1276

LEASE

AGREEMENT made and entered into this 2d day of August, 19 73, between

UNITED STATES RAILWAY LEASING COMPANY
an Illinois corporation (hereinafter called "United") and

North West Hardwoods, Inc.
(Northwest)

(hereinafter called "Lessee")

7654
RECORDATION NO. Filed & Recorded
SEP 23 1974 -9 50 AM
INTERSTATE COMMERCE COMMISSION

RECITALS

Lessee desires to lease from United as Lessor certain railroad cars, hereinafter specifically designated, all upon the rentals and terms and conditions set forth in this Lease.

AGREEMENT

It is Agreed:

1. *Lease of Cars.* United agrees to lease to Lessee and Lessee agrees to and does hereby lease from United that number of railroad cars, of the type, construction and such other description (hereinafter referred to as the "Cars") as is set forth in Exhibit "A" attached hereto and by this reference made a part hereof. The Cars covered by this Lease are those which shall be delivered to and accepted by Lessee pursuant to Paragraphs 2 and 3 hereof. The Lease shall become effective as to any Car immediately upon its acceptance pursuant to Paragraph 3 hereof.

2. *Delivery of Cars.* United shall deliver the Cars as promptly as is reasonably possible from time to time in groups of no less than two(2). United's obligations with respect to delivery of all or any of the Cars are hereby made expressly subject to, and United shall not be responsible for, failure to deliver or delays in delivering Cars due to labor difficulties, fire, delays and defaults of carriers and material suppliers or Car manufacturers, acts of God, governmental acts, regulations and restrictions or any other causes, casualties or contingencies beyond United's control; provided, however, that in no event shall Lessee be obligated to accept delivery of Cars after November 30, 1973. Initial delivery shall be f.o.t. Springfield, Oregon

From and after acceptance of a Car, Lessee shall be liable for, and shall pay or reimburse United for the payment of, all costs, charges and expenses of any kind whatsoever on account of or relating to switching, demurrage, detention, storage, transportation or movement of a Car, including specifically, but not exclusively, freight and switching charges for movement to and from United's plant at any time and for any reason.

3. *Condition of Cars — Acceptance.* All Cars delivered hereunder shall be in satisfactory condition for movement in the normal interchange of rail traffic and shall otherwise comply with the description and/or specifications contained in Exhibit "A"; but Lessee shall be solely responsible for determining that Cars are in proper condition for loading and shipment. Within five(5) days after United shall give Lessee notice that some or all Cars are ready for delivery, Lessee may have its authorized representative inspect such Cars at (the point of delivery) (United's

USRL-SME — 4/72

plant) (the manufacturer's plant)*and accept or reject them as to condition. Cars so inspected and accepted and any Cars which Lessee does not elect to inspect shall upon delivery thereof to Lessee as above provided be conclusively deemed to be accepted and subject to this Lease and to meet all requirements of this Lease.

4. *Use and Possession.* Throughout the continuance of this Lease, so long as Lessee is not in default hereunder, Lessee shall be entitled to possession of each Car from the date the Lease becomes effective as to each Car and shall use such Car exclusively in its own service for the transportation of wood products (a) on its own property or lines; or (b) upon the lines of any railroad or other person, firm or corporation in the usual interchange of traffic; provided, however, that Lessee agrees that the Cars shall at all times be used (i) in conformity with the rules ("Operating Rules") governing use, condition, repair and other matters pertaining to the interchange of freight traffic, adopted and in effect from time to time by the Association of American Railroads ("AAR") and any other organization, association, agency or governmental authority, including the United States Department of Transportation, which may from time to time be responsible for or have authority to adopt Operating Rules; (ii) in compliance with the terms and provisions of this Lease; (iii) in a careful and prudent manner, solely for the purpose, in the service and in the manner for which they were designed; (iv) only within the continental limits of the United States of America or in Canada, and (v) in such service as will not employ more than ten percent (10%) of the Cars as part of any one (1) train.

5. *Term — Average Date.* This Lease shall be for a term (hereinafter referred to as the "original term") which shall commence on the date of delivery by United of the first Car, as provided in Paragraph 2 hereof, and shall terminate five (5) years from the Average Date of Delivery unless sooner terminated in accordance with the provisions of this Lease. The Average Date of Delivery shall be determined after delivery of the Cars as follows,

(a) multiply the number of Cars delivered by United on each day by the number of days elapsed between such day and the date of delivery of the first Car hereunder, then add all of the products so obtained and divide by the total number of Cars so delivered; the quotient rounded out to the nearest whole number shall be added to the date of delivery of the first Car, and the resulting date shall constitute the Average Date of Delivery;

(b) the date on which delivery of a Car shall be deemed to have been made will be the day following delivery of the Car to the Lessee, as specified in Paragraph 2. A Car shall be conclusively deemed delivered to the Lessee on the earliest date shown on either of the following: (i) a delivery receipt or other writing acknowledging delivery of a Car signed by the Lessee; or (ii) a bill of lading showing delivery to Lessee or to a railroad for the account of Lessee.

6. *Rental.* (a) Per Car. During the original term of this Lease, Lessee shall pay to United for each Car, commencing on the date of delivery thereof a rental of $ 290.00 per Car per month.

(b) Adjustment. The rental provided in Paragraph 6(a) is comprised of a "Constant Factor" of $ 250.00 plus a "Maintenance Factor" determined as follows: the Maintenance Factor shall initially be $ 40.00 per Car per month,

*Strike inapplicable material in Paragraph 3.

which amount is based upon a per hour general labor rate established by the AAR of $ 12.27 (the "Basic Rate") in effect as at the date hereof for freight car repair operations. If the AAR general labor rate established and in effect upon the expiration of each sixty (60) month period from and after the date hereof (the "Prevailing Rate") shall differ from the Basic Rate, the Maintenance Factor shall be adjusted to be the product obtained by multiplying the initial Maintenance Factor by a faction, the numerator of which is the Prevailing Rate and the denominator of which is the Basic Rate; and the per Car rental shall be revised to be the sum of the Constant Factor and the adjusted Maintenance Factor. Any such adjustment shall be instituted by written notice ("Adjustment Notice") from United to Lessee and shall take effect with respect to rents coming due next after the date of such notice, provided, however, that no adjustment shall be made which would reduce the Maintenance Factor below the initial Maintenance Factor. Notwithstanding the foregoing, if Lessee shall be served with an Adjustment Notice having the effect of increasing the rents thereafter payable hereunder, Lessee may, in lieu of paying such increased rents, elect by notice in writing to United ten (10) days after receipt of an Adjustment Notice to itself perform or cause to be performed all Repair Work to Cars as defined in and required by Paragraph 9(a) and (b) hereof, and, upon such election, the rents thereafter payable per Car shall be and remain only in the amount of the Constant Factor; and Lessee shall thereafter be obligated, at its own expense, to perform, or cause to be performed, all such Repair Work, and United shall be released from and indemnified against all responsibility, cost and expense therefor.

(c) Mileage Credits. Any mileage payments paid or allowed by railroads on the Cars shall be the property of United, but United shall credit mileage payments actually received by it during an accounting period (less taxes, other than income taxes, due or to become due on account thereof) against rental then or thereafter due under this Lease during such accounting period; provided, however, that the total of such credits shall not exceed the total rental payable by Lessee during the term hereof and any credit unused at the end of each accounting period and at the expiration or termination of this Lease shall be cancelled. The term "accounting period" shall mean each consecutive period of twelve (12) months commencing with the date hereof and any period of less than twelve (12) months during which period this Lease shall expire or terminate. Lessee shall so use the Cars that their mileage under load shall be equal to their mileage empty upon each railroad (not having a published exemption therefor in its tariff) over which the Cars shall move, including movement to place of delivery to Lessee hereunder and movement to United upon termination or expiration of this Lease. Upon notice from any railroad, whether received prior to or after termination of this Lease, Lessee shall pay United as additional Rental for all excess empty mileage incurred on Cars at the rate established by the applicable railroad tariff.

7. *Payment.* Lessee shall make payment of all sums due hereunder to United in Chicago funds at the address provided in Paragraph 21 hereof, or such other place as United may direct. Rental payments shall be made on or before the 15th day of each month succeeding the month for which such rental has accrued.

8. *Title.* Lessee shall not by reason of this Lease or any action taken hereunder acquire or have any right or title in the Cars except the rights herein expressly granted to it as Lessee.

9. *Repairs.* (a) United. Except as otherwise provided in this Paragraph 9(a) and (b), United shall be responsible for all repairs, maintenance, modifications, additions or replacements required to keep and maintain the Cars in good working order and repair (hereinafter referred to as "Repair Work") in accordance with the requirements of all Operating Rules which are in effect as at the date hereof or which have been adopted and promulgated as at the date hereof to take effect at a future date. Lessee shall promptly notify United of any required Repair Work of which it has knowledge. United shall have no responsibility hereunder until informed of the need for Repair Work and in no event before the effective date of any presently adopted Operating Rule. United may require Lessee to return Cars for preventive Repair Work and may withdraw from this Lease

and terminate this Lease (subject to substitution at United's option as provided in Paragraph 10) with respect to any Car or Cars ("Withdrawn Cars") with respect to which it deems any Repair Work to be unsuitable or uneconomical.

(b) **Lessee.** Lessee shall make or cause to be made at its sole cost and expense all Repair Work required by reason of (i) damage or other condition caused by negligence of Lessee or anyone other than a railroad or other party required to make payment therefor under Operating Rules, (ii) damage or other condition caused by loading or unloading of any commodity other than of the kind or in the manner permitted herein, (iii) ordinary wear and tear or damage to interior linings or equipment, or (iv) Operating Rules which have not been adopted or promulgated as of the date hereof.

10. *Substitution of Cars.* United may, at any time and from time to time, replace any Withdrawn Cars or Casualty Cars (as defined in Paragraph 16 hereof) with Cars ("Replacement Cars") of substantially similar specifications and such Replacement Cars shall be deemed to be subject to all terms and conditions of this Lease as if the same had been originally delivered to Lessee at the time and in the place of Cars for which they are substituted. The parties shall execute amendments to this Lease and such other or further documents as may be required by either party hereto to evidence the withdrawal from and termination of this Lease with respect to Withdrawn or Casualty Cars, or to include any Replacement Cars within the terms and provisions of this Lease and of any other document under which United has assigned its rights hereunder, as permitted in Paragraph 19 hereof.

11. *Abatement of Rent.* Rental payments on any Car out of service for Repair Work shall abate from the fifth (5th) day after such Car has been placed in any railroad or car shop for service until such Car or a Replacement Car is delivered to Lessee, to a railroad for the account of Lessee, or is otherwise ready for or is returned to service by Lessee; provided, however, that rental shall not abate on any Car out of service by reason of Repair Work for which Lessee is responsible under Paragraph 9(b) hereof. In the event rental is abated, then if United so elects and notwithstanding anything contained in Paragraph 5 to the contrary, the original term of this Lease, as determined in Paragraph 5, shall be extended for a period of time (but not less than one (1) day) determined by dividing the number of Car days with respect to which rental was so abated by the number of Cars subject to this Lease on what would otherwise have been the last day of the original term hereof.

12. *Taxes.* United shall be liable for and shall pay all federal or state property taxes assessed or levied against the Cars. Lessee shall be liable for and shall pay (i) all federal, state or local sales or use taxes imposed upon the Cars or this Lease, (ii) all taxes, duties or imposts assessed or levied on the Cars or this Lease by a foreign country and (iii) all taxes or other governmental charges assessed or levied upon its interest as lessee of Cars. Lessee shall reimburse United for payment of any taxes levied or assessed upon United for which Lessee is liable hereunder.

13. *Liens.* Lessee shall keep the Cars free from any and all encumbrances or liens, in favor of anyone claiming by, through or under Lessee which may be a cloud upon or otherwise affect United's title, including, but not limited to liens or encumbrances which arise out of any suit involving Lessee, or any act, omission or failure of Lessee or Lessee's failure to comply with the provisions of this Lease, and Lessee shall promptly discharge any such lien, encumbrance or legal process.

14. ***Indemnities — Patent Covenants.*** Lessee agrees to indemnify United and hold it harmless from any loss, expense or liability which United may suffer or incur from any charge, claim, proceeding, suit or other event which in any manner or from any cause arises in connection with the use, possession or operation of a Car while subject to this Lease, excepting only any such loss,

expense or liability which arises while a Car is in United's shop or possession, United agrees to indemnify Lessee and save it harmless against any charge, loss, claim, suit, expense or liability arising out of or on account of the use or incorporation by United upon delivery of a Car or upon the making of repairs thereto by United, of any invention or the infringement of any patents, except if such invention was used or incorporated by reason of Lessee's specifications. The term United shall mean and include any subsidiary, parent or affiliated corporation for all purposes of this Paragraph 14, provided, however, that Lessee's indemnity shall not include or eliminate any liability expressly assumed by United under its manufacturer's Warranty. The indemnities and assumptions of liability herein contained shall survive the termination of this Lease. Each party shall, upon learning of same, give the other prompt notice of any claim or liability hereby indemnified against.

15. *Use — Lettering.* Except for renewal and maintenance of lettering which exists when a Car is delivered to Lessee and for additional lettering indicating the rights of any assignee of United or that the Car is leased to the Lessee, or to a sublessee in accordance with demurrage tariffs, no lettering or marking shall be placed upon any of the Cars by Lessee except upon the written direction or consent of United.

16. *Loss, Theft or Destruction of Cars.* In the event any Car ("Casualty Car") is lost, stolen, destroyed or damaged beyond economic repair, Lessee shall, by notice, promptly and fully advise United of such occurrence. Except where such occurrence takes place under circumstances which entitle United to payment for such Casualty Car from a handling railroad or other party under and pursuant to Operating Rules, Lessee shall, upon demand of United, promptly make payment to United in the same amount as would be payable to United under such Operating Rules if a handling railroad was liable for payment therefor. If such payment by Lessee is not made within forty-five (45) days after the same is due, such payment shall thereafter bear interest at the rate of ten percent (10%) per annum until paid. Lessee shall cooperate with United and take any and all action required to assist and enable United to receive payment for a Casualty Car directly from any handling line or other party bound to make payment under the Operating Rules. This Lease shall terminate with respect to a Casualty Car on the date United shall receive notice of a casualty occurrence with respect thereto, and thereafter, Lessee shall have no further liability to United hereunder with respect thereto excepting liabilities arising or existing under Paragraphs 6(c), 12, 13 and 14 hereof and the liability, if any, of Lessee to make payments pursuant to this Paragraph. Notwithstanding the termination of this Lease with respect to a Casualty Car, United may, as provided in Paragraph 10 hereof, elect to substitute a Replacement Car for a Casualty Car (such election to be made within forty-five (45) days after United's receipt of notice of a casualty occurrence), in which event, all of the terms and provisions of this Lease shall be applicable to such Replacement Car as to other Cars subject to this Lease.

17. *Return of Cars.* Upon the expiration or upon the termination of this Lease with respect to any Car (other than pursuant to Paragraph 16 hereof), Lessee shall at its sole cost and expense, forthwith surrender possession of such Car to United by delivering same to United at ~~its plant at~~ such point as United may direct. Each Car so surrendered shall be in the same or as good condition, order and repair as when delivered to Lessee, wear and tear from ordinary use and the passage of time excepted, and shall be in need of no repairs of the nature referred to in Section 9(b). Until the delivery of possession to United pursuant to this Paragraph 17, Lessee shall continue to be liable for and to pay rental at the rate being paid immediately prior to termination or expiration, and Lessee shall, in addition, make all other payments and keep all obligations and undertakings required of Lessee under any and all provisions of this Lease as though such termination or expiration had not occurred.

18. *Default.* If Lessee shall fail to make any payment required hereunder within twenty (20) days after same shall have become due or shall default or fail for a period of twenty (20) days in

the due observance or performance of any covenant, condition or agreement required to be observed or performed on its part hereunder, or a proceeding shall have been commenced by or against Lessee under any bankruptcy laws, Federal or State, or other laws for the appointment of a receiver, assignee or trustee of Lessee or its property, or Lessee shall make a general assignment for the benefit of creditors, then and in any of said events United may at its election terminate this Lease by written notice to such effect, and retake the Cars and thereafter recover any and all damages sustained by reason of Lessee's default in addition to all rental unpaid as of said date or may without terminating the Lease repossess the Cars and relet same, and if, after paying all expenses of retaking and reletting the Cars, the amount so realized will not satisfy the rentals reserved in this Lease, Lessee agrees that it will pay any such deficiency from time to time upon demand from United. The obligation to pay such deficiency or any sum or sums due and unpaid or any damages suffered by reason of Lessee's default hereunder shall survive the termination of the Lease and the retaking of the Cars.

19. *Sublease and Assignment.* The right to assign this Lease by either party and the Lessee's right to sublease shall exist only as follows:

(a) Lessee shall have no right to assign or sublease or loan any of the Cars without the written consent of United; provided, however, that Lessee shall have the right to sublease any of the Cars for single trips within the continental limits of the United States to its customers or suppliers where the sole purpose of such sublease is to obtain exemption from demurrage on the subleased Cars. Any such sublease shall be upon terms which are in compliance with the provisions of all applicable Operating Rules, tariffs, regulations and laws and all terms and conditions of this Lease;

(b) all rights of United hereunder may be assigned, pledged, mortgaged, transferred or otherwise disposed of either in whole or in part with or without notice to Lessee. This Lease and Lessee's rights hereunder are and shall be subject and subordinate to any chattel mortgage, security agreement or equipment trust or other security instrument covering the cars heretofore or hereafter created by United. If United shall have given written notice to Lessee stating the identity and post office address of any assignee entitled to receive future rentals and any other sums payable by Lessee hereunder, Lessee shall thereafter make such payments to the designated assignee.

The making of an assignment or sublease by Lessee or an assignment by United shall not serve to relieve such party of any liability or undertaking hereunder nor to impose any liability or undertaking hereunder upon any such assignee or sublessee except as otherwise provided herein or unless expressly assumed in writing by such sublessee or assignee.

20. *Opinion of Counsel.* Upon the request of United or its assignee at any time or times, Lessee will deliver to United a favorable opinion of counsel for Lessee, addressed to United or its assignee in form and substance satisfactory to counsel for United, or its assignee, which opinion shall be to the effect that:

(a) Lessee is a corporation duly organized and validly existing in good standing under the laws of the state of its incorporation, and has corporate power to and has taken all corporate action necessary to validly enter into this Lease and carry out its obligations thereunder;

(b) this Lease has been duly executed on behalf of Lessee and constitutes the legal, valid and binding obligation of Lessee, enforceable in accordance with its terms;

(c) the Cars which are then subject to the Lease are held by Lessee under and subject to the provisions of this Lease prior to any lien, charge or encumbrance in favor of anyone claiming by, through or under Lessee; and all of the Cars were, upon delivery to Lessee, in condition satisfactory to Lessee and were accepted by Lessee in accordance with the terms of this Lease;

(d) neither Lessee nor its counsel know of any requirement for recording, filing or depositing of this Lease, other than with the Interstate Commerce Commission in accordance with Section 20(c) of the Interstate Commerce Act, which is necessary to preserve or protect the title of United or its assignee in the United States of America; and

(e) no governmental, administrative or judicial authorization, permission, consent or approval is necessary on the part of Lessee in connection with this Lease or any action contemplated on its part thereunder.

21. *Notice.* Any notice required or permitted to be given pursuant to the terms of this Lease shall be properly given when made in writing, forwarded registered United States mail, return receipt requested, postage prepaid, addressed to:

United at: 2200 East Devon Avenue
Des Plaines, Illinois 60018

Lessee at: 1300 South West 5th Avenue
Portland, Oregon 97201

or at such other address as either party may from time to time designate by such notice in writing to the other.

22. *Warranty — Representations.* United makes no warranty or representation of any kind, either expressed or implied, as to any matter whatsoever, including specifically but not exclusively, merchantability, fitness for a particular purpose extending beyond the description in Exhibit A, or the design, workmanship, condition or quality of the Cars or parts thereof which Cars have been accepted by Lessee hereunder; and United shall have no liability hereunder for damages of any kind, including specifically but not exclusively, special, indirect, incidental, or consequential damages on account of any matter which might otherwise constitute a breach of warranty or representation. United agrees to assign to Lessee such rights as it may have under warranties, if any, which it may have received from the manufacturer of any Cars or parts therefor and shall at Lessee's expense cooperate with Lessee and take such action as may be reasonably requested to enable Lessee to enforce such rights. Lessee represents that all of the matters set forth in Paragraph 20(a) through and including (e) shall be and are true and correct at all times that any Car becomes subject to this Lease.

23. *Governing Law — Writing.* The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of Illinois. The terms of this Lease and the rights and obligations of the parties hereto may not be changed or terminated orally, but only by agreement in writing signed by the party against whom enforcement of such change or termination is sought.

24. *Counterparts.* This Lease 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 evidenced by any such signed counterpart.

25. *Severability — Waiver.* If any term or provision of this Lease or the application thereof to any persons or circumstances shall to any extent be invalid or unenforceable, the remainder of this Lease or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby, and each provision of this Lease shall be valid and be enforced to the fullest extent permitted by law. Failure of United to

exercise any rights hereunder shall not constitute a waiver of any such right upon the continuation or recurrence of the situation or contingency giving rise to such right.

26. *Terminology.* In construing any language contained in this Lease, no reference shall be made and no significance given to paragraph titles, such titles being used only for convenience of reference. Where the context so permits, the singular shall include the plural and vice versa.

27. *Benefit.* Except as otherwise provided herein the covenants, conditions and agreements contained in this Lease shall bind and inure to the benefit of the parties and their successors and assigns (to the extent permitted in Paragraph 19 hereof). Without limiting the generality of the foregoing, the indemnities of the Lessee contained in Paragraph 14 hereof shall apply to and inure to the benefit of any assignee of United, and, if such assignee is a trustee or secured party under an indenture under which evidence of indebtedness has been issued in connection with the financing of the Cars, then also to the benefit of any holder of such evidence of indebtedness.

28. *Recording.* Lessee agrees that it will join in the execution of a memorandum or short form of this Lease for the purposes of recordation under Section 20(c) of the Interstate Commerce Act or such other recordation as United deems appropriate. Said memorandum or short form of lease shall describe the parties, the Cars being leased and the term of this Lease including any options to extend and shall incorporate the Lease by reference.

IN WITNESS WHEREOF, United and Lessee have duly executed this Lease as of the day and year first above written.

UNITED STATES RAILWAY LEASING COMPANY
an Illinois corporation

By _____
Vice President

ATTEST:

_____
Secretary

NORTHWEST HARDWOODS, INC.

_____

By _____
VICE President

ATTEST:

_____
Secretary

EXHIBIT "A"

Lease dated August 2, 19 73 by and between United States Railway Leasing Company, ("United") and North West Hardwoods, Inc. ("Lessee")

TYPE AND DESCRIPTION OF CAR:

52' 5", 70-ton, Insulated Box Cars, equipped with 20" cushion underframe and 16' door opening (two 8' plug doors).

NUMBER OF CARS: Three (3)

*REPORTING NUMBERS AND MARKS:

USLX 10870, 10874 and 10879

SPECIFICATIONS DESIGNATED BY LESSEE:

*When United's reporting marks are specified, this lease is subject to the granting of all necessary consents to such use by carrier, AAR, or any other approval now or hereafter required by tariff, AAR rules or applicable laws and regulations.

STATE OF ILLINOIS
COUNTY OF COOK } ss

On this 17th day of September, 1974, before me personally appeared R. E. Bell, to me personally known, who being by me duly sworn, says that he is Vice President of the United States Railway Leasing Company and Paul P. Lake, to me personally known to be the Assist. Secretary of said corporation, that the seal 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 they acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Mary Ellen Sander
Notary Public
My Commission Expires June 16, 1975

STATE OF OREGON
COUNTY OF MULTNOMAH } ss

On this 15th day of November, 1973, before me personally appeared Karl Zeisler, to me personally known, who being by me duly sworn, says that he is Vice President of NORTHWEST HARDWOODS, INC., and Mark G. Copeland to me personally known to be the Secretary of said corporation, that the seal 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 they acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Kathleen G. Miller
Notary Public
My commission expires
Dec. 18, 1976