

RECORDATION NO. 12079-A  
Filed & Recorded

AUG 11 1980 - 1 40 PM

CRAVATH, SWAINE & MOORE

INTERSTATE COMMERCE COMMISSION

ONE CHASE MANHATTAN PLAZA

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I. C. C.  
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RECORDATION NO. Filed & Recorded

No. 12079-13

Date AUG 11 1980

Fee \$ 100.00

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INTERSTATE COMMERCE COMMISSION

ICC Washington, D. C.

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RECORDATION NO. 12079-B  
Filed & Recorded

August 4, 1980

AUG 11 1980 - 1 40 PM

INTERSTATE COMMERCE COMMISSION

The Baltimore and Ohio Railroad Company

Lease Financing Dated as of July 1, 1980

11-3/8% Conditional Sale Indebtedness Due January 1, 1991

Dear Ms. Mergenovich:

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

New Number

1. (a) Conditional Sale Agreement dated as of July 1, 1980, between Whitehead & Kales Company and The Connecticut Bank and Trust Company, as Trustee;

- A

(b) Agreement and Assignment dated as of July 1, 1980 between Whitehead & Kales Company and Mercantile-Safe Deposit and Trust Company, as Agent;

- B

2. Lease of Railroad Equipment dated as of July 1, 1980, between The Baltimore and Ohio Railroad Company and The Connecticut Bank and Trust Company, as Trustee; and

- C

(b) Assignment of Lease and Agreement dated as

RECORDATION NO. 12079-C  
Filed & Recorded

AUG 11 1980 - 1 40 PM

INTERSTATE COMMERCE COMMISSION

Counterparts  
1  
J.B.

of July 1, 1980, between The Connecticut Bank and Trust Company, as Trustee, and Mercantile-Safe Deposit and Trust Company, as Agent.

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

(1) Vendor-Builder:

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

(2) Vendee-Lessor:

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

(3) Assignee-Vendor:

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

(4) Lessee:

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

Please file and record the documents referred to above and index them under the names of the Vendor-Builder, the Vendee-Lessor, the Assignee-Vendor and the Lessee.

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

167 Fully Enclosed Tri-Level Auto Racks, bearing identifying numbers of the Lessee RP428-RP594, both inclusive.

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

Please stamp all counterparts of the enclosed documents, retain one copy of the documents for your files and forward the remaining counterparts to me.

Thank you for your assistance.

Sincerely,

  
Jacqueline B. Goodyear  
As Agent for The Baltimore and  
Ohio Railroad Company

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

Encl.

ZZ

**Interstate Commerce Commission**  
Washington, D.C. 20423

OFFICE OF THE SECRETARY

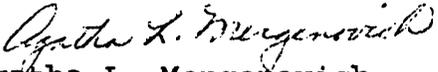
**8-11-80**

**Jacqueline B. Goodyear  
Cravath, Swaine & Moore  
One Chase Manhattan Plaza  
New York, NY. 10005**

Dear **Ms. Goodyear:**

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on **8-11-80** at **1:40 PM**, and assigned re-  
recording number(s). **12079, 12079-A, 12079-B and 12079-C**

Sincerely yours,

  
Agatha L. Mergenovich  
Secretary

Enclosure(s)

See-D for #5

RECORDATION No. 12079 Filed Recorded

AUG 11 1980 - 1 40 PM

INTERSTATE COMMERCE COMMISSION

[CS&M Ref. 5415-003]

CONDITIONAL SALE AGREEMENT

Dated as of July 1, 1980

Between

WHITEHEAD & KALES COMPANY,  
Builder,

and

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

11-3/8% Conditional Sale Indebtedness Due 1991

[Covering 167 Whitehead & Kales Auto Racks]

CONDITIONAL SALE AGREEMENT

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

CONDITIONAL SALE AGREEMENT dated as of July 1, 1980, between WHITEHEAD & KALES COMPANY, a Michigan corporation (the "Vendor" or "Builder" as set forth in Article 1 hereof), and THE CONNECTICUT BANK AND TRUST COMPANY, a Connecticut banking corporation, not in its individual capacity but solely as trustee (the "Vendee") under a Trust Agreement dated as of the date hereof (the "Trust Agreement") with GENERAL ELECTRIC CREDIT CORPORATION (the "Owner").

The Builder has agreed to construct, sell and deliver to the Vendee, and the Vendee has agreed to purchase, the railroad equipment described in Annex B hereto (the "Equipment").

The Vendee is entering into a Lease of Railroad Equipment dated as of the date hereof (the "Lease") with THE BALTIMORE AND OHIO RAILROAD COMPANY (the "Lessee") in substantially the form of Annex C hereto.

MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY (the "Agent") is acting as agent for MORGAN GUARANTY TRUST COMPANY OF NEW YORK, as trustee of a commingled pension trust fund (the "Investor" and, together with its successors and assigns, the "Investors") pursuant to a Participation Agreement dated as of the date hereof (the "Participation Agreement"), between the Lessee, the Agent, the Owner, the Vendee and the Investor.

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

#### ARTICLE 1. ASSIGNMENT; DEFINITIONS

1.01. Source of Purchase Price; Assignment. The parties hereto contemplate that the Vendee will furnish 25.843771% of the Purchase Price (as defined in Section 4.01 hereof) for the Equipment and that an amount equal to the balance of such Purchase Price shall be paid to the Builder by the Agent pursuant to an Agreement and Assignment dated as of the date hereof (the "CSA Assignment") between the Builder and the Agent.

1.02. Lease Assignment. The Vendee will assign to

the Agent, as security for the payment and performance of all the Vendee's obligations hereunder, certain of its rights, title and interest in and to the Lease pursuant to an Assignment of Lease and Agreement substantially in the form of Annex D hereto (the "Lease Assignment"), and the Lessee will acknowledge and consent thereto pursuant to a Consent and Agreement substantially in the form attached to the Lease Assignment (the "Consent").

1.03. Meaning of "Vendor" and "Builder". The term "Vendor", whenever used in this Agreement, means the Builder before any assignment of its right hereunder and, after any such assignment, both any assignee as regards any assigned rights and also any assignor as regards any rights that are retained or excluded from any assignment. 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.

## ARTICLE 2. CONSTRUCTION AND SALE

The Builder shall construct the Equipment at its plant set forth in Annex B hereto and will sell and deliver the Equipment to the Vendee. Each unit of Equipment shall be constructed in accordance with the specifications referred to in Annex B hereto and in accordance with such modifications thereof as may be agreed upon in writing between the Builder, the Vendee and the Lessee (such specifications and any modifications are called the "Specifications"). The design, quality and component parts of each unit of Equipment shall conform on the date of completion of manufacture thereof to all regulatory requirements and specifications reasonably interpreted as being applicable to equipment of the character of such unit, and each such unit will be new equipment.

## ARTICLE 3. INSPECTION AND DELIVERY

3.01. Place of Delivery. The Builder will deliver the units of Equipment to the Vendee at the place or places specified in Annex B hereto, freight charges, if any, prepaid, in accordance with the delivery schedule set forth therein; provided, however, that delivery of any unit of the Equipment shall not be made until the filings referred to in Article 18 hereof have been made; and provided further that the Builder shall have no obligation

to deliver any unit of Equipment hereunder subsequent to the commencement of any proceedings specified in Sections 15.01(c) or (d) hereof or the occurrence of any event of default as described in Section 15.01 hereof or event which with notice or lapse of time or both could constitute such an event of default. The Builder agrees not to deliver any unit of Equipment hereunder following written notice from the Vendee or the Agent of the commencement of any such proceedings or the occurrence of any such event, or until it receives notice from the Agent and the Vendee that the respective conditions contained in Paragraphs 7 and 8 of the Participation Agreement have been satisfied or waived.

3.02. Exclusion of Units. Any unit of Equipment not delivered as a result of Section 3.01 hereof and any unit of Equipment not delivered and accepted hereunder on or prior to December 31, 1980, shall (notwithstanding anything to the contrary contained in Section 3.03 hereof) be excluded from this Agreement and the Vendee shall be relieved of its obligation to purchase and pay for such Equipment. If any Equipment shall be excluded herefrom for any reason, the parties hereto shall execute an agreement supplemental hereto limiting this Agreement to the Equipment not so excluded herefrom. The Lessee has agreed to purchase such excluded Equipment and any Equipment excluded from this Agreement pursuant to Section 4.01 hereof from the Builder as provided in Paragraph 1 of the Participation Agreement.

3.03. Force Majeure. The Builder's obligation as to the time of delivery set forth in Annex B hereto is subject 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.

3.04. Inspection. During construction, the Equipment shall be subject to inspection and approval by the authorized inspectors of the Vendee (who may be employees of the Lessee) and the Builder shall grant to such authorized inspectors reasonable access to its plant. The Builder agrees to inspect the materials used in the construction of the Equipment in accordance with its

standard quality control practices. Upon completion of each unit or a number of units of Equipment, such unit or units shall be presented to an authorized inspector of the Vendee for inspection at the place specified for delivery of such unit or units, and if each such unit conforms to the Specifications, requirements and standards applicable thereto, such authorized inspector shall execute and deliver to the Builder a certificate of acceptance (the "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 referred to in Article 13 hereof.

3.05. Risk of Loss. Upon tender of delivery, inspection and acceptance of each such unit at the place specified for delivery pursuant to this Article 3, risk of loss shall pass to the Vendee, and the Builder shall have no further responsibility for any damage to or the destruction or loss of such unit; provided, however, that the Builder shall not thereby be relieved of its warranties referred to in Article 13 hereof.

3.06. No Interest of Vendee. 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 Section 4.01 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 (except as provided in Section 4.01 hereof) to impose on the Vendee any liability, obligation or responsibility with respect thereto; and any right or interest in any such unit 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

4.01. Meaning of "Purchase Price"; Exclusion of Units. The base price or prices per unit of Equipment are set forth in Annex B hereto. Such base price or prices are subject to such increase or decrease as is agreed to by the Builder, the Vendee and the Lessee. The term "Purchase Price" as used herein shall mean the base price or prices as so increased or decreased as set forth in the Builder's invoice or invoices (the "Invoices")

delivered to the Vendee accompanied by or having endorsed thereon the approval of the Lessee and the Vendee. If on any Closing Date (as hereinafter defined) the aggregate Purchase Price of Equipment for which settlement is then being made under this Agreement would, but for the provisions of this sentence, exceed the Maximum Purchase Price specified in Item 4 of Annex A hereto (or such higher amount as the Vendee may at its option agree to prior to delivery of any unit or units of Equipment that would otherwise be excluded from this Agreement), the Builder (and any assignee of the Builder) and the Vendee will enter into an agreement excluding from this Agreement such unit or units of Equipment then proposed to be settled for and specified by the Vendee as will, after giving effect to such exclusion, reduce such aggregate Purchase Price to not more than the Maximum Purchase Price (or such higher amount as aforesaid) and the Vendee shall take such other steps, including the execution of instruments of transfer, as may be reasonably requested by the Lessee for the purpose of acknowledging the interest of the Lessee in any unit of Equipment so excluded, and the Vendee shall have no further obligation or liability in respect of units so excluded.

4.02. Settlement and Closing Dates. The Equipment shall be settled for in such number of groups of units (the "Groups") of Equipment delivered to and accepted by the Vendee as is provided in Item 2 of Annex A hereto, unless the Lessee, the Vendee and the Builder shall otherwise agree. The term "Closing Date" with respect to any such Group shall mean such date not earlier than September 25, 1980, and not later than December 31, 1980 (the "Cut-Off Date"), occurring not more than 10 business days following presentation by the Builder to the Vendee of the Invoice and of the Certificate or Certificates of Acceptance for the Equipment and written notice thereof by the Builder to the Lessee, as shall be fixed by the Lessee by written notice delivered to the Vendee and the Agent at least six business days prior to the Closing Date designated therein. The term "business day" as used herein means any calendar day, excluding Saturdays, Sundays and any other day on which banking institutions in Hartford, Connecticut; New York, New York; or Baltimore, Maryland; are authorized or obligated to remain closed.

4.03. Indebtedness to Vendor. Subject to the terms of this Agreement, the Vendee hereby acknowledges itself to be indebted to the Vendor in the amount of the Purchase Price of the Equipment in each Group and hereby

promises to pay the same in cash or immediately available funds to the Vendor at such place as the Vendor may designate, as follows:

(a) on the Closing Date with respect to each Group, an amount equal to 25.843771% of the aggregate Purchase Price of the units in such Group plus the amount, if any, by which the Purchase Price of all units of Equipment for which settlement has theretofore or is then being made exceeds the sum of the Maximum CSA Indebtedness specified in Item 5 of Annex A hereto plus any amount or amounts previously paid or payable pursuant to this Section; and

(b) in 20 semiannual installments, as hereinafter provided, an amount equal to the aggregate Purchase Price of such units, less the aggregate amount paid or payable with respect thereto pursuant to subsection (a) of this Section.

4.04. CSA Indebtedness. The portion of the Purchase Price payable pursuant to Section 4.03(b) hereof (the "CSA Indebtedness") shall be payable in 20 consecutive semiannual installments on January 1 and July 1 in each year, commencing July 1, 1981, to and including January 1, 1991 (or if any such date is not a business day, on the next succeeding business day) (each such date is called a "Payment Date"). The unpaid balance of the CSA Indebtedness shall bear interest from the Closing Date in respect of which such indebtedness was incurred at the rate of 11-3/8% per annum. Interest on the unpaid balance of the CSA Indebtedness shall be payable to the extent accrued on January 1, 1981, and on each Payment Date thereafter. The amounts of CSA Indebtedness payable on each Payment Date shall be calculated to be substantially in proportion to the allocation of principal and interest on such Payment Date set forth in Schedule I hereto and the aggregate of such installments of principal will completely amortize the remaining CSA Indebtedness. The Vendee will furnish to the Vendor and the Lessee promptly after the Closing Date a schedule showing the respective amounts of principal and interest payable on each Payment Date.

4.05. Calculation of Interest. Interest under this Agreement shall be determined on the basis of a 360-day year of 12 30-day months, except that interest payable on January 1, 1981, shall be computed on an actual elapsed day,

365-day year basis.

4.06. Penalty Interest. The Vendee will pay interest upon all amounts remaining unpaid after the same shall have become due and payable hereunder at the rate of 12-3/8% per annum, to the extent legally enforceable.

4.07. Manner of Payment; Prepayment. 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. All such payments shall be made by the Vendee to the Vendor by wire transfer of immediately available funds. 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 a portion of the CSA Indebtedness may be prepaid as provided in Article 7 hereof in the event of a Casualty Occurrence (as defined in § 7 of the Lease) and the Vendee may also prepay all the CSA Indebtedness, without penalty or premium, together with interest accrued to the date of payment, if an Event of Default shall have occurred under the Lease, whether or not a Declaration of Default under Section 15.01 hereof shall be made by the Vendor.

4.08. Obligation Subject to CSA Assignment. The obligation of the Vendee to pay to the Vendor the amount required to be paid pursuant to Section 4.03(a) hereof with respect to a Group shall be subject to the receipt by the Vendee of the documents required to be furnished pursuant to Section 4 of the CSA Assignment in respect of such Group.

4.09. Limitation of Vendee Liability. Notwithstanding any other provision of this Agreement (including but not limited to any provision of Articles 15 and 16 hereof), but without limiting the effect of Article 21 hereof, the liability of the Vendee or any assignee of the Vendee for all payments to be made by it under this Agreement, including any liability arising out of or in connection with the performance of its obligations hereunder and excluding only the obligations set forth in the proviso in Section 12.03 hereof and the payments to be made pursuant to Section 4.03(a) 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, "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 or any assignee of the Vendee at any time after any such event and during the continuance thereof: (a) all amounts of rental and amounts of Casualty Values in respect of Casualty Occurrences (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 § 10 or any other provision of the Lease and (b) any and all payments or proceeds received for or with respect to the Equipment as the result of the sale, lease or other disposition thereof, 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 or any assignee of the Vendee and as shall equal the portion of the CSA Indebtedness (including prepayments thereof required in respect of Casualty Occurrences) and/or interest thereon due and payable on the date such amounts were required to be paid pursuant to the Lease or as shall equal any other payments then due and payable under this Agreement; it being agreed that "income and proceeds from the Equipment" shall in no event include (x) amounts referred to in the foregoing clauses (a) and (b) received by the Vendee or any assignee of the Vendee prior to the existence of such an event of default which exceeded the amounts required to discharge that portion of the CSA Indebtedness (including prepayments thereof required in respect of Casualty Occurrences) and/or interest thereon due and payable on the date on which amounts with respect thereto received by the Vendee or any assignee of the Vendee were required to be paid to it pursuant to the Lease or which exceeded any other payments due and payable under this Agreement at the time such amounts were payable under the Lease or (y) the amounts excluded from Payments pursuant to Section 1 of the Lease Assignment. Notwithstanding anything to the contrary contained in Article 15 or 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 Section, it will limit its execution of such judgment to amounts payable pursuant to the limitations set forth in this Section. Nothing contained herein limiting the liability of the Vendee shall derogate from the right of the Vendor to proceed against the Equipment for the full unpaid Purchase Price of the Equipment and accrued interest thereon and all other payments and obligations hereunder.

## ARTICLE 5. SECURITY INTEREST IN EQUIPMENT

5.01. Vendor Retains Security Interest. The Vendor hereby retains a security interest in the Equipment until the Vendee shall have made all its payments under this Agreement and shall have kept and performed all its agreements herein 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. Any and all additions to the Equipment and any and all replacements of the Equipment and of parts thereof and additions thereto shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

5.02. Obligation upon Payment of CSA Indebtedness. 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 accrued interest thereon and all other payments as herein provided, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee without further transfer or action on the part of the Vendor, except that the Vendor, if so requested by the Vendee at that time, will, at the Vendee's expense, (a) execute a bill or bills of sale for the Equipment releasing its security interest therein to the Vendee or upon its order, free of all liens, security interests and other encumbrances created or retained hereby and deliver such bill or bills of sale to the Vendee at its address referred to in Article 20 hereof, (b) execute and deliver at the same place, for filing 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 the Equipment and (c) pay to the Vendee any money paid to the Vendor pursuant to Article 7 hereof and not theretofore applied as therein provided. 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 bill or bills of sale or instrument or instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file such certificate

within a reasonable time after written demand by the Vendee.

#### ARTICLE 6. TAXES

All payments to be made by the Vendee hereunder will be free of expense to the Vendor for collection or other charges and will be free of expense to the Vendor with respect to the amount of any impositions (as defined in § 6.01 of the Lease), all of which such impositions the Vendee assumes and agrees to pay on demand in addition to the Purchase Price of the Equipment. The Vendee will also pay promptly all impositions which may be imposed upon the Equipment for the use or operation thereof or upon the earnings arising therefrom or upon the Vendor solely by reason of its security title therein and will keep at all times all and every part of the Equipment free and clear of all impositions which might in any way affect the security interest of the Vendor or result in a lien upon any part of the Equipment; provided, however, that the Vendee shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal or administrative proceedings such impositions and the nonpayment thereof does not, in the reasonable opinion of the Vendor, adversely affect the security interest or property or rights of the Vendor in or to the Equipment or otherwise under this Agreement. If any impositions shall have been charged or levied against the Vendor directly and paid by the Vendor, the Vendee shall reimburse the Vendor upon presentation of an invoice therefor, and any amounts so paid by the Vendor shall be secured by and under this Agreement; provided, however, that the Vendee shall not be obligated to reimburse the Vendor for any impositions so paid unless the Vendor shall have been legally liable with respect thereto (as evidenced by an opinion of independent counsel for the Vendor) or unless the Vendee shall have approved in writing the payment thereof.

#### ARTICLE 7. MAINTENANCE AND CASUALTY OCCURRENCES

7.01. Maintenance. The Vendee shall, at its own cost and expense, maintain and keep each unit of Equipment in good operating order, repair and condition, reasonable wear and tear excepted.

7.02. Casualty Occurrences. In the event that

any unit of the Equipment shall suffer a Casualty Occurrence (as defined in § 7 of the Lease), the Vendee shall promptly cause the Vendor to be fully informed in regard thereto. On the next succeeding date for the payment of principal and/or interest in respect of the CSA Indebtedness, the Vendee shall pay to the Vendor a sum equal to the Casualty Value (as hereinafter defined) of such unit 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 Section shall be applied (after the payment of the interest and principal due on such date) to prepay the CSA Indebtedness, without penalty or premium, ratably in accordance with the unpaid balance of each installment, 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 the event of the requisition for use by the United States Government of any unit of the Equipment not constituting a Casualty Occurrence, all of the Vendee's obligations hereunder with respect to such unit shall continue to the same extent as if such requisition had not occurred.

7.03. Transfer of Vendor's Rights. Upon payment by the Vendee to the Vendor of the Casualty Value of any unit of Equipment having suffered a Casualty Occurrence, absolute right to the possession of, title to and property in such unit shall pass to and vest in the Vendee 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 the passage to the Vendee of all the Vendor's right, title 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.

7.04. Casualty Value. The Casualty Value of each unit of Equipment suffering a Casualty Occurrence shall be deemed to be that portion of the original CSA Indebtedness of such unit remaining unpaid on the date as of which such Casualty Value shall be determined (without giving effect to any prepayment or prepayments theretofore made under this Article with respect to any other unit), plus interest accrued thereon but unpaid, if any, as of such date. For the purpose of this Section, each payment of the CSA Indebtedness in respect of Equipment made

pursuant to Article 4 hereof shall be deemed to be a payment on each unit of Equipment in like proportion as the original CSA Indebtedness of such unit bears to the aggregate original CSA Indebtedness of the Equipment.

7.05. Insurance. The Vendee will cause the Equipment to be insured as provided in § 7.07 of the Lease.

#### ARTICLE 8. REPORTS

On or before November 30 in each year, commencing with the year 1981, the Vendee shall cause to be furnished to the Vendor an accurate statement to the effect set forth in § 8 of the Lease.

#### ARTICLE 9. MARKING OF EQUIPMENT

The Vendee will cause each unit of Equipment to be kept numbered and marked as provided in § 5 of the Lease. The Vendee will not permit any such unit to be placed in operation or exercise any control or dominion over the same until such markings have been made thereon and will replace promptly any such markings which may be removed, defaced, obliterated or destroyed. The Vendee will not permit the numbers of any unit of Equipment to be changed except in accordance with a statement of new numbers to be substituted therefor which previously shall have been filed with the Vendor and filed by the Vendee in all public offices where this Agreement shall have been filed. 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; provided, however, that the Equipment may be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates.

#### ARTICLE 10. COMPLIANCE WITH APPLICABLE LAWS

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 the use, maintenance and operation of the Equipment) with all Applicable Laws (as defined in § 9 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 Equipment, the Vendee will conform therewith at its own expense; provided, however, that the Vendee or the Lessee may, in good faith, contest the validity or application of any Applicable Law in any reasonable manner which does not, in the reasonable opinion of the Vendor, adversely affect the property or rights of the Vendor under this Agreement.

#### ARTICLE 11. POSSESSION AND USE

So long as an event of default shall not have occurred and be continuing under this Agreement, the Vendee shall be entitled to the possession and use of the Equipment from and after delivery of the Equipment by the Builder to it, but only upon and subject to all the terms and conditions of this Agreement.

The parties hereto acknowledge that the Vendee simultaneously 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 subordinated and junior in rank to the rights and subject to the remedies of the Vendor under this Agreement. The Lease shall not be amended or terminated (except in accordance with its terms or as provided in Section 3 of the Lease Assignment) without the prior written consent of the Vendor.

#### ARTICLE 12. PROHIBITION AGAINST LIENS

12.01. Vendee To Discharge 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 any unit of Equipment or the Vendee's interests in the Lease and the payments to be made thereunder, 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 appropriate legal or administrative proceedings in any reasonable manner and the nonpayment thereof does not, in the reasonable opinion of the Vendor, adversely affect the security interest of the Vendor in the Equipment or otherwise under this Agreement. Any amounts paid by the Vendor in discharge of any such claim shall be secured by and

under this Agreement.

12.02. No Breach for Certain Liens. 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.

12.03. Certain Limitations. The foregoing provisions of this Article 12 shall be subject to the limitations set forth in Sections 4.09 and 21.03 hereof; provided, however, that the Vendee will pay or discharge any and all taxes, claims, liens, charges or security interests claimed by any party from, through or under the Vendee or its successors or assigns (other than the Vendor) or (to the extent it receives funds for such purpose from the Owner) the Owner or its successors or assigns not arising out of the transactions contemplated hereby (but, to the extent it receives funds for such purpose from the Owner, including taxes arising out of the receipt of the rentals and other payments under the Lease and any other proceeds from the Equipment), which, if unpaid, might become a lien, charge, security interest or other encumbrance on or with respect to any unit of Equipment or the Vendee's interests 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 thereof shall be contested in good faith and by appropriate legal or administrative proceedings in any reasonable manner and the nonpayment thereof does not, in the reasonable opinion of the Vendor, adversely affect the security interest of the Vendor in the Equipment or otherwise under this Agreement or in the Lease and the payments to be made thereunder.

### ARTICLE 13. INDEMNITIES AND WARRANTIES

13.01. Indemnification by Vendee. The Vendee assumes the risk of and agrees to indemnify, protect and hold harmless the Vendor from and against all Indemnified Matters (as defined in § 9 of the Lease), except however, in the case of the Builder, any losses, damages, injuries, liabilities, claims and demands whatsoever arising out of any tort by the Builder or out of any breach of warranty or failure to perform any covenant hereunder by the Builder. This covenant of indemnity shall continue in full force and effect notwith-

standing the full payment of the CSA Indebtedness and the release of the security interest in the Equipment or the termination of this Agreement in any manner whatsoever.

13.02. Risk of Loss. The Vendee will bear the responsibility for and risk of any damage to or the destruction or loss of any unit of Equipment and shall not be released from its obligations under this Agreement in any such event.

13.03. Good Title. The Builder represents and warrants to the Vendee that at the time of delivery and acceptance of each unit of Equipment under this Agreement the Vendee will receive 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 Lessee under the Lease.

13.04. Indemnification by Builder. Except in cases of articles or materials specified by the Lessee and not manufactured by the Builder and in cases of designs, systems, processes, formulae or combinations specified by the Lessee and not developed or purported to be developed by the Builder, the Builder agrees to indemnify, protect and hold harmless the Vendee and, as third-party beneficiary hereof, 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, the Lessee, its or their assigns or the users of the Equipment because of the use in or about the construction or operation of any of the Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Builder hereby assigns to the Lessee every claim, right and cause of action (to the extent legally possible without impairing any claim, right or cause of action) which the Builder has or hereafter shall have against the seller or sellers of any designs, systems, processes, formulae, combinations, articles or materials specified by the Lessee and purchased or otherwise acquired by the Builder for use in or about the construction or operation of any of the Equipment on the ground that any such design, system, process, formula, combination, article or material or operation thereof infringes or is claimed to infringe on any patent or other right. The Vendee likewise will indemnify, protect and hold harmless the Builder from and against any and all liability, claims, demands, costs, charges and expenses,

including royalty payments and counsel fees, in any manner imposed upon or accruing against the Builder because of the use in or about the construction or operation of any unit of Equipment of any design, process or combination specified by the Lessee and not developed or purported to be developed by the Builder or article or material specified by the Lessee and not manufactured by the Builder which infringes or is claimed to infringe on any patent or other right. The Builder further agrees to execute and deliver to the Lessee or the Vendee or the users of the Equipment all and every such further assurance as may be reasonably requested by the Lessee or the Vendee to more fully effectuate the assignment of every such claim, right and cause of action. 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.

13.05. ERISA. The Builder represents that it is not entering into this Agreement or 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 or any party to the Participation Agreement is a party in interest, all within the meaning of the Employee Retirement Income Security Act of 1974.

13.06. Warranty of Material and Workmanship. The agreement of the parties relating to the Builder's warranty of material and workmanship is set forth in Item 3 of Annex A hereto.

#### ARTICLE 14. ASSIGNMENTS

14.01. Assignment by Vendee. Except as provided in this Agreement or the Trust Agreement, the Vendee will not transfer the right to possession of any unit of Equipment or sell, assign, transfer or otherwise dispose of its rights under this Agreement or the Lease without the prior written consent of the Vendor.

14.02. Assignment by 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 referred to in Article 13 hereof or relieve the Vendee of its respective obligations to the Builder contained in Articles 2, 3, 4, 6 and 13 hereof, Annex A hereto and this Article 14, or any other obligation which, according to its terms or context, is intended to survive an assignment.

14.03. Notice of Assignment. Upon any such assignment, either the assignor or the assignee shall give written notice to the Vendee and the Lessee, 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.

14.04. No Setoff Against CSA Indebtedness upon Assignment. The Vendee recognizes that this Agreement will be assigned to the Agent 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 the rights of the assignee to the entire unpaid CSA Indebtedness 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 manufacture, construction, delivery or warranty of the Equipment (which obligations shall be construed to include without limitation the indemnification provisions of Section 13.04 hereof) 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. DEFAULT

15.01. Events of Default. In the event that any one or more of the following events of default shall occur and be continuing:

(a) the Vendee shall fail to pay in full any sum payable by the Vendee pursuant to Sections 4.03(b) or 7.02 hereof when payment thereof shall be due hereunder (irrespective of the provisions of Article 4 or 21 hereof or any other provision of this Agreement limiting the liability of the Vendee) and such default shall continue for 15 days after the date such payment became due and payable; or

(b) the Vendee (irrespective of the provisions of Article 4 or 21 hereof or any other provision of this Agreement limiting the liability of the Vendee) or the Lessee shall, for more than 30 days after the Vendor shall have given notice thereof demanding in writing performance thereof, fail or refuse to comply with any other covenant, agreement, term or provision of this Agreement or any agreement contemplated by the Participation Agreement on its part to be kept and performed or to make provision 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 the Lease and the Consent shall not have been and shall not continue to be duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (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 of the Vendee hereunder or of the Lessee under the Lease or the Consent under any bankruptcy or insolvency laws or laws relating to the relief of debtors, 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, 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 Equipment and the Vendee shall fail to secure a reassignment or retransfer to the Vendee of such Agreement, interest or right for more than 30 days after notice and demand in writing by the Vendor; or

(f) any Event of Default (as defined in the Lease) shall have occurred and be continuing under the Lease; provided, however, that an Event of Default under § 10.01(A) of the Lease shall not be deemed to be an event of default hereunder if the Vendee shall not be in default under subsection (a) of this Section;

then at any time after the occurrence of such an event of default the Vendor may upon five days' written notice to the Vendee, the Owner and the Lessee and upon compliance with any legal requirements then in force and applicable to such action by the Vendor, (i) cause the Lease immediately upon such notice to terminate (and the Vendee acknowledges the right of the Vendor to terminate the Lease), but without affecting the indemnities which by the provisions of the Lease survive its termination and/or (ii) 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 the CSA Indebtedness and interest shall bear interest from the date of such Declaration of Default at the rate per annum specified in Section 4.06 hereof. 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 so payable, with interest as aforesaid, and to collect such judgment out of the property of the Vendee wherever situated. The Vendee shall promptly notify the Vendor of any event which has come to its attention which constitutes or with notice or lapse of time or both would constitute an event of default under this Agreement.

15.02. Waiver. 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 and the Lessee 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 Section, 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

16.01. Possession of Equipment. At any time during the continuance of a Declaration of Default, the Vendor may, and upon such further notice, 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 one or more units of Equipment 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 or any other person and for such purpose may enter upon any 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.

16.02. Assembling of Equipment. In case the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall reasonably designate a point or points upon the premises of the Lessee for the delivery of the Equipment to the Vendor, the Vendee shall, at its own expense and risk, forthwith and in the usual manner (including without limitation giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any part of the Equipment has been interchanged to return the Equipment so interchanged), cause (a) the Equipment to be detached from each unit of railroad rolling stock to which it has been attached, (b) the Equipment to be moved to such point or points on the lines of the Lessee as shall be designated by the Vendor and shall there deliver the Equipment or cause it to be delivered to the Vendor and (c) the Equipment to be moved to such interchange point or points of the Lessee as shall be designated by the Vendor upon any sale, lease or other disposal of all or any part of the Equipment by the Vendor. At the option of the Vendor, the Vendor may keep the Equipment on any of the lines or premises of the Lessee until the Vendor shall have leased, sold or otherwise disposed of the same, and for such purpose the Lessee has agreed in the Lease to furnish, without charge for rent or storage, the necessary facilities at any point or points selected by the Vendor reasonably convenient to the Lessee and, at the Lessee's risk, to permit inspection of the Equipment by the Vendor, the Vendor's representatives and prospective purchasers 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 competent jurisdiction, the Vendor shall be entitled to a decree against the Lessee requiring specific performance thereof. The Lessee 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 Equipment in any reasonable manner.

16.03. Vendor's Election To Dispose or Retain Equipment. 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 shall 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 or for its account 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 as well as expenses of removing and retaking possession of the Equipment, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee; provided further that if the Vendee or any other persons notified under the terms of this Section 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.

16.04. Sale of Equipment. 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, the

Lessee and any other persons to whom the law may require notice of the time and place, may sell any one or more units of Equipment, free from any and all claims of the Vendee, the Lessee or any other party claiming from, through or under the Vendee or the Lessee, 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, then upon receipt of such payment, expenses and fees by the Vendor, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee. 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.

16.05. Manner of Sale. Any sale hereunder may be held or conducted at such place or places and at such time or times 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 and the Vendee may bid for and become the purchaser of any unit of Equipment so offered for sale. The Vendee and the Lessee shall be given written notice of such sale or the making of a contract for such sale not less than 10 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 rights of the Vendee to purchase or provide a purchaser within 15 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 of the Equipment, it shall not be

accountable to the Vendee or the Lessee (except to the extent of surplus money received as hereinafter provided in this Article 16), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all or any part of sums due to the Vendor hereunder.

16.06. Remedies Not Exclusive. 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 each and every power and remedy 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 or the Lessee 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.

16.07. Deficiency or Surplus. 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 pay the amount of such deficiency to the Vendor upon demand, together with interest thereon from the date of such demand to the date of payment, at the rate per annum specified in Section 4.06 hereof and, if the Vendee shall fail to pay such deficiency, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Vendee, subject to the limitations set forth in Sections 4.09 and 21.03 hereof. 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.

16.08. Expenses. 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, then in such suit 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

17.01. Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall be ineffective as to such jurisdiction 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. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the parties hereto 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.

17.02. Waiver of Notice. 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 any one or more units of Equipment, 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 filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303. The Vendee will further cause this Agreement, any assignments hereof and

the Lease Assignment and any amendments or supplements hereto or thereto and appropriate financing statements or continuation statements to be filed and (from time to time when required) refiled in accordance with the applicable provisions of the Uniform Commercial Code as in effect in the State of Connecticut (and, if the Vendee changes its principal place of business to a different state, in any such other state) and in any other State of the United States of America or the District of Columbia where filing is reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of the Vendor, of its security interest in the Equipment and its rights under this Agreement. The Vendee will from time to time perform any other act and will execute, deliver and file any and all further instruments required by law or reasonably requested by the Vendor for the purposes specified in this Article.

The Vendee will promptly furnish to the Vendor evidence satisfactory to the Vendor of such filing.

#### ARTICLE 19. HEADINGS; EFFECT AND MODIFICATION OF AGREEMENT

19.01. Headings. All Article and Section headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

19.02. Effect and Modification of Agreement. Except for the Participation Agreement, this Agreement, including the Annexes hereto, exclusively and completely states the rights of the Vendor and the Vendee 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 Vendor and the Vendee.

#### ARTICLE 20. NOTICES

Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed to it by first class mail, postage prepaid, at the following addresses

(a) to the Lessee, at 100 North Charles Street,

Baltimore, Maryland 21201, attention of Treasurer;

(b) to the Builder, at the address specified in Item 1 of Annex A hereto;

(c) to the Vendee, at One Constitution Plaza, Hartford, Connecticut 06115, attention of Corporate Trust Department, with a copy to the Owner at its address set forth in the Participation Agreement; and

(d) 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, and to the Lessee, 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. Any such notice shall be deemed to be effective three days after its deposit.

ARTICLE 21. IMMUNITIES; SATISFACTION OF UNDERTAKINGS; NO RECOURSE

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

21.02. Satisfaction of Undertakings. The obligations of the Vendee under Section 16.02 hereof and under Articles 3, 6, 7 (other than the second and third sentences of Section 7.02 hereof), 8, 9, 10, 12 (other than the proviso to Section 12.03 hereof), 13 and 18 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 undertak-

ings under the Lease shall be effective unless joined in by the Vendor.

21.03. No Recourse. Notwithstanding anything herein to the contrary, each of the representations, warranties, undertakings and agreements herein made on the part of the Vendee are made and intended not as personal representations, warranties, undertakings and agreements by The Connecticut Bank and Trust Company or for the purpose or with the intention of binding said bank personally but are made and intended for the purpose of binding only the Trust Estate (as such term is used in the Trust Agreement) and this Agreement is executed and delivered by said bank not in its own right but solely in the exercise of the powers expressly conferred upon it as trustee under the Trust Agreement; and except in the case of wilful misconduct or gross negligence on the part of said bank, no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against said bank or the Owner hereunder (except in connection with the payment or discharge of claims pursuant to the proviso to Section 12.03 hereof and except, with respect to the Owner, pursuant to Section 1.03 and the last paragraph of Section 5.01 of the Trust Agreement) on account of this Agreement or the Trust Agreement or on account of any representation, warranty, undertaking or agreement of the said bank or the Owner hereunder, either expressed or implied, all such personal liability (except as aforesaid), if any, being expressly waived and released by the Vendor and the Builder and by all persons claiming by, through or under the Vendor or the Builder.

## ARTICLE 22. GOVERNING LAW

The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Connecticut; provided, however, that the parties shall be entitled to all rights arising out of the filing hereof 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.

## ARTICLE 23. EXECUTION

This Agreement may be executed in any number of counterparts, all of which together shall constitute a single instrument, but the counterpart delivered to the Agent shall

be deemed to be the original. Although for convenience this Agreement is dated as of the date first set forth above, the actual dates of execution hereof by the parties hereto are the dates stated in the acknowledgments hereto.

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

WHITEHEAD & KALES COMPANY,

by

*C. E. Wieser* C. E. WIESER  
SENIOR Vice President-Finance

[Corporate Seal]

Attest:

*G. Konchal*  
G, KONCHAL Treasurer

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

by

\_\_\_\_\_

[Corporate Seal]

Attest:

\_\_\_\_\_

STATE OF MICHIGAN, )  
 ) ss.:  
COUNTY OF WAYNE, )

On this 7<sup>th</sup> day of August 1980, before me personally appeared C. E. WIESER, to me personally known, who, being by me duly sworn, says that he is <sup>SR</sup>Vice President-Finance of WHITEHEAD & KALES COMPANY, a Michigan corporation, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

Ardis W. Hall  
Notary Public

[NOTARIAL SEAL]

ARDIS W. HALL

Notary Public, Wayne County, Mich.

My Commission expires My Commission Expires July 22, 1981

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

On this \_\_\_\_\_ day of August 1980, before me personally appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, says that he is \_\_\_\_\_ of THE CONNECTICUT BANK AND TRUST COMPANY, a Connecticut banking corporation, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

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

[NOTARIAL SEAL]

My Commission expires

SCHEDULE I  
TO THE CONDITIONAL SALE AGREEMENT

Allocation Schedule of Each  
\$1,000,000 of 11-3/8% CSA Indebtedness

<u>Payment No.</u>	<u>Date Due</u>	<u>Debt Service</u>	<u>Interest Payment</u>	<u>Principal Payment</u>	<u>Ending Principal</u>
	January 1, 1981	*	*	-0-	\$1,000,000.00
1	July 1, 1981	\$ 72,123.20	\$ 56,875.00	\$ 15,248.20	984,751.80
2	January 1, 1982	82,171.08	56,007.76	26,163.32	958,588.48
3	July 1, 1982	82,171.08	54,519.72	27,651.36	930,937.12
4	January 1, 1983	82,171.08	52,947.05	29,224.03	901,713.09
5	July 1, 1983	82,171.08	51,284.93	30,886.15	870,826.94
6	January 1, 1984	82,171.08	49,528.28	32,642.80	838,184.14
7	July 1, 1984	82,171.08	47,671.72	34,499.36	803,684.78
8	January 1, 1985	82,171.08	45,709.57	36,461.51	767,223.27
9	July 1, 1985	82,171.08	43,635.83	38,535.25	728,688.02
10	January 1, 1986	82,171.08	41,444.13	40,726.95	687,961.07
11	July 1, 1986	93,441.30	39,127.79	54,313.51	633,647.56
12	January 1, 1987	93,441.30	36,038.71	57,402.59	576,244.97
13	July 1, 1987	90,913.38	32,773.94	58,139.44	518,105.53
14	January 1, 1988	92,108.57	29,467.25	62,641.32	455,464.21
15	July 1, 1988	84,391.17	25,904.53	58,486.64	396,977.57
16	January 1, 1989	93,441.30	22,578.10	70,863.20	326,114.37
17	July 1, 1989	93,441.30	18,547.76	74,893.54	251,220.83
18	January 1, 1990	93,441.30	14,288.19	79,153.11	172,067.72
19	July 1, 1990	93,441.30	9,786.35	83,654.95	88,412.77
20	January 1, 1991	93,441.25	5,028.48	88,412.77	-0-
	Total	\$1,733,165.09	\$733,165.09	\$1,000,000.00	

\* Interest on the CSA Indebtedness to the extent accrued.

ANNEX A  
to the  
Conditional Sale Agreement

Concerning the Builder

- Item 1: Whitehead & Kales Company, a Michigan corporation, 58 Haltiner Street, River Rouge, Michigan 48218.
- Item 2: The Equipment shall be settled for in not more than one group of units on September 8, 1980.
- Item 3: The Builder warrants that the Equipment will be built in accordance with the Specifications and the standards and requirements set forth in Article 2 of this Agreement and warrants the Equipment will be free from defects in material and workmanship under normal use and service. The Builder's obligation under this Item 3 is limited to making good at its plant any part or parts of any unit of the Equipment which shall be returned to the Builder with transportation charges prepaid within one year after the delivery of such unit to the Vendee and which the Builder's examination shall disclose to its satisfaction to have been thus defective. The Builder shall not be liable for any indirect, incidental, consequential, special or commercial damages of whatever nature.

THE FOREGOING WARRANTY OF THE BUILDER IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND OF ALL OTHER OBLIGATIONS OR LIABILITIES ON THE PART OF THE BUILDER, EXCEPT FOR ITS OBLIGATIONS UNDER ARTICLES 2, 3, 4 AND 13 OF THIS AGREEMENT AND THE BUILDER NEITHER ASSUMES NOR AUTHORIZES ANY PERSON TO ASSUME FOR IT ANY OTHER LIABILITY IN CONNECTION WITH THE CONSTRUCTION AND DELIVERY OF ITS EQUIPMENT, EXCEPT AS AFORESAID.

The Builder further agrees with the Vendee that neither the inspection as provided in Article 3 of this Agreement nor any examination nor the acceptance of any units of 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 Maximum Purchase Price referred to in Article 4 of this Agreement is \$7,244,354 plus an amount equal to the same percentage thereof as the percentage of increase of the Investor's commitment pursuant to Paragraph 2 of the Participation Agreement, if any.

Item 5: The Maximum CSA Indebtedness referred to in Article 4 of this Agreement is \$5,372,140 plus any increase of the Investor's commitment pursuant to Paragraph 2 of the Participation Agreement.

ANNEX B  
to the  
Conditional Sale Agreement

Units of Equipment

<u>Equipment Type</u>	<u>Builder's Specifications</u>	<u>Builder's Plant and Place of Delivery</u>	<u>Delivery Date</u>	<u>Number of Units</u>	<u>Unit Base Price</u>	<u>Total Base Price</u>	<u>Lessee's Numbers (Inclusive)</u>
Fully Enclosed	ASK 7127	River Rouge, Michigan	7/14/80	27	\$43,267	\$1,168,209	RP428-RP594
Tri-Level	ASK 7215		7/21/80	27	43,380	1,171,267	
Auto Racks			7/28/80	<del>27</del>	43,406	1,171,962	
			8/4/80	27	43,406	1,171,962	
			8/11/80	27	43,406	1,171,962	
			8/18/80	27	43,406	1,171,962	
			8/25/80	5	43,406	217,030	
				<u>167</u>		<u>\$7,244,354</u>	

ANNEX C  
to the  
Conditional Sale Agreement

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[CS&M Ref. 5415-003]

LEASE OF RAILROAD EQUIPMENT

Dated as of July 1, 1980

Between

THE BALTIMORE AND OHIO RAILROAD COMPANY,  
Lessee,

and

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

[Covering 167 Whitehead & Kales Auto Racks]

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## LEASE OF RAILROAD EQUIPMENT

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

LEASE OF RAILROAD EQUIPMENT dated as of July 1, 1980, between THE BALTIMORE AND OHIO RAILROAD COMPANY, a Maryland corporation (the "Lessee"), and THE CONNECTICUT BANK AND TRUST COMPANY, a Connecticut banking corporation, not in its individual capacity but solely as trustee (the "Lessor") under a trust agreement dated as of the date hereof (the "Trust Agreement") with GENERAL ELECTRIC CREDIT CORPORATION (the "Owner").

The Lessor is entering into a Conditional Sale Agreement dated as of the date hereof (the "CSA") with WHITEHEAD & KALES COMPANY (the "Builder"), wherein the Builder has agreed to manufacture, sell and deliver to the Lessor the units of railroad equipment described in Schedule A hereto (the "Equipment").

The Builder is assigning its interests in the CSA pursuant to an Agreement and Assignment dated as of the date hereof (the "CSA Assignment") to MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, acting as agent (together with its successors and assigns and the Investors for whom it is acting called the "Vendor") under a Participation Agreement dated as of the date hereof (the "Participation Agreement") with the Lessee, the Owner and the Lessor.

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

The Lessor will assign 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 to the Lease Assignment pursuant to a Lessee's Consent and Agreement (the "Consent").

In consideration of the rentals to be paid and the agreements hereinafter set forth, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions:

## § 1. NET LEASE

This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent, reduction thereof or setoff against rent, including but not limited to abatements, reductions or setoffs due or alleged to be due by reason of any past, present or future claims of the Lessee against the Lessor under this Lease or under the CSA or against the Builder or the Vendor or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate or the respective obligations of the Lessor or the Lessee be otherwise affected by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency of or any bankruptcy, reorganization or similar proceeding against the Lessee or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever.

## § 2. DELIVERY AND ACCEPTANCE OF UNITS

The Lessor hereby appoints the Lessee its agent for inspection and acceptance of the Units pursuant to the CSA. The Lessor will cause each Unit to be delivered to the Lessee at the point or points within the United States of America at which such Unit is delivered to the Lessor under the CSA. Upon such delivery, the Lessee will cause an authorized representative, who may be an employee of

the Lessee, to inspect the same, and if such Unit is found to be acceptable, to accept delivery of such Unit and execute and deliver to the Lessor a certificate of acceptance (the "Certificate of Acceptance") in accordance with the provisions of Article 3 of the CSA, stating that such Unit has been inspected and accepted on behalf of the Lessee and the Lessor on the date of such Certificate of Acceptance and is marked in accordance with § 5 hereof, whereupon 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; provided, however, that the delivery, inspection and acceptance hereunder of any unit of Equipment excluded from the CSA pursuant to Section 4.01 thereof shall be ineffective to subject such unit to this Lease.

### § 3. RENTALS

3.01. Basic Rentals. The Lessee agrees to pay to the Lessor as rental for each Unit subject to this Lease 20 consecutive semiannual payments, payable in arrears on January 1 and July 1 of each year, commencing July 1, 1981. The first 10 semiannual rental payments with respect to each Unit then subject to this Lease shall each be in an amount equal to 6.1066915% of the Purchase Price (as defined in the CSA) of such Unit, and the second 10 semiannual rental payments with respect to each Unit then subject to this Lease shall each be in an amount equal to 7.4637341% of the Purchase Price of such Unit. Notwithstanding anything to the contrary set forth herein, the rental payable on each such date shall in no event be less than the payments due on each such date pursuant to Sections 4.03(b) and 4.04 of the CSA.

3.02. Rental Adjustments. The Lessee and the Lessor agree that the rentals payable hereunder and the Casualty Value percentages set forth in Schedule B hereto will be adjusted in the event that (A) any change in the Internal Revenue Code of 1954 (the "Code"), the income tax regulations thereunder or published administrative or judicial interpretations of the Code or such regulations is enacted or has an effective date on or prior to December 31, 1980, or prior to such date any income tax regulations or published administrative or judicial interpretations of the Code are issued, the effect of which is to deny to the Owner the ability to put into practice with

respect to this transaction any of the tax assumptions utilized by the Owner in originally evaluating this transaction, (B) a Closing Date is held on a date other than September 25, 1980; (C) the amount or number of Units settled for on any Closing Date is different from the amount or number of Units specified therefor in Annex B to the CSA; or (D) there is any deficiency payable in respect of Investments (as defined in the Participation Agreement) pursuant to the Participation Agreement. Any such adjustment shall be effective as of the first rental payment date following the event giving rise to such adjustment, and shall be made in such manner as will result, in the Owner's reasonable judgment, in preserving for the Owner both the after-tax economic yield and the after-tax cash flow that would have been realized by the Owner had such event not occurred, based on the rates of Federal, state and local taxes on or measured by net income in effect from time to time and in all other respects based on the assumptions and methods of calculation utilized by the Owner in originally evaluating the transaction described in this Lease and related documents (the "Net Economic Return"). Notwithstanding the foregoing, the rentals payable and Casualty Value percentages will never be less than those amounts and percentages required to enable the Lessor to satisfy its obligations under the CSA and to enable the Owner to satisfy the profit and positive cash flow requirements set forth in Section 4(6) of Rev. Proc. 75-21, 1975-1 C. B. 715, as such requirements may be modified or adjusted as of the applicable rental payment date. The Owner shall furnish the Lessee and the Vendor prior to the effective date of any such adjustment with a notice setting forth in reasonable detail the computations and methods used in computing such adjustment.

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

3.04. Instructions To Pay Assignee. Upon execution and delivery of any lease assignment in writing and until the Lessee shall have been otherwise advised in writing, the Lessee shall pay all amounts so assigned in accordance with the instructions of any assignee.

3.05. Payment in Immediately Available Funds. The Lessee agrees to make each payment provided for herein in immediately available funds at or prior to 11:00 a.m. in the city where such payment is to be made.

#### § 4. TERM OF LEASE

The term of this Lease as to each Unit shall begin on the date of delivery and acceptance of such Unit hereunder and, subject to the provisions of §§ 7, 10 and 13 hereof, shall terminate on the date on which the final payment of rent in respect thereof is due pursuant to § 3.01 hereof; provided, however, that all obligations of the Lessee hereunder (except for the payment of rent and the furnishing of annual reports) shall survive the expiration of the term of this Lease.

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

#### § 5. MARKING OF UNITS

The Lessee will cause each Unit to be kept numbered with its identifying number as set forth in Schedule A hereto or, in the case of Equipment not there listed, such identifying number as shall be set forth in any amendment or supplement hereto extending this Lease to cover such Equipment and will keep and maintain, plainly and distinctly marked on each side of each Unit, in letters not less than one inch in height, the words "Ownership Subject to a Security Agreement filed with the Interstate Commerce Commission", or other appropriate words designated by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be

required by law in order to protect the Lessor's ownership and the Vendor's security interest in such Unit and the rights of the Lessor under this Lease and of the Vendor under the CSA. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such markings have been made thereon and will replace promptly any such markings which may be defaced, obliterated or destroyed. The Lessee will not change the number of any Unit except in accordance with a statement of new number or numbers to be substituted therefor which previously shall have been filed with the Lessor and the Vendor by the Lessee and filed by the Lessee in all public offices where this Lease and the CSA shall have been filed.

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

## § 6. TAXES

6.01. Indemnification. All payments to be made by the Lessee hereunder will be free of expense to the Lessor and the Vendor for collection or other charges and will be free of expense to the Lessor (in both its individual and fiduciary capacities) with respect to the amount of any local, state, Federal or foreign taxes (other than gross receipt taxes (except gross receipt taxes in the nature of or in lieu of sales or use or rental taxes), taxes measured by Lessor's net income, excess profits taxes and similar taxes or general corporation, franchise or like taxes measured by Lessor's capital, capital stock or net worth) or license fees, assessments, charges, fines or penalties hereafter levied or imposed upon or in connection with or measured by this Lease or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof or the CSA (the "impositions"), all of which impositions the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. The Lessee will also pay promptly all impositions which may be imposed upon any Unit or for the use or operation thereof (except as provided above) or upon the earnings arising therefrom (except as provided above) or upon the Lessor solely by reason of its ownership thereof (except as

provided above) and will keep at all times all and every part of such Unit free and clear of all impositions which might in any way affect the title of the Lessor or the security interest of the Vendor or result in a lien upon any such Unit; provided, however, that the Lessee shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal or administrative proceedings such impositions and the nonpayment thereof is permitted by law and does not, in the reasonable opinion of the Lessor, adversely affect the title, property, rights or interest of the Lessor hereunder or the Vendor under the CSA. The Lessee agrees to give the Lessor notice of such contest within 30 days after institution thereof and the Lessor agrees to provide such information as may be reasonably requested by the Lessee in furtherance of such contest. If any impositions shall have been charged or levied against the Lessor directly and paid by the Lessor, the Lessee shall reimburse the Lessor on presentation of an invoice therefor; provided, however, that the Lessor shall have given the Lessee written notice of such imposition prior to such payment; and provided further that the failure of the Lessor so to notify the Lessee shall not affect the obligations of the Lessee thereunder.

6.02. Obligation Under CSA. In the event that the Lessor shall become obligated to make any payment pursuant to Article 6 of the CSA to the Builder or the Vendor or otherwise pursuant to any correlative provision of the CSA, the Lessee shall pay such additional amounts (which shall also be deemed impositions hereunder) to the Lessor as will enable the Lessor to fulfill completely its obligations pursuant to said provision.

6.03. Reports. The Lessee will make any returns, statements and reports with respect to impositions which are required to be made in such manner as to show the interest of the Lessor and the Vendor in such Units.

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

6.05. Lessee To Act in Name of Lessor. To the extent the Lessee may be prohibited by law from performing

in its own name the duties required by this § 6, the Lessor hereby authorizes the Lessee to act in the Lessor's name and on the Lessor's behalf; provided, however, that 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 by the Lessee pursuant to this authorization.

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

§ 7. MAINTENANCE; CASUALTY OCCURRENCES; INSURANCE;  
DISCHARGE OF LIENS

7.01. Maintenance. The Lessee, at its own cost and expense, will maintain and keep each Unit subject to this Lease in good operating order, repair and condition, reasonable wear and tear excepted.

7.02. Casualty Occurrences. In the event that any Unit shall be or become worn out beyond repair, lost, stolen, destroyed or irreparably damaged from any cause whatsoever or taken or requisitioned by condemnation or requisitioned for use or otherwise, except requisition for use by the United States Government for a stated period not in excess of the then remaining term of this Lease (a "Casualty Occurrence"), prior to the return of such Unit in the manner set forth in § 14 hereof, the Lessee shall promptly and fully notify the Lessor and the Vendor with respect thereto. On the casualty payment date set forth in Schedule B hereto next succeeding such notification, the Lessee shall pay to the Lessor an amount equal to the rental payment or payments in respect of such Unit due and payable on such date, if any, plus a sum equal to the Casualty Value (as hereinafter defined) of such Unit. Upon the making of all such payments by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft or complete destruction of such Unit) the Lessor shall be entitled to recover possession of such Unit. Any Casualty Value not paid when due shall accrue interest as

provided in § 17 hereof. The Lessor hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof at the best price obtainable on an "as is, where is" basis. Provided that the Lessee has previously paid the Casualty Value to the Lessor, the Lessee shall be entitled to the net proceeds of such sale after deduction of any cost or expense (including, without limitation, transportation costs, commissions, taxes and attorneys' fees) 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.

7.03. Casualty Value. The Casualty Value of each Unit as of the casualty 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 (or if there is no such casualty payment date, the last casualty payment date).

7.04. Casualty Occurrence After Termination. Whenever any Unit shall suffer a Casualty Occurrence after termination of this Lease and before such Unit shall have been returned in the manner provided in § 14 hereof, the Lessee shall promptly and fully notify the Lessor with respect thereto and pay to the Lessor within 30 days after the Treasury Department of the Lessee receives notice of such Casualty Occurrence an amount equal to the Casualty Value of such Unit. Upon the making of any such payment by the Lessee in respect of any Unit (except in the case of the loss, theft or complete destruction of such Unit), the Lessor shall be entitled to recover possession of such Unit, and the Lessee shall be entitled to the net proceeds of any sale to the extent they do not exceed the Casualty Value of such Unit.

7.05. Requisition Not Casualty Occurrence. In the event of the requisition for use by the United States Government (the "Government") of any Unit during the term of this Lease or any renewal thereof not constituting a Casualty Occurrence, all the Lessee's obligations under this Lease with respect to such Unit shall continue to the same extent as if such requisition had not occurred, except that the Lessee shall not be obligated to return such Unit to the lessor pursuant to § 11 or 14 hereof until such Unit is returned by the Government. All payments received by the Lessor or the Lessee from the Government for the use of such Unit during the term of this Lease or any renewal thereof shall be paid to or

retained by the Lessee; provided that no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing; and all payments received by the Lessor or the Lessee from the Government for the use of such Unit after the term of this Lease or any renewal thereof shall be paid to or retained by the Lessor.

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

7.07. Insurance. The Lessee will, at all times while this Lease is in effect, at its own expense, cause to be carried and maintained types and amounts of insurance that are satisfactory to the Lessor in respect of the Units at the time subject hereto and the use and operation thereof, including without limitation property insurance and public liability insurance in such amounts and for such risks and with such insurance companies as are consistent with prudent industry practice, but in any event at least comparable to insurance coverage carried by the Lessee in respect of similar equipment owned or leased by it; provided, however, that, in respect of property insurance, the Lessee may self-insure any Unit to the extent that it self-insures similar equipment owned by it and as is consistent with prudent industry practice. The Lessee hereby assigns and transfers to the Lessor and the Vendor, as their interests may appear, all right, title, and interest in and to any insurance proceeds paid under any policy of insurance to the extent such proceeds relate to the Units or the use and operation thereof as aforesaid; provided, however, if the Lessee fully complies with all the provisions of this § 7 and § 9.03 hereof in respect of the risk insured against as to which such proceeds are paid and, if there is no Event of Default under § 10 hereof, the Lessee shall be entitled to retain all such proceeds. Notwithstanding the foregoing, the Lessor may, at its option and expense, provide casualty insurance in amounts which are in excess of the Casualty Value of the Units and which policies may name the Lessor as the loss payee. The Lessee will cooperate with the reasonable requests of the Lessor so as to effect this insurance coverage; it being understood that any such insured coverage is expressly within the Lessor's option and in no way relieves the Lessee from any of its responsibilities under this § 7.07.

7.08. Discharge of Liens. The Lessee, at its own expense, will promptly pay or discharge any and all sums claimed by any party which, if unpaid, might become a lien, charge or security interest (other than an encum-

brance created by the Lessor or the Vendor or resulting from claims against the Lessor or the Vendor not related to the ownership of the Units) upon or with respect to any Unit, including any accession thereto or the interest of the Lessor, the Vendor or the Lessee therein, and will promptly discharge any such lien, charge or security interest which arises, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal or administrative proceedings in any reasonable manner and the nonpayment thereof does not, in the reasonable opinion of the Lessor and of the Vendor, adversely affect the title of the Lessor or the security interest of the Vendor in or to the Units or otherwise under this Lease or the CSA. Any amounts paid by the Lessor or the Vendor in discharge of such liens, charges or security interests upon the Units shall be secured by and under this Lease. This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

#### § 8. REPORTS

On or before November 30 in each year, commencing with the calendar year 1981, the Lessee will furnish to the Lessor and the Vendor a certificate signed by an officer of the Lessee who has knowledge of the pertinent facts (a) setting forth as at the preceding June 30 the amount, description and numbers of all Units then leased hereunder, the description and numbers of the railroad equipment to which such Units are attached and the amount, description and numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year (or since the date of this Agreement in the case of the first such statement) or are then undergoing repairs (other than running repairs) or are then withdrawn from use pending such repairs and such other information regarding the condition, state of repair and use of the Units as the Lessor or the Vendor may reasonably request and (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and markings required by § 5 hereof and by the CSA have been preserved or replaced. The Lessor, at its sole cost and expense, shall have the right by its agents to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Lessor may request during the continuance of this Lease.

§ 9. DISCLAIMER OF WARRANTIES;  
COMPLIANCE WITH APPLICABLE LAWS; INDEMNIFICATION

9.01. Disclaimer of Warranties by Lessor. THE LESSEE ACKNOWLEDGES AND AGREES (1) THAT EACH UNIT IS OF A SIZE, DESIGN, CAPACITY AND MANUFACTURE SELECTED BY THE LESSEE, (2) THAT THE LESSEE IS SATISFIED THAT THE SAME IS SUITABLE FOR ITS PURPOSES, (3) THAT THE LESSOR IS NOT A MANUFACTURER OR INSTALLER THEREOF, NOR A DEALER IN PROPERTY OF SUCH KIND, (4) THAT THE LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF OR THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN THE UNITS DELIVERED TO THE LESSEE HEREUNDER AND (5) THAT THE LESSOR MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE OR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF OR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT, EITHER UPON DELIVERY THEREOF TO THE LESSEE OR OTHERWISE, it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee; but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for the account of the Lessor and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Lessor may have against the Builder under the provisions of Item 3 of Annex A and the patent infringement and title indemnification provisions of Article 13 of the CSA; provided, however, that if at any time an Event of Default shall have occurred and be continuing, the Lessor may assert and enforce such claims and rights at the Lessee's sole cost and expense. The Lessor shall have no responsibility or liability to the Lessee or any other person with respect to (i) any liability (including without limitation strict liability in tort or otherwise), loss or damage caused or alleged to be caused directly or indirectly by any Unit or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of any Unit or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Unit. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Lessor that the Units described therein are

in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

9.02. Compliance with Applicable Laws. The Lessee agrees, for the benefit of the Lessor and the Vendor, to comply in all respects (including, without limitation, the use, maintenance and operation of each Unit) with all applicable laws of the jurisdictions in which its operations involving the Units may extend, with the interchange rules of the United States Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units (the "Applicable Laws"), and in the event that, prior to the expiration of this Lease or any renewal thereof, any Applicable Law requires any alteration, replacement or addition of or to any part on any Unit, the Lessee will conform therewith at its own expense (and the Lessor will have title thereto); provided, however, that the Lessee may, at its own expense, in good faith, contest the validity or application of any Applicable Law in any reasonable manner which does not, in the reasonable opinion of the Lessor or the Vendor, adversely affect the property or rights of the Lessor or the Vendor under this Lease or under the CSA. The Lessee, at its own cost and expense, may furnish other additions, modifications and improvements to the Units during the term of this Lease which shall be owned by the Lessee and shall be removed by it upon the return of the Units pursuant to § 14 hereof; provided that such additions, modifications and improvements are readily removable without causing material damage to the Units.

9.03. Lessee To Indemnify Lessor and Vendor. The Lessee assumes the risk of and agrees to indemnify, protect and hold harmless the Lessor (in both its individual and fiduciary capacities) and the Vendor from and against all losses, damages, injuries, liabilities, claims (including, without limitation, claims for strict liability in tort or otherwise) and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including but not limited to counsel fees and expenses, patent liabilities, penalties and interest, arising out of or as the result of the entering into or the performance of this Lease, the CSA, the Participation

Agreement or any sublease entered into pursuant to § 12 hereunder, or the occurrence of a default, an event of default or an Event of Default under any of the above instruments, the ownership of any Unit, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any Unit or any accident in connection with the operation, use, condition, possession, storage or return of any Unit resulting in damage to property or injury or death to any person or the transfer of title to or its security interest in the Equipment by the Vendor pursuant to any provision of the CSA (the "Indemnified Matters"). The indemnities arising under this Section shall continue in full force and effect notwithstanding the full payment of all obligations under this Lease or the expiration or termination of the term of this Lease. The indemnities arising under this Section shall not be deemed to operate as a guarantee of the principal of or interest on the CSA Indebtedness under the CSA.

9.04. Preparation of Reports. The Lessee agrees to prepare and deliver to the Lessor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor) any and all reports (other than tax returns not required to be prepared by the Lessee pursuant to § 6 hereof) to be filed by the Lessor with any Federal, state or other regulatory authority by reason of the ownership by the Lessor of the Units, the security interest of the Vendor in the Units, or the leasing thereof to the Lessee.

## § 10. DEFAULT

10.01. Events of 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 payment of any amount provided for in § 3, 7 or 13 hereof, and such default shall continue for 10 days;

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

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

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

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

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

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

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units so terminated shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as herein-after provided; and thereupon the Lessor may by its agents enter upon any premises where any of the Units so terminated may be and take possession of all or any of such Units and thenceforth possess, sell, operate, lease to others and use the same free from any right of the Lessee or its successors or assigns to use the Units for any purposes whatever; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee as damages for loss of a bargain and not as a penalty an amount equal to the excess, if any, of the Casualty Value as of the rental payment date on or next preceding the date of termination over the net proceeds of the sale of the Equipment if sold or, if not sold at such time, the amount the Lessor reasonably estimates to be the net sales proceeds of such Unit at such time.

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

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

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

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

#### § 11. RETURN OF UNITS UPON DEFAULT

11.01. Return of Units upon Default. If this Lease shall terminate pursuant to § 10 hereof, the Lessee

shall forthwith deliver possession of the Units to the Lessor. Each Unit so delivered shall be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted. For the purpose of delivering possession of any Unit or Units to the Lessor as above required, the Lessee shall, at its own expense and risk, forthwith and in the usual manner (including, without limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any Unit has been interchanged to return such Unit so interchanged), cause (a) if requested by the Lessor, the Units to be detached from each unit of railroad rolling stock to which it has been attached, (b) the Units to be moved to such point or points on its lines as shall be designated by the Lessor and shall there deliver the Units or cause them to be delivered to the Lessor and (c) the Units to be moved to such interchange point or points of the Lessee as shall be designated by the Lessor upon any sale, lease or other disposal of all or any part of the Units by the Lessor. At the option of the Lessor, the Lessor may keep the Units on any of the lines or premises of the Lessee until the Lessor shall have leased, sold or otherwise disposed of the same, and for such purpose the Lessee agrees to furnish, without charge for rent or storage, the necessary facilities at any point or points selected by the Lessor reasonably convenient to the Lessee and, at the Lessee's risk, to permit inspection of the Units by the Lessor, the Lessor's representatives and prospective purchasers and users. The movement and storage of such Units shall be at the expense and risk of the Lessee without charge to the Lessor for insurance, which shall be provided by Lessee until expiration of Lessee's obligations under this § 11 pursuant to § 7 of this Lease. During any storage period, Lessee will, at its own cost and expense, maintain and keep the Units in good order and repair pursuant to § 7 of this Lease. This agreement to detach and deliver the Units and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties and, upon application to any court of equity having competent jurisdiction, the Lessor shall be entitled to a decree against the Lessee requiring specific performance thereof. The Lessee hereby expressly waives any and all claims against the Lessor and its agent or agents for damages of whatever nature in connection with any retaking of any Units in any reasonable manner.

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

the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor. In the event any Unit is not detached, delivered and stored as hereinabove provided within 30 days after such termination, the Lessee shall, in addition, pay to the Lessor for each day thereafter an amount equal to the amount, if any, by which 0.04182% of the Purchase Price of such Unit exceeds the actual earnings received by the Lessor on such Unit for each such day.

11.02. Lessor as Agent of Lessee. Without in any way limiting the obligation of the Lessee under the foregoing provisions of this § 11, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

## § 12. ASSIGNMENT; POSSESSION AND USE

12.01. Assignment by Lessor. This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. All the rights of the Lessor hereunder shall inure to the benefit of the Lessor's assigns (including the Vendor to the extent provided in the Lease Assignment).

12.02. Possession and Use. So long as the Lessee shall not be in default under this Lease and no event of default shall exist under the CSA, the Lessee shall be entitled to the possession and use of the Units by it or any affiliate upon lines of railroad owned or operated by it or any such affiliate or upon lines of railroad over which the Lessee or any such affiliate has trackage or other operating rights or over which railroad equipment of the Lessee or any such affiliate is regularly operated pursuant to contract, and also to permit the use of the Units upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements, but only upon and subject to all the terms and

conditions of this Lease and the CSA; provided, however, that the Lessee shall not use or permit to be used any Unit, or assign or permit the assignment of any Unit to service involving any use thereof, outside the United States of America within the meaning of section 861 of the Code, except for temporary use in Canada or Mexico for not more than 90 days in any calendar year and provided further that the Lessee shall not assign or transfer its leasehold interest in this Lease except as provided herein without the prior written consent of the Lessor and the Vendor. The Lessee may receive and retain compensation for such use from other railroads so using any of the Units.

12.03. Sublease. The Lessee shall have the right to sublease any or all of the Units from time to time to The Chesapeake and Ohio Railway Company or Western Maryland Railway Company, for terms not to extend beyond the term of this Lease, but only upon and subject to all the terms and conditions of this Lease and of the CSA; 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 an Event of Default hereunder and that no such sublease shall relieve the Lessee of its obligations to the Lessor under this Lease.

12.04. Merger. Nothing in this § 12 shall be deemed to restrict the right of the Lessee to assign or transfer its interest under this Lease in the Units or possession of the Units to any railroad corporation incorporated under the laws of any state of the United States of America or the District of Columbia (which shall have duly assumed the obligations of the Lessee hereunder and under the Participation Agreement and the Consent) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety; provided that such assignee or transferee will not, upon the effectiveness of such merger, consolidation or acquisition, be in default under any provision of this Lease.

### § 13. RENEWAL; DUTY TO FIRST OFFER

13.01. Renewal. Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may by written notice delivered to the Lessor not less than 180 days prior to the end of the original term of this Lease elect to extend

the term of this Lease in respect of all but not less than all of the Units then covered by this Lease for an additional two-year period commencing on the scheduled expiration of such original term at a rental payable in semiannual payments on January 1 and July 1 in each year equal to the Fair Market Rental (as defined in § 13.02 hereof).

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

13.03. Appraisal. If, after 35 days from the giving of notice by the Lessee of the Lessee's election to extend the term of this Lease as provided in § 13.01 hereof, the Lessee and the Lessor are unable to agree upon a determination of Fair Market Rental, either party to such determination may give written notice to the other requesting determination of such value by an appraisal procedure and the parties shall consult for the purpose of appointing a qualified independent appraiser by mutual agreement. If no such appraiser is so appointed within 20 business days after such notice is given, each party shall appoint an independent appraiser within 25 business days after such notice is given and the two appraisers so appointed shall appoint a third independent appraiser within 30 business days after such notice is given. If no such third appraiser is appointed within 30 business days after such notice is given, either party may apply to make such appointment to the American Arbitration Association and both parties shall be bound by any appointment so made. Each appraiser or appraisers appointed pursuant to the foregoing procedure shall be instructed to determine the Fair Market Rental of the Units subject to the proposed extended term within 90 days after his or her appointment. If the parties shall have appointed a single appraiser or if either party shall have failed to appoint an appraiser, the determination of the single appraiser appointed shall be final. If three appraisers shall be appointed, the determination of the appraiser which differs most from the other two appraisers shall be excluded, the remaining two determinations shall be averaged and such

latter average shall be final and binding upon the parties hereto. The appraisal proceedings shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association as in effect on the date hereof, except as modified hereby. The provisions for this appraisal procedure shall be the exclusive means of determining Fair Market Rental and shall be in lieu of any judicial or other procedure for the determination thereof. The expenses of the appraisal procedure shall be borne equally by the Lessee and the Lessor.

13.04. Duty to First Offer. Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, in the event that the Lessor elects to sell the Units to third parties at the expiration of the original or an extended term of this Lease, the Lessor shall give the Lessee at least 10 business days' prior written notice of such intention prior to the expiration of such term. The Lessee shall have the sole right and option to purchase all but not less than all the Units then subject to this Lease at the Fair Market Value thereof. The Lessee shall irrevocably exercise such purchase right by delivery to the Lessor of a written notice within 10 business days from receipt of such notice from the Lessor, specifying a date of purchase not later than the later of 10 business days after the date of delivery of such notice by the Lessee to the Lessor or 90 days after the expiration of such term of this Lease. In the event that the Lessee shall have delivered a notice of its election to purchase such Units, this Lease (including the obligation to pay rent) shall be extended upon the same terms and conditions set forth herein from the date such notice is delivered to the Lessor until the date of such purchase.

Upon payment of the purchase price of any Unit, the Lessor shall upon request of the Lessee execute and deliver a bill of sale (without recourse, representations or warranties of any kind) for such Unit to the Lessee or to the Lessee's assignee or nominee such as will transfer to the Lessee such title to such Unit as the Lessor derived from the Vendor, free and clear of all liens, security interests and other encumbrances arising through the Lessor not arising out of the transactions contemplated herein.

13.05. Fair Market Value. Fair Market Value shall be equal to the value which would be obtained in an arm's-length transaction between an informed and willing buyer (other than a lessee currently in possession) and an

informed and willing seller under no compulsion to sell and, in such determination, costs of removal from the location of current use shall not be a deduction from such value. If on or prior to the valuation date the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Value of the Units, such value shall be determined in accordance with the appraisal procedure set forth in § 13.03 hereof.

#### § 14. RETURN OF UNITS UPON EXPIRATION OF TERM

14.01. Return of Units. The Lessor intends to retain the Units for re-lease at the expiration of the term of this Lease. As soon as practicable on or after the expiration of the original or extended term of this Lease with respect to any Unit not purchased by the Lessee, the Lessee will, at its own cost and expense, at the request of the Lessor, detach each Unit from the unit of railroad rolling stock to which it had been attached and deliver possession of such Unit to the Lessor at such point or points on its lines as the Lessor may designate or, in the absence of such designation, as the Lessee may select; provided, however, that if so instructed in writing by the Lessor at least 30 days prior to such expiration, the Lessee will, on or prior to the last business day of each consecutive calendar month following such expiration, deliver to the Lessor not more than 56 Units (or such other number as may be agreed to by the Lessor) under this Lease. If the Lessor gives such instruction to the Lessee, the Lessee shall pay as rent to the Lessor for each Unit not delivered upon the expiration of the original or extended term of this Lease in accordance with such instruction an amount equal to 50% of one-sixth of the average rental rate per Unit set forth in § 3.01 hereof for each month (or part thereof) subsequent to such expiration, payable on the last business day of the month in which the Unit is returned.

Subsequent to the expiration of the term of this Lease and prior to delivery of any Unit to the Lessor, all terms and conditions of this Lease (except as provided above) shall continue to apply to such Unit.

14.02. Storage. The Lessee shall permit the Lessor to store the Units at such point or points on the Lessee's lines as the Lessee may select, in facilities furnished by the Lessee, for a period not exceeding 90

days after the delivery of the last Unit to the Lessor, and shall transport all such Units on a one time basis at any time within such 90-day period to any reasonable place on the lines of railroads operated by the Lessee or to any connecting carrier for shipment, all as directed by the Lessor. The movement and storage of such Units shall be at the expense and risk of the Lessee without charge to the Lessor for insurance, which shall be provided by Lessee until expiration of Lessee's obligations under this § 14 pursuant to § 7 hereof. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser, lessee or user of such Unit, to inspect the same.

14.03. Condition of Units. Each Unit returned to the Lessor pursuant to this § 14 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted, (ii) meet the standards then in effect under the Applicable Laws and (iii) have removed, at the Lessee's expense, all additions, modifications and improvements owned by the Lessee.

14.04. Specific Performance. The detaching, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having competent jurisdiction, the Lessor shall be entitled to a decree against the Lessee requiring specific performance thereof. The Lessee shall defend and indemnify the Lessor against any damages, cost or liability incurred by the Lessor as a consequence of Lessee's failure to perform in accordance with the terms of this Section.

#### § 15. INCOME TAX INDEMNITY

15.01. Assumptions. (1) The parties hereto agree that the Owner, as the beneficial owner of each Unit, shall be entitled to such deductions, credits and other benefits as are provided by the Code and state and local taxing statutes to an owner of property, including without limitation (i) deductions for depreciation of each Unit under section 167 of the Code computed on the basis (A) that each such Unit will have a basis under section 167(g) of the Code at least equivalent to the Purchase Price and such other transaction expenses as are properly includible in the basis of such Unit, (B) of the double-declining balance method of depreciation authorized

by section 167(b)(2) of the Code with respect to the amount of the aggregate Purchase Price of the Units, switching to the sum-of-the-years digits method of depreciation authorized by section 167(b)(3) of the Code when most beneficial to the Owner without obtaining the consent of the Commissioner of Internal Revenue in accordance with Treasury Regulation § 1.167(a)-11(c)(1)(iii), (C) of the asset depreciation range system of Treasury Regulation § 1.167(a)-11, (D) of an asset depreciation period of 12 years and (E) of a net salvage value of zero after the reduction permitted by section 167(f) of the Code (the "ADR Deductions"); (ii) deductions with respect to interest payable on the CSA Indebtedness (the "Interest Deductions"); and (iii) investment credit pursuant to section 38 of the Code at least equal to 10% of the Purchase Price and such other transaction expenses as are properly includible in the basis of each Unit (the "Investment Credit").

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

(3) The Lessee agrees that neither it nor any corporation controlled by it, in control of it or under common control with it, directly or indirectly, will at any time take any action or file any returns or other documents inconsistent with the foregoing clauses (1) and (2) of this § 15.01 and that the Lessee and any corporation controlled by it, in control of it or under

common control with it, directly or indirectly, will file such returns, take such actions and execute such documents as may be reasonable and necessary to facilitate accomplishment of the intent hereof.

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

(A) when delivered and accepted under this Lease, the Units will not have been used by any person so as to preclude "the original use of such property" within the meaning of Sections 48(b) and 167(c)(2) of the Code from commencing with the Owner;

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

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

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

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

(F) at all times during the original term of this Lease and renewal periods thereof, the Owner will be entitled to treat, for Federal income tax purposes, each item of income, deduction and credit relating to all Units subject to the CSA and this

Lease as being derived from or allocable to sources within the United States of America;

(G) when delivered and accepted under this Lease, the Units will require no improvements, modifications, or additions (other than ancillary items of removable equipment of a kind that customarily are selected and furnished by purchasers or lessees of auto racks) in order to be rendered complete for their intended use by the Lessee;

(H) at the time the Units are delivered and accepted under this Lease and related documents, the Lessee shall have been fully reimbursed for all costs incurred with respect to the Units, and neither the Lessee, any affiliate thereof nor any other person will have made any investment in the Units in violation of Revenue Procedure 75-21, 1975-1 C.B. 715, as modified in Revenue Procedure 79-48, 1979-2, C.B. 529.

(2) In the opinion of the Lessee, each Unit will have an estimated useful life of not less than 13-1/2 years and fair market value at the end of the original lease term (without including in fair market value for this purpose any increase or decrease for inflation or deflation, and after subtracting from such value any cost for removal and delivery of possession of the Unit at the end of such lease term) equal to at least 22.6% of the Purchase Price of such Unit and each Unit will be useful and usable by a party other than the Lessee at the end of the original term and capable of continued leasing and transfer to another party at that time and it will be commercially feasible to do so.

15.03. Indemnity for Acts, Omissions or Misrepresentations. (1) If by reason of any act of commission or omission, misrepresentation, breach of any agreement, covenant or warranty contained in this Lease or any other agreement relating to the lease of the Units on the part of the Lessee or any party referred to in clause (3) of § 15.01 hereof or by any sublessee or assignee of the Lessee, the Owner shall lose the right to claim, shall

not claim (as the result of a good faith determination of tax counsel of General Electric Company (the "Tax Counsel") that such claim is not allowable), shall suffer a disallowance of or shall be required to recapture all or any portion of its proportionate share of the Investment Credit, the Interest Deductions or the ADR Deductions (any such event is called a "Loss"), then the Lessee shall pay to the Owner as an indemnity, on the next succeeding rental payment date hereunder after written notice to the Lessee by the Owner of such Loss (or, if this Lease is terminated, within 30 days after demand), and on each rental payment date thereafter during the remaining term of this Lease, such amount or amounts as shall cause the Owner's Net Economic Return to equal the Net Economic Return that would have been realized by the Owner if such Loss had not occurred.

(2) In the event that the Owner suffers a Loss and the Owner and the Lessee are unable to agree on the indemnity amount required to restore the Owner's Net Economic Return, as aforesaid, then the Lessee shall pay to the Owner, in lieu of the amount provided for in clause (1) of this Section, such amount or amounts from time to time as, after deduction of all taxes required to be paid by the Owner in respect of the receipt of such amounts under the laws of any Federal, state, local or foreign government or taxing authority, shall be equal to the sum of the aggregate additional Federal, state or local income taxes payable by the Owner from time to time as a result of any such Loss plus the amount of any interest, penalties or additions to tax payable as a result of any such Loss. If, as a result of a Loss, the aggregate Federal, state or local income taxes paid by the Owner for any taxable year shall be less than the amount of such taxes which would have been payable by the Owner had no such Loss occurred, then the Owner shall pay the Lessee the amount of such difference in taxes plus any additional tax benefits realized by the Owner as the result of such payment; provided, however, that the Owner shall not be obligated to make any payment pursuant to this sentence to the extent that the amount of such payment would exceed (x) the amount of all prior payments by the Lessee to the Owner pursuant to this clause (2) in respect of a Loss less (y) the amount of all prior payments by the Owner to the Lessee hereunder. The amount payable to the Owner pursuant to this clause (2) shall be paid within 30 days after receipt of a written demand therefor from the Owner accompanied by a written statement describing in reasonable detail such Loss and the computation of the amount so payable (but not prior to the earlier of (i) the filing of a return or the acceptance of an audit report in which

such Loss is reflected and (ii) the payment of the additional income tax that becomes due as the result of the Loss and, in the case of amounts which are being contested in accordance with § 15.04 hereof, not prior to the time provided in such Section). Any payment due to the Lessee from the Owner pursuant to this clause (2) shall be paid within 30 days after the Owner realized any such savings in its income taxes or additional tax benefits, as the case may be.

(3) If the Owner is required by the Internal Revenue Service to include in its gross income an amount in respect of any replacement, improvement and/or addition to any Unit or as the result of any action taken by the Lessee or any sublessee or assignee of the Lessee ("Capital Expenditures"), then the Lessee shall pay directly to the Owner, as an indemnity, in immediately available funds, such amount or amounts which, after deduction of all taxes required to be paid by the Owner in respect of the receipt of such amounts under the laws of any Federal, state or local government or taxing authority of the United States of America, shall be equal to the sum of the aggregate additional Federal, state or local income taxes payable by the Owner from time to time as a result of such Capital Expenditure plus the amount of any interest, penalties or additions to tax payable as a result of any such Capital Expenditure. If as a result of any such Capital Expenditure the aggregate Federal, state or local income taxes paid by the Owner for any taxable year shall be less than the amount of such taxes which would have been payable by the Owner had no such Capital Expenditure been made, then the Owner shall pay the Lessee the amount of such savings in taxes plus any additional tax benefits realized by the Owner as a result of such payment; provided, however, that the Owner shall not be obligated to make any payment pursuant to this sentence to the extent that the amount of such payment would exceed (x) the amount of all prior payments by the Lessee to the Owner pursuant to this clause (3) in respect of any Capital Expenditures less (y) the amount of all prior payments by the Owner to the Lessee hereunder. The amount payable to the Owner pursuant to this clause (3) shall be paid within 30 days after receipt of a written demand therefor from the Owner (but not prior to payment by the Owner of the additional Federal, state or local income tax, as the case may be, which becomes due as a result of the said inclusion) accompanied by a written statement describing in reasonable detail such inclusion and the computation of

the amount so payable. Any payment due to the Lessee from the Owner pursuant to this clause (3) shall be paid within 30 days after the Owner realizes any such savings in its income taxes or additional tax benefits, as the case may be. The Lessee agrees to give the Owner, within 30 days after request therefor, written notice describing in reasonable detail Capital Expenditures made and specifying the cost thereof with respect to each Unit if such information is required in connection with an audit by the Internal Revenue Service of the tax returns of the Owner.

15.04. Contest Provisions. (1) If the Internal Revenue Service shall propose an adjustment in the Federal income taxes of the Owner for which the Lessee would be required to indemnify the Owner pursuant to § 15.03 hereof and the amount of the indemnity which the Lessee would be required to pay would exceed \$100,000 then, if requested by the Lessee in a timely written request, the Owner shall request an opinion from Tax Counsel as to whether the basis in law and in fact in favor of allowance of the item proposed to be adjusted outweighs the basis in law and in fact to the contrary. If the opinion is to that effect and if the Lessee promptly requests the Owner to do so, the Owner shall contest the proposed adjustment; provided, however, that Tax Counsel shall determine in its sole and reasonable discretion the nature of all action to be taken to contest such proposed adjustment including (A) whether any action to contest such proposed adjustment shall initially be by way of judicial or administrative proceedings, or both, (B) whether any such proposed adjustment shall be contested by resisting payment thereof or by paying the same and seeking a refund thereof, and (C) if the Owner shall undertake judicial action with respect to such proposed adjustment, the court or other judicial body before which such action shall be commenced. The Owner shall have full control over any contest pursuant to this Section and shall not be obligated to appeal an adverse determination by any court. At any time, whether before or after commencing to take the action set forth in this Section, the Owner may decline to take such action by notifying the Lessee in writing that the Lessee is relieved of its obligation to indemnify the Owner with respect to the adjustment proposed by the Internal Revenue Service or such portion thereof as may be specified in such notice.

(2) The Owner shall not be required to take any action pursuant to this Section unless and until the Lessee shall have agreed to indemnify the Owner in a manner reasonably satisfactory to the Owner for any liability or loss which the Owner may incur as a result of contesting the validity of any proposed adjustment and shall have agreed to pay to the Owner on demand all costs and expenses which the Owner may incur in connection with contesting such proposed adjustment (including reasonable fees and disbursements of counsel selected by the Owner). If the Owner determines to contest any adjustment by paying the additional tax and suing for a refund, the Lessee shall pay to the Owner an amount equal to the sum on an after-tax basis of any tax, interest, penalties and additions to tax which are required to be paid. Upon receipt by the Owner of a refund of any amounts paid by it in respect of which amounts it shall have been paid an equivalent amount by the Lessee, the Owner shall pay to the Lessee the amount of such refund together with any interest received by it on such amount. The Lessee shall be obligated to pay to the Owner the amount specified in § 15.03 hereof promptly after the Owner has taken all the action that it has agreed in this § 15.04 to take.

15.05. Foreign Tax Credit Indemnity. If any item of income or deduction with respect to the Units shall not be treated as derived from or allocable to sources within the United States of America for a given taxable year (any such event is called a "Foreign Loss"), then the Lessee shall pay to the Owner as an indemnity, on the next succeeding rental payment date after written notice to the Lessee by the Owner, such amount which after deduction of all taxes required to be paid by the Owner in respect of the receipt of such amounts under the laws of any Federal, state or local government or taxing authority of the United States of America shall equal the sum of (1) the excess of (x) the foreign tax credits which the Owner would have been entitled to for such year had no such Foreign Loss occurred over (y) the foreign tax credit to which the Owner was limited as a result of such Foreign Loss and (2) the amount of any interest, penalties or additions to tax payable as a result of such Foreign Loss.

15.06. Exceptions. Notwithstanding the foregoing provisions, the Lessee shall not be required to indemnify the Owner with respect to any Loss or Foreign Loss that results solely and directly from (i) a Casualty

Occurrence, if the Lessee has made all payments with respect thereto that are required to be made pursuant to § 6 hereof; (ii) a voluntary disposition by the Owner of its beneficial interest in any Unit, if such disposition (x) shall be the direct cause of such Loss or Foreign Loss with respect to such Unit, (y) shall occur at a time while no Event of Default (and no event that with notice or lapse of time or both would constitute an event of Default) has occurred and is continuing, and (z) shall not be pursuant to the written consent of the Lessee; (iii) the failure of the Owner to claim the proper credit or deductions contemplated by § 15.01 hereof unless the Owner shall have been so advised by Tax Counsel; (iv) the failure of the Owner to have sufficient Federal income tax liability against which to apply such credits or sufficient income to benefit from such depreciation or interest deductions; or (v) any change in the Code, the income tax regulations thereunder or published administrative or judicial interpretations of the Code or such regulations which is not enacted or does not have an effective date on or prior to December 31, 1980.

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

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

15.09. Additional Definitions. For purposes of this § 15, the term "Owner" shall include General Electric

Credit Corporation and shall also include any member of an affiliated group, within the meaning of section 1504 of the Code, of which General Electric Credit Corporation is or may become a member, if consolidated returns are filed for such affiliated group for Federal income tax purposes.

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

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

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

15.13. Tax Indemnity Provisions Attach at Date of Execution. The provisions of this § 15 shall apply from the time of execution of this Lease, the Participation Agreement and the CSA, whether or not the other provisions of this Lease come into effect.

## § 16. FILING

The Lessee will cause this Lease, the Lease Assignment, the CSA and the CSA Assignment to be filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303. The Lessee will further cause this Lease and appropriate financing statements or continuation statements to be filed and (from time to time when required) refiled in accordance with the applicable provisions of the Uniform Commercial Code as in effect in the State of Maryland (and, if the Lessee changes its

principal place of business to a different state, in any such other state) in like manner as if the Lessor's interest in this Lease represented a security interest and in any other state of the United States of America or the District of Columbia where filing is 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 interests in the Units and their rights under this Lease. The Lessee, at its expense, will undertake or cause to be undertaken the filings with the Interstate Commerce Commission and the State of Connecticut required of the Lessor under the CSA and will from time to time perform any other act and will execute, deliver and file any and all further instruments required by law or reasonably requested by the Lessor or the Vendor for the purposes specified in this Section. The Lessee will promptly furnish or cause to be furnished to the Vendor and the Lessor evidence of all such filing and, in connection with all filings other than the initial filings with respect thereto, an opinion of counsel with respect thereto satisfactory to the Vendor and the Lessor. This Lease and the CSA shall be filed and recorded with the Interstate Commerce Commission and financing statements in respect of the interests of the Vendor in the Units, the CSA and the Lease shall have been filed in accordance with the Uniform Commercial Code as in effect in the States of Maryland and Connecticut prior to the delivery and acceptance hereunder of any Unit.

#### § 17. INTEREST ON OVERDUE AMOUNTS

The Lessee shall promptly pay an amount equal to interest at the rate of 12-3/8% per annum on any overdue rentals or other obligations hereunder for the period of time during which they are overdue, or such lesser amount as may be legally enforceable.

#### § 18. NOTICES

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

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

Trust Department, with a copy to the Owner at its address set forth in the Participation Agreement; and

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

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

§ 19. SEVERABILITY; HEADINGS;  
EFFECT AND MODIFICATION OF LEASE

19.01. Severability. Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall be ineffective as to such jurisdiction 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.

19.02. Headings. All Section headings are inserted for convenience only and shall not affect any construction or interpretation of this Lease.

19.03. 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 with respect thereto. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized signatories for the Lessor and the Lessee.

§ 20. DEFINITIONS

If and so long as this Lease is assigned to the Vendor (or any successor thereto) for collateral purposes, wherever the term "Lessor" is used in this Lease it shall include the Vendor and any successors thereto (unless the context shall otherwise require) but the Vendor shall not

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

#### § 21. EXECUTION

This Lease may be executed in several counterparts, all of which together shall constitute a single instrument, but the counterpart delivered to the Vendor shall be deemed to be the original. Although for convenience this Lease is dated as of the date first set forth above, the actual dates of execution hereof by the parties hereto are the dates stated in the acknowledgments hereto.

#### § 22. GOVERNING LAW

The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of Maryland; provided, however, that the parties shall be entitled to all rights arising out of the filing hereof and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Lease or any assignment hereof shall be filed.

#### § 23. LESSOR'S RIGHT TO PERFORM FOR LESSEE

If the Lessee fails to perform or comply with any of its agreements contained herein, the Lessor may upon notice to the Lessee perform or comply with such agreement. The Lessee shall pay on demand the amount of the reasonable cost and expenses of the Lessor incurred in connection with such performance or compliance, together with interest thereon at the rate specified in § 17 hereof. No such performance or compliance by the Lessor shall be deemed a waiver of the rights and remedies of the Lessor against the Lessee hereunder or be deemed to cure the default of the Lessee hereunder (but if such default is cured within the time periods set forth in § 10.01 hereof, such default shall not constitute an Event of Default hereunder for purposes of Section 15.01(f) of the CSA).

§ 24. IMMUNITIES; NO RECOURSE

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

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

IN WITNESS WHEREOF, the parties hereto have

caused this instrument to be executed by duly authorized officers as of the date first set forth above.

THE BALTIMORE AND OHIO  
RAILROAD COMPANY,

by

\_\_\_\_\_  
Assistant Vice President  
and Treasurer

[Corporate Seal]

Attest:

\_\_\_\_\_  
Assistant Secretary

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

by

[Corporate Seal]

Attest:

\_\_\_\_\_



SCHEDULE A TO THE LEASE

Units Leased

<u>Type</u>	<u>Quantity</u>	<u>Lessee's Numbers (Inclusive)</u>
Fully Enclosed Tri-Level Auto Racks	167	RP428-RP594

SCHEDULE B TO THE LEASE

Casualty Values

<u>Date</u>	<u>Percentage of Purchase Price</u>
January 1, 1981	89.95
July 1, 1981	90.67
January 1, 1982	90.11
July 1, 1982	89.20
January 1, 1983	87.96
July 1, 1983	87.52
January 1, 1984	85.77
July 1, 1984	83.72
January 1, 1985	81.38
July 1, 1985	78.75
January 1, 1986	75.86
July 1, 1986	71.33
January 1, 1987	66.53
July 1, 1987	61.46
January 1, 1988	56.14
July 1, 1988	50.58
January 1, 1989	44.78
July 1, 1989	38.79
January 1, 1990	32.64
July 1, 1990,	26.37
January 1, 1991	20.00

The percentages set forth above have been computed without regard to recapture of the Investment Credit. Consequently, the Casualty Value of any Unit suffering a Casualty Occurrence on or before the third, fifth or seventh anniversary of the date of delivery and acceptance thereof shall be increased as follows:

<u>Anniversary of the Date of the Certificate of Acceptance</u>	<u>Percentage of Purchase Price to be Added</u>
Third	19.231
Fifth	12.821
Seventh	6.411

ANNEX D  
to the  
CONDITIONAL SALE AGREEMENT

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[CS&M Ref. 5415-003]

ASSIGNMENT OF LEASE AND AGREEMENT

Dated as of July 1, 1980

Between

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

and

MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY,  
as Agent.

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ASSIGNMENT OF LEASE AND AGREEMENT dated as of July 1, 1980, between THE CONNECTICUT BANK AND TRUST COMPANY, a Connecticut banking corporation, not in its individual capacity but solely as trustee (the "Lessor") under a Trust Agreement dated as of the date hereof (the "Trust Agreement") with GENERAL ELECTRIC CREDIT CORPORATION (the "Owner"), and MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, a Maryland banking corporation, as Agent (the "Vendor") under a Participation Agreement dated as of the date hereof (the "Participation Agreement").

The Lessor has entered into a Conditional Sale Agreement dated as of the date hereof (the "CSA") with WHITEHEAD & KALES COMPANY (the "Builder") providing for the sale to the Lessor of such units of railroad equipment (the "Units") described in Annex B thereto as are delivered to and accepted by the Lessor thereunder.

The Lessor and the Lessee have entered into a Lease of Railroad Equipment dated as of the date hereof (the "Lease"), providing for the leasing by the Lessor to the Lessee of the Units.

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

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

1. Assignment; Application of Payments. The Lessor hereby assigns to the Vendor, as collateral security for the payment and performance of the obligations of the Lessor under the CSA, all the Lessor's right, title and interest, powers, privileges, and other benefits under the Lease, including without limitation the immediate right to

receive and collect all rentals, profits and other sums payable to or receivable by the Lessor from the Lessee pursuant to the provisions of the Lease, whether as rent, casualty payment, indemnity (except its rights under §§ 6, 9.03, 13, 15 and 23 of the Lease), liquidated damages or otherwise (such moneys are called the "Payments"), and the right to make all waivers and agreements and to give all notices, consents and releases (subject to Section 12 hereof), 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 Lessor is or may become entitled to do under the Lease. Notwithstanding the foregoing, Payments shall not be deemed to include payments made by the Lessee to the Lessor pursuant to §§ 6, 9.03, 13, 15 and 23 of the Lease (except indemnification payments intended to satisfy the obligations of the Lessor to indemnify the Vendor pursuant to Articles 6 and 13 of the CSA). In furtherance of the foregoing assignment, the Lessor hereby irrevocably authorizes and empowers the Vendor in its own name or in the name of its nominee or in the name of the Lessor or as its attorney to demand, sue for and receive any and all sums to which the Lessor 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 Lessor pursuant to the Lease. To the extent received, the Vendor will apply such Payments to satisfy the obligations of the Lessor under the CSA then due and payable, and so long as no event of default (or event which with notice or lapse of time or both could constitute an event of default) under the CSA shall have occurred and be continuing, any balance shall be paid to the Lessor, in immediately available funds, not later than the first business day following receipt of such balance. If the Vendor shall not receive any rental payment under § 3.01 of the Lease when due, the Vendor shall promptly notify the Lessor and the Owner at the addresses set forth in the Participation Agreement; provided, however, that the failure of the Vendor so to notify the Lessor shall not affect the obligations of the Lessor hereunder or under the CSA.

2. No Assumption of Lessor's Liabilities. This Assignment is executed only as security and, therefore, the

execution and delivery of this Assignment shall not subject the Vendor to or in any way affect or modify the liability of the Lessor under the Lease, it being agreed that all obligations of the Lessor to the Lessee shall be and remain enforceable by the Lessee and its successors and assigns against and only against the Lessor or persons other than the Vendor.

3. No Modification of Lease Without Vendor's Consent. The Lessor agrees that, without the written consent of the Vendor, the Lessor will not anticipate the rents under the Lease or waive 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 or terminating the Lease and the Lessor agrees that any amendment or termination thereof without such consent shall be void; provided, however, that the Lessor may amend or supplement the Lease to provide for an increase or decrease of amounts due as rentals or Casualty Values under § 3.02 or 15.08 thereof, provided that no such decrease shall reduce said amounts below that which are necessary to satisfy the obligations of the Lessor under the CSA.

4. Vendor To Act for Lessor. The Lessor hereby constitutes the Vendor the Lessor's true and lawful attorney, irrevocably, with full power (in the name of the Lessor or otherwise), to demand and receive any and all Payments to which the Lessor 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 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.

5. Termination of Assignment. Upon the full discharge and satisfaction of all amounts due from the Lessor under the CSA and the Participation Agreement (without giving effect to any limitations of liability contained therein), this Assignment and all rights herein assigned to the Vendor shall terminate, and all right, title and interest of the Vendor in and to the Lease shall revert to the Lessor.

6. Filing. The Lessor will, from time to time, perform any other act and will execute, 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. Assignments by Vendor. 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 Lessor 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 Lessor and the Lessee may rely on instruments of assignment which they believe in good faith to be true and authentic.

8. Liens. The Lessor will pay and discharge any and all taxes, claims, liens, charges or security interests (other than those created by the CSA) on the Lease or the rentals or other payments due or to become due thereunder claimed by any party from, through or under the Lessor or its successors and assigns (other than the Vendor), not arising out of the transactions contemplated by the CSA or the Lease (but including tax liens arising out of the receipt by or for the account of the Lessor of the rentals and other payments under the Lease and any other proceeds from the Units) which, if unpaid, might become a claim, lien, charge or security interest on or with respect to the Lease or such rentals or other payments, unless the Lessor shall be contesting the same in good faith by appropriate proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect such interests of the Vendor.

9. Governing Law. This Assignment shall be governed by the laws of the State of Connecticut, but the parties shall be entitled to all rights conferred by the

laws of the several jurisdictions in which this Assignment shall be filed.

10. Notices. The Lessor 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 the CSA or at such other address as the Vendor shall designate.

11. No Action by Vendor Without Event of Default. The Vendor agrees that it will not, so long as no Event of Default under the Lease or event of default under the CSA has occurred and is continuing, exercise or seek to exercise any of the rights, powers, privileges or benefits which are assigned and transferred by the Lessor to the Vendor by this Assignment, except the right to receive and apply the Payments as provided in Section 1 hereof, and that, subject to the terms of the Lease and the CSA, the Lessor may, so long as no event of default under the CSA or Event of Default under the Lease has occurred and is continuing, exercise or seek to exercise such rights, powers, privileges or benefits; provided, however, that the Lessor shall not take any action which would terminate the Lease without the prior written consent of the Vendor.

12. Retained Rights of Lessor. Notwithstanding any other provision of this Assignment, and so long as there is no event of default under the CSA, and to the extent that the Vendor does not seek to receive and collect any Payments under the Lease in excess of the amounts required to discharge the obligations of the Lessor under the CSA, the terms of this Assignment shall not limit or in any way affect the Lessor's right to receive and collect any Payments under the Lease in excess of the obligations of the Lessor under the CSA, or empower the Vendor in any way to waive or release the Lessee's obligation to pay such excess amounts, and the Lessor shall continue to be empowered to demand, sue for and receive any and all of such excess amounts, but shall not take any action under § 10.01(b) of the Lease without the prior written consent of the Vendor.

13. Limitation of Liability. Each and all of the warranties, representations, undertakings and agreements herein made on the part of the Lessor are made and

intended not as personal representations, warranties, undertakings and agreements by The Connecticut Bank and Trust Company or for the purpose or with the intention of binding said bank personally but are made and intended for the purpose of binding only the Trust Estate (as such term is used in the Trust Agreement), and this Assignment is executed and delivered by said bank solely in the exercise of the powers expressly conferred upon said bank as trustee under the Trust Agreement, and no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against said bank, except for wilful misconduct or gross negligence on the part of said Bank, or against the Owner hereunder (except pursuant to Section 1.03 and the last paragraph of Section 5.01 of the Trust Agreement) or on account of any representation, warranty, undertaking or agreement of said bank or the Owner, either expressed or implied, all such personal liability (except as aforesaid), if any, being expressly waived and released by the Vendor and by all persons claiming by, through or under the Vendor; provided, however, that the Vendor or any person claiming by, through or under it making claim hereunder may look to said Trust Estate for satisfaction of the same.

14. Execution. 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. Although for convenience this Assignment is dated as of the date first set forth above, the actual dates of execution are the dates stated in the acknowledgments hereto.

15. Headings. Section headings have been provided for convenience only and do not form part of this instrument.

IN WITNESS WHEREOF, the parties hereto have

caused this instrument to be executed by duly authorized officers as of the date first set forth above.

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

[Corporate Seal]

by

\_\_\_\_\_

Attest:

\_\_\_\_\_

MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, as Agent under the Participation Agreement,

[Corporate Seal]

by

\_\_\_\_\_  
Assistant Vice President

Attest:

\_\_\_\_\_  
Corporate Trust Officer

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

On this day of August 1980, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is of THE CONNECTICUT BANK AND TRUST COMPANY, a Connecticut banking corporation, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

Notary Public

[Notarial Seal]
My Commission expires

STATE OF MARYLAND,)
) ss.:
CITY OF BALTIMORE,)

On this day of August 1980, before me personally appeared RUSSELL E. SCHREIBER, 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, a Maryland banking corporation, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

Notary Public

[Notarial Seal]
My Commission expires

## LESSEE'S CONSENT AND AGREEMENT

THE BALTIMORE AND OHIO RAILROAD COMPANY (the "Lessee"), the lessee named in the Lease of Railroad Equipment (the "Lease") referred to in the foregoing Assignment of Lease and Agreement (the "Assignment"), hereby acknowledges receipt of a copy of the Assignment and consents to all the terms and conditions of the Assignment and agrees that:

(1) it will pay all Payments (as defined in the Assignment) payable under the Lease directly to Mercantile-Safe Deposit and Trust Company, as Agent (the "Vendor"), the assignee named in the Assignment, by 11:00 a.m. Baltimore time, on the date such payment is due, by bank wire transfer of immediately available funds to The Annapolis Banking and Trust Company, Main Street and Church Circle, Annapolis, Maryland, for credit to the Agent's Account No. 52076-1, with a request that The Annapolis Banking and Trust Company advise Mrs. K. M. Tollberg, Assistant Vice President, Mercantile-Safe Deposit and Trust Company, Baltimore, Maryland, that the funds are "RE: B&O 7/1/80" (or at such other address as may be furnished in writing to the Lessee 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 Lessee under the Lease as though the Vendor were named therein as the Lessor; it will not assert against the Vendor any claim or defense it may have against the Lessor under the Lease and the Vendor shall not by virtue of the Assignment become subject to any liability or obligation under the Lease or otherwise; and

(3) the Lease shall not, without the prior written consent of the Vendor, be amended or terminated, nor shall any action be taken or omitted by the Lessee which might result in an alteration or impairment of the Lease, the Assignment or this Consent and Agreement or of any of the rights created by any thereof.

This Consent and Agreement shall be construed in accordance with the laws of the State of Maryland.

Dated as of July 1, 1980

THE BALTIMORE AND OHIO RAILROAD  
COMPANY,

[Corporate Seal]

by

Attest:

\_\_\_\_\_  
Assistant Vice President  
and Treasurer

\_\_\_\_\_  
Assistant Secretary

CONDITIONAL SALE AGREEMENT

Dated as of July 1, 1980

Between

WHITEHEAD & KALES COMPANY,  
Builder,

and

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

---

11-3/8% Conditional Sale Indebtedness Due 1991

[Covering 167 Whitehead & Kales Auto Racks]

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CONDITIONAL SALE AGREEMENT

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

CONDITIONAL SALE AGREEMENT dated as of July 1, 1980, between WHITEHEAD & KALES COMPANY, a Michigan corporation (the "Vendor" or "Builder" as set forth in Article 1 hereof), and THE CONNECTICUT BANK AND TRUST COMPANY, a Connecticut banking corporation, not in its individual capacity but solely as trustee (the "Vendee") under a Trust Agreement dated as of the date hereof (the "Trust Agreement") with GENERAL ELECTRIC CREDIT CORPORATION (the "Owner").

The Builder has agreed to construct, sell and deliver to the Vendee, and the Vendee has agreed to purchase, the railroad equipment described in Annex B hereto (the "Equipment").

The Vendee is entering into a Lease of Railroad Equipment dated as of the date hereof (the "Lease") with THE BALTIMORE AND OHIO RAILROAD COMPANY (the "Lessee") in substantially the form of Annex C hereto.

MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY (the "Agent") is acting as agent for MORGAN GUARANTY TRUST COMPANY OF NEW YORK, as trustee of a commingled pension trust fund (the "Investor" and, together with its successors and assigns, the "Investors") pursuant to a Participation Agreement dated as of the date hereof (the "Participation Agreement"), between the Lessee, the Agent, the Owner, the Vendee and the Investor.

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

#### ARTICLE 1. ASSIGNMENT; DEFINITIONS

1.01. Source of Purchase Price; Assignment. The parties hereto contemplate that the Vendee will furnish 25.843771% of the Purchase Price (as defined in Section 4.01 hereof) for the Equipment and that an amount equal to the balance of such Purchase Price shall be paid to the Builder by the Agent pursuant to an Agreement and Assignment dated as of the date hereof (the "CSA Assignment") between the Builder and the Agent.

1.02. Lease Assignment. The Vendee will assign to

the Agent, as security for the payment and performance of all the Vendee's obligations hereunder, certain of its rights, title and interest in and to the Lease pursuant to an Assignment of Lease and Agreement substantially in the form of Annex D hereto (the "Lease Assignment"), and the Lessee will acknowledge and consent thereto pursuant to a Consent and Agreement substantially in the form attached to the Lease Assignment (the "Consent").

1.03. Meaning of "Vendor" and "Builder". The term "Vendor", whenever used in this Agreement, means the Builder before any assignment of its right hereunder and, after any such assignment, both any assignee as regards any assigned rights and also any assignor as regards any rights that are retained or excluded from any assignment. 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.

## ARTICLE 2. CONSTRUCTION AND SALE

The Builder shall construct the Equipment at its plant set forth in Annex B hereto and will sell and deliver the Equipment to the Vendee. Each unit of Equipment shall be constructed in accordance with the specifications referred to in Annex B hereto and in accordance with such modifications thereof as may be agreed upon in writing between the Builder, the Vendee and the Lessee (such specifications and any modifications are called the "Specifications"). The design, quality and component parts of each unit of Equipment shall conform on the date of completion of manufacture thereof to all regulatory requirements and specifications reasonably interpreted as being applicable to equipment of the character of such unit, and each such unit will be new equipment.

## ARTICLE 3. INSPECTION AND DELIVERY

3.01. Place of Delivery. The Builder will deliver the units of Equipment to the Vendee at the place or places specified in Annex B hereto, freight charges, if any, prepaid, in accordance with the delivery schedule set forth therein; provided, however, that delivery of any unit of the Equipment shall not be made until the filings referred to in Article 18 hereof have been made; and provided further that the Builder shall have no obligation

to deliver any unit of Equipment hereunder subsequent to the commencement of any proceedings specified in Sections 15.01(c) or (d) hereof or the occurrence of any event of default as described in Section 15.01 hereof or event which with notice or lapse of time or both could constitute such an event of default. The Builder agrees not to deliver any unit of Equipment hereunder following written notice from the Vendee or the Agent of the commencement of any such proceedings or the occurrence of any such event, or until it receives notice from the Agent and the Vendee that the respective conditions contained in Paragraphs 7 and 8 of the Participation Agreement have been satisfied or waived.

3.02. Exclusion of Units. Any unit of Equipment not delivered as a result of Section 3.01 hereof and any unit of Equipment not delivered and accepted hereunder on or prior to December 31, 1980, shall (notwithstanding anything to the contrary contained in Section 3.03 hereof) be excluded from this Agreement and the Vendee shall be relieved of its obligation to purchase and pay for such Equipment. If any Equipment shall be excluded herefrom for any reason, the parties hereto shall execute an agreement supplemental hereto limiting this Agreement to the Equipment not so excluded herefrom. The Lessee has agreed to purchase such excluded Equipment and any Equipment excluded from this Agreement pursuant to Section 4.01 hereof from the Builder as provided in Paragraph 1 of the Participation Agreement.

3.03. Force Majeure. The Builder's obligation as to the time of delivery set forth in Annex B hereto is subject 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.

3.04. Inspection. During construction, the Equipment shall be subject to inspection and approval by the authorized inspectors of the Vendee (who may be employees of the Lessee) and the Builder shall grant to such authorized inspectors reasonable access to its plant. The Builder agrees to inspect the materials used in the construction of the Equipment in accordance with its

standard quality control practices. Upon completion of each unit or a number of units of Equipment, such unit or units shall be presented to an authorized inspector of the Vendee for inspection at the place specified for delivery of such unit or units, and if each such unit conforms to the Specifications, requirements and standards applicable thereto, such authorized inspector shall execute and deliver to the Builder a certificate of acceptance (the "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 referred to in Article 13 hereof.

3.05. Risk of Loss. Upon tender of delivery, inspection and acceptance of each such unit at the place specified for delivery pursuant to this Article 3, risk of loss shall pass to the Vendee, and the Builder shall have no further responsibility for any damage to or the destruction or loss of such unit; provided, however, that the Builder shall not thereby be relieved of its warranties referred to in Article 13 hereof.

3.06. No Interest of Vendee. 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 Section 4.01 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 (except as provided in Section 4.01 hereof) to impose on the Vendee any liability, obligation or responsibility with respect thereto; and any right or interest in any such unit 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

4.01. Meaning of "Purchase Price"; Exclusion of Units. The base price or prices per unit of Equipment are set forth in Annex B hereto. Such base price or prices are subject to such increase or decrease as is agreed to by the Builder, the Vendee and the Lessee. The term "Purchase Price" as used herein shall mean the base price or prices as so increased or decreased as set forth in the Builder's invoice or invoices (the "Invoices")

delivered to the Vendee accompanied by or having endorsed thereon the approval of the Lessee and the Vendee. If on any Closing Date (as hereinafter defined) the aggregate Purchase Price of Equipment for which settlement is then being made under this Agreement would, but for the provisions of this sentence, exceed the Maximum Purchase Price specified in Item 4 of Annex A hereto (or such higher amount as the Vendee may at its option agree to prior to delivery of any unit or units of Equipment that would otherwise be excluded from this Agreement), the Builder (and any assignee of the Builder) and the Vendee will enter into an agreement excluding from this Agreement such unit or units of Equipment then proposed to be settled for and specified by the Vendee as will, after giving effect to such exclusion, reduce such aggregate Purchase Price to not more than the Maximum Purchase Price (or such higher amount as aforesaid) and the Vendee shall take such other steps, including the execution of instruments of transfer, as may be reasonably requested by the Lessee for the purpose of acknowledging the interest of the Lessee in any unit of Equipment so excluded, and the Vendee shall have no further obligation or liability in respect of units so excluded.

4.02. Settlement and Closing Dates. The Equipment shall be settled for in such number of groups of units (the "Groups") of Equipment delivered to and accepted by the Vendee as is provided in Item 2 of Annex A hereto, unless the Lessee, the Vendee and the Builder shall otherwise agree. The term "Closing Date" with respect to any such Group shall mean such date not earlier than September 25, 1980, and not later than December 31, 1980 (the "Cut-Off Date"), occurring not more than 10 business days following presentation by the Builder to the Vendee of the Invoice and of the Certificate or Certificates of Acceptance for the Equipment and written notice thereof by the Builder to the Lessee, as shall be fixed by the Lessee by written notice delivered to the Vendee and the Agent at least six business days prior to the Closing Date designated therein. The term "business day" as used herein means any calendar day, excluding Saturdays, Sundays and any other day on which banking institutions in Hartford, Connecticut; New York, New York; or Baltimore, Maryland; are authorized or obligated to remain closed.

4.03. Indebtedness to Vendor. Subject to the terms of this Agreement, the Vendee hereby acknowledges itself to be indebted to the Vendor in the amount of the Purchase Price of the Equipment in each Group and hereby

promises to pay the same in cash or immediately available funds to the Vendor at such place as the Vendor may designate, as follows:

(a) on the Closing Date with respect to each Group, an amount equal to 25.843771% of the aggregate Purchase Price of the units in such Group plus the amount, if any, by which the Purchase Price of all units of Equipment for which settlement has theretofore or is then being made exceeds the sum of the Maximum CSA Indebtedness specified in Item 5 of Annex A hereto plus any amount or amounts previously paid or payable pursuant to this Section; and

(b) in 20 semiannual installments, as hereinafter provided, an amount equal to the aggregate Purchase Price of such units, less the aggregate amount paid or payable with respect thereto pursuant to subsection (a) of this Section.

4.04. CSA Indebtedness. The portion of the Purchase Price payable pursuant to Section 4.03(b) hereof (the "CSA Indebtedness") shall be payable in 20 consecutive semiannual installments on January 1 and July 1 in each year, commencing July 1, 1981, to and including January 1, 1991 (or if any such date is not a business day, on the next succeeding business day) (each such date is called a "Payment Date"). The unpaid balance of the CSA Indebtedness shall bear interest from the Closing Date in respect of which such indebtedness was incurred at the rate of 11-3/8% per annum. Interest on the unpaid balance of the CSA Indebtedness shall be payable to the extent accrued on January 1, 1981, and on each Payment Date thereafter. The amounts of CSA Indebtedness payable on each Payment Date shall be calculated to be substantially in proportion to the allocation of principal and interest on such Payment Date set forth in Schedule I hereto and the aggregate of such installments of principal will completely amortize the remaining CSA Indebtedness. The Vendee will furnish to the Vendor and the Lessee promptly after the Closing Date a schedule showing the respective amounts of principal and interest payable on each Payment Date.

4.05. Calculation of Interest. Interest under this Agreement shall be determined on the basis of a 360-day year of 12 30-day months, except that interest payable on January 1, 1981, shall be computed on an actual elapsed day,

365-day year basis.

4.06. Penalty Interest. The Vendee will pay interest upon all amounts remaining unpaid after the same shall have become due and payable hereunder at the rate of 12-3/8% per annum, to the extent legally enforceable.

4.07. Manner of Payment; Prepayment. 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. All such payments shall be made by the Vendee to the Vendor by wire transfer of immediately available funds. 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 a portion of the CSA Indebtedness may be prepaid as provided in Article 7 hereof in the event of a Casualty Occurrence (as defined in § 7 of the Lease) and the Vendee may also prepay all the CSA Indebtedness, without penalty or premium, together with interest accrued to the date of payment, if an Event of Default shall have occurred under the Lease, whether or not a Declaration of Default under Section 15.01 hereof shall be made by the Vendor.

4.08. Obligation Subject to CSA Assignment. The obligation of the Vendee to pay to the Vendor the amount required to be paid pursuant to Section 4.03(a) hereof with respect to a Group shall be subject to the receipt by the Vendee of the documents required to be furnished pursuant to Section 4 of the CSA Assignment in respect of such Group.

4.09. Limitation of Vendee Liability. Notwithstanding any other provision of this Agreement (including but not limited to any provision of Articles 15 and 16 hereof), but without limiting the effect of Article 21 hereof, the liability of the Vendee or any assignee of the Vendee for all payments to be made by it under this Agreement, including any liability arising out of or in connection with the performance of its obligations hereunder and excluding only the obligations set forth in the proviso in Section 12.03 hereof and the payments to be made pursuant to Section 4.03(a) 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, "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 or any assignee of the Vendee at any time after any such event and during the continuance thereof: (a) all amounts of rental and amounts of Casualty Values in respect of Casualty Occurrences (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 § 10 or any other provision of the Lease and (b) any and all payments or proceeds received for or with respect to the Equipment as the result of the sale, lease or other disposition thereof, 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 or any assignee of the Vendee and as shall equal the portion of the CSA Indebtedness (including prepayments thereof required in respect of Casualty Occurrences) and/or interest thereon due and payable on the date such amounts were required to be paid pursuant to the Lease or as shall equal any other payments then due and payable under this Agreement; it being agreed that "income and proceeds from the Equipment" shall in no event include (x) amounts referred to in the foregoing clauses (a) and (b) received by the Vendee or any assignee of the Vendee prior to the existence of such an event of default which exceeded the amounts required to discharge that portion of the CSA Indebtedness (including prepayments thereof required in respect of Casualty Occurrences) and/or interest thereon due and payable on the date on which amounts with respect thereto received by the Vendee or any assignee of the Vendee were required to be paid to it pursuant to the Lease or which exceeded any other payments due and payable under this Agreement at the time such amounts were payable under the Lease or (y) the amounts excluded from Payments pursuant to Section 1 of the Lease Assignment. Notwithstanding anything to the contrary contained in Article 15 or 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 Section, it will limit its execution of such judgment to amounts payable pursuant to the limitations set forth in this Section. Nothing contained herein limiting the liability of the Vendee shall derogate from the right of the Vendor to proceed against the Equipment for the full unpaid Purchase Price of the Equipment and accrued interest thereon and all other payments and obligations hereunder.

## ARTICLE 5. SECURITY INTEREST IN EQUIPMENT

5.01. Vendor Retains Security Interest. The Vendor hereby retains a security interest in the Equipment until the Vendee shall have made all its payments under this Agreement and shall have kept and performed all its agreements herein 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. Any and all additions to the Equipment and any and all replacements of the Equipment and of parts thereof and additions thereto shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

5.02. Obligation upon Payment of CSA Indebtedness. 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 accrued interest thereon and all other payments as herein provided, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee without further transfer or action on the part of the Vendor, except that the Vendor, if so requested by the Vendee at that time, will, at the Vendee's expense, (a) execute a bill or bills of sale for the Equipment releasing its security interest therein to the Vendee or upon its order, free of all liens, security interests and other encumbrances created or retained hereby and deliver such bill or bills of sale to the Vendee at its address referred to in Article 20 hereof, (b) execute and deliver at the same place, for filing 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 the Equipment and (c) pay to the Vendee any money paid to the Vendor pursuant to Article 7 hereof and not theretofore applied as therein provided. 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 bill or bills of sale or instrument or instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file such certificate

within a reasonable time after written demand by the Vendee.

#### ARTICLE 6. TAXES

All payments to be made by the Vendee hereunder will be free of expense to the Vendor for collection or other charges and will be free of expense to the Vendor with respect to the amount of any impositions (as defined in § 6.01 of the Lease), all of which such impositions the Vendee assumes and agrees to pay on demand in addition to the Purchase Price of the Equipment. The Vendee will also pay promptly all impositions which may be imposed upon the Equipment for the use or operation thereof or upon the earnings arising therefrom or upon the Vendor solely by reason of its security title therein and will keep at all times all and every part of the Equipment free and clear of all impositions which might in any way affect the security interest of the Vendor or result in a lien upon any part of the Equipment; provided, however, that the Vendee shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal or administrative proceedings such impositions and the nonpayment thereof does not, in the reasonable opinion of the Vendor, adversely affect the security interest or property or rights of the Vendor in or to the Equipment or otherwise under this Agreement. If any impositions shall have been charged or levied against the Vendor directly and paid by the Vendor, the Vendee shall reimburse the Vendor upon presentation of an invoice therefor, and any amounts so paid by the Vendor shall be secured by and under this Agreement; provided, however, that the Vendee shall not be obligated to reimburse the Vendor for any impositions so paid unless the Vendor shall have been legally liable with respect thereto (as evidenced by an opinion of independent counsel for the Vendor) or unless the Vendee shall have approved in writing the payment thereof.

#### ARTICLE 7. MAINTENANCE AND CASUALTY OCCURRENCES

7.01. Maintenance. The Vendee shall, at its own cost and expense, maintain and keep each unit of Equipment in good operating order, repair and condition, reasonable wear and tear excepted.

7.02. Casualty Occurrences. In the event that

any unit of the Equipment shall suffer a Casualty Occurrence (as defined in § 7 of the Lease), the Vendee shall promptly cause the Vendor to be fully informed in regard thereto. On the next succeeding date for the payment of principal and/or interest in respect of the CSA Indebtedness, the Vendee shall pay to the Vendor a sum equal to the Casualty Value (as hereinafter defined) of such unit 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 Section shall be applied (after the payment of the interest and principal due on such date) to prepay the CSA Indebtedness, without penalty or premium, ratably in accordance with the unpaid balance of each installment, 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 the event of the requisition for use by the United States Government of any unit of the Equipment not constituting a Casualty Occurrence, all of the Vendee's obligations hereunder with respect to such unit shall continue to the same extent as if such requisition had not occurred.

7.03. Transfer of Vendor's Rights. Upon payment by the Vendee to the Vendor of the Casualty Value of any unit of Equipment having suffered a Casualty Occurrence, absolute right to the possession of, title to and property in such unit shall pass to and vest in the Vendee 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 the passage to the Vendee of all the Vendor's right, title 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.

7.04. Casualty Value. The Casualty Value of each unit of Equipment suffering a Casualty Occurrence shall be deemed to be that portion of the original CSA Indebtedness of such unit remaining unpaid on the date as of which such Casualty Value shall be determined (without giving effect to any prepayment or prepayments theretofore made under this Article with respect to any other unit), plus interest accrued thereon but unpaid, if any, as of such date. For the purpose of this Section, each payment of the CSA Indebtedness in respect of Equipment made

pursuant to Article 4 hereof shall be deemed to be a payment on each unit of Equipment in like proportion as the original CSA Indebtedness of such unit bears to the aggregate original CSA Indebtedness of the Equipment.

7.05. Insurance. The Vendee will cause the Equipment to be insured as provided in § 7.07 of the Lease.

#### ARTICLE 8. REPORTS

On or before November 30 in each year, commencing with the year 1981, the Vendee shall cause to be furnished to the Vendor an accurate statement to the effect set forth in § 8 of the Lease.

#### ARTICLE 9. MARKING OF EQUIPMENT

The Vendee will cause each unit of Equipment to be kept numbered and marked as provided in § 5 of the Lease. The Vendee will not permit any such unit to be placed in operation or exercise any control or dominion over the same until such markings have been made thereon and will replace promptly any such markings which may be removed, defaced, obliterated or destroyed. The Vendee will not permit the numbers of any unit of Equipment to be changed except in accordance with a statement of new numbers to be substituted therefor which previously shall have been filed with the Vendor and filed by the Vendee in all public offices where this Agreement shall have been filed. 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; provided, however, that the Equipment may be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates.

#### ARTICLE 10. COMPLIANCE WITH APPLICABLE LAWS

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 the use, maintenance and operation of the Equipment) with all Applicable Laws (as defined in § 9 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 Equipment, the Vendee will conform therewith at its own expense; provided, however, that the Vendee or the Lessee may, in good faith, contest the validity or application of any Applicable Law in any reasonable manner which does not, in the reasonable opinion of the Vendor, adversely affect the property or rights of the Vendor under this Agreement.

#### ARTICLE 11. POSSESSION AND USE

So long as an event of default shall not have occurred and be continuing under this Agreement, the Vendee shall be entitled to the possession and use of the Equipment from and after delivery of the Equipment by the Builder to it, but only upon and subject to all the terms and conditions of this Agreement.

The parties hereto acknowledge that the Vendee simultaneously 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 subordinated and junior in rank to the rights and subject to the remedies of the Vendor under this Agreement. The Lease shall not be amended or terminated (except in accordance with its terms or as provided in Section 3 of the Lease Assignment) without the prior written consent of the Vendor.

#### ARTICLE 12. PROHIBITION AGAINST LIENS

12.01. Vendee To Discharge 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 any unit of Equipment or the Vendee's interests in the Lease and the payments to be made thereunder, 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 appropriate legal or administrative proceedings in any reasonable manner and the nonpayment thereof does not, in the reasonable opinion of the Vendor, adversely affect the security interest of the Vendor in the Equipment or otherwise under this Agreement. Any amounts paid by the Vendor in discharge of any such claim shall be secured by and

under this Agreement.

12.02. No Breach for Certain Liens. 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.

12.03. Certain Limitations. The foregoing provisions of this Article 12 shall be subject to the limitations set forth in Sections 4.09 and 21.03 hereof; provided, however, that the Vendee will pay or discharge any and all taxes, claims, liens, charges or security interests claimed by any party from, through or under the Vendee or its successors or assigns (other than the Vendor) or (to the extent it receives funds for such purpose from the Owner) the Owner or its successors or assigns not arising out of the transactions contemplated hereby (but, to the extent it receives funds for such purpose from the Owner, including taxes arising out of the receipt of the rentals and other payments under the Lease and any other proceeds from the Equipment), which, if unpaid, might become a lien, charge, security interest or other encumbrance on or with respect to any unit of Equipment or the Vendee's interests 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 thereof shall be contested in good faith and by appropriate legal or administrative proceedings in any reasonable manner and the nonpayment thereof does not, in the reasonable opinion of the Vendor, adversely affect the security interest of the Vendor in the Equipment or otherwise under this Agreement or in the Lease and the payments to be made thereunder.

### ARTICLE 13. INDEMNITIES AND WARRANTIES

13.01. Indemnification by Vendee. The Vendee assumes the risk of and agrees to indemnify, protect and hold harmless the Vendor from and against all Indemnified Matters (as defined in § 9 of the Lease), except however, in the case of the Builder, any losses, damages, injuries, liabilities, claims and demands whatsoever arising out of any tort by the Builder or out of any breach of warranty or failure to perform any covenant hereunder by the Builder. This covenant of indemnity shall continue in full force and effect notwith-

standing the full payment of the CSA Indebtedness and the release of the security interest in the Equipment or the termination of this Agreement in any manner whatsoever.

13.02. Risk of Loss. The Vendee will bear the responsibility for and risk of any damage to or the destruction or loss of any unit of Equipment and shall not be released from its obligations under this Agreement in any such event.

13.03. Good Title. The Builder represents and warrants to the Vendee that at the time of delivery and acceptance of each unit of Equipment under this Agreement the Vendee will receive 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 Lessee under the Lease.

13.04. Indemnification by Builder. Except in cases of articles or materials specified by the Lessee and not manufactured by the Builder and in cases of designs, systems, processes, formulae or combinations specified by the Lessee and not developed or purported to be developed by the Builder, the Builder agrees to indemnify, protect and hold harmless the Vendee and, as third-party beneficiary hereof, 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, the Lessee, its or their assigns or the users of the Equipment because of the use in or about the construction or operation of any of the Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Builder hereby assigns to the Lessee every claim, right and cause of action (to the extent legally possible without impairing any claim, right or cause of action) which the Builder has or hereafter shall have against the seller or sellers of any designs, systems, processes, formulae, combinations, articles or materials specified by the Lessee and purchased or otherwise acquired by the Builder for use in or about the construction or operation of any of the Equipment on the ground that any such design, system, process, formula, combination, article or material or operation thereof infringes or is claimed to infringe on any patent or other right. The Vendee likewise will indemnify, protect and hold harmless the Builder from and against any and all liability, claims, demands, costs, charges and expenses,

including royalty payments and counsel fees, in any manner imposed upon or accruing against the Builder because of the use in or about the construction or operation of any unit of Equipment of any design, process or combination specified by the Lessee and not developed or purported to be developed by the Builder or article or material specified by the Lessee and not manufactured by the Builder which infringes or is claimed to infringe on any patent or other right. The Builder further agrees to execute and deliver to the Lessee or the Vendee or the users of the Equipment all and every such further assurance as may be reasonably requested by the Lessee or the Vendee to more fully effectuate the assignment of every such claim, right and cause of action. 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.

13.05. ERISA. The Builder represents that it is not entering into this Agreement or 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 or any party to the Participation Agreement is a party in interest, all within the meaning of the Employee Retirement Income Security Act of 1974.

13.06. Warranty of Material and Workmanship. The agreement of the parties relating to the Builder's warranty of material and workmanship is set forth in Item 3 of Annex A hereto.

#### ARTICLE 14. ASSIGNMENTS

14.01. Assignment by Vendee. Except as provided in this Agreement or the Trust Agreement, the Vendee will not transfer the right to possession of any unit of Equipment or sell, assign, transfer or otherwise dispose of its rights under this Agreement or the Lease without the prior written consent of the Vendor.

14.02. Assignment by 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 referred to in Article 13 hereof or relieve the Vendee of its respective obligations to the Builder contained in Articles 2, 3, 4, 6 and 13 hereof, Annex A hereto and this Article 14, or any other obligation which, according to its terms or context, is intended to survive an assignment.

14.03. Notice of Assignment. Upon any such assignment, either the assignor or the assignee shall give written notice to the Vendee and the Lessee, 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.

14.04. No Setoff Against CSA Indebtedness upon Assignment. The Vendee recognizes that this Agreement will be assigned to the Agent 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 the rights of the assignee to the entire unpaid CSA Indebtedness 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 manufacture, construction, delivery or warranty of the Equipment (which obligations shall be construed to include without limitation the indemnification provisions of Section 13.04 hereof) 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. DEFAULT

15.01. Events of Default. In the event that any one or more of the following events of default shall occur and be continuing:

(a) the Vendee shall fail to pay in full any sum payable by the Vendee pursuant to Sections 4.03(b) or 7.02 hereof when payment thereof shall be due hereunder (irrespective of the provisions of Article 4 or 21 hereof or any other provision of this Agreement limiting the liability of the Vendee) and such default shall continue for 15 days after the date such payment became due and payable; or

(b) the Vendee (irrespective of the provisions of Article 4 or 21 hereof or any other provision of this Agreement limiting the liability of the Vendee) or the Lessee shall, for more than 30 days after the Vendor shall have given notice thereof demanding in writing performance thereof, fail or refuse to comply with any other covenant, agreement, term or provision of this Agreement or any agreement contemplated by the Participation Agreement on its part to be kept and performed or to make provision 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 the Lease and the Consent shall not have been and shall not continue to be duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (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 of the Vendee hereunder or of the Lessee under the Lease or the Consent under any bankruptcy or insolvency laws or laws relating to the relief of debtors, 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, 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 Equipment and the Vendee shall fail to secure a reassignment or retransfer to the Vendee of such Agreement, interest or right for more than 30 days after notice and demand in writing by the Vendor; or

(f) any Event of Default (as defined in the Lease) shall have occurred and be continuing under the Lease; provided, however, that an Event of Default under § 10.01(A) of the Lease shall not be deemed to be an event of default hereunder if the Vendee shall not be in default under subsection (a) of this Section;

then at any time after the occurrence of such an event of default the Vendor may upon five days' written notice to the Vendee, the Owner and the Lessee and upon compliance with any legal requirements then in force and applicable to such action by the Vendor, (i) cause the Lease immediately upon such notice to terminate (and the Vendee acknowledges the right of the Vendor to terminate the Lease), but without affecting the indemnities which by the provisions of the Lease survive its termination and/or (ii) 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 the CSA Indebtedness and interest shall bear interest from the date of such Declaration of Default at the rate per annum specified in Section 4.06 hereof. 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 so payable, with interest as aforesaid, and to collect such judgment out of the property of the Vendee wherever situated. The Vendee shall promptly notify the Vendor of any event which has come to its attention which constitutes or with notice or lapse of time or both would constitute an event of default under this Agreement.

15.02. Waiver. 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 and the Lessee 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 Section, 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

16.01. Possession of Equipment. At any time during the continuance of a Declaration of Default, the Vendor may, and upon such further notice, 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 one or more units of Equipment 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 or any other person and for such purpose may enter upon any 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.

16.02. Assembling of Equipment. In case the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall reasonably designate a point or points upon the premises of the Lessee for the delivery of the Equipment to the Vendor, the Vendee shall, at its own expense and risk, forthwith and in the usual manner (including without limitation giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any part of the Equipment has been interchanged to return the Equipment so interchanged), cause (a) the Equipment to be detached from each unit of railroad rolling stock to which it has been attached, (b) the Equipment to be moved to such point or points on the lines of the Lessee as shall be designated by the Vendor and shall there deliver the Equipment or cause it to be delivered to the Vendor and (c) the Equipment to be moved to such interchange point or points of the Lessee as shall be designated by the Vendor upon any sale, lease or other disposal of all or any part of the Equipment by the Vendor. At the option of the Vendor, the Vendor may keep the Equipment on any of the lines or premises of the Lessee until the Vendor shall have leased, sold or otherwise disposed of the same, and for such purpose the Lessee has agreed in the Lease to furnish, without charge for rent or storage, the necessary facilities at any point or points selected by the Vendor reasonably convenient to the Lessee and, at the Lessee's risk, to permit inspection of the Equipment by the Vendor, the Vendor's representatives and prospective purchasers 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 competent jurisdiction, the Vendor shall be entitled to a decree against the Lessee requiring specific performance thereof. The Lessee 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 Equipment in any reasonable manner.

16.03. Vendor's Election To Dispose or Retain Equipment. 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 shall 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 or for its account 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 as well as expenses of removing and retaking possession of the Equipment, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee; provided further that if the Vendee or any other persons notified under the terms of this Section 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.

16.04. Sale of Equipment. 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, the

Lessee and any other persons to whom the law may require notice of the time and place, may sell any one or more units of Equipment, free from any and all claims of the Vendee, the Lessee or any other party claiming from, through or under the Vendee or the Lessee, 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, then upon receipt of such payment, expenses and fees by the Vendor, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee. 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.

16.05. Manner of Sale. Any sale hereunder may be held or conducted at such place or places and at such time or times 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 and the Vendee may bid for and become the purchaser of any unit of Equipment so offered for sale. The Vendee and the Lessee shall be given written notice of such sale or the making of a contract for such sale not less than 10 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 rights of the Vendee to purchase or provide a purchaser within 15 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 of the Equipment, it shall not be

accountable to the Vendee or the Lessee (except to the extent of surplus money received as hereinafter provided in this Article 16), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all or any part of sums due to the Vendor hereunder.

16.06. Remedies Not Exclusive. 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 each and every power and remedy 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 or the Lessee 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.

16.07. Deficiency or Surplus. 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 pay the amount of such deficiency to the Vendor upon demand, together with interest thereon from the date of such demand to the date of payment, at the rate per annum specified in Section 4.06 hereof and, if the Vendee shall fail to pay such deficiency, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Vendee, subject to the limitations set forth in Sections 4.09 and 21.03 hereof. 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.

16.08. Expenses. 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, then in such suit 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

17.01. Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall be ineffective as to such jurisdiction 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. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the parties hereto 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.

17.02. Waiver of Notice. 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 any one or more units of Equipment, 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 filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303. The Vendee will further cause this Agreement, any assignments hereof and

the Lease Assignment and any amendments or supplements hereto or thereto and appropriate financing statements or continuation statements to be filed and (from time to time when required) refiled in accordance with the applicable provisions of the Uniform Commercial Code as in effect in the State of Connecticut (and, if the Vendee changes its principal place of business to a different state, in any such other state) and in any other State of the United States of America or the District of Columbia where filing is reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of the Vendor, of its security interest in the Equipment and its rights under this Agreement. The Vendee will from time to time perform any other act and will execute, deliver and file any and all further instruments required by law or reasonably requested by the Vendor for the purposes specified in this Article.

The Vendee will promptly furnish to the Vendor evidence satisfactory to the Vendor of such filing.

#### ARTICLE 19. HEADINGS; EFFECT AND MODIFICATION OF AGREEMENT

19.01. Headings. All Article and Section headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

19.02. Effect and Modification of Agreement. Except for the Participation Agreement, this Agreement, including the Annexes hereto, exclusively and completely states the rights of the Vendor and the Vendee 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 Vendor and the Vendee.

#### ARTICLE 20. NOTICES

Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed to it by first class mail, postage prepaid, at the following addresses

(a) to the Lessee, at 100 North Charles Street,

Baltimore, Maryland 21201, attention of Treasurer;

(b) to the Builder, at the address specified in Item 1 of Annex A hereto;

(c) to the Vendee, at One Constitution Plaza, Hartford, Connecticut 06115, attention of Corporate Trust Department, with a copy to the Owner at its address set forth in the Participation Agreement; and

(d) 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, and to the Lessee, 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. Any such notice shall be deemed to be effective three days after its deposit.

#### ARTICLE 21. IMMUNITIES; SATISFACTION OF UNDERTAKINGS; NO RECOURSE

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

21.02. Satisfaction of Undertakings. The obligations of the Vendee under Section 16.02 hereof and under Articles 3, 6, 7 (other than the second and third sentences of Section 7.02 hereof), 8, 9, 10, 12 (other than the proviso to Section 12.03 hereof), 13 and 18 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 undertak-

ings under the Lease shall be effective unless joined in by the Vendor.

21.03. No Recourse. Notwithstanding anything herein to the contrary, each of the representations, warranties, undertakings and agreements herein made on the part of the Vendee are made and intended not as personal representations, warranties, undertakings and agreements by The Connecticut Bank and Trust Company or for the purpose or with the intention of binding said bank personally but are made and intended for the purpose of binding only the Trust Estate (as such term is used in the Trust Agreement) and this Agreement is executed and delivered by said bank not in its own right but solely in the exercise of the powers expressly conferred upon it as trustee under the Trust Agreement; and except in the case of wilful misconduct or gross negligence on the part of said bank, no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against said bank or the Owner hereunder (except in connection with the payment or discharge of claims pursuant to the proviso to Section 12.03 hereof and except, with respect to the Owner, pursuant to Section 1.03 and the last paragraph of Section 5.01 of the Trust Agreement) on account of this Agreement or the Trust Agreement or on account of any representation, warranty, undertaking or agreement of the said bank or the Owner hereunder, either expressed or implied, all such personal liability (except as aforesaid), if any, being expressly waived and released by the Vendor and the Builder and by all persons claiming by, through or under the Vendor or the Builder.

#### ARTICLE 22. GOVERNING LAW

The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Connecticut; provided, however, that the parties shall be entitled to all rights arising out of the filing hereof 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.

#### ARTICLE 23. EXECUTION

This Agreement may be executed in any number of counterparts, all of which together shall constitute a single instrument, but the counterpart delivered to the Agent shall

be deemed to be the original. Although for convenience this Agreement is dated as of the date first set forth above, the actual dates of execution hereof by the parties hereto are the dates stated in the acknowledgments hereto.

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

WHITEHEAD & KALES COMPANY,

by

\_\_\_\_\_  
Vice President-Finance

[Corporate Seal]

Attest:

\_\_\_\_\_  
Treasurer

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

by

*F. Lawton*

[Corporate Seal]

Attest:

*[Signature]*

STATE OF MICHIGAN, )  
 ) ss.:  
COUNTY OF WAYNE, )

On this            day of August 1980, before me personally appeared            , to me personally known, who, being by me duly sworn, says that he is Vice President-Finance of WHITEHEAD & KALES COMPANY, a Michigan corporation, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

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

[NOTARIAL SEAL]

My Commission expires

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

On this *7th* day of August 1980, before me personally appeared **F. W. KAWAM**, to me personally known, who, being by me duly sworn, says that he is **VICE PRESIDENT** of THE CONNECTICUT BANK AND TRUST COMPANY, a Connecticut banking corporation, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

*Dianne J. Owens*  
\_\_\_\_\_  
Notary Public

**DIANNE J. OWENS**  
NOTARY PUBLIC  
MY COMMISSION EXPIRES MARCH 31, 1981

[NOTARIAL SEAL]

My Commission expires

SCHEDULE I  
TO THE CONDITIONAL SALE AGREEMENT

Allocation Schedule of Each  
\$1,000,000 of 11-3/8% CSA Indebtedness

<u>Payment No.</u>	<u>Date Due</u>	<u>Debt Service</u>	<u>Interest Payment</u>	<u>Principal Payment</u>	<u>Ending Principal</u>
	January 1, 1981	*	*	-0-	\$1,000,000.00
1	July 1, 1981	\$ 72,123.20	\$ 56,875.00	\$ 15,248.20	984,751.80
2	January 1, 1982	82,171.08	56,007.76	26,163.32	958,588.48
3	July 1, 1982	82,171.08	54,519.72	27,651.36	930,937.12
4	January 1, 1983	82,171.08	52,947.05	29,224.03	901,713.09
5	July 1, 1983	82,171.08	51,284.93	30,886.15	870,826.94
6	January 1, 1984	82,171.08	49,528.28	32,642.80	838,184.14
7	July 1, 1984	82,171.08	47,671.72	34,499.36	803,684.78
8	January 1, 1985	82,171.08	45,709.57	36,461.51	767,223.27
9	July 1, 1985	82,171.08	43,635.83	38,535.25	728,688.02
10	January 1, 1986	82,171.08	41,444.13	40,726.95	687,961.07
11	July 1, 1986	93,441.30	39,127.79	54,313.51	633,647.56
12	January 1, 1987	93,441.30	36,038.71	57,402.59	576,244.97
13	July 1, 1987	90,913.38	32,773.94	58,139.44	518,105.53
14	January 1, 1988	92,108.57	29,467.25	62,641.32	455,464.21
15	July 1, 1988	84,391.17	25,904.53	58,486.64	396,977.57
16	January 1, 1989	93,441.30	22,578.10	70,863.20	326,114.37
17	July 1, 1989	93,441.30	18,547.76	74,893.54	251,220.83
18	January 1, 1990	93,441.30	14,288.19	79,153.11	172,067.72
19	July 1, 1990	93,441.30	9,786.35	83,654.95	88,412.77
20	January 1, 1991	93,441.25	5,028.48	88,412.77	-0-
	Total	\$1,733,165.09	\$733,165.09	\$1,000,000.00	

\* Interest on the CSA Indebtedness to the extent accrued.

ANNEX A  
to the  
Conditional Sale Agreement

Concerning the Builder

- Item 1: Whitehead & Kales Company, a Michigan corporation, 58 Haltiner Street, River Rouge, Michigan 48218.
- Item 2: The Equipment shall be settled for in not more than one group of units on September 8, 1980.
- Item 3: The Builder warrants that the Equipment will be built in accordance with the Specifications and the standards and requirements set forth in Article 2 of this Agreement and warrants the Equipment will be free from defects in material and workmanship under normal use and service. The Builder's obligation under this Item 3 is limited to making good at its plant any part or parts of any unit of the Equipment which shall be returned to the Builder with transportation charges prepaid within one year after the delivery of such unit to the Vendee and which the Builder's examination shall disclose to its satisfaction to have been thus defective. The Builder shall not be liable for any indirect, incidental, consequential, special or commercial damages of whatever nature.

THE FOREGOING WARRANTY OF THE BUILDER IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND OF ALL OTHER OBLIGATIONS OR LIABILITIES ON THE PART OF THE BUILDER, EXCEPT FOR ITS OBLIGATIONS UNDER ARTICLES 2, 3, 4 AND 13 OF THIS AGREEMENT AND THE BUILDER NEITHER ASSUMES NOR AUTHORIZES ANY PERSON TO ASSUME FOR IT ANY OTHER LIABILITY IN CONNECTION WITH THE CONSTRUCTION AND DELIVERY OF ITS EQUIPMENT, EXCEPT AS AFORESAID.

The Builder further agrees with the Vendee that neither the inspection as provided in Article 3 of this Agreement nor any examination nor the acceptance of any units of 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 Maximum Purchase Price referred to in Article 4 of this Agreement is \$7,244,354 plus an amount equal to the same percentage thereof as the percentage of increase of the Investor's commitment pursuant to Paragraph 2 of the Participation Agreement, if any.

Item 5: The Maximum CSA Indebtedness referred to in Article 4 of this Agreement is \$5,372,140 plus any increase of the Investor's commitment pursuant to Paragraph 2 of the Participation Agreement.

ANNEX B  
to the  
Conditional Sale Agreement

Units of Equipment

<u>Equipment Type</u>	<u>Builder's Specifications</u>	<u>Builder's Plant and Place of Delivery</u>	<u>Delivery Date</u>	<u>Number of Units</u>	<u>Unit Base Price</u>	<u>Total Base Price</u>	<u>Lessee's Numbers (Inclusive)</u>
Fully Enclosed Tri-Level Auto Racks	ASK 7127 ASK 7215	River Rouge, Michigan	7/14/80 7/21/80 7/28/80 8/4/80 8/11/80 8/18/80 8/25/80	27 27 27 27 27 27 5	\$43,267 43,380 43,406 43,406 43,406 43,406 43,406	\$1,168,209 1,171,267 1,171,962 1,171,962 1,171,962 1,171,962 217,030	RP428-RP594
				<u>167</u>		<u>\$7,244,354</u>	

ANNEX C  
to the  
Conditional Sale Agreement

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[CS&M Ref. 5415-003]

LEASE OF RAILROAD EQUIPMENT

Dated as of July 1, 1980

Between

THE BALTIMORE AND OHIO RAILROAD COMPANY,  
Lessee,

and

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

[Covering 167 Whitehead & Kales Auto Racks]

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LEASE OF RAILROAD EQUIPMENT

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

LEASE OF RAILROAD EQUIPMENT dated as of July 1, 1980, between THE BALTIMORE AND OHIO RAILROAD COMPANY, a Maryland corporation (the "Lessee"), and THE CONNECTICUT BANK AND TRUST COMPANY, a Connecticut banking corporation, not in its individual capacity but solely as trustee (the "Lessor") under a trust agreement dated as of the date hereof (the "Trust Agreement") with GENERAL ELECTRIC CREDIT CORPORATION (the "Owner").

The Lessor is entering into a Conditional Sale Agreement dated as of the date hereof (the "CSA") with WHITEHEAD & KALES COMPANY (the "Builder"), wherein the Builder has agreed to manufacture, sell and deliver to the Lessor the units of railroad equipment described in Schedule A hereto (the "Equipment").

The Builder is assigning its interests in the CSA pursuant to an Agreement and Assignment dated as of the date hereof (the "CSA Assignment") to MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, acting as agent (together with its successors and assigns and the Investors for whom it is acting called the "Vendor") under a Participation Agreement dated as of the date hereof (the "Participation Agreement") with the Lessee, the Owner and the Lessor.

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

The Lessor will assign 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 to the Lease Assignment pursuant to a Lessee's Consent and Agreement (the "Consent").

In consideration of the rentals to be paid and the agreements hereinafter set forth, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions:

## § 1. NET LEASE

This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent, reduction thereof or setoff against rent, including but not limited to abatements, reductions or setoffs due or alleged to be due by reason of any past, present or future claims of the Lessee against the Lessor under this Lease or under the CSA or against the Builder or the Vendor or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate or the respective obligations of the Lessor or the Lessee be otherwise affected by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency of or any bankruptcy, reorganization or similar proceeding against the Lessee or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever.

## § 2. DELIVERY AND ACCEPTANCE OF UNITS

The Lessor hereby appoints the Lessee its agent for inspection and acceptance of the Units pursuant to the CSA. The Lessor will cause each Unit to be delivered to the Lessee at the point or points within the United States of America at which such Unit is delivered to the Lessor under the CSA. Upon such delivery, the Lessee will cause an authorized representative, who may be an employee of

the Lessee, to inspect the same, and if such Unit is found to be acceptable, to accept delivery of such Unit and execute and deliver to the Lessor a certificate of acceptance (the "Certificate of Acceptance") in accordance with the provisions of Article 3 of the CSA, stating that such Unit has been inspected and accepted on behalf of the Lessee and the Lessor on the date of such Certificate of Acceptance and is marked in accordance with § 5 hereof, whereupon 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; provided, however, that the delivery, inspection and acceptance hereunder of any unit of Equipment excluded from the CSA pursuant to Section 4.01 thereof shall be ineffective to subject such unit to this Lease.

### § 3. RENTALS

3.01. Basic Rentals. The Lessee agrees to pay to the Lessor as rental for each Unit subject to this Lease 20 consecutive semiannual payments, payable in arrears on January 1 and July 1 of each year, commencing July 1, 1981. The first 10 semiannual rental payments with respect to each Unit then subject to this Lease shall each be in an amount equal to 6.1066915% of the Purchase Price (as defined in the CSA) of such Unit, and the second 10 semiannual rental payments with respect to each Unit then subject to this Lease shall each be in an amount equal to 7.4637341% of the Purchase Price of such Unit. Notwithstanding anything to the contrary set forth herein, the rental payable on each such date shall in no event be less than the payments due on each such date pursuant to Sections 4.03(b) and 4.04 of the CSA.

3.02. Rental Adjustments. The Lessee and the Lessor agree that the rentals payable hereunder and the Casualty Value percentages set forth in Schedule B hereto will be adjusted in the event that (A) any change in the Internal Revenue Code of 1954 (the "Code"), the income tax regulations thereunder or published administrative or judicial interpretations of the Code or such regulations is enacted or has an effective date on or prior to December 31, 1980, or prior to such date any income tax regulations or published administrative or judicial interpretations of the Code are issued, the effect of which is to deny to the Owner the ability to put into practice with

respect to this transaction any of the tax assumptions utilized by the Owner in originally evaluating this transaction, (B) a Closing Date is held on a date other than September 25, 1980; (C) the amount or number of Units settled for on any Closing Date is different from the amount or number of Units specified therefor in Annex B to the CSA; or (D) there is any deficiency payable in respect of Investments (as defined in the Participation Agreement) pursuant to the Participation Agreement. Any such adjustment shall be effective as of the first rental payment date following the event giving rise to such adjustment, and shall be made in such manner as will result, in the Owner's reasonable judgment, in preserving for the Owner both the after-tax economic yield and the after-tax cash flow that would have been realized by the Owner had such event not occurred, based on the rates of Federal, state and local taxes on or measured by net income in effect from time to time and in all other respects based on the assumptions and methods of calculation utilized by the Owner in originally evaluating the transaction described in this Lease and related documents (the "Net Economic Return"). Notwithstanding the foregoing, the rentals payable and Casualty Value percentages will never be less than those amounts and percentages required to enable the Lessor to satisfy its obligations under the CSA and to enable the Owner to satisfy the profit and positive cash flow requirements set forth in Section 4(6) of Rev. Proc. 75-21, 1975-1 C. B. 715, as such requirements may be modified or adjusted as of the applicable rental payment date. The Owner shall furnish the Lessee and the Vendor prior to the effective date of any such adjustment with a notice setting forth in reasonable detail the computations and methods used in computing such adjustment.

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

3.04. Instructions To Pay Assignee. Upon execution and delivery of any lease assignment in writing and until the Lessee shall have been otherwise advised in writing, the Lessee shall pay all amounts so assigned in accordance with the instructions of any assignee.

3.05. Payment in Immediately Available Funds. The Lessee agrees to make each payment provided for herein in immediately available funds at or prior to 11:00 a.m. in the city where such payment is to be made.

#### § 4. TERM OF LEASE

The term of this Lease as to each Unit shall begin on the date of delivery and acceptance of such Unit hereunder and, subject to the provisions of §§ 7, 10 and 13 hereof, shall terminate on the date on which the final payment of rent in respect thereof is due pursuant to § 3.01 hereof; provided, however, that all obligations of the Lessee hereunder (except for the payment of rent and the furnishing of annual reports) shall survive the expiration of the term of this Lease.

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

#### § 5. MARKING OF UNITS

The Lessee will cause each Unit to be kept numbered with its identifying number as set forth in Schedule A hereto or, in the case of Equipment not there listed, such identifying number as shall be set forth in any amendment or supplement hereto extending this Lease to cover such Equipment and will keep and maintain, plainly and distinctly marked on each side of each Unit, in letters not less than one inch in height, the words "Ownership Subject to a Security Agreement filed with the Interstate Commerce Commission", or other appropriate words designated by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be

required by law in order to protect the Lessor's ownership and the Vendor's security interest in such Unit and the rights of the Lessor under this Lease and of the Vendor under the CSA. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such markings have been made thereon and will replace promptly any such markings which may be defaced, obliterated or destroyed. The Lessee will not change the number of any Unit except in accordance with a statement of new number or numbers to be substituted therefor which previously shall have been filed with the Lessor and the Vendor by the Lessee and filed by the Lessee in all public offices where this Lease and the CSA shall have been filed.

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

## § 6. TAXES

6.01. Indemnification. All payments to be made by the Lessee hereunder will be free of expense to the Lessor and the Vendor for collection or other charges and will be free of expense to the Lessor (in both its individual and fiduciary capacities) with respect to the amount of any local, state, Federal or foreign taxes (other than gross receipt taxes (except gross receipt taxes in the nature of or in lieu of sales or use or rental taxes), taxes measured by Lessor's net income, excess profits taxes and similar taxes or general corporation, franchise or like taxes measured by Lessor's capital, capital stock or net worth) or license fees, assessments, charges, fines or penalties hereafter levied or imposed upon or in connection with or measured by this Lease or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof or the CSA (the "impositions"), all of which impositions the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. The Lessee will also pay promptly all impositions which may be imposed upon any Unit or for the use or operation thereof (except as provided above) or upon the earnings arising therefrom (except as provided above) or upon the Lessor solely by reason of its ownership thereof (except as

provided above) and will keep at all times all and every part of such Unit free and clear of all impositions which might in any way affect the title of the Lessor or the security interest of the Vendor or result in a lien upon any such Unit; provided, however, that the Lessee shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal or administrative proceedings such impositions and the nonpayment thereof is permitted by law and does not, in the reasonable opinion of the Lessor, adversely affect the title, property, rights or interest of the Lessor hereunder or the Vendor under the CSA. The Lessee agrees to give the Lessor notice of such contest within 30 days after institution thereof and the Lessor agrees to provide such information as may be reasonably requested by the Lessee in furtherance of such contest. If any impositions shall have been charged or levied against the Lessor directly and paid by the Lessor, the Lessee shall reimburse the Lessor on presentation of an invoice therefor; provided, however, that the Lessor shall have given the Lessee written notice of such imposition prior to such payment; and provided further that the failure of the Lessor so to notify the Lessee shall not affect the obligations of the Lessee thereunder.

6.02. Obligation Under CSA. In the event that the Lessor shall become obligated to make any payment pursuant to Article 6 of the CSA to the Builder or the Vendor or otherwise pursuant to any correlative provision of the CSA, the Lessee shall pay such additional amounts (which shall also be deemed impositions hereunder) to the Lessor as will enable the Lessor to fulfill completely its obligations pursuant to said provision.

6.03. Reports. The Lessee will make any returns, statements and reports with respect to impositions which are required to be made in such manner as to show the interest of the Lessor and the Vendor in such Units.

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

6.05. Lessee To Act in Name of Lessor. To the extent the Lessee may be prohibited by law from performing

in its own name the duties required by this § 6, the Lessor hereby authorizes the Lessee to act in the Lessor's name and on the Lessor's behalf; provided, however, that 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 by the Lessee pursuant to this authorization.

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

§ 7. MAINTENANCE; CASUALTY OCCURRENCES; INSURANCE;  
DISCHARGE OF LIENS

7.01. Maintenance. The Lessee, at its own cost and expense, will maintain and keep each Unit subject to this Lease in good operating order, repair and condition, reasonable wear and tear excepted.

7.02. Casualty Occurrences. In the event that any Unit shall be or become worn out beyond repair, lost, stolen, destroyed or irreparably damaged from any cause whatsoever or taken or requisitioned by condemnation or requisitioned for use or otherwise, except requisition for use by the United States Government for a stated period not in excess of the then remaining term of this Lease (a "Casualty Occurrence"), prior to the return of such Unit in the manner set forth in § 14 hereof, the Lessee shall promptly and fully notify the Lessor and the Vendor with respect thereto. On the casualty payment date set forth in Schedule B hereto next succeeding such notification, the Lessee shall pay to the Lessor an amount equal to the rental payment or payments in respect of such Unit due and payable on such date, if any, plus a sum equal to the Casualty Value (as hereinafter defined) of such Unit. Upon the making of all such payments by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft or complete destruction of such Unit) the Lessor shall be entitled to recover possession of such Unit. Any Casualty Value not paid when due shall accrue interest as

provided in § 17 hereof. The Lessor hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof at the best price obtainable on an "as is, where is" basis. Provided that the Lessee has previously paid the Casualty Value to the Lessor, the Lessee shall be entitled to the net proceeds of such sale after deduction of any cost or expense (including, without limitation, transportation costs, commissions, taxes and attorneys' fees) 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.

7.03. Casualty Value. The Casualty Value of each Unit as of the casualty 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 (or if there is no such casualty payment date, the last casualty payment date).

7.04. Casualty Occurrence After Termination. Whenever any Unit shall suffer a Casualty Occurrence after termination of this Lease and before such Unit shall have been returned in the manner provided in § 14 hereof, the Lessee shall promptly and fully notify the Lessor with respect thereto and pay to the Lessor within 30 days after the Treasury Department of the Lessee receives notice of such Casualty Occurrence an amount equal to the Casualty Value of such Unit. Upon the making of any such payment by the Lessee in respect of any Unit (except in the case of the loss, theft or complete destruction of such Unit), the Lessor shall be entitled to recover possession of such Unit, and the Lessee shall be entitled to the net proceeds of any sale to the extent they do not exceed the Casualty Value of such Unit.

7.05. Requisition Not Casualty Occurrence. In the event of the requisition for use by the United States Government (the "Government") of any Unit during the term of this Lease or any renewal thereof not constituting a Casualty Occurrence, all the Lessee's obligations under this Lease with respect to such Unit shall continue to the same extent as if such requisition had not occurred, except that the Lessee shall not be obligated to return such Unit to the lessor pursuant to § 11 or 14 hereof until such Unit is returned by the Government. All payments received by the Lessor or the Lessee from the Government for the use of such Unit during the term of this Lease or any renewal thereof shall be paid to or

retained by the Lessee; provided that no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing; and all payments received by the Lessor or the Lessee from the Government for the use of such Unit after the term of this Lease or any renewal thereof shall be paid to or retained by the Lessor.

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

7.07. Insurance. The Lessee will, at all times while this Lease is in effect, at its own expense, cause to be carried and maintained types and amounts of insurance that are satisfactory to the Lessor in respect of the Units at the time subject hereto and the use and operation thereof, including without limitation property insurance and public liability insurance in such amounts and for such risks and with such insurance companies as are consistent with prudent industry practice, but in any event at least comparable to insurance coverage carried by the Lessee in respect of similar equipment owned or leased by it; provided, however, that, in respect of property insurance, the Lessee may self-insure any Unit to the extent that it self-insures similar equipment owned by it and as is consistent with prudent industry practice. The Lessee hereby assigns and transfers to the Lessor and the Vendor, as their interests may appear, all right, title, and interest in and to any insurance proceeds paid under any policy of insurance to the extent such proceeds relate to the Units or the use and operation thereof as aforesaid; provided, however, if the Lessee fully complies with all the provisions of this § 7 and § 9.03 hereof in respect of the risk insured against as to which such proceeds are paid and, if there is no Event of Default under § 10 hereof, the Lessee shall be entitled to retain all such proceeds. Notwithstanding the foregoing, the Lessor may, at its option and expense, provide casualty insurance in amounts which are in excess of the Casualty Value of the Units and which policies may name the Lessor as the loss payee. The Lessee will cooperate with the reasonable requests of the Lessor so as to effect this insurance coverage; it being understood that any such insured coverage is expressly within the Lessor's option and in no way relieves the Lessee from any of its responsibilities under this § 7.07.

7.08. Discharge of Liens. The Lessee, at its own expense, will promptly pay or discharge any and all sums claimed by any party which, if unpaid, might become a lien, charge or security interest (other than an encum-

brance created by the Lessor or the Vendor or resulting from claims against the Lessor or the Vendor not related to the ownership of the Units) upon or with respect to any Unit, including any accession thereto or the interest of the Lessor, the Vendor or the Lessee therein, and will promptly discharge any such lien, charge or security interest which arises, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal or administrative proceedings in any reasonable manner and the nonpayment thereof does not, in the reasonable opinion of the Lessor and of the Vendor, adversely affect the title of the Lessor or the security interest of the Vendor in or to the Units or otherwise under this Lease or the CSA. Any amounts paid by the Lessor or the Vendor in discharge of such liens, charges or security interests upon the Units shall be secured by and under this Lease. This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

#### § 8. REPORTS

On or before November 30 in each year, commencing with the calendar year 1981, the Lessee will furnish to the Lessor and the Vendor a certificate signed by an officer of the Lessee who has knowledge of the pertinent facts (a) setting forth as at the preceding June 30 the amount, description and numbers of all Units then leased hereunder, the description and numbers of the railroad equipment to which such Units are attached and the amount, description and numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year (or since the date of this Agreement in the case of the first such statement) or are then undergoing repairs (other than running repairs) or then withdrawn from use pending such repairs and such other information regarding the condition, state of repair and use of the Units as the Lessor or the Vendor may reasonably request and (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and markings required by § 5 hereof and by the CSA have been preserved or replaced. The Lessor, at its sole cost and expense, shall have the right by its agents to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Lessor may request during the continuance of this Lease.

§ 9. DISCLAIMER OF WARRANTIES;  
COMPLIANCE WITH APPLICABLE LAWS; INDEMNIFICATION

9.01. Disclaimer of Warranties by Lessor. THE LESSEE ACKNOWLEDGES AND AGREES (1) THAT EACH UNIT IS OF A SIZE, DESIGN, CAPACITY AND MANUFACTURE SELECTED BY THE LESSEE, (2) THAT THE LESSEE IS SATISFIED THAT THE SAME IS SUITABLE FOR ITS PURPOSES, (3) THAT THE LESSOR IS NOT A MANUFACTURER OR INSTALLER THEREOF, NOR A DEALER IN PROPERTY OF SUCH KIND, (4) THAT THE LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF OR THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN THE UNITS DELIVERED TO THE LESSEE HEREUNDER AND (5) THAT THE LESSOR MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE OR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF OR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT, EITHER UPON DELIVERY THEREOF TO THE LESSEE OR OTHERWISE, it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee; but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for the account of the Lessor and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Lessor may have against the Builder under the provisions of Item 3 of Annex A and the patent infringement and title indemnification provisions of Article 13 of the CSA; provided, however, that if at any time an Event of Default shall have occurred and be continuing, the Lessor may assert and enforce such claims and rights at the Lessee's sole cost and expense. The Lessor shall have no responsibility or liability to the Lessee or any other person with respect to (i) any liability (including without limitation strict liability in tort or otherwise), loss or damage caused or alleged to be caused directly or indirectly by any Unit or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of any Unit or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Unit. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Lessor that the Units described therein are

in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

9.02. Compliance with Applicable Laws. The Lessee agrees, for the benefit of the Lessor and the Vendor, to comply in all respects (including, without limitation, the use, maintenance and operation of each Unit) with all applicable laws of the jurisdictions in which its operations involving the Units may extend, with the interchange rules of the United States Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units (the "Applicable Laws"), and in the event that, prior to the expiration of this Lease or any renewal thereof, any Applicable Law requires any alteration, replacement or addition of or to any part on any Unit, the Lessee will conform therewith at its own expense (and the Lessor will have title thereto); provided, however, that the Lessee may, at its own expense, in good faith, contest the validity or application of any Applicable Law in any reasonable manner which does not, in the reasonable opinion of the Lessor or the Vendor, adversely affect the property or rights of the Lessor or the Vendor under this Lease or under the CSA. The Lessee, at its own cost and expense, may furnish other additions, modifications and improvements to the Units during the term of this Lease which shall be owned by the Lessee and shall be removed by it upon the return of the Units pursuant to § 14 hereof; provided that such additions, modifications and improvements are readily removable without causing material damage to the Units.

9.03. Lessee To Indemnify Lessor and Vendor. The Lessee assumes the risk of and agrees to indemnify, protect and hold harmless the Lessor (in both its individual and fiduciary capacities) and the Vendor from and against all losses, damages, injuries, liabilities, claims (including, without limitation, claims for strict liability in tort or otherwise) and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including but not limited to counsel fees and expenses, patent liabilities, penalties and interest, arising out of or as the result of the entering into or the performance of this Lease, the CSA, the Participation

Agreement or any sublease entered into pursuant to § 12 hereunder, or the occurrence of a default, an event of default or an Event of Default under any of the above instruments, the ownership of any Unit, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any Unit or any accident in connection with the operation, use, condition, possession, storage or return of any Unit resulting in damage to property or injury or death to any person or the transfer of title to or its security interest in the Equipment by the Vendor pursuant to any provision of the CSA (the "Indemnified Matters"). The indemnities arising under this Section shall continue in full force and effect notwithstanding the full payment of all obligations under this Lease or the expiration or termination of the term of this Lease. The indemnities arising under this Section shall not be deemed to operate as a guarantee of the principal of or interest on the CSA Indebtedness under the CSA.

9.04. Preparation of Reports. The Lessee agrees to prepare and deliver to the Lessor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor) any and all reports (other than tax returns not required to be prepared by the Lessee pursuant to § 6 hereof) to be filed by the Lessor with any Federal, state or other regulatory authority by reason of the ownership by the Lessor of the Units, the security interest of the Vendor in the Units, or the leasing thereof to the Lessee.

## § 10. DEFAULT

10.01. Events of 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 payment of any amount provided for in § 3, 7 or 13 hereof, and such default shall continue for 10 days;

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

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

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

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

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

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

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units so terminated shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided; and thereupon the Lessor may by its agents enter upon any premises where any of the Units so terminated may be and take possession of all or any of such Units and thenceforth possess, sell, operate, lease to others and use the same free from any right of the Lessee or its successors or assigns to use the Units for any purposes whatever; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee as damages for loss of a bargain and not as a penalty an amount equal to the excess, if any, of the Casualty Value as of the rental payment date on or next preceding the date of termination over the net proceeds of the sale of the Equipment if sold or, if not sold at such time, the amount the Lessor reasonably estimates to be the net sales proceeds of such Unit at such time.

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

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

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

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

## § 11. RETURN OF UNITS UPON DEFAULT

11.01. Return of Units upon Default. If this Lease shall terminate pursuant to § 10 hereof, the Lessee

shall forthwith deliver possession of the Units to the Lessor. Each Unit so delivered shall be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted. For the purpose of delivering possession of any Unit or Units to the Lessor as above required, the Lessee shall, at its own expense and risk, forthwith and in the usual manner (including, without limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any Unit has been interchanged to return such Unit so interchanged), cause (a) if requested by the Lessor, the Units to be detached from each unit of railroad rolling stock to which it has been attached, (b) the Units to be moved to such point or points on its lines as shall be designated by the Lessor and shall there deliver the Units or cause them to be delivered to the Lessor and (c) the Units to be moved to such interchange point or points of the Lessee as shall be designated by the Lessor upon any sale, lease or other disposal of all or any part of the Units by the Lessor. At the option of the Lessor, the Lessor may keep the Units on any of the lines or premises of the Lessee until the Lessor shall have leased, sold or otherwise disposed of the same, and for such purpose the Lessee agrees to furnish, without charge for rent or storage, the necessary facilities at any point or points selected by the Lessor reasonably convenient to the Lessee and, at the Lessee's risk, to permit inspection of the Units by the Lessor, the Lessor's representatives and prospective purchasers and users. The movement and storage of such Units shall be at the expense and risk of the Lessee without charge to the Lessor for insurance, which shall be provided by Lessee until expiration of Lessee's obligations under this § 11 pursuant to § 7 of this Lease. During any storage period, Lessee will, at its own cost and expense, maintain and keep the Units in good order and repair pursuant to § 7 of this Lease. This agreement to detach and deliver the Units and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties and, upon application to any court of equity having competent jurisdiction, the Lessor shall be entitled to a decree against the Lessee requiring specific performance thereof. The Lessee hereby expressly waives any and all claims against the Lessor and its agent or agents for damages of whatever nature in connection with any retaking of any Units in any reasonable manner.

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

the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor. In the event any Unit is not detached, delivered and stored as hereinabove provided within 30 days after such termination, the Lessee shall, in addition, pay to the Lessor for each day thereafter an amount equal to the amount, if any, by which 0.04182% of the Purchase Price of such Unit exceeds the actual earnings received by the Lessor on such Unit for each such day.

11.02. Lessor as Agent of Lessee. Without in any way limiting the obligation of the Lessee under the foregoing provisions of this § 11, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

## § 12. ASSIGNMENT; POSSESSION AND USE

12.01. Assignment by Lessor. This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. All the rights of the Lessor hereunder shall inure to the benefit of the Lessor's assigns (including the Vendor to the extent provided in the Lease Assignment).

12.02. Possession and Use. So long as the Lessee shall not be in default under this Lease and no event of default shall exist under the CSA, the Lessee shall be entitled to the possession and use of the Units by it or any affiliate upon lines of railroad owned or operated by it or any such affiliate or upon lines of railroad over which the Lessee or any such affiliate has trackage or other operating rights or over which railroad equipment of the Lessee or any such affiliate is regularly operated pursuant to contract, and also to permit the use of the Units upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements, but only upon and subject to all the terms and

conditions of this Lease and the CSA; provided, however, that the Lessee shall not use or permit to be used any Unit, or assign or permit the assignment of any Unit to service involving any use thereof, outside the United States of America within the meaning of section 861 of the Code, except for temporary use in Canada or Mexico for not more than 90 days in any calendar year and provided further that the Lessee shall not assign or transfer its leasehold interest in this Lease except as provided herein without the prior written consent of the Lessor and the Vendor. The Lessee may receive and retain compensation for such use from other railroads so using any of the Units.

12.03. Sublease. The Lessee shall have the right to sublease any or all of the Units from time to time to The Chesapeake and Ohio Railway Company or Western Maryland Railway Company, for terms not to extend beyond the term of this Lease, but only upon and subject to all the terms and conditions of this Lease and of the CSA; 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 an Event of Default hereunder and that no such sublease shall relieve the Lessee of its obligations to the Lessor under this Lease.

12.04. Merger. Nothing in this § 12 shall be deemed to restrict the right of the Lessee to assign or transfer its interest under this Lease in the Units or possession of the Units to any railroad corporation incorporated under the laws of any state of the United States of America or the District of Columbia (which shall have duly assumed the obligations of the Lessee hereunder and under the Participation Agreement and the Consent) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety; provided that such assignee or transferee will not, upon the effectiveness of such merger, consolidation or acquisition, be in default under any provision of this Lease.

### § 13. RENEWAL; DUTY TO FIRST OFFER

13.01. Renewal. Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may by written notice delivered to the Lessor not less than 180 days prior to the end of the original term of this Lease elect to extend

the term of this Lease in respect of all but not less than all of the Units then covered by this Lease for an additional two-year period commencing on the scheduled expiration of such original term at a rental payable in semiannual payments on January 1 and July 1 in each year equal to the Fair Market Rental (as defined in § 13.02 hereof).

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

13.03. Appraisal. If, after 35 days from the giving of notice by the Lessee of the Lessee's election to extend the term of this Lease as provided in § 13.01 hereof, the Lessee and the Lessor are unable to agree upon a determination of Fair Market Rental, either party to such determination may give written notice to the other requesting determination of such value by an appraisal procedure and the parties shall consult for the purpose of appointing a qualified independent appraiser by mutual agreement. If no such appraiser is so appointed within 20 business days after such notice is given, each party shall appoint an independent appraiser within 25 business days after such notice is given and the two appraisers so appointed shall appoint a third independent appraiser within 30 business days after such notice is given. If no such third appraiser is appointed within 30 business days after such notice is given, either party may apply to make such appointment to the American Arbitration Association and both parties shall be bound by any appointment so made. Each appraiser or appraisers appointed pursuant to the foregoing procedure shall be instructed to determine the Fair Market Rental of the Units subject to the proposed extended term within 90 days after his or her appointment. If the parties shall have appointed a single appraiser or if either party shall have failed to appoint an appraiser, the determination of the single appraiser appointed shall be final. If three appraisers shall be appointed, the determination of the appraiser which differs most from the other two appraisers shall be excluded, the remaining two determinations shall be averaged and such

latter average shall be final and binding upon the parties hereto. The appraisal proceedings shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association as in effect on the date hereof, except as modified hereby. The provisions for this appraisal procedure shall be the exclusive means of determining Fair Market Rental and shall be in lieu of any judicial or other procedure for the determination thereof. The expenses of the appraisal procedure shall be borne equally by the Lessee and the Lessor.

13.04. Duty to First Offer. Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, in the event that the Lessor elects to sell the Units to third parties at the expiration of the original or an extended term of this Lease, the Lessor shall give the Lessee at least 10 business days' prior written notice of such intention prior to the expiration of such term. The Lessee shall have the sole right and option to purchase all but not less than all the Units then subject to this Lease at the Fair Market Value thereof. The Lessee shall irrevocably exercise such purchase right by delivery to the Lessor of a written notice within 10 business days from receipt of such notice from the Lessor, specifying a date of purchase not later than the later of 10 business days after the date of delivery of such notice by the Lessee to the Lessor or 90 days after the expiration of such term of this Lease. In the event that the Lessee shall have delivered a notice of its election to purchase such Units, this Lease (including the obligation to pay rent) shall be extended upon the same terms and conditions set forth herein from the date such notice is delivered to the Lessor until the date of such purchase.

Upon payment of the purchase price of any Unit, the Lessor shall upon request of the Lessee execute and deliver a bill of sale (without recourse, representations or warranties of any kind) for such Unit to the Lessee or to the Lessee's assignee or nominee such as will transfer to the Lessee such title to such Unit as the Lessor derived from the Vendor, free and clear of all liens, security interests and other encumbrances arising through the Lessor not arising out of the transactions contemplated herein.

13.05. Fair Market Value. Fair Market Value shall be equal to the value which would be obtained in an arm's-length transaction between an informed and willing buyer (other than a lessee currently in possession) and an

informed and willing seller under no compulsion to sell and, in such determination, costs of removal from the location of current use shall not be a deduction from such value. If on or prior to the valuation date the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Value of the Units, such value shall be determined in accordance with the appraisal procedure set forth in § 13.03 hereof.

#### § 14. RETURN OF UNITS UPON EXPIRATION OF TERM

14.01. Return of Units. The Lessor intends to retain the Units for re-lease at the expiration of the term of this Lease. As soon as practicable on or after the expiration of the original or extended term of this Lease with respect to any Unit not purchased by the Lessee, the Lessee will, at its own cost and expense, at the request of the Lessor, detach each Unit from the unit of railroad rolling stock to which it had been attached and deliver possession of such Unit to the Lessor at such point or points on its lines as the Lessor may designate or, in the absence of such designation, as the Lessee may select; provided, however, that if so instructed in writing by the Lessor at least 30 days prior to such expiration, the Lessee will, on or prior to the last business day of each consecutive calendar month following such expiration, deliver to the Lessor not more than 56 Units (or such other number as may be agreed to by the Lessor) under this Lease. If the Lessor gives such instruction to the Lessee, the Lessee shall pay as rent to the Lessor for each Unit not delivered upon the expiration of the original or extended term of this Lease in accordance with such instruction an amount equal to 50% of one-sixth of the average rental rate per Unit set forth in § 3.01 hereof for each month (or part thereof) subsequent to such expiration, payable on the last business day of the month in which the Unit is returned.

Subsequent to the expiration of the term of this Lease and prior to delivery of any Unit to the Lessor, all terms and conditions of this Lease (except as provided above) shall continue to apply to such Unit.

14.02. Storage. The Lessee shall permit the Lessor to store the Units at such point or points on the Lessee's lines as the Lessee may select, in facilities furnished by the Lessee, for a period not exceeding 90

days after the delivery of the last Unit to the Lessor, and shall transport all such Units on a one time basis at any time within such 90-day period to any reasonable place on the lines of railroads operated by the Lessee or to any connecting carrier for shipment, all as directed by the Lessor. The movement and storage of such Units shall be at the expense and risk of the Lessee without charge to the Lessor for insurance, which shall be provided by Lessee until expiration of Lessee's obligations under this § 14 pursuant to § 7 hereof. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser, lessee or user of such Unit, to inspect the same.

14.03. Condition of Units. Each Unit returned to the Lessor pursuant to this § 14 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted; (ii) meet the standards then in effect under the Applicable Laws and (iii) have removed, at the Lessee's expense, all additions, modifications and improvements owned by the Lessee.

14.04. Specific Performance. The detaching, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having competent jurisdiction, the Lessor shall be entitled to a decree against the Lessee requiring specific performance thereof. The Lessee shall defend and indemnify the Lessor against any damages, cost or liability incurred by the Lessor as a consequence of Lessee's failure to perform in accordance with the terms of this Section.

## § 15. INCOME TAX INDEMNITY

15.01. Assumptions. (1) The parties hereto agree that the Owner, as the beneficial owner of each Unit, shall be entitled to such deductions, credits and other benefits as are provided by the Code and state and local taxing statutes to an owner of property, including without limitation (i) deductions for depreciation of each Unit under section 167 of the Code computed on the basis (A) that each such Unit will have a basis under section 167(g) of the Code at least equivalent to the Purchase Price and such other transaction expenses as are properly includible in the basis of such Unit, (B) of the double-declining balance method of depreciation authorized

by section 167(b)(2) of the Code with respect to the amount of the aggregate Purchase Price of the Units, switching to the sum-of-the-years digits method of depreciation authorized by section 167(b)(3) of the Code when most beneficial to the Owner without obtaining the consent of the Commissioner of Internal Revenue in accordance with Treasury Regulation § 1.167(a)-11(c)(1)(iii), (C) of the asset depreciation range system of Treasury Regulation § 1.167(a)-11, (D) of an asset depreciation period of 12 years and (E) of a net salvage value of zero after the reduction permitted by section 167(f) of the Code (the "ADR Deductions"); (ii) deductions with respect to interest payable on the CSA Indebtedness (the "Interest Deductions"); and (iii) investment credit pursuant to section 38 of the Code at least equal to 10% of the Purchase Price and such other transaction expenses as are properly includible in the basis of each Unit (the "Investment Credit").

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

(3) The Lessee agrees that neither it nor any corporation controlled by it, in control of it or under common control with it, directly or indirectly, will at any time take any action or file any returns or other documents inconsistent with the foregoing clauses (1) and (2) of this § 15.01 and that the Lessee and any corporation controlled by it, in control of it or under

common control with it, directly or indirectly, will file such returns, take such actions and execute such documents as may be reasonable and necessary to facilitate accomplishment of the intent hereof.

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

(A) when delivered and accepted under this Lease, the Units will not have been used by any person so as to preclude "the original use of such property" within the meaning of Sections 48(b) and 167(c)(2) of the Code from commencing with the Owner;

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

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

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

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

(F) at all times during the original term of this Lease and renewal periods thereof, the Owner will be entitled to treat, for Federal income tax purposes, each item of income, deduction and credit relating to all Units subject to the CSA and this

Lease as being derived from or allocable to sources within the United States of America;

(G) when delivered and accepted under this Lease, the Units will require no improvements, modifications, or additions (other than ancillary items of removable equipment of a kind that customarily are selected and furnished by purchasers or lessees of auto racks) in order to be rendered complete for their intended use by the Lessee;

(H) at the time the Units are delivered and accepted under this Lease and related documents, the Lessee shall have been fully reimbursed for all costs incurred with respect to the Units, and neither the Lessee, any affiliate thereof nor any other person will have made any investment in the Units in violation of Revenue Procedure 75-21, 1975-1 C.B. 715, as modified in Revenue Procedure 79-48, 1979-2, C.B. 529.

(2) In the opinion of the Lessee, each Unit will have an estimated useful life of not less than 13-1/2 years and fair market value at the end of the original lease term (without including in fair market value for this purpose any increase or decrease for inflation or deflation, and after subtracting from such value any cost for removal and delivery of possession of the Unit at the end of such lease term) equal to at least 22.6% of the Purchase Price of such Unit and each Unit will be useful and usable by a party other than the Lessee at the end of the original term and capable of continued leasing and transfer to another party at that time and it will be commercially feasible to do so.

15.03. Indemnity for Acts, Omissions or Misrepresentations. (1) If by reason of any act of commission or omission, misrepresentation, breach of any agreement, covenant or warranty contained in this Lease or any other agreement relating to the lease of the Units on the part of the Lessee or any party referred to in clause (3) of § 15.01 hereof or by any sublessee or assignee of the Lessee, the Owner shall lose the right to claim, shall

not claim (as the result of a good faith determination of tax counsel of General Electric Company (the "Tax Counsel") that such claim is not allowable), shall suffer a disallowance of or shall be required to recapture all or any portion of its proportionate share of the Investment Credit, the Interest Deductions or the ADR Deductions (any such event is called a "Loss"), then the Lessee shall pay to the Owner as an indemnity, on the next succeeding rental payment date hereunder after written notice to the Lessee by the Owner of such Loss (or, if this Lease is terminated, within 30 days after demand), and on each rental payment date thereafter during the remaining term of this Lease, such amount or amounts as shall cause the Owner's Net Economic Return to equal the Net Economic Return that would have been realized by the Owner if such Loss had not occurred.

(2) In the event that the Owner suffers a Loss and the Owner and the Lessee are unable to agree on the indemnity amount required to restore the Owner's Net Economic Return, as aforesaid, then the Lessee shall pay to the Owner, in lieu of the amount provided for in clause (1) of this Section, such amount or amounts from time to time as, after deduction of all taxes required to be paid by the Owner in respect of the receipt of such amounts under the laws of any Federal, state, local or foreign government or taxing authority, shall be equal to the sum of the aggregate additional Federal, state or local income taxes payable by the Owner from time to time as a result of any such Loss plus the amount of any interest, penalties or additions to tax payable as a result of any such Loss. If, as a result of a Loss, the aggregate Federal, state or local income taxes paid by the Owner for any taxable year shall be less than the amount of such taxes which would have been payable by the Owner had no such Loss occurred, then the Owner shall pay the Lessee the amount of such difference in taxes plus any additional tax benefits realized by the Owner as the result of such payment; provided, however, that the Owner shall not be obligated to make any payment pursuant to this sentence to the extent that the amount of such payment would exceed (x) the amount of all prior payments by the Lessee to the Owner pursuant to this clause (2) in respect of a Loss less (y) the amount of all prior payments by the Owner to the Lessee hereunder. The amount payable to the Owner pursuant to this clause (2) shall be paid within 30 days after receipt of a written demand therefor from the Owner accompanied by a written statement describing in reasonable detail such Loss and the computation of the amount so payable (but not prior to the earlier of (i) the filing of a return or the acceptance of an audit report in which

such Loss is reflected and (ii) the payment of the additional income tax that becomes due as the result of the Loss and, in the case of amounts which are being contested in accordance with § 15.04 hereof, not prior to the time provided in such Section). Any payment due to the Lessee from the Owner pursuant to this clause (2) shall be paid within 30 days after the Owner realized any such savings in its income taxes or additional tax benefits, as the case may be.

(3) If the Owner is required by the Internal Revenue Service to include in its gross income an amount in respect of any replacement, improvement and/or addition to any Unit or as the result of any action taken by the Lessee or any sublessee or assignee of the Lessee ("Capital Expenditures"), then the Lessee shall pay directly to the Owner, as an indemnity, in immediately available funds, such amount or amounts which, after deduction of all taxes required to be paid by the Owner in respect of the receipt of such amounts under the laws of any Federal, state or local government or taxing authority of the United States of America, shall be equal to the sum of the aggregate additional Federal, state or local income taxes payable by the Owner from time to time as a result of such Capital Expenditure plus the amount of any interest, penalties or additions to tax payable as a result of any such Capital Expenditure. If as a result of any such Capital Expenditure the aggregate Federal, state or local income taxes paid by the Owner for any taxable year shall be less than the amount of such taxes which would have been payable by the Owner had no such Capital Expenditure been made, then the Owner shall pay the Lessee the amount of such savings in taxes plus any additional tax benefits realized by the Owner as a result of such payment; provided, however, that the Owner shall not be obligated to make any payment pursuant to this sentence to the extent that the amount of such payment would exceed (x) the amount of all prior payments by the Lessee to the Owner pursuant to this clause (3) in respect of any Capital Expenditures less (y) the amount of all prior payments by the Owner to the Lessee hereunder. The amount payable to the Owner pursuant to this clause (3) shall be paid within 30 days after receipt of a written demand therefor from the Owner (but not prior to payment by the Owner of the additional Federal, state or local income tax, as the case may be, which becomes due as a result of the said inclusion) accompanied by a written statement describing in reasonable detail such inclusion and the computation of

the amount so payable. Any payment due to the Lessee from the Owner pursuant to this clause (3) shall be paid within 30 days after the Owner realizes any such savings in its income taxes or additional tax benefits, as the case may be. The Lessee agrees to give the Owner, within 30 days after request therefor, written notice describing in reasonable detail Capital Expenditures made and specifying the cost thereof with respect to each Unit if such information is required in connection with an audit by the Internal Revenue Service of the tax returns of the Owner.

15.04. Contest Provisions. (1) If the Internal Revenue Service shall propose an adjustment in the Federal income taxes of the Owner for which the Lessee would be required to indemnify the Owner pursuant to § 15.03 hereof and the amount of the indemnity which the Lessee would be required to pay would exceed \$100,000 then, if requested by the Lessee in a timely written request, the Owner shall request an opinion from Tax Counsel as to whether the basis in law and in fact in favor of allowance of the item proposed to be adjusted outweighs the basis in law and in fact to the contrary. If the opinion is to that effect and if the Lessee promptly requests the Owner to do so, the Owner shall contest the proposed adjustment; provided, however, that Tax Counsel shall determine in its sole and reasonable discretion the nature of all action to be taken to contest such proposed adjustment including (A) whether any action to contest such proposed adjustment shall initially be by way of judicial or administrative proceedings, or both, (B) whether any such proposed adjustment shall be contested by resisting payment thereof or by paying the same and seeking a refund thereof, and (C) if the Owner shall undertake judicial action with respect to such proposed adjustment, the court or other judicial body before which such action shall be commenced. The Owner shall have full control over any contest pursuant to this Section and shall not be obligated to appeal an adverse determination by any court. At any time, whether before or after commencing to take the action set forth in this Section, the Owner may decline to take such action by notifying the Lessee in writing that the Lessee is relieved of its obligation to indemnify the Owner with respect to the adjustment proposed by the Internal Revenue Service or such portion thereof as may be specified in such notice.

(2) The Owner shall not be required to take any action pursuant to this Section unless and until the Lessee shall have agreed to indemnify the Owner in a manner reasonably satisfactory to the Owner for any liability or loss which the Owner may incur as a result of contesting the validity of any proposed adjustment and shall have agreed to pay to the Owner on demand all costs and expenses which the Owner may incur in connection with contesting such proposed adjustment (including reasonable fees and disbursements of counsel selected by the Owner). If the Owner determines to contest any adjustment by paying the additional tax and suing for a refund, the Lessee shall pay to the Owner an amount equal to the sum on an after-tax basis of any tax, interest, penalties and additions to tax which are required to be paid. Upon receipt by the Owner of a refund of any amounts paid by it in respect of which amounts it shall have been paid an equivalent amount by the Lessee, the Owner shall pay to the Lessee the amount of such refund together with any interest received by it on such amount. The Lessee shall be obligated to pay to the Owner the amount specified in § 15.03 hereof promptly after the Owner has taken all the action that it has agreed in this § 15.04 to take.

15.05. Foreign Tax Credit Indemnity. If any item of income or deduction with respect to the Units shall not be treated as derived from or allocable to sources within the United States of America for a given taxable year (any such event is called a "Foreign Loss"), then the Lessee shall pay to the Owner as an indemnity, on the next succeeding rental payment date after written notice to the Lessee by the Owner, such amount which after deduction of all taxes required to be paid by the Owner in respect of the receipt of such amounts under the laws of any Federal, state or local government or taxing authority of the United States of America shall equal the sum of (1) the excess of (x) the foreign tax credits which the Owner would have been entitled to for such year had no such Foreign Loss occurred over (y) the foreign tax credit to which the Owner was limited as a result of such Foreign Loss and (2) the amount of any interest, penalties or additions to tax payable as a result of such Foreign Loss.

15.06. Exceptions. Notwithstanding the foregoing provisions, the Lessee shall not be required to indemnify the Owner with respect to any Loss or Foreign Loss that results solely and directly from (i) a Casualty

Occurrence, if the Lessee has made all payments with respect thereto that are required to be made pursuant to § 6 hereof; (ii) a voluntary disposition by the Owner of its beneficial interest in any Unit, if such disposition (x) shall be the direct cause of such Loss or Foreign Loss with respect to such Unit, (y) shall occur at a time while no Event of Default (and no event that with notice or lapse of time or both would constitute an event of Default) has occurred and is continuing, and (z) shall not be pursuant to the written consent of the Lessee; (iii) the failure of the Owner to claim the proper credit or deductions contemplated by § 15.01 hereof unless the Owner shall have been so advised by Tax Counsel; (iv) the failure of the Owner to have sufficient Federal income tax liability against which to apply such credits or sufficient income to benefit from such depreciation or interest deductions; or (v) any change in the Code, the income tax regulations thereunder or published administrative or judicial interpretations of the Code or such regulations which is not enacted or does not have an effective date on or prior to December 31, 1980.

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

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

15.09. Additional Definitions. For purposes of this § 15, the term "Owner" shall include General Electric

Credit Corporation and shall also include any member of an affiliated group, within the meaning of section 1504 of the Code, of which General Electric Credit Corporation is or may become a member, if consolidated returns are filed for such affiliated group for Federal income tax purposes.

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

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

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

15.13. Tax Indemnity Provisions Attach at Date of Execution. The provisions of this § 15 shall apply from the time of execution of this Lease, the Participation Agreement and the CSA, whether or not the other provisions of this Lease come into effect.

## § 16. FILING

The Lessee will cause this Lease, the Lease Assignment, the CSA and the CSA Assignment to be filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303. The Lessee will further cause this Lease and appropriate financing statements or continuation statements to be filed and (from time to time when required) refiled in accordance with the applicable provisions of the Uniform Commercial Code as in effect in the State of Maryland (and, if the Lessee changes its

principal place of business to a different state, in any such other state) in like manner as if the Lessor's interest in this Lease represented a security interest and in any other state of the United States of America or the District of Columbia where filing is 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 interests in the Units and their rights under this Lease. The Lessee, at its expense, will undertake or cause to be undertaken the filings with the Interstate Commerce Commission and the State of Connecticut required of the Lessor under the CSA and will from time to time perform any other act and will execute, deliver and file any and all further instruments required by law or reasonably requested by the Lessor or the Vendor for the purposes specified in this Section. The Lessee will promptly furnish or cause to be furnished to the Vendor and the Lessor evidence of all such filing and, in connection with all filings other than the initial filings with respect thereto, an opinion of counsel with respect thereto satisfactory to the Vendor and the Lessor. This Lease and the CSA shall be filed and recorded with the Interstate Commerce Commission and financing statements in respect of the interests of the Vendor in the Units, the CSA and the Lease shall have been filed in accordance with the Uniform Commercial Code as in effect in the States of Maryland and Connecticut prior to the delivery and acceptance hereunder of any Unit.

#### § 17. INTEREST ON OVERDUE AMOUNTS

The Lessee shall promptly pay an amount equal to interest at the rate of 12-3/8% per annum on any overdue rentals or other obligations hereunder for the period of time during which they are overdue, or such lesser amount as may be legally enforceable.

#### § 18. NOTICES

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

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

Trust Department, with a copy to the Owner at its address set forth in the Participation Agreement; and

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

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

§ 19. SEVERABILITY; HEADINGS;  
EFFECT AND MODIFICATION OF LEASE

19.01. Severability. Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall be ineffective as to such jurisdiction 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.

19.02. Headings. All Section headings are inserted for convenience only and shall not affect any construction or interpretation of this Lease.

19.03. 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 with respect thereto. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized signatories for the Lessor and the Lessee.

§ 20. DEFINITIONS

If and so long as this Lease is assigned to the Vendor (or any successor thereto) for collateral purposes, wherever the term "Lessor" is used in this Lease it shall include the Vendor and any successors thereto (unless the context shall otherwise require) but the Vendor shall not

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

#### § 21. EXECUTION

This Lease may be executed in several counterparts, all of which together shall constitute a single instrument, but the counterpart delivered to the Vendor shall be deemed to be the original. Although for convenience this Lease is dated as of the date first set forth above, the actual dates of execution hereof by the parties hereto are the dates stated in the acknowledgments hereto.

#### § 22. GOVERNING LAW

The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of Maryland; provided, however, that the parties shall be entitled to all rights arising out of the filing hereof and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Lease or any assignment hereof shall be filed.

#### § 23. LESSOR'S RIGHT TO PERFORM FOR LESSEE

If the Lessee fails to perform or comply with any of its agreements contained herein, the Lessor may upon notice to the Lessee perform or comply with such agreement. The Lessee shall pay on demand the amount of the reasonable cost and expenses of the Lessor incurred in connection with such performance or compliance, together with interest thereon at the rate specified in § 17 hereof. No such performance or compliance by the Lessor shall be deemed a waiver of the rights and remedies of the Lessor against the Lessee hereunder or be deemed to cure the default of the Lessee hereunder (but if such default is cured within the time periods set forth in § 10.01 hereof, such default shall not constitute an Event of Default hereunder for purposes of Section 15.01(f) of the CSA).

§ 24. IMMUNITIES; NO RECOURSE

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

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

IN WITNESS WHEREOF, the parties hereto have

caused this instrument to be executed by duly authorized officers as of the date first set forth above.

THE BALTIMORE AND OHIO  
RAILROAD COMPANY,

by

\_\_\_\_\_  
Assistant Vice President  
and Treasurer

[Corporate Seal]

Attest:

\_\_\_\_\_  
Assistant Secretary

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

by

\_\_\_\_\_

[Corporate Seal]

Attest:

\_\_\_\_\_



SCHEDULE A TO THE LEASE

Units Leased

<u>Type</u>	<u>Quantity</u>	<u>Lessee's Numbers (Inclusive)</u>
Fully Enclosed Tri-Level Auto Racks	167	RP428-RP594

SCHEDULE B TO THE LEASE

Casualty Values

<u>Date</u>	<u>Percentage of Purchase Price</u>
January 1, 1981	89.95
July 1, 1981	90.67
January 1, 1982	90.11
July 1, 1982	89.20
January 1, 1983	87.96
July 1, 1983	87.52
January 1, 1984	85.77
July 1, 1984	83.72
January 1, 1985	81.38
July 1, 1985	78.75
January 1, 1986	75.86
July 1, 1986	71.33
January 1, 1987	66.53
July 1, 1987	61.46
January 1, 1988	56.14
July 1, 1988	50.58
January 1, 1989	44.78
July 1, 1989	38.79
January 1, 1990	32.64
July 1, 1990,	26.37
January 1, 1991	20.00

The percentages set forth above have been computed without regard to recapture of the Investment Credit. Consequently, the Casualty Value of any Unit suffering a Casualty Occurrence on or before the third, fifth or seventh anniversary of the date of delivery and acceptance thereof shall be increased as follows:

<u>Anniversary of the Date of the Certificate of Acceptance</u>	<u>Percentage of Purchase Price to be Added</u>
Third	19.231
Fifth	12.821
Seventh	6.411

ANNEX D  
to the  
CONDITIONAL SALE AGREEMENT

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[CS&M Ref. 5415-003]

ASSIGNMENT OF LEASE AND AGREEMENT

Dated as of July 1, 1980

Between

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

and

MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY,  
as Agent.

---

ASSIGNMENT OF LEASE AND AGREEMENT dated as of July 1, 1980, between THE CONNECTICUT BANK AND TRUST COMPANY, a Connecticut banking corporation, not in its individual capacity but solely as trustee (the "Lessor") under a Trust Agreement dated as of the date hereof (the "Trust Agreement") with GENERAL ELECTRIC CREDIT CORPORATION (the "Owner"), and MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, a Maryland banking corporation, as Agent (the "Vendor") under a Participation Agreement dated as of the date hereof (the "Participation Agreement").

The Lessor has entered into a Conditional Sale Agreement dated as of the date hereof (the "CSA") with WHITEHEAD & KALES COMPANY (the "Builder") providing for the sale to the Lessor of such units of railroad equipment (the "Units") described in Annex B thereto as are delivered to and accepted by the Lessor thereunder.

The Lessor and the Lessee have entered into a Lease of Railroad Equipment dated as of the date hereof (the "Lease"), providing for the leasing by the Lessor to the Lessee of the Units.

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

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

1. Assignment; Application of Payments. The Lessor hereby assigns to the Vendor, as collateral security for the payment and performance of the obligations of the Lessor under the CSA, all the Lessor's right, title and interest, powers, privileges, and other benefits under the Lease, including without limitation the immediate right to

receive and collect all rentals, profits and other sums payable to or receivable by the Lessor from the Lessee pursuant to the provisions of the Lease, whether as rent, casualty payment, indemnity (except its rights under §§ 6, 9.03, 13, 15 and 23 of the Lease), liquidated damages or otherwise (such moneys are called the "Payments"), and the right to make all waivers and agreements and to give all notices, consents and releases (subject to Section 12 hereof), 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 Lessor is or may become entitled to do under the Lease. Notwithstanding the foregoing, Payments shall not be deemed to include payments made by the Lessee to the Lessor pursuant to §§ 6, 9.03, 13, 15 and 23 of the Lease (except indemnification payments intended to satisfy the obligations of the Lessor to indemnify the Vendor pursuant to Articles 6 and 13 of the CSA). In furtherance of the foregoing assignment, the Lessor hereby irrevocably authorizes and empowers the Vendor in its own name or in the name of its nominee or in the name of the Lessor or as its attorney to demand, sue for and receive any and all sums to which the Lessor 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 Lessor pursuant to the Lease. To the extent received, the Vendor will apply such Payments to satisfy the obligations of the Lessor under the CSA then due and payable, and so long as no event of default (or event which with notice or lapse of time or both could constitute an event of default) under the CSA shall have occurred and be continuing, any balance shall be paid to the Lessor, in immediately available funds, not later than the first business day following receipt of such balance. If the Vendor shall not receive any rental payment under § 3.01 of the Lease when due, the Vendor shall promptly notify the Lessor and the Owner at the addresses set forth in the Participation Agreement; provided, however, that the failure of the Vendor so to notify the Lessor shall not affect the obligations of the Lessor hereunder or under the CSA.

2. No Assumption of Lessor's Liabilities. This Assignment is executed only as security and, therefore, the

execution and delivery of this Assignment shall not subject the Vendor to or in any way affect or modify the liability of the Lessor under the Lease, it being agreed that all obligations of the Lessor to the Lessee shall be and remain enforceable by the Lessee and its successors and assigns against and only against the Lessor or persons other than the Vendor.

3. No Modification of Lease Without Vendor's Consent. The Lessor agrees that, without the written consent of the Vendor, the Lessor will not anticipate the rents under the Lease or waive 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 or terminating the Lease and the Lessor agrees that any amendment or termination thereof without such consent shall be void; provided, however, that the Lessor may amend or supplement the Lease to provide for an increase or decrease of amounts due as rentals or Casualty Values under § 3.02 or 15.08 thereof, provided that no such decrease shall reduce said amounts below that which are necessary to satisfy the obligations of the Lessor under the CSA.

4. Vendor To Act for Lessor. The Lessor hereby constitutes the Vendor the Lessor's true and lawful attorney, irrevocably, with full power (in the name of the Lessor or otherwise), to demand and receive any and all Payments to which the Lessor 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 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.

5. Termination of Assignment. Upon the full discharge and satisfaction of all amounts due from the Lessor under the CSA and the Participation Agreement (without giving effect to any limitations of liability contained therein), this Assignment and all rights herein assigned to the Vendor shall terminate, and all right, title and interest of the Vendor in and to the Lease shall revert to the Lessor.

6. Filing. The Lessor will, from time to time, perform any other act and will execute, 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. Assignments by Vendor. 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 Lessor 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 Lessor and the Lessee may rely on instruments of assignment which they believe in good faith to be true and authentic.

8. Liens. The Lessor will pay and discharge any and all taxes, claims, liens, charges or security interests (other than those created by the CSA) on the Lease or the rentals or other payments due or to become due thereunder claimed by any party from, through or under the Lessor or its successors and assigns (other than the Vendor), not arising out of the transactions contemplated by the CSA or the Lease (but including tax liens arising out of the receipt by or for the account of the Lessor of the rentals and other payments under the Lease and any other proceeds from the Units) which, if unpaid, might become a claim, lien, charge or security interest on or with respect to the Lease or such rentals or other payments, unless the Lessor shall be contesting the same in good faith by appropriate proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect such interests of the Vendor.

9. Governing Law. This Assignment shall be governed by the laws of the State of Connecticut, but the parties shall be entitled to all rights conferred by the

laws of the several jurisdictions in which this Assignment shall be filed.

10. Notices. The Lessor 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 the CSA or at such other address as the Vendor shall designate.

11. No Action by Vendor Without Event of Default. The Vendor agrees that it will not, so long as no Event of Default under the Lease or event of default under the CSA has occurred and is continuing, exercise or seek to exercise any of the rights, powers, privileges or benefits which are assigned and transferred by the Lessor to the Vendor by this Assignment, except the right to receive and apply the Payments as provided in Section 1 hereof, and that, subject to the terms of the Lease and the CSA, the Lessor may, so long as no event of default under the CSA or Event of Default under the Lease has occurred and is continuing, exercise or seek to exercise such rights, powers, privileges or benefits; provided, however, that the Lessor shall not take any action which would terminate the Lease without the prior written consent of the Vendor.

12. Retained Rights of Lessor. Notwithstanding any other provision of this Assignment, and so long as there is no event of default under the CSA, and to the extent that the Vendor does not seek to receive and collect any Payments under the Lease in excess of the amounts required to discharge the obligations of the Lessor under the CSA, the terms of this Assignment shall not limit or in any way affect the Lessor's right to receive and collect any Payments under the Lease in excess of the obligations of the Lessor under the CSA, or empower the Vendor in any way to waive or release the Lessee's obligation to pay such excess amounts, and the Lessor shall continue to be empowered to demand, sue for and receive any and all of such excess amounts, but shall not take any action under § 10.01(b) of the Lease without the prior written consent of the Vendor.

13. Limitation of Liability. Each and all of the warranties, representations, undertakings and agreements herein made on the part of the Lessor are made and

intended not as personal representations, warranties, undertakings and agreements by The Connecticut Bank and Trust Company or for the purpose or with the intention of binding said bank personally but are made and intended for the purpose of binding only the Trust Estate (as such term is used in the Trust Agreement), and this Assignment is executed and delivered by said bank solely in the exercise of the powers expressly conferred upon said bank as trustee under the Trust Agreement, and no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against said bank, except for wilful misconduct or gross negligence on the part of said Bank, or against the Owner hereunder (except pursuant to Section 1.03 and the last paragraph of Section 5.01 of the Trust Agreement) or on account of any representation, warranty, undertaking or agreement of said bank or the Owner, either expressed or implied, all such personal liability (except as aforesaid), if any, being expressly waived and released by the Vendor and by all persons claiming by, through or under the Vendor; provided, however, that the Vendor or any person claiming by, through or under it making claim hereunder may look to said Trust Estate for satisfaction of the same.

14. Execution. 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. Although for convenience this Assignment is dated as of the date first set forth above, the actual dates of execution are the dates stated in the acknowledgments hereto.

15. Headings. Section headings have been provided for convenience only and do not form part of this instrument.

IN WITNESS WHEREOF, the parties hereto have

caused this instrument to be executed by duly authorized officers as of the date first set forth above.

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

[Corporate Seal]

by

\_\_\_\_\_

Attest:

\_\_\_\_\_

MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, as Agent under the Participation Agreement,

[Corporate Seal]

by

\_\_\_\_\_

Assistant Vice President

Attest:

\_\_\_\_\_  
Corporate Trust Officer

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

On this            day of August 1980, before me personally appeared           , to me personally known, who, being by me duly sworn, says that he is            of THE CONNECTICUT BANK AND TRUST COMPANY, a Connecticut banking corporation, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

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Notary Public

[Notarial Seal]

My Commission expires

STATE OF MARYLAND, )  
 ) ss.:  
CITY OF BALTIMORE, )

On this            day of August 1980, before me personally appeared RUSSELL E. SCHREIBER, 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, a Maryland banking corporation, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

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Notary Public

[Notarial Seal]

My Commission expires

LESSEE'S CONSENT AND AGREEMENT

THE BALTIMORE AND OHIO RAILROAD COMPANY (the "Lessee"), the lessee named in the Lease of Railroad Equipment (the "Lease") referred to in the foregoing Assignment of Lease and Agreement (the "Assignment"), hereby acknowledges receipt of a copy of the Assignment and consents to all the terms and conditions of the Assignment and agrees that:

(1) it will pay all Payments (as defined in the Assignment) payable under the Lease directly to Mercantile-Safe Deposit and Trust Company, as Agent (the "Vendor"), the assignee named in the Assignment, by 11:00 a.m. Baltimore time, on the date such payment is due, by bank wire transfer of immediately available funds to The Annapolis Banking and Trust Company, Main Street and Church Circle, Annapolis, Maryland, for credit to the Agent's Account No. 52076-1, with a request that The Annapolis Banking and Trust Company advise Mrs. K. M. Tollberg, Assistant Vice President, Mercantile-Safe Deposit and Trust Company, Baltimore, Maryland, that the funds are "RE: B&O 7/1/80" (or at such other address as may be furnished in writing to the Lessee 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 Lessee under the Lease as though the Vendor were named therein as the Lessor; it will not assert against the Vendor any claim or defense it may have against the Lessor under the Lease and the Vendor shall not by virtue of the Assignment become subject to any liability or obligation under the Lease or otherwise; and

(3) the Lease shall not, without the prior written consent of the Vendor, be amended or terminated, nor shall any action be taken or omitted by the Lessee which might result in an alteration or impairment of the Lease, the Assignment or this Consent and Agreement or of any of the rights created by any thereof.

This Consent and Agreement shall be construed in accordance with the laws of the State of Maryland.

Dated as of July 1, 1980

THE BALTIMORE AND OHIO RAILROAD  
COMPANY,

[Corporate Seal]

by

Attest:

\_\_\_\_\_  
Assistant Vice President  
and Treasurer

\_\_\_\_\_  
Assistant Secretary