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INTERSTATE COMMERCE COMMISSION

CONDITIONAL SALE AGREEMENT

Dated as of October 15, 1968

among

**LEASE FINANCING CORPORATION,
NEW ENGLAND MERCHANTS FINANCIAL
CORPORATION**

and

PENN CENTRAL COMPANY

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AGREEMENT AND ASSIGNMENT

Dated as of October 15, 1968

between

LEASE FINANCING CORPORATION

and

**THE FIDELITY BANK,
As Agent**

CONDITIONAL SALE AGREEMENT dated as of October 15, 1968, among LEASE FINANCING CORPORATION (hereinafter called the Vendor or Seller as more particularly set forth in Article 27 hereof), NEW ENGLAND MERCHANTS FINANCIAL CORPORATION, a Massachusetts corporation (hereinafter called the Vendee), a wholly owned subsidiary of New England Merchants National Bank of Boston, and PENN CENTRAL COMPANY, a Pennsylvania corporation (hereinafter sometimes called the Guarantor).

WHEREAS, the Seller has purchased from The Budd Company (hereinafter called the Builder) the railroad equipment described in Annex A hereto (hereinafter called the Equipment);

WHEREAS, the Seller has agreed to sell and deliver to the Vendee, and the Vendee has agreed to purchase, the Equipment; and

WHEREAS, the Vendee is executing a lease of the Equipment as of the date hereof to Penn Central Company, as lessee (hereinafter, in such capacity, sometimes called the Lessee), in substantially the form annexed hereto as Annex B (hereinafter called the Lease) and the Guarantor is willing to guarantee to the Vendor the due and punctual payment of certain sums payable by, and the due and punctual performance of all other obligations of, the Vendee under this Agreement and has joined in this Agreement for the purpose of setting forth the terms and conditions of such guaranty and making certain further agreements as hereinafter set forth;

Now, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

ARTICLE 1. Construction and Sale. Pursuant to this Agreement, the Seller will sell and deliver the Equipment to the Vendee and the Vendee will purchase from the Seller and accept delivery of and pay for (as hereinafter provided) the Equipment, each unit of which will be either a new standard-

gauge unit of high-speed railroad passenger equipment or new spare parts therefor and will be constructed in accordance with the specifications referred to and as described in Annex A hereto and in accordance with such modifications thereof as may have been agreed upon in writing by the Seller, the Vendee and the Guarantor, whether before or after acceptance of delivery of the Equipment pursuant to Article 2 hereof but before delivery of the Second Certificate of Acceptance (as defined in Section 5 of the Assignment referred to in Article 3 hereof) (such specifications, as so modified, being hereinafter called the Specifications). A copy of such written modifications shall promptly be delivered to the Vendor by the Guarantor. The Guarantor represents and warrants that the design, quality and component parts of the Equipment will conform to all Department of Transportation requirements (and those of any other regulatory authority having jurisdiction) and specifications applicable to railroad equipment of the character of the Equipment as of the date of delivery of the Equipment. Any spare parts included in the Equipment will be acquired for use on the units of railroad passenger equipment included in the Equipment.

ARTICLE 2. *Delivery.* The Seller will deliver each unit of the Equipment to the Vendee at the point specified in, and in accordance with, the delivery schedule set forth in Annex A hereto and will simultaneously deliver to the Assignee referred to in Article 3 a bill of sale for such unit dated the date of such delivery stating that such unit is free and clear of all claims, liens, security interests and other encumbrances except those of Vendee hereunder. Upon such delivery Vendee will issue to Seller a certificate of Vendee's acceptance of such delivery; and upon delivery of such certificate on behalf of the Vendee, the Vendee will assume with respect to such Equipment covered by such certificate the responsibility and risk of loss. The Guarantor represents and warrants that the Equipment qualifies, and will upon delivery to the Vendee qualify, as new equipment in the hands of the Vendee under Section 48(b) of the Internal Revenue Code of 1954.

Any Equipment not delivered to the Vendee on or before December 15, 1969 (unless such date is extended by the

Vendee, the Vendor and the Guarantor by appropriate written agreement), shall be excluded from this Agreement and not included in the term "Equipment" as used in this Agreement. In the event of any such exclusion the Vendor, the Vendee and the Guarantor shall execute an agreement supplemental hereto limiting this Agreement to the Equipment theretofore delivered, accepted and settled for hereunder and a separate agreement shall be entered into between the Seller and the Guarantor providing for the purchase of such excluded Equipment by the Guarantor on the terms herein specified, payment to be made in cash on delivery of such Equipment either directly or by means of a conditional sale, equipment trust or such other appropriate method of financing the purchase as the Guarantor and the Seller shall determine.

The Equipment shall be subject to inspection and approval by inspectors or other authorized representatives of the Vendee who may be employees of the Guarantor. The Vendee does hereby appoint the Chief Engineer-Passenger Equipment and the Assistant Vice President-Corporate of the Guarantor as its inspectors and representatives to inspect, approve and accept the Equipment on behalf of the Vendee. ^{The Vice President in charge of Operations}

ARTICLE 3. *Purchase Price and Payment.* The base price per unit of the Equipment, as set forth in Annex A hereto, is subject to such increase or decrease as is agreed to by the Seller, the Vendee and the Guarantor (such base price, as so increased or decreased, being hereinafter called the Base Price), *provided, however,* that the Base Price of all spare parts included in the Equipment shall in no event exceed \$350,000. The term "Purchase Price" of any unit of the Equipment as used herein shall mean

(a) after delivery of the First Certificate of Acceptance (as defined in Section 5 of the Assignment referred to in this Article 3) in respect of such unit and until the delivery of the Second Certificate of Acceptance with respect to such unit, the Purchase Price of such unit shall be deemed to be an amount equal to 80% of the Base Price of such unit; and

(b) upon delivery of the Second Certificate of Acceptance in respect of such unit, the Purchase Price of

such unit shall be deemed to be an amount equal to 100% of the Base Price of such unit;

it being understood and agreed that any claim the Seller or the Builder may have based on a failure or alleged failure to deliver the Second Certificate of Acceptance with respect to a unit of the Equipment shall represent an unsecured claim against the Guarantor, and the Seller and the Builder shall not have any lien on or security interest in or claim against such unit or against the Vendor with respect thereto; it being further understood and agreed that no adjustment in the Purchase Price shall be made pursuant to clause (b) above if settlement in respect of a unit is not required to be made pursuant to this Article 3 on or before December 15, 1969. If on any Closing Date (as hereinafter defined in this Article 3) the aggregate of (x) the Invoiced Purchase Prices (as hereinafter defined in this Article 3) for which settlement has theretofore been and is then being made, plus (y) an amount equal to the maximum adjustment that may be made in Invoiced Purchase Prices pursuant to clause (b) of the second sentence of this paragraph, would, but for the provisions of this sentence, exceed \$21,250,000, the Seller (and any assignee of the Seller) and the Guarantor will, upon request of the Vendee, enter into an agreement excluding from this Agreement such unit or units of Equipment then proposed to be settled for on the basis of First Certificates of Acceptance, specified by the Vendee, as will reduce such aggregate to not more than \$21,250,000, and the Guarantor agrees to purchase any such unit or units so excluded from the Agreement for cash on the date such unit or units would otherwise have been settled for under this Agreement.

All settlements for the Equipment shall take place on such dates on or before December 15, 1969, as may be designated by written notice from the Seller and the Guarantor to the Vendee. The Equipment to be settled for on each such date shall consist of all Equipment for which invoices or supplemental invoices (as described in Section 5 of the Assignment) and First Certificates of Acceptance or Second Certificates of Acceptance have been presented at least five busi-

ness days prior to such date (or such lesser number of days as may be agreed to by the Vendee and any assignee of the Seller). Not less than five business days prior to the date designated in such notice, the Seller shall give telephonic or telegraphic notice (confirmed in writing) to the Vendee and any assignee of the Seller of each date for the settlement for units of the Equipment (herein called a Closing Date) describing (a) the units of the Equipment to be settled for under a First Certificate of Acceptance and the aggregate amount payable under the invoices therefor determined as provided in clause (a) of the first paragraph of this Article 3, and (b) the units of the Equipment to be settled for under a Second Certificate of Acceptance and the aggregate amount payable under supplemental invoices therefor determined as provided in clause (b) of the first paragraph of this Article 3 (all such units of the Equipment being hereinafter together called a Group and the aggregate of all invoiced amounts being herein called the Invoiced Purchase Price). The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and holidays.

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

(a) On each Closing Date with respect to each Group (i) an amount equal to 20% of the aggregate Invoiced Purchase Price of the units of the Equipment in the Group plus (ii) the amount by which (x) 80% of the aggregate of the Invoiced Purchase Price of all units of the Equipment for which settlement has theretofore been and is then being made, exceeds (y) the sum of \$17,000,-000 and any amount or amounts previously paid or payable with respect to the Invoiced Purchase Prices pursuant to clause (ii) of this subparagraph (a); and

(b) In 30 consecutive semiannual instalments, as hereinafter provided, an amount equal to the aggregate Invoiced Purchase Price of the Equipment in the Group

for which settlement is then being made, less the aggregate amount paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph (the aggregate of such amounts for all Groups being herein called the Conditional Sale Indebtedness).

If this Agreement shall have been assigned by the Seller, the obligation of the Vendee under subparagraph (a) of the preceding paragraph of this Article 3 shall be an unsecured obligation and the Seller shall not have any lien on or security interest in or claim against the Equipment or any part thereof with respect to such obligation.

The first instalment of the Conditional Sale Indebtedness shall be payable on June 15, 1974, and subsequent instalments shall be payable semiannually thereafter on each June 15 and December 15 to and including December 15, 1988 (or if any such date is not a business day on the next succeeding business day), each such date being hereinafter called a Payment Date. The unpaid balance of the Conditional Sale Indebtedness in respect of each Group shall bear interest from the Closing Date in respect of which such Indebtedness was incurred, at the rate of $7\frac{1}{8}\%$ per annum and such interest shall be payable, to the extent accrued, on each June 15 and December 15, commencing June 15, 1969. Additionally, interest shall be payable at the rate of $7\frac{1}{8}\%$ per annum on 64% of the Base Price of each unit of the Equipment for the period from the date of its acceptance under Vendee's certificate of acceptance of delivery to the Closing Date in respect thereof; and additional interest shall be payable at the rate of $7\frac{1}{8}\%$ per annum on 80% of the adjustment to be made in the Purchase Price of such unit of Equipment upon delivery of a Second Certificate of Acceptance for the period from the date of its acceptance under a Second Certificate of Acceptance to the Closing Date in respect thereof; the aggregate amount of such interest to the extent accrued and unpaid to be payable on the interest payment date next succeeding each such Closing Date. It is understood and agreed that the obligation of the Vendee to the Seller pursuant to the next preceding sentence shall be an unsecured obligation.

The principal amount of Conditional Sale Indebtedness payable on each of the 30 semiannual Payment Dates shall be calculated on such a basis that the aggregate of the principal and interest payable on each Payment Date shall be substantially equal and such 30 instalments of principal and interest will completely amortize the Conditional Sale Indebtedness. The Vendee will furnish to the Vendor and the Guarantor promptly after each Closing Date a schedule showing the respective amounts of principal and interest payable on each Payment Date.

Interest under this Agreement shall be determined on the basis of a 360-day year of twelve 30-day months.

The Vendee will pay interest at the rate of 8% per annum upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof, anything herein to the contrary notwithstanding.

All payments provided for in this Agreement shall be made in Philadelphia Clearing House funds. Except as provided in Article 5 hereof, the Vendee shall not have the privilege of prepaying any of the Conditional Sale Indebtedness prior to the date it becomes due.

The parties hereto contemplate (subject to the limitations set forth in the first paragraph of this Article 3) that the Vendee will furnish that portion of the Invoiced Purchase Price for each Group of Equipment as is required under subparagraph (a) of the third paragraph of this Article 3 and that an amount equal to the balance of such Invoiced Purchase Price shall be paid to the Seller by an assignee of the Seller's right, title and interest under this Agreement pursuant to an Agreement and Assignment in the form annexed hereto between the Seller and The Fidelity Bank, as Agent (such Agreement and Assignment being herein called the Assignment and such Bank being herein sometimes called the Assignee).

It is agreed that the obligation of the Vendee to pay to the Seller any amount required to be paid pursuant to subparagraph (a) of the third paragraph of this Article 3 with respect to any Group of Equipment is specifically subject to the following conditions:

(a) the Assignee shall simultaneously pay to the Seller the amounts contemplated to be paid by it as provided in the preceding paragraph of this Article 3 and in Section 5 of the Assignment and the documents required by Section 5 of the Assignment shall have been delivered; and

(b) no event of default of the Guarantor specified herein or of the Lessee under the Lease or any event which with the lapse of time and/or notice provided for herein or in the Lease would constitute such an event of default shall have occurred and be continuing.

Notwithstanding any other provisions of this Agreement, it is understood and agreed by the Vendor that liability of the Vendee for all payments to be made by it under and pursuant to this Agreement, with the exception only of the payments to be made pursuant to subparagraph (a) of the third paragraph of Article 3 hereof, shall not exceed an amount equal to the income and proceeds from the Equipment. As used herein the term "income and proceeds from the Equipment" shall mean, if one of the events of default specified in Article 17 hereof shall have occurred and while it shall be continuing, so much of the following amounts as are indefeasibly received by the Vendee at any time after such event and during the continuance thereof: (x) all amounts of rental and amounts in respect of Casualty Occurrences and Economic Obsolescence paid for or with respect to the Equipment pursuant to the Lease, and (y) any and all payments or proceeds received by the Vendee for or with respect to the Equipment as the result of the sale, lease or other disposition thereof and after deducting all costs and expenses of such sale, lease or other disposition; and shall mean at any other time only that portion of the amounts referred to in the foregoing clauses (x) and (y) as are indefeasibly received by the Vendee and as shall equal the portion of the Conditional Sale Indebtedness with interest thereon, and payments in respect of Replacement Value pay-

able in respect of Casualty Occurrences and Economic Obsolescence under Article 5 hereof (including any premium payable in respect of prepayments made in respect of Economic Obsolescence), in each case due and payable on the date such amounts received by the Vendee were required to be paid to it pursuant to the Lease. It is understood that "income and proceeds from the Equipment" shall in no event include amounts referred to in the foregoing clauses (x) and (y) which were received by the Vendee at a time when no event of default shall be subsisting under Article 17 hereof and which exceeded (i) the amounts required to discharge that portion of the Conditional Sale Indebtedness with interest thereon, and (ii) payments in respect of Replacement Value as aforesaid (including the premium thereon), in each case then due and payable or due and payable on the date such amounts received by the Vendee were required to be paid to it pursuant to the Lease. It is further specifically understood and agreed that nothing contained herein limiting the liability of the Vendee shall derogate from the right of the Vendor to proceed against the Equipment or the Guarantor as provided for in Article 6 hereof for the full unpaid Purchase Price of the Equipment and interest thereon, and all other amounts payable to the Vendor hereunder. The Vendor agrees, however, that in the event it shall obtain a judgment against the Vendee for an amount in excess of the amounts payable by the Vendee pursuant to the limitations set forth in this paragraph, it will, accordingly, limit its execution of such judgment against the Vendee to such amount.

ARTICLE 4. *Title to the Equipment.* The Vendor shall and hereby does retain the full legal title to and property in the Equipment until the Vendee shall have made all the payments hereunder and shall have kept and performed all its agreements herein contained, notwithstanding the delivery of the Equipment to and the possession and use thereof by the Vendee or the Guarantor as herein provided.

Except as otherwise specifically provided in Article 5 hereof, when and only when the Vendor shall have been

paid the full amount of the Conditional Sale Indebtedness, together with interest and all other payments as herein provided, and all the Vendee's obligations herein contained shall have been performed, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee without further transfer or action on the part of the Vendor, except that the Vendor, if requested by the Vendee, will execute appropriate instruments confirming such passage to the Vendee of title to and property in the Equipment free of all liens, security interests and other encumbrances created or retained hereby and deliver such instruments to the Vendee at its address specified in Article 23 hereof, and will execute in the same manner and deliver at the same place, for filing, recording or depositing in all necessary public offices such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Vendee to the Equipment, and will pay to the Vendee any money paid to the Vendor pursuant to Article 5 hereof and not theretofore applied as therein provided.

The Vendee hereby waives and releases any and all rights existing or that may be acquired in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such instruments or to file such certificate within a reasonable time after written demand of the Vendee.

ARTICLE 5. *Casualty Occurrences and Economic Obsolescence; Insurance.* In the event that any Equipment shall be or become worn out, lost, stolen, destroyed or, in the opinion of the Lessee, irreparably damaged from any cause whatsoever or taken or requisitioned by condemnation or otherwise (such occurrences being herein called Casualty Occurrences), or shall, after December 15, 1976, or the eighth anniversary of the date on which the delivery of the final

unit of Equipment is accepted by the Vendee, pursuant to Article 2 hereof, whichever is the later, in the opinion of the Lessee be or become economically obsolete from any cause whatsoever (such an occurrence being herein called Economic Obsolescence), the Vendee shall, within 30 days after it shall have determined that such Equipment has suffered a Casualty Occurrence or has reached Economic Obsolescence, as the case may be (or as of such earlier date as the Company may receive notice thereof under the Lease), cause the Vendor to be fully informed in writing in regard thereto, including in such information a statement of the causes or reasons for such Casualty Occurrence or Economic Obsolescence, as the case may be. On the next succeeding interest payment date the Vendee shall pay to the Vendor a sum equal to the Replacement Value (as hereinafter defined) of such Equipment suffering a Casualty Occurrence or reaching Economic Obsolescence, as the case may be, as of the date of such payment and shall file with the Vendor a certificate setting forth the determination of the Replacement Value of such unit.

Upon payment by the Vendee to the Vendor of the Replacement Value of any Equipment having suffered a Casualty Occurrence or having reached Economic Obsolescence, as the case may be, absolute right to the possession of, title to and property in such unit shall pass to and vest in the Vendee without further transfer or action on the part of the Vendor, except that the Vendor, if requested by the Vendee, will execute and deliver to the Vendee, at the expense of the Vendee, an appropriate instrument confirming such passage to the Vendee of title to and property in such Equipment, in recordable form, in order that the Vendee may make clear upon the public records the title of the Vendee thereto.

The Replacement Value of the Equipment (other than a replacement unit) shall be deemed to be the greater of (1) the Purchase Price thereof less 4% thereof for each full year elapsed since the Closing Date on which settlement was made therefor under a First Certificate of Acceptance

and (2) that portion of the Purchase Price thereof remaining unpaid on the date on which such Replacement Value is required to be paid (without giving effect to any prepayment made under this Article 5); *provided, however*, that the foregoing clause (1) shall not be applicable if the Replacement Value is applied to the prepayment of the Conditional Sale Indebtedness. The Replacement Value of each replacement unit shall be deemed to be that proportion of the cost thereof paid by the Vendor as (a) the unpaid Conditional Sale Indebtedness (without giving effect to any prepayment made pursuant to this Article 5) as of the date payment is made with respect to a Casualty Occurrence or Economic Obsolescence bears to (b) the unpaid Conditional Sale Indebtedness (without giving effect to any such prepayment) as of the date of acquisition by the Vendor of such replacement unit. For the purposes of this paragraph each payment of the Purchase Price in respect of a Group made pursuant to Article 3 hereof shall be deemed to be a payment on each item of the Equipment in such Group in like proportion as the original Purchase Price of such item bears to the aggregate original Purchase Price of the Group in which such item is included.

Any money paid to the Vendor as hereinabove provided in this Article 5 shall, so long as no default shall have occurred and be continuing hereunder, be applied as the Vendee may direct prior to the date payment of such money is required to be made (i) to the *pro rata* prepayment on the next succeeding Payment Date of each instalment of the Conditional Sale Indebtedness remaining unpaid (in proportion to the principal amount of Conditional Sale Indebtedness represented by each instalment) or (ii) to or toward the purchase price of a unit or units of new, standard-gauge railroad rolling stock (other than work equipment) or new spare parts of the same general description as those described in Annex A hereto (subject to the limitations contained in the last sentence of Article 1 and the first paragraph of Article 3 hereof) to replace such Equipment suffering a

Casualty Occurrence or reaching Economic Obsolescence, as the case may be. If the Vendee elects to have such money applied to the prepayment of the Conditional Sale Indebtedness, the Vendee will promptly furnish to the Vendor a revised schedule of payments of principal and interest thereafter to be made to be calculated in the manner set forth in the fifth paragraph of Article 3 hereof. The Vendee will also pay to the Vendor on the date payment is required to be made of the Replacement Value, all interest accrued and unpaid on any Conditional Sale Indebtedness to be prepaid; and, in addition, if such Replacement Value is payable in respect of Equipment reaching Economic Obsolescence, and the Vendee elects to apply the same to the prepayment of the Conditional Sale Indebtedness, the Vendee will pay to the Vendor a premium initially in an amount equal to 3% of such Replacement Value in respect of prepayments made for the period to and including June 15, 1977, or the eighth anniversary of the date on which the final unit of Equipment is delivered and accepted hereunder under a First Certificate of Acceptance, whichever is the later, such percentage to decline by an amount equal to $\frac{1}{4}$ of 1% for each subsequent twelve-month period.

The Vendee will cause any replacement unit or units to be marked to the extent provided in Article 9 hereof. Any and all such replacements shall constitute accessions to the Equipment and shall be subject to all appropriate terms and conditions of this Agreement as though part of the original Equipment delivered hereunder and shall be included in the term "Equipment" as used in this Agreement; *provided, however*, that nothing herein shall result in the Seller's having any liability or obligation with respect to any replacement unit or units not sold by it. Title to all such replacement units shall be free and clear of all liens, security interests and other encumbrances except the liens permitted by the second paragraph of Article 13 hereof and shall be taken initially and shall remain in the name of the Vendor subject to the provisions hereof, and the Vendee shall execute,

acknowledge, deliver, file, record or deposit all such documents and do any and all such acts as may be necessary to cause such replacements to come under and be subject to this Agreement and to protect the title of the Vendor to such replacements. All such replacements shall be warranted in like manner as is customary at the time for equipment of the same type.

Prior to the application of any money to or toward the cost of a replacement unit of standard-gauge railroad equipment, the Vendee shall file with the Vendor in such form as the Vendor or its special counsel may approve:

(1) the certificate of a Vice President or the Chief Accounting Officer of the Lessee required by subparagraph (1) of the penultimate paragraph of § 6 of the Lease;

(2) a certificate of acceptance of the Vendee stating that such replacement unit has been inspected and accepted by it under this Agreement;

(3) the opinions of counsel required by subparagraph (2) of the penultimate paragraph of § 6 of the Lease addressed to the Vendor; and

(4) an invoice and an unconditional bill of sale for such replacement unit from the builder thereof addressed to the Vendor.

So long as no event of default shall have occurred and be continuing hereunder, any money paid to the Vendor pursuant to this Article 5 shall, if the Vendee and the Guarantor shall in writing so direct, be invested, pending its application as hereinabove provided, in such (i) direct obligations of the United States of America or obligations for which the faith of the United States of America is pledged to provide for the payment of principal and interest, (ii) open market commercial paper rated prime by a national credit agency or (iii) certificates of deposit of commercial banks in the United

States of America having capital and surplus aggregating at least \$20,000,000, in each case maturing in not more than one year from the date of such investment (all such investments being hereinafter called Investments) as may be specified in such direction. Any such obligations shall from time to time be sold and the proceeds reinvested in such Investments as the Vendee and the Guarantor may in writing direct. Any interest received by the Vendor on any Investments shall be held by the Vendor and applied as hereinafter provided. Upon any sale or the maturity of any Investments, the proceeds thereof plus any interest received by the Vendor thereon up to the cost (including accrued interest) thereof shall be held by the Vendor for application pursuant to this Article 5. If such proceeds (plus such interest) shall be greater than such cost, such excess shall be paid to the Vendee. If such proceeds (plus such interest) shall be less than such cost, the Vendee will promptly pay to the Vendor an amount equal to such deficiency. The Vendee will pay all expenses incurred by the Vendor in connection with the purchase and sale of Investments.

If an event of default shall have occurred and be continuing hereunder, all money held by the Vendor pursuant to this Article 5 (including, for this purpose, Investments) shall be applied by the Vendor as if such money were received upon the sale of Equipment pursuant to Article 18 hereof.

The Guarantor will maintain excess coverage insurance with reputable insurers in an amount not less than \$10,000,000 on the Equipment against risks of fire, wind-storm and explosion, with a deductible of not more than \$500,000, and such insurance shall be payable to the Vendor and the Vendee as their interests may appear. Although the Guarantor shall not be required to maintain any other insurance on any unit of the Equipment, the Guarantor agrees that the benefits of any other insurance maintained upon the units of the Equipment will be made available to the Vendor and the Vendee, as their interests may appear, to

the extent such policies of insurance so permit. It is understood and agreed that any net insurance proceeds received by the Vendor in respect of insurance carried by the Guarantor in respect of units suffering a Casualty Occurrence shall be deducted from the amounts payable by the Vendee to the Vendor in respect of Casualty Occurrences pursuant to the first paragraph of this Article 5 and the Guarantor shall receive a credit therefor against the amount payable by it to the Vendee under § 6 of the Lease. If the Vendor shall receive any other net insurance proceeds in respect of insurance carried by the Guarantor in respect of such units suffering a Casualty Occurrence after the Vendee shall have made payments pursuant to this Article 5 without deduction for such net insurance proceeds, the Vendor shall pay such insurance proceeds to the Guarantor. All net proceeds of insurance received by the Vendor in respect of insurance carried by the Guarantor in respect of any Equipment not suffering a Casualty Occurrence shall be paid to the Guarantor upon proof satisfactory to the Vendor that any damage to such unit in respect of which such net proceeds were paid has been fully repaired.

Subject to the prior written approval of the Vendor and upon the execution and filing and recordation by the Vendee in all places where this Agreement has theretofore been filed and recorded of such appropriate agreements supplemental hereto and to the Lease and the Assignment as may be required by the Vendor or its counsel, the Vendee, within five days of written notification from the Lessee under § 6 of the Lease that certain Equipment has reached Economic Obsolescence, may elect not to pay the Replacement Value in respect of such Equipment; *provided, however*, that the Vendee shall theretofore have waived the payment of the Casualty Value and of rental payable by the Lessee under the Lease in respect of such Equipment pursuant to the ninth paragraph of § 6 of the Lease. In such event, the Vendee may retain possession of such Equipment hereunder and shall continue to pay or cause to be paid to the Vendor all payments in re-

spect of such Equipment required to be paid by the Vendee when due pursuant to Article 3 hereof; it being understood that in such event, the Guarantor shall be released from its guaranty of such payments in respect of such Equipment; and it being further understood that in such event the provisions of the last paragraph of Article 3 hereof shall cease to be operative in limiting the liability of the Vendee to make such payments to the Vendor hereunder, and the Vendee shall be fully and unconditionally liable therefor.

ARTICLE 6. *Obligations of Guarantor.* The Guarantor for value received hereby unconditionally guarantees to the Vendor by endorsement (through its execution hereof) the due and punctual payment of that portion of the Purchase Price of the Equipment payable pursuant to subparagraph (b) of the third paragraph of Article 3 hereof and interest thereon and the due and punctual performance of all other obligations of the Vendee and the due and punctual payment of any and all sums payable by the Vendee under this Agreement (except for the obligations of the Vendee and sums payable by the Vendee pursuant to subparagraph (a) of the third paragraph of Article 3 hereof and pursuant to the last paragraph of Article 5 hereof) when due, whether at stated maturity or by declaration or otherwise; and in case any such payments or obligations are not so made or performed the Guarantor agrees punctually to pay or perform the same irrespective of any enforcement against the Vendee of any of the rights of the Vendor hereunder.

The Guarantor hereby agrees that its obligations hereunder shall be unconditional (and shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever) irrespective of the genuineness, validity, regularity or enforceability of this Agreement or any other circumstance which might otherwise constitute a legal or equitable discharge of a surety or guarantor and irrespective of the last paragraph of Article 3 hereof or any other circumstances which might otherwise limit the recourse of the Vendor to

the Vendee. The Guarantor hereby waives diligence, presentment, demand of payment, protest, any notice of any assignment hereof in whole or in part or of any default hereunder and all notices with respect to this Agreement and all demands whatsoever hereunder. No waiver by the Vendor of any of its rights hereunder and no action by the Vendor to enforce any of its rights hereunder or failure to take, or delay in taking, any such action shall affect the obligations of the Guarantor hereunder.

In the event that the Guarantor shall make any payments to the Vendor on account of its guaranty hereunder, the Guarantor hereby covenants and agrees that it shall not acquire any rights, by subrogation or otherwise, against the Vendee or with respect to any of the units of the Equipment by reason of such payments, all such rights being hereby irrevocably released, discharged and waived by the Guarantor; *provided, however*, that after the payment by the Guarantor to the Vendor of all sums payable under this Agreement (including the payment of the entire unpaid Conditional Sale Indebtedness and interest thereon), the Guarantor shall, by subrogation, be entitled to the rights of the Vendor against the Vendee by reason of such payment, to the extent, but only to the extent, that the Vendee has received income and proceeds from the equipment (as defined in Article 3 hereof) and has not applied amounts equal to such income and proceeds to the payment, in accordance with this Agreement and subject to the limitations contained in said Article 3, of sums payable by the Vendee to the Vendor hereunder.

ARTICLE 7. *Maintenance and Repairs; Operation.* The Vendee agrees that, at its own cost and expense, it will maintain and keep all the Equipment in good order and repair. The Vendee agrees that during the period that any portion of the Conditional Sale Indebtedness in respect of any Group remains outstanding and unpaid, the Vendee will not assign or permit the assignment of any Equipment to

service involving operation and maintenance thereof outside the continental United States of America.

ARTICLE 8. *Reports and Inspections.* On or before March 1 in each year commencing with the year 1970 the Vendee will cause to be furnished to the Vendor an accurate statement as of the preceding January 1 (a) showing the amount, description and numbers of the Equipment then covered hereby, the amount and description of all the Equipment that may have suffered a Casualty Occurrence or reached Economic Obsolescence during the preceding 12 months (or since the date of delivery hereunder of the Equipment in the case of the first such statement) and such information regarding the condition and state of repair of the Equipment as the Vendor may reasonably request, (b) stating that, in the case of all units of the Equipment repainted or repaired during the period covered by such statement, the markings required by Article 9 hereof have been preserved or replaced and (c) certifying that the insurance required to be carried pursuant to Article 5 hereof is then in effect.

ARTICLE 9. *Identification Marks.* The Vendee will cause each unit of railroad rolling stock in the Equipment which has been accepted pursuant to a First Certificate of Acceptance to be kept numbered with its identifying number as set forth in Annex A hereto and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each such unit, in letters not less than one-half inch in height, the words, "THE FIDELITY BANK, PHILADELPHIA, PA., AGENT-OWNER", or other appropriate words designated by the Vendor with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the title of the Vendor to such unit and the rights of the Vendor under this Agreement. The Vendee will not permit any such unit to be placed in operation or exercise any control or dominion over the same until such names and word or words shall have been so marked thereon

and will replace or cause to be replaced promptly any such names and word or words which may be removed, defaced or destroyed. The Vendee will not permit the identifying number of any such unit of Equipment to be changed except in accordance with a statement of new identifying numbers to be substituted therefor, which statement previously shall have been filed with the Vendor and filed, recorded or deposited in all public offices where this Agreement will have been filed, recorded or deposited.

Except as above provided, the Vendee will not allow the name of any person, association or corporation to be placed on any Equipment as a designation that might be interpreted as a claim of ownership; *provided, however*, that the Vendee may cause the Equipment to be lettered with the names or initials or other insignia customarily used by the Vendee or the Guarantor or its affiliates on railroad equipment used by it of the same or a similar type for convenience of identification of the interests of the Vendee and the Guarantor therein.

ARTICLE 10. Taxes. All payments to be made by the Vendee hereunder will be free of expense to the Vendor for collection or other charges and will be free of expense to the Vendor with respect to the amount of any local, state or federal taxes (other than net income, gross receipts [except gross receipts in the nature of or in lieu of sales taxes], excess profits and similar taxes) licenses, charges, fines or penalties hereafter levied or imposed upon, or in connection with, or measured by, this Agreement or any sale, use, payment, shipment, delivery or transfer of title under the terms hereof, all of which expenses, taxes, licenses, charges and penalties the Vendee assumes and agrees to pay on demand in addition to the Purchase Price of the Equipment. The Vendee will also pay promptly all taxes, assessments, license fees, charges, fines or penalties (hereinafter called "impositions") which may be imposed upon the Equipment or for the use or operation thereof or upon the earnings

arising therefrom or upon the Vendor solely by reason of its ownership thereof and will keep at all times all and every part of the Equipment free and clear of all impositions which might in any way affect the title of the Vendor or result in a lien upon any Equipment; *provided, however,* that the Vendee shall be under no obligation to pay any impositions of any kind so long as it or the Lessee is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor hereunder. If any impositions shall have been charged or levied against the Vendor directly and paid by the Vendor, the Vendee shall reimburse the Vendor on presentation of an invoice therefor.

ARTICLE 11. *Compliance with Laws and Rules.* During the term of this Agreement, the Vendee will comply and will cause any lessee of the Equipment to comply in all respects with all laws of the jurisdictions in which operations involving the Equipment may extend, with the Interchange Rules of the Association of American Railroads, if applicable, and with all lawful rules of the Interstate Commerce Commission, the Department of Transportation and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment to the extent that such laws and rules affect the operation or use of the Equipment. In the event that such laws or rules require the alteration of the Equipment, or in case any equipment or appliance on the Equipment shall be required to be changed or replaced, or in case any additional or other equipment or appliance is required to be installed on the Equipment in order to comply with such laws, regulations, requirements and rules, the Vendee agrees to make such alterations, changes, additions and replacements at its own expense and the Vendee will use, maintain and operate the Equipment in full compliance with such laws, regulations, requirements and rules so long as it is subject to this Agree-

ment; *provided, however*, that the Vendee 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 Vendor, adversely affect the property or rights of the Vendor hereunder.

ARTICLE 12. *Possession and Use.* The Vendee, so long as it shall not be in default under this Agreement, shall be entitled from and after delivery of the Equipment by the Seller to the Vendee to the possession of the Equipment and the use thereof but only upon and subject to all the terms and conditions of this Agreement.

The Vendee may lease the Equipment to the Lessee or its assigns as permitted by, and for use as provided in, the Lease, *provided, however*, and the Lessee hereby acknowledges, that if and only if the Lessee shall be in default under the Lease or, in its capacity as Guarantor, in default hereunder, the rights of the Lessee and its permitted assigns under the Lease shall be subordinated and junior in rank to the rights and shall be subject to the remedies of the Vendor under this Agreement; but, so long as the Lessee shall not be in default under the Lease or, in its capacity as Guarantor, in default hereunder, it shall be entitled to possession of the Equipment. The Vendee hereby agrees that it will not exercise any of the remedies provided in the case of an Event of Default under and as defined in the Lease unless it shall notify the Vendor in writing of its intended exercise thereof and hereby further agrees to furnish to the Vendor copies of all summonses, writs, processes and other documents served by it upon the Lessee or served by the Lessee upon it in connection therewith.

So long as no event of default shall have occurred and be continuing hereunder, the Vendee shall be entitled to the possession of the Equipment and the Equipment may be used upon the lines of railroad owned or operated by the Lessee (or any other railroad company approved by the Vendor) or upon lines of railroad over which the Lessee has track-

age or other operating rights or over which railroad equipment of the Lessee is regularly operated pursuant to contract, trackage or other operating rights and the Equipment may be used upon other railroads in the usual interchange of traffic (if such interchange is customary at the time), but only upon and subject to all the terms and conditions of this Agreement. The Vendee may also lease the Equipment to any other railroad company with the prior written consent of the Vendor, *provided* that the rights of such lessee are made expressly and unconditionally subordinate to the rights and remedies of the Vendor under this Agreement.

The Vendee agrees that during the term of this Agreement the Vendee will not permit any unit of the Equipment to be assigned to service involving the operation or maintenance thereof outside the continental United States of America.

The Vendee will not permit any spare parts included in the Equipment to be stored or maintained in any jurisdiction other than the States of Delaware or New York or the Commonwealth of Pennsylvania.

ARTICLE 13. *Prohibition Against Liens.* The Vendee will pay or satisfy and cause to be duly discharged any and all sums claimed by any party by, through or under the Vendee or its successors or assigns which, if unpaid, might become a lien, charge or security interest or other encumbrance upon any Equipment, including any accession thereto, equal or superior to the title of the Vendor thereto but the Vendee shall not be required to pay, satisfy or cause to be discharged any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor in such Equipment.

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

ARTICLE 14. *Indemnities and Warranties.* The Vendee agrees to indemnify, protect and hold harmless the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever regardless of the cause thereof and expenses in connection therewith including counsel fees arising out of retention by the Vendor of title to the Equipment or out of the use and operation thereof during the period when title thereto remains in the Vendor; This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the indebtedness in respect of the Purchase Price and the conveyance of the Equipment, as provided in Article 4 hereof, or the termination of this Agreement in any manner whatsoever.

Except as provided in Article 5 hereof, the Vendee will bear the risk of, and shall not be released from its obligations hereunder in the event of any damage to or a Casualty Occurrence to or the Economic Obsolescence of any Equipment after delivery to and acceptance thereof by Vendee under a certificate of acceptance of delivery pursuant to Article 2 hereof.

The Seller hereby assigns to the Vendee all and each of those warranties and indemnities of the builder of the various units of the Equipment as to material, workmanship and patent indemnification which such builder has given or will give to the Seller upon the Seller's purchase of the various units of the Equipment from said builder. Except as expressly provided in this Agreement, the Seller gives no warranties, express or implied, with respect to the Equipment, except as to its title to the Equipment.

The Seller agrees that neither the inspection as provided in Article 2 of this Agreement, nor any examination, nor the acceptance of any units of Equipment as provided in said

Article 2 shall be deemed a waiver or a modification by the Vendee of any of its rights under this Article 14.

ARTICLE 15. *Patent Indemnities.* The Vendee will indemnify, protect and hold harmless the Vendor from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendor because of the use in or about the construction or operation of the Equipment of any design which infringes or is claimed to infringe on any patent or other similar right. Said covenants of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due hereunder, the satisfaction and discharge of this Agreement or the termination of this Agreement in any manner.

ARTICLE 16. *Assignments.* The Vendee will not sell, assign or transfer its rights under this Agreement or, except as provided in Article 12 hereof, transfer the right to possession of the Equipment; *provided, however,* that the Vendee may so sell, assign or transfer its rights under this Agreement and the possession of the Equipment, with the written consent of the Vendor and the Guarantor, if such sale, assignment or transfer is made expressly subject in all respects to the rights and remedies of the Vendor hereunder.

All or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Vendee and the benefits arising from the undertakings of the Guarantor hereunder, may be assigned by the Vendor and reassigned by an assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve the Seller from, any of the obligations of the Seller to deliver the Equipment in accordance herewith or to respond to its agreements contained in this Agreement or relieve the Vendee or the Guarantor of their respective obligations to the Seller contained or referred to in Articles 1, 2, 3, 6, 10 and 15 hereof and the last paragraph of this

Article 16 or any other obligation which, according to its terms and context, is intended to survive an assignment.

Upon any such assignment either the assignor or the assignee shall give written notice to the Vendee and the Guarantor together with a counterpart or copy of such assignment stating the identity and post office address of the assignee and such assignee shall, by virtue of such assignment, acquire all the Vendor's right, title and interest in and to the Equipment, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Vendee and the Guarantor, respectively, of the notification of any such assignment, all payments thereafter to be made by the Vendee or the Guarantor hereunder shall, to the extent so assigned, be made to the assignee at the address of the assignee specified in the aforesaid notice.

The Vendee and the Guarantor recognize that it is the custom of railroad equipment sellers to assign agreements of this character and understand that the assignment of this Agreement or of some of or all the rights of the Vendor hereunder is contemplated. The Vendee and the Guarantor expressly represent, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Vendor hereunder, and for the purpose of inducing such acquisition, that in the event of such assignment by the Vendor as hereinbefore provided the rights of such assignee to the entire unpaid Purchase Price of the Equipment or such part thereof as may be assigned, together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Seller or the builder of the Equipment with respect to the Equipment or the delivery or assignment of warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or

liability at any time owing to the Vendee or the Guarantor by the Seller or the builder of the Equipment. Any and all such obligations howsoever arising shall be and remain enforceable by the Vendee or the Guarantor, as the case may be, against and only against the Seller or the builder of the Equipment.

In the event of any such assignment or successive assignments by the Vendor of title to the Equipment and of the Vendor's rights hereunder with respect thereto, the Vendee will, whenever requested by such assignee, change the names and word or words to be marked on each unit of railroad rolling stock included in the Equipment pursuant to Article 9 hereof, so as to indicate the title of such assignee to the Equipment with such names and word or words as shall be specified by such assignee, subject to the requirements of the laws of the jurisdictions in which the Equipment shall be operated relating to such names and word or words for use on equipment covered by conditional sale agreements with respect to railroad equipment.

The Vendee and the Guarantor will, in connection with settlement for any Group of Equipment, deliver to the Assignee, at the time of delivery by the Vendee of notice fixing the Closing Date with respect to such Group, all documents required by the terms of the Assignment to be delivered to the Assignee in connection with such settlement, in such number of counterparts as may reasonably be requested, except for any opinion of counsel for the Assignee.

If this Agreement shall have been assigned by the Seller and the Assignee shall not make the payment to the Seller required upon delivery of the First Certificate of Acceptance in respect of any unit of the Equipment on the Closing Date with respect to such unit of an amount equal to the Conditional Sale Indebtedness in respect of such unit, the Seller will promptly notify the Vendee and the Guarantor of such event and, if such amount shall not previously have been paid by the Assignee or the Vendee, such unit will be excluded from this Agreement and the Guarantor will not

later than 90 days after the Closing Date purchase any such unit from the Seller for cash together with interest thereon from such Closing Date to the date of payment by the Guarantor at the prime rate of interest of leading New York City banks in effect at such Closing Date. The Guarantor hereby guarantees to the Seller that all payments required to be made to the Seller by the Assignee upon delivery of the ~~Second~~ ^{First or} Second Certificate of Acceptance promptly will be made to the Manufacturer.

ARTICLE 17. *Defaults.* In the event that any one or more of the following events of default shall occur and be continuing, to wit:

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

(b) The Vendee or the Guarantor shall, for more than 30 days after the Vendor shall have demanded in writing performance thereof, fail or refuse to comply with any covenant, agreement, term or provision of this Agreement on its part to be kept and performed or to make provision satisfactory to the Vendor for such compliance; or

(c) Any proceedings shall be commenced by or against the Vendee or the Guarantor for any relief 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 readjustment of the indebtedness payable hereunder), and (unless such proceedings shall have been discontinued, stayed or otherwise rendered ineffective, but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Vendee or the Guarantor, as the case may be, under this Agreement shall not have been duly assumed in writ-

ing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Vendee or the Guarantor or for the property of the Vendee or the Guarantor in connection with any such proceedings or otherwise given 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

(d) A petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may be hereafter amended, shall be filed by or against the Guarantor 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 Guarantor under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier; or

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

(f) The Vendee, during the term of this Agreement, shall without the prior written consent of the Vendor and the Guarantor cease to be a wholly owned subsidiary of New England Merchants National Bank of Boston;

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Vendee and the Guarantor and upon compliance with any legal requirements then in force and applicable to such

action by the Vendor, (i) subject to the rights of the Lessee referred to in Article 12 hereof, cause the Lease immediately upon such notice to terminate (and the Vendee and the Guarantor each acknowledge the right of the Vendor to terminate the Lease) and/or (ii) declare (hereinafter called a Declaration of Default) the entire unpaid Purchase Price of the Equipment, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such Purchase Price and such interest shall bear interest from the date of such declaration at the rate of 8% per annum and the Vendor shall thereupon be entitled to recover judgment for the entire unpaid balance of the Purchase Price of the Equipment so payable, with interest as aforesaid, and to collect such judgment out of any property of the Vendee (subject to the provisions of the last paragraph of Article 3 hereof, as limited by the last paragraph of Article 5 hereof) or the Guarantor wherever situated.

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

ARTICLE 18. Remedies. At any time during a Declaration of Default, the Vendor may, upon such further notice, if any, as may be required for compliance with any mandatory requirements of law then in force and applicable to the action to be taken by the Vendor (subject to the rights of the Lessee under the Lease referred to in Article 12 hereof)

take or cause to be taken by its agent or agents immediate possession of the Equipment, or any unit thereof, without liability to return to the Vendee or the Guarantor any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 18 expressly provided, and may remove the same from possession and use of the Vendee or anyone having such possession and use and for such purpose may enter upon the premises of the Vendee or the Guarantor or where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Vendee or the Guarantor, with or without process of law.

In case the Vendor shall rightfully demand possession of the Equipment in pursuance of this Agreement and shall reasonably designate a point or points upon the lines of the Guarantor for the delivery of the Equipment to the Vendor, the Guarantor shall, at its own expense, forthwith and in the usual manner, cause the Equipment to be moved to such point or points as shall be reasonably designated by the Vendor and shall there deliver the Equipment or cause it to be delivered to the Vendor. At the option of the Vendor, the Vendor may keep the Equipment on any of the lines of railroad or premises of the Guarantor until the Vendor shall have leased, sold or otherwise disposed of the same. For such purpose the Guarantor agrees to furnish, without charge for rent or storage, the necessary facilities at any reasonably convenient point or points selected by the Vendor. This agreement to deliver the Equipment as hereinbefore provided is of the essence of this Agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled to a decree against the Vendee and/or the Guarantor requiring specific performance hereof; *provided, however*, if the Guarantor is in possession of the Equipment the Vendor shall be entitled to such a decree only against the Guarantor. The Vendee and the Guar-

antor hereby expressly waive any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 18 provided) may at its election and upon such notice as hereinafter set forth retain the Equipment in satisfaction of the entire indebtedness in respect of the Purchase Price of the Equipment and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Vendee and the Guarantor by telegram or registered mail, addressed as provided in Article 23 hereof, and to any other persons to whom the law may require notice within 30 days after the entire indebtedness in respect of the Purchase Price of the Equipment shall have been declared immediately due and payable. In the event that the Vendor should elect to retain the Equipment and no objection is made thereto within the 30-day period described in the second proviso below, all rights of the Vendee in the Equipment will thereupon terminate and all payments made by the Vendee or the Guarantor may be retained by the Vendor as compensation for the use of the Equipment; *provided, however*, that if the Vendee, before the expiration of the 30-day period described in the proviso below should pay or cause to be paid to the Vendor the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee; and *provided, further*, that if the Vendee or any other persons notified under the terms of this paragraph object in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale,

lease or other disposition as hereinafter provided or as may otherwise be permitted by law.

At any time during the continuance of a Declaration of Default, the Vendor, with or without the retaking of possession of the Equipment, at its election and upon reasonable notice to the Vendee, the Guarantor and to any other persons to whom the law may require notice of the time and place, may sell the Equipment, or any unit thereof, free from any and all claims of the Vendee, or of any other party (including the Guarantor) claiming by, through or under the Vendee, at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; *provided, however*, that if, prior to such sale or prior to the making of a contract for such sale, the Vendee should tender full payment of the entire indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking, holding and preparing the Equipment for disposition and arrangement for the sale and the Vendor's reasonable attorneys' fees, then in such event absolute right to the possession of title to and property in the Equipment shall pass to and vest in the Vendee. The proceeds of such sale, or of any lease or other disposition of the Equipment as provided hereunder, less the attorneys' fees and any other expenses incurred by the Vendor in taking possession of, removing, storing and so disposing of the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement.

Any sale hereunder may be held or conducted at such place or places and at such time or times as the Vendor may specify, in one lot and as an entirety, or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine, *provided*, that the Vendee and the Guarantor shall be given written notice of such sale as provided hereinabove. If such sale shall be a private sale, it shall be subject to the right of the Vendee and the Guarantor

to purchase or provide a purchaser within ten days after notice of the proposed sale price, at the same price offered by the intending purchaser or at a better price. The Vendor may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale without accountability to the Vendee or the Guarantor (except to the extent of surplus money received as hereinafter provided in this Article 18), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all sums due to the Vendor from the Vendee hereunder.

Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor, except as such exercise may expressly be limited herein. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others, except as such exercise may expressly be limited herein. No delay, except where time limits are expressly herein provided, or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein.

All sums of money realized by the Vendor under the remedies herein provided shall be applied, *first* to the payment of the expenses and liabilities of the Vendor herein undertaken to be paid, *second* to the payment of interest on the unpaid Purchase Price of the Equipment accrued and unpaid and *third* to the payment of the unpaid Purchase Price of the Equipment. If, after applying as aforesaid all sums of money realized by the Vendor, there shall remain any amount due to it under the provisions of this Agreement, the Vendee, subject to the provisions of the last paragraph

of Article 3 hereof, shall pay the amount of such deficiency to the Vendor upon demand, and, if the Vendee shall fail to pay the full deficiency, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Vendee and the Guarantor. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Vendee *provided* such application shall not be deemed to be a waiver of any right thereto against the Vendee which the Lessee may have under the Lease.

The Vendee, subject to the provisions of the last paragraph of Article 3 hereof, will pay all reasonable expenses, including attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable expenses, including attorneys' fees and the amount thereof shall be included in such judgment.

The foregoing provisions of this Article 18 are subject in all respects to all mandatory requirements of law at the time in force and applicable thereto.

ARTICLE 19. *Applicable State Laws.* Any provision of this Agreement prohibited by any applicable law of any state shall as to such state be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any applicable state law may be waived, they are hereby waived by the Vendee and the Guarantor to the full extent permitted by law, to the end that this Agreement shall be deemed to be a conditional sale agreement and enforceable as such.

Except as otherwise provided in this Agreement, the Vendee and the Guarantor, to the full extent permitted by law, hereby waive all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell the Equipment, or any unit thereof, and any other requirements as to the time, place and terms of

sale thereof, any other requirements with respect to the enforcement of the Vendor's rights hereunder and any and all rights of redemption.

ARTICLE 20. *Extension not a Waiver.* Any extension of time for payment hereunder or other indulgence duly granted to the Vendee shall not otherwise alter or affect the Vendor's rights or the obligations of the Vendee or the Guarantor hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Vendee's or the Guarantor's obligations or the Vendor's rights hereunder with respect to any subsequent payments or defaults therein.

ARTICLE 21. *Recording.* The Vendee will cause this Agreement, the first assignment hereof and any supplements hereto and thereto to be filed, recorded or deposited and re-filed, re-recorded or redeposited, with the Interstate Commerce Commission and otherwise as may be required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement (including the execution and filing of all financing statements and continuation statements in respect of the spare parts included in the Equipment); and the Vendee will promptly furnish to the Vendor evidences of such filing, recording or depositing, and an opinion or opinions of counsel for the Vendee with respect thereto, satisfactory to the Vendor.

ARTICLE 22. *Payment of Expenses.* The Vendee will pay all reasonable costs and expenses (other than the fees and expenses of counsel for the Seller) incident to the preparation and execution of this Agreement and the first assignment of this Agreement (including the initial and continuing fees and expenses of an agent or trustee, if the first assignee is an agent or trustee), or any instrument supplemental thereto, including all fees and expenses of special

counsel for the first assignee of this Agreement and for any party acquiring interests in such first assignment. For the purposes of this Article 22, if the first assignee is an agent or trustee, then any successor thereto shall be considered the first assignee.

ARTICLE 23. *Notice.* Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed to it at its chief place of business at the following specified addresses:

(a) to the Vendee, at 28 State Street, Boston, Massachusetts 02106;

(b) to the Guarantor, at Six Penn Center Plaza, Philadelphia, Pennsylvania 19104;

(c) to the Seller, at One Wynnewood Road, Wynnewood, Pennsylvania 19096;

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

or at such other address as may have been furnished in writing by such party to the other parties to this Agreement. The Vendee represents and warrants that its chief place of business is in the Commonwealth of Massachusetts.

ARTICLE 24. *Satisfaction of Undertakings.* The obligations of the Vendee under Articles 7, 8, 9, 10, 11, 13, 14, 15, 21 and 22 hereunder shall be deemed in all respects satisfied by the Lessee's undertakings contained in §§ 4, 5, 7, 8, 11 and 15 of the Lease. The Guarantor shall be liable in respect of its guaranty hereunder for such obligations under said Articles whether or not the Lease is in effect. The Vendee shall not have any responsibility for the Lessee's failure to perform such undertakings, but if the same shall not be performed they may constitute the basis for an event of default hereunder pursuant to Article 17.

ARTICLE 25. *Effect and Modification of Agreement.* This Agreement, and the annexes relating hereto, exclusively and completely state the rights and agreements of the Vendor, the Vendee and the Guarantor with respect to the Equipment and supersede all other agreements, oral or written, with respect to the Equipment. No variation of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and duly executed on behalf of the Vendor, the Vendee and the Guarantor.

ARTICLE 26. *Law Governing.* The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the Commonwealth of Massachusetts; *provided, however,* that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act, and by such additional rights arising out of the filing, recording or depositing hereof and of any assignment hereof or of any financing statement or continuation statement as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited.

ARTICLE 27. *Definitions.* The term "Vendor", whenever used in this Agreement, means, before any assignment of any of its rights hereunder, Lease Financing Corporation and any successor or successors for the time being to its properties and business, and, after any such assignment, both any assignee or assignees for the time being of such particular assigned rights as regards such rights, and also any assignor or assignors as regards any rights hereunder that are retained or excluded from any assignment; and the term "Seller", whenever used in this Agreement, means, both before and after any such assignment, Lease Financing Corporation and any successor or successors for the time being to its properties and business.

ARTICLE 28. *Execution.* This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same con-

tract, which shall be sufficiently evidenced by any such original counterpart. Although this Agreement is dated as of October 15, 1968, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective corporate names by their officers thereunto duly authorized, and their respective corporate seals hereunto to be affixed and duly attested.

LEASE FINANCING CORPORATION,

[CORPORATE SEAL]

by *Levin R. Gettelman*
.....
President.

Attest:

Morris H. Wolff
.....
Assistant Secretary.

NEW ENGLAND MERCHANTS FINANCIAL CORPORATION,

[CORPORATE SEAL]

by *John K. Beeten*
.....
Vice President.

Attest:

J. A. Mosse
.....
Clerk.

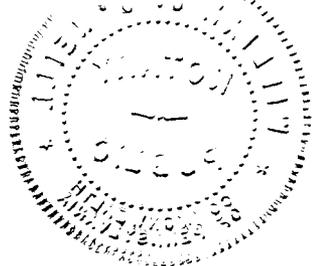
[CORPORATE SEAL]

PENN CENTRAL COMPANY,

by *Arthur J. Fode*
.....
Assistant Vice President—
Corporate.

Attest:

M. J. Murray
.....
Assistant Secretary.



COMMONWEALTH OF MASSACHUSETTS }
COUNTY OF SUFFOLK } ss.:

On this 23^d day of DECEMBER, 1968, before me personally appeared JOHN K. BEETEN to me personally known who, being by me duly sworn, says that he is a Vice President of NEW ENGLAND MERCHANTS FINANCIAL CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of the 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.

Robert B. Graser
.....
Notary Public

[NOTARIAL SEAL]

My Commission Expires Nov. 29, 1969

COMMONWEALTH OF PENNSYLVANIA }
COUNTY OF PHILADELPHIA } ss.:

On this 20th day of December, 1968, before me personally appeared R. W. LODER, to me personally known, who, being by me duly sworn, says that he is the Assistant Vice President—Corporate of PENN CENTRAL COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of the said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[NOTARIAL SEAL]

My Commission Expires

William J. O'Neill
.....
Notary Public

WILLIAM J. O'NEILL

Notary Public, Philadelphia, Philadelphia Co.
My Commission Expires June 26, 1972



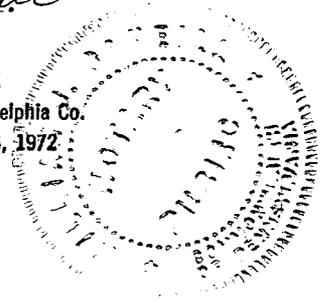
COMMONWEALTH OF PENNSYLVANIA }
COUNTY OF PHILADELPHIA } SS.:

On this ^{20th} day of ^{December} 1968, before me personally appeared ^{Louis A. De Mue, Jr.} ~~D. CHARLES MERRIWETHER~~, to me personally known, who, being by me duly sworn, says that he is ^{vice} President of LEASE FINANCING CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of the said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[NOTARIAL SEAL]

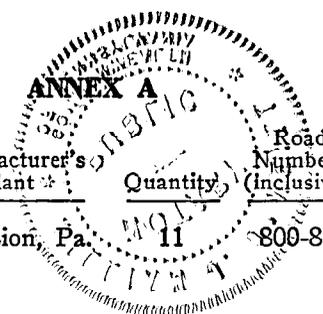
..... *William J. O'Neill*
Notary Public

WILLIAM J. O'NEILL
My Commission Expires Notary Public, Philadelphia, Philadelphia Co.
My Commission Expires June 26, 1972



<u>Type</u>	<u>Manufacturer's Specifications</u>	<u>Manufacturer's Plant</u>	<u>Quantity</u>	<u>Road Numbers (Inclusive)</u>	<u>Unit Base Price</u>	<u>Total Base Price</u>	<u>Delivery*</u>
1200 h. p. Electric Metroliner Coaches	Being built under construction specifications for electric multiple unit railroad passenger cars for use in high speed demonstration project between New York and Washington, dated April, 1964, as modified.	Red Lion, Pa.	11	800-810	\$408,523.07	\$ 4,493,753.77	First Quarter 1969
1200 h. p. Electric Metroliner Coaches	Being built under construction specifications for electric multiple unit railroad passenger cars for use in high speed demonstration project between New York and Washington, dated April, 1964, as modified.	Red Lion, Pa.	9	811-819	408,741.76	3,678,675.84	First Quarter 1969
1200 h. p. Electric Metroliner Coaches with Snack Bar	Being built under construction specifications for electric multiple unit railroad passenger cars for use in high speed demonstration project between New York and Washington, dated April, 1964, as modified.	Red Lion, Pa.	20	850-869	421,759.63	8,435,192.60	December 1968
1200 h. p. Electric Metro Club (parlor) Cars	Being built under construction specifications for electric multiple unit railroad passenger cars for use in high speed demonstration project between New York and Washington, dated April, 1964, as modified.	Red Lion, Pa.	10	880-889	430,560.13	4,305,601.30	December 1968
Spare Parts:							
Main Transformer		Red Lion, Pa.	2	—	32,443.50	64,887.00	
Traction Motor		Red Lion, Pa.	8	—	5,822.00	46,576.00	
Motor Alternator set		Red Lion, Pa.	4	—	9,353.50	37,414.00	
Hand Brake Truck Assembly		Red Lion, Pa.	4	—	36,303.00	145,212.00	
Wheel and Axle Assembly		Red Lion, Pa.	8	—	5,424.50	43,396.00	
						<u>\$21,250,708.51</u>	

*At Wilmington, Delaware.



4

ANNEX B

LEASE OF RAILROAD EQUIPMENT

by and between

**NEW ENGLAND MERCHANTS
FINANCIAL CORPORATION**

and

PENN CENTRAL COMPANY

Dated as of October 15, 1968

LEASE OF RAILROAD EQUIPMENT, dated as of October 15, 1968, between NEW ENGLAND MERCHANTS FINANCIAL CORPORATION, a Massachusetts corporation (hereinafter called the Lessor), and PENN CENTRAL COMPANY, a Pennsylvania corporation (hereinafter called the Lessee).

WHEREAS, the Lessor and the Lessee have entered into a Conditional Sale Agreement dated as of October 15, 1968 (hereinafter called the Conditional Sale Agreement) with Lease Financing Corporation, as Seller (the term Seller or Vendor, as used herein, being deemed to have the respective meanings set forth in Article 27 of the Conditional Sale Agreement), wherein the Seller has agreed to sell and deliver to the Lessor the railroad equipment described in Schedule A hereto;

WHEREAS, the Seller has assigned its interest in the Conditional Sale Agreement to The Fidelity Bank, as Agent, pursuant to an Agreement and Assignment dated as of October 15, 1968 (hereinafter called the Assignment); and

WHEREAS, the Lessee desires to lease all the items of said equipment or such lesser number as are delivered and accepted pursuant to and acceptance of delivery referred to in Article 2 of the Conditional Sale Agreement and settled for under the Conditional Sale Agreement on or prior to December 15, 1969 (hereinafter called the Units), at the rentals and for the terms and upon the conditions hereinafter provided;

Now, THEREFORE, in consideration of the premises and 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 but, upon default of the Lessee hereunder or under the Conditional Sale Agreement, subject to all the rights and remedies of the Vendor under the Conditional Sale Agreement:

§ 1. *Delivery and Acceptance of Units.* The Lessor will cause each Unit to be tendered to the Lessee at the point or points within the United States of America at which such Unit is delivered to the Lessor under the Conditional Sale Agreement. Upon such tender, the Lessee will cause an authorized representative of the Lessee to inspect the same and if such Unit is found to be in good order, to accept delivery of such Unit and to execute and deliver to the Lessor, the Seller and the assignee of the Seller a certificate of Lessee's acceptance of such delivery; whereupon such Unit shall be deemed to have been delivered to and accepted by the Lessee under this Lease and shall be subject thereafter to all the terms and conditions of this Lease. The Lessee does hereby appoint the Chief Engineer—Passenger Equipment, the Assistant Vice President—Corporate and any vice president in charge of operations of the Lessee as its authorized representatives to inspect and accept delivery of Units under this Lease.

§ 2. *Rentals.* The Lessee agrees to pay to the Lessor as rental for each Unit subject to this Lease 40 consecutive semiannual payments, payable on June 15 and December 15 of each year commencing June 15, 1969. The first such semiannual payment shall be in an amount equal to .01708% of the Purchase Price (as such term is defined in the Conditional Sale Agreement) of each Unit subject to this Lease for each day elapsed from and including the date such Unit is accepted pursuant to Lessee's certificate of acceptance of delivery under § 1 hereof to and including June 15, 1969; the second such semi-annual payment shall be in an amount equal to .01708% of the Purchase Price of each Unit subject to this Lease for each day elapsed from June 15, 1969, or the date such Unit is accepted pursuant to Lessee's certificate of acceptance of delivery under § 1 hereof, whichever is the later, to and including December 15, 1969; the next eight semiannual payments shall each be in an amount equal to 3.0744% of the Purchase Price of each Unit subject to this Lease; and the last 30 semiannual payments shall

each be in an amount equal to 4.5859% of the Purchase Price of each such Unit. If any adjustment in the Purchase Price of any Unit is made during the first six months' rental payment period or the second six months' rental payment period, the rental payable on June 15, 1969, or December 15, 1969, as the case may be, shall include .01708% of the amount of such adjustment for each day elapsed from and including the date of the adjustment to and including June 15, 1969, or December 15, 1969, as the case may be. If any of the payment dates referred to above is not a business day, the payment shall be payable on the next succeeding business day.

The Lessor and the Lessee irrevocably agree that all payments provided for in this Lease to be made to the Lessor shall be paid in immediately available funds in Philadelphia to the account of the Lessor, care of The Fidelity Bank, Broad and Walnut Streets, Philadelphia, Pennsylvania 19109, attention of Joseph F. McDonald, Assistant Vice President (or to any assignee of said Bank under an assignment made pursuant to Section 6 of the Assignment), and shall be applied by such Bank to satisfy the obligations of the Lessor as Vendee under the Conditional Sale Agreement accrued at the time such payments are due hereunder, and any balance shall be paid to the Lessor.

This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent, reduction thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs due or alleged to be due to, or by reason of, any past, present or future claims of the Lessee against the Lessor under this Lease or the Vendor or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use of or destruction of all or any of the Units from whatsoever cause, the prohibition of or other restriction against Lessee's use of all or any of the Units, the interference with such use by any private person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, 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.

§ 3. *Term of Lease.* The term of this Lease as to each Unit shall begin on the date of the delivery of a certificate of Lessee's acceptance of delivery of such Unit and, subject to the provisions of §§ 6, 9 and 12 hereof, shall terminate on the date on which the final semiannual payment of rent in respect thereof is due hereunder.

Notwithstanding anything to the contrary contained herein all rights and obligations under this Lease and in and to the Units, upon default by the Lessee hereunder, are subject to the rights of the Vendor under the Conditional Sale Agreement. If an event of default should occur under the Conditional Sale Agreement and the Lessee is in default hereunder or under the Conditional Sale Agreement, the Vendor may terminate this Lease (or rescind its termination), all as provided in the Conditional Sale Agreement. If a Declaration of Default (as defined in the Conditional Sale Agreement) should be made under the Conditional Sale Agreement due to an event of default not occasioned by an act or omission of the Lessee hereunder or not attributable to the Lessee under the Conditional Sale Agreement, and if such Declaration of Default shall not have been rescinded by the Vendor within 30 days of the making thereof, or if the Vendor theretofore has indicated either in writing to the Lessor or the Lessee or by the commencement of the remedies specified under Article 18 of the Conditional Sale Agreement, that it will not rescind such Declaration of Default, the Lessee, without penalty under this Lease, may but shall not be obligated to terminate this Lease.

§ 4. Identification Marks. The Lessee will cause each Unit of railroad rolling stock to be kept numbered with the identifying number set forth in Annex A to the Conditional Sale Agreement and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each such Unit, in letters not less than one-half inch in height, the following words:

“THE FIDELITY BANK, PHILADELPHIA, PA., AGENT-OWNER”

or other appropriate words designated by the Lessor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the title of the Lessor or the Vendor to such Unit and the rights of the Lessor under this Lease and of the Vendor under the Conditional Sale Agreement. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such names and word or words shall have been so marked on both sides thereof and will replace promptly any such names and word or words which may be removed, defaced or destroyed. The Lessee will not change the identifying number of any Unit except in accordance with a statement of new identifying numbers to be substituted therefor, which statement previously shall have been filed with the Vendor and the Lessor by the Lessee and filed, recorded or deposited in all public offices where this Lease will have been filed, recorded or deposited.

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

§ 5. Taxes. All payments to be made by the Lessee hereunder will be free of expense to the Lessor for collection

or other charges and will be free of expense to the Lessor with respect to the amount of any local, state, or federal taxes (other than any United States federal income tax payable by the Lessor in consequence of the receipt of payments provided herein and other than the aggregate of all state or city income taxes or franchise taxes payable to any jurisdiction in the United States measured by net income based on such receipts, up to the amount of any such taxes which would be payable to the state and city in which the Lessor has its principal place of business without apportionment to any other state, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided), assessments or licenses (and any charges, fines or penalties in connection therewith) hereafter levied or imposed upon or in connection with or measured by, this Lease or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof or the Conditional Sale Agreement, all of which expenses, taxes, assessments, licenses, charges, fines and penalties (hereinafter called "impositions") the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. The Lessee will also pay promptly all impositions which may be imposed upon any Unit or for the use or operation thereof or upon the earnings arising therefrom or upon the Lessor solely by reason of its ownership thereof and will keep at all times all and every part of such Unit free and clear of all impositions which might in any way affect the title of the Lessor or result in a lien upon any such Unit; *provided, however,* that the Lessee shall be under no obligation to pay any impositions so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Lessor, adversely affect the property or rights of the Lessor hereunder or under the Conditional Sale Agreement. If any impositions shall have been charged or levied against the Lessor directly and paid by the Lessor, the Lessee shall reimburse the Lessor on presentation of invoice therefor.

In the event that the Lessor shall become obligated to make any payment to the Vendor pursuant to Article 10 of the Conditional Sale Agreement not covered by the foregoing paragraph of this § 5, the Lessee shall pay such additional amounts (which shall also be deemed "impositions" hereunder) to the Lessor as will enable the Lessor to fulfill completely its obligations to the Vendor pursuant to said Article 10.

In the event any reports with respect to impositions are required to be made on the basis of individual Units, the Lessee will either make such reports in such manner as to show the interests of the Lessor and the Vendor in such Units or will notify the Lessor and the Vendor of such requirement and will make such reports in such manner as shall be satisfactory to the Lessor and the Vendor.

In the event that, during the continuance of this Lease, the Lessee becomes liable for the payment or reimbursement of any impositions, pursuant to this § 5, such liability shall continue, notwithstanding the expiration of this Lease, until all such impositions are paid or reimbursed by the Lessee.

§ 6. *Payment for Casualty Occurrences and Economic Obsolescence.* In the event that any Unit shall be or become worn out, lost, stolen, destroyed or, in the opinion of the Lessee, irreparably damaged, from any cause whatsoever or taken or requisitioned by condemnation or otherwise (such occurrences being hereinafter called Casualty Occurrences) or shall, after December 15, 1976, or the eighth anniversary of the date on which the delivery of final Unit of equipment is accepted by the Lessee pursuant to § 1 hereof, whichever is the later, in the opinion of the Lessee be or become economically obsolete from any cause whatsoever (such an occurrence being hereinafter called Economic Obsolescence) during the term of this Lease, the Lessee shall within 20 days after it shall have determined that such Unit has suffered a Casualty Occurrence or has reached Economic Obsolescence,

as the case may be, fully inform the Lessor and the Vendor in writing in regard thereto, including in such information a statement of the causes of or reasons for such Casualty Occurrence or Economic Obsolescence, as the case may be, and a certificate setting forth a determination of the Replacement Value thereof (as defined in the Conditional Sale Agreement). On the next succeeding rental payment date the Lessee shall pay to the Lessor in immediately available funds in Philadelphia an amount equal to the accrued rental for such Unit to the date of such payment plus a sum equal to the Casualty Value, as hereinafter defined, of such Unit suffering a Casualty Occurrence or reaching Economic Obsolescence as of the date of such payment in accordance with the schedule set out 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. Following the giving of written notice of a Casualty Occurrence or of Economic Obsolescence as to any Unit pursuant to the first sentence of this § 6, the Lessee shall cooperate fully with the Lessor in seeking bids for the purchase of such Unit. Upon the sale by the Lessor of such Unit the Lessee shall be entitled to the proceeds of such sale up to an amount equal to the Casualty Value previously paid by the Lessee hereunder. Any excess of such proceeds over the Casualty Value previously paid by the Lessee shall be retained by the Lessor.

The Casualty Value of each Unit (other than any replacement unit) as of any rental payment date shall be an amount equal to the greater of (i) the Replacement Value of such Unit (as defined in the Conditional Sale Agreement) on such date and (ii) that percentage of the Purchase Price of such Unit as is set forth in Column B of the following schedule opposite the number of such rental payment date; plus, in the case of either (i) or (ii), any premium (hereinafter called

the Premium) payable pursuant to the last sentence of the fourth paragraph of Article 5 of the Conditional Sale Agreement in the event the Replacement Value is applied to the prepayment of Conditional Sale Indebtedness under the Conditional Sale Agreement upon the occurrence of Economic Obsolescence.

CASUALTY VALUE FACTORS

(STATED AS A PERCENTAGE OF PURCHASE PRICE)

A.	B.
<u>Payment No.</u>	<u>Casualty Factor</u>
1	100.00%
2	100.00
3	100.00
4	100.00
5	100.00
6	100.00
7	100.00
8	100.00
9	100.00
10	100.00
11	100.00
12	100.00
13	100.00
14	100.00
15	100.00
16	100.00
17	96.22
18	93.94
19	91.20
20	88.45
21	85.86
22	83.07
23	80.14
24	77.99
25	74.90
26	71.85
27	69.01

A.	B.
<u>Payment No.</u>	<u>Casualty Factor</u>
28	65.65%
29	62.37
30	59.29
31	55.73
32	52.51
33	48.93
34	45.23
35	41.41
36	37.46
37	33.37
38	29.15
39	24.80
40	20.28

The Casualty Value of each replacement unit as of any rental payment date shall be an amount equal to the greater of (i) the Replacement Value of such unit and (ii) an amount determined by multiplying the Purchase Price of the original Unit or Units replaced by the applicable casualty factor set forth in the above table; plus in the case of both (i) and (ii) above an amount equal to any Premium payable pursuant to the Conditional Sale Agreement.

The Casualty Value of each Unit as of any rental payment date after the 40th rental payment date shall be 20% of the Purchase Price of such Unit.

Anything in this § 6 to the contrary notwithstanding and provided that no Event of Default shall have occurred or be continuing hereunder, the Lessee may upon written direction to the Lessor, prior to the date payment is required to be made in respect of a Unit having suffered a Casualty Occurrence or having reached Economic Obsolescence, as the case may be, elect to have any money paid to the Lessor pursuant to this § 6 (up to the Replacement Value of such Unit) held and applied to or toward the purchase price of a unit or units of new, standard-gauge railroad rolling stock (other than work equipment) or new spare parts of the same gen-

eral description as those described in Schedule A hereto, subject to the limitation contained in the last sentence of Article 1 and the first paragraph of Article 3 of the Conditional Sale Agreement, to replace such Unit under the Lease as provided in the Conditional Sale Agreement. Immediately upon acquisition of a replacement unit under the Conditional Sale Agreement such unit shall forthwith become subject to this Lease. The Lessee agrees that, in the event the Lessee makes the election specified in the first sentence of this paragraph, the lease rental under this Lease shall continue to accrue in respect of such Unit having suffered a Casualty Occurrence or having reached Economic Obsolescence, as the case may be, but shall be deemed to be payable in respect of the unit or units acquired or to be acquired in replacement thereof as hereinbefore provided and shall be paid on each rental payment date hereunder whether or not the replacement unit or units have been acquired at the time such rental is due hereunder.

Under Article 5 of the Conditional Sale Agreement, moneys deposited in respect of Casualty Occurrences or Economic Obsolescence thereunder may be applied as the Lessor may direct to the purchase of replacement units or the prepayment of the Conditional Sale Indebtedness under the Conditional Sale Agreement and, pending such application, such moneys may be invested in such Investments (as defined in the Conditional Sale Agreement) as the Lessor may direct at the expense of the Lessee. So long as the Lessee is not in default hereunder the Lessor agrees to follow such directions in respect of all the foregoing matters in this § 6 as the Lessee may furnish to the Lessor in writing. Upon any sale or the maturity of any Investments, the proceeds thereof plus any interest received thereon up to the cost (including accrued interest) thereof under the seventh paragraph of Article 5 of the Conditional Sale Agreement shall be held by the Vendor for application pursuant to said Article 5. Any excess proceeds received by the Lessor pursuant to said seventh paragraph of Article 5 shall be paid over to the

Lessee; and the amount of any deficiency required to be paid by the Lessor under said seventh paragraph of Article 5 shall be paid by the Lessee to the Lessor. The Lessee shall also reimburse the Lessor for any net tax liability (or net reduction in tax losses) of the Lessor or its parent suffered by reason of any income or profit on such Investments or by reason of such reimbursement.

The Lessee shall cause each replacement unit to be marked to the extent provided in § 4 hereof and in Article 9 of the Conditional Sale Agreement. Any and all such replacement units shall constitute accessions to the equipment leased hereunder, shall become a Unit or Units, as the case may be, for all purposes hereof, except as otherwise provided herein, and shall be subject to all the terms and provisions of this Lease as though an original Unit or Units delivered hereunder. Title to each replacement unit shall be free and clear of any liens, security interests and other encumbrances excepting only the title and rights of the Vendor under the Conditional Sale Agreement, and the liens permitted by the second paragraph of Article 13 of the Conditional Sale Agreement and shall be warranted in like manner as is customary at the time for equipment of the same type. Such replacement unit or units shall become subject to the terms and conditions of the Conditional Sale Agreement pursuant to Article 5 thereof and to the terms of this § 6 prior to the first use of such replacement units by the Lessee or by any other person. The Lessee shall execute, acknowledge, deliver, file and record all such documents and do any and all such acts as may be necessary to cause any such replacement unit to come under and become subject to this Lease and to protect the title and interests of the Vendor and the interests of the Lessor thereto.

It is understood and agreed by the parties hereto that no increase or decrease in the aggregate amount of rental payable pursuant to § 2 hereof will result by reason of the purchase of replacement units contemplated by this § 6.

Subject to the prior notification of and written approval from the Vendor pursuant to the terms of the last paragraph of Article 5 of the Conditional Sale Agreement and notwithstanding the preceding provisions of this § 6, the Lessor, within five days of written notification by the Lessee that a Unit has reached Economic Obsolescence, may elect to waive the payment by the Lessee of the Casualty Value in respect of such Unit. In such event, (a) the Lessor shall be entitled to the immediate possession of such Unit, (b) such Unit shall be excluded from this Lease by supplemental agreement hereto which shall be filed and recorded by the Lessee with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act and in all other offices in which this Lease or a financing statement with respect to such Unit may theretofore have been filed and recorded and (c) as of the date of such filing and recordation, the Lessee shall be released from its obligation to pay rental hereunder to the Lessor in respect of such Unit and from all other obligations and rights hereunder with respect to such Unit.

In connection with each acquisition hereunder of a replacement unit of equipment, the Lessee shall file with the Vendor and the Lessor:

(1) a certificate of a Vice President or the Chief Accounting Officer of the Lessee certifying (i) that such replacement unit is either new, standard-gauge railroad rolling stock (other than work equipment) and has been marked as required by the provisions of this § 6 and of Article 9 of the Conditional Sale Agreement or is a spare part or parts complying with the limitations set forth in the fifth paragraph of this § 6; (ii) as to the cost of such unit; (iii) that such replacement unit has been inspected and accepted by it under this Lease; and (iv) that such replacement unit was not placed into first use prior to the subjection of such unit to the Conditional Sale Agreement and this Lease;

(2) opinions of counsel for the Lessee and of counsel for the builder of such replacement unit to the effect

that title to such replacement unit is vested in the Vendor free and clear of all claims, liens, security interests and other encumbrances except only the rights of the Vendee under the Conditional Sale Agreement and the rights of the Lessee under this Lease, and that such unit has come under and become subject to the Conditional Sale Agreement and this Lease.

Except as hereinabove in this § 6 provided, the Lessee shall not be released from its obligations hereunder in the event of, and will bear the risk of, a Casualty Occurrence to any Unit or the Economic Obsolescence of any Unit, as the case may be, after delivery to and acceptance thereof by the Lessee hereunder.

§ 7. *Annual Reports.* On or before March 1 in each year commencing with the year 1970, the Lessee will cause to be furnished to the Lessor and the Vendor an accurate statement, as of the preceding January 1, (a) showing the amount, description and numbers of the Units then leased hereunder, the amount, description and numbers of all Units that may have suffered a Casualty Occurrence or reached Economic Obsolescence during the preceding twelve months (or since the date of this Lease, in the case of the first such statement), and such other information regarding the condition and state of repair of the Units as the Lessor or the Vendor may reasonably request, (b) stating that, in the case of all Units of railroad rolling stock repaired or repainted during the period covered by such statement, the markings required by § 4 hereof and Article 9 of the Conditional Sale Agreement shall have been preserved or replaced and (c) certifying that the insurance required to be carried pursuant to Article 5 of the Conditional Sale Agreement is then in effect. The Lessor shall have the right at its sole cost and expense, by its authorized representatives, to inspect the Units and the Lessee's records with respect thereto, at such times as shall be reasonably necessary to confirm to the Lessor the existence

and proper maintenance thereof during the continuance of this Lease.

§ 8. *Disclaimer of Warranties; Compliance with Laws and Rules; Maintenance; and Indemnification.* The Lessor makes no warranty or representation with respect to the Units delivered to the Lessee hereunder, either express or implied, including, without limitation, warranties or representation as to the design or condition of, or as to the quality of the material, equipment or workmanship in such Units and the Lessor makes no warranty of merchantability or fitness of the Units for any particular purpose or as to title to the Units or any component thereof, 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 account of the Lessor and/or the Lessee, as their interests may appear, whatever claims and rights the Lessor may have as vendee under the provisions of Article 14 of the Conditional Sale Agreement. Lessee's certificate of acceptance of delivery of the Units pursuant to § 1 hereof shall be conclusive evidence as between the Lessee and the Lessor that all Units described in such certificate of acceptance 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, it being understood and agreed that this sentence in no way limits Lessee's rights as against the builder of the Units under the builder's warranty thereof which is made available to Lessee pursuant to this § 8.

The Lessee agrees, for the benefit of the Lessor and the Vendor, to comply during the term of this Lease in all respects with all laws of the jurisdictions in which operations involving the Units may extend, with the Interchange Rules of the Association of American Railroads, if applicable, and with all lawful rules of the Interstate Commerce Commis-

sion, the Department of Transportation and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units to the extent that such laws or rules affect the operation, maintenance or use of the Units. In the event that such laws or rules require the alteration of the Units or in case any equipment or appliance or any such Unit shall be required to be changed or replaced, or in case any additional or other equipment or appliance is required to be installed on such Unit in order to comply with such laws, regulations, requirements and rules, the Lessee agrees to make such alterations, changes, additions and replacements at its own expense; and the Lessee will use, maintain and operate such Unit in full compliance with such laws, regulations, requirements and rules so long as it is subject to this Lease; *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 or the Vendor, adversely affect the property or rights of the Lessor or the Vendor hereunder or under the Conditional Sale Agreement.

The Lessee agrees that, at its own cost and expense, it will maintain and keep each Unit which is subject to this Lease in good order and repair.

Any and all additions to any Unit and any and all parts installed on or replacements made to any Unit, but only if such additions or parts (other than replacements) are necessary to the operation of the Equipment as passenger equipment, shall be considered accessions to such Unit and, at the cost and expense of the Lessee, full ownership thereof free of any lien, charge, security interest or encumbrance (except for those created by the Conditional Sale Agreement) shall immediately be vested in the Lessor and the Vendor as their respective interests appear in the Unit itself.

The Lessee agrees to indemnify and save harmless the Lessor and the Vendor against any charge or claim made against the Lessor or the Vendor, and against any expense,

loss or liability (including but not limited to counsel fees and expenses, patent liabilities, penalties and interest and any other liability which the Lessor may have under Articles 14 and 15 of the Conditional Sale Agreement) which the Lessor or the Vendor may incur in any manner by reason of entering into or the performance of the Conditional Sale Agreement or this Lease or by reason of the ownership of any Unit, or which may arise in any manner out of or as the result of the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any Unit under this Lease. The Lessee further agrees to indemnify and save harmless the Lessor and the Vendor against any charge, claim, expense, loss or liability (including but not limited to counsel fees and expenses, penalties and interest) on account of any accident in connection with the operation, use, condition, possession or storage of any Unit resulting in damage to property or injury to any person. The indemnities arising under this paragraph shall survive payment of all other obligations under this Lease or the termination of this Lease.

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

§ 9. *Default.* If, during the continuance of this Lease, one or more of the following events (hereinafter sometimes called Events of Default) shall occur:

A. default shall be made in the payment of any part of the rental provided in § 2 hereof and such default shall continue for five days;

B. the Lessee shall make or permit any unauthorized assignment or transfer of this Lease or of possession of the Units, or any thereof;

C. default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein or in the Conditional Sale Agreement and such default shall continue for 25 days after written notice from the Lessor or the Vendor to the Lessee specifying the default and demanding that the same be remedied;

D. any proceedings shall be commenced by or against the Lessee for any relief 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 readjustment of the obligations of the Lessee hereunder or under the Conditional Sale Agreement), and (unless such proceedings shall have been discontinued, 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 and under the Conditional Sale Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Lessee or for the property of the Lessee in connection with any such proceedings or otherwise given a status comparable to 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

E. a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may be hereafter amended, shall be filed by or against the Lessee and (unless such petition shall be dismissed, nullified, stayed or otherwise rendered ineffective but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of

the Lessee under the Conditional Sale Agreement and this Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier;

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

(a) proceed by appropriate court action or actions either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof (including expenses and the fees and expenses of counsel sustained by Lessor by reason of such breach); 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 determine as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided; and thereupon the Lessor may by its agents enter upon 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 and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may then be 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 (i) as dam-

ages for loss of the bargain and not as a penalty, a sum, with respect to each Unit, which represents the excess of (x) 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 (y) the then present value of the rentals which the Lessor reasonably estimates to be obtainable for the use of the Unit during such period, such present value to be computed in each case on a basis of a 6% per annum discount compounded semiannually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, (ii) any damages (other than for the payment of rental) and expenses, including reasonable attorneys' fees, in addition thereto which the Lessor shall have sustained by reason of the breach of any covenant or covenants of this Lease and including, without limitation, (iii) an amount which, after deduction of all taxes required to be paid by the Lessor in respect of the receipt thereof under the laws of the United States or any political subdivision thereof, shall be equal to any portion of the investment credit allowed by Section 38 of the Internal Revenue Code of 1954, as amended, lost by the Lessor as a result of the sale or other disposition of the Lessor's interest in any Unit after the occurrence of an Event of Default.

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is 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.

§ 10. *Return of Units upon Default.* If this Lease shall terminate pursuant to § 9 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor. 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 place such Units upon such storage tracks of the Lessee as the Lessor reasonably may designate,

B. permit the Lessor to store such Units on such tracks at the risk of the Lessee until such Units have been sold, leased or otherwise disposed of by the Lessor, and

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

The assembling, delivery, storage and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Unit to inspect the

same; *provided, however*, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this § 10, 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 at the time shall be in possession of such Unit.

§ 11. *Assignment; Possession and Use.* This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor.

So long as the Lessee shall not be in default under this Lease or under the Conditional Sale Agreement, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease, but, without the prior written consent of the Lessor, the Lessee shall not assign or transfer its leasehold interest under this Lease in the Units or any of them. In addition, the Lessee, at its own expense, will promptly pay or satisfy and cause to be duly discharged any and all sums claimed by any party by, through or under the Lessee or its successors or assigns which, if unpaid, might become a lien, charge, security interest or other encumbrance upon any Unit including any accession thereto equal to or superior to the interests of the Vendor and the Lessor therein (other than an encumbrance resulting from claims against the Lessor or the Vendor not related to the ownership of the Units); but the Lessee shall not be required to pay, satisfy or cause to be discharged any

such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Vendor or the Lessor, adversely affect the property or rights of the Vendor or the Lessor in such Units. **The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provisions of the next succeeding paragraph hereof.**

So long as the Lessee shall not be in default under this Lease or under the Conditional Sale Agreement, the Lessee shall be entitled to the possession of the Units and to the use thereof upon its lines of railroad or upon lines of railroad over which the Lessee has trackage or other operating rights or over which railroad equipment of the Lessee is regularly operated pursuant to contract, and also to permit the use of the Units upon other railroads in the usual interchange of traffic (if such interchange is customary at the time), but only upon and subject to all the terms and conditions of this Lease and the Conditional Sale Agreement.

Nothing in this § 11 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any corporation (which shall have duly assumed the obligations of the Lessee hereunder and under the Conditional Sale Agreement) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety.

The Lessee agrees that during the term of this Lease the Lessee will not assign any Unit to service involving operation or maintenance thereof outside the continental United States of America.

The Lessee will not permit any spare parts included in the equipment to be stored or maintained in any jurisdiction other than the States of Delaware or New York or the Commonwealth of Pennsylvania.

§ 12. *Purchase or Renewal Option.* Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee shall have the option (1) to purchase all but not fewer than all the Units then covered by this Lease at the end of the original term hereof for a purchase price equal to the "Fair Market Value" as of the end of such term or (2) to extend the term of this Lease for two additional five-year periods in respect of all, but not fewer than all, the Units then covered by this Lease at a rental for the first such five-year term equal to the "Fair Rental Value" of such Units as of the end of such original term and for the second such five-year term equal to the "Fair Rental Value" of such Units as of the end of the first five-year extended term, in each case payable in ten equal semiannual payments. Either of such options is to be exercised by written notification from the Lessee to the Lessor received at least six months prior to the expiration of the original term or of the first five-year term, as the case may be, of this Lease.

Fair Market Value shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an arm's length transaction between an informed and willing buyer-user (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 and, in such determination, costs of removal from the location of current use shall not be a deduction from such value. Fair Rental Value shall be determined on the basis of, and shall be equal in amount to, the rental which would obtain in an arm's length transaction between an informed and willing lessee-user (other than a lessee currently in possession) and an informed and willing lessor under no compulsion to lease, and in such determination costs of removal from the location of current use shall not be a deduction from such rental.

If on or before four months prior to the expiration of the original term hereof (or the first five-year extended term in the case of the option to renew for a second five-year

period), the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Value or Fair Rental Value of the Units, such values shall be determined in accordance with the foregoing definitions, by a qualified independent Appraiser. The term Appraiser shall mean such independent appraiser as the Lessor and the Lessee may mutually agree upon, or, failing such agreement, a panel of three independent appraisers, one of whom shall be selected by the Lessor, the second by the Lessee and the third designated by the first two so selected, in which event the determination of value shall be by majority vote. The Appraiser shall be instructed to make such determination within a period of 30 days following appointment, and shall promptly communicate such determination in writing to the Lessor and the Lessee. The determination so made shall be conclusively binding upon both Lessor and Lessee. The expenses and fee of the Appraiser shall be borne by the Lessee.

§ 13. *Return of Units upon Expiration of Term.* As soon as practicable on or after the expiration of the term of this Lease, the Lessee will (unless the Units are sold to the Lessee), at its own cost and expense, at the request of the Lessor, deliver possession of any Units to the Lessor upon such storage tracks of the Lessee as the Lessee may designate and permit the Lessor to store such Units on such tracks for a period not exceeding three months and transport the same, at any time within such three-month period, to any reasonable place on the lines of railroad operated by the Lessee or to any connecting carrier for shipment, all as directed by the Lessor, the movement and storage of the Units 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 of any such Unit, to inspect the same; *provided, however*, that the Lessee shall not be liable except in the case of negligence of the Lessee or of its employees or agents, for

any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence. The assembling, 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 assemble, deliver, store and transport the Units. If Lessor shall elect to abandon any Unit which has suffered a Casualty Occurrence or reached Economic Obsolescence or which, after the expiration of this Lease, the Lessor shall have deemed to have suffered a Casualty Occurrence or to have reached Economic Obsolescence, it may deliver written notice to such effect to the Lessee and the Lessee shall thereupon assume, and hold the Lessor harmless from all liability arising in respect of, any responsibility of ownership thereof, from and after receipt of such notice.

§ 14. *Opinion of Counsel.* Concurrently with the execution and delivery of this Lease, the Lessee will deliver to the Lessor two counterparts of the written opinion of counsel for the Lessee, addressed to the Lessor, in scope and substance satisfactory to the Lessor and its counsel, to the effect that:

A. the Lessee is a corporation legally incorporated and validly existing, in good standing, under the laws of the Commonwealth of Pennsylvania, with adequate corporate power to enter into this Lease;

B. this Lease has been duly authorized, executed and delivered by the Lessee and constitutes a valid, legal and binding agreement, enforceable in accordance with its terms;

C. this Lease has been duly filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act and no other

filing or recordation is necessary for the protection of the rights of the Lessor;

D. no approval is required from any public regulatory body with respect to the Lessee's entering into or performance of this Lease;

E. the entering into and performance of this Lease by the Lessee will not result in any breach of, or constitute a default under, any indenture, mortgage, deed of trust, bank loan or credit agreement or other agreement or instrument to which the Lessee is a party or by which it may be bound;

F. no mortgage, deed of trust, or other lien of any nature whatsoever which now covers or affects, or which may hereafter cover or affect, any property or interests therein of the Lessee, now attaches or hereafter will attach to the Units or in any manner affects or will affect adversely the Lessor's right, title and interest therein; provided, however, that such liens may attach to the rights of the Lessee hereunder in and to the Units.

§ 15. Recording; Expenses. Prior to the delivery and acceptance of the Units, the Lessee will cause this Lease, the Conditional Sale Agreement and any assignment hereof or thereof to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act. The Lessee will, from time to time, do and perform any other act and will execute, acknowledge, deliver, file, register, record and deposit (and will refile, re-register, rerecord or redeposit whenever required) any and all further instruments required by law or reasonably requested by the Lessor for the purpose of proper protection, to the satisfaction of the Lessor, of the Vendor's and the Lessor's respective interests in the Units, or for the purpose of carrying out the intention of this Lease or the Conditional Sale Agreement (including the execution and filing of all financing statements and continuation statements in respect of those Units consisting of spare parts).

The Lessee will pay the reasonable costs and expenses involved in the preparation and printing of this Lease. In addition, the Lessee will pay to the Lessor an amount equal to all payments which the Lessor is required to make under Article 22 of the Conditional Sale Agreement. The Lessor and Lessee each will bear the respective fees and disbursements of any counsel which it may retain.

§ 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 also an amount equal to 8% per annum of the overdue rentals or 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 deposited in the United States certified mails, first-class postage prepaid, addressed as follows:

if to the Lessor, at 28 State Street, Boston, Massachusetts 02106;

if to the Lessee, at Six Penn Center Plaza, Philadelphia, Pennsylvania 19104;

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

§ 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 Units and supersedes all other agreements, oral or written, with respect to the Units. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Lessor and the Lessee.

§ 19. *Execution in Counterparts.* This Lease may be executed in several counterparts, each of which so executed shall be deemed to be an original, and in each case such counterparts together shall constitute but one and the same instrument. Although this Lease is dated as of October 15, 1968, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

§ 20. *Law Governing.* This Lease shall be construed in accordance with the laws of Pennsylvania; *provided, however,* that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and by the laws of any other jurisdiction in which this Lease is recorded.

IN WITNESS WHEREOF, the Lessor and the Lessee each have caused these presents to be signed in their respective corporate names by duly authorized officers and their respective corporate seals hereunto to be affixed and duly attested.

NEW ENGLAND MERCHANTS FINANCIAL CORPORATION,

by
Vice President.

[CORPORATE SEAL]

Attest:

.....
Clerk.

PENN CENTRAL COMPANY,

[CORPORATE SEAL] by
Assistant Vice President—
Corporate.

Attest:

.....
Assistant Secretary.

COMMONWEALTH OF MASSACHUSETTS }
COUNTY OF } ss.:

On day of , 1968, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President of NEW ENGLAND MERCHANTS FINANCIAL CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[NOTARIAL SEAL]

.....
Notary Public

My Commission Expires .

COMMONWEALTH OF PENNSYLVANIA, }
COUNTY OF PHILADELPHIA, } ss.:

On this day of , 1968, before me personally appeared R. W. LODER, to me personally known, who, being by me duly sworn, says that he is an Assistant Vice President—Corporate of PENN CENTRAL COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[NOTARIAL SEAL]

.....
Notary Public

My Commission Expires .

SCHEDULE A

<u>Type</u>	<u>Manufacturer's Specifications</u>	<u>Manufacturer's Plant</u>	<u>Quantity</u>	<u>Road Numbers (inclusive)</u>	<u>Unit Base Price</u>	<u>Total Base Price</u>	<u>Delivery*</u>
1200 h. p. Electric Metroliner Coaches	Being built under construction specifications for electric multiple unit railroad passenger cars for use in high speed demonstration project between New York and Washington, dated April, 1964, as modified.	Red Lion, Pa.	11	800-810	\$408,523.07	\$ 4,493,753.77	First Quarter 1969
1200 h. p. Electric Metroliner Coaches	Being built under construction specifications for electric multiple unit railroad passenger cars for use in high speed demonstration project between New York and Washington, dated April, 1964, as modified.	Red Lion, Pa.	9	811-819	408,741.76	3,678,675.84	First Quarter 1969
1200 h. p. Electric Metroliner Coaches with Snack Bar	Being built under construction specifications for electric multiple unit railroad passenger cars for use in high speed demonstration project between New York and Washington, dated April, 1964, as modified.	Red Lion, Pa.	20	850-869	421,759.63	8,435,192.60	December 1968
1200 h. p. Electric Metro Club (parlor) Cars	Being built under construction specifications for electric multiple unit railroad passenger cars for use in high speed demonstration project between New York and Washington, dated April, 1964, as modified.	Red Lion, Pa.	10	880-889	430,560.13	4,305,601.30	December 1968
Spare Parts:							
Main Transformer		Red Lion, Pa.	2	—	32,443.50	64,887.00	
Traction Motor		Red Lion, Pa.	8	—	5,822.00	46,576.00	
Motor Alternator set		Red Lion, Pa.	4	—	9,353.50	37,414.00	
Hand Brake Truck Assembly		Red Lion, Pa.	4	—	36,303.00	145,212.00	
Wheel and Axle Assembly		Red Lion, Pa.	8	—	5,424.50	43,396.00	
						<u>\$21,250,708.51</u>	

*At Wilmington, Delaware.