THE WESTERN PACIFIC RAILROAD COMPANY

WESTERN PACIFIC BUILDING, 526 MISSION STREET
SAN FRANCISCO, CALIFORNIA 94105
TELEPHONE: (415) 982-2100

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VICE PRESIDENT-LAW

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GENERAL ATTORNEY

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ATTORNEYS

No. 9-CGSA044
Date MAR 9 1979
Fee $50.00
ICC Washington, D. C.

March 8, 1979

10180
RECORDATION NO. Filed 1425

MAR 9 1979 - 11 00 AM
INTERSTATE COMMERCE COMMISSION

I.C.C. FEE OPERATION BR.

MAR 9 10 48 AM '79
RECEIVED

DELIVER

Hon. H. G. Homme, Jr.
Secretary
Interstate Commerce Commission
Washington, D. C. 20423

Dear Sir:

Enclosed for filing with and recording by the Interstate Commerce Commission are an original and four copies of a Lease Agreement for railroad cars dated as of February 19, 1979 between The Western Pacific Railroad Company, 526 Mission Street, San Francisco, California 94105 as Lessee and GATX Aircraft Corporation, One Embarcadero Center, San Francisco, California 94111 as Lessor, covering the following railroad equipment:

84 100-ton open top hopper cars manufactured by Greenville Steel Car Company; AAR mechanical designation HT; Road numbers WP 70145 - 70228, both inclusive.

Identifying marks on all of the foregoing equipment: The words "Ownership subject to a Security Agreement filed under the Interstate Commerce Act, Section 20c" printed on each side of each unit.

Also enclosed is this Company's voucher in the sum of $50.00 payable to the Interstate Commerce Commission being the prescribed fee for filing and recording the foregoing document.

Please return all extra enclosed copies with recordation data stamped thereon to the representative of the office of Kunkel Transportation Services, Inc., 425 - 13th Street, N.W., Suite 523, Washington, D. C. 20004, who will be delivering this letter on our behalf.

Very truly yours,

THE WESTERN PACIFIC RAILROAD COMPANY

By Walter G. Treanor
Senior Vice President-Law

KMG:pra
Attach.

Interstate Commerce Commission
Washington, D.C. 20423

3/9/79

OFFICE OF THE SECRETARY

Walter G. Treanor
Vice President
The Western Pacific RR. Co
Western Pacific Building
526 Mission Street
San Francisco, Calif. 94105

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 20(c) of the Interstate Commerce Act, 49 U.S.C. 20(c), on 3/9/79 at 11:00am, and assigned recordation number(s) 10180 &10181

Sincerely Yours,

H.G. Homme, Jr.,
Secretary

Enclosure(s)

SE-30-T
(2/78)

cc: Mr. Christopher Bensick
GATX Aircraft Corporation
One Embarcadero Center
San Francisco, California 94111

Mr. J. Malinowski
McDonnell Douglas Financial Corp.
3855 Lakewood Boulevard
Long Beach, Calif. 90846

RECORDATION NO. 10180 Filed 1425

MAR 9 1979 -11 00 AM

INTERSTATE COMMERCE COMMISSION

LEASE AGREEMENT

THIS LEASE AGREEMENT entered as of the 19th day of February 1979 (hereinafter called "the Agreement"), by and between GATX AIRCRAFT CORPORATION, a Delaware corporation ("Lessor"), and THE WESTERN PACIFIC RAILROAD COMPANY, a corporation ("Lessee").

ARTICLE 1

LEASE

Lessor shall furnish and lease to Lessee, and Lessee shall accept and use, on the terms and conditions set forth herein, the railroad cars (such railroad cars being hereinafter collectively referred to as the "Railroad Cars" and separately as a "Railroad Car") which are described more particularly in the attached Exhibit A.

ARTICLE 2

TERM

The Railroad Cars shall be leased to Lessee hereunder for a term which shall commence on the date of physical delivery of the first Railroad Car to be delivered to Lessee hereunder (hereafter, the "Delivery Date") and, except as otherwise provided herein, shall end: (i) with respect to those Railroad Cars for which Lessee has elected the option to pay monthly rental payments pursuant to Article 5A(i), on the fifth anniversary of the Delivery Date; and (ii) with respect to those Railroad Cars for which Lessee has elected the option to pay monthly rental payments pursuant to Article 5A(ii), on the date in the 61st calendar month following the Delivery Date that corresponds to the date of the month on which the Delivery Date occurred.

ARTICLE 3

DELIVERY

A. ACCEPTANCE OF CARS

Subject to compliance with the terms and conditions specified in the last paragraph of this Section A, on the date that Greenville Steel Car Company (hereafter, the "Manufacturer") tenders delivery of the Railroad Cars to Lessor, Lessor will purchase the Railroad Cars and lease the Railroad Cars to Lessee hereunder. Upon tender of delivery of the Railroad Cars by the Manufacturer, Lessee shall promptly inspect such Railroad Cars and shall accept all such Railroad Cars from the Manufacturer on behalf of Lessor if they (i) comply with the description set forth in the attached Exhibit A, (ii) comply with all Department of Transportation and Interstate Commerce Commission requirements and specifications and (iii) are fit and suitable for operation as those terms are defined from time to time in the Field and Office Manuals of the Interchange Rules adopted by the Association of American Railroads (the "Interchange Rules"). Lessee hereby agrees that such acceptance of delivery of such Railroad Cars on behalf of Lessor shall, without further

act, irrevocably constitute acceptance by Lessee of such Railroad Cars for all purposes of this Agreement. Upon acceptance of such Railroad Cars, Lessee shall deliver to Lessor a Certificate of Acceptance, dated the Delivery Date, in the form attached hereto as Exhibit B. Notwithstanding the foregoing, Lessee shall be deemed to have accepted any Railroad Car delivered by the Manufacturer if, with respect to such Railroad Car, the Lessee shall (i) load or otherwise use the Railroad Car or (ii) fail to notify Lessor in writing within five (5) days after delivery of its rejection of the Railroad Car and the specific reasons why the Railroad Car does not meet the applicable standards set forth herein. If Lessee rejects any Railroad Car, Lessor shall have the right to have the rejected Railroad Car inspected at Lessee's expense by an inspector acceptable to both Lessor and Lessee. Lessee shall be deemed to have accepted any Railroad Car for which the inspector determines that good cause for rejection did not exist. The decision of the inspector shall be final and binding upon the parties. Lessee's acceptance, however effected, shall be deemed effective as of the Delivery Date. Such acceptance shall conclusively establish that such Railroad Cars conform to the applicable standards set forth herein; provided, however, that nothing contained herein or in any Certificate of Acceptance for a Railroad Car or any other document shall in any way diminish or otherwise affect any right Lessor or Lessee may have with respect to the Railroad Cars as against the Manufacturer or any third party.

Lessor's obligation to purchase the Railroad Cars from the Manufacturer and lease the same to Lessee hereunder is subject to satisfaction of the following conditions precedent: (i) Lessor shall have received: (A) a favorable opinion of counsel for Lessee addressed to Lessor and dated the Delivery Date, concerning the matters set forth in Article 6A; (B) a satisfactory invoice and bill of sale for such Railroad Cars from the Manufacturer in favor of Lessor; and (C) a certificate signed by Lessee's insurance brokers certifying as to the due compliance with the insurance requirements of Article 24; and (ii) on the Delivery Date, the representations and warranties of Lessee contained in Article 6A shall be true and correct as of such date and no event shall have occurred and be continuing which would constitute an Event of Default or an event which with the giving of notice or the lapse of time or both would mature into an Event of Default.

B. PLACE OF DELIVERY

Lessor shall cause the Railroad Cars to be delivered to Lessee at Greenville, Pennsylvania, or, subject to the following provisions in this Section B, such other location or locations as shall be specified by Lessee prior to the commencement of the term. Lessee contemplates that it will be able to load some or all of the Railroad Cars with cargo in Pennsylvania, destined for the Chicago, Illinois, area and thereafter it is contemplated that the Railroad Cars will be reloaded or moved empty to the Denver, Colorado area. In the event Lessee is unable to so load a Railroad Car and consequently a cost is incurred in moving such Railroad Car to Denver, Colorado, Lessor will bear such cost in an amount not to exceed $200. Lessee will bear any cost in moving a Railroad Car in excess of $200. Lessee

will use its best efforts to load the Railroad Cars and the railroad cars subject to a lease agreement, dated of even date herewith, between McDonnell Douglas Finance Corporation and Lessee (hereafter, the "MDFC Lease Agreement"), and as between the Railroad Cars and the railroad cars subject to the MDFC Lease Agreement, Lessee will use its best efforts to obtain an equal number of loads for each such group with the objective that Lessor and McDonnell Douglas Finance Corporation incur substantially the same amount of moving costs.

ARTICLE 4

MARKINGS

At the time of delivery of the Railroad Cars by Lessor to Lessee, the Railroad Cars will be plainly marked on each side with the reporting marks of Lessee and with such marks as Lessor deems reasonably necessary to indicate the rights of Lessor in such Railroad Cars, including the following inscription: "Ownership subject to a security agreement filed under the Interstate Commerce Act, Section 20c." If such markings shall at any time be removed or become illegible, wholly or in part, Lessee shall immediately cause such markings to be restored or replaced at Lessee's expense. Lessee shall not otherwise place, nor permit to be placed, any lettering or marking of any kind upon the Railroad Cars without Lessor's prior written consent, which consent shall not unreasonably be withheld.

ARTICLE 5

PAYMENT OF RENTALS

A. MONTHLY RENTALS

Lessee shall pay rent to Lessor for each Railroad Car subject to this Lease throughout the term therefor in 60 consecutive monthly payments.

(i) Subject to clause (ii), below, such monthly rental payments shall be due and payable commencing on the date in the calendar month following the Delivery Date that corresponds to the date of the month on which the Delivery Date occurred, and shall contine on the corresponding date in each calendar month thereafter to and including the 60th calendar month, or if any such month does not have such a date, on the last date of such month. Each such monthly rental payment, subject to any increase thereof pursuant to clause (iii) below, shall be in the sum of $387 for each Railroad Car subject to this Lease.

(ii) Lessee shall have the option, which may be exercised as to one-half or all of the Railroad Cars subject to this Lease (provided that the equivalent option is exercised under the MDFC Lease Agreement), and which shall be exercised, if at all, upon notice by Lessee to Lessor given within 25 days after the Delivery Date, to make monthly rental payments for the Railroad Cars specified in Lessee's notice, commencing on the date in the second calendar month following the Delivery Date that corresponds to the date of the month on which

the Delivery Date occurred, and continuing on the corresponding date in each calendar month thereafter to and including the 61st calendar month, or if any such month does not have such a date, on the last date of such month. Each such monthly rental payment, subject to any increase thereof pursuant to clause (iii), below, shall be in the sum of $392 for each Railroad Car subject to this Lease. If Lessee exercises the option granted pursuant to this clause (ii), Lessee shall be obligated to make monthly rental payments pursuant to clause (i), above, only as to those Railroad Cars not specified in Lessee's notice as being subject to this clause (ii).

(iii) In the event the American Association of Railroads, the Department of Transportation, the Federal Railways Administration or any other governmental body having jurisdiction enacts any law, rule or regulation which requires that the Railroad Cars and all equivalent railroad cars (without regard to the type of cargo carried by Lessee or Lessee's operations) be modified or altered, Lessee shall promptly notify Lessor of such law, rule or regulation as well as the estimated cost thereof (calculated at the applicable AAR billing rates) and the estimated time for work completion, and unless, but only for so long as, the validity of such law, rule or regulation is being contested by Lessor in good faith and by appropriate proceedings, Lessor will promptly (A) contract with Lessee (at the applicable AAR billing rates) or a private railroad car shop reasonably acceptable to Lessee (provided that Lessee also approves the proposed work schedule, which approval shall not be unreasonably withheld) to do the required modifications and alterations or (B) at Lessor's sole option, if the cost of the modifications and alterations would be economically unfeasible to do, considering the remaining term of this Lease, elect not to do the necessary modifications and alterations and cancel this Lease, effective on the date on which such modifications and alterations are required to be completed for continued use of the Railroad Cars. If Lessor elects to have the required modifications and alterations performed, Lessee shall deliver the Railroad Cars at its expense as soon as possible to the person with whom Lessor has contracted for the performance of such work. Furthermore, Lessee shall continue to pay the monthly rentals as and when due pursuant to clause (i) or (ii), above, as the case may be, while the required modifications and alterations are being accomplished. Upon completion of the modifications and alterations for a Railroad Car, each monthly rental payment for such Railroad Car thereafter becoming due pursuant to clause (i) or (ii), above, shall be increased by an amount equal to the level annuity payment needed to repay in monthly installments a sum equal to the aggregate cost to Lessor of the required modifications and alterations for such Railroad Car, together with interest thereon computed at Prime (as hereafter defined), over a period equal to the difference between 15 years and the number of full years (rounded upward or downward to the nearest full year) elapsed from the Delivery Date to the date of completion of the modifications and alterations to such Railroad Car. "Prime" means the published or announced prime rate of the Chase Manhattan Bank, N.A. which is in effect on the date of completion of the modifications and alterations to such Railroad Car.

B. SUPPLEMENTAL ANNUAL RENTAL

If, as of any anniversary of the first date of the month in which the Delivery Date has occurred, Lessee in good faith estimates that more than 42,000 miles shall have been accumulated on a Railroad Car during the 12 month period preceding such anniversary date, Lessee shall pay to Lessor, with respect to such Railroad Car, within 60 days of such anniversary date, in addition to the monthly rental payments due for such Railroad Car pursuant to clause (i) or (ii), above, a sum equal to one cent for each mile in excess of 42,000 miles accumulated on such Railroad Car during such 12-month period, and an additional one cent for each mile in excess of 75,000 miles accumulated on such Railroad Car during such 12-month period (in each case based on Lessee's best estimate of such mileage so accumulated and within 180 days thereafter Lessee shall file a report with Lessor and make any necessary adjustments). Lessor agrees to accept Lessee's reasonable estimate of mileage accumulated on Railroad Cars on its own lines for which computer readings are not available, and Lessor may, from time to time, audit Lessee's car movement records in respect of such Railroad Cars.

ARTICLE 6

REPRESENTATIONS AND WARRANTIES

A. LESSEE'S REPRESENTATIONS AND WARRANTIES

Lessee represents as of the date of this Agreement, and shall be deemed to represent as of the Delivery Date that:

(i) Lessee is a corporation duly incorporated, validly existing and in good standing under the laws of the state of its incorporation, and is either duly qualified to-do business and is in good standing in such other jurisdiction in which the business and activities of Lessee require such qualification or its failure to so qualify in such other jurisdiction will not have a material adverse impact on Lessee or Lessee's ability to perform its obligations under this Agreement.

(ii) Lessee has full corporate power to enter into and perform its obligations under this Agreement.

(iii) The Agreement has been duly authorized, executed and delivered by Lessee, and constitutes a valid, legal and binding agreement, enforceable in accordance with its terms.

(iv) No approval, consent, license, order or authorization from or registration with any governmental or public body or authority is required with respect to the entering into or performance of this Agreement.

(v) The entering into and performance of this Agreement will not conflict with, or result in a breach of, the terms, conditions or provision of any law, or any regulations, order, injunction, permit, franchise or decree of any court or governmental instrumentality.

(vi) The entering into and performance of this Agreement will not conflict with, or result in a breach of, the Articles of Incorporation or By-Laws of Lessee or the terms, conditions or provisions of any indenture, agreement or other instrument to which Lessee is a party or by which it or any of its property is bound.

(vii) Lessee is neither an organization described in Section 48(a)(4) nor a governmental unit described in Section 48(a)(5) of the Internal Revenue Code of 1954, as amended.

(viii) Except for the recordation of documents under Section 20c of the Interstate Commerce Act and the placing of Lessor's markings on the Railroad Cars as contemplated by Article 4 hereof, no other recordation and no further filing or registration of this Agreement or of any other instrument or document is necessary or advisable under the laws of the United States of America or any State thereof in order to fully protect, establish and perfect Lessor's title to and interest in the Railroad Cars as against Lessee or any third person in any jurisdiction within the United States.

B. LESSOR'S REPRESENTATIONS AND WARRANTIES

LESSOR MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, AS TO THE CONDITION, DESIGN, TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER MATTER CONCERNING THE RAILROAD CARS, INCLUDING, WITHOUT LIMITATION, ANY MATTER BASED ON OR ARISING OUT OF THE MODIFICATIONS OR ALTERATIONS MADE TO THE RAILROAD CARS AS CONTEMPLATED UNDER ARTICLE 5A(iii) HEREOF. LESSEE HEREBY WAIVES ANY CLAIM IT MIGHT HAVE AGAINST LESSOR FOR ANY LOSS, DAMAGE, OR EXPENSE CAUSED BY THE RAILROAD CARS OR BY ANY DEFECT THEREIN. During the term of this Lease, so long as no Event of Default, or event which with the giving of notice or the lapse of time or both would mature into an Event of Default, shall have occurred and be continuing, Lessor hereby assigns to Lessee any factory or dealer warranty, whether express or implied, in connection with defects in the Railroad Cars or Lessor's title thereto to the extent the same affects Lessee's quiet enjoyment of such Railroad Cars.

Lessor represents and warrants to Lessee that as of the date of this Agreement:

(i) Lessor is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Delaware and is duly qualified to do business in the State of California.

(ii) Lessor has full corporate power to enter into this Agreement.

(iii) This Agreement has been duly authorized, executed and delivered by Lessor and constitutes a valid, legal and binding agreement of Lessor, enforceable against Lessor in accordance with its terms.

(iv) Lessor is neither an organization described in Section 48(a)(4) nor a governmental unit described in Section 48(a)(5) of the Internal Revenue Code of 1954, as amended.

ARTICLE 7

CAR HIRE PAYMENTS

Any per diem or mileage allowances, rentals, demurrage and/or other compensation payable by railroads (other than Lessee) by reason of the use of the Railroad Cars during the term of this Agreement (hereinafter referred to as "Allowances") shall be collected by and shall constitute the property of Lessee. Any Allowances paid to Lessor shall be immediately paid to Lessee, unless at the time of such payment an Event of Default or event which with the giving of notice or the lapse of time or both shall have occurred, in which case Lessor shall be entitled to hold such payments as security for Lessee's performance of its obligations hereunder.

ARTICLE 8

CAR ALTERATIONS

Lessee shall not alter the physical structure of any of the Railroad Cars without the prior written approval of Lessor.

ARTICLE 9

MAINTENANCE AND REPAIRS

Lessee shall, at its own cost and expense, maintain and keep each Railroad Car in the same operating order, repair and condition as when originally delivered to Lessee hereunder, ordinary wear and tear excepted, and in accordance with the Interchange Rules. Any parts installed or replacements made to any Railroad Car by Lessee pursuant to this Article or Article 23 shall be considered accessions to such Railroad Car and title thereto shall be vested immediately in Lessor. All replaced, worn out or defective parts which have been replaced by Lessee hereunder, may be retained by the Lessee for its own account.

ARTICLE 10

LOSS OR DAMAGE

In the event any Railroad Car is lost, stolen, destroyed or damaged beyond economic repair during the term therefor (hereafter, an "Event of Loss"), Lessee shall give Lessor prompt written notice thereof and shall pay or cause to be paid to Lessor on the next succeeding rental payment date following notice of such Event of Loss: (i) the monthly rental payment due on such date for the Railroad Car, together with any other rental payments or other sums that are then due and unpaid and (ii) the settlement value of such Railroad Car, determined pursuant to Rule 107 of the Interchange Rules. In addition, Lessee shall be obligated to pay Lessor, promptly after the same shall have been determined, the difference between the fair market value of such Railroad Car (determined as hereinafter provided) and the amount specified in clause (ii) above, together with interest on such difference at the rate of 10% per annum from the

rental payment date next succeeding notice of the Event of Loss to the date of full payment of such sum. "Fair market value" shall be determined as of the date immediately preceding the Event of Loss by agreement between Lessor and Lessee, such determination to be made on the basis of, and shall be equal in amount to, the sale value of an equivalent railroad car which: (i) has the value and utility and is in the condition and state of repair required under this Agreement; (ii) would be obtained in an arms'-length transaction between an informed and willing buyer-user (other than (A) a lessee currently in possession and (B) a used railroad car dealer) under no compulsion to buy and an informed and willing seller under no compulsion to sell; and, in making such determination costs of removal from the location of current use shall not be a deduction from such value. In the event that Lessor and Lessee are unable to agree upon the fair market value of the Railroad Car within 30 days after notice by Lessor to Lessee that the fair market value is in excess of the settlement value, then Lessor and Lessee agree that the fair market value for such Railroad Car shall, in accordance with the criteria stated above, be determined by an independent railroad car appraiser mutually agreed to by Lessor and Lessee. In the event Lessor and Lessee fail to agree upon such appraiser within 20 days of the Event of Loss, then Lessor or Lessee may apply to any court having jurisdiction to make such appointment.

At such time as Lessor has received the sum of clauses (i) and (ii), above: (A) the obligation of Lessee to pay rental payments hereunder with respect to such Railroad Car shall terminate, (B) the term of this Agreement in respect of such Railroad Car shall end, and (C) Lessor will transfer to Lessee, without representation, recourse or warranty of any kind, express or implied (except a warranty that such Railroad Car is free of liens and encumbrances other than liens and encumbrances which Lessee is required to discharge hereunder, or defects in title resulting from acts by or claims against Lessor), all of Lessor's right, title and interest, if any, in and to such Railroad Car, and all claims for damages to or loss of such Railroad Car, if any, against any third party arising from such event of loss. In addition, Lessor agrees to cooperate with and assist Lessee in any reasonable manner requested, but without affecting the obligations under this Article or Article 11, to establish proper claims against parties responsible for the loss or destruction of, or damage to, the Railroad Cars.

ARTICLE 11

INDEMNIFICATION BY LESSEE: DAMAGES, LOSSES AND INJURIES

Lessee shall defend (if such defense is tendered to Lessee), indemnify and hold Lessor harmless from and against and does hereby release Lessor from, all claims, suits, liabilities, losses, damages, costs and expenses, including attorneys' fees, in any way arising out of or resulting from the condition, storage, use, loss of use, or operation of the Railroad Cars (including, without limitation, claims based on strict liability in tort), even though the same may have resulted from Lessor's concurrent negligence, whether active or passive. In all cases to which this indemnity agreement applies, Lessee's obligation shall be to indemnify Lessor for the full

amount of the claim, suit, liability, loss, damage, cost or expense involved, and principles of comparative negligence shall not apply.

ARTICLE 12

LOSS OF COMMODITIES

Lessor shall not be liable for any loss of, or damage to, commodities, or any part thereof, loaded or shipped in the Railroad Cars, however such loss or damage shall be caused, or shall result, and Lessee shall hold Lessor harmless in connection with any claims therefor.

ARTICLE 13

LOSS OF USE OF RAILROAD CARS BY LESSEE

Lessor shall not be liable to Lessee for any damages, costs or losses which result from the loss of the use of any Railroad Car for any reason whatsoever, and, except as expressly provided herein, loss of use of a Railroad Car shall not in any way diminish or abate Lessee's obligation to pay rent hereunder in respect of such Railroad Car, including, without limitation, loss of use resulting from repair work or modification or alteration work contemplated under Article 5A(iii) hereof.

ARTICLE 14

TAXES AND OTHER CHARGES

Except as otherwise hereinafter provided, Lessee shall pay and indemnify and hold Lessor harmless from any and all taxes and other charges, including penalties and interest thereon, levied or imposed by any foreign, Federal, state or local government or taxing authority, railroad or other agency upon or with respect to the Railroad Cars, or Lessor in connection with the Railroad Cars or the lease thereof hereunder, including without limitation (i) personal property taxes imposed as a result of ownership or use of the Railroad Cars, (ii) any taxes (withholding or otherwise) and penalties and interest thereon imposed by Canada or Mexico or any province or any governmental or administrative subdivision thereof, (iii) sales and/or use taxes, gross receipts, franchise and single business taxes, except any Pennsylvania sales tax imposed upon the original acquisition of the Railroad Cars, and (iv) license fees, assessments, charges, fines, levies, imposts, duties, tariffs, customs, switching, and demurrage.

Notwithstanding the foregoing, Lessee shall not be responsible for any tax imposed by the United States or any state or governmental subdivision thereof which is measured solely by Lessor's net income, unless such tax is in substitution for or releases Lessee from the payment of any taxes for which Lessee would otherwise be obligated under this Article 14.

ARTICLE 15

ASSIGNMENT, TRANSFERS, ENCUMBRANCES

A. LESSOR'S RIGHTS TO ASSIGN OR TRANSFER

All rights of Lessor hereunder may be assigned, pledged, mortgaged, transferred or otherwise disposed of, either in whole or in part, and/or Lessor may assign, pledge, mortgage, transfer or otherwise dispose of title to the Railroad Cars, with or without notice to Lessee. In the event of any such assignment, pledge, mortgage, transfer or other disposition, this Agreement and all rights of Lessee hereunder or those of any person, firm or corporation who claims or who may hereafter claim any rights in this Agreement under or through Lessee, are hereby made subject and subordinate to the terms, covenants and conditions of any chattel mortgage, conditional sale agreement, equipment trust agreement or other agreements or assignments covering the Railroad Cars heretofore or hereafter created and entered into by Lessor, its successors or assigns, and to all of the rights of any such chattel mortgagee, assignee, trustee or other holder of legal title to the Railroad Cars; provided, however, that so long as Lessee is not in default hereunder Lessor shall continue to perform its obligations hereunder, and Lessee shall be entitled to use the Railroad Cars in accordance with the terms and conditions hereof. Any sublease or assignment of the Railroad Cars permitted by this Agreement that is entered into by Lessee or its successors or assigns shall contain language which expressly makes such assignment or sublease subject to the subordination contained herein. At the request of Lessor or any chattel mortgagee, assignee, trustee, or other holder of the legal title to or security interest in the Railroad Cars, Lessee at Lessor's expense shall letter or mark the Railroad Cars to identify the legal owner of the Railroad Cars and, if applicable, place on each side of each Railroad Car, 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 reasonably requested.

B. LESSEE'S USE OF RAILROAD CARS

Lessee hereby acknowledges that Lessor will claim with respect to the Railroad Cars the investment tax credit allowable pursuant to Section 38 of the Internal Revenue Code of 1954, as amended (the "Code"), for "new Section 38 property" as defined in Section 48(b) of the Code and intends to use the most accelerated method of depreciation in respect of the Railroad Cars permitted to Lessor under the Code. Lessee further acknowledges that an investment tax credit with respect to the Railroad Cars would not be allowable in the taxable year claimed, and that the investment tax credit or depreciation previously claimed with respect to the Railroad Cars would be recaptured, if the Railroad Cars were to be used predominantly outside the United States within the meaning of Section 48(a)(2)(A) of the Code.

Lessee intends to use the Railroad Cars entirely within the continental United States. Notwithstanding the foregoing, Lessee shall not use a Railroad Car (nor permit a Railroad Car to be used

by a transferee, sublessee or assignee of Lessee) outside the continental United States more than an aggregate of 55 days during any calendar year (or a pro-rata portion thereof for a period of use of less than a full calendar year).

Notwithstanding anything contained herein to the contrary, Lessee shall not permit the Railroad Cars to be used by any organization described in Section 48(a)(4) of the Code or by a governmental unit described in Section 48(a)(5) of the Code.

Lessee shall be required to pay to Lessor an amount which, after deduction of all taxes required to be paid by Lessor in respect of all amounts payable by Lessee to Lessor hereunder under the laws of any Federal, state, or local government or taxing authority, shall be equal to all or such portion of the investment tax credit or depreciation disallowed or recaptured by or from Lessor as a direct or indirect result of Lessee's violation of this Article 15B, plus the aggregate amount of any related interest, penalties or additions to tax payable by Lessor.

C. LESSEE'S RIGHT TO TRANSFER OR SUBLEASE

Except as provided in the next succeeding paragraph, Lessee shall not transfer, sublease or assign the Railroad Cars, nor shall a transfer, sublease or assignment by operation of law or otherwise of Lessee's interest in the Railroad Cars or this Agreement be effective against Lessor, without Lessor's prior written consent. Nothing in this Agreement shall be deemed, however, to restrict the right of Lessee to assign or transfer its leasehold interest in the Railroad Cars or possession of the Railroad Cars to a corporation into which or with which Lessee shall have become merged or consolidated or which shall have acquired the property of Lessee as a whole or substantially as a whole.

If Lessee shall have made at least 36 monthly rental payments to Lessor as contemplated by clause (i) or (ii) of Article 5A, above, Lessee may, except as otherwise provided in the last sentence of this paragraph, sublease all the Railroad Cars to PLM Railcar Services, Inc. for a term of not less than six months but in any event for a term that is coextensive with the term of this Agreement; provided, however, that Lessee first shall have given Lessor at least six months prior written notice of such proposed sublease (which notice shall specify the term and the other material provisions of the proposed sublease) and, if available, be accompanied by a copy of the proposed sublease. In addition, Lessee shall prohibit PLM Railcar Services,Inc. from (i) subleasing or otherwise using the Railroad Cars in a manner that, in Lessor's reasonable opinion, would result in the elimination or diminution of Lessor's tax benefits contemplated in Section B of this Article or (ii) subleasing the Railroad Cars to any corporation other than a corporation whose obligations are rated "Baa" or better by Moody's Investors Services, Inc., unless Lessor shall have given its prior written approval to a sublease to such

other corporation, which approval will not be unreasonably withheld (and Lessor shall advise Lessee and PLM Railcar Services, Inc. as to such approval or disapproval within five business days after Lessor's receipt of notice of such proposed sublessee). Notwithstanding any of the foregoing, Lessee shall not be entitled to enter into any sublease with PLM Railcar Services, Inc. if: (A) it fails to enter into an equivalent sublease with PLM Railcar Services, Inc. for all the railroad cars that are subject to the MDFC Lease Agreement; or (B) within 60 days after receipt of notice of the proposed sublease, Lessor, at its option, offers (whether or not such offer is accepted by Lessee) to shorten the

term of this Agreement so that the term would end on the intended commencement date of the proposed sublease, and Lessee shall be deemed to have rejected such offer by Lessor unless Lessor shall have received from Lessee written acceptance of such offer within 10 days after the date that such offer was made by Lessor.

Any transfer, sublease or assignment of this Agreement, or of the Railroad Cars, including a sublease entered into pursuant to the authority of the preceding paragraph, shall not relieve Lessee from, or in any way diminish any of, Lessee's obligations to Lessor under this Agreement.

ARTICLE 16

OWNERSHIP OF THE RAILROAD CARS

Lessee acknowledges and agrees that by the execution of this Agreement, it does not obtain and by payments and performance hereunder it does not and will not have or obtain any title to the Railroad Cars or any property right or interest therein, legal or equitable, except solely as lessee hereunder and subject to all of the terms hereof. Lessee shall keep the Railroad Cars free from any liens or encumbrances, except those created by or through Lessor.

ARTICLE 17

EVENTS OF DEFAULT; REMEDIES

The occurrence of any of the following events shall constitute an Event of Default: if Lessee defaults in the payment of any sum of money to be paid under this Agreement and such default continues for a period of ten (10) days after written notice to Lessee of such default; or if Lessee fails to perform any covenant or condition required to be performed by Lessee which failure shall not be remedied within ten (10) days after notice thereof by Lessor to Lessee; or if any event of default under, and as defined in, the MDFC Lease Agreement shall have occurred and be continuing or if Lessee shall dissolve, make or commit any act of bankruptcy, or if any proceeding under any bankruptcy, or insolvency statute or any laws relating to relief of debtors is commenced by Lessee, or if Lessee files an answer admitting the material allegations of a petition filed against Lessee in any such proceeding; or if any such proceeding is commenced against Lessee and same shall not have been withdrawn or dismissed within thirty (30) days of the date of the filing thereof, or if a receiver, trustee or liquidator is appointed for Lessee or for all or a substantial part of Lessee's assets with Lessee's consent, or if without Lessee's consent the same shall not have been removed within thirty (30) days of the date of the appointment thereof; or if an order, judgment or decree be entered against Lessee or in respect of any Railroad Car by a court of competent jurisdiction and continue in effect for any period of thirty (30) consecutive days without a stay of execution; or if a writ of attachment or execution is levied on any Railroad Car and is not discharged within ten (10) days thereafter.

Upon the occurrence of any Event of Default, Lessor may exercise one or more of the following remedies with respect to the Railroad Cars:

1. Immediately terminate this Agreement and Lessee's rights hereunder;

2. Require Lessee to return the Railroad Cars to Lessor at Lessee's expense, and if Lessee fails to so comply, Lessor may take possession of such Railroad Cars without demand or notice and without court order or legal process. Lessee hereby waives any damages occasioned by such taking of possession whether or not Lessee was in default at the time possession was taken, so long as Lessor reasonably believes that Lessee was in default at such time. Lessee acknowledges that it may have a right to notice of possession and the taking of possession with a court order or other legal process. Lessee, however, knowingly waives any right to such notice of possession and the taking of such possession without court order or legal process;

3. Sell all or any of the Railroad Cars, at public or private sale, or otherwise dispose of, hold, use, operate, lease to others or keep idle any Railroad Car, or part thereof, as Lessor in its sole discretion may determine, all free and clear of any rights of Lessee and without any duty to account to Lessee with respect to such action or inaction or for any proceeds with respect thereto, except to the extent required by paragraph 5 below in the event Lessor elects to exercise its rights under such paragraph (in lieu of its rights under paragraph 4 below);

4. Whether or not Lessor shall have exercised, or shall thereafter at any time exercise, any of its rights under paragraph 1, 2 or 3 above, Lessor, by written notice to Lessee specifying a payment date, may demand that Lessee pay to Lessor, and Lessee shall pay to Lessor, on the payment date specified in such notice, as liquidated damages for loss of a bargain and not as a penalty (in lieu of the rental payments for such Railroad Car due for the period commencing after the date specified for payment in such notice), any accrued but unpaid rental payments for such Railroad Cars due to and including the payment date specified in such notice, plus an amount equal to the excess, if any, of: (A) the aggregate unpaid monthly rental payments for such Railroad Cars for the remainder of the term therefor, discounted monthly to present worth as of the payment date specified in such notice at Prime (as defined in Article 5A(iii)) over (B) the aggregate fair market rental value of such Railroad Car (computed as hereafter in this Article provided) for a period equal to the remainder of the term for such Railroad Car, after discounting such fair market rental value monthly to present worth as of the payment date specified in such notice at Prime (as defined in Article 5A(iii)).

5. In the event Lessor, pursuant to paragraph 3, above, shall have relet a Railroad Car, Lessor, in lieu of exercising its rights under paragraph 4, above, with respect to such Railroad Car, may, if it shall so elect, demand that Lessee pay Lessor and Lessee shall pay Lessor, as liquidated damages for loss of a bargain and

not as a penalty (in lieu of the rental payments for such Railroad Car due for the period commencing after the date of reletting) any accrued but unpaid rental payments for such Railroad Car due up to and including the date of reletting plus the excess of (A) the aggregate unpaid monthly rental payments for such Railroad Car which would otherwise have become due over the term therefor discounted monthly to present worth as of the date of reletting at Prime (as defined in Article 5A(iii)) over (B) the aggregate basic rental payments to become due under the reletting from the date of such reletting to the date upon which the term for such Railroad Car would have expired but for Lessee's default, discounted monthly to present worth as of the date of the reletting at Prime (as defined in Article 5A(iii)).

6. Proceed by appropriate court action or actions to enforce performance by Lessee of the applicable covenants of this Lease and to recover damages for the breach hereof, or to terminate this Lease as to any or all Railroad Cars;

7. Pursue any other remedy which Lessor may have under law or otherwise.

Each remedy is cumulative and may be enforced separately or concurrently. In the event of default, Lessee shall pay to Lessor all costs and expenses including reasonable attorney's fees expended by Lessor in the enforcement of its rights and remedies hereunder, and Lessee shall pay interest at the rate of ten percent (10%) per annum on any amount owing to Lessor from the time such amount becomes due hereunder until paid. Except as otherwise specifically provided above, Lessee shall also be liable for all unpaid rental payments and any other amounts due hereunder before, during or after the exercise of any of the foregoing remedies and for all legal fees and other costs and expenses incurred by reason of the occurrence of any Event of Default or the exercise of any of Lessor's remedies with respect thereto, including all costs and expenses incurred in connection with the return of the Railroad Cars in accordance with the terms of Article 18 hereof, or in placing such Railroad Cars in the condition required by Article 9 hereof. For purposes of paragraph 4, above, the "aggregate fair market rental value" of any Railroad Car shall be as specified in an appraisal by a recognized independent railroad car appraiser chosen by Lessor.

ARTICLE 18

DELIVERY AT END OF TERM

Lessee shall not deliver the Railroad Cars prior to the end of the term without the prior written consent of Lessor; provided further, that notwithstanding anything contained herein to the contrary, Lessee shall not load any Railroad Car leased hereunder during the final 15 days of the term.

At the end of the term, Lessee, at its expense, shall deliver each Railroad Car to Lessor or its designee, or to a subsequent lessee, at Elko, Nevada, or at such other location or locations as may be designated by Lessor at least 30 days prior to the end of the term,

(provided, that, except as otherwise provided in the next succeeding paragraph, Lessee shall bear the cost of delivering a Railroad Car to such other location only to the extent that such cost equals the cost that would have been incurred in delivering such Railroad Car to Elko, Nevada). At the time of delivery, the Railroad Cars shall be empty, free from residue, in the same good order and condition as when delivered to Lessee hereunder, normal wear and tear excepted, and in the condition and repair required according to the Interchange Rules. Lessee shall, on demand, reimburse Lessor for the expense of cleaning any Railroad Car that contains residue or such other cost which may be incurred to place such Railroad Car in the condition described above. If requested by Lessor, Lessee shall provide Lessor with free storage of the Railroad Cars at Elko, Nevada, for up to 90 days, and thereafter, will lease track space to Lessor at Elko at Lessee's standard track lease rate per month. Lessee further agrees, at Lessor's request, to paint over Lessee's markings on the Railroad Cars and to place such other markings on the Railroad Cars as Lessor may designate, all in accordance with Lessee's normal painting procedures and at applicable AAR billing rates.

Whether the Railroad Cars are in storage as contemplated above or whether Lessor has designated to Lessee that the Railroad Cars be delivered to a location other than Elko, Nevada, resulting in a potential cost to Lessor, at Lessor's request, Lessee will use its best efforts to obtain loads for the Railroad Cars, acceptable to Lessor, going in the direction of the location designated by Lessor in order that as promptly as reasonably possible the Railroad Cars may be delivered to such designated location. In the event Lessee obtains a load for a Railroad Car, Lessor shall only be responsible for the transportation costs associated with moving such Railroad Car from the point at which the Railroad Car is unloaded to the point designated as the point of delivery by Lessor, together with any cost of cleaning of residue from such Railroad Car. In cases where such designation is the same as the designation by McDonnell Douglas Finance Corporation pursuant to the MDFC Lease Agreement, Lessee shall, to the extent reasonably possible, provide equal treatment to Lessor and McDonnell Douglas Finance Corporation.

If any Railroad Car is not redelivered to Lessor or not delivered to a subsequent lessee on or before the date on which the term ends, or in the event that a Railroad Car so delivered is not in the condition required by this Article 18, Lessee shall pay rental for each day that such Railroad Car is not delivered as required herein or until such Railroad Car is delivered in the condition required, at the prorated monthly rental rate required under Article 5A. Lessee shall pay to Lessor on or before the last day of each month the amount Lessee is obligated to pay to Lessor for such month under this Article 18. In addition to any other indemnity provided herein and any payments to be made to Lessor hereunder, Lessee shall also indemnify and hold Lessor harmless from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, including those asserted by a subsequent lessee arising out of or as a result of such late delivery or failure to deliver in the condition required.

ARTICLE 19

NOTIFICATION REQUIRED

If Lessee fails to perform any of its obligations hereunder, Lessor, at Lessee's expense, and without waiving any rights it may have against Lessee for such nonperformance, may itself render such performance. Lessee shall reimburse Lessor on demand for all sums so paid by Lessor on Lessee's behalf, together with interest at a rate of 10% per annum.

ARTICLE 20

FAILURE OF INSPECTION

Lessor or its assignee shall, at any reasonable time and from time to time and without interfering with Lessee's operations, have the right to inspect the Railroad Cars and all logs, records and manuals maintained in respect of the Railroad Cars, by its authorized representative wherever the same may be located for the purpose of determining compliance by Lessee with its obligations hereunder. Lessee shall use its best effort to obtain permission, if necessary, for Lessor or its representative to enter upon any premises where the Railroad Cars may be located.

ARTICLE 21

NOTIFICATION REQUIRED

Lessee shall notify Lessor of any accident or malfunction in connection with the operation of the Railroad Cars promptly upon becoming aware of such event and to the extent such information is available to Lessee, including in such report the time, place and nature of the accident, the damage caused to any property, the names and addresses of persons injured and of witnesses, and other such information as may be pertinent to Lessor's investigation of such accident. Lessee shall also notify Lessor in writing within three (3) days after any attachment, lien (including any tax and mechanics' liens), or other judicial process attaches to the Railroad Cars. Within five (5) days after receipt of written demand from Lessor, Lessee shall give Lessor written notice of the approximate location of the Railroad Cars.

ARTICLE 22

ASSIGNMENT OF RIGHTS

Except as otherwise provided in Article 15A and C, this Agreement shall inure to the benefit of, and be binding upon, the parties hereto and their respective successors and assigns.

ARTICLE 23

GOVERNMENTAL LAWS

Lessee shall comply with all governmental laws, rules, regulations, requirements and the Interchange Rules (herein collectively referred to as the "Rules") with respect to the use and operation of the Railroad Cars, and if the Railroad Cars have any interior lading protective devices, special interior linings or removable parts, the maintenance of such devices, linings or parts. Lessee shall comply with the Rules with respect to its obligation to maintain the Railroad Cars under Article 9 hereof. Upon prompt notice to Lessor by Lessee, Lessor shall comply with the Rules in the event such Rules require modifications or alterations to the Railroad Cars as contemplated under Article 5A(iii); Lessee shall comply with the Rules in all other circumstances.

ARTICLE 24

INSURANCE

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 Railroad Cars at the time subject hereto, and public liability and property damage insurance, in amounts and against risks customarily insured against by railroad companies on similar equipment owned or operated by them, and no event less than in amounts and against risks comparable to those insured against by the Lessee on similar equipment owned or operated by Lessee. All such policies of insurance and all policies taken out in substitution or replacement for any of such policies (A) shall name Lessor as owner of the Railroad Cars, as an additional named insured, (but without imposing upon Lessor any obligation imposed upon the insured, including, without limitation, the liability to pay the premiums for such policies), (B) shall provide that in respect of the interests of Lessor in such policies, the insurance shall not be invalidated by any action or inaction of Lessee or any other person (other than action or inaction of Lessor), and shall insure Lessor, regardless of any breach or violation of any warranty, declaration or condition in such policies by Lessee or any other person (other than Lessor), and (C) shall provide that if such insurance is cancelled for any reason whatever, or is changed in any material respect in relation to the interests of Lessor, or if such insurance is allowed to lapse for nonpayment of premium, such cancellation, change or lapse shall not be effective as to Lessor for 30 days after receipt by Lessor of written notice by such insurers of such cancellation, change or lapse. Each liability policy (1) shall be primary without right of contribution from any other insurance which is carried by Lessor with respect to its interest as such in the Railroad Cars and (2) shall expressly provide that all of the provisions thereof shall operate in the same manner as if there were a separate policy covering each insured; provided, however, such policies shall not operate to increase the insurer's limit of liability. On or before the Delivery Date, and annually on the anniversary date thereof, Lessee will furnish to Lessor a certificate signed by Lessee's insurance brokers certifying that the insurance then carried and maintained on the Railroad Cars complies with the terms hereof.

ARTICLE 25

MISCELLANEOUS

A. No modification or waiver of any provision of this Agreement nor consent to any departure by Lessee therefrom shall be effective unless the same shall be in writing signed by both parties, and then such waiver of consent shall be effective only in the specific instance and for the purpose for which given.

B. This Agreement shall be interpreted under and performance shall be governed by the laws of California.

C. In the event the Interchange Rules conflicts with any provision of this Agreement, this Agreement shall govern.

D. All exhibits attached hereto are incorporated herein by this reference.

E. All payments to be made under this Lease shall be made at the addresses set forth in Article 26.

F. This Agreement is intended to cover all rights to indemnify between the parties hereto.

G. Lessee will promptly and duly execute and deliver to Lessor such further documents and assurances and take such further action as Lessor may from time to time reasonably request in order to more effectively carry out the intent and purpose of this Agreement and to establish and protect the rights and remedies created or intended to be created in favor of Lessor hereunder, including, without limitation, if requested by Lessor, at the expense of Lessee, the execution and delivery of supplements or amendments hereto, or of financing statements with respect hereto, in accordance with the laws of such jurisdictions as Lessor may from time to time reasonably deem advisable.

H. All covenants, agreements, indemnities, representations and warranties in this Agreement shall survive the execution and delivery of this Agreement and the expiration or sooner termination of the term of this Agreement.

ARTICLE 26

ADDRESSING OF NOTICES

Any notice, demand or other communication required or permitted hereunder shall be in writing and shall be deemed given when deposited in the United States mail as certified or registered matter, return receipt requested, postage prepaid, and addressed to the appropriate party as follows, unless otherwise advised in writing.

LESSEE TO LESSOR:

To: GATX AIRCRAFT CORPORATION
One Embarcadero Center
San Francisco, California
94111

Attention: Contracts Administration

LESSOR TO LESSEE:

To: THE WESTERN PACIFIC RAILROAD COMPANY
526 Mission Street
San Francisco, California 94105

Attention: Vice President-Finance

and, in each case, with a copy to:

MCDONNELL DOUGLAS FINANCE CORPORATION
3855 Lakewood Boulevard
Long Beach, California 90846

Attention: Contracts Administration

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed and delivered as of the 19th day of February, 1979.

GATX AIRCRAFT CORPORATION

ATTEST:

By: Assistant Secretary

By: Peter A Clukman

Its: VICE PRESIDENT

THE WESTERN PACIFIC RAILROAD COMPANY

ATTEST:

By: W. D. Brew
SECRETARY

By: Roger G Meldahl

Its: Sr. V.P. Mkt

State of California]
] ss.
County of San Francisco]

On this 7th day of March, 1979, before me personally appeared PETER S. CHALMERS, to me personally know, who, being by me duly sworn says that he is VICE PRESIDENT of GATX AIRCRAFT CORPORATION, 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.

DIANE L. BRADISON
NOTARY PUBLIC-CALIFORNIA
CITY & COUNTY OF SAN FRANCISCO
My Commission Expires July 16, 1982

Diane L. Bradison
Notary Public

State of California]
] ss.
County of San Francisco]

On this 8TH day of March, 1979, before me personally appeared R. G. MELDAHL, to me personally known, who, being by me duly sworn says that he is SENIOR VICE PRESIDENT of THE WESTERN PACIFIC RAILROAD COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Hyrum A. Orullian
Notary Public

OFFICIAL SEAL
HYRUM A. ORULLIAN
NOTARY PUBLIC — CALIFORNIA
COUNTY OF SAN FRANCISCO
My Commission Expires Sept. 7, 1981

EXHIBIT A

NUMBER AND DESCRIPTION OF CARS

Number of Cars:	Eighty-four (84)
Description of Cars:	4,000 cubic foot, 100-ton high-side open-top hopper railcars, built by Greenville Steel Car Company according to specification number H-30102-A, numbered WP70145 through WP70228.

EXHIBIT B

CERTIFICATE OF ACCEPTANCE OF RAILROAD CAR

This Certificate relates to the railroad cars listed below leased by GATX AIRCRAFT CORPORATION to THE WESTERN PACIFIC RAILROAD COMPANY under a Lease Agreement dated as of February 19, 1979 into which this Certificate is incorporated (by Article 3 thereof).

Railroad Car Numbers:

Lessee hereby certifies that the Railroad Cars listed above were delivered to and received by Lessee, inspected, determined to be fit and suitable for operation within the meaning of the Interchange Rules; and Lessee hereby certifies its acceptance of the railcars as of

Executed:

Attest:	THE WESTERN PACIFIC RAILROAD COMPANY
By:	By:
Its:	Its: