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INTERSTATE COMMERCE COMMISSION

LEASE OF RAILROAD EQUIPMENT

Dated as of April 1, 1972

between

THE WESTERN PACIFIC RAILROAD COMPANY

and

**FIRST SECURITY BANK OF UTAH,
NATIONAL ASSOCIATION**

LEASE OF RAILROAD EQUIPMENT dated as of April 1, 1972, between THE WESTERN PACIFIC RAILROAD COMPANY, a California corporation (hereinafter called the Lessee), and FIRST SECURITY BANK OF UTAH, NATIONAL ASSOCIATION, a national banking association (hereinafter called the Lessor).

WHEREAS, the Lessor and the Lessee have entered into four Conditional Sale Agreements dated as of April 1, 1972 (hereinafter called the Security Documents), with PACCAR INC, ACF INDUSTRIES, INCORPORATED, GENERAL ELECTRIC COMPANY and MAXSON CORPORATION, respectively (hereinafter individually called a Builder and together the Builders), wherein the Builders have agreed to manufacture, sell and deliver to the Lessor the railroad equipment described in Schedule A hereto;

WHEREAS, the Builders have assigned or will assign their respective interests in the Security Documents to FIRST SECURITY BANK OF IDAHO, NATIONAL ASSOCIATION, as Agent (hereinafter, together with its successors and assigns, referred to as the Vendor); and

WHEREAS, the Lessee desires to lease all the units of said equipment, or such lesser number (hereinafter called the Units) as are delivered and accepted and settled for under the Security Documents on or prior to September 1, 1972 (hereinafter called the Cut-Off Date), at the rentals and for the terms and upon the conditions hereinafter provided;

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

terms and conditions, but, upon default of the Lessee hereunder or under the Security Documents, subject to all the rights and remedies of the Vendor under the Security Documents:

§ 1. *Incorporation of Model Provisions.* Whenever this Lease incorporates herein by reference, in whole or in part or as hereby amended, any provision of the document entitled "Model Lease Provisions" annexed to the Security Documents as Part II of Annex C thereto (hereinafter called the Model Lease Provisions), such provision of the Model Lease Provisions shall be deemed to be a part of this instrument as fully to all intents and purposes as though such provision had been set forth in full in this Lease.

§ 2. *Delivery and Acceptance of Units.* § 2 of the Model Lease Provisions is herein incorporated as § 2 hereof except that the words "and the Builder" shall be inserted after the word "Lessor" in the eighth line thereof.

§ 3. *Rentals.* The Lessee agrees to pay to the Lessor as rental for each Unit subject to this Lease the following: on September 1, 1972 an amount equal to .02222% of the Purchase Price (as defined in the appropriate Security Documents) of each Unit settled for under the Security Documents on or before September 1, 1972 for each day elapsed from and including the date such Unit is settled for under the Security Documents to September 1, 1972, thereafter 30 consecutive semiannual payments payable on March 1 and September 1 in each year commencing with March 1, 1973 each in an amount equal to 4.49742% of the Purchase Price of each Unit subject to this Lease on such date.

The Lessor irrevocably instructs the Lessee to make all the payments provided for in this Lease in Federal funds (including but not limited to the payments required under

§ 7 hereof) for the account of the Lessor, c/o First Security Bank of Idaho, 119 North 9th Street, Boise, Idaho 83707, attention of Trust Department on or before the date upon which such payments are due and owing and the Lessee agrees so to do. On or before the date upon which payments to the Vendor under the Security Documents are due and owing, First Security Bank of Idaho, National Association, is hereby irrevocably instructed to apply funds received hereunder to make such payment to the Vendor (or to any assignee of the Vendor pursuant to Section 7 of the Agreements and Assignments between the respective Builders and the Vendor, dated as of April 1, 1972, under which the Security Documents are being assigned to the Vendor). Such payments shall be applied by the Vendor to satisfy the obligations of the Lessor under the Security Documents payable at the time such payments are due hereunder (or within six days thereafter) and, so long as no default under the Security Documents shall have occurred and be continuing, any balance shall be paid to the Lessor.

This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent, reduction thereof or 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 Documents, including the Lessee's rights by subrogation under Article 8 thereof, or the Builders 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, bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment 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.

§ 4. *Term of Lease.* The term of this Lease as to each Unit shall begin on the date of the delivery to and acceptance by the Lessee of such Unit and, subject to the provisions of §§ 7 and 10 hereof, shall terminate on the date on which the final semiannual payment of rent in respect thereof is due hereunder.

Notwithstanding anything to the contrary contained herein, all rights and obligations under this Lease and in and to the Units, upon default by the Lessee hereunder, or under the Security Documents in its capacity as Guarantor or otherwise, are subject to the rights of the Vendor under the Security Documents. If an event of default should occur under the Security Documents, the Vendor may ter-

minate this Lease (or rescind its termination), all as provided therein, unless the Lessee is not so in default under this Lease or under the Security Documents.

§ 5. *Identification Marks.* § 5 of the Model Lease Provisions is herein incorporated as § 5 hereof, except that nothing contained in such § 5 shall bar the Lessor from having its name, initials or other insignia on the Units.

§ 6. *Taxes.* § 6 of the Model Lease Provisions is herein incorporated as § 6 hereof, except that the first sentence of the first paragraph thereof shall be deleted and replaced with the following:

“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, federal or foreign taxes (other than any United States federal income tax [and, to the extent that the Lessor receives credit therefor against its United States federal income tax liability, any foreign income tax] payable by the Lessor in consequence of the receipt of payments provided for herein and other than the aggregate of all state or city income taxes or franchise taxes measured by net income based on such receipts or gross receipts taxes [other than gross receipts taxes in the nature of sales or use taxes], up to the amount of any such taxes which would be payable to the state and city in which the Lessor resides or has its principal place of business without apportionment to any other state, or, if no such taxes would be payable, then up to the amount of taxes which would be payable in any other taxing jurisdiction charging the lowest

rate of such taxes without apportionment to any other state, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided) 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 Documents, all of which impositions the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein.”

§ 7. *Payment for Casualty Occurrences; Insurance.* In the event that any Unit shall be or become worn out, lost, stolen, destroyed, or, in the opinion of the Lessor or the Lessee, irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (such occurrences being hereinafter called Casualty Occurrences) during the term of this Lease, 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 the rental payment 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 set out below. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft or complete destruction of such Unit) the Lessor shall be entitled to recover possession of such Unit.

The Casualty Value of each Unit as of any rental payment date shall be that percentage of the Purchase Price of such Unit as is set forth in the following schedule opposite the number of such rental payment date:

<u>Payment No.</u>	<u>Percentage</u>	<u>Payment No.</u>	<u>Percentage</u>
1	107.0144%	17	62.7818%
2	105.0553	18	59.8044
3	104.6018	19	56.7436
4	103.8189	20	53.6115
5	102.7785	21	50.4129
6	101.4440	22	47.1593
7	95.2627	23	43.8410
8	93.5482	24	40.4662
9	91.6941	25	37.0243
10	89.6883	26	33.5241
11	82.9146	27	29.9545
12	80.6360	28	26.3250
13	78.2338	29	22.6235
14	75.7017	30	18.8605
15	68.4185	31	15.0000
16	65.6533		

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 after delivery to and acceptance thereof by the Lessee hereunder.

The Lessee will, at all times while this Lease is in effect, at its own expense, cause to be carried and maintained insurance in respect of the Units at the time subject hereto, and public liability insurance, in amounts and against risks customarily insured against by railroad companies on similar equipment, and in any event in amounts and against risks comparable to those insured against by the Lessee on

equipment owned by it and the benefits thereof shall be payable as provided in the Security Documents and to furnish appropriate evidence of such insurance coverage upon request of Lessor. Any damages receivable from others, any salvage value paid by the Lessee, any condemnation payments and any net insurance proceeds, together with any interest received thereon pursuant to Article 7 of the Security Documents, as the result of insurance carried by the Lessee received by the Lessor in respect of Units suffering a Casualty Occurrence (all hereinafter collectively referred to as Recoveries) shall be deducted from the amounts payable by the Lessee to the Lessor in respect of Casualty Occurrences pursuant to this § 7 and the excess of such Recoveries, if any, shall belong to the Lessor. If the Lessor shall receive any such Recoveries after the Lessee shall have made payments pursuant to this § 7 without deduction for such Recoveries the Lessor shall pay such Recoveries 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 Recoveries shall remain the property of the Lessor. In the event of the loss, theft, irreparable damage or complete destruction of such Unit, the Lessee shall also pay the Lessor the salvage value of such Unit which will be based upon its net scrap value, computed at the current quoted price per gross ton of number 1 railroad heavy melting steel scrap at San Francisco, California, on the date of the Casualty Occurrence, less an allowance of \$6.00 per gross ton for dismantling such Unit. Upon such payment of the salvage value of such Unit, the title to such Unit, subject to the rights of the Vendor under the Security Documents shall pass to and vest in the Lessee.

All proceeds of insurance received by the Lessor in respect of insurance carried on any Unit or Units 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.

§ 8. *Annual Reports.* § 8 of the Model Lease Provisions is herein incorporated as § 8 hereof except the dates "March 31" and "December 31" shall be deleted and replaced with the dates "August 1" and "June 30", respectively; and the word "calendar" shall be deleted each time it appears in said § 8.

§ 9. *Disclaimer of Warranties; Compliance with Laws and Rules; Maintenance; and Indemnification.* § 9 of the Model Lease Provisions is herein incorporated as § 9 hereof.

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

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

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

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

D. 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, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under the Security Documents and this Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier;

E. any other proceedings shall be commenced by or against the Lessee for any relief which includes, or might result in, any modification of the obligations of the Lessee hereunder or under the Security Documents under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions, and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease and under the Security Documents 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 trustee or trustees or receiver or receivers, within 30 days after such appointment, if any,

or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

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

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

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as 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 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 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 (y) the then present value of the rentals which the Lessor reasonably estimates to be obtainable for the Unit during such period, such present value to be computed in each case on a basis of an 8% per annum discount, compounded semiannually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, (ii) any damages 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, and (iii) an amount which, after deduction of all taxes required to be paid by the Lessor in respect of the receipt thereof under the laws of the United States of America or any political subdivision thereof, shall be equal to any portion of the 7% investment credit (hereinafter called the Investment Credit) with respect to the Purchase Price of the Units pursuant to Section 38 and related sections of the Internal Revenue Code of 1954, as amended, lost, not claimed, not available for claim, disallowed or recaptured by or from the Lessor as a result of the breach of one or more of the representations, warranties and covenants made by the Lessee in § 17 or any other provision of the 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 in the reasonable opinion of the Lessor, will cause the Lessor's net return under this Lease to be equal to the net return that would have been available to the Lessor if it had been entitled to utilization of all or such portion of the maximum depreciation deduction with respect to a Unit authorized under Section 167 of the Internal Revenue Code utilizing the "class life" pre-

scribed in accordance with Section 167(m) of said Code (hereinafter called the ADR Deduction) which was lost, not claimed, not available for claim or disallowed or recaptured in respect of a Unit as a result of the breach of one or more of the representations, warranties and covenants made by the Lessee in § 17 or any other provision of this Lease, the termination of this Lease, the Lessee's loss of the right to use such Unit, or the sale or other disposition of the Lessor's interest in such Unit after the occurrence of an Event of Default.

Anything in this § 10 to the contrary notwithstanding, any default in the observance or performance of any covenant, condition or agreement on the part of the Lessee which results solely in the loss by the Lessor of, or the loss by the Lessor of the right to claim, or the disallowance with respect to the Lessor of all or any portion of the Investment Credit or ADR Deduction or both shall be for all purposes of this Lease deemed to be cured if the Lessee shall, on or before the next rental payment date after written notice from the Lessor of the loss, or the loss of the right to claim, or the disallowance of the Investment Credit or ADR Deduction or both in respect of such Unit, agree to pay to the Lessor the revised rental rate in respect of such Unit determined as provided in the fourth paragraph of § 17 hereof.

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.

§ 11. *Return of Units Upon Default.* § 11 of the Model Lease Provisions is herein incorporated as § 11 hereof.

§ 12. *Assignment; Possession and Use.* § 12 of the Model Lease Provisions is herein incorporated as § 12 hereof, except that the second and third paragraphs thereof shall be deleted and replaced with the following:

“So long as the Lessee shall not be in default under this Lease or under the Security Documents in its capacity as Guarantor or otherwise, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease and the Security Documents, but, without the prior written consent of the Lessor, the Lessee shall not assign or transfer its leasehold interest under this Lease in the Units or any of them. The Lessee, at its own expense, will promptly pay or discharge any and all sums claimed by any party which, if unpaid, might become a lien, charge, security interest or other encumbrance (other than an encumbrance created by the Lessor or the Vendor after the date hereof or resulting from claims against the Lessor or the Vendor not related to the ownership of the Units) upon or with respect to any Unit, including any accession thereto, or the interest of the Lessor, the Vendor or the Lessee therein, and will promptly discharge any such lien, claim, security interest or

encumbrance which arises. The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provisions of the immediately succeeding paragraph.

“So long as the Lessee shall not be in default under this Lease or under the Security Documents in its capacity as Guarantor or otherwise, the Lessee shall be entitled to the possession of the Units and to the use of the Units by it or any affiliate upon lines of railroad owned or operated by it or any such affiliate or upon lines of railroad over which the Lessee or any such affiliate has trackage or other operating rights or over which railroad equipment of the Lessee or any such affiliate is regularly operated pursuant to contract, and also to permit the use of the Units upon connecting and other carriers in the usual interchange of traffic and equipment, but only upon and subject to all the terms and conditions of this Lease and the Security Documents; *provided, however,* that the Lessee shall not assign or permit the assignment of any Unit to service involving the regular operation and maintenance thereof outside the United States of America. The Lessee may receive and retain compensation for such use from other carriers so using any of the Units.”

§ 13. *Purchase Option.* 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 term of this Lease, elect to purchase all, but not fewer than all, the Units covered by this Lease at the end of such term of this Lease for a purchase price equal to the “Fair Market Value” of such Units as of the end of such term.

Fair Market Value shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an arm's-length transaction between an informed and willing buyer-user (other than (i) a lessee currently in possession and (ii) a used equipment dealer) and an informed and willing seller under no compulsion to sell and, in such determination, costs of removal from the location of current use shall not be a deduction from such value. If on or before four months prior to the expiration of the term of this Lease, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Value of the Units, such value shall be determined in accordance with the foregoing definition by a qualified independent Appraiser. The term Appraiser shall mean such independent appraiser as the Lessor and the Lessee may mutually agree upon, or failing such agreement, the majority of a panel of three independent appraisers, one of whom shall be selected by the Lessor, the second by the Lessee and the third designated by the first two so selected. The Appraiser shall be instructed to make such determination within a period of 30 days following appointment, and shall promptly communicate such determination in writing to the Lessor and the Lessee. The determination so made shall be conclusively binding upon both Lessor and Lessee. The expenses and fee of the Appraiser shall be borne by the Lessee.

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 representations or warranties except that such Units are free and clear of all claims, liens, security interests and other encumbrances by or in favor of any person claiming by, through or under the Lessor) for such Units, and such other documents as may be required to release such Units from the terms and scope of this Lease and to transfer title thereto to the Lessee or such assignee or nominee, in such

form as may reasonably be requested by the Lessee, all at the Lessee's expense.

§ 14. *Return of Units upon Expiration of Term.* § 14 of the Model Lease Provisions is herein incorporated as § 14 hereof.

§ 15. *Opinion of Counsel.* § 15 of the Model Lease Provisions is herein incorporated as § 15 hereof. In addition, the Lessor will deliver to the Lessee an opinion of counsel for the Lessor stating that the Security Documents and this Lease have been duly authorized, executed and delivered by the Lessor and are legal and valid instruments, binding upon the Lessor and enforceable against the Lessor in accordance with their terms.

§ 16. *Recording; Expenses.* § 16 of the Model Lease Provisions is herein incorporated as § 16 hereof.

§ 17. *Federal Income Taxes.* The Lessor, as the 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 (hereinafter called the Code), to an owner of property, including (without limitation) an allowance for the Investment Credit and the ADR Deduction (each as defined in § 10 of this Lease), with respect to the Units.

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 and that each of such corporations will file such returns, take such action and execute such documents as may be reasonable and necessary to facilitate accomplishment of the intent thereof. Lessee agrees to keep and make available for inspection and copying by Lessor such records as will enable Lessor to determine whether it is entitled

to the full benefit of the Investment Credit and the ADR Deduction with respect to the Units.

The Lessee represents and warrants that (i) none of the Units constitutes property the construction, reconstruction or erection of which was begun before April 1, 1971; (ii) at the time the Lessor becomes the owner of the Units, the Units will constitute "new section 38 property" within the meaning of Section 48(b) of the Code and at the time the Lessor becomes the 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 Section 48(b) and 167(c)(2) of the Code from commencing with the Lessor; and (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.

If (other than for the reasons set forth below) the Lessor shall lose, or shall not have or shall lose the right to claim, or there shall be disallowed with respect to the Lessor, all or any portion of the Investment Credit or ADR Deduction with respect to any Unit the rental rate applicable to such Unit set forth in § 3 of this Lease shall, on and after the next succeeding rental payment date after written notice to the Lessee by the Lessor that such Investment Credit or ADR Deduction has not been claimed, or if claimed and then disallowed on and after the next succeeding rental date after payment of the tax attributable thereto, be increased by such amount for such Unit which, in the reasonable opinion of the Lessor, will cause the Lessor's net return over the term of the Lease in respect of such Unit under this Lease to equal the net return that would have been available if the Lessor had been entitled to utilization of all or such portion of the Investment Credit or ADR Deduction which was not claimed or was disallowed and the Lessee shall forthwith pay to the Lessor

the amount of any interest which may be assessed by the United States against the Lessor attributable to the loss of all or any portion of the Investment Credit or ADR Deduction; *provided, however*, that such rental rate shall not be so increased if the Lessor shall have lost, or shall not have, or shall have lost the right to claim, or if there shall have disallowed with respect to the Lessor, all or any portion of such Investment Credit or ADR Deduction with respect to such Unit as a direct result of the occurrence of any of the following events:

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

(ii) a transfer by the Lessor of legal title to such Unit, the disposition by the Lessor of any interest in such Unit or the reduction by the Lessor of its interest in the rentals from such Unit under the Lease, unless, in each case, an Event of Default shall have occurred and be continuing;

(iii) the amendment of the Security Documents without the prior written consent of the Lessee;

(iv) the failure of the Lessor to claim such Investment Credit or ADR Deduction as applicable, in its income tax return for the appropriate year or the failure of the Lessor to follow proper procedure in claiming such Investment Credit or ADR Deduction as applicable;

(v) the failure of the Lessor to have sufficient liability for tax against which to credit such Investment Credit or sufficient income to benefit from the ADR Deduction as applicable;

(vi) the failure of the Lessor to take timely action in contesting a claim made by the Internal Revenue Service with respect to the disallowance of such Invest-

ment Credit or ADR Deduction, if the failure to take such action in a timely manner shall have precluded the right of the Lessee to contest such claim, or a failure to take action to contest any such claim after a timely request to conduct such contest has been given by the Lessee to the Lessor (provided that the Lessee shall upon demand of the Lessor pay to the Lessor the expenses of any such contest as a condition of prosecuting the same); or the release, waiver, compromise or settlement of any action or proceeding taken in accordance with this clause (vi) by the Lessor without the prior written consent of the Lessee; or

(vii) any other fault of the Lessor which directly causes the loss of any of the aforesaid tax benefits; *provided, however*, that the execution and delivery of this Lease and the other documents herein referred to and the carrying out of the transactions contemplated herein and therein in accordance with the terms of this Lease and such other documents shall not be deemed to have caused the loss of such tax benefit under this clause (vii).

If action is taken by the Lessor with respect to the disallowance of all or a portion of the Investment Credit or ADR Deduction and the final determination shall be adverse to the Lessor, the Lessee shall pay to the Lessor interest on the amount of the tax and interest paid attributable to the Investment Credit or ADR Deduction disallowed, computed at the rate of 8% per annum from the date of payment of such tax and interest to the date the Lessee shall reimburse the Lessor in accordance with the provisions of this § 17. The Lessor shall not be obligated to take any such legal or other appropriate action unless the Lessee shall first have indemnified the Lessor for all liabilities and expenses which may be entailed therein and shall have furnished the Lessor with such reasonable security therefor as may be requested.

If the Lessor's right to claim all or any part of the full Investment Credit or ADR Deduction with respect to a Unit, which was not claimed or was disallowed, shall be established by the final judgment or decree of the court or administrative agency having jurisdiction thereof, or if the Lessor shall release, waive, compromise or settle any claim without the written consent of the Lessee, then, on the next succeeding rental payment date thereafter, or after such judgment or decree shall have become final, as the case may be, the rental rate in respect of such Unit set forth in § 3 of this Lease shall again become applicable to such Unit and the Lessor shall forthwith upon demand of the Lessee reimburse Lessee in an amount equal to the excess, if any, of (i) the sum of (A) the difference between the increased rental paid by the Lessee with respect to such Unit pursuant to the fourth paragraph of this § 17 and the rental rate applicable to such Unit pursuant to § 3 of this Lease and (B) any interest paid by the Lessee to the Lessor pursuant to the next preceding paragraph of this § 17 over (ii) the difference between (A) an amount equal to interest at the rate of 8% per annum on the amount of any federal income tax paid by the Lessor on account of the disallowance or inability to claim the Investment Credit or ADR Deduction on such Unit and (B) the amount of any interest to which the Lessor would be entitled in connection with the refund of any tax paid on account of such disallowance or inability to claim; *provided, however*, that if the amount calculated in accordance with clause (ii) exceeds the amount calculated in accordance with clause (i), the Lessee shall pay such excess to the Lessor promptly on demand.

The Lessee's and the Lessor's agreement to pay any sums which may become payable pursuant to this § 17 shall survive the expiration or other termination of this Lease.

§ 18. *Interest on Overdue Rentals.* Anything to the contrary herein contained notwithstanding, any nonpay-

ment 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 9% per annum of the overdue rentals for the period of time during which they are overdue or such lesser amount as may be legally enforceable.

§ 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 deposited in the United States certified mails, first-class postage prepaid, addressed as follows:

(a) if to the Lessor, at 79 South Main Street, Salt Lake City, Utah 84111; and

(b) if to the Lessee, at 526 Mission Street, San Francisco, California 94105, attention Vice President—Finance;

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

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

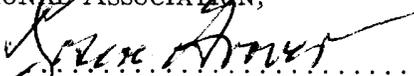
This Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the Units and supersedes all other agreements, oral or written, with respect to the Units. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid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

§ 21. *Execution.* This Lease may be executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument. Although this Lease is dated as of April 1, 1972, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

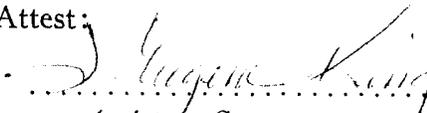
§ 22. *Law Governing.* The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of Utah, *provided, however,* that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

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

FIRST SECURITY BANK OF UTAH,
NATIONAL ASSOCIATION,

by 
.....
Senior Vice President

[CORPORATE SEAL]

Attest:

.....
Assistant Secretary

THE WESTERN PACIFIC RAILROAD
COMPANY,

by 
.....
Vice President

[CORPORATE SEAL]

Attest:

.....
Assistant Secretary

STATE OF UTAH }
COUNTY OF SALT LAKE } ss.:

On this 28th day of *December*, 1972, before me personally appeared ROSCOE GROVER, to me personally known, who, being by me duly sworn, says that he is a Vice President of FIRST SECURITY BANK OF UTAH, NATIONAL ASSOCIATION, that the seal affixed to the foregoing instrument is the corporate seal of said association, that said instrument was signed and sealed on behalf of said association 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 association.

[Signature]
Notary Public

[NOTARIAL SEAL]

My Commission Expires

STATE OF CALIFORNIA }
CITY AND COUNTY OF SAN FRANCISCO } ss.:

On this 2nd day of *May*, 1972, before me personally appeared F. A. TEGELER, to me personally known, who, being by me duly sworn, says that he is a Vice President of THE WESTERN PACIFIC 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.

[Signature]
Notary Public

[NOTARIAL SEAL]

My Commission Expires *December 14, 1975*



SCHEDULE A

Type	Builder's Specifications	Builder's Plant	Quantity	Lessee's Road Numbers (Both Inclusive)	Unit Base Price	Total Base Price	Estimated Time and Place of Delivery
70-ton insulated box cars	PC-260 dated December 8, 1971	Renton, Washington	36	WP 61051-61086	\$ 21,120	\$ 760,320	May 1972 at Renton, Washington
100-ton covered hopper cars	General Issue for 100 ton CF 4650-C dated May 1, 1969 as Modif. November 30, 1971	Red House, West Virginia	25	WP 11826-11850	19,850	496,250	July 1972 at Omaha, Nebraska
U23B locomotives	3530A	Erie, Pennsylvania	15	WP 2251-2265	275,000*	4,125,000*	May-July 1972 at Chicago, Illinois**
70-ton flat cars	422 dated January 21, 1972	St. Paul, Minnesota	5	WP 2226-2230	20,700	103,500	June 1972 at St. Paul, Minnesota

*F.O.B. Chicago, Illinois, including estimated freight charges and California state sales or use tax.

**Delivery at Erie, Pennsylvania, on delivery to a common carrier for shipment to final destination at Chicago, Illinois. Inspection and acceptance shall take place at final destination notwithstanding prior delivery to carrier at Erie, Pennsylvania. General Electric warrants that each unit will meet inspection requirements at final destination. General Electric will retain risk of loss and damage to units prior to delivery at Chicago, Illinois.