

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

LAW DEPARTMENT
701 COMMERCE STREET
DALLAS, TEXAS 75202

RECORDATION NO. 133712

214-651-6736

WILLIAM A. THIE
Vice-President-Law
JOE C. CRAWFORD
General Counsel

DEC 21 1981 - 3 10 PM

INTERSTATE COMMERCE COMMISSION

ARTHUR M. ALBIN
General Attorney
MICHAEL E. ROPER
Commerce Counsel
J. MICHAEL WILSON
General Attorney

December 18, 1981

IN REPLY REFER TO: 410.043-73

Mrs. Agatha L. Mergenovich
Secretary
Interstate Commerce Commission
12th and Constitution Ave., N.W.
Washington, D.C. 20423

1-255A134
No.
Date OCT 21 1981
Fee \$ 50.00
ICC Washington, D. C.

Re: Railroad Equipment Lease dated as
of December 16, 1981 between MISSOURI-
KANSAS-TEXAS RAILROAD COMPANY and
INTERNATIONAL METALS & MACHINES, INC.
covering eight (8) SD-40 Locomotives

Dear Mrs. Mergenovich:

In accordance with the provisions of Section 11303 of the
Interstate Commerce Act and rules and regulations approved and
prescribed by the Interstate Commerce Commission pursuant thereto,
there are submitted for filing and recording five (5) executed
counterparts of the Railroad Equipment Lease dated as of December 16,
1981, between MISSOURI-KANSAS-TEXAS RAILROAD COMPANY, 701 Commerce
Street, Dallas, Texas 75202, the Lessee, and INTERNATIONAL METALS
& MACHINES, INC., 2200 E. Devon Avenue, Suite 220, Des Plaines,
Illinois 60011, Lessor, covering the lease of eight (8) SD-40
locomotives manufactured by General Motors Corporation (Electro-
Motive Division) bearing the Lessee's serial numbers 629 through
636, both inclusive.

Please return one file marked copy to the undersigned and
the balance of the file marked copies to the attorney for the
Lessor, Mr. Art Miller, Quinn, Jacobs and Barry, Suite 1425,
LaSalle Bank Building, 135 LaSalle Street, Chicago, Illinois 60603.
I am enclosing a cashier's check in the amount of \$50.00 to cover
the prescribed fee for recording the lease.

I certify that I have knowledge of the matter set forth
herein.

Yours very truly,

Arthur M. Albin
Arthur M. Albin

DEC 21 3 04 PM '81

AMA/bmw
Enclosures

cc: Mr. Art Miller

Open Harold - Give A. Albin

Interstate Commerce Commission
Washington, D.C. 20423

OFFICE OF THE SECRETARY

Mr. Art Miller
Quinn, Jacobs & Barry
Suite 1425-LaSalle Building
135 LaSalle Street
Chicago, Illinois 60603

12/21/81

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 12/21/81 at 3:10PM, and assigned re-
recording number(s). 13372

Sincerely yours,

Agatha L. Mergenovich
Agatha L. Mergenovich
Secretary

Enclosure(s)

RECORDATION NO. 13372
FIVE 1425

DEC 21 1981 -3 10 PM
INTERSTATE COMMERCE COMMISSION

RAILROAD EQUIPMENT LEASE

Dated as of December 16, 1981

between

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

and

INTERNATIONAL METALS & MACHINES, INC.

RAILROAD EQUIPMENT LEASE dated as of December 16, 1981, between MISSOURI-KANSAS-TEXAS RAILROAD COMPANY, a Delaware corporation (hereinafter called the Lessee), and INTERNATIONAL METALS & MACHINES, INC., a Delaware corporation (hereinafter called the Lessor).

WHEREAS the Lessee desires to obtain the use of certain railroad equipment for its business and pursuant to due corporate authority agrees to lease such equipment from the Lessor at the rentals and upon the terms and conditions hereinafter provided;

WHEREAS the Lessor will purchase the equipment described in Schedule A hereto (such equipment as shall be delivered and accepted hereunder being hereinafter called the Equipment) for lease to the Lessee;

WHEREAS the Lessor will finance a portion of the purchase price of the Equipment by entering into a Sale Agreement dated as of the date hereof (hereinafter called the Sale Agreement) with General Motors Corporation (Electro-Motive Division) (hereinafter called the Builder); and

WHEREAS the Lessor, the Lessee and General Motors Corporation (Electro-Motive Division) have entered into a Purchase Order Assignment dated as of the date hereof (hereinafter called the "Purchase Order Assignment").

NOW THEREFORE, in consideration of the rentals to be paid and the covenants herein contained, the Lessor hereby leases the Equipment to the Lessee upon the following terms and conditions:

SECTION ONE DELIVERY AND ACCEPTANCE

1.1. Assignment of Purchase Order. The Lessee hereby assigns to the Lessor and/or its nominee all the Lessee's right, title and interest in and to the equipment described in Schedule A hereto, and its right to purchase and take delivery of said equipment from the Builder. Subject to the terms and conditions hereof, the Lessor assumes and undertakes the obligations of the Lessee to purchase and pay for said equipment.

In the event that the Lessor shall be relieved of its obligation to purchase any unit of such equipment because of the failure of any condition set forth for such purchase in the Sale

Agreement or this lease or for acceptance on behalf of the Lessor by the Lessee in Section 1.3 hereof, then the right of the Lessor to purchase and take delivery of such equipment shall revert to the Lessee, and in such case the Lessee agrees, for the benefit of the Builder, to assume the obligation of the Lessor to the Builder to purchase and pay for such equipment.

1.2. Appointment of Lessee as Agent. The Lessor hereby appoints the Lessee its agent, with full power of substitution, so long as no Event of Default (as defined in Section 8.1 hereof) or event that, with the lapse of time or the giving of notice or both, would become an Event of Default, has occurred or is continuing,

(a) to inspect and accept the equipment described in Schedule A hereto on behalf of the Lessor; and

(b) to assert and enforce any rights the Lessor may have against the Builder with respect to the Builder's obligations for delivery and warranties.

1.3. Acceptance of Equipment. Upon delivery of such equipment or any part or unit thereof, the Lessee shall inspect the same, and if it is found to be acceptable and in conformance with the terms of any purchase contracts and specifications in respect thereof, shall accept such equipment on behalf of the Lessor as agent as aforesaid and execute and deliver a certificate of acceptance describing such equipment and the date and location of such acceptance, substantially in the form of Exhibit A hereto; whereupon such equipment will be subject to the terms of this lease.

The Lessee shall not accept any unit of such equipment on behalf of the Lessor:

(a) prior to the date of execution of this lease or subsequent to January 30, 1982;

(b) if the purchase price of such unit of equipment as determined in the Sale Agreement (such purchase price being hereinafter called the Cost) and of all units theretofore delivered shall exceed \$7,250,000; or

(c) if the conditions set forth for such delivery and acceptance in the Sale Agreement shall not have been satisfied or waived.

SECTION TWO
TERM AND RENT

2.1. Term. This lease, with respect to any unit of the Equipment, will commence on the date of Lessor's purchase thereof and, unless this lease shall have been earlier terminated as herein provided with respect to any unit of Equipment, shall continue to January 15, 1997.

2.2. Rent. The Lessee agrees to pay to the Lessor or for the Lessor's account 181 consecutive rental payments on the fifteenth day each month, commencing January 15, 1982, and ending on January 15, 1997.

The rental payment due on the first such date shall be equal to the Cost (as defined in Section 1.3 hereof) of each unit of Equipment then subject to this lease multiplied by .000383 for each day elapsed from the date of payment for such unit under the Sale Agreement to January 15, 1982. The next 180 payments shall each be in an amount equal to the Cost of each unit of Equipment then subject to this lease multiplied by 0.01168190. (The term "Cost" shall include the cost of additional equipment installed or attached to the Equipment as may be agreed to between Lessor and Lessee. After closing Lessor shall furnish a certified copy of its cost per unit to Lessee.)

The Lessee agrees to make each payment provided for herein in accordance with the instructions of the Lessor by draft at or prior to 11:00 a.m. in the city where such payments are to be made.

The Lessee promptly shall pay an amount equal to interest at the rate of 18.75% per annum on any overdue rental payments and other obligations hereunder for the period of time during which they are overdue, or such lesser amount as may be legally enforceable.

2.3. Net Lease. This lease is a net lease, and the Lessee agrees that its obligations to make payments due hereunder, and the rights of the Lessor and/or its nominee in and to such payments, are absolute and unconditional and are not subject to any abatement, reduction, set-off, defense, counterclaim, or recoupment for any reason whatever, any present or future law, rule or regulation to the contrary notwithstanding. The Lessee also agrees that, except as otherwise expressly provided herein, this lease will not terminate nor will the Lessee's obligations hereunder be affected for any reason whatever, it being the intention of the parties that all payments due and to become due hereunder are, and shall continue to be, payable in all events unless the obligation to pay the same is expressly terminated pursuant hereto.

SECTION THREE
CONDITONS, REPRESENTATIONS AND WARRANTIES

3.1. Conditions Precedent to Obligations of the Lessor.

Lessor shall have no obligations under this lease, the Sale Agreement or the Purchase Order Assignment, nor shall this lease become binding on Lessor unless and until the following events have occurred:

(a) Lessee has delivered certificates of acceptance in the form of Exhibit A attached hereto, duly executed by a Vice President of the Lessee, to Lessor.

(b) This Lease shall have been filed and recorded with the Interstate Commerce Commission pursuant to Section 11303 of Title 49 of United States Code.

(c) The Lessor shall have received a favorable opinion of counsel for the Lessee, dated as of the closing date for the purchase of the Equipment, and satisfactory in form and substance to Lessor, to the effect set forth in paragraphs (a) through (h) of Section 3.2 hereof, and to the further effect that

(i) the lease has been filed and recorded with the Interstate Commerce Commission pursuant to Section 11303 of Title 49 of United States Code, and no further filing is necessary or appropriate in the United States to fully perfect and protect the interests of the Lessor in and into the Equipment.

(ii) It is not necessary to register the lease under the Securities Act of 1933, as amended, or to qualify the lease or any other agreement or instrument contemplated thereby under the Trust Indenture Act of 1939, as amended.

The opinion delivered pursuant to this section may be subject to appropriate qualification as to applicable bankruptcy, insolvency, reorganization, or similar laws affecting creditors' and lessors' rights generally, and may rely, as to matters relating to the laws of jurisdictions other than the United States of America and the jurisdiction in which such counsel is admitted to practice, on the other opinions of counsel furnished pursuant hereto.

3.2 Representations of the Lessee. The Lessee represents that:

(a) as of the date of execution hereof, the Lessee has not taken delivery or possession of any of the equipment described in Schedule A hereto, and all such equipment remains the property of the Builder; and

(b) the Lessee has selected the equipment to be leased hereunder and approved its design, the Lessee has not relied on the Lessor for selection of such equipment or for determination of its fitness for use or fitness for a particular purpose, and the Lessee bears full responsibility for such matters.

(c) the Lessee is a corporation duly incorporated, validly existing, and in good standing under the laws of the State of Delaware, is duly qualified to do business in each jurisdiction where the activities of the Lessee require such qualification, and has the corporate power and authority to enter into and perform its obligations under this lease;

(d) this lease has been duly authorized, executed, and delivered by the Lessee and, assuming due authorization, execution, and delivery by the other party thereto, is a legal, valid, and binding obligation of the Lessee;

(e) the execution and delivery by the Lessee of this lease is not, and the performance by the Lessee of its obligations hereunder will not be, inconsistent with the Lessee's certificate of incorporation or by-laws, does not and will not contravene any law, governmental rule or regulation, judgment or order applicable to the Lessee, and does not and will not contravene any provision of, or constitute a default under, any indenture, mortgage, contract or other instrument to which the Lessee is a party or by which it is bound;

(f) the consent or approval of, or giving of notice to, registration with, or taking of any action in respect of or by, any federal, state, or local governmental body is not required with respect to the execution, delivery, and performance by the Lessee of this lease;

(g) the Lessee is not in default under any obligation for the payment of borrowed money, the deferred purchase price of property, or rent under any lease of real or personal property which, if adversely determined, will have a material adverse effect on the ability of the Lessee to perform its obligation hereinunder, and no event that, with the lapse of time or the giving of notice or both, would constitute a material default under any thereof, has occurred and is continuing;

(h) the Lessee has filed all tax returns that are required under the laws of the United States and any state or subdivision thereof and have paid all taxes shown to be due and payable except for the payment of certain taxes claimed by the City of Dallas, Texas, the Dallas Independent School District, the City of Houston, Texas and the Houston Independent School District, and the State of Kansas, which taxes and claims are being contested by Lessee through appropriate measures, and there are no Federal tax liens filed against the Lessee;

(i) the balance sheet and the related statement of income and statement of changes in financial position of the Lessee, or the consolidated group of which the Lessee is a member, heretofore delivered to the Lessor, have been prepared in accordance with generally accepted accounting principles and fully and fairly present the financial position of the Lessee or such consolidated group, as the case may be, on and as of the date thereof, and the results of its operations for the period or periods covered thereby; since the date of such balance sheet and statement, there has not been any material adverse change in the financial condition or results of operations of the Lessee or such consolidated group;

3.3. Representations and Warranties of Lessor. The Lessor represents and warrants that:

(a) the Lessor is a corporation duly incorporated, validly existing, and in good standing under the laws of the State of Delaware, and has the corporate power and authority to own property for lease and to enter into and perform its obligations under this lease;

(b) this lease has been duly authorized, executed, and delivered by the Lessor and, assuming due authorization, execution, and delivery by the Lessee, is a legal, valid, and binding obligation of the Lessor, and the lease is enforceable against the Lessor in accordance with its terms;

(c) the execution and delivery by the Lessor of this lease are not, and the performance by the Lessor of its obligations hereunder will not be, inconsistent with the Lessor's certificate of incorporation or by-laws, does not and will not contravene any law, governmental rule or regulation, judgment or order applicable to the Lessor, and does not and will not contravene any provision of, or constitute a default under, any indenture, mortgage, contract or other instrument to which the Lessor is a party or by which it is bound;

(d) the consent or approval of, or giving of notice to, registration with, or taking of any action in respect of or by, any federal, state, or local governmental body is not required with respect to the execution, delivery, and performance by the Lessor of this lease;

(e) there are no actions, suits, or proceedings pending or, to the knowledge of the Lessor threatened against or affecting the Lessor in any court or before any governmental body that, if adversely determined, will have a material adverse effect on the ability of the Lessor to perform its obligations under this lease;

(f) the Lessor is not in default under any obligation for the payment of borrowed money, the deferred purchase price of property, or rent under any lease of real or personal property which, if adversely determined, will have a material adverse effect on the ability of the Lessor to perform its obligation hereinunder, and no event that, with the lapse of time or the giving of notice or both, would constitute a material default under any thereof, has occurred and is continuing;

(g) within five business days after Lessee has furnished Lessor properly executed Certificates of Acceptance covering the Equipment Lessor, its nominee and/or assignee, will comply with the terms and provisions of the Sale Agreement and will purchase the Equipment and take title to same, subject only to Lessee furnishing the opinion of counsel as set forth in Section 3.2.

3.4. No Representations by the Lessor. THE LESSOR DISCLAIMS ANY REPRESENTATION OR WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THE DESIGN OR CONDITION OF THE EQUIPMENT, ITS MERCHANTABILITY OR ITS FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OF ITS MATERIAL OR WORKMANSHIP OR ITS CONFORMITY TO THE SPECIFICATIONS OF ANY PURCHASE ORDERS RELATING THERETO. THE LESSOR SHALL NOT BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES. THE LESSEE AGREES TO LEASE THE EQUIPMENT AS IS.

SECTION FOUR THE EQUIPMENT

4.1. Maintenance. The Lessee shall keep and maintain the Equipment in the same condition as when delivered hereunder, ordinary wear and tear excepted. The Lessee shall observe the recommendations of the manufacturer of the Equipment regarding preventive maintenance and repair, and shall use replacement parts at least equal in quality and function to the parts originally furnished with the Equipment. Any replacement parts shall be free of lien or encumbrance when installed.

4.2. Inspection. The Lessor shall have the right, by its agents, to inspect the Equipment and the records of the Lessee pertaining to the Equipment at any reasonable time.

4.3. Compliance with Laws and Rules. The Lessee shall use and maintain the Equipment in compliance with all laws, government regulations, and standards of the Association of American Railroads and any other national organization applicable to the use, maintenance, and interchange of the Equipment, and shall at its own expense make such alterations to the Equipment as may be required from time to time for such compliance.

4.4. Hypothecation. The Lessee shall not, without the express written permission of the Lessor, (a) sell, transfer, assign, or sublease the Equipment or any unit thereof, or (b) otherwise part with possession or control of the Equipment or any part thereof except to railroad companies pursuant to run-through agreements and similar arrangements customary in the railroad industry for the joint use of locomotives or to the manufacturer or other maintenance facilities for maintenance, repair, or overhaul, or for modification to the extent permitted hereby.

4.5. Accessions and Improvements. All replacement parts installed in maintaining the Equipment or improvements or modifications required for compliance with Section 4.3 hereof will be considered accessions and title thereto will, upon installation, automatically vest in the Lessor. The Lessee may make improvements or additions to the Equipment if such improvement is separately identifiable, will not impair the originally intended function of the Equipment, and is readily removable without material damage to the Equipment to which it is attached; such improvement or addition, unless necessary for compliance with Section 4.3 hereof, shall remain the property of the Lessee. Any other improvement, addition, or modification shall be made only with the Lessor's prior consent; any such improvement, addition, or modification shall become an accession, as aforesaid.

4.6. Equipment Identification and Marking. The Lessee shall affix and maintain on each side of each unit of the Equipment (a) the identification number set forth in Schedule A hereto for such unit, (b) the legend "Leased under Lease Agreement filed with the Interstate Commerce Commission", and (c) such other markings as from time to time may be required by law or deemed necessary by the Lessor to protect the title of the Lessor and any interest of any nominee or assignee of the Lessor in the Equipment.

4.7. Location of the Equipment. Unless the Lessor shall otherwise agree, the Equipment shall not be used or assigned for use in service involving the regular operation or maintenance outside of the United States of America.

4.8. Recordation and Filing. This lease or a counterpart or copy hereof or evidence hereof may be filed or recorded in any public office as may be necessary or appropriate to protect the interest of the Lessor or any assignee of the Lessor herein or in

the Equipment. The Lessee shall, at its own expense, file and record this lease, any security agreement entered into by Lessor covering any of the Equipment, and any assignments hereof and thereof and amendments hereto and thereto with the Interstate Commerce Commission pursuant to Section 11303 of Title 49 of United States Code, and shall execute and file any other instruments requested by the Lessor or any assignee of the Lessor that are requested by the Lessor or any assignee of the Lessor that are necessary or appropriate to protect and preserve such interests.

4.9. Insurance. At its own expense, the Lessee shall maintain during the term of this lease and during any period of storage thereafter all risk casualty insurance and public liability insurance in amounts and against risks customarily insured against by the Lessee on equipment similar to the Equipment owned or leased by the Lessee.

4.10. Condition upon Return. Upon the expiration or early termination of this lease, the Lessee shall, at its own expense and risk, assemble all the units of the Equipment at any single facility of the Lessee, selected by the Lessor, but subject to availability of space, by notice not later than 75 days prior to the expiration of this lease, within the United States of America or, if the Lessor shall not so notify the Lessee of such selection, at any such facility selected by the Lessee, and there store the Equipment for a period not to exceed 180 days after the expiration of this lease, and deliver the Equipment to a carrier for shipment at the instruction of the Lessor.

Upon termination of this lease, the Lessee shall deliver to the Lessor or any person designated by the Lessor all available manuals, logs, and maintenance records for the Equipment.

Upon such return, the Equipment shall be in the condition required by Sections 4.1, 4.3. and 4.11 hereof. Not less than 30 days prior to the expiration of this lease, the Lessee shall notify the Lessor of the location to which the Equipment is to be delivered pursuant to this section. The Lessor or any person designated by the Lessor may there inspect the Equipment, but the Lessee shall not be liable, except in the case of negligence or intentional acts, for any injury to any person exercising such right of inspection. If any unit of the Equipment is found not conforming to the requirements of this section, the Lessee shall make such repairs as are necessary for such conformance.

In the event that any unit of the Equipment shall not be returned or shall not be in the condition required upon such return at the expiration of this lease, the Lessee shall pay to the Lessor daily rent for each day from the expiration of this lease to the date such unit is returned or restored to the condition required, as the case may be (or payment made in respect of any such unit deemed to have suffered an Event of Loss in accordance with Section 6.3 hereof). Such daily rent shall be the fair market rental rate at such time, shall be determined in accordance with the procedure set forth in Section 10.1 hereof, and shall be not less than the amounts paid by railroad companies to other railroad companies or equipment lessors for the use of equipment of the same type as the Equipment.

4.11. Encumbrances. The Lessee shall not create or permit to exist any claims, liens, security interests, or other encumbrances of any nature upon or against the Equipment (except pursuant to any assignment of this lease by the Lessor or any security interest in the Equipment granted by Lessor and any encumbrance resulting from claims against the Lessor not related to the ownership or leasing of the Equipment), and the Lessee shall take such action at its own expense as may be necessary to duly discharge any such encumbrance.

SECTION FIVE COVENANTS

5.1. Reports. The Lessee shall furnish to the Lessor and any Assignee:

(a) within 120 days after the close of each fiscal year of the Lessee or the consolidated group of which the Lessee is a member, as the case may be, occurring after the date hereof, an audited balance sheet and statement of changes in the financial position of the Lessee or of such consolidated group at and as of the end of such fiscal year, together with an audited statement of income of the Lessee or of such consolidated group for such fiscal year;

(b) within 60 days as soon as available after the close of each of the first three quarters of each fiscal year of the Lessee or the consolidated group of which the Lessee is a member, as the case may be, an unaudited balance sheet and statement of changes in financial position of the Lessee or of such consolidated group at and as of the end of such quarter, together with an unaudited statement of income of the Lessee or of such consolidated group for such quarter;

(c) simultaneously with the mailing thereof to its stockholders, or to the stockholders of its parent corporation, copies of all such financial statements, reports, notices, or proxy statements as the Lessee or its parent corporation shall mail to its stockholders;

(d) promptly upon their availability, all regular and periodic financial reports of the Lessee to the Interstate Commerce Commission;

(e) promptly upon their availability, all regular and periodic reports of the Lessee to the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934, as amended, or any successor statute;

(f) upon request within the period set forth in (a) above, a certificate of an officer of the Lessee stating that he has reviewed the activities of the Lessee and that, to the best of his knowledge, there exists no default or Event of Default (as defined in Section 8.1 hereof); and

(g) from time to time, such other information regarding the Equipment or this lease as the Lessor shall reasonably request.

5.2. Waiver. The Lessee hereby waives and releases any claim against the Lessor or its successors or assigns arising out of or connected with the ownership, leasing, possession, use, operation, or condition of the Equipment.

5.3. Quiet Possession. If and so long as the Lessee keeps and performs each and every covenant and agreement to be performed and observed by it hereunder, the Lessee shall be entitled to the use and possession of the Equipment according to the terms hereof without interference by the Lessor or by any party lawfully claiming by or through the Lessor.

SECTION SIX LOSS OR DESTRUCTION

6.1. Risk of Loss. The Lessee bears the entire risk of loss of or damage to the Equipment from the time the Lessor shall have become obliged to purchase the Equipment pursuant to the provisions of Section One hereof, through the term of this lease and the period of storage specified in Section 4.10 hereof, until the Lessor or a party designated by the Lessor shall have recovered possession of the Equipment.

6.2. Insurance, Warranty, and Other Proceeds. All net proceeds of an recoveries from insurance, manufacturers' or dealers' warranty settlements, payments and compensation from taking or requisitioning authorities, sale or dispositon in accordance with Section 6.4, or similar payments from other parties in respect of loss of or damage to any unit of Equipment (hereinafter called Proceeds), whether received by the Lessor or the Lessee, and whether or not such loss or damage shall be regarded as an Event of Loss under the next section, shall be paid to the Lessor, except the following, which shall be paid to the Lessee unless an Event of Default or event that, with the passage of time or the giving of notice or both, would constitute an Event of Default, shall have occurred and shall be continuing:

(a) such Proceeds as are in the nature of damages or compensation for the Lessee's business interruption, loss of profits, loss of leasehold interest, consequential or incidental damages, or any other claim not based upon the reduction in value of a unit of Equipment as a result of an Event of Loss;

(b) such Proceeds as are attributable to damage to any unit of Equipment not constituting an Event of Loss, upon proof satisfactory to the Lessor that such damage shall have been fully repaired; and

(c) such Proceeds as are attributable to an Event of Loss with respect to any unit of Equipment, if such Casualty Value shall have been fully paid, and Lessee shall have complied with the next section.

6.3. Casualty Value Payments. In the event that the Equip- ment or any unit thereof shall be or become worn out, lost, stolen, destroyed, rendered permanently unfit for the intended use, or irreparably damaged, from any cause whatsoever, returned to the manufacturer pursuant to any patent indemnity or warranty settlement, or taken or requisitioned by condemnation or otherwise by any government agency resulting in loss of possession by the Lessee for a period of 90 consecutive days (any such occurrence being herein called an Event of Loss), prior to the return of such unit to the Lessor, the Lessee shall promptly and fully notify the Lessor with respect thereto. On the rental payment date next succeeding such notice (unless such payment date occurs within 60 days of such

Event of Loss, in which case the next following rental payment date) the Lessee shall pay to the Lessor an amount equal to the rental payment or payments then due in respect of such unit plus an amount equal to the Casualty Value of such unit (as set forth in Schedule B hereto) as of the date of such payment. If such Event of Loss occurs within 60 days of the expiration of this lease, or thereafter, such payment shall be made within 60 days of the occurrence of such Event of Loss.

Upon the making of such payment by the Lessee in respect of any unit, the rental for such unit shall cease to accrue, this lease shall terminate with respect to such unit, and (except in the case of the loss, theft, complete destruction, or the return to the manufacturer of such unit) the Lessee shall be entitled to retain possession of such unit.

The Lessee shall be entitled to retain any settlement from third parties, insurance proceeds or scrap proceeds from disposition of the unit, provided that it shall remit one-half (1/2) of any such proceeds to Lessor to the extent that such proceeds exceed the stipulated loss value up to a limit of ten percent (10%) of original cost discounted at a rate of ten percent (10%) over the number of months remaining until termination of the lease.

6.4. Equipment Disposition. The Lessor hereby appoints the Lessee its agent to dispose of any unit of the Equipment suffering an Event of Loss, at the best price obtainable on an "as is, where is" basis, and the Lessee agrees to use its best efforts to effect such sale. Lessor hereby agrees to execute any documents including Opinion of Counsel or Bill of Sale reasonably required by Lessee to facilitate such disposition of any unit.

SECTION SEVEN
INDEMNITIES

7.1. General Indemnity. The Lessee shall indemnify and hold the Lessor, its nominee or its Assignee, any holder of indebtedness under the Sale Agreement, and their respective agents and employees harmless from and against any and all liabilities, losses, damages, injuries, penalties, claims, demands, actions, suits, costs, and expenses, including reasonable attorney's fees, and including but not limited to any of the foregoing arising out of or imposed by the doctrine of strict liability or any statute imposing liability on owners of property, or arising out of the manufacture, ordering, purchase, acceptance, lease, possession, or operation by the Lessee or any other entity, the condition, return, or use of the Equipment, or by operation of law, except any of the foregoing as may arise due to the wilful misconduct or gross negligence of the party seeking indemnity. The wilful misconduct or gross negligence of any party indemnified hereunder shall not affect the rights of any other party entitled to indemnity. The Lessee agrees that upon written notice by any party entitled to indemnity hereunder of the assertion of any such liability, loss, damage, injury, penalty, claim, demand, action, or suit, the Lessee shall assume full responsibility for the defense thereof.

The Lessee shall be subrogated to the rights of any indemnified party in respect of the matter for which the indemnity has been given.

7.2. Taxes. The Lessee shall pay and discharge and hold the Lessor, its nominee and/or its assignee, and any holder of indebtedness under the Sale Agreement harmless from and against all assessments and all taxes (including without limitation all sales, use, rental, and property taxes) and similar charges of any nature whatsoever, together with any penalties, fines, or interest thereon that may now or hereafter be imposed upon the purchase, delivery, ownership, leasing, maintenance, possession, or use of the Equipment, or upon this lease, any assignment hereof, or the other documents contemplated hereby or thereby, or the rent payments or other amounts due or to become due hereunder or thereunder, excluding, however, all income, franchise, capital, or other taxes, on or measured by the net income of the Lessor, imposed by:

- (i) the United States,
- (ii) the jurisdiction in which the principal office of the Lessor is located, or
- (iii) any other jurisdiction in which the Lessor may be subject to such tax, but only to the extent that
 - (a) the income of the Lessor attributable to this lease is not subject to tax in the jurisdiction in which the principal office of the Lessor is located, and
 - (b) the amount of tax payable by the Lessor to such other jurisdiction does not exceed the amount of tax, if any, that would be payable to the jurisdiction in which the principal office of the Lessor is located if that income were subject to tax in that jurisdiction.

In case any report or return is required to be made with respect to any obligation of the Lessee under this section, the Lessee shall either (a) make such report or return to show the ownership of the Equipment in the Lessor if necessary and shall upon request shall send a copy of such report or return to the Lessor or (b) notify the Lessor of such requirement and prepare and furnish such report or return for filing by the Lessor in such manner as shall be satisfactory to the Lessor.

The Lessee shall be under no obligation to pay any such taxes so long as it is contesting in good faith and by appropriate legal or administrative proceedings such taxes and the nonpayment thereof does not adversely affect the title, property, or rights of the Lessor hereunder. The Lessee shall 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.

7.3. Income Taxes. This transaction has been entered into by the parties hereto on the assumption that the Lessee will be treated as the lessee of the Equipment and the Lessor will be treated as the owner of the Equipment and will be entitled, for Federal and State income tax purposes, to:

(a) the maximum deduction with respect to the Equipment under the accelerated cost recovery system of Section 168 of the Internal Revenue Code of 1954, as amended to the date hereof (hereinafter called the Code): (i) commencing in the taxable year of the Lessor during which the delivery of the Equipment occurs, (ii) utilizing a recovery period of five years (said deduction being hereinafter called the ACRS deduction);

(b) deductions with respect to interest payable under indebtedness incurred to purchase the Equipment (or any refinancing thereof) pursuant to Section 163 of the Code (hereinafter called the Interest Deduction); and

(c) the investment credit pursuant to Section 38 and related sections of the Code in an amount equal to 10% of the Cost of the Equipment (said credit being hereinafter called the Investment Credit).

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 or that would increase the amount of rentals required to be taken into income by the Lessor over the amount specified to be payable hereunder on the dates due, except as specifically provided hereunder, and that the Lessee will file such returns, take such action, and execute such documents as requested by Lessor as may be reasonable and necessary to facilitate accomplishment of the intent hereof. The Lessee agrees to keep and make available for inspection and copying by the Lessor such records as will enable the Lessor to determine the extent to which it is entitled to the benefit of the ACRS Deduction, and the Investment Credit with respect to the Equipment and to determine the source of each item of income, deduction, loss, and credit with respect to the transactions contemplated hereby.

Specifically, and without limiting the generality of the foregoing, Lessor and Lessee hereby elect to have the provisions of Section 168 (f) (8) of the Code apply with respect to this Agreement, and Lessor and Lessee hereby agree as provided for in

said Section 168 (f) (8) that this Agreement shall constitute and be characterized as a lease and that Lessor shall be the owner and lessor, and Lessee shall be the lessee, of the items of Equipment for Federal tax law purposes. Lessor and Lessee further agree to file in a timely and proper manner all elections, income tax returns or amended returns or statements required under Section 168 (f) (8) of the Code, or any regulations thereunder, including but not limited to Temp. Reg. § 5c.168 (f) (8)-2, and to take any other appropriate action to have this Agreement treated as a lease for Federal tax law purposes. Lessor and Lessee further agree that the election pursuant to Section 168 (f) (8) of the Code shall not be revocable without the consent of both Lessor and Lessee to such revocation.

The Lessee represents and warrants that:

(a) 100% of the Cost of the Equipment qualifies for the ACRS Deduction and the Investment Credit;

(b) when delivered to the Lessor hereunder the Equipment will constitute "new Section 38 property" in the hands of the Lessor within the meaning of Section 48 (b) of the Code;

(c) at all times within the terms of this lease the Equipment will constitute "Section 38 property" within the meaning of Section 48(a) of the Code and will not be used predominantly outside the United States within the meaning of said Section 48(a).

If the Lessor shall lose, shall not have, shall lose the right to claim, shall suffer a disallowance of or shall be required to recapture all or any portion of the ACRS Deduction, the Interest Deduction, or the Investment Credit with respect to all or any part of the Equipment because of:

(A) the inaccuracy of any of the representations or warranties set forth in the immediately preceding paragraph;

(B) the breach by the Lessee of any of its agreements hereunder; or

(C) any act or omission of the Lessee or any affiliate of the Lessee or any sublessee or any user of the Equipment (regardless of whether any such act or omission is permitted or contemplated by the terms of this lease or otherwise);

(any such loss, disallowance, recapture, or treatment described in the foregoing clause (A), (B), or (C) being hereinafter called a Loss), then in any such case the Lessee shall pay to the Lessor, on each of the dates provided in this Lease for the payment of rent commencing with the first such date following written notice to the Lessee by the Lessor of such Loss, such amounts as, when taken together with the rental payments due on such date, shall maintain the Lessor's after-tax rate of return and total after-tax cash flows (computed on the same assumptions utilized by the Lessor in originally evaluating this transaction, including, without limitation, assumptions as to Federal and State income tax rates in respect to the Equipment hereunder at the level that would have been available if such Loss had not occurred, and taking into consideration any interest, penalty, or addition to tax incurred by the Lessor in connection with such Loss. In the event that this Lease is terminated with respect to the Equipment prior to the time the Lessee is obliged to make payments to the Lessor in accordance with the preceding sentence (because such payment obligation had not been fixed or demanded or such payments shall become due after the termination of this lease or otherwise) then the Lessee shall pay to the Lessor, in lieu of such payments, on or before 30 days after written notice to the Lessee by the Lessor of such Loss, such lump sum as shall be necessary to maintain the Lessor's after-tax rate of return and after-tax cash flows, as aforesaid. The Lessee shall not be required to make any payment to the Lessor provided for in this paragraph in respect of any unit of the Equipment if the Lessor shall have suffered such Loss solely as a result of an Event of Loss with respect to such unit, if the Lessee shall have paid to the Lessor the amounts required to be paid in respect of such Event of Loss pursuant to Section 6.3 hereof. Simultaneously with or prior to the execution of this Lease, Lessor shall deliver to Lessee a letter setting forth the above referenced assumptions utilized by the Lessor in originally evaluating this transaction setting forth Lessor's assumptions and computations covering Lessor's after-tax rate of return and its total after-tax cash flows. Said letter shall be the bases for calculating any payments by Lessee that may arise hereunder.

In the event that any payments shall be made by the Lessee pursuant to this section, the Casualty Values stipulated in Section 6.3 and Schedule B hereto shall be reduced accordingly.

In the event that, without breach or violation of any of the representations, warranties, covenants or other undertakings of either party hereto, this transaction shall not be treated as a lease for Federal income tax purposes pursuant to which Lessor is entitled to the tax deductions and credits described above, (i) Lessee will reimburse Lessor for all costs and expenses incurred in connection with this transaction, including actual interest expense on any borrowings used to finance any portion of the purchase price of the Equipment, and interest at 17.25% on any funds of Lessor (other than borrowed funds) applied to the purchase price of the Equipment or to the discharge of obligations for funds borrowed therefor; and (ii) will pay to Lessor an amount equal to the purchase price of the Equipment, either by cash payment or by a combination of cash payment and assumption of outstanding debt obligations of Lessor; less (iii) the amount of any rental amounts paid prior thereto, and, upon satisfaction of Lessee's obligations set forth above, Lessor will assign to Lessee all of its right, title and interest in and to the Equipment.

7.4. Contest. In the event a claim shall be made against the Lessor that, if successful, would result in payments by the Lessee in respect of a Loss pursuant to Section 7.3 hereof, the Lessor agrees to promptly notify the Lessee of such claim, and shall, upon the request and at the expense of the Lessee, contest such matter as hereinafter provided, subject to the following conditions:

(a) the Lessor shall have received an opinion from independent counsel selected by the Lessee and acceptable to the Lessor that there is a reasonable basis for contesting such matter;

(b) the Lessee shall have indemnified the Lessor for all liabilities and expenses that may be entailed in such contest and shall have furnished the Lessor such reasonable security therefor as may be requested; and

(c) Lessee promptly pays to Lessor the amount required to pay the tax, interest and panalties, if any, and sue for a refund, if Lessor determines to conduct such contest in a manner which requires payment of said amounts prior to a Final Determination (as defined below).

If the Lessor takes such action prior to making such Tax Payment, such sums payable hereunder need not be paid by the Lessee while such action is pending, but the Lessee shall pay the liabilities and expenses relating to such action when and as the same shall become due. In such case, if the Final Determination shall be adverse to the Lessor, the sums payable hereunder shall be computed by the Lessor as of the date of such Final Determination, the Lessor shall notify the Lessee of such computation and the Lessee shall commence payment thereof on the rental payment date hereunder next succeeding such Final Determination or otherwise as provided in Section 7.3 hereof.

If the Lessor makes such Tax Payment prior to contesting the matter, and then sues for a refund, the sums payable hereunder shall be payable by the Lessee not later than the second rental payment date hereunder after the Lessor notifies the Lessee that such Tax Payment has been made, and the Lessee shall pay to the Lessor, for the period from the date of the original payment of the Tax Payment by the Lessor to the date the Lessor is reimbursed therefor by the Lessee, an amount equal to interest on the amount of such Tax Payment at the rate per annum equal to the corporate base rate announced by The First National Bank of Chicago from time to time.

If the Lessor sues for a refund after making such Tax Payment, and if the Final Determination shall be in favor of the Lessor, no future payments shall be due hereunder in respect of such matter (or an appropriate reduction shall be made if the Final Determination is partly in favor of and partly adverse to the Lessor) on or before such next succeeding rental payment date together with interest on the amount of such sums refunded by the United States at the interest rate or rates then currently paid on tax overpayments by the United States.

Lessor, at its sole option, may choose to pursue or to forego any and all administrative appeals, proceedings, hearings and conferences with the relevant taxing authorities with respect to such matter (unless and to the extent that pursuance of any such appeal, proceeding, hearing or conference is required to secure judicial remedies, in which case Lessor shall be required to pursue the same), but will (unless there is a settlement or compromise with the consent of Lessee as hereinafter provided)

contest such matter in a court of competent jurisdiction selected by such Lessor in its sole discretion and will, upon prompt and timely written request of Lessee, appeal any adverse determination to a court or courts selected by Lessor in its sole discretion, where such request is accompanied by a written opinion of independent tax counsel for Lessee that Lessor has a reasonable likelihood of success with respect to such appeal. Lessee shall not have any right to appear in person or through its representatives in any administrative proceedings before such taxing authority. Lessee shall supply Lessor with such information requested by Lessor to contest such Loss hereunder. Lessor agrees to cooperate in good faith requests from Lessee concerning such contest, including the advisability of pursuing administrative remedies, the appropriate forum for any judicial proceeding, and the legal basis for the contest.

Lessee shall be entitled to participate in any such judicial proceeding if and to the extent that in the opinion of Lessor's counsel, such participation does not adversely affect in any material respect any other interests of Lessor or any affiliate of Lessor in such proceeding, whether such interest is related or unrelated to this lease. Lessor shall supply Lessee with such information requested by Lessee in writing that, in the opinion of Lessor's counsel, is necessary for Lessee to participate in any proceeding to the extent permitted hereunder.

Lessor shall not enter into a settlement or other compromise with respect to any Loss without the written consent of Lessee, which consent shall not be unreasonably withheld, unless Lessor waives its right to be indemnified with respect to such Loss or unless Lessee fails to satisfy the conditions to Lessor's obligation to contest such matter. Lessee shall not be considered to have unreasonably withheld such consent if such consent shall be withheld as a result of Lessee's reasonable evaluation of the merits of the basis for contesting such matter and Lessee shall not be required to consider any issue or dispute not directly related to such Loss.

"Final Determination" for the purpose of this section means a final decision of a court of competent jurisdiction after all allowable appeals that the Lessee has requested to be pursued or contested have been exhausted by either party to the action.

If any such claim referred to above shall be made and the Lessee shall reasonably have requested the Lessor to contest such claim as above provided and shall have duly complied with all the terms of this section, the Lessor may elect not to contest such claim despite such request or may elect to discontinue any proceedings previously commenced as a consequence of such request or may otherwise elect to disregard Lessee's directions concerning such contest, and thereupon the Lessee shall be relieved of all liability for indemnity with respect to the amount of such claim.

7.5. Miscellaneous. For purposes of this Section Seven, the term "Lessor" shall include the Lessor, and any affiliated group of which the Lessor or Lessor is or shall become a member if consolidated, joint, or combined returns are or shall be filed for such affiliated group for Federal, state or local income tax purposes.

The Lessee's obligations under the indemnities provided for in this Section Seven shall be those of a primary obligor whether or not any party indemnified hereunder shall also be indemnified with respect to the same matter under the terms of any other document or instrument, and such party may proceed directly against the Lessee without first seeking to enforce any other right of indemnification.

The indemnities payable under this Section Seven shall be computed on an after-tax basis, so that any such indemnity, when reduced by any tax liability arising from the payment of such indemnity, shall be sufficient to compensate the indemnified party for the loss or tax for which the indemnity is given.

SECTION EIGHT
DEFAULTS AND REMEDIES

8.1. Events of Default. In case any of the following events (any such event being herein called an Event of Default) shall occur (whatever the reason for such event and whether it shall be voluntary or involuntary, or come about or be effected by operation of law, or be pursuant to or in compliance with any judgment, decree, or order of any court or any order, rule, or regulation of any administrative or governmental body):

(a) the Lessee shall fail to make any payment due hereunder within ten (10) days after the same shall have become due;

(b) the Lessee shall fail to perform or observe any covenant, condition, or agreement under this lease, or any agreement, document, or certificate delivered by the Lessee in connection herewith, and such failure shall continue for 30 days after written notice thereof from the Lessor to the Lessee;

(c) any representation or warranty made by the Lessee in this lease (except in Section 7.3 hereof) or in any agreement, document, or certificate delivered by the Lessee in connection herewith or therewith shall prove to have been incorrect in any material respect when made or given;

(d) the Lessee shall attempt to remove, sell, transfer, encumber, part with possession of, assign, or sublet the Equipment or any part or unit thereof (except as expressly permitted hereunder), or there shall occur any termination of or material alteration in the coverage of any policy of insurance required to be maintained hereunder;

(e) the Lessee shall (1) be generally not paying its debts as they become due, (2) file, or consent to the filing against it of a petition for relief under any bankruptcy or insolvency laws, (3) make an assignment for the benefit of creditors, (4) consent to the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator, or other official with similar powers over the Lessee or a substantial part of its property, or (5) take corporate action for the purpose of any of the foregoing; or

(f) a court having jurisdiction over the Lessee or its property shall enter a decree or order in respect of the Lessee or its property in an involuntary case under any bankruptcy or insolvency law, or shall appoint a receiver, liquidator, assignee, custodian, trustee, sequestrator, or official with similar powers over the Lessee or a substantial part of its property, or shall order the winding-up or liquidation of the affairs of the Lessee, and such order or decree shall continue in effect for a period of 60 consecutive days;

then the Lessor may, at its option, declare this lease to be in default by written notice to such effect given to the Lessee.

8.2. Remedies. At any time after the Lessor shall have declared this lease to be in default, the Lessor may:

(a) proceed by appropriate court action, at law or in equity, to enforce performance by the Lessee of the applicable covenants and agreements of this lease or to recover damages for the breach thereof; and

(b) by notice in writing terminate this lease, whereupon all rights of the Lessee to the use of the Equipment shall absolutely cease and terminate but the Lessee shall remain liable as herein provided; and thereupon the Lessee, if so requested by the Lessor, shall at the expense of the Lessee give prompt telegraphic and written notice to the Association of American Railroads and all railroads having possession of any unit of the Equipment to return the Equipment promptly to the Lessee, and the Lessee shall promptly transport the Equipment to the location specified in Section 4.10 hereof, and there store the Equipment for a period of up to six months at the direction of the Lessor and return the Equipment to the possession of the Lessor in the condition required by, and as more fully set forth in, Section 4.10 of this lease, or the Lessor may, by its agents, enter upon the premises where the Equipment is located and take immediate possession of and remove the same, and may use and employ in connection with such removal any services, aids, equipment, trackage, and other facilities of the Lessee.

The obligation to return the Equipment to the possession of the Lessor is of the essence of this lease, and the Lessor shall be entitled to a judgment conferring upon the Lessor the immediate right to such possession and to a decree of specific performance requiring the return of the Equipment.

8.3. Damages. The Lessee shall be liable for all damages, costs, charges, and expenses, including attorneys' fees and disbursements, incurred by the Lessor because of the occurrence of any Event of Default or the exercise of the Lessor's rights with respect thereto.

When the Lessor shall have terminated this lease pursuant to clause (b) of Section 8.2, the Lessee shall pay to the Lessor without further demand the following amounts:

(a) the amount of rental payment accrued and unpaid to the date the Equipment is surrendered to the Lessor as hereinabove provided, and the amount of any indemnity or other payments due hereunder;

(b) an amount equal to the Casualty Value of the Equipment, determined as of the date of such payment, which amount, because of the difficulty or impossibility of determining actual damages, the parties have agreed as the reasonable, fixed, and liquidated damages the Lessor is entitled to receive in lieu of actual damages (and not as a penalty) for loss of bargain and non-payment of rent after the surrender of the Equipment to the Lessor;

(c) any damages and expenses that the Lessor shall have sustained because of the breach of any obligation or the occurrence of an Event of Default under this lease, other than for payment of rent; and

(d) such other expenses as shall be expended or incurred in the seizure, storage, rental or sale of the Equipment or in the enforcement of any right or privilege hereunder.

Upon payment by Lessee within five days of termination of all of the amounts set forth above, title to the Equipment shall vest in Lessee and Lessor shall provide Lessee with a Bill of Sale upon request of Lessee and Lessee shall be entitled to immediate possession of the Equipment.

8.4. Mitigation of Damages. Upon the recovery of the Equipment by the Lessor, the Lessor may retain the use of the Equipment, or with or without recovering possession of the Equipment the Lessor may sell or lease the Equipment or any unit thereof in a commercially reasonable manner. In the event that any unit of the Equipment shall be sold or leased, the Lessee shall be entitled, in mitigation of the damages set forth in clause (b) of Section 8.3 hereof, to the net proceeds of such sale or the net present value of the contractual rentals under any new lease (discounted at the interest rate that the Lessee under such new lease could borrow funds on a secured basis for a term equivalent to the term of the new lease), as the case may be, after deduction from such proceeds or present value of all costs, charges, and expenses incurred by the Lessor in the exercise of its remedies hereunder, up to the amount of the Casualty Value of such unit, if the Lessee shall have theretofore paid the full amount of such Casualty Value. In the Event that the Lessor shall elect to retain any unit of Equipment, the Lessee shall be entitled, in mitigation as aforesaid, to a credit against the amount of Casualty Value, but not in excess thereof, due or paid in respect of such unit in an amount equal to the Fair Market Value of such unit, determined in accordance with the procedures set forth in Section Ten hereof, less the amount of all costs, charges, and expenses of the Lessor, as aforesaid.

8.5. Remedies not Exclusive; No Waiver. No remedy referred to herein is intended to be exclusive, but each shall be cumulative and in addition to any other remedy referred to above or otherwise available to the Lessor at law or in equity. No express or implied waiver by the Lessor of any default or Event of Default hereunder shall be, or be construed to be, a waiver of any future or subsequent default or Event of Default. The failure or delay of the Lessor in exercising any right hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation of such contingencies or similar contingencies and any single or partial exercise of any particular right by the Lessor shall not exhaust the same or constitute a waiver of any other right provided herein.

8.6. Bankruptcy. This lease has been entered into by the Lessor as a financial accommodation to the Lessee based on the Lessee's undertakings to perform its obligations hereunder and the assessment of the Lessor as to the ability of the Lessee so to perform. Accordingly, if the Lessee shall become a debtor in a case under Title 11 of the United States Code or any successor statute on the subject of bankruptcies, the Lessor does not accept performance of the Lessee's obligations hereunder by the trustee of the estate of the Lessee, or by any assignee or delegatee of the Lessee or such trustee, and reserves its right to terminate this lease and recover possession of the Equipment, subject, however, to the provisions of Section 1168 of such Title. Notwithstanding the foregoing, and without prejudice thereto, the parties hereto agree that (a) "adequate assurance of future performance", for the purpose of Section 365 of said Title, shall include, without limitation, a guaranty or surety bond for all obligations of the Lessee for the balance of the lease term from a third party with net worth and ratio of net worth to debt of not less than the net worth and such ratio, respectively, of the Lessee at the time of the execution of this lease; and (b) the Lessor shall be entitled to all proceeds from any assignment of this lease.

SECTION NINE ASSIGNMENTS

9.1. Assignments; Indemnified Parties. This lease, including all agreements, covenants, indemnities, representations, and warranties, shall be binding upon and inure to the benefit of, any may be enforced by, (a) the Lessor and its successors, assigns, agents, employees, and representative; and (b) the Lessee and its successors and, to the extent permitted hereby, assigns.

9.2. Rights of Lessor's Nominee and/or Assignee. This lease may be assigned by Lessor. The Lessee consents to any such assignment, and agrees that

(a) all rights of the Lessor hereunder shall be exercisable by the assignee and its successor assignees;

(b) the rights of any assignee and such successors shall not be subject to any defense, counterclaim, or set-off that the Lessee may have or assert against the Lessor; and

(c) Lessor's assignee and any successor assignees shall not be or become liable for any obligation of the Lessor otherwise.

9.3. Merger. Nothing in this lease shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest hereunder to any railroad corporation incorporated under the laws of any state of the United States of America or the District of Columbia, that shall have duly assumed the obligations of the Lessee hereunder, into or with which the Lessee shall have become merged or consolidated or that shall have acquired the business and property of the Lessee 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, and provided further that such assignee or transferee shall have a net worth, at the time of such assignment or transfer, equal to or greater than that of the Lessee at such time.

9.4. Prohibition on Assignment Terminating Lease for Tax Purposes. Notwithstanding anything to the contrary herein contained, Lessee shall not cause or permit any assignment or other transfer (including any assignment or transfer otherwise permitted under Section 9.3) of its leasehold interest hereunder or of the Equipment or the right to use the same, if as a result of such assignment or transfer this lease would cease to be treated as a lease for Federal income tax purposes.

SECTION TEN LESSEE'S OPTIONS

10.1. Purchase and Renewal Options. Unless an Event of Default or event that, with the passage of time or the giving of notice or both, would become an Event of Default, shall have occurred and shall be continuing, the Lessee, by 180-days' written notice to the Lessor, may elect (a) to extend the term of this lease with respect to not less than all of the Equipment then subject to this lease for additional one-year periods commencing on the scheduled expiration of the original term or any extended term of this lease, as the case may be, provided that no such extended term extends beyond the November 15, 1999, at a Fair Market Rental, or (b) to purchase not less than all of the Equipment at the end of the original term (or any extended term) for a purchase price equal to the lower of 35% of the Cost thereof or the Fair Market Value. Upon payment of such amount the Lessor shall convey the Equipment to the Lessee without warranty, except as to the title of the Lessor.

The Fair Market Rental or Fair Market Value shall be determined as of the time of the commencement of any such extended term or the exercise of the purchase option, as the case may be, and shall be equal to the amount that would obtain in an arms'-length

transaction between an informed and willing lessee or buyer (other than a lessee or buyer in possession), as the case may be, and an informed and willing owner under no compulsion to lease or sell, and in such determination, the costs of removal from the location of current use shall not be a deduction from such value. It is understood and agreed, however, that Fair Market Value shall in no event be less than 25% of the Cost of the Equipment, and that Fair Market Rental, to the extent based on value of the Equipment, shall be not less than such rental would be based on a value of 25% of Cost.

In the event that the Lessee and the Lessor are unable to agree on the Fair Market Rental or Fair Market Value, as the case may be, before 90 days from the expiration of the term of this lease, such rental or value shall be determined by an appraiser selected by the Lessee and the Lessor, or if such parties cannot agree on a single appraiser, by two appraisers, one selected by each party. If the two appraisers cannot agree on a value, then they shall select a third appraiser, and the parties shall be bound by the decision of the third appraiser. The costs of such appraisal shall be borne by the Lessee.

10.2. Right of Lessor. If the Lessee shall fail to exercise its options set forth in Section 10.1 hereof, the Lessor may, prior to recovery of the Equipment from the Lessee, by 90 days' written notice to the Lessee tender the Equipment to the Lessor, and if the price stipulated in such tender shall be not greater than 25% of the Cost of the Equipment, the Lessee shall purchase such Equipment from the Lessor at such price, "as is" and "where is." Upon payment of such amount the Lessor shall convey the Equipment to the Lessee without warranty, except as to the title of the Lessor.

SECTION ELEVEN
MISCELLANEOUS

11.1 Mailing of Notice. All communications and notices provided for herein shall be in writing and shall become effective when delivered or three days after being deposited in the United States mail, with proper postage for first-class mail prepaid, addressed:

(a) if to the Lessor at 2200 E. Devon Ave.,
Suite 220, Des Plaines, Illinois 60018, attention of
George E. McKewen, President

(b) if to the Lessee at 701 Commerce Street,
Dallas, Texas 75202, attention of Karl R. Ziebarth

or such other address that either party shall designate by notice to the other.

11.2. Indemnity for Lessor's Performance. If the Lessee shall fail to perform or comply with any of its agreements contained herein, the Lessor may upon notice to the Lessee itself perform or comply with such agreement, and the Lessee shall pay to the Lessor, upon demand, the amount of the reasonable costs and expenses incurred by the Lessor in connection with such performance or compliance, together with interest on such amount at the rate per annum set forth in Section 2.2 hereof for overdue payments of rent.

11.3. Covenants to Survive. All covenants, agreements, indemnities, representations, and warranties contained in this lease or any document, agreement, or certificate delivered pursuant hereto shall survive the expiration or other termination of this lease.

11.4. Handling of Communications Regarding Equipment. The Lessee shall furnish, promptly upon receipt thereof, copies of communications or notices from the manufacturer of the Equipment or any government agency with jurisdiction over the Equipment regarding any material matter with respect to the use or modification of the Equipment.

11.5. Amendments and Waivers. The terms of this lease shall not be waived, altered, modified, amended, supplemented, or terminated in any manner whatsoever except by written instrument signed by the Lessor and the Lessee.

11.6. Enforceability and Severability. Any provision of this lease that may be prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by law, the Lessee hereby waives any provision of law that renders any provision hereof prohibited or unenforceable in any respect.

11.7. Law Governing. This lease shall be governed by, and construed in accordance with, the law of the State of Texas.

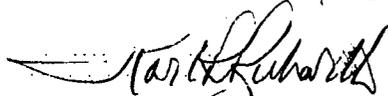
11.8. Recourse. This lease is solely a corporate obligation of the Lessee and the Lessor and no recourse shall be had in respect of any obligation, covenant, or agreement of this lease, or referred to herein, against any stockholder, incorporator, director, or officer, as such, past, present, and future, of the parties hereto by the enforcement of any assessment or by any legal or equitable proceeding, by virtue of statute or otherwise.

11.9. Intention of the Parties. This lease shall be construed as an agreement of lease and nothing herein shall be construed as conveying to the Lessee any right, title, or interest in or to the Equipment, except as lessee only. This agreement and the other agreements and documents referred to herein constitute the final and entire expression of the agreement of the parties regarding to the matters contemplated hereby.

11.10. Counterparts. This lease may be executed in any number of counterparts and by the different parties hereto on separate counterparts, all of which together shall constitute a single agreement.

IN WITNESS WHEREOF, the parties hereto have each caused this lease to be duly executed by their respective officers thereunto duly authorized.

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY



Vice President

Dated: December 18, 1981

INTERNATIONAL METALS & MACHINES, INC.



President

Dated: Dec. 18, 1981

STATE OF TEXAS) SS:

On this 18th day of December, 1981, before me personally appeared Karl R. Ziebarth, to me personally known, who, by me being duly sworn, says that he is a Vice President of Missouri-Kansas-Texas Railroad Company, that one of the seals affixed to the foregoing instrument is the corporate seal of said company, and that said instrument was signed and sealed on behalf of said company by authority of its board of directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said company.

Ruth Murdoch

Notary Public for the State of Texas

My Commission expires: December 31, 1984

STATE OF ILLINOIS)
) SS:
COUNTY OF Cook)

On this 18th day of December, 1981, before me personally appeared George E. McKewen, to me personally known, who by me being duly sworn, says that he is a ~~Vice~~ President of International Metals & Machines, Inc., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its board of directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Joane Kasprzyk

Notary Public

My Commission Expires Nov. 3, 1984

SCHEDULE A

EQUIPMENT

Eight General Motors model EMD SD-40-2 Diesel-Electric Locomotives, marked with the road numbers of the Lessee 629 through 636, both inclusive, manufactured pursuant to Lessee's Purchase Order No. D-65269, dated February 17, 1981.

EXHIBIT A

CERTIFICATE OF ACCEPTANCE

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY, a Delaware corporation, does hereby certify that:

1. Pursuant to the Equipment Lease dated as of December 18, 1981, (hereinafter called the Lease), between this corporation and International Metals & Machines, Inc. (hereinafter called the Lessor), the equipment described below has been accepted by this corporation on the date hereof at Parsons, Kansas.

- (a) as agent for the Lessor pursuant to the Sale Agreement dated December 17, 1981, with the Lessor and General Motors Corporation (Electro-Motive Division); and
- (b) on its own behalf as lessee of such equipment under the Lease.

<u>Quantity</u>	<u>Description</u>	<u>Identifying Numbers</u>
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2. No event of Default, as such term is defined in the Lease, or event that, with the passage of time or the giving of notice or both, would constitute such an Event of Default, has occurred and is continuing.

3. The representations and warranties made in the Lease and in the certificates heretofore delivered pursuant hereto remain true and correct as if made on the date hereof.

IN WITNESS THEREOF, the undersigned corporation has caused this certificate to be executed by its duly authorized officer, on this day of December, 1981.

MISSOURI-KANSAS-TEXAS
RAILROAD COMPANY

By _____
Vice President

E X H I B I T B
to Lease from IMM to MKT
of 8 SD40-2 Locomotives.

CASUALTY VALUE PER UNIT
BASED ON ORIGINAL COST OF \$909,030

<u>Year in which Loss Occurs</u>	<u>Percent</u>	<u>Dollar Amount</u>
1982	103%	\$ 936,300
1983	104	945,391
1984	105	954,481
1985	106	963,572
1986	106	963,572
1987	102	927,211
1988	97	881,759
1989	91	827,217
1990	84	763,585
1991	76	690,863
1992	68	618,140
1993	59	536,328
1994	49	445,425
1995	38	345,431
1996	25	227,258