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RECORDATION NO. _____ Filed & Recorded

AUG 26 1974 - 1 25 PM

INTERSTATE COMMERCE COMMISSION

LEASE OF RAILROAD EQUIPMENT

Dated as of February 1, 1974

between

THE WESTERN PACIFIC RAILROAD COMPANY

and

THIRD

GATX AIRCRAFT CORPORATION

ASSIGNMENT OF LEASE AND AGREEMENT

Dated as of February 1, 1974

between

THIRD

GATX AIRCRAFT CORPORATION

and

UNITED STATES TRUST COMPANY OF NEW YORK,
as Agent

LEASE OF RAILROAD EQUIPMENT dated as of February 1, 1974, between THE WESTERN PACIFIC RAILROAD COMPANY (hereinafter called the Lessee), and GATX AIRCRAFT CORPORATION (hereinafter called the Lessor).

THIRD

WHEREAS, the Lessee has entered into purchase agreements (hereinafter called the Purchase Agreements), with ACF INDUSTRIES, INCORPORATED, MIDWEST FREIGHT CAR COMPANY and PACCAR INC, respectively (hereinafter called the Builders), wherein the Builders have agreed to manufacture, sell and deliver to the Lessee the units of railroad equipment described in Schedule A hereto (hereinafter called the Equipment);

WHEREAS, the Lessor desires to purchase the Equipment and the Lessee agrees to assign its rights to purchase the Equipment to the Lessor;

WHEREAS, the Lessor and the Lessee are entering into conditional sale agreements dated as of the date hereof with the Builders, respectively and contemplate entering into amendments thereto or additional conditional sale agreements with other builders of railroad equipment (such agreements, amendments and additional agreements being hereinafter collectively called the Security Documents);

WHEREAS, the Builders are assigning their respective interests in the Security Documents to United States Trust Company of New York, as agent (hereinafter, together with its successors and assigns, being called the Vendor); and

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

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions;

§1. *Assignment of Right to Purchase.* The Lessee hereby assigns, transfers and sets over unto the Lessor, its successors and assigns:

(a) all the right, title and interest of the Lessee in and to the Equipment, except to the extent granted to the Lessee by this Lease; and

(b) all the right, title and interest of the Lessee in and to the Purchase Agreements, in so far as such documents relate to the Equipment.

The obligation of the Lessor to purchase and pay for the Equipment or any portion thereof is subject to certain conditions set forth in the Security Documents. In respect thereof, the Lessee covenants with the Lessor and the Builders and the Vendor as third party beneficiaries hereof, that, in the event of any non-payment by the Lessor in respect of any unit of the Equipment, the Lessee will be obligated to pay the full purchase price therefor when due, all in accordance with the terms of the Purchase Agreements.

Subject to the provisions of this Lease, the Lessor accepts the assignments herein contained, and assumes the obligations of the Lessee under the Purchase Agreements to purchase and pay for the Units, but no other duties or obligations of the Lessee thereunder; *provided, however,* that the Lessee shall remain liable to the Builder in respect of its duties and obligations in accordance with the Purchase Agreements.

The Lessee represents and warrants that (i) the Lessee is the lawful owner, free from all claims, liens, security interests and encumbrances, of its rights under the Purchase Agreements, (ii) the Lessee has the right to sell and assign the Purchase Agreements as set forth herein and (iii) the Lessee will warrant and defend this assignment against the lawful claims and demands of all persons.

§2. *Delivery and Acceptance of Units.* The Lessor will cause each Unit to be delivered to the Lessee at the point or points within the United States of America at which such Unit is delivered to the Lessor under the Security Documents. Upon such delivery, the Lessee will cause an inspector of the Lessee to inspect the same, and if such Unit is found to be acceptable, to accept delivery of such Unit and execute and deliver to the Lessor a certificate of acceptance (hereinafter called the Certificate of Acceptance) in accordance with the provisions of Article 3 of the Security Documents, whereupon such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease.

§ 3. *Rentals.* The Lessee agrees to pay to the Lessor, as rental for each Unit subject to this Lease, 31 consecutive semiannual payments payable on April 1 and October 1 in each year commencing October 1, 1974. The rental payment payable on October 1, 1974, shall be in an amount equal to the

sum of (i) .016527778% of the Purchase Price (as defined in the Security Documents) of each Unit then subject to this Lease for each day (computed on the basis of a 360-day year of twelve 30-day months) elapsed from the Closing Date (as defined in the Security Documents) for such Unit to and including the date of such payment plus (ii) 32% of such Purchase Price of each such unit multiplied by a rate per annum equal to 1¼% above the best commercial loan rate of Wells Fargo Bank National Association in effect from time to time to responsible and substantial corporate borrowers for the period from such Closing Date to and including the date of such payment. Any change in such rate resulting from a change in said commercial loan rate shall become effective on the first day of the month following the month in which such change in said commercial loan rate occurred. The next 30 semiannual rental payments shall each be in an amount equal to 4.1136% of the Purchase Price of each Unit then subject to this Lease.

The rental payments hereinbefore set forth are subject to adjustment pursuant to § 17 hereof. If any of the semiannual rental payment dates referred to above is not a business day the semiannual rental payment otherwise payable on such date shall be payable on the next preceding business day.

The Lessor irrevocably instructs the Lessee to make all the payments provided for in this Lease in immediately available funds at the principal office of the Vendor, for the account of the Lessor, in care of the Vendor, with instructions to the Vendor first to apply such payments to satisfy the obligations of the Lessor under the Security Documents known to the Vendor to be due and payable on the date such payments are due and payable hereunder and second, so long as no event of default under the Security Documents shall have occurred and be continuing, to pay any balance promptly to the Lessor at such place as the Lessor shall specify in writing. The Lessee agrees to make each payment provided for herein as contemplated by this paragraph in immediately available funds in the city where such payment is to be made.

This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent, reduction thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs due or alleged to be due by reason of any past, present or future claims of the Lessee against the Lessor under this Lease or under the Security Documents, including the Lessee's

rights by subrogation thereunder or the Builders 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 the bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever.

§ 4. *Term of Lease.* The term of this Lease as to each Unit shall begin on the date of delivery and acceptance of such Unit hereunder and, subject to the provisions of §§ 7, 10 and 13 hereof, shall terminate on the date on which the final payment of rent in respect thereof is due pursuant to §3 hereof.

Notwithstanding anything to the contrary contained herein, all rights and obligations under this Lease and in and to the Units, upon default by the Lessee hereunder, or under the Security Documents in its capacity as guarantor or otherwise, are subject to the rights of the Vendor under the Security Documents. If an event of default should occur under the Security Documents, the Vendor may terminate this Lease (or rescind its termination), all as provided therein, unless the Lessee is not so in default under this Lease or under the Security Documents.

§ 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" 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 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 Documents. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such name and words shall have been so marked on both sides thereof and will replace promptly any such name and words which may be removed, defaced or destroyed. The Lessee will not change the identifying number of any Unit unless and until a statement of new number or 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 Documents shall have been filed, recorded and deposited.

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

§ 6. *Taxes.* All payments to be made by the Lessee hereunder will be free of expense to the Lessor for collection or other charges and will be free of expense to the Lessor with respect to the amount of any local, state, federal, or foreign taxes (other than any United States federal income tax [and, to the extent that the Lessor receives credit therefor against its United States federal income tax liability, any foreign income tax] payable by the Lessor in consequence of the receipt of payments provided for herein and other than the aggregate of all state or city income taxes or franchise taxes measured by net income based on such receipts, or gross receipts taxes (other than gross receipts taxes in the nature of sales or use taxes), up to the

amount of any such taxes which would be payable to the state and city in which the Lessor has its principal place of business without apportionment to any other state, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided) or license fees, assessments, charges, fines or penalties (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called impositions) hereafter levied or imposed upon or in connection with or measured by this Lease or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof or the Security Documents, all of which impositions the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. The Lessee will also pay promptly all impositions which may be imposed upon any Unit or for the use or operation thereof or upon the earnings arising therefrom (except as provided above) or upon the Lessor solely by reason of its ownership thereof and will keep at all times all and every part of such Unit free and clear of all impositions which might in any way affect the title of the Lessor or result in a lien upon any such Unit; *provided, however,* that the Lessee shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Lessor, adversely affect the title, property or rights of the Lessor hereunder or the Vendor under the Security Documents. If any impositions shall have been charged or levied against the Lessor directly and paid by the Lessor, the Lessee shall reimburse the Lessor on presentation of an invoice therefor.

In the event that the Lessor shall become obligated to make any payment to the Builder or the Vendor or otherwise pursuant to any correlative provision of the Security Documents not covered by the foregoing paragraph of this §6, the Lessee shall pay such additional amounts (which shall also be deemed impositions hereunder) to the Lessor as will enable the Lessor to fulfill completely its obligations pursuant to said provision.

In the event any reports with respect to impositions are required to be made, the Lessee will either make such reports in such manner as to show the interests of the Lessor and the Vendor in such Units or notify the Lessor and the Vendor of such requirement and make such reports in such manner as shall be satisfactory to the Lessor and the Vendor.

In the event that, during the continuance of this Lease, the Lessee becomes liable for the payment or reimbursement of any imposition, pursuant to this §6, such liability shall continue, notwithstanding the expiration of this Lease, until all such impositions are paid or reimbursed by the Lessee.

§ 7. *Payment for Casualty Occurrences.* In the event that any Unit shall be or become worn out, lost, stolen, destroyed, or, in the opinion of the Lessor or the Lessee, irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (such occurrences being hereinafter called Casualty Occurrences) during the term of this Lease, the Lessee shall promptly and fully notify the Lessor and the Vendor with respect thereto. On the rental payment date next succeeding such notice the Lessee shall pay to the Lessor an amount equal to the rental payment or payments in respect of such Unit due and payable on such date plus a sum equal to the Casualty Value (as hereinafter defined) of such Unit as of the date of such payment in accordance with the schedule set out below. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft or complete destruction of such Unit) the Lessor shall be entitled to recover possession of such Unit. The Lessor hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof, at the best price obtainable on an "as is, where is" basis. Provided that the Lessee has previously paid the Casualty Value to the Lessor, the Lessee shall be entitled to the proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Lessor.

Subject to adjustment pursuant to the provisions of §17 hereof, the Casualty Value of each Unit as of the payment date on which payment is to be made as aforesaid shall be that percentage of the Purchase Price of such Unit as is set forth in the following schedule opposite such date:

Date	Percentage
October 1, 1974	101.6500%
April 1, 1975	101.0510
October 1, 1975	100.3331

Date	Percentage
April 1, 1976	99.4965
October 1, 1976	98.5410
April 1, 1977	97.4668
October 1, 1977	96.2738
April 1, 1978	90.2952
October 1, 1978	88.8646
April 1, 1979	87.3151
October 1, 1979	85.6469
April 1, 1980	79.1932
October 1, 1980	77.2873
April 1, 1981	75.2627
October 1, 1981	73.1192
April 1, 1982	66.1902
October 1, 1982	63.8092
April 1, 1983	61.3093
October 1, 1983	58.6906
April 1, 1984	55.9532
October 1, 1984	53.0969
April 1, 1985	50.1218
October 1, 1985	47.0279
April 1, 1986	43.8152
October 1, 1986	40.4838
April 1, 1987	37.0335
October 1, 1987	33.4644
April 1, 1988	29.7765
October 1, 1988	25.9698
April 1, 1989	22.0443
October 1, 1989 and thereafter	18.0000

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 the date of delivery and acceptance of such Unit hereunder.

§ 8. *Reports.* On or before August 1 in each year, commencing with the year 1975, the Lessee will furnish to the Lessor and the Vendor an accurate statement (a) setting forth as at the preceding June 30 the amount, description and numbers of all Units then leased hereunder and covered by the Security Documents, the amount, description and numbers of all Units that have suffered a Casualty Occurrence or are then undergoing repairs (other than running repairs) or have been withdrawn from use pending repairs (other than running repairs) during the preceding year 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 Documents 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. *Disclaimer of Warranties; Compliance with Laws and Rules; Maintenance; Indemnification.* **The Lessor makes no warranty or representation, either express or implied, as to the design or condition of, or as to the quality of the material, equipment or workmanship in, the Units delivered to the Lessee hereunder, and the Lessor makes no warranty of merchantability or fitness of the Units for any particular purpose or as to title to the Units or any component thereof,** it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee; but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for account of the Lessor and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Lessor may have against the Builder under the provisions of Article 14 of the Security Documents. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Lessor that the Units described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

The Lessee agrees, for the benefit of the Lessor and the Vendor, to comply in all respects (including, without limitation, with respect to the use,

maintenance and operation of each Unit) with all laws of the jurisdictions in which its operations involving the Units may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units, and in the event that such laws or rules require any alteration, replacement or addition of or to any part on any Unit, the Lessee will conform therewith at its own expense; *provided, however,* that the Lessee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Lessor or the Vendor, adversely affect the property or rights of the Lessor or the Vendor under this Lease or under the Security Documents.

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

Any and all additions to any Unit (except, in the case of any Unit which is a locomotive, communications, signal and automatic control equipment or devices having a similar use which have been added to such Unit by the Lessee, the cost of which is not included in the Purchase Price of such Unit and which are not required for the operation or use of such Unit by the Interstate Commerce Commission, the Department of Transportation or any other applicable regulatory body), and any and all parts installed on and additions and replacements made to any Unit shall constitute accessions to such Unit and, at the cost and expense of the Lessee, full ownership thereof free from any lien, charge, security interest or encumbrance (except for those created by the Security Documents) shall immediately be vested in the Lessor and the Vendor as their respective interests appear in the Unit itself.

The Lessee agrees to indemnify, protect and hold harmless the Lessor and the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including, but not limited to, counsel fees and expenses, patent liabilities, penalties and interest, arising out of or as the result of the entering into or the performance of the Security Documents or this Lease, the ownership of any Unit, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any Unit or any accident in connection with the operation, use, condition,

possession, storage or return of any Unit resulting in damage to property or injury or death to any person, except as otherwise provided in § 14 of this Lease. The indemnities arising under this paragraph shall continue in full force and effect notwithstanding the full payment of all obligations under this Lease or the termination of this Lease.

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

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

A. default shall be made in payment of any part of the rental provided in § 3 hereof, and such default shall continue for ten days;

B. the Lessee shall make or permit any unauthorized assignment or transfer of this Lease or of possession of the Units, or any thereof;

C. default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein or in the Security Documents, and such default shall continue for 30 days after written notice from the Lessor to the Lessee specifying the default and demanding that the same be remedied;

D. a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may hereafter be amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under the Security Documents and this Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the

same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier; or

E. any other proceedings shall be commenced by or against the Lessee for any relief which includes, or might result in, any modification of the obligations of the Lessee hereunder or under the Security Documents under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extension (other than a law which does not permit any readjustments of the obligations of the Lessee hereunder or under the Security Documents), 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 Documents shall not 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 obligations shall have the same status as obligations incurred by such a trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier;

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

(a) proceed by appropriate court action or actions either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof including net after tax losses of Federal, state and local income tax benefits to which the Lessor would otherwise be entitled under this Lease; or

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided; and thereupon the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Units may be and take

possession of all or any of such Units and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee (i) as damages for loss of the bargain and not as a penalty, a sum, with respect to each Unit, which represents the excess of (x) the present value, at the time of such termination, of the entire unpaid balance of all rental for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over (y) the then present value of the 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 a basis of a rate of 8¾% per annum, discount, compounded semiannually, from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, (ii) any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Lessor shall have sustained by reason of the breach of any covenant, representation or warranty of this Lease other than for the payment of rental, and (iii) an amount which, after deduction of all fees, taxes and other charges required to be paid by the Lessor in respect of all amounts payable by the Lessee to the Lessor hereunder under the laws of any Federal, state or local government or taxing authority in the United States or under the laws of any foreign country or any subdivision or taxing authority thereof, shall, in the reasonable opinion of the Lessor, cause the Lessor's net return under this Lease to be equal to the net return that would have been available to the Lessor if it had been entitled to utilization of all or such portion of the Investment Credit (as defined in § 17 hereof) lost, not claimed, not available for claim, disallowed or recaptured by or from the Lessor as a result of the breach of one or more of the representations, warranties and covenants made by the Lessee in § 17 or any other provision of this Lease or the sale or other disposition of the Lessor's interest in any Unit

after the occurrence of an Event of Default, plus such sum as shall, in the reasonable opinion of the Lessor, cause the Lessor's net return under this Lease to be equal to the net return that would have been available to the Lessor if it had been entitled to utilization of all or such portion of the ADR Deduction and the Interest Deduction (as such terms are defined in § 17 hereof) which was lost, not claimed, not available for claim or disallowed or recaptured in respect of a Unit as a result of the breach of one or more of the representations, warranties and covenants made by the Lessee in § 17 or any other provision of this Lease, the inaccuracy of any statement in any letter or document furnished to the Lessor by the Lessee, the termination of this Lease, the Lessee's loss of the right to use such Unit or the sale or other disposition of the Lessor's interest in such Unit after the occurrence of an Event of Default.

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 mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is 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.

§ 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. For the purpose of delivering possession of any Unit or Units to the Lessor as above required, the Lessee shall at its own cost, expense and risk:

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

(b) permit the Lessor to store such Units on such tracks at the risk of the Lessee until such Units have been sold, leased or otherwise disposed of by the Lessor; and

(c) transport the same to any place on the lines of railroad operated by the Lessee or any of its affiliates or to any connecting carrier for shipment, all as directed by the Lessor.

The assembling, delivery, storage 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.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this § 11, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

§ 12. *Assignment; Possession and Use.* This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. All the rights of the Lessor hereunder (including, but not limited to, the rights under §§ 6, 7, 10 and 17 and the rights to receive the rentals payable under this Lease) shall inure to the benefit of the Lessor's assigns (including the partners or any beneficiary of any such assignee if such assignee is a partnership or a trust, respectively).

So long as the Lessee shall not be in default under this Lease or under the Security Documents in its capacity as guarantor or otherwise, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease and the Security Documents, but, without the prior written consent of the Lessor, the Lessee shall not assign or transfer its leasehold interest under this Lease in the Units or any of them. The Lessee, at its own expense, will promptly pay or discharge any and all sums claimed by any party which, if unpaid, might become a lien, charge, security interest

or other encumbrance (other than an encumbrance created by the Lessor or the Vendor or resulting from claims against the Lessor or the Vendor not related to the ownership of the Units) upon or with respect to any Unit, including any accession thereto, or the interest of the Lessor, the Vendor or the Lessee therein, and will promptly discharge any such lien, claim, security interest or encumbrance which arises. The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provisions of the immediately succeeding paragraph.

So long as the Lessee shall not be in default under this Lease or under the Security Documents in its capacity as guarantor or otherwise, the Lessee shall be entitled to the possession of the Units and to the use of the Units by it or any affiliate upon lines of railroad owned or operated by it or any such affiliate or upon lines of railroad over which the Lessee or any such affiliate has trackage or other operating rights or over which railroad equipment of the Lessee or any such affiliate is regularly operated pursuant to contract, and also to permit the use of the Units upon connecting and other carriers in the usual interchange of traffic, but only upon and subject to all the terms and conditions of this Lease and the Security Documents; *provided, however,* that the Lessee shall not assign or permit the assignment of any Unit to service involving the regular operation and maintenance thereof outside the United States of America. The Lessee may receive and retain compensation for such use from other railroads so using any of the Units.

Nothing in this § 12 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any railroad corporation incorporated under the laws of any state of the United States of America or the District of Columbia (which shall have duly assumed the obligations of the Lessee hereunder and under the Security Documents) 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 or consolidation, be in default under any provision of this Lease.

§ 13. *Purchase and 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 six months prior to the end of the original term or any extended term of this Lease, as the case may be, (i) elect to extend the term of this Lease in respect of all but not fewer than all of such Units then covered by this Lease, for two additional five-year periods commencing on the scheduled expiration of the original term or any extended term of this Lease, as the case may be, provided that no such extended term extends beyond October 1, 1999, at a "Fair Market Rental" payable in semiannual payments on April 1 and October 1 in each year of such extended term or (ii) elect to purchase all, but not fewer than all, the Units then covered by this Lease for a purchase price equal to the "Fair Market Value" of such Units as of the end of the original or extended term of this Lease, as the case may be.

Fair Rental Value shall be determined on the basis of, and shall be equal in amount to, the value 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 value. If on or before four months prior to the expiration of the term of this Lease, the Lessor and the Lessee are unable to agree upon a determination of the Fair Rental Value of the Units, such value shall be determined in accordance with the foregoing definition by the American Appraisal Company or its successor (hereinafter called the Appraiser). The Appraiser shall be instructed to make such determination within a period of 30 days following appointment, and shall promptly communicate such determination in writing to the Lessor and the Lessee. The determination so made shall be conclusively binding upon both Lessor and Lessee. The expenses and fees of the Appraiser shall be borne by the Lessee.

Fair Market Value shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an arm's-length transaction between an informed and willing buyer-user (other than (i) a lessee currently in possession and (ii) a used equipment dealer) and an informed and willing seller under no compulsion to sell and, in such determination, costs of removal from the location of current use shall not be a deduction from such value. If on or before four months prior to the expiration of the term of this Lease, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Value of the Units, such

value shall be determined in accordance with the foregoing definition by the Appraiser. The Appraiser shall be instructed to make such determination within a period of 30 days following appointment, and shall promptly communicate such determination in writing to the Lessor and the Lessee. The determination so made shall be conclusively binding upon both Lessor and Lessee. The expenses and fee of the Appraiser shall be borne by the Lessee.

Upon payment of the purchase price, the Lessor shall upon request of the Lessee execute and deliver to the Lessee, or to the Lessee's assignee or nominee, a bill of sale (without representations or warranties except that such Units are free and clear of all claims, liens, security interests and other encumbrances by or in favor of any person claiming by, through or under the Lessor) for such Units, and such other documents as may be required to release such Units from the terms and scope of this Lease and to transfer title thereto to the Lessee or such assignee or nominee, in such form as may reasonably be requested by the Lessee, all at the Lessee's expense.

§ 14. *Return of Units upon Expiration of Term.* As soon as practicable on or after the expiration of the original or extended term of this Lease with respect to any Unit, the Lessee will, at its own cost and expense, at the request of the Lessor, deliver possession of such Unit to the Lessor upon such storage tracks of the Lessee as the Lessee may designate, or, in the absence of such designation, as the Lessor may select, and permit the Lessor to store such Unit on such tracks for a period not exceeding three months and transport the same, at any time within such three-month period, to any reasonable place on the lines of railroad operated by the Lessee, or to any connecting carrier for shipment, all as directed by the Lessor; the movement and storage of such 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 of such Unit, to inspect the same; *provided, however,* that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a

decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. If the Lessor shall elect to abandon any Unit which has suffered a Casualty Occurrence or which after the expiration of this Lease the Lessor shall have deemed to have suffered a Casualty Occurrence, it may deliver written notice to such effect to the Lessee and the Lessee shall thereupon assume and hold the Lessor harmless from all liability arising in respect of any responsibility of ownership thereof, from and after receipt of such notice. The Lessor shall execute and deliver to the Lessee a bill of sale or bills of sale transferring to the Lessee, or upon its order, the Lessor's title to and property in any Unit abandoned by it pursuant to the immediately preceding sentence. The Lessee shall have no liability to the Lessor in respect of any Unit abandoned by the Lessor after termination of the Lease; *provided, however,* that the foregoing clause shall not in any way relieve the Lessee of its obligations pursuant to § 7 hereof to make payments equal to the Casualty Value of any Unit experiencing a Casualty Occurrence while this Lease is in effect.

§ 15. *Representations and Warranties; Opinions of Counsel.* The Lessee represents and warrants that:

A. the Lessee is a corporation legally incorporated, validly existing and in good standing under the laws of the State of California with adequate corporate power to enter into the Security Documents and this Lease;

B. the Security Documents and this Lease have been duly authorized, executed and delivered by the Lessee and constitute valid, legal and binding agreements of the Lessee, enforceable in accordance with their respective terms except as the same may be limited by laws relating to bankruptcy, insolvency, or other similar laws affecting generally the rights of creditors;

C. the Security Documents (and any assignment thereof) and this Lease (and any assignment hereof) have been duly filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act and such filing and recordation will protect the Vendor's and the Lessor's interests in and to the Units and no filing, recording or deposit (or giving of notice) with any other federal, state or local government is necessary in order to protect the interests of the Vendor or the Lessor in and to the Units;

D. no approval is required from any public regulatory body with respect to the entering into or performance by the Lessee of the Security Document or this Lease;

E. the entering into and performance of the Security Documents or this Lease will not result in any breach of, or constitute a default under, any indenture, mortgage, deed of trust, bank loan or credit agreement or other agreement or instrument to which the Lessee is a party or by which it may be bound; and

F. no mortgage, deed of trust, or other lien of any nature whatsoever which now covers or affects, or which may hereafter cover or affect, any property or interests therein of the Lessee, now attaches or hereafter will attach to the Units or in any manner affects or will affect adversely the Vendor's or Lessor's right, title and interest therein; *provided, however,* that such liens may attach to the rights of the Lessee hereunder in and to the Units.

On each Closing Date the Lessee will deliver to the Lessor two counterparts of the written opinion of counsel for the Lessee, addressed to the Lessor and the Vendor, in scope and substance satisfactory to the Lessor, the Vendor and their respective counsel, to the effect set forth above.

§ 16. *Recording.* The Lessee, at the expense of the Lessee, will cause this Lease, the Security Documents 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 Documents 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 Documents or the assignment thereof to the Vendor; and the Lessee will promptly furnish to the Vendor and the Lessor evidences of all such filing, registering, depositing or recording, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the

Vendor and the Lessor. This Lease and the Security Documents shall be filed and recorded with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Unit.

§ 17. *Income Taxes.* It is the intent of the parties to this Lease that it will be a true lease for all Federal, state, city and local income taxes or for franchise taxes measured by net income, and that this Lease conveys to the Lessee no right, title or interest in the Units except as lessee and that, for United States income tax purposes (and to the extent allowable for state and local tax purposes), the Lessor or the affiliated group of corporations of which the Lessor is a member shall be entitled to such deductions, credits and other benefits as are provided by the Internal Revenue Code of 1954, as amended to the date hereof (hereinafter called the Code), to an owner of property used in such owner's trade or business, including, without limitation, an allowance for (i) the Investment Credit (as defined in the fourth paragraph of this § 17), (ii) the ADR Deduction (as defined in the fourth paragraph of this § 17) and (iii) the Interest Deduction (as defined in the fourth paragraph of this § 17).

The Lessee agrees that neither it nor any corporation controlled by it, in control of it, or under common control with it, directly or indirectly, will at any time take any action or file any returns or other documents inconsistent with the foregoing and that each of such corporations will file such returns, take such actions and execute such documents as may be reasonable and necessary to facilitate accomplishment of the intent hereof. Consistent with the foregoing, the Lessor will not make an election pursuant to section 48(d) of the Code.

Notwithstanding anything to the contrary contained in §12 hereof, the Lessee represents and warrants that (i) all the Units constitute property the full Purchase Price of which qualifies for the Investment Credit under section 50 of the Code; (ii) at the time the Lessor becomes the owner of the Units, the Units will constitute "new section 38 property" within the meaning of section 48(b) of the Code and at the time the Lessor becomes the owner of the Units, the Units will not have been used by any person so as to preclude "the original use of such property" within the meaning of sections 48(b) and 167(c)(2) of the Code from commencing with the Lessor; (iii) at all times during the term of this Lease, each Unit will constitute "section 38 property" within the meaning of section 48(a) of the Code, will not be used

predominantly outside the United States within the meaning of said section 48(a) (or any exception thereto) and will be used by railroad companies; (iv) the Lessee will maintain sufficient records to verify such use; and (v) upon request of the Lessor, the Lessee will provide written reports establishing such use.

If for any reason (other than for the reasons set forth below) the Lessor shall lose, or shall not have, or shall lose the right to claim, or shall suffer a disallowance of or shall be required to recapture (any such event being hereinafter called a Loss), (a) all or any portion of the 7% investment credit presently allowed by section 38 and related sections of the Code for "new section 38 property" with respect to the Purchase Price of each Unit or any adjustment of such Purchase Price (such investment credit being herein referred to as the Investment Credit), (b) in computing its Federal taxable income or its taxable income for purposes of computing its liability to all states, cities and/or other local authorities for any taxable year (or portion thereof) during which this Lease is in effect, all or any portion of the depreciation deductions with respect to the Purchase Price of each Unit, or any adjustment of such Purchase Price, based upon and computed (i) in accordance with the maximum depreciation deductions authorized under section 167 of the Code including, without limitation, section 167(m) thereof and the regulations thereunder for new tangible personal property used exclusively in the United States with an ADR depreciation life of twelve (12) years, and (ii) utilizing a salvage value of no greater than 5% of such Purchase Price, and in the case of state and local taxes, under the most accelerated method of depreciation allowed by any such state or local taxing authority on the date hereof (such depreciation deductions being herein referred to as the ADR Deduction), or (c) in computing its Federal taxable income or its taxable income for purposes of computing its liability to all states, cities and/or other local authorities for any taxable year (or portion thereof) during such time as the Conditional Sale Indebtedness (as defined in the Security Documents) is outstanding, all or any portion of the interest deductions with respect to amounts paid or accrued as interest (the term "interest" shall include all commitment fees and letter of credit fees but shall not include interest elected to be capitalized pursuant to section 266 of the Code or applicable state or local law) on the Conditional Sale Indebtedness (such interest deductions being herein referred to as the Interest Deduction), then the rentals for the Units set forth in §3 hereof shall, on the next succeeding rental payment date after written notice to the Lessee by the

Lessor of payment by the Lessor of the tax and interest and/or penalties attributable to such Loss, be increased to such amount or amounts as shall, in the reasonable opinion of the Lessor, after deduction of all fees, taxes and/or other charges required to be paid by the Lessor in respect of the receipt of all amounts payable by the Lessee to the Lessor under this §17 under the laws of any Federal, state, city or local government or taxing authority in the United States, or under the laws of any foreign country or any subdivision or taxing authority thereof (hereinafter called "fees, taxes and/or other charges") cause the Lessor's net return to equal the net return that would have been realized by the Lessor if the Lessor had been entitled to utilize all the Investment Credit, the ADR Deduction and the Interest Deduction, or if payment of the tax and interest and/or penalties attributable to such Loss is made after the final rental payment date hereunder, within 30 days after written notice by the Lessor to the Lessee of such payment by the Lessor, the Lessee shall pay to the Lessor such amount which, after the deduction of all fees, taxes and/or other charges, when added to the rental payments made pursuant to this Lease, will cause the Lessor's net return to equal the net return that would have been realized by the Lessor if the Lessor had been entitled to utilize all the Investment Credit or the ADR Deduction or the Interest Deduction, and, in addition to the foregoing, the Lessee shall forthwith pay to the Lessor the amount which, after the deduction of all fees, taxes and/or other charges, equals the amount of any interest and/or penalties (including any additions to tax because of underpayment of estimated tax) which may be assessed by the United States of America or any state or local taxing authority against the Lessor attributable to the loss of all of such portion of the Investment Credit or the ADR Deduction or the Interest Deduction; *provided, however,* that such rental rate shall not be so increased if the Lessor shall have lost, or shall not have, or shall have lost the right to claim, or shall have suffered a disallowance of, or shall have been required to recapture all or any portion of the Investment Credit or the ADR Deduction with respect to all or part of such Unit or the Interest Deduction solely as a direct result of the occurrence of any of the following events:

(i) a Casualty Occurrence with respect to such Unit, if the Lessee shall have paid to the Lessor the amounts stipulated under §7 hereof;

(ii) a transfer or other disposition by the Lessor (other than a Casualty Occurrence) of any interest in such Unit or the reduction by

the Lessor of its interest in the rentals from such Unit under the Lease, unless, in each case, an Event of Default shall have occurred and be continuing; *provided, however,* that the execution and delivery of this Lease and the other documents herein referred to and the carrying out of the transactions contemplated herein and therein in accordance with the terms hereof and thereof shall not be deemed to be a transfer or disposition under this clause (ii);

(iii) the failure of the Lessor to claim in a timely manner the Investment Credit, the ADR Deduction or the Interest Deduction; or

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

(v) the failure of the Lessor to take timely action in contesting a claim made by the Internal Revenue Service with respect to the disallowance of such Investment Credit or ADR Deduction or the Interest Deduction, if the failure to take such action in a timely manner shall have precluded the right of the Lessee to contest such claim, or a failure to take action to contest any such claim after a timely request to conduct such contest has been given by the Lessee to the Lessor pursuant and subject to the sixth paragraph of this §17, or the release, waiver, compromise or settlement of any action or proceeding taken in accordance with this clause (v) by the Lessor without the prior written consent of the Lessee; or

(vi) any other fault of the Lessor which directly causes the loss of any of the aforesaid tax benefits; *provided, however,* that the execution and delivery of this Lease and the other documents herein referred to and the carrying out of the transactions contemplated herein and therein in accordance with the terms of this Lease and such other documents shall not be deemed to have caused the loss of such tax benefit under this clause (vi).

In the event the rental rates shall be adjusted as hereinbefore provided, the Casualty Values set forth in §7 hereof and the damages and amounts set forth in subparagraph (b) of §10 hereof shall be adjusted accordingly.

In the event a claim shall be made by the Internal Revenue Service or any such state or local taxing authority which, if successful would result in a loss of Investment Credit or of the ADR Deduction or of the Interest Deduction under circumstances which would require the Lessee to pay increased rental and interest and/or penalty to the Lessor pursuant to the fourth paragraph of this §17, the Lessor hereby agrees to take such action in connection with contesting such claim as the Lessee shall reasonably request in writing from time to time, provided that (i) within 30 days after notice by the Lessor to the Lessee of such claim, the Lessee shall request that such claim be contested; (ii) the Lessee is not in default under any of its obligations under this Lease, including, but not limited to, any obligations under this §17; (iii) prior to taking such action, the Lessee shall have furnished the Lessor with an opinion of the Lessee's independent tax counsel to the effect that a meritorious defense exists to such claim; (iv) the Lessor, at its sole option, may forego any and all administrative appeals, proceedings, hearings and conferences with the Internal Revenue Service or any such state or local taxing authority, as the case may be, in respect of such claim, and may contest the claim in any permissible forum selected by the Lessor at its sole option, considering, however, in good faith such request as the Lessee shall make concerning the most appropriate forum in which to proceed; and (v) the Lessee shall have indemnified the Lessor in an amount, after deducting fees, taxes and/or other charges, which is satisfactory to it and in a manner satisfactory to it, including, but not limited to, reasonable security therefor, for any liability or loss which the Lessor may incur as the result of contesting such claim and shall have agreed to pay the Lessor on demand all costs and expenses which the Lessor may incur in connection with contesting such claim, including, without limitation, (a) reasonable attorneys', accountants' and investigatory fees and disbursements and (b) the amount of any interest or penalty which may ultimately be payable as the result of contesting such claim.

If the Lessor's right to claim all or any part of the full Investment Credit or ADR Deduction with respect to a Unit or the Interest Deduction which was not claimed or was disallowed shall be established by the final judgment or decree of the court or administrative agency having jurisdiction thereof, or if the Lessor shall release, waive, compromise or settle any claim which pursuant to the sixth paragraph of this §17 it is obliged to contest without the written consent of the Lessee, then, on the next succeeding rental

payment date thereafter, or after such judgment or decree shall have become final, as the case may be, the rental rate in respect of such Unit set forth in §3 of this Lease shall again become applicable to such Unit and the Lessor shall forthwith upon demand of the Lessee reimburse the Lessee in an amount equal to the excess, if any, of (i) the difference between the increased rental paid by the Lessee with respect to such Unit pursuant to the fourth paragraph of this §17 and the rental rate applicable to such Unit pursuant to §3 of this Lease.

The Lessee's and the Lessor's agreement to pay any sums which may become payable pursuant to this §17 shall survive the expiration or other termination of this Lease.

§ 18. *Interest on Overdue Rentals.* Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay, to the extent legally enforceable, an amount equal to 9¾% per annum of the overdue rentals and other obligations for the period of time during which they are overdue or such lesser amount as may be legally enforceable.

§ 19. *Notices.* Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when deposited in the United States certified mails, first-class postage prepaid, addressed as follows:

(a) if to the Lessor, at One Embarcadero Center, San Francisco, California 94111; and

(b) if to the Lessee, at 526 Mission Street, San Francisco, California 94105, attention of Vice President—Finance;

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing.

§ 20. *Severability; Effect and Modification of Lease.* Any provision of this Lease which is prohibited or unenforceable in any jurisdiction, shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

This Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the leasing of the Units and supersedes all other agreements, oral or written, with respect thereto. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Lessor and of the Lessee.

§ 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 this Lease is dated as of the date first set forth above, for convenience, 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 California; *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.

THE WESTERN PACIFIC RAILROAD COMPANY,

By.....
Vice President

[CORPORATE SEAL]

Attest:

.....
Assistant Secretary

THIRD

GATX AIRCRAFT CORPORATION,

By.....
Vice President

[CORPORATE SEAL]

Attest:

.....
Assistant Secretary

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

On this 22nd day of August, 1974, before me personally appeared R. W. Stumbo, Jr., to me personally known, who, being by me duly sworn, says that he is a Vice Pres. of THE WESTERN PACIFIC RAILROAD COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said Company, that said instrument was signed and sealed on behalf of said Company 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 Company.

OFFICIAL SEAL
DIANE L. FAFOUTIS
NOTARY PUBLIC CALIFORNIA
CITY AND COUNTY OF
SAN FRANCISCO
My Commission Expires Dec. 14, 1975

Diane L. Fafoutis
Notary Public

[NOTARIAL STAMP]

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

On this 12th day of August, 1974, before me personally appeared William J. Kempenich, to me personally known, who, being by me duly sworn, says that he is a Vice President of GATX AIRCRAFT CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

GOB
THIRD

Lee Anne O'Brien
Notary Public

[NOTARIAL STAMP]

OFFICIAL SEAL
LEE ANNE O'BRIEN
NOTARY PUBLIC-CALIFORNIA
PRINCIPAL OFFICE IN
SAN FRANCISCO COUNTY
My Commission Expires October 3, 1976

Schedule A

to Lease

Type	Quantity	Lessee's Road Numbers (Both Inclusive)
100-ton covered hopper car	10	WP 11956-11965
40′ 100-ton, 2770 cu. ft. capacity, open top, triple hopper car	22	WP 10179-10200
60′ 100-ton insulated box car	10	WP 67042-67051

ASSIGNMENT OF LEASE AND AGREEMENT dated as of February 1, 1974 (hereinafter called "this Assignment"), by and between GATX Aircraft Corporation (hereinafter called the Lessor or the Vendee) and United States Trust Company of New York, as Agent under a Finance Agreement dated the date hereof (hereinafter called the Vendor).

Third

WHEREAS, the Vendee and The Western Pacific Railroad Company (hereinafter called the Guarantor) are entering into Conditional Sale Agreements dated as of the date hereof (hereinafter collectively called the Security Documents), with ACF Industries, Incorporated, Midwest Freight Car Company, and PACCAR Inc, respectively, (hereinafter called the Builders) providing for the sale to the Vendee of such units of railroad equipment (hereinafter called the Units) described in the Schedules thereto as are delivered to and accepted by the Vendee thereunder; and

WHEREAS, the Lessor and the Guarantor have entered into a Lease of Railroad Equipment dated as of the date hereof (hereinafter called the Lease), providing for the leasing by the Lessor to the Guarantor of the Units; and

WHEREAS, in order to provide security for the obligations of the Lessor under the Security Documents and as an inducement to the Vendor to invest in the Conditional Sale Indebtedness (as that term is defined in the Security Documents), the Lessor has agreed to assign for security purposes its rights in, to and under the Lease to the Vendor;

NOW, THEREFORE, in consideration of the premises and 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 11 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 Documents, 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 Guarantor 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 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 sums to which the Lessor is or may become entitled under the Lease, and to enforce compliance by the Guarantor with all the terms and provisions thereof.

The Vendor agrees to accept any Payments made by the Guarantor 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 Documents, subject to the limitations contained in the last paragraph of Article 4 of the Conditional Sale Agreement, and any balance shall be paid within five business days to and retained by the Lessor. If the Vendor shall not receive any rental payment under the first paragraph of Section 3 of the Lease when due, the Vendor shall notify the Lessor at the addresses set forth in the Lease.

2. This Assignment is executed only as security 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 Guarantor shall be and remain enforceable by the Guarantor, 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 Guarantor thereunder of or from the obligations, covenants, conditions and agreements to be perfomed by the Guarantor, 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 amending, modifying or terminating the Lease and the Lessor agrees that any 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 hereof, 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. 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 compliance by the Guarantor 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 to the Vendor may seem to be necessary or advisable in the premises.

5. Upon the full discharge and satisfaction of all the Guarantor's and the Lessor's obligations under the Security Documents, 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, on each Closing Date (as defined in the Security Documents) furnish the Vendor with an opinion of counsel that this Assignment has been duly authorized, executed and delivered by the Lessor and is a legal and valid agreement binding on the Lessor.

7. 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, reregister, rerecord 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.

8. 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.

9. 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.

10. 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 22 of the Security Documents, or at such other address as the Vendor shall designate.

11. The Vendor hereby agrees with the Lessor that the Vendor will not, so long as no Event of Default under the Lease or event of default under the Security Documents has occurred and is then continuing, 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 apply the Payments as provided in Paragraph 1 hereof.

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.

THIRD

GATX AIRCRAFT CORPORATION,

By .....
Vice President

[CORPORATE SEAL]

Attest:
.....
Assistant Secretary

UNITED STATES TRUST COMPANY
OF NEW YORK, as Agent,

By .....
Vice President

[CORPORATE SEAL]

Attest:
.....
Assistant Secretary

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

On this 12th day of August, 1974 before me personally appeared William J. Kempenich, to me personally known, who, being by me duly sworn, says that he is Vice President of GATX/AIRCRAFT CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation 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.

THIRD

Lee Anne O'Brien
Notary Public

[NOTARIAL STAMP]

OFFICIAL SEAL
LEE ANNE O'BRIEN
NOTARY PUBLIC-CALIFORNIA
PRINCIPAL OFFICE IN
SAN FRANCISCO COUNTY
My Commission Expires October 3, 1976

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

On this 8 day of August, 1974 before me personally appeared MALCOLM J. HOOD, to me personally known, who, being by me duly sworn, says that he is VICE PRESIDENT of UNITED STATES TRUST COMPANY OF NEW YORK, that one of the seals affixed to the foregoing instrument is the corporate seal of said ~~trust company~~ CORPORATION and that said instrument was signed and sealed on behalf of said ~~trust company~~ CORPORATION by authority of its ~~Board of Directors~~ BY-LAWS and he acknowledged that the execution of the foregoing instrument was the free act and deed of said ~~trust company~~ CORPORATION.

Thomas B. Zakrzewski
Notary Public

[NOTARIAL SEAL]

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

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

Receipt of a copy of, and due notice of the assignment made by, the foregoing Assignment of Lease and Agreement is hereby acknowledged as of February 1, 1974.

THE WESTERN PACIFIC RAILROAD COMPANY

By .....

Vice President