

RECORDATION NO. 10167 FILE 1425

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INTERSTATE COMMERCE COMMISSION

ASSIGNMENT OF LEASE AND AGREEMENT dated as of February 15, 1979, by and between FIRST NATIONAL BANK AND TRUST COMPANY OF EVANSTON, not in its individual capacity but solely as Trustee (hereinafter, together with its successors and assigns, called the "Owner-Trustee") acting under a Trust Agreement dated as of the date hereof (the "Owner's Trust"), with FIRST NATIONAL BANK OF MINNEAPOLIS (the "Owner") and MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, not in its individual capacity but solely as agent under the Participation Agreement (the "Agent") for certain institutional investors (hereinafter, together with their successors and assigns, called the "Investors") under a Participation Agreement dated as of the date hereof among the Owner-Trustee, the Owner, the Agent, the Investors and American Rail Box Car Company (the "Lessee").

WHEREAS the Owner-Trustee is entering into a Conditional Sale Agreement dated as of the date hereof (the "CSA") with Pullman Incorporated (Pullman Standard Division), FMC Corporation and PACCAR Inc (the "Builders"), providing for the sale to the Owner-Trustee of such units of railroad equipment (the "Units") described in the Annex B thereto as are delivered to and accepted by the Owner-Trustee thereunder and the CSA is being assigned to the Agent by the Builders;

WHEREAS the Owner-Trustee and the Lessee have entered into a Lease of Railroad Equipment dated as of the date hereof (hereinafter, together with the amendments and supplements thereto, being called the "Lease"), providing for the leasing by the Owner-Trustee to the Lessee of the Units; and

WHEREAS, in order to provide security for the obligations of the Owner-Trustee under the CSA and as an inducement to the Investors to invest in the CSA Indebtedness as defined in the CSA, the Owner-Trustee agrees to assign for security purposes its rights in, to and under the Lease to the Agent.

NOW, THEREFORE, in consideration of the payments to be made, the parties hereto agree as follows:

1. Subject to the provisions of Paragraph 10 hereof, the Owner-Trustee hereby assigns, transfers and sets over unto the Agent, as collateral security for the payment and performance of the Owner-Trustee's obligations under the CSA, all the Owner-Trustee's right, title and interest, powers, privileges, and other benefits under the Lease (including those inuring to the benefit of the Owner under § 12 of the Lease), including, without limitation, the immediate right to receive and collect all rentals, profits and other sums payable to or receivable by the Owner-Trustee under or pursuant to the provisions of the Lease whether as rent, casualty payment, indemnity (except any sum payable by the Lessee pursuant to § 6 of the Lease to reimburse the Owner-Trustee or the Owner for Taxes (as defined in said § 6) actually paid by the Owner-Trustee or the Owner), liquidated damages, or otherwise (such moneys being hereinafter called the "Payments"), and the right to make all waivers and agreements, to give all notices, consents and releases, to take all action upon the happening of an Event of Default specified in the Lease, and to do any and all other things whatsoever which the Owner-Trustee is or may become entitled to do under the Lease. In furtherance of the foregoing assignment, the Owner-Trustee hereby irrevocably authorizes and empowers the Agent in its own name, or in the name of its nominee, or in the name of the Owner-Trustee or as its attorney, to ask, demand, sue for, collect and receive any and all Payments to which the Owner-Trustee is or may become entitled under the Lease and to enforce compliance by the Lessee with all the terms and provisions thereof.

The Agent agrees to accept any Payments made by the Lessee for the account of the Owner-Trustee pursuant to the Lease and, to the extent received, the Agent will apply such Payments to satisfy the obligations of the Owner-Trustee under the CSA then due and payable, and due and payable on the date such Payment is due and payable under the Lease, subject to the limitations contained in the last paragraph of Article 4 of the CSA, and so long as no event of default shall have occurred and be continuing under the CSA, any balance

held by the Agent hereunder for the account of the Owner-Trustee shall be paid immediately to and retained by the Owner-Trustee. The foregoing provision shall also be for the benefit of the Builders as third party beneficiaries. If the Agent shall not receive any rental payment under the first paragraph of § 3 of the Lease or any payment of Casualty Values under § 7 of the Lease when due, the Agent shall promptly notify the Owner-Trustee by telegraphic communication at the address set forth in the Lease. Failure to so notify the Owner-Trustee shall not affect the rights and remedies of the Agent hereunder or under the CSA, except that the Vendor may not take any action described in (i) and (ii) of the first paragraph of Article 15 of the CSA upon the occurrence of an event of default under subparagraph (a) or (f) of Section 15 of the CSA if such event of default results solely by reason of the failure of the Lessee to make any such rental payment which, pursuant to subparagraph (f) of the CSA would not constitute an event of default thereunder if the Owner-Trustee complies with the provisions thereof, unless such event of default is not remedied within 10 business days after notification is given as aforesaid.

2. This Assignment is executed only as security for the obligations of the Owner-Trustee under the CSA and, therefore, the execution and delivery of this Assignment shall not subject the Agent to, or transfer, or pass, or in any way affect or modify the liability of the Owner-Trustee under the Lease, it being agreed that notwithstanding this Assignment or any subsequent assignment, all obligations of the Owner-Trustee to the Lessee shall be and remain enforceable by the Lessee, its successors and assigns, against, and only against, the Owner-Trustee or persons other than the Agent.

3. To protect the security afforded by this Assignment, the Owner-Trustee agrees as follows:

(a) The Owner-Trustee will faithfully abide by, perform and discharge each and every obligation, covenant and agreement which the Lease provides are to be performed by the Owner-Trustee; without the written consent of the Agent, the Owner-Trustee will not anticipate the rents under the Lease or waive, excuse, condone, forgive or in any manner release or discharge the Lessee thereunder of or from the obligations, covenants, conditions and agreements to be performed by the Lessee which are intended to satisfy the obligations of the Owner-Trustee under the CSA, including, without limitation, the obligation to pay the rents in the manner and at the time and place specified therein or enter into any agreement so amending, modifying or terminating the Lease and the Owner-Trustee agrees that any such amendment, modification or termination thereof without such consent shall be void.

(b) Should the Owner-Trustee fail to make any payment or to do any act which this Assignment requires the Owner-Trustee to make or do, then the Agent, but without obligation so to do, after first making written demand upon the Owner-Trustee and affording the Owner-Trustee a reasonable period of time within which to make such payment or do such act, but without releasing the Owner-Trustee from any obligation hereunder, may make or do the same in such manner and to such extent as the Agent may deem necessary to protect the security provided hereby, including specifically, without limiting its general powers, the right to appear in and defend any action or proceeding purporting to affect the security hereof and the rights or powers of the Agent, and also the right to perform and discharge each and every obligation, covenant and agreement of the Owner-Trustee contained in the Lease; and in exercising any such powers, the Agent may pay necessary costs and expenses, employ counsel and incur and pay reasonable attorneys' fees, and the Owner-Trustee will reimburse the Agent for such costs, expenses and fees; *provided, however*, that the obligations of the Owner-Trustee to make reimbursements under this Paragraph 3 are subject to the last paragraph of Article 4 of the CSA.

4. Subject to the provisions of Paragraph 10 hereof, the Owner-Trustee does hereby constitute the Agent; the Owner-Trustee's true and lawful attorney, irrevocably, with full power (in the name of the Owner-Trustee, or otherwise), to ask, require, demand, receive, compound and give acquittance for any and all Payments due and to become due under or arising out of the Lease to which the Owner-Trustee is or may become entitled, to enforce compliance by the Lessee with all the terms and provisions of the Lease, to endorse any checks or other instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings which the Agent may deem to be necessary or advisable in the premises.

5. Upon the full discharge and satisfaction of all the Owner-Trustee's obligations under the CSA, this Assignment, and all rights herein assigned to the Agent in respect thereof shall terminate, and all estate, right, title and interest of the Agent in and to the Lease shall revert to the Owner-Trustee without further act or deed, but the Agent shall execute and deliver such documents as the Owner-Trustee may reasonably request in order to confirm, or make clear upon public records, such termination and/or reversion.

6. The Owner-Trustee will, from time to time, do and perform any other act and will execute, acknowledge and deliver any and all further instruments required by law or reasonably requested by the Agent in order to confirm or further assure the interests of the Agent hereunder.

7. The Agent may assign all or any of the rights assigned to it hereby or arising under the Lease, including, without limitation, the right to receive any Payments due or to become due. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Agent hereunder. The Agent will give written notice to the Owner-Trustee and the Lessee of any such assignment.

8. This Assignment shall be governed by the laws of the State of Illinois, but the parties shall be entitled to all rights conferred by 49 U. S. C. § 11303 (a).

9. The Owner-Trustee shall cause copies of all notices received in connection with the Lease and all payments hereunder to be promptly delivered or made to the Agent at its address set forth in Article 20 of the CSA, or at such other address as the Agent shall designate.

10. The Agent hereby agrees with the Owner-Trustee that, so long as no event of default, or any event which with lapse of time or notice or both would constitute such an event of default, under the CSA has occurred and is then continuing, the Agent will not exercise or enforce, or seek to exercise or enforce, or avail itself of, any of the rights, powers, privileges, authorizations or benefits assigned and transferred by the Owner-Trustee to the Agent by this Assignment, except the right to receive and apply the Payments as provided in Paragraph 1 hereof, and that, subject to the terms of the Lease and the CSA, the Owner-Trustee may, so long as no such event of default under the CSA has occurred and is then continuing, exercise or enforce, or seek to exercise or enforce, its rights, powers, privileges, and remedies arising out of subparagraph (a) of the first paragraph of § 10 of the Lease; *provided, however*, the Owner-Trustee shall not, without the prior written consent of the Agent, terminate the Lease or otherwise exercise or enforce, or seek to exercise or enforce, any rights, powers, privileges and remedies arising out of subparagraph (b) of said § 10; *provided, further, however*, that if the Lessee shall default in its obligation pursuant to § 6 of the Lease to reimburse the Owner-Trustee or the Owner for Taxes (as defined in said § 6) actually paid by the Owner-Trustee or any Owner at a time when no event of default under the CSA had occurred and was continuing, the Owner-Trustee or the Owner shall have the right to proceed by appropriate court action to recover damages for breach thereof as provided in subparagraph (a) of the first paragraph of § 10 of the Lease, but may not terminate the Lease.

11. No recourse shall be had in respect of any obligation due under this Assignment, or referred to herein, against any incorporator, stockholder, director or officer, as such, past, present or future, of the Owner-Trustee, the Agent, any Investor or the Owner, whether by virtue of any constitutional provision, statute or rule of law or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of incorporators, stockholders, directors, officers, as such, or beneficiaries being forever released as a condition of and as consideration for the execution of this Assignment.

12. This Assignment may be executed in any number of counterparts, all of which together shall constitute a single instrument. It shall be necessary that any counterpart be executed by both the parties hereto so long as each party shall have executed one counterpart hereof and delivered it to the other party.

It is expressly agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, undertakings and agreements herein made on the part of the Owner-

Trustee are each and every one of them made and intended not as personal representations, undertakings and agreements by First National Bank and Trust Company of Evanston or for the purpose or with the intention of binding the said financial institution personally but are made and intended for the purpose of binding only the Owner's Trust and this Assignment is executed and delivered by the Owner-Trustee solely in the exercise of the powers expressly conferred upon the Owner-Trustee under the Trust Agreement; and that no personal liability or responsibility is assumed by or shall at any time be asserted or enforceable against the said financial institution or the Owner on account of any representation, undertaking or agreement hereunder of said financial institution, acting in its capacity as Owner-Trustee or the Owner, either expressed or implied, except for their respective obligations under the proviso to the last paragraph of Article 12 of the CSA and subparagraph (b) of the third paragraph of Article 4 of the CSA; all such personal liability, if any, being expressly waived and released by the Agent and by all persons claiming by, through or under the Agent; *provided, however,* that the Agent or any person claiming by, through or under the Agent, making claim hereunder, may look to the Owner's Trust for satisfaction of the same.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective corporate names, by officers thereunto duly authorized, and their respective corporate seals to be affixed and duly attested, all as of the date first above written.

[CORPORATE SEAL]

Attest:


Assistant Vice President and Trust Officer

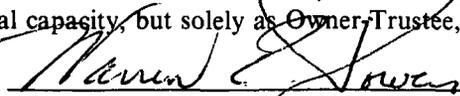
[CORPORATE SEAL]

Attest:

Corporate Trust Officer

FIRST NATIONAL BANK AND TRUST COMPANY OF EVANSTON, not in its individual capacity, but solely as Owner-Trustee,

by


Vice President and Trust Officer

MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, not in its individual capacity, but solely as Agent,

by

Assistant Vice President

LESSEE'S CONSENT AND AGREEMENT

The undersigned, a corporation duly incorporated under the laws of the State of Delaware, the Lessee named in the Lease (the "Lease") referred to in the foregoing Assignment of Lease and Agreement (the "Assignment"), hereby acknowledges receipt of a copy of the Assignment, consents to all the terms and conditions of the Assignment and agrees as follows:

(1) subject to the terms and conditions of the Assignment, to pay all rentals, casualty payments, liquidated damages, indemnities and other moneys provided for in the Lease and assigned to the Agent (as hereinafter defined) by the Assignment (which moneys are hereinafter called the "Payments") due and to become due to the Owner-Trustee under the Lease in respect of the Units leased thereunder, by wire transfer of Federal or other immediately available funds, directly to the Mercantile-Safe Deposit and Trust Company, as agent (the "Agent") under the Participation Agreement referred to in the Assignment, to be applied as provided in the Assignment, to such address as may be requested by the Agent;

(2) agrees, subject to the terms and conditions of the Assignment, that the Agent shall be entitled to the benefits of, and to receive and enforce performance of, all of the covenants to be performed by the undersigned under the Lease as though the Agent were named therein as the Owner-Trustee;

(3) agrees that the Agent shall not, by virtue of the Assignment or this Consent and Agreement, be or become subject to any liability or obligation under the Lease or otherwise;

(4) agrees that the Lease shall not, without the prior written consent of the Agent, be amended, terminated or modified, or any action be taken or omitted by the undersigned, the taking or omission of which might result in any alteration or impairment of the obligations of the Lessee under the Lease which are intended to satisfy the obligations of the Owner-Trustee under the CSA, the obligations of the Owner-Trustee under the Assignment or the obligations of the Lessee under this Consent and Agreement or of any of the rights created by any thereof;

(5) will (i) execute, deliver and/or furnish all notices, certificates, communications, instruments, agreements, legal opinions and other documents and papers required to be executed, delivered and/or furnished by it (or its counsel) pursuant to the Participation Agreement as defined in the Lease and the exhibits thereto and (ii) do all such acts and execute and deliver all such further assurances required to be done and/or executed and delivered by it pursuant to the provisions of any thereof; and

(6) to the extent not assigned to the Agent, will pay all amounts payable by the Lessee pursuant to § 6 of the Lease directly to the indemnified party.

This Consent and Agreement may be executed in several counterparts, each of which when so executed shall be deemed an original, and such counterparts together shall constitute one and the same instrument. It is not necessary that any counterpart be executed by the Lessee and accepted by the Agent so long as the Lessee executes and delivers and the Agent accepts one counterpart hereof.

This Consent and Agreement, when accepted by the Agent by signing the acceptance at the foot hereof, shall be deemed to be a contract under the laws of the State of Illinois and, for all purposes, shall be construed in accordance with the laws of said State.

Dated as of February 15, 1979

AMERICAN RAIL BOX CAR COMPANY,

by _____

[CORPORATE SEAL]

Attest:

Assistant Secretary

Accepted:

MERCANTILE-SAFE DEPOSIT AND
TRUST COMPANY, not in its individual capacity,
but solely as Agent,

by _____

[CORPORATE SEAL]

Attest:

Assistant Vice President

Corporate Trust Officer