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November 2, 1994

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VIA OVERNIGHT COURIER

Acting Secretary  
Interstate Commerce Commission  
Room 2311  
Washington, DC 20423

Attention: DOCUMENTS FOR RECORDATION

Re: General Electric Railcar Services Corporation

Dear Acting Secretary:

I am an attorney representing a party to the enclosed document. I have enclosed two originals of the document described below, to be recorded pursuant to Section 11303 of Title 49 of the United States Code and the regulations adopted thereto.

10-16-94 The document is a Lease of Railroad Equipment, a primary document, dated as of ~~November 1, 1994~~. The names and addresses of the parties to the foregoing document are as follows:

Lessor: Mellon Financial Services Corporation #3  
One Mellon Bank Center  
Pittsburgh, Pennsylvania 15258-0001

Lessee: General Electric Railcar Services Corporation  
33 West Monroe Street  
Chicago, Illinois 60603

A description of the equipment covered by the foregoing document follows: 241 covered hopper railcars marked and numbered: NAHX 466600 through 466745 (inclusive) and NAHX 475900 through 475994 (inclusive).

A fee of \$18.00 is enclosed. Please return an original and any extra copies not needed by the Commission for recordation and the enclosed copy of this letter, each stamped

SEYFARTH, SHAW, FAIRWEATHER & GERALDSON

Interstate Commerce Commission  
January 13, 1994  
Page Two

with your recordation number, to Stacy Powell-Bennett, Seyfarth, Shaw, Fairweather & Geraldson, 55 East Monroe Street, Suite 4200, Chicago, Illinois 60603.

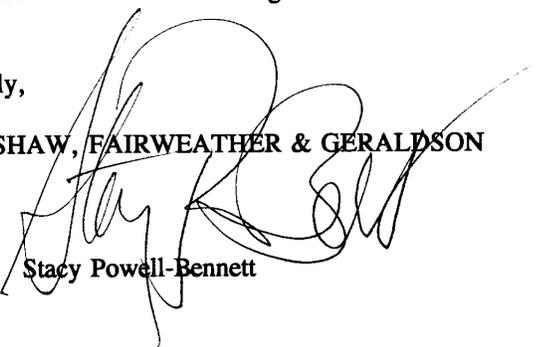
A short summary of the document to appear in the index follows:

Lease of Railroad Equipment dated as of November 1, 1994, between Mellon Financial Services Corporation #3, Pittsburgh, Pennsylvania and General Electric Railcar Services Corporation, covering car marks and numbers NAHX 466600 through 466745 (inclusive) and NAHX 475900 through 475994 (inclusive).

Yours very truly,

SEYFARTH, SHAW, FAIRWEATHER & GERALDSON

By:

  
Stacy Powell-Bennett

cc: Robert K. Parsons  
Richard Demarest Yant  
William Smith

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

11/7/94

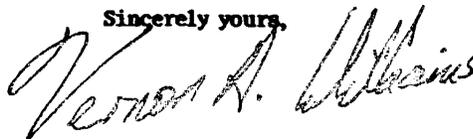
OFFICE OF THE SECRETARY

Stacy Powell-Bennett  
SeyFarth, Shaw, Fairweather & Geraldson  
55 East Monroe Street, Ste. 4200  
Chicago, Illinois 60603-5803

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 11/4/94 at 4:00PM, and assigned recordation number(s) 19044.

Sincerely yours,



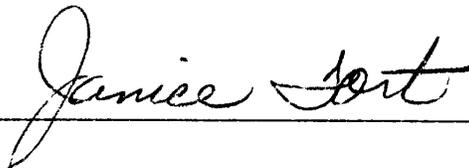
Vernon A. Williams  
Secretary

Enclosure(s)

( 0100424005)

\$ 21.00 The amount indicated at the left has been received in payment of a fee in connection with a document filed on the date shown. This receipt is issued for the amount paid and in no way indicates acknowledgment that the fee paid is correct. This is accepted subject to review of the document which has been assigned the transaction number corresponding to the one typed on this receipt. In the event of an error or any questions concerning this fee, you will receive a notification after the Commission has had an opportunity to examine your document.

Signature



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COLOGNE, GERMANY

Re: General Electric

Mellon Financial

\$3.00 to add  
to filing fees -

Thanks!

Stacy  
Powell-Bennett

19044

NOT RECORDED

# **LEASE OF RAILROAD EQUIPMENT**

Dated as of October 16, 1994,

between

**GENERAL ELECTRIC RAILCAR SERVICES CORPORATION**

and

**MELLON FINANCIAL SERVICES CORPORATION #3**

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

LEASE OF RAILROAD EQUIPMENT dated as of  
October 16, 1994, between GENERAL ELECTRIC RAILCAR  
SERVICES CORPORATION, a Delaware corporation  
("Lessee"), and MELLON FINANCIAL SERVICES  
CORPORATION #3, a Pennsylvania corporation ("Lessor").

RECITALS:

- A. The Lessor has succeeded to the interest of Westinghouse Credit Corporation ("Westinghouse") under a Lease of Railroad Equipment dated as of July 1, 1979 (the "Santa Fe Lease") between Westinghouse and The Atchison, Topeka and Santa Fe Railway Company ("Santa Fe").
- B. The Lessee has succeeded to the interest of Tiger Financial Services, Inc. ("TFS") under the option to lease granted pursuant to a letter agreement dated July 1, 1979 between TFS and Westinghouse (the "Option Agreement").
- C. The Lessee has exercised its option contained in the Option Agreement pursuant to the letter from the Lessee to the Lessor dated March 18, 1994.
- D. The Lessee desires to lease from the Lessor and the Lessor desires to lease to the Lessee all of the equipment remaining subject to the Santa Fe Lease to the extent delivered and accepted as hereinafter provided, on or before December 16, 1994 (referred to herein as the "Equipment" or "Units" and individually referred to as a "Unit") at the rentals and for the terms and upon the conditions hereinafter provided.

NOW, THEREFORE, in consideration of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions:

§ 1. Net Lease. This Lease is a net lease. The Lessee's obligation to pay all rentals and other amounts hereunder shall be absolute and unconditional and, except as herein provided, 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 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 the 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, required to be 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. The Lessor will cause the Units to be delivered to the Lessee at the point or points within the United States of America at which such Units are delivered to the Lessor by Santa Fe pursuant to and in accordance with § 13 of the Santa Fe Lease. Coincident with the delivery of the Units in accordance with the Santa Fe Lease, Lessee shall execute and deliver to the Lessor a certificate of acceptance (hereinafter called the "Certificate of Acceptance") stating that such Units have been inspected and accepted on behalf of the Lessee and the Lessor on the date of such Certificate of Acceptance whereupon such Units shall be deemed to have been delivered to and accepted by the Lessee as of such date ("Delivery Date") and shall be subject thereafter to all the terms and conditions of this Lease.

Notwithstanding anything herein to the contrary Lessor, for the benefit of Lessee, hereby agrees to hold the Lessee harmless from any claim of any nature arising out of any lien, encumbrance, security interest or right or claim of any third party in, on or with respect to any Unit existing as of the Delivery Date.

**§ 3. Rentals.** The Lessee agrees to pay to the Lessor rental for each Unit as follows: (a) during the interim term (as defined in Section 4 hereinbelow) [REDACTED] for each month of such interim term, and (b) during the Basic Lease Term (as defined in Section 4 below), [REDACTED] per month for each of the 60 months in the Basic Lease Term. Rental payments for the interim term shall be made on the applicable Delivery Date of each Unit and on November 16, 1994 [REDACTED], each a "Rental Payment Date". The first Rental Payment Date for the Basic Lease Term shall be December 16, 1994, and the remaining 59 additional monthly payments are payable on the 16th day of each of the next succeeding 59 consecutive months.

If any of the Rental Payment Dates referred to above is not a business day, the rental payment otherwise payable on such date shall then 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 Pittsburgh, Pennsylvania, and Chicago, Illinois, are authorized or obligated to remain closed. The

Lessee agrees to make each payment provided for in this §3 in immediately available funds at or prior to 10:00 a.m. Chicago, Illinois, time at the office of the Lessor on the due date.

§ 4. Term of Lease. The "term" of this Lease shall consist of an "interim term" and a "Basic Lease Term." The interim term shall begin on the Delivery Date for each Unit and end on December 15, 1994. The Basic Lease Term shall commence on December 16, 1994, and, subject to the provisions of §§ 7, 10 and 14 hereof, shall terminate on December 15, 1999. Except for obligations of the Lessee hereunder which are not specifically stated to terminate at a fixed time, the obligations of the Lessee hereunder (including, but not limited to, the obligations under §§ 3, 6, 7, 9 and 13 hereof) shall survive the expiration of the term of this Lease.

§ 5. Identification Marks. The Lessee will cause each Unit to be kept numbered with the identifying number set forth in Schedule A hereto, or in the case of any Unit not there listed such identifying number as shall be set forth in any amendment or supplement hereto extending this Lease to cover such Unit, and will keep and maintain, plainly, distinctly, permanently and conspicuously 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 or approved by the Lessor, with appropriate changes thereof and additions thereto as from time to time may be required by law or reasonably requested in order to protect the Lessor's title to and interest in such Unit and the rights of the Lessor under this Lease. The Lessee will not place or permit any such Unit to be placed in operation or exercise any control or dominion over the same until such words shall have been so marked on both sides thereof and will replace or cause to be replaced promptly any such name and words which may be removed, defaced, obliterated or destroyed. The Lessee will not change or permit to be changed the identifying number of any Unit unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with the Lessor and filed, recorded and deposited by the Lessee in all public offices where this Lease shall have been filed, recorded and deposited and (ii) the Lessee shall have furnished the Lessor an opinion of counsel to the effect that such statement has been so filed, recorded and deposited, such filing, recordation and deposit will protect the Lessor's interests in such Units and no filing, recording, deposit or giving of notice with or to any other Federal, state or local government or agency thereof is necessary to protect the interests of the Lessor in such Units.

Except as above provided, 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 permit the Equipment to be lettered with the names, trademarks, initials or other insignias customarily used by the Lessee or its affiliates on railroad equipment used by it of the same or a similar type for convenience of identification of its rights to use the Equipment under this Lease, and the Equipment may be lettered in an appropriate manner for convenience of identification of the interest of the Lessee therein.

§ 6. Taxes.

§6.1 General Tax Indemnity.

Whether or not any of the transactions contemplated hereby are consummated, the Lessee agrees to pay, and to indemnify and hold the Lessor and its successors and assigns harmless from all taxes (income, gross receipts, franchise, sales, use, property [real or personal, tangible or intangible] and stamp taxes), assessments, fees and charges of any nature whatsoever, together with any penalties, fines, additions to tax or interest thereon, howsoever imposed, whether levied or imposed upon the Lessor or its successors and assigns, or otherwise, by any Federal, state or local government or governmental subdivision in the United States or by any foreign country or subdivision thereof, upon or with respect to and limited to: any Unit or any part thereof; the manufacture, purchase, ownership, delivery, leasing, possession, use, operation, transfer of title, return or other disposition thereof; the rentals, receipts or earnings arising therefrom or value added thereto; this Lease, any payment made pursuant to this Lease, or the property, the income or other proceeds received with respect to the Units (all such taxes, assessments, fees, charges, penalties, fines, additions to tax and interest imposed as aforesaid being hereinafter called "Taxes"); excluding, however: (i) Taxes of the United States or of any state or political subdivision thereof and (if and to the extent that any person indemnified hereunder is currently allowed a credit therefor against its United States Federal income taxes or is indemnified by the Lessee pursuant to the Indemnity Agreement [hereinafter defined]) of any foreign country or subdivision thereof, imposed on or measured solely by the net income (or taxes the Lessor chooses to pay in lieu thereof) or excess profits of the Lessor or its successors and assigns, other than Taxes arising out of or imposed in respect of the receipt of indemnification payments pursuant to this Lease, provided that such Taxes of any foreign country or subdivision thereof incurred as a result of the indemnified party being taxed by such foreign country or jurisdiction on its worldwide income without regard to the transactions contemplated by this Lease shall be excluded whether or not the indemnified party is currently allowed a credit against its United States Federal income taxes; (ii) Taxes imposed by reason of a voluntary transfer of the Units by the Lessor so long as no Event of Default has occurred and is continuing hereunder; provided, however, that the Lessee shall not be required to pay any Taxes during the period it may be contesting the same in the manner provided in the next succeeding paragraph. The Lessee further agrees to pay on or before the time or times prescribed by law any tax imposed on or measured solely by the net income of the Lessee (or the affiliated group, within the meaning of Section 1504 of the Internal Revenue Code of 1986, as amended, of which the Lessee is a member) under the laws of the United States or of any state or political subdivision thereof, or of any foreign country or subdivision thereof which, if unpaid, might result in a lien or other encumbrance upon any Unit; provided, however, that the Lessee shall not be required to pay any such tax during the period it may be contesting the same. The amount which the Lessee shall be required to pay with respect to any taxes indemnified against pursuant to this § 6.1 shall be an amount sufficient to restore the indemnified party to the same position such indemnified party would have been in had such Taxes not been imposed.

If claim is made against any indemnified party for any Taxes indemnified against under this § 6.1, such party shall promptly notify the Lessee. If reasonably requested by the Lessee in writing, such indemnified party shall, upon receipt of indemnity satisfactory to it for all costs, expenses, losses, legal and accountants' fees and disbursements, penalties, fines, additions to tax and interest, and at the expense of the Lessee, contest in good faith the validity, applicability or amount of such Taxes by (a) resisting payment thereof if possible, (b) not paying the same except under protest, if protest is necessary and proper, and (c) if payment is made, using reasonable efforts to obtain a refund thereof in appropriate administrative or judicial proceedings, or both. The Lessee may also contest, at its own expense, the validity, applicability or amount of such Taxes in the name of such indemnified party; provided that no proceeding or action relating to such contest shall be commenced (nor shall any pleading, motion, brief or other paper be submitted or filed in the name of such indemnified party in any such proceeding or action) without the prior written consent of such indemnified party, which consent shall not be unreasonably withheld (it being understood that the indemnified party shall not be entitled to indemnity under this Section 6 in respect of any matter as to which such consent shall be withheld for any reason unrelated to this transaction). If such indemnified party shall obtain a refund of all or any part of such Taxes previously reimbursed by the Lessee in connection with any such contest or an amount representing interest thereon applicable to the amount paid by the Lessee and the period of such payment, such indemnified party shall pay to the Lessee the amount of such refund or interest net of expenses; provided, however, that no Event of Default and no event which, with notice or lapse of time or both, would constitute an Event of Default shall have occurred and be continuing.

If any person indemnified hereunder shall be allowed a credit for any foreign taxes for which the Lessee shall have reimbursed such indemnified party, such indemnified party shall pay to the Lessee the amount of such credit, plus an amount equal to any tax benefits realized by such indemnified party as a result of any payment to the Lessee pursuant to this sentence. For purposes of this paragraph, in determining the order in which the indemnified party utilizes withholdings or other foreign taxes as a credit against such indemnified party's United States income taxes, such indemnified party shall be deemed to utilize (i) first, all foreign taxes other than those described in (ii) below and (ii) then, all foreign taxes for which the Lessee shall have reimbursed such indemnified party pursuant to this § 6.1. Each indemnified party shall in good faith use reasonable efforts in filing its tax returns and in dealing with taxing authorities to claim a credit for any foreign taxes for which the Lessee shall have reimbursed such indemnified party and otherwise to minimize any taxes for which the Lessee is responsible under this § 6.1.

In case any report or return is required to be made with respect to any obligation of the Lessee under this § 6.1, except obligations resulting from the second sentence of the first paragraph of this § 6.1, the Lessee shall either make such report or return in such manner as will show the interests of the Lessor in the Units, or shall promptly notify the Lessor of such requirement and shall make such report or return in such manner as shall be satisfactory to

the Lessor. All costs and expenses (including legal and accountants' fees) of preparing any such return or report shall be borne by the Lessee.

All the obligations of the Lessee under this § 6.1 shall survive and continue, but only with respect to periods included in the term of this Lease and the period of any assembly, delivery, storage and transporting of the Units pursuant to § 13 hereof, notwithstanding the termination of this Lease.

The Lessee shall furnish promptly upon request, such information and data as is normally available to the Lessee and which the Lessor reasonably may require to permit compliance with the requirement of any taxing authority.

§ 6.2 Special Tax Indemnity.

Lessee covenants that Lessee will not at any time during the term of this Lease use, or fail to use any Unit in such a way as to cause any amounts includible in the gross income of the Lessor for Federal income tax purposes to be treated as derived from or allocable to sources outside the United States. Upon the failure of the foregoing covenant, the Lessor shall be entitled to receive an amount or amounts from Lessee which would be payable pursuant to Section 2 of the Indemnity Agreement dated July 1, 1979, between Westinghouse and Santa Fe ("Indemnity Agreement") as a result of such failure, as if Lessor and Lessee were parties to such Indemnity Agreement (as "Lessor" and "Lessee", respectively). The fourth paragraph of such Section 2 shall not apply to the transaction described herein.

In addition, the Lessor and the Lessee agree that Sections 3, 4, 5, 6 and 7 of the Indemnity Agreement shall apply to the transaction described herein, as if set forth in their entirety in this Lease, and that in applying such Sections, the "Lessor" under the Indemnity Agreement shall mean the Lessor hereunder and the "Lessee" under the Indemnity Agreement shall mean the Lessee hereunder.

§ 7. Payment for Casualty Occurrences; Maintenance; Insurance; Economic Obsolescence.

§ 7.1 Casualty Occurrences.

The Lessee agrees that, at its own cost and expense, it will maintain and keep each Unit (including any parts installed on or replacements made to any Unit and considered an accession thereto as hereinbelow provided) in good operating order, repair and condition, ordinary wear and tear excepted, and eligible for railroad interchange in accordance with the interchange rules of the Association of American Railroads or other applicable regulatory body.

In the event that any Unit shall be or become worn out, lost, stolen, destroyed, irreparably damaged, or permanently rendered unfit for use from any cause whatsoever, or

taken or requisitioned by condemnation or otherwise resulting in loss of possession by the Lessee for a period of 90 consecutive days, except requisition for use by the United States Government for a period not in excess of the then remaining term of this Lease (each such occurrence being hereinafter called a "Casualty Occurrence") during the term of this Lease, or until such Unit shall have been returned in the manner provided in §§ 11 or 13 hereof, the Lessee shall promptly and fully notify the Lessor with respect thereto. On the Rental Payment Date next succeeding the delivery of such notice (or, in the event such Rental Payment Date will occur within 15 days after delivery of notice, on the following Rental Payment Date, or, in the event the term of this Lease has already expired or will expire within 15 days after delivery of such notice, on a date within 15 days of such delivery) (such date being hereinafter called a "Casualty Payment Date"), 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 Casualty Payment Date plus a sum equal to the Casualty Value (as hereinafter defined) of such Unit as of such Casualty Payment Date in accordance with the schedule referred to below. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue as of the date of such payment, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft or complete destruction of such Unit) the Lessor shall be entitled to recover possession of such Unit.

The Casualty Value of each Unit as of the Casualty Payment Date for each such Unit shall be the percentage of the Vendee Purchase Price of such Unit as is set forth in Schedule B hereto opposite such date with respect to such Unit.

Whenever any Unit shall suffer a Casualty Occurrence after the expiration of the original or extended term of this Lease and before such Unit shall have been returned in the manner provided in § 13 hereof, the Lessee shall promptly and fully notify the Lessor with respect thereto and pay to the Lessor an amount equal to the Casualty Value of such Unit, which shall be \$8,605.00 for each such Unit (unless such Casualty Occurrence occurs after the term of this Lease has been extended pursuant to § 14 hereof, in which case the amount of such Casualty Value shall be as agreed upon between the Lessor and the Lessee at the time of such extension). Upon the making of any such payment by the Lessee in respect of any Unit (except in the case of the loss, theft or complete destruction of such Unit), the Lessor shall be entitled to recover possession of such Unit.

The Lessor hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof, before or after the expiration of this Lease, 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 and is not in default hereunder, the Lessee shall be entitled to the net proceeds of such disposition to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Lessor.

In the event of the requisition for use by the United States Government or any political subdivision thereof (the "Government") of any Unit during the term of this Lease, unless such requisition shall at the time of such requisition be scheduled to extend beyond the

then remaining term of this Lease, 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 if such Unit is returned by the Government at any time after the end of the term of this Lease, the Lessee shall be obligated to return such Unit to the Lessor pursuant to § 11 or 13 hereof, as the case may be, promptly upon such return by the Government rather than at the end of the term of this Lease, but the Lessee shall in all other respects comply with the provisions of said § 11 or 13, as the case may be, with respect to such Unit. All payments received by the Lessor or the Lessee from the Government for the use of such Unit during the term of this Lease shall be paid over to, or retained by, the Lessee provided 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 shall be paid over to, or retained by, the Lessor.

Except as hereinabove in this § 7 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit from and after delivery and acceptance thereof by the Lessee hereunder.

**§7.2 Insurance.**

The Lessee will, at all times prior to the return of the Equipment to the Lessor in accordance with the terms of this Lease and during any storage period, at its own expense, cause to be carried and maintained property and casualty insurance and public liability insurance, against the risks and in the amounts customarily insured against by the Lessee in respect of similar equipment owned or leased by it, and the benefits thereof shall be payable to the Lessor and the Lessee, as their interests may appear. Any policies of insurance carried in accordance with this paragraph shall (i) require 30 days' prior notice of cancellation to the Lessor, (ii) name the Lessor as additional named insured or loss payee, as its interest may appear and (iii) include waivers by the insurer of all claims for premiums against the Lessor. All insurance will insure the interests of the Lessor regardless of any breach or violation of warranty by the Lessee.

**§ 7.3 Economic Obsolescence.**

(a) If (i) no Event of Default (or an event which would constitute an Event of Default but for the lapse of time or the giving of notice or both) shall have occurred and be continuing and (ii) the Equipment in Lessee's reasonable judgment has become surplus or obsolete to Lessee's requirements, then Lessee may at its option, upon not less than 180 days prior written notice to Lessor, terminate this Lease with respect to all, but not less than all, of the Equipment provided that (x) the effective date (hereinafter called the "Termination Date") of such termination is a rental payment date and (y) the rental payment due on such rental payment date and all other sums due from Lessee to Lessor have been paid. Lessee shall continue to pay rent for the Equipment accruing and unpaid until the Termination Date, at which time Lessee shall pay to Lessor the applicable Casualty Value determined as of such

date, the rental payment due on such date and all other sums due to Lessor from Lessee hereunder as a result of such termination.

(b) During the period from the giving of such notice until the Termination Date, Lessor, and Lessee on behalf of Lessor, shall use reasonable efforts to obtain bids for the cash sale of the Equipment. Lessor and Lessee shall certify to each other in writing the amount and the terms of each bid received by them an address of the parties submitting such bids. Subject to Lessor's right to reject bids as set forth below, on the Termination Date Lessor shall, without recourse, representation or warranty, sell the Equipment to the highest bidder who shall have submitted such bid prior to such date. If Lessee shall have paid to Lessor the Casualty Value therefore, Lessor will refund the proceeds of such sale, less an amount equal to all expenses incurred by Lessor, including selling commissions in connection with all attempts to sell the Equipment, except that such refund to Lessee shall, in no event, exceed the amount of Casualty Value paid by Lessee.

(c) If neither Lessor nor Lessee shall receive any bid for the Equipment or there shall not be any bid which shall be acceptable to Lessor, in its reasonable judgment, Lessor shall so advise Lessee. Thereupon, Lessee shall have the right (i) to notify Lessor, within 15 days following the giving of such advice, that Lessee will continue to lease the Equipment with the same effect as if Lessee had not given notice of termination with respect thereto or (ii) to pay to Lessor, on the Termination Date, the aggregate Casualty Value of the Equipment plus the rental payment due on such Termination Date, and thereupon Lessee shall have no further right with respect to the Equipment.

(d) Notwithstanding the foregoing, if the Casualty Value exceeds the amount of any bid which is acceptable to Lessor, Lessee may at its option upon written notice given o Lessor not less than 90 days prior to the Termination Date, elect one time only to rescind Lessee's notice of termination, whereupon this Agreement shall not terminate but shall, provided that no Event of Default (or other event which would constitute an Event of Default but for the lapse of time or the giving of notice or both) has occurred and is continuing hereunder and Lessor has not by reason thereof declared this Lease to be in default, continue in full force and effect as though no such notice of termination had been given by Lessee. In the event Lessee shall elect to rescind Lessee's notice of termination in accordance with the provisions of this Subsection (d) hereof, Lessee shall reimburse Lessor for all expenses which have been incurred in reliance upon any notice of termination by Lessee.

(e) Except as Lessee shall, in a timely fashion, have either exercised its right to continue to lease the Equipment pursuant to Subsection (c) hereof, or elected to rescind Lessee's notice of termination pursuant of Subsection (d) hereof, Lessee shall pay to Lessor the Casualty Value on the Termination Date, without asserting any setoff, counterclaim or other defense for any reason whatsoever.

(f) Under no circumstances shall the Lessee have the right or be permitted to purchase any Unit pursuant to the terms of this § 7.3.

**§ 8. Reports; Financial Information.** On or before April 1 in each year, commencing with the calendar year 1995, the Lessee will furnish to the Lessor an accurate statement (a) setting forth as at the preceding December 31 the amount, description and numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year (specifying the dates of such Casualty Occurrences) or to the knowledge of the Lessee are then undergoing repairs (other than running repairs) or are then withdrawn from use pending repairs (other than running repairs) and such other information regarding the condition and state of repair of the Units as the Lessor 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 the markings required by § 5 hereof have been preserved or replaced. The Lessor 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.

Lessee shall keep its books and records in accordance with generally accepted accounting principles and practices consistently applied and shall deliver to Lessor copies of the quarterly and annual reports to security holders of General Electric Capital Corporation, the owner of all of the outstanding stock of Lessee, with such annual reports being certified by a firm of independent public accountants; provided, however, nothing contained herein shall constitute or be deemed to be a guarantee by General Electric Capital Corporation, of the obligations of the Lessee under this Lease.

**§ 9. Disclaimer of Warranties; Compliance with Laws and Rules; Indemnification.** THE LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN, COMPLIANCE WITH SPECIFICATIONS, OPERATION OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS OR ANY COMPONENT THEREOF DELIVERED TO THE LESSEE HEREUNDER, AND THE LESSOR MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS OR ANY COMPONENT THEREOF FOR ANY PARTICULAR PURPOSE NOR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, NOR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT OR ANY COMPONENT THEREOF (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 any person, including, but not limited to, any claims and rights arising under the provisions any purchase order or agreement applicable to the Units. The Lessor shall have no responsibility or liability to the Lessee or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Units or by any inadequacy thereof or deficiency or defect therein or by any other circumstance in connection

therewith; (ii) the use, operation or performance of any Units or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Units. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Lessor that 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.

The Lessee agrees, for the benefit of the Lessor, to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each Unit) with all laws of the jurisdictions in which its operations involving the Units may extend, with the interchange rules of the Association of American Railroads and with all lawful 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 and in the event that such laws or rules require any alteration, replacement, modification or addition of or to any part of any Unit, the Lessee will fully conform therewith at its own expense; provided, however, that the Lessee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Lessor, adversely affect the property or rights of the Lessor under this Lease.

The Lessee and its affiliates, at their own cost and expense, may from time to time make such alterations, modifications and additions (including, without limitation, any special devices or assemblies at any time attached or affixed to any Unit, which are not required for the operation or use of such Unit by the Interstate Commerce Commission, the United States Department of Transportation or any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over such Unit) (hereinafter collectively called "Additions") to the Units as the Lessee may deem desirable in the proper conduct of its business so long as such Additions shall not be inconsistent with the continuing operation of the Units or in accordance with their original conventional purpose and shall not diminish the value, utility or condition of the Units below the value, utility and condition thereof immediately prior to the making of such Additions, assuming the Units were then in the condition required to be maintained by the terms of this Lease; provided, however, that no such Addition shall be made if it is not readily removable from the Unit to which it relates without material damage thereto and without diminishing or impairing the value or utility which the Unit would have had immediately prior to such time had such Addition not been made.

Title to all Parts (as hereinbelow defined) incorporated in or installed as part of the Units shall without further act vest in the Lessor in the following cases: (i) such Part is in replacement of or in substitution for, and not in addition to, any Part originally incorporated in or installed as part of a Unit at the time of the acceptance thereof hereunder or any Part in replacement of, or in substitution for any such original Part, (ii) such Part is required to be

incorporated in or installed as part of the Unit pursuant to the terms of the second or third paragraph of this §9, or (iii) notwithstanding the provisions of the fourth paragraph of this § 9, such Part cannot be readily removed from the Unit to which it relates without material damage thereto and without diminishing or impairing the value or utility which such Unit shall have had at such time had such alteration or addition not occurred. In all other cases, if no Event of Default under § 10 hereof (or other event which after lapse of time or notice or both would constitute an Event of Default) shall have occurred and be continuing, title to Parts incorporated in or installed as parts of the Units as a result of such alterations or additions shall vest in the Lessee. The term Part for the purposes of this paragraph and § 13 hereof shall be defined to include any appliance, part, instrument, accessory, furnishing or other equipment of any nature which may from time to time be incorporated in or installed as part of any Unit.

The Lessee shall pay, and shall protect, indemnify and hold the Lessor, and its successors, assigns, agents and servants (hereinafter called "Indemnified Persons"), harmless from and against any and all losses, damages, injuries, liabilities, causes of action, suits, penalties, claims, demands or judgments, of any nature whatsoever which may be imposed on, incurred by or asserted against any Indemnified Person (including any or all liabilities, obligations, damages, costs, interest, disbursements, expenses [including without limitation attorneys' fees and expenses of any Indemnified Person] relating thereto) in any way relating to or arising or alleged to arise out of the entering into or performance of, or the occurrence of a default, an event of default or an Event of Default under this Lease or any sublease, including without limitation those in any way relating to or arising or alleged to arise out of (i) the manufacture, construction, purchase, acceptance, rejection, ownership, delivery, nondelivery, lease, possession, use, operation, condition, sale, return or other disposition of any Unit or portion thereof; (ii) any latent or other defects whether or not discoverable by any Indemnified Person or the Lessee; (iii) any claim for patent, trademark or copyright infringement; (iv) any claims based on strict liability in tort; (v) any injury to or the death of any person or any damage to or loss of property on or near the Units or in any manner growing out of or concerned with, or alleged to grow out of or be connected with, the ownership, use, replacement, adaptation or maintenance of the Units or of any other equipment in connection with the Units (whether owned or under the control of the Lessor, the Lessee or any other person) or resulting or alleged to result from the condition of any thereof; (vi) any violation, or alleged violation, of any provision of this Lease (except by the Lessor) or of any agreement, law, rule, regulation, ordinance or restriction, affecting or applicable to the Units or the leasing, ownership, use, replacement, adaptation or maintenance thereof. The Lessee shall be obligated under this § 9, irrespective of whether any Indemnified Person shall also be indemnified with respect to the same matter under any other agreement by any other person, and the Indemnified Person seeking to enforce the indemnification may proceed directly against the Lessee under this § 9 without first resorting to any such other rights of indemnification. In case any action, suit or proceeding is brought against any Indemnified Person in connection with any claim indemnified against hereunder, the Lessee may and, upon such Indemnified Person's request, will at the Lessee's expense resist and defend such action, suit or proceeding, or cause the same to be resisted or

defended by counsel selected by the Lessee and approved by such Indemnified Person, as the case may be, and, in the event of any failure by the Lessee to so do, the Lessee shall pay all costs and expenses (including without limitation attorneys' fees and expenses) incurred by such Indemnified Person in connection with such action, suit or proceeding. In the event the Lessee is required to make any payment under this § 9, the Lessee shall pay such Indemnified Person an amount which, after deduction of all taxes required to be paid by such Indemnified Person in respect of the receipt thereof under the laws of the United States or of any political subdivision thereof (after giving credit for any savings in respect of any such taxes by reason of deductions, credits or allowances in respect of the payment of the expense indemnified against, and of any other such taxes as determined in the sole discretion of the Indemnified Person), shall be equal to the amount of such payment. The Lessee and the Lessor each agrees to give each other promptly upon obtaining knowledge thereof written notice of any claim or liability hereby indemnified against. Upon the payment in full of any indemnities as contained in this § 9 by the Lessee, and provided that no Event of Default (or other event which with lapse of time or notice or both would constitute an Event of Default) shall have occurred and be continuing, it shall be subrogated to any right of such Indemnified Person in respect of the matter against which indemnity has been given. Any payments received by such Indemnified Person from any person (except the Lessee) as a result of any matter with respect to which such Indemnified Person has been indemnified by the Lessee pursuant to this § 9 shall be paid over to the Lessee to the extent necessary to reimburse the Lessee for indemnification payments previously made in respect of such matter.

The indemnities contained in this § 9 shall survive the expiration or termination of this Lease with respect to all events, facts, conditions or other circumstances occurring or existing prior to such expiration or termination and are expressly made for the benefit of, and shall be enforceable by any Indemnified Person. None of the indemnities in this § 9 shall be deemed to create any rights of subrogation in any insurer or third party against the Lessee therefor, from or under any Indemnified Person, whether because of any claim paid or defense provided for the benefit thereof or otherwise.

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

§ 10. Default. If, during the continuance of this Lease, one or more of the following events (each such event being herein sometimes called an "Event of Default") shall occur:

(a) default shall be made in payment of any amount provided in § 3, 7 or 13 hereof, and such default shall continue for ten days after such payment is due;

(b) default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein, and such default shall

continue for 30 days after the earlier of (i) written notice from the Lessor to the Lessee specifying the default and demanding that the same be remedied, and (ii) the date on which such default shall first become known to any officer of the Lessee;

(c) 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 the Units, or any thereof;

(d) a petition for reorganization under any provision of Title 11 of the United States Code, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) or the debtor in possession in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or debtor in possession, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier;

(e) any other proceedings shall be commenced by or against the Lessee for any relief which includes, or might result in, any modification of the obligations of the Lessee under this Lease 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 the obligations of the Lessee hereunder), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been and shall not continue to have been duly assumed in writing, by the trustee in such proceedings or 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 obligations incurred by such a trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

(f) any representation or warranty made by the Lessee in any document or certificate furnished by the Lessee to the Lessor in connection herewith or pursuant hereto or thereto shall be incorrect when made in any material respect adverse to such parties or any thereof and such condition, which caused such misrepresentation or breach of warranty, shall continue unremedied for a period of 30 days after the Lessee becomes aware of such condition;

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; or

(B) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as herein provided; and thereupon the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess, sell, operate, lease to others and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever and without any duty to account to the Lessee for such action or inaction or for any proceeds arising therefrom; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee as damages for loss of the bargain and not as a penalty, whichever of the following amounts the Lessor, in its sole discretion, shall specify: (x) a sum with respect to each Unit which represents the excess of (1) the present value, at the time of such termination, of the entire unpaid balance of all rentals for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over (2) the then present value of the rentals which the Lessor reasonably estimates to be obtainable for the Unit during such period, such present value to be computed in each case on the basis of a 6% per annum discount, compounded monthly from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, together with any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Lessor shall have sustained by reason of the breach of any covenant, representation or warranty of this Lease other than for the payment of the rental; or (y) an amount equal to the excess, if any, of the Casualty Value as of the Rental Payment Date on or next preceding the date of termination over the amount the Lessor reasonably estimates to be the sales value (after deduction of all estimated expenses of such sale) of such Unit at such time; provided, however, that in the event the Lessor shall have sold any Unit, the Lessor, in lieu of collecting any amounts payable to the Lessor by the Lessee pursuant to the preceding clauses (x) and (y) of this subparagraph (B) with respect to such Unit, may, if it shall so elect, demand that the Lessee pay the Lessor and the Lessee shall pay to the Lessor on the date of such sale (in addition to the amounts payable pursuant to §§ 6 and 9 hereof), as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty Value for such Unit, as of the Rental Payment Date on or next preceding the date of termination, over the net proceeds of such sale.

In addition, 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.

If the Lessee fails to perform or comply with any agreement, covenant or condition contained in this Lease, and such nonperformance or noncompliance could, with the lapse of time and/or demand or failure to take action, result in an Event of Default under clause (a), (b), (c) or (f) of this § 10, the Lessor may, upon notice to the Lessee, itself perform or comply with such agreement, covenant or condition, and the amount of the reasonable costs and expenses of the Lessor incurred in connection with such performance or compliance, together with interest on such amounts at the rate of 10.875% per annum, shall be payable to the Lessor by the Lessee upon demand.

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

The failure of the Lessor to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies, and a waiver of any such right on one occasion shall not constitute a waiver of such right as to any other occasion and shall not be effective unless in writing signed by the Lessor.

The Lessee also agrees to furnish the Lessor, promptly upon any responsible officer's becoming aware of any condition which constitutes an Event of Default under this Lease or which, after notice or lapse of time or both, would constitute such an Event of Default, written notice specifying such condition and the nature and status thereof. For the purposes of this paragraph, a "responsible officer" shall mean, with respect to the subject matter of any covenant, agreement or obligation of the Lessee in this Lease contained, any corporate official of the Lessee who in the normal performance of his operational responsibilities would have knowledge of such matter and the requirements of this Lease with respect thereto.

**§ 11. 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 and shall give prompt telegraphic and written notice to the Association of American Railroads and all railroads having possession or any Unit so to return such Units. Each Unit returned to the Lessor pursuant to this § 11 shall (i) be in the same operating order, repair and condition as

when originally delivered to the Lessee, reasonable wear and tear and modifications, if any, permitted by this Lease excepted and (ii) meet the standards then in effect under the Interchange Rules of the Association of American Railroads, if applicable. For the purpose of delivering possession of any Unit or Units to the Lessor as above required, the Lessee shall at its own cost, expense and risk:

(a) forthwith and in the usual manner cause such Units to be transported to such location as shall reasonably be designated by the Lessor and there assembled,

(b) furnish and arrange for the Lessor to store such Units on any lines of railroad or premises in the 48 contiguous United States approved by the Lessor until such Units have been sold, leased or otherwise disposed of by the Lessor, and

(c) cause the Units to be moved to such interchange point or points in the 48 contiguous United States as shall be designated by the Lessor upon any sale, lease or other disposal of all or any of the Units.

The assembling, delivery, storage and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and, upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Unit, to inspect the same. All per diem amounts earned in respect of the Units after the date of termination of this Lease shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor. In the event any Unit is not assembled, delivered and stored, as hereinabove provided, within 60 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 \$5.34 exceeds the actual earnings received by the Lessee on such Unit for each such day; such payment shall not affect the obligation of the Lessee to redeliver the Equipment pursuant to the first sentence of this Paragraph.

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. The Lessor agrees that it will not assign any of its rights under this Lease without the prior written consent of the Lessee unless such assignment is to (a) a bank, trust company or insurance company which is organized and doing business in the United States and has a combined capital and surplus of at least

\$100,000,000; (b) a financial corporation which (i) is organized and doing business in the United States, (ii) has a combined capital and surplus of at least \$75,000,000, and (iii) either has any securities listed on a national securities exchange or any long-term indebtedness rated "A" (or the equivalent) or better by Standard & Poor's Corporation of Moody's Investors Services, Inc. (or a comparable rating by any successor to either of their businesses); or (c) any corporation which is a member of the same "affiliated group" (as defined in Section 1504 of the Internal Revenue Code of 1986, as amended) as the Lessor (or the corporation which holds all the voting securities of the Lessor) or as any bank, trust company, insurance company or other financial corporation covered by clause (a) or (b) above. The Lessee shall be under no obligation to any assignee of the Lessor except under written notice of such assignment from the Lessor.

So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession and use of the Units and, without the Lessor's consent, may furnish any Unit or Units to railroad companies for use upon the lines of railroads owned or operated by them or over which they have trackage rights and upon connecting and other carriers in the usual interchange of traffic, or to other than railroad companies, or sublease any Unit or Units to any person or entity, but only, in each case, upon and subject to all the terms and conditions of this Lease, provided, however, that Lessee shall not sublease or permit the sublease or use of any Unit outside the United States of America, except occasional use permitted in Canada as long as such use does not involve regular operation and maintenance outside the United States of America. No such sublease shall relieve Lessee of its obligations hereunder which shall be and remain those of a principal and not a surety

Any such sublease may provide that the sublessee, so long as it shall not be in default under such sublease, shall be entitled to the possession of the Units included in such sublease and the use thereof; provided, however, that every such sublease shall be subject to the rights and remedies of Lessor under this Lease in respect of the Units covered by such sublease upon the occurrence of an Event of Default hereunder.

The Lessee, at its own expense, will as soon as possible cause to be duly discharged any lien, charge, security interest or other encumbrance (except any sublease as aforesaid and other than an encumbrance resulting from claims against Lessor not related to the ownership or leasing of the Units) which may at any time be imposed on or with respect to any Unit including any accession thereto or the interest of Lessor or Lessee therein; except that this covenant will not be 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; and, furthermore, Lessee shall be under no obligation to discharge any such lien, charge, security interest or encumbrance so long as it is contesting the same in good faith and by appropriate legal proceedings and the failure to discharge the same does not, in the opinion of Lessor, adversely affect the title, property or rights of Lessor.

Nothing in this § 12 shall be deemed to restrict the right of Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any solvent corporation (i) incorporated under the laws of any state of the United States of America or the District of Columbia and (ii) with capital and surplus aggregating at least that of Lessee immediately after such assignment or transfer (which shall have duly assumed the obligations of Lessee hereunder pursuant to appropriate instruments satisfactory in form and substance to Lessor, or and its counsel) into or with which Lessee shall have become merged or consolidated or which shall have acquired all or substantially all the assets of Lessee; provided, however, 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 that such acquisition shall not alter in any way Lessee's obligation to Lessor hereunder which shall be and remain those of a principal and not a surety.

§ 13. Return of Units upon Expiration of Term; Fee to be Paid to Lessee. As soon as practicable but not later than 60 days after the expiration of the original or any extended term of this Lease, the Lessee will, at its own cost and expense, cause each Unit to be transported to such point or points within a five hundred (500) mile radius of St. Louis, Missouri, and within the 48 contiguous United States, as shall be reasonably designated by Lessor at least thirty days prior to such termination and arrange for the Lessor to store such Unit on any lines of railroad or premises approved by the Lessor for a period commencing on the date of its arrival at any such point and extending thereafter to a date not later than 90 days from the date at which at least 95% of such Units are first placed into storage pursuant to this § 13; the assembly, delivery, storage and transporting of such Unit to be at the expense and risk of the Lessee. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser or lessee of such Unit, to inspect the same; provided, however, that the Lessee shall not be liable except in the case of the negligent or intentional act of the Lessee or of its employees or agents and, except to the extent otherwise provided by law, for any injury to or the death of any person exercising, either on behalf of the Lessor or any prospective purchaser or Lessee, the rights of inspection granted under this sentence. The assembly, 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 jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to cause the assembly, delivery, storage and transporting of the Units. Each Unit returned to the Lessor pursuant to this § 13 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted, (ii) fit for loading, (iii) have attached or affixed thereto any Part title to which is in the Lessor pursuant to § 9 hereof and have removed therefrom at Lessee's expense any Part title to which is in the Lessee or any other person pursuant to such § 9 and (iv) meet the standards then in effect under the Interchange Rules of the Association of American Railroads, if applicable. If any Unit suffers a Casualty Occurrence during any storage period provided for in this § 13, the Lessee shall pay to

the Lessor the Casualty Value of such Unit as determined in accordance with § 7 hereof. All per diem 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 that by the 60th day after the termination of the original or any extended term of this Lease the Lessee has not, at the request of the Lessor, caused at least 95% of the Units to be transported to such point or points reasonably designated by Lessor pursuant to this § 13, the Lessee shall, in addition, pay to the Lessor an amount equal to the amount, if any, by which \$5.34 exceeds the actual earnings received by the Lessor for the number of Units equal to the difference between 95% of such Units and the number of Units previously delivered pursuant to this § 13 (such number to be determined on each day) for each day from such 60th day to the date on which at least 95% of the Units have been so transported. If, after the termination of the storage period provided in this § 13, any Units have not been so transported, the Lessee shall pay to the Lessor an amount equal to the amount, if any, by which \$5.34 exceeds the actual earnings received by the Lessor for each Unit not so transported for each day after the end of such storage period until such Unit or Units have been so transported; provided, however, that if any Unit has not suffered a Casualty Occurrence prior to the first anniversary of the termination of this Lease and has not been so transported within one year after the termination of the term of this Lease, such Unit shall be deemed to have suffered a Casualty Occurrence and the Lessee shall pay or cause to be paid to the Lessor on the 10th day after the expiration of such year, an amount equal to the greater of (x) the Casualty Value of such Unit as of such date or (y) the Fair Market Value of such Unit as of the date this lease is terminated and assuming such Unit had not experienced a Casualty Occurrence and was then in the condition required to be maintained by the terms of this Lease. If, after 10 days from the expiration of such year, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Value of any such Unit, such value shall be determined in accordance with the appraisal procedure specified in the second and third paragraph of § 14 hereof (with the exception that the entire cost of such appraisal shall be borne by the Lessee and that the Lessor and the Lessee shall have 10 days from the expiration of the year first succeeding the date this Lease is terminated to agree upon a determination of Fair Market Value, as aforesaid), and payment of such amount shall be made on the fifth business day following the determination of such Fair Market Value. "Fair Market Value" shall be determined on the basis of the value which would be obtained in an arm's-length transaction between an informed and willing buyer (other than (i) a lessee currently in possession and (ii) a used equipment dealer) and an informed and willing seller under no compulsion to sell.

Provided that this Lease has not been earlier terminated by reason of an Event of Default, Casualty Occurrence, Economic Obsolescence or otherwise, then, at the expiration of the Lease and providing no Event of Default shall have occurred and is continuing, Lessor shall pay to Lessee a fee equal to \$2,151.25 for each Unit returned to Lessor. The foregoing amount is payable 15 days following return of all Units then subject to this Lease.

§ 14. Renewal Option. Unless an Event of Default (or other event which would constitute an Event of Default but for the lapse of time or the giving of notice or both) has occurred and is continuing, Lessee shall have the option to extend the term of lease with respect to all, but not less than all, of the Equipment for one period of three years at the then Fair Market Rental Value (as hereinafter defined) as determined by agreement between Lessor and Lessee, provided that Lessee gives Lessor notice in writing of its desire to exercise such extension option no less than 180 days prior to the expiration of the original term of lease. If Lessor and Lessee cannot agree on the Fair Market Rental Value, Lessee shall, not later than 180 days prior to the expiration of the term of lease, advise Lessor in writing that Lessee either (a) does not desire to exercise its option to extend or (b) desires to have the then Fair Market Rental Value of the Equipment determined by an independent appraiser satisfactory to Lessor and Lessee. If Lessor and Lessee are unable to agree upon an appraiser within 20 days after the giving of such notice, then the Fair Market Rental Value of the Equipment shall be determined by a panel of three appraisers, one of whom shall be selected by Lessee, another of whom shall be selected by Lessor and the third of whom shall be selected by the other two. If no such third appraiser is so 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. The appraisers appointed pursuant to the foregoing procedure shall be instructed to determine Fair Market Rental Value of the Equipment within 10 days after appointment. If three appraisers shall be appointed, their determinations shall be averaged, except that if one determination materially and substantially differs from the other two determinations, such determination shall be excluded when calculating the average and such average shall be binding upon the parties hereto as the Fair Market Rental Value. If Lessee elects to have Fair Market Rental Value determined by independent appraisers, Lessee shall lease such Equipment for the then Fair Market Rental Value determined as provided in this § 14, but otherwise subject to all of the other terms and conditions hereof, except that any extension of this Lease shall not result in the creation of any additional extension options. Lessee shall pay for any appraisal made pursuant to this § 14. For the purpose of this § 14 Fair Market Rental Value shall mean and be determined on the basis of, and shall be equal in amount to, the value 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 or from the item of railroad rolling stock to which it is attached shall not be a deduction from such value.

§ 15. Recording. The Lessee, at its own expense, will cause this Lease and any assignment hereof to be filed with the Interstate Commerce Commission in accordance with 49 U.S.C. § 11303. The Lessee will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, re-register, deposit and redeposit or re-record whenever required) any and all further instruments required by law or reasonably requested by the Lessor for the purpose of proper protection, to its satisfaction, of the Lessor's interest in the Units and the Lease, or for the purpose of carrying out the intention of this Lease.

The Lessee will promptly furnish to the Lessor evidence of all such filing, registering, depositing or recording, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Lessor. This Lease shall be filed with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Unit.

§ 16. Interest on Overdue Rentals. Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay an amount equal to interest at a rate equal to the lesser of 10-7/8% per annum or the highest rate as may be legally enforceable on the overdue rentals and other obligations for the period of time during which they are overdue.

§ 17. Notices. Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when delivered to such other party or deposited in the United States mails, first-class postage prepaid, addressed as follows: if to the Lessor, at One Mellon Bank Center, Room 151-4444, Pittsburgh, Pennsylvania 15258-0001 Attention of President; if to the Lessee, at 33 West Monroe Street., Chicago, Illinois 60603, Attention of Vice President - Business Development; or addressed to any party at such other address as such party shall hereafter furnish to the other parties in writing. Any certificate, document or report required to be furnished by any party hereto to the other parties shall be delivered to the address set forth above for such party.

§ 18. Severability; Effect and Modification of Lease. Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

This Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the leasing of the Units and supersedes all other agreements, oral or written, with respect thereto. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized signatories for the Lessor and the Lessee.

§ 19. No Third Party Beneficiaries. Nothing in this Lease shall be deemed to create any right in any person not a party hereto and this instrument shall not be construed in any respect to be a contract in whole or in part for the benefit of any third party except as aforesaid.

§ 20. Law Governing. The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the Commonwealth of Pennsylvania; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303.

§ 21. Execution. This Lease may be executed in several counterparts, such counterparts together constituting but one and the same instrument, but the counterpart marked "Lessor's Original" shall be deemed to be the chattel paper copy for purposes of any applicable Uniform Commercial Code. Although for convenience this Lease is dated as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

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

GENERAL ELECTRIC RAILCAR  
SERVICES CORPORATION,

by \_\_\_\_\_

[Corporate Seal]

Attest:

MELLON FINANCIAL SERVICES  
CORPORATION #3,

by 

M.F. MARKS - VP

[Corporate Seal]

Attest:

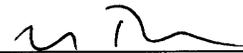


§ 21. Execution. This Lease may be executed in several counterparts, such counterparts together constituting but one and the same instrument, but the counterpart marked "Lessor's Original" shall be deemed to be the chattel paper copy for purposes of any applicable Uniform Commercial Code. Although for convenience this Lease is dated as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

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

GENERAL ELECTRIC RAILCAR  
SERVICES CORPORATION,

by

x  \_\_\_\_\_

[Corporate Seal]

Attest: 

MELLON FINANCIAL SERVICES  
CORPORATION #3,

by

\_\_\_\_\_

[Corporate Seal]

Attest:

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

On this 31 day of October, 1994, before me personally appeared \_\_\_\_\_  
Robert H. Tucker, to me personally known, who, being by me  
duly sworn, says that he is a Executive Vice President of GENERAL ELECTRIC  
RAILCAR SERVICES 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



COMMONWEALTH OF PENNSYLVANIA,        )  
  ) ss.:  
COUNTY OF ALLEGHENY,        )

On this \_\_\_\_\_ day of \_\_\_\_\_, 1994, before me personally appeared \_\_\_\_\_  
\_\_\_\_\_, to me personally known, who, being by  
me duly sworn, says that he is a \_\_\_\_\_ of MELLON FINANCIAL  
SERVICES CORPORATION #3, 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

Lease of Railroad Equipment

SCHEDULE A

Description of Equipment

241 covered hopper railroad cars, bearing marks and numbers in series as described below:

<u>Type</u>	<u>Quantity</u>	<u>Old Marks and Numbers (Both Inclusive)</u>	<u>New Marks and Numbers (Both Inclusive)</u>
National Steel--4,650 cu. ft. covered hopper cars	146	ATSF 316000- 316149 (except ATSF 316007; 316012; 316014; 316050)	NAHX 466600- 466745
Pullman Standard--4,750 cu. ft. covered hopper cars	95	ATSF 315900- 315999 (except ATSF 315910; 315948; 315954; 315985; 315994)	NAHX 475900- 475994

**SCHEDULE B**  
**INTENTIONALLY OMITTED**