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INTERSTATE COMMERCE COMMISSION

LEASE OF RAILROAD EQUIPMENT
(NO. 2)

Dated as of July 15, 1975

between

INDIANA & MICHIGAN ELECTRIC COMPANY

and

THE CONNECTICUT BANK AND TRUST COMPANY,
as Trustee under an Owner Trust Agreement
dated as of the date hereof with
MICHIGAN NATIONAL BANK OF DETROIT

LEASE OF RAILROAD EQUIPMENT No. 2 dated as of July 15, 1975, between INDIANA & MICHIGAN ELECTRIC COMPANY, an Indiana corporation (hereinafter called the Lessee), and THE CONNECTICUT BANK AND TRUST COMPANY, acting as Trustee under an Owner Trust Agreement No. 2 dated as of the date hereof (hereinafter called the Trust Agreement) with MICHIGAN NATIONAL BANK OF DETROIT (said Trust Company so acting hereinafter called the Lessor; said Corporation being hereinafter called the Beneficiary).

WHEREAS the Lessor is entering into Conditional Sale Agreement No. 2 dated as of the date hereof with Bethlehem Steel Corporation, a Pennsylvania corporation (hereinafter called the Builder), (such agreement being hereinafter called the Security Documentation), wherein the Builder has agreed to manufacture, sell and deliver to the Lessor that portion of the units of the railroad equipment listed in Schedule A hereto (hereinafter called the Equipment) which have been delivered and accepted and settled for on or prior to December 31, 1975, under said Conditional Sale Agreement No. 2 (such units to be described in Supplement I hereto and being hereinafter called the Units).

WHEREAS the Builder, pursuant to an Agreement and Assignment annexed as Exhibit B to the Security Documentation, is assigning its interests in the Security Documentation to Girard Trust Bank, acting as Agent (said bank, as so acting, being hereinafter together with its successors and assigns called the Vendor) under a Participation Agreement dated as of the date hereof (hereinafter called the Participation Agreement) with the Lessee, The Connecticut Bank and Trust Company, acting as Trustee under the Trust Agreement with the Beneficiary and correspondingly but severally acting as Trustee under Owner Trust Agreements respectively with First National Bank of Akron, Northwestern National Bank of Minneapolis and Borg-Warner Equities Corporation (hereinafter called the Other Beneficiaries), and the parties named in Schedule B to the Participation Agreement (herein with their successors and assigns called the Investors and individually the Investor), in the form annexed as Annex E to the Security Documentation; and

WHEREAS the Lessee desires to lease from the Lessor such number of Units of the Equipment as are delivered and

accepted and settled for under the Security Documentation, 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:

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

§ 2. Delivery and Acceptance of Units. The Lessor hereby appoints the Lessee its agent for inspection and acceptance of the Units pursuant to the Security Documentation. The Lessor will cause each Unit to be delivered to the Lessee at the point or points within the United States of America at which such Unit is delivered to the Lessor under the Security Documentation. Upon such delivery, the Lessee will cause its agent or an employee of the Lessee to inspect the same, and if such Unit is found to be acceptable, to accept delivery of such Unit and the Lessee shall execute and deliver to the Lessor a certificate of acceptance (hereinafter called the Certificate of Acceptance) in accordance with the provisions of Article 3 of the Security Documentation, stating that such Unit has been inspected and accepted on behalf of the Lessee and the Lessor on the date of such Certificate of Acceptance and is marked in accordance with § 5 hereof, whereupon, except as provided in the next sentence hereof, such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease. The delivery, inspection and acceptance hereunder of any unit of Equipment excluded from the Security Documentation pursuant to the second paragraph of Article 3 or the first paragraph of Article 4 thereof shall be null and void and ineffective to subject such unit to this Lease.

§ 3. Rentals. The Lessee agrees to pay to the Lessor, as rental for each Unit subject to this Lease, (i) a first rental payment on March 15, 1976, and (ii) 30 consecutive semiannual payments payable in arrears on March 15 and September 15 of each year commencing September 15, 1976. The rental payment payable on March 15, 1976, shall be in an amount equal to 0.029167% of the Purchase Price (as defined in the Security Documentation) of each Unit then subject to this Lease for each day elapsed from the Closing Date (as defined in the Security Documentation) for such Unit to the date of such payment (each month being deemed to have 30 days). The next 30 rental payments shall each be in an amount equal to 5.2920% of the Purchase Price of each Unit then subject to this Lease delivered prior to January 1, 1976. On March 15, 1976, and the Cut-Off Date (as defined in the Participation Agreement) the Lessee shall also pay, as additional rental hereunder, amounts equal to the amounts required by the Lessor to make the payments provided for in the penultimate paragraph of Paragraph 9 of the Participation Agreement whether or not any Units have been subjected to this Lease.

The rental payments hereinbefore set forth are subject to adjustment pursuant to §§ 7, 9 and 16 hereof.

If any of the semiannual rental payment dates referred to above is not a business day the semiannual rental payment otherwise payable on such date shall be payable on the next succeeding business day. The term "business day" as used herein means a calendar day, excluding Saturdays, Sundays and any other day on which banking institutions in Hartford, Connecticut, New York, New York, or Philadelphia, Pennsylvania, are authorized or obligated to remain closed.

The Lessor irrevocably instructs the Lessee to make all the payments provided for in this Lease, including, but not limited to, the payments provided for in this § 3 and in § 7 hereof, at the principal office of the Vendor, for the account of the Lessor in care of the Vendor, with instructions to the Vendor first, to apply such payments to satisfy the obligations of the Lessor under the Security Documentation, and second, so long as no event of default or event which with the lapse of time and/or demand provided for in the Security Documentation could constitute an event of default under the Security Documentation shall have occurred and be continuing, to pay any balance promptly to the Lessor or such other person as the Lessor shall direct at such place as the Lessor shall specify in writing. The Lessee agrees to make each payment provided for herein as contemplated by this paragraph in Federal or other funds immediately available to the Vendor by 11:00 a.m., local time, on the date such payment is due.

§ 4. Term of Lease. The term of this Lease as to each Unit shall begin on the date of delivery and acceptance of such Unit hereunder and, subject to the provisions of §§ 7, 10 and 13 hereof, shall terminate on the date on which the final payment of rent in respect thereof is due pursuant to § 3 hereof. The obligations of the Lessee, the Lessor and the Beneficiary hereunder (including, but not limited to, the obligations under §§ 6, 7, 9 and 14 hereof) shall survive the expiration of the term of this Lease.

All rights and obligations of the Lessee under this Lease and in and to the Units are subject to the rights of the Vendor under the Security Documentation, provided, however, that the Lessee shall be entitled to possession and use of the Units in accordance with the second paragraph of § 12 hereof.

§ 5. Identification Marks. The Lessee will cause each Unit to be kept numbered with the identifying number set forth in Schedule A hereto, or in the case of any Unit not there listed, such identifying number as shall be set forth in any amendment or supplement hereto extending this Lease to cover such Unit, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one-half inch in height, the words "Ownership subject to a Security Agreement Filed under the Interstate Commerce Act, Section 20c", "Owned by a Bank or Trust Company under a Security Agreement Filed under the Interstate Commerce Act, Section 20c" or other appropriate words designated by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Lessor's and Vendor's title to and interest in such Unit and the rights of the Lessor under this Lease and of the rights of the Vendor under the Security Documentation. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such words shall have been so marked and will replace promptly any such markings which may be removed, defaced or destroyed. The Lessee will not change the identifying number of any Unit unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with the Vendor and the Lessor and duly filed, recorded and deposited by the Lessee in all public offices where this Lease and the Security Documentation shall have been filed, recorded and deposited and (ii) the Lessee shall have furnished the Vendor and the Lessor an opinion of counsel to such effect and to the effect that such filing and recordation will protect the interest of the Vendor and the Lessor in and to the Units and no filing, recording or deposit (or giving of notice) with any other federal, state and local government or agency thereof is necessary in order to protect the interest of the Vendor or the Lessor in and to the Units in the United States of America or any state thereof. The Units may be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates or assignees or sublessees.

Except as provided in the immediately preceding paragraph, the Lessee will not allow the name of any person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership.

§ 6. Taxes. All payments to be made by the Lessee under this Lease will be free of net expense (after giving

effect to Federal, state and local income tax benefits accruing to the Lessor and the Beneficiary) to the Lessor and the Beneficiary for collection or other charges and will be free of net expense (after giving effect to Federal, state and local income tax benefits accruing to the Lessor and the Beneficiary) to the Lessor and the Beneficiary with respect to the amount of any local, state, federal, or foreign taxes (other than any United States federal income tax payable by the Beneficiary in consequence of the receipt of payments provided for in this Lease and other than the aggregate of all state or local taxes imposed on or measured by net income based on such receipts and other than franchise taxes on Lessor's capital stock or net worth attributable to the Units or this Lease, up to the amount of any such taxes based on such receipts which would be payable to the state and locality in which the Beneficiary has its principal place of business without apportionment to any other state, except as to the amount of any such tax which the Lessor can reasonably establish 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) or license fees, assessments, charges, fines or penalties (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called impositions) 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 Security Documentation, all of which impositions the Lessee assumes and agrees to pay when due or on demand by the Lessor for any imposition payable and paid by the Lessor or the Beneficiary in addition to the payments to be made by the Lessee provided for by other Sections of this Lease. The Lessee will also pay promptly all impositions which may be imposed upon any Unit or for the use or operation thereof (except as provided above) or upon the gross receipts, income and earnings arising therefrom (except as provided above) 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 the interest of the Vendor or the Beneficiary or result in a lien upon any such Unit except for liens for taxes not yet due and payable; provided, however, that the Lessee shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal or administrative proceedings such impositions and the nonpayment thereof does not, in the reasonable opin-

ion of the Lessor and the Beneficiary, adversely affect the title, property or rights of the Lessor or the Beneficiary under this Lease or the Vendor under the Security Documentation.

In the event that the Lessor shall become obligated to make any payment to the Builder or the Vendor or otherwise pursuant to Article 6 of the Security Documentation not covered by the foregoing paragraph of this § 6, the Lessee shall pay such additional amounts (which shall also be deemed impositions hereunder) to the Lessor as will enable the Lessor to fulfill completely its obligations pursuant to said provision.

In the event that the Lessee has knowledge of any returns, statements or reports with respect to impositions which are required to be made, the Lessee will notify the Lessor and the Vendor of such requirements and make such returns, statements and reports in such manner (unless otherwise agreed by the Vendor and the Lessor) as to show the interest of the Lessor, the Beneficiary and the Vendor in such Units; provided, however, that the Lessor, and, if applicable, the Beneficiary, shall, with respect to any state or political subdivision thereof of the United States of America, file required returns, statements, and reports relating to sales or use taxes, franchise taxes, value added taxes and taxes, fees, and charges on or measured by gross receipts, income or earnings arising under this Lease, and remit the amount thereof and the Lessee shall reimburse the Lessor or the Beneficiary, if applicable, promptly upon demand for the amount of such taxes, fees and charges except as provided above.

If claim is made against the Lessor or the Beneficiary for any tax or other imposition which the Lessee is required to pay or to reimburse under this Lease, and the Lessor or the Beneficiary, as the case may be, shall have actual knowledge of such claim, such party shall give the Lessee prompt notice thereof. Upon receipt of such notice, the Lessee shall promptly and in good faith determine whether such claimed additional tax or other imposition is to be contested, and if the decision to contest is made, the Lessee shall promptly notify the Lessor of such decision and shall proceed, with due diligence and at its own expense, to contest the validity, applicability or amount of such additional tax or other imposition by whatsoever method is allowed by law that it chooses, including (a) resisting payment

thereof if practicable, (b) not paying the same except under protest, if protest is necessary and proper, or (c) if payment is made, using reasonable efforts to obtain a refund thereof in appropriate administrative or judicial proceedings. The Lessor or the Beneficiary, as the case may be, will fully cooperate with the Lessee in any such contest, including permitting the Lessee to contest the tax or imposition in the Lessor's or Beneficiary's name, as appropriate, and the Lessee agrees to promptly reimburse the Lessor or the Beneficiary, as appropriate, for all reasonable expenses incurred by the Lessor or the Beneficiary, as the case may be, in connection therewith. Notwithstanding the foregoing, a claim for additional tax or other imposition, together with any interest or penalty thereon, shall be paid (by the Lessee or with prompt reimbursement to the Lessor or the Beneficiary by the Lessee if paid by the Lessor or the Beneficiary), subject to refund proceedings, if, in the judgment of the Lessor, the Beneficiary or the Vendor, failure to pay such claim promptly would adversely affect the title, property or rights of the Lessor or the Beneficiary under this Lease or the Vendor under the Security Documentation. If the Lessor or the Beneficiary shall receive a refund of any such additional tax or other imposition which has been paid or reimbursed by the Lessee, the Lessor or the Beneficiary, as the case may be, shall promptly pay to the Lessee the amount of any such refund, together with any interest thereon received by the Lessor or the Beneficiary. Anything herein to the contrary notwithstanding, failure of the Lessor or the Beneficiary to give the Lessee prompt notice of any claim for taxes or other impositions for which the Lessee is required to pay or reimburse the Lessor or Beneficiary, as applicable, under § 6 of this Lease, shall not relieve the Lessee of its obligation to pay such tax or imposition, or reimburse the Lessor or Beneficiary, as applicable, therefor, unless such failure to give prompt notice deprives the Lessee, acting in its own name or otherwise, of the right to contest such tax or imposition. If such deprivation is limited to the right to contest the tax prior to payment, the party failing to give such notice shall not be entitled to have Lessee pay or reimburse such tax unless and until such party pays such tax or imposition and seeks a refund thereof at its own expense, and there is a final determination that such tax or imposition is not refundable.

The obligations of the Beneficiary, the Lessor and the Lessee under this § 6 shall survive the termination

of this Lease.

To the extent the Lessee may be prohibited by law from performing in its name the duties required by this § 6, the Lessor and the Beneficiary hereby authorize the Lessee to act in the Lessor's or Beneficiary's name and on the Lessor's or Beneficiary's behalf, as applicable; provided, however, that the Lessee shall indemnify and hold the Lessor and the Beneficiary harmless from and against any and all claims, costs, expenses, damages, losses and liabilities incurred in connection therewith as a result of, or incident to, any action by the Lessee pursuant to this authorization.

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

§ 7. Maintenance; Casualty Occurrences; Economic Unserviceability; Insurance. The Lessee agrees that, at its own cost and expense, it will be responsible for maintenance and repairs required to maintain and keep each Unit which is subject to this Lease in good operating order, repair and condition.

In the event that any Unit shall be or become worn out, lost, stolen, destroyed, or irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise resulting in loss of possession by the Lessee for a period of 120 consecutive days, except requisition for use by the United States Government or other governmental authority in the United States (such occurrences being hereinafter called Casualty Occurrences), prior to the return of such Unit in the manner set forth in § 14 hereof, the Lessee shall promptly and fully notify the Lessor and the Vendor with respect thereto. On the rental payment date next succeeding such notice the Lessee shall pay to the Lessor an amount equal to the rental payment or payments in respect of such Unit due and payable on such date plus a sum equal to the Casualty Value (as hereinafter defined)

of such Unit as of the date of such payment in accordance with the schedule referred to below. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft, or complete destruction of such Unit) the Lessor shall be entitled to recover possession of such Unit. The Lessor hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof, at the best price obtainable on an "as is, where is" basis. Provided that the Lessee has previously paid the Casualty Value to the Lessor, the Lessee shall be entitled to the proceeds of any sale to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess received by it from such sale to the Lessor.

The Casualty Value of each Unit as of the payment date on which payment is to be made as aforesaid shall be that percentage of the Purchase Price of such Unit as is set forth in the Schedule in item 1 of Schedule B hereto opposite such date.

The aforesaid percentages have been computed without regard to recapture of the Investment Credit (as defined in § 16 hereof). Consequently, the Casualty Value of any Unit suffering a Casualty Occurrence during the period preceding the third, fifth or seventh anniversary of the date of delivery and acceptance of such Unit shall be increased by the applicable percentage of the Purchase Price set forth in item 3 of Schedule B hereto and such additional amount, if any, shall be included within the meaning of the term "Casualty Value" as used herein. In the event there is a change in section 38 and related sections of the Code (as defined in § 16 hereof) during the term of this Lease adjusting the amount of recapture of investment credit, said percentages will be adjusted accordingly.

Whenever any Unit shall suffer a Casualty Occurrence after termination of this Lease and before such Unit shall have been returned in the manner provided in § 14 hereof, the Lessee shall promptly and fully notify the Lessor with respect thereto and pay to the Lessor an amount equal to the Casualty Value of such Unit, which shall be equal to 20% of the Purchase Price of such Unit if during the first renewal term hereof, 15% if during the second renewal term hereof, or 10% if during the third renewal term hereof. Upon the making of any such payment by the Lessee in respect

of any Unit (except in the case of the loss, theft or complete destruction of such Unit), the Lessor shall be entitled to recover possession of such Unit. The Lessor hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof, at the best price obtainable on an "as is, where is" basis. Provided that the Lessee has previously paid the Casualty Value to the Lessor, the Lessee shall be entitled to the proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Lessor.

In the event of the requisition for use by the United States Government or other governmental authority in the United States (hereinafter called the Government) of any Unit during the term of this Lease or any renewal hereof, all of the Lessee's obligations under this Lease with respect to such Unit shall continue to the same extent as if such requisition had not occurred, except that if such Unit is returned by the Government at any time after the end of the term of this Lease or any renewal hereof, the Lessee shall be obligated to return such Unit to the Lessor pursuant to § 11 or 14 hereof, as the case may be, promptly upon such return by the Government rather than at the end of the term of this Lease or any renewal hereof, but the Lessee shall in all other respects comply with the provisions of said § 11 or 14, as the case may be, with respect to such Unit. All payments received by the Lessor, the Beneficiary or the Lessee from the Government for the use of such Unit during the term of this Lease or any renewal thereof shall be paid over to, or retained by, the Lessee provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing; and all payments received by the Lessor, the Beneficiary or the Lessee from the Government for the use of such Unit after the term of this Lease or any renewal hereof, shall be paid over to, or retained by, the Lessor or the Beneficiary.

Except as hereinabove in this § 7 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit from and after delivery and acceptance thereof by the Lessee hereunder until return thereof pursuant to § 11 or § 14 hereof.

Notwithstanding any provision contained in this

Lease to the contrary, in the event that the Lessee shall in its reasonable judgment determine that the Units have become economically unserviceable for use in the Lessee's business during the original term of this Lease, the Lessee shall have the right at its option, on at least 60 days' prior written notice to the Lessor, to terminate (subject to the provisions for the survival of indemnification obligations contained in § 9 hereof) this Lease in whole as to all the Units or in part as to groups of not less than 25 of the Units under this Lease and not less than 100 of the Units in the aggregate under the other Leases being executed simultaneously herewith on the first rental payment date following the expiration of such notice period (for the purpose of this § 7 called the "termination date") provided that (i) the termination date is not earlier than September 15, 1982, (ii) on the termination date no Event of Default (or other event which after lapse of time or notice or both would become an Event of Default) shall have occurred and be continuing, (iii) on the termination date the Units shall be in the same condition as if being redelivered pursuant to § 14 hereof, (iv) the Lessee shall have delivered to the Lessor a certificate signed by its Chairman of the Board, its President or one of its Vice Presidents to the effect that such Units are economically unserviceable for use in the Lessee's business. During the period from the giving of such notice until the fifth business day preceding the termination date, the Lessee shall, and Lessee is hereby appointed by Lessor as agent for such purpose, and the Lessor may, use its best efforts to obtain bids for the purchase of the Units, and the Lessee shall at least 5 business days prior to such termination date certify to the Lessor the amount of each such bid obtained by it and the name and address of the party (which shall not be a corporation or individual affiliated with the Lessee or any party from whom the Lessee or any such affiliate intends thereafter to lease such Units) submitting such bid. On or before the termination date the Lessor shall, subject to the Lessee's obtaining, on behalf of the Lessor, any governmental consents required, sell such Units for cash to the bidder who shall have submitted the highest bid prior to the termination date; in the event Lessor fails to so sell such Units, Lessor hereby appoints Lessee its agent and attorney in fact to effect such sale. The total sales price realized at such sale shall be paid to the Lessor in immediately available funds on the termination date and, in addition, on the termination date, the Lessee shall pay to the Lessor, the excess, if any, of the Economic Obsolescence Value (as hereinafter

defined) in respect of the Units, computed as of the termination date, over the net sales price of such Units after deducting from such sales price any and all costs and expenses whatsoever incurred by the Lessor in connection with such sales. If no sale shall occur on the date scheduled therefor as above provided, this Lease shall continue in full force and effect without change. In the event of such sale and the receipt by the Lessor of the amounts above described, the obligation of the Lessee to pay rent pursuant to § 3 hereof in respect of the Units so sold on each rental payment date shall continue to and including the termination date but shall then terminate. The Lessor, in both its individual and fiduciary capacity, shall be under no duty to solicit bids, to inquire into the efforts of the Lessee to obtain bids or otherwise to take any action or incur any cost or expense in connection with any sale pursuant to this § 7, other than to transfer or to cause to be transferred to the purchaser named in the highest bid certified by the Lessee to the Lessor, as above provided, all of the Lessor's right, title and interest in and to the Units. Any sale pursuant to this § 7 shall be free and clear of all of the Lessee's rights to the Units, but otherwise shall be made without warranties other than against Lessor's acts.

The Economic Obsolescence Value of each Unit as of any rental payment date on which termination may be effected shall be that percentage of the Purchase Price of such Unit as is set forth in the Schedule in Item 2 of Schedule B opposite such rental payment date.

Subject to the provisions of § 11 and § 14 hereof, the Lessee will, at all times prior to the return of the Equipment to the Lessor, at its own expense, cause to be carried and maintained property insurance in respect of the Units at the time subject hereto, and public liability insurance comparable in amounts and against risks insured against by the Lessee in respect of similar equipment owned by it and, in any event, comparable in amounts and against risks insured against by the Lessee in respect of similar equipment leased or operated by it, but in no event shall the limits of liability of such insurance be less than $2,500,000 for any one occurrence. All policies evidencing such insurance shall contain an agreement by the insurers that such policies shall not be canceled or the amount of coverage thereof or persons covered thereunder adversely changed without at least 30 days' prior written notice to the Lessor and the Vendor by the insurers or the insurers' authorized represen-

tative, as the case may be. The benefits of such insurance shall be payable to the Vendor, the Lessor and the Lessee, as their interests may appear, so long as the indebtedness, if any, evidenced by the Security Documentation shall not have been paid in full, and thereafter to the Lessor and the Lessee as their interests may appear. Any insurance proceeds in respect of damage to or loss of the Units or condemnation payments received hereunder by the Vendor shall, subject to the provisions of the fifth paragraph of Article 7 of the Security Documentation, be invested and reinvested by the Vendor as Agent under the Participation Agreement in United States Treasury securities under a repurchase agreement for a term not in excess of 30 days with a bank which is a member of the New York Clearing House and, also subject to the provisions of the fifth paragraph of Article 7 of the Security Documentation, upon the next succeeding Payment Date, be paid to Lessor together with any earnings from such investment. If the Lessor shall receive any insurance proceeds or condemnation payments in respect of a Unit suffering a Casualty Occurrence, or any earnings from investment by the Vendor pursuant to the next preceding sentence, the Lessor shall, subject to the Lessee having made payment of the Casualty Value in respect of such Unit, pay such proceeds or condemnation payments or investment earnings to the Lessee up to an amount equal to the Casualty Value with respect to a Unit paid by the Lessee and any balance of such proceeds or condemnation payments or investment earnings shall remain the property of the Lessor. All insurance proceeds and investment earnings thereon received by the Lessor in respect of any Unit not suffering a Casualty Occurrence shall be paid to the Lessee upon proof satisfactory to the Lessor that any damage to such Unit in respect of which such proceeds were paid has been fully repaired.

The Lessor agrees that, after the Conditional Sale Indebtedness (as defined in the Security Documentation) shall have been paid in full and the original lease term shall have expired, the Lessor shall be responsible for the investment of funds referred to in the preceding paragraph during any renewal term of this Lease.

§ 8. Reports. On or before June 30 in each year, commencing with the calendar year 1976, the Lessee will furnish to the Lessor and the Vendor an accurate statement (a) setting forth as at the preceding April 30 the amount, description and numbers of all Units then leased hereunder and covered by the Security Documentation, the amount, descrip-

tion and numbers of all Units that have suffered a Casualty Occurrence during the preceding twelve months (or since the date of this Lease in the case of the first such statement) or are then undergoing repairs (other than running repairs) or then withdrawn from use pending such repairs (other than running repairs) and such other information regarding the condition and state of repair of the Units as the Lessor or the Vendor may reasonably request and (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and markings required by § 5 hereof and by the Security Documentation have been preserved or replaced. The Lessor, at its sole cost and expense, shall have the right by its agents, to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Lessor may request during the continuance of this Lease.

The Lessee will furnish to the Lessor, the Vendor, the Beneficiary and any party for whom the Vendor is acting as Agent who shall so request (1) as soon as possible and in any event within 120 days after the end of each fiscal year, a certificate signed by the President, any Vice President, the Treasurer or any Assistant Treasurer of the Lessee stating that a review of the activities of the Lessee during such year has been made under his supervision with a view to determining whether the Lessee has kept, observed, performed and fulfilled all its obligations under this Agreement, the Leases and the Consents and that to the best of his knowledge the Lessee during such year has kept, observed, performed and fulfilled each and every covenant, obligation and condition contained herein and in the Leases and the Consents, or if an Event of Default (as defined in the Lease) shall exist or if an event has occurred and is continuing which, with the giving of notice or the passage of time or both, would constitute an Event of Default, specifying such Event of Default and all such events and the nature and status thereof, (ii) as soon as available and to the extent available, and in any event within 90 days after the end of the first, second and third quarterly accounting periods in each fiscal year of the Lessee copies of the consolidated balance sheet of the Lessee as of the end of such accounting period and copies of the related statements of income and retained earnings of the Lessee for the portion of its fiscal year ended with the last day of such quarterly accounting period, all in reasonable detail and stating in comparative form the figures for the corresponding date and period in the previous fiscal year, (iii) as soon as

available, and in any event within 120 days after the end of each fiscal year, copies, in comparative form with the preceding fiscal year, of the consoldiated balance sheet of the Lessee as at the end of such fiscal year, and of the consolidated statements of income, retained earnings and the consolidated statements of Sources of Funds for Utility Plant Additions of the Lessee for such fiscal year, all in reasonable detail and stating in comparative form the consolidated figures as of the end of and for the previous fiscal year, and accompanied by an opinion thereon of independent certified public accountants of recognized national standing selected by the Lessee which opinion shall state that such financial statements have been prepared in accordance with generally accepted accounting principles, consistently applied (except for changes in application in which such accountants concur) and that the examination of such accountants in connection with such financial statements has been made in accordance with generally accepted auditing standards and accordingly included such tests of the accounting records and such other auditing procedures as were considered necessary in the circumstances, (iv) promptly upon the filing of the same, the annual reports of the Lessee under the Securities Exchange Act of 1934, and (v) from time to time such other information as the Lessor may reasonably request. The Lessee will furnish the Lessor from time to time on request such information as the Lessee or the Lessor may be required to furnish to any person pursuant to the Security Documentation. The Lessor shall have the right, at its expense, during the term of this Lease to discuss the affairs, finances and accounts of the Lessee with, and to be advised as to the same by, its officers and employees, at such reasonable times and intervals as the Lessor may desire.

§ 9. Disclaimer of Warranties; Compliance with Laws and Rules; Indemnification. AS BETWEEN LESSOR AND LESSEE, THE LESSEE TAKES THE EQUIPMENT AS IS FROM THE LESSOR AND THE LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS DELIVERED TO THE LESSEE HEREUNDER, 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, OR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT, EITHER UPON DELIVERY THEREOF TO THE LESSEE OR OTHERWISE, it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee; but the Lessor hereby irrevo-

cably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for the account of the Lessor and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Lessor may have against the Builder under the provisions of Items 3 and 4 of Annex A of the Security Documentation and under documents delivered pursuant to § 4 of Agreement and Assignment relating hereto; provided, however, that if at any time an Event of Default shall have occurred and be continuing, the Lessor may assert and enforce, at the Lessee's sole cost and expense, such claims and rights. The Lessor shall have no responsibility or liability to the Lessee or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Units or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of any Units or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Units. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Lessor that the Units described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters. Lessor agrees with the Lessee that it will not accept Equipment other than pursuant to a sale meeting the conditions of § 4 of the Agreement and Assignment relative hereto.

The Lessee agrees, for the benefit of the Lessor and the Vendor, to comply in all respects (including without limitation, with respect to the use, maintenance and operation of each Unit) with all applicable laws of the jurisdictions in which its operations involving the Units may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units, and in the event that, prior to the expiration of this Lease or any renewal thereof, such laws or rules require any alteration, replacement,

addition or modification of or to any part on any Unit, the Lessee will conform therewith at its own expense; provided, however, that the Lessee may at its own expense, 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 under this Lease or under the Security Documentation. The Lessee, at its own cost and expense, may furnish additions, modifications and improvements to the Units during the term of this Lease provided that such additions, modifications and improvements are readily removable without causing material damage to the Units. The additions, modifications and improvements made by the Lessee under the preceding sentence shall be owned by the Lessee, unless made pursuant to, or required by, the first sentence of this paragraph, the first sentence of § 7, § 11 or § 14 of this Lease.

Except as otherwise provided, the Lessee agrees to indemnify, protect and hold harmless respectively and severally the Vendor, each Investor, the Beneficiary and the Owner Trustee (in both its individual and fiduciary capacities) from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including, but not limited to, counsel fees and expenses, patent liabilities, penalties and interest, arising out of or as the result of the entering into or the performance of, or the occurrence of a default under the Consent, an Event of Default under this Lease or an event of default under the Security Documentation, or a default under the Participation Agreement chargeable to Lessee, or the ownership, ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any Unit pursuant to this Lease, the Participation Agreement or the Security Documentation, or any accident in connection therewith resulting in damage to property or injury or death to any person, or the transfer of title to the Equipment by Vendor pursuant to any provision of the Security Documentation; provided, however, that the foregoing indemnification shall not apply to the Purchase Price or the obligations and agreements contained in paragraph 12 of the Participation Agreement or the overhead expenses of any person or attorneys' fees in connection with the preparation of the documentation for this transaction or related to the closings thereunder or any failure of payment of any of the principal or interest on the Conditional Sale Indebtedness. The indemnities arising

under this paragraph shall continue in full force and effect notwithstanding the full payment of all obligations under this Lease or the expiration or termination of this Lease.

In the event that there are any gains, losses, liabilities or expenses arising out of or resulting from the Investments made pursuant to Paragraph 9 of the Participation Agreement, including, but not limited to, any deficiency in respect thereof, the Lessee agrees that each rental payment due thereafter in respect of Units acquired after such deficiency arose shall be increased or decreased by such amount as, in the reasonable opinion of the Lessor, will cause the Lessor's net return (after giving effect to the payment of such losses, liabilities or expenses) to equal the net return (computed on the same assumptions used by the Lessor in originally evaluating this transaction) that would have been available to the Lessor if the Lessor had not been required to pay or receive such gains, losses, liabilities or expenses; provided, however, that no such adjustment shall reduce the amount of rental below that which is necessary to satisfy the obligation of the Lessor to pay the Purchase Price, and interest thereon, for the Units under the Security Documentation, notwithstanding any limitations of liability of the Lessor contained therein.

The Lessee agrees to prepare and deliver to the Lessor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor) any and all reports (other than tax returns) 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.

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

A. default shall be made in payment of any amount provided for in §§ 3, 7 or 13 hereof, and such default shall continue for ten business days after notice thereof is given to the Lessee;

B. the Lessee shall make or permit any unauthorized assignment or transfer of this Lease, or any interest herein, or of the right to possession of the

Units, or any thereof;

C. default shall be made in the observance or performance of any other of the covenants, conditions and agreements contained herein (other than in the tax representations and warranties in § 16 hereof), in the Consent or in the Participation Agreement by the Lessee, and such default shall continue for 30 days after written notice from the Lessor or the Vendor to the Lessee specifying the default and demanding that the same be remedied;

D. (i) a voluntary petition in bankruptcy or for reorganization under the Bankruptcy Act, as now constituted or as hereafter amended, shall be filed by the Lessee or (ii) an involuntary petition in bankruptcy or for reorganization under the Bankruptcy Act, as now constituted or as hereafter amended, shall be filed against the Lessee, 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) within 60 days after each petition shall have been filed;

E. (i) any other voluntary proceedings shall be commenced by the Lessee for any relief which includes, or might result in, any modification of the obligations of the Lessee hereunder or under the Consent, under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions, or extensions (other than a law which does not permit any readjustments of the obligations of the Lessee hereunder or under the Consent) or (ii) an involuntary proceeding of the type referred to in clause (i) of this subparagraph (D) shall be commenced against the Lessee, unless such proceeding 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) within 60 days after such proceeding shall have been commenced;

F. any representation or warranty made by the Lessee in this Lease or the Participation Agreement or in any document or certificate furnished the Lessor in connection herewith or pursuant hereto shall prove

to be incorrect at any time in any material respect and such condition shall continue unremedied for a period of 15 days after written notice thereof by the Lessor to the Lessee specifying the default and demanding that the same be remedied;

G. if (i) any obligations of the Lessee in excess of $500,000 in the aggregate for the payment of borrowed money (with respect to either principal or interest), for the deferred purchase price of property or for the payment of rent or hire under any lease shall not be paid when the same becomes due whether by acceleration or otherwise after the expiration of any applicable grace period, or shall be declared due and payable prior to the maturity thereof, (ii) the Lessee shall default in the performance of any other term, agreement, covenant or condition contained in any agreement or instrument under or by which any such obligation is created, evidenced or secured, if the effect of such default is to cause, or permit the holder or holders of such obligation (or a trustee on behalf of such holder or holders) to cause any such obligations in excess of $500,000 in the aggregate to become due prior to its stated maturity, or (iii) final judgments for the payment of money in excess of $500,000 in the aggregate shall be rendered against the Lessee and the same shall remain undischarged for a period of 60 days during which execution of such judgment shall not be effectively stayed, and if, after the occurrence of any of the events specified in clauses (i), (ii) or (iii) of this sentence, (x) within 15 days after receipt by the Lessee of notice from the Vendor or notice from the Lessor after the Conditional Sale Indebtedness has been paid in full, the Lessee shall not have retained American Appraisal Co. or, if American Appraisal Co. is not available to act, another independent appraiser which each of the Investors shall have notified Lessee is acceptable to each of them in the aforesaid notice, to determine if the Units are being maintained in compliance with the first paragraph of § 7 hereof and (y) within 45 days after retaining such appraiser the Lessee shall not have delivered to the Vendor a report of said independent appraiser to the effect that the appraisal was conducted in accordance with generally accepted appraisal techniques and the Units are being so maintained; or

H. an Event of Default shall have occurred under any of the Leases of Railroad Equipment dated as of the date hereof between the Lessee and the Lessor as trustee for the Other Beneficiaries;

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

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

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as herein provided; and thereupon the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units, the Lessee hereby agreeing to use its best efforts to permit the Lessor to have such access to the Equipment as will permit the Lessor to exercise such remedies, and thenceforth hold, possess, sell, operate, lease to others and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever and without any duty to account to the Lessee for such action or inaction or for any proceeds arising therefrom; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee as damages for loss of the bargain and not as a penalty, whichever of the following amounts the Lessor, in its sole discretion, shall specify: (x) a sum, with respect to each Unit, equal to (A) the excess of the present value, at the time of such termination, of the entire unpaid balance of all rental 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 the then present value of the rental which the Lessor reasonably estimates to be obtainable for the Unit during such period, such present value to be computed in each case on the basis of a 10-1/2% per annum discount, compounded semiannually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, provided, however, that in the event that the Lessor shall have rented any Unit, then the reasonably estimated rental with respect to any such rental period shall be equal to that rental actually obtained by Lessor during such rental period, plus (B) to the extent not paid pursuant to § 16 hereof, an amount which, after deduction of all taxes required to be paid by the Beneficiary in respect of the receipt thereof under the laws of any Federal, state or local government or taxing authority of the United States of America or under the laws of any taxing authority or governmental subdivision of a foreign country, shall, in the reasonable opinion of the Beneficiary, be equal to all or such portion of the Investment Credit (as defined in § 16 hereof) lost, not claimed, not available for claim, disallowed or recaptured by or from the Beneficiary as a direct or indirect result of the breach of one or more of the representations, warranties and covenants made by the Lessee in § 16 or any other provision of this Lease or the sale or other disposition of the Lessor's interest in any Unit after the occurrence of an Event of Default, plus such sum as shall cause the Beneficiary's net return under this Lease to be equal to the net return that would have been available to the Beneficiary if it had been entitled to utilization of all or such portion of the ADR Deduction and the Interest Deduction (as such deductions are defined in § 16 hereof) which was lost, not claimed, not available for claim or disallowed or recaptured in respect of a Unit as a direct or indirect result of the breach of one or more of the representations, warranties and covenants made by the Lessee in § 16 or any other provision of this Lease, the inaccuracy of any statement in any letter or document furnished to the Lessor by the Lessee, the termination of this Lease, the Lessee's loss of the right to use such Unit, any action or inaction by the Lessee or the sale or other disposition of the Lessor's interest in such Unit after the occurrence of an Event

of Default plus such sum as will pay or reimburse the Beneficiary for any interest, penalties or additions to tax incurred in connection with such loss, failure to claim, inability to claim, disallowance or recapture; or (y) an amount equal to the excess, if any, of the Casualty Value as of the rental payment date on or next preceding the date of termination over the amount the Lessor reasonably estimates to be the sales value of such Unit at such time; provided, however, that in determining any such amounts, or any component thereof, where actual values exist they shall be utilized and provided, further, that in the event the Lessor shall have sold any Unit, the Lessor, in lieu of collecting any amounts payable to the Lessor by the Lessee pursuant to the preceding clauses (x) and (y) of this clause (b) with respect to such Unit, shall demand that the Lessee pay the Lessor and the Lessee shall pay to the Lessor on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty Value for such Unit, as of the rental payment date on or next preceding the date of termination over the net proceeds of such sale.

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

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

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

§ 11. Return of Units Upon Default. If this Lease shall terminate pursuant to § 10 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor. Each Unit so delivered shall be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted. For the purpose of delivering possession of any Unit or Units to the Lessor as above required, the Lessee shall at its own cost and expense:

(a) forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any Unit or Units have been interchanged to return the Unit or Units so interchanged) place such Units upon such storage tracks as the Lessee reasonably may designate or in the absence of such designation, as the Lessor may designate;

(b) permit the Lessor to store such Units on such tracks for sixty days without charge for insurance, rent or storage; and

(c) prepare the same for shipment within thirty days to the nearest carrier for shipment, all as directed by the Lessor.

The assembling, storage, insurance and preparation of the Units as hereinbefore provided shall be at the expense of the Lessee 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, store, insure and prepare the Units. The Lessor and the Beneficiary shall bear all risk and liability from all losses, damages, injuries, liabilities, claims and demands whatsoever, and expenses in connection therewith, including without limitation counsel fees and expenses, penalties and interest, from and after the time that the Units shall be shipped by the Lessor, or after the end of said sixty-day storage period if the Units shall not have been shipped theretofore,

and arising out of or as a result of the ownership, acquisition, purchase, use, operation, condition, storage, delivery or return of any Unit or otherwise or any accident related thereto and the Lessor and the Beneficiary agree to indemnify, protect and hold harmless the Lessee therefrom, it being agreed that such indemnity shall continue in full force and effect notwithstanding the full payment of all obligations under this Lease or the expiration or termination of the term of this Lease. During any storage period up to the aforesaid 60-day maximum, the Lessee will, at its own cost and expense, insure, maintain and keep the Equipment in good order and repair and will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Unit, to inspect the same. All amounts earned in respect of the Units after the date of termination of this Lease shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor net of expenses.

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

§ 12. Assignment; Possession and Use. This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. All the rights of the Lessor hereunder (including, but not limited to, the rights under §§ 6, 7, 9, 10 and 16 and the rights to receive the rentals payable under this Lease) shall inure to the benefit of the Beneficiary's and the Lessor's assigns, including the Vendor; and if this Lease is assigned to the Vendor the fact that the Vendor is specifically named herein in certain provisions shall not be construed as limiting the rights assigned to the Vendor pursuant to such assignment.

So long as no Event of Default shall exist under this Lease, the Lessee shall be entitled to the possession of the Units and to the use of the Units by it or any affiliate of the Lessee in accordance with the terms hereof and the

Lessee may also (a) furnish the Units or any thereof to railroad companies for use upon lines of railroad owned or operated by them or upon lines of railroad over which they have trackage or other operating rights, and connecting and other carriers in the usual interchange of traffic or to others than railroad companies for use in their business, (b) assign this Lease to an affiliate or with the prior written consent of the Lessor and the Investors under the Participation Agreement, which consent shall not be unreasonably withheld, to a nonaffiliate or (c) sublet all or any of the Units, but only, in either case, upon and subject to all the terms and conditions of this Lease and the Security Documentation; provided, however, in the event the Lessee assigns this Lease to an affiliate or nonaffiliate the Lessee shall in all events and all causes remain responsible and liable for all obligations of such assignee under the Lease. The Lessee may receive and retain compensation for such use from any railroads so using any of the Units. Neither the Lessee, any sublessee nor assignee shall assign or permit the assignment of any Unit to service involving the regular operation and maintenance outside the United States.

Nothing in this § 12 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 incorporated under the laws of any state of the United States of America or the District of Columbia (which shall have duly assumed the obligations of the Lessee hereunder and under the Participation Agreement and the Consent (as defined in the Security Documentation)) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety, provided that such assignee or transferee will not, upon the effectiveness of such merger, consolidation or acquisition, be in default under any provision of this Lease.

§ 13. Purchase and Renewal Options. Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may by written notice delivered to the Lessor not less than six months prior to the end of the original term or any renewal term of this Lease, as the case may be, elect (a) to purchase some or all of the Units covered by this Lease at the end of the original term or such renewal term of this Lease for a purchase price equal to the "Fair Market Value" of such Units as of the end of such term and/or (b) to renew

this Lease in respect of all or some, but in no event fewer than twelve and, if less than all, in no event more than twelve Units less than the aggregate number of the Units then covered by this Lease and not purchased pursuant to clause (a), for one or more of three consecutive additional five-year periods commencing on the scheduled expiration of the original term or any renewal term of this Lease, as the case may be, provided that no such renewal term extends beyond fifteen years from the date of the expiration of the original term of the Lease, at a rental equal to the "Fair Market Rental" of such Units at the time of such renewal payable in arrears, in 10 semiannual payments for each five-year period; such semiannual payments to be made on March 15 and September 15 in each year of the applicable renewal term.

Fair Market Value or Fair Market Rental shall be determined on the basis of, and shall be equal in amount to, the value or rental at the time of such renewal which would obtain in an arm's-length transaction between an informed and willing buyer-user or lessee, as the case may be (other than (i) a lessee currently in possession or (ii) a used-equipment dealer) and an informed and willing seller or lessor, as the case may be, under no compulsion to sell or 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 or any renewal term hereof, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Value or Fair Market Rental, as the case may be, of the relevant Units, such value or rental shall be determined in accordance with the foregoing definitions by the following procedure: If either party to such determination shall have given written notice to the other requesting determination of such value or rental by this appraisal procedure, the parties shall consult for the purpose of appointing a qualified independent appraiser by mutual agreement. If no such appraiser is so appointed within 20 business days after such notice is given, each party shall appoint an independent appraiser within 25 business days after such notice is given, and the two appraisers so appointed shall within 35 business days after such notice is given appoint a third independent appraiser. If no such third appraiser is appointed within 35 business days after such notice is given, either party may apply, to make such appointment, to the American Arbitration Association, and

both parties shall be bound by any appointment so made. Any appraiser or appraisers appointed pursuant to the foregoing procedure shall be instructed to determine the Fair Market Value or Fair Market Rental, as the case may be, of the relevant Units within 90 days after his or their appointment. If the parties shall have appointed a single appraiser or if either party shall have failed to appoint an appraiser, the determination of Fair Market Value or Fair Market Rental, as the case may be, of the single appraiser appointed shall be final. If three appraisers shall be appointed, the determination of the appraiser which differs most from the other two appraisers shall be excluded, the remaining two determinations shall be averaged and such latter average shall be final and binding upon the parties hereto as the Fair Market Value or Fair Market Rental, as the case may be. The appraisal proceedings shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association as in effect on the date hereof, except as modified hereby. The provision for this appraisal procedure shall be the exclusive means of determining Fair Market Value or Fair Market Rental, as the case may be, and shall be in lieu of any judicial or other procedure for the determination thereof, and each party hereto hereby consents and agrees not to assert any judicial or other procedures. The expenses of the appraisal procedure shall be borne equally by the Lessee and the Lessor.

In the event the Lessee elects to purchase any Units, upon payment of the purchase price, the Lessor shall upon request of the Lessee execute and deliver to the Lessee, or to the Lessee's assignee or nominee, a bill of sale (without warranties except as to Lessor's acts) for such Unit such as will transfer to the Lessee such title to such Unit as the Lessor derived from the Vendor, free and clear of all liens, security interests and other encumbrances arising through the Lessor.

In order to avoid any inadvertent loss of any right to purchase the Equipment as provided in this Section, if Lessee shall fail to give timely notice of its election of any such right unless Lessee shall have given affirmative disavowal of such right, Lessee's right to purchase shall nevertheless continue as shall the term of Lease then in effect (under the same terms and conditions as theretofore in effect) until ten (10) days after Lessor shall have given to Lessee written notice of the nonreceipt of such timely notice. Lessee may exercise its right to purchase at any time until the expiration of such ten (10) day period by

giving Lessor written notice of its election to purchase, which such notice shall have the same force and effect as hereinabove provided without other action by Lessor or Lessee, the same as if such notice had been timely given by Lessee. If Lessee fails to exercise its right to purchase within such ten (10) day period, the term of Lease then in effect upon the expiration of such ten (10) day period shall continue under the same terms and conditions as theretofore in effect for one hundred eighty (180) days, except that rental payments will be at the daily equivalent of the rental rent.

In order to avoid any inadvertent loss of any right to renew this Lease as provided in this Section, if Lessee shall fail to give timely notice of its election of any such right unless Lessee shall have given affirmative disavowal of such right, Lessee's right to renew shall nevertheless continue as shall the term of Lease then in effect (under the same terms and conditions as theretofore in effect) until ten (10) days after Lessor shall have given to Lessee written notice of the nonreceipt of such timely notice. Lessee may exercise its right to renew at any time until the expiration of such ten (10) day period by giving Lessor written notice of its election to renew, whereupon this Lease shall be renewed as hereinabove provided without other action by Lessor or Lessee, the same as if such notice had been timely given by Lessee. If Lessee fails to exercise its right to renew within such ten (10) day period, the term of Lease then in effect upon the expiration of such ten (10) day period shall continue under the same terms and conditions as theretofore in effect for one hundred eighty (180) days, except that rental payments will be at the daily equivalent of the rental rate.

§ 14. Return of Units upon Expiration of Term. The Lessor intends to retain the Units for re-lease at the expiration of the term of this Lease. As soon as practicable on or after the expiration of the original or any renewal term of this Lease with respect to any Unit not purchased by the Lessee, the Lessee will, at its own cost and expense, at the request of the Lessor, deliver possession of such Unit to the Lessor upon such storage tracks as the Lessee may designate, or, in the absence of such designation, as the Lessor may select, and permit the Lessor to store such Unit on such tracks for a period not exceeding 30 days and prepare the same for shipment, at any time within such 30 days, to the nearest carrier for shipment, as directed by

the Lessor, the assembling, storage and preparation of such Units to be at the expense of the Lessee. During such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser, lessee or user of such Unit, to inspect the same. The Lessor and the Beneficiary shall bear all risk and liability from all losses, damages, injuries, liabilities, claims and demands whatsoever and expenses in connection therewith, including without limitation counsel fees and expenses, penalties and interest, from and after the expiration of the original or any renewal term of this Lease with respect to any Unit not purchased by the Lessee arising out of or as a result of the ownership, acquisition, purchase, use, operation, condition, storage, delivery or return of any Unit or otherwise or any accident related thereto and the Lessor and the Beneficiary agree to indemnify, protect and hold harmless the Lessee therefrom, it being agreed that such indemnity shall continue in full force and effect notwithstanding the full payment of all obligations under this Lease or the expiration or termination of the term of this Lease. Each Unit returned to the Lessor pursuant to this § 14 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted, and (ii) meet the standards then in effect under the Interchange Rules of the Association of American Railroads and/or the applicable rules of any governmental agency or other organization with jurisdiction. The assembling, storage and preparation 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, store and prepare the Units. All amounts earned in respect of the Units after the date of termination of this Lease shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor net of expenses.

§ 15. Recording. The Lessee, at its own expense, will cause this Lease, the Security Documentation 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 undertake the filing, registering, deposit, and recording required of the Lessor under the Security Documentation and will from time to time do and perform any other act and will execute,

acknowledge, deliver, file, register, record (and will refile, reregister, deposit and redeposit or rerecord whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Vendor for the purpose of proper protection, to their satisfaction, of the Vendor's and the Lessor's respective interests in the Units, or for the purpose of carrying out the intention of this Lease, the Security Documentation and the assignment thereof to the Vendor; and the Lessee will promptly furnish to the Vendor and the Lessor evidence of all such filing, registering, depositing or recording, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Vendor and the Lessor. This Lease and the Security Documentation shall be filed and recorded with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Unit.

§ 16. Federal Income Taxes.

(a) Tax Ruling and Indemnification. It is the intent of the parties to the Lease that it will be recognized as a lease for all Federal, State, city and local income taxes or franchise taxes imposed on or measured by net income, and that this Lease does not convey to the Lessee any right, title or interest in the Units except as lessee and that for United States income tax purposes (and to the extent applicable for state and local tax purposes), the Beneficiary as the beneficial owner of the Units, shall be entitled to such deductions, credits and other benefits as are provided by the Internal Revenue Code of 1954, as amended to the date hereof (herein called the Code), to an owner of property, including, without limitation, the maximum depreciation deduction with respect to the Units authorized under section 167 of the Code based on the aggregate Purchase Price of the Units utilizing the 12-year depreciable life prescribed for the Units in the Asset Guideline Class No. 00.25 in accordance with section 167(m) of the Code employing the double declining balance method of depreciation, switching to the sum of the years-digits method when most beneficial to the Beneficiary [utilizing the half-year convention as provided in Reg. Sec. 1.167(a)-11(c)(2)(iii) and without taking into account the salvage value of the Units until the Units have been depreciated to a salvage value that is not greater than 10% of their basis to the Beneficiary (said 10% being based upon an estimated gross salvage value of 20% of the basis of the Units which will be reduced by 10% of such basis as provided in section 167(f) of the Code)]

(such deduction being herein called the ADR Deduction), deductions with respect to interest payable under the Security Documentation pursuant to section 163 of the Code (such deduction being herein called the Interest Deduction), and the 10% investment credit (herein called the Investment Credit) with respect to the aggregate Purchase Price of the Units pursuant to section 38 and related sections of the Code.

The Lessee agrees that neither it nor any corporation controlled by it, in control of it, or under common control with it, directly or indirectly, will at any time take any action or file any returns or other documents inconsistent with the foregoing or which would increase the amount of rentals required to be taken into income by the Beneficiary over the amount specified to be payable under this Lease on the dates due hereunder, except as specifically provided in this Lease, and that each of such corporations will file such returns, take such actions and execute such documents as may be reasonable and necessary to facilitate accomplishment of the intent hereof. The Lessee agrees to keep and make available for inspection and copying by the Lessor and the Beneficiary such records as will enable the Beneficiary to determine the extent to which it is entitled to the benefit of the Investment Credit and the ADR Deduction with respect to the Units.

The Lessee represents and warrants that (i) all the Units constitute property the full Purchase Price of which qualifies for the Investment Credit under sections 38, 46, 48 and 50 of the Code; (ii) at the time the Beneficiary becomes the beneficial owner of the Units, the Units will constitute "new section 38 property" within the meaning of sections 46 and 48 of the Code and at the time the Beneficiary becomes the beneficial owner of the Units, the Units will not have been used by any person so as to preclude "the original use of such property" within the meaning of sections 48(b) and 167(c)(2) of the Code from commencing with the Beneficiary; (iii) at all times during the term of this Lease, each Unit will constitute "section 38 property" within the meaning of section 48(a) of the Code, and the Lessee will not at any time during the term of this Lease use or fail to use any Unit in such a way as to disqualify it as "section 38 property" within the meaning of section 48(a) of the Code; (iv) for Federal income tax purposes, all amounts includible in the gross income of the Beneficiary with respect to the Units and all deductions allowable to

the Beneficiary with respect to the Units will be treated as derived from, or allocable to, sources within the United States; and (v) the Lessee will maintain sufficient records to verify such use, which records will be furnished to the Lessor within 30 days after receipt of a written demand therefor.

If (i) for any reason (including the inaccuracy in law or in fact of the representations and warranties set forth in the preceding paragraph or any act or omission of the Lessee or the inaccuracy of any statement in any letter or document furnished to the Beneficiary by the Lessee in connection with an application to the Internal Revenue Service for a ruling (hereinafter called the Ruling) or otherwise prior to the Beneficiary's receipt of a favorable Ruling to the effect that the Beneficiary is the beneficial owner of the Units and has the right to claim the Investment Credit, the ADR Deduction and the Interest Deduction or (ii) by reason of the inaccuracy in law or in fact of the representations and warranties set forth in the preceding paragraph or any act or omission of the Lessee (including, but not limited to, the failure of the Lessee to furnish the notice to the Lessor contemplated by the penultimate paragraph of subsection (b) of this § 16 or any inaccuracy in such notice) or the inaccuracy of any statement in any letter or document furnished to the Beneficiary by the Lessee in connection with any application for the Ruling, the Beneficiary shall lose, or shall not have, or shall lose the right to claim, or shall suffer a disallowance of or shall be required to recapture all or any portion of the Investment Credit, the ADR Deduction, or the Interest Deduction with respect to all or part of any Unit or if for Federal income tax purposes any item of income, loss or deduction with respect to any Unit is treated as derived from, or allocable to, sources without the United States under the Code (any such loss, disallowance, recapture or treatment being hereinafter called a Loss), then the rentals for the Units set forth in § 3 hereof shall, beginning with the next succeeding rental payment date after written notice to the Lessee by the Beneficiary of such fact, be increased to such amount or amounts as shall, in the reasonable opinion of the Beneficiary, cause the Beneficiary's net return (calculated on the same basis as used by the Beneficiary in originally evaluating this transaction) to equal the net return that would have been realized by the Beneficiary if such Loss had not occurred, and the Lessee shall forthwith pay to the Lessor as additional rental the amount of any interest

and/or penalties which may be assessed by the United States of America against the Beneficiary attributable to such Loss; provided, however, that such rental rate shall not be so increased if the Beneficiary shall have suffered such Loss with respect to all or part of such Unit as a direct result of the occurrence of any of the following events:

(i) a Casualty Occurrence with respect to such Unit or the termination of this Lease pursuant to § 7 hereof, if the Lessee shall have paid to the Lessor the amounts stipulated under § 7 hereof;

(ii) a voluntary transfer or other voluntary disposition by the Lessor or the Beneficiary of any interest in such Unit or this Lease or the voluntary reduction by the Lessor or the Beneficiary of its interest in the rentals from such Unit under the Lease (other than pursuant to the assignment of this Lease to the Vendor), unless, in each case, an Event of Default shall have occurred and be continuing;

(iii) the failure of the Beneficiary to claim in a timely or proper manner the Investment Credit, the ADR Deduction or the Interest Deduction;

(iv) the failure of the Beneficiary to have sufficient liability for Federal income tax against which to credit all such Investment Credit or sufficient taxable income (before taking into account the ADR Deduction or the Interest Deduction) to benefit in full from the ADR Deduction or the Interest Deduction, as applicable; or

(v) the failure of the Beneficiary to timely contest a claim with respect to its income tax liability which, if successful, would under this § 16(a) lead to increased rental payments by the Lessee, after having received a timely written request from the Lessee, as hereinafter provided for in this § 16(a), to contest such claim.

If the deductions, credits or other benefits to which the Owner is entitled are increased or decreased by a change in law (other than a change in income tax rates) that is effective prior to the later of the receipt of a Ruling with respect to the matter affected by the change (or December 31, 1975, if no Ruling is received by that date) or the delivery of the units of Equipment which are affected

by the change, the rental, Casualty Value and Economic Obsolescence Value under the Lease shall be adjusted appropriately by agreement of the Beneficiary, the Lessor, the Lessee and the Vendor so that the Beneficiary's net return shall not be increased or decreased by reason of such change.

In the event the rental rates shall be increased or decreased as provided in this § 16, the Casualty Values set forth in § 7 hereof shall be increased or decreased accordingly; provided, however, that no such adjustment shall reduce the amount of rental below that which is necessary to satisfy the obligation of the Lessor to pay or prepay the Purchase Price, and interest thereon, for the Units under the Security Documentation, notwithstanding any limitations of liability of the Lessor contained therein.

If a claim shall be made by the Internal Revenue Service or any state or local taxing authorities with respect to the income tax liability of the Beneficiary which, if successful, would under this § 16(a) lead to increased rental payments by the Lessee, the Beneficiary shall give prompt notice of such claim to the Lessee and shall take such action to contest such claim as the Lessee shall reasonably request in writing from time to time, provided that within 30 days after notice by the Beneficiary to the Lessee of such proposed adjustment, the Lessee shall request that such adjustment be contested. The Beneficiary may in its discretion forego any administrative appeal within the Internal Revenue Service in respect of such claim and may, at its option, either pay the tax claimed and sue for refund in the appropriate United States District Court or in the United States Court of Claims, as the Beneficiary may elect, or contest such claim in the United States Tax Court, considering, however, in good faith such request as the Lessee may make concerning the most appropriate forum in which to proceed; provided, however, that the final decision as to selection of the forum shall be solely the Beneficiary's. If the Beneficiary pays the tax claimed and sues for refund, subsequent rental payments by the Lessee shall be increased so as to maintain the Beneficiary's net return in the manner and to the extent provided in this § 16(a), and the Lessee shall forthwith pay to the Lessor as additional rental the amount of any interest and/or penalty assessed against the Beneficiary with respect to such additional income tax. If the Beneficiary receives a refund, it shall forthwith pay to the Lessee any interest thereon paid by the taxing jurisdiction, and the rentals for the Units shall, beginning

with the next rental payment due after receipt by the Beneficiary of such refund, be decreased to such amount or amounts as shall, in the reasonable opinion of the Beneficiary, cause the Beneficiary's net return over the term of this Lease (calculated on the same basis as used by the Beneficiary in originally evaluating this transaction) to equal the net return that would have been realized by the Beneficiary if additional income taxes of the Beneficiary in the amount refunded had not been paid. Any such contest shall be at the sole expense of the Lessee, and the Lessee agrees to pay to the Beneficiary on demand any expense incurred by the Beneficiary in connection with such contest.

The Lessee's and the Lessor's agreements to pay any sums which may become payable pursuant to this § 16 shall survive the expiration or other termination of this Lease.

The Beneficiary, at its sole expense, will apply for and diligently seek the Ruling. The Lessee will join in any request for such Ruling, and will furnish such documents, records and representations (including, but not limited to, evidence of the useful life and residual value of the Units sufficient to support the matters claimed in such request) as shall be deemed necessary and appropriate for such request by the Lessor or Lessee.

(b) Rental Adjustment For Lessee's Capital Expenditures. In the event and to the extent that the cost of any improvement and/or addition (hereinafter called Capital Expenditures) to a Unit made by the Lessee, under and pursuant to the terms of this Lease or otherwise, is required to be included in the gross income of the Beneficiary for Federal income tax purposes at any time prior to the time such Unit is disposed of in a taxable transaction, then the rentals for the Units set forth in § 3 hereof shall, beginning with the next succeeding rental payment date after the date on which the Lessee is required to furnish written notice thereof to the Beneficiary pursuant to the penultimate paragraph of this subsection (b) after said inclusion in the Beneficiary's gross income is required, be increased to such amount or amounts as shall, in the reasonable opinion of the Beneficiary, after taking into account any present or future tax benefits that the Beneficiary reasonably anticipates it will derive from its additional investment in the Units (including without limitation any available current deduction, current and future depreciation deductions and

investment tax credit), cause the Beneficiary's net return (calculated on the same basis as used by the Beneficiary in originally evaluating this transaction) to equal the net return that would have been realized by the Beneficiary if the cost of such Capital Expenditures had not been includible in the Beneficiary's gross income.

In determining the present or future tax benefits to be taken into account by the Beneficiary in establishing the rental increase required hereby, the Beneficiary shall attempt to maximize such benefits and hence minimize the increase in rents by making such elections (including where advantageous the applicable asset guideline repair allowance and accelerated depreciation, if then permitted) and utilizing such conventions and accounting methods as will further such objectives; provided, however, that the Beneficiary shall not be required to make any election or utilize a particular convention or accounting method if the Beneficiary determines, in its sole discretion but in good faith, that in so doing it will adversely affect its Federal income tax liability determined without regard to this transaction.

For purposes of this subsection the cost of Capital Expenditures made by the Lessee shall be deemed to be "required to be included in the gross income of the Beneficiary for Federal income tax purposes" if such inclusion is required by (i) any private ruling letter issued to the Beneficiary by the Internal Revenue Service that has not been revoked or otherwise rendered inapplicable at the time the cost of said Capital Expenditures is incurred; (ii) any provision of the Code or the applicable regulations enacted or adopted after the date of this Lease; or (iii) any published revenue ruling of the Internal Revenue Service issued after the date of this Lease which has not been held invalid by a court having appellate jurisdiction over the Federal income tax liability of the Beneficiary in a decision which has become final.

The Beneficiary agrees that it will, upon the written request and at the sole expense of the Lessee, (A) seek a modification of any private ruling letter described in (i) of the preceding paragraph to eliminate the requirement that the cost of Capital Expenditures be included in the Beneficiary's gross income and (B) contest the inclusion of the cost of Capital Expenditures in its gross income if such inclusion is required for reasons described in (ii) or (iii) (but not in (i)) of the preceding paragraph in

such forum as it, in its sole judgment but with due regard to the Lessee's advice, shall select; provided, however, that the Beneficiary shall not be required to contest such inclusion unless it has received an opinion from counsel selected by the Lessee and acceptable to the Beneficiary that there is a reasonable basis for contesting such inclusion. The Lessee agrees to pay the Beneficiary, on demand, the amount of any expense incurred by the Beneficiary in connection with such contest.

The Lessee agrees that, within 30 days after the close of any calendar year (or in the event the Beneficiary gives the Lessee written notice that the Beneficiary's taxable year closes on a date specified therein other than December 31, within 30 days after said date) in which the Lessee has made Capital Expenditures which the Lessee believes are, or are of a type which it has been advised by the Lessor may be, required to be included in the gross income of the Beneficiary for Federal income tax purposes prior to the time such Unit is disposed of in a taxable transaction, the Lessee will give written notice thereof to the Beneficiary describing such Capital Expenditures in reasonable detail and specifying the cost thereof with respect to each Unit.

For purposes of this § 16, the term "Beneficiary" shall include any affiliated group, within the meaning of Section 1504 of the Code, of which the Beneficiary is a member, if consolidated returns are filed for such affiliated group for Federal income tax purposes.

(c) Capital Expenditures by Lessor.

(i) Capital Expenditures by Lessor. Anything in this Lease to the contrary notwithstanding, if the Lessee shall elect, in accordance with this § 16(c), to have the Lessor pay for Capital Expenditures which but for such election would result in a rental adjustment pursuant to § 16(b) of this Lease, then the Lessor shall make such Capital Expenditures and the rentals for the Units set forth in § 3 of this Lease, as such rentals may have been adjusted under this Lease from time to time, shall be further adjusted as hereinafter provided in § 16(c)(iii) hereof.

(ii) Election by Lessee. In order for the Lessee to elect to have the Lessor pay for the cost of Capital Expenditures, such Capital Expenditures must be required by the Association of American Railroads, the Department of

Transportation, the Interstate Commerce Commission or any other legislative, executive, administrative or judicial body exercising power or jurisdiction over the Lessee or the Equipment, to be made with respect to a Unit or Units in order for the Lessee to continue use or operation of such Unit or Units as contemplated by this Lease and the following must obtain:

(A) The Lessee must provide the Lessor and the Beneficiary with a written notice setting forth in reasonable detail the following:

(w) a description of the nature of the improvements and/or additions which the Lessee desires the Lessor to pay;

(x) an explanation as to why such expenditures are being made, with reference to the provision or provisions of this Lease requiring such expenditures to be made and with reference to the law requiring such expenditures;

(y) a representation that, and an explanation as to why, such expenditures will constitute Capital Expenditures for which a rental adjustment would be required under § 16(b) if such expenditures were made by the Lessee; and

(z) an estimate of the cost of such expenditures.

(B) The Lessor must be able to borrow sufficient funds to pay the cost of such Capital Expenditures, including all fees and expenses incurred by the Lessor and/or the Beneficiary in connection therewith (such loan being hereinafter referred to as a "Capital Expenditures Loan" and the Lenders making such Loan being hereinafter referred to as the Capital Expenditure Lenders"), on terms and conditions which are consistent with the following:

(x) the Capital Expenditures Loan must be repayable solely out of amounts payable by the Lessee under this Lease (exclusive of amounts payable pursuant to § 16(a) or (b) hereof) and must be secured solely by a security interest granted by the Lessor to the Capital Expenditure

Lenders in the Lessor's interest in this Lease and the Units, which security interest shall expressly be subordinate to the interests of the Investors and the Agent in this Lease and the Units, and must otherwise be without recourse to the Lessor and/or the Beneficiary; and

(y) the Capital Expenditures Loan must be repayable in level or declining (but not inclining) instalments, consisting in part of principal and in part of interest, over a period that is coterminus with the term of this Lease remaining (without regard to any renewal term) at the time such Loan is advanced; and

(z) the Lessee must approve the Capital Expenditures Loan.

(C) The Lessee must undertake (or arrange for a third party to undertake) the manufacture or construction and installation of the Capital Expenditures, and must take whatever action the Lessor and/or the Beneficiary reasonably deem necessary to protect them and hold them harmless, from and against any and all expenses, obligations and liabilities resulting from or arising out of the making of any such Capital Expenditures, including but not limited to providing insurance and/or posting performance bonds.

(D) The Lessee must undertake (or cause counsel to undertake on its behalf), at its expense, the preparation of first drafts of all documentation necessary to accomplish the financing of the Capital Expenditures which the Lessee is electing the Lessor to pay pursuant to this § 16(c) and must undertake and handle any and all negotiations with any party or parties who have an interest in the construction or manufacture and financing of such Capital Expenditures or whose consent, approval or cooperation is necessary to accomplish such construction or manufacture and financing.

(iii) Rental Adjustment. In the event that the Lessee elects in accordance with § 16(c)(ii) hereof to have the Lessor make and pay for Capital Expenditures, then the rents payable under § 3 of this Lease will be increased by an amount precisely equal to the payments required to be made by the Lessor to the Capital Expenditure Lenders

so that the Capital Expenditures Loan will be fully amortized over the term of this Lease remaining on the date such Loan is advanced. In addition, this Lease shall be amended so that the Casualty Values and Economic Obsolescence Values of any Unit will be increased by an amount equal to the amount which the Lessor is required to pay to the Capital Expenditure Lenders in order to comply with any acceleration provisions of the Capital Expenditures Loan.

(iv) Miscellaneous. The election available under this § 16(c) shall be made by the Lessee separately with respect to each addition and improvement required to be made by the Lessee with respect to the Units or any part thereof, but such election when made shall apply to all Units with respect to which a particular addition or improvement is being made. An election under this § 16(c) shall only be available if a rental adjustment would be required under § 16(b) were the Lessee to make and pay for the Capital Expenditures with respect to which the election is being made. An election otherwise available under this § 16(c) shall not be effective, and the other provisions of this Lease, including § 16(b), shall be applicable to the Capital Expenditures, if the principal amount of the Capital Expenditures Loan required, or reasonably estimated to be required, for the Lessor to make such Capital Expenditures, when added to the principal amount of all other borrowings by the Lessor to acquire and maintain the Units, including any prior Capital Expenditures Loan, exceeds 80% of the total cost of the Units.

§ 17. 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, to the extent legally enforceable, an amount equal to (1) interest at a rate of 11-1/2% per annum upon that portion of the overdue rentals and other obligations required to be paid by the Lessor to the Agent for payment to the Investors under the terms of the Security Documentation plus (2) interest at a rate per annum 1% in excess of the prime rate of Manufacturers Hanover Trust Company upon the remaining portion of the overdue rentals and other obligations hereunder, all for the period of time during which they are overdue, or such lesser amount as may be legally enforceable.

§ 18. Agreement of Lease. This Lease shall constitute an agreement of lease, and nothing herein shall be

construed as conveying to the Lessee any right, title or interest in the Equipment except as a lessee only unless the Lessee shall exercise its option to purchase Units pursuant to § 13 hereof and then only in respect of such Units as provided thereunder.

§ 19. Notices. Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when mailed, certified, postage prepaid, addressed as follows:

(a) if to the Lessor, at the address set forth in item 4 of Schedule B hereto, with a copy to the Beneficiary at Michigan National Bank of Detroit, In care of Michigan National Leasing Corporation, 38200 West Ten Mile Road, Farmington Hill, Michigan 48024, attention of John Verdon; and

(b) if to the Lessee, at P. O. Box 18, Bowling Green Station, New York, New York 10004, attention of Financial Vice President;

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing. Copies of each such notice shall be given to the Vendor at Broad and Chestnut Streets, Philadelphia, Pennsylvania 19101, attention of Corporate Trust Department, and to ITEL Leasing Corporation, One Embarcadero Center, San Francisco, California 94111, attention of Contract Administration.

§ 20. Severability; Effect and Modification of Lease; Article Headings. 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.

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

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

§ 1. Execution. This Lease may be executed in several counterparts, such counterparts together constituting but one and the same instrument, but the counterpart delivered to the Vendor pursuant to the Assignment hereof to the Vendor shall be deemed to be the original and all other counterparts shall be deemed duplicates thereof. Although for convenience this Lease is dated as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

§ 22. Quiet Enjoyment. The Lessor covenants that if, and so long as, the Lessee keeps and performs each and every covenant, condition and agreement to be performed or observed by it hereunder, the Lessee shall quietly enjoy the Units leased hereunder without hindrance or molestation by the Lessor or any other person lawfully claiming the same by, through or under the Lessor.

§ 23. Law Governing. The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of Indiana; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

§ 24. Notice of Default. In the event that the Lessee shall have knowledge of an Event of Default under the Lease or an event of default under the Security Documentation, the Lessee shall give prompt telephonic notice (confirmed in writing) thereof to the Lessor and, if the Lessor shall so request, to the Beneficiary and to each party named in Schedule B to the Participation Agreement.

§ 25. Immunities; No Recourse. It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all the representations, undertakings and agreements herein made on the part of the Lessor are each and every one of them made and intended not as personal representations, covenants, undertakings and agreements by The Connecticut Bank and Trust Company or for the purpose or with the intention of binding said trust company personally, but are made and intended for the purpose of binding only the Trust Estate as

such term is used in the Trust Agreement, and this Lease is executed and delivered by said trust company solely in the exercise of the powers expressly conferred upon it as trustee under the Trust Agreement; and except in the case of negligence or wilful misconduct, no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable, except against the Trust Estate or the Beneficiary's interest therein, against said trust company or on account of any representation, covenant, undertaking or agreement of the Lessor, either express or implied, all such personal liability, if any, being expressly waived and released by the Lessee.

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

INDIANA & MICHIGAN ELECTRIC COMPANY,

by

Vice President

[Corporate Seal]

Attest:

Assistant Secretary

THE CONNECTICUT BANK AND TRUST COMPANY, as Trustee,

by

Vice President

[Corporate Seal]

Attest:

Assistant Secretary

STATE OF NEW YORK,)
) ss.:
COUNTY OF NEW YORK,)

On this 4th day of November 1975, before me personally appeared G P Maloney, to me personally known, who, being by me duly sworn, says that he is the Vice President of INDIANA & MICHIGAN ELECTRIC COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

David G. Hume
Notary Public

[Notarial Seal]

My Commission expires

DAVID G. HUME
NOTARY PUBLIC, State of New York
No. 31-4608113
Qualified in New York County
Commission Expires March 30, 1977

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

On this 3rd day of November, 1975, before me personally appeared F. W. KAWAM, to me personally known, who, being by me duly sworn, says that he is a Vice President of THE CONNECTICUT BANK AND TRUST COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said bank, that said instrument was signed and sealed on behalf of said bank 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 bank.

Carmela R. Lwingin
Notary Public

[Notarial Seal]

My Commission expires 3/31/76

SCHEDULE A TO LEASE

Type	Quantity	Lessee's Identifying Numbers (Both Inclusive)
100-Ton triple hopper cars	600	AEPX 2001-2600

SCHEDULE B TO LEASE

Casualty Value

Item 1:

Date	Percentage
March 15, 1976	86.7450
September 15, 1976	87.6184
March 15, 1977	88.3509
September 15, 1977	88.9973
March 15, 1978	89.2048
September 15, 1978	89.0821
March 15, 1979	88.5455
September 15, 1979	87.6931
March 15, 1980	86.4590
September 15, 1980	84.9310
March 15, 1981	83.0622
September 15, 1981	80.9308
March 15, 1982	78.5102
September 15, 1982	75.9123
March 15, 1983	73.1765
September 15, 1983	70.2975
March 15, 1984	67.2716
September 15, 1984	64.1614
March 15, 1985	60.9649
September 15, 1985	57.7069
March 15, 1986	54.3864
September 15, 1986	51.0090
March 15, 1987	47.6719
September 15, 1987	44.3461
March 15, 1988	40.9958
September 15, 1988	37.5771
March 15, 1989	34.1406
September 15, 1989	30.6404
March 15, 1990	27.1311
September 15, 1990	23.5645
March 15, 1991	20.0000

Economic Unserviceability Date

Item 2:

Date	Percentage
March 15, 1983	73.6826
September 15, 1983	70.1878
March 15, 1984	66.1895

Date	Percentage
September 15, 1984	62.5754
March 15, 1985	58.4419
September 15, 1985	54.6628
March 15, 1986	50.4397
September 15, 1986	46.5209
March 15, 1987	42.3176
September 15, 1987	38.4285
March 15, 1988	34.2502
September 15, 1988	30.2443
March 15, 1989	26.0200
September 15, 1989	21.9070
March 15, 1990	17.6516
September 15, 1990	13.4445
March 15, 1991 and thereafter	0

Item 3:

Anniversary of Delivery and Acceptance	Percentage of Purchase Price
Michigan National Bank of Detroit	
Third	21.2965%
Fifth	14.1977%
Seventh	7.0988%

Item 4: The Connecticut Bank and Trust Company
One Constitution Plaza
Hartford, Connecticut 06115

Attention of Corporate Trust Department