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INTERSTATE COMMERCE COMMISSION

CONDITIONAL SALE AGREEMENT

Dated as of December 1, 1975,

AMONG

FMC CORPORATION,

UNITED STATES TRUST COMPANY OF NEW YORK,

as Trustee,

AND

SOUTHERN PACIFIC TRANSPORTATION COMPANY

CONDITIONAL SALE AGREEMENT

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CONDITIONAL SALE AGREEMENT dated as of December 1, 1975, among FMC CORPORATION, a Delaware corporation (hereinafter called the Vendor or Builder as more particularly set forth in Article 1 hereof), UNITED STATES TRUST COMPANY OF NEW YORK, a New York corporation, not individually but solely in its capacity as Trustee (hereinafter, together with its successors and assigns, being called the Owner-Trustee) under a Trust Agreement dated as of the date hereof (hereinafter called the Trust Agreement) with General Electric Credit Corporation, a New York corporation (hereinafter called the Owner), and SOUTHERN PACIFIC TRANSPORTATION COMPANY, a Delaware corporation (hereinafter called the Guarantor).

WHEREAS the Builder agrees to construct, sell and deliver to the Owner-Trustee, and the Owner-Trustee agrees to purchase, in accordance with the terms and provisions hereof, the railroad equipment described in Annex B hereto to the extent not excluded herefrom under the provisions hereof (hereinafter called the Equipment);

WHEREAS the Owner-Trustee and the Guarantor are entering into Conditional Sale Agreements dated as of the date hereof (hereinafter called the Other Agreements) with ACF Industries, Incorporated, and Whittaker Corporation (Berwick Forge and Fabricating Division), respectively;

WHEREAS the Owner-Trustee is entering into a lease dated as of the date hereof with American Rail Box Car Company (hereinafter called the Lessee) in substantially the form annexed hereto as Annex C (hereinafter called the Lease);

WHEREAS the Guarantor is willing to guarantee to the Vendor the due and punctual payment of all sums payable by, and the due and punctual performance of all other obligations of, the Owner-Trustee under this Agreement (except for its obligations under subparagraph (a) of Article 4 hereof) and has joined in this Agreement for the purpose of setting forth the terms and conditions of such guaranty and making certain further agreements as hereinafter set forth;

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

ARTICLE 1. *Assignment; Definitions.* The parties hereto contemplate that the Owner-Trustee will furnish that portion of the Purchase Price (as defined in Article 4 hereof) of the Equipment as is required under subparagraph (a) of the third paragraph of Article 4 hereof and that an amount equal to the balance of the Purchase Price shall be paid to the Builder by an assignee of the Builder's right, title and interest under this Agreement pursuant to an Agreement and Assignment dated as of the date hereof between the Builder and Mercantile-Safe Deposit and Trust Company, as agent (said Agreement and Assignment being hereinafter called the Assignment and said agent being hereinafter sometimes called the Assignee, the parties for which the Assignee is acting as being hereinafter called the Investors, and the Agreement dated as of the date hereof under which the Assignee is so acting being hereinafter called the Finance Agreement).

In case of such assignment, the Owner-Trustee will assign to the Vendor, as security for the payment and performance of all the Owner-Trustee's obligations hereunder, all right, title and interest of the Owner-Trustee in and to the Lease, pursuant to an Assignment of Lease and Agreement in substantially the form of Annex D hereto (hereinafter called the Lease Assignment) and the Lessee will enter into a Lessee's Consent and Agreement (hereinafter called the Consent) in the form attached to the Lease Assignment.

The term "Builder", whenever used in this Agreement, means, both before and after any assignment of its rights hereunder, the party hereto which has manufactured the Equipment and any successor or successors for the time being to its manufacturing properties and business. The term "Vendor", whenever used in this Agreement, means, before any such assignment, the Builder and, after any such assignment, both any assignee or assignees for the time being of such particular assigned rights as regards such rights, and also any assignor as regards any rights hereunder that are retained or excluded from any assignment. Any references herein to this Agreement or any other agreement shall mean such agreement and all amendments and supplements thereto then in effect.

ARTICLE 2. *Construction and Sale.* Pursuant to this Agreement, the Builder shall construct the Equipment at its plant set forth in Annex B hereto, and will sell and deliver to the Owner-Trustee, and the Owner-Trustee will, as hereinafter provided, purchase from the Builder and accept delivery of and pay for the Equipment, each unit of which shall be constructed in accordance with the specifications referred to in Annex B hereto and in accordance with such modifications thereof as may be agreed upon in writing among the Builder, the Owner-Trustee and the Lessee (which specifications and modifications, if any, are hereinafter called the Specifications). The Builder represents and warrants that the design, quality and component parts of each unit of the Equipment shall conform, on the date of completion of manufacture thereof, to all United States Department of Transportation and Interstate Commerce Commission requirements and specifications and to all standards recommended by the Association of American Railroads reasonably interpreted as being applicable to railroad equipment of the character of such unit, and each such unit will be new railroad equipment.

ARTICLE 3. *Inspection and Delivery.* The Builder will deliver the units of the Equipment to the Owner-Trustee at the place or places specified in Annex B hereto (or if Annex B does not specify a place or places, at the place or places designated from time to time by the Owner-Trustee), freight charges, if any, prepaid, in accordance with the delivery schedule set forth in Annex B hereto; *provided, however,* that delivery of any unit of the Equipment shall not be made until this Agreement and the Lease have been filed pursuant to Section 20c of the Interstate Commerce Act and the Finance Agreement shall have been executed and delivered; *provided further,* that the Builder shall have no obligation to deliver any unit of Equipment hereunder subsequent to the commencement of any proceedings specified in clause (c) or (d) of Article 16 hereof or the occurrence of any event of default (as described in Article 16 hereof), or event which, with the lapse of time and/or demand, could constitute such an event of default.

The Builder's obligation as to time of delivery is subject, however, to delays resulting from causes beyond the Builder's reasonable con-

trol, including but not limited to acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, delays in receiving necessary materials or delays of carriers or subcontractors.

Any Equipment not delivered, accepted and settled for on or prior to September 1, 1976, shall be excluded herefrom and the Owner-Trustee shall be relieved of its obligation to purchase and pay for such Equipment. If any Equipment shall be excluded herefrom pursuant to the immediately preceding sentence, the Builder, the Guarantor and the Owner-Trustee shall execute an agreement supplemental hereto limiting this Agreement to the Equipment not so excluded herefrom.

During construction, the Equipment shall be subject to inspection and approval by the authorized inspectors of the Owner-Trustee (who may be employees or agents of the Lessee) and the Builder shall grant to such authorized inspectors reasonable access to its plant. The Builder agrees to inspect all materials used in the construction of the Equipment in accordance with the standard quality control practices of the Builder. Upon completion of each unit or of a number of units of the Equipment, such unit or units shall be presented to an inspector of the Owner-Trustee for inspection at the place specified for delivery of such unit or units, and if each such unit conforms to the Specifications, requirements and standards applicable thereto, such inspector or an authorized representative of the Owner-Trustee (who may be an employee or agent of the Lessee) shall execute and deliver to the Builder a certificate of acceptance (hereinafter called the Certificate of Acceptance) stating that such unit or units have been inspected and accepted on behalf of the Owner-Trustee and are marked in accordance with Article 10 hereof; *provided, however,* that the Builder shall not thereby be relieved of its warranty referred to in Article 14 hereof; *and provided, further,* that no certificate of acceptance shall be delivered prior to the date on which such unit or units may be delivered as set forth in the first proviso of the first paragraph of this Article 3. By §2 of the Lease, the Owner-Trustee is appointing the Lessee its agent to inspect and accept delivery of the Equipment. Acceptance of any unit of Equip-

ment by the Lessee (or its employees or agents, as aforesaid) shall be deemed to be acceptance of such unit by the Owner-Trustee.

On delivery of each such unit hereunder at the place specified for delivery and due execution and delivery of a Certificate of Acceptance in respect thereof, the Builder shall have no further responsibility for, nor bear any risk of, any damage to or the destruction or loss of such unit; *provided, however*, that the Builder shall not thereby be relieved of its warranty referred to in Article 14 hereof.

ARTICLE 4. *Purchase Price and Payment.* The base price or prices per unit of the Equipment are set forth in Annex B hereto. Such base price or prices are subject to such increase or decrease as is agreed to by the Builder, the Lessee and the Guarantor. The term "Purchase Price" as used herein shall mean the base price or prices as so increased or decreased. If on any Closing Date (as hereinafter defined in this Article) the aggregate Purchase Price of Equipment for which settlement has theretofore been and is then being made under this Agreement and the Other Agreements would, but for the provisions of this sentence, exceed the Maximum Purchase Price specified in Annex A hereto (or such higher amount to which the Owner-Trustee and the Guarantor may at their option agree), the parties hereto (and any assignee of the Builder) shall enter into an agreement excluding from this Agreement or the Other Agreements such unit or units of Equipment then proposed to be settled for and specified by the Owner-Trustee, as will, after giving effect to such exclusion, reduce such aggregate Purchase Price under this Agreement and the Other Agreements to not more than the Maximum Purchase Price specified in Annex A hereto (or such higher amount as aforesaid), and the Guarantor and the Owner-Trustee shall have no further obligation or liability in respect of units so excluded.

The Equipment shall be settled for in not more than five groups of units of Equipment delivered to and accepted by the Owner-Trustee. The term "Closing Date" with respect to any such group shall mean the date or dates set forth in Item 2 of Annex A hereto or such other dates specified by the Lessee by ten days' written notice (such notice specifying the aggregate Purchase Price of such group) with the concurrence of the Owner-Trustee, the Assignee and the Builder, but in

no event shall such date be later than September 1, 1976. The term "Group", as used herein, shall mean the group of units of Equipment being settled for on any Closing Date. The place of each closing shall be determined by mutual agreement among the parties hereto.

Subject to the terms and conditions of this Agreement, the Owner-Trustee hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay in cash to the Vendor at such place as the Vendor may designate, the Purchase Price of the Equipment, as follows:

(a) on the Closing Date with respect to each Group (i) an amount equal to 30% of the aggregate Purchase Price of the units of Equipment in such Group plus (ii) the amount, if any, by which (x) 70% of the Purchase Price of all units of the Equipment covered by this Agreement and the Other Agreements for which settlement has theretofore and is then being made exceeds (y) the aggregate amount required to be deposited by the Investors pursuant to the Finance Agreement and any amount or amounts previously paid or payable pursuant to this clause (ii) and the corresponding clause of the Other Agreements; and

(b) in 30 semiannual instalments, as hereinafter provided, an amount equal to the aggregate Purchase Price of the units of Equipment for which settlement is then being made, less the aggregate amount paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph.

The Purchase Price of each unit of Equipment shall bear interest from the 30th day after the average date on which the units of Equipment in the Group in which such unit shall be settled for are available for delivery and acceptance to the Closing Date in respect thereof, at a rate per annum equal to the rate which Manufacturers Hanover Trust Company, New York, New York, charges for 90-day unsecured loans to large corporate borrowers of the highest credit standing from time to time in effect during the period such interest is payable; *provided, however*, that changes in such rate occurring during the ten business days next preceding the Closing Date shall be disregarded. Such interest in respect of any unit of Equipment shall be payable within five business days of the Closing Date in respect thereof. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions

in New York, New York, or Baltimore, Maryland, are authorized or obligated to remain closed.

The portion of the Purchase Price payable pursuant to subparagraph (b) of the preceding paragraph (herein called the Conditional Sale Indebtedness) shall be payable on each March 1 and September 1, commencing September 1, 1976, to and including March 1, 1991 (or if any such date is not a business day, on the next succeeding business day), each such date being hereinafter called a Payment Date. The unpaid balance of the Conditional Sale Indebtedness payable in instalments on each Payment Date from and including September 1, 1976, through March 1, 1982, shall bear interest from the Closing Date on which such indebtedness was incurred at the rate of 9% per annum. The unpaid balance of Conditional Sale Indebtedness payable in instalments on each Payment Date from and including September 1, 1982 through March 1, 1991, shall bear interest from the Closing Date on which such indebtedness was incurred at the rate of 9½% per annum. Such interest shall be payable, to the extent accrued, on March 1, 1976, and on each Payment Date thereafter. The instalments of Conditional Sale Indebtedness payable on each Payment Date shall each be calculated so that the aggregate of Conditional Sale Indebtedness and interest payable on each Payment Date shall be substantially equal, and shall completely amortize the Conditional Sale Indebtedness; *provided, however,* that in calculating the amount of Conditional Sale Indebtedness payable on the first Payment Date, it shall be assumed, for the sake of such calculation only, that interest has accrued thereon for a full six-month period.

All interest under this Agreement shall be calculated on the basis of a 360-day year of twelve 30-day months.

The Owner-Trustee will pay interest, to the extent legally enforceable, at the rate of 10% per annum upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof, or such lesser amount as shall be legally enforceable, anything herein to the contrary notwithstanding.

All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. Except as provided in Article 7 hereof, the Owner-Trustee shall not

have the privilege of prepaying any portion of the Conditional Sale Indebtedness prior to the date it becomes due.

The obligation of the Owner-Trustee to pay to the Vendor any amount required to be paid pursuant to this Article with respect to any Group is specifically subject to the fulfillment, on or before the Closing Date in respect of such Group, of the conditions set forth in Paragraph 6 of the Participation Agreement dated as of the date hereof (hereinafter called the Participation Agreement), among the Lessee, the Guarantor, the Owner and the Owner-Trustee (any of which may be waived by the Owner-Trustee, and payment by the Owner-Trustee of the amount specified in subparagraph (a) of the third paragraph of this Article with respect to such Group shall be conclusive evidence that such conditions have been fulfilled or irrevocably waived).

Notwithstanding any other provision of this Agreement (including, but not limited to, any provision of Articles 16 and 17 hereof), it is understood and agreed by the Vendor that the liability of the Owner-Trustee for all payments to be made by it under and pursuant to this Agreement, with the exceptions only of the payments to be made pursuant to subparagraph (a) of the third paragraph of this Article, shall not exceed an amount equal to, and shall be payable only out of, the "income and proceeds from the Equipment", and such payments shall be made by the Owner-Trustee only to the extent that the Owner-Trustee or any assignee of the Owner-Trustee shall have actually received sufficient "income or proceeds from the Equipment" to make such payments. Except as provided in the next preceding sentence, the Vendor agrees that the Owner-Trustee shall have no personal liability to make any payments under this Agreement whatsoever except from the "income and proceeds from the Equipment" to the extent actually received by the Owner-Trustee or any assignee of the Owner-Trustee. In addition, the Vendor agrees that the Owner-Trustee

(i) makes no representation or warranty, and is not responsible for, the due execution, validity, sufficiency or enforceability of the Lease insofar as it relates to the Lessee (or any document relative thereto) or of any of the Lessee's obligations thereunder or under this Agreement, insofar as it relates to the Lessee (or any document relative thereto), or any of the Guarantor's obligations hereunder, and

(ii) shall not be responsible for the performance or observance by the Lessee or the Guarantor of any of their respective agreements,

representations, indemnities, obligations or other undertakings under the Lease; it being understood that as to all such matters the Vendor will look solely to the Vendor's rights under this Agreement against the Guarantor and the Equipment and to the Vendor's rights under the Lease and the Lease Assignment against the Lessee and the Equipment.

As used herein the term "income and proceeds from the Equipment" shall mean

(i) if one of the events of default specified in Article 16 hereof shall have occurred and while it shall be continuing, so much of the following amounts as are indefeasibly received by the Owner-Trustee or any assignee of the Owner-Trustee at any time after any such event and during the continuance thereof:

(a) all amounts of rental and amounts in respect of Casualty Occurrences (as defined in Article 7 hereof) paid for or with respect to the Equipment pursuant to the Lease and any and all other payments received under §10 or any other provision of the Lease and

(b) any and all payments or proceeds received for or with respect to the Equipment as the result of the sale, lease or other disposition thereof, after deducting all costs and expenses of such sale, lease or other disposition, and

(ii) at any other time only that portion of the amounts referred to in the foregoing clauses (a) and (b) (not including amounts paid by the Guarantor to the Owner-Trustee as reimbursement of sums paid by the Owner-Trustee on account of prior defaults under paragraph (a) of Article 16) as are indefeasibly received by the Owner-Trustee or any assignee of the Owner-Trustee and as shall equal the portion of the Conditional Sale Indebtedness (including prepayments thereof required in respect of Casualty Occurrences) and/or interest thereon due and payable on the date such amounts were required to be paid pursuant to the Lease or as shall equal any other payments then due and payable under this Agreement;

it being understood that "income and proceeds from the Equipment" shall in no event include amounts referred to in the foregoing clauses (a) and (b) which were received by the Owner-Trustee or any assignee of the Owner-Trustee prior to the existence of such an event of default

which exceeded the amounts required to discharge that portion of the Conditional Sale Indebtedness (including prepayments thereof required in respect of Casualty Occurrences) and/or interest thereon due and payable on the date on which amounts with respect thereto received by the Owner-Trustee or any assignee of the Owner-Trustee were required to be paid to it pursuant to the Lease or which exceeded any other payments due and payable under this Agreement at the time such amounts were payable under the Lease. Nothing contained herein limiting the liability of the Owner-Trustee shall derogate from the right of the Vendor to proceed against the Equipment or the Guarantor as provided for herein for the full unpaid Conditional Sale Indebtedness of the Equipment and interest thereon and all other payments and obligations hereunder. Notwithstanding anything to the contrary contained in Article 16 hereof, the Vendor agrees that in the event it shall obtain a judgment against the Owner-Trustee for an amount in excess of the amounts payable by the Owner-Trustee pursuant to the limitations set forth in this paragraph, it will, accordingly, limit its execution of such judgment to amounts payable pursuant to the limitations set forth in this paragraph.

ARTICLE 5. *Security Interest in the Equipment.* The Vendor shall and hereby does retain a security interest in and to the Equipment until the Owner-Trustee shall have made all its payments under this Agreement and shall have kept and performed all its agreements herein contained, notwithstanding any provision of this Agreement limiting the liability of the Owner-Trustee and notwithstanding the delivery of the Equipment to and the possession and use thereof by the Owner-Trustee and the Lessee as provided in this Agreement. Such retention of security interest is solely to secure performance of the Owner-Trustee of its obligations under this Agreement (without regard to any provision of this Agreement limiting the liability of the Owner-Trustee), and beneficial ownership of the Equipment shall be and remain in the Owner-Trustee subject to such performance. Any and all additions to the Equipment (other than any special devices, racks or assemblies at any time attached or affixed to any unit of the Equipment, the cost or purchase price 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 United States Department of

Transportation or any other applicable regulatory body), and any and all parts installed on and additions and replacements made to any unit of the Equipment shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

Except as otherwise specifically provided in Article 7 hereof, when and only when the Vendor shall have been paid the full Conditional Sale Indebtedness, together with interest and all other payments as herein provided, and all the Owner-Trustee's obligations herein contained shall have been performed, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Owner-Trustee, *ipso facto* without further transfer or action on the part of the Vendor. However, the Vendor, if so requested by the Owner-Trustee at that time, will (a) execute a bill or bills of sale for the Equipment releasing its security interest therein and transferring its title thereto and property therein to the Owner-Trustee, or upon its order, free of all claims, liens, security interests and other encumbrances created or retained hereby or otherwise created by the Vendor and deliver such bill or bills of sale to the Owner-Trustee at its address referred to in Article 21 hereof and (b) execute and deliver at the same place, for filing, recording or depositing in all necessary public offices, termination statements or other such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Owner-Trustee to the Equipment. In addition, at that time, the Vendor will pay to the Owner-Trustee any money paid to the Vendor pursuant to Article 7 hereof and not theretofore applied as therein provided. The Owner-Trustee hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file such certificate within a reasonable time after written demand by the Owner-Trustee.

ARTICLE 6. *Taxes.* Whether or not any of the transactions contemplated hereby are consummated, the Owner-Trustee agrees to pay,

and to indemnify and hold the Vendor harmless from, all taxes, assessments, fees and charges of any nature whatsoever, together with any penalties, fines, additions to tax or interest thereon, howsoever imposed, whether levied or imposed upon the Owner-Trustee, the Owner, the Vendor, the Lessee, the trust estate created by the Trust Agreement or otherwise, by any Federal, state or local government or governmental subdivision in the United States or by any foreign country or subdivision thereof, upon or with respect to: any unit of the Equipment or any part thereof; the purchase, ownership, delivery, leasing, possession, use, operation, transfer of title, return or other disposition thereof; the rentals, receipts or earnings arising therefrom; or this Agreement, the Assignment, the Lease, the Lease Assignment, any payment made pursuant to any such agreement, or the property, the income or other proceeds received with respect to the Equipment (all such taxes, assessments, fees, charges, penalties, fines, additions to tax and interest imposed as aforesaid being hereinafter called "Taxes"); *excluding, however*: (i) Taxes of the United States or of any state or political subdivision thereof and (if and to the extent that any person indemnified hereunder is entitled to a credit therefor against its United States Federal income taxes) of any foreign country or subdivision thereof, imposed on or measured solely by the net income or excess profits of the Vendor other than Taxes arising out of or imposed in respect of the receipt of indemnification payments pursuant to this Agreement, provided that such Taxes of any foreign country or subdivision thereof incurred as a result of the indemnified party being taxed by such foreign country or jurisdiction on its world-wide income without regard to the transactions contemplated by this Agreement shall be excluded whether or not the indemnified party is entitled to a credit against its United States Federal income taxes; (ii) any Taxes imposed on or measured by any fees or compensation received by the Vendor; and (iii) Taxes which are imposed on or measured solely by the net income of the Vendor if and to the extent that such Taxes are in substitution for or reduce the Taxes payable by any other person which the Owner-Trustee has not agreed to pay or indemnify against pursuant to this Article 6.

If claim is made against the Vendor for any Taxes indemnified against under this Article 6, the Vendor shall promptly notify the Owner-Trustee. If reasonably requested by the Owner-Trustee in writ-

ing, the Vendor shall, upon receipt of any indemnity satisfactory to it for all costs, expenses, losses, legal and accountants' fees and disbursements, penalties, fines, additions to tax and interest, and at the expense of the Owner-Trustee contest in good faith the validity, applicability or amount of such Taxes by (a) resisting payment thereof if possible, (b) not paying the same except under protest, if protest is necessary and proper, and (c) if payment is made, using reasonable efforts to obtain a refund thereof in appropriate administrative or judicial proceedings, or both. The Owner-Trustee may also contest, at its own expense, the validity, applicability or amount of such Taxes in the name of the Vendor; provided that, no proceeding or actions relating to such contest shall be commenced (nor shall any pleading, motion, brief or other paper be submitted or filed in the name of the Vendor in any such proceeding or action) without the prior written consent of the Vendor. If the Vendor shall obtain a refund of all or any part of such Taxes previously reimbursed by the Owner-Trustee in connection with any such contest or an amount representing interest thereon, the Vendor shall pay the Owner-Trustee the amount of such refund or interest net of expenses; *provided, however*, that no event of default set forth in Article 16 hereof and no event which with notice or lapse of time or both would constitute such an event of default shall have occurred and be continuing.

In case any report or return is required to be made with respect to any obligation of the Owner-Trustee under this Article 6 or arising out of this Article 6, the Owner-Trustee shall either make such report or return in such manner as will show the interests of the Vendor in the Equipment or shall promptly notify the Vendor of such requirement and shall make such report or return in such manner as shall be satisfactory to the Vendor. All costs and expenses (including legal and accountants' fees) of preparing any such return or report shall be borne by the Owner-Trustee.

All of the obligations of the Owner-Trustee under this Article 6 shall survive and continue, notwithstanding payment in full of all amounts due under this Agreement.

The obligations of the Owner-Trustee under this Article 6 are subject to the limitations contained in the last paragraph of Article 4 hereof and in Article 22 hereof.

ARTICLE 7. *Maintenance; Casualty Occurrences; Insurance.* Subject to the limitations contained in Article 22 hereof, the Owner-Trustee agrees that, at its own cost and expense, it will maintain and keep each unit of the Equipment in good order and repair.

In the event that any unit of the Equipment shall be worn out, lost, stolen, destroyed, irreparably damaged or permanently rendered unfit for use, from any cause whatsoever, or seized, confiscated, taken or requisitioned by condemnation or otherwise resulting in loss of possession by the Lessee for a period of 90 consecutive days, except requisition for use by the United States Government (such occurrences being herein called Casualty Occurrences), the Owner-Trustee shall, promptly after it shall have received notice from the Lessee or otherwise been informed that such unit has suffered a Casualty Occurrence cause the Vendor to be fully informed in regard thereto. On the next succeeding March 1 or September 1, or if such notice is received by the Owner-Trustee within 15 days of such next succeeding March 1 or September 1, then on the March 1 or September 1 immediately following such next succeeding March 1 or September 1, (hereinafter called a Casualty Payment Date), the Owner-Trustee shall, subject to the limitations contained in the last paragraph of Article 4 hereof, pay to the Vendor a sum equal to the Casualty Value (as hereinafter defined in this Article) of such unit suffering a Casualty Occurrence as of the date of such payment and shall file, or cause to be filed, with the Vendor a certificate setting forth the Casualty Value of such unit. Any money paid to the Vendor pursuant to this paragraph shall be applied to prepay without penalty or premium, ratably in accordance with the unpaid balance of each instalment, the Conditional Sale Indebtedness, and the Owner-Trustee will promptly furnish to the Vendor and the Guarantor a revised schedule of payments of Conditional Sale Indebtedness and interest thereafter to be made, calculated as provided in the fifth paragraph of Article 4 hereof. In the event of the requisition for use by the United States Government of any unit of Equipment, all of the Owner-Trustee's obligations hereunder with respect to such unit shall continue to the same extent as if such requisition had not occurred.

Upon payment by the Owner-Trustee to the Vendor of the Casualty Value of any unit of the Equipment having suffered a Casualty Occurrence, absolute right to the possession of, title to and property in such unit shall pass to and vest in the Owner-Trustee, without further

transfer or action on the part of the Vendor, except that the Vendor, if requested by the Owner-Trustee, will execute and deliver to the Owner-Trustee, at the expense of the Owner-Trustee, an appropriate instrument confirming such passage to the Owner-Trustee of all the Vendor's right, title and interest in such unit, free of all liens, security interests and other encumbrances created or retained hereby or otherwise created by the Vendor, in recordable form, in order that the Owner-Trustee may make clear upon the public record the title of the Owner-Trustee to such unit.

The Casualty Value of each unit of the Equipment suffering a Casualty Occurrence shall be deemed to be that portion of the original Purchase Price thereof remaining unpaid on the date as of which such Casualty Value shall be determined (without giving effect to any prepayment or prepayments theretofore made under this Article), plus interest accrued thereon but unpaid as of such date. For the purpose of this paragraph, each payment of the Purchase Price in respect of Equipment made pursuant to Article 4 hereof shall be deemed to be a payment on each unit of the Equipment in like proportion as the original Purchase Price of such unit bears to the aggregate original Purchase Price of the Equipment.

Any insurance proceeds or condemnation payments received and retained by the Vendor in respect of units suffering a Casualty Occurrence shall be deducted from the amounts payable by the Owner-Trustee to the Vendor in respect of Casualty Occurrences pursuant to the second paragraph of this Article. If the Vendor shall receive any insurance proceeds or condemnation payments in respect of such units suffering a Casualty Occurrence either after the Owner-Trustee shall have made payments pursuant to this Article without deduction for such insurance proceeds or condemnation payments, or in excess of the Casualty Value (after taking into account payments by the Owner-Trustee under this Article 7), the Vendor shall promptly pay such insurance proceeds or condemnation payments to the Owner-Trustee; *provided, however,* that no event of default shall have occurred and be continuing hereunder. All insurance proceeds or condemnation payments or such excess received by the Vendor in respect of any unit or units of Equipment not suffering a Casualty Occurrence shall be paid to the Owner-Trustee upon proof satisfactory to the Vendor that any

damage to such unit in respect of which such proceeds were paid has been fully repaired.

ARTICLE 8. *Obligations of Guarantor.* The Guarantor represents and warrants to the Vendor that the rentals and other obligations under the Lease have been calculated so as to provide for the due and punctual payment of the Conditional Sale Indebtedness and interest thereon and the due and punctual performance of all other obligations of the Owner-Trustee under this Agreement (except the obligations of the Owner-Trustee under subparagraph (a) of the third paragraph of Article 4 hereof) and that, pursuant to the Lease Assignment, the Vendor will have the indefeasible right to apply such rental payments and other payments under the Lease to the payment of the Conditional Sale Indebtedness and interest thereon and the payment of such other obligations under this Agreement. The Guarantor, for value received, hereby unconditionally guarantees to the Vendor that the Conditional Sale Indebtedness and interest thereon will be duly and punctually paid when due and all other obligations of the Owner-Trustee will be duly and punctually performed (except for the obligations of the Owner-Trustee under subparagraph (a) of the third paragraph of Article 4 hereof), whether at stated maturity or by declaration or otherwise, by the due and punctual payment of the rentals and the due and punctual performance of the other obligations of the Lessee under the Lease, irrespective of any enforcement against the Owner-Trustee of any of the rights of the Vendor hereunder.

The Guarantor hereby agrees that its aforesaid guaranty hereunder shall be unconditional (and shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever), irrespective of the genuineness, validity, regularity or enforceability of this Agreement, the Lease, the Lease Assignment, any failure of the Lessee to make its rental or other payments under the Lease to the Vendor pursuant to the Lease Assignment or the failure of the Lessee to perform any other obligation under the Lease for any reason whatsoever (including termination of the Lease by operation of law or otherwise) or any interference with the right of the Vendor to apply such rental or other payments as provided in the Lease Assignment and irrespective of the last paragraph of Article 4 and Article 22 hereof or any other circumstances which might otherwise limit the recourse of the

Vendor to the Owner-Trustee. The Guarantor hereby waives diligence, presentment, demand of payment, protest, any notice of any assignment hereof in whole or in part or of any default hereunder and all notices with respect to this Agreement and all demands whatsoever hereunder. No waiver by the Vendor of any of its rights hereunder and no action by the Vendor to enforce any of its rights hereunder or failure to take, or delay in taking, any such action shall affect the obligations of the Guarantor hereunder. The Guarantor hereby agrees that any rights that it may acquire by reason of performance of its obligations hereunder, by subrogation or otherwise, may not be exercised against the Owner-Trustee under this Agreement or with respect to any of the units of the Equipment.

ARTICLE 9. *Reports and Inspections.* On or before April 1 in each year, commencing with the year 1977, the Owner-Trustee shall, subject to the provisions of Article 22 hereof, cause to be furnished to the Vendor an accurate statement (a) setting forth as at the preceding December 31 the amount, description and numbers of all units of the Equipment then subject to this Agreement, the amount, description and numbers of all units of the Equipment that have suffered a Casualty Occurrence or to the knowledge of the Owner-Trustee are then undergoing repairs (other than running repairs) or have been withdrawn from use pending repairs (other than running repairs) during the preceding calendar year (or since the date of this Agreement in the case of the first such statement) and such other information regarding the condition and state of repair of the Equipment as the Vendor may reasonably request and (b) stating that, in the case of all Equipment repaired or repainted during the period covered by such statement, the numbers and markings required by Article 10 hereof have been preserved or replaced. The Vendor shall have the right, by its agents, to inspect the Equipment and the Owner-Trustee's records with respect thereto at such reasonable times as the Vendor may request during the term of this Agreement.

ARTICLE 10. *Marking of Equipment.* The Owner-Trustee will cause each unit of the Equipment to be kept numbered with the identifying number of the Lessee as set forth in Annex B hereto, or, in the case of Equipment not there listed, such identifying number as shall be set forth in any amendment or supplement hereto extending this Agree-

ment to cover such Equipment, 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", "Owned by a Bank or Trust Company under a Security Agreement Filed under the Interstate Commerce Act, Section 20c" or other appropriate words designated by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Vendor's interest in the Equipment and its rights under this Agreement. The Owner-Trustee will not permit any such unit to be placed in operation or exercise any control or dominion over the same until such markings shall have been made thereon and will replace or will cause to be replaced promptly any such markings which may be removed, defaced or destroyed. The Owner-Trustee will not permit the identifying number of any unit of the Equipment to be changed except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Vendor and filed, recorded and deposited by the Owner-Trustee in all public offices where this Agreement shall have been filed, recorded and deposited.

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

The obligations of the Owner-Trustee under this Article are subject to the limitations contained in Article 22 hereof.

ARTICLE 11. *Compliance with Laws and Rules.* During the term of this Agreement, the Owner-Trustee will comply, and will cause every lessee or user of the Equipment to comply, in all respects (including, without limitation, with respect to the use, maintenance and operation of the Equipment) with all laws of the jurisdictions in which its or such lessees' or users' operations involving the Equipment may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the United States Department of Transportation, the Interstate Commerce Commission and any other legisla-

tive, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the title, operation or use of the Equipment, and in the event that such laws or rules require any alteration, replacement or addition of or to any part on any unit of the Equipment, the Owner-Trustee will, or will cause the Lessee to, conform therewith at no expense to the Vendor; *provided, however*, that the Owner-Trustee or the Lessee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor under this Agreement.

The obligations of the Owner-Trustee under this Article are subject to the limitations contained in Article 22 hereof.

ARTICLE 12. *Possession and Use.* The Owner-Trustee, so long as an event of default shall not have occurred and be continuing under this Agreement, shall be entitled, from and after delivery of the Equipment by the Builder to the Owner-Trustee, to the possession of the Equipment and the use thereof, but only upon and subject to all the terms and conditions of this Agreement.

The Owner-Trustee may lease the Equipment to the Lessee as permitted by, and for use as provided in, the Lease, but the rights of the Lessee and its permitted assigns under the Lease shall be subordinated and junior in rank to the rights, and shall be subject to the remedies, of the Vendor under this Agreement. The Lease shall not be amended or terminated (except in accordance with its terms) without the prior written consent of the Vendor.

Subject to the rights of the Lessee under the Lease, the Owner-Trustee may also lease the Equipment to any railroad company, but only with the prior written consent of the Vendor if the lease is to a railroad company other than the Guarantor, which consent may be subject to the conditions, among other, that (i) such lease shall provide that the rights of such lessee are made expressly subordinate to the rights and remedies of the Vendor under this Agreement, (ii) such lessee shall expressly agree not to assign or permit the assignment of any unit of the Equipment to service involving the regular operation and maintenance thereof outside the United States of America and (iii) such lease shall be assigned to the Vendor as security on terms

consistent with those set forth in Annex D hereto, and in any event satisfactory to the Vendor.

ARTICLE 13. *Prohibition Against Liens.* The Owner-Trustee will pay or discharge any and all sums claimed by any party from, through or under the Owner-Trustee or its successors or assigns which, if unpaid, might become a lien, charge or security interest on or with respect to the Equipment, or any unit thereof, and will promptly discharge any such lien, charge or security interest which arises, but 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 Vendor, adversely affect the security interest of the Vendor in or to the Equipment or otherwise under this Agreement. Any amounts paid by the Vendor in discharge of liens, charges or security interests upon the Equipment shall be secured by and under this Agreement.

This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

The obligations of the Owner-Trustee under this Article 13 are subject to the limitations contained in Article 22 hereof; *provided, however*, that the Owner-Trustee will pay or discharge any and all claims, liens, charges or security interests claimed by any party from, through or under the Owner-Trustee or the Owner or the successors or assigns of either of them, not arising out of the transactions contemplated hereby, but 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 adversely affect the security interest of the Vendor in or to the Equipment or otherwise under this Agreement.

ARTICLE 14. *Indemnities and Warranties.* The Owner-Trustee shall pay, and shall protect, indemnify and hold the Vendor and any assignee hereof, and their respective successors, assigns, agents and servants (hereinafter called Indemnified Persons), harmless from and

against any and all causes of action, suits, penalties, claims, demands or judgments, of any nature whatsoever which may be imposed on, incurred by or asserted against any Indemnified Person (including any or all liabilities, obligations, damages, costs, disbursements, expenses [including without limitation attorneys' fees and expenses of any Indemnified Person] relating thereto) in any way relating to or arising, or alleged to arise out of this Agreement or the Equipment, including without limitation those in any way relating to or arising or alleged to arise out of (i) the manufacture, construction, purchase, acceptance, rejection, ownership, delivery, non-delivery, lease, possession, use, operation, condition, sale, return or other disposition of any unit of Equipment or portion thereof, (ii) any latent and other defects whether or not discoverable by the Owner-Trustee or the Vendor, (iii) any claim for patent, trademark or copyright infringement, (iv) any claims based on strict liability in tort, (v) any injury to or the death of any person or any damage to or loss of property on or near the Equipment or in any manner growing out of or concerned with, or alleged to grow out of or be connected with, the ownership, use, replacement, adaptation or maintenance of the Equipment or of any other equipment in connection with the Equipment (whether owned or under the control of the Owner-Trustee, the Lessee or any other person) or resulting or alleged to result from the condition of any thereof; (vi) any violation, or alleged violation, of any provision of this Agreement or of any agreement, law, rule, regulation, ordinance or restriction, affecting or applicable to the Equipment or the leasing, ownership, use, replacement, adaptation or maintenance thereof; or (vii) any claim arising out of the Vendor's retention of security interest under this Agreement or the Lease Assignment; except that the Owner-Trustee shall not be liable to the Builder in respect of any of the foregoing matters to the extent liability in respect thereof arises from an act or omission of the Builder or is covered by the Builder's patent indemnification referred to in the last paragraph of this Article 14. The Owner-Trustee shall be obligated under this Article 14, irrespective of whether any Indemnified Person shall also be indemnified with respect to the same matter under any other agreement by any other person, and the Indemnified Person seeking to enforce the indemnification may proceed directly against the Owner-Trustee under this Article 14 without first resorting to any such other rights of indemnification. In case any action, suit or proceeding is brought against any

Indemnified Person in connection with any claim indemnified against hereunder, the Owner-Trustee may and, upon such Indemnified Person's request will, at the Owner-Trustee's expense, resist and defend such action, suit or proceeding, or cause the same to be resisted or defended by counsel selected by the Owner-Trustee and approved by such Indemnified Person, as the case may be, and, in the event of any failure by the Owner-Trustee to do so, the Owner-Trustee shall pay all costs and expenses (including without limitation attorneys' fees and expenses) incurred by such Indemnified Person in connection with such action, suit or proceeding. In the event the Owner-Trustee is required to make any payment under this Article 14, the Owner-Trustee shall pay such Indemnified Person an amount which, after deduction of all taxes required to be paid by such Indemnified Person, as the case may be, in respect of the receipt thereof under the laws of the United States or of any political subdivision thereof (after giving credit for any savings in respect of any such taxes by reason of deductions, credits or allowances in respect of the payment of the expense indemnified against, and of any other such taxes as determined in the sole discretion of the Indemnified Person), shall be equal to the amount of such payment. The Vendor and the Owner-Trustee each agrees to give each other promptly upon obtaining knowledge thereof written notice of any claim or liability hereby indemnified against. Upon the payment in full of any indemnities as contained in this Article 14 by the Owner-Trustee, and provided that no event of default set forth in Article 16 hereof (or other event which with lapse of time or notice or both would constitute such an event of default) shall have occurred and be continuing, it shall be subrogated to any right of such Indemnified Person in respect of the matter against which indemnity has been given. Any payments received by such Indemnified Person from any person as a result of any matter with respect to which such Indemnified Person has been indemnified by the Lessee pursuant to the Lease shall be paid over to the Owner-Trustee to the extent necessary to reimburse the Owner-Trustee for indemnification payments previously made in respect of such matter.

The indemnities contained in this Article 14 shall survive the expiration or termination of this Agreement with respect to all events, facts, conditions or other circumstances occurring or existing prior to such expiration or termination and are expressly made for the benefit of,

and shall be enforceable by any Indemnified Person. None of the indemnities in this Article 14 shall be deemed to create any rights of subrogation in any insurer or third party against the Owner-Trustee therefor, from or under any Indemnified Person, whether because of any claim paid or defense provided for the benefit thereof or otherwise. The obligations of the Owner-Trustee pursuant to the foregoing paragraph are subject to the provisions of Article 22 hereof.

The Owner-Trustee will bear the responsibility for and risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of any unit of or all the Equipment.

The agreement of the parties relating to the Builder's warranty of material and workmanship and the agreement of the parties relating to patent indemnification are set forth in Items 3 and 4 of Annex A hereto.

ARTICLE 15. *Assignments.* Except as provided in the Trust Agreement, the Owner-Trustee will not (a) except as provided in Article 12 hereof, transfer the right to possession of any unit of the Equipment or (b) sell, assign, transfer or otherwise dispose of its rights under this Agreement unless such sale, assignment, transfer or disposition (i) is made expressly subject in all respects to the rights and remedies of the Vendor hereunder (including, without limitation, rights and remedies against the Owner-Trustee and the Guarantor) and (ii) provides that the Owner-Trustee shall remain liable for all the obligations of the Owner-Trustee under this Agreement. Subject to the preceding sentence, any such sale, assignment, transfer or disposition may be made by the Owner-Trustee without the purchaser, assignee or transferee assuming any of the obligations of the Owner-Trustee hereunder.

All or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Owner-Trustee and the benefits arising from the undertakings of the Guarantor hereunder, may be assigned by the Vendor and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve the Builder from, any of the obligations of the Builder to construct and deliver the Equipment in accordance herewith or to respond to its warranties and indemnities contained or referred to in

Article 14 hereof, or relieve the Owner-Trustee of its obligations to the Builder contained in Articles 2, 3, 4, 6 and 14 hereof, Annex A hereto and this Article 15, or any other obligation which, according to its terms and context, is intended to survive an assignment.

Upon any such assignment by the Vendor, either the assignor or the assignee shall give written notice to the Owner-Trustee and the Guarantor, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall, by virtue of such assignment, acquire all the assignor's right, title and interest in and to the Equipment and this Agreement, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Owner-Trustee and the Guarantor, respectively, of the notification of any such assignment, all payments thereafter to be made by the Owner-Trustee or the Guarantor under this Agreement shall, to the extent so assigned, be made to the assignee in such manner as it may direct.

The Owner-Trustee and the Guarantor recognize that it is the custom of railroad equipment manufacturers or sellers to assign agreements of this character and understand that the assignment of this Agreement, or of some of or all the rights of the Vendor hereunder, is contemplated. The Owner-Trustee and the Guarantor severally represent, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Vendor hereunder, and for the purpose of inducing such acquisition, that in the event of such assignment by the Vendor as hereinbefore provided, the rights of such assignee to the entire unpaid Conditional Sale Indebtedness or such part thereof as may be assigned, together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment, by the Owner-Trustee or the Guarantor, as the case may be, whatsoever arising out of any breach of any obligation of the Builder with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Owner-Trustee or the Guarantor, as the case may be, by the Builder. Any and all such obligations, howsoever arising,

shall be and remain enforceable by the Owner-Trustee or the Guarantor, as the case may be, against and only against the Builder.

If the Builder shall not receive on any Closing Date the aggregate Purchase Price in respect of all of the Equipment proposed to be settled for on such Closing Date, the Builder will promptly notify the Owner-Trustee and the Guarantor of such event and, if such amount shall not have been previously paid, the parties hereto will, upon the request of the Builder, enter into an appropriate written agreement with the Builder excluding from this Agreement those units of Equipment whose aggregate Purchase Price shall not have been received, but fully preserving the Builder's security interest in such units of Equipment in a manner acceptable to the Builder, and the Guarantor will, not later than 90 days after such Closing Date, pay or cause to be paid to the Builder the aggregate Purchase Price of such units, together with interest thereon from such Closing Date to the date of payment by the Guarantor at the highest prime rate of interest charged by any of the four New York City banks having the largest total assets in effect on the date such payment is due, and all right and title in and to those units of Equipment shall be vested in the Guarantor or other purchaser thereof.

ARTICLE 16. *Defaults.* In the event that any one or more of the following events of default shall occur and be continuing, to wit:

(a) the Owner-Trustee shall fail to pay or cause to be paid in full any sum payable by the Owner-Trustee pursuant to the provisions of Articles 4 and 7 hereof (irrespective of the provisions of Article 4 or 22 hereof or any other provision of this Agreement limiting the liability of the Owner-Trustee) when payment thereof shall be due hereunder and such default shall continue for ten business days after the date such payment is due and payable; or

(b) the Owner-Trustee, the Guarantor or the Lessee shall, for more than 30 days after the Vendor shall have demanded in writing performance thereof, fail or refuse to comply with any other covenant, agreement, term or provision of this Agreement (irrespective of the provisions of Article 4 or 22 hereof or any other provision of this Agreement limiting the liability of the Owner-Trustee), the Lease Assignment or the Consent, or any covenant, agreement, term or provision of the Participation Agreement made expressly for the benefit of the Vendor, on its part to be kept and performed or to make provision satisfactory to the Vendor for such compliance; or

(c) a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may be hereafter

amended, shall be filed by or against the Guarantor 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 Guarantor under this 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 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

(d) any other proceeding shall be commenced by or against the Owner-Trustee, the Guarantor or the Lessee for any relief which includes, or might result in, any modification of the obligations of the Guarantor, the Owner-Trustee or the Lessee hereunder or under the Lease under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustment of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the obligations of the Owner-Trustee or the Guarantor under this Agreement or of the Lessee under the Lease), 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 Owner-Trustee, the Guarantor or the Lessee, as the case may be, under this Agreement or the Lease shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Owner-Trustee, the Guarantor or the Lessee, as the case may be, or for their respective property 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; or

(e) an event of default shall have occurred and be continuing under an Other Agreement;

then at any time after the occurrence of such an event of default the Vendor may, upon five days' written notice to the Owner-Trustee, the Lessee and the Guarantor and upon compliance with any legal requirements then in force and applicable to such action by the Vendor, (i)

cause the Lease immediately upon such notice to terminate (and the Owner-Trustee and the Guarantor each acknowledges the right of the Vendor to terminate the Lease) and/or (ii) declare (hereinafter called a Declaration of Default) the entire unpaid Conditional Sale Indebtedness, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such Declaration of Default at the rate per annum specified in Article 4 hereof as being applicable to amounts remaining unpaid after becoming due and payable, to the extent legally enforceable. Upon a Declaration of Default, the Vendor shall be entitled to recover judgment for the entire unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment so payable, with interest as aforesaid, and to collect such judgment out of any property of the Owner-Trustee (subject to the provisions of the last paragraph of Article 4 hereof and of Article 22 hereof) or the Guarantor wherever situated. The Owner-Trustee or the Guarantor, as the case may be, shall promptly notify the Vendor of any event which has come to its attention which constitutes, or with the giving of notice and/or lapse of time could constitute, an event of default under this Agreement.

The Vendor may, at its election, waive any such event of default and its consequences and rescind and annul any Declaration of Default or notice of termination of the Lease by notice to the Owner-Trustee, the Lessee and the Guarantor in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such event of default had occurred and no Declaration of Default or notice of termination of the Lease had been made or given. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

ARTICLE 17. *Remedies.* At any time during the continuance of a Declaration of Default, the Vendor may, in compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Vendor, take or cause to be taken, by its agent or agents,

immediate possession of the Equipment, or one or more of the units thereof, without liability to return to the Owner-Trustee or the Guarantor any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 17 expressly provided, and may remove the same from possession and use of the Owner-Trustee, the Lessee or any other person and for such purpose may enter upon the premises of the Lessee or any other premises where the Equipment may be located without judicial process if this can be done without breach of the peace, and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Owner-Trustee, the Guarantor or the Lessee.

In case the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall designate a reasonable point or points for the delivery of the Equipment to the Vendor, the Owner-Trustee shall, subject to the provisions of Article 22 hereof, at its own expense and risk, forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads having possession of any of the Equipment to return the Equipment), cause (a) the Equipment to be moved to and assembled at such location as shall be designated by the Vendor and shall there deliver the Equipment or cause it to be delivered to the Vendor and (b) the Equipment to be moved to such interchange point or points as shall be designated by the Vendor upon any sale, lease or other disposal of all or any part of the Equipment by the Vendor. At the option of the Vendor, the Vendor may keep the Equipment on any of the lines or premises of the Guarantor or the Lessee until the Vendor shall have leased, sold or otherwise disposed of the same, and for such purpose the Guarantor agrees to furnish, and the Lessee has agreed to furnish pursuant to the Lease, without charge for rent or storage, the necessary facilities at any point or points selected by the Vendor reasonably convenient to the Guarantor or the Lessee, as the case may be, and to permit inspection of the Equipment by the Vendor, the Vendor's representatives and prospective purchasers, lessees and users. This agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled to a decree re-

quiring specific performance hereof. The Owner-Trustee and the Guarantor hereby expressly waive any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 17 provided) may, at its election and upon such notice as is hereinafter set forth, retain the Equipment in satisfaction of the entire Conditional Sale Indebtedness and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Owner-Trustee and the Guarantor by telegram or registered mail, addressed as provided in Article 21 hereof, and to any other persons to whom the law may require notice, within 30 days after such Declaration of Default. In the event that the Vendor should elect to retain the Equipment and no objection is made thereto within the 30-day period described in the second proviso below, all the Owner-Trustee's rights in the Equipment shall thereupon terminate and all payments made by the Owner-Trustee and the Guarantor may be retained by the Vendor as compensation for the use of the Equipment; *provided, however*, that if the Owner-Trustee before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to the Vendor the total unpaid balance of the Conditional Sale Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Owner-Trustee; *provided, further*, that if the Owner-Trustee, the Guarantor or any other persons notified under the terms of this paragraph object in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall not have given notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 17.

At any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon reasonable notice to the Owner-Trustee, the Guarantor and any other persons to whom the law may require notice of the time and place, may sell the Equipment, or one or more of the units thereof, free from any and all claims of the Owner-Trustee, the Guarantor, the Lessee or any other party claiming from, through or under the Owner-Trustee, the Guarantor or the Lessee, at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; *provided, however,* that if, prior to such sale and prior to the making of a contract for such sale, the Owner-Trustee should tender full payment of the total unpaid balance of the Conditional Sale Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale and the Vendor's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Owner-Trustee. The proceeds of such sale or other disposition, less the attorneys' fees and any other expenses incurred by the Vendor in retaking possession of, removing, storing, holding, preparing for sale and selling or otherwise disposing of the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement and the balance, if any, shall be paid to the Owner-Trustee.

Any sale hereunder may be held or conducted at New York, New York, at such time or times as the Vendor may specify (unless the Vendor shall specify a different place or places, in which case the sale shall be held at such place or places as the Vendor may specify), in one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine, so long as such sale shall be in a commercially reasonable manner. The Vendor, the Owner-Trustee or the Guarantor may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. The Owner-Trustee and the Guarantor shall be given written notice of such sale not less than ten days prior thereto, by telegram or registered mail addressed as provided in Article 21 hereof. In the event that the Vendor shall be the purchaser of the Equipment, it shall not be accountable to the Owner-

Trustee or the Guarantor (except to the extent of surplus money received as hereinafter provided in this Article 17), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all or any part of sums due to the Vendor hereunder. From and after the date of any such sale, the Owner-Trustee shall, subject to the provisions of Article 22 hereof, pay to the Vendor the per diem interchange (pursuant to the applicable Interchange Rules of the Association of American Railroads) for each unit of Equipment which shall not have been assembled, as hereinabove provided, by the date of such sale for each day from the date of such sale to the date of delivery to the purchaser at such sale.

Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly granted to the Owner-Trustee or the Guarantor shall not otherwise alter or affect the Vendor's rights or the Owner-Trustee's or the Guarantor's obligations hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Owner-Trustee's or the Guarantor's obligations or the Vendor's rights hereunder with respect to any subsequent payments or default therein.

If, after applying all sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Owner-Trustee shall pay the amount of such deficiency to the Vendor upon demand, together with the interest from the date of such demand to the date of payment at the highest prime rate of interest charged by any of the four New York City banks having the largest total assets in effect on the date such demand was made, and, if the Owner-Trustee shall fail to pay such de-

ficiency and interest, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Owner-Trustee. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Owner-Trustee or the Guarantor, as the case may be, to the extent of their respective interests therein. The Owner-Trustee will pay all reasonable expenses, including attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable expenses, including reasonable attorneys' fees, and the amount thereof shall be included in such judgment. The provisions of this paragraph are subject to the limitations of the liability of the Owner-Trustee contained in the last paragraph of Article 4 hereof and in Article 22 hereof.

The Vendor shall forbear exercising its rights to declare the unpaid indebtedness hereunder due and payable in accordance with the provisions of the first paragraph of Article 16 hereof and its remedies under this Article 17, if such rights and remedies arise out of an event of default pursuant to subparagraph (b) of the first paragraph of Article 16 hereof or of an Other Agreement caused by default by the Lessee pursuant to subparagraph B of the first paragraph of §10 of the Lease (other than an event of default caused by a default in the payment of any monetary obligation due under the Lease) or pursuant to subparagraph (d) of the first paragraph of Article 16 hereof (other than an event of default caused by a proceeding commenced by or against the Owner-Trustee or the Guarantor specified in said subparagraph (d), if, and so long as, all of the conditions set forth in the last two paragraphs of §10 of the Lease shall be duly and punctually complied with.

The foregoing provisions of this Article 17 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

ARTICLE 18. *Applicable State Laws.* Any provision of this Agreement prohibited by any applicable law of any jurisdiction (which is not overridden by applicable Federal law) shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such

applicable law may be waived, they are hereby waived by the Owner-Trustee and the Guarantor to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

Except as otherwise provided in this Agreement, the Owner-Trustee and the Guarantor, to the full extent permitted by law, hereby waive all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment, or any one or more units thereof, and any other requirements as to the time, place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of the Vendor's rights under this Agreement and any and all rights of redemption.

ARTICLE 19. *Recording.* Subject to the provisions of Article 22 hereof and the proviso contained in §15 of the Lease, the Owner-Trustee will (a) cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto to be filed and recorded in accordance with Section 20c of the Interstate Commerce Act, (b) from time to time do and perform any other act and execute, acknowledge, deliver, file, register, deposit and record any and all further instruments required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its interest in the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement and (c) promptly furnish to the Vendor certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Vendor.

ARTICLE 20. *Article Headings; Effect and Modification of Agreement; Amendments.* All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

This Agreement, including the Annexes hereto, exclusively and completely states the rights of the Vendor, the Owner-Trustee and the Guarantor with respect to the Equipment and supersedes all other agreements, oral or written, with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by

duly authorized representatives of the Vendor, the Owner-Trustee and the Guarantor.

ARTICLE 21. *Notice.* Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed to it at the following specified addresses:

(a) to the Owner-Trustee, at 130 John Street, New York, New York 10038, attention of Corporate Trust and Agency Division, with copies to the Owner at P. O. Box 8300, Stamford, Connecticut 06904, attention of Manager—Operations, Leasing and Industrial Loan Financing and attention of Loan Officer—Rail,

(b) to the Guarantor, at One Market Street, San Francisco, California 94105, attention of Vice President and Treasurer,

(c) to the Builder, at the address specified in Item 1 of Annex A hereto,

(d) to any assignee of the Vendor, or of the Owner-Trustee, at such address as may have been furnished in writing to the Owner-Trustee, or the Vendor, as the case may be, and to the Guarantor, by such assignee,

(e) to the Lessee, at 300 South Wacker Drive, Chicago, Illinois 60606,

or at such other address as may have been furnished in writing by such party to the other parties to this Agreement.

ARTICLE 22. *Immunities; Satisfaction of Undertakings.* No recourse shall be had in respect of any obligation due under this Agreement, or referred to herein, against any incorporator, stockholder, director or officer, as such, past, present or future, of the Owner-Trustee, the Guarantor or the Builder (or Vendor), whether by virtue of any constitutional provision, statute or rule of law, or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of incorporators, stockholders, directors or officers, as such, being forever released as a condition of and as consideration for the execution of this Agreement.

The covenants of the Owner-Trustee under the first paragraph of Article 7, the second, fifth and seventh paragraphs of Article 17, and under Articles 6, 9, 10, 11, 13, 14 and 19 hereof and any and all obligations at any time arising thereunder shall be deemed satisfied in full in all respects (except, in the case of Article 13 hereof, as set forth in the last paragraph thereof), and be of no further force or effect in so far as they involve personal liability of the Owner-Trustee, other than out of "income and proceeds from the Equipment" (as defined in Article 4 hereof), upon the execution and delivery of the Lease (whether or not the Lease shall thereafter be amended, terminated or otherwise modified and irrespective of the genuineness, validity, regularity or enforceability of the Lease); *provided, however*, that such covenants and obligations shall be deemed covenants of the Owner-Trustee within the meaning of subparagraphs (a) and (b) of the first paragraph of Article 16 hereof (it being the intention of the parties hereto that neither the Owner-Trustee nor any of its properties shall be subject to any liability for any breach or alleged breach by it of any such covenant or obligation except out of the "income and proceeds from the Equipment", but that any such breach may be made the basis of an event of default under said Article 16). The execution and delivery of the Lease shall be presumed conclusively to have occurred, for the purpose of this Article 22, upon the delivery to the Owner-Trustee by the Vendor of written confirmation to such effect signed by the Vendor. The Guarantor shall be liable in respect of its guaranty hereunder for such obligations under said Articles regardless of whether or not the Lease provides for the discharge of such obligations or is in effect and irrespective of any limitation of the liability of the Owner-Trustee contained in the last paragraph of Article 4 hereof or in this Article 22. No waiver or amendment of the Lessee's undertakings under the Lease shall be effective unless joined in by the Vendor.

It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, undertakings and agreements herein made on the part of the Owner-Trustee are each and every one of them made and intended not as personal representations, undertakings and agreements by the Owner-Trustee, or for the purpose or with the intention of binding the Owner-Trustee personally but are made and intended for the purpose of binding only the Trust Estate as such term is

used in the Trust Agreement to the extent provided in this Agreement, and this Agreement is executed and delivered by the Owner-Trustee solely in the exercise of the powers expressly conferred upon the Owner-Trustee as trustee under the Trust Agreement; and that no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against the Owner-Trustee, or the Owner or on account of any representation, undertaking or agreement of the Owner-Trustee or the Owner, either expressed or implied, all such personal liability, if any, being expressly waived and released by the Vendor and by all persons claiming by, through or under the Vendor; *provided, however*, that the Vendor or any person claiming by, through or under it, making claim hereunder, may look to said Trust Estate for satisfaction of the same. Nothing contained in this paragraph shall limit, restrict or impair the rights of the Vendor to take all actions to enforce the rights and remedies provided for herein and to bring suit and obtain a judgment against the Owner-Trustee (provided that neither the Owner-Trustee in its fiduciary or individual capacity nor the Owner shall have any personal liability on any such judgment and the satisfaction thereof shall be limited to the Trust Estate, including any interest therein of the Owner-Trustee or the Owner) or to foreclose the lien and security interest created by this Agreement or otherwise realize upon the Trust Estate, including the right to proceed against the Equipment or the Lessee under the Lease or the Guarantor hereunder.

ARTICLE 23. *Representation and Warranty of Builder.* The Builder hereby represents and warrants to the Owner-Trustee, its successors and assigns, that this Agreement is duly authorized by it and lawfully executed and delivered by it for a valid consideration, and that, assuming due authorization, execution and delivery by the Owner-Trustee and the Guarantor, this Agreement is, in so far as the Builder is concerned, a legal, valid and existing agreement binding upon the Builder in accordance with its terms.

ARTICLE 24. *Law Governing.* The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of New York; *provided, however*, that the parties shall be

entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording or deposit hereof, if any, and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited or in which any unit of Equipment shall be located, and any rights arising out of the marking of the Equipment.

ARTICLE 25. *Execution.* This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. Although for convenience this Agreement is dated as of the date first above written, 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.

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

FMC CORPORATION,

by W. R. Wallace
Vice President

[CORPORATE SEAL]

Attest:

R. L. Day
Assistant Secretary

UNITED STATES TRUST COMPANY OF NEW YORK, as trustee,

by Rene R. Scocca
Assistant Vice President

[CORPORATE SEAL]

Attest:

W. Bruce
Assistant Secretary

SOUTHERN PACIFIC TRANSPORTATION COMPANY,

by A. E. Wood
Vice President

[CORPORATE SEAL]

Attest:

[illegible]
~~*Assistant*~~ *Secretary*

STATE OF ILLINOIS,
COUNTY OF COOK, } SS.:

On this 22 day of December 1975, before me personally appeared W. D. Wallace, to me personally known, who, being by me duly sworn, says that he is Vice President of FMC 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.

Deborah A. Jenus
Notary Public

[NOTARIAL SEAL]

My Commission expires My Commission Expires January 9, 1979

STATE OF NEW YORK,
COUNTY OF NEW YORK, } SS.:

On this 29th day of December 1975, before me personally appeared IRENE R. SCOCCA, to me personally known, who, being by me duly sworn, says that She is an Assistant Vice President of UNITED STATES TRUST COMPANY OF NEW YORK, 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 By-laws and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Thomas B. Zakrzewski
Notary Public

[NOTARIAL SEAL]

THOMAS B. ZAKRZEWSKI
Notary Public, State of New York
No. 24-9820331
Qualified in Kings County
Certificate filed in New York County
Commission Expires March 30, 1976

STATE OF CALIFORNIA)
) SS.:
CITY AND COUNTY OF SAN FRANCISCO)

On this 23rd day of December, 1975, before me personally appeared A. D. DeMOSS, to me personally known, who, being by me duly sworn says that he is a Vice President of SOUTHERN PACIFIC TRANSPORTATION COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of the Executive Committee of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Gene H. Ellinger
Notary Public

[NOTARIAL STAMP]

My Commission expires

GENE H. ELLINGER
NOTARY PUBLIC-CALIFORNIA
PRINCIPAL PLACE OF BUSINESS IN
CITY AND COUNTY OF
SAN FRANCISCO
My Commission Expires July 11, 1979

ANNEX A
TO
CONDITIONAL SALE AGREEMENT

ITEM 1: 4700 Northwest Front Avenue, Portland, Oregon 97210.

ITEM 2: January 9, January 23, and February 10, 1976, and such later date or dates as may be necessary in order to settle for units of Equipment not settled for on such dates, but not later than September 1, 1976.

ITEM 3: The Builder warrants that the Equipment will be built in accordance with the requirements, specifications and standards set forth in Article 2 of the Conditional Sale Agreement to which this Annex A is attached (hereinafter called this Agreement) and, except in cases of articles and materials specified by the Lessee and not manufactured by the Builder, warrants the Equipment to be free from defects in material and workmanship under normal use and service, the liability of the Builder under this warranty being limited, as the Lessee may elect: (i) to repair of the defect at the Builder's plant at Portland, Oregon; or (ii) to replacement of the defective part; or (iii) to the cost of repair or replacement according to the AAR Code of Rules Governing Condition of and Repairs to Freight and Passenger Cars with Interchange of Traffic. The foregoing warranty of the Builder shall begin at the time of delivery of a unit of Equipment under this Agreement and terminate one year after such delivery. **This warranty is expressly in lieu of all other warranties expressed or implied on the part of the Builder,** except for the patent indemnification included in Item 4 of this Annex A, and the Builder neither assumes nor authorizes any person to assume for it any other warranty liability in connection with the construction and delivery of the Equipment.

The Builder further agrees that neither the inspection as provided in Article 3 of this Agreement nor any examination nor the acceptance of any units of the Equipment as provided

in said Article 3 shall be deemed a waiver or a modification by the Owner-Trustee of any of its rights under this Item 3.

ITEM 4: Except in cases of articles or materials specified by the Lessee and not manufactured by the Builder and in cases of designs, systems, processes, formulae or combinations specified by the Lessee and not developed or purported to be developed by the Builder, the Builder agrees to indemnify, protect and hold harmless the Owner-Trustee and, as third party beneficiary hereof, the Lessee from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Owner-Trustee, the Lessee, its or their assigns or the users of the Equipment because of the use in or about the construction or operation of any of the Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. Pursuant to the Lease, the Lessee likewise will indemnify, protect and hold harmless the Vendor from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendor because of the use in or about the construction or operation of any of the Equipment of any article or material specified by the Lessee and not manufactured by the Builder or of any design, system, process, formula or combination specified by the Lessee and not developed or purported to be developed by the Builder which infringes or is claimed to infringe on any patent or other right. The Builder agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, assign, set over and deliver to the Lessee every claim, right and cause of action which the Builder has or hereafter shall have against the seller or sellers of any designs, systems, processes, formulae, combinations, articles or materials specified by the Lessee and purchased or otherwise acquired by the Builder for use in or about the construction or operation of any of the Equipment on the ground that any such design, system,

process, formula, combination, article or material or operation thereof infringes or is claimed to infringe on any patent or other right. The Builder further agrees to execute and deliver to the Lessee or the Owner-Trustee or the users of the Equipment all and every such further assurance as may be reasonably requested by the Lessee or the Owner-Trustee to more fully effectuate the assignment and delivery of every such claim, right and cause of action. The Builder will give notice to the Lessee of any claim known to the Builder from which liability may be charged against the Lessee hereunder and the Owner-Trustee will give notice to the Builder of any claim known to the Owner-Trustee from which liability may be charged against the Builder hereunder. Such covenants of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, the satisfaction and discharge of this Agreement or the termination of this Agreement in any manner.

ITEM 5: The Maximum Purchase Price referred to in Article 4 of the Conditional Sale Agreement to which this Annex A is attached is $29,983,800.

ANNEX B

TO

CONDITIONAL SALE AGREEMENT

Type	AAR Mechanical Designation	Specifications	Builder's Plant	Quantity	Lessee's Identifying Numbers (Both Inclusive)	Unit Base Price*	Total Base Price*	Estimated Time and Place of Delivery
50′ 6″, 70-ton capacity, general service box car	XM	Railbox number 68-43-060774, issued 6/7/74, revised 6/19/74 and 11/26/74, FMC number 17635, revised 6/10/75	Portland, Oregon	414	RBOX 18806-19219	$28,641	$11,857,374	Prior to September 1, 1976, at Builder's Plant

* Base Price subject to increase or decrease as set forth in Article 4 of the Conditional Sale Agreement to which this Annex B is attached.

Annex C to
Conditional Sale Agreement

LEASE OF RAILROAD EQUIPMENT

Dated as of December 1, 1975,

BETWEEN

AMERICAN RAIL BOX CAR COMPANY

AND

UNITED STATES TRUST COMPANY OF NEW YORK,

as Trustee

LEASE OF RAILROAD EQUIPMENT

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* This Table of Contents has been included in this document for convenience only and does not form a part of, or affect any construction or interpretation of this document.

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SCHEDULE A [Units Leased]

SCHEDULE B [Computation of Casualty Value]

LEASE OF RAILROAD EQUIPMENT dated as of December 1, 1975, between AMERICAN RAIL BOX CAR COMPANY, a Delaware corporation (hereinafter called the Lessee), and UNITED STATES TRUST COMPANY OF NEW YORK, a New York corporation, as Trustee (hereinafter, together with its successors and assigns, called the Owner-Trustee) under a Trust Agreement dated as of the date hereof (hereinafter called the Trust Agreement), with GENERAL ELECTRIC CREDIT CORPORATION (hereinafter called the Owner).

WHEREAS the Owner-Trustee and SOUTHERN PACIFIC TRANSPORTATION COMPANY (hereinafter called the Guarantor) are entering into conditional sale agreements dated as of the date hereof (hereinafter individually and collectively called the Security Document) with ACF Industries, Incorporated, FMC Corporation, and Whittaker Corporation (Berwick Forge and Fabricating Division), respectively, (hereinafter individually called a Builder and collectively the Builders) wherein the Builders agree to manufacture, sell and deliver to the Owner-Trustee the units of railroad equipment described in Schedule A hereto (hereinafter called the Equipment); and

WHEREAS each Builder will assign certain of its interests in its Security Document to Mercantile-Safe Deposit and Trust Company, as agent (hereinafter, together with its successors and assigns, called the Vendor), pursuant to, in each case, an Agreement and Assignment (hereinafter individually called an Assignment and collectively the Assignments); and

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

WHEREAS the Guarantor agrees to guarantee the obligations of the Lessee hereunder pursuant to a Guaranty Agreement dated as of the date hereof (hereinafter called the Guaranty); and

WHEREAS the Owner-Trustee will assign this Lease for security to the Vendor pursuant to an Assignment of Lease and Agreement (hereinafter called the Lease Assignment) and the Lessee will consent to the Lease Assignment pursuant to a Lessee's Consent and Agreement (hereinafter called the Consent);

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

§1. *Net Lease.* This Lease is a net lease. Lessee's obligation to pay all rentals and other amounts hereunder shall be absolute and unconditional and, except as herein provided, 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 Owner-Trustee or the Owner under this Lease or under the Security Document, including the Lessee's rights by subrogation thereunder to the Builder or the Vendor or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Owner-Trustee 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 the bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Owner-Trustee, the Owner, or the Vendor for any reason whatsoever.

§2. *Delivery and Acceptance of Units.* The Owner-Trustee hereby appoints the Lessee its agent for inspection and acceptance of the Units pursuant to the Security Document. Each delivery of a Unit to the Owner-Trustee under the Security Document shall be deemed to be a delivery hereunder to the Lessee at the point or points within the United States of America at which such Unit is delivered to the Owner-Trustee under the Security Document. Upon such delivery, the Lessee will cause an employee or agent of the Lessee to inspect the same, and if such Unit is found to be acceptable, to accept delivery of such unit on behalf of the Owner-Trustee under the Security Document and itself hereunder and execute and deliver to the Owner-Trustee a certificate of acceptance (hereinafter called the Certificate of Acceptance) in accordance with the provisions of Article 3 of the Security Document, stating that such Unit has been inspected and accepted on behalf of the Lessee and the Owner-Trustee 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 Owner-Trustee, as rental for each Unit subject to this Lease, one payment within five business days of the date on which such Unit is settled for under the Security Document (such date of settlement for such Unit being hereinafter called a Closing Date) and thereafter 31 consecutive semiannual payments, payable on March 1 and September 1 in each year commencing March 1, 1976 (or, in the case of any Unit settled for on or after March 1, 1976, 30 consecutive semiannual payments, payable on March 1 and September 1 of each year commencing September 1, 1976). The first rental payment shall be in an amount equal to interest (computed on the basis of a 360-day year of twelve 30-day months) on the Purchase Price (as defined in the Security Document) of each Unit from the thirtieth day following the average date on which the Units in the Group (as defined in the Security Document) in which such Unit shall be settled for under the Security Document are available for delivery and acceptance thereunder to the Closing Date for such Unit, at a rate per annum equal to the rate which Manufacturers Hanover Trust Company, New York, New York, charges for 90-day unsecured loans to large corporate borrowers of the highest credit standing from time to time in effect for the period such interest is payable; *provided, however,*

that changes in such prime rate occurring during the ten business days preceding the Closing Date shall be disregarded; and *provided, further,* that such amount in respect of any Unit shall be the amount of interest on the Purchase Price thereof due the Builder thereof pursuant to the Security Document. The rental payment payable on March 1, 1976, shall be in an amount equal to 70% of the Purchase Price of each Unit then subject to this Lease multiplied by the daily equivalent of the interest rate per annum then applicable to the Conditional Sale Indebtedness (as defined in the Security Document) (such rate being hereinafter called the Daily Debt Rate) plus an amount equal to .001286% of the Purchase Price for each Unit then subject to this Lease, in each case for each day elapsed from the Closing Date with respect to such Unit to March 1, 1976 (computed on the basis of a 360-day year of twelve 30-day months). The remaining 30 semiannual rental payments shall each be in an amount equal to 4.6406% of the Purchase Price of each Unit subject to this Lease on the date of such payment. In the event that any Unit shall be settled for on or after March 1, 1976, then the rental payment payable in respect of said Unit on September 1, 1976, shall be reduced by an amount equal to 70% of the Purchase Price of each such Unit multiplied by the Daily Debt Rate and an amount equal to .001286% of the Purchase Price of such unit, in each case for each day elapsed from March 1, 1976, to the date such Unit shall have been settled for.

In addition to the foregoing rentals, the Lessee hereby agrees to pay to the Owner-Trustee amounts equal to the amounts required by the Agent to make the payments provided for in the last sentence of the penultimate paragraph and in the last paragraph of Paragraph 4 of the Finance Agreement on the dates required for such payments in said Paragraph 4 (without regard to the limitation of the obligation of the Owner-Trustee set forth therein) and the Owner-Trustee agrees to apply such rentals for such purposes.

If any of the semiannual rental payment dates referred to above is not a business day (as such term is defined in the Security Document) the semiannual rental payment otherwise payable on such date shall then be payable on the next succeeding business day, and no interest shall be payable for the period from and after the nominal date for payment thereof to such next succeeding business day.

Unless the Assignment is not executed and delivered, the Owner-Trustee irrevocably instructs the Lessee to make all the payments provided for in this Lease (other than the rental payment, if any, payable within five business days of a Closing Date which rental payment shall be paid to the Builder for the account of the Owner-Trustee at such place as the Builder shall specify) to the Vendor, for the account of the Owner-Trustee, in care of the Vendor, with instructions to the Vendor (a) first to apply such payments to satisfy the obligations of the Owner-Trustee under the Security Document known to the Vendor to be due and payable on the date such payments are due and payable hereunder and (b) second, so long as no event of default under the Security Document shall have occurred and be continuing, to pay any balance promptly to the Owner-Trustee or to the order of the Owner-Trustee in immediately available funds at such place as the Owner-Trustee shall specify in writing. If the Assignment is not executed and delivered, all payments provided for in this Lease (except said payment to the Builder which shall be paid to the Builder as aforesaid) shall be made at such place as the Owner-Trustee or the Owner shall specify in writing.

The Lessee agrees to make each payment provided for herein as contemplated by this §3 in immediately available funds at or prior to 11:00 a.m. 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. The obligations of the Lessee hereunder (including, but not limited to, the obligations under §§6, 7, 9 and 14 hereof) shall survive the expiration of the term of this Lease.

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 Document. If an event of default should occur under the Security Document, the Vendor may terminate this Lease (or rescind its termination), all as provided therein.

§5. *Identification Marks.* The Lessee will cause each Unit to be kept numbered with the identifying number set forth in Schedule A

hereto, or in the case of any Unit not there listed such identifying number as shall be set forth in any amendment or supplement hereto extending this Lease to cover such Unit, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the words, "Ownership Subject to a Security Agreement Filed under the Interstate Commerce Act, Section 20c", "Owned by a Bank or Trust Company under a Security Agreement Filed under the Interstate Commerce Act, Section 20c" or other appropriate words designated by the Owner-Trustee, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Owner-Trustee's and the Vendor's title to and property in such Unit and the rights of the Owner-Trustee under this Lease and of the Vendor under the Security Document. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such name and words shall have been so marked on both sides thereof and will replace promptly any such name and words which may be removed, defaced or destroyed. The Lessee will not change the identifying number of any Unit unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with the Vendor and the Owner-Trustee and filed, recorded and deposited by the Lessee in all public offices where this Lease and the Security Document shall have been filed, recorded and deposited and (ii) the Lessee shall have furnished the Vendor and the Owner-Trustee an opinion of counsel to the effect that such statement has been so filed, recorded and deposited, such filing, recordation and deposit will protect the Vendor's and the Owner-Trustee's interests in such Units and no filing, recording, deposit or giving of notice with or to any other federal, state or local government or agency thereof is necessary to protect the interests of the Vendor and the Owner-Trustee in such Units.

The Units may be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates. Except as above provided, 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.* Whether or not any of the transactions contemplated hereby are consummated, the Lessee agrees to pay, and to indemnify

and hold the Owner-Trustee, the Owner, and the Vendor harmless from, all taxes, assessments, fees and charges of any nature whatsoever, together with any penalties, fines, additions to tax or interest thereon, howsoever imposed, whether levied or imposed upon the Owner-Trustee, the Owner, the Vendor, the Lessee, the trust estate created by the Trust Agreement or otherwise, by any federal, state or local government or governmental subdivision in the United States or by any foreign country or subdivision thereof, upon or with respect to: and Unit or any part thereof; the purchase, ownership, delivery, leasing, possession, use, operation, transfer of title, return or other disposition thereof; the indebtedness with respect thereto; the rentals, receipts or earnings arising therefrom; or this Lease, the Trust Agreement, the Participation Agreement dated as of the date hereof among the Lessee, the Guarantor, the Owner-Trustee and the Owner (hereinafter called the Participation Agreement), the Security Document, the Assignment, the assignment hereof to the Vendor, any payment made pursuant to any such agreement, or the property, the income or other proceeds received with respect to property held in trust by the Owner-Trustee under the Trust Agreement (all such taxes, assessments, fees, charges, penalties, fines, additions to tax and interest imposed as aforesaid being hereinafter called "Taxes"); *excluding, however:* (i) Taxes of the United States or of any state or political subdivision thereof and (if and to the extent that any person indemnified hereunder is entitled to a credit therefor against its United States Federal income taxes or is indemnified by the Lessee pursuant to Paragraph 7 of the Participation Agreement) of any foreign country or subdivision thereof, imposed on or measured solely by the net income or excess profits of the Owner-Trustee (in its individual capacity), the Owner or the Vendor, other than Taxes arising out of or imposed in respect of the receipt of indemnification payments pursuant to this Lease, provided that such Taxes of any foreign country or subdivision thereof incurred as a result of the indemnified party being taxed by such foreign country or jurisdiction on its worldwide income without regard to the transactions contemplated by this Lease shall be excluded whether or not the indemnified party is entitled to a credit against its United States Federal income taxes; (ii) any Taxes imposed as a direct result of a voluntary transfer or other voluntary disposition by the Owner or any transfer or disposition by the Owner resulting from

bankruptcy or other proceedings for the relief of creditors in which the Owner is the debtor, whether voluntary or involuntary, of any interest in any Unit or interest in rentals under this Lease; (iii) any Taxes imposed on or measured by any fees or compensation received by the Owner-Trustee or the Vendor; and (iv) Taxes which are imposed on or measured solely by the net income of the Owner-Trustee or the Vendor if and to the extent that such Taxes are in substitution for or reduce the Taxes payable by any other person which the Lessee has not agreed to pay or indemnify against pursuant to this §6; *provided, however*, that the Lessee shall not be required to pay any Taxes during the period it may be contesting the same in the manner provided in the next succeeding paragraph. The Lessee further agrees to pay on or before the time or times prescribed by law any tax imposed on or measured solely by the net income of the Lessee (or the affiliated group, within the meaning of section 1504 of the Internal Revenue Code of 1954, as amended, of which the Lessee is a member) under the laws of the United States or of any state or political subdivision thereof, or of any foreign country or subdivision thereof which, if unpaid, might result in a lien or other encumbrance upon any Unit; *provided, however*, that the Lessee shall not be required to pay any such tax during the period it may be contesting the same.

If claim is made against the Owner-Trustee, the Owner or the Vendor for any Taxes indemnified against under this §6, such party shall promptly notify the Lessee. If reasonably requested by the Lessee in writing, the Owner-Trustee or the Vendor, as the case may be, shall, upon receipt of any indemnity satisfactory to it and to the Owner for all costs, expenses, losses, legal and accountants' fees and disbursements, penalties, fines, additions to tax and interest, and at the expense of the Lessee, contest in good faith the validity, applicability or amount of such Taxes by (a) resisting payment thereof if possible, (b) not paying the same except under protest, if protest is necessary and proper, and (c) if payment is made, using reasonable efforts to obtain a refund thereof in appropriate administrative or judicial proceedings, or both. The Lessee may also contest, at its own expense, the validity, applicability or amount of such Taxes in the name of the Owner-Trustee, the Owner or the Vendor; provided that, no proceeding or actions relating to such contest shall be commenced (nor shall any

pleading, motion, brief or other paper be submitted or filed in the name of the Owner-Trustee, the Owner or the Vendor in any such proceeding or action) without the prior written consent of the Owner-Trustee, the Owner or the Vendor, as the case may be. If the Owner-Trustee, the Owner or the Vendor shall obtain a refund of all or any part of such Taxes previously reimbursed by the Lessee in connection with any such contest or an amount representing interest thereon, the Owner-Trustee or the Vendor, as the case may be, or the Owner shall pay the Lessee the amount of such refund or interest net of expenses; *provided, however*, that no Event of Default and no event which with notice or lapse of time or both would constitute an Event of Default shall have occurred and be continuing.

In case any report or return is required to be made with respect to any obligation of the Lessee under this §6 or arising out of this §6, except obligations resulting from the second sentence of the first paragraph of this §6, the Lessee shall either make such report or return in such manner as will show the interests of the Owner-Trustee in the Units, or shall promptly notify the Owner-Trustee, the Owner and the Vendor of such requirement and shall make such report or return in such manner as shall be satisfactory to the Owner-Trustee and the Vendor. All costs and expenses (including legal and accountants' fees) of preparing any such return or report shall be borne by the Lessee.

All the obligations of the Lessee under this §6 shall survive and continue, but only with respect to periods included in the term of this Lease, notwithstanding payment in full of all amounts due under the Security Document or the termination of this Lease. Payments due from the Lessee to the Owner-Trustee, the Owner or the Vendor under this §6 shall be made directly to the party indemnified.

§7. *Payment for Casualty Occurrences; Insurance.* In the event that any Unit shall be or become worn out, lost, stolen, destroyed, irreparably damaged, or permanently rendered unfit for use from any cause whatsoever, or taken or requisitioned by condemnation or otherwise resulting in loss of possession by the Lessee for a period of 90 consecutive days, except requisition for use by the United States Government (such occurrences being hereinafter called Casualty Occurrences) during the term of this Lease, or until such Unit shall have been returned in the manner provided in §11 or 14 hereof, the Lessee shall promptly and fully notify the Owner-Trustee and the

Vendor with respect thereto. If such notice from the Lessee shall have been received at least 15 days prior to the March 1 or September 1 next succeeding the event with respect to which such notice is given, then on such next March 1 or September 1 following such event the Lessee shall pay to the Owner-Trustee 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 (a) as to each Unit delivered and accepted on or before March 1, 1976, in accordance with Schedule B hereto, and (b) as to each Unit delivered and accepted after that date, in accordance with an additional schedule to be agreed upon between the Owner-Trustee and the Lessee and made a part hereof by supplement or amendment hereto which schedule shall provide for such amounts as shall, in the reasonable opinion of the Owner-Trustee, cause the Owner's net return on Casualty Occurrences for such Units to equal the net return that would be realized with respect to Units delivered and accepted on or prior to March 1, 1976 (but shall, in any event, be in an amount not less than the amount necessary to discharge the Owner-Trustee's obligations under the Security Documents). If such notice from the Lessee shall have been received within 15 days of the March 1 or September 1 next succeeding the event with respect to which such notice is given or subsequent to such date, then on such next March 1 or September 1 the Lessee shall pay to the Owner-Trustee an amount equal to the rental payment or payments in respect of such Unit due and payable on such date and shall further pay to the Owner-Trustee on the March 1 or September 1 next succeeding the date for such rental payment a sum equal to the Casualty Value of such Unit as of the March 1 or September 1 next succeeding the event with respect to which such notice is given plus an amount equal to interest at the rate of 9½% per annum (calculated on the basis of a 360-day year of 12 30-day months) on such Casualty Value from such next succeeding date until the payment of such Casualty Value. All references herein to March 1 or September 1 shall be deemed to refer to whichever such date shall occur soonest. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft or complete destruction of such Unit) the Owner-Trustee shall be entitled to recover possession of such Unit.

If the date upon which the making of such payment by the Lessee in respect of any Unit is required as aforesaid shall be after the term of this Lease in respect of such Unit has expired, no rental for such Unit shall accrue after the end of such term but the Lessee, in addition to paying the Casualty Value for such Unit (which shall be the same percentage of the Purchase Price as is indicated in Schedule B hereto opposite the last rental payment date), shall pay interest thereon from the end of such term to the date of such payment at the prime rate of interest which Manufacturers Hanover Trust Company, New York, New York, charges on the date of such payment for 90-day unsecured loans to large corporate borrowers of the highest credit standing.

The Owner-Trustee hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof before and after the expiration of this Lease, at the best price obtainable on an "as is, where is" basis. Provided that the Lessee has previously paid the Casualty Value to the Owner-Trustee, 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 any excess to the Owner-Trustee.

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 Schedule B hereto opposite such date.

In the event of the requisition for use by the United States Government of any Unit during the term of this Lease or any renewal thereof, all of the Lessee's obligations under this Lease with respect to such Unit shall continue to the same extent as if such requisition had not occurred, except that if such Unit is returned by the Government at any time after the end of the term of this Lease or any renewal thereof, the Lessee shall be obligated to return such Unit to the Owner-Trustee pursuant to §11 or 14 hereof, as the case may be, promptly upon such return by the Government rather than at the end of the term of this Lease or any renewal thereof, but Lessee shall in all other respects comply with the provisions of said §11 or 14, as the case may be, with respect to such Unit. All payments received by the Owner-Trustee or the Lessee from the Government for the use of such Unit during the term of this Lease or any renewal thereof shall be paid

over to, or retained by, the Lessee provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing; and all payments received by the Owner-Trustee or the Lessee from the Government for the use of such Unit after the term of this Lease or any renewal thereof, shall be paid over to, or retained by, the Owner-Trustee.

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

The Lessee shall at all times while this Lease is in effect maintain or cause to be maintained with such insurers as may be acceptable to the Owner-Trustee and any assignee hereof, property, casualty and public liability insurance in respect of the Units at the time subject hereto, at least in amounts and against risks customarily insured against by railroad companies on similar equipment owned by them and in amounts and against risks customarily insured against by the Lessee on similar equipment owned by it (except in each case as otherwise agreed to by the Owner-Trustee).

All insurance policies maintained pursuant to this Lease shall: (i) name the Owner-Trustee, as owner of the Equipment, the Owner, the Vendor and any assignee thereof as additional insureds with respect to the Equipment and shall insure the Owner-Trustee's, the Owner's and such assignee's interests, regardless of any breach or violation by the Lessee of any warranties, declarations or conditions contained in such policies; (ii) provide that all insurance proceeds with respect to the Equipment shall be adjusted by the Lessee so long as no Event of Default shall have occurred and be continuing; (iii) provide that any losses with respect to the Equipment shall be payable notwithstanding any act, failure to act or negligence of any named insured or any other person; (iv) provide that any losses shall be payable notwithstanding the use of the Equipment for purposes more hazardous than permitted by the terms of the policy; (v) provide that any losses shall be payable notwithstanding any foreclosure or other proceeding or notice of sale relating to the Equipment or this Lease or the Security Document; (vi) provide that any losses shall be payable notwithstanding any

change in the title or ownership of the Equipment; and (vii) provide that no cancelation thereof shall be effective until at least 30 days after the giving of notice by the insurer thereunder to the Owner-Trustee, the Owner, any assignee thereof and the Lessee. Any insurance maintained by the Lessee pursuant to this §7 may be evidenced by blanket insurance policies covering the Equipment and other property or assets of the Lessee.

Upon the execution of this Lease, and thereafter not less than 15 days prior to the expiration dates of the expiring policies theretofore delivered pursuant to this §7, the Lessee shall deliver to the Owner-Trustee duplicate originals of all policies (or in the case of blanket policies, certificates thereof issued by the insurers thereunder) for the insurance maintained pursuant to this §7; *provided, however*, that if the delivery of a formal policy or certificate, as the case may be, is delayed, the Lessee shall deliver an executed binder with respect thereto and shall deliver the formal policy or certificate, as the case may be, upon receipt thereof.

There shall be no apportionment of premiums in respect of insurance maintained pursuant to this §7 at the expiration or any termination of this Lease; and the Lessee may cancel any such policies as of such expiration or termination and obtain any premium refunds incident thereto. Provided that no Event of Default shall have occurred and be continuing, the Lessee shall be entitled to any premium refund or dividend received by the Owner-Trustee or the Lessee on account of any insurance maintained by the Lessee pursuant to this §7.

In the event that the Lessee shall fail to maintain insurance as herein provided, the Owner-Trustee may at its option provide such insurance (giving the Lessee prompt written notice thereof) and, in such event, the Lessee shall, upon demand from time to time, reimburse the Owner-Trustee for the cost thereof together with interest, on the amount of the cost to the Lessor of such insurance which the Lessee shall have failed to maintain, at the rate per annum specified in §17 hereof.

Any insurance proceeds received and retained by the Owner-Trustee or the Vendor as the result of insurance carried by the Lessee, or condemnation payments received and retained by the Owner-Trustee in

respect of Units suffering a Casualty Occurrence, shall be deducted from the amounts payable by the Lessee to the Owner-Trustee in respect of Casualty Occurrences pursuant to this §7, and, in the case of such insurance proceeds, any amount received by the Owner-Trustee or the Vendor which exceeds the Casualty Value in respect of such Casualty Occurrences shall be paid to the Lessee. If the Owner-Trustee shall receive any insurance proceeds or condemnation payments after the Lessee shall have made payments pursuant to this §7 without deduction for such insurance proceeds or such condemnation payments, the Owner-Trustee shall pay to the Lessee all such proceeds and condemnation payments up to an amount equal to the Casualty Value with respect to a Unit paid by the Lessee and any balance of such proceeds and condemnation payments shall remain the property of the Owner-Trustee. All insurance proceeds received by the Owner-Trustee in respect of any Unit not suffering a Casualty Occurance shall be paid to the Lessee upon proof satisfactory to the Owner-Trustee that any damage to such Unit in respect of which such proceeds were paid has been fully repaired.

§8. *Reports.* On or before April 1 in each year, commencing with the calendar year 1977, the Lessee will furnish to the Owner-Trustee, the Owner and the Vendor an accurate statement (a) setting forth as at the preceding December 31 the amount, description and numbers of all Units then leased hereunder and covered by the Security Document, the amount, description and numbers of all Units that have suffered a Casualty Occurrence or to the knowledge of the Lessee are then undergoing repairs (other than running repairs) or are then withdrawn from use pending repairs (other than running repairs) and such other information regarding the condition and state of repair of the Units as the Owner-Trustee or the Vendor may reasonably request and (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and the markings required by §5 hereof and the Security Document have been preserved or replaced. The Owner-Trustee 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 Owner-Trustee may request during the continuance of this Lease.

§9. *Disclaimer of Warranties; Compliance with Laws and Rules; Maintenance; Indemnification.* NEITHER THE OWNER-TRUSTEE

NOR THE OWNER MAKES, HAS MADE OR SHALL BE DEEMED TO MAKE OR HAVE MADE ANY 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 NEITHER THE OWNER-TRUSTEE NOR THE OWNER MAKES ANY WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE NOR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, NOR 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 OWNER-TRUSTEE AND THE LESSEE, ARE TO BE BORNE BY THE LESSEE; but the Owner-Trustee 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 Owner-Trustee and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Owner-Trustee may have against the Builder, including, but not limited to, any claims and rights arising under the provisions of Items 3 and 4 of Annex A to the Security Document. The Owner-Trustee and the Owner 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 circumstance 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 Owner-Trustee 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 Owner-Trustee or the Vendor based on any of the foregoing matters.

The Lessee agrees, for the benefit of the Owner-Trustee, the Owner 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 United States 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 fully conform therewith at its own expense; *provided, however,* that the Lessee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Owner-Trustee or the Vendor, adversely affect the property of rights of the Owner-Trustee or the Vendor under this Lease or under the Security Document.

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

Any and all additions to any Unit and any and all parts installed on or replacements made to any Unit (other than any special devices, racks or assemblies at any time attached or affixed to any such Unit, the cost or purchase price 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 United States Department of Transportation or any other legislative, executive, administrative or judicial body exercising any power or jurisdiction of such Unit) shall be considered accessions to such Unit and, without cost or expense to the Owner-Trustee or the Vendor, there shall immediately be vested in the Owner-Trustee and the Vendor the same interests in such accessions as the interests of the Owner-Trustee and the Vendor in such Unit. The Lessee may make alterations or modifications to any Unit so long as they do not affect the value of such

Unit materially and adversely. The Lessee shall not permit any special device, rack 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, rack or assembly is to be considered an accession to such Unit.

The Lessee shall pay, and shall protect, indemnify and hold the Owner-Trustee, the Owner, the Vendor and any assignee thereof, and their respective successors, assigns, agents and servants (hereinafter called Indemnified Persons), harmless from and against any and all causes of action, suits, penalties, claims, demands or judgments, of any nature whatsoever which may be imposed on, incurred by or asserted against any Indemnified Person (including any or all liabilities, obligations, damages, costs, disbursements, expenses [including without limitation attorneys' fees and expenses of any Indemnified Person] relating thereto) in any way relating to or arising, or alleged to arise out of this Lease or the Units, including without limitation those in any way relating to or arising or alleged to arise out of (i) the manufacture, construction, purchase, acceptance, rejection, ownership, delivery, non-delivery, lease, possession, use, operation, condition, sale, return or other disposition of any Unit or portion thereof, (ii) any latent and other defects whether or not discoverable by the Owner-Trustee or the Lessee, (iii) any claim for patent, trademark or copyright infringement, (iv) any claims based on strict liability in tort, (v) any injury to or the death of any person or any damage to or loss of property on or near the Units or in any manner growing out of or concerned with, or alleged to grow out of or be connected with, the ownership, use, replacement, adaptation or maintenance of the Units or of any other equipment in connection with the Units (whether owned or under the control of the Owner-Trustee, the Lessee or any other person) or resulting or alleged to result from the condition of any thereof; (vi) any violation, or alleged violation, of any provision of this Lease (except by the Owner-Trustee) or of any agreement, law, rule, regulation, ordinance or restriction, affecting or applicable to the Units or the leasing, ownership, use, replacement, adaptation or maintenance thereof; or (vii) any claim arising out of any of the Owner-Trustee's obligations under the Lease Assignment, the Security Document or the Participation Agreement, except to the extent such claim arises from an act or omission of the Owner-Trustee. The Lessee shall be obligated under this §9, irre-

spective of whether any Indemnified Person shall also be indemnified with respect to the same matter under any other agreement by any other person, and the Indemnified Person seeking to enforce the indemnification may proceed directly against the Lessee under this §9 without first resorting to any such other rights of indemnification. In case any action, suit or proceeding is brought against any Indemnified Person in connection with any claim indemnified against hereunder, the Lessee may and, upon such Indemnified Person's request, will at the Lessee's expense resist and defend such action, suit or proceeding, or cause the same to be resisted or defended by counsel selected by the Lessee and approved by such Indemnified Person, as the case may be, and, in the event of any failure by the Lessee to do so, the Lessee shall pay all costs and expenses (including without limitation attorneys' fees and expenses) incurred by such Indemnified Person in connection with such action, suit or proceeding. In the event the Lessee is required to make any payment under this §9, the Lessee shall pay such Indemnified Person an amount which, after deduction of all taxes required to be paid by such Indemnified Person in respect of the receipt thereof under the laws of the United States or of any political subdivision thereof (after giving credit for any savings in respect of any such taxes by reason of deductions, credits or allowances in respect of the payment of the expense indemnified against, and of any other such taxes as determined in the sole discretion of the Indemnified Person), shall be equal to the amount of such payment. The Lessee and the Owner-Trustee each agrees to give each other promptly upon obtaining knowledge thereof written notice of any claim or liability hereby indemnified against. Upon the payment in full of any indemnities as contained in this §9 by the Lessee, and provided that no Event of Default (or other event which with lapse of time or notice or both would constitute an Event of Default) shall have occurred and be continuing, it shall be subrogated to any right of such Indemnified Person in respect of the matter against which indemnity has been given. Any payments received by such Indemnified Person from any person (except the Lessee or the Guarantor) as a result of any matter with respect to which such Indemnified Person has been indemnified by the Lessee pursuant to this §9 shall be paid over to the Lessee to the extent necessary to reimburse the Lessee for indemnification payments previously made.

The Lessee further agrees to indemnify, protect and hold harmless the Vendor and the Builder as third party beneficiaries hereof from

and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendor because of the use in or about the construction or operation of any of the Equipment of any article or material specified by the Lessee and not manufactured by the Builder or of any design, system, process, formula or combination specified by the Lessee and not developed or purported to be developed by the Builder which infringes or is claimed to infringe on any patent or other right. The Lessee will give notice to the Builder of any claim known to the Lessee from which liability may be charged against the Builder hereunder.

In the event that there are any losses, liabilities or expenses arising out of or resulting from the Investments made pursuant to Paragraph 1 of the Finance Agreement, including, but not limited to, any deficiency in respect thereof, the rentals thereafter payable by the Lessee in respect of Units settled for after such loss, liabilities, expenses or deficiency arose shall be increased by such amount as shall, in the reasonable opinion of the Owner, cause the Owner's net return (computed on the same assumptions as were utilized by the Owner in originally evaluating this transaction) to equal the net return that would have been realized by the Owner if such loss, liability or expense had not occurred.

The indemnities contained in this §9 shall survive the expiration or termination of this Lease with respect to all events, facts, conditions or other circumstances occurring or existing prior to such expiration or termination and are expressly made for the benefit of, and shall be enforceable by, any Indemnified Person. None of the Indemnities in this §9 shall be deemed to create any rights of subrogation in any insurer or third party against the Lessee therefor, from or under any Indemnified Person, whether because of any claim paid or defense provided for the benefit thereof or otherwise.

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

of the ownership by the Owner-Trustee or the Vendor of the Units or the leasing thereof to the Lessee.

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

A. payment of any part of the rental provided in §3 hereof (as such rentals may be increased pursuant to §9 hereof) or payment in respect of any Casualty Occurrence pursuant to §7 hereof shall not be made by or on behalf of the Lessee, and such failure to make payment shall continue for five business days after such payment is due; or

B. default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein or in the Security Document, the Participation Agreement or the Consent, or of the Guarantor contained in the Security Document, and such default shall continue for 20 days after written notice from the Owner-Trustee or the Vendor to the Lessee and the Guarantor specifying the default and demanding that the same be remedied; or

C. a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may be hereafter amended, shall be filed by or against the Guarantor 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 Guarantor under the Security Document and the Guaranty 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

D. any other proceedings shall be commenced by or against the Guarantor or the Lessee for any relief which includes, or might result in, any modification of the obligations of the Lessee hereunder or of the Guarantor under the Security Document or the Guaranty under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extension (other than a law which

does not permit any readjustments of the obligations of the Lessee hereunder or of the Guarantor under the Security Document or the Guaranty), 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 of the Guarantor under the Security Document and the Guaranty, as the case may be, 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 Guarantor or the Lessee or for the property of the Guarantor or the Lessee in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such a trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

E. an event of default set forth in Article 16 of the Security Document shall have occurred and be continuing;

then, in any such case, the Owner-Trustee, at its option, may,

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

(b) by notice in writing to the Lessee and the Guarantor terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided; and thereupon the Owner-Trustee may by its agents enter upon the premises of the Lessee or other premises, in so far as the Lessee may be lawfully authorized to so permit, where any of the Units may be located, without judicial process if this can be done without breach of the peace and in accordance with due process of law, 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 Owner-Trustee 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 have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of

days in such full rental period) and also to recover forthwith from the Lessee (i) as damages for loss of the bargain and not as a penalty, a sum, with respect to each Unit, which represents the excess of (x) the present value, at the time of such termination, of the entire unpaid balance of all rental for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over (y) the then present value of the rentals which the Owner-Trustee 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% per annum discount, compounded semiannually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, and (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.

The remedies in this Lease provided in favor of the Owner-Trustee shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is permitted by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make rental payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

The failure of the Owner-Trustee 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.

The Lessee also agrees to furnish the Owner-Trustee, the Owner, the Guarantor and the Vendor, promptly upon any responsible officer's becoming aware of any condition which constitutes an Event of Default under the Lease or which, after notice or lapse of time or both, would constitute such an Event of Default, written notice specifying such condition and the nature and status thereof. For the purposes of this Section, a "responsible officer" shall mean, with respect to the subject

matter of any covenant, agreement or obligation of the Lessee in this Lease contained, any corporate officer of the Lessee who in the normal performance of his operational responsibilities would have knowledge of such matter and the requirements of this Lease with respect thereto.

The Owner-Trustee shall forbear exercising its remedies hereunder arising out of an Event of Default pursuant to subparagraph B (other than an Event of Default caused by a default in the payment of any monetary obligation due under this Lease), or D (other than an Event of Default caused by a proceeding commenced by or against the Guarantor as specified in said subparagraph D) of the first paragraph of this §10 if, and so long as, the following conditions shall have been fully complied with:

I. Within 15 days of such Event of Default the Guarantor shall have certified to the Owner-Trustee and the Vendor that (i) the Guarantor is not then in default on any obligation for the payment of principal and interest on indebtedness and (ii) the Guarantor will directly assume all of the obligations of the Lessee hereunder (except the obligations of the Lessee in respect of insurance set forth in the last five paragraphs of §7 hereof) and under the Consent (hereinafter in this §10 called the Old Consent), by entering into a new lease (hereinafter called the New Lease) of the Units in substantially the form of this Lease (except, as aforesaid) and a new Lessee's Consent and Agreement (hereinafter called the New Consent) in respect of the New Lease and the assignment thereof to the Vendor in substantially the form of the Old Consent.

II. Within 60 days after such Event of Default (i) the Guarantor and the Owner-Trustee shall have executed and delivered the New Lease, (ii) the Owner-Trustee shall have executed and delivered to the Vendor an assignment of the New Lease in substantially the form of Annex D to the Security Document, (iii) the Guarantor shall have executed and delivered to the Vendor the New Consent, (iv) the Guarantor shall have delivered to the Owner-Trustee and the Vendor an opinion of counsel to the effect that the New Lease and the New Consent have been duly authorized, executed and delivered by the Guarantor and constitute valid, legal and binding obligations of the Guarantor, together with such other documents and copies of corporate proceedings in connection therewith as the Owner-Trustee or the Vendor may reasonably request, (v) the New Lease and the assignment thereof to the Vendor shall have been filed and recorded in accordance with the provisions of §15 hereof, and (vi) the Guarantor shall have tendered to the Owner-Trustee and

to the Vendor all amounts of rentals and other amounts then due and payable under the Lease and the Old Consent.

The Owner-Trustee agrees to execute and deliver the New Lease within 15 days after tender thereof to it by the Guarantor, provided it complies with the provisions of the foregoing paragraph and is otherwise in form and substance satisfactory to it. The Lessee agrees that upon execution and delivery of the New Lease by the Owner-Trustee and the Guarantor, the Lessee's leasehold interest in and to the Units shall automatically terminate and the Lessee will promptly deliver possession of the Units to the Guarantor and will convey, transfer or assign to the Guarantor all the Lessee's right, title and interest in any subleases, car contracts or other agreements with respect to the Units and take any other action and execute any documents reasonably requested by the Guarantor or the Owner-Trustee; it being understood and agreed, however, that the Guarantor's obligations under the Security Document, the New Lease and the New Consent shall not be conditioned upon or affected in any way by the failure of the Lessee to comply with the provisions of this sentence.

§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 Owner-Trustee and shall give prompt telegraphic and written notice to the Association of American Railroads and all railroads having possession of any Unit so to return such Units. Each Unit returned to the Owner-Trustee pursuant to this §11 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear and modifications, if any, permitted by this Lease excepted, (ii) have attached or affixed thereto any special device, rack or assembly considered an accession thereto as provided in §9 hereof and have removed therefrom any special device, rack or assembly not so considered an accession thereto and (iii) meet the standards then in effect under the Interchange Rules of the Association of American Railroads, if applicable. For the purpose of delivering possession of any Unit or Units to the Owner-Trustee as above required, the Lessee shall at its own cost, expense and risk:

(a) forthwith and in the usual manner cause such Units to be transported to such location as shall reasonably be designated by the Owner-Trustee and there assembled,

(b) furnish and arrange for the Owner-Trustee to store such Units on any lines of railroad or premises approved by the Owner-Trustee until such Units have been sold, leased or otherwise disposed of by the Owner-Trustee, and

(c) cause the Units to be moved to such interchange point or points as shall be designated by the Owner-Trustee upon any sale, lease or other disposal of all or any of the Units.

The assembling, delivery, storage and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Owner-Trustee shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will permit the Owner-Trustee or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Unit, to inspect the same. In the event that the Units or any thereof are sold pursuant to the exercise of the Vendor's remedies under the Security Document, the Lessee shall pay to the Owner-Trustee 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 Owner-Trustee 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 Owner-Trustee, 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 Owner-Trustee without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Owner-Trustee other than the Vendor except upon written notice of such assignment from the Owner-Trustee. All the rights of the Owner-Trustee hereunder (including, but not limited to, the rights under §§6, 7 and 10 and the rights to receive the rentals pay-

able under this Lease) shall inure to the benefit of the Owner and the Owner's and the Owner-Trustee's assigns.

So long as no Event of Default or event of default exists hereunder or under the Security Document and the Lessee shall have fully complied with the provisions of this §12, the Lessee shall be entitled to the possession of the Units and also to sublease the Units to, or to permit their use under the terms of car contracts by, a sublessee or user incorporated in the United States of America (or any State thereof or the District of Columbia), upon lines of railroad owned or operated by a railroad company or companies incorporated in the United States of America (or any State thereof or the District of Columbia), or over which such railroad company or companies have trackage rights or rights for operation of their trains, and upon connecting and other carriers in the usual interchange of traffic in the continental United States, Canada and Mexico, but only upon and subject to all the terms and conditions of this Lease; *provided, however*, that if the Lessee subleases or permits the use of any Unit in Canada (or any Province or Territory thereof) or in Mexico (or any State or the Federal District thereof), the Lessee shall, except as otherwise provided in §15 hereof, first have (a) taken all necessary action to protect the right, title and interest of the Lessor and the Vendor in the Units to be so subleased or used and (b) furnished the Owner-Trustee and the Vendor with an opinion of Canadian or Mexican counsel, as the case may be, satisfactory to the Owner-Trustee and the Vendor to the effect that such action is all that is necessary to protect the right, title and interest of the Owner-Trustee and the Vendor in such Units; *provided, further*, that no Units shall be used predominantly outside the United States of America within the meaning of section 48(a) of the Internal Revenue Code of 1954, as amended to the date hereof, nor shall the Lessee sub-lease the Units to, or permit their use by, any person in whose hands such Units would not qualify as "section 38" property within the meaning of such Code.

Any such sublease may provide that the sublessee, so long as it shall not be in default under such sublease, shall be entitled to the possession of the Units included in such sublease and the use thereof; *provided, however*, that every such sublease shall be subject to the rights and

remedies of the Vendor under the Security Document and the Owner-Trustee under this Lease.

The Lessee, at its own expense, will as soon as possible cause to be duly discharged any lien, charge, security interest or other encumbrance (except any sublease or car contract as aforesaid and other than an encumbrance resulting from claims against the Owner-Trustee or the Vendor not related to the ownership or leasing of, or the security interest of the Vendor to, the Units) which may at any time be imposed on or with respect to any Unit including any accession thereto or the interest of the Owner-Trustee, the Vendor or the Lessee therein. The Lessee shall not, without the prior written consent of the Owner-Trustee, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provisions of this §12.

Nothing in this §12 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any corporation incorporated under the laws of any state of the United States of America or the District of Columbia (which shall have specifically assumed the obligations of the Lessee hereunder and under the Consent by an appropriate instrument in writing) 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 Options.* 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 Owner-Trustee not less than one year 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, the Units then covered by this Lease, for a five-year period commencing on the scheduled expiration of the original term of this Lease, at a rental payable in ten semiannual payments, payable on the semiannual anniversaries of the expiration of the original term, each in an amount equal to 50% of the amount of the final semiannual rental payable for such Units during the original term of the 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 Owner-Trustee not less than one year prior to the end of any extended term of this Lease, elect to extend the term of this Lease in respect of all but not fewer than all of the Units then covered by this Lease, for an additional period of not less than one year commencing on the scheduled expiration of any extended term of this Lease, at a "Fair Market Rental" payable in semiannual payments on the semiannual anniversaries of the expiration of the preceding extended term. Additional successive renewals may be made on the same terms and conditions as set forth in this paragraph.

Fair Market Rental shall be determined on the basis of, and shall be equal in amount to, the rental which would obtain in an arm's-length transaction between an informed and willing lessee (other than a lessee currently in possession) and an informed and willing lessor under no compulsion to lease and, in such determination, costs of removal from the location of current use shall not be a deduction from such rental. If, after 60 days from the giving of notice by the Lessee of the Lessee's election to extend the term of this Lease, the Owner-Trustee and the Lessee are unable to agree upon a determination of the Fair Market Rental of the Units, such rental shall be determined in accordance with the foregoing definition by the following procedure: If either party to such determination shall have given written notice to the other requesting determination of such value by this appraisal procedure, the parties shall consult for the purpose of appointing a qualified independent appraiser by mutual agreement. If no such appraiser is so appointed within 20 business days after such notice is given, each party shall appoint an independent appraiser within 25 business days after such notice is given, and the two appraisers so appointed shall within 35 business days after such notice is given appoint a third independent appraiser. If no such third appraiser is appointed within 35 business days after such notice is given, either party may apply, to make such appointment, to the American Arbitration Association, and both parties shall be bound by any appointment so made. Any appraiser or appraisers appointed pursuant to the foregoing procedure shall be instructed to determine the Fair Market Rental of the Units subject to the proposed extended term within 90 days after his or their appointment. If the parties shall have appointed a single appraiser or if either

party shall have failed to appoint an appraiser, the determination of Fair Market Rental of the single appraiser appointed shall be final. If three appraisers shall be appointed, the determination of the appraiser which differs most from the other two appraisers shall be excluded, the remaining two determinations shall be averaged and such latter average shall be final and binding upon the parties hereto as the Fair Market Rental. The appraisal proceedings shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association as in effect on the date hereof, except as modified hereby. The provision for this appraisal procedure shall be the exclusive means of determining Fair Market Rental and shall be in lieu of any judicial or other procedure for the determination thereof, and each party hereto hereby consents and agrees not to assert any judicial or other procedures. The expenses of the appraisal procedure shall be borne by the Lessee.

§14. *Return of Units upon Expiration of Term.* As soon as practicable on or after the termination of the original or any extended term of this Lease, and in any event not later than 90 days thereafter, the Lessee will, at its own cost and expense, at the request of the Owner-Trustee, cause each Unit to be transported to such point or points as shall be reasonably designated by the Owner-Trustee immediately prior to such termination and arrange for the Owner-Trustee to store such Unit on any lines of railroad or premises approved by the Owner-Trustee for a period not exceeding one year from the date such Unit is first placed in storage pursuant to this §14; the assembly, delivery, storage and transporting of such Unit to be at the expense and risk of the Lessee. During any such storage period the Lessee will permit the Owner-Trustee 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 or intentional act of the Lessee or of its employees or agents and, except to the extent otherwise provided by law, for any injury to or the death of any person exercising, either on behalf of the Owner-Trustee or any prospective purchaser, the rights of inspection granted under this sentence. The assembly, 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 Owner-

Trustee shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to cause the assembly, delivery, storage and transporting of the Units. Each Unit returned to the Owner-Trustee pursuant to this §14 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted, (ii) have attached or affixed thereto any special device, rack or assembly considered an accession thereto as provided in §9 hereof and have removed therefrom any special device, rack or assembly not so considered an accession thereto and (iii) meet the standards then in effect under the Interchange Rules of the Association of American Railroads, if applicable.

§15. *Recording.* The Lessee, at its own expense, will cause this Lease, the Security Document, the Lease Assignment, the Assignment and any assignment hereof or thereof to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act. The Lessee will undertake the filing, registering, deposit, and recording required of the Owner-Trustee under the Security Document and will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, re-register, deposit and redeposit or re-record whenever required) any and all further instruments required by law or reasonably requested by the Owner-Trustee or the Vendor for the purpose of proper protection, to their satisfaction, of the Vendor's and the Owner-Trustee's respective interests in the Units, or for the purpose of carrying out the intention of this Lease, the Security Document, the Assignment or the Lease Assignment; *provided, however,* that the Lessee shall not be required to take any such action in respect of any jurisdiction outside the United States if (1) the Lessee deems such action to be unduly burdensome, (2) after giving effect to the failure to take such action, the Lessee has taken all action required by law to protect the title of the Owner-Trustee and the Vendor to Units having a fair value of not less than 85% of the aggregate fair value of all the Units then subject to this Lease, and (3) any Unit at any time located in such jurisdiction shall have been marked with the markings specified in §5 hereof.

The Lessee will promptly furnish to the Vendor and the Owner-Trustee evidence 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 Owner-Trustee. This Lease and the Security Document shall be filed and recorded with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Unit.

§16. *Guarantor's Right to Acquire Lessee's Leasehold Interest.* In addition to the rights of the Guarantor under §10 hereof, if the Guarantor shall make any payments to the Owner, the Owner-Trustee or the Vendor on account of its guaranty under the Guaranty in order to prevent the occurrence of an Event of Default specified in subparagraph A or B of the first paragraph of §10 of the Lease, then upon the written request of the Guarantor the Lessee shall convey, transfer and assign to the Guarantor all the Lessee's right, title and interest in and to the Lease and the Units. Any such conveyance, transfer or assignment shall be in form reasonably satisfactory to the Guarantor, and shall be free of expense to the Guarantor.

In the event of such conveyance, transfer or assignment, the Guarantor shall assume the obligations of the Lessee hereunder in a manner satisfactory to the Owner-Trustee and the Vendor, and shall be entitled to all of the rights, titles, interests, powers and privileges of the Lessee hereunder. In furtherance thereof the Owner-Trustee will, upon written request of the Guarantor, enter into a New Lease (as defined in §10 hereof) with the Guarantor; *provided, however,* that such New Lease complies with the provisions of the penultimate paragraph of §10 hereof and is otherwise in form and substance satisfactory to the Owner-Trustee, and *provided, further,* that the Guarantor shall have concurrently executed and delivered an assignment of the New Lease and a New Consent and furnished opinions of counsel and other documents in connection therewith, all as contemplated by clause II of the penultimate paragraph of §10 hereof. In such event the provisions of the last sentence of the last paragraph of §10 hereof shall be applicable.

Any payment by the Guarantor in respect of its guaranty under the Guaranty or under the Security Document shall not be regarded as consideration for the conveyance, transfer or assignment or the right thereto hereinabove set forth, but the Guarantor shall be entitled to recover from the Lessee the amount of any such payments made prior to such conveyance or assignment, together with expenses connected with such conveyance or assignment.

§17. *Owner-Trustee's Right To Perform for the Lessee.* If the Lessee fails to perform or comply with any of its agreements contained herein, the Owner-Trustee may upon notice to the Lessee itself perform or comply with such agreement, and the amount of the reasonable cost and expenses of the Owner-Trustee incurred in connection with such performance or compliance, together with interest on such amount at the rate per annum which Manufacturers Hanover Trust Company, New York, New York, charges for unsecured 90-day loans to large corporate borrowers at the time in effect, shall be payable by the Lessee upon demand.

§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 interest at 10% per annum on 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. *Notices.* Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when delivered to such other party or deposited in the United States mails, first-class postage prepaid, addressed as follows:

if to the Owner-Trustee, at 130 John Street, New York, New York 10038, attention of Corporate Trust and Agency Division, with copies to the Owner, at P. O. Box 8300, Stamford, Connecticut 06904, attention of Manager—Operations, Leasing and Industrial Loans and attention of Loan Officer—Rail;

if to the Lessee, at 300 South Wacker Drive, Chicago, Illinois 60606;

if to the Guarantor, at One Market Street, San Francisco, California 94105, attention of Vice President and Treasurer;

or addressed to any party at such other address as such party shall hereafter furnish to the other parties in writing. Any certificate, document or report required to be furnished by any party hereto to the other parties shall be delivered to the address set forth above for such party. Any notice to the Lessee or the Guarantor regarding the Lessee's failure to perform any obligation hereunder shall also be furnished to the Owner-Trustee.

§20. *Owner-Trustee Acting as Trustee.* The representations, undertakings and agreements herein made on the part of the Owner-Trustee are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement.

Whenever the term Owner-Trustee is used in this Lease it shall apply and refer to the Owner-Trustee and the Owner and any assignee of the Owner-Trustee.

§21. *No Recourse.* No recourse shall be had in respect of any obligation due under this Lease, or referred to herein, against any incorporator, stockholder, director or officer, as such, past, present or future, of the Owner-Trustee or the Lessee, or against the Owner or any other beneficiary of a trust for which the Owner-Trustee is acting as trustee, whether by virtue of any constitutional provision, statute or rule of law or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of incorporators, stockholders, directors, officers, as such, or beneficiaries being forever released as a condition of and as consideration for the execution of this Lease.

§22. *Severability; Effect and Modification of Lease; Third Party Beneficiaries.* 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 Owner-Trustee and the Lessee with respect to the leasing of the Units and supersedes all other agreements, oral or written, with respect thereto, except the Participation Agreement. 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 Owner-Trustee and the Lessee.

Nothing in this Lease shall be deemed to create any right in any person not a party hereto (other than the Guarantor, the Owner, the

Vendor and the permitted successors and assigns of a party) and this instrument shall not be construed in any respect to be a contract in whole or in part for the benefit of any third party except as aforesaid.

§23. *Other Obligations.* In the event that any of the covenants of the Owner-Trustee under the first paragraph of Article 7, the second, fifth and seventh paragraphs of Article 17, and under Articles 6, 9, 10, 11, 13, 14 and 19 of the Security Document (without reference to any limitation of liability contained in Article 22 or the last paragraph of Article 4 of the Security Document) are not complied with through the performance by the Lessee of its obligations specifically provided for in this Lease, the Lessee shall, as additional obligations under this Lease, take all such action as may be necessary to enable compliance to be made with such covenants under the Security Document.

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

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

AMERICAN RAIL BOX CAR COMPANY,

by.....
Vice President-Finance and Treasurer

[CORPORATE SEAL]

Attest:

.....
Assistant Secretary

UNITED STATES TRUST COMPANY OF NEW YORK, as trustee,

by.....
Assistant Vice President

[CORPORATE SEAL]

Attest:

.....
Assistant Secretary

STATE OF ILLINOIS, }
COUNTY OF COOK, } ss.:

On this day of December, 1975, before me personally appeared N. V. Reichert, to me personally known, who, being by me duly sworn, says that he is Vice President—Finance and Treasurer of American Rail Box Car Company, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

.....
Notary Public

[Notarial Seal]

My Commission expires

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } ss.:

On this day of December, 1975, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is an Assistant Vice President of UNITED STATES TRUST COMPANY OF NEW YORK, 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 By-laws, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

.....
Notary Public

[Notarial Seal]

SCHEDULE A

Type	AAR Mechanical Designation	Quantity	Lessee's Identifying Numbers (All Sets Inclusive)
50′ 6″, 70-ton capacity, general service box car	XM	1,000	RBOX 12894-13261 16700-16917 18806-19219

SCHEDULE B

Date	Percentage
March 1, 1976	101.07%
September 1, 1976	100.77
March 1, 1977	100.68
September 1, 1977	100.53
March 1, 1978	100.37
September 1, 1978	100.16
March 1, 1979	99.65
September 1, 1979	92.29
March 1, 1980	91.43
September 1, 1980	90.40
March 1, 1981	89.21
September 1, 1981	81.20
March 1, 1982	79.71
September 1, 1982	78.08
March 1, 1983	76.32
September 1, 1983	65.65
March 1, 1984	63.45
September 1, 1984	61.72
March 1, 1985	58.65
September 1, 1985	56.06
March 1, 1986	53.34
September 1, 1986	50.50
March 1, 1987	47.55
September 1, 1987	44.48
March 1, 1988	41.30
September 1, 1988	38.02
March 1, 1989	34.63
September 1, 1989	31.14
March 1, 1990	27.54
September 1, 1990	23.83
March 1, 1991 and thereafter	20.00

Annex D
to Conditional Sale Agreement

ASSIGNMENT OF LEASE AND AGREEMENT dated as of December 1, 1975 (hereinafter called this Assignment), by and between United States Trust Company of New York, a New York corporation, as Trustee under a Trust Agreement dated as of the date hereof, with General Electric Credit Corporation (such Trustee, together with its successors and assigns, being hereinafter called the Owner-Trustee) and Mercantile-Safe Deposit and Trust Company, as agent (hereinafter called the Vendor).

WHEREAS the Owner-Trustee and Southern Pacific Transportation Company (hereinafter called the Guarantor) have entered into Conditional Sale Agreements dated as of the date hereof (such Conditional Sale Agreements hereinafter, together with amendments and supplements thereto, being collectively called the Security Document), with ACF Industries, Incorporated, FMC Corporation, and Whittaker Corporation (Berwick Forge and Fabricating Division), respectively (hereinafter individually called a Builder and collectively the Builders), providing for the sale to the Owner-Trustee of such units of railroad equipment (hereinafter called the Units) described in the Annexes thereto as are delivered to and accepted and settled for by the Owner-Trustee thereunder; and

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

WHEREAS in order to provide security for the obligations of the Owner-Trustee under the Security Document and as an inducement to the Vendor to invest in the Conditional Sale Indebtedness (as that term is defined in the Security Document), the Owner-Trustee agrees to assign for security purposes its rights in, to and under the Lease to the Vendor;

NOW, THEREFORE, in consideration of the payments to be made and the covenants hereinafter mentioned to be kept and performed, the parties hereto agree as follows:

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

The Vendor agrees to accept any payments made by the Lessee for the account of the Owner-Trustee pursuant to the Lease. To the extent received, the Vendor will apply such Payments to satisfy the obligations of the Owner-Trustee under the Security Document then due and payable, subject to the limitations contained in the last paragraph of Article 4 of the Security Document, and any balance shall be paid immediately to and retained by the Owner-Trustee. If the Vendor shall not receive any rental payment under the first paragraph of § 3 of the Lease payable to it as provided in the Consent attached hereto when due, the Vendor shall immediately notify the Owner-Trustee and the Guarantor by telegraphic communication at the address set forth in the Lease.

2. This Assignment is executed only as security for the obligations of the Owner-Trustee under the Security Document and, therefore,

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

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

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

(b) At the Owner-Trustee's sole cost and expense, the Owner-Trustee will appear in and defend every action or proceeding arising under, growing out of or in any manner connected with the obligations, duties or liabilities of the Owner-Trustee under the Lease.

(c) Should the Owner-Trustee fail to make any payment or to do any act which this Assignment requires the Owner-Trustee to make or do, then the Vendor, but without obligation so to do, after first making written demand upon the Owner-Trustee and affording the Owner-Trustee a reasonable period of time within which to make such payment or do such act, but without releasing the Owner-Trustee from any obligation hereunder, may make or do the same in such manner and to such extent as the Vendor may deem necessary to protect the security provided hereby, including specifically, without limiting its general powers, the right to appear in and defend any action or proceeding purporting to affect the security hereof and the rights or powers of the Vendor, and also the right to perform and discharge each and every obligation, covenant and agreement of the Owner-Trustee contained in the Lease; and in exercising any such powers, the Vendor may pay necessary costs and

expenses, employ counsel and incur and pay reasonable attorneys' fees, and the Owner-Trustee will reimburse the Vendor for such costs, expenses and fees.

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

5. Upon the full discharge and satisfaction of all the Owner-Trustee's obligations under the Security Document, this Assignment and all rights herein assigned to the Vendor shall terminate, and all estate, right, title and interest of the Vendor in and to the Lease shall revert to the Owner-Trustee.

6. The Owner-Trustee will, from time to time, do and perform any other act and will execute, acknowledge, deliver and file, register, deposit and record (and will refile, re-register, re-record or redeposit whenever required) any and all further instruments required by law or reasonably requested by the Vendor in order to confirm or further assure, the interests of the Vendor hereunder.

7. Pursuant to the provisions of the Finance Agreement relating to assignment to a successor agent thereunder or if a Declaration of Default under the Security Document has been made and is in effect, the Vendor may assign all or any of the rights assigned to it hereby or arising under the Lease, including, without limitation, the right to receive any Payments due or to become due. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Vendor hereunder. The Vendor will give written notice to the Owner-Trustee and the Lessee of any such assignment.

8. This Assignment shall be governed by the laws of the State of New York, but the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

9. The Owner-Trustee shall cause copies of all notices received in connection with the Lease and all payments hereunder to be promptly delivered or made to the Vendor at its address set forth in Article 21 of the Security Document, or at such other address as the Vendor shall designate.

10. The Vendor hereby agrees with the Owner-Trustee that, so long as no event of default under the Security Document has occurred and shall be continuing, the Vendor will not exercise or enforce, or seek to exercise or enforce, or avail itself of, any of the rights, powers, privileges, authorizations or benefits assigned and transferred by the Owner-Trustee to the Vendor by this Assignment, except the right to receive and apply the Payments as provided in Paragraph 1 hereof, and that, subject to the terms of the Lease and the Security Document, the Owner-Trustee may, so long as no event of default under the Security Document has occurred and shall be continuing, exercise or enforce, or seek to exercise or enforce, such rights, powers, privileges, authorizations or benefits; *provided, however*, that the Lessor may not terminate the Lease without the prior written consent of the Vendor.

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

UNITED STATES TRUST COMPANY OF NEW YORK, as Trustee,

by .....
Assistant Vice President

[CORPORATE SEAL]

Attest:

.....
Assistant Secretary

MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, as Agent,

by .....
Assistant Vice President

[CORPORATE SEAL]

Attest:

.....
Corporate Trust Officer

STATE OF NEW YORK,
COUNTY OF NEW YORK, } SS.:

On this day of December 1975, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is an Assistant Vice President of UNITED STATES TRUST COMPANY OF NEW YORK, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its By-laws and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

.....
Notary Public

[NOTARIAL SEAL]

STATE OF MARYLAND,
CITY OF BALTIMORE, } SS.:

On this day of December 1975, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is an Assistant Vice President of MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

.....
Notary Public

[NOTARIAL SEAL]

My Commission expires July 1, 1978

LESSEE'S CONSENT AND AGREEMENT

The undersigned, a corporation duly incorporated under the laws of the State of Delaware, the Lessee named in the Lease (hereinafter called the Lease) referred to in the foregoing Assignment of Lease and Agreement (hereinafter called the Assignment), hereby (a) acknowledges receipt of a copy of the Assignment and (b) consents to all the terms and conditions of the Assignment.

As an inducement to the investors (hereinafter called the Investors) to invest in the Conditional Sale Indebtedness, as that term is defined in the Security Document referred to and defined in the Assignment (a copy of which Security Document has been delivered to the undersigned) pursuant to which the United States Trust Company of New York, as trustee (hereinafter called the Owner-Trustee) is partially financing the purchase of the units of railroad equipment (hereinafter called the Units) being leased by the Owner-Trustee to the undersigned pursuant to the Lease, and in consideration of other good and valuable consideration, the undersigned:

(1) represents and warrants to Mercantile-Safe Deposit and Trust Company (hereinafter called the Vendor), acting as agent for the Investors, that the rentals and other obligations under the Lease have been calculated so as to provide for the due and punctual payment of the principal of, and interest on, the Conditional Sale Indebtedness and the due and punctual performance of all other obligations of the Owner-Trustee under the Security Document (except the obligations of the Owner-Trustee under subparagraph (a) of the third paragraph of Article 4 thereof) without reference to any limitation of liability contained in the last paragraph of Article 4 or Article 22 thereof;

(2) agrees, subject to the terms and conditions of the Assignment, to pay all rentals, casualty payments, liquidated damages, indemnities and other moneys (other than the rental payment, if any, payable to the Builder within five business days of a Closing Date) provided for in the Lease (which moneys are hereinafter called the Payments) due and to become due under the Lease in respect of the Units leased thereunder, directly to the Vendor to be applied as provided in the Security Document, at P. O. Box 2258, Two Hopkins Plaza, Baltimore, Maryland 21203, attention of Corporate Trust

Department (or to such other address as may be furnished in writing to the undersigned by the Vendor); it being hereby agreed that the undersigned's obligation to pay all the aforesaid Payments is absolute and unconditional;

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

(4) agrees that the Payments shall not be subject to any right of setoff or counterclaim or other defense which the undersigned might have against the Owner-Trustee or otherwise, and the payment thereof to the Vendor shall be final and shall not be subject to, and the undersigned hereby agrees to indemnify the Vendor against, any liens, charges or claims of any nature whatsoever (other than liens, charges or claims created or incurred by the Vendor not arising out of the transactions contemplated by the Security Document, the Lease or the Assignment) resulting from a breach by the undersigned of its obligations under the Lease prior to or *pari passu* with the right of the Vendor to apply such Payments, as provided in the Assignment;

(5) agrees that any rights acquired by the undersigned, by subrogation or otherwise, against the Owner-Trustee under the Security Document or with respect to any of the Units by reason of any payment made by the undersigned pursuant hereto may not be exercised until the Vendor has been paid all sums payable to it under the Security Document;

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

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

(8) will (i) execute, deliver and/or furnish all notices, certificates, communications, instruments, agreements, legal opinions and other documents and papers required to be executed, delivered and/

or furnished by it (or its counsel) pursuant to the provisions of the Security Document and (ii) do all such acts and execute and deliver all such further assurances required to be done and/or executed and delivered by it pursuant to the provisions of any thereof.

This Agreement may be executed in several counterparts, each of which when so executed shall be deemed an original, and such counter parts together shall constitute one and the same instrument.

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

Dated as of December 1, 1975

AMERICAN RAIL BOX CAR COMPANY,

by .....
Vice President—Finance and Treasurer

[CORPORATE SEAL]

Attest:

.....
Assistant Secretary

Accepted:

MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, as Agent,

by .....
Assistant Vice President

[CORPORATE SEAL]

Attest:

.....
Corporate Trust Officer

STATE OF ILLINOIS,
COUNTY OF COOK, } SS.:

On this day of December 1975, before me personally appeared N. V. Reichert, to me personally known, who, being by me duly sworn, says that he is Vice President—Finance and Treasurer of AMERICAN RAIL BOX CAR COMPANY, that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

.....
Notary Public

[NOTARIAL SEAL]

My Commission expires