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INTERSTATE COMMERCE COMMISSION

LEASE OF RAILROAD EQUIPMENT

Dated as of March 1, 1975

between

WCTU RAILWAY COMPANY

and

WALTER E. HELLER & COMPANY

LEASE OF RAILROAD EQUIPMENT dated as of March 1, 1975, between WCTU RAILWAY COMPANY, an Oregon corporation (hereinafter called the Lessee), and WALTER E. HELLER & COMPANY, a Delaware corporation (hereinafter called the Lessor).

WHEREAS the Lessor is entering into a conditional sale agreement dated as of the date hereof with PACCAR Inc, a Delaware corporation (such corporation being hereinafter called the Builder and such agreement being hereinafter called the Security Documentation), 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 interest in the Security Documentation to First Security Bank of Utah, N.A., as agent under a Finance Agreement dated as of the date hereof (hereinafter called the Finance Agreement) with the Lessor and the parties named in Schedules A and B thereto (said bank, as so acting, being hereinafter, together with its successors and assigns, called the Vendor);

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

WHEREAS Union Tank Car Company, a Delaware corporation (hereinafter called the Guarantor), of which the Lessee is a wholly owned subsidiary, has agreed to guarantee to the Lessor and the Vendor, as provided in a guaranty agreement dated as of March 1, 1975 (hereinafter called the Guaranty Agreement), with the Lessor and the Vendor, the due and punctual payment of the sums payable by, and the due and punctual performance of the obligations of, the Lessee under this Lease and the Lessee's Consent and Agreement dated as of the date hereof (hereinafter called the Consent), by the terms of which the Lessee consents to the assignment of the Lease;

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the 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, the Builder or the Vendor; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency of or any 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 Documentation. 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 Documentation. 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 Documentation, 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 March 15 and September 15 in each year, commencing September 15, 1975. The rental payment payable on September 15, 1975, shall be in an amount equal to the Purchase Price (as defined in the Security Documentation) of each Unit subject to this Lease for each day elapsed from the Closing Date (as defined in the Security Documentation) for such Unit to and including the date of such payment multiplied by the Interim Rate (as defined in the Security Documentation) for each day so elapsed, plus amounts equal to the amounts required to be paid by the Lessor pursuant to the last paragraph of Paragraph 4 of the Finance Agreement. The next 40 rental payments shall each be in an amount equal to 4.46011% of the Purchase Price of each Unit then subject to this Lease.

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

The Lessor irrevocably instructs the Lessee to make, and the Lessee agrees to make, all the payments provided for in this Lease for the account of the Lessor in immediately available funds in care of the Vendor, at 79 South Main Street, Salt Lake City, Utah 84111, attention of Trust Department, Corporate Division, on or before 11:00 a.m., Salt Lake City time, on the date upon which such pay-

ments are due and payable. Such payments shall be accompanied by instructions to the Vendor, first, to apply such payments to satisfy the obligations of the Lessor under the Security Documentation, subject to the limitations contained in the last paragraph of Article 4 of the Security Documentation, and, second, so long as no event of default or event which with the lapse of time and/ or demand provided for in the Security Documentation could constitute an event of default under the Security Documentation 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 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 of such Unit 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 are subject to the rights of the Vendor under the Security Documentation. If an event of default should occur under the Security Documentation, the Vendor may terminate this Lease (or rescind its termination), all as provided therein.

§ 5. Identification Marks. The Lessee will cause each Unit to be kept numbered with the road number set forth in Schedule A hereto, or in the case of any Unit not there listed such road 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", 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, the rights of the Lessor under this Lease and the rights of the Vendor under the Security Documentation. 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 that may be removed, defaced or destroyed. In the event of a change in the road number of any Unit, the Lessee will promptly (i) file a statement containing the new number or numbers being substituted with the Vendor and the Lessor and file, record and deposit such statement in all public offices where this Lease and the Security Documentation shall have been filed, recorded and deposited and (ii) furnish the Vendor and the Lessor an opinion of counsel to the effect set forth in subparagraph (I) F of § 15 hereof in respect of such statement. The Units may be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates.

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.

§ 6. 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 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, up to the amount of any such taxes based on such receipts 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 Documentation, 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 the 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 opinion of the Lessor, materially adversely affect the title, property or rights of the Lessor hereunder or the Vendor under the Security Documentation. The Lessee agrees to give the Lessor notice of such contest within 30 days after institution thereof. If any impositions shall have been charged or levied against the Lessor directly and paid by the Lessor, the Lessee shall reimburse the Lessor on presentation of an invoice therefor; provided, however, that the Lessee shall not be obligated to reimburse the Lessor for any imposition so paid unless the Lessor shall have given the Lessee 30 days written notice prior to payment and shall have given the Lessee the opportunity to contest such imposition, provided that any such contest shall be in good faith and by appropriate legal proceedings and the nonpayment of such imposition shall not, in the opinion of the Lessor or the Vendor, materially adversely affect the property or rights of the Lessor or the Vendor under this Lease or the Security Documentation.

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 Documentation 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.

In the event any reports with respect to impositions are required to be made, the Lessee will either make such reports in such manner as to show the interest 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.

To the extent that the Lessee may be prohibited by law from performing in its own name the duties required by this § 6, the Lessor hereby authorizes the Lessee to act in its own name and on its behalf; provided, however, that the Lessee shall indemnify and hold the Lessor harmless from and against any and all claims, costs, expenses, damages, losses and liabilities incurred in connection therewith as a result of, or incident to, any action or failure to act by the Lessee pursuant to this authorization.

The Lessee shall, whenever requested by the Lessor, submit to the Lessor copies of returns, statements, reports, billings and remittances, or furnish other evidence satisfactory to the Lessor of the Lessee's performance of its duties under this § 6. The Lessee shall also furnish promptly upon request such data as the Lessor reasonably may require to permit the Lessor's compliance with the requirements of taxing jurisdictions.

§ 7. Payment for Casualty Occurrences; Insurance.
In the event that any Unit shall be or become worn out, lost, stolen, destroyed, or, in the opinion of the Lessor or the Lessee, irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise resulting in loss of possession by the Lessee for a period of 180 consecutive days (such occurrences being hereinafter called Casualty Occurrences), prior to the return of such Unit in the manner set forth in § 14 hereof, the Lessee shall promptly and fully notify the Lessor and the Vendor with respect thereto. On the September 15 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, complete destruction or return to the Builder of such Unit) the Lessor shall be entitled to recover possession of such Unit. The Lessor hereby appoints the Lessee its agent 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, the Lessee shall be entitled to the proceeds of such sale to the extent they do not exceed the Casualty

Value of such Unit, and shall pay one half of any excess to the Lessor with the remainder of such excess to be retained by the Lessee.

Subject to adjustment pursuant to the provisions of § 17 hereof, 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:

<u>Date</u>	<u>Percentage of Purchase Price</u>
September 15, 1975	84.69%
September 15, 1976	87.46
September 15, 1977	89.06
September 15, 1978	89.72
September 15, 1979	89.46
September 15, 1980	88.36
September 15, 1981	86.47
September 15, 1982	83.89
September 15, 1983	80.69
September 15, 1984	76.99
September 15, 1985	72.86
September 15, 1986	68.38
September 15, 1987	63.58
September 15, 1988	58.52
September 15, 1989	53.22
September 15, 1990	47.68
September 15, 1991	41.89
September 15, 1992	35.84

<u>Date</u>	<u>Percentage of Purchase Price</u>
September 15, 1993	29.52%
September 15, 1994	22.94
September 15, 1995 and thereafter	16.04

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 or seventh anniversary of the date of delivery and acceptance of such Units shall be increased by the applicable percentage of the Purchase Price set forth below:

<u>Anniversary of Delivery and Acceptance</u>	<u>Percentage of Purchase Price</u>
Third	19.80%
Fifth	13.20
Seventh	6.60

Whenever any Unit shall suffer a Casualty Occurrence after termination of this Lease and before such Unit shall have been returned in the manner provided in § 14 hereof, the Lessee shall promptly and fully notify the Lessor with respect thereto and pay to the Lessor an amount equal to the Casualty Value of such Unit, which shall be an amount equal to 16.04% of the Purchase Price of such Unit.

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 responsibility for and risk of, and shall not be released from its obligations hereunder in the event of, any damage to or any Casualty Occurrence to any Unit from and after delivery and acceptance thereof by the Lessee hereunder.

The Lessee will, at all times prior to the return of the Equipment to the Lessor, 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 in amounts and against risks 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 Documentation shall not have been paid in full, and thereafter to the Lessor and the Lessee as their interests may appear. If the Lessor shall receive any net insurance proceeds as the result of insurance carried by the Lessee or any condemnation payments in respect of Units suffering a Casualty Occurrence, the Lessor shall pay such proceeds or condemnation payments to the Lessee up to an amount equal to the Casualty Value with respect to such Units paid or payable by the Lessee and one half of any balance of such proceeds or condemnation payments shall remain the property of the Lessor with the remainder of such balance to be paid to the Lessee. 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 proceeds were paid has been fully repaired.

§ 8. Reports. On or before September 15 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 June 30 the amount, description and numbers of all Units then leased hereunder and covered by the Security Documentation, the amount, description and numbers of all Units that have suffered a Casualty Occurrence during the preceding twelve months and such 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 markings required by § 5 hereof and by the Security Documentation have been preserved or replaced. The Lessor and the Vendor 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.

The Lessee will furnish to the Lessor, the Ven-

dor and the parties named in Schedules A and B to the Finance Agreement and will cause the Guarantor to furnish to the Lessor, the Vendor and such parties (i) within 45 days after the end of each of the first three quarterly fiscal periods of the Lessee and the Guarantor, statements of income and surplus of the Lessee and of the Guarantor and its consolidated subsidiaries as of the close of such periods, in comparative form with the corresponding fiscal period in the preceding fiscal year, in reasonable detail and certified by any Vice President or the Treasurer of the Lessee and the Guarantor, (ii) within 90 days after the close of each of the fiscal years of the Lessee and the Guarantor, balance sheets of the Lessee and of the Guarantor and its consolidated subsidiaries as of the close of such fiscal years, together with the related statements of income and surplus and source and application of funds for such fiscal years, in comparative form with the preceding fiscal year, all in reasonable detail and, in the case of the Lessee, certified by any Vice President or the Treasurer of the Lessee, and, in the case of the Guarantor, certified by a recognized national firm of independent public accountants, such certification including their certificates and accompanying comments, (iii) within 90 days after the close of the fiscal year of the Lessee, a certificate of the Lessee, signed by a principal financial officer, to the effect that the signer has reviewed the relevant terms of this Lease and the Security Documentation and has made, or caused to be made under his supervision, a review of the transactions and condition of the Lessee during the preceding fiscal year, and that such review has not disclosed the existence during such period, nor does the signer have knowledge of the existence, as at the date of such certificate, of any condition or event which constitutes an Event of Default or which, after notice or lapse of time or both, would constitute an Event of Default or, if any such condition or event existed or exists, specifying the nature and period of existence thereof and what action the Lessee has taken or is taking or proposes to take with respect thereto, (iv) promptly upon the filing of the same, the annual report of the Guarantor under the Securities Exchange Act of 1934, and (v) from time to time such other information as the Lessor may reasonably request. The Lessee will furnish the Lessor from time to time on request such information as the Lessee or the Lessor may be required to furnish to any person pursuant to the Security Documentation.

§ 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, OR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT, EITHER UPON DELIVERY THEREOF TO THE LESSEE OR OTHERWISE, 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 of Annex A of the Security Documentation; provided, however, that if at any time an Event of Default shall have occurred and be continuing, the Lessor may assert and enforce, at the Lessee's sole cost and expense, such claims and rights. The Lessor shall have no responsibility or liability to the Lessee or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Units or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of any Units or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Units. 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 at its own expense, 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, materially adversely affect the property or rights of the Lessor or the Vendor under this Lease or under the Security Documentation.

The Lessee agrees that, at its own cost and expense, it will maintain and keep each Unit (including any parts installed on or replacements made to any Unit and considered an accession thereto as hereinbelow provided) which is subject to this Lease in good operating order, repair and condition.

Any and all additions to any Unit (except any communications, signal and automatic control equipment or devices having a similar use which have been added to such Unit by the Lessee, the cost of which is not included in the Purchase Price of such Unit and which are not required for the operation or use of such Unit by the Interstate Commerce Commission, the Department of Transportation or any other applicable regulatory body) and any and all parts installed on and additions and replacements made to any 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 Documentation) shall immediately be vested in the Lessor and the Vendor as their respective interests appear in the Unit itself. The Lessee shall not permit any special device or assembly to be attached or affixed to any Unit which may not be readily removed from such Unit without materially impairing such Unit or the value thereof unless such special device or assembly is to be considered an accession to such Unit.

The Lessee agrees to indemnify, protect and hold harmless the Lessor and the Vendor from and against all losses, damages, injuries, liabilities, 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 or the occurrence of a default or an Event of Default under the Security Documentation 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 expiration or termination of the term 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 herein sometimes called an Event of Default) shall occur:

A. default shall be made in payment of any amount provided for in §§ 3, 7 or 13 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 any interest herein, or of the right to 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 contained herein, in the Consent or in the Guaranty Agreement by the Lessee or the Guarantor, respectively, and such default shall continue for 30 days after written notice from the Lessor or the Vendor to the Lessee and/or the Guarantor 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 this Lease and under the Consent 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 or the Guarantor for any relief which includes, or might result in, any modification of the obligations of the Lessee hereunder or under the Consent, or of the Guarantor under the Guaranty Agreement, under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of the Lessee hereunder or under the Consent, or of the Guarantor under the Guaranty Agreement), 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 Consent, or of the Guarantor under the Guaranty Agreement, 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 the Guarantor or for the property of the Lessee or the Guarantor in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such 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 herein 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 rental 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 6.38% per annum discount, compounded semiannually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, (ii) any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Lessor shall have sustained by reason of the breach of any covenant, 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 all amounts payable by the Lessee to the Lessor hereunder under the laws of any Federal, state or local government or taxing authority of the United States of America or under the laws of any taxing authority or governmental subdivision of a foreign country, shall, in the reasonable opinion of the Lessor, be equal to 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 direct or indirect 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 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 and the Interest Deduction (as such deductions are defined in § 17 hereof) which was lost, not claimed, not available for claim or disallowed or recaptured in respect of a Unit as a direct or indirect 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, any action or inaction by the Lessee or the sale or other disposition of the Lessor's interest in such Unit after the occurrence of an Event of Default plus such sum as will pay or reimburse the Lessor for any interest, penalties or additions to tax incurred in connection with such loss, failure to claim, inability to claim, disallowance or recapture.

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative and may be exercised concurrently or consecutively, 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 the rental 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.

Notwithstanding the foregoing, if the Lessee fails to make any payment of the rental required to be made by the Lessee pursuant to § 3 of this Lease, the Lessor may itself make such payment and the amount of such payment and the reasonable costs and expenses of the Lessor incurred in connection with such payment shall be payable by the Lessee to the Lessor upon demand; provided, however, that the Lessor shall not be entitled to make such payment of any rental provided in § 3 hereof with respect to more than two consecutive defaults in the payment of such rental by the Lessee. The failure of the Lessor to exercise the rights granted under this paragraph shall not constitute, and shall not be construed as, the waiver of any rights or remedies arising from the failure of the Lessee to make such rental payment upon the continuation or recurrence of the failure of the Lessee to make a rental payment. Upon demand of the Lessor or the Vendor, the Lessee shall furnish written acknowledgment to the effect that any such failure to exercise rights or remedies, or performance by the Lessor, shall not constitute a waiver as aforesaid.

§ 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. Each Unit so delivered shall be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted. For the purpose of delivering possession of any Unit or Units to the Lessor as above required, the Lessee shall at its own cost, expense and risk:

(a) forthwith place such Units upon such storage tracks of the Lessee or any of its affiliates as the Lessor reasonably may designate;

(b) permit the Lessor to store such Units on such tracks at the risk of the Lessee without charge for in-

surance, rent or storage 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, insurance 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, at its own cost and expense, maintain and keep the Equipment in good order and repair and 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 Documentation, 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, 9, 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, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease but, without the prior written consent of the Lessor, the Lessee shall not assign or transfer its leasehold interest under this Lease in the Units or any of them. The Lessee, at its own expense, will promptly pay or discharge any and all sums claimed by any party which, if unpaid, might become a lien, charge, security interest or other encumbrance (other than an encumbrance created by the Lessor or the Vendor or resulting from claims against the Lessor or the Vendor not related to the ownership of the Units) upon or with respect to any Unit, including any accession thereto, or the interest of the Lessor, the Vendor or the Lessee therein, and will promptly discharge any such lien, charge, security interest or other encumbrance which arises; provided, however, that the Lessee shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Lessor or the Vendor, materially adversely affect the property or rights of the Lessor or the Vendor under this Lease or the Security Documentation. The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provisions of the immediately succeeding paragraph.

So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession of the Units and to the use of the Units by it or any affiliate upon lines of railroad owned or operated by it or any such affiliate or upon lines of railroad over which the Lessee or any such affiliate has trackage or other operating rights or over which railroad equipment of the Lessee or any such affiliate is regularly operated pursuant to contract, and also to permit the use of the Units upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements, but only upon and subject to all the terms and conditions of this Lease and the Security Documentation; provided, however, that the Lessee shall not use or permit the use of any Units in service involving the regular operation and maintenance thereof outside the United States of

America. The Lessee may receive and retain compensation for such use from other railroads so using any of the Units. The Lessee represents and warrants to the Lessor and the Vendor that the Units will be used, and are intended for use, in connection with interstate commerce; and it is the intention of the parties hereto that the Units will be used exclusively in the United States of America.

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) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety, provided that such assignee or transferee will not, upon the effectiveness of such merger, consolidation or acquisition, be in default under any provision of this Lease.

§ 13. Renewal Option; Right of First Refusal.

The Lessor intends to retain the Units for release at the expiration of the term of this Lease. 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 one additional five-year period commencing on the scheduled expiration of the original term of this Lease at a rental equal to 2.230055% of the Purchase Price of such Units, payable in arrears in two semiannual payments for each one year period, such semiannual payments to be made on March 15 and September 15 in each year of the extended term.

The Lessor agrees that (provided no default hereunder shall have occurred and be continuing) it will not sell the Units, or any of them, unless the Lessor shall have given the Lessee at least 30 business days' prior written notice of such sale, specifying the sale price and terms of such sale, and the Lessee shall have had the opportunity to purchase such Unit or Units at the same price and on the same terms as specified in such notice. The foregoing right of the Lessee shall expire 90 days after the termination of this Lease or any renewal thereof.

Upon payment of the purchase price of any Unit, 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 warranties) for such Unit as the Lessor derived from the Vendor, free and clear of all liens, security interests and other encumbrances arising through the Lessor.

§ 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, 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 or any of its affiliates as the Lessor may designate, or, in the absence of such designation, as the Lessee may select, and permit the Lessor to store such Unit on such tracks for a period not exceeding six months and transport the same, at any time within such six-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 Units 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, on behalf of either the Lessor or any prospective purchaser, the rights of inspection granted under this sentence. 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, ordinary 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. 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.

§ 15. Opinions of Counsel. On each Closing Date (as defined in the Security Documentation) the Lessee will

deliver to the Lessor:

(I) two counterparts of the written opinion of counsel for the Lessee (who may be an employee of the Lessee or an affiliate of 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 organized and validly existing in good standing under the laws of the State of Oregon and is duly qualified and authorized to do business wherever necessary to carry on its present business and operations and to own its properties and to perform its obligations under this Lease and the Consent;

B. the Lessee has the full power, authority and legal right to enter into and perform its obligations under this Lease and the Consent and the execution, delivery and performance of this Lease and the Consent have been duly authorized by all necessary corporate action on the part of the Lessee, do not require any stockholder approval or approval or consent of any trustee or holders of any indebtedness or obligations of the Lessee, or such required approvals and consents have heretofore been duly obtained, certified copies thereof having been delivered to the Lessor, and do not contravene any law, governmental rule, regulation or order binding on the Lessee or the certificate of incorporation or by-laws of the Lessee and will not result in any breach of, or constitute a default under, any indenture, mortgage, contract or other agreement or instrument to which the Lessee is a party or by which the Lessee is bound as guarantor or otherwise;

C. neither the execution and delivery by the Lessee of this Lease and the Consent, nor the consummation of any of the transactions by the Lessee contemplated hereby or thereby, requires the consent or approval of, the giving of notice to, or the registration with, or the taking of any other action in respect of, the Interstate Commerce Commission or any other Federal, state or foreign governmental authority or agency, except the filing and recording of such documents with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act;

D. there are no pending or threatened actions or proceedings before any court or administrative agency which will materially adversely affect the condition, business or operations of the Lessee and its subsidiaries, taken as a whole, or the ability of the Lessee to perform its obligations under this Lease and the Consent;

E. this Lease and the Consent 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 terms;

F. the Security Documentation (and any assignment thereof), this Lease (and any assignment hereof) and the Consent have been duly filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act and such filing and recording 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; and

G. 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; and

(II) two counterparts of the written opinion of counsel for the Guarantor (who may be an employee of the Guarantor or an affiliate of the Guarantor), 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 Guarantor is a corporation legally incorporated and validly existing in good standing under the laws of the State of Delaware, with adequate corporate power to enter into the Guaranty Agreement;

B. the Guaranty Agreement has been duly authorized, executed and delivered by the Guarantor and constitutes a legal and valid agreement binding upon the Guarantor and enforceable in accordance with its terms;

C. no approval is required of any governmental agency or public regulatory body with respect to the entering into or performance of the Guaranty Agreement by the Guarantor, or, if any such approval is required, it has been duly obtained; and

D. the entering into and performance of the Guaranty Agreement will not result in any breach of, or constitute a default under, any indenture, mortgage, contract or other agreement or instrument to which the Guarantor is a party or by which it may be bound.

§ 16. Recording. The Lessee, at its own expense, will cause this Lease, the Security Documentation, any assignment hereof or thereof and the Consent 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 Documentation and will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, reregister, deposit and redeposit or rerecord 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 Documentation and 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 Documentation shall be filed and recorded with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Unit, and the parties recognize that the sole filings, registrations, deposits and recordings presently required pursuant to this § 16 are with the Interstate Commerce Commission.

§ 17. Federal Income Taxes. It is the intent of the parties to this Lease that it will be a true lease for

all Federal, state, city and local income taxes or for franchise taxes measured by net income, and that this Lease does not convey to the Lessee any right, title or interest in the Units except as lessee and that, for United States income tax purposes (and to the extent applicable for state and local tax purposes), the Lessor or the affiliated group of corporations of which the Lessor is a member 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 used in such owner's trade or business, including, without limitation, (a) the maximum depreciation deduction with respect to the Units authorized under Section 167 of the Code based on the aggregate Purchase Price of the Units utilizing the 12-year depreciable life prescribed for the Units in the Asset Guideline Class No. 00.25, as described in Revenue Procedure 72-10, I.R.B. 1972-8, in accordance with Section 167(m) of the Code, employing the double declining method of depreciation switching to the sum-of-the-years-digits method when most beneficial to the Lessor, utilizing the half-year convention as provided in Reg. 1.167(a)-11(c)(2) (iii) and taking into account an estimated gross salvage value of 10% of the Purchase Price of the Units which will be reduced by 10% of the Purchase Price as provided in Section 167(f) of the Code (such deduction being herein called the ADR Deduction), (b) deductions with respect to interest payable under the Security Documentation pursuant to Section 163 of the Code (such deduction being herein called the Interest Deduction), and (c) the 10% investment credit in 1975 (herein called the Investment Credit) with respect to the Purchase Price of the Units pursuant to Section 38 and related sections of the Code for "new section 38 property".

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 or which would increase the amount of rentals required to be taken into income by the Lessor over the amount specified to be payable under this Lease on the dates due hereunder 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. The Lessee agrees to keep and make available for inspection and copying by the Lessor such records as will enable the Lessor to determine

the extent to which it is entitled to the benefit of the Investment Credit, the ADR Deduction and the Interest Deduction with respect to the Units.

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) at all times during the term of this Lease, each Unit will constitute "section 38 property" within the meaning of Section 48(a) of the Code, and 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", including use of the Units predominantly outside the United States, 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.

With respect to any Unit, if (a) for any reason (other than the reasons set forth below) prior to the receipt by the Lessor of the Ruling (as hereinafter defined), or (b) after the receipt by the Lessor of the Ruling as a direct or indirect result of (i) 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 the application for the Ruling, (ii) the adoption of an amendment, modification, addition or change in the provisions of the Code, or (iii) the promulgation of any Income Tax Regulation, Revenue Procedure, Revenue Ruling or Technical Information Release or any other change in Treasury Department or Internal Revenue Service policy, the Lessor shall lose or shall not have or shall lose the right to claim, or there shall be disallowed or recaptured with respect to the Lessor, all or any portion of the Investment Credit, the Interest Deduction or the ADR Deduction with respect to a Unit in computing taxable income under one of the accelerated methods of depreciation provided in Section 167(b)

of the Code for the period this Lease is in effect, then, after written notice thereof to the Lessee by the Lessor, the rental rates applicable to such Unit set forth in § 3 hereof shall be increased by an amount for such Unit which, in the reasonable opinion of the Lessor, will cause the Lessor's net after tax return in respect of such Unit under this Lease to equal the net after tax return that would have been available if the Lessor had been entitled to utilization of all or such portion of the Investment Credit, Interest Deduction or ADR Deduction which was not claimed or was disallowed or recaptured and the Lessee shall forthwith pay to the Lessor as additional rental the amount of any interest or penalty which may be assessed by the United States against the Lessor attributable to the loss of all or any portion of the Investment Credit, the Interest Deduction or ADR Deduction, provided, however, that such rental rate shall not be so increased nor shall the Lessee be obliged to the Lessor for such interest or penalty if the Lessor shall have lost, or shall not have or shall have lost the right to claim, or if there shall have been disallowed with respect to the Lessor all or any portion of the Investment Credit, the Interest Deduction or the ADR Deduction with respect to such Unit as a direct result of the occurrence of any of the following events:

- (i) a Casualty Occurrence with respect to such Unit, if the Lessee shall have paid to the Lessor the amounts stipulated pursuant to § 7 hereof;
- (ii) a voluntary transfer by the Lessor of legal title to such Unit, the disposition by the Lessor of any interest in such Unit or the reduction by the Lessor of its interest in the rentals from such Unit under the Lease (other than as contemplated by the Security Documentation) unless, in each case, an Event of Default shall have occurred and be continuing;
- (iii) the amendment of the Security Documentation without the prior written consent of the Lessee, if such amendment shall be the cause of such loss;
- (iv) the failure of the Lessor to claim the Investment Credit, the ADR Deduction or the Interest Deduction in its income tax return for the appropriate year or the failure of the Lessor to follow proper procedure in claiming the Investment Credit, the ADR Deduction or the Interest Deduction with respect to such Unit;
or

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

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 ADR Deduction, the Investment Credit or the Interest Deduction on any Unit exists in respect 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 in a form satisfactory to the Lessor. 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 Investment Credit, the Interest Deduction or the ADR 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 (if the Lessee, at its option, shall not have paid such interest and penalty to the Lessor on the date such payment is made by the Lessor) with interest thereon from the date such payment is made by the Lessor to the date the Lessee reimburses the Lessor therefor at a rate five percentage points above the highest prime rate charged by any of the four New York City banks having the largest total assets in effect on the date of such final determination (hereinafter called the Prime Rate).

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 received by the Lessor 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 a rate five percentage points above the Prime Rate for the period such increase in rentals received by the Lessor 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 a rate five percentage points above 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 reimbursed increments of rent calculated by reference to the actual applicable dates of final determination, Tax Payment and reimbursements pursuant to the immediately preceding paragraph.

If on or before April 1, 1976, the Internal Revenue Service for any reason whatsoever shall not have issued 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 (without taking into account in the definition of ADR Deduction the applicable level of gross salvage value) in respect of 100% of the Purchase Price of the Units; and (v) the payments to be paid by the Lessee under this Lease for the use of the Units constitute rent and are deductible by the Lessee pursuant to Section 162(a)(3) of the Code; then the Lessee in its sole discretion may, in respect of all Units delivered hereunder and settled for under the Security Documentation (excluding any Units for which payment in respect of a Casualty Occurrence has been made), on May 1, 1976, purchase or cause to be purchased the interest of the Lessor in the Units and in payment therefor assume and agree to discharge the Lessor's obligations relating to such Units under the Security Documentation (without regard to the limitations set forth in the last paragraph of Article 4 and Article 23 of the Security Documentation) and shall pay to the Lessor an amount (hereinafter called the Lessee's Purchase Price) equal to the amounts paid by the Lessor pursuant to subparagraph (a) of the third paragraph of Article 4 of the Security Documentation (the "Lessor's Investment") plus all fees or expenses paid or incurred by the Lessor in respect of this transaction, plus interest at a rate five percentage points above the Prime Rate, from time to time in effect, commencing with the date or dates of the Lessor's Investment, or the payment of such fees or expenses

as appropriate, and ending on the day preceding such purchase. Any rental payments or portion thereof theretofore received by the Lessor which have not been applied by the Lessor to the payment of the Conditional Sale Indebtedness and interest thereon, plus interest at a rate five percentage points above the Prime Rate, from time to time in effect, commencing with the date of receipt by the Lessor and ending on the day preceding such purchase, shall be credited against the Lessee's Purchase Price with any balance remaining to be paid to the Lessee.

In the event that rental rates shall be adjusted as hereinabove provided in this § 17, applicable Casualty Values set forth in § 7 hereof shall be appropriately adjusted. The Lessee's and the Lessor's agreements to pay any sums which may become payable pursuant to this § 17 shall survive the expiration or other termination of this Lease.

§ 18. Interest on Overdue Rentals. Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay, to the extent legally enforceable, an amount equal to 11-1/2% per annum of the overdue rentals and other obligations for the period of time during which they are overdue or such lesser amount as may be legally enforceable.

§ 19. Purchase of Equipment by Lessee Under Certain Conditions. If on or before September 15, 1975, the interests of the Interim Investor (as defined in the Finance Agreement) under the Security Documentation shall not have been acquired by a limited number of institutional investors or other financial institutions (hereinafter called the Investors) at a price equal to the unpaid Conditional Sale Indebtedness, all on such reasonable terms and conditions (including any amendments of this Lease, the Security Documentation and any other documents executed in connection therewith which may be reasonably required) as shall be reasonably satisfactory in form and substance to the Investors and to the Lessor, then, the Lessee shall purchase or cause to be purchased from the Lessor, on or before October 15, 1975, the interest of the Lessor in the Units and shall pay to the Lessor the Lessee's Purchase Price. Any rental payments or portion thereof theretofore received by the Lessor which have not been applied by the Lessor to the payment of the Conditional Sale Indebtedness and interest thereon, plus interest at a

rate five percentage points above the Prime Rate, from time to time in effect, commencing with the date of receipt by the Lessor and ending on the day preceding such purchase, shall be credited against the Lessee's Purchase Price with any balance remaining to be paid to the Lessee.

§ 20. Notices. Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when mailed, first class, postage prepaid and addressed as follows:

(a) if to the Lessor, to 105 West Adams Street, Chicago, Illinois 60690, attention of Samuel L. Eichenfield, Vice President Leasing; and

(b) if to the Lessee, at 111 West Jackson Boulevard, Chicago, Illinois 60604, Attention of Gerald F. Lahey;

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing. Copies of each such notice shall be given to the Agent at 79 South Main Street, Salt Lake City, Utah 84111, Attention of Trust Department, Corporate Division, and to ITEL Leasing Corporation, One Embarcadero Center, San Francisco, California 94111, Attention of Contract Administration.

§ 21. 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.

§ 22. Execution. This Lease may be executed in several counterparts, such counterparts together constitut-

ing 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.

§ 23. 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.

WCTU RAILWAY COMPANY,

by *Ernest P. Leahy*
~~Vice~~ President

[Corporate Seal]

Attest:

W. B. Moore
Assistant Secretary

WALTER E. HELLER & COMPANY,

by *John J. ...*
Vice President

[Corporate Seal]

Attest:

Charles A. Buzzolan
Assistant Secretary



SCHEDULE A TO LEASE

<u>Type</u>	<u>Quantity</u>	<u>Lessee's Road Numbers (Both Inclusive)</u>
50' 7-1/4" 70 Ton Single Sheath Boxcar, XM	493	WCTR 100500-100992