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INTERSTATE COMMERCE COMMISSION

LEASE OF RAILROAD EQUIPMENT

(No. 2)

Dated as of July 1, 1974

between

CHICAGO AND NORTH WESTERN
TRANSPORTATION COMPANY

and

TRUST COMPANY BANK, as Trustee

LEASE OF RAILROAD EQUIPMENT dated as of July 1, 1974, between Chicago and North Western Transportation Company, (hereinafter called the Lessee), and Trust Company Bank, a Georgia banking corporation, as Trustee (hereinafter, together with its successors and assigns, called the Lessor), under a Trust Agreement dated as of the date hereof (hereinafter called the Trust Agreement), with First Security Leasing Company (First Security Leasing Company being hereinafter called the Beneficiary and, the Beneficiary if it retains an interest, and any Permitted Transferee or Transferees, as defined in said Trust Agreement, of all or any portion of its interests therein being hereinafter collectively called the Beneficiaries).

WHEREAS, the Lessor and the Lessee are entering into a conditional sale agreement dated as of the date hereof with Pullman Incorporated (Pullman-Standard division) (such agreement being hereinafter called the Security Document and such party being hereinafter called the Builder) wherein the Builder has agreed to manufacture, sell and deliver to the Lessor the units of railroad equipment described in Schedule A hereto (hereinafter called the Equipment);

WHEREAS, the Builder is assigning its rights in the Security Document to First Security Bank of Utah, N.A., as agent (hereinafter, together with its successors and assigns, called the Vendor); and

WHEREAS, the Lessee desires to lease all the units of the Equipment, or such lesser number (hereinafter called the Units) as are delivered and accepted and settled for under the Security Document at the rentals and for the terms and upon the conditions hereinafter provided;

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

§ 1. *Net Lease.* This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent, reduction thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs due or alleged to be due by reason of any past, present or future claims of the Lessee against the Lessor under this Lease or under the Security Document, including the Lessee's rights by subrogation thereunder to the Builder or the Vendor or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, including without limitation, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other

restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency of or the bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever.

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

§ 3. *Rentals.* The Lessee agrees to pay to the Lessor, as rental for each Unit subject to this Lease, 41 consecutive semiannual payments payable on January 15 and July 15 in each year, commencing July 15, 1975. The rental payment payable on July 15, 1975 shall be in an amount equal to .029861% of the Purchase Price (as defined in the Security Document) of each Unit then subject to this Lease for each day (computed on the basis of a 360-day year of twelve 30-day months) elapsed from 30 days prior to the Closing Date (as defined in the Security Document) for such Unit to the date of such payment. The next 40 rental payments shall each be in an amount equal to 4.61396% of the Purchase Price of each Unit then subject to this

Lease. The Lessee agrees to pay to the Lessor as advance rent (hereinafter called Advance Rent) an amount, payable on the Final Deposit Date (as defined in the Finance Agreement, dated as of the date hereof, referring to this Lease) equal to .029861% of the *pro rata* share of the Interim Investor (as defined in said Finance Agreement) in the Conditional Sale Indebtedness (as defined in the Security Document) for each day of the period from the date said Conditional Sale Indebtedness was incurred to (but not including) the Final Deposit Date; *provided, however,* that the next succeeding rental payment hereunder following said advance shall be reduced by the amount of the Advance Rent paid.

The rental payments hereinbefore set forth are subject to adjustment pursuant to § 17 hereof. If any of the semiannual rental payment dates referred to above is not a business day the semiannual rental payment otherwise payable on such date shall be payable on the next preceding business day. The term "business day" as used herein means calendar days, excluding Saturday, Sunday and every other day in which banking institutions in Salt Lake City, Utah or Chicago, Illinois are authorized or obligated to remain closed.

The Lessor irrevocably instructs the Lessee to make all the payments provided for in this Lease at the principal office of the Vendor, for the account of the Lessor, in care of the Vendor, with instructions to the Vendor first, to apply such payments to satisfy the obligations of the Lessor under the Security Document, subject to the limitations contained in the last paragraph of Article 4 of the Security Document and second, so long as no event of default under the Security Document shall have occurred and be continuing, to pay any balance promptly to the Lessor at such place as the Lessor shall specify in writing. The Lessee agrees to make each payment provided for herein as contemplated by this paragraph in immediately available Salt Lake City or Federal funds in the city where such payment is to be made.

§ 4. *Term of Lease.* The term of this Lease as to each Unit shall begin on the date of delivery and acceptance thereof hereunder and, subject to the provisions of §§ 7, 10 and 13 hereof, shall terminate on the date on which the final payment of rent in respect thereof is due pursuant to §3 hereof.

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

terminate this Lease (or rescind its termination), all as provided therein, unless the Lessee is not in default under this Lease or under the Security Document in its capacity as guarantor.

§ 5. *Identification Marks.* The Lessee will cause each Unit to be kept numbered with the identifying number set forth in Schedule A hereto, or in the case of any Unit not there listed such identifying number as shall be set forth in any amendment or supplement hereto extending this Lease to cover such Unit, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the words "Ownership Subject to a Security Agreement Filed under the Interstate Commerce Act, Section 20c" 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 Lessor's and Vendor's title to and property in such Unit and the rights of the Lessor under this Lease and of the Vendor under the Security Document. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such words shall have been so marked on both sides thereof and will replace promptly any such words which may be removed, defaced or destroyed. The Lessee will not change the identifying number of any Unit unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with the Vendor and the Lessor and filed, recorded and deposited by the Lessee in all public offices where this Lease and the Security Document shall have been filed, recorded and deposited and (ii) the Lessee shall have furnished the Vendor and the Lessor an opinion of counsel to the effect set forth in subparagraph C of §15 hereof in respect of such statement.

Except as provided in the immediately preceding paragraph, the Lessee will not allow the name of any person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership; *provided, however,* that the Units may be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates.

§ 6. *Expenses and 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, federal, or foreign taxes (other than any United States federal income tax or any value added tax in lieu of or in substitution for any such income taxes or any excess profits taxes [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 has its principal place of business without apportionment to any other state, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided) 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 Document, 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. 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 (except as provided above) or upon the Lessor solely by reason of its ownership thereof and will keep at all times all and every part of such Unit free and clear of all impositions which might in any way affect the title of the Lessor or result in a lien upon any such Unit; *provided, however,* that the Lessee shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinions of the Lessor and the Vendor, adversely affect the title, property or rights of the Lessor hereunder or the Vendor under the Security Document. If any impositions shall have been charged or levied against the Lessor directly and paid by the Lessor, the Lessee shall promptly reimburse the Lessor on presentation of an invoice therefor; *provided, however,* that the Lessee shall not be obligated to reimburse the Lessor for any impositions so paid unless the Lessor shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Lessor) or unless the Lessee shall have approved the payment thereof.

In the event that the Lessor shall become obligated to make any payment to the Builder or the Vendor or otherwise pursuant to any correlative provision of the Security Document not covered by the foregoing

paragraph of this §6, the Lessee shall pay such additional amounts (which shall also be deemed impositions hereunder) to the Lessor as will enable the Lessor to fulfill completely its obligations pursuant to said provision, subject to the provisos set forth in the last two sentences of the next preceding paragraph.

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

In the event that, during the continuance of this Lease, the Lessee becomes liable for the payment or reimbursement of any imposition, pursuant to this §6, such liability shall continue, notwithstanding the expiration of this Lease, until all such impositions are paid or reimbursed by the Lessee.

§ 7. *Payment for Casualty Occurrences; Insurance.* 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 in a manner constituting a Condemnation (as hereinafter defined) (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. With respect to any Unit taken or requisitioned by condemnation or otherwise, a "Condemnation" shall be deemed to have occurred (i) on the date of the taking or requisitioning when such taking or requisitioning is for a definite period exceeding the otherwise remaining term of this Lease or (ii) on the date on which such taking or requisitioning constitutes a Condemnation under the Security Document. On the rental payment date next succeeding such notice the Lessee shall pay to the Lessor an amount equal to the rental payment or payments in respect of such Unit due and payable on such date plus a sum equal to the Casualty Value (as hereinafter defined) of such Unit as of the date of such payment in accordance with the schedule 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 Lessor hereby irrevocably appoints the Lessee its agent

during the original and any extended term of this Lease to dispose of any Unit suffering a Casualty Occurrence or any component thereof, at the best price obtainable on an "as is, where is" basis. Provided that the Lessee has previously paid the Casualty Value to the Lessor and an Event of Default hereunder, or an event which upon lapse of time and/or demand could constitute an Event of Default thereunder, has not occurred, the Lessee shall be entitled to the proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit. The Lessee shall pay any excess proceeds to the Lessor.

The Casualty Value of each Unit as of the payment date on which payment is to be made as aforesaid shall be that percentage of the Purchase Price of such Unit as is set forth in the following schedule opposite such date:

Rent Payment Date	Casualty Value (Percentage of Purchase Price)	Rent Payment Date	Casualty Value (Percentage of Purchase Price)
July 15, 1975	88.6776%	January 15, 1986	70.0970%
January 15, 1976	90.6278	July 15, 1986	67.6077
July 15, 1976	92.2841	January 15, 1987	65.0711
January 15, 1977	93.2795	July 15, 1987	62.4763
July 15, 1977	93.7475	January 15, 1988	59.8666
January 15, 1978	93.3563	July 15, 1988	57.2268
July 15, 1978	92.8306	January 15, 1989	54.6086
January 15, 1979	92.4559	July 15, 1989	51.9785
July 15, 1979	91.8969	January 15, 1990	49.3832
January 15, 1980	91.1430	July 15, 1990	46.7857
July 15, 1980	90.2137	January 15, 1991	44.2258
January 15, 1981	89.1040	July 15, 1991	41.5282
July 15, 1981	87.8293	January 15, 1992	38.7330
January 15, 1982	86.3906	July 15, 1992	35.8022
July 15, 1982	84.7990	January 15, 1993	32.7751
January 15, 1983	83.0617	July 15, 1993	29.5990
July 15, 1983	81.1855	January 15, 1994	26.2994
January 15, 1984	79.1842	July 15, 1994	22.8388
July 15, 1984	77.0601	January 15, 1995	19.2424
January 15, 1985	74.8339	and thereafter	16.0400
July 15, 1985	72.5036		

In the event that the Beneficiary assigns, transfers or conveys all or any part of its right, title and interest in the Trust Agreement to any Permitted Transferee thereunder, then the Casualty Values shall be increased or decreased as appropriate to such percentage of the Purchase Price of the Units as shall, in the reasonable opinion of Itel Leasing Corporation or other competent party acceptable to the Lessee and the Beneficiaries, cause the Beneficiaries' (including the Beneficiary if it retains any interest) net return and after-tax cash flow from payments in respect of casualty occurrences to

equal the net return and after-tax cash flow anticipated by each Beneficiary as of the date each became a party to the Trust Agreement; *provided, however,* in the event of any decrease, the Casualty Value in respect of any Unit may not be decreased to an amount less than that portion of the Conditional Sale Indebtedness (as defined in the Security Document) remaining unpaid in respect of such Unit on the date as of which such Casualty Value shall be determined, plus interest accrued thereon but unpaid as of such date. The parties shall enter into an agreement supplemental hereto setting forth the adjusted schedule.

The foregoing percentages have been computed without regard to recapture of the Investment Credit (as defined in §17 hereof). Consequently, the Casualty Value of any Unit Suffering a Casualty Occurrence on or before the third, fifth and seventh anniversary of the date of delivery and acceptance of such Unit shall be increased by the applicable percentage of the Purchase Price set forth below.

Anniversary of Delivery and Acceptance	Percentage of Purchase Price
Third	13.4615%
Fifth	8.9744
Seventh	4.4872

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

The lessee will, at all times while this Lease is in effect, at its own expense, cause to be carried and maintained property insurance in respect of the Units at the time subject hereto, and public liability insurance, in amounts and against risks customarily insured against by railroad companies in respect of similar equipment, and in any event comparable to those insured against by the Lessee in respect of similar equipment owned by it and the benefits thereof shall be payable to the Vendor, the Lessor and the Lessee, as their interests may appear, so long as the indebtedness, if any, evidenced by the Security Document shall not have been paid in full, and thereafter to the Lessor and the Lessee as their interests may appear. Any insurance proceeds as the result of insurance carried by the Lessee or condemnation payments received by the Lessor in respect of Units suffering a Casualty Occurrence shall be deducted from the amounts payable by the Lessee to the Lessor in respect of Casualty Occurrences pursuant to this §7. If the Lessor shall receive any such insurance proceeds or condemnation payments after the Lessee shall have made payments pursuant to this §7 without deduction for such insurance proceeds or such condemnation payments, the Lessor shall pay such proceeds or condemnation payments to the Lessee up to an amount equal to the Casualty Value with respect to a

Unit paid by the Lessee and any balance of such proceeds or condemnation payments shall remain the property of the Lessor. All insurance proceeds received by the Lessor in respect of any Unit not suffering a Casualty Occurrence shall be paid to the Lessee upon proof satisfactory to the Lessor that any damage to such Unit in respect of which such proceeds were paid has been fully repaired. The Lessor shall not be required to make any of the payments contemplated by the preceding two sentences if an Event of Default hereunder, or an event which upon lapse of time and/or demand could constitute an Event of Default, has occurred and may retain such proceeds or payments until such Event of Default has been cured.

In the event that during the original and any extended term of this Lease the use of any Unit is requisitioned or taken by any governmental authority by condemnation or otherwise in a manner not constituting a Condemnation (as defined in this §7), the Lessee's obligation to pay rent shall continue for the duration of such requisitioning or taking. The Lessee shall be entitled to receive and retain for its own account all sums payable for any such period by such governmental authority as compensation for requisitioning or taking of possession so long as there is no Event of Default hereunder.

§ 8. *Reports.* On or before March 31 in each year, commencing with the calendar year 1976, the Lessee will furnish to the Lessor and the Vendor an accurate statement (a) setting forth as at the preceding December 31 the amount, description and numbers of all Units then leased hereunder and covered by the Security Document, the amount, description and numbers of all Units that have suffered a Casualty Occurrence (or have been taken or requisitioned, although such taking or requisitioning does not yet constitute a Condemnation under § 7 hereof) or are then undergoing repairs (other than running repairs) or have been withdrawn from use pending repairs (other than running repairs) during the preceding calendar year and such other information regarding the condition and state of repair of the Units as the Lessor or the Vendor may reasonably request and (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and the markings required by §5 hereof and the Security Document have been preserved or replaced. The Lessor shall have the right by its agents, to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Lessor may request during the continuance of this Lease.

As soon as available and in any event within 120 days after the close of each fiscal year, the Lessee will promptly furnish to the Lessor, the Vendor (and any party for whom the Vendor is acting as agent) a balance sheet as of the end of such year and a profit and loss and retained earnings statement for the year then ended prepared in conformity with generally accepted accounting principles or the regulations of the Interstate Commerce Commission, in either case applied on a basis consistent with that of the preceding fiscal year and certified by the Lessee's independent certified public accountants.

The Lessee shall also furnish to the Vendor (and to any party for whom the Vendor is acting as agent) and the Lessor (i) as soon as available and in any event within 45 days after the end of the first, second and third quarterly accounting periods in each fiscal year of the Lessee two copies of the balance sheet of the Lessee as of the end of such accounting period and copies of the related statements of income and retained earnings of the Lessee for the portion of its fiscal year ended with the last day of such quarterly accounting period, all in reasonable detail and stating in comparative form the figures for the corresponding date and period in the previous fiscal year; (ii) promptly after filing, a copy of the Annual Report to the Interstate Commerce Commission which is required to be filed by the Lessee; (iii) as soon as available, the Quarterly Commodities Statistical Reports of the Lessee and such reports and proxy statements as are furnished to its stockholders from time to time and (iv) such other financial information as the Vendor (and any party for whom the Vendor is acting as agent) and the Lessor may reasonably request from time to time.

As soon as available and in any event within 120 days after the end of each fiscal year, the Lessee will deliver to the Lessor and the Vendor (and to any party for whom the Vendor is acting as agent) a certificate signed by the President, any Vice President, the Treasurer or any Assistant Treasurer of the Lessee stating that a review of the activities of the Lessee during such year has been made under his supervision with a view to determining whether the Lessee has kept, observed, performed and fulfilled all of its covenants and obligations under this Lease and the Security Document and that to the best of his knowledge the Lessee during such year has kept, observed, performed and fulfilled each and every covenant and obligation contained herein and in the Security Document, or if an Event of Default under this Lease or an event of default under the Security Document shall

exist or if an event has occurred which, with the giving of notice or the passage of time or both, would constitute such an Event of Default or event of default, specifying same and the nature and status thereof.

§ 9. *Disclaimer of Warranties; Compliance with Laws and Rules; Maintenance; Indemnification.* **The Lessor makes no warranty or representation, either express or implied, as to the design or condition of, or as to the quality of the material, equipment or workmanship in, the Units delivered to the Lessee hereunder, and the Lessor makes no warranty of merchantability or fitness of the Units for any particular purpose or as to title to the Units or any component thereof,** it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee; but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for the account of the Lessor and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Lessor may have against the Builder under the provisions of Items 3 and 4 to Annex A of the Security Document. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Lessor that the Units described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

The Lessee agrees, for the benefit of the Lessor and the Vendor, to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each Unit) with all laws of the jurisdictions in which its operations involving the Units may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units, and in the event that such laws or rules require any alteration, replacement or addition of or to any part on any Unit, the Lessee will conform therewith at its own expense; *provided, however,* that the Lessee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does

not, in the opinion of the Lessor or the Vendor, adversely affect the property or rights of the Lessor or the Vendor under this Lease or under the Security Document.

The Lessee agrees that, at its own cost and expense, it will maintain and keep each Unit in good order and repair.

Any and all additions to any Unit and any and all parts installed on and additions and replacements made to any Unit (except additions and replacements made to any Unit [other than replacements for parts included in the Purchase Price (as defined in the Security Document) of such Units] which are not required under the terms of the second paragraph of this §9 and which can be removed without damage to such Unit and without impairing the originally intended function or use of such Unit,) shall constitute accessions to such Unit and, at the cost and expense of the Lessee, full ownership thereof free from any lien, charge, security interest or encumbrance (except for those created by the Security Document) shall immediately be vested in the Lessor and the Vendor as their respective interests appear in the Unit itself. The Lessee, at its expense, may remove from any Unit any addition or replacement not constituting accessions provided such removal does not damage such Unit.

The Lessee agrees to indemnify, protect and hold harmless the Lessor and the Vendor from and against all losses, damages, injuries, liabilities (including, without limitation, strict or absolute liability in tort), claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including, but not limited to, counsel fees and expenses, patent liabilities, penalties and interest, arising out of or as the result of the entering into or the performance of the Security Document or this Lease, the ownership of any Unit, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any Unit or any accident in connection with the operation, use, condition, possession, storage or return of any Unit resulting in damage to property or injury or death to any person, except as otherwise provided in § 14 of this Lease. The indemnities arising under this paragraph shall continue in full force and effect notwithstanding the full payment of all obligations under this Lease or the termination of this Lease.

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

§ 10. *Default.* If, during the continuance of this Lease, one or more of the following events (each such event being 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 five days;

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

C. default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein or in the Security Document, 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;

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 Document and this Lease shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier; or

E. 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 Document under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extension (other than a law which does not permit any readjustments of the obligations of the Lessee hereunder or under the Security Document), 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 Document shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Lessee or for the property of the Lessee in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such a trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier;

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

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

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as 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 the basis of a 9% 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, without limitation, reasonable attorneys' fees, in addition thereto which the Lessor shall have sustained by reason of the breach of any covenant, representation or warranty of this Lease other than for the payment of 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, in the reasonable opinion of the Lessor, 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 Investment Credit (as defined in § 17 hereof) 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 this Lease, the inaccuracy of any statement in any letter or document furnished to the Lessor by the Lessee, the termination of this Lease, the Lessee's loss of the right to use such Unit or the sale or other disposition of the Lessor's interest in any Unit after

the occurrence of an Event of Default, plus such sum as shall, in the reasonable opinion of the Lessor, 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 ADR Deduction (as defined in § 17 hereof) 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 inaccuracy of any statement in any letter or document furnished to the Lessor by the Lessee, the termination of this Lease, the Lessee's loss of the right to use such Unit 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, other than the loss of the Units as described in §7, 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 a revised rental rate in respect of such Unit so that the Lessor shall have the same rate of return as would have been realized by the Lessor if the Lessor had been entitled to utilize all the Investment Credit and the ADR Deduction.

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 not, at the time in question, prohibited by law. The Lessee hereby waives any and all existing or future claims to any offset against payments due hereunder, and agrees to make such payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

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

§ 11. *Return of Units Upon Default.* If this Lease shall terminate pursuant to § 10 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor. For the purpose of delivering possession of any Unit or Units to the Lessor as above required, the Lessee shall at its own cost, expense and risk:

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

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

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

The assembling, delivery, storage and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Unit, to inspect the same. In the event that the Units or any thereof are sold pursuant to the exercise of the Vendor's remedies under the Security Document, the Lessee shall pay to the Vendor the per diem interchange for each such Unit which shall not have been assembled, delivered and stored, as hereinbefore provided, by the date of such sale for

each day from the date of such sale to the date of delivery to the purchaser thereof.

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

§ 12. *Assignment; Possession and Use.* This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. All the rights of the Lessor hereunder (including, but not limited to, the rights under §§ 6, 7, 10 and 17 and the rights to receive the rentals payable under this Lease) shall inure to the benefit of the Lessor's assigns (including the partners or any beneficiary of any such assignee if such assignee is a partnership or a trust, respectively).

So long as the Lessee shall not be in default under this Lease or under the Security Document in its capacity as guarantor or otherwise and the Lessee shall have fully complied with the provisions of the fifth paragraph of this §12 and the third paragraph of §17 hereof, the Lessee shall be entitled to the possession of the Units and also to sublease the Units to, or to permit their use under the terms of car contracts by, a sublessee or user incorporated in the United States of America (or any State thereof or the District of Columbia), upon lines of railroad owned or operated by a railroad company or companies incorporated in the United States of America (or any State thereof or the District of Columbia), or over which such railroad company or companies have trackage rights or rights for operation of their trains, and upon connecting and other carriers in the usual interchange of traffic, but only upon and subject to all the terms and conditions of this Lease; *provided, however,* that the Lessee shall not sublease or permit the sublease or use of any Unit to service involving regular operation and maintenance outside the United States of America; *and provided further,* that any such sublease or use shall be consistent with the provisions of §17 hereof. No such assignment or sublease shall relieve the

Lessee of its obligations hereunder which shall be and remain those of a principal and not a surety.

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

The Lessor shall have the right to declare this Lease terminated in case of any unauthorized assignment or transfer of the Lessee's rights hereunder or in case of any unauthorized transfer or sublease of any of the Units.

The Lessee, at its own expense, will as soon as possible cause to be duly discharged any lien, charge, security interest or other encumbrance (except any sublease as aforesaid and other than an encumbrance resulting from claims against the Lessor, the Vendee or the Vendor not related to the ownership or leasing of, or the security title of the Vendor to, the Units) which may at any time be imposed on or with respect to any Unit including any accession thereto or the interest of the Lessor, the Vendor or the Lessee therein; except that this covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent; and, furthermore, the Lessee shall be under no obligation to discharge any such lien, charge, security interest or encumbrance so long as it is contesting the same in good faith and by appropriate legal proceedings and the failure to discharge the same does not, in the opinions of the Lessor and the Vendor, adversely affect the title, property or rights of the Lessor hereunder or the Vendor under the Security Document. 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 this §12.

Nothing in this § 12 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or

possession of the Units to any railroad corporation incorporated under the laws of any state of the United States of America or the District of Columbia (which shall have duly assumed the obligations of the Lessee hereunder and under the Security Document) into or with which the Lessee shall have become merged or consolidated or which shall have acquired or leased all or substantially all the lines of railroad of the Lessee, provided that such assignee, lessee or transferee will not, upon the effectiveness of such merger, consolidation, lease or acquisition be in default under any provision of this Lease and that such acquisition or lease of railroad lines of the Lessee shall not alter in any way the Lessee's obligation to the Lessor and Vendor hereunder which shall be and remain those of a principal and not a surety.

§ 13. *Renewal Option and Right of First Refusal.* Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may by written notice delivered to the Lessor not less than six months prior to the end of the original term of this Lease elect to extend the term of this Lease in respect of all but not fewer than all of the Units then covered by this Lease, for an additional five-year period commencing on the scheduled expiration of the original term of this Lease, and the rental payments shall each be in an amount equal to 1.978% of the Purchase Price (as defined in the Security Document) of each Unit then subject to this Lease, payable on January 15 and July 15 in each year of such extended term.

In the event that there is no extension of this Lease by the Lessee at the expiration of the original term thereof and the Lessor elects to sell such Units to third parties at the expiration of the original term, the Lessor shall, in a commercially reasonable manner, solicit offers to buy such Units (excepting additions and replacements not constituting accessions, as described in the fourth paragraph of § 9 hereof), and upon receipt thereof shall exhibit to the Lessee a true copy of the most favorable offer, and the Lessee shall have a right of first refusal, exercisable by written notice delivered within 15 days of the receipt of said copy, to purchase such Units at the sale price set forth in such offer. In the event that the Lessor elects to sell or lease such Units to third parties at the expiration of the extended term of this Lease, the Lessor shall in a commercially reasonable manner solicit offers to buy or lease (for a term of at least one year) such Units (excepting additions and replacements not constituting accessions, described in the fourth paragraph of § 9

hereof), and upon receipt thereof shall exhibit to the Lessee a true copy of the most favorable offer, and the Lessee shall have a right of first refusal, exercised by written notice delivered within 15 days of the receipt of said copy, to purchase or lease such Units at the sale price or lease terms set forth in such offer.

Upon purchase of the Units of Equipment by the Lessee, 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.* As soon as practicable on or after the expiration of the original or extended term of this Lease with respect to any Unit not purchased by the Lessee, the Lessee will, at its own cost and expense, at the request of the Lessor, deliver possession of such Unit to the Lessor upon such storage tracks of the Lessee as the Lessee may designate (but in not more than six locations), or, in the absence of such designation, as the Lessor may select, and permit the Lessor to store such Unit on such tracks for a period not exceeding 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 such Unit, to inspect the same; *provided, however,* that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having

jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. Each Unit returned to the Lessor pursuant to this § 14 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted, and (ii) meet the standards then in effect under the Interchange Rules of the Association of American Railroads and/or the applicable rules of any governmental agency or other organization with jurisdiction. If the Lessor shall elect to abandon any Unit which has suffered a Casualty Occurrence or which after the expiration of this Lease the Lessor shall have deemed to have suffered a Casualty Occurrence, it may deliver written notice to such effect to the Lessee and the Lessee shall thereupon assume and hold the Lessor harmless from all liability arising in respect of any responsibility of ownership thereof, from and after receipt of such notice. The Lessor shall execute and deliver to the Lessee a bill of sale or bills of sale transferring to the Lessee, or upon its order, the Lessor's title to and property in any Unit abandoned by it pursuant to the immediately preceding sentence. The Lessee shall have no liability to the Lessor in respect of any Unit abandoned by the Lessor after termination of the Lease; *provided, however,* that the foregoing clause shall not in any way relieve the Lessee of its obligations pursuant to § 7 hereof to make payments equal to the Casualty Value of any Unit experiencing a Casualty Occurrence while this Lease is in effect.

§ 15. *Opinion of Counsel.* On each Closing Date the Lessee will deliver to the Lessor two counterparts of the written opinion of counsel for the Lessee, addressed to the Lessor and the Vendor, in scope and substance satisfactory to the Lessor, the Vendor and their respective counsel, to the effect that:

A. the Lessee is a corporation duly incorporated, validly existing and in good standing under the laws of its state of incorporation (specifying the same) with adequate corporate power and authority to own its properties and to carry on its business as now conducted, and to enter into the Security Document, this Lease and the Acknowledgments of Assignments of the Security Document and this Lease (hereinafter called the Acknowledgments);

B. the Security Document, this Lease and the Acknowledgments have been duly authorized, executed and delivered by the Lessee and constitute legal, valid and binding agreements of the Lessee, enforceable in accordance with their respective terms;

C. the Security Document (and any assignment thereof) and this Lease (and any assignment hereof) have been duly filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act and such filing and recordation will protect the Vendor's and the Lessor's interests in and to the Units and no filing, recording or deposit (or giving of notice) with any other federal, state or local government or agency thereof is necessary in order to protect the interests of the Vendor or the Lessor in and to the Units in the United States of America;

D. no approval is required from any public regulatory body with respect to the execution and delivery or performance of the Security Document, this Lease or the Acknowledgments;

E. the execution and delivery and performance of the Security Document, this Lease or the Acknowledgments will not result in any breach of, or constitute a default under, the Certificate of Incorporation, the By-Laws, any indenture, mortgage, deed of trust, bank loan or credit agreement or other agreement or instrument to which the Lessee is a party or by which it may be bound and will not conflict with any provision of law or rule or order of any court or government agency to which the Lessee is subject; 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 Vendor's or Lessor's right, title and interest therein; *provided, however,* that such liens may attach to the leasehold interest of the Lessee hereunder in and to the Units.

On each closing date the Lessor will deliver to the Lessee an opinion of counsel for the Lessor stating that the Security Document and this Lease

have been duly authorized, executed and delivered by the Lessor and constitute legal valid and binding agreements of the Lessor enforceable in accordance with their terms.

§ 16. *Recording.* The Lessee, at its own expense, will cause this Lease, the Security Document and any assignment hereof or thereof to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act. The Lessee will undertake the filing, registering, deposit, and recording required of the Lessor under the Security Document and will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, re-register, deposit and redeposit or re-record whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Vendor for the purpose of proper protection, to their satisfaction, of the Vendor's and the Lessor's respective interests in the Units, or for the purpose of carrying out the intention of this Lease, the Security Document or the assignment thereof to the Vendor; and the Lessee will promptly furnish to the Vendor and the Lessor evidences of all such filing, registering, depositing or recording, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Vendor and the Lessor. This Lease and the Security Document shall be filed and recorded with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Unit.

Except as otherwise provided in §21 hereof, the Lessor shall pay all costs, fees and expenses incurred in the preparation and printing of this Lease, the Security Document and related documents, and all costs, fees and expenses (including without limitation brokerage and money placement fees, legal fees, accountants' fees, trustee and agent fees) incurred in connection with the transactions contemplated by this Lease and the Security Document, except that the Lessee will bear the expense, if any, of its counsel.

§ 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, the maximum depreciation deduction with respect to the Units authorized under section 167 of the Code utilizing the "class life" prescribed in accordance with section 167(m) of the Code (such deduction being herein called the ADR Deduction), deductions with respect to interest payable under the Security Document pursuant to section 163 of the Code (such deduction being herein called the Interest Deduction), and the 7% investment credit (herein called the Investment Credit) with respect to the Purchase Price of the Units pursuant to section 38 and related sections of the Code.

The Lessee agrees that neither it nor any corporation controlled by it, in control of it, or under common control with it, directly or indirectly, will at any time take any action or file any returns or other documents inconsistent with the foregoing and that each of such corporations will file such returns, take such actions and execute such documents as may be reasonable and necessary to facilitate accomplishment of the intent hereof.

Notwithstanding anything to the contrary contained in §12 hereof, the Lessee represents and warrants that (i) all the Units constitute property the full Purchase Price of which qualifies for the Investment Credit under section 50 of the Code; (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 sections 48(b) and 167(c)(2) of the Code from commencing with the Lessor; (iii) the Lessee will not at any time during the term of this Lease use, or fail to use, any Unit in such a way as to disqualify it as "Section 38 property" within the meaning of Section 48(a) of the Code; (iv) the Lessee will maintain sufficient records to verify such use; and (v) upon request of the Lessor, the Lessee will provide written reports establishing such use.

If by reason of the inaccuracy in law or in fact of the representations and warranties set forth in the preceding paragraph or any act or omission of the Lessee or the inaccuracy of any statement in any letter or document furnished to the Lessor by the Lessee in connection with any application for ruling of the Internal Revenue Service or otherwise, the Lessor shall lose, or shall not have, or shall lose the right to claim, or shall suffer a disallowance of or shall be required to recapture (any such event being hereinafter called a Loss), all or any portion of the Investment Credit, the ADR Deduction, or the Interest Deduction with respect to all or part of any Unit, then the rentals for the Units set forth in §3 hereof shall, on the next succeeding rental payment date after written notice to the Lessee by the Lessor of such fact, be increased to such amount or amounts as shall, in the reasonable opinion of

the Lessor, cause the Lessor's net return to equal the net return that would have been realized by the Lessor if the Lessor had been entitled to utilize all the Investment Credit, the ADR Deduction and the Interest Deduction, and the Lessee shall forthwith pay to the Lessor as additional rental the amount of any interest and/or penalties which may be assessed by the United States of America against the Lessor attributable to the loss of all or such portion of the Investment Credit, the ADR Deduction or the Interest Deduction; *provided, however,* that such rental rate shall not be so increased if, notwithstanding any such act, omission or inaccuracy or any such breach of warranty by the Lessee, the Lessor shall have lost, or shall not have, or shall have lost the right to claim, or shall have suffered a disallowance of, or shall have been required to recapture all or any portion of the Investment Credit, the ADR Deduction or the Interest Deduction with respect to all or part of 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 voluntary transfer or other voluntary disposition by the Lessor of any interest in such Unit or the voluntary reduction by the Lessor of its interest in the rentals from such Unit under this Lease (except pursuant to or assignment of this Lease to the Vendor), unless, in each case, an Event of Default shall have occurred and be continuing;

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

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

(v) any voluntary act of the Lessor which is not included in the foregoing clauses (i) through (iv) and which is not required or contemplated by this Lease, or any other agreement referred to and/or annexed to the Finance Agreement, dated as of the date hereof, referring to this Lease, and, if not so required or contemplated, which is not expressly agreed to, in writing, by the Lessee or its counsel.

In the event the rental rates shall be adjusted as hereinbefore provided, the Casualty Values set forth in §7 hereof and the damages and amounts set forth in subparagraph (b) of §10 hereof shall be adjusted accordingly.

The Lessor agrees that if, in the opinion of its or the Lessee's independent tax counsel (herein referred to as Counsel), a bona fide claim to all or a portion of the Depreciation Deduction, the Investment Credit or the Interest Deduction on any Unit exists in respects of which the Lessee would otherwise be required to pay to the Lessor pursuant to the immediately preceding paragraph increased rental and additional rental in respect of any interest and/or penalty, the Lessor shall, upon request and at the expense of the Lessee, take all such legal or other appropriate action deemed reasonable by either Counsel in order to sustain such claim; *provided, however,* that 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. The Lessor may, at its option, take such action prior to making payment of any tax and interest and/or penalty attributable to the disallowance or recapture with respect to the Lessor of all or any portion of the Depreciation Deduction, the Investment Credit or the Interest Deduction on any Unit (hereinafter called a Tax Payment) or may make such Tax Payment and then sue for a refund. If the Lessor takes such action prior to making such Tax Payment, such increased rental and additional rental need not be paid by the Lessee while such action is pending. In such case, if the final determination shall be adverse to the Lessor, the increased rental shall be computed by the Lessor as of the date of such final determination and the Lessee shall commence payment thereof on the rental payment date next succeeding such final determination and, on or before such rental payment date, the Lessee shall pay to the Lessor as additional rental an amount equal to all interest and penalty paid by the Lessor in respect of such final determination, together with interest thereon from the date such payment is made by the Lessor to the date the Lessee reimburses the Lessor therefor at the prime rate of The Chase Manhattan Bank, National Association (hereinafter called the Prime Rate) in effect on the date of such final determination. If the Lessor makes such Tax Payment and then sues for a refund such increased rental shall commence to be payable by the Lessee on the first rental payment date after such Tax Payment is made and, on or before such rental payment date, the Lessee shall pay to the Lessor as additional rental an amount equal to all interest and penalty paid by the Lessor included in such Tax Payment. In such case, if the final determination shall be in favor of the Lessor, the rental payable by the Lessee to the

Lessor shall be reduced to the rental rate that would have been in effect if such increase had not been made (or such reduction shall be made proportionately if the final determination is partly in favor of and partly adverse to the Lessor) and such reduced rental shall be payable by the Lessee on the rental payment date next succeeding such final determination and thereafter. In addition, the Lessee and the Lessor shall adjust their accounts so that (a) the Lessor pays to the Lessee (x) an amount equal to the increase in rentals theretofore paid by the Lessee to the Lessor (or a proportionate part thereof if the final determination is partly in favor of and partly adverse to the Lessor) on or before such next succeeding rental payment date together with interest thereon at the Prime Rate for the period such increase in rentals was paid to the Lessor to the date the Lessor pays to the Lessee an amount equal to such increase and (y) the amount of any penalty or interest refunded to the Lessor as a result of such final determination and any interest paid to the Lessor by the government on such refund, promptly upon receipt thereof and (b) the Lessee pays to the Lessor an amount equal to interest at the Prime Rate on the amount of the tax refund made in respect of the Tax Payment (excluding any interest or penalty included therein) for the period from the date of the original payment of the Tax Payment by the Lessor to the date such tax refund is received by the Lessor, such Prime Rate to be calculated in either case as from time to time in effect during the respective periods.

In the event that any payment or adjustment is required to be made pursuant to the two immediately preceding paragraphs and such payment or adjustment is to be made on succeeding rental payment dates or on or before the next succeeding rental payment date, but at such time this Lease shall have been terminated or rent shall otherwise no longer be due and payable on the remaining rental payment dates, (a) the Lessee shall promptly pay the Lessor an amount, if any, otherwise payable and not theretofore paid by it, equal to the incremental increase in rent which would have been required if the earlier of the final determination and the Tax Payment had occurred immediately prior to the last rental payment date on or prior to the termination of this Lease and (b) each party required to make payment shall promptly pay all amounts otherwise payable and not theretofore paid by it in respect of interest and penalty (and interest thereon) and previously paid increments of rent calculated by reference to the actual applicable dates of final determination, Tax Payment and reimbursements pursuant to the immediately preceding paragraph.

becomes a Beneficiary shall be entitled to all the rights of its transferor hereunder except that no transferee or Beneficiary shall be entitled to the increased rentals provided for in §17 hereof, unless such transferee is a Permitted Transferee described in Article VI of the Trust Agreement and shall (by a supplement thereto) become a party to the Trust Agreement prior to the delivery and acceptance of Units under the Security Document.

§ 21. *Purchase of Equipment by Lessee Under Certain Conditions.* If on or before June 30, 1975, the Internal Revenue Service for any reason whatsoever shall not have issued to the Lessor, upon a request by it, a favorable tax ruling (herein called the Ruling) to the effect that: (i) this Lease constitutes a true lease and the Lessor will be treated as owner of the Units; (ii) the Lessor is entitled to the Interest Deduction in computing its taxable income; (iii) the Lessor is entitled to the Investment Credit in respect of 100% of the Purchase Price of the Units; (iv) the Lessor is entitled to the ADR Deduction in respect of 100% of the Purchase Price of the Units; (v) the payments to be paid by the Lessee for the use of the Units constitute rent and are deductible by the lessee pursuant to section 162(a)(3) of the Code, then at the request of the Lessor the Lessee shall purchase from the Lessor within 30 days after June 30, 1975, the Lessor's interests in all of the Units subject to this Lease for a purchase price equal to (i) 33.9996% of the Purchase Price of each such Unit plus interest on such amount at the rate per annum of 10¾% for the period in question from the Closing Date for each such Unit under the Security Documents to and including the date of such purchase, plus all fees and expenses paid or incurred by the Lessor (including without limitation brokerage commissions, legal and printing fees, and attorneys' and accountants' fees) in connection with the transactions contemplated by the Security Document and this Lease, less (ii) any rental payments paid to the Lessor under §3 of this Lease not applied to the payment of the obligations of the Lessor under the Conditional Sale Agreement. The Lessee shall, at the time of such purchase, enter into a supplement to the Security Document, in form and substance satisfactory to the Vendor, pursuant to which the Lessee shall directly assume all obligations of the Vendee thereunder without reference to any limitation of liability contained in Articles 4 or 23 or otherwise.

Notwithstanding anything to the contrary in this Lease, if it appears that the Ruling would be obtainable if this Lease were amended in a manner not adverse to the Lessor (determined in the case of financial

becomes a Beneficiary shall be entitled to all the rights of its transferor hereunder except that no transferee or Beneficiary shall be entitled to the increased rentals provided for in §17 hereof, unless such transferee is a Permitted Transferee described in Article VI of the Trust Agreement and shall (by a supplement thereto) become a party to the Trust Agreement prior to the delivery and acceptance of Units under the Security Document.

§ 21. *Purchase of Equipment by Lessee Under Certain Conditions.* If on or before June 30, 1975, the Internal Revenue Service for any reason whatsoever shall not have issued to the Lessor, upon a request by it, a favorable tax ruling (herein called the Ruling) to the effect that: (i) this Lease constitutes a true lease and the Lessor will be treated as owner of the Units; (ii) the Lessor is entitled to the Interest Deduction in computing its taxable income; (iii) the Lessor is entitled to the Investment Credit in respect of 100% of the Purchase Price of the Units; (iv) the Lessor is entitled to the ADR Deduction in respect of 100% of the Purchase Price of the Units; (v) the payments to be paid by the Lessee for the use of the Units constitute rent and are deductible by the lessee pursuant to section 162(a)(3) of the Code, then at the request of the Lessor the Lessee shall purchase from the Lessor within 30 days after June 30, 1975, the Lessor's interests in all of the Units subject to this Lease for a purchase price equal to (i) 33.9996% of the Purchase Price of each such Unit plus interest on such amount at the rate per annum of 10¾% for the period in question from the Closing Date for each such Unit under the Security Documents to and including the date of such purchase, plus all fees and expenses paid or incurred by the Lessor (including without limitation brokerage commissions, legal and printing fees, and attorneys' and accountants' fees) in connection with the transactions contemplated by the Security Document and this Lease, less (ii) any rental payments paid to the Lessor under §3 of this Lease not applied to the payment of the obligations of the Lessor under the Conditional Sale Agreement. The Lessee shall, at the time of such purchase, enter into a supplement to the Security Document, in form and substance satisfactory to the Vendor, pursuant to which the Lessee shall directly assume all obligations of the Vendee thereunder without reference to any limitation of liability contained in Articles 4 or 23 or otherwise.

Notwithstanding anything to the contrary in this Lease, if it appears that the Ruling would be obtainable if this Lease were amended in a manner not adverse to the Lessor (determined in the case of financial

changes so as to maintain the same pretax rate of return to the Lessor on a discounted cash flow basis [also known as sinking fund yield] as is inherent in this Lease, and, in the case of nonfinancial changes, in the reasonable opinion of the Lessor's counsel) and the form and substance of such amendment is consented to by the Assignee, then the Lessor, at the request of the Lessee, shall agree to amend this Lease to permit prompt resubmittal of the request for the Ruling.

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

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

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

§ 24. *Law Governing.* The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of Illinois; *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.

CHICAGO AND NORTH WESTERN
TRANSPORTATION COMPANY,

by.....
Vice President

[CORPORATE SEAL]

Attest:

.....
Assistant Secretary

TRUST COMPANY BANK,
as Trustee

by.....
~~*Vice President*~~
Corporate Trust Officer

[CORPORATE SEAL]

Attest:

.....
~~*Assistant Secretary*~~
Assistant Corporate Trust Officer

STATE OF ILLINOIS
COUNTY OF COOK } SS.:

On this 16th day of December 1974, before me personally appeared J. M. Butler, to me personally known, who, being by me duly sworn, says that he is a Vice President of CHICAGO AND NORTH WESTERN TRANSPORTATION 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.

Notary Public

[NOTARIAL SEAL]
My Commission expires August 22, 1977

STATE OF GEORGIA
COUNTY OF FULTON } SS.:

On this 17 day of DECEMBER 1974, before me personally appeared R. M. BELK, to me personally known, who, being by me duly sworn, says that he is a ~~Vice President~~ CORPORATE TRUST OFFICER of TRUST COMPANY BANK, that one of the seals affixed to the foregoing instrument is the corporate seal of said Company, that said instrument was signed and sealed on behalf of said Company 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 Company.

Notary Public

[NOTARIAL SEAL]
My Commission expires

NOTARY PUBLIC, STATE OF GEORGIA AT LARGE
MY COMMISSION EXPIRES SEPTEMBER 1, 1978

Schedule A

to Lease

(No. 2)

Type and AAR Mechanical Designation	Quantity*	Lessee's Road* Numbers (Both Inclusive)
9762 (LO)	1000	CNW 173500-174499

* Any Equipment not delivered and accepted after December 31, 1974 and settled for under the Security Document on or before June 30, 1975 shall be deemed to be excluded herefrom and an appropriate supplement will be entered into as soon as practicable after June 30, 1975, setting forth the Units not so excluded.