8254
RECORDATION NO. ..... Filed & Recorded
MAR 30 1976 -4 05 PM
INTERSTATE COMMERCE COMMISSION

CONDITIONAL SALE AGREEMENT

Dated as of March 15, 1976,

AMONG

PULLMAN INCORPORATED (Pullman Standard Division),

AMERICAN RAIL BOX CAR COMPANY

AND

UNION PACIFIC RAILROAD COMPANY

CONDITIONAL SALE AGREEMENT dated as of March 15, 1976, among PULLMAN INCORPORATED (Pullman Standard Division), a Delaware corporation (hereinafter called the Vendor or Builder as more particularly set forth in Article 1 hereof), AMERICAN RAIL BOX CAR COMPANY, a Delaware corporation (hereinafter called the Vendee), and UNION PACIFIC RAILROAD COMPANY, a Utah corporation (hereinafter called the Guarantor).

WHEREAS the Builder agrees to construct, sell and deliver to the Vendee, and the Vendee 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 Vendee and the Guarantor are entering into another Conditional Sale Agreement dated as of the date hereof (hereinafter called the Other Agreement) with PACCAR Inc;

WHEREAS the Guarantor may, under the circumstances provided in Article 17 hereof, lease the Equipment from the Vendee pursuant to a lease in substantially the form annexed hereto as Annex C (hereinafter called the Lease and the Guarantor, in the capacity as lessee, being hereinafter called the Lessee);

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 Vendee 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 Vendee 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 agent 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 the event the Lease is executed and delivered, the Vendee will assign to the Vendor, as security for the payment and performance of all the Vendee's obligations hereunder, all right, title and interest of the Vendee 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 as its plant set forth in

Annex B hereto, and will sell and deliver to the Vendee, and the Vendee 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 and the Vendee (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 Vendee 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 Vendee), 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 has 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 control, 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 December 31, 1976, shall be excluded herefrom and the Vendee 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 Vendee 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 Vendee 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 Vendee 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 Vendee 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 Vendee 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.

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 Vendee and the Guarantor. The term "Purchase Price" as used herein shall mean the base price or prices as so increased or decreased.

The Equipment shall be settled for in not more than four groups of units of Equipment delivered to and accepted by the Vendee. 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 Vendee by ten days' written notice (such notice specifying the aggregate Purchase Price of such group) with the concurrence of the Assignee and the Builder, but in no event shall such date be later than December 31, 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 Vendee 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 20% of the aggregate Purchase Price of the units of Equipment in such Group plus (ii) the amount, if any, by which (x) 80% of the Purchase Price of all units of the Equipment covered by this Agreement and the Other Agreement 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 Agreement; and

(b) in 15 consecutive substantially equal annual 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 third paragraph of this Article 4 (herein called the Conditional Sale Indebtedness) shall be payable on each July 1, commencing July 1, 1977, to and including July 1, 1991 (or if any such date is not a business day, on the next succeeding business day). The unpaid balance of the Conditional Sale Indebtedness shall bear interest from the Closing Date in respect of which such indebtedness was incurred at the rate of 8½% per annum. Such interest shall be payable, to the extent accrued, on each January 1 and July 1 commencing July 1, 1976, to and including July 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.

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

The Vendee will pay interest, to the extent legally enforceable, at the rate of 9½% 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 Vendee shall not have the privilege of prepaying any portion of the Conditional Sale Indebtedness prior to the date it becomes due.

ARTICLE 5. *Security Interest in the Equipment.* The Vendor shall and hereby does retain a security interest in and to the Equipment until the Vendee shall have made all its payments under this Agreement and shall have kept and performed all its agreements herein contained, notwithstanding the delivery of the Equipment to and the possession and use thereof by the Vendee. 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 Vendee'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 Vendee, *ipso facto* without further transfer or action on the part of the Vendor. However, the Vendor, if so requested by the Vendee 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 Vendee, 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 Vendee 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 Vendee to the Equipment. In addition, at that time, the Vendor will pay to the Vendee any money paid to the Vendor pursuant to Article 7 hereof and not theretofore applied as therein provided. The Vendee 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 Vendee.

ARTICLE 6. *Taxes.* Whether or not any of the transactions contemplated hereby are consummated, the Vendee 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 Vendee, the Vendor, the Lessee 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 sub-

division 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; and (ii) any Taxes imposed on or measured by any fees or compensation received by the Vendor.

If claim is made against the Vendor for any Taxes indemnified against under this Article 6, the Vendor shall promptly notify the Vendee. If reasonably requested by the Vendee in writing, 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 Vendee 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 Vendee 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 Vendee in connection with any such contest or an amount representing interest thereon, the Vendor shall pay the Vendee 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 Vendee under this Article 6 or arising out of this Article 6, the Vendee 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 Vendee.

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

ARTICLE 7. *Maintenance; Casualty Occurrences; Insurance.* The Vendee 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 Vendee or 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 Vendee shall promptly (after it has knowledge of such Casualty Occurrence) and fully inform the Vendor in regard thereto. When the aggregate Casualty Value (as defined herein and in the Other Agreement) of all units having suffered a Casualty Occurrence (exclusive of units having suffered a Casualty Occurrence with respect to which a payment shall have been made to the Vendor pursuant to this Article 7) hereunder shall exceed $250,000 (or such lesser amount as the Vendee or the Lessee may elect), the Vendee, within 30 days after it has knowledge of such event, shall promptly pay to the Vendor a sum equal to the aggregate Casualty Value of such units of the Equipment as of the date of such payment and shall file with the Vendor a certificate of an officer of the Vendee setting forth the Casualty Value of each unit of the Equipment suffering a Casualty Occurrence. In the event of the requisition for use by the United States Government of any unit of Equipment, all of the Vendee's obligations hereunder with respect to such unit shall continue to the same extent as if such requisition had not occurred.

Any money paid to the Vendor pursuant to the preceding paragraph of this Article 7 shall, as the Vendee may direct in a written instru-

ment filed with the Vendor, be applied (so long as no event of default shall have occurred and be continuing), in whole or in part, to prepay instalments of Conditional Sale Indebtedness or toward the cost of a unit or units of standard-gauge railroad rolling stock (other than passenger or work equipment of types other than locomotives) first put into service no earlier than the date of this Agreement, to replace units suffering a Casualty Occurrence. If such replacement equipment shall be equipment theretofore used in service, the Vendee shall deliver to the Vendor a certificate of an officer of the Vendee that the cost of such equipment does not exceed the fair value thereof. In case any money is applied to prepay indebtedness, it shall be so applied, on the instalment date for the payment of Conditional Sale Indebtedness next following receipt by the Vendor of such written direction, to reduce instalments thereafter falling due in the inverse order of maturity thereof without premium.

The Casualty Value of each unit of the Equipment (other than a replacement unit) shall be deemed to be that amount which bears the same ratio to the original Purchase Price thereof (less, in the event that the Vendee shall have made any payment or payments under the provisions of subparagraph (a) of the third paragraph of Article 4 hereof, an amount which bears the same ratio to the aggregate of all such payments as the original Purchase Price of such unit bears to the original aggregate Purchase Price of all the Equipment) as the unpaid Conditional Sale Indebtedness (without giving effect to any prepayments then or theretofore made pursuant to this Article 7) as of the date payment is made with respect to such Casualty Occurrence bears to the original Conditional Sale Indebtedness. The Casualty Value of each replacement unit shall be deemed to be that amount which bears the same ratio to the portion of the cost thereof paid by the Vendor as the unpaid Conditional Sale Indebtedness (without giving effect to any prepayments then or theretofore made pursuant to this Article 7) as of the date payment is made with respect to such Casualty Occurrence bears to the unpaid Conditional Sale Indebtedness (without giving effect to any such prepayments) as of the date of acquisition by the Vendor of such replacement unit.

The Vendee will cause any replacement unit or units to be marked as provided in Article 10 hereof. Any and all such replacements of Equip-

ment shall constitute accessions to the Equipment and shall be subject to all appropriate terms and conditions of this Agreement as though part of the original Equipment delivered hereunder and shall be included in the term "Equipment" as used in this Agreement. Title to all such replacement units shall be free and clear of all liens and encumbrances except the liens permitted by the second paragraph of Article 13 hereof and shall be taken initially and shall remain in the name of the Vendor subject to the provisions hereof, and the Vendee shall execute, acknowledge, deliver, file, record or deposit all such documents and do any and all such acts as may be necessary to cause such replacement units to come under and be subject to this Agreement. All such replacement units shall be guaranteed and warranted in like manner as is customary at the time for similar equipment. Whenever the Vendee shall file with the Vendor a written direction to apply amounts toward the cost of any replacement unit or units, the Vendee shall file therewith executed counterparts of an opinion of counsel covering the matters set forth in this paragraph.

So long as no event of default shall have occurred and be continuing, any money paid to the Vendor pursuant to this Article 7 shall, if the Vendee shall in writing so direct, be invested, pending its application as hereinabove provided, in such (i) direct obligations of the United States of America or obligations for which the faith of the United States is pledged to provide for the payment of principal and interest or (ii) certificates of deposit of domestic commercial banks in the United States of America having a capital and surplus aggregating at least $100,000,000 or total assets in excess of $1,000,000,000, in each case maturing in not more than one year from the date of such investment (such investments being hereinafter called Investments), as may be specified in such written direction. Any such obligations may be held to maturity or may, from time to time, be sold; the proceeds thereof may be reinvested in such Investments as the Vendee may in writing direct. Any interest received by the Vendor on any Investments shall be held by the Vendor and applied as hereinafter provided. Upon any sale or the maturity of any Investments, the proceeds thereof, plus any interest received by the Vendor thereon, up to the cost (including accrued interest) thereof, shall be held by the Vendor for application pursuant to this Article 7, and any excess shall be paid to the Vendee. If such proceeds (plus such interest) shall be less than such cost, the Vendee

will promptly pay to the Vendor an amount equal to such deficiency. The Vendee will pay all expenses incurred by the Vendor in connection with the purchase and sale of Investments.

If one or more events of default shall have occurred and be continuing, all money held by the Vendor pursuant to this Article 7 (including, for this purpose, Investments) shall be applied by the Vendor as if such money were money received upon the sale of Equipment pursuant to Article 17 hereof.

In order to facilitate the sale or other disposition of any Equipment suffering a Casualty Occurrence, the Vendor shall, upon request of the Vendee, after payment by the Vendee of a sum equal to the Casualty Value of such Equipment, execute and deliver to the Vendee or the Vendee's vendee, assignee or nominee, a bill of sale (without warranties) for such Equipment, and such other documents as may be required to release such Equipment from the terms and scope of this Agreement, in such form as may be reasonably requested by the Vendee.

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 Vendee to the Vendor in respect of Casualty Occurrences pursuant to 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 Vendee 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 Vendee under this Article 7), the Vendor shall promptly pay such insurance proceeds or condemnation payments to the Vendee; *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 Vendee 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, for value received, hereby unconditionally guarantees to the Vendor that the Con-

ditional Sale Indebtedness and interest thereon will be duly and punctually paid when due and all other obligations of the Vendee hereunder and under the Finance Agreement will be duly and punctually performed (except for the obligations of the Vendee under subparagraph (a) of the third paragraph of Article 4 hereof), whether at stated maturity or by declaration or otherwise, irrespective of any enforcement against the Vendee 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 any other circumstances which might otherwise limit the recourse of the Vendor to the Vendee. 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 Vendee under this Agreement 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 Vendee shall 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 Vendee 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 Vendee'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 Vendee will cause each unit of the Equipment to be kept numbered with the identifying number of the Vendee 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 Agreement 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 Vendee 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 and such markings which may be removed, defaced, obliterated or destroyed. The Vendee 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 Vendee in all public offices where this Agreement shall have been filed, recorded and deposited.

Except as provided in the immediately preceding paragraph, the Vendee 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 Vendee or its affiliates.

ARTICLE 11. *Compliance with Laws and Rules.* During the term of this Agreement, the Vendee 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 legislative, 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 Vendee will conform therewith at no expense to the Vendor; *provided, however*, that the Vendee 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.

ARTICLE 12. *Possession and Use.* The Vendee, 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 Vendee, to the possession of the Equipment and the use thereof and also to sublease the Equipment to, or to permit its use under the terms of car contracts by, a lessee or user incorporated in the United States of America (or any State thereof or the District of

Columbia), in Mexico (or any State or the Federal District thereof) or in the Dominion of Canada (or any Province or Territory thereof), upon lines of railroad owned or operated by such lessee or user, or over which such lessee or user has trackage right or rights for operation of its trains, and upon connecting and other carriers in or between the United States, Mexico or Canada in the usual interchange of traffic, but only upon and subject to all the terms and conditions of this Agreement; *provided that*, if the Vendee leases or permits the use of the Equipment in Canada (or any Province or Territory thereof) or in Mexico (or any State or the Federal District thereof), the Vendee shall, except as otherwise provided in Article 19 hereof, first have (a) taken all necessary action to protect the right, title and interest of the Vendor in the Equipment to be so leased or used and (b) furnished the Vendor with an opinion of Canadian or Mexican counsel, as the case may be, satisfactory to the Vendor to the effect that such action is all that is necessary to protect the right, title and interest of the Vendor in such Equipment.

Any such lease may provide that the lessee, so long as it shall not be in default under such lease, shall be entitled to the possession of the Equipment included in such lease and the use thereof subject to the rights and remedies of the Vendor in respect of the Equipment covered by such sublease upon the occurrence of an event of default hereunder.

The Vendee may, in accordance with the provisions of Article 17 hereof, also 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.

ARTICLE 13. *Prohibition Against Liens.* The Vendee will pay or discharge any and all sums claimed by any party from, through or under the Vendee 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.

ARTICLE 14. *Indemnities and Warranties.* The Vendee 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 Vendee 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 Vendee, 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 Vendee 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 Vendee 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 Vendee 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 Vendee may and, upon such Indemnified Person's request will, at the Vendee's expense, resist and defend such action, suit or proceeding, or cause the same to be resisted or defended by counsel selected by the Vendee and approved by such Indemnified Person, and, in the event of any failure by the Vendee to do so, the Vendee 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 Vendee is required to make any payment under this Article 14, the Vendee 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 in respect 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 Vendee 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 Vendee, 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 Vendee to the extent necessary to reimburse the Vendee 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, an 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 Vendee therefor, from or under any Indemnified Person, whether because of any claim paid or defense provided for the benefit thereof or otherwise.

The Vendee 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.* The Vendee 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 is to a 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 Vendee hereunder by an appropriate instrument in writing approved by the

Vendor) into or with which the Vendee shall have become merged or consolidated or which shall have acquired the property of the Vendee 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 Agreement.

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 Vendee 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 Vendee 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 Vendee 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 Vendee and the Guarantor, respectively, of the notification of any such assignment, all payments thereafter to be made by the Vendee 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 Vendee 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 Vendee 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 Vendee 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 Vendee 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 Vendee 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 Vendee 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 Vendee shall fail to pay or cause to be paid in full any sum payable by the Vendee pursuant to the provisions of Articles 4 and 7 hereof 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 Vendee, 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, the Lease Assignment or the Consent, or any covenant, agreement, term or provision of the Finance 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 or the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Guarantor under this Agreement or the Lessee under the Lease, 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 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 Vendee, the Guarantor or the Lessee for any relief which includes, or might result in, any modification of the obligations of the Guarantor, the Vendee 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 Vendee 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 Vendee, 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 Vendee, 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 the Other Agreement; or

(f) after the execution and delivery of the Lease, an Event of Default shall have occurred and be continuing under the Lease or the Lease is terminated by the Vendee or the Lessee or by operation of law or otherwise;

then at any time after the occurrence of such an event of default the Vendor may, upon five days' written notice to the Vendee, 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, if it has been executed and delivered, immediately upon such notice to terminate (and the Vendee 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 of 9½% per annum, 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 Conditional Sale Indebtedness so payable, with interest as aforesaid, and to collect such judgment out of any property of the Vendee or the Guarantor wherever situated. The Vendee 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 Vendee, 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 Vendee 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 Vendee, the Lessee or any other person and for such purpose may enter upon the premises of the Vendee or 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 in accordance with due process of law, 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 Vendee, 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 Vendee shall, 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 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 Vendee or the Guarantor until the Vendor shall have leased, sold or otherwise disposed of the same, and for such purpose the Vendee and the Guarantor agree to furnish, without charge for rent or storage, the necessary facilities at any point or points selected by the Vendor reasonably convenient to the Vendee or the Guarantor, 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 requiring specific performance hereof. The Vendee 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 Vendee 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 Vendee's rights in the Equipment shall thereupon terminate and all payments made by the Vendee and the Guarantor

may be retained by the Vendor as compensation for the use of the Equipment; *provided, however*, that if the Vendee 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 Vendee; *provided, further*, that if the Vendee, 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 Vendee, 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 Vendee, the Guarantor, the Lessee or any other party claiming from, through or under the Vendee, 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 Vendee 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 Vendee. The proceeds of such sale or other disposition, less the attorneys' fees and any other expenses incurred by the Vendor in retaking pos-

session 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 Vendee.

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 Vendee or the Guarantor may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. The Vendee 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 Vendee 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 Vendee shall 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 Vendee or the Guarantor shall not otherwise alter or affect the Vendor's rights or the Vendee'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 Vendee'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 Vendee shall pay the amount of such deficiency to the Vendor upon demand, together with interest from the date of such demand to the date of payment at the rate of 9½% per annum, and, if the Vendee shall fail to pay such deficiency and interest, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Vendee. 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 Vendee or the Guarantor, as the case may be, to the extent of their respective interests therein. The Vendee 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 Vendor shall forbear exercising its rights to declare the unpaid Conditional Sale 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 the Other Agreement (other than an event of default caused by a default in the payment of any monetary obligation) 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 Guarantor or the Lessee specified in said subparagraph (d)), if, and so long as, the following conditions are fully complied with.

I. Within 15 days of such event of default the Guarantor shall have certified to 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 agrees to enter into a lease of the Equipment then subject to this Agreement with the Vendee in substantially the form of the Lease and a Lessee's consent and agreement in substantially the form of the Consent in respect of the Lease and the assignment thereof to the Vendor.

II. Within 60 days after such event of default (i) the Guarantor and the Vendee shall have executed and delivered the Lease, (ii) the Vendee shall have executed and delivered to the Vendor an assignment of the Lease in substantially the form of the Lease Assignment, (iii) the Guarantor shall have executed and delivered to the Vendor the Consent, (iv) the Guarantor shall have delivered to the Vendee and the Vendor an opinion of counsel to the effect that the Lease and Consent have been duly authorized, executed and delivered by the Guarantor and constitute valid, legal and binding obligations of the Guarantor and the Vendee shall have delivered to the Guarantor and the Vendor an opinion of counsel that the Lease and the Lease Assignment have been duly authorized, executed and delivered by the Vendee and constitute valid, legal and binding obligations of the Vendee, together in each case with such other documents and copies of corporate proceedings in connection therewith as the Vendor may reasonably request, and (v) the Lease and the Lease Assignment shall have been filed and recorded in accordance with the provisions of §15 of the Lease.

III. The Guarantor is not in default under any provision of the Lease.

The Vendee agrees to execute and deliver the Lease within 15 days after tender thereof to it by the Guarantor, provided it complies with the provisions of the foregoing paragraph. The Vendee agrees that upon execution and delivery of the Lease, the Vendee will promptly deliver possession of the Equipment to the Guarantor and will convey, transfer or assign to the Guarantor all the Vendee's right, title and interest in any subleases, car contracts or other agreements with respect to the Equipment and take any other action and execute any documents reasonably requested by the Guarantor; it being understood and agreed, however, that the Guarantor's obligations under Article 8 hereof, the

Lease and the Consent shall not be conditioned upon or affected in any way by the failure of the Vendee to comply with the provisions of this sentence.

In addition to the rights of the Guarantor as provided above, if the Guarantor shall make any payments to the Vendor in order to prevent the occurrence of an event of default specified in subparagraphs (a) or (b) of the first paragraph of Article 16 hereof, then upon the written request of the Guarantor the Vendee shall enter into a lease of the Equipment then subject to this Agreement with the Guarantor in substantially the form of the Lease and shall, concurrently therewith, execute and deliver to the Vendor the Lease Assignment; *provided, however*, that the Guarantor shall have concurrently executed and delivered to the Vendor the Consent and furnished opinions of counsel and other documents required of it, all as contemplated by clause II of the eighth paragraph of this Article 17. In such event the provisions of the last sentence of the ninth paragraph of this Article 17 shall be applicable. The Vendee also agrees to execute and deliver the opinion of counsel required of it, all as contemplated by clause II of the eighth paragraph of this Article 17. Any payment by the Guarantor in respect of its guaranty hereunder shall not be regarded as consideration for the lease of the Equipment to the Guarantor or the right thereto hereinabove set forth, but the Guarantor shall be entitled to recover from the Vendee (not by way of subrogation to any of the rights of the Vendor hereunder, but as an unsecured claim) the amount of any such payments made prior to the execution and delivery of the Lease, together with expenses connected therewith.

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 Vendee 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 Vendee 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.* The Vendee 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 Vendor for the purpose of proper protection, to its satisfaction, of the Vendor's security interest in the Equipment, or for the purpose of carrying out the intention of this Agreement, the Lease, the Assignment or the Lease Assignment; *provided, however,* that the Vendee shall not be required to take any such action in respect of any jurisdiction outside the United States if (1) the Vendee deems such action to be unduly burdensome, (2) after giving effect to the failure to take such action, the Vendee has taken all action required by law to protect the title of the Vendor to units of Equipment having a fair value of not less than 85% of the aggregate fair value of all such units then subject to this Agreement, and (3) any such unit at any time located in such jurisdiction shall have been marked with the markings specified in Article 10 hereof.

The Vendee will promptly furnish to the Vendor evidence of all such filing, registering, depositing or recording, and an opinion or opinions of counsel for the Vendee with respect thereto 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 Vendee 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 Vendee 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 Vendee, at 300 South Wacker Drive, Chicago, Illinois 60606, attention of Assistant Vice President, Financial Planning;

(b) to the Guarantor or the Lessee, at 345 Park Avenue, New York, New York 10022, attention of Vice President-Finance,

(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 Vendee, at such address as may have been furnished in writing to the Vendee, or the Vendor, as the case may be, and to the Guarantor, by such assignee,

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 Vendee, 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.

ARTICLE 23. *Representation and Warranty of Builder.* The Builder hereby represents and warrants to the Vendee, 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 Vendee 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 Illinois; *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.

PULLMAN INCORPORATED
(Pullman Standard Division),

by .....
Vice President-Freight Unit

[CORPORATE SEAL]

Attest:

.....
Assistant Secretary

AMERICAN RAIL BOX COMPANY,

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

[CORPORATE SEAL]

Attest:

.....
Assistant Secretary

UNION PACIFIC
RAILROAD COMPANY,

by .....
Vice President-Finance

[CORPORATE SEAL]

Attest:

.....
Secretary

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

On this 25th day of March, 1976, before me personally appeared Thomas P. Glaser, to me personally known, who, being by me duly sworn, says that he is a Vice President—Freight Unit of PULLMAN INCORPORATED (Pullman Standard Division), 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.

Hallie E. Funk
Notary Public

[NOTARIAL SEAL]

My Commission Expires May 7, 1978

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

On this 26TH day of March, 1976, 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 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.

Jo-Ann Frank
Notary Public

[NOTARIAL SEAL]

My Commission Expires

My Commission Expires June 26, 1978

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

On this 29th day of March, 1976, before me personally appeared W. F. Surette, to me personally known, who, being by me duly sworn, says that he is Vice President—Finance of UNION PACIFIC RAILROAD COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Elizabeth L. Vella
Notary Public

[NOTARIAL STAMP]

ELIZABETH L. VELLA
Notary Public, State of New York
No. 30-6451300
Qualified in Nassau County
Certificate Filed in N. Y. Co. Clk's Office
Commission Expires March 30, 1976

ANNEX A

TO

CONDITIONAL SALE AGREEMENT

ITEM 1: 200 South Michigan Avenue, Chicago, Illinois 60604.

ITEM 2: June 15, 1976 and such later date or dates as may be necessary in order to settle for units of Equipment not settled for on such date, but not later than December 31, 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 warrants the Equipment will be free from defects in material (except as to specialties incorporated therein which were specified or supplied by the Vendee and not manufactured by the Builder) and workmanship under normal use and service, the Builder's obligation under this Item 3 being limited to making good at its factory any part or parts of any unit of the Equipment which shall be returned to the Builder with transportation charges prepaid, within one year after the delivery of such unit to the Vendee, and which the Builder's examination shall disclose to its satisfaction to have been thus defective. **Except for the obligations and liabilities of the Builder under Articles 2, 3 and 4 of the Agreement and Item 4 of this Annex A, the foregoing warranty of the Builder is expressly in lieu of all other warranties, express or implied, including any implied warranty of merchantability or fitness for a particular purpose, and of all other obligations or liabilities,** and the Builder neither assumes nor authorizes any person to assume for it any other liability in connection with the construction and delivery of the Equipment except as aforesaid. It is further understood and agreed that in no event shall the Builder be liable for indirect or consequential damages of any kind.

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 Vendee of any of its rights under this Item 3.

ITEM 4: Except in cases of articles or materials specified by the Vendee and not manufactured by the Builder and in cases of designs, systems, processes, formulae or combinations specified by the Vendee and not developed or purported to be developed by the Builder, the Builder agrees to indemnify, protect and hold harmless the Vendee 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 Vendee, its 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. The Vendee 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 Vendee and not manufactured by the Builder or of any design, system, process, formula or combination specified by the Vendee 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 Vendee 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 Vendee 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 there-

of infringes or is claimed to infringe on any patent or other right. The Builder further agrees to execute and deliver to the Vendee or the users of the Equipment all and every such further assurance as may be reasonably requested by the Vendee to more fully effectuate the assignment and delivery of every such claim, right and cause of action. The Builder will give notice to the Vendee of any claim known to the Builder from which liability may be charged against the Vendee hereunder and the Vendee will give notice to the Builder of any claim known to the Vendee 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.

ANNEX B

TO

CONDITIONAL SALE AGREEMENT

(Pullman)

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 68-43-060744, issued 6/7/74, revised 6/19/74, and 11/26/74, as amended Pullman number 9831 latest revision	Bessemer, Alabama	249	RBOX 21351-21599	$25,400	$6,324,600	Prior to December 31, 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 , 19

BETWEEN

AMERICAN RAIL BOX CAR COMPANY

AND

UNION PACIFIC RAILROAD COMPANY

LEASE OF RAILROAD EQUIPMENT dated as of , 19 , between AMERICAN RAIL BOX CAR COMPANY, a Delaware corporation (hereinafter called the Lessor), and UNION PACIFIC RAILROAD COMPANY, a Utah corporation (hereinafter called the Lessee).

WHEREAS the Lessor and the Lessee heretofore entered into conditional sale agreements dated as of March 15, 1976 (hereinafter individually and collectively called the Security Document) with Pullman Incorporated (Pullman Standard Division) and PACCAR Inc, respectively, (hereinafter individually called a Builder and collectively the Builders) wherein the Builders manufactured, sold and delivered to the Lessor the units of railroad equipment described in Schedule A hereto (hereinafter called the Equipment); and

WHEREAS each Builder assigned 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 pursuant to the provisions of Article 17 of the Security Document the Lessee desires to lease all the units of the Equipment presently subject to the Security Document on the date of execution and delivery of this Lease (hereinafter called the Units), at the rentals and for the terms and upon the conditions hereinafter provided; and

WHEREAS the Lessor 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 Lessor 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 Lessor under this Lease or under the Security Document, including the Lessee's rights by subrogation thereunder to the Builder or the Vendor or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency of or any bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor or the Vendor for any reason whatsoever.

§2. *Possession of Units; Car Contracts.* The Lessor hereby appoints the Lessee its agent to demand possession of the Units from any user or users thereof and the Lessor agrees with the Lessee to take all necessary steps to deliver possession of the Units to the Lessee.

The Lessor hereby conveys, transfers and assigns to the Lessee all the Lessor's right, title and interest in any subleases, car contracts or other agreements with respect to the Units.

§3. *Rentals.* The Lessee agrees to pay to the Lessor, as rental for each Unit subject to this Lease, * consecutive semiannual payments payable on each date for the payment of interest and/or principal (each such date being hereinafter called a Rental Payment Date) on the Conditional Sale Indebtedness (as defined in the Security Document), commencing on 1, 19 , an amount equal to the interest and/or principal payable on such date. In addition, as additional rental hereunder, the Lessee shall pay to the Lessor on each such Rental Payment Date an amount equal to .161520% of the Purchase Price (as defined in the Security Document) for each Unit then subject to this Lease on the date of such payment; *provided, however,* that there shall be deducted from the first such payment an amount equal to .000897% of the Purchase Price of such Unit for each day elapsed from the January 1 or July 1, as the case may be, next preceding the date of execution and delivery of this Lease.

If any of the Rental Payment Dates is not a business day (as such term is defined in the Security Document) the 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.

The Lessor irrevocably instructs the Lessee to make all the payments provided for in this Lease to the Vendor, for the account of the Lessor, in care of the Vendor, with instructions to the Vendor (a) first to apply such payments to satisfy the obligations of the Lessor 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 the Lessee is not in default under Article 8 of the Security Document and no event of default shall have occurred and be continuing under subparagraphs (c) or (d) of Article 16 of the Security Document due to a petition or proceedings in respect of the Guarantor, to pay

* The same number of payments as there are interest payments remaining under the Security Document.

any balance promptly to the Lessor or to the order of the Lessor in immediately available funds at such place as the Lessor 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 execution and delivery of this Lease and 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 (other than an event of default in respect of which the Vendor is required to forbear exercising its remedies as provided in Article 17 of 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 Lessor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Lessor's and the Vendor's title to and property in such Unit and the rights of the Lessor under this Lease and of the Vendor under the Security Document. The Lessee

will replace promptly any such number and words which may be removed, defaced, obliterated or destroyed. The Lessee will not change the identifying number of any Unit unless and until (i) a statement of new number of numbers to be substituted therefor shall have been filed with the Vendor and the Lessor and filed, recorded and deposited by the Lessee in all public offices where this Lease and the Security Document shall have been filed, recorded and deposited and (ii) the Lessee shall have furnished the Vendor and the Lessor an opinion of counsel to the effect that such statement has been so filed, recorded and deposited, such filing, recordation and deposit will protect the Vendor's and the Lessor'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 Lessor 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 Lessor, 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 Lessor, the Vendor, the Lessee, 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 Security Document, the Assignments, the assignment hereof to the Vendor, or any payment made pursuant to any such 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) of any foreign country or subdivision thereof, imposed on or measured solely by the net income or excess profits of the Lessor (in its individual capacity) 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 Lessor or any transfer or disposition by the Lessor resulting from bankruptcy or other proceedings for the relief of creditors in which the Lessor 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 Lessor or the Vendor; and (iv) Taxes which are imposed on or measured solely by the net income of the Lessor 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 Lessor 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 Lessor or

the Vendor, as the case may be, 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 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 Lessor 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 Lessor or the Vendor in any such proceeding or action) without the prior written consent of the Lessor or the Vendor, as the case may be. If the Lessor 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 Lessor or the Vendor, as the case may be, 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 Lessor in the Units, or shall promptly notify the Lessor and the Vendor of such requirement and shall make such report or return in such manner as shall be satisfactory to the Lessor 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 Lessor 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 Lessor and the Vendor with respect thereto. When the aggregate Casualty Value (as defined in the Security Document) of all Units having suffered a Casualty Occurrence (exclusive of Units having suffered a Casualty Occurrence with respect to which a payment shall have been made to the Lessor pursuant to this §7) hereunder shall exceed $250,000 (or such lesser amount as the Lessee may elect), the Lessee, within 30 days after it has knowledge of such event, shall promptly pay to the Lessor whichever of the following is the greater amount: (a) an amount equal to the aggregate Casualty Value of such Units as of the date of such payment or (b) an amount equal to the "Depreciated Value" of such Units as of the date of payment of such amount to the Lessor, calculated in accordance with Association of American Railroads Interchange Rule Number 107, *provided, however*, that the rate of depreciation applied to such Units pursuant to such Rule Number 107 shall be 5¾% per annum (the greater of (a) and (b) being hereinafter called the Value). Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft or complete destruction of such Unit) the Lessor shall be entitled to recover possession of such Unit.

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 Value for such Unit (which shall be the amount determined pursuant to clause (b) of the immediately preceding paragraph as of the date of expiration of the original term of this Lease), 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 Value of any Unit during any extended term of this Lease shall be the amount determined pursuant to clause (b) of the immediately preceding paragraph as of the date of expiration of the original term of this Lease.

The Lessor 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 Value to the Lessor, the Lessee shall be entitled to the proceeds of such sale to the extent they do not exceed the Value of such Unit, and shall pay any excess to the Lessor.

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 Lessor 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 the 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 Lessor 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 Lessor 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 Lessor.

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 of such Unit to 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 Lessor 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 Lessor).

§8. *Reports.* On or before April 1 in each year, commencing with the calendar year following the execution and delivery of this Lease, the Lessee will furnish to the Lessor and the Vendor an accurate statement (a) setting forth as at the preceding December 31 the amount, description and numbers of all Units then leased hereunder and covered by the Security Document, the amount, description and numbers of all Units that have suffered a Casualty Occurrence or 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 Lessor or the Vendor may reasonably request and (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and the markings required by §5 hereof and the Security Document have been preserved or replaced. The Lessor shall have the right by its agents, to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Lessor may request during the continuance of this Lease.

§9. *Compliance with Laws and Rules; Maintenance; Indemnification.* The Lessee agrees, for the benefit of the Lessor and the Vendor, to comply in all respect (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 Vendor, adversely affect the property or rights of 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 over such Unit) shall be considered accessions to such Unit and, without cost or expense to the Lessor or the Vendor, there shall immediately be vested in the Lessor and the Vendor the same interests in such accessions as the interests of the Lessor 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 as accession to such Unit.

The Lessee shall pay, and shall protect, indemnify and hold the Vendor, the Lessor 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 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 Lessor or the Lessee, (iii) any claims based on strict liability in tort, (iv) 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 Lessor, the Lessee or any other person) or resulting or alleged to result from the condition of any thereof, (v) any violation or alleged violation, of any provision of this Lease (except by the Lessor) 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 (vi) any claim arising out of any of the Lessor's obligations under the Lease Assignment or the Security Document. The Lessee shall be obligated under this §9, 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 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 in respect 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 Lessor 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) 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 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.

§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 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, or the Consent, and such default shall continue for 20 days after written notice from the Lessor or the Vendor to the Lessee 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 Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee hereunder and under the Security Document shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees 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 Lessee for any relief which includes, or might result in, any modification of the obligations of the Lessee hereunder or under the Security Document under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of the Lessee hereunder or under the Security Document), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease and under the Security Document shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Lessee or for the property of the Lessee in connection with any such proceedings in such manner that such obli-

gations shall have the same status as obligations incurred by such a trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier;

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

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

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided; and thereupon the Lessor may by its agents enter upon the premises of the Lessee or other premises, 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 Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee (i) as damages for loss of the bargain and not as a penalty, a sum, with respect to each Unit, which represents the excess of (x) the present value, at the time of such termination, of the entire unpaid balance of all rental for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over (y) the then present value of the rentals which the Lessor reasonably estimates to be obtainable for the Unit during such period, such present value to be computed in each case on the basis of a 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 sus-

tained 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 Lessor shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any 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 Lessor to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

The Lessee also agrees to furnish the Lessor 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.

§11. *Return of Units Upon Default.* If this Lease shall terminate pursuant to §10 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor 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 Lessor 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 Lessor 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 Lessor and there assembled,

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

(c) cause the Units to be moved to such interchange point or points as shall be designated by the Lessor 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 Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Unit, to inspect the same. In the event that the Units or any thereof are sold pursuant to the exercise of the Vendor's remedies under the Security Document, the Lessee shall pay to the Lessor the per diem interchange for each such Unit which shall not have been assembled, delivered and stored, as hereinbefore provided, by the date of such sale for each day from the date of such sale to the date of delivery to the purchaser thereof.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this §11, the Lessee hereby irrevocably appoints

the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

§12. *Assignment; Possession and Use.* This Lease shall not be assignable by the Lessor, except to the Vendor, without the consent of the Lessee. The Vendor may assign this Lease in whole or in part.

So long as no Event of Default or event of default exists hereunder or under the Security Document (except for any event of default in respect of which the Vendor is required to forebear exercising its rights under Article 17 of the Security Document) and the Lessee shall have fully complied with the provisions of this §12, the Lessee shall be entitled to the possession and use 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 Lessor and the Vendor with an opinion of Canadian or Mexican counsel, as the case may be, satisfactory to the Lessor and the Vendor to the effect that such action is all that is necessary to protect the right, title and interest of the Lessor and the Vendor in such Units.

Any such sublease may provide that the sublessee, so long as it shall not be in default under such sublease, shall be entitled to the possession

of the Units included in such sublease and the use thereof; *provided, however*, that every such sublease shall be subject to the rights and remedies of the Vendor under the Security Document and the Lessor under this Lease.

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 Lessor 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 Lessor, the Vendor or the Lessee therein. The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provisions of this §12.

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

saries of the expiration of the original term, each in an amount equal to 2.32% of the Purchase Price of such Units.

Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may by written notice delivered to the Lessor not less than 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 Lessor 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 Lessor, cause each Unit to be transported to such point or points as shall be reasonably designated by the Lessor immediately prior to such termination and arrange for the Lessor to store such Unit on any lines of railroad or premises approved by the Lessor 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 Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser or lessee of such Unit, to inspect the same; *provided, however*, that the Lessee shall not be liable except in the case of negligence or international 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 Lessor or any prospective purchaser or lessee, 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 Lessor 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 Lessor pursuant to this §14 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear expected, (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 Lease 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 Lessor under the Security Document and will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, re-register, deposit and redeposit or re-record whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Vendor for the purpose of proper protection, to their satisfaction, of the Vendor's and the Lessor's respective interests in the Units, or for the purpose of carrying out the intention of this Lease, the Security Document, the Assignments 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 Lessor 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 Lessor 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 Lessor.

§16. *Lessor's Right To Perform for the Lessee.* If the Lessee fails to perform or comply with any of its agreements contained herein, the Lessor may upon notice to the Lessee itself perform or comply with such agreement, and the amount of the reasonable cost and expenses of the Lessor incurred in connection with such performance or compliance, together with interest on such amount between the date when any such costs and expenses are paid by the Lessor and the date when the Lessor is reimbursed for such costs and expenses, 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.

§17. *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 9½% 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.

§18. *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 Lessor, at 300 South Wacker Drive, Chicago, Illinois 60606;

if to the Lessee, at 345 Park Avenue, New York, New York 10022, attention of Vice President-Finance;

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.

§19. *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 Lessor or the Lessee, 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, being forever released as a condition of and as consideration for the execution of this Lease.

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

Nothing in this Lease shall be deemed to create any right in any person not a party hereto (other than 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.

§21. *Execution.* This Lease may be executed in several counterparts, such counterparts together constituting but one and the same instrument, but the counterpart delivered to the Vendor shall be deemed to be the original counterpart. Although for convenience this

Lease is dated as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

§22. *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

UNION PACIFIC RAILROAD COMPANY,

by .....
Vice President-Finance

[CORPORATE SEAL]

Attest:

.....
Secretary

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

On this day of , before me personally appeared , 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 , before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President-Finance of UNION PACIFIC RAILROAD COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

.....
Notary Public

[Notarial Seal]

Annex D

to Conditional Sale Agreement

ASSIGNMENT OF LEASE AND AGREEMENT dated as of (hereinafter called this Assignment), by and between AMERICAN RAIL BOX COMPANY, a Delaware corporation (hereinafter called the Lessor) and Mercantile-Safe Deposit and Trust Company, as agent (hereinafter called the Vendor).

WHEREAS the Lessor and Union Pacific Railroad Company (hereinafter called the Lessee) have entered into Conditional Sale Agreements dated as of March 15, 1976 (such Conditional Sale Agreements hereinafter, together with amendments and supplements thereto, being collectively called the Security Document), with Pullman Incorporated (Pullman Standard Division) and PACCAR Inc, (hereinafter individually called a Builder and collectively the Builders), respectively, providing for the sale to the Lessor of the units of railroad equipment (hereinafter called the Units) described in the Lease (as hereinafter defined); and

WHEREAS the Lessor and 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 Lessor to the Lessee of the Units; and

WHEREAS in order to provide additional security for the obligations of the Lessor under the Security Document, the Lessor agreed 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 Lessor hereby assigns, transfers and sets over unto the Vendor, as collateral security for the payment and performance of the Lessor's obligations under the Security Document, all the Lessor'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 Lessor 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 Lessor is or may become entitled to do under the Lease. In furtherance of the foregoing assignment, the Lessor hereby irrevocably authorizes and empowers the Vendor in its own name, or in the name of its nominee, or in the name of the Lessor or as its attorney, to ask, demand, sue for, collect and receive any and all Payments to which the Lessor 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 Lessor pursuant to the Lease. To the extent received, the Vendor will apply such Payments to satisfy the obligations of the Lessor under the Security Document then due and payable, and any balance shall, so long as the Lessee is not in default under Article 8 of the Security Document and no event of default shall have occurred and be continuing under subparagraphs (c) or (d) of Article 16 of the Security Document due to a petition or proceedings in respect of the Guarantor, be paid immediately to and retained by the Lessor.

2. This Assignment is executed only as security for the obligations of the Lessor 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 Lessor under the Lease, it being understood and agreed that notwithstanding this Assignment or any subsequent assignment, all obligations of the Lessor to the Lessee shall be and remain enforceable by the Lessee, its successors and assigns, against, and only against the Lessor or persons other than the Vendor.

3. To protect the security afforded by this Assignment, the Lessor agrees as follows:

(a) The Lessor will faithfully abide by, perform and discharge each and every obligation, covenant and agreement which the Lease provides are to be performed by the Lessor; without the written consent of the Vendor, the Lessor 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 Lessor 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 Lessor agrees that any such amendment, modification or termination thereof without such consent shall be void.

(b) At the Lessor's sole cost and expense, the Lessor 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 Lessor under the Lease.

(c) Should the Lessor fail to make any payment or to do any act which this Assignment requires the Lessor to make or do, then the Vendor, but without obligation so to do, after first making written demand upon the Lessor and affording the Lessor a reasonable period of time within which to make such payment or do such act, but without releasing the Lessor 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 Lessor 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 Lessor will reimburse the Vendor for such costs, expenses and fees.

4. Subject to the provisions of Paragraph 10 hereof, the Lessor does hereby constitute the Vendor the Lessor's true and lawful attorney, irrevocably, with full power (in the name of the Lessor, 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 Lessor is or may become entitled, to enforce com-

pliance 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 Lessor'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 Lessor.

6. The Lessor 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 Lessor 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 Lessor 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 Lessor that, so long as no event of default under the Security Document has occurred and shall be continuing (other than an event of default as to which the Vendor is required to forbear exercising its remedies under Article 17 of the Security Document), 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 Lessor 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 Lessor may, so long as no event of default under the Security Document has occurred and shall be continuing (other than as aforesaid), 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.

AMERICAN RAIL BOX COMPANY,

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

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

On this day of , 19 , before me personally appeared , to me personally known, who, being by me duly sworn, says that he is Vice President-Finance and Treasurer of AMERICAN RAIL BOX 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 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 , 19 , 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

LESSEE'S CONSENT AND AGREEMENT

The undersigned, a corporation duly incorporated under the laws of the State of Utah, 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 consents to all the terms and conditions of the Assignment and (b) in consideration of other good and valuable consideration, the undersigned:

(1) agrees, subject to the terms and conditions of the Assignment, to pay all rentals, casualty payments, liquidated damages, indemnities and other moneys provided for in the Lease (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 (as defined in the Lease), to be applied as provided in the Security Document (as defined in the Lease), 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;

(2) 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 Lessor;

(3) 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 Lessor 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;

(4) 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;

(5) will (i) execute, deliver and/or furnish all notices, certificates, communications, instruments, agreements, legal opinions and other documents and papers required to be executed, delivered and/or furnished by it (or its counsel) pursuant to the 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 counterparts 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

UNION PACIFIC RAILROAD COMPANY,

by.....
Vice President-Finance

[CORPORATE SEAL]

Attest:

.....
Secretary

Accepted:

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 , 19 , before me personally appeared , to me personally known, who, being by me duly sworn, says that he is Vice President-Finance of UNION PACIFIC RAILROAD 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]