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INTERSTATE COMMERCE COMMISSION

ICC Washington, D. C.

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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:

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

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

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

(b) Assignment of Lease and Agreement dated as

RECORDATION NO. 12079-C
Filed & Recorded

AUG 11 1980 - 1 40 PM

INTERSTATE COMMERCE COMMISSION

Counterpart 1
J. B. Moore

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

See - D for #5

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AUG 11 1980 - 1 40 PM

INTERSTATE COMMERCE COMMISSION

[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]

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 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 *A.C. Smith*
Assistant Vice President
and Treasurer

[Corporate Seal]

Attest:

Wm. J. ...
Deputy Corporate Assistant Secretary

APPROVED AS TO FORM

J.C. ...
ASSISTANT GENERAL ATTORNEY

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

[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]

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

Fulwider

[Corporate Seal]

Attest:

[Signature]

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

On this day of August 1980, before me personally appeared L. C. ROIG, JR., to me personally known, who, being by me duly sworn, says that he is Assistant Vice President and Treasurer of THE BALTIMORE AND OHIO RAILROAD COMPANY, a Maryland 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 **r. 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 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

1980 330

1980 330

1980 330

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