random selection basis) or all of the Locomotives then subject to this Lease, elect to extend this Lease for a one (1) year Renewal Term and thereafter for up to two (2) additional consecutive one (1) year Renewal Terms for a total of three (3) consecutive Renewal Terms after the Basic Term. The rent payment amount for such Locomotives during the Renewal Term shall be an amount equal to 50% of the average Basic Rent therefor, payable in semiannual payments, in arrears (the "Renewal Rent"), on each January 15 and July 15 during the Renewal Term.

16.3 Determination of Fair Market Value.

(i) Fair Market Value shall be determined for the Locomotives on the basis of, and shall be equal in amount to, the purchase price which would be obtained in an arm's length transaction between an informed and willing purchaser and an informed and willing seller under no compulsion to purchase or sell but shall not include shipping costs.

(ii) If, after forty-five (45) days from the giving of notice to the Lessor of the Lessee's election to purchase Locomotives or exercise its renewal option, the Lessor and the Lessee are unable to agree after negotiating in good faith upon a determination of the Fair Market Value of such Locomotives, the Lessee may, upon written notice to the Lessor, terminate its election to purchase the Locomotives. If the Lessee does not terminate its

election, the Fair Market Value shall be determined in accordance with the foregoing definition by the following procedure:

The Lessee will provide Lessor the name of an appraiser that would be satisfactory to Lessee and the Lessee and Lessor will consult with the intent of selecting a mutually acceptable appraiser. If a mutually acceptable appraiser is selected, the Lessee shall bear the cost thereof. If the Lessee and Lessor are unable to agree upon a single appraiser within fifteen (15) days, the Lessor will retain an appraiser within fifteen (15) days and the appraiser selected by Lessee and the appraiser retained by the Lessor shall select a consensus appraiser within thirty (30) days. If the appraisers cannot agree on a consensus appraiser within such thirty (30) days, the Fair Market Value shall be determined by binding arbitration pursuant to the Commercial Arbitration Rules of the AAA and the cost of such determination shall be borne equally by the Lessee and the Lessor, except that the Lessee shall bear the cost of the appraiser selected by Lessee and the Lessor shall bear the cost of the appraiser selected by the Lessor. If the parties are able to agree upon a single appraiser, or the two appraisers are able to agree upon a consensus appraiser, the single appraiser or the three (3) appraisers, as the case may be, shall within sixty (60) days make a determination of such Fair Market Value. If there shall be a panel of three (3) appraisers, the appraisal which differs most from the other two appraisals shall be excluded and the remaining two determinations shall be averaged and such average shall constitute the Fair Market Value. If there shall be a panel of three appraisers, the Lessee shall bear the cost of the appraiser selected by Lessee, the Lessor shall bear the cost of the appraiser selected by the Lessor, and the Lessee and Lessor shall equally share the cost of the consensus appraiser. The appraiser or appraisers shall base the appraisal on the assumption that the subject Locomotives have been maintained and is otherwise in compliance with Section 12 hereof.

#### 16.4 Optional Termination Upon Economic Obsolescence.

(i) In the event that, at any time on or after January 15, 1995, the Lessee shall determine in good faith that, in its reasonable judgment evidenced by a written certificate to such effect signed on behalf of the Lessee by its chief financial officer and delivered to the Lessor and the Lender, a Locomotive has become (a) economically obsolete or (b) surplus to its needs, then the Lessee shall have the right, following not less than ninety (90) days prior written notice to the Lessor and the

Lender, to terminate this Lease (a "Termination") with respect to such Locomotive as of the Termination Date specified in such notice; provided, that no Default or Event of Default has occurred and is continuing and on the Termination Date Lessee shall have paid to Lessor all Basic Rent, Supplemental Rent and all other amounts due hereunder as of such date and complied in full with the further provisions of this Section 16.4. Any notice of Termination pursuant to this Section shall be accompanied by the written certificate referred to in this subsection.

(ii) If Lessee has asserted that grounds for termination exist pursuant to Section 16.4(i)(a), at its option, the Lender may challenge such grounds for termination. Lessee may elect to deposit in escrow upon terms reasonably satisfactory to Lender and Lessee any difference in the Yield Maintenance Premium which would have been payable by Lessee pursuant to Section 12 of the Participation Agreement if the Locomotive was not obsolete but surplus to Lessee's needs, in which event the Lease shall terminate with respect to such Locomotive in accordance with the terms hereof. Such a dispute shall be submitted to an arbitrator in accordance with the Commercial Arbitration Rules of the AAA, except as modified hereby. The arbitrator will be selected in the following manner from among a list created by the AAA of proposed experts with at least five (5) years experience related to the railroad industry. Upon their failure to agree to an arbitrator within fourteen (14) days after both parties have received this list, an arbitrator may be appointed by the AAA from the list of proposed arbitrators (at the request of either the Lender or the Lessee).

The costs of such an arbitration will be paid by the party who does not prevail before the panel. The Lessee shall bear the burden of proving by a preponderance of the evidence that it is entitled to terminate the Lease for the Locomotive or Locomotives at issue pursuant to Section 16.4(i)(a).

(iii) During the period after the giving of such notice until the day preceding the Termination Date, the Lessee shall use its best efforts to obtain cash bids for the purchase of all Terminated Locomotives, and the Lessee shall at least thirty (30) days prior to such Termination Date certify to the Owner Participant the amount of each such bid and the name and address of the party (which shall not be an Affiliate of the Lessee or any party from whom the Lessee or any such Affiliate intends to lease back such Terminated Locomotive) submitting such bid. On the Termination Date, unless (x) the Lessee shall have revoked its election to terminate this Lease under subsection (vi) below, or (y) the Lessor shall have elected to retain the Locomotives under subsection (vii) below, or (z) no bids shall have been received, the Lessor shall sell, without recourse or warranty, express or implied, except as to Lessor's Liens, all

Terminated Locomotives for cash to the bidder or bidders who shall have submitted the highest bid or bids prior to the Termination Date (or any other bidder or bidders designated by the Lessor in its sole discretion), and shall warrant to such bidder or bidders that the title to such Terminated Locomotives shall be free and clear of all Lessor's Liens. The total sale price realized at such sale shall be paid to the Lessor.

(iv) On such Termination Date, the Lessee shall pay to the Lessor the sum of (a) the excess, if any, of the Termination Value of each Terminated Locomotive computed as of such date over the proceeds of the sale of such Terminated Locomotive after the deduction of all expenses incurred by the Lessor under the Lease and (b) all unpaid rental payments, if any, then due under the Lease (excluding the installment of Basic Rent otherwise due on the Termination Date), less (c) if Lessor shall have declined to accept the highest bid, the difference between the highest bid or bids submitted and the bid or bids designated by the Lessor.

(v) In the event of any such sale and the receipt by the Lessor of the sale proceeds in respect of any Terminated Locomotive, the obligation of Lessee to pay Basic Rent pursuant to Section 4 hereof in respect of such Terminated Locomotive on each date which an installment of Basic Rent is due and payable hereunder (as well as all other obligations of Lessee hereunder in respect of such Terminated Locomotive) shall continue to and including the Termination Date but shall then terminate, provided that the Lessee shall have complied with all of the other provisions of this Section 16.4 with respect to such Terminated Locomotives. The Lessor may, but shall be under no duty to, solicit bids, inquire into the efforts of the Lessee to obtain bids or otherwise take any action or incur any cost or expense in connection with any sale, other than to decide to accept or reject any bid and to transfer or to cause to be transferred all the Lessor's right, title and interest in and to the Terminated Locomotives to the purchaser thereof. Any such sale shall be free and clear of all the Lessee's rights to such Terminated Locomotive, but otherwise shall be made without warranties other than against Lessor's Liens.

(vi) At any time after giving a Termination notice pursuant to this Section and prior to the thirtieth (30th) calendar day preceding the related Termination Date, the Lessee may revoke its election to terminate this Lease with respect to the related Locomotives, and this Lease shall thereupon continue in effect with respect to such Locomotives as though such election to terminate this Lease had not been made, but in such event the Lessee shall pay all expenses incurred by the Lessor pursuant to this Section.

(vii) If the Lessee shall exercise its option to terminate with respect to any Terminated Locomotive, the Lessor

may, notwithstanding such election by the Lessee, by written notice to the Lessee and the Lender given not later than five (5) Business Days after Lessee shall notify the Owner Participant of bids pursuant to subsection (iii) above, elect to retain the Terminated Locomotives, in which case the Lessee shall not be obligated to pay the Termination Value for such Terminated Locomotives as above provided. In the event the Lessor shall so elect to retain the Terminated Locomotives, the Lessee shall deliver the Terminated Locomotives to the Lessor in accordance with the provisions of Section 17 hereof.

Section 17. RETURN OF LOCOMOTIVES UPON EXPIRATION OF TERM

As soon as practicable on or after the expiration of the Lease Term, or any prior termination of this Lease for any reason except pursuant to Section 5.2 or Section 13 hereof, and in any event not later than fifteen (15) days after any such termination, the Lessee shall return each Locomotive with respect to which the Lease has terminated to the Lessor by causing such Locomotives to be moved, at Lessee's expense, to a site on Lessee's tracks to be determined by Lessee (but in no event may more than four (4) such sites be selected for all Locomotives returned). The Lessee shall permit the Lessor to store such Locomotives on such tracks for a period not exceeding ninety (90) days; provided that Lessor shall pay Lessee an amount equal to Lessee's standard per diem storage charges for each day of storage if the actual storage period exceeds ninety (90) days. During any such storage period, risk of loss of such Locomotives shall be the responsibility of the Lessor; provided, that any damage or loss to any Locomotive resulting from gross negligence or willful misconduct of the Lessee or from the Lessee's use or transport of any Locomotive to storage locations shall be the responsibility of the Lessee. The Lessee agrees upon the request of the Lessor to provide, at the Lessor's expense (based upon the Lessee's then-prevailing terms and conditions therefor), such maintenance services for the Locomotives as the Lessor shall request. 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 of any such Locomotive, to inspect the same; provided, that as a condition precedent to such inspection, the Owner Participant shall cause each such individual desiring to inspect to execute and deliver to Lessee Lessee's form of liability release attached hereto as Exhibit C. Each Locomotive returned to the Lessor pursuant to this Section shall be in compliance with all Association of American Railroads and Federal Railroad Administration regulatory requirements and all applicable laws, regulations, requirements and rules, of any governmental agency or other organization with jurisdiction over the use of such Locomotives in interstate transportation, as such requirements apply to the original user of such Locomotives. The assembly,

delivery, storage and maintenance of the Locomotives 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 assemble, deliver, store and maintain the Locomotives.

Any Locomotives not delivered on the date of expiration of the Lease Term, any renewal thereof, or any prior termination of this Lease referred to in this Section, or any Locomotive not returned in accordance with this Section shall continue to be subject to all of the rights and duties of the parties set forth in this Lease. If Lessee shall keep any such Locomotives in service after the expiration of the Lease Term or shall fail to place such Locomotives in storage as provided above, it shall pay an amount to Lessor equal to the per diem equivalent of the Basic Rent or Renewal Rent, as the case may be, per Locomotive for each day of service or failure to store such Locomotive as required hereunder.

#### Section 18. RECORDING

18.1 ICC; States. The Lessee, at its own expense, will cause this Lease, the Lease Supplement relating to the Locomotives being delivered on each Delivery Date, the Loan and Security Agreement, the Loan and Security Agreement Supplement relating to the Locomotives being delivered on each Delivery Date, and all supplements to the Lease and to the Loan and Security Agreement to be filed with the ICC pursuant to 49 U.S.C. § 11303 prior to the delivery and acceptance hereunder of any Locomotive. The Lessee, at its own expense, 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 State of Minnesota (and, if the Lessee changes its chief executive office to any other state) in the same manner as if the Lessor's interest in this Lease represented a security interest and in any other state of the United States of America or the District of Columbia where filing is necessary or reasonably requested by the Lessor or any holder from time to time of any Note for the purpose of proper protection, to the satisfaction of counsel to the Owner Participant and any holder from time to time of any Note, of their interests and rights under this Lease and the Loan and Security Agreement for the purpose of carrying out the intention of this Lease and the Loan and Security Agreement.

18.2 Canada. The Lessee, at its own expense, prior to the transportation or use of any Locomotive in Canada but in no event later than thirty (30) days after the applicable Delivery

Date will (i) cause this Lease, the Lease Supplement relating to the Locomotives being delivered on such Delivery Date, the Loan and Security Agreement, and the Loan and Security Agreement Supplement relating to the Locomotives being delivered on such Delivery Date, to be deposited with the Registrar General of Canada (notice of such deposit to be forthwith given in The Canada Gazette) pursuant to Section 86 of the Railway Act of Canada and (ii) the Lender and the Owner Participant shall have received a favorable opinion of counsel selected by the Lessee and reasonably acceptable to each of Lender and Owner Participant, addressed to them, covering such matters as they shall reasonably request including, without limitation, compliance with the Railway Act of Canada and maintenance and perfection of the Lender's first security interest in the Locomotives.

18.3 Continuing Obligations. The Lessee, in addition to the requirements of Sections 18.1 and 18.2 above, will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record and deposit (and will refile, reregister, rerecord or redeposit whenever required) any and all further instruments required by law or reasonably requested by the Lessor, the Owner Participant or any holder from time to time of any Note for the purpose of proper protection, to their satisfaction, of their respective interests in the Locomotives, or for the purpose of carrying out the intention of this Lease and the Loan and Security Agreement; and the Lessee will promptly furnish to the Lessor and each other holder from time to time of any Note which shall have requested the same evidence of all such filing, registering, depositing or recording, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Lessor, the Owner Participant and each such holder of a Note.

#### Section 19. 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 (but shall be under no obligation to) perform or comply with such agreement, and the amount of the reasonable costs and expenses of the Lessor incurred in connection with such performance or compliance, together with interest on such amount at the Overdue Rate shall be payable by the Lessee, upon demand except as otherwise provided in this Lease. No such performance or compliance by the Lessor shall be deemed a waiver of the rights and remedies of the Lessor or any assignee of the Lessor against the Lessee hereunder.

#### Section 20. NOTICES

Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given, if delivered by hand, when received; if mailed, on the fifth Busi-

ness Day after deposit thereof in the United States mail, first class, postage prepaid; or if by overnight delivery, on the next Business Day after such notice was delivered to or deposited with a recognized overnight delivery service; addressed as follows:

(a) if to the Lessor, at

Meridian Trust Company  
35 North 6th Street  
Reading, Pennsylvania 19601  
Attention: Corporate Trust Administration

with a copy to the Owner Participant at

Whirlpool Financial Corporation  
17177 N. Laurel Park Drive, Suite 233  
Livonia, Michigan 48152  
Attention: Leveraged Lease Administrator

(b) if by mail to the Lessee, at

Soo Line Railroad Company  
Soo Line Building  
P.O. Box 530  
Minneapolis, Minnesota 55440  
Attention: Executive Vice President of Operations

or if by overnight delivery at

Soo Line Railroad Company  
Soo Line Building  
105 South Fifth Street  
Minneapolis, Minnesota 55402  
Attention: Executive Vice President of Operations

in each case with a copy to the Lender at the address specified in the Participation Agreement, or addressed to any party at such other address as such party shall hereafter furnish to the other party and the Lender in writing. If Lessor assigns its entire right, title and interest in and to this Lease pursuant to Section 15.1 hereof, or transfers the same pursuant to Section 15.4 hereof, or if Lessee assigns or transfers its interests in the Locomotives pursuant to Section 15.3 hereof, then such assignee or transferee will be entitled to any notice to be given to the Lessor or Lessee, as the case may be, at such address as it shall specify.

#### Section 21. SEVERABILITY

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 unenforce-

ability 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.

#### Section 22. EFFECT AND MODIFICATION OF LEASE

Except for the Operative Documents referred to herein, this Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the leasing of the Locomotives and supersedes all other agreements, oral or written, with respect thereto. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized signatories for the Lessor and the Lessee; and if required by the Loan and Security Agreement, the Lender.

#### Section 23. THIRD-PARTY BENEFICIARIES

Nothing in this Lease shall be deemed to create any right in any person not a party hereto (other than the Owner Participant and each holder from time to time of a Note and the permitted successors and assigns of any such person and any party hereto) and this instrument shall not be construed in any respect to be a contract in whole or in part for the benefit of a third party except as aforesaid.

#### Section 24. EXECUTION

This Lease may be executed in several counterparts (or upon separate signature pages bound together into one or more counterparts), such counterparts together constituting but one and the same instrument. To the extent, if any, that this Lease or any Lease Supplement constitutes chattel paper (as such term is defined in the Uniform Commercial Code as in effect in any applicable jurisdiction), no security interest in this Lease or such Lease Supplement may be created through the transfer or possession of any counterpart of this Lease or such Lease Supplement other than the original counterpart which shall be identified as the counterpart containing the receipt therefor executed by the Lender on or immediately following the signature page hereof or thereof. Although for convenience this Lease is dated as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

#### Section 25. LAW GOVERNING

The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of

Minnesota; provided, that the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303.

Section 26. IMMUNITIES; NO RECOURSE

No recourse shall be had in respect of any obligation due under this Lease, or referred to herein, against any incorporator, stockholder, director, officer, employee, agent or affiliate, as such, past, present or future, of the parties hereto, whether by virtue or 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.

Section 27. AGREEMENTS FOR BENEFIT OF LESSOR'S ASSIGNS

All rights of the Lessor hereunder shall inure to the benefit of the Lessor's permitted assigns (including the Lender).

Section 28. LESSOR

Whenever the term "Lessor" is used in this Lease it shall apply and refer to the Lessor and any permitted assignee of the Lessor (including, so long as any indebtedness evidenced by the Notes or interest thereon shall remain unpaid or any other obligation thereunder be continuing, the Lender).

Section 29. LIABILITY OF LESSOR LIMITED

It is expressly agreed, anything herein to the contrary notwithstanding, that each and all of the representations, warranties, covenants, undertakings and agreements herein made on the part of the Lessor are made and intended not as personal representations, warranties, covenants, undertakings and agreements by Meridian Trust Company, or for the purpose or with the intention of binding Meridian Trust Company personally, but are made and intended for the purpose of binding only the Trust Estate, and this Lease is executed and delivered by Meridian Trust Company not in its own right but solely in the exercise of the powers expressly conferred upon it as trustee under the Trust Agreement; and no personal liability or personal responsibility, except in the case of willful misconduct or gross negligence of Lessor (other than with respect to the handling of funds, in which case the Lessor shall be accountable for its failure to exercise ordinary care), is assumed by or shall at any time be asserted or enforceable against Meridian Trust Company on account of this Lease or on account of any representation, warranty, covenant, undertaking or agreement of Lessor, either expressed or implied herein, all such personal liability, if any, being

expressly waived and released by Lessee and by all persons claiming by, through or under it, and that all recourse against Meridian Trust Company or the Owner Participant shall be limited to the Trust Estate.

Section 30. ARBITRATION

Provisions for arbitration in this Lease shall be the exclusive means of resolving the subject dispute 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 such judicial or other procedures in regard to these matters.

IN WITNESS WHEREOF, the Lessor and the Lessee have executed this Lease of Railroad Equipment as of the day and year first above written.

MERIDIAN TRUST COMPANY, not individually (except as otherwise expressly provided in the foregoing instrument), but solely in its capacity as Owner Trustee under the Trust Agreement,

Lessor

By: Kathleen A. Kelso  
Name: KATHLEEN A. KELSO  
Title: ACCOUNT OFFICER

SOO LINE RAILROAD COMPANY,  
Lessee

By: \_\_\_\_\_  
Name:  
Title:

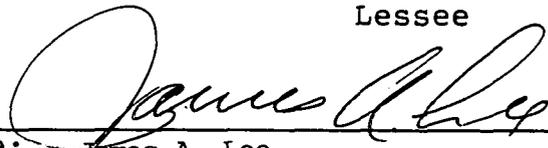
IN WITNESS WHEREOF, the Lessor and the Lessee have executed this Lease of Railroad Equipment as of the day and year first above written.

MERIDIAN TRUST COMPANY, not individually (except as otherwise expressly provided in the foregoing instrument), but solely in its capacity as Owner Trustee under the Trust Agreement,

Lessor

By: \_\_\_\_\_  
Name:  
Title:

SOO LINE RAILROAD COMPANY,  
Lessee

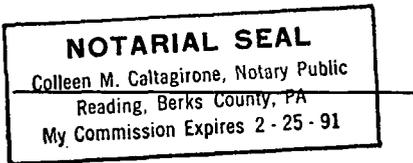
By:   
Name: James A. Lee  
Title: Senior Vice President &  
Chief Financial Officer

State of PENNSYLVANIA )  
County of Berks ) ss.

On this 12th day of April, 1989, before me personally appeared KATHLEEN A. KASS, to me personally known, who, being by me duly sworn, did say that she is a Account Officer of MERIDIAN TRUST COMPANY that the instrument was signed on behalf of such 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 such corporation.

Colleen M. Caltagirone  
Notary Public

My commission expires



State of \_\_\_\_\_ )  
County of \_\_\_\_\_ ) ss.

On this \_\_\_\_ day of April, 1989, before me personally appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, did say that he is a \_\_\_\_\_ of SOO LINE RAILROAD COMPANY that the instrument was signed on behalf of such 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 such corporation.

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

My commission expires

\_\_\_\_\_

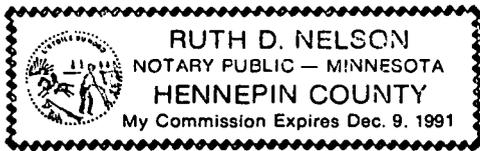
STATE OF MINNESOTA )  
COUNTY OF HENNEPIN )

On this 19<sup>th</sup> day of April, 1989, before me personally appeared James A. Lee, to me personally known, who being by me duly sworn, says that he is the Dr. V.P. & CFO of Soo Line Railroad Company ("Soo"), that said instrument was signed on behalf of Soo by Authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of Soo.

Ruth D. Nelson

Notary Public

My Commission Expires:



Certificate of Inspection and Acceptance

To: Meridian Trust Company  
as Owner Trustee (the "Owner Trustee")  
35 North 6th Street  
Reading, PA 19601  
Attention: Corporate Trust Administration

I, the duly authorized inspector and representative for the Owner Trustee and SOO LINE RAILROAD COMPANY (the "Lessee") under the Lease of Railroad Equipment dated as of April \_\_, 1989, do hereby certify that I inspected the locomotives described on Schedule 1 attached hereto (each a "Locomotive," collectively the "Locomotives").

I do further certify that the Locomotives were new when delivered to the Lessee, were delivered on or after \_\_\_\_\_, 1989, are in good order and condition, and conform to the specifications, requirements and standards applicable thereto, that, based upon my inspection, there is no apparent defect in any Locomotive with respect to design, manufacture, condition or in any other respect, that no material warranty claims are pending with respect to the Locomotives and that the Locomotives have not been damaged by accident or otherwise.

As the duly authorized inspector and representative for the Owner Trustee and the Lessee, I hereby certify that I have accepted delivery of the Locomotives on the date hereof.

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

"OWNED BY MERIDIAN TRUST COMPANY AS OWNER TRUSTEE  
AND SUBJECT TO A SECURITY INTEREST RECORDED WITH  
THE ICC"

The execution of this Certificate will in no way relieve or decrease the responsibility of General Motors Corporation (Electro-Motive Division), as manufacturer, for any warranties it has made with respect to the Locomotives.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Inspector and Authorized  
Representative of Owner  
Trustee and Lessee

SCHEDULE 1 TO  
CERTIFICATE OF ACCEPTANCE

DESCRIPTION OF LOCOMOTIVES

<u>Description</u>	<u>Manufacturer</u>	<u>Manuf. Serial No.</u>	<u>Lessee's Road No.</u>	<u>Purchase Price</u>
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LEASE SUPPLEMENT NO. \_\_\_\_\_

THIS LEASE SUPPLEMENT NO. \_\_\_\_\_ is dated \_\_\_\_\_, 19\_\_ (this "Lease Supplement"), and is executed and delivered to MERIDIAN TRUST COMPANY, a Pennsylvania trust company, not individually but solely as trustee under that certain Trust Agreement, dated as of April \_\_, 1989, between WHIRLPOOL FINANCIAL CORPORATION and such trustee (the "Lessor"), by SOO LINE RAILROAD COMPANY, a Minnesota corporation (the "Lessee"), pursuant to and in accordance with the Lease of Railroad Equipment dated as of April \_\_, 1989 between the Lessor and the Lessee (the "Lease"). Unless otherwise defined herein, capitalized terms in this Lease Supplement are used with the respective meanings specified in the Lease.

1. The locomotives covered by this Lease Supplement consist of the items described in Schedule 1 attached hereto (the "Locomotives").

2. The Lessee confirms that the Locomotives have been delivered to it and, as between the Lessor and the Lessee, are in good working order and condition, and have been inspected and accepted by Lessee as of the date first set forth above.

3. The Purchase Price of each of the Locomotives is set forth in Schedule 1 attached hereto and the aggregate Purchase Price for such Locomotives is \$ \_\_\_\_\_.

4. The percentages of Basic Rent, Casualty Value and Termination Value for the Locomotives are set forth in Schedules 2, 3 and 4 hereto, respectively.

5. The Lessee hereby: (a) confirms that the Locomotives covered hereby are of the size, design, capacity and manufacture selected by it and meet the provisions of the applicable purchase agreement with the Manufacturer with respect thereto, (b) confirms that the Locomotives have been marked in accordance with all of the provisions of Section 6.1 of the Lease, (c) confirms that the Locomotives conform to the modifications, requirements and standards applicable thereto as provided in the Lease, and (d) irrevocably accepts such Locomotives "as-is, where-is" for all purposes of the Lease as of the date first set forth above.

6. By the execution and delivery of this Lease Supplement by the Lessee, and the acceptance thereof by Lessor, Lessee and Lessor reaffirm all of the terms, provisions and conditions of the Lease.

7. The Lease Supplement may be executed in several counterparts (or upon separate signature pages bound together into one or more counterparts), such counterparts together constituting but one and the same instrument. To the extent, if any, that this Lease Supplement constitutes chattel paper (as such term is defined in the Uniform Commercial Code as in effect in any applicable jurisdiction), no security interest in this Lease Supplement may be created through the transfer or possession of any counterpart of this Lease Supplement other than the original counterpart, which shall be identified as the counterpart containing the receipt therefor executed by the Lender on or immediately following the signature page hereof.

IN WITNESS WHEREOF, Lessee has caused this Lease Supplement to be duly executed by its duly authorized officer as of the date first set forth above.

SOO LINE RAILROAD COMPANY

By: \_\_\_\_\_  
Name:  
Title:

Accepted as of the date first set forth above:

MERIDIAN TRUST COMPANY, not individually (except as otherwise provided in the Lease), but solely as Owner Trustee under the Trust Agreement

By: \_\_\_\_\_  
Name:  
Title:

TO THE EXTENT, IF ANY, THAT THIS LEASE SUPPLEMENT  
CONSTITUTES CHATTEL PAPER (AS SUCH TERM IS DEFINED IN THE UNIFORM  
COMMERCIAL CODE AS IN EFFECT IN ANY APPLICABLE JURISDICTION), NO  
SECURITY INTEREST IN THIS LEASE SUPPLEMENT MAY BE CREATED EXCEPT  
BY THE TRANSFER OR POSSESSION OF THE COUNTERPART CONTAINING THE  
ORIGINAL RECEIPT THEREFOR EXECUTED BY THE PRUDENTIAL INSURANCE  
COMPANY OF AMERICA IMMEDIATELY FOLLOWING THIS LEGEND.

Receipt of this original counterpart of the foregoing  
Lease Supplement hereby acknowledged this \_\_\_ day of April, 1989.

The Prudential Insurance Company of  
America

By: \_\_\_\_\_  
Name:  
Title:

State of \_\_\_\_\_ )  
County of \_\_\_\_\_ ) ss.

On this \_\_\_\_ day of \_\_\_\_\_, 19\_\_, before me personally appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, did say that he is a \_\_\_\_\_ of SOO LINE RAILROAD COMPANY and that the instrument was signed on behalf of such 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 such corporation.

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

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

State of \_\_\_\_\_ )  
County of \_\_\_\_\_ ) ss.

On this \_\_\_\_ day of \_\_\_\_\_, 19\_\_, before me personally appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, did say that he is a \_\_\_\_\_ of MERIDIAN TRUST COMPANY and that the instrument was signed on behalf of such company by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of such company.

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

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

DESCRIPTION OF LOCOMOTIVES

<u>Description</u>	<u>Manufacturer</u>	<u>Manuf. Serial No.</u>	<u>Lessee's Road No.</u>	<u>Purchase Price</u>
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BASIC RENT

Rental factors are expressed as percentages of Lessor's Purchase Price. The Basic Rent due on a Rent Payment Date is equal to the product of the Arrears Rent Factor or the Advance Rent Factor, as the case may be, and Lessor's Purchase Price for the Locomotives.

<u>Rent</u>		<u>Arrears Rent</u>		<u>Advance Rent</u>
<u>Pmt. Date</u>	<u>Pmt. No.</u>	<u>Factor (%)</u>	<u>Pmt. No.</u>	<u>Factor (%)</u>

CASUALTY VALUE

Casualty Value  
Determination Date

Casualty Value (as a percentage  
of the Purchase Price)

In the event any of the events set forth in Section 4.4 of the Lease shall occur, the Casualty Value shall be adjusted accordingly.

TERMINATION VALUE

LIABILITY RELEASE

THIS IS A LEGAL DOCUMENT WHICH AFFECTS YOUR LEGAL RIGHTS. READ IT CAREFULLY BEFORE YOU SIGN IT. IF YOU DO NOT UNDERSTAND IT, YOU SHOULD CONSULT AN ATTORNEY.

DEFINITIONS:

The following definitions are used in this document:

"agreement" means this document.

"injury" means any injury or harm to person or property, including injury or harm which results in death.

"Owner" means Soo Line Railroad Company.

"Owner's property" means land, buildings, facilities, equipment, and any other property owned or used by Soo Line Railroad Company.

"Soo Companies" means the following companies and their employees, agents, subsidiaries, and affiliated companies: Soo Line Corporation, Soo Line Railroad Company, Tri-State Land Company, Tri-State Management Company, The Milwaukee Motor Transportation Company, and Hiawatha Transfer Company.

"your heirs" means your family, any other heirs you may have, and any person responsible for administering any of your property during your life or after your death.

PERMIT:

Owner gives your permission to enter and be on Owner's property at \_\_\_\_\_ for the purpose of \_\_\_\_\_. The permission granted to you in this Agreement is limited to the following period and time: starting at \_\_\_\_\_ .m. on \_\_\_\_\_, 19\_\_, and ending at \_\_\_\_\_ .m. on \_\_\_\_\_, 19\_\_. You may not transfer or assign this permission to anyone else.

RELEASE:

In return, you and your heirs release the Soo Companies from any responsibility or legal liability arising from any injury to you or your property that occurs while you are on Owner's property, and this is true even if that injury is caused

(in whole or in part) by the negligence of the Soo Companies. You also acknowledge that you knowingly assume all risk of injury to you or your property while you are on Owner's property, and this is true even if that injury is caused (in whole or in part) by the negligence of the Soo Companies. Finally, you agree that you have read and understood this agreement and that you have had an opportunity to consult with an attorney.

Date: \_\_\_\_\_, 19\_\_.

SOO LINE RAILROAD COMPANY

\_\_\_\_\_  
type or print your name

By: \_\_\_\_\_

Its: \_\_\_\_\_

\_\_\_\_\_  
your signature

STATEMENT OF WITNESS:

I know \_\_\_\_\_, I saw him/her sign this agreement, and I state under penalty of perjury that the signature in the space marked "your signature" is his/her signature.

Date: \_\_\_\_\_, 19\_\_.

\_\_\_\_\_  
signature of witness

\_\_\_\_\_  
type or print name of witness

## SCHEDULE I

### DEFINITIONS

The following terms shall have the following meanings for all purposes of the Participation Agreement, the Lease and the Loan and Security Agreement and certain other documents to which only the Owner Trustee, the Owner Participant, the Lessee or the Lender are a party as such agreements may be modified, amended or supplemented from time to time, and shall be equally applicable to both the singular and plural forms of the terms herein defined:

"AAA" means the American Arbitration Association.

"Additional Insureds" means the Lessor, the Owner Participant and the Lender.

"Affiliate" means, with respect to any Person, any other Person controlling, controlled by or under common control with such Person.

"After-Tax Basis" is defined in Section 9(b)(9) of the Participation Agreement.

"Amendment" is defined in Section 1 of the Assignment.

"Assigned Rights" is defined in Section 1 of the Assignment.

"Assignee" means the Owner Trustee under the Assignment.

"Assignment" means each Purchase Agreement Assignment.

"Assignor" means the Lessee under the Assignment.

"Authorizations" is defined in Section 5(xvii) of the Participation Agreement.

"Bankruptcy Code" means the Federal Bankruptcy Code, Title 11, United States Code, as amended from time to time.

"Base Case" is the Schedule of Base Case Economics attached as Schedule 2 to the Participation Agreement.

"Base Index" is defined in Section 4.1 of the Lease.

"Base Issue" is defined in Section 4.1 of the Lease.

"Basic Rent" means the rent payable for a Locomotive during the Basic Term identified as "Basic Rent" in and payable pursuant to Section 4.1 of the Lease.

"Basic Term" means the period beginning on January 15, 1990 and ending on January 14, 2010.

"Bill of Sale" means each bill of sale executed and delivered by the Manufacturer pursuant to Section 2(c) of the Participation Agreement substantially in the form of Exhibit B to the Participation Agreement.

"Business Day" means any day other than (i) a Saturday or Sunday and (ii) a day on which state or national banking institutions are authorized or obligated by law to remain closed in the States of New York, Pennsylvania, Michigan or Minnesota.

"Cancellation Factor" means the Cancellation Price Increase, if any, divided by the closing price of the Reference Treasury Note on the Rate Date for the applicable Note, such closing price to be determined by the Purchaser on a Reference Treasury Note in the principal amount of \$100 and to be rounded to the second decimal place.

"Cancellation Fee" means any fee payable pursuant to Sections 10(g) of the Participation Agreement.

"Cancellation Price Increase" means the excess, if any, of the closing price of the Reference Treasury Note on the date the applicable Cancellation Fee is required to be paid, over the closing price of the Reference Treasury Note on the Rate Date for the applicable Note, such closing price to be determined by the Lender on a Reference Treasury Note in the principal amount of \$100 and to be rounded to the second decimal place.

"Cancelled Commitment" is defined in Section 10(g)(ii) of the Participation Agreement.

"Casualty Occurrence" with respect to any Locomotive means any of the following events with respect to such Locomotive: (i) such Locomotive shall be or become lost or stolen for a period in excess of 30 days (or to the end of the remaining term of this Lease, if it first occurs), or (ii) such Locomotive shall be worn out, destroyed, or, in the reasonable good faith opinion of the Lessee, irreparably damaged, or uneconomical to repair to return to service from any cause whatsoever during the term of the Lease or any renewal term hereof or until such Locomotive is returned pursuant to Section 14 or Section 17 of the Lease, or (iii) such Locomotive, together with all other Locomotives manufactured by the same Manufacturer shall have been returned permanently to such Manufacturer pursuant to any patent indemnity provisions of any agreement between such Manufacturer and the Lessee, or

(iv) such Locomotive shall be permanently returned to the Manufacturer thereof due to a material breach of such Manufacturer's warranty (other than under the circumstances contemplated by the immediately preceding clause (iii)) contained in any agreement between such Manufacturer and the Lessee, or (v) title to such Locomotive shall be taken by any governmental entity by condemnation or otherwise, or (vi) use of such Locomotive shall be taken or requisitioned (a) by the United States Government (I) for a stated period which shall equal or exceed the then remaining term of the Lease, or (II) for a period which has exceeded two years, or (b) by any other governmental entity (I) for a stated period which shall equal or exceed the then remaining term of the Lease or (II) for a period which has exceeded 180 consecutive days, or (vii) as a result of any rule, regulation, order or other action by the United States Government or any agency or instrumentality thereof, the use of such Locomotives in the normal course of interstate rail transportation shall have been prohibited for a continuous period of six months (or to the end of the remaining term of the Lease, if it first occurs).

"Casualty Payment Date" means, with respect to any Casualty Occurrence, the next Rent Payment Date which is more than 30 days after the Casualty Occurrence.

"Casualty Value" is defined in Section 8.4 of the Lease.

"Certificate of Inspection and Acceptance" means any certificate provided by the Lessee in substantially the form of Exhibit A to the Lease.

"Change in Tax Law" means, with respect to any Delivery Date, any change in federal income tax laws or regulations which (i) results from a change in the Code, including any technical corrections legislation, issuance of final or temporary Treasury Regulations and Internal Revenue Service rulings, announcements and notices, (ii) as a result of such change, any one or more of the Tax Assumptions set forth in Section 1 of the Tax Indemnity Agreement are no longer correct as a matter of law, and (iii) as a result of such change, there is a decrease in the Net Economic Return of the Owner Participant.

"Claim" is defined in Section 9(c)(i) of the Participation Agreement.

"Code" means the Internal Revenue Code of 1986, as amended.

"Collateral" is defined in Clause A of the Granting Clause of the Loan and Security Agreement.

"Consent to Purchase Agreement Assignment" means any consent substantially in the form of Exhibit J to the Participation Agreement, given by Manufacturer, to the assignment of any Purchase Agreement by the Lessee (as assignor) to the Owner Trustee (as assignee) and to the further assignment of rights under such Purchase Agreement pursuant to the Loan and Security Agreement by the Owner Trustee (as assignee) to the Lender (as assignor).

"Cross-Default Provision" is defined in Section 5(xxiii) of the Participation Agreement.

"Debt Rate" means 10.45% with respect to the first Delivery Date and, with respect to the second and each subsequent Delivery Date the rate determined pursuant to Section 2.05 of the Loan and Security Agreement.

"Default" means any event which with the lapse of time or the giving of notice, or both, would constitute an Event of Default.

"Delivery Date" means each date on which the Locomotives are purchased by the Owner Trustee in accordance with the Participation Agreement and leased to the Lessee pursuant to the Lease.

"Equipment Group A" means all Locomotives with a Delivery Date on or before April 30, 1989.

"Equipment Group B" means all Locomotives with a Delivery Date after April 30, 1989.

"Equity Interest" means the Owner Participant's interest in the trust created by the Trust Agreement, including the right, title and interest of the Owner Participant in and to the Participation Agreement and the Trust Agreement and its beneficial interest in the Trust Estate.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

"Event of Default" is defined in Section 13.1 of the Lease.

"Excepted Rights in Collateral" is defined in Clause E of the Granting Clause of the Loan and Security Agreement.

"Fair Market Value" is defined in Section 16.3 of the Lease.

"Foreign Tax" is defined in Section 9(b)(3) of the Participation Agreement.

"Foreign Tax Credit Limitation" is defined in Section 9(b)(3) of the Participation Agreement.

"Foreign Taxing Authorities" is defined in Section 9(b)(1) of the Participation Agreement.

"ICC" means the Interstate Commerce Commission.

"Income Taxes" is defined in Section 9(b)(1)(i) of the Participation Agreement.

"Indemnified Parties" means the Owner Participant, the Owner Trustee in its individual capacity and as Owner Trustee, the Lender, each other holder from time to time of any Note (including, in the case of each of the foregoing, as to any such corporation, any corporation which is a member of the same affiliated group, as defined in Section 1504 of the Code), the Trust Estate, the Collateral, and the permitted successors, assigns, affiliates, agents, officers, shareholders, directors, servants and employees of any thereof, each individually being an "Indemnified Party."

"Installment Payment Date" is defined in Section 2.04(ii) of the Loan and Security Agreement.

"Interim Term" is defined in Section 5.1 of the Lease.

"Lease Agreement", and each reference in the Lease to "this Lease", "this Agreement", "herein", "hereunder", "hereof", "hereby" or other like words means or refers to the Lease of Railroad Equipment, dated as of April 14, 1989, between Owner Trustee/Lessor and Lessee, in substantially the form of Exhibit C to the Participation Agreement, as originally executed or as modified, amended or supplemented from time to time to the extent permitted by the Loan and Security Agreement, including, without limitation, supplementation of the Lease by one or more Lease Supplements and any amendments thereto entered into pursuant to the applicable provisions of the Lease.

"Lease Supplement" means a Lease Supplement to be dated as of a Delivery Date and substantially in the form of Exhibit B to the Lease, to be entered into between Lessor and Lessee for the purpose of leasing the Locomotives as of said Delivery Date under and pursuant to the terms of the Lease.

"Lease Term" means the period commencing on the first Delivery Date and continuing to and including the last day of the Basic Term, or if the Lessee exercises one or more options contained in Section 16.2 of the Lease, the last day of the last Renewal Term, in each case unless earlier terminated pursuant to the terms of the Lease.

"Lender" means The Prudential Insurance Company of America, a New Jersey corporation, and its permitted successors and assigns.

"Lender's Percentage" for any Delivery Date means a percentage, not more than 80%, designated in the Lessee's Notice.

"Lessee" means Soo Line Railroad Company, a Minnesota corporation, and its permitted successors and assigns.

"Lessee's Instruments" means each Operative Document which is to be executed and delivered by the Lessee.

"Lessee Notes" is defined in Section 16.1(iii) of the Lease.

"Lessee's Notice" is defined in Section 2(b) of the Participation Agreement.

"Lessor" means the Owner Trustee acting as Lessor under the Lease Agreement.

"Lessor's Liens" means any Lien which results from claims against the Lessor unrelated to the Lessor's ownership or mortgaging of the Locomotives or the transactions contemplated by the Operative Documents.

"Liability Insurance" means excess liability insurance with respect to third-party bodily and personal injury, death and property damage (including, but not limited to, contractual liability insurance) excluding only such risks as are consistent with prudent industry practice in the railroad industry.

"Liens" means liens, mortgages, encumbrances, pledges, charges and security interests or rights of any kind.

"Loan and Security Agreement" means that certain Loan and Security Agreement, dated as of April 14, 1989, between the Owner Trustee and the Lender, in substantially the form of Exhibit D to the Participation Agreement, as originally executed or as modified, amended or supplemented in accordance with the applicable provisions thereof. Unless the context otherwise requires, "Loan and Security Agreement" shall include each Loan and Security Agreement Supplement.

"Loan and Security Agreement Default" means any act or occurrence which, with notice or lapse of time, or both, would constitute a Loan and Security Agreement Event of Default.

"Loan and Security Agreement Event of Default" is defined in Section 6.01 of the Loan and Security Agreement.

"Loan and Security Agreement Supplement" is defined in Clause A of the Granting Clause of the Loan and Security Agreement.

"Locomotives" means at least 21 and as many as 39 General Motors EMD SD-60 locomotives (each a "Locomotive"), more specifically described in the Lease Supplements delivered pursuant to Section 2 of the Participation Agreement, which shall be purchased by the Owner Trustee in accordance with the Participation Agreement and leased to the Lessee pursuant to the Lease and one or more Lease Supplements, together with related appurtenances, additions, improvements, equipment and replacements.

"Majority in Interest of Note Holders" means, as of a particular date of determination, the holder or holders of at least two-thirds in aggregate principal amount of all Notes outstanding as of such date (excluding any Notes then held by the Owner Trustee, the Owner Participant or the Lessee or any Affiliate of any thereof unless all Notes then outstanding are held by the Owner Trustee, the Owner Participant and the Lessee and their Affiliates).

"Manufacturer" means the Electro-Motive Division of General Motors Corporation.

"Maximum Loan Amount" means \$42,000,000.

"Net Economic Return" means the Owner Participant's net after-tax yield using the multiple investment sinking fund method and total after-tax cash flow for the Base Case or adjusted pursuant to Section 4.1 of the Lease, computed on the basis of the assumptions, including, without limitation, the Tax Assumptions set forth in the Tax Indemnity Agreement, used by the Owner Participant in originally evaluating the transactions contemplated by the Lease.

"Net Income Taxes" is defined in Section 9(b)(1)(i) of the Participation Agreement.

"Note" means and "Notes" mean all of the notes of the Owner Trustee, substantially in the form thereof set forth in Exhibit B to the Loan and Security Agreement originally issued to the Lender pursuant to Section 2.04 of the Loan and Security Agreement, in the aggregate principal amount determined pursuant to the Participation Agreement, and maturing and bearing interest and secured as provided in said form, and as otherwise provided in the Loan and Security Agreement, and any

note issued pursuant to the Loan and Security Agreement in replacement or exchange for any Note previously issued pursuant to the Loan and Security Agreement.

"Officer's Certificate" means, with respect to any corporation or entity, a certificate executed on behalf of such corporation or entity by its Chief Executive Officer, President, Chief Financial Officer or one of its Vice Presidents or Assistant Vice Presidents or its Treasurer, or one of its Assistant Treasurers, or its Secretary or one of its Assistant Secretaries, or one of its Controllers or Assistant Controllers or, in the case of Owner Trustee, by one of its Account Officers or Assistant Account Officers.

"Operative Documents" means the Participation Agreement, the Trust Agreement, the Loan and Security Agreement, the Lease, the Tax Indemnity Agreement, the Notes, the Bills of Sale, the Purchase Agreement Assignment, and each Lease Supplement and Loan and Security Agreement Supplement, collectively.

"Overdue Rate" is defined in Section 2.04(ii) of the Loan and Security Agreement.

"Owner Participant" means Whirlpool Financial Corporation, a Delaware corporation (formerly known as Whirlpool Acceptance Corporation) and its permitted successors and assigns under the Trust Agreement and Sections 10(a) and 10(b) of the Participation Agreement.

"Owner Participant's Instruments" means each Operative Document which is to be executed and delivered by the Owner Participant.

"Owner Trustee" means Meridian Trust Company, a Pennsylvania trust company, not in its individual capacity, but solely as trustee under the Trust Agreement dated as of April 14, 1989 between Owner Participant and Meridian Trust Company, and its permitted successors and assigns.

"Owner Trustee Office" means the principal corporate trust office of the entity then serving as Owner Trustee, which, in the case of Meridian Trust Company, until notice of a change of address of such office is given by such entity, shall be at 35 North 6th Street, Reading, Pennsylvania.

"Owner Trustee's Instruments" means each Operative Document which is to be executed and delivered by Meridian Trust Company or the Owner Trustee.

"Owner's Percentage" for any Delivery Date means a percentage, not less than 20%, and not more than 50%, designated in the Lessee's Notice.

"Parent" means Soo Line Corporation, a Minnesota corporation, or any successor corporation which has the power to vote at least 50% of the issued and outstanding shares of any class of stock of Lessee.

"Participant" means any of the Owner Participant and the Lender.

"Participation Agreement" and each reference in the Participation Agreement to "this Participation Agreement", "this Agreement", "herein", "hereunder", "hereof" or other like words means or refers to the Participation Agreement dated as of April 14, 1989, among Lessee, Lender, Owner Participant and Owner Trustee, as the Participation Agreement shall have been originally executed or as modified, amended or supplemented in accordance with the applicable provisions of the Participation Agreement.

"Permitted Investment" means (i) certificates of deposit and time and other interest bearing deposits in banks which are members of the Federal Reserve System having a net worth of not less than \$125,000,000; (ii) short-term debt securities issued by or entitled to the full faith and credit of the United States Government; (iii) bank repurchase agreements with banks described in clause (i) of this definition which are fully collateralized by securities described in clause (ii) of this definition or (iv) commercial paper which is rated "A-1" or better (or comparable ratings) by Standard & Poor's Corporation or "P-1" or better (or comparable ratings) by Moody's Investors Service, Inc. or the successors to such rating organizations, in each case referred to in the foregoing clauses (i) through (iv) due within 210 days of the date of purchase.

"Permitted Liens" means (i) liens for taxes, assessments or governmental charges or levies in each case not due and delinquent, (ii) inchoate materialmen's, mechanics' workmen's, repairmen's or other like liens arising in the ordinary course of Lessee's business and in each case not delinquent, and (iii) the lien of the Lease and the Loan and Security Agreement.

"Person" or "person" means any individual, partnership, corporation, trust, unincorporated association or joint venture, a government or any department or agency thereof, or any other entity.

"Plan" means an employee benefit plan as defined in Section 3(3) of ERISA.

"Prepaid Amount" is defined in Sections 5.02 and 5.03 of the Loan and Security Agreement.

"Property Insurance" is defined in Section 8.6(i) of the Lease.

"PruCapital" means Prudential Capital Corporation, an Affiliate of Lender.

"Purchase Agreement" means each purchase agreement between Lessee (as purchaser) and Manufacturer (as seller) subject to a Purchase Agreement Assignment.

"Purchase Agreement Assignment" means each purchase agreement assignment, dated as of April 14, 1989 and as of the second and subsequent Delivery Dates, made by Lessee (as assignor) to Owner Trustee (as assignee), substantially in the form of Exhibit I to the Participation Agreement.

"Purchase Price" for each Locomotive means the price paid to the Manufacturer for the purchase of such Locomotive as set forth in the Lease Supplement delivered on the Delivery Date.

"Qualified Affiliate" means Canadian Pacific Limited, a Canada corporation, and, if CP Rail, a division of Canadian Pacific Limited, should become a separate corporation, then said separate corporation.

"Reference Rate" means the rate per annum announced by Morgan Guaranty Trust Company of New York from time to time in New York City as its Prime or Reference Rate.

"Reference Treasury Note" means the Treasury Note or Notes by reference to which the Treasury Rate is determined in fixing the interest rate for the Notes.

"Register" has the meaning specified in Section 2.07(i) of the Loan and Security Agreement.

"Renewal Rent" means the rent payable during the Renewal Term for each Locomotive subject to this Lease at the end of the Basic Term, as specified in Section 16.2 of the Lease.

"Renewal Term" means the period beginning on January 15, 2010 and ending on January 14, 2011 and any subsequent renewal term pursuant to Section 16.2 of the Lease.

"Rent Payment Date" is defined in Section 4.1 of the Lease.

"Replacement Locomotive" means a Locomotive whose title is offered to the Lender as substitute security pursuant to Section 8.1(ii) of the Lease.

"Secured Obligations" has the meaning specified in Clause A of the Granting Clause of the Loan and Security Agreement.

"Self-Insure" is defined in Section 8.6(i) of the Lease.

"Statutory Interest" has the meaning specified in Section 9(b)(2) of the Participation Agreement.

"Subsidiaries" means such subsidiaries of Lessee as are included in its consolidated financial statements prepared in accordance with generally accepted accounting principles consistently applied.

"Supplemental Rent" means any and all amounts, liabilities and obligations (other than Basic Rent or Renewal Rent) which the Lessee assumes or agrees to pay to any person under the Lease or under the Participation Agreement including, without limitation, Section 9 of the Participation Agreement, or under any other Operative Document, including, without limitation, payments of Casualty Value and amounts measured by reference to the Participation Agreement and payments pursuant to the Tax Indemnity Agreement.

"Tax Assumptions" is defined in Section 1 of the Tax Indemnity Agreement.

"Tax Forms" is defined in Section 9(b)(1)(xii) of the Participation Agreement.

"Tax Indemnity Agreement" means that certain Income Tax Indemnity Agreement, dated as of April 14, 1989, between the Owner Participant and the Lessee, as originally executed or as modified, amended or supplemented in accordance with the applicable provisions thereof.

"Taxes" is defined in Section 9(b)(1) of the Participation Agreement.

"Terminated Locomotive" means any Locomotive which Lessee has elected to terminate pursuant to Section 16.4 of the Lease.

"Termination" is defined in Section 16.4(i) of the Lease.

"Termination Date" with respect to any Locomotive, means a date on which an installment of Basic Rent is due and which has been specified by the Lessee, pursuant to Section 16.4 of the Lease, as the date of Termination with respect to such Locomotive.

"Termination Value" with respect to any Locomotive, means an amount equal to the specified percentage set forth in the Schedule 3 appended to the Lease Supplement, subject to

adjustment as provided in Section 4.4 of the Lease, for the Termination Date with respect to such Locomotive multiplied by the Purchase Price of such Locomotive.

"Transaction Expenses" is defined in Section 13(a) of the Participation Agreement.

"Treasury Note" shall mean a note or bond, as the case may be, issued by the United States government.

"Treasury Rate" means, as of the date on which the interest rate for the Notes is fixed, the then-current yield (determined on a semi-annual bond equivalent basis adjusted to a quarterly basis) on the most recently issued Treasury Note or Notes having a maturity substantially equal to the remaining average life of the Notes, determined by PruCapital in its sole discretion reasonably exercised.

"Trust Agreement" means that certain Trust Agreement, dated as of April 14, 1989, between the Owner Participant and Meridian Trust Company, in substantially the form of Exhibit F to the Participation Agreement, as originally executed or as modified, amended or supplemented in accordance with the applicable provisions thereof and of the Loan and Security Agreement.

"Trust Estate" means the Locomotives, contract rights and other property held or owned by the Owner Trustee in accordance with the Trust Agreement, but shall not include any Excepted Rights in Collateral.

"Yield Maintenance Premium" shall mean, with respect to any Note, a premium equal to the excess, if any, of the Discounted Value of the Called Principal of such Note over the sum of (i) such Called Principal plus (ii) interest accrued thereon as of (including interest due on) the Settlement Date with respect to such Called Principal. The Yield Maintenance Premium shall in no event be less than zero.

"Called Principal" means, with respect to any Note, the principal of such Note (i) that is to be prepaid pursuant to Sections 2.11(i), (ii) or (iii) of the Loan and Security Agreement, any partial prepayment being applied in satisfaction of required payments of principal as set forth in Section 2.11(vii) of the Loan and Security Agreement or (ii) that is declared to be immediately due and payable pursuant to Section 6 of the Loan and Security Agreement, as the context requires.

"Discounted Value" shall mean, with respect to the Called Principal of any Note, the amount obtained by discounting all Remaining Scheduled Payments with respect

to such Called Principal from their respective scheduled due dates to the Settlement Date with respect to such Called Principal, in accordance with accepted financial practice and at a discount factor (applied on a semiannual basis) equal to the Reinvestment Yield with respect to such Called Principal.

"Reinvestment Yield" means, with respect to the Called Principal of any Note, the yield to maturity implied by (i) the yields reported, as of 10:00 A.M. (New York City time) on the Business Day next preceding the Settlement Date with respect to such Called Principal, on the display designated as "Page 678" on the Telerate Service (or such other display as may replace Page 678 on the Telerate Service) for actively traded U.S. Treasury securities having maturity equal to the Remaining Average Life of such Called Principal as of such Settlement Date, or if such yields shall not be reported as of such time or the yields reported as of such time shall not be ascertainable, (ii) the Treasury Constant Maturity Series yields reported, for the latest day for which such yields shall have been so reported as of the Business Day next preceding the Settlement Date with respect to such Called Principal, in Federal Reserve Statistical Release H.15 (519) (or any comparable successor publication) for actively traded U.S. Treasury securities having a constant maturity equal to the Remaining Average Life of such Called Principal as of such Settlement Date. Such implied yield shall be determined, if necessary, by (a) converting U.S. Treasury bill quotations to bond-equivalent yields in accordance with accepted financial practice and (b) interpolating linearly between reported yields.

"Remaining Average Life" shall mean, with respect to the Called Principal of any Note, the number of years (calculated to the nearest one-twelfth year) obtained by dividing (i) such Called Principal into (ii) the sum of the products obtained by multiplying (a) each Remaining Scheduled Payment of such Called Principal (but not of interest thereon) by (b) the number of years (calculated to the nearest one-twelfth year) which will elapse between the Settlement Date with respect to such Called Principal and the scheduled due date of such Remaining Scheduled Payment.

"Remaining Scheduled Payments" shall mean, with respect to the Called Principal of any Note, all payments of such Called Principal and interest thereon that would be due on or after the Settlement Date with respect to such Called Principal if no payment of such Called Principal were made prior to its scheduled due date.

"Settlement Date" shall mean, with respect to the Called Principal of any Note, the date on which such Called Principal is to be prepaid pursuant to Section 2.11 of the Loan and Security Agreement or is declared to be immediately due and payable pursuant to Section 6 of the Loan and Security Agreement, as the context requires.

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