

CRAVATH, SWAINE & MOORE

RECORDATION NO. 14294 Filed 1425

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MAR 16 1984 3 00 PM

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MAR 16 1984 3 00 PM

INTERSTATE COMMERCE COMMISSION

No.

MAR 16 1984

RECORDATION NO. 14294/A Filed 1425

Date

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14294/C

Filed 1425

ICC Washington, D. C.

INTERSTATE COMMERCE COMMISSION

INTERSTATE COMMERCE COMMISSION

March 13, 1984

Southern Pacific Transportation Company
Lease Financing Dated as of March 1, 1984
12.625% Conditional Sale Indebtedness due December 28, 1994

Dear Ms. Mergenovich:

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

1. (a) Conditional Sale Agreement dated as of March 1, 1984, between Southern Pacific Transportation Company, as Builder, and Cumberland Leasing Co., as Vendee; and

(b) Agreement and Assignment dated as of March 1, 1984, between Southern Pacific Transportation Company, as Builder, and Mercantile-Safe Deposit and Trust Company, as Agent.

2. (a) Lease of Railroad Equipment dated as of March 1, 1984, between Southern Pacific Transportation Company, as Lessee, and Cumberland Leasing Co., as Vendee; and

(b) Assignment of Lease and Agreement dated as of March 1, 1984, between Cumberland Leasing Co., as Vendee, and Mercantile-Safe Deposit and Trust Company, as Agent.

C. Quinlan
Laura Jean Byggers

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

1. Agent:

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

2. Vendee:

Cumberland Leasing Co.,
8501 West Higgins Road,
Chicago, Illinois 60631.

3. Builder-Vendor:

Southern Pacific Transportation Company
Southern Pacific Building
One Market Plaza
San Francisco, California 94105.

4. Lessee:

Southern Pacific Transportation Company
Southern Pacific Building
One Market Plaza
San Francisco, California 94105.

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

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

38 3,200 h.p. Model SD45-2 diesel electric
locomotives bearing the Lessee's identification numbers
SP7499-7536, both inclusive, and also bears the legend
"Ownership Subject to a Security Agreement Filed with The
Interstate Commerce Commission".

There is also enclosed a check for \$100 payable to
the Interstate Commerce Commission, representing the fee for
recording the Conditional Sale Agreement and related Agree-
ment and Assignment (together constituting one document),
and the Lease of Railroad Equipment and related Assignment
of Lease and Agreement (together constituting one document).

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

Very truly yours,

Laurance V. Goodrich

Laurance V. Goodrich
as Agent for Southern Pacific
Transportation Company

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

Encls.

Interstate Commerce Commission
Washington, D.C. 20423

3/16/84

OFFICE OF THE SECRETARY

**Laurance E. Goodrich
Cravath, Swaine & Moore
One Chase Manhattan Plaza
New York, N.Y. 10005**

Dear

Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on **3/16/84** at **3:00pm** and assigned re-
recording number(s). **14294, 14294-A, 14294-B, 14294-C**

Sincerely yours,



JAMES H. BAYNE

Secretary

Enclosure(s)

SE-30
(7/79)

14294
RECORDATION NO. Filed 1425

MAR 16 1984 - 3 09 PM

~~INTERSTATE COMMERCE COMMISSION~~

[CS&M Ref: 3909-208]

CONDITIONAL SALE
AGREEMENT

Dated as of March 1, 1984

between

SOUTHERN PACIFIC TRANSPORTATION COMPANY

Builder,

and

CUMBERLAND LEASING CO.,

Vendee.

CONDITIONAL SALE AGREEMENT

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CONDITIONAL SALE AGREEMENT dated as of March 1, 1984, between SOUTHERN PACIFIC TRANSPORTATION COMPANY, a Delaware corporation (the "Builder") and CUMBERLAND LEASING CO., an Illinois corporation (the "Vendee").

The Builder agrees to construct, sell and deliver to the Vendee, and the Vendee agrees to purchase, the railroad equipment described in Annex B hereto other than equipment excluded pursuant to Article 3 or Article 4 hereof (the railroad equipment which is delivered and accepted hereunder is hereinafter called, collectively, the "Equipment" or the "Units" and, individually, a "Unit").

The Vendee is entering into a Lease of Railroad Equipment dated as of the date hereof (the "Lease") with SOUTHERN PACIFIC TRANSPORTATION COMPANY (in such capacity, the "Lessee"), substantially in the form of Annex C hereto.

Mercantile-Safe Deposit and Trust Company (the "Assignee" or "Vendor") is acting as agent for certain investors (together with their successors and assigns, the "Investors") pursuant to a Participation Agreement dated as of the date hereof (the "Participation Agreement") among the Assignee, the Vendee, the Guarantor named therein, the Lessee and such investors.

In consideration of the agreements hereinafter set forth, the parties hereto do hereby agree as follows:

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

The term "Vendor", whenever used in this Agreement, means, before any assignment of its rights hereunder, the party hereto which has manufactured the Equipment and any successor or successors for the time being to its manufacturing properties and business, and, after such assignment, both any assignee or assignees for the time being of such particular assigned rights as regards such rights, and also any assignor as regards any rights here-

under that are retained or excluded from any assignment; and the term "Builder", whenever used in this Agreement, means, both before and after any such assignment, the party hereto which has manufactured the Equipment and any successor or successors for the time being to its manufacturing properties and business.

In case of such assignment, the Vendee will assign to the Vendor, as security for the payment and performance of all the Vendee's obligations hereunder, certain rights of the Vendee in and to the Lease, pursuant to an Assignment of Lease and Agreement in the form of Annex D hereto (the "Lease Assignment"), and the Lessee shall consent thereto pursuant to the Consent and Agreement in the form attached to Annex D (the "Consent").

ARTICLE 2. Construction and Sale. Pursuant to this Agreement, the Builder will construct the Equipment as described in Schedule A hereto and will deliver the Equipment to the Vendee, and the Vendee will accept delivery of and pay for the Equipment as hereinafter provided, each Unit of which shall be standard gauge railroad equipment constructed in accordance with the Vendee's specifications referred to in Annex B hereto and in accordance with such modifications thereof as may be agreed to in writing between the Builder and the Vendee (which specifications and modifications, if any, are by reference made a part of this Agreement as fully as though expressly set forth herein and are hereinafter called the "Specifications"). The design, quality and component parts of each Unit shall conform, on the date of delivery of each thereof, to the Specifications and to all Department of Transportation and Interstate Commerce Commission requirements and specifications, and to all standards recommended by the Association of American Railroads reasonably interpreted as being applicable to each such Unit as of the date of such delivery, and each such Unit shall be new railroad equipment.

ARTICLE 3. Inspection and Delivery. The Builder will deliver the Units of the Equipment to the Vendee at such point or points within the United States of America specified by the Lessee on or prior to the Cut-Off Date (as hereinafter defined), freight charges, if any, prepaid; provided, however, that any Unit of Equipment which is delivered prior to the filing of this Agreement pursuant to 49 U.S.C. § 11303 shall be excluded from this Agreement, and the Vendee shall be relieved of its obligation to purchase and pay for such Equipment; and provided further that the Builder shall not have any obligation to deliver any Unit of Equipment hereunder subsequent to the commencement of any proceedings specified in clause (c) of Article 15 hereof or

the occurrence of any event of default (as described in Article 15 hereof), or event which, with the lapse of time and/or demand, would constitute such an event of default. The Builder agrees not to deliver any Unit of Equipment hereunder (a) following receipt of written notice from the Vendee or the Assignee of the commencement of any such proceedings or the occurrence of any such event, as aforesaid, and (b) until the Builder receives notice from the Assignee and the Vendee, respectively, that the conditions contained in Paragraphs 6 and 7, respectively, of the Participation Agreement have been met or waived.

Any Unit delivered prior to the filing of this Agreement pursuant to 49 U.S.C § 11303 and any Unit not delivered at the time of receipt by the Builder of the notice specified in clause (a) of the second sentence of the first paragraph of this Article 3 and any Unit not delivered and accepted hereunder on or prior to December 31, 1984, shall be excluded from this Agreement, and the Vendee shall be relieved of its obligation to purchase and pay for such Unit. If any Unit shall be excluded herefrom pursuant to the immediately preceding sentence, the Builder and the Vendee shall execute an agreement supplemental hereto limiting this Agreement to the Equipment not so excluded herefrom.

As between the Builder and the Vendee, the Builder's obligation as to the time of delivery set forth in Annex B hereto is subject, however, to delays resulting from causes beyond the Builder's reasonable control, including but not limited to acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, delays in receiving necessary materials or delays of carriers or subcontractors, but in no event shall such delays be construed to require the Vendee to accept any Unit hereunder after December 31, 1984.

During construction, including, without limitation, all phases of fabrication and assembly, the Equipment and all materials used in the construction of the Equipment and all work thereon shall be subject to inspection and approval by the authorized inspectors of the Vendee (who may be employees of the Lessee); provided, however, that any inspection or failure to inspect by the Vendee shall not affect any of its rights hereunder. The Builder shall grant to the authorized inspectors of the Vendee access to all portions of its plant where the Equipment is being

constructed. The Builder agrees to inspect all materials used in the construction of the Equipment in accordance with the standard quality control practices of the Builder. Upon completion of each Unit or of a number of Units of the Equipment, the authorized inspector of the Vendee shall inspect such Unit or Units, and if each such Unit conforms to the Specifications, such authorized inspector of the Vendee shall execute and deliver to the Builder a certificate of acceptance substantially in the form of Schedule D to the Lease ("Certificate of Acceptance") stating that such Unit or Units have been inspected and accepted on behalf of the Vendee and are marked in accordance with Article 9 hereof; provided, however, that the Builder shall not thereby be relieved of its warranties set forth or referred to in Article 13 hereof.

On delivery and acceptance of each such Unit hereunder at the place specified for delivery, the Builder shall not have any further responsibility for, nor bear any risk of, any damage to or the destruction or loss of such Unit; provided, however, that the Builder shall not thereby be relieved of its warranty referred to in Article 13 hereof.

Notwithstanding the foregoing or any other provision of this Agreement to the contrary, the delivery to and acceptance by or on behalf of the Vendee of any Unit of Equipment excluded from this Agreement pursuant to the first paragraph of Article 4 hereof shall be ineffective, ab initio, to create in or transfer to the Vendee any legal or beneficial right or interest in such Unit or to impose on the Vendee any liability, obligation or responsibility with respect thereto; any right or interest in any such Unit created in, or transferred to, or purported to be created in or transferred to, the Vendee shall be held by the Vendee solely as trustee for the benefit of the Lessee.

ARTICLE 4. Purchase Price and Payment. The Purchase Price per Unit of the Equipment is set forth in Annex B hereto.

The Equipment shall be settled for in such number of groups of Units of the Equipment delivered to and accepted by the Vendee as is provided in Item 2 of Annex A hereto (each such group being hereinafter called a "Group"). The term "Closing Date" with respect to any Group shall mean such date, not later than December 31, 1984 (the "Cut-Off Date"), occurring not more than ten business days following presentation by the Builder to the Vendee of the invoice (addressed to the Vendor and approved as to price by the

Vendee) and the Certificate or Certificates of Acceptance for such Group, as shall be fixed by the Builder by written notice delivered to the Vendee and the Vendor at least three business days prior to the Closing Date designated therein. The parties hereto will, so far as is practicable, attempt to comply with the schedule of estimated Closing Dates set forth in Item 5 of Annex A hereto. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays, holidays and any other day on which banking institutions in Chicago, Illinois, San Francisco, California, Baltimore, Maryland, or New York, New York, are authorized to remain closed.

The Vendee hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay in immediately available funds to the Vendor at such place as the Vendor may designate, the Purchase Price of each Group of the Equipment, as follows:

(a) in 20 semiannual installments, as hereinafter provided, an amount (the "CSA Indebtedness") equal to 68.45083% of the aggregate of the Purchase Prices of the Units of the Equipment in the Group for which settlement is then being made as set forth in the Invoice or Invoices therefor (the "Invoiced Purchase Prices"); and

(b) on the Closing Date with respect to each Group an amount (the "Down Payment") equal to the aggregate Purchase Price of such Group, less the amount payable pursuant to subparagraph (a) of this paragraph.

The installments of the CSA Indebtedness shall be payable on each December 28 and June 28 commencing June 28, 1985, to and including December 28, 1994, or, if any such date is not a business day, on the next succeeding business day (each such date being hereinafter called a "Payment Date"). The unpaid balance of the CSA Indebtedness shall bear interest from the Closing Date upon which such CSA Indebtedness was incurred at the rate of 12.625% per annum, and such interest shall be payable, to the extent accrued, on December 28, 1984, and on each Payment Date. The installments of principal and/or interest payable on each Payment Date shall be calculated as set forth in Schedule I hereto and the aggregate of such installments of principal will completely amortize the CSA Indebtedness. Promptly following the earlier of the last Closing Date or the

Cut-Off Date, the Vendee will furnish to the Vendor and the Lessee a payment schedule showing the amount of principal payable on each Payment Date.

Except as provided in the next paragraph, interest under this Agreement shall be determined on the basis of a 360-day year of 12 30-day months, except that interest due on December 28, 1984, shall be calculated on an actual elapsed day, 366-day year basis.

The Vendee will pay interest at the rate of 13.625% per annum (calculated on an actual elapsed day basis), to the extent legally enforceable, upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof, anything herein to the contrary notwithstanding (the "Penalty Rate").

All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts and shall be made by bank wire transfer of Federal or other funds immediately available at, and not later than, noon Baltimore, Maryland time. The Vendee shall not have the privilege of prepaying any portion of the CSA Indebtedness prior to the date it becomes due; provided, however, that the CSA Indebtedness may be prepaid as provided for in Article 7 hereof.

The obligation of the Vendee to pay to the Vendor the Down Payment shall be subject to the receipt by the Vendee of copies of the documents required to be furnished by the Builder pursuant to Section 4 of the CSA Assignment in respect of such Group.

Notwithstanding any other provision of this Agreement (including, but not limited to, any provision of Articles 15 and 16 hereof), but not limiting the effect of Article 21 hereof, the Vendor agrees that the liability of the Vendee or any assignee of the Vendee for all payments to be made by it under this Agreement (with the exception only of the payments to be made pursuant to subparagraph (b) of the third paragraph of Article 4, the interest payment due on December 28, 1984, to the extent provided in the last sentence of the last paragraph of Paragraph 8 of the Participation Agreement, and the obligations set forth in the proviso in the third paragraph of Article 12 hereof) shall not exceed an amount equal to, and shall be payable only out of, the "income and proceeds from the Equipment". As used herein, the term "income and proceeds from the

Equipment" shall mean (i) if one of the events of default specified in Article 15 hereof shall have occurred and while it shall be continuing, so much of the following amounts as are indefeasibly received by the Vendee at any time after any such event and during the continuance thereof: (a) all amounts of rental and amounts in respect of Casualty Occurrences or a Termination (as such terms are defined in Article 7 hereof) paid for or with respect to the Equipment pursuant to the Lease and any and all other payments received under Section 8 or any other provision of the Lease and (b) any and all payments or proceeds received by the Vendee under the Lease or received by the Vendee for or with respect to the Equipment as the result of the sale, lease or other disposition thereof and after deducting all costs and expenses of such sale, lease or other disposition and (ii) at any other time only that portion of the amounts referred to in the foregoing clauses (a) and (b) as are indefeasibly received by the Vendee and as shall be required to discharge (A) the portion of the CSA Indebtedness (including prepayments thereof required in respect of Casualty Occurrences or a Termination) and/or interest thereon due and payable on the date such amounts were required to be paid pursuant to the Lease, (B) any other payments then due and payable under this Agreement and (C) any of the obligations of the Vendee under this Agreement, the Vendee under the Participation Agreement or the Lessee under the Lease to which the Vendor is entitled to apply Payments (as defined in Paragraph 1 of the Lease Assignment) under the Lease Assignment; it being understood that "income and proceeds from the Equipment" shall in no event include Excluded Payments (as defined in Paragraph 1 of the Lease Assignment). Notwithstanding anything to the contrary contained in Articles 15 and 16 hereof, the Vendor agrees that in the event it shall obtain a judgment against the Vendee for an amount in excess of the amounts payable by the Vendee pursuant to the limitations set forth in this paragraph, it will, accordingly, limit its execution of such judgment against the Vendee to amounts payable pursuant to the limitations set forth in this paragraph. It is further agreed by the parties hereto that nothing contained herein limiting the liability of the Vendee shall derogate from the right of the Vendor to proceed against the Equipment as provided for herein for the full unpaid CSA Indebtedness and interest thereon and all other payments and obligations hereunder or to proceed against the Lessee under the Lease or the Consent.

ARTICLE 5. Security Interest in the Equipment.

The Vendor shall and hereby does retain a security interest in the Equipment until (i) the Vendee shall have made all its payments under this Agreement in respect of the Equipment and the Vendee shall have made all its payments under the Participation Agreement and shall have kept and performed all agreements herein and therein contained, notwithstanding any provision of this Agreement limiting the liability of the Vendee and notwithstanding the delivery of the Equipment to and the possession and use thereof by the Vendee and the Lessee as provided in this Agreement and the Lease, and (ii) the Lessee shall have satisfied all its obligations to the Vendor and any Investor under any provision of the Lease.

Except as otherwise specifically provided in Article 7 hereof, when and only when the Vendor shall have been paid the full CSA Indebtedness, together with interest and all other payments as herein provided, and all the Vendee's obligations herein contained and all the Lessee's obligations to the Vendor and the Investors contained in the Lease shall have been performed, all rights and interests of the Vendor in the Equipment shall be released and discharged to the Vendee without further transfer or action on the part of the Vendor. However, the Vendor, if so requested by the Vendee at that time, will (a) execute and deliver to the Vendee documents covering the Equipment releasing its security interest therein to the Vendee, free of all claims, rights, liens, security interests and other encumbrances created or retained hereby and (b) execute and deliver to the Vendee for filing, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Vendee to such Equipment. The Vendee hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such release documents or instrument or instruments or to file any such certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such release documents or instrument or instruments or to file such certificate within a reasonable time after written demand by the Vendee.

ARTICLE 6. Impositions. All payments to be made by the Vendee hereunder will be free of all withholding or expense of any nature whatsoever to the Vendor and the Investors (as defined in the Participation Agreement)

including their respective successors, assigns, agents and servants) for, and the Vendee shall pay and shall indemnify and hold harmless the Vendor and the Investors (including their respective successors, assigns, agents and servants), from and against, all collection charges, all license and registration fees and all taxes, including without limitation, income, sales, use, personal property, stamp, interest equalization, withholding and other taxes, levies, imposts, duties, charges, or withholdings of any nature, together with any penalties, fines or interest thereon (all such collection charges, fees, taxes, levies, imposts, duties, charges, withholdings, penalties, fines and interest being hereinafter called collectively "Impositions"), imposed against the Vendor, the Investors (including their respective successors, assigns, agents and servants), the Lessee, the Vendee or any Unit or any part thereof by any Federal, state or local government or taxing authority of or in the United States of America, or by any taxing authority or governmental subdivision of a foreign country, upon or with respect to any Unit or any part thereof, or upon or with respect to the purchase, ownership, delivery, leasing, rental payment, shipment, possession, use, operation, sale, return, transfer of title, or other disposition thereof, or upon the rentals, receipts or earnings arising therefrom, or upon the proceeds received with respect thereto, or upon or with respect to this Agreement, the CSA Assignment, the Participation Agreement, the Lease, the Lease Assignment or the CSA Indebtedness (or any amendment, consent, waiver or modification of any thereof); excluding, however:

(i) any taxes on or measured by any fees or other compensation received by the Vendor for services rendered in connection with the transactions contemplated hereby; or

(ii) any United States Federal, state or local taxes, or other charges on or with respect to the investment in or transfer of the CSA Indebtedness or the revenues, receipts, or earnings therefrom for which any Investor is liable;

except any such tax which is in substitution for or relieves the Vendee from the payment of taxes which it would otherwise be obligated to pay or reimburse herein provided. The Vendee will also pay promptly all Impositions which may be imposed upon any Unit or any part thereof or for the use or operation thereof or upon the earnings arising therefrom or upon the Vendee solely by reason of its ownership thereof and will keep at all times all and every part of such Unit

free and clear of all Impositions which might in any way affect the title of the Vendee or result in a lien upon any such Unit. The Vendee need not pay any Imposition to the extent that and while it is being contested by the Vendee in good faith and by appropriate proceedings and so long as such proceedings or the nonpayment of such Imposition does not, in the reasonable opinion of the Vendor, involve (A) any substantial danger of the sale, forfeiture or loss of any Unit or any interest therein, (B) any material adverse change in the title, property or rights of the Vendee in or to the Units under the Lease or of Vendor hereunder, (C) any assessment or penalty against any party which is indemnified by this Article 5, (D) any interference with the due payment by the Lessee of rentals under the Lease or the application of such rentals under the Lease Assignment or (E) any danger of criminal liability or of other liability for which no indemnification is provided hereunder being imposed against the Vendor, any Investor, or the agents or servants of any of them. If any Imposition shall have been charged or levied against the Vendor or the Investors (including their respective successors, assigns, agents and servants) directly, the Vendee shall be advised promptly and shall be given an opportunity to contest such Imposition before the Imposition is paid by the Vendor or the Investors, and if, after such notice is given and such opportunity is provided, the Vendor or the Investors shall pay such Imposition, the Vendee shall reimburse such person, plus interest at the rate per annum equal to the rate announced from time to time by Wells Fargo Bank, N.A. as its best rate for 90 day loans to its largest commercial customers (the "WFB Prime") (calculated on an actual elapsed day basis) from the date of payment to the date of reimbursement, upon presentation of an invoice therefor. The Vendee further agrees that it will promptly pay to the Vendor or the Investors (including their respective successors, assigns, agents and servants), as the case may be, an amount which, after deduction of any taxes required to be paid by such person in respect of the receipt thereof, shall be equal to any additional tax payable by the Vendee under this Article 5; provided, however, that such payment shall be reduced by an amount equal to any reduction in taxes resulting from the deduction by such person of the liability or payments with respect to which such payment or reimbursement is made or paid by the Vendee.

All amounts payable by the Vendee pursuant to this Article 6 shall be payable, to the extent not theretofore paid, on written demand by the party entitled to indemnification; and all the indemnities contained in this Article 5 shall continue in full force and effect notwithstanding the

expiration or other termination of this Agreement and are expressly made for the benefit of, and shall be enforceable by the Vendor and the Investors.

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

In the event any reports with respect to Impositions are required to be made, the Vendee will either make such reports in such manner as to show the ownership of the Vendee and the security interest of the Vendor in the Units or notify the Vendor of such requirement and make such reports in such manner as shall be satisfactory to the Vendor.

In the event the Vendee may be prohibited by law or impaired from contesting in its own name any Imposition covered by this Article 6 in respect of which the Vendee would otherwise be required to make payments to the Vendor pursuant hereto, the Vendor shall, upon request and at the expense of the Vendee, take all legal and other appropriate action reasonably requested by the Vendee to contest such Imposition. The Vendor shall not be obligated to take any such legal or other appropriate action unless the Vendee shall first have indemnified the Vendor in a manner satisfactory to the Vendor for all liabilities and expenses which may be entailed therein. Further, the Vendee shall indemnify and hold the Vendor harmless from and against any and all claims, costs, expenses, damages, losses and liabilities incurred in connection therewith as a result of, or incident to, any action taken by the Vendor or the Vendee under this Article 6. The Vendee shall be entitled to any refund received by the Vendor or the Vendee in respect of any Imposition paid by the Vendee, provided no event of default hereunder or other event which, with notice, demand and/or lapse of time, would constitute such an event of default hereunder shall have occurred and be continuing.

ARTICLE 7. Maintenance and Repair; Casualty Occurrences; Termination. The Vendee agrees that, at its own cost and expense, it will maintain and keep each Unit of the Equipment in good operating order, repair and condition,

ordinary wear and tear excepted, and in accordance with the provisions of the first paragraph of Section 6 of the Lease.

In the event that any Unit of the Equipment shall suffer a Casualty Occurrence (as defined in Section 6 of the Lease) or the Lessee elects to terminate the Lease pursuant to Section 6 thereof (a "Termination"), the Vendee shall, within 30 days after it shall have determined that such Unit has suffered a Casualty Occurrence or received notice of a Termination, cause the Vendor to be fully informed in regard thereto. Notwithstanding any such Casualty Occurrence or Termination, the Vendee shall continue making payment of all installments of principal and interest in respect of such Unit until, in the case of a Casualty Occurrence, the next succeeding date for the payment of interest on the CSA Indebtedness and, in the case of a Termination, the Termination Date (as defined in Section 6 of the Lease) (each such Date hereinafter called a "Settlement Date"). On such Settlement Date the Vendee shall pay to the Vendor a sum equal to the Casualty Value (as hereinafter defined) of such Unit suffering a Casualty Occurrence or subject to a Termination as of the date of such payment and shall file, or cause to be filed, with the Vendor a certificate setting forth the Casualty Value of such Unit. Any money paid to the Vendor pursuant to this paragraph shall be applied on the date that such Casualty Value is paid (after the payment of the interest and principal due on such date) to prepay without penalty or premium the unpaid balance of the CSA Indebtedness with respect to such Unit or Units (in the manner provided in the second paragraph of Paragraph 9 of the Participation Agreement), and the Vendee will promptly furnish to the Vendor and the Lessee a revised schedule of payments of principal and interest thereafter to be made in respect of the remaining Units in such number of counterparts as the Vendor may request.

Upon payment by the Vendee to the Vendor of the Casualty Value of any Unit of the Equipment having suffered a Casualty Occurrence or subject to a Termination, all rights and interests of the Vendor in such Unit shall be released and discharged, without further transfer or action on the part of the Vendor, except that the Vendor, if requested by the Vendee, will execute and deliver to the Vendee, at the expense of the Vendee, an appropriate instrument, confirming such release and discharge of all the Vendor's right and interest, and the release of the Vendor's security interest, in such Unit, in recordable form, in order that the Vendee may make clear upon the public records the title of the Vendee to such Unit.

The Vendee will at all times prior to the payment of the full CSA Indebtedness, together with interest thereon and all other payments required hereby, cause to be carried and maintained insurance in respect of the Equipment at the time subject hereto, in amounts and against risks comparable to those insured against by the Lessee on similar equipment owned by it.

The Casualty Value of each Unit of the Equipment suffering a Casualty Occurrence or subject to a Termination shall be deemed for purposes of this Agreement to be that portion of the original CSA Indebtedness with respect to such Unit remaining unpaid on the date as of which such Casualty Value shall be determined, plus interest accrued thereon but unpaid as of such date. For the purpose of this paragraph, each payment of CSA Indebtedness in respect of Equipment made pursuant to Article 4 hereof shall be deemed to be a payment on each Unit of the Equipment in like proportion as the Purchase Price of such Unit bears to the aggregate Purchase Price of all the Units of Equipment.

If the Vendor shall receive any insurance proceeds or condemnation payments in respect of such Units suffering a Casualty Occurrence, the Vendor shall, subject to the Vendor having received payment of the Casualty Value hereunder, pay such insurance proceeds or condemnation payments to the Vendee. All insurance proceeds or condemnation payments received by the Vendor in respect of any Unit or Units of Equipment not suffering a Casualty Occurrence shall be paid to the Vendee upon proof satisfactory to the Vendor that any damage to such Unit in respect of which such proceeds were paid has been fully repaired.

ARTICLE 8. Reports and Inspections. On or before March 31 in each year, commencing with the calendar year 1985, the Vendee shall cause to be furnished to the Vendor an accurate statement to the effect set forth in Section 7 of the Lease. The Vendor shall have the right, by its agents, to inspect the Equipment and the Vendee's and Lessee's records with respect thereto at such reasonable times as the Vendor may request during the continuance of this Agreement.

ARTICLE 9. Marking of Equipment. The Vendee will cause each Unit of the Equipment to be kept numbered and marked as provided in Section 4 of the Lease.

Except as provided in the immediately preceding paragraph and in the proviso to the second paragraph of Section 4 of the Lease, the Vendee will not allow the name of any person, association or corporation to be placed on any Unit of the Equipment as a designation that might be interpreted as a claim of ownership.

ARTICLE 10. Compliance with Laws and Rules. During the term of this Agreement, the Vendee will comply, and will cause every lessee or user of the Equipment to comply, in all respects (including, without limitation, with respect to the use, maintenance and operation of the Equipment) with all Applicable Laws (as defined in Section 8 of the Lease) and in the event that any Applicable Law requires any alteration, replacement or modification, of or to any part on any Unit of the Equipment, the Vendee will conform therewith at its own expense; provided, however, that the Vendee may, in good faith, contest the validity or application of any Applicable Law in any reasonable manner which does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor under this Agreement.

ARTICLE 11. Possession and Use. The Vendee, so long as an event of default shall not have occurred and be continuing under this Agreement, shall be entitled, from and after delivery of the Equipment to the Vendee, to the possession of the Equipment and the use thereof, but only upon and subject to all the terms and conditions of this Agreement and the Lease.

The parties hereto acknowledge that the Vendee simultaneously herewith is leasing the Equipment to the Lessee as provided in the Lease, and the rights of the Lessee and its permitted assigns under the Lease shall be subordinate and junior in rank to the rights, and shall be subject to the remedies, of the Vendor under this Agreement. The Vendee shall have no right to lease or sublease the Equipment other than the Lease to the Lessee. The Lease shall not be amended or terminated (except in accordance with its terms) without the prior written consent of the Vendor.

ARTICLE 12. Prohibition Against Liens. The Vendee will pay or discharge any and all sums claimed by any party from, through or under the Vendee or its successors or

assigns which, if unpaid, might become a lien, charge, security interest or other encumbrance upon or with respect to the Equipment, or any Unit thereof, or the Vendee's interests in the Lease or the payments due and to become due thereunder, or any part thereof, and will promptly discharge any such lien, charge, security interest or other encumbrance which arises, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by any appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the reasonable opinion of the Vendor, adversely affect the property or rights of the Vendor in or to the Equipment or otherwise under this Agreement. Any amounts paid by the Vendor in discharge of any claims, liens, charges or security interests upon the Equipment shall be secured by and under this Agreement.

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

The foregoing provisions of this Article 11 shall be subject to the limitations set forth in the last paragraph of Article 4 hereof and the provisions of Article 21 hereof; provided, however, that the Vendee will pay or discharge any and all claims, liens, charges or security interests claimed by any party from, through or under the Vendee or its successors and assigns, not arising out of the ownership of the Equipment or the transactions contemplated hereby (but including income taxes arising out of the receipt of rentals and other payments under the Lease and any other proceeds of the Equipment) which, if unpaid, might become a lien, charge or security interest on or with respect to the Equipment, or any Unit thereof, or the Vendee's interest in the Lease and the payments to be made thereunder, but the Vendee shall not be required to pay or discharge any such claim so long as the validity or priority thereof shall be contested in good faith and by appropriate legal or administrative proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of counsel to the Vendor, adversely affect the security interest of the Vendor in or to the Equipment or otherwise under this Agreement or in and to the Lease and the payments to be made thereunder.

ARTICLE 13. Indemnities and Warranties. The Vendee agrees to indemnify, protect and hold harmless the Vendor from and against all losses, damages, injuries, liabilities, including, without limitation, strict or absolute liability in tort or by statute imposed, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including but not limited to counsel fees and expenses, penalties and interest, arising out of or as the result of the entering into or the performance of this Agreement, the retention by the Vendor of security title to or a security interest in the Equipment, the ordering, acquisition, use, operation, condition, construction, purchase, delivery, rejection, storage or return of any of the Equipment, any accident in connection with the operation, use, condition, construction, possession, storage or return of any of the Equipment resulting in damage to property or injury or death to any person during the period when title thereto remains in the Vendor or the transfer of title to the Equipment by the Vendor pursuant to any of the provisions of this Agreement, except, however, any losses, damages, injuries, liabilities, claims and demands whatsoever arising out of any tort, breach of warranty or failure to perform any covenant hereunder by the Builder. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the CSA Indebtedness and the release of the security interest in the Equipment, as provided in the last paragraph of Article 5 hereof, or the termination of this Agreement in any manner whatsoever.

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

The Builder represents and warrants to the Vendee that, at the time of delivery and acceptance of each Unit of its Equipment under this Agreement, the Vendee will have good and marketable title to such Unit, free and clear of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Vendor under this Agreement and the rights of the Lessee under the Lease.

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

meaning of the Employee Retirement Income Security Act of 1974.

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

The indemnities made in this Article 13 by the Builder shall not be modified, abated, postponed or in any other way or in any manner diminished or reduced as a consequence of any action or inaction of the Vendee, the Vendor or the Investors in connection with, relating to, or arising out of the rights (whether or not exercised) of any such party to inspect or approve the construction to be performed by the Builder pursuant to this Agreement. Such indemnities shall in all events, and in addition to the agreements contained elsewhere in this Article 13, extend to and apply to any allegation against any indemnified party that it has been negligent, either actively or passively, or is guilty of a breach of other duty, including, without limitation, any breach of warranty or breach of contract, to any person or organization.

The warranties and indemnities of the Builder contained or referred to in this Article 13 and in any other Articles hereof and all other covenants and obligations of the Builder contained in this Agreement shall inure to the benefit of, and be enforceable by the Vendee, the Vendor, the Investors, any lessor, lessee, assignee or transferee of this Agreement or of any Units of the Equipment constructed by the Builder hereunder.

ARTICLE 14. Assignments. The Vendee will not, except as provided in Article 11 hereof, transfer the right to possession of any Unit of the Equipment or sell, assign, transfer or otherwise dispose of its rights under this Agreement except that all, but not less than all, of the Vendee's right, title and interest under this Agreement may be assigned, conveyed or transferred by the Vendee to (a) any bank, savings institution, trust company, financial company or other corporation having a combined capital and surplus of at least \$50,000,000, or (b) any corporation owning at the time substantially all of the capital stock of the Vendee or any corporation or other entity (but not an individual) controlled by or under common control with the Vendee (any such party being hereinafter called the "Transferee"). If the transfer occurs pursuant to (b) above, the Vendee shall remain secondarily liable for the

Transferee's obligations under this Agreement if such Transferee shall not have a net worth of at least \$50,000,000 at the time of transfer. In the event of any such assignment, conveyance or transfer, the Transferee shall become a party to this Agreement and will agree to be bound by all the terms of and will undertake all the obligations of the Vendee contained in this Agreement, in the Participation Agreement, the Lease and the Lease Assignment in such manner as is reasonably satisfactory to the Vendor.

All or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Vendee, may be assigned by the Vendor and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve the Builder from, any of the obligations of the Builder to construct and deliver the Equipment in accordance herewith or to respond to its warranties and indemnities contained or referred to in Article 13 hereof or relieve the Vendee of its obligations to the Builder or diminish the rights of the Vendee contained or referred to in this Agreement.

Upon any such assignment, either the assignor or the assignee shall give written notice to the Vendee, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall, by virtue of such assignment, acquire all the assignor's right, title and interest in and to the Equipment and this Agreement, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Vendee of the notification of any such assignment, all payments thereafter to be made by the Vendee under this Agreement shall, to the extent so assigned, be made to the assignee in such manner as it may direct and shall constitute full compliance with the terms of this Agreement. The Vendee may rely upon instruments or documents which it believes in good faith to be true and authentic.

The Vendee recognizes that this Agreement will be assigned to the Assignee as provided in the CSA Assignment. The Vendee expressly represents, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Vendor hereunder, and for the purpose of inducing such acquisition, that, subject to the provisions of the last paragraph of Article 4 hereof, the rights of the

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

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

(a) the Vendee shall fail to pay in full any sum payable by the Vendee when payment thereof shall be due hereunder and such default shall continue for ten days; or

(b) the Vendee or the Lessee shall, for more than 30 days after the Vendor shall have demanded in writing (sent to both the Lessee and the Vendee) performance thereof, fail or refuse to comply with any other covenant, agreement, term or provision of this Agreement, the Participation Agreement, the CSA Assignment, the Lease, the Lease Assignment or the Consent on its part to be kept and performed and the Vendee or the Lessee shall have failed to make provision reasonably satisfactory to the Vendor for such compliance; or

(c) a petition for reorganization under Title 11 of the United States Code, as now constituted or as hereafter amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Agreement, the Lease and the Consent shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a

trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees, within 60 days after such petition shall have been filed and otherwise in accordance with the provisions of 11 U.S.C. § 1168, or any successor provision, as the same may hereafter be amended; or

(d) any other proceeding shall be commenced by or against the Vendee or the Lessee for any relief which includes, or might result in, any modification of the obligations under this Agreement, the Participation Agreement, the CSA Assignment, the Lease, the Lease Assignment, or the Consent of the Vendee or the Lessee, under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, including without limitation, readjustment of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of such obligations), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Vendee or the Lessee, as the case may be, hereunder and thereunder shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Vendee or the Lessee, as the case may be, or for their respective property in connection with any such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees or receiver or receivers, within 60 days after such proceedings shall have been commenced; or

(e) the Vendee shall make or permit any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession of any Unit of the Equipment;

(f) any Event of Default shall have occurred under the Lease and be continuing; provided, however, that an Event of Default under Section 9A of the Lease shall not be deemed to be an event of default hereunder if (i) not more than four such Events of Default shall

have occurred and not more than two such Events of Default shall have occurred on consecutive dates and (ii) the Vendee shall not be in default under the provisions of clause (a) of this Article 15;

then at any time after the occurrence of such an event of default and during the continuance thereof, the Vendor may, upon written notice to the Vendee and the Lessee and upon compliance with any legal requirements then in force and applicable to such action by the Vendor, declare (a "Declaration of Default") the entire unpaid CSA Indebtedness together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such Declaration of Default at the Penalty Rate, to the extent legally enforceable. In addition, if the Vendee does not pay the entire unpaid CSA Indebtedness, together with interest thereon accrued and unpaid to the date of payment, within 30 days of such notice of Declaration of Default, the Vendor may, upon written notice to the Vendee and the Lessee cause the term of the Lease immediately upon such notice to terminate (and the Vendee acknowledges the right of the Vendor to terminate the Lease) and the Vendor may exercise the other remedies provided in Article 16 hereof; provided, however, that such termination shall not be in derogation of or impair the rights of the Vendee or the Vendor under the Lease Assignment, as the case may be, to enforce compliance by the Lessee with any of its covenants and agreements under the Lease or to enforce any of its rights and remedies under Section 9 of the Lease (subject to the Vendor's rights to repossess and sell the Equipment as provided in this Agreement), including the rights of the Vendee or the Vendor under the Lease Assignment, as the case may be, to sue for and recover damages provided for in Section 9 of the Lease upon the occurrence of an Event of Default under the Lease. Upon a Declaration of Default, subject to Article 4 hereof, the Vendor shall be entitled to recover judgment for the entire unpaid balance of the CSA Indebtedness, with interest as aforesaid, and to collect such judgment out of any property of the Vendee, subject to the limitations of Articles 4 and 21 hereof, wherever situated. The Vendee agrees to notify the Vendor promptly of any event of which it has knowledge which constitutes, or with the giving of notice or lapse of time or both would constitute, an event of default under this Agreement.

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

ARTICLE 16. Remedies. At any time during the continuance of a Declaration of Default, the Vendor may, upon such further notice and action, if any, as may be required for compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Vendor, take or cause to be taken, by its agent or agents, immediate possession of the Equipment, or one or more of the Units thereof, without liability to return to the Vendee any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 16 expressly provided, and may remove the same from possession and use of the Vendee, the Lessee or any other person and for such purpose may enter upon the premises of the Vendee or the Lessee or any other premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Vendee or the Lessee, subject to all mandatory requirements of due process of law.

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

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

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

(c) cause the Equipment to be transported to any reasonable place on the lines of the Lessee or any of its affiliates or to any connecting carrier for shipment, all as directed by the Vendor.

During any storage period, the Vendee will, at its own cost and expense, insure, maintain and keep each such Unit in good order and repair and will permit the inspection of the Equipment by the Vendor, the Vendor's representatives and prospective purchasers, lessees and users. This agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled to a decree against the Vendee requiring specific performance hereof. The Vendee hereby expressly waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any Unit of the Equipment in any reasonable manner.

At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 16 provided) may, at its election and upon such notice as is hereinafter set forth, retain the Equipment in satisfaction of the entire CSA Indebtedness and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Vendee by telegram or registered mail, addressed as provided in Article 20 hereof, and to any other persons to whom the law may require notice, within 30 days after such Declaration of Default. In the event that the Vendor should elect to retain the Equipment and no objection is made thereto within the 30-day period described in the second proviso below, all the Vendee's rights in the Equipment shall thereupon terminate and all payments made by the Vendee may be retained by the Vendor as compensation for the use of the Equipment; provided, however, that if the Vendee, before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to the Vendor the total unpaid balance of the CSA Indebtedness together with interest thereon accrued and unpaid and all other payments

due under this Agreement (and all obligations of the Lessee under any provisions of the Lease to the Vendor or any Investor shall have been satisfied or provision therefor satisfactory to the Vendor and such Investor shall have been made), then in such event all rights and interests of the Vendor in the Equipment shall be released and discharged; provided, further, that if the Vendee or any other persons notified under the terms of this paragraph object in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall not have given notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 16.

At any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon reasonable notice to the Vendee and any other persons to whom the law may require notice of the time and place, may sell the Equipment, or one or more of the Units thereof, free from any and all claims of the Vendee or any other party claiming from, through or under the Vendee at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; provided, however, that if, prior to such sale and prior to the making of a contract for such sale, the Vendee should tender full payment of the total unpaid balance of the CSA Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale and the Vendor's reasonable attorneys' fees (and all obligations of the Lessee under any provisions of the Lease to the Vendor or any Investor shall have been satisfied or provision therefor satisfactory to the Vendor and such Investor shall have been made), then in such event the rights and interests of the Vendor in the Equipment shall be immediately released and discharged. The proceeds of such sale or other disposition, less the attorneys' fees and any other expenses incurred by the Vendor in retaking possession of, removing, storing, holding, preparing for sale and selling or otherwise disposing of the Equipment, shall be credited on the amount due to the Vendor under the

provisions of this Agreement and the balance shall be paid to the Vendee.

Any sale hereunder may be held or conducted at New York, New York, at such time or times as the Vendor may specify (unless the Vendor shall specify a different place or places, in which case the sale shall be held at such place or places as the Vendor may specify), in one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine, so long as such sale shall be in a commercially reasonable manner. The Vendor or the Vendee may bid for and become the purchaser of the Equipment, or any Unit thereof, so offered for sale. The Vendee shall be given written notice of such sale not less than ten days prior thereto by telegram or registered mail, addressed as provided in Article 20 hereof. If such sale shall be a private sale (which shall be deemed to mean only a sale where an advertisement for bids has not been published in a newspaper of general circulation or a sale where less than 40 offerees have been solicited in writing to submit bids), it shall be subject to the right of the Vendee to purchase or provide a purchaser, within 10 days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. In the event that the Vendor shall be the purchaser thereof, it shall not be accountable to the Vendee (except to the extent of surplus money received as hereinafter provided in this Article 15), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all sums due to the Vendor hereunder.

Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly granted to the Vendee shall not otherwise alter or affect the Vendor's rights or the Vendee's obligations hereunder. The Vendor's acceptance of any payment after it

shall have become due hereunder shall not be deemed to alter or affect the Vendee's obligations or the Vendor's rights hereunder with respect to any subsequent payments or default therein.

If, after applying all sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Vendee shall, subject to the provisions of the last paragraph of Article 4 hereof, pay the amount of such deficiency to the Vendor upon demand, together with interest from the date of such demand to the date of payment, at the rate per annum specified in Article 4 hereof as being applicable to amounts remaining unpaid after becoming due and payable, and, if the Vendee shall fail to pay such deficiency, the Vendor may bring suit therefor and shall, subject to the limitations of the last paragraph of Article 4 and Article 21 hereof, be entitled to recover a judgment therefor against the Vendee. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Vendee.

The Vendee will pay all reasonable expenses, including attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, the Vendor may recover reasonable expenses, including reasonable attorneys' fees, and the amount thereof shall be included in such judgment.

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

ARTICLE 17. Applicable State Laws. Any provision of this Agreement prohibited by any applicable law of any jurisdiction which is not overridden by applicable Federal law shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Vendee to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

Except as otherwise provided in this Agreement, the Vendee, to the full extent permitted by law, hereby

waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment, or any one or more Units thereof, and any other requirements as to the time, place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of the Vendor's rights under this Agreement and any and all rights of redemption.

ARTICLE 18. Filing. The Vendee will cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto to be duly filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303 and the Vendee will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record any and all further instruments required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of special counsel for the Vendor, of its security title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Vendee will promptly furnish to the Vendor certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Vendor.

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

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

ARTICLE 20. Notices. Any notice hereunder may be given by telephone (confirmed promptly in writing), telegraph, telex, telecopy (or similar transmission), hand or mail and shall in each case be effective when first received. Any notice hereunder to any of the parties designated below

shall be sent to it as follows:

(a) to the Vendor, at P.O. Box 2258 (Two Hopkins Plaza), Baltimore, Maryland 21203, Attention of Corporate Trust Department,

(b) to the Builder, at Southern Pacific Building, One Market Plaza, San Francisco, California 94105, Attention of Vice President and Treasurer,

(c) to the Vendee, 8501 West Higgins Road, Chicago, Illinois 60631, Attention of Vice President and Treasurer, with a copy to GATX Leasing Corporation, Four Embarcadero Center, San Francisco, California 94111; attention of Contracts Administration.

(d) to the Lessee, at Southern Pacific Building, One Market Plaza, San Francisco, California 94105, Attention of Vice President and Treasurer,

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

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

ARTICLE 21. Immunities; Satisfaction of Undertakings. No recourse shall be had in respect of any obligation due under this Agreement, or referred to herein, against any incorporator, stockholder, beneficiary, director or officer, as such, past, present or future, of the parties hereto, whether by virtue of any constitutional provision, statute or rule of law or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of such incorporators, beneficiaries, stockholders, directors or officers being forever released as a condition of and as consideration for the execution of this Agreement.

The obligations of the Vendee under the second, seventh and eighth paragraphs of Article 16 and under Articles 3, 6, 7 (other than the second, third and fourth sentences of the second paragraph thereof to the extent requiring delivery of certificates and payment schedules as therein provided and other than the payment obligations, which are limited under the last paragraph of Article 4 hereof), 8, 9, 10, 12 (other than the proviso to the last paragraph thereof), 13 and 18 hereof, or any other obligations hereunder not specifically enumerated in the last paragraph of Article 4 hereof, shall be deemed in all respects satisfied by the Lessee's undertakings contained in the Lease. The Vendee shall not have any responsibility for the Lessee's failure to perform such obligations, but if the same shall not be performed they shall constitute the basis for an event of default hereunder pursuant to Article 15 hereof. No waiver or amendment of the Lessee's undertakings under the Lease shall be effective unless joined in by the Vendor.

It is expressly understood and agreed by and between the parties hereto that Illinois Tool Works Inc., as Guarantor under the Participation Agreement, has guaranteed the performance of all Obligations (as defined in Paragraph 16 of the Participation Agreement) of the Vendee and any performance by said Guarantor shall be deemed to be performance by the Vendee.

It is also expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that this Agreement is executed and delivered by the Agent, not in its individual capacity but solely as Agent under the Participation Agreement.

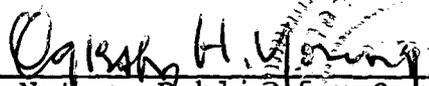
ARTICLE 22. Law Governing. The terms of this Agreement and all rights and obligations hereunder shall be governed by and construed in accordance with the laws of the State of Illinois; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303 and such additional rights arising out of the filing, recording or deposit hereof, if any, and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited.

ARTICLE 23. Execution. This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same

STATE OF OREGON,)
) ss.:
COUNTY OF MULTNOMAH,)

On this 14th day of March 1984, before me personally appeared DAVID A. SMITH, to me personally known, who, being by me duly sworn, says that he is the Vice President and Treasurer of Southern Pacific Transportation Company, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

[Notarial Seal]


Notary Public for Oregon
My Commission Expires 1-2-86

STATE OF ILLINOIS,)
)
COUNTY OF COOK,)

On this day of March 1984, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is the Vice President and Treasurer of CUMBERLAND LEASING CO., that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, and that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

[Notarial Seal]

Notary Public

My Commission Expires

SCHEDULE I

Allocation Schedule of Each
\$1,000,000 of 12.625% CSA Indebtedness Payable

<u>Payment No.</u>	<u>Rental Payment Date</u>	<u>Debt Service</u>	<u>Interest Payment</u>	<u>Principal Payment</u>	<u>Unpaid Principal</u>
	12/28/84	*	*	.00	1,000,000.00
1	6/28/85	71,237.88	63,125.00	8,112.88	991,887.12
2	12/28/85	115,198.84	62,612.87	52,585.97	939,301.15
3	6/28/86	65,128.19	59,293.39	5,834.80	933,466.35
4	12/28/86	130,056.52	58,925.06	71,131.46	862,334.89
5	6/28/87	92,554.13	54,434.89	38,119.24	824,215.65
6	12/28/87	102,630.59	52,028.61	50,601.98	773,613.67
7	6/28/88	119,132.40	48,834.36	70,298.04	703,315.63
8	12/28/88	76,063.39	44,396.80	31,666.59	671,649.04
9	6/28/89	127,139.92	42,397.85	84,742.07	586,906.97
10	12/28/89	56,209.94	37,048.50	19,161.44	567,745.53
11	6/28/90	51,908.40	35,838.94	16,069.46	551,676.07
12	12/28/90	121,991.77	34,824.55	87,167.22	464,508.85
13	6/28/91	118,280.20	29,322.12	88,958.08	375,550.77
14	12/28/91	39,033.80	23,706.64	15,327.16	360,223.61
15	6/28/92	113,937.62	22,739.12	91,198.50	269,025.11
16	12/28/92	21,087.33	16,982.21	4,105.12	264,919.99
17	6/28/93	125,622.10	16,723.07	108,899.03	156,020.96
18	12/28/93	65,826.51	9,848.82	55,977.69	100,043.27
19	6/28/94	94,487.88	6,315.23	88,172.65	11,870.62
20	12/28/94	12,619.95	749.33	11,870.62	.00
		<u>\$1,720,147.36</u>	<u>\$720,147.36</u>	<u>\$1,000,000.00</u>	

* Interest only shall be payable to the extent accrued on this date.

ANNEX A
TO
CONDITIONAL SALE AGREEMENT

- Item 1: Southern Pacific Transportation Company
Southern Pacific Building
One Market Plaza
San Francisco, California 94105.
Attention of Vice President and Treasurer.
- Item 2: Unless the parties shall otherwise agree, the Equipment shall be settled for in not more than nine Groups.
- Item 3: The Builder warrants that the Equipment built by it will be built in accordance with the requirements, Specifications and standards set forth in Article 2 of the CSA to which this Annex A is attached (this "Agreement") and warrants the Equipment will be free from defects in material and workmanship under normal use and service. If any unit of the Equipment covered by the above warranty does not meet the above warranty, within one year after the date of the acceptance of such unit by the Vendee, the Builder shall thereupon correct such defect (including nonconformance with the requirements, Specifications and standards set forth in Article 2 of this Agreement), either by (1) repairing or replacing such defective part or parts of any unit of the Equipment, provided that the Vendor or the Lessee notifies the Builder in writing promptly after discovery of such defect, and at the expense of the Lessee, makes such defective unit or units of the Equipment promptly available at the Builder's plant for any repair, or by (2) making available at the Builder's plant the necessary repaired or replacement parts, as appropriate and agreed to by the parties.

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

Item 4: The Builder agrees to indemnify, protect and hold harmless the Vendee and the Lessee from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendee or the Lessee because of the use in or about the construction or operation of any of its Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. Such covenants of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, the satisfaction and discharge of this Agreement or the termination of this Agreement in any manner.

Item 5: Estimated Schedule of Closings

<u>Estimated Closing Date</u>	<u>Estimated Purchase Price of Equipment</u>
April 30, 1984	\$ 3,020,000
May 31, 1984	3,020,000
June 29, 1984	3,020,000
July 31, 1984	3,020,000
August 31, 1984	3,775,000
October 1, 1984	3,020,000
October 31, 1984	3,020,000
November 30, 1984	3,020,000
December 28, 1984	3,775,000
	<hr/>
	\$28,690,000

<u>Type</u>	<u>Builder</u>	<u>Specifi- cations</u>	<u>Builder's Plant</u>	<u>Quantity</u>	<u>Lessee Road Numbers (Both Inclusive)</u>	<u>Unit Purchase Price</u>	<u>Total Purchase Price</u>	<u>Estimated Time of Delivery</u>
3,200 h.p. Model SD45-2 diesel- electric loco- motive	SPTCo	Per specifi- cations provided by Builder to Vendee	Sacra- mento, Cal.	38	SP 7499- 7536	\$ 755,000	\$ 28,690,000	April-Dec. 1984

C-35

ANNEX B
TO
CONDITIONAL SALE AGREEMENT

ANNEX C
to the
Conditional Sale
Agreement

[CS&M Ref. 3909-208]

LEASE OF RAILROAD EQUIPMENT

dated as of March 1, 1984

Between

SOUTHERN PACIFIC TRANSPORTATION COMPANY,
as Lessee,

and

CUMBERLAND LEASING CO.,
Lessor.

The rights and interests of the Lessor under this Lease are subject to a security interest in favor of MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, as Agent for certain institutional investors. The original of this Lease is held by said Agent.

LEASE OF RAILROAD EQUIPMENT

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LEASE OF RAILROAD EQUIPMENT, dated as of March 1, 1984, between SOUTHERN PACIFIC TRANSPORTATION COMPANY, a Delaware corporation (the "Lessee") and CUMBERLAND LEASING CO., an Illinois corporation (the "Lessor").

The Lessor is entering into a Conditional Sale Agreement dated as of the date hereof (the "CSA") with SOUTHERN PACIFIC TRANSPORTATION COMPANY (in such capacity, the "Builder"), by which the Builder has agreed to manufacture, sell and deliver to the Lessor the units of railroad equipment described in Schedule A hereto.

The Builder is assigning its interest in the CSA to Mercantile-Safe Deposit and Trust Company, a Maryland banking corporation, acting as agent (together with its successors and assigns, the "Vendor") under a Participation Agreement dated as of the date hereof (the "Participation Agreement") with the Lessee, the Lessor, the Guarantor named therein and the parties named in Schedule A thereto (including their successors and assigns, the "Investors").

The Lessee desires to lease such number of units of the Equipment as are delivered, accepted and settled for under the CSA (collectively, the "Equipment" or the "Units" and, individually, a "Unit").

The Lessor will assign certain rights in this Lease for security to the Vendor pursuant to an Assignment of Lease and Agreement dated as of the date hereof (the "Lease Assignment") and the Lessee will consent thereto pursuant to the Consent and Agreement attached to the Lease Assignment (the "Consent").

The Lessee will indemnify the Lessor against certain losses, liabilities and expenses pursuant to an indemnity agreement (the "Indemnity Agreement") substantially in the form of Exhibit D to the Participation Agreement.

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

SECTION 1. Delivery and Acceptance of Units. The Lessor hereby appoints the Lessee its agent for inspection and acceptance of the Units pursuant to the CSA. The Lessor will cause each Unit to be tendered to the Lessee at the

point or points within the United States of America at which such Unit is delivered to the Lessor under the CSA. Upon such tender, the Lessee will cause an authorized representative of the Lessee to inspect the same, and if such Unit is found to be in good order, to accept delivery of such Unit and execute and deliver to the Lessor a certificate of acceptance and delivery substantially in the form of Schedule D hereto (the "Certificate of Acceptance"), whereupon, except as provided in the next sentence, such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease. The delivery, inspection and acceptance hereunder of any unit of Equipment excluded from the CSA pursuant to the first paragraph of Article 4 thereof shall be null and void and ineffective to subject such unit to this Lease. The inspection and acceptance by the Lessee of any Unit shall not in any way release any rights which the Lessee may have against the Builder thereof under any warranty relating to such Unit.

SECTION 2. Rental. The Lessee agrees to pay to the Lessor, as rental for each Unit subject to this Lease, 20 consecutive semiannual payments in arrears on December 28 and June 28 of each year commencing June 28, 1985. The 20 semiannual rental payments shall each be in an amount equal to the percentage of the Purchase Price (as defined in Article 4 of the CSA) of each Unit then subject to this Lease which is set forth in Schedule C hereto. In addition, the Lessee agrees to pay the Lessor as additional rental for each Unit subject to this Lease (i) on the Repayment Date (as defined in the fourth paragraph of Paragraph 8 of the Participation Agreement) an amount equal to the interest payable under clause (a) of said fourth paragraph, (ii) on December 28, 1984, an amount equal to interest accrued on the amounts deposited by the Investors from the Deposit Date to the various Closing Dates and (iii) from time to time upon demand of the Lessor an amount equal to any Investment Deficiency (as defined in the first paragraph of Paragraph 8 of the Participation Agreement). The foregoing rental amounts and the Casualty Values and Termination Values set forth in Schedule B hereto have been calculated based on the assumptions set forth on Schedule B hereto. If for any reason any of the assumptions contained in Schedule B is or becomes untrue or inaccurate in any respect, the Lessor and the Lessee agree that the rentals payable hereunder and the Casualty Values and Termination Values will be adjusted so as to maintain the Net Return, as defined below, that the Lessor expected to realize as of the date hereof if such assumptions had been correct. "Net Return" shall include

consideration of all the following: the after-tax rate of return, the total net after-tax cash flow as a percentage of original equity investment, the timing and amount of accounting income and the net present value of the after-tax cash flows that the Lessor expects to realize as of the date hereof from the transaction described herein and in the Participation Agreement and the CSA. The Casualty Value and Termination Value percentages are also subject to adjustment as provided in the Indemnity Agreement. The Lessor shall notify the Lessee in writing of any such adjustment not later than April 30, 1985, setting forth in reasonable detail the changes in the Schedule B assumptions and the amounts of the resulting adjustments. Any adjustment of rental shall be calculated in such a manner as to comply with Revenue Procedure 75-21. At the Lessee's request and expense, the Lessor shall retain the firm of Price Waterhouse & Co. to provide verification of the consistency of the calculation of the amount of such adjustments. The Lessor and the Lessee agree to execute an addendum to this Lease to reflect each such adjustment; provided that such adjustment shall be effective for all purposes of this Lease regardless of whether such addendum is actually executed and delivered. Notwithstanding any other provision in this Lease, the Participation Agreement or the CSA, the rentals and Casualty Value and Termination Value percentages shall always be sufficient to satisfy the obligations of the Lessor under the CSA in respect of the CSA Indebtedness (as defined in Article 4 of the CSA), notwithstanding any limitation of liability contained therein.

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

This Lease is a net lease and the Lessee shall not be entitled to any abatement of rental or any other amount payable hereunder, reduction thereof or setoff against rental or any other amount payable hereunder, including, but not limited to, abatements, reductions or setoffs due or alleged to be due to, or by reason of, any past, present or future claims of the Lessee against the Lessor under this Lease or under the CSA, or against the Builder or the Vendor or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective

obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or failure of title of the Lessor to any of the Units or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against Lessee's use of all or any of the Units, the taking or requisitioning of any of the Units by condemnation or otherwise, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency, bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the Lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever. All payments under this Lease shall be made by bank wire transfer of immediately available funds, and not later than noon local time, in the city where such payments are due.

SECTION 3. Term of Lease. The term of this Lease as to each Unit shall begin on the date of the delivery to and acceptance by the Lessee of such Unit and, subject to the provisions of Sections 6, 9 and 12 hereof, shall terminate on the date on which the final payment of rent in respect thereof is due hereunder; provided, however, that all the obligations of the Lessee, except for the payment of rental, taxes accruing after the termination or expiration hereof and the furnishing of annual reports, shall continue until surrender of the Units in accordance with Section 13 hereof. Nothing in this paragraph shall be deemed to terminate any obligation or provision of this Lease which by its terms is stated to survive the final payment of rent due hereunder.

Notwithstanding anything to the contrary contained herein, all rights and obligations of the Lessee under this

Lease and in and to the Units are subject to the rights of the Vendor under the CSA. If an event of default should occur under the CSA, the Vendor may terminate this Lease (or rescind its termination), all as provided therein.

SECTION 4. Identification Marks. The Lessee, so long as this Lease shall remain in effect, will cause each Unit to be kept numbered with the road number set forth in Schedule A hereto and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of such Unit, in letters not less than one inch in height, the words "OWNERSHIP SUBJECT TO A SECURITY AGREEMENT FILED WITH THE INTERSTATE COMMERCE COMMISSION" or other appropriate markings designated by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect Lessor's and Vendor's title to and property in such Unit and the rights of the Lessor under this Lease and of the Vendor under the CSA. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such legend shall have been so marked on both sides thereof and will replace promptly any such legend which may be removed, obliterated, defaced or destroyed. The Lessee will not change the road number of any Unit unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with the Vendor and the Lessor and filed by the Lessee in all public offices where this Lease and the CSA shall have been filed, recorded and deposited and (ii) the Lessee shall have furnished the Vendor and the Lessor an opinion of counsel to that effect and to the further effect that such filing, recordation and deposit will protect the Vendor's and the Lessor's interests in such Units and that no filing, recording, depositing or giving of notice with or to any other Federal, state or local government or agency thereof is necessary to protect the interests of the Vendor and the Lessor in such Units.

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

SECTION 5. Impositions. All payments to be made by the Lessee hereunder will be free of all withholding or expense of any nature whatsoever to the Lessor, the Vendor and the Investors (including their respective successors, assigns, agents and servants) for, and the Lessee shall pay and shall indemnify and hold harmless the Lessor, the Vendor and the Investors (including their respective successors, assigns, agents and servants), from and against, all collection charges, all license and registration fees and all taxes, including without limitation, income, sales, use, personal property, stamp, interest equalization, withholding and other taxes, levies, imposts, duties, charges, or withholdings of any nature, together with any penalties, fines or interest thereon (all such collection charges, fees, taxes, levies, imposts, duties, charges, withholdings, penalties, fines and interest being hereinafter called collectively "Impositions"), imposed against the Lessor, the Vendor, the Investors (including their respective successors, assigns, agents and servants), the Lessee or any Unit or any part thereof by any Federal, state or local government or taxing authority of or in the United States of America, or by any taxing authority or governmental subdivision of a foreign country, upon or with respect to any Unit or any part thereof, or upon or with respect to the purchase, ownership, delivery, leasing, rental payment, shipment, possession, use, operation, sale, return, transfer of title, or other disposition thereof, or upon the rentals, receipts or earnings arising therefrom, or upon the proceeds received with respect thereto, or upon or with respect to this Lease, the Participation Agreement, the CSA, the CSA Assignment, the Lease Assignment or the CSA Indebtedness (or any amendment, consent, waiver or modification of any thereof); excluding, however:

(i) United States Federal income taxes payable by the Lessor in consequence of the receipt of payments provided for herein and, to the extent that the Lessor receives credit therefor against its United States Federal income tax liability, any foreign income taxes payable by the Lessor; provided, however, that all other foreign taxes of the Lessor for the same period which qualify for such credit are first allowed and utilized;

(ii) the aggregate of all state or local taxes payable by the Lessor measured by net income based on such receipts, up to the amount of any such taxes which would be payable to the state and city in which the

Lessor has its principal place of business (determined without apportionment to any other state);

(iii) any taxes on or measured by any fees or other compensation received by the Lessor or the Vendor for services rendered in connection with the transactions contemplated hereby; or

(iv) any United States Federal, state or local taxes, or other charges on or with respect to the investment in or transfer of the CSA Indebtedness or the revenues, receipts, or earnings therefrom for which any Investor is liable;

(v) late filing and fraud fines or penalties and late payment and negligence fines or penalties caused solely by the act, failure to act or omission of the party seeking indemnification ("Excluded Fines and Penalties");

except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse herein provided. The Lessee will also pay promptly all Impositions which may be imposed upon any Unit or any part thereof or for the use or operation thereof or upon the earnings arising therefrom or upon the Lessor solely by reason of its ownership thereof and will keep at all times all and every part of such Unit free and clear of all Impositions which might in any way affect the title of the Lessor or result in a lien upon any such Unit. The Lessee need not pay any Imposition to the extent that and while it is being contested by the Lessee in good faith and by appropriate proceedings and so long as such proceedings or the nonpayment of such Imposition does not, in the opinion of the Lessor and the Vendor involve (A) any danger of the sale, forfeiture or loss of any Unit or any interest therein, (B) any material adverse change in the title, property or rights of the Lessor in or to the Units hereunder or of Vendor under the CSA, (C) any assessment or penalty against any party which is indemnified by this Section 5, (D) any interference with the due payment by the Lessee of rentals hereunder or the application of such rentals under the Lease Assignment or (E) any danger of criminal liability or of other liability for which no indemnification is provided hereunder being imposed against the Lessor, the Vendor, any Investor, or the agents or servants of any of them. If any Imposition shall have been charged or levied against the Lessor, the Vendor or the Investors (including their respective successors, assigns, agents and

servants) directly, the Lessee shall be advised promptly and shall be given an opportunity to contest such Imposition before the Imposition is paid by the Lessor, the Vendor or the Investors, and if, after such notice is given and such opportunity is provided, the Lessor, the Vendor or the Investors shall pay such Imposition, the Lessee shall reimburse such person, plus interest at the rate per annum (calculated on an actual elapsed day basis) equal to the WFB Prime (as defined in Article 6 of the CSA) from the date of payment to the date of reimbursement, upon presentation of an invoice therefor. The Lessee further agrees that it will promptly pay to the Lessor, the Vendor or the Investors (including their respective successors, assigns, agents and servants), as the case may be, an amount which, after deduction of any taxes required to be paid by such person in respect of the receipt thereof, shall be equal to any additional tax payable by such person attributable to the inclusion in such person's income of any payment or reimbursement made or payable by the Lessee under this Section 5; provided, however, that such payment shall be reduced by an amount equal to any reduction in taxes resulting from the deduction by such person of the liability or payments with respect to which such payment or reimbursement is made or paid by the Lessee.

All amounts payable by the Lessee pursuant to this Section 5 shall be payable, to the extent not theretofore paid, on written demand by the party entitled to indemnification; and all the indemnities contained in this Section 5 shall continue in full force and effect notwithstanding the expiration or other termination of this Lease and are expressly made for the benefit of, and shall be enforceable by the Lessor, the Vendor and the Investors.

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

In the event any reports with respect to Impositions are required to be made, the Lessee will either make such reports in such manner as to show the ownership of the Lessor and the security interest of the Vendor in the Units or notify the Lessor and the Vendor of such requirement and

make such reports in such manner as shall be satisfactory to the Lessor and the Vendor.

In the event the Lessee may be prohibited by law or impaired from contesting in its own name any Imposition covered by this Section 5 in respect of which the Lessee would otherwise be required to make payments to the Lessor pursuant hereto, the Lessor shall, upon request and at the expense of the Lessee, take all legal and other appropriate action reasonably requested by the Lessee to contest such Imposition. The Lessor shall not be obligated to take any such legal or other appropriate action unless the Lessee shall first have indemnified the Lessor in a manner satisfactory to the Lessor for all liabilities and expenses which may be entailed therein. Further, the Lessee shall indemnify and hold the Lessor harmless from and against any and all claims, costs, expenses, damages, losses and liabilities incurred in connection therewith as a result of, or incident to, any action taken by the Lessor or the Lessee under this Section 5. The Lessee shall be entitled to any refund received by the Lessor or the Lessee in respect of any Imposition paid by the Lessee, provided no Event of Default or other event which, with notice, demand and/or lapse of time, would constitute such an Event of Default shall have occurred and be continuing.

SECTION 6. Maintenance; Payment for Casualty Occurrences; Insurance; Termination. The Lessee agrees that, at its own cost and expense, it will maintain and keep each Unit which is subject to this Lease in good operating order, repair and condition, ordinary wear and tear excepted; provided, however, the Lessee shall maintain each such Unit (i) in a manner which is consistent with the provisions of Section 13 hereof, (ii) at or better than the level of maintenance of similar equipment owned or leased by the Lessee, (iii) at or better than the standard in the railroad industry for maintenance of similar equipment and (iv) such that the Equipment is in compliance with all applicable Association of American Railroads and Federal Railroad Administration rules and regulations. The Lessee shall maintain written maintenance and overhaul records sufficient to disclose compliance with the requirements of this Lease and shall make such records available to the Lessor's inspection upon request during normal business hours upon reasonable notice. Such records shall include the date(s) of the replacement or overhaul of at least the following major components: engine power assemblies, engine main bearings, engine accessory end, engine gear end, main

generator, turbocharger, air compressor, traction motors and trucks.

In the event that any Unit shall be or become worn out, lost, stolen, destroyed or, in the opinion of the Lessee, irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise by the United States Government for a period which shall exceed the then remaining term of this Lease or by any other governmental entity resulting in loss of possession by the Lessee for the lesser of a period of 90 consecutive days or a period which shall exceed the then remaining term of this Lease (each such occurrence being hereinafter called a "Casualty Occurrence") prior to the return of such Unit in the manner set forth in Section 13 hereof, the Lessee shall, within 30 days after it shall have determined that such Unit has suffered a Casualty Occurrence, fully notify the Lessor and the Vendor in writing with respect thereto. Notwithstanding any such Casualty Occurrence, the Lessee shall continue making all rental and other payments provided for in this Lease in respect of such Unit to and including the Casualty Payment Date (as hereinafter defined) listed in Schedule B hereto next succeeding such notice. On December 28, 1984, or the rental payment date, whichever next succeeds such notice ("Casualty Payment Date"), the Lessee shall pay to the Lessor the Casualty Value (as hereinafter defined) of such Unit as of the date of such payment in accordance with Schedule B hereto, the rental due on such Casualty Payment Date plus any other rental or other payments in respect of such Unit then due and payable. Upon the making of all such payments by the Lessee in respect of any Unit, the rental for such Unit shall thereafter cease to accrue, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft or complete destruction of such Unit) the Lessor shall be entitled to recover possession of such Unit. The Lessor hereby appoints the Lessee its agent, to dispose of any Unit suffering a Casualty Occurrence or any component thereof, at the best price obtainable under the circumstances on an "as is, where is, and with all faults" basis in accordance with the Lessee's normal procedures. Provided that the Lessee has previously paid the Casualty Value to the Lessor, the Lessee shall be entitled to the net proceeds of such sale after deductions of any cost or expense incurred in disposing of such Unit to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Lessor.

Subject to adjustment pursuant to the provisions of Section 2, the Casualty Value of each Unit as of the payment date on which payment is to be made as aforesaid

shall be an amount equal to that percentage of the Purchase Price of such Unit as is set forth in Schedule B hereto opposite such date with respect to such Unit.

Whenever any Unit shall suffer a Casualty Occurrence at the end of the term of this Lease or after termination of this Lease and before such Unit shall have been returned in the manner provided in Section 13 hereof, the Lessee shall promptly and fully notify the Lessor with respect thereto and pay to the Lessor all amounts then due with respect to such Unit plus an amount equal to the Casualty Value of such Unit set forth in Schedule B hereto as of the rental payment date immediately preceding such termination. Upon the making of any such payment by the Lessee in respect of any Unit (except in the case of the loss, theft or complete destruction of such Unit), the Lessor shall be entitled to recover possession of such Unit. The Lessor hereby appoints the Lessee its agent, to dispose of any Unit suffering such Casualty Occurrence or any component thereof, at the best price obtainable on an "as is, where is, and with all faults" basis. (The Lessee itself may be the purchaser thereof.) Provided that the Lessee has previously paid the Casualty Value to the Lessor, the Lessee shall be entitled to the proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Lessor.

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

The Lessee will, at its own expense and at all times after delivery and acceptance of each Unit, keep or cause to be kept each such Unit insured against loss on an "all risk" basis (a) in an amount which shall be customary for companies owning property of a character similar to the Units and engaged in a business similar to that engaged in by the Lessee or (b) in an amount equal to the Casualty Value for such Unit, whichever amount is greater. The Lessee shall also maintain general public liability insurance with respect to the Units against damage because of bodily injury, including death, or damage to property of others, such insurance to afford protection to the limit of not less than \$175,000,000 per occurrence combined single limit or such greater amount as the Lessor shall reasonably require. Such insurance may include any deductible or self-insured retention ("SIR") permitted hereby. Any such deductible or SIR may be in an amount not to exceed the

greater of \$15,000,000 or one percent of the net worth of the Lessee or such other amounts as the Lessor, the Vendor and the Lessee shall agree upon, provided it is expressly understood and agreed that any loss, cost or expense arising out of use of deductible or SIR shall be exclusively the cost and expense of the Lessee. All such insurance shall cover the interests of the Lessor, the Lessee, and the Vendor in the Equipment and liability insurance shall name the Lessor, the Lessee and the Vendor as additional insureds in respect of risks arising out of the condition, the maintenance, use or ownership of the Units and shall provide that losses, if any, in respect of the Units shall be payable to the Lessee, the Lessor and the Vendor, as their respective interests may appear. All such insurance policies shall name the Lessor, the Lessee and the Vendor as additional insureds or loss payees or both, as appropriate, and shall insure their interests regardless of any breach or violation by the Lessee of any representation, warranty or condition contained in such policies. All such insurance policies shall further provide that (a) the insurers waive all rights of subrogation against the Lessor, the Lessee and the Vendor, (b) the insurers waive all right to any set-off, counterclaim or other deduction, whether by attachment or otherwise, in respect of any liability of the Lessee, (c) such policies shall not be invalidated by any foreclosure or other remedial proceedings or notices thereof relating to the Units or by any change in the title to or ownership of the Units or by the use or operation of any Units for purposes or in a manner more hazardous than permitted by such policies and (d) the insurers shall promptly advise the Lessor, the Lessee and the Vendor, in writing, at least thirty days prior thereto, of the expiration, termination or suspension of, or any material change in, the coverage of any such policy. No such termination, expiration, suspension or change shall be effective until thirty days after such notice is given. In the event of one of the insureds incurring liability to any other insured, the policies carried hereunder shall cover the insured against which claim is made in the same manner as if separate policies had been issued to each insured. No such policy shall contain a provision relieving the insurer thereunder of liability for any loss by reason of the existence of other policies of insurance covering the Units against the peril involved, whether collectible or not.

In the event of failure on the part of the Lessee to provide and furnish any of the aforesaid insurance, the Lessor or the Vendor, upon notice to the Lessee, may, but shall not be obligated to, procure such insurance and the

Lessee shall, upon demand, reimburse the Lessor and the Vendor for all reasonable expenditures made by the Lessor or the Vendor for such insurance, together with interest thereon computed at the rate set forth in Section 15 in respect of overdue rentals from the date of the Vendor's or the Lessor's payment until reimbursed by the Lessee. Nothing in this Section 6 shall prohibit the Lessor or the Vendor from maintaining at its own expense, additional insurance for its own account with respect to the Units.

If the Lessor shall receive any insurance proceeds from insurance maintained by the Lessee pursuant hereto or condemnation payments in respect of a Unit suffering a Casualty Occurrence, the Lessor shall, if no Event of Default exists and no event has occurred which with the lapse of time or the giving of notice would be an Event of Default and subject to the Lessee having made payment of the Casualty Value in respect of such Unit, pay such proceeds or condemnation payments (up to the amount of the Casualty Value paid) to the Lessee. All insurance proceeds received by the Lessor in respect of any Unit not suffering a Casualty Occurrence shall be paid to the Lessee upon proof satisfactory to the Lessor and the Vendor that any damage to such Unit in respect of which such proceeds were paid has been fully repaired.

In the event that the Lessee shall, in its reasonable and good faith judgment, determine that the Units have become economically obsolete in the Lessee's business or surplus to the Lessee's equipment needs and if no Event of Default exists and no event has occurred which with the lapse of time or the giving of notice would be an Event of Default, the Lessee shall have the right, at its option and by written notice to the Lessor on a rental payment date, to terminate (hereinafter called a "Termination") this Lease as to all (but not less than all) of the Units as of one or the other of the two next succeeding rental payment dates as specified in such notice (the termination date specified in such notice being hereinafter called the "Termination Date"); provided, however, that (i) no Termination Date shall be earlier than June 28, 1991, (ii) on the Termination Date, no Event of Default or other event which with the lapse of time or notice or both would become an Event of Default shall have occurred and be continuing, (iii) on the Termination Date each Unit shall be in the same condition as if being redelivered pursuant to Section 13 hereof, (iv) on or before the Termination Date the Lessee shall have paid to the Lessor all amounts due in respect of the Units and shall have complied with the provisions of the tenth and eleventh

paragraphs of this Section 6, (v) on the Termination Date the Vendor shall have received the Casualty Value (as defined in the fifth paragraph of Article 7 of the CSA) of the Units in accordance with the second paragraph of Article 7 of the CSA and (vi) on the Termination Date the Lessee shall deliver to the Lessor and the Vendor a certificate signed by a Vice President of the Lessee stating that (a) the Units have become economically obsolete in the Lessee's business or surplus to its equipment requirements and (b) the Lessee has, to the extent permitted thereunder, terminated other leases of SD-45-2 locomotives ("Similar Equipment") placed in service prior to the date the Units were placed in service. The phrase "economically obsolete" as used in the first sentence of this paragraph does not mean that the Lessee, at the time of termination, is able to purchase, lease or otherwise obtain the use of Similar Equipment at a cost less than that under this Lease.

If the Lessee shall give notice of its election to terminate under the preceding paragraph, the Lessor may, by written notice to the Lessee given within 30 days after the termination notice is given to the Lessor, elect to retain the Units for its own account or for sale, in which case on the Termination Date the Lessor shall pay to the Vendor a sum sufficient to pay the Casualty Value (as defined in the CSA) of the Units in accordance with Article 7 of the CSA. In the event the Lessor shall so elect to retain the Units, the Lessee shall deliver the Units to the Lessor in accordance with the provisions of Section 13 of this Lease.

If the Lessor shall not make the election described in the preceding paragraph, during the period from the giving of the notice by the Lessee until the 35th day preceding the Termination Date, the Lessee shall use its best efforts to obtain bids for the purchase of all Units then subject to this Lease on an "as is, where is, and with all faults" basis, and the Lessee shall at least 35 days prior to the Termination Date certify to the Lessor the amount of each such bid and the name and address of the party submitting such bid (which shall not be the Lessee or a person affiliated with the Lessee or any party from whom the Lessee or any such affiliate intends thereafter to purchase or lease such Units). Unless the Lessee shall have directed that all such bids be rejected on the 35th day preceding the Termination Date the Lessor shall agree to sell on the Termination Date all the Units for cash, payable on such Termination Date, to the bidder which shall have submitted the highest bid. The net sales proceeds realized, after payments to the Vendor as provided below, shall be retained by the Lessor. On the Termination Date (a) the

Lessee shall pay to the Lessor all amounts due with respect to the Units plus the excess, if any, of the Termination Value (as hereinafter defined) for such Units over the net sales proceeds of such Units, after the deduction of all expenses incurred in connection with such sale, and (b) the Lessor shall pay to the Vendor the Casualty Value (as defined in the CSA) of the Units in accordance with Article 7 of the CSA and all other amounts due thereunder. If the Lessee shall have directed that all bids be rejected or no sale shall occur pursuant to this paragraph, this Lease shall continue in full force and effect without change.

The Termination Value of each Unit as of the Termination Date shall be that percentage of the Purchase Price of such Unit as is set forth under the caption "Termination Value Percentage" in Schedule B hereto opposite such date, but in no event shall such amount be less than the Casualty Value (as defined in Article 7 of the CSA) of each such Unit, as of such date.

Upon the satisfaction of the conditions set forth in the proviso to the ninth paragraph of this Section 6, the obligation of the Lessee to pay rent pursuant to Section 2 hereof in respect of such Unit on each rental payment date subsequent to the Termination Date shall then terminate. The Lessor shall be under no duty to solicit bids, to inquire into the efforts of the Lessee to obtain bids or otherwise to take any action or incur any cost or expense in connection with any sale other than to transfer or to cause to be transferred all of the Lessor's right, title and interest in and to each Unit to the purchaser named in the highest bid certified by the Lessee to the Lessor as above provided. Any such sale shall be free and clear of all of the Lessee's rights to such Unit, but otherwise shall be made without warranties other than against the Lessor's acts.

SECTION 7. Annual Reports. On or before March 31 in each year, commencing with the calendar year 1985, the Lessee will cause to be furnished to the Lessor and the Vendor (at the addresses shown in Section 16 hereof) an accurate statement, as of the preceding December 31, showing the amount, description and numbers of the Units (a) then leased hereunder and/or covered by the CSA, (b) that have suffered a Casualty Occurrence during the preceding 12 months (or since the date of this Lease in the case of the first such statement) and (c) then undergoing repairs (other than running repairs) or then withdrawn from use pending

such repairs and setting forth such other information regarding the condition and state of repair of the Units as the Lessor or the Vendor may reasonably request, and stating that, in the case of all Units repainted or repaired during the period covered by such statement, the markings required by Section 4 hereof shall have been preserved or replaced. The Lessor and the Vendor shall have the right at their sole cost, risk and expense, by their authorized representatives, to inspect the Units and the Lessee's records with respect thereto (including those relating to any use of the Units outside the United States) during normal business hours and upon such reasonable notice as the Lessor or the Vendor may give during the continuance of this Lease.

SECTION 8. Disclaimer of Warranties; Compliance with Laws and Rules; Indemnification. THE LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF, OR AS TO QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS DELIVERED TO THE LESSEE HEREUNDER, AND THE LESSOR MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE OR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, OR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT, EITHER UPON DELIVERY THEREOF TO THE LESSEE, OR OTHERWISE, it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee. The Lessor shall have no responsibility or liability to the Lessee or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Units or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation, or performance of any Units or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Units. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Lessor that all Units described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

The Lessee agrees, for the benefit of the Lessor and the Vendor, to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each Unit) with all applicable laws of the

jurisdictions in which its operations involving the Units may extend, and with all lawful rules of the Department of Transportation, the Interstate Commerce Commission, the Association of American Railroads and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units (the "Applicable Laws"), and in the event that, prior to the expiration of this Lease or any renewal thereof and the return of all Units as provided in Section 10 or 13 hereof, such laws or rules require any alteration, replacement, addition or modification of or to any part of any Unit, the Lessee will conform therewith at its own expense; provided, however, that the Lessee may at its own expense, in good faith, contest the validity or application of any Applicable Law in any reasonable manner which does not, in the advance opinion of the Lessor or the Vendor, adversely affect the property or rights of the Lessor or the Vendor, respectively, under this Lease or the CSA. In addition to the requirements of the preceding sentence, so long as no Event of Default, or event which with the lapse of time or the giving of notice or both could become an Event of Default, shall have occurred and be continuing, the Lessee, at its own cost and expense, may furnish additions, modifications and improvements to any Unit during the term of this Lease provided that such additions, modifications and improvements (a) are readily removable without causing material damage to such Unit and (b) do not diminish its utility or value. The additions, modifications and improvements made by the Lessee under the first sentence of this paragraph shall be owned by the Lessor, and the additions, modifications and improvements made by the Lessee under the second sentence of this paragraph shall (unless any such addition, modification or improvement is a replacement of or substitution for, any part originally incorporated or installed in or attached to a Unit or any part in replacement of or substitution for any such original part) be owned by the Lessee.

The Lessee agrees to indemnify, protect and hold harmless the Lessor, the Vendor and the Investors from and against all losses, damages, injuries, liabilities, claims and demands whatsoever and expenses in connection therewith, including, but not limited to, counsel fees and expenses, patent liabilities, penalties and interest, arising out of or as a result of (i) the entering into or the performance of any of the transactions contemplated by this Lease and the Participation Agreement, (ii) the ownership of any Unit, (iii) the ordering, acquisition, use, operation, maintenance, condition, construction, purchase, delivery,

rejection, storage or return of any Unit, (iv) any accident in connection with the operation, use, condition, construction, possession, storage or return of any Unit resulting in damage to property or injury or death to any person, except as otherwise provided in Section 13 of this Lease, including without limitation any claim based upon the doctrines of product liability or strict or absolute liability in tort or by statute imposed, or (v) the transfer of title to the Equipment by the Vendor pursuant to any provision of the CSA. The Lessor agrees to give the Lessee, promptly upon obtaining knowledge thereof, written notice of any claim or liability to be indemnified against hereunder. The indemnities arising under this paragraph shall continue in full force and effect notwithstanding the return of the Units pursuant to Section 10 or 13 hereof or the full payment and performance of all obligations under this Lease or the expiration or termination of the term of this Lease; provided, however, that the foregoing indemnification shall not apply to any failure of payment of any of the principal of or interest on the CSA Indebtedness. Nothing in this Section 8 shall constitute a guarantee by the Lessee of the CSA Indebtedness of the Lessor under the CSA or a guarantee of the residual value of any Unit.

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

SECTION 9. Default. If, during the continuance of this Lease, one or more of the following events (an "Event of Default") shall occur:

- A. default shall be made in the payment of any amount due hereunder and such default shall continue for five days;
- B. default shall be made in the maintenance of the insurance coverage required by Section 6 hereof;
- C. the Lessee shall make or permit any unauthorized assignment or transfer of this Lease, or any interest therein, or of the right to possession of the Units, or any thereof;

D. default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein or in the Participation Agreement, the Consent or the Indemnity Agreement and such default shall continue for 30 days after written notice from the Lessor or the Vendor to the Lessee (and the Lessor, if such notice is given by the Vendor) specifying the default and demanding that the same be remedied;

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

F. any other proceedings shall be commenced by or against the Lessee for any relief which includes, or might result in, any modification of the obligations of the Lessee hereunder or under the Participation Agreement or the Consent, under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, including without limitation, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of such obligations of the Lessee), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all such obligations of the Lessee shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or

decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Lessee or for the property of the Lessee in connection with any such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such a trustee or trustees or receiver or receivers, within 60 days after such proceedings shall have been commenced;

G. the Lessee shall admit in writing its inability to pay its debts as they become due;

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

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

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

(a) proceed by appropriate court action, either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof, including amounts sufficient to maintain the Lessor's Net Return that the Lessor anticipated realizing as of the date hereof had such breach not occurred;

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as herein provided; and thereupon the Lessor or its agents may enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess, sell, operate, lease to others and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever and without any

duty to account to the Lessee for such action or inaction or for any proceeds arising therefrom; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee as damages for loss of the bargain and not as a penalty, whichever of the following amounts the Lessor, in its sole discretion, shall specify: (x) a sum, with respect to each Unit, equal to the excess of the present value, at the time of such termination, of the entire unpaid balance of all rental for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over the then present value of the rental which the Lessor reasonably estimates to be obtainable for the Unit (as is, where is) during such period, such present value to be computed in each case on the basis of a 8% per annum discount, compounded semiannually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated; or (y) an amount equal to the excess, if any, of the Casualty Value as of the rental payment date on or next preceding the date of termination over the amount the Lessor reasonably estimates to be the sales value of such Unit (as is, where is) at such time; provided, however, that in the event the Lessor shall have sold any Unit, the Lessor, in lieu of collecting any amounts payable to the Lessor by the Lessee pursuant to the preceding clauses (x) and (y) of this part (b) with respect to such Unit, may, if it shall so elect, demand that the Lessee pay the Lessor and the Lessee shall pay to the Lessor on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty Value for such Unit, as of the rental payment date on or next preceding the date of termination over the net proceeds of such sale.

In addition, in the case of an Event of Default the Lessee shall be liable, except as otherwise provided above, for any and all unpaid amounts due hereunder before, during or after the exercise of any of the foregoing remedies and for all

reasonable attorneys' fees and other costs and expenses incurred by reason of the occurrence of any Event of Default or the exercise of the Lessor's remedies with respect thereto, including all costs and expenses incurred in connection with the return of any Unit.

Should the Lessee fail to make any payment or to do any act as provided by this Lease, then the Lessor shall have the right (but not the obligation), without notice to the Lessee of its intention to do so and without releasing the Lessee from any obligation hereunder to make or to do the same, to make advances to preserve the Equipment or the Lessor's title thereto, and to pay, purchase, contest or compromise any insurance premium, encumbrance, charge, tax, lien or other sum which in the judgment of the Lessor appears to affect the Equipment, and in exercising any such rights, the Lessor may insure any liability and expend whatever amounts in its absolute discretion it may deem necessary therefor. All sums so incurred or expended by the Lessor shall be due and payable by the Lessee within ten (10) days of notice thereof.

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

The failure of the Lessor to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

SECTION 10. Return of Units upon Default. If this Lease shall terminate pursuant to Section 9 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor. Each Unit so delivered shall be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted and in the condition required by Section 13 hereof. For the purpose of delivering possession of any Unit or Units to the

Lessor as above required, the Lessee shall at its own cost, expense and risk:

(a) forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any Unit or Units so interchanged) place such Units upon such storage tracks of the Lessee as the Lessor reasonably may designate;

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

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

The assembling, delivery, storage and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having 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 Units. During any storage period, the Lessee will, at its own cost and expense, insure, maintain and keep the Equipment in good order and repair and will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Unit, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence.

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

All amounts earned in respect of the Units after the date of termination of this Lease shall belong to the

Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor. In the event any Unit is not assembled, delivered and stored, as hereinabove provided the Lessee shall, in addition, pay to the Lessor \$325 per Unit for each day thereafter. Nothing contemplated by this paragraph, including the payment by the Lessee of any amounts pursuant hereto shall be deemed to relieve the Lessee of its obligation to assemble, deliver and store the Units or affect the Lessor's rights and remedies with respect to such obligation.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this Section 10, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney-in-fact of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

SECTION 11. Assignment; Possession and Use. This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. The rights of the Lessor hereunder (including the rights to receive the rentals payable under this Lease) shall inure to the benefit of the Vendor as assignee under the Assignment in the manner and to the extent therein provided. So long as the Lessee shall not be in default under this Lease and no event of default exists under the CSA, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease but, without the prior written consent of the Lessor and the Vendor, the Lessee shall not assign or transfer its leasehold interest under this Lease in any of the Units or sublease any of the Units, except to the extent permitted by the provisions of the next succeeding paragraph hereof; and any such assignment or transfer without said consent shall be void. The Lessee, at its own expense, will promptly discharge or cause to be duly discharged any and all sums claimed by any party which if unpaid, might become a lien, charge, security interest or other encumbrance (other than an encumbrance which the Lessor is obligated to discharge pursuant to Paragraph 16 of the Participation Agreement), upon or with respect to any Unit or the interest of the Lessor, the Vendor or the Lessee therein, and will promptly discharge any such lien, charge, security interest or other

encumbrance which arises. The Lessee shall not, without the prior written consent of the Lessor and the Vendor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provisions of the next succeeding paragraph hereof.

So long as the Lessee shall not be in default under this Lease and no event of default exists under the CSA and the Lessee shall have fully complied with the provisions of the last paragraph of this Section 11, the Lessee shall be entitled to the possession and use of the Units and, without the Lessor's consent, to sublease the Units to, or to permit their use by, a user incorporated in the United States of America (or any State thereof or the District of Columbia), upon lines of railroad owned or operated by the Lessee or such user or by a railroad company or companies incorporated in the United States of America (or any State thereof or the District of Columbia), or over which the Lessee, such user, or such railroad company or companies have trackage rights or rights for operation of their trains, and upon the lines of railroad of connecting and other carriers in the usual interchange of traffic or in through or run-through service, but only upon and subject to all the terms and conditions of this Lease, including the last paragraph of this Section 11 and the CSA; provided, however, that the Lessee shall not sublease or permit the sublease or use of any Unit to service involving any operation outside the continental United States of America; provided, further, however, if the use or sublease is for more than 30 days, prior written approval by the Lessor shall be required unless the use is by, or the sublease is to, a Class I Railroad; provided, further, however, that the Lessee shall only use, or sublease for use, any Unit in the manner for which it was designed and intended and in a manner which subjects it to no more than ordinary and normal wear and tear and in no event shall such use involve operation of any Unit for more than 180,000 miles per year. No such assignment or sublease shall relieve the Lessee of its obligations hereunder which shall be and remain those of principal and not a surety. Any such sublease may provide that the sublessee, so long as it shall not be in default under such sublease, shall be entitled to the possession of the Units, included in such sublease and the use thereof; provided, however, that every such sublease shall be subject to the rights and remedies of the Vendor under the CSA, and the Lessor under this Lease in respect of the Units covered by such sublease upon the occurrence of an Event of Default thereunder or hereunder.

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

SECTION 12. Renewal Option; Purchase Option.
Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may elect, by written notice delivered to the Lessor not more than 270 and not less than 180 days prior to the end of the original term of this Lease, to extend the term of this Lease in respect of all, but not less than all, the Units then covered by this Lease for an additional term of one year (or such longer term as the Lessor and the Lessee may agree upon) commencing on the scheduled expiration of the original term at a semiannual rental payable in arrears in semiannual payments, in an amount equal to the "Fair Market Rental" of such Units as of the commencement of such extended term, such rental payments to be made on December 28 and June 28 in each year of the extended term.

"Fair Market Rental" shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an arm's-length transaction between an informed and willing lessee (other than a lessee currently in possession) and an informed and willing lessor under no compulsion to lease and, in such determination, (i) it shall be assumed that the Units are in the condition and repair required by Section 13 hereof and that they are free and clear of all liens, claims and encumbrances, (ii) the value of the additions, modifications and improvements as to which Lessee retains title pursuant to Section 8 shall not be included and (iii) costs of removal from the location of current use shall not be a deduction from such value. If, within 30 days following receipt of the notice required by the preceding paragraph, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Rental of the Units, such Fair Market Rental shall be determined in accordance with the foregoing definition by a qualified independent Appraiser as hereinafter defined. The

term "Appraiser" shall mean such independent Appraiser as the Lessor may select with the approval of the Lessee, or, failing such approved selection, a panel of three independent Appraisers, one of whom shall be selected by the Lessor, the second by the Lessee and the third designated by the first two so selected; and if the Appraisers selected by the Lessor and the Lessee are unable to agree upon such third Appraiser, either the Lessor or the Lessee may apply to any court of competent jurisdiction to select such third Appraiser. The Appraiser(s) shall be instructed to make the determination of Fair Market Rental within a period of 30 days following appointment and shall promptly communicate such determination in writing to the Lessor and the Lessee. If within 15 days following receipt of such communication the Lessee objects in writing to such determination, there shall be no renewal term and the term of this Lease shall expire at the end of the original term. Otherwise, this Lease will continue for the renewal term at the Fair Market Rental so determined by the appraisal procedure. If for any reason, the determination of such Fair Market Rental is not communicated to the Lessor or the Lessee prior to the expiration of the original term of this Lease, such term shall be automatically extended on a day to day basis until 15 days after such determination is so communicated to the Lessor and the Lessee at a daily rental equal to \$325 per Unit; and if there is a renewal term, it shall be deemed to have commenced on the expiration of the original term and the daily rentals paid shall be credited against the Fair Market Rental so determined. If the Lessee objects to the determination of the Fair Market Rental, all expenses and fees of the appraisal shall be paid by the Lessee; otherwise, the expenses and fees of a single Appraiser shall be shared equally by the Lessee and the Lessor; and if three Appraisers are selected, each party shall pay the expenses and fees of the Appraiser selected by it and the expenses and fees of the third Appraiser shall be shared equally by the Lessee and the Lessor.

Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, at the end of the original term and at the end of the extended term of this Lease the Lessee may elect to purchase all but not less than all the Units then subject to this Lease at the then "Fair Market Value" of such Units, by giving written notice to the Lessor not more than 270 and not less than 180 days prior to the expiration of such term.

"Fair Market Value" shall be determined on the basis of, and shall be equal in amount to, the value which

would obtain in an arm's length transaction between an informed and willing purchaser (other than a lessee currently in possession) and an informed and willing seller under no compulsion to sell and, in such determination, the same assumptions applicable to the determination of Fair Market Rental, as set forth in the second paragraph of this Section 12, shall be applied. If, within 30 days following receipt of the notice required by the preceding paragraph, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Value of the Units, such Fair Market Value shall be determined in accordance with the foregoing definition by the appraisal procedure set forth in the second paragraph of this Section 12. The Appraiser(s) shall be instructed to make the determination Fair Market Value within a period of 30 days following appointment and shall promptly communicate such determination in writing to the Lessor and the Lessee. If within 15 days following receipt of such communication the Lessee objects in writing to such determination, there shall be no purchase and the term of this Lease shall expire at the end of the applicable term. Otherwise, the purchase shall be effected on the last day of the applicable term of this Lease at the Fair Market Value so determined by the appraisal procedure. If for any reason, the determination of such Fair Market Value is not communicated to the Lessor or the Lessee prior to the expiration of the applicable term of this Lease, such term shall be automatically extended on a day to day basis until 15 days after such determination is so communicated to the Lessor and the Lessee at a daily rental equal to (i) \$325 per Unit in the case of the original term or (ii) the daily equivalent of the Fair Market Rental per Unit in the case of the renewal term; and if there is a purchase, it shall be effected 15 days after such communication of the Fair Market Rental to the Lessor and the Lessee. The fees and expenses of the appraisal shall be allocated in the same manner as provided in the last sentence of the second paragraph of this Section 12.

Upon payment of the purchase price pursuant to the exercise by the Lessee of its above-specified purchase rights and of all other amounts due with respect to the Units, the Lessor shall, upon request of the Lessee, execute and deliver to the Lessee, or to the Lessee's assignee or nominee, a bill of sale (without representations or warranties except that the Units so being sold are free and clear of all liens, charges, security interests and other encumbrances by or in favor of any person claiming by, through or under the Lessor and which the Lessor is obligated to discharge pursuant to Paragraph 15 of the

Participation Agreement) for such Units, and such other documents as may be required to release such Units from the terms and scope of this Lease and to transfer title thereto to the Lessee, or such assignee or nominee, in such form as may reasonably be requested by the Lessee, all at the Lessee's expense.

SECTION 13. Return of Units upon Expiration of Term. Upon the expiration of the original or any extended term of this Lease or any storage period provided hereunder, the Lessee will at its own cost and expense, deliver possession of the Units to the Lessor upon such tracks of the Lessee or any Affiliate (as defined in Section 1504 of the Internal Revenue Code) of the Lessee as the Lessor may reasonably designate, or in the absence of such designation, as the Lessee may select. The Lessee shall permit the Lessor to store such Units in a single location on such tracks as the Lessee shall designate, provided that such location is reasonably accessible to the Lessor and prospective purchasers and lessees, for a period not exceeding 120 days, and transport the Units at any one time within such 120 day period, to a point on the tracks of the Lessee or any Affiliate of the Lessee as directed by the Lessor. All movement and storage of such Units is to be at the expense and risk of the Lessee on the lines of the Lessee or any Affiliate of the Lessee and at the expense of Lessor on other lines. 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 or lessee of any Unit, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser or lessee, the rights of inspection granted under this sentence. Each Unit returned to the Lessor pursuant to this Section 13 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, ordinary wear and tear excepted, (ii) have removed therefrom by the Lessee without cost or expense to the Lessor all additions, modifications and improvements which the Lessee owns pursuant to Section 8 hereof, and (iii) be fully serviced and inspected to the Lessee standards applicable to the Lessee owned or leased units like the Units and shall comply with all applicable Association of American Railroads and Federal Railroad Administration requirements, and the applicable rules of any governmental agency or other organization with jurisdiction. The Lessee at its own expense shall provide a written

spectrographic analysis of samples of crankshaft lube oil removed from each engine at the normal scheduled oil sampling closest to the expiration of the term of this Lease as performed by the Lessee's own laboratory. Such oil sampling must occur within the final six months of the term of the Lease. The Lessee shall retain oil samples in sufficient quantity that the Lessor may have the same analysis performed by an independent laboratory. If such analysis discloses the presence of metal or other foreign substances in amounts which exceed the standards in effect as of the date of this Lease that are published in the EMD Maintenance Instructions applicable to locomotives for engine shut-down or repair, the Lessee shall perform all necessary repairs or replacements prior to the expiration of the term of this Lease at its own expense. Within six months prior to its return to the Lessor each Unit shall have been tested under a normal working load and the results of such tests shall be promptly provided to Lessor. Such test must demonstrate that all mechanical and electrical systems are operating properly. The phrase "ordinary wear and tear" as used herein shall not be construed as permitting any broken, damaged or missing items or components. All costs and expenses incurred in order to place the Units in the condition required by this Section 13 shall be for the account of the Lessee. Prior to the delivery of a Unit off Lessee's railroad lines, Lessee may remove or paint over all identifying marks or insignia of Lessee or its Affiliates associating the Unit with Lessee. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and, upon application to any court having 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 Units.

SECTION 14. Recording; Expenses. The Lessee, at its own expense, will cause this Lease, the CSA and any assignment hereof or thereof to be filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303. The Lessee will undertake the filing, recording and depositing and refile, reregister, rerecord or redeposit whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Vendor for the purpose of proper protection, to their satisfaction, of the

Vendor's and the Lessor's respective interests in the Units, or for the purpose of carrying out the intention of this Lease or the assignment hereof to the Vendor, or the CSA; and the Lessee will promptly furnish to the Vendor and the Lessor evidences of all such filing, registering, recording or depositing, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Vendor and the Lessor. This Lease, the CSA, the CSA Assignment and the Lease Assignment shall be filed with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Unit.

SECTION 15. Interest on Overdue Obligations and Rentals. Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other amounts when due hereunder shall result in the obligation on the part of the Lessee promptly to pay also an amount equal to the greater of (i) the WFB Prime or (ii) 13.625% per annum of the overdue rentals and other amounts for the period of time during which they are overdue (calculated on an actual elapsed day basis) or such lesser amount as may be legally enforceable.

SECTION 16. Notices. Any notice hereunder may be given by telephone (confirmed promptly in writing), telegraph, telex, telecopy (or similar transmission), hand or mail and shall in each case be effective when first received. Any notice required or permitted to be given by either party hereto shall be addressed as follows.

(a) if to the Lessor, at 8501 West Higgins Road, Chicago, Illinois 60631, attention: Vice President and Treasurer; with a copy to GATX Leasing Corporation, Four Embarcadero Center, San Francisco, California 94111, attention of Contracts Administration;

(b) if to the Lessee, at Southern Pacific Building One Market Plaza, San Francisco, California 94105, attention: Vice President and Treasurer;

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

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

SECTION 17. Effect and Modification of Lease.

Except for the Participation Agreement, this Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the leasing of the Units and 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 officers of the Lessor and the Lessee.

SECTION 18. Definitions.

If and so long as this Lease is assigned to the Vendor (or any successor thereto) for collateral purposes, wherever the term "Lessor" is used in this Lease it shall also apply and refer to the Vendor and any successors thereto unless the context shall otherwise require and except that the Vendor shall not be subject to any liabilities or obligations under this Lease; and the fact that the Vendor is specifically named in certain provisions shall not be construed to mean that the Vendor (and any successors thereto) is not entitled to the benefits of other provisions where only the Lessor is named or where only the Vendor, as the case may be, is named.

SECTION 19. Execution.

This Lease may be executed in several counterparts, such counterparts together constituting but one and the same instrument, but the counterpart delivered to the Vendor pursuant to the Lease Assignment shall be deemed to be the original counterpart and all other counterparts shall be deemed duplicates thereof. It is not necessary that the parties hereto all sign the same counterpart as long as each party shall sign a counterpart and such counterpart is delivered to the Vendor or its counsel, whereupon this Lease shall become effective. Although this Lease is dated as of the date first set forth above for convenience, 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 20. Law Governing; Severability.

The terms of this Lease and all rights and obligations hereunder shall be governed by and construed in accordance with the laws of the State of California; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303.

Any provision of this Lease which is prohibited or unenforceable in any jurisdiction, shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining

provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

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

CUMBERLAND LEASING CO.,

by

[Corporate Seal]

Vice President and Treasurer

Attest:

Assistant Secretary

SOUTHERN PACIFIC TRANSPORTATION
COMPANY,

by

[Corporate Seal]

Vice President and Treasurer

Attest:

Assistant Secretary

STATE OF ILLINOIS)
) ss.:
COUNTY OF COOK)

On this day of March 1984, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is the Vice President and Treasurer of CUMBERLAND LEASING CO., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]

My Commission Expires

STATE OF OREGON)
) ss.:
COUNTY OF MULTNOMAH)

On this day of March 1984, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is Vice President and Treasurer of SOUTHERN PACIFIC TRANSPORTATION COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that such instrument was this day signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public for Oregon

[Notarial Seal]

My Commission Expires

SCHEDULE A

TO

Lease of Railroad Equipment

<u>Quantity</u>	<u>Model</u>	<u>Description</u>	<u>Lessee's Road Numbers (Inclusive)</u>
38	3,200 h.p. Model SD-45-2	Diesel Electric Locomotives	SP 7499-7536

SCHEDULE B

TO

Lease of Railroad Equipment

Casualty Value and Termination Value Percentages Schedule

<u>Rental Payment Date</u>	<u>Casualty Value Percentage*</u>	<u>Termination Value Percentag</u>
12/28/84	107.498%	
6/28/85	110.044	
12/28/85	109.714	
6/28/86	109.004	
12/28/86	106.478	
6/28/87	102.601	
12/28/87	100.471	
6/28/88	93.319	
12/28/88	91.432	
6/28/89	82.641	
12/28/89	80.769	
6/28/90	75.259	
12/28/90	67.280	
6/28/91	58.727	58.727%
12/28/91	56.071	56.071
6/28/92	46.523	46.523
12/28/92	44.362	44.362
6/28/93	34.938	34.938
12/28/93	32.267	32.267
6/28/94	20.064	20.064
12/28/94	20.000	20.000

* These values assume that all rentals due on or before the applicable rental payment date have in fact been paid.

SCHEDULE B

TO

Lease of Railroad Equipment

Casualty Value and Termination Value Percentages Schedule

<u>Rental Payment Date</u>	<u>Casualty Value Percentage*</u>	<u>Termination Value Percentage*</u>
12/28/84	107.301%	
6/28/85	109.851	
12/28/85	109.709	
6/28/86	109.016	
12/28/86	106.794	
6/28/87	103.117	
12/28/87	101.111	
6/28/88	93.841	
12/28/88	91.981	
6/28/89	82.996	
12/28/89	81.131	
6/28/90	75.434	
12/28/90	67.455	
6/28/91	58.899	58.899%
12/28/91	56.237	56.237
6/28/92	46.677	46.677
12/28/92	44.504	44.504
6/28/93	35.062	35.062
12/28/93	32.363	32.363
6/28/94	20.105	20.105
12/28/94	20.000	20.000

* These values assume that all rentals due on or before the applicable rental payment date have in fact been paid.

ASSUMPTIONS

- (1) The Purchase Price of each Unit equals \$755,000.
- (2)
- | <u>Closing Date</u> | <u>Number of Units
in Group</u> |
|---------------------|-------------------------------------|
| April 30, 1984 | 4 |
| May 31, 1984 | 4 |
| June 29, 1984 | 4 |
| July 31, 1984 | 4 |
| August 31, 1984 | 5 |
| October 1, 1984 | 4 |
| October 31, 1984 | 4 |
| November 30, 1984 | 4 |
| December 28, 1984 | 5 |
- (3) Down Payment as a percent of the aggregate Purchase Price of each Group equals 31.54917%.
- (4) Total fees, costs, disbursements, and expenses paid by the Vendee pursuant to the first sentence of Paragraph 11 of the Participation Agreement equals 1.25% of the aggregate Purchase Price of all Units.
- (5) Interest on the CSA Indebtedness accrued under the CSA from the various Closing dates and payable by the Vendee on December 28, 1984 equals 2.753260% of the aggregate Purchase Price of all Units.
- (6) The interest rate on the CSA Indebtedness equals 12.625% per annum.
- (7) CSA Indebtedness as a percent of the aggregate Purchase Price of each Group equals 68.45083%.
- (8) Installments of the CSA Indebtedness are payable as set forth in Schedule I to the Conditional Sale Agreement.
- (9) With respect to each Unit, no change in the Internal Revenue Code or the Regulations thereunder shall be enacted or promulgated with an effective date prior to the Delivery Date of such Unit; and if there is any such change, it shall affect only those Units with Delivery Dates after the effective date of such change.

SCHEDULE C

TO

Lease of Railroad Equipment

Schedule of Rental Payments

<u>Rental Payment Date</u>	<u>Payment as a % of aggregate Purchase Price</u>
12/28/84	[additional rentals only]
6/28/85	5.475100%
12/28/85	7.885456
6/28/86	4.458079
12/28/86	8.902477
6/28/87	6.335407
12/28/87	7.025149
6/28/88	8.154712
12/28/88	5.206602
6/28/89	8.702833
12/28/89	4.657723
6/28/90	5.230220
12/28/90	11.098590
6/28/91	11.152709
12/28/91	5.176859
6/28/92	11.974784
12/28/92	4.354784
6/28/93	11.546416
12/28/93	4.783153
6/28/94	14.620503
12/28/94	1.709066

SCHEDULE D

Certificate of Acceptance

To: Cumberland Leasing Co. (the "Vendee")
8501 West Higgins Road
Chicago, Illinois 60631

Attention of Vice President and Treasurer

I, the duly authorized representative for the Vendee and Southern Pacific Transportation Company (the "Lessee") under the Conditional Sale Agreement and the Lease of Railroad Equipment, both dated as of January 15, 1984, respectively, do hereby certify that I inspected and accepted delivery thereunder of the following Units:

TYPE OF UNIT: Diesel electric locomotive
MODEL: SD-45-2
DATE ACCEPTED:
NUMBER OF UNITS:
NUMBERED: SP _____

I do further certify that the foregoing Units are in good order and condition, and conform to the specifications, requirements and standards applicable thereto as provided in Article 2 of the said Conditional Sale Agreement.

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

"OWNERSHIP SUBJECT TO A SECURITY AGREEMENT FILED WITH THE INTERSTATE COMMERCE COMMISSION."

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

Authorized Representative of the Vendee and the Lessee

ANNEX D
to
Conditional
Sale Agreement

[CS&M Ref. 3909-208]

ASSIGNMENT OF LEASE AND AGREEMENT

Dated as of March 1, 1984

between

CUMBERLAND LEASING CO.,

and ..

MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY
not in its individual capacity but solely
as Agent.

ASSIGNMENT OF LEASE AND AGREEMENT

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* This Table of Contents has been included in this document for convenience only and does not form a part of, or affect any construction or interpretation of this document.

ASSIGNMENT OF LEASE AND AGREEMENT dated as of March 1, 1984, by and between CUMBERLAND LEASING CO., an Illinois corporation (the "Vendee") and MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, not in its individual capacity but solely as Agent (the "Vendor") under a Participation Agreement dated as of the date hereof.

The Vendee has entered into a Conditional Sale Agreement dated as of the date hereof (the "CSA") with SOUTHERN PACIFIC TRANSPORTATION COMPANY (in such capacity, the Builder) providing for the sale to the Vendee of such units of railroad equipment (the "Units") described in Schedule A thereto as are delivered to and accepted by the Vendee thereunder.

The Vendee and Southern Pacific Transportation Company (in such capacity, the "Lessee") have entered into a Lease of Railroad Equipment dated as of the date hereof (the "Lease") providing for the leasing by the Vendee to the Lessee of the Units.

In order to provide security for the obligations of the Vendee under the CSA and for certain obligations of the Vendee under the Participation Agreement and the Lessee under the Lease and as an inducement to the Vendor to invest in the CSA Indebtedness (as that term is defined in the CSA), the Vendee has agreed to assign for security purposes its rights in, to and under the Lease to the Vendor.

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

1. The Vendee hereby assigns, transfers and sets over unto the Vendor, as collateral security for the payment and performance of (i) the obligations of the Vendee under the CSA, (ii) the obligations of the Vendee under the Participation Agreement and (iii) those obligations of the Lessee under the Lease referred to in subparagraph (c) of the second paragraph of this Section 1, all the Vendee's right, title and interest, powers, privileges, and other benefits under the Lease (subject to Sections 10 and 11 hereof) including, without limitation, the immediate right to receive and collect all rentals, profits and other sums payable to or receivable by the Vendee from the Lessee under

or pursuant to the provisions of the Lease whether as rent, casualty payment, indemnity, liquidated damages, or otherwise (such moneys, other than Excluded Payments (as hereinafter defined), being hereinafter called the "Payments"), and the right to make all waivers and agreements, to give all notices, consents and releases, to take all action upon the happening of an Event of Default specified in the Lease, and to do any and all other things whatsoever which the Vendee is or may become entitled to do under the Lease. Notwithstanding the foregoing, the Vendee does not assign to the Vendor, and the Vendor shall have no right or interest in or to, Excluded Payments. As used herein, the term "Excluded Payments" shall mean (i) payments by the Lessee to the Vendee for its own account pursuant to Sections 5 and 8 of the Lease and the fifth paragraph of Article 13 of the CSA, and (ii) any proceeds payable under liability insurance policies to or for the benefit of the Vendee for its own account. In furtherance of the foregoing assignment and subject to Sections 10 and 11 hereof, the Vendee hereby irrevocably authorizes and empowers the Vendor in its own name, or in the name of its nominee, or in the name of the Vendee or as its attorney, to ask, demand, sue for, collect and receive any and all sums to which the Vendee is or may become entitled under the Lease, and to enforce compliance by the Lessee with all the terms and provisions thereof...

The Vendor agrees to accept any Payments made by the Lessee for the account of the Vendee pursuant to the Lease. To the extent received the Vendor will apply such Payments as follows:

(a) to satisfy the obligations of the Vendee under the CSA which are due and payable at the time such Payments are due and payable under the Lease or which become due and payable while such Payments are held as collateral security by the Vendor pursuant to the third and fourth paragraphs of this Section 1;

(b) to satisfy any obligations of the Vendee under provisions of the Participation Agreement;

(c) if an Event of Default under the Lease (or an event which with notice or lapse of time, or both, could constitute such an Event of Default) shall have occurred and be continuing (unless such Event of Default shall have been cured by the Vendee as provided in Article 15(f) of the CSA), (i) to satisfy any obligations of the Lessee under any provision of the

Lease to the Vendor or any Investor and (ii) to satisfy any obligations of the Lessee, or to effect performance by the Lessee, under Sections 5, 6, 8, 9, 10 and 11 of the Lease; provided, however, that no Payment shall be applied as provided in clause (i) or (ii) (other than with respect to Section 9) until at least 30 days after the Vendor shall have demanded that the Lessee satisfy such obligation or effect such performance; and

(d) if no event of default under the CSA or Event of Default under the Lease (or any event which with notice or lapse of time, or both, could constitute such an event of default or Event of Default) shall have occurred and be continuing, any balance shall be paid to the Vendee, or to such other person as the Vendee may direct in writing, in the type of funds received by the Vendor at such address as the Vendee may direct in writing, and the Agent shall give the Vendee written notice of any such payment.

All Payments received by the Vendor (and not applied pursuant to the second paragraph of this Section 1) which, but for the existence of an Event of Default under the Lease (or an event which with notice or lapse of time, or both, could constitute such an Event of Default) would be distributable, shall be held by the Vendor as part of the collateral security for the Vendee's obligations under the CSA, the Vendee's obligations under the Participation Agreement and the Lessee's obligations and performance under the Lease (as described in subparagraph (c) of the second paragraph of this Section 1) until the earlier of

(i) application of such Payments pursuant to subparagraph (a), (b) or (c) of the second paragraph of this Section 1,

(ii) such time or such Event of Default or event shall cease to be continuing, or

(iii) 180 days after the Vendor's receipt of such Payment, unless prior to expiration of such 180-day period the Vendor either (A) shall have commenced using reasonable efforts (which under no circumstances shall be deemed to require termination of the Lease) to enforce the Lessee's compliance with its underlying obligation giving rise to such Event of Default or event or (B) shall have authorized the Vendee to seek compliance by the Lessee with such obligation (which authorization shall in no circumstances include the right to terminate the Lease),

at which time such Payments (if not previously applied pursuant to clause (i) above) shall be paid to the Vendee pursuant to subparagraph (d) of the second paragraph of this Section 1.

All Payments received by the Vendor (and not applied pursuant to the second paragraph of this Section 1) which, but for the existence of an event of default under the CSA (or an event which with notice or lapse of time, or both, could constitute such an event of default) would be distributable, shall be held by the Vendor as part of collateral security for the Vendee's obligations under the CSA, the Vendee's obligations under the Participation Agreement and the Lessee's obligations and performance under the Lease (as described in subparagraph (c) of the second paragraph of this Section 1) until such event of default or event shall cease to be continuing, at which time such Payments (if not previously applied pursuant to subparagraph (a), (b) or (c) of this Section 1), shall be paid to the Vendee pursuant to subparagraph (d) of the second paragraph of this Section 1.

Notwithstanding anything to the contrary contained herein, Excluded Payments are not part of the collateral security for the Vendor or the Investors and any Excluded Payment received by the Vendor or any Investor shall be immediately paid to the Vendee.

If the Vendor shall not receive any payment under Sections 2, 5, 6, 8 or 12 of the Lease when due, the Vendor shall, on the date due, notify the Vendee and the Lessee, by telephone, confirmed in writing, at the respective addresses set forth in the Lease; provided, however, that the failure of the Vendor so to notify the Vendee and the Lessee shall not affect the obligations of the Vendee hereunder or under the CSA or the Lessee under the Lease or the Consent and Agreement attached hereto; provided further, however, that the Vendor shall not issue a Declaration of Default (as defined in the CSA) or terminate the Lease under Article 14(a) of the CSA until 10 days after such notice.

2. This Assignment is executed only as security and, therefore, the execution and delivery of this Assignment shall not subject the Vendor to, or transfer, or pass, or in any way affect or modify the liability of the Vendee under the Lease, it being understood and agreed that notwithstanding this Assignment or any subsequent assignment, all obligations of the Vendee to the Lessee shall be and remain enforceable by the Lessee, its successors and

assigns, against, and only against, the Vendee or persons other than the Vendor.

3. To protect the security afforded by this Assignment the Vendee agrees subject to Paragraphs 10 and 11 hereof, that, without the written consent of the Vendor, the Vendee will not anticipate the rents under the Lease or waive, excuse, condone, forgive or in any manner release or discharge the Lessee thereunder of or from the obligations, covenants, conditions and agreements to be performed by the Lessee, including, without limitation, the obligation to pay the rents in the manner and at the time and place specified therein or enter into any agreement amending, modifying or terminating the Lease and the Vendee agrees that any amendment, modification or termination thereof without such consent shall be void.

4. Subject to Paragraphs 10 and 11 hereof, the Vendee does hereby constitute the Vendor the Vendee's true and lawful attorney, irrevocably, with full power (in the name of the Vendee, or otherwise), to ask, require, demand, and receive, any and all Payments due and to become due under or arising out of the Lease to which the Vendee is or may become entitled, to enforce compliance by the Lessee with all the terms and provisions of the Lease, to endorse any checks or other instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings which the Vendor may deem to be necessary or advisable in the premises.

5. Upon the full discharge and satisfaction of all the Vendee's obligations under the CSA and the Participation Agreement (without giving effect to any limitations on liability contained therein) and the Lessee's obligations to the Vendor and the Investor under any provisions of the Lease, this Assignment and all rights herein assigned to the Vendor shall terminate, and all estate, right, title and interest of the Vendor in and to the Lease shall revert to the Vendee.

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

7. The Vendor may assign all or any of the rights assigned to it hereby or arising under the Lease, including,

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

8. The terms of this Assignment and all rights and obligations hereunder shall be governed by and construed in accordance with the laws of the State of Illinois, but the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303.

9. The Vendee shall cause copies of all notices received by it in connection with the Lease and all payments hereunder to be promptly delivered or made to the Vendor at its address set forth in Article 20 of the CSA, or at such other address as the Vendor shall designate.

10. The Vendor hereby agrees with the Vendee that the Vendor will not, so long as neither an event of default under the CSA nor an Event of Default under the Lease has occurred and is continuing, exercise or enforce, or seek to exercise or enforce, or avail itself of, any of the rights, powers, privileges, authorizations or benefits which are assigned and transferred by the Vendee to the Vendor by this Assignment without the prior written consent of the Vendee except the right to receive and apply the Payments as provided in Paragraph 1 hereof and to enforce any right, power, agreement or indemnity under the Lease, and that, subject to the terms of the Lease and the CSA, the Vendee may, so long as neither an event of default under the CSA nor an Event of Default under the Lease has occurred and is continuing, exercise or enforce, or seek to exercise or enforce, such rights, powers, privileges, authorizations or benefits; provided, however, that the Vendee shall not, and shall not have any authority to, take any action which would terminate the Lease without the prior written consent of the Vendor.

11. Notwithstanding anything herein to the contrary, (a) unless and until an event of default under the

CSA shall have occurred and is continuing, the Vendee shall have the right, without the concurrence of the Vendor, to adjust the rentals and Casualty Value and Termination Value percentages pursuant to, and subject to the limitation contained in, Section 2 of the Lease and to exercise the rights of the Lessor under Sections 12 and 13 of the Lease; (b) at all times the Vendee may (without the concurrence of the Vendor) receive all notices, certificates, opinions of counsel and other documents and information to be furnished to the Lessor or the Vendee under the Lease; (c) at all times the Vendee shall have the right to proceed by appropriate court action or actions either at law or in equity to enforce performance by the Lessee of its obligations with respect to Excluded Payments or to recover damages for the breach thereof as provided in Section 9(a) of the Lease but may not, without the written consent of the Vendor, declare an Event of Default under or terminate the Lease; and (d) at all times the Vendee may exercise the rights of the Vendee under the seventh paragraph of Section 6 of the Lease. The Vendor may not at any time, without the consent of the Vendee, amend, modify or supplement, or give or accept any waiver or consent with respect to, the Lease so as to increase the liabilities or diminish the immunities of the Vendee or reduce the amount or extend the time or payment of any Excluded Payment then due and payable or change any of the circumstances under which such Excluded Payments are payable.

12. Any notice hereunder shall be given in the manner and to the respective addresses specified in the Participation Agreement.

13. This Assignment may be executed in any number of counterparts, all of which together shall constitute a single instrument, but the counterpart delivered to the Vendor shall be deemed to be the original counterpart. It is not necessary that the parties hereto all sign the same counterpart as long as each party shall sign a counterpart

and such counterpart is delivered to the Vendor or its counsel, whereupon this Agreement shall become effective.

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

MERCANTILE-SAFE DEPOSIT AND
TRUST COMPANY, not in its
individual capacity but solely
as Agent,

[Corporate Seal]

by

Assistant Vice President

Attest:

Assistant Corporate
Trust Officer

CUMBERLAND LEASING CO.,

[Corporate Seal]

by

Vice President and
Treasurer

Attest:

Assistant Secretary

STATE OF MARYLAND)
) ss:
COUNTY OF BALTIMORE)

On this day of March 1984, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is an Assistant Vice President of MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its By-laws and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

Notary Public

[Notarial Seal]

My Commission Expires

STATE OF ILLINOIS)
) ss.:
COUNTY OF COOK)

On this day of March 1984, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is the Vice President and Treasurer of CUMBERLAND LEASING CO., that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, and that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

Notary Public

[Notarial Seal]

My Commission Expires

LESSEE'S CONSENT AND AGREEMENT

The undersigned, SOUTHERN PACIFIC TRANSPORTATION COMPANY, a corporation duly incorporated under the laws of the State of Delaware, the Lessee (the "Lessee") named in the Lease (the "Lease") referred to in the foregoing Assignment of Lease and Agreement (the "Assignment"), hereby (a) acknowledges receipt of a copy of the Assignment and (b) consents to all the terms and conditions of the Assignment and agrees that:

(1) it will pay all Payments as defined in the Assignment, due and to become due under the Lease or otherwise in respect of the Units leased thereunder, directly to MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, not in its individual capacity but solely as Agent (the "Vendor"), the assignee named in the Assignment, to be applied as provided in the Assignment, in immediately available funds by noon Baltimore, Maryland time on the date of payment, by wire transfer to Mercantile-Safe Deposit and Trust Company, Baltimore, Maryland, for credit to its Corporate Trust Department's Account No. 619478-8, with advice that the deposit is "RE: SPTCo 3/1/84" (or to such other address as may be furnished in writing to the undersigned by the Vendor);

(2) the Vendor shall be entitled to the benefits of, and to receive and enforce performance of, all the covenants to be performed by the undersigned under the Lease as though the Vendor were named therein as the Lessor and that it will not assert against the Vendor any claim or defense the Lessee may have against the Lessor under the Lease;

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

(4) the Lease shall not, without the prior written consent of the Vendor, be amended, terminated or modified (other than as provided in Paragraph 11 of the Assignment), nor shall any action be taken or omitted by the undersigned, the taking or omission of which might result in an alteration or impairment of the Lease or this Consent and Agreement or of any of the rights created by any thereof.

This Consent and Agreement when accepted by the Vendor by signing the acceptance at the foot hereof, shall be deemed a contract under, and shall be construed in accordance with, the laws of the State of California. It is not necessary that the parties hereto all sign the same counterpart of this Agreement and Consent as long as each party shall sign a counterpart and such counterpart is delivered to the Vendor or its counsel, whereupon this Agreement and Consent shall become effective.

Dated as of March 1, 1984

SOUTHERN PACIFIC TRANSPORTATION
COMPANY,

by

Vice President and
Treasurer

[Corporate Seal]

Attest:

Assistant Secretary

The foregoing Consent and Agreement is hereby accepted, as of the 1st day of March 1984.

MERCANTILE-SAFE DEPOSIT AND
TRUST COMPANY, not in its
individual capacity but solely
as Agent,

by

Assistant Vice President

EXHIBIT A
to
Participation
Agreement

[CS&M Ref: 3909-208]

CONDITIONAL SALE
AGREEMENT

Dated as of March 1, 1984

between

SOUTHERN PACIFIC TRANSPORTATION COMPANY

Builder,

and

CUMBERLAND LEASING CO.,

Vendee.

CONDITIONAL SALE AGREEMENT

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CONDITIONAL SALE AGREEMENT dated as of March 1, 1984, between SOUTHERN PACIFIC TRANSPORTATION COMPANY, a Delaware corporation (the "Builder") and CUMBERLAND LEASING CO., an Illinois corporation (the "Vendee").

The Builder agrees to construct, sell and deliver to the Vendee, and the Vendee agrees to purchase, the railroad equipment described in Annex B hereto other than equipment excluded pursuant to Article 3 or Article 4 hereof (the railroad equipment which is delivered and accepted hereunder is hereinafter called, collectively, the "Equipment" or the "Units" and, individually, a "Unit").

The Vendee is entering into a Lease of Railroad Equipment dated as of the date hereof (the "Lease") with SOUTHERN PACIFIC TRANSPORTATION COMPANY (in such capacity, the "Lessee"), substantially in the form of Annex C hereto.

Mercantile-Safe Deposit and Trust Company (the "Assignee" or "Vendor") is acting as agent for certain investors (together with their successors and assigns, the "Investors") pursuant to a Participation Agreement dated as of the date hereof (the "Participation Agreement") among the Assignee, the Vendee, the Guarantor named therein, the Lessee and such investors.

In consideration of the agreements hereinafter set forth, the parties hereto do hereby agree as follows:

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

The term "Vendor", whenever used in this Agreement, means, before any assignment of its rights hereunder, the party hereto which has manufactured the Equipment and any successor or successors for the time being to its manufacturing properties and business, and, after such assignment, both any assignee or assignees for the time being of such particular assigned rights as regards such rights, and also any assignor as regards any rights here-

under that are retained or excluded from any assignment; and the term "Builder", whenever used in this Agreement, means, both before and after any such assignment, the party hereto which has manufactured the Equipment and any successor or successors for the time being to its manufacturing properties and business.

In case of such assignment, the Vendee will assign to the Vendor, as security for the payment and performance of all the Vendee's obligations hereunder, certain rights of the Vendee in and to the Lease, pursuant to an Assignment of Lease and Agreement in the form of Annex D hereto (the "Lease Assignment"), and the Lessee shall consent thereto pursuant to the Consent and Agreement in the form attached to Annex D (the "Consent").

ARTICLE 2. Construction and Sale. Pursuant to this Agreement, the Builder will construct the Equipment as described in Schedule A hereto and will deliver the Equipment to the Vendee, and the Vendee will accept delivery of and pay for the Equipment as hereinafter provided, each Unit of which shall be standard gauge railroad equipment constructed in accordance with the Vendee's specifications referred to in Annex B hereto and in accordance with such modifications thereof as may be agreed to in writing between the Builder and the Vendee (which specifications and modifications, if any, are by reference made a part of this Agreement as fully as though expressly set forth herein and are hereinafter called the "Specifications"). The design, quality and component parts of each Unit shall conform, on the date of delivery of each thereof, to the Specifications and to all Department of Transportation and Interstate Commerce Commission requirements and specifications, and to all standards recommended by the Association of American Railroads reasonably interpreted as being applicable to each such Unit as of the date of such delivery, and each such Unit shall be new railroad equipment.

ARTICLE 3. Inspection and Delivery. The Builder will deliver the Units of the Equipment to the Vendee at such point or points within the United States of America specified by the Lessee on or prior to the Cut-Off Date (as hereinafter defined), freight charges, if any, prepaid; provided, however, that any Unit of Equipment which is delivered prior to the filing of this Agreement pursuant to 49 U.S.C. § 11303 shall be excluded from this Agreement, and the Vendee shall be relieved of its obligation to purchase and pay for such Equipment; and provided further that the Builder shall not have any obligation to deliver any Unit of Equipment hereunder subsequent to the commencement of any proceedings specified in clause (c) of Article 15 hereof or

the occurrence of any event of default (as described in Article 15 hereof), or event which, with the lapse of time and/or demand, would constitute such an event of default. The Builder agrees not to deliver any Unit of Equipment hereunder (a) following receipt of written notice from the Vendee or the Assignee of the commencement of any such proceedings or the occurrence of any such event, as aforesaid, and (b) until the Builder receives notice from the Assignee and the Vendee, respectively, that the conditions contained in Paragraphs 6 and 7, respectively, of the Participation Agreement have been met or waived.

Any Unit delivered prior to the filing of this Agreement pursuant to 49 U.S.C § 11303 and any Unit not delivered at the time of receipt by the Builder of the notice specified in clause (a) of the second sentence of the first paragraph of this Article 3 and any Unit not delivered and accepted hereunder on or prior to December 31, 1984, shall be excluded from this Agreement, and the Vendee shall be relieved of its obligation to purchase and pay for such Unit. If any Unit shall be excluded herefrom pursuant to the immediately preceding sentence, the Builder and the Vendee shall execute an agreement supplemental hereto limiting this Agreement to the Equipment not so excluded herefrom.

As between the Builder and the Vendee, the Builder's obligation as to the time of delivery set forth in Annex B hereto is subject, however, to delays resulting from causes beyond the Builder's reasonable control, including but not limited to acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, delays in receiving necessary materials or delays of carriers or subcontractors, but in no event shall such delays be construed to require the Vendee to accept any Unit hereunder after December 31, 1984.

During construction, including, without limitation, all phases of fabrication and assembly, the Equipment and all materials used in the construction of the Equipment and all work thereon shall be subject to inspection and approval by the authorized inspectors of the Vendee (who may be employees of the Lessee); provided, however, that any inspection or failure to inspect by the Vendee shall not affect any of its rights hereunder. The Builder shall grant to the authorized inspectors of the Vendee access to all portions of its plant where the Equipment is being

constructed. The Builder agrees to inspect all materials used in the construction of the Equipment in accordance with the standard quality control practices of the Builder. Upon completion of each Unit or of a number of Units of the Equipment, the authorized inspector of the Vendee shall inspect such Unit or Units, and if each such Unit conforms to the Specifications, such authorized inspector of the Vendee shall execute and deliver to the Builder a certificate of acceptance substantially in the form of Schedule D to the Lease ("Certificate of Acceptance") stating that such Unit or Units have been inspected and accepted on behalf of the Vendee and are marked in accordance with Article 9 hereof; provided, however, that the Builder shall not thereby be relieved of its warranties set forth or referred to in Article 13 hereof.

On delivery and acceptance of each such Unit hereunder at the place specified for delivery, the Builder shall not have any further responsibility for, nor bear any risk of, any damage to or the destruction or loss of such Unit; provided, however, that the Builder shall not thereby be relieved of its warranty referred to in Article 13 hereof.

Notwithstanding the foregoing or any other provision of this Agreement to the contrary, the delivery to and acceptance by or on behalf of the Vendee of any Unit of Equipment excluded from this Agreement pursuant to the first paragraph of Article 4 hereof shall be ineffective, ab initio, to create in or transfer to the Vendee any legal or beneficial right or interest in such Unit or to impose on the Vendee any liability, obligation or responsibility with respect thereto; any right or interest in any such Unit created in, or transferred to, or purported to be created in or transferred to, the Vendee shall be held by the Vendee solely as trustee for the benefit of the Lessee.

ARTICLE 4. Purchase Price and Payment. The Purchase Price per Unit of the Equipment is set forth in Annex B hereto.

The Equipment shall be settled for in such number of groups of Units of the Equipment delivered to and accepted by the Vendee as is provided in Item 2 of Annex A hereto (each such group being hereinafter called a "Group"). The term "Closing Date" with respect to any Group shall mean such date, not later than December 31, 1984 (the "Cut-Off Date"), occurring not more than ten business days following presentation by the Builder to the Vendee of the invoice (addressed to the Vendor and approved as to price by the

Vendee) and the Certificate or Certificates of Acceptance for such Group, as shall be fixed by the Builder by written notice delivered to the Vendee and the Vendor at least three business days prior to the Closing Date designated therein. The parties hereto will, so far as is practicable, attempt to comply with the schedule of estimated Closing Dates set forth in Item 5 of Annex A hereto. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays, holidays and any other day on which banking institutions in Chicago, Illinois, San Francisco, California, Baltimore, Maryland, or New York, New York, are authorized to remain closed.

The Vendee hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay in immediately available funds to the Vendor at such place as the Vendor may designate, the Purchase Price of each Group of the Equipment, as follows:

(a) in 20 semiannual installments, as hereinafter provided, an amount (the "CSA Indebtedness") equal to 68.45083% of the aggregate of the Purchase Prices of the Units of the Equipment in the Group for which settlement is then being made as set forth in the Invoice or Invoices therefor (the "Invoiced Purchase Prices"); and

(b) on the Closing Date with respect to each Group an amount (the "Down Payment") equal to the aggregate Purchase Price of such Group, less the amount payable pursuant to subparagraph (a) of this paragraph.

The installments of the CSA Indebtedness shall be payable on each December 28 and June 28 commencing June 28, 1985, to and including December 28, 1994, or, if any such date is not a business day, on the next succeeding business day (each such date being hereinafter called a "Payment Date"). The unpaid balance of the CSA Indebtedness shall bear interest from the Closing Date upon which such CSA Indebtedness was incurred at the rate of 12.625% per annum, and such interest shall be payable, to the extent accrued, on December 28, 1984, and on each Payment Date. The installments of principal and/or interest payable on each Payment Date shall be calculated as set forth in Schedule I hereto and the aggregate of such installments of principal will completely amortize the CSA Indebtedness. Promptly following the earlier of the last Closing Date or the

Cut-Off Date, the Vendee will furnish to the Vendor and the Lessee a payment schedule showing the amount of principal payable on each Payment Date.

Except as provided in the next paragraph, interest under this Agreement shall be determined on the basis of a 360-day year of 12 30-day months, except that interest due on December 28, 1984, shall be calculated on an actual elapsed day, 366-day year basis.

The Vendee will pay interest at the rate of 13.625% per annum (calculated on an actual elapsed day basis), to the extent legally enforceable, upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof, anything herein to the contrary notwithstanding (the "Penalty Rate").

All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts and shall be made by bank wire transfer of Federal or other funds immediately available at, and not later than, noon Baltimore, Maryland time. The Vendee shall not have the privilege of prepaying any portion of the CSA Indebtedness prior to the date it becomes due; provided, however, that the CSA Indebtedness may be prepaid as provided for in Article 7 hereof.

The obligation of the Vendee to pay to the Vendor the Down Payment shall be subject to the receipt by the Vendee of copies of the documents required to be furnished by the Builder pursuant to Section 4 of the CSA Assignment in respect of such Group.

Notwithstanding any other provision of this Agreement (including, but not limited to, any provision of Articles 15 and 16 hereof), but not limiting the effect of Article 21 hereof, the Vendor agrees that the liability of the Vendee or any assignee of the Vendee for all payments to be made by it under this Agreement (with the exception only of the payments to be made pursuant to subparagraph (b) of the third paragraph of Article 4, the interest payment due on December 28, 1984, to the extent provided in the last sentence of the last paragraph of Paragraph 8 of the Participation Agreement, and the obligations set forth in the proviso in the third paragraph of Article 12 hereof) shall not exceed an amount equal to, and shall be payable only out of, the "income and proceeds from the Equipment". As used herein, the term "income and proceeds from the

Equipment" shall mean (i) if one of the events of default specified in Article 15 hereof shall have occurred and while it shall be continuing, so much of the following amounts as are indefeasibly received by the Vendee at any time after any such event and during the continuance thereof: (a) all amounts of rental and amounts in respect of Casualty Occurrences or a Termination (as such terms are defined in Article 7 hereof) paid for or with respect to the Equipment pursuant to the Lease and any and all other payments received under Section 8 or any other provision of the Lease and (b) any and all payments or proceeds received by the Vendee under the Lease or received by the Vendee for or with respect to the Equipment as the result of the sale, lease or other disposition thereof and after deducting all costs and expenses of such sale, lease or other disposition and (ii) at any other time only that portion of the amounts referred to in the foregoing clauses (a) and (b) as are indefeasibly received by the Vendee and as shall be required to discharge (A) the portion of the CSA Indebtedness (including prepayments thereof required in respect of Casualty Occurrences or a Termination) and/or interest thereon due and payable on the date such amounts were required to be paid pursuant to the Lease, (B) any other payments then due and payable under this Agreement and (C) any of the obligations of the Vendee under this Agreement, the Vendee under the Participation Agreement or the Lessee under the Lease to which the Vendor is entitled to apply Payments (as defined in Paragraph 1 of the Lease Assignment) under the Lease Assignment; it being understood that "income and proceeds from the Equipment" shall in no event include Excluded Payments (as defined in Paragraph 1 of the Lease Assignment). Notwithstanding anything to the contrary contained in Articles 15 and 16 hereof, the Vendor agrees that in the event it shall obtain a judgment against the Vendee for an amount in excess of the amounts payable by the Vendee pursuant to the limitations set forth in this paragraph, it will, accordingly, limit its execution of such judgment against the Vendee to amounts payable pursuant to the limitations set forth in this paragraph. It is further agreed by the parties hereto that nothing contained herein limiting the liability of the Vendee shall derogate from the right of the Vendor to proceed against the Equipment as provided for herein for the full unpaid CSA Indebtedness and interest thereon and all other payments and obligations hereunder or to proceed against the Lessee under the Lease or the Consent.

ARTICLE 5. Security Interest in the Equipment.

The Vendor shall and hereby does retain a security interest in the Equipment until (i) the Vendee shall have made all its payments under this Agreement in respect of the Equipment and the Vendee shall have made all its payments under the Participation Agreement and shall have kept and performed all agreements herein and therein contained, notwithstanding any provision of this Agreement limiting the liability of the Vendee and notwithstanding the delivery of the Equipment to and the possession and use thereof by the Vendee and the Lessee as provided in this Agreement and the Lease, and (ii) the Lessee shall have satisfied all its obligations to the Vendor and any Investor under any provision of the Lease.

Except as otherwise specifically provided in Article 7 hereof, when and only when the Vendor shall have been paid the full CSA Indebtedness, together with interest and all other payments as herein provided, and all the Vendee's obligations herein contained and all the Lessee's obligations to the Vendor and the Investors contained in the Lease shall have been performed, all rights and interests of the Vendor in the Equipment shall be released and discharged to the Vendee without further transfer or action on the part of the Vendor. However, the Vendor, if so requested by the Vendee at that time, will (a) execute and deliver to the Vendee documents covering the Equipment releasing its security interest therein to the Vendee, free of all claims, rights, liens, security interests and other encumbrances created or retained hereby and (b) execute and deliver to the Vendee for filing, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Vendee to such Equipment. The Vendee hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such release documents or instrument or instruments or to file any such certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such release documents or instrument or instruments or to file such certificate within a reasonable time after written demand by the Vendee.

ARTICLE 6. Impositions. All payments to be made by the Vendee hereunder will be free of all withholding or expense of any nature whatsoever to the Vendor and the Investors (as defined in the Participation Agreement)

including their respective successors, assigns, agents and servants) for, and the Vendee shall pay and shall indemnify and hold harmless the Vendor and the Investors (including their respective successors, assigns, agents and servants), from and against, all collection charges, all license and registration fees and all taxes, including without limitation, income, sales, use, personal property, stamp, interest equalization, withholding and other taxes, levies, imposts, duties, charges, or withholdings of any nature, together with any penalties, fines or interest thereon (all such collection charges, fees, taxes, levies, imposts, duties, charges, withholdings, penalties, fines and interest being hereinafter called collectively "Impositions"), imposed against the Vendor, the Investors (including their respective successors, assigns, agents and servants), the Lessee, the Vendee or any Unit or any part thereof by any Federal, state or local government or taxing authority of or in the United States of America, or by any taxing authority or governmental subdivision of a foreign country, upon or with respect to any Unit or any part thereof, or upon or with respect to the purchase, ownership, delivery, leasing, rental payment, shipment, possession, use, operation, sale, return, transfer of title, or other disposition thereof, or upon the rentals, receipts or earnings arising therefrom, or upon the proceeds received with respect thereto, or upon or with respect to this Agreement, the CSA Assignment, the Participation Agreement, the Lease, the Lease Assignment or the CSA Indebtedness (or any amendment, consent, waiver or modification of any thereof); excluding, however:

(i) any taxes on or measured by any fees or other compensation received by the Vendor for services rendered in connection with the transactions contemplated hereby; or

(ii) any United States Federal, state or local taxes, or other charges on or with respect to the investment in or transfer of the CSA Indebtedness or the revenues, receipts, or earnings therefrom for which any Investor is liable;

except any such tax which is in substitution for or relieves the Vendee from the payment of taxes which it would otherwise be obligated to pay or reimburse herein provided. The Vendee will also pay promptly all Impositions which may be imposed upon any Unit or any part thereof or for the use or operation thereof or upon the earnings arising therefrom or upon the Vendee solely by reason of its ownership thereof and will keep at all times all and every part of such Unit

free and clear of all Impositions which might in any way affect the title of the Vendee or result in a lien upon any such Unit. The Vendee need not pay any Imposition to the extent that and while it is being contested by the Vendee in good faith and by appropriate proceedings and so long as such proceedings or the nonpayment of such Imposition does not, in the reasonable opinion of the Vendor, involve (A) any substantial danger of the sale, forfeiture or loss of any Unit or any interest therein, (B) any material adverse change in the title, property or rights of the Vendee in or to the Units under the Lease or of Vendor hereunder, (C) any assessment or penalty against any party which is indemnified by this Article 5, (D) any interference with the due payment by the Lessee of rentals under the Lease or the application of such rentals under the Lease Assignment or (E) any danger of criminal liability or of other liability for which no indemnification is provided hereunder being imposed against the Vendor, any Investor, or the agents or servants of any of them. If any Imposition shall have been charged or levied against the Vendor or the Investors (including their respective successors, assigns, agents and servants) directly, the Vendee shall be advised promptly and shall be given an opportunity to contest such Imposition before the Imposition is paid by the Vendor or the Investors, and if, after such notice is given and such opportunity is provided, the Vendor or the Investors shall pay such Imposition, the Vendee shall reimburse such person, plus interest at the rate per annum equal to the rate announced from time to time by Wells Fargo Bank, N.A. as its best rate for 90 day loans to its largest commercial customers (the "WFB Prime") (calculated on an actual elapsed day basis) from the date of payment to the date of reimbursement, upon presentation of an invoice therefor. The Vendee further agrees that it will promptly pay to the Vendor or the Investors (including their respective successors, assigns, agents and servants), as the case may be, an amount which, after deduction of any taxes required to be paid by such person in respect of the receipt thereof, shall be equal to any additional tax payable by the Vendee under this Article 5; provided, however, that such payment shall be reduced by an amount equal to any reduction in taxes resulting from the deduction by such person of the liability or payments with respect to which such payment or reimbursement is made or paid by the Vendee.

All amounts payable by the Vendee pursuant to this Article 6 shall be payable, to the extent not theretofore paid, on written demand by the party entitled to indemnification; and all the indemnities contained in this Article 5 shall continue in full force and effect notwithstanding the

expiration or other termination of this Agreement and are expressly made for the benefit of, and shall be enforceable by the Vendor and the Investors.

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

In the event any reports with respect to Impositions are required to be made, the Vendee will either make such reports in such manner as to show the ownership of the Vendee and the security interest of the Vendor in the Units or notify the Vendor of such requirement and make such reports in such manner as shall be satisfactory to the Vendor.

In the event the Vendee may be prohibited by law or impaired from contesting in its own name any Imposition covered by this Article 6 in respect of which the Vendee would otherwise be required to make payments to the Vendor pursuant hereto, the Vendor shall, upon request and at the expense of the Vendee, take all legal and other appropriate action reasonably requested by the Vendee to contest such Imposition. The Vendor shall not be obligated to take any such legal or other appropriate action unless the Vendee shall first have indemnified the Vendor in a manner satisfactory to the Vendor for all liabilities and expenses which may be entailed therein. Further, the Vendee shall indemnify and hold the Vendor harmless from and against any and all claims, costs, expenses, damages, losses and liabilities incurred in connection therewith as a result of, or incident to, any action taken by the Vendor or the Vendee under this Article 6. The Vendee shall be entitled to any refund received by the Vendor or the Vendee in respect of any Imposition paid by the Vendee, provided no event of default hereunder or other event which, with notice, demand and/or lapse of time, would constitute such an event of default hereunder shall have occurred and be continuing.

ARTICLE 7. Maintenance and Repair; Casualty Occurrences; Termination. The Vendee agrees that, at its own cost and expense, it will maintain and keep each Unit of the Equipment in good operating order, repair and condition,

ordinary wear and tear excepted, and in accordance with the provisions of the first paragraph of Section 6 of the Lease.

In the event that any Unit of the Equipment shall suffer a Casualty Occurrence (as defined in Section 6 of the Lease) or the Lessee elects to terminate the Lease pursuant to Section 6 thereof (a "Termination"), the Vendee shall, within 30 days after it shall have determined that such Unit has suffered a Casualty Occurrence or received notice of a Termination, cause the Vendor to be fully informed in regard thereto. Notwithstanding any such Casualty Occurrence or Termination, the Vendee shall continue making payment of all installments of principal and interest in respect of such Unit until, in the case of a Casualty Occurrence, the next succeeding date for the payment of interest on the CSA Indebtedness and, in the case of a Termination, the Termination Date (as defined in Section 6 of the Lease) (each such Date hereinafter called a "Settlement Date"). On such Settlement Date the Vendee shall pay to the Vendor a sum equal to the Casualty Value (as hereinafter defined) of such Unit suffering a Casualty Occurrence or subject to a Termination as of the date of such payment and shall file, or cause to be filed, with the Vendor a certificate setting forth the Casualty Value of such Unit. Any money paid to the Vendor pursuant to this paragraph shall be applied on the date that such Casualty Value is paid (after the payment of the interest and principal due on such date) to prepay without penalty or premium the unpaid balance of the CSA Indebtedness with respect to such Unit or Units (in the manner provided in the second paragraph of Paragraph 9 of the Participation Agreement), and the Vendee will promptly furnish to the Vendor and the Lessee a revised schedule of payments of principal and interest thereafter to be made in respect of the remaining Units in such number of counter-parts as the Vendor may request.

Upon payment by the Vendee to the Vendor of the Casualty Value of any Unit of the Equipment having suffered a Casualty Occurrence or subject to a Termination, all rights and interests of the Vendor in such Unit shall be released and discharged, without further transfer or action on the part of the Vendor, except that the Vendor, if requested by the Vendee, will execute and deliver to the Vendee, at the expense of the Vendee, an appropriate instrument, confirming such release and discharge of all the Vendor's right and interest, and the release of the Vendor's security interest, in such Unit, in recordable form, in order that the Vendee may make clear upon the public records the title of the Vendee to such Unit.

The Vendee will at all times prior to the payment of the full CSA Indebtedness, together with interest thereon and all other payments required hereby, cause to be carried and maintained insurance in respect of the Equipment at the time subject hereto, in amounts and against risks comparable to those insured against by the Lessee on similar equipment owned by it.

The Casualty Value of each Unit of the Equipment suffering a Casualty Occurrence or subject to a Termination shall be deemed for purposes of this Agreement to be that portion of the original CSA Indebtedness with respect to such Unit remaining unpaid on the date as of which such Casualty Value shall be determined, plus interest accrued thereon but unpaid as of such date. For the purpose of this paragraph, each payment of CSA Indebtedness in respect of Equipment made pursuant to Article 4 hereof shall be deemed to be a payment on each Unit of the Equipment in like proportion as the Purchase Price of such Unit bears to the aggregate Purchase Price of all the Units of Equipment.

If the Vendor shall receive any insurance proceeds or condemnation payments in respect of such Units suffering a Casualty Occurrence, the Vendor shall, subject to the Vendor having received payment of the Casualty Value hereunder, pay such insurance proceeds or condemnation payments to the Vendee. All insurance proceeds or condemnation payments received by the Vendor in respect of any Unit or Units of Equipment not suffering a Casualty Occurrence shall be paid to the Vendee upon proof satisfactory to the Vendor that any damage to such Unit in respect of which such proceeds were paid has been fully repaired.

ARTICLE 8. Reports and Inspections. On or before March 31 in each year, commencing with the calendar year 1985, the Vendee shall cause to be furnished to the Vendor an accurate statement to the effect set forth in Section 7 of the Lease. The Vendor shall have the right, by its agents, to inspect the Equipment and the Vendee's and Lessee's records with respect thereto at such reasonable times as the Vendor may request during the continuance of this Agreement.

ARTICLE 9. Marking of Equipment. The Vendee will cause each Unit of the Equipment to be kept numbered and marked as provided in Section 4 of the Lease.

Except as provided in the immediately preceding paragraph and in the proviso to the second paragraph of Section 4 of the Lease, the Vendee will not allow the name of any person, association or corporation to be placed on any Unit of the Equipment as a designation that might be interpreted as a claim of ownership.

ARTICLE 10. Compliance with Laws and Rules. During the term of this Agreement, the Vendee will comply, and will cause every lessee or user of the Equipment to comply, in all respects (including, without limitation, with respect to the use, maintenance and operation of the Equipment) with all Applicable Laws (as defined in Section 8 of the Lease) and in the event that any Applicable Law requires any alteration, replacement or modification, of or to any part on any Unit of the Equipment, the Vendee will conform therewith at its own expense; provided, however, that the Vendee may, in good faith, contest the validity or application of any Applicable Law in any reasonable manner which does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor under this Agreement.

ARTICLE 11. Possession and Use. The Vendee, so long as an event of default shall not have occurred and be continuing under this Agreement, shall be entitled, from and after delivery of the Equipment to the Vendee, to the possession of the Equipment and the use thereof, but only upon and subject to all the terms and conditions of this Agreement and the Lease.

The parties hereto acknowledge that the Vendee simultaneously herewith is leasing the Equipment to the Lessee as provided in the Lease, and the rights of the Lessee and its permitted assigns under the Lease shall be subordinate and junior in rank to the rights, and shall be subject to the remedies, of the Vendor under this Agreement. The Vendee shall have no right to lease or sublease the Equipment other than the Lease to the Lessee. The Lease shall not be amended or terminated (except in accordance with its terms) without the prior written consent of the Vendor.

ARTICLE 12. Prohibition Against Liens. The Vendee will pay or discharge any and all sums claimed by any party from, through or under the Vendee or its successors or

assigns which, if unpaid, might become a lien, charge, security interest or other encumbrance upon or with respect to the Equipment, or any Unit thereof, or the Vendee's interests in the Lease or the payments due and to become due thereunder, or any part thereof, and will promptly discharge any such lien, charge, security interest or other encumbrance which arises, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by any appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the reasonable opinion of the Vendor, adversely affect the property or rights of the Vendor in or to the Equipment or otherwise under this Agreement. Any amounts paid by the Vendor in discharge of any claims, liens, charges or security interests upon the Equipment shall be secured by and under this Agreement.

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

The foregoing provisions of this Article 11 shall be subject to the limitations set forth in the last paragraph of Article 4 hereof and the provisions of Article 21 hereof; provided, however, that the Vendee will pay or discharge any and all claims, liens, charges or security interests claimed by any party from, through or under the Vendee or its successors and assigns, not arising out of the ownership of the Equipment or the transactions contemplated hereby (but including income taxes arising out of the receipt of rentals and other payments under the Lease and any other proceeds of the Equipment) which, if unpaid, might become a lien, charge or security interest on or with respect to the Equipment, or any Unit thereof, or the Vendee's interest in the Lease and the payments to be made thereunder, but the Vendee shall not be required to pay or discharge any such claim so long as the validity or priority thereof shall be contested in good faith and by appropriate legal or administrative proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of counsel to the Vendor, adversely affect the security interest of the Vendor in or to the Equipment or otherwise under this Agreement or in and to the Lease and the payments to be made thereunder.

ARTICLE 13. Indemnities and Warranties. The Vendee agrees to indemnify, protect and hold harmless the Vendor from and against all losses, damages, injuries, liabilities, including, without limitation, strict or absolute liability in tort or by statute imposed, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including but not limited to counsel fees and expenses, penalties and interest, arising out of or as the result of the entering into or the performance of this Agreement, the retention by the Vendor of security title to or a security interest in the Equipment, the ordering, acquisition, use, operation, condition, construction, purchase, delivery, rejection, storage or return of any of the Equipment, any accident in connection with the operation, use, condition, construction, possession, storage or return of any of the Equipment resulting in damage to property or injury or death to any person during the period when title thereto remains in the Vendor or the transfer of title to the Equipment by the Vendor pursuant to any of the provisions of this Agreement, except, however, any losses, damages, injuries, liabilities, claims and demands whatsoever arising out of any tort, breach of warranty or failure to perform any covenant hereunder by the Builder. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the CSA Indebtedness and the release of the security interest in the Equipment, as provided in the last paragraph of Article 5 hereof, or the termination of this Agreement in any manner whatsoever.

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

The Builder represents and warrants to the Vendee that, at the time of delivery and acceptance of each Unit of its Equipment under this Agreement, the Vendee will have good and marketable title to such Unit, free and clear of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Vendor under this Agreement and the rights of the Lessee under the Lease.

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

meaning of the Employee Retirement Income Security Act of 1974.

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

The indemnities made in this Article 13 by the Builder shall not be modified, abated, postponed or in any other way or in any manner diminished or reduced as a consequence of any action or inaction of the Vendee, the Vendor or the Investors in connection with, relating to, or arising out of the rights (whether or not exercised) of any such party to inspect or approve the construction to be performed by the Builder pursuant to this Agreement. Such indemnities shall in all events, and in addition to the agreements contained elsewhere in this Article 13, extend to and apply to any allegation against any indemnified party that it has been negligent, either actively or passively, or is guilty of a breach of other duty, including, without limitation, any breach of warranty or breach of contract, to any person or organization.

The warranties and indemnities of the Builder contained or referred to in this Article 13 and in any other Articles hereof and all other covenants and obligations of the Builder contained in this Agreement shall inure to the benefit of, and be enforceable by the Vendee, the Vendor, the Investors, any lessor, lessee, assignee or transferee of this Agreement or of any Units of the Equipment constructed by the Builder hereunder.

ARTICLE 14. Assignments. The Vendee will not, except as provided in Article 11 hereof, transfer the right to possession of any Unit of the Equipment or sell, assign, transfer or otherwise dispose of its rights under this Agreement except that all, but not less than all, of the Vendee's right, title and interest under this Agreement may be assigned, conveyed or transferred by the Vendee to (a) any bank, savings institution, trust company, financial company or other corporation having a combined capital and surplus of at least \$50,000,000, or (b) any corporation owning at the time substantially all of the capital stock of the Vendee or any corporation or other entity (but not an individual) controlled by or under common control with the Vendee (any such party being hereinafter called the "Transferee"). If the transfer occurs pursuant to (b) above, the Vendee shall remain secondarily liable for the

Transferee's obligations under this Agreement if such Transferee shall not have a net worth of at least \$50,000,000 at the time of transfer. In the event of any such assignment, conveyance or transfer, the Transferee shall become a party to this Agreement and will agree to be bound by all the terms of and will undertake all the obligations of the Vendee contained in this Agreement, in the Participation Agreement, the Lease and the Lease Assignment in such manner as is reasonably satisfactory to the Vendor.

All or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Vendee, may be assigned by the Vendor and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve the Builder from, any of the obligations of the Builder to construct and deliver the Equipment in accordance herewith or to respond to its warranties and indemnities contained or referred to in Article 13 hereof or relieve the Vendee of its obligations to the Builder or diminish the rights of the Vendee contained or referred to in this Agreement.

Upon any such assignment, either the assignor or the assignee shall give written notice to the Vendee, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall, by virtue of such assignment, acquire all the assignor's right, title and interest in and to the Equipment and this Agreement, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Vendee of the notification of any such assignment, all payments thereafter to be made by the Vendee under this Agreement shall, to the extent so assigned, be made to the assignee in such manner as it may direct and shall constitute full compliance with the terms of this Agreement. The Vendee may rely upon instruments or documents which it believes in good faith to be true and authentic.

The Vendee recognizes that this Agreement will be assigned to the Assignee as provided in the CSA Assignment. The Vendee expressly represents, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Vendor hereunder, and for the purpose of inducing such acquisition, that, subject to the provisions of the last paragraph of Article 4 hereof, the rights of the

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

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

(a) the Vendee shall fail to pay in full any sum payable by the Vendee when payment thereof shall be due hereunder and such default shall continue for ten days; or

(b) the Vendee or the Lessee shall, for more than 30 days after the Vendor shall have demanded in writing (sent to both the Lessee and the Vendee) performance thereof, fail or refuse to comply with any other covenant, agreement, term or provision of this Agreement, the Participation Agreement, the CSA Assignment, the Lease, the Lease Assignment or the Consent on its part to be kept and performed and the Vendee or the Lessee shall have failed to make provision reasonably satisfactory to the Vendor for such compliance; or

(c) a petition for reorganization under Title 11 of the United States Code, as now constituted or as hereafter amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Agreement, the Lease and the Consent shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a

trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees, within 60 days after such petition shall have been filed and otherwise in accordance with the provisions of 11 U.S.C. § 1168, or any successor provision, as the same may hereafter be amended; or

(d) any other proceeding shall be commenced by or against the Vendee or the Lessee for any relief which includes, or might result in, any modification of the obligations under this Agreement, the Participation Agreement, the CSA Assignment, the Lease, the Lease Assignment, or the Consent of the Vendee or the Lessee, under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, including without limitation, readjustment of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of such obligations), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Vendee or the Lessee, as the case may be, hereunder and thereunder shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Vendee or the Lessee, as the case may be, or for their respective property in connection with any such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees or receiver or receivers, within 60 days after such proceedings shall have been commenced; or

(e) the Vendee shall make or permit any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession of any Unit of the Equipment;

(f) any Event of Default shall have occurred under the Lease and be continuing; provided, however, that an Event of Default under Section 9A of the Lease shall not be deemed to be an event of default hereunder if (i) not more than four such Events of Default shall

have occurred and not more than two such Events of Default shall have occurred on consecutive dates and (ii) the Vendee shall not be in default under the provisions of clause (a) of this Article 15;

then at any time after the occurrence of such an event of default and during the continuance thereof, the Vendor may, upon written notice to the Vendee and the Lessee and upon compliance with any legal requirements then in force and applicable to such action by the Vendor, declare (a "Declaration of Default") the entire unpaid CSA Indebtedness together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such Declaration of Default at the Penalty Rate, to the extent legally enforceable. In addition, if the Vendee does not pay the entire unpaid CSA Indebtedness, together with interest thereon accrued and unpaid to the date of payment, within 30 days of such notice of Declaration of Default, the Vendor may, upon written notice to the Vendee and the Lessee cause the term of the Lease immediately upon such notice to terminate (and the Vendee acknowledges the right of the Vendor to terminate the Lease) and the Vendor may exercise the other remedies provided in Article 16 hereof; provided, however, that such termination shall not be in derogation of or impair the rights of the Vendee or the Vendor under the Lease Assignment, as the case may be, to enforce compliance by the Lessee with any of its covenants and agreements under the Lease or to enforce any of its rights and remedies under Section 9 of the Lease (subject to the Vendor's rights to repossess and sell the Equipment as provided in this Agreement), including the rights of the Vendee or the Vendor under the Lease Assignment, as the case may be, to sue for and recover damages provided for in Section 9 of the Lease upon the occurrence of an Event of Default under the Lease. Upon a Declaration of Default, subject to Article 4 hereof, the Vendor shall be entitled to recover judgment for the entire unpaid balance of the CSA Indebtedness, with interest as aforesaid, and to collect such judgment out of any property of the Vendee, subject to the limitations of Articles 4 and 21 hereof, wherever situated. The Vendee agrees to notify the Vendor promptly of any event of which it has knowledge which constitutes, or with the giving of notice or lapse of time or both would constitute, an event of default under this Agreement.

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

ARTICLE 16. Remedies. At any time during the continuance of a Declaration of Default, the Vendor may, upon such further notice and action, if any, as may be required for compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Vendor, take or cause to be taken, by its agent or agents, immediate possession of the Equipment, or one or more of the Units thereof, without liability to return to the Vendee any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 16 expressly provided, and may remove the same from possession and use of the Vendee, the Lessee or any other person and for such purpose may enter upon the premises of the Vendee or the Lessee or any other premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Vendee or the Lessee, subject to all mandatory requirements of due process of law.

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

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

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

(c) cause the Equipment to be transported to any reasonable place on the lines of the Lessee or any of its affiliates or to any connecting carrier for shipment, all as directed by the Vendor.

During any storage period, the Vendee will, at its own cost and expense, insure, maintain and keep each such Unit in good order and repair and will permit the inspection of the Equipment by the Vendor, the Vendor's representatives and prospective purchasers, lessees and users. This agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled to a decree against the Vendee requiring specific performance hereof. The Vendee hereby expressly waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any Unit of the Equipment in any reasonable manner.

At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 16 provided) may, at its election and upon such notice as is hereinafter set forth, retain the Equipment in satisfaction of the entire CSA Indebtedness and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Vendee by telegram or registered mail, addressed as provided in Article 20 hereof, and to any other persons to whom the law may require notice, within 30 days after such Declaration of Default. In the event that the Vendor should elect to retain the Equipment and no objection is made thereto within the 30-day period described in the second proviso below, all the Vendee's rights in the Equipment shall thereupon terminate and all payments made by the Vendee may be retained by the Vendor as compensation for the use of the Equipment; provided, however, that if the Vendee, before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to the Vendor the total unpaid balance of the CSA Indebtedness together with interest thereon accrued and unpaid and all other payments

due under this Agreement (and all obligations of the Lessee under any provisions of the Lease to the Vendor or any Investor shall have been satisfied or provision therefor satisfactory to the Vendor and such Investor shall have been made), then in such event all rights and interests of the Vendor in the Equipment shall be released and discharged; provided, further, that if the Vendee or any other persons notified under the terms of this paragraph object in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall not have given notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 16.

At any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon reasonable notice to the Vendee and any other persons to whom the law may require notice of the time and place, may sell the Equipment, or one or more of the Units thereof, free from any and all claims of the Vendee or any other party claiming from, through or under the Vendee at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; provided, however, that if, prior to such sale and prior to the making of a contract for such sale, the Vendee should tender full payment of the total unpaid balance of the CSA Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale and the Vendor's reasonable attorneys' fees (and all obligations of the Lessee under any provisions of the Lease to the Vendor or any Investor shall have been satisfied or provision therefor satisfactory to the Vendor and such Investor shall have been made), then in such event the rights and interests of the Vendor in the Equipment shall be immediately released and discharged. The proceeds of such sale or other disposition, less the attorneys' fees and any other expenses incurred by the Vendor in retaking possession of, removing, storing, holding, preparing for sale and selling or otherwise disposing of the Equipment, shall be credited on the amount due to the Vendor under the

provisions of this Agreement and the balance shall be paid to the Vendee.

Any sale hereunder may be held or conducted at New York, New York, at such time or times as the Vendor may specify (unless the Vendor shall specify a different place or places, in which case the sale shall be held at such place or places as the Vendor may specify), in one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine, so long as such sale shall be in a commercially reasonable manner. The Vendor or the Vendee may bid for and become the purchaser of the Equipment, or any Unit thereof, so offered for sale. The Vendee shall be given written notice of such sale not less than ten days prior thereto by telegram or registered mail, addressed as provided in Article 20 hereof. If such sale shall be a private sale (which shall be deemed to mean only a sale where an advertisement for bids has not been published in a newspaper of general circulation or a sale where less than 40 offerees have been solicited in writing to submit bids), it shall be subject to the right of the Vendee to purchase or provide a purchaser, within 10 days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. In the event that the Vendor shall be the purchaser thereof, it shall not be accountable to the Vendee (except to the extent of surplus money received as hereinafter provided in this Article 15), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all sums due to the Vendor hereunder.

Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly granted to the Vendee shall not otherwise alter or affect the Vendor's rights or the Vendee's obligations hereunder. The Vendor's acceptance of any payment after it

shall have become due hereunder shall not be deemed to alter or affect the Vendee's obligations or the Vendor's rights hereunder with respect to any subsequent payments or default therein.

If, after applying all sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Vendee shall, subject to the provisions of the last paragraph of Article 4 hereof, pay the amount of such deficiency to the Vendor upon demand, together with interest from the date of such demand to the date of payment, at the rate per annum specified in Article 4 hereof as being applicable to amounts remaining unpaid after becoming due and payable, and, if the Vendee shall fail to pay such deficiency, the Vendor may bring suit therefor and shall, subject to the limitations of the last paragraph of Article 4 and Article 21 hereof, be entitled to recover a judgment therefor against the Vendee. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Vendee.

The Vendee will pay all reasonable expenses, including attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, the Vendor may recover reasonable expenses, including reasonable attorneys' fees, and the amount thereof shall be included in such judgment.

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

ARTICLE 17. Applicable State Laws. Any provision of this Agreement prohibited by any applicable law of any jurisdiction which is not overridden by applicable Federal law shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Vendee to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

Except as otherwise provided in this Agreement, the Vendee, to the full extent permitted by law, hereby

waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment, or any one or more Units thereof, and any other requirements as to the time, place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of the Vendor's rights under this Agreement and any and all rights of redemption.

ARTICLE 18. Filing. The Vendee will cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto to be duly filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303 and the Vendee will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record any and all further instruments required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of special counsel for the Vendor, of its security title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Vendee will promptly furnish to the Vendor certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Vendor.

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

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

ARTICLE 20. Notices. Any notice hereunder may be given by telephone (confirmed promptly in writing), telegraph, telex, telecopy (or similar transmission), hand or mail and shall in each case be effective when first received. Any notice hereunder to any of the parties designated below

shall be sent to it as follows:

(a) to the Vendor, at P.O. Box 2258 (Two Hopkins Plaza), Baltimore, Maryland 21203, Attention of Corporate Trust Department,

(b) to the Builder, at Southern Pacific Building, One Market Plaza, San Francisco, California 94105, Attention of Vice President and Treasurer,

(c) to the Vendee, 8501 West Higgins Road, Chicago, Illinois 60631, Attention of Vice President and Treasurer, with a copy to GATX Leasing Corporation, Four Embarcadero Center, San Francisco, California 94111; attention of Contracts Administration.

(d) to the Lessee, at Southern Pacific Building, One Market Plaza, San Francisco, California 94105, Attention of Vice President and Treasurer,

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

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

ARTICLE 21. Immunities; Satisfaction of Undertakings. No recourse shall be had in respect of any obligation due under this Agreement, or referred to herein, against any incorporator, stockholder, beneficiary, director or officer, as such, past, present or future, of the parties hereto, whether by virtue of any constitutional provision, statute or rule of law or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of such incorporators, beneficiaries, stockholders, directors or officers being forever released as a condition of and as consideration for the execution of this Agreement.

The obligations of the Vendee under the second, seventh and eighth paragraphs of Article 16 and under Articles 3, 6, 7 (other than the second, third and fourth sentences of the second paragraph thereof to the extent requiring delivery of certificates and payment schedules as therein provided and other than the payment obligations, which are limited under the last paragraph of Article 4 hereof), 8, 9, 10, 12 (other than the proviso to the last paragraph thereof), 13 and 18 hereof, or any other obligations hereunder not specifically enumerated in the last paragraph of Article 4 hereof, shall be deemed in all respects satisfied by the Lessee's undertakings contained in the Lease. The Vendee shall not have any responsibility for the Lessee's failure to perform such obligations, but if the same shall not be performed they shall constitute the basis for an event of default hereunder pursuant to Article 15 hereof. No waiver or amendment of the Lessee's undertakings under the Lease shall be effective unless joined in by the Vendor.

It is expressly understood and agreed by and between the parties hereto that Illinois Tool Works Inc., as Guarantor under the Participation Agreement, has guaranteed the performance of all Obligations (as defined in Paragraph 16 of the Participation Agreement) of the Vendee and any performance by said Guarantor shall be deemed to be performance by the Vendee.

It is also expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that this Agreement is executed and delivered by the Agent, not in its individual capacity but solely as Agent under the Participation Agreement.

ARTICLE 22. Law Governing. The terms of this Agreement and all rights and obligations hereunder shall be governed by and construed in accordance with the laws of the State of Illinois; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303 and such additional rights arising out of the filing, recording or deposit hereof, if any, and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited.

ARTICLE 23. Execution. This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same

contract, which shall be sufficiently evidenced by any such original counterpart. It is not necessary that the parties hereto all sign the same counterpart as long as each party shall sign a counterpart and such counterpart is delivered to the Vendor or its counsel, whereupon this Agreement shall become effective. Although this Agreement is dated as of the date set forth on the cover hereof, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

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

SOUTHERN PACIFIC
TRANSPORTATION COMPANY,

by

Vice President
and Treasurer

[Corporate Seal]

Attest:

Assistant Secretary

CUMBERLAND LEASING CO.,

by



Vice President and Treasurer

[Corporate Seal]

Attest:



Assistant Secretary

STATE OF OREGON,)
) ss.:
COUNTY OF MULTNOMAH,)

On this day of March 1984, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is the Vice President and Treasurer of Southern Pacific Transportation Company, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

[Notarial Seal]

Notary Public for Oregon

My Commission Expires

STATE OF ILLINOIS,)
)
COUNTY OF COOK,)

On this *13th* day of March 1984, before me personally appeared *DAVID B. SMITH* , to me personally known, who, being by me duly sworn, says that he is the Vice President and Treasurer of CUMBERLAND LEASING CO., that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, and that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

[Notarial Seal]

Margaret S. Gordon

Notary Public

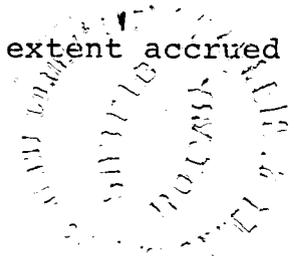
My Commission Expires *02/23/87*

SCHEDULE I

Allocation Schedule of Each
\$1,000,000 of 12.625% CSA Indebtedness Payable

<u>Payment No.</u>	<u>Rental Payment Date</u>	<u>Debt Service</u>	<u>Interest Payment</u>	<u>Principal Payment</u>	<u>Unpaid Principal</u>
	12/28/84	*	*	.00	1,000,000.00
1	6/28/85	71,237.88	63,125.00	8,112.88	991,887.12
2	12/28/85	115,198.84	62,612.87	52,585.97	939,301.15
3	6/28/86	65,128.19	59,293.39	5,834.80	933,466.35
4	12/28/86	130,056.52	58,925.06	71,131.46	862,334.89
5	6/28/87	92,554.13	54,434.89	38,119.24	824,215.65
6	12/28/87	102,630.59	52,028.61	50,601.98	773,613.67
7	6/28/88	119,132.40	48,834.36	70,298.04	703,315.63
8	12/28/88	76,063.39	44,396.80	31,666.59	671,649.04
9	6/28/89	127,139.92	42,397.85	84,742.07	586,906.97
10	12/28/89	56,209.94	37,048.50	19,161.44	567,745.53
11	6/28/90	51,908.40	35,838.94	16,069.46	551,676.07
12	12/28/90	121,991.77	34,824.55	87,167.22	464,508.85
13	6/28/91	118,280.20	29,322.12	88,958.08	375,550.77
14	12/28/91	39,033.80	23,706.64	15,327.16	360,223.61
15	6/28/92	113,937.62	22,739.12	91,198.50	269,025.11
16	12/28/92	21,087.33	16,982.21	4,105.12	264,919.99
17	6/28/93	125,622.10	16,723.07	108,899.03	156,020.96
18	12/28/93	65,826.51	9,848.82	55,977.69	100,043.27
19	6/28/94	94,487.88	6,315.23	88,172.65	11,870.62
20	12/28/94	12,619.95	749.33	11,870.62	.00
		<u>\$1,720,147.36</u>	<u>\$720,147.36</u>	<u>\$1,000,000.00</u>	

* Interest only shall be payable to the extent accrued on this date.



ANNEX A
TO
CONDITIONAL SALE AGREEMENT

- Item 1: Southern Pacific Transportation Company
Southern Pacific Building
One Market Plaza
San Francisco, California 94105.
Attention of Vice President and Treasurer.
- Item 2: Unless the parties shall otherwise agree, the Equipment shall be settled for in not more than nine Groups.
- Item 3: The Builder warrants that the Equipment built by it will be built in accordance with the requirements, Specifications and standards set forth in Article 2 of the CSA to which this Annex A is attached (this "Agreement") and warrants the Equipment will be free from defects in material and workmanship under normal use and service. If any unit of the Equipment covered by the above warranty does not meet the above warranty, within one year after the date of the acceptance of such unit by the Vendee, the Builder shall thereupon correct such defect (including nonconformance with the requirements, Specifications and standards set forth in Article 2 of this Agreement), either by (1) repairing or replacing such defective part or parts of any unit of the Equipment, provided that the Vendor or the Lessee notifies the Builder in writing promptly after discovery of such defect, and at the expense of the Lessee, makes such defective unit or units of the Equipment promptly available at the Builder's plant for any repair, or by (2) making available at the Builder's plant the necessary repaired or replacement parts, as appropriate and agreed to by the parties.

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

Item 4: The Builder agrees to indemnify, protect and hold harmless the Vendee and the Lessee from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendee or the Lessee because of the use in or about the construction or operation of any of its Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. Such covenants of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, the satisfaction and discharge of this Agreement or the termination of this Agreement in any manner.

Item 5: Estimated Schedule of Closings

<u>Estimated Closing Date</u>	<u>Estimated Purchase Price of Equipment</u>
April 30, 1984	\$ 3,020,000
May 31, 1984	3,020,000
June 29, 1984	3,020,000
July 31, 1984	3,020,000
August 31, 1984	3,775,000
October 1, 1984	3,020,000
October 31, 1984	3,020,000
November 30, 1984	3,020,000
December 28, 1984	3,775,000
	<hr/>
	\$28,690,000

<u>Type</u>	<u>Builder</u>	<u>Specifi- cations</u>	<u>Builder's Plant</u>	<u>Quantity</u>	<u>Lessee Road Numbers (Both Inclusive)</u>	<u>Unit Purchase Price</u>	<u>Total Purchase Price</u>	<u>Estimated Time of Delivery</u>
3,200 h.p. Model SD45-2 diesel- electric loco- motive	SPTCo	Per specifi- cations provided by Builder to Vendee	Sacra- mento, Cal.	38	SP 7499- 7536	\$ 755,000	\$ 28,690,000	April-Dec. 1984

C-35

ANNEX B
TO
CONDITIONAL SALE AGREEMENT

ANNEX C
to the
Conditional Sale
Agreement

[CS&M Ref. 3909-208]

LEASE OF RAILROAD EQUIPMENT

dated as of March 1, 1984

Between

SOUTHERN PACIFIC TRANSPORTATION COMPANY,
as Lessee,

and

CUMBERLAND LEASING CO.,

Lessor.

The rights and interests of the Lessor under this Lease are subject to a security interest in favor of MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, as Agent for certain institutional investors. The original of this Lease is held by said Agent.

LEASE OF RAILROAD EQUIPMENT

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LEASE OF RAILROAD EQUIPMENT, dated as of March 1, 1984, between SOUTHERN PACIFIC TRANSPORTATION COMPANY, a Delaware corporation (the "Lessee") and CUMBERLAND LEASING CO., an Illinois corporation (the "Lessor").

The Lessor is entering into a Conditional Sale Agreement dated as of the date hereof (the "CSA") with SOUTHERN PACIFIC TRANSPORTATION COMPANY (in such capacity, the "Builder"), by which the Builder has agreed to manufacture, sell and deliver to the Lessor the units of railroad equipment described in Schedule A hereto.

The Builder is assigning its interest in the CSA to Mercantile-Safe Deposit and Trust Company, a Maryland banking corporation, acting as agent (together with its successors and assigns, the "Vendor") under a Participation Agreement dated as of the date hereof (the "Participation Agreement") with the Lessee, the Lessor, the Guarantor named therein and the parties named in Schedule A thereto (including their successors and assigns, the "Investors").

The Lessee desires to lease such number of units of the Equipment as are delivered, accepted and settled for under the CSA (collectively, the "Equipment" or the "Units" and, individually, a "Unit").

The Lessor will assign certain rights in this Lease for security to the Vendor pursuant to an Assignment of Lease and Agreement dated as of the date hereof (the "Lease Assignment") and the Lessee will consent thereto pursuant to the Consent and Agreement attached to the Lease Assignment (the "Consent").

The Lessee will indemnify the Lessor against certain losses, liabilities and expenses pursuant to an indemnity agreement (the "Indemnity Agreement") substantially in the form of Exhibit D to the Participation Agreement.

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

SECTION 1. Delivery and Acceptance of Units. The Lessor hereby appoints the Lessee its agent for inspection and acceptance of the Units pursuant to the CSA. The Lessor will cause each Unit to be tendered to the Lessee at the

point or points within the United States of America at which such Unit is delivered to the Lessor under the CSA. Upon such tender, the Lessee will cause an authorized representative of the Lessee to inspect the same, and if such Unit is found to be in good order, to accept delivery of such Unit and execute and deliver to the Lessor a certificate of acceptance and delivery substantially in the form of Schedule D hereto (the "Certificate of Acceptance"), whereupon, except as provided in the next sentence, such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease. The delivery, inspection and acceptance hereunder of any unit of Equipment excluded from the CSA pursuant to the first paragraph of Article 4 thereof shall be null and void and ineffective to subject such unit to this Lease. The inspection and acceptance by the Lessee of any Unit shall not in any way release any rights which the Lessee may have against the Builder thereof under any warranty relating to such Unit.

SECTION 2. Rental. The Lessee agrees to pay to the Lessor, as rental for each Unit subject to this Lease, 20 consecutive semiannual payments in arrears on December 28 and June 28 of each year commencing June 28, 1985. The 20 semiannual rental payments shall each be in an amount equal to the percentage of the Purchase Price (as defined in Article 4 of the CSA) of each Unit then subject to this Lease which is set forth in Schedule C hereto. In addition, the Lessee agrees to pay the Lessor as additional rental for each Unit subject to this Lease (i) on the Repayment Date (as defined in the fourth paragraph of Paragraph 8 of the Participation Agreement) an amount equal to the interest payable under clause (a) of said fourth paragraph, (ii) on December 28, 1984, an amount equal to interest accrued on the amounts deposited by the Investors from the Deposit Date to the various Closing Dates and (iii) from time to time upon demand of the Lessor an amount equal to any Investment Deficiency (as defined in the first paragraph of Paragraph 8 of the Participation Agreement). The foregoing rental amounts and the Casualty Values and Termination Values set forth in Schedule B hereto have been calculated based on the assumptions set forth on Schedule B hereto. If for any reason any of the assumptions contained in Schedule B is or becomes untrue or inaccurate in any respect, the Lessor and the Lessee agree that the rentals payable hereunder and the Casualty Values and Termination Values will be adjusted so as to maintain the Net Return, as defined below, that the Lessor expected to realize as of the date hereof if such assumptions had been correct. "Net Return" shall include

consideration of all the following: the after-tax rate of return, the total net after-tax cash flow as a percentage of original equity investment, the timing and amount of accounting income and the net present value of the after-tax cash flows that the Lessor expects to realize as of the date hereof from the transaction described herein and in the Participation Agreement and the CSA. The Casualty Value and Termination Value percentages are also subject to adjustment as provided in the Indemnity Agreement. The Lessor shall notify the Lessee in writing of any such adjustment not later than April 30, 1985, setting forth in reasonable detail the changes in the Schedule B assumptions and the amounts of the resulting adjustments. Any adjustment of rental shall be calculated in such a manner as to comply with Revenue Procedure 75-21. At the Lessee's request and expense, the Lessor shall retain the firm of Price Waterhouse & Co. to provide verification of the consistency of the calculation of the amount of such adjustments. The Lessor and the Lessee agree to execute an addendum to this Lease to reflect each such adjustment; provided that such adjustment shall be effective for all purposes of this Lease regardless of whether such addendum is actually executed and delivered. Notwithstanding any other provision in this Lease, the Participation Agreement or the CSA, the rentals and Casualty Value and Termination Value percentages shall always be sufficient to satisfy the obligations of the Lessor under the CSA in respect of the CSA Indebtedness (as defined in Article 4 of the CSA), notwithstanding any limitation of liability contained therein.

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

This Lease is a net lease and the Lessee shall not be entitled to any abatement of rental or any other amount payable hereunder, reduction thereof or setoff against rental or any other amount payable hereunder, including, but not limited to, abatements, reductions or setoffs due or alleged to be due to, or by reason of, any past, present or future claims of the Lessee against the Lessor under this Lease or under the CSA, or against the Builder or the Vendor or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective

obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or failure of title of the Lessor to any of the Units or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against Lessee's use of all or any of the Units, the taking or requisitioning of any of the Units by condemnation or otherwise, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency, bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the Lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever. All payments under this Lease shall be made by bank wire transfer of immediately available funds, and not later than noon local time, in the city where such payments are due.

SECTION 3. Term of Lease. The term of this Lease as to each Unit shall begin on the date of the delivery to and acceptance by the Lessee of such Unit and, subject to the provisions of Sections 6, 9 and 12 hereof, shall terminate on the date on which the final payment of rent in respect thereof is due hereunder; provided, however, that all the obligations of the Lessee, except for the payment of rental, taxes accruing after the termination or expiration hereof and the furnishing of annual reports, shall continue until surrender of the Units in accordance with Section 13 hereof. Nothing in this paragraph shall be deemed to terminate any obligation or provision of this Lease which by its terms is stated to survive the final payment of rent due hereunder.

Notwithstanding anything to the contrary contained herein, all rights and obligations of the Lessee under this

Lease and in and to the Units are subject to the rights of the Vendor under the CSA. If an event of default should occur under the CSA, the Vendor may terminate this Lease (or rescind its termination), all as provided therein.

SECTION 4. Identification Marks. The Lessee, so long as this Lease shall remain in effect, will cause each Unit to be kept numbered with the road number set forth in Schedule A hereto and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of such Unit, in letters not less than one inch in height, the words "OWNERSHIP SUBJECT TO A SECURITY AGREEMENT FILED WITH THE INTERSTATE COMMERCE COMMISSION" or other appropriate markings designated by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect Lessor's and Vendor's title to and property in such Unit and the rights of the Lessor under this Lease and of the Vendor under the CSA. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such legend shall have been so marked on both sides thereof and will replace promptly any such legend which may be removed, obliterated, defaced or destroyed. The Lessee will not change the road number of any Unit unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with the Vendor and the Lessor and filed by the Lessee in all public offices where this Lease and the CSA shall have been filed, recorded and deposited and (ii) the Lessee shall have furnished the Vendor and the Lessor an opinion of counsel to that effect and to the further effect that such filing, recordation and deposit will protect the Vendor's and the Lessor's interests in such Units and that no filing, recording, depositing or giving of notice with or to any other Federal, state or local government or agency thereof is necessary to protect the interests of the Vendor and the Lessor in such Units.

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

SECTION 5. Impositions. All payments to be made by the Lessee hereunder will be free of all withholding or expense of any nature whatsoever to the Lessor, the Vendor and the Investors (including their respective successors, assigns, agents and servants) for, and the Lessee shall pay and shall indemnify and hold harmless the Lessor, the Vendor and the Investors (including their respective successors, assigns, agents and servants), from and against, all collection charges, all license and registration fees and all taxes, including without limitation, income, sales, use, personal property, stamp, interest equalization, withholding and other taxes, levies, imposts, duties, charges, or withholdings of any nature, together with any penalties, fines or interest thereon (all such collection charges, fees, taxes, levies, imposts, duties, charges, withholdings, penalties, fines and interest being hereinafter called collectively "Impositions"), imposed against the Lessor, the Vendor, the Investors (including their respective successors, assigns, agents and servants), the Lessee or any Unit or any part thereof by any Federal, state or local government or taxing authority of or in the United States of America, or by any taxing authority or governmental subdivision of a foreign country, upon or with respect to any Unit or any part thereof, or upon or with respect to the purchase, ownership, delivery, leasing, rental payment, shipment, possession, use, operation, sale, return, transfer of title, or other disposition thereof, or upon the rentals, receipts or earnings arising therefrom, or upon the proceeds received with respect thereto, or upon or with respect to this Lease, the Participation Agreement, the CSA, the CSA Assignment, the Lease Assignment or the CSA Indebtedness (or any amendment, consent, waiver or modification of any thereof); excluding, however:

(i) United States Federal income taxes payable by the Lessor in consequence of the receipt of payments provided for herein and, to the extent that the Lessor receives credit therefor against its United States Federal income tax liability, any foreign income taxes payable by the Lessor; provided, however, that all other foreign taxes of the Lessor for the same period which qualify for such credit are first allowed and utilized;

(ii) the aggregate of all state or local taxes payable by the Lessor measured by net income based on such receipts, up to the amount of any such taxes which would be payable to the state and city in which the

Lessor has its principal place of business (determined without apportionment to any other state);

(iii) any taxes on or measured by any fees or other compensation received by the Lessor or the Vendor for services rendered in connection with the transactions contemplated hereby; or

(iv) any United States Federal, state or local taxes, or other charges on or with respect to the investment in or transfer of the CSA Indebtedness or the revenues, receipts, or earnings therefrom for which any Investor is liable;

(v) late filing and fraud fines or penalties and late payment and negligence fines or penalties caused solely by the act, failure to act or omission of the party seeking indemnification ("Excluded Fines and Penalties");

except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse herein provided. The Lessee will also pay promptly all Impositions which may be imposed upon any Unit or any part thereof or for the use or operation thereof or upon the earnings arising therefrom or upon the Lessor solely by reason of its ownership thereof and will keep at all times all and every part of such Unit free and clear of all Impositions which might in any way affect the title of the Lessor or result in a lien upon any such Unit. The Lessee need not pay any Imposition to the extent that and while it is being contested by the Lessee in good faith and by appropriate proceedings and so long as such proceedings or the nonpayment of such Imposition does not, in the opinion of the Lessor and the Vendor involve (A) any danger of the sale, forfeiture or loss of any Unit or any interest therein, (B) any material adverse change in the title, property or rights of the Lessor in or to the Units hereunder or of Vendor under the CSA, (C) any assessment or penalty against any party which is indemnified by this Section 5, (D) any interference with the due payment by the Lessee of rentals hereunder or the application of such rentals under the Lease Assignment or (E) any danger of criminal liability or of other liability for which no indemnification is provided hereunder being imposed against the Lessor, the Vendor, any Investor, or the agents or servants of any of them. If any Imposition shall have been charged or levied against the Lessor, the Vendor or the Investors (including their respective successors, assigns, agents and

servants) directly, the Lessee shall be advised promptly and shall be given an opportunity to contest such Imposition before the Imposition is paid by the Lessor, the Vendor or the Investors, and if, after such notice is given and such opportunity is provided, the Lessor, the Vendor or the Investors shall pay such Imposition, the Lessee shall reimburse such person, plus interest at the rate per annum (calculated on an actual elapsed day basis) equal to the WFB Prime (as defined in Article 6 of the CSA) from the date of payment to the date of reimbursement, upon presentation of an invoice therefor. The Lessee further agrees that it will promptly pay to the Lessor, the Vendor or the Investors (including their respective successors, assigns, agents and servants), as the case may be, an amount which, after deduction of any taxes required to be paid by such person in respect of the receipt thereof, shall be equal to any additional tax payable by such person attributable to the inclusion in such person's income of any payment or reimbursement made or payable by the Lessee under this Section 5; provided, however, that such payment shall be reduced by an amount equal to any reduction in taxes resulting from the deduction by such person of the liability or payments with respect to which such payment or reimbursement is made or paid by the Lessee.

All amounts payable by the Lessee pursuant to this Section 5 shall be payable, to the extent not theretofore paid, on written demand by the party entitled to indemnification; and all the indemnities contained in this Section 5 shall continue in full force and effect notwithstanding the expiration or other termination of this Lease and are expressly made for the benefit of, and shall be enforceable by the Lessor, the Vendor and the Investors.

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

In the event any reports with respect to Impositions are required to be made, the Lessee will either make such reports in such manner as to show the ownership of the Lessor and the security interest of the Vendor in the Units or notify the Lessor and the Vendor of such requirement and

make such reports in such manner as shall be satisfactory to the Lessor and the Vendor.

In the event the Lessee may be prohibited by law or impaired from contesting in its own name any Imposition covered by this Section 5 in respect of which the Lessee would otherwise be required to make payments to the Lessor pursuant hereto, the Lessor shall, upon request and at the expense of the Lessee, take all legal and other appropriate action reasonably requested by the Lessee to contest such Imposition. The Lessor shall not be obligated to take any such legal or other appropriate action unless the Lessee shall first have indemnified the Lessor in a manner satisfactory to the Lessor for all liabilities and expenses which may be entailed therein. Further, the Lessee shall indemnify and hold the Lessor harmless from and against any and all claims, costs, expenses, damages, losses and liabilities incurred in connection therewith as a result of, or incident to, any action taken by the Lessor or the Lessee under this Section 5. The Lessee shall be entitled to any refund received by the Lessor or the Lessee in respect of any Imposition paid by the Lessee, provided no Event of Default or other event which, with notice, demand and/or lapse of time, would constitute such an Event of Default shall have occurred and be continuing.

SECTION 6. Maintenance; Payment for Casualty Occurrences; Insurance; Termination. The Lessee agrees that, at its own cost and expense, it will maintain and keep each Unit which is subject to this Lease in good operating order, repair and condition, ordinary wear and tear excepted; provided, however, the Lessee shall maintain each such Unit (i) in a manner which is consistent with the provisions of Section 13 hereof, (ii) at or better than the level of maintenance of similar equipment owned or leased by the Lessee, (iii) at or better than the standard in the railroad industry for maintenance of similar equipment and (iv) such that the Equipment is in compliance with all applicable Association of American Railroads and Federal Railroad Administration rules and regulations. The Lessee shall maintain written maintenance and overhaul records sufficient to disclose compliance with the requirements of this Lease and shall make such records available to the Lessor's inspection upon request during normal business hours upon reasonable notice. Such records shall include the date(s) of the replacement or overhaul of at least the following major components: engine power assemblies, engine main bearings, engine accessory end, engine gear end, main

generator, turbocharger, air compressor, traction motors and trucks.

In the event that any Unit shall be or become worn out, lost, stolen, destroyed or, in the opinion of the Lessee, irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise by the United States Government for a period which shall exceed the then remaining term of this Lease or by any other governmental entity resulting in loss of possession by the Lessee for the lesser of a period of 90 consecutive days or a period which shall exceed the then remaining term of this Lease (each such occurrence being hereinafter called a "Casualty Occurrence") prior to the return of such Unit in the manner set forth in Section 13 hereof, the Lessee shall, within 30 days after it shall have determined that such Unit has suffered a Casualty Occurrence, fully notify the Lessor and the Vendor in writing with respect thereto. Notwithstanding any such Casualty Occurrence, the Lessee shall continue making all rental and other payments provided for in this Lease in respect of such Unit to and including the Casualty Payment Date (as hereinafter defined) listed in Schedule B hereto next succeeding such notice. On December 28, 1984, or the rental payment date, whichever next succeeds such notice ("Casualty Payment Date"), the Lessee shall pay to the Lessor the Casualty Value (as hereinafter defined) of such Unit as of the date of such payment in accordance with Schedule B hereto, the rental due on such Casualty Payment Date plus any other rental or other payments in respect of such Unit then due and payable. Upon the making of all such payments by the Lessee in respect of any Unit, the rental for such Unit shall thereafter cease to accrue, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft or complete destruction of such Unit) the Lessor shall be entitled to recover possession of such Unit. The Lessor hereby appoints the Lessee its agent, to dispose of any Unit suffering a Casualty Occurrence or any component thereof, at the best price obtainable under the circumstances on an "as is, where is, and with all faults" basis in accordance with the Lessee's normal procedures. Provided that the Lessee has previously paid the Casualty Value to the Lessor, the Lessee shall be entitled to the net proceeds of such sale after deductions of any cost or expense incurred in disposing of such Unit to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Lessor.

Subject to adjustment pursuant to the provisions of Section 2, the Casualty Value of each Unit as of the payment date on which payment is to be made as aforesaid

shall be an amount equal to that percentage of the Purchase Price of such Unit as is set forth in Schedule B hereto opposite such date with respect to such Unit.

Whenever any Unit shall suffer a Casualty Occurrence at the end of the term of this Lease or after termination of this Lease and before such Unit shall have been returned in the manner provided in Section 13 hereof, the Lessee shall promptly and fully notify the Lessor with respect thereto and pay to the Lessor all amounts then due with respect to such Unit plus an amount equal to the Casualty Value of such Unit set forth in Schedule B hereto as of the rental payment date immediately preceding such termination. Upon the making of any such payment by the Lessee in respect of any Unit (except in the case of the loss, theft or complete destruction of such Unit), the Lessor shall be entitled to recover possession of such Unit. The Lessor hereby appoints the Lessee its agent, to dispose of any Unit suffering such Casualty Occurrence or any component thereof, at the best price obtainable on an "as is, where is, and with all faults" basis. (The Lessee itself may be the purchaser thereof.) Provided that the Lessee has previously paid the Casualty Value to the Lessor, the Lessee shall be entitled to the proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Lessor.

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

The Lessee will, at its own expense and at all times after delivery and acceptance of each Unit, keep or cause to be kept each such Unit insured against loss on an "all risk" basis (a) in an amount which shall be customary for companies owning property of a character similar to the Units and engaged in a business similar to that engaged in by the Lessee or (b) in an amount equal to the Casualty Value for such Unit, whichever amount is greater. The Lessee shall also maintain general public liability insurance with respect to the Units against damage because of bodily injury, including death, or damage to property of others, such insurance to afford protection to the limit of not less than \$175,000,000 per occurrence combined single limit or such greater amount as the Lessor shall reasonably require. Such insurance may include any deductible or self-insured retention ("SIR") permitted hereby. Any such deductible or SIR may be in an amount not to exceed the

greater of \$15,000,000 or one percent of the net worth of the Lessee or such other amounts as the Lessor, the Vendor and the Lessee shall agree upon, provided it is expressly understood and agreed that any loss, cost or expense arising out of use of deductible or SIR shall be exclusively the cost and expense of the Lessee. All such insurance shall cover the interests of the Lessor, the Lessee, and the Vendor in the Equipment and liability insurance shall name the Lessor, the Lessee and the Vendor as additional insureds in respect of risks arising out of the condition, the maintenance, use or ownership of the Units and shall provide that losses, if any, in respect of the Units shall be payable to the Lessee, the Lessor and the Vendor, as their respective interests may appear. All such insurance policies shall name the Lessor, the Lessee and the Vendor as additional insureds or loss payees or both, as appropriate, and shall insure their interests regardless of any breach or violation by the Lessee of any representation, warranty or condition contained in such policies. All such insurance policies shall further provide that (a) the insurers waive all rights of subrogation against the Lessor, the Lessee and the Vendor, (b) the insurers waive all right to any set-off, counterclaim or other deduction, whether by attachment or otherwise, in respect of any liability of the Lessee, (c) such policies shall not be invalidated by any foreclosure or other remedial proceedings or notices thereof relating to the Units or by any change in the title to or ownership of the Units or by the use or operation of any Units for purposes or in a manner more hazardous than permitted by such policies and (d) the insurers shall promptly advise the Lessor, the Lessee and the Vendor, in writing, at least thirty days prior thereto, of the expiration, termination or suspension of, or any material change in, the coverage of any such policy. No such termination, expiration, suspension or change shall be effective until thirty days after such notice is given. In the event of one of the insureds incurring liability to any other insured, the policies carried hereunder shall cover the insured against which claim is made in the same manner as if separate policies had been issued to each insured. No such policy shall contain a provision relieving the insurer thereunder of liability for any loss by reason of the existence of other policies of insurance covering the Units against the peril involved, whether collectible or not.

In the event of failure on the part of the Lessee to provide and furnish any of the aforesaid insurance, the Lessor or the Vendor, upon notice to the Lessee, may, but shall not be obligated to, procure such insurance and the

Lessee shall, upon demand, reimburse the Lessor and the Vendor for all reasonable expenditures made by the Lessor or the Vendor for such insurance, together with interest thereon computed at the rate set forth in Section 15 in respect of overdue rentals from the date of the Vendor's or the Lessor's payment until reimbursed by the Lessee. Nothing in this Section 6 shall prohibit the Lessor or the Vendor from maintaining at its own expense, additional insurance for its own account with respect to the Units.

If the Lessor shall receive any insurance proceeds from insurance maintained by the Lessee pursuant hereto or condemnation payments in respect of a Unit suffering a Casualty Occurrence, the Lessor shall, if no Event of Default exists and no event has occurred which with the lapse of time or the giving of notice would be an Event of Default and subject to the Lessee having made payment of the Casualty Value in respect of such Unit, pay such proceeds or condemnation payments (up to the amount of the Casualty Value paid) to the Lessee. All insurance proceeds received by the Lessor in respect of any Unit not suffering a Casualty Occurrence shall be paid to the Lessee upon proof satisfactory to the Lessor and the Vendor that any damage to such Unit in respect of which such proceeds were paid has been fully repaired.

In the event that the Lessee shall, in its reasonable and good faith judgment, determine that the Units have become economically obsolete in the Lessee's business or surplus to the Lessee's equipment needs and if no Event of Default exists and no event has occurred which with the lapse of time or the giving of notice would be an Event of Default, the Lessee shall have the right, at its option and by written notice to the Lessor on a rental payment date, to terminate (hereinafter called a "Termination") this Lease as to all (but not less than all) of the Units as of one or the other of the two next succeeding rental payment dates as specified in such notice (the termination date specified in such notice being hereinafter called the "Termination Date"); provided, however, that (i) no Termination Date shall be earlier than June 28, 1991, (ii) on the Termination Date, no Event of Default or other event which with the lapse of time or notice or both would become an Event of Default shall have occurred and be continuing, (iii) on the Termination Date each Unit shall be in the same condition as if being redelivered pursuant to Section 13 hereof, (iv) on or before the Termination Date the Lessee shall have paid to the Lessor all amounts due in respect of the Units and shall have complied with the provisions of the tenth and eleventh

paragraphs of this Section 6, (v) on the Termination Date the Vendor shall have received the Casualty Value (as defined in the fifth paragraph of Article 7 of the CSA) of the Units in accordance with the second paragraph of Article 7 of the CSA and (vi) on the Termination Date the Lessee shall deliver to the Lessor and the Vendor a certificate signed by a Vice President of the Lessee stating that (a) the Units have become economically obsolete in the Lessee's business or surplus to its equipment requirements and (b) the Lessee has, to the extent permitted thereunder, terminated other leases of SD-45-2 locomotives ("Similar Equipment") placed in service prior to the date the Units were placed in service. The phrase "economically obsolete" as used in the first sentence of this paragraph does not mean that the Lessee, at the time of termination, is able to purchase, lease or otherwise obtain the use of Similar Equipment at a cost less than that under this Lease.

If the Lessee shall give notice of its election to terminate under the preceding paragraph, the Lessor may, by written notice to the Lessee given within 30 days after the termination notice is given to the Lessor, elect to retain the Units for its own account or for sale, in which case on the Termination Date the Lessor shall pay to the Vendor a sum sufficient to pay the Casualty Value (as defined in the CSA) of the Units in accordance with Article 7 of the CSA. In the event the Lessor shall so elect to retain the Units, the Lessee shall deliver the Units to the Lessor in accordance with the provisions of Section 13 of this Lease.

If the Lessor shall not make the election described in the preceding paragraph, during the period from the giving of the notice by the Lessee until the 35th day preceding the Termination Date, the Lessee shall use its best efforts to obtain bids for the purchase of all Units then subject to this Lease on an "as is, where is, and with all faults" basis, and the Lessee shall at least 35 days prior to the Termination Date certify to the Lessor the amount of each such bid and the name and address of the party submitting such bid (which shall not be the Lessee or a person affiliated with the Lessee or any party from whom the Lessee or any such affiliate intends thereafter to purchase or lease such Units). Unless the Lessee shall have directed that all such bids be rejected on the 35th day preceding the Termination Date the Lessor shall agree to sell on the Termination Date all the Units for cash, payable on such Termination Date, to the bidder which shall have submitted the highest bid. The net sales proceeds realized, after payments to the Vendor as provided below, shall be retained by the Lessor. On the Termination Date (a) the

Lessee shall pay to the Lessor all amounts due with respect to the Units plus the excess, if any, of the Termination Value (as hereinafter defined) for such Units over the net sales proceeds of such Units, after the deduction of all expenses incurred in connection with such sale, and (b) the Lessor shall pay to the Vendor the Casualty Value (as defined in the CSA) of the Units in accordance with Article 7 of the CSA and all other amounts due thereunder. If the Lessee shall have directed that all bids be rejected or no sale shall occur pursuant to this paragraph, this Lease shall continue in full force and effect without change.

The Termination Value of each Unit as of the Termination Date shall be that percentage of the Purchase Price of such Unit as is set forth under the caption "Termination Value Percentage" in Schedule B hereto opposite such date, but in no event shall such amount be less than the Casualty Value (as defined in Article 7 of the CSA) of each such Unit, as of such date.

Upon the satisfaction of the conditions set forth in the proviso to the ninth paragraph of this Section 6, the obligation of the Lessee to pay rent pursuant to Section 2 hereof in respect of such Unit on each rental payment date subsequent to the Termination Date shall then terminate. The Lessor shall be under no duty to solicit bids, to inquire into the efforts of the Lessee to obtain bids or otherwise to take any action or incur any cost or expense in connection with any sale other than to transfer or to cause to be transferred all of the Lessor's right, title and interest in and to each Unit to the purchaser named in the highest bid certified by the Lessee to the Lessor as above provided. Any such sale shall be free and clear of all of the Lessee's rights to such Unit, but otherwise shall be made without warranties other than against the Lessor's acts.

SECTION 7. Annual Reports. On or before March 31 in each year, commencing with the calendar year 1985, the Lessee will cause to be furnished to the Lessor and the Vendor (at the addresses shown in Section 16 hereof) an accurate statement, as of the preceding December 31, showing the amount, description and numbers of the Units (a) then leased hereunder and/or covered by the CSA, (b) that have suffered a Casualty Occurrence during the preceding 12 months (or since the date of this Lease in the case of the first such statement) and (c) then undergoing repairs (other than running repairs) or then withdrawn from use pending

such repairs and setting forth such other information regarding the condition and state of repair of the Units as the Lessor or the Vendor may reasonably request, and stating that, in the case of all Units repainted or repaired during the period covered by such statement, the markings required by Section 4 hereof shall have been preserved or replaced. The Lessor and the Vendor shall have the right at their sole cost, risk and expense, by their authorized representatives, to inspect the Units and the Lessee's records with respect thereto (including those relating to any use of the Units outside the United States) during normal business hours and upon such reasonable notice as the Lessor or the Vendor may give during the continuance of this Lease.

SECTION 8. Disclaimer of Warranties; Compliance with Laws and Rules; Indemnification. THE LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF, OR AS TO QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS DELIVERED TO THE LESSEE HEREUNDER, AND THE LESSOR MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE OR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, OR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT, EITHER UPON DELIVERY THEREOF TO THE LESSEE, OR OTHERWISE, it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee. The Lessor shall have no responsibility or liability to the Lessee or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Units or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation, or performance of any Units or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Units. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Lessor that all Units described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

The Lessee agrees, for the benefit of the Lessor and the Vendor, to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each Unit) with all applicable laws of the

jurisdictions in which its operations involving the Units may extend, and with all lawful rules of the Department of Transportation, the Interstate Commerce Commission, the Association of American Railroads and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units (the "Applicable Laws"), and in the event that, prior to the expiration of this Lease or any renewal thereof and the return of all Units as provided in Section 10 or 13 hereof, such laws or rules require any alteration, replacement, addition or modification of or to any part of any Unit, the Lessee will conform therewith at its own expense; provided, however, that the Lessee may at its own expense, in good faith, contest the validity or application of any Applicable Law in any reasonable manner which does not, in the advance opinion of the Lessor or the Vendor, adversely affect the property or rights of the Lessor or the Vendor, respectively, under this Lease or the CSA. In addition to the requirements of the preceding sentence, so long as no Event of Default, or event which with the lapse of time or the giving of notice or both could become an Event of Default, shall have occurred and be continuing, the Lessee, at its own cost and expense, may furnish additions, modifications and improvements to any Unit during the term of this Lease provided that such additions, modifications and improvements (a) are readily removable without causing material damage to such Unit and (b) do not diminish its utility or value. The additions, modifications and improvements made by the Lessee under the first sentence of this paragraph shall be owned by the Lessor, and the additions, modifications and improvements made by the Lessee under the second sentence of this paragraph shall (unless any such addition, modification or improvement is a replacement of or substitution for, any part originally incorporated or installed in or attached to a Unit or any part in replacement of or substitution for any such original part) be owned by the Lessee.

The Lessee agrees to indemnify, protect and hold harmless the Lessor, the Vendor and the Investors from and against all losses, damages, injuries, liabilities, claims and demands whatsoever and expenses in connection therewith, including, but not limited to, counsel fees and expenses, patent liabilities, penalties and interest, arising out of or as a result of (i) the entering into or the performance of any of the transactions contemplated by this Lease and the Participation Agreement, (ii) the ownership of any Unit, (iii) the ordering, acquisition, use, operation, maintenance, condition, construction, purchase, delivery,

rejection, storage or return of any Unit, (iv) any accident in connection with the operation, use, condition, construction, possession, storage or return of any Unit resulting in damage to property or injury or death to any person, except as otherwise provided in Section 13 of this Lease, including without limitation any claim based upon the doctrines of product liability or strict or absolute liability in tort or by statute imposed, or (v) the transfer of title to the Equipment by the Vendor pursuant to any provision of the CSA. The Lessor agrees to give the Lessee, promptly upon obtaining knowledge thereof, written notice of any claim or liability to be indemnified against hereunder. The indemnities arising under this paragraph shall continue in full force and effect notwithstanding the return of the Units pursuant to Section 10 or 13 hereof or the full payment and performance of all obligations under this Lease or the expiration or termination of the term of this Lease; provided, however, that the foregoing indemnification shall not apply to any failure of payment of any of the principal of or interest on the CSA Indebtedness. Nothing in this Section 8 shall constitute a guarantee by the Lessee of the CSA Indebtedness of the Lessor under the CSA or a guarantee of the residual value of any Unit.

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

SECTION 9. Default. If, during the continuance of this Lease, one or more of the following events (an "Event of Default") shall occur:

- A. default shall be made in the payment of any amount due hereunder and such default shall continue for five days;
- B. default shall be made in the maintenance of the insurance coverage required by Section 6 hereof;
- C. the Lessee shall make or permit any unauthorized assignment or transfer of this Lease, or any interest therein, or of the right to possession of the Units, or any thereof;

duty to account to the Lessee for such action or inaction or for any proceeds arising therefrom; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee as damages for loss of the bargain and not as a penalty, whichever of the following amounts the Lessor, in its sole discretion, shall specify: (x) a sum, with respect to each Unit, equal to the excess of the present value, at the time of such termination, of the entire unpaid balance of all rental for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over the then present value of the rental which the Lessor reasonably estimates to be obtainable for the Unit (as is, where is) during such period, such present value to be computed in each case on the basis of a 8% per annum discount, compounded semiannually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated; or (y) an amount equal to the excess, if any, of the Casualty Value as of the rental payment date on or next preceding the date of termination over the amount the Lessor reasonably estimates to be the sales value of such Unit (as is, where is) at such time; provided, however, that in the event the Lessor shall have sold any Unit, the Lessor, in lieu of collecting any amounts payable to the Lessor by the Lessee pursuant to the preceding clauses (x) and (y) of this part (b) with respect to such Unit, may, if it shall so elect, demand that the Lessee pay the Lessor and the Lessee shall pay to the Lessor on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty Value for such Unit, as of the rental payment date on or next preceding the date of termination over the net proceeds of such sale.

In addition, in the case of an Event of Default the Lessee shall be liable, except as otherwise provided above, for any and all unpaid amounts due hereunder before, during or after the exercise of any of the foregoing remedies and for all

reasonable attorneys' fees and other costs and expenses incurred by reason of the occurrence of any Event of Default or the exercise of the Lessor's remedies with respect thereto, including all costs and expenses incurred in connection with the return of any Unit.

Should the Lessee fail to make any payment or to do any act as provided by this Lease, then the Lessor shall have the right (but not the obligation), without notice to the Lessee of its intention to do so and without releasing the Lessee from any obligation hereunder to make or to do the same, to make advances to preserve the Equipment or the Lessor's title thereto, and to pay, purchase, contest or compromise any insurance premium, encumbrance, charge, tax, lien or other sum which in the judgment of the Lessor appears to affect the Equipment, and in exercising any such rights, the Lessor may insure any liability and expend whatever amounts in its absolute discretion it may deem necessary therefor. All sums so incurred or expended by the Lessor shall be due and payable by the Lessee within ten (10) days of notice thereof.

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

The failure of the Lessor to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

SECTION 10. Return of Units upon Default. If this Lease shall terminate pursuant to Section 9 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor. Each Unit so delivered shall be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted and in the condition required by Section 13 hereof. For the purpose of delivering possession of any Unit or Units to the

Lessor as above required, the Lessee shall at its own cost, expense and risk:

(a) forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any Unit or Units so interchanged) place such Units upon such storage tracks of the Lessee as the Lessor reasonably may designate;

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

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

The assembling, delivery, storage and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having 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 Units. During any storage period, the Lessee will, at its own cost and expense, insure, maintain and keep the Equipment in good order and repair and will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Unit, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence.

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

All amounts earned in respect of the Units after the date of termination of this Lease shall belong to the

Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor. In the event any Unit is not assembled, delivered and stored, as hereinabove provided the Lessee shall, in addition, pay to the Lessor \$325 per Unit for each day thereafter. Nothing contemplated by this paragraph, including the payment by the Lessee of any amounts pursuant hereto shall be deemed to relieve the Lessee of its obligation to assemble, deliver and store the Units or affect the Lessor's rights and remedies with respect to such obligation.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this Section 10, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney-in-fact of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

SECTION 11. Assignment; Possession and Use. This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. The rights of the Lessor hereunder (including the rights to receive the rentals payable under this Lease) shall inure to the benefit of the Vendor as assignee under the Assignment in the manner and to the extent therein provided. So long as the Lessee shall not be in default under this Lease and no event of default exists under the CSA, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease but, without the prior written consent of the Lessor and the Vendor, the Lessee shall not assign or transfer its leasehold interest under this Lease in any of the Units or sublease any of the Units, except to the extent permitted by the provisions of the next succeeding paragraph hereof; and any such assignment or transfer without said consent shall be void. The Lessee, at its own expense, will promptly discharge or cause to be duly discharged any and all sums claimed by any party which if unpaid, might become a lien, charge, security interest or other encumbrance (other than an encumbrance which the Lessor is obligated to discharge pursuant to Paragraph 16 of the Participation Agreement), upon or with respect to any Unit or the interest of the Lessor, the Vendor or the Lessee therein, and will promptly discharge any such lien, charge, security interest or other

encumbrance which arises. The Lessee shall not, without the prior written consent of the Lessor and the Vendor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provisions of the next succeeding paragraph hereof.

So long as the Lessee shall not be in default under this Lease and no event of default exists under the CSA and the Lessee shall have fully complied with the provisions of the last paragraph of this Section 11, the Lessee shall be entitled to the possession and use of the Units and, without the Lessor's consent, to sublease the Units to, or to permit their use by, a user incorporated in the United States of America (or any State thereof or the District of Columbia), upon lines of railroad owned or operated by the Lessee or such user or by a railroad company or companies incorporated in the United States of America (or any State thereof or the District of Columbia), or over which the Lessee, such user, or such railroad company or companies have trackage rights or rights for operation of their trains, and upon the lines of railroad of connecting and other carriers in the usual interchange of traffic or in through or run-through service, but only upon and subject to all the terms and conditions of this Lease, including the last paragraph of this Section 11 and the CSA; provided, however, that the Lessee shall not sublease or permit the sublease or use of any Unit to service involving any operation outside the continental United States of America; provided, further, however, if the use or sublease is for more than 30 days, prior written approval by the Lessor shall be required unless the use is by, or the sublease is to, a Class I Railroad; provided, further, however, that the Lessee shall only use, or sublease for use, any Unit in the manner for which it was designed and intended and in a manner which subjects it to no more than ordinary and normal wear and tear and in no event shall such use involve operation of any Unit for more than 180,000 miles per year. No such assignment or sublease shall relieve the Lessee of its obligations hereunder which shall be and remain those of principal and not a surety. Any such sublease may provide that the sublessee, so long as it shall not be in default under such sublease, shall be entitled to the possession of the Units, included in such sublease and the use thereof; provided, however, that every such sublease shall be subject to the rights and remedies of the Vendor under the CSA, and the Lessor under this Lease in respect of the Units covered by such sublease upon the occurrence of an Event of Default thereunder or hereunder.

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

SECTION 12. Renewal Option; Purchase Option.
Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may elect, by written notice delivered to the Lessor not more than 270 and not less than 180 days prior to the end of the original term of this Lease, to extend the term of this Lease in respect of all, but not less than all, the Units then covered by this Lease for an additional term of one year (or such longer term as the Lessor and the Lessee may agree upon) commencing on the scheduled expiration of the original term at a semiannual rental payable in arrears in semiannual payments, in an amount equal to the "Fair Market Rental" of such Units as of the commencement of such extended term, such rental payments to be made on December 28 and June 28 in each year of the extended term.

"Fair Market Rental" shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an arm's-length transaction between an informed and willing lessee (other than a lessee currently in possession) and an informed and willing lessor under no compulsion to lease and, in such determination, (i) it shall be assumed that the Units are in the condition and repair required by Section 13 hereof and that they are free and clear of all liens, claims and encumbrances, (ii) the value of the additions, modifications and improvements as to which Lessee retains title pursuant to Section 8 shall not be included and (iii) costs of removal from the location of current use shall not be a deduction from such value. If, within 30 days following receipt of the notice required by the preceding paragraph, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Rental of the Units, such Fair Market Rental shall be determined in accordance with the foregoing definition by a qualified independent Appraiser as hereinafter defined. The

term "Appraiser" shall mean such independent Appraiser as the Lessor may select with the approval of the Lessee, or, failing such approved selection, a panel of three independent Appraisers, one of whom shall be selected by the Lessor, the second by the Lessee and the third designated by the first two so selected; and if the Appraisers selected by the Lessor and the Lessee are unable to agree upon such third Appraiser, either the Lessor or the Lessee may apply to any court of competent jurisdiction to select such third Appraiser. The Appraiser(s) shall be instructed to make the determination of Fair Market Rental within a period of 30 days following appointment and shall promptly communicate such determination in writing to the Lessor and the Lessee. If within 15 days following receipt of such communication the Lessee objects in writing to such determination, there shall be no renewal term and the term of this Lease shall expire at the end of the original term. Otherwise, this Lease will continue for the renewal term at the Fair Market Rental so determined by the appraisal procedure. If for any reason, the determination of such Fair Market Rental is not communicated to the Lessor or the Lessee prior to the expiration of the original term of this Lease, such term shall be automatically extended on a day to day basis until 15 days after such determination is so communicated to the Lessor and the Lessee at a daily rental equal to \$325 per Unit; and if there is a renewal term, it shall be deemed to have commenced on the expiration of the original term and the daily rentals paid shall be credited against the Fair Market Rental so determined. If the Lessee objects to the determination of the Fair Market Rental, all expenses and fees of the appraisal shall be paid by the Lessee; otherwise, the expenses and fees of a single Appraiser shall be shared equally by the Lessee and the Lessor; and if three Appraisers are selected, each party shall pay the expenses and fees of the Appraiser selected by it and the expenses and fees of the third Appraiser shall be shared equally by the Lessee and the Lessor.

Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, at the end of the original term and at the end of the extended term of this Lease the Lessee may elect to purchase all but not less than all the Units then subject to this Lease at the then "Fair Market Value" of such Units, by giving written notice to the Lessor not more than 270 and not less than 180 days prior to the expiration of such term.

"Fair Market Value" shall be determined on the basis of, and shall be equal in amount to, the value which

would obtain in an arm's length transaction between an informed and willing purchaser (other than a lessee currently in possession) and an informed and willing seller under no compulsion to sell and, in such determination, the same assumptions applicable to the determination of Fair Market Rental, as set forth in the second paragraph of this Section 12, shall be applied. If, within 30 days following receipt of the notice required by the preceding paragraph, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Value of the Units, such Fair Market Value shall be determined in accordance with the foregoing definition by the appraisal procedure set forth in the second paragraph of this Section 12. The Appraiser(s) shall be instructed to make the determination Fair Market Value within a period of 30 days following appointment and shall promptly communicate such determination in writing to the Lessor and the Lessee. If within 15 days following receipt of such communication the Lessee objects in writing to such determination, there shall be no purchase and the term of this Lease shall expire at the end of the applicable term. Otherwise, the purchase shall be effected on the last day of the applicable term of this Lease at the Fair Market Value so determined by the appraisal procedure. If for any reason, the determination of such Fair Market Value is not communicated to the Lessor or the Lessee prior to the expiration of the applicable term of this Lease, such term shall be automatically extended on a day to day basis until 15 days after such determination is so communicated to the Lessor and the Lessee at a daily rental equal to (i) \$325 per Unit in the case of the original term or (ii) the daily equivalent of the Fair Market Rental per Unit in the case of the renewal term; and if there is a purchase, it shall be effected 15 days after such communication of the Fair Market Rental to the Lessor and the Lessee. The fees and expenses of the appraisal shall be allocated in the same manner as provided in the last sentence of the second paragraph of this Section 12.

Upon payment of the purchase price pursuant to the exercise by the Lessee of its above-specified purchase rights and of all other amounts due with respect to the Units, the Lessor shall, upon request of the Lessee, execute and deliver to the Lessee, or to the Lessee's assignee or nominee, a bill of sale (without representations or warranties except that the Units so being sold are free and clear of all liens, charges, security interests and other encumbrances by or in favor of any person claiming by, through or under the Lessor and which the Lessor is obligated to discharge pursuant to Paragraph 15 of the

Participation Agreement) for such Units, and such other documents as may be required to release such Units from the terms and scope of this Lease and to transfer title thereto to the Lessee, or such assignee or nominee, in such form as may reasonably be requested by the Lessee, all at the Lessee's expense.

SECTION 13. Return of Units upon Expiration of Term. Upon the expiration of the original or any extended term of this Lease or any storage period provided hereunder, the Lessee will at its own cost and expense, deliver possession of the Units to the Lessor upon such tracks of the Lessee or any Affiliate (as defined in Section 1504 of the Internal Revenue Code) of the Lessee as the Lessor may reasonably designate, or in the absence of such designation, as the Lessee may select. The Lessee shall permit the Lessor to store such Units in a single location on such tracks as the Lessee shall designate, provided that such location is reasonably accessible to the Lessor and prospective purchasers and lessees, for a period not exceeding 120 days, and transport the Units at any one time within such 120 day period, to a point on the tracks of the Lessee or any Affiliate of the Lessee as directed by the Lessor. All movement and storage of such Units is to be at the expense and risk of the Lessee on the lines of the Lessee or any Affiliate of the Lessee and at the expense of Lessor on other lines. 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 or lessee of any Unit, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser or lessee, the rights of inspection granted under this sentence. Each Unit returned to the Lessor pursuant to this Section 13 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, ordinary wear and tear excepted, (ii) have removed therefrom by the Lessee without cost or expense to the Lessor all additions, modifications and improvements which the Lessee owns pursuant to Section 8 hereof, and (iii) be fully serviced and inspected to the Lessee standards applicable to the Lessee owned or leased units like the Units and shall comply with all applicable Association of American Railroads and Federal Railroad Administration requirements, and the applicable rules of any governmental agency or other organization with jurisdiction. The Lessee at its own expense shall provide a written

spectrographic analysis of samples of crankshaft lube oil removed from each engine at the normal scheduled oil sampling closest to the expiration of the term of this Lease as performed by the Lessee's own laboratory. Such oil sampling must occur within the final six months of the term of the Lease. The Lessee shall retain oil samples in sufficient quantity that the Lessor may have the same analysis performed by an independent laboratory. If such analysis discloses the presence of metal or other foreign substances in amounts which exceed the standards in effect as of the date of this Lease that are published in the EMD Maintenance Instructions applicable to locomotives for engine shut-down or repair, the Lessee shall perform all necessary repairs or replacements prior to the expiration of the term of this Lease at its own expense. Within six months prior to its return to the Lessor each Unit shall have been tested under a normal working load and the results of such tests shall be promptly provided to Lessor. Such test must demonstrate that all mechanical and electrical systems are operating properly. The phrase "ordinary wear and tear" as used herein shall not be construed as permitting any broken, damaged or missing items or components. All costs and expenses incurred in order to place the Units in the condition required by this Section 13 shall be for the account of the Lessee. Prior to the delivery of a Unit off Lessee's railroad lines, Lessee may remove or paint over all identifying marks or insignia of Lessee or its Affiliates associating the Unit with Lessee. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and, upon application to any court having 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 Units.

SECTION 14. Recording; Expenses. The Lessee, at its own expense, will cause this Lease, the CSA and any assignment hereof or thereof to be filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303. The Lessee will undertake the filing, recording and depositing and refile, reregister, rerecord or redeposit whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Vendor for the purpose of proper protection, to their satisfaction, of the

Vendor's and the Lessor's respective interests in the Units, or for the purpose of carrying out the intention of this Lease or the assignment hereof to the Vendor, or the CSA; and the Lessee will promptly furnish to the Vendor and the Lessor evidences of all such filing, registering, recording or depositing, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Vendor and the Lessor. This Lease, the CSA, the CSA Assignment and the Lease Assignment shall be filed with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Unit.

SECTION 15. Interest on Overdue Obligations and Rentals. Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other amounts when due hereunder shall result in the obligation on the part of the Lessee promptly to pay also an amount equal to the greater of (i) the WFB Prime or (ii) 13.625% per annum of the overdue rentals and other amounts for the period of time during which they are overdue (calculated on an actual elapsed day basis) or such lesser amount as may be legally enforceable.

SECTION 16. Notices. Any notice hereunder may be given by telephone (confirmed promptly in writing), telegraph, telex, telecopy (or similar transmission), hand or mail and shall in each case be effective when first received. Any notice required or permitted to be given by either party hereto shall be addressed as follows.

(a) if to the Lessor, at 8501 West Higgins Road, Chicago, Illinois 60631, attention: Vice President and Treasurer; with a copy to GATX Leasing Corporation, Four Embarcadero Center, San Francisco, California 94111, attention of Contracts Administration;

(b) if to the Lessee, at Southern Pacific Building One Market Plaza, San Francisco, California 94105, attention: Vice President and Treasurer;

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

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

SCHEDULE A

TO

Lease of Railroad Equipment

<u>Quantity</u>	<u>Model</u>	<u>Description</u>	<u>Lessee's Road Numbers (Inclusive)</u>
38	3,200 h.p. Model SD-45-2	Diesel Electric Locomotives	SP 7499-7536

SCHEDULE B

TO

Lease of Railroad Equipment

Casualty Value and Termination Value Percentages Schedule

<u>Rental Payment Date</u>	<u>Casualty Value Percentage*</u>	<u>Termination Value Percentage*</u>
12/28/84	107.498%	
6/28/85	110.044	
12/28/85	109.714	
6/28/86	109.004	
12/28/86	106.478	
6/28/87	102.601	
12/28/87	100.471	
6/28/88	93.319	
12/28/88	91.432	
6/28/89	82.641	
12/28/89	80.769	
6/28/90	75.259	
12/28/90	67.280	
6/28/91	58.727	58.727%
12/28/91	56.071	56.071
6/28/92	46.523	46.523
12/28/92	44.362	44.362
6/28/93	34.938	34.938
12/28/93	32.267	32.267
6/28/94	20.064	20.064
12/28/94	20.000	20.000

* These values assume that all rentals due on or before the applicable rental payment date have in fact been paid.

SCHEDULE B

TO

Lease of Railroad Equipment

Casualty Value and Termination Value Percentages Schedule

<u>Rental Payment Date</u>	<u>Casualty Value Percentage*</u>	<u>Termination Value Percentage*</u>
12/28/84	107.301%	
6/28/85	109.851	
12/28/85	109.709	
6/28/86	109.016	
12/28/86	106.794	
6/28/87	103.117	
12/28/87	101.111	
6/28/88	93.841	
12/28/88	91.981	
6/28/89	82.996	
12/28/89	81.131	
6/28/90	75.434	
12/28/90	67.455	
6/28/91	58.899	58.899%
12/28/91	56.237	56.237
6/28/92	46.677	46.677
12/28/92	44.504	44.504
6/28/93	35.062	35.062
12/28/93	32.363	32.363
6/28/94	20.105	20.105
12/28/94	20.000	20.000

* These values assume that all rentals due on or before the applicable rental payment date have in fact been paid.

ASSUMPTIONS

- (1) The Purchase Price of each Unit equals \$755,000.
- (2)
- | <u>Closing Date</u> | <u>Number of Units
in Group</u> |
|---------------------|-------------------------------------|
| April 30, 1984 | 4 |
| May 31, 1984 | 4 |
| June 29, 1984 | 4 |
| July 31, 1984 | 4 |
| August 31, 1984 | 5 |
| October 1, 1984 | 4 |
| October 31, 1984 | 4 |
| November 30, 1984 | 4 |
| December 28, 1984 | 5 |
- (3) Down Payment as a percent of the aggregate Purchase Price of each Group equals 31.54917%.
- (4) Total fees, costs, disbursements, and expenses paid by the Vendee pursuant to the first sentence of Paragraph 11 of the Participation Agreement equals 1.25% of the aggregate Purchase Price of all Units.
- (5) Interest on the CSA Indebtedness accrued under the CSA from the various Closing dates and payable by the Vendee on December 28, 1984 equals 2.753260% of the aggregate Purchase Price of all Units.
- (6) The interest rate on the CSA Indebtedness equals 12.625% per annum.
- (7) CSA Indebtedness as a percent of the aggregate Purchase Price of each Group equals 68.45083%.
- (8) Installments of the CSA Indebtedness are payable as set forth in Schedule I to the Conditional Sale Agreement.
- (9) With respect to each Unit, no change in the Internal Revenue Code or the Regulations thereunder shall be enacted or promulgated with an effective date prior to the Delivery Date of such Unit; and if there is any such change, it shall affect only those Units with Delivery Dates after the effective date of such change.

SCHEDULE C

TO

Lease of Railroad Equipment

Schedule of Rental Payments

<u>Rental Payment Date</u>	<u>Payment as a % of aggregate Purchase Price</u>
12/28/84	[additional rentals only]
6/28/85	5.475100%
12/28/85	7.885456
6/28/86	4.458079
12/28/86	8.902477
6/28/87	6.335407
12/28/87	7.025149
6/28/88	8.154712
12/28/88	5.206602
6/28/89	8.702833
12/28/89	4.657723
6/28/90	5.230220
12/28/90	11.098590
6/28/91	11.152709
12/28/91	5.176859
6/28/92	11.974784
12/28/92	4.354784
6/28/93	11.546416
12/28/93	4.783153
6/28/94	14.620503
12/28/94	1.709066

SCHEDULE D

Certificate of Acceptance

To: Cumberland Leasing Co. (the "Vendee")
8501 West Higgins Road
Chicago, Illinois 60631

Attention of Vice President and Treasurer

I, the duly authorized representative for the Vendee and Southern Pacific Transportation Company (the "Lessee") under the Conditional Sale Agreement and the Lease of Railroad Equipment, both dated as of January 15, 1984, respectively, do hereby certify that I inspected and accepted delivery thereunder of the following Units:

TYPE OF UNIT: Diesel electric locomotive
MODEL: SD-45-2
DATE ACCEPTED:
NUMBER OF UNITS:
NUMBERED: SP _____

I do further certify that the foregoing Units are in good order and condition, and conform to the specifications, requirements and standards applicable thereto as provided in Article 2 of the said Conditional Sale Agreement.

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

"OWNERSHIP SUBJECT TO A SECURITY AGREEMENT FILED WITH THE INTERSTATE COMMERCE COMMISSION."

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

Authorized Representative of the Vendee and the Lessee

ANNEX D
to
Conditional
Sale Agreement

[CS&M Ref. 3909-208]

ASSIGNMENT OF LEASE AND AGREEMENT

Dated as of March 1, 1984

between

CUMBERLAND LEASING CO.,

and

MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY
not in its individual capacity but solely
as Agent.

ASSIGNMENT OF LEASE AND AGREEMENT

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* This Table of Contents has been included in this document for convenience only and does not form a part of, or affect any construction or interpretation of this document.

ASSIGNMENT OF LEASE AND AGREEMENT dated as of March 1, 1984, by and between CUMBERLAND LEASING CO., an Illinois corporation (the "Vendee") and MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, not in its individual capacity but solely as Agent (the "Vendor") under a Participation Agreement dated as of the date hereof.

The Vendee has entered into a Conditional Sale Agreement dated as of the date hereof (the "CSA") with SOUTHERN PACIFIC TRANSPORTATION COMPANY (in such capacity, the Builder) providing for the sale to the Vendee of such units of railroad equipment (the "Units") described in Schedule A thereto as are delivered to and accepted by the Vendee thereunder.

The Vendee and Southern Pacific Transportation Company (in such capacity, the "Lessee") have entered into a Lease of Railroad Equipment dated as of the date hereof (the "Lease") providing for the leasing by the Vendee to the Lessee of the Units.

In order to provide security for the obligations of the Vendee under the CSA and for certain obligations of the Vendee under the Participation Agreement and the Lessee under the Lease and as an inducement to the Vendor to invest in the CSA Indebtedness (as that term is defined in the CSA), the Vendee has agreed to assign for security purposes its rights in, to and under the Lease to the Vendor.

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

1. The Vendee hereby assigns, transfers and sets over unto the Vendor, as collateral security for the payment and performance of (i) the obligations of the Vendee under the CSA, (ii) the obligations of the Vendee under the Participation Agreement and (iii) those obligations of the Lessee under the Lease referred to in subparagraph (c) of the second paragraph of this Section 1, all the Vendee's right, title and interest, powers, privileges, and other benefits under the Lease (subject to Sections 10 and 11 hereof) including, without limitation, the immediate right to receive and collect all rentals, profits and other sums payable to or receivable by the Vendee from the Lessee under

or pursuant to the provisions of the Lease whether as rent, casualty payment, indemnity, liquidated damages, or otherwise (such moneys, other than Excluded Payments (as hereinafter defined), being hereinafter called the "Payments"), and the right to make all waivers and agreements, to give all notices, consents and releases, to take all action upon the happening of an Event of Default specified in the Lease, and to do any and all other things whatsoever which the Vendee is or may become entitled to do under the Lease. Notwithstanding the foregoing, the Vendee does not assign to the Vendor, and the Vendor shall have no right or interest in or to, Excluded Payments. As used herein, the term "Excluded Payments" shall mean (i) payments by the Lessee to the Vendee for its own account pursuant to Sections 5 and 8 of the Lease and the fifth paragraph of Article 13 of the CSA, and (ii) any proceeds payable under liability insurance policies to or for the benefit of the Vendee for its own account. In furtherance of the foregoing assignment and subject to Sections 10 and 11 hereof, the Vendee hereby irrevocably authorizes and empowers the Vendor in its own name, or in the name of its nominee, or in the name of the Vendee or as its attorney, to ask, demand, sue for, collect and receive any and all sums to which the Vendee is or may become entitled under the Lease, and to enforce compliance by the Lessee with all the terms and provisions thereof.

The Vendor agrees to accept any Payments made by the Lessee for the account of the Vendee pursuant to the Lease. To the extent received the Vendor will apply such Payments as follows:

(a) to satisfy the obligations of the Vendee under the CSA which are due and payable at the time such Payments are due and payable under the Lease or which become due and payable while such Payments are held as collateral security by the Vendor pursuant to the third and fourth paragraphs of this Section 1;

(b) to satisfy any obligations of the Vendee under provisions of the Participation Agreement;

(c) if an Event of Default under the Lease (or an event which with notice or lapse of time, or both, could constitute such an Event of Default) shall have occurred and be continuing (unless such Event of Default shall have been cured by the Vendee as provided in Article 15(f) of the CSA), (i) to satisfy any obligations of the Lessee under any provision of the

Lease to the Vendor or any Investor and (ii) to satisfy any obligations of the Lessee, or to effect performance by the Lessee, under Sections 5, 6, 8, 9, 10 and 11 of the Lease; provided, however, that no Payment shall be applied as provided in clause (i) or (ii) (other than with respect to Section 9) until at least 30 days after the Vendor shall have demanded that the Lessee satisfy such obligation or effect such performance; and

(d) if no event of default under the CSA or Event of Default under the Lease (or any event which with notice or lapse of time, or both, could constitute such an event of default or Event of Default) shall have occurred and be continuing, any balance shall be paid to the Vendee, or to such other person as the Vendee may direct in writing, in the type of funds received by the Vendor at such address as the Vendee may direct in writing, and the Agent shall give the Vendee written notice of any such payment.

All Payments received by the Vendor (and not applied pursuant to the second paragraph of this Section 1) which, but for the existence of an Event of Default under the Lease (or an event which with notice or lapse of time, or both, could constitute such an Event of Default) would be distributable, shall be held by the Vendor as part of the collateral security for the Vendee's obligations under the CSA, the Vendee's obligations under the Participation Agreement and the Lessee's obligations and performance under the Lease (as described in subparagraph (c) of the second paragraph of this Section 1) until the earlier of

(i) application of such Payments pursuant to subparagraph (a), (b) or (c) of the second paragraph of this Section 1,

(ii) such time or such Event of Default or event shall cease to be continuing, or

(iii) 180 days after the Vendor's receipt of such Payment, unless prior to expiration of such 180-day period the Vendor either (A) shall have commenced using reasonable efforts (which under no circumstances shall be deemed to require termination of the Lease) to enforce the Lessee's compliance with its underlying obligation giving rise to such Event of Default or event or (B) shall have authorized the Vendee to seek compliance by the Lessee with such obligation (which authorization shall in no circumstances include the right to terminate the Lease),

at which time such Payments (if not previously applied pursuant to clause (i) above) shall be paid to the Vendee pursuant to subparagraph (d) of the second paragraph of this Section 1.

All Payments received by the Vendor (and not applied pursuant to the second paragraph of this Section 1) which, but for the existence of an event of default under the CSA (or an event which with notice or lapse of time, or both, could constitute such an event of default) would be distributable, shall be held by the Vendor as part of collateral security for the Vendee's obligations under the CSA, the Vendee's obligations under the Participation Agreement and the Lessee's obligations and performance under the Lease (as described in subparagraph (c) of the second paragraph of this Section 1) until such event of default or event shall cease to be continuing, at which time such Payments (if not previously applied pursuant to subparagraph (a), (b) or (c) of this Section 1), shall be paid to the Vendee pursuant to subparagraph (d) of the second paragraph of this Section 1.

Notwithstanding anything to the contrary contained herein, Excluded Payments are not part of the collateral security for the Vendor or the Investors and any Excluded Payment received by the Vendor or any Investor shall be immediately paid to the Vendee.

If the Vendor shall not receive any payment under Sections 2, 5, 6, 8 or 12 of the Lease when due, the Vendor shall, on the date due, notify the Vendee and the Lessee, by telephone, confirmed in writing, at the respective addresses set forth in the Lease; provided, however, that the failure of the Vendor so to notify the Vendee and the Lessee shall not affect the obligations of the Vendee hereunder or under the CSA or the Lessee under the Lease or the Consent and Agreement attached hereto; provided further, however, that the Vendor shall not issue a Declaration of Default (as defined in the CSA) or terminate the Lease under Article 14(a) of the CSA until 10 days after such notice.

2. This Assignment is executed only as security and, therefore, the execution and delivery of this Assignment shall not subject the Vendor to, or transfer, or pass, or in any way affect or modify the liability of the Vendee under the Lease, it being understood and agreed that notwithstanding this Assignment or any subsequent assignment, all obligations of the Vendee to the Lessee shall be and remain enforceable by the Lessee, its successors and

assigns, against, and only against, the Vendee or persons other than the Vendor.

3. To protect the security afforded by this Assignment the Vendee agrees subject to Paragraphs 10 and 11 hereof, that, without the written consent of the Vendor, the Vendee will not anticipate the rents under the Lease or waive, excuse, condone, forgive or in any manner release or discharge the Lessee thereunder of or from the obligations, covenants, conditions and agreements to be performed by the Lessee, including, without limitation, the obligation to pay the rents in the manner and at the time and place specified therein or enter into any agreement amending, modifying or terminating the Lease and the Vendee agrees that any amendment, modification or termination thereof without such consent shall be void.

4. Subject to Paragraphs 10 and 11 hereof, the Vendee does hereby constitute the Vendor the Vendee's true and lawful attorney, irrevocably, with full power (in the name of the Vendee, or otherwise), to ask, require, demand, and receive, any and all Payments due and to become due under or arising out of the Lease to which the Vendee is or may become entitled, to enforce compliance by the Lessee with all the terms and provisions of the Lease, to endorse any checks or other instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings which the Vendor may deem to be necessary or advisable in the premises.

5. Upon the full discharge and satisfaction of all the Vendee's obligations under the CSA and the Participation Agreement (without giving effect to any limitations on liability contained therein) and the Lessee's obligations to the Vendor and the Investor under any provisions of the Lease, this Assignment and all rights herein assigned to the Vendor shall terminate, and all estate, right, title and interest of the Vendor in and to the Lease shall revert to the Vendee.

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

7. The Vendor may assign all or any of the rights assigned to it hereby or arising under the Lease, including,

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

8. The terms of this Assignment and all rights and obligations hereunder shall be governed by and construed in accordance with the laws of the State of Illinois, but the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303.

9. The Vendee shall cause copies of all notices received by it in connection with the Lease and all payments hereunder to be promptly delivered or made to the Vendor at its address set forth in Article 20 of the CSA, or at such other address as the Vendor shall designate.

10. The Vendor hereby agrees with the Vendee that the Vendor will not, so long as neither an event of default under the CSA nor an Event of Default under the Lease has occurred and is continuing, exercise or enforce, or seek to exercise or enforce, or avail itself of, any of the rights, powers, privileges, authorizations or benefits which are assigned and transferred by the Vendee to the Vendor by this Assignment without the prior written consent of the Vendee except the right to receive and apply the Payments as provided in Paragraph 1 hereof and to enforce any right, power, agreement or indemnity under the Lease, and that, subject to the terms of the Lease and the CSA, the Vendee may, so long as neither an event of default under the CSA nor an Event of Default under the Lease has occurred and is continuing, exercise or enforce, or seek to exercise or enforce, such rights, powers, privileges, authorizations or benefits; provided, however, that the Vendee shall not, and shall not have any authority to, take any action which would terminate the Lease without the prior written consent of the Vendor.

11. Notwithstanding anything herein to the contrary, (a) unless and until an event of default under the

CSA shall have occurred and is continuing, the Vendee shall have the right, without the concurrence of the Vendor, to adjust the rentals and Casualty Value and Termination Value percentages pursuant to, and subject to the limitation contained in, Section 2 of the Lease and to exercise the rights of the Lessor under Sections 12 and 13 of the Lease; (b) at all times the Vendee may (without the concurrence of the Vendor) receive all notices, certificates, opinions of counsel and other documents and information to be furnished to the Lessor or the Vendee under the Lease; (c) at all times the Vendee shall have the right to proceed by appropriate court action or actions either at law or in equity to enforce performance by the Lessee of its obligations with respect to Excluded Payments or to recover damages for the breach thereof as provided in Section 9(a) of the Lease but may not, without the written consent of the Vendor, declare an Event of Default under or terminate the Lease; and (d) at all times the Vendee may exercise the rights of the Vendee under the seventh paragraph of Section 6 of the Lease. The Vendor may not at any time, without the consent of the Vendee, amend, modify or supplement, or give or accept any waiver or consent with respect to, the Lease so as to increase the liabilities or diminish the immunities of the Vendee or reduce the amount or extend the time or payment of any Excluded Payment then due and payable or change any of the circumstances under which such Excluded Payments are payable.

12. Any notice hereunder shall be given in the manner and to the respective addresses specified in the Participation Agreement.

13. This Assignment may be executed in any number of counterparts, all of which together shall constitute a single instrument, but the counterpart delivered to the Vendor shall be deemed to be the original counterpart. It is not necessary that the parties hereto all sign the same counterpart as long as each party shall sign a counterpart

and such counterpart is delivered to the Vendor or its counsel, whereupon this Agreement shall become effective.

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

MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, not in its individual capacity but solely as Agent,

[Corporate Seal]

by

Assistant Vice President

Attest:

Assistant Corporate Trust Officer

CUMBERLAND LEASING CO.,

[Corporate Seal]

by



Vice President and Treasurer

Attest:



Assistant Secretary

STATE OF MARYLAND)
) ss:
COUNTY OF BALTIMORE)

On this day of March 1984, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is an Assistant Vice President of MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its By-laws and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

Notary Public

[Notarial Seal]

My Commission Expires

STATE OF ILLINOIS)
) ss.:
COUNTY OF COOK)

On this *13TH* day of March 1984, before me personally appeared *DAVID B. SMITH* to me personally known, who, being by me duly sworn, says that he is the Vice President and Treasurer of CUMBERLAND LEASING CO., that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, and that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

Margaret A. Jordan

Notary Public

[Notarial Seal]

My Commission Expires *02/23/87*

LESSEE'S CONSENT AND AGREEMENT

The undersigned, SOUTHERN PACIFIC TRANSPORTATION COMPANY, a corporation duly incorporated under the laws of the State of Delaware, the Lessee (the "Lessee") named in the Lease (the "Lease") referred to in the foregoing Assignment of Lease and Agreement (the "Assignment"), hereby (a) acknowledges receipt of a copy of the Assignment and (b) consents to all the terms and conditions of the Assignment and agrees that:

(1) it will pay all Payments as defined in the Assignment, due and to become due under the Lease or otherwise in respect of the Units leased thereunder, directly to MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, not in its individual capacity but solely as Agent (the "Vendor"), the assignee named in the Assignment, to be applied as provided in the Assignment, in immediately available funds by noon Baltimore, Maryland time on the date of payment, by wire transfer to Mercantile-Safe Deposit and Trust Company, Baltimore, Maryland, for credit to its Corporate Trust Department's Account No. 619478-8, with advice that the deposit is "RE: SPTCo 3/1/84" (or to such other address as may be furnished in writing to the undersigned by the Vendor);

(2) the Vendor shall be entitled to the benefits of, and to receive and enforce performance of, all the covenants to be performed by the undersigned under the Lease as though the Vendor were named therein as the Lessor and that it will not assert against the Vendor any claim or defense the Lessee may have against the Lessor under the Lease;

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

(4) the Lease shall not, without the prior written consent of the Vendor, be amended, terminated or modified (other than as provided in Paragraph 11 of the Assignment), nor shall any action be taken or omitted by the undersigned, the taking or omission of which might result in an alteration or impairment of the Lease or this Consent and Agreement or of any of the rights created by any thereof.

This Consent and Agreement when accepted by the Vendor by signing the acceptance at the foot hereof, shall be deemed a contract under, and shall be construed in accordance with, the laws of the State of California. It is not necessary that the parties hereto all sign the same counterpart of this Agreement and Consent as long as each party shall sign a counterpart and such counterpart is delivered to the Vendor or its counsel, whereupon this Agreement and Consent shall become effective.

Dated as of March 1, 1984

SOUTHERN PACIFIC TRANSPORTATION
COMPANY,

by

Vice President and
Treasurer

[Corporate Seal]

Attest:

Assistant Secretary

The foregoing Consent and Agreement is hereby accepted, as of the 1st day of March 1984.

MERCANTILE-SAFE DEPOSIT AND
TRUST COMPANY, not in its
individual capacity but solely
as Agent,

by

Assistant Vice President