

6204

RECORDATION NO. _____ Filed & Recorded

JUN 25 1971 -11 42 AM

INTERSTATE COMMERCE COMMISSION

LEASE OF RAILROAD EQUIPMENT

among

TEXAS, OKLAHOMA & EASTERN RAILROAD COMPANY

LESSEE

WEYERHAEUSER COMPANY

GUARANTOR

and

BANKERS TRUST COMPANY,
as Trustee

LESSOR

Dated as of June 1, 1971

INDEX TO LEASE OF RAILROAD EQUIPMENT

	PAGE
1. Lease.....	5
2. Term.....	6
3. Rent.....	6
4. The Conditional Sale Agreements.....	7
5. Use.....	7
6. Delivery and Acceptance.....	8
7. Annual Reports.....	10
8. Disclaimer; Maintenance and Repair; Compliance With Laws and Rules.....	11
9. Casualty Occurrence.....	14
10. Return of Units Upon Expiration of Term.....	16
11. Taxes.....	18
12. Liens, Encumbrances and Rights of Others.....	20
13. Lessor's Payment.....	21
14. Default.....	22
15. Return of Units Upon Default.....	28
16. Purchase Option.....	30
17. Lessee's Representations and Warranties.....	31
18. Lessee's Obligation to Purchase the Units Under Certain Circumstances.....	33
19. Indemnity for Failure to Obtain Accelerated Depreciation or Interest Deductions.....	35
20. Obligations of Guarantor.....	40

	PAGE
21. Successor Trustee.....	43
22. Lessee's Obligations Unconditional.....	44
23. Identification.....	45
24. Interest on Overdue Rentals.....	47
25. Assignment and Possession.....	47
26. Recording; Further Assurances.....	48
27. Notices.....	49
28. Execution in Counterparts.....	49
29. Miscellaneous.....	49
30. Enforcement by Vendors.....	51

EXHIBIT A

LEASE OF RAILROAD EQUIPMENT

THIS LEASE OF RAILROAD EQUIPMENT dated as of June 1, 1971 among BANKERS TRUST COMPANY, a New York banking corporation, as Trustee (hereinafter called the "Lessor") under the Trust Agreement referred to below and TEXAS, OKLAHOMA & EASTERN RAILROAD COMPANY, an Oklahoma corporation (herein called the "Lessee") and WEYERHAEUSER COMPANY, a Washington corporation (herein called the "Guarantor"), the owner of all the capital stock of the Lessee,

W I T N E S S E T H :

WHEREAS, the Trustee and Industrial Leasing Corporation, a Rhode Island corporation (herein called "ILC"), have entered into an interim trust agreement dated as of April 1, 1971 to be amended concurrently with the execution and delivery hereof (herein as so amended and as same may from time to time be further supplemented or amended called the "Trust Agreement", receipt of an executed counterpart of which, as so amended, is hereby acknowledged by the Lessee and the Guarantor) whereby, among other things, the Trustee agrees to hold, in accordance with the terms and provisions of said Trust Agreement, all its right, title and interest in and to, among other things, this Lease, and all payments or proceeds received hereunder or after the termination hereof with respect to any Unit (as such term is hereinafter

defined) as a result of the sale, lease or other disposition thereof or otherwise the railroad equipment hereinafter referred to for the benefit of ILC in accordance with the terms of the Trust Agreement; and

WHEREAS, the Lessor has entered into an interim conditional sale agreement (herein as same may from time to time be supplemented or amended called the "Locomotive Conditional Sale Agreement") with General Motors Corporation, a Delaware corporation (herein called the "Locomotive Manufacturer"), and the Guarantor dated as of April 1, 1971 to be amended the date hereof by an amendment in substantially the form of Exhibit VII to the Trust Agreement, and pursuant to such amendment (i) the Locomotive Manufacturer agrees to manufacture (in accordance with the specifications referred to in Annex A to said amendment and in accordance with such modifications thereof as may have been agreed upon in writing by the Locomotive Manufacturer, the Lessee and the Guarantor, which specifications and modifications, if any, are hereinafter called the "Locomotive Specifications"), sell and deliver to the Lessor, in addition to the diesel locomotive previously delivered under said interim conditional sale agreement, two diesel locomotives, to bear Lessee's road numbers D-13 and D-14, respectively, and (ii) the Guarantor unconditionally guarantees the obligations of the

Lessor thereunder; (each of the three aforesaid locomotives being called individually a "Locomotive" or "Unit" and collectively the "Locomotives"); and

WHEREAS, the Lessor has entered into a conditional sale agreement (herein called the "Chip Car Conditional Sale Agreement") with Thrall Car Manufacturing Company, a Delaware corporation (herein called the "Chip Car Manufacturer"), and the Guarantor dated as of the date hereof in substantially the form of Exhibit IV to the Trust Agreement wherein (i) the Chip Car Manufacturer agrees to manufacture (in accordance with the specifications referred to in Annex A to the Chip Car Conditional Sale Agreement and in accordance with such modifications thereto as may have been agreed upon in writing by the Chip Car Manufacturer, the Lessee and the Guarantor, which specifications and modifications, if any, are hereinafter called the "Chip Car Specifications"), sell and deliver to the Lessor 135 Chip Cars (herein called individually a "Chip Car" or "Unit" and collectively the "Chip Cars", the Chip Cars and the Locomotives being herein called collectively the "Units") with Lessee's road numbers 1200 through 1334, inclusive, and (ii) the Guarantor unconditionally guarantees the obligations of the Lessee thereunder (the Chip Car Conditional Sale Agreement and the Locomotive Conditional Sale Agreement

being herein called collectively the "Conditional Sale Agreements" and the Chip Car Manufacturer or the Locomotive Manufacturer being herein called individually a "Vendor" or "Manufacturer" and collectively the "Vendors" or "Manufacturers", as more particularly set forth in Section 26 of each respective Conditional Sale Agreement, it being understood that after the execution of the Assignments that each reference herein to the Agent shall include the Agent in its capacity as Vendor under each of the Conditional Sales Agreements); and

WHEREAS, ILC, the Lessee, the Guarantor, First National City Bank in its own capacity (herein called "FNCB"), First National City Bank as Agent (herein called the "Agent"), and each Investor (as such term is defined in the Finance Agreement) named therein are concurrently herewith entering into a finance agreement dated as of the date hereof (herein called the "Finance Agreement") in substantially the form of Exhibit I to the Trust Agreement wherein, among other things, each Investor agrees, subject to the terms and conditions set forth therein, to make available certain participations in the Agent's purchase of certain interests of the Manufacturers in the Units under a certain agreement and assignment with the Locomotive Manufacturer in substantially the form of Exhibit VIII to the Trust Agreement and

a certain agreement and assignment with the Chip Car Manufacturer in substantially the form of Exhibit V to the Trust Agreement; and

WHEREAS, the Lessee desires to lease said Units, or such lesser number as are delivered under the Conditional Sale Agreements on or prior to December 31, 1971, at the rentals and for the terms and upon the conditions hereinafter provided; and

WHEREAS, the Guarantor has agreed to guarantee unconditionally the amount payable by, and other obligations of, the Lessee under this Lease,

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 parties hereto agree as follows:

1. LEASE. The Lessor hereby leases to the Lessee, and the Lessee hereby leases from the Lessor, the Units described in the lease supplement executed by the parties hereto concurrently herewith or described in any lease supplement from time to time hereafter executed by the parties hereto. Each such lease supplement (hereinafter individually called a "Lease Supplement" and collectively the "Lease Supplements") is or shall be in substantially the form attached hereto as Annex A and shall constitute a part of

this Lease for all purposes hereof to the same extent as if set forth in full herein.

2. TERM. The term of the lease of each Unit hereunder shall commence upon delivery as set forth in Section 6 hereof and shall continue for the period specified in the Lease Supplement relating thereto.

3. RENT. The aggregate rent payable for each Unit throughout the term such Unit is leased hereunder shall be the amount or amounts set forth in the Lease Supplement covering such Unit. Such rent shall be payable in arrears in the amounts and on the dates specified in such Lease Supplement. Anything contained herein to the contrary notwithstanding, all rents and any and all other amounts payable by the Lessee to the Lessor under this Lease shall be made directly to the Agent for the account of the Lessor, so long as there shall be outstanding any Conditional Sale Indebtedness, as a credit against all obligations of the Lessor to the Agent as Vendor under the Conditional Sale Agreements in accordance with the provisions of Article 10 of the Finance Agreement, and the Lessor, upon receipt by it from the Lessee and the Agent of written evidence of such payment, forthwith shall credit an amount equal to the amount of such payment against the obligations of the Lessee hereunder, in such manner as the Lessor shall

determine or, in the case of payment in respect of a Unit having suffered a Casualty Occurrence (as such term is hereinafter defined), against the payment of the Stipulated Loss Value of such Unit then due under Section 9 hereof.

4. THE CONDITIONAL SALE AGREEMENTS. On or prior to the date of the execution and delivery of this Lease, the Lessor has purchased the Units leased hereunder pursuant to the Conditional Sale Agreements with the respective Vendor thereunder, it being hereby specifically agreed to by the Lessee that all of the interests of the Lessee in and to the Units are subject and subordinate in all respects to all of the right, title and interest of the Vendors in and to the Units under the respective Conditional Sale Agreements; provided, however, that as agreed to by said Vendors in Article 17 of each respective Conditional Sale Agreement, the Vendors shall not have the right to exercise any right or remedy pursuant to the respective Conditional Sale Agreements to the extent that to do so would interfere with, or otherwise adversely affect, any right or interest of the Lessee under this Lease unless and until an Event of Default as defined in this Lease shall have occurred and be continuing.

5. USE. The Lessee will cause the Units to be operated in accordance with any applicable manufacturer's

manuals or instructions by competent and duly qualified personnel only and in accordance with all applicable governmental regulations, if any, and only upon railroad lines owned or operated by the Lessee or over which the Lessee has trackage rights for operation of its trains, and upon connecting and other railroads in the usual interchange of traffic, but only upon and subject to all the terms and conditions of this Lease; and the Lessee may receive and retain all compensation for such use from other railroads so using any of the Units.

6. DELIVERY AND ACCEPTANCE. Upon the execution hereof (a) the Interim Lease Agreement dated as of April 1, 1971 between the parties hereto shall be null and void and of no further force and effect and (b) the first of the three Locomotives (herein called in chronological order of delivery the "first", "second" or "third" Locomotive) shall thereupon be deemed delivered by the Lessor and accepted by the Lessee hereunder for all purposes hereof and in accordance with the Lease Supplement with respect thereto executed the date hereof, regardless of the location or condition of such Unit. The Lessor will cause the second and third Locomotives contemplated to be leased hereunder to be delivered to the Lessee at its tracks in Eagletown, Oklahoma, and as each such Unit is so delivered it shall

thereupon be deemed accepted hereunder and be and become immediately subject to all the terms and provisions of this Lease without necessity of any further act, subject, however, to the execution of a Lease Supplement with respect thereto upon or prior to the Settlement Date for the second and third Locomotive as set forth in Article 3 of the Locomotive Conditional Sale Agreement; provided, however, that no Lease Supplement with respect to the second and third Locomotive will be delivered unless simultaneously therewith or prior thereto the Lessee shall have delivered to the Locomotive Manufacturer an executed Lease Supplement as provided in the immediately following sentence. If the second and third Locomotives are in compliance with the Locomotive Specifications the Lessee shall (and is hereby authorized and empowered by the Lessor to) confirm the acceptability of such Locomotives on behalf of the Lessor under the Locomotive Conditional Sale Agreement and evidence such acceptability by executing and delivering to the Vendor thereunder, in such number of counterparts or copies as may reasonably be requested, the Lease Supplement describing such Locomotives to be delivered or being delivered therewith to the Lessee.

The Lessor will cause each of the Chip Cars to be delivered to the Lessee at the tracks of the Chip Car Manufacturer in Chicago Heights, Illinois. Upon the delivery

of any Chip Car as provided above, such Unit shall be deemed accepted hereunder and be and become immediately subject to all the terms and provisions of this Lease without necessity of further act, subject, however, to the execution of a Lease Supplement with respect thereto upon or prior to the Settlement Date for such Unit as set forth in Article 3 of the Chip Car Conditional Sale Agreement; provided, however, that no Lease Supplement with respect to the Chip Cars will be delivered unless simultaneously therewith or prior thereto the Lessee shall have delivered to the Chip Car Manufacturer an executed Lease Supplement as provided in the immediately following sentence. If such Chip Car is in compliance with the Chip Car Specifications the Lessee shall (and is hereby authorized and empowered by the Lessor to) confirm the acceptability of such Unit on behalf of the Lessor under the Chip Car Conditional Sale Agreement and evidence such acceptability by executing and delivering to the Vendor thereunder, in such number of counterparts or copies as may reasonably be requested, the Lease Supplement describing such Unit to be delivered or being delivered therewith to the Lessee.

7. ANNUAL REPORTS. On or before the last day of February in each year, commencing with the year 1972, the Lessee will cause to be furnished to the Lessor and

the Agent an accurate statement, as of the preceding September 30, (a) showing the amount, description and numbers of the Units then leased hereunder, the amount, description and numbers of all Units that may have suffered a Casualty Occurrence during the preceding twelve months (or since the date of this Lease, in the case of the first such statement), and such other information regarding the condition and state of repair of the Units as the Lessor or the Agent may reasonably request and (b) stating that, in the case of all Units repainted during the period covered by such statement, the markings as required by Section 23 hereof and Article 14 of the appropriate Conditional Sale Agreement shall have been preserved or replaced. The Lessor and the Agent shall each have the right, at their sole cost and expense, by their authorized representatives, to inspect the Units and the Lessee's books and records with respect thereto, at such times as shall be reasonably necessary to confirm to the Lessor and the Agent the existence and the proper maintenance, use and operation of the Units during the continuance of this Lease.

8. DISCLAIMER; MAINTENANCE AND REPAIR; COMPLIANCE WITH LAWS AND RULES. The Lessor makes no warranty or representation, either express or implied, as to the

fitness, design or condition of, or as to the quality of
the material, equipment or workmanship in, the Units de-
livered 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 representations and warran-
ties whatsoever with respect to the Units, 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 irrev-
ocably 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 ac-
count of the Lessor and/or the Lessee, as their interests
may appear, whatever claims and rights the Lessor may have,
as vendee, under the provisions of Articles 12 and 13 of
the respective Conditional Sale Agreements. The Lessee
agrees for the benefit of the Lessor, ILC and the Agent
that, at its own cost and expense, it will maintain and
keep each Unit which is subject to this Lease in good order
and repair, ordinary wear and tear excepted. The Lessee
further agrees, for the benefit of the Lessor, ILC and the
Agent, to comply in all respects with all governmental laws,
regulations, requirements and rules (including the rules
of the Department of Transportation and the Interstate Commerce

Commission and the interchange rules of the Association of American Railroads) with respect to the use, maintenance and operation of each Unit subject to this Lease. In case any equipment or appliance on any such Unit shall be required to be changed or replaced, or in case any additional or other equipment or appliance is required to be installed on such Unit in order to comply with such laws, regulations, requirements and rules the Lessee agrees to make such changes, additions and replacements at its own expense; and the Lessee agrees to maintain such Unit in full compliance with such laws, regulations, requirements and rules so long as it is subject to this Lease. Any parts installed or replacements made by the Lessee upon any Unit shall be considered acccessions to such Unit and title thereto shall be immediately vested in the Lessor, subject to the Conditional Sale Agreement to which such Unit is subject and the rights of the Vendor thereunder, without cost or expense to the Lessor or such Vendor. The Lessee agrees to prepare and deliver to the Lessor, with a copy to the Agent, 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 required to be filed by the Lessor, with any federal, state or other regulatory authority by reason of the ownership by the Lessor of the Units or the leasing of the Units to

the Lessee.

9. CASUALTY OCCURRENCE. 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 (each such occurrence being hereinafter called a "Casualty Occurrence") during the term of this Lease, the Lessee shall, within eight days after it shall have determined that such Unit has suffered a Casualty Occurrence, fully notify the Agent and the Lessor with respect thereto. On the rental payment date next succeeding such notice (or in the event such rental payment date shall occur within five days after such notice, on the following rental payment date) the Lessee shall pay to the Agent an amount equal to the accrued rental for such Unit to the date of such payment plus a sum equal to the Stipulated Loss Value of such Unit as of the date of such payment as set forth in paragraph F of the Lease Supplement with respect thereto. Upon payment of the Stipulated Loss Value for such Unit, the rental for such Unit shall cease to accrue as of the date of such payment, the term of this Lease as to such Unit shall terminate, title to such Unit shall pass to and vest in the Lessee, without necessity of further act and without any representation or warranty whatsoever on the part of the Lessor, and the Lessee shall

assume all responsibility in respect of the ownership of such Unit.

Except as hereinabove in this Section 9 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 after delivery to the Lessee hereunder.

In the event the Lessor or the Lessee shall receive any payment from any governmental authority by reason of any Casualty Occurrence to a Unit resulting from any taking or requisitioning of such Unit, the Lessee shall be entitled to such payment to the extent the same does not exceed the Stipulated Loss Value of such Unit duly paid by the Lessee and the Lessor shall be entitled to any remaining portion of such payment which shall promptly be paid over to the Agent for the account of the Lessor as a credit against the amounts owed by the Lessor to the Agent under Article 6 of the respective Conditional Sale Agreements.

The Lessee will, without cost to the Lessor, cause to be maintained in effect throughout the Lease term, with insurers of recognized responsibility, policies insuring against loss or damage to each Unit from such risks and in such amounts as the Lessee would in the prudent management of its property cause to be maintained with respect

to similar equipment owned by it, provided, that the amount of such insurance with respect to each Unit shall not at any time be less than the Stipulated Loss Value of such Unit as of the next following applicable date for the payment of an instalment of rent. Notwithstanding the provisions of the foregoing sentence, the Lessee may self-insure against such risks if the Units are self-insured to an extent no greater than any similar railroad equipment owned by the Lessee.

10. RETURN OF UNITS UPON EXPIRATION OF TERM. As soon as practicable on or after the expiration of the term of this Lease with respect to any Unit, 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 of the Lessee as the Lessor may designate, and permit the Lessor to store such Unit on such tracks for a period not exceeding three months and transport the same, at any time within such three-month period, to any reasonable place on the lines of railroad operated by the Lessee or to any connecting carrier for shipment, all as directed by the Lessor, the movement and storage of such Unit to be at the expense and risk of the Lessee. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized

representative or representatives of any prospective purchaser of any such Unit, to inspect the same. Following such expiration of the term of this Lease, with respect to such Unit the rental therefor shall continue, however, at a daily rate computed by dividing the semiannual rental hereunder for such Unit by 180 until actual withdrawal from service and storage of such Unit. Notwithstanding the foregoing, if any such Unit is sold to the Lessee pursuant to the provisions of Section 15 hereof prior to its having been assembled, delivered and stored as above provided, all obligations hereunder of the Lessee with respect to the assembling, delivering, storing and transporting of such Unit shall thereupon terminate. The assembling, delivering, storing and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. Upon the return of any Unit, the Lessee agrees that there will be removed from such Unit any name or other identification of the Lessee thereon and that such Unit will be in the same condition as when delivered to the Lessee hereunder, ordinary wear and tear excepted, and free and

clear of all liens, encumbrances or rights of others whatsoever except liens or encumbrances resulting from claims against the Lessor not related to the ownership of each Unit.

11. TAXES. All payments to be made by the Lessee hereunder will be free of expense to the Lessor for collection or other charges and will be free of expense to the Lessor with respect to the amount of any local, state or federal taxes (other than net income, gross receipts [except gross receipts in the nature of and in lieu of sales taxes], excess profits and similar taxes, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided), assessments, license fees, charges, fines, all expenses of collection or penalties of any kind hereafter levied or imposed upon, or in connection with, or measured by, this Lease, the Conditional Sale Agreements or any sale, rental, use, payment, shipment, delivery or transfer of legal title or security title under the terms hereof or either or both of the Conditional Sale Agreements, all of which amounts (hereinafter called "impositions") the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. The Lessee will also pay promptly all impositions which may be imposed upon any Unit or for the use or operation thereof

or upon the earnings arising therefrom or upon the Lessor solely by reason of its ownership thereof and will keep at all times all and every part of such Unit free and clear of all impositions which might in any way affect the title of the Lessor or result in a lien upon any such Unit; provided, however, that the Lessee shall be under no obligation to pay any impositions so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Lessor, adversely affect the title, property or rights of the Lessor hereunder or under either or both of the Conditional Sale Agreements. If any impositions shall have been charged or levied against the Lessor directly and paid by the Lessor, the Lessee shall pay to the Agent for the account of the Lessor, as a credit against any obligation of the Lessor to the Agent under Article 25 of the Conditional Sale Agreements the amount of such impositions upon presentation of an invoice therefor.

In the event that the Lessor shall become obligated to make any payment pursuant to Article 25 of either or both of the Conditional Sale Agreements not covered by the foregoing paragraph of this Section 11, the Lessee shall pay such additional amounts (which shall also be deemed impositions hereunder) to the Agent for the account of the

Lessor as a credit against any obligation of the Lessor to the Agent under said Article 25 as will enable the Lessor to fulfill completely its obligations pursuant to said Article 25.

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

In the event that, during the continuance of this Lease, the Lessee becomes liable for the payment or reimbursement of any impositions, pursuant to this Section 11, such liability shall continue, notwithstanding the expiration of this Lease, until all such impositions are paid or reimbursed by the Lessee.

12. LIENS, ENCUMBRANCES AND RIGHTS OF OTHERS.

The Lessee will not directly or indirectly create, incur, assume or suffer to exist any mortgage, pledge, lien, attachment, charge, encumbrance or right of others whatsoever on or with respect to any Unit, title thereto or any interest therein, except (i) the respective rights of the

Lessor, the Lessee, the Vendor with respect thereto and ILC, as provided herein and in the Conditional Sale Agreements and the Trust Agreement, (ii) liens or encumbrances which result from claims against the Lessor not related to the ownership of the Units, (iii) liens for taxes either not yet due or being contested in good faith and by appropriate proceedings and (iv) inchoate materialmen's, mechanics', workmen's, repairmen's or employees' liens or other like liens arising in the ordinary course of business and securing obligations which are not delinquent. The Lessee will promptly notify the Lessor in writing and will promptly, at the Lessee's expense, cause any such mortgage, pledge, lien, attachment, charge, encumbrance or right of others not excepted above which may arise at any time to be duly discharged, dismissed and removed as soon as possible, but in any event within 30 days after the existence of the same shall have first become known to the Lessee. The Lessee's obligations under this Section 12 shall survive termination of this Lease.

13. LESSOR'S PAYMENT. If the Lessee fails to make any payment of rent required to be made by it hereunder or fails to perform or comply with any of its agreements contained herein, the Lessor may itself make such payment or perform or comply with such agreement, and the amount

of such payment and the amount of the reasonable expenses of the Lessor incurred in connection with such payment or the performance of or compliance with such agreement, as the case may be, together with interest thereon at the rate of 9% per annum, shall be deemed additional rent, payable by the Lessee upon demand. In the event of the nonpayment of any such additional rent, the Lessor shall have all rights, powers and remedies provided for herein or by law or equity or otherwise in the case of the nonpayment of the rent payable pursuant to Section 3 hereof.

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

A. default shall be made in the payment of any part of the rental provided in Section 3 hereof and such default shall continue for five days;

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

C. any representation or warranty made by the Lessee herein or in any document or certificate furnished to the Lessor in connection herewith or pursuant hereto shall prove to be incor-

rect at any time in any material respect;

D. default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein and such default shall continue for 30 days after written notice from the Lessor to the Lessee specifying the default and demanding that the same be remedied;

E. any proceedings shall be commenced by or against the Lessee for any relief under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of the Lessee hereunder), and all the obligations of the Lessee under this Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Lessee or for the property of the Lessee in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such a trus-

tee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceeding shall have been commenced, whichever shall be earlier;

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

G. any proceedings shall be commenced by or against the Guarantor for any relief under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obliga-

tions of the Guarantor hereunder), and all the obligations of the Guarantor under this Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Guarantor or for the property of the Guarantor in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such a trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceeding shall have been commenced, whichever shall be earlier;

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

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

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and determine as though this Lease had never been made, but the Lessee shall remain liable

as hereinafter provided; and thereupon the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may 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 (i) as liquidated damages for loss of the bargain and not as a penalty, a sum, with respect to each Unit, which represents the excess of (x) the present value, at the time of such termination, of the entire unpaid balance of all rentals for such Unit which would otherwise

have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over (y) the then present value, if any, of the rentals which the Lessor reasonably estimates to be obtainable by the Lessor for the use of the Unit during such period, such present value to be computed in each case on a basis of a 6% per annum discount, compounded semiannually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated and (ii) any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Lessor shall have sustained by reason of the breach of any covenant or covenants of this Lease other than for the payment of rental.

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

claims to any offset against the rental payments due hereunder, and agrees to make rental payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

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

15. RETURN OF UNITS UPON DEFAULT. If this Lease shall terminate pursuant to Section 14 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor. For the purpose of delivering possession of any Unit or Units to the Lessor as above required, the Lessee shall at its own cost, expense and risk:

A. forthwith place such Units upon such storage tracks of the Lessee as the Lessor reasonably may designate,

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

C. transport the same to any place on the lines of railroad operated by it or any of its

affiliates or to any connecting carrier for shipment, all as directed by the Lessor.

The assembling, delivering, storing and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Unit, to inspect the same. Upon the return of any Unit, the Lessee agrees that there will be removed from such Unit any name or other identification of the Lessee thereon and that such Unit will be in the same condition as when delivered to the Lessee hereunder, ordinary wear and tear excepted, and free and clear of all liens, encumbrances or rights of others whatsoever except the Conditional Sale Agreements and liens or encumbrances resulting from claims against the Lessor not related to the ownership of such Unit. Without in any way limiting the obligation of the Lessee under the foregoing provisions of this Section 15, the Lessee hereby ir-

revocably 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.

16. PURCHASE OPTION. Unless an Event of Default shall have occurred and be continuing, the Lessee may elect, by giving not less than 180 days' prior written notice to the Lessor, to purchase on the last business day of the term hereof, and having made such election the Lessee shall so purchase, any Unit from the Lessor by paying to the Lessor in cash on such day an amount equal to the then fair market sales value of such Unit. For the purpose of this Section 16, "fair market sales value" of any Unit shall be determined by an appraisal mutually agreed to by two recognized independent railroad equipment appraisers, one chosen by the Lessor and one chosen by the Lessee, or, if such appraisers cannot agree on the amount of such appraisal, arrived at by a third independent appraiser chosen by the mutual consent of such two appraisers. If either party shall fail to appoint an appraiser within 30 days after notice to the Lessor of the Lessee's election to purchase or if such two appraisers be appointed and such appraisers cannot within

30 days of the appraiser last appointed agree on the amount of such appraisal and fail within such time to appoint a third appraiser, then either party may apply to any court having jurisdiction to make such appointment. The sale of any Unit by the Lessor to the Lessee pursuant to this Section 16 shall be made without any recourse or warranty whatsoever on the part of the Lessor except for liens or encumbrances which result from claims against the Lessor not related to the ownership of such Unit. The cost of all appraisals and any other costs or expenses incurred in connection with a sale pursuant to this Section 16 shall be borne by the Lessee.

17. LESSEE'S REPRESENTATIONS AND WARRANTIES. The Lessee represents and warrants that:

A. the Lessee is a corporation legally incorporated, validly existing and in good standing under the laws of the State of Oklahoma, with adequate corporate power to own its properties and carry on its business as presently conducted and to enter into and perform this Lease;

B. this Lease, including each Lease Supplement, and the Finance Agreement each has been duly authorized, executed and delivered by the Lessee and constitutes a valid, legal and bind-

ing agreement of the Lessee, enforceable in accordance with its terms;

C. if the Conditional Sale Agreements, any assignment thereof and this Lease, including each Lease Supplement, are filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act, no other filing or recording is necessary or advisable to protect the title and interest of the Vendor or the Lessor in and to the Units in the United States of America;

D. no approval is required of the Interstate Commerce Commission or any other governmental authority with respect to the entering into or performance of the Finance Agreement, the Conditional Sale Agreements, any assignments thereof or this Lease, including each Lease Supplement;

E. the entering into and performance of the Finance Agreement or this Lease, including each Lease Supplement, will not contravene any law binding upon the Lessee or result in any breach of, or constitute a default under, or result in the creation of any lien, charge or encumbrance upon the Lessee's leasehold interest under this

Lease in the Units pursuant to any indenture, mortgage, deed of trust, bank loan or credit agreement or other instrument to which the Lessee is a party or by which it may be bound; and

F. no mortgage, deed of trust, or other lien of any nature whatsoever which now covers or affects, or which may hereafter cover or affect, any property or interests therein of the Lessee, now attaches or hereafter will attach to the Units or in any manner affects or will affect adversely the Lessor's right, title and interest therein; provided, however, that such liens may attach to the rights of the Lessee hereunder in and to the Units if they do not adversely affect the Lessor's rights hereunder or its right, title and interest in the Units.

18. LESSEE'S OBLIGATION TO PURCHASE THE UNITS UNDER CERTAIN CIRCUMSTANCES. In the event that (i) on or before the Permanent Funding Date (as such term is defined in the Finance Agreement) all of the Investors shall not have paid to the Agent the full amount of their respective commitments under the Finance Agreement or (ii) on or before December 15, 1971, the Internal Revenue Service for any reason whatsoever (including, without limitation, a

change of law, regulations or policy) shall not have issued a favorable ruling, in each case in form and substance satisfactory to ILC, to the effect that (A) the trust created by the Trust Agreement will be subject to Subpart E, Part I, Subchapter J, Chapter 1 of Subtitle A of the Internal Revenue Code of 1954 for federal income tax purposes, (B) ILC will be entitled to take the depreciation deductions with respect to the amortization of the cost of the Units pursuant to Section 184 of the Internal Revenue Code of 1954, (C) ILC will be entitled to deduct the amounts paid or accrued as interest on the Conditional Sale Indebtedness pursuant to Section 163(a) of such Code and (D) ILC is the purchaser, original user, owner and lessor of the Units (herein called the "Ruling"); then, in such event, the Lessee hereby unconditionally and irrevocably agrees that it will, on or before December 20, 1971, pay to the Agent, for the account of the Lessor's obligations under Article 8 of the respective Conditional Sale Agreements an amount equal to the sum of (x) the unpaid principal amount of the Conditional Sale Indebtedness outstanding on the date of such purchase plus the unpaid interest thereon accrued to and including such date and (y) 22% of the Owner's Cost of the Units plus interest on such amount at the rate of 8% per annum (computed on the basis of a

360-day year of twelve 30-day months) from, but not including, September 30, 1971 to and including the date of such purchase, less the aggregate amount of all distributions made by the Agent to ILC pursuant to Section 10 of the Finance Agreement prior to the date of such purchase. On the date the Lessor receives notification of receipt by the Agent for the account of the Lessor of the amount in full referred to above, the Lessor will deliver to the Lessee a bill of sale executed by the Lessor covering the Units (in their then condition and location on an "as is, where is" basis) and the Lessor will pay over to the Lessee any insurance proceeds or payments from governmental authorities then held or thereafter received by the Lessor with respect to the Units or any thereof. Such transfer of title by the Lessor will be without any recourse or warranty whatsoever except for liens or encumbrances resulting from claims against the Lessor not related to its ownership of the Units. The Lessee will pay any costs or expenses or taxes in connection with such payment and transfer of title, and the Lessor shall have no duty, responsibility or liability whatsoever with respect thereto except as expressly provided in this Section 18.

19. INDEMNITY FOR FAILURE TO OBTAIN ACCELERATED DEPRECIATION OR INTEREST DEDUCTIONS. If ILC, in computing

its taxable income for any part of the term of this Lease, shall lose, in whole or in part, the benefit of deductions with respect to the amortization of any Unit allowable to it pursuant to Section 184 of the Internal Revenue Code of 1954 as in effect on June 1, 1971, computed on a basis equal to the full amount of the Owner's Cost of such Unit, or ILC, in computing its taxable income for any period during which any Conditional Sale Indebtedness is outstanding, shall lose, in whole or in part, the benefit of interest deductions allowable to it pursuant to Section 163(a) of the Internal Revenue Code of 1954 as in effect on June 1, 1971 with respect to amounts paid or accrued as interest on such Conditional Sale Indebtedness, in either case under any circumstances or for any reason whatsoever (including, but not limited to, (x) the occurrence, at any time prior to the issuance of the Ruling, of a change in or modification of law, including, without limitation, any change in or modification of applicable Treasury Regulations, (y) the "original use" of such Unit not having commenced with ILC within the meaning of Section 167(c)(2) of the Internal Revenue Code of 1954 or any part of Owner's Cost for such Unit not being part of ILC's basis for the purpose of computing depreciation deductions or (z) the Trust Agreement not being treated as a grantor trust for federal income

tax purposes), except for the loss of the benefit of such depreciation or interest deduction solely because of the occurrence of any of the following events:

(i) an event shall occur whereby the Lessee is required by the terms of Section 9 hereof to pay, and shall pay in full, the Stipulated Loss Value for such Unit;

(ii) the Lessee shall purchase such Unit pursuant to Section 18 hereof and shall duly and timely perform all of its obligations under said Section;

(iii) at any time while such Unit is leased hereunder and while no Event of Default has occurred and is continuing unremedied, without the written consent of the Lessee, the Lessor shall (other than solely in connection with a substitution of the Trustee under the Trust Agreement as contemplated by Section 21 hereof) voluntarily transfer legal title to such Unit to anyone or ILC shall dispose of any interest in such Unit or shall reduce its interest in the profits from such Unit;

(iv) the parties to the Trust Agreement shall at any time after the execution and delivery hereof

amend such document without the prior written consent of the Lessee;

(v) ILC shall fail to claim such depreciation deduction or interest deduction in its income tax returns for the appropriate year or shall fail to follow the proper procedure in claiming such depreciation or interest deduction;

(vi) ILC shall fail to have sufficient income to benefit from the depreciation or interest deduction;

(vii) ILC shall fail to take timely action in contesting a claim made by the Internal Revenue Service with respect to the disallowance of such depreciation deduction or interest deduction pursuant to Section 29 of the Finance Agreement;

or

(viii) after issuance of the Ruling, the Internal Revenue Service shall take action contrary to any of the matters set forth in the Ruling for any reason (including by reason of a change in or modification of law or applicable Treasury Regulations or otherwise), provided such action is not taken as the result of a change in law or applicable Treasury Regulations effective prior

to the date of the Ruling and further provided such action is not taken by the Internal Revenue Service directly or indirectly as a result of (A) any representation, fact, estimate, opinion or other statement made or stated by the Lessee or any officer, employee, agent or counsel thereof (including any such statement made jointly with ILC or any officer, employee, agent or counsel thereof) in connection with the obtaining of such Ruling proving to be, or in the opinion of the Internal Revenue Service proving to be, fraudulent, untrue, incorrect, inaccurate, misleading, unreasonable or insufficient in whole or in part, or (B) the Lessee or any officer, employee, agent or counsel thereof failing to state, or in the opinion of the Internal Revenue Service failing to state, any material fact in connection with the obtaining of such Ruling or (C) the Lessee or any officer, employee, agent or counsel thereof taking, or failing to take, or being deemed by the Internal Revenue Service to have taken, or to have failed to take, any action whatsoever (including, without limitation, any action in respect of the Lessee's

income tax returns) inconsistent with or in contravention of any matters set forth in such Ruling; then, the Lessee shall pay the Lessor, as additional rent hereunder, an amount which, after deduction of all taxes required to be paid by the Lessor and ILC in respect of the receipt thereof under the laws of any governmental or taxing authority in the United States, shall be equal to the additional income taxes paid or payable by the Lessor and ILC in consequence of such failure to obtain or have the right to claim, or the disallowance of, such depreciation deduction or such interest deduction, together with the amount of any interest (including any additions to tax) and penalties which may be payable by the Lessor or ILC in connection with such loss.

20. OBLIGATIONS OF GUARANTOR. The Guarantor, for value received, hereby unconditionally and irrevocably guarantees to the Lessor by endorsement (through its execution hereof) the prompt and punctual payment of all sums payable by the Lessee under this Lease and the prompt and punctual performance of all other obligations of the Lessee under this Lease when due, whether at stated maturity or by declaration or otherwise, strictly in accordance with the terms of this Lease and in case any such payments or obligations are not so made or performed the Guarantor agrees punctually to pay or perform the same irrespective of any

enforcement against the Lessee of any of the rights of the Lessor hereunder.

The Guarantor hereby agrees that its obligations hereunder shall be absolute and unconditional under all circumstances, including, without limitation, the following circumstances: (a) any setoff, counterclaim, recoupment, defense or other right which the Lessee may have against the Lessor, the Manufacturer or anyone else for any reason whatsoever; (b) any defect in the condition, design, operation or fitness for use of any Unit or the existence of any liens, encumbrances or rights of others whatsoever with respect to the Unit, whether or not resulting from claims against the Lessor not related to the ownership of the Unit; (c) any damage to or loss or destruction of any Unit or any interruption or cessation in the use or possession thereof by the Lessee for any reason whatsoever; (d) any insolvency, bankruptcy, reorganization or similar proceedings by or against the Lessee; (e) the taking by the Lessor of any steps to enforce any of its rights or remedies under this Lease against the Lessee or the Unit; (f) the invalidity, illegality or unenforceability of this Lease or the disaffirmance thereof in any insolvency, bankruptcy or reorganization proceeding relating to the Lessee; (g) the existence of any law, regulation or decree now or hereafter

in effect which might cause or permit to be invoked any alteration in the time, amount, manner of payment or performance of any of the Lessee's obligations under this Lease; or (h) any other event or circumstances whatsoever, whether or not similar to the foregoing. This guaranty shall continue to be effective or be reinstated, as the case may be, if at any time payment or performance of any of the Lessee's obligations under this Lease is rescinded or must otherwise be restored or returned by the Lessor upon the insolvency, bankruptcy or reorganization of the Lessee, or otherwise, all as though such payment or performance had not occurred. The Guarantor waives any requirement of diligence or promptness on the part of the Lessor in making demand, commencing suit or exercising any other right or remedy under this Lease or otherwise and any right to require the Lessor to exercise any right or remedy against the Lessee or the Unit prior to enforcing any right of the Lessor against the undersigned hereunder. No waiver by the Lessor of any of its rights hereunder and no action by the Lessor to enforce any of its rights hereunder or failure to take, or delay in taking, any such action shall affect the obligations of the Guarantor hereunder.

In the event that the Guarantor shall make any payments to the Lessor on account of its guaranty hereunder,

the Guarantor shall, by subrogation, be entitled to the rights of the Lessor against the Lessee by reason of such payments and with respect to any Units to the extent of the amount so paid, but such rights shall be subordinate in all respects to such rights of the Lessor and shall not be exercisable until the Vendor shall have been paid all sums payable under the Conditional Sale Agreements (including the payment of the entire unpaid Conditional Sale Indebtedness (as defined in the Conditional Sale Agreements) plus interest thereon as defined in the respective Conditional Sale Agreements).

21. SUCCESSOR TRUSTEE. The Lessee agrees that in the case of the appointment of any successor trustee pursuant to the terms of the Trust Agreement, such successor trustee shall, upon written notice by such successor trustee to the Lessee, succeed to all the rights, powers and title of the Lessor hereunder and shall be deemed to be the Lessor and the owner of the Units for all purposes hereof, without the necessity of any consent or approval by the Lessee and without in any way altering the terms of this Lease or the Lessee's obligations hereunder. One such appointment and designation of a successor trustee shall not exhaust the right to appoint and designate further successor trustees pursuant to the Trust Agreement, but such right may be exercised repeatedly as long as this Lease shall

be in effect.

22. LESSEE'S OBLIGATIONS UNCONDITIONAL. The Lessee agrees to pay all rent, additional rent and any other amounts owing hereunder on the due date thereof in immediately available funds to the Agent at its office at 399 Park Avenue, New York, New York 10022; and the Lessee hereby agrees that the Lessee's obligation to pay such rent and other amounts shall be absolute and unconditional under all circumstances, including, without limitation, the following circumstances: (i) any setoff, counterclaim, recoupment, defense or other right which the Lessee may have against the Lessor, any seller or manufacturer of any Unit or anyone else for any reason whatsoever; (ii) any defect in the condition, design, operation or fitness for use of any Unit or the existence of any liens, encumbrances or rights of others whatsoever with respect to such Units, whether or not resulting from claims against the Lessor not related to the ownership of such Units; (iii) any damage to or loss or destruction of any Unit or any interruption or cessation in the use or possession thereof by the Lessee for any reason whatsoever; (iv) any insolvency, bankruptcy, reorganization or similar proceedings by or against the Lessee; or (v) any other events or circumstances whatsoever, whether or not similar to any of the foregoing. 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 Unit hereunder except in accordance with the express terms hereof. If for any reason whatsoever this Lease shall be terminated in whole or in part by operation of law or otherwise except as specifically provided herein or shall be disaffirmed by any trustee or receiver for the Lessee or the Lessor, the Lessee nonetheless agrees to pay to the Lessor an amount equal to each rent payment at the time such payment would have become due and payable in accordance with the terms hereof had this Lease not been terminated or disaffirmed in whole or in part. Each rent or other payment made by the Lessee hereunder shall be final and the Lessee will not seek to recover all or any part of such payment from the Lessor for any reason whatsoever.

23. IDENTIFICATION. The Lessee, at its own expense, will cause each Unit to be kept numbered with the road numbers with respect thereto and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of such Unit, in letters not less than one inch in height, the following words:

"LEASED TO TEXAS, OKLAHOMA & EASTERN RAILROAD COMPANY BY BANKERS TRUST COMPANY, AS OWNER-TRUSTEE, AND SUBJECT TO A SECURITY INTEREST RECORDED WITH THE I.C.C."

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

Except as above provided, the Lessee will not allow the name of any person, association or corporation to be placed on the Units as a designation that might be interpreted as a claim of ownership; provided, however, that the Lessee may cause the Units to be lettered with the names, initials or other insignia customarily used by

the Lessee or its affiliates on railroad equipment used by them of the same or a similar type for convenience of identification of their rights to use the Units as permitted under this Lease.

24. INTEREST ON OVERDUE RENTALS. Anything to the contrary herein contained notwithstanding, any non-payment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay also an amount equal to 9% per annum of such overdue obligation for the period of time during which it is overdue.

25. ASSIGNMENT AND POSSESSION. This Lease and all rights of the Lessor hereunder may be assigned, pledged, mortgaged, transferred or otherwise disposed of, in whole or in part, by the Lessor with or without notice to, and the consent of, the Lessee, but the Lessee shall be under no obligation to any assignee, pledgee, mortgagee or other transferee of the Lessor except upon the giving of written notice thereof from the Lessor.

So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease, but, without the prior written consent of the Lessor, the Lessee shall not assign, transfer or en-

cumber its leasehold interest under this Lease in the Units or any of them (except to the extent that the provisions of any mortgage now or hereafter created on any of the lines of railroad of the Lessee may subject such leasehold interest to the lien thereof). The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provisions of Section 5 hereof.

Nothing in this Section 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 or its rights under the Finance Agreement to any corporation (which shall have duly assumed the obligations hereunder and thereunder of the Lessee) 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.

26. RECORDING; FURTHER ASSURANCES. Prior to the delivery and acceptance hereunder of any Unit, other than the first Locomotive leased to the Lessee, the Lessee will cause this Lease, and any amendments or supplements thereto as amended, to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the

Interstate Commerce Act and in accordance with the Lessee's undertaking in Section 27 of the Finance Agreement.

27. NOTICES. All notices hereunder shall be in writing and shall become effective when deposited in the United States certified mail, first-class postage prepaid, addressed as follows: if to the Lessor, at 16 Wall Street, New York, New York 10015, Attention: Corporate Trust Division, if to the Lessee, at Hot Springs, Arkansas, Attention: President, if to the Guarantor, at Tacoma, Washington 98401, Attention: Treasurer; or addressed to either party at such other address as such party shall from time to time designate in writing to the other party.

28. EXECUTION IN COUNTERPARTS. This Lease, and any lease supplemental hereto, may be executed in several separate counterparts, each of which when so executed shall be deemed to be an original, and in each case such counterparts together shall constitute but one and the same instrument.

29. MISCELLANEOUS. Any provision of this Lease Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in

any other jurisdiction. To the extent permitted by applicable law the Lessee hereby waives any provision of law which renders any provision hereof prohibited or unenforceable in any respect. Upon the execution and delivery hereof the Interim Lease of Railroad Equipment dated as of April 1, 1971 between the parties hereto shall be null and void and of no further force and effect as of the date of this Lease. No term or provision of this Lease may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against which the enforcement of the change, waiver, discharge or termination is sought and by the Agent; and any waiver of the terms hereof shall be effective only in the specific instance and for the specific purpose given. 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 any Units except as a lessee only. The captions in this Lease are for convenience of reference only and shall not define or limit any of the terms or provisions hereof. This Lease shall in all respects be governed by, and construed in accordance with, the laws of the State of New York, including all matters of construction, validity and performance; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act, such additional rights arising out of the filing, recording or depositing hereof and of any assignment hereof or out of the marking on the Units as shall be conferred by the laws of the sev-

eral jurisdictions in which this Lease or any assignment hereof shall be filed, recorded or deposited and any and all rights arising out of the marking of the Units.

30. ENFORCEMENT BY VENDORS. The provisions of this Lease as they relate to the Vendors are for the benefit of the Vendors and may be enforced by the appropriate Vendor, to the same extent as if it were a party hereto, as a third-party beneficiary hereof, without any assignment thereof to such Vendor and without any responsibility by the Lessor in connection therewith.

IN WITNESS WHEREOF, the Lessor, the Lessee and the Guarantor have caused this Agreement to be duly executed by their respective officers or representatives thereunto duly authorized as of the day and year first above written.

BANKERS TRUST COMPANY
Lessor

TEXAS, OKLAHOMA & EASTERN
RAILROAD COMPANY

By *E. Shaw*
Vice President

By *Alan J. Vandeventer*
Title: *Attorney-in-fact*
WEYERHAEUSER COMPANY

By *Alan J. Vandeventer*
Title: *Attorney-in-fact*

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

On this 22nd day of June, 1971, before me personally appeared ALAN P. VANDEVERT, to me personally known, who being by me duly sworn, says that he is Attorney-in-Fact for TEXAS, OKLAHOMA & EASTERN RAILROAD 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.

Margaret S. McCluskey

Notary Public

MARGARET S. McCLUSKEY
 Notary Public, State of New York
 No. 43-2605850
 Qualified in Richmond County
 Certificate filed in New York County
 Commission Expires March 30, 1972

[Notarial Seal]

My Commission expires _____.

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

On this 22nd day of June, 1971, before me personally appeared ALAN P. VANDEVERT, to me personally known, who being by me duly sworn, says that he is Attorney-in-Fact for WEYERHAEUSER 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.

Margaret S. McCluskey

Notary Public

MARGARET S. McCLUSKEY,
 Notary Public, State of New York
 No. 43-2605350
 Qualified in Richmond County
 Certificate filed in New York County
 Commission Expires March 30, 1972

[Notarial Seal]

My Commission expires _____

EXHIBIT A

LEASE SUPPLEMENT NO.

SETTLEMENT DATE , 1971

THIS LEASE SUPPLEMENT is executed and delivered by BANKERS TRUST COMPANY, as Trustee under a Trust Agreement dated as of April 1, 1971 (herein called the "Lessor"), and TEXAS, OKLAHOMA & EASTERN RAILROAD COMPANY (herein called the "Lessee") in accordance with the terms and as a part of that certain Lease of Railroad Equipment dated as of June 1, 1971 (the "Lease"), between the Lessor and the Lessee (the defined terms in the Lease being herein used with the same meaning):

A. DESCRIPTION OF UNITS COVERED BY THIS LEASE SUPPLEMENT (include name of Manufacturer, the Manufacturer's Specifications; and the Lessee's Road Number):

B. TOTAL COST OF UNITS COVERED BY THIS LEASE SUPPLEMENT. \$_____ (\$_____ per Unit) (herein called the "Owner's Cost").

C. TERM. The term of this Lease for each Unit covered by this Lease Supplement shall commence on the date of delivery of such Unit as provided in Section 6 of the Lease and shall continue through September 30, 1991.

D. RENT. For each Unit leased under this Lease Supplement, the Lessee hereby agrees to pay rent for the term of the Lease in 40 consecutive semiannual instalments commencing March 31, 1972, the first 10 of which shall each be in an amount equal to 3.198% of the Owner's Cost of such Unit and the last 30 of which shall each be in an amount equal to 4.609% of the Owner's Cost as to such Unit; provided, however, that if any of the payment dates referred to above is a Saturday, Sunday or a public holiday under the laws of the State of New York, the payment shall be payable on the immediately preceding business day. [In addition to the foregoing instalments of rent the Lessee agrees to pay on the Permanent Funding Date (as defined in the Finance Agreement) as an additional instalment of rent for each Unit leased under this Lease Supplement for the period commencing the Settlement Date set forth herein to and including the Permanent Funding Date, an amount equal to 7.22% of the Owner's Cost of the Unit leased hereunder.]*

E. DELIVERY. The Lessee hereby represents, warrants and confirms to the Lessor that the Units covered by this Lease Supplement have been duly delivered to the Lessee at the location referred to in Section 6 of the Lease, that

* Insert the bracketed words in each Lease Supplement executed prior to September 30, 1971.

the Lessee has duly inspected said Units and that the Lessee hereby accepts said Units for all purposes of the Lease [and for the Trustee under the [Locomotive]* [Chip Car]** Conditional Sale Agreement]*** as being in accordance with the [Locomotive]* [Chip Car]** Specifications, properly constructed, in good working order, repair and appearance and without defect or inherent vice in condition, design, operation or fitness for use, whether or not discoverable by the Lessee as of the date hereof, and free and clear of all liens, encumbrances and rights of others whatsoever, whether or not resulting from claims against the Lessor not related to the ownership of said Units; provided, however, that nothing contained herein or in the Lease shall in any way diminish or otherwise affect any right the Lessee or the Lessor may have with respect to said Units against the seller or any manufacturer of said Units or any part thereof.

F. STIPULATED LOSS VALUE. Upon the happening of any event referred to in the first sentence of Section 9 of the Lease with respect to any Unit covered by this

-
- * Insert the bracketed word in the Lease Supplement covering the second and third Locomotive.
 - ** Insert the bracketed words in the Lease Supplement covering the Chip Cars.
 - *** Delete from Lease Supplement covering the first Locomotive.

Lessor on the rental payment date next following the giving of notice of such event to the Agent and the Lessee required by Section 9 of the Lease (or, in the event that such rental payment date shall occur within five days after such notice, on the next succeeding rental payment date) of such event, the Stipulated Loss Value of such Unit computed as of such rental payment date. As of each rental payment date the Stipulated Loss Value of any Unit covered by this Lease Supplement shall be the percentage of the Owner's Cost for such Unit set opposite the number of such rental payment below:

<u>Number of</u> <u>Rental Payment</u>	<u>% of</u> <u>Owner's Cost</u>	<u>Number of</u> <u>Rental Payment</u>	<u>% of</u> <u>Owner's Cost</u>
1	105.5728%	21	85.0878%
2	109.4395	22	82.2769
3	112.5687	23	79.4242
4	114.8834	24	76.5296
5	116.2987	25	73.5929
6	116.7312	26	70.6143
7	116.6456	27	67.5936
8	116.3250	28	64.5309
9	115.7643	29	61.4263
10	114.9586	30	58.2799
11	110.9364	31	55.0920
12	108.5327	32	51.8627
13	106.0896	33	48.5923
14	103.6066	34	45.2811
15	101.0835	35	42.1422
16	98.5201	36	37.9797
17	95.9159	37	33.1488
18	93.2708	38	27.6507
19	90.5846	39	21.4866
20	87.8570	40	15.0000
		Thereafter	

Upon payment of the Stipulated Loss Value of such Unit and all rent due under this Lease Supplement up to and including the rental payment date on which such payment of Stipulated Loss Value is due as provided above, no further rental payment shall be due under Section D of this Lease Supplement as to such Unit.

G. IDENTIFICATION. The Lessee hereby further represents and warrants that the Units described above have been duly marked with insignia, plates or other identification showing the Lessor's title thereto in accordance with the terms of Section 23 of the Lease.

[H. RENEWAL OPTION. The Lessee shall have the option of extending for a term of five years the initial term of the Lease with respect to any Unit leased under this Lease Supplement. The Lessee shall exercise such option by giving the Lessor written notice of such election, specifying the Units as to which such option is being exercised, not less than 90 but not more than 180 days prior to the expiration of the Lease. The rent during such renewal term shall be payable on the last day of March and September during such renewal term and each such instalment of rent shall be an amount equal to 7.5% of the aggregate fair market sales value at the expiration of the Lease of the Units as to which the renewal option has been exercised.

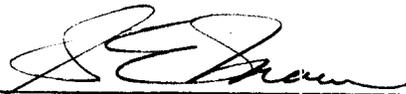
For purposes of this paragraph "fair market sales value" shall be determined as provided in the second and third sentences of Section 16 of the Lease.]*

APPROVED AND AGREED TO by and between the parties hereto as of the Settlement Date specified above.

TEXAS, OKLAHOMA & EASTERN
RAILROAD COMPANY

By _____
Title:

BANKERS TRUST COMPANY,
as Trustee

By  _____
Title: VICE PRESIDENT

WEYERHAEUSER COMPANY

By _____
Title:

* Insert the bracketed words in each Lease Supplement covering Chip Cars.