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RECORDATION
OCT 11 1974
INTERSTATE COMMERCE COMMISSION

LEASE OF RAILROAD EQUIPMENT

Dated as of September 1, 1974

between

AMERICAN RAIL BOX CAR COMPANY

and

UNITED STATES TRUST COMPANY OF NEW YORK,
as Trustee

LEASE OF RAILROAD EQUIPMENT dated as of September 1, 1974, between AMERICAN RAIL BOX CAR COMPANY, a Delaware corporation (hereinafter called the Lessee), and UNITED STATES TRUST COMPANY OF NEW YORK, a New York corporation, as Trustee (hereinafter, together with its successors and assigns, called the Owner-Trustee) under a Trust Agreement dated as of September 1, 1974 (hereinafter called the Trust Agreement), with GENERAL ELECTRIC CREDIT CORPORATION (hereinafter called the Owner).

WHEREAS the Owner-Trustee and SEABOARD COAST LINE RAILROAD COMPANY (hereinafter called the Guarantor) are entering into a conditional sale agreement dated as of the date hereof (hereinafter called the Security Document) with ACF INDUSTRIES, INCORPORATED (hereinafter called the Builder) wherein the Builder agrees to manufacture, sell and deliver to the Owner-Trustee the units of railroad equipment described in Schedule A hereto (hereinafter called the Equipment); and

WHEREAS the Builder will assign certain of its interests in the Security Document to a bank or trust company, as agent (hereinafter, together with its successors and assigns, called the Vendor) pursuant to an Agreement and Assignment (hereinafter called the Assignment); and

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

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

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

NOW, THEREFORE, in consideration of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee,

the Owner-Trustee hereby leases the Units to the Lessee upon the following terms and conditions:

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

§ 2. *Delivery and Acceptance of Units.* The Owner-Trustee hereby appoints the Lessee its agent for inspection and acceptance of the Units pursuant to the Security Document. Each delivery of a Unit to the Owner-Trustee under the Security Document shall be deemed to be a delivery

hereunder to the Lessee at the point or points within the United States of America at which such Unit is delivered to the Owner-Trustee under the Security Document. Upon such delivery, the Lessee will cause an employee or agent of the Lessee to inspect the same, and if such Unit is found to be acceptable, to accept delivery of such Unit on behalf of the Owner-Trustee under the Security Document and itself hereunder and execute and deliver to the Owner-Trustee a certificate of acceptance (hereinafter called the Certificate of Acceptance) in accordance with the provisions of Article 3 of the Security Document, stating that such Unit has been inspected and accepted on behalf of the Lessee and the Owner-Trustee on the date of such Certificate of Acceptance and is marked in accordance with § 5 hereof, whereupon such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease.

§ 3. *Rentals.* The Lessee agrees to pay to the Owner-Trustee, as rental for each Unit subject to this Lease, one payment within five business days of the date on which such Unit is settled for under the Security Document (such date of settlement for such Unit being hereinafter called a Closing Date) and thereafter 31 consecutive semiannual payments, payable on April 1 and October 1 in each year commencing April 1, 1975 (or, in the case of any Unit settled for on or after April 1, 1975, 30 consecutive semi-annual payments, payable on April 1 and October 1 of each year commencing October 1, 1975). The first rental payment shall be in an amount equal to interest (computed on the basis of a 360-day year of twelve 30-day months) on the Purchase Price (as defined in the Security Document) of each Unit from the thirtieth day following the average date of acceptance pursuant to §2 hereof of the Group (as defined in the Security Document) in which such Unit is settled for under the Security Document to the Closing Date for such Unit, at a rate per annum equal to the rate which Manufacturers Hanover Trust Company, New York, New York, charges for 90-day unsecured loans to large corporate borrowers of the highest credit standing from time to time in effect for the period such interest is payable; *provided, however,* that changes in such prime rate occurring during the ten business days preceding the Closing Date shall be disregarded; and *provided, further,* that such amount in respect of any Unit shall be the amount of interest on the Purchase Price thereof due the Builder thereof pursuant to the Security Document. The rental payment payable on April 1, 1975, shall be in an

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amount equal to 70% of the Purchase Price of each Unit then subject to this Lease multiplied by the daily equivalent of the interest rate per annum then applicable to the Conditional Sale Indebtedness (as defined in the Security Document) (such rate being hereinafter called the Daily Debt Rate) plus an amount equal to .00792% of the Purchase Price for each Unit then subject to this Lease, in each case for each day elapsed from the Closing Date with respect to such Unit to April 1, 1975. The remaining 30 semiannual rental payments shall each be in an amount equal to that percentage of the Purchase Price of each Unit subject to this Lease on the date of such payment which is set forth below opposite the interest rate per annum applicable to the Conditional Sale Indebtedness (as defined in the Security Document):

Interest Rate	Percentage of Purchase Price
8½%	4.6764%
9	4.7937
9½	4.9190
10	5.0395
10½	5.1616
11	5.2884

In the event that any Unit shall be settled for after April 1, 1975, then the rental payment payable in respect of said Unit on October 1, 1975, shall be reduced by an amount equal to the Daily Debt Rate for each day elapsed from April 1, 1975, to the date such Unit shall have been settled for.

If the interest rate per annum applicable to the Conditional Sale Indebtedness is not expressly set forth above, the percentages of Purchase Price constituting semiannual rental payments shall be calculated by interpolating or extrapolating the percentages of Purchase Price set forth above. Upon determination of the interest rate applicable to the Conditional Sale Indebtedness, the parties hereto shall enter into an agreement supplemental hereto, setting forth the appropriate percentage of Purchase Price to be used to calculate rentals, and setting forth any revisions and adjustments in the Casualty Values required by the provisions of §7 hereof.

If any of the semiannual rental payment dates referred to above is not a business day (as such term is defined in the Security Document) the semiannual rental payment otherwise payable on such date shall then be

payable on the next succeeding business day, and no interest shall be payable for the period from and after the nominal date for payment thereof to such next succeeding business day.

Unless the Assignment is not executed and delivered, the Owner-Trustee irrevocably instructs the Lessee to make all the payments provided for in this Lease (other than the first rental payment and any amount payable in respect of a Unit which has not been settled for pursuant to the Security Document by reason of such Unit having suffered a Casualty Occurrence [as defined in §7 hereof], which rental payment and amount shall be paid to the Owner-Trustee at such place as the Owner-Trustee shall specify in writing) at the principal corporate trust office of the Vendor, for the account of the Owner-Trustee, in care of the Vendor, with instructions to the Vendor first to apply such payments to satisfy the obligations of the Owner-Trustee under the Security Document known to the Vendor to be due and payable on the date such payments are due and payable hereunder and second, so long as no event of default under the Security Document shall have occurred and be continuing, to pay any balance promptly to the Owner-Trustee or to the order of the Owner-Trustee in immediately available funds at such place as the Owner-Trustee shall specify in writing. If the Assignment is not executed and delivered, all payments provided for in this Lease shall be made at such place as the Owner-Trustee or the Owner shall specify in writing.

The Lessee agrees to make each payment provided for herein as contemplated by this §3 in immediately available funds at or prior to 11:00 a.m. in the city where such payment is to be made.

§ 4. *Term of Lease.* The term of this Lease as to each Unit shall begin on the date of delivery and acceptance of such Unit hereunder and, subject to the provisions of §§ 7, 10 and 13 hereof, shall terminate on the date on which the final payment of rent in respect thereof is due pursuant to §3 hereof. The obligations of the Lessee hereunder (including, but not limited to, the obligations under §§ 6, 7, 9, and 14 hereof) shall survive the expiration of the term of this Lease.

Notwithstanding anything to the contrary contained herein, all rights and obligations of the Lessee under this Lease and in and to the Units are subject to the rights of the Vendor under the Security Document. If an event of default should occur under the Security Document, the Vendor may terminate this Lease (or rescind its termination), all as provided therein.

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

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

§ 6. *Taxes.* Whether or not any of the transactions contemplated hereby are consummated, the Lessee agrees to pay, and to indemnify and hold the Owner-Trustee, the Owner, and the Vendor harmless from, all

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

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

If claim is made against the Owner-Trustee, the Owner or the Vendor for any Taxes indemnified against under this § 6, such party shall promptly notify the Lessee. If reasonably requested by the Lessee in writing, the Owner-Trustee or the Vendor, as the case may be, shall, upon receipt of any indemnity satisfactory to it and to the Owner for all costs, expenses, losses, legal and accountants' fees and disbursements, penalties, fines, additions to tax and interest, and at the expense of the Lessee, contest in good faith the validity, applicability or amount of such Taxes by (a) resisting payment thereof if possible, (b) not paying the same except under protest, if protest is necessary and proper, and (c) if payment is made, using reasonable efforts to obtain a refund thereof in appropriate administrative or judicial proceedings, or both. The Lessee may also contest, at its own expense, the validity, applicability or amount of such Taxes in the name of the Owner-Trustee, the Owner or the Vendor; provided that, no proceeding or actions relating to such contest shall be commenced (nor shall any pleading, motion, brief or other paper be submitted or filed in the name of the Owner-Trustee, the Owner or the Vendor in any such proceeding or action) without the prior written consent of the Owner-Trustee, the Owner or the Vendor, as the case may be. If the Owner-Trustee, the Owner or the Vendor shall obtain a refund of all or any part of such Taxes previously reimbursed by the Lessee in connection with any such contest or an amount representing interest thereon, the Owner-Trustee or the Vendor, as the case may be, or the Owner

shall pay the Lessee the amount of such refund or interest net of expenses; *provided, however,* that no Event of Default and no event which with notice or lapse of time or both would constitute an Event of Default shall have occurred and be continuing.

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

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

§ 7. *Payment for Casualty Occurrences; Insurance.* In the event that any Unit shall be or become worn out, lost, stolen, destroyed, irreparably damaged, or permanently rendered unfit for use from any cause whatsoever, or taken or requisitioned by condemnation or otherwise resulting in loss of possession by the Lessee for a period of 90 consecutive days, except requisition for use by the United States government (such occurrences being hereinafter called Casualty Occurrences) during the term of this Lease, or until such Unit shall have been returned in the manner provided in § 11 or 14 hereof, the Lessee shall promptly and fully notify the Owner-Trustee and the Vendor with respect thereto. On the April 1 or October 1 next succeeding such notice (or, in the case of a Casualty Occurrence prior to the Closing Date, on the Closing Date) the Lessee shall pay to the Owner-Trustee an amount equal to the rental payment or payments in respect of such Unit due and payable on such date plus a sum equal to the Casualty Value (as hereinafter defined) of such Unit as of the date of such payment in accordance with Schedule B hereto. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to

accrue, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft or complete destruction of such Unit) the Owner-Trustee shall be entitled to recover possession of such Unit.

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

The Owner-Trustee hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof, at the best price obtainable on an "as is, where is" basis. Provided that the Lessee has previously paid the Casualty Value to the Owner-Trustee, the Lessee shall be entitled to the proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Owner-Trustee.

The Casualty Value of each Unit as of the payment date on which payment is to be made as aforesaid shall be that percentage of the Purchase Price of such Unit as is set forth in Schedule B hereto opposite such date.

The parties hereto acknowledge that the percentages set forth in Schedule B hereto have been calculated with the assumption that the interest rate per annum applicable to the Conditional Sale Indebtedness will be 11%. If the Conditional Sale Indebtedness bears an interest rate per annum of other than 11%, the percentages set forth in Schedule B hereto shall be adjusted so that the Owner's net return in the event of a Casualty Occurrence shall equal the net return that would have been realized by the Owner if such interest rate per annum had been 11%, and the Owner-Trustee had received the Casualty Value calculated as set forth above. Said adjustment shall be set forth in an agreement supplemental hereto by the parties hereto.

In the event of the requisition for use by the United States Government of any Unit during the term of this Lease or any renewal thereof, all of the

Lessee's obligations under this Lease with respect to such Unit shall continue to the same extent as if such requisition had not occurred, except that if such Unit is returned by the Government at any time after the end of the term of this Lease or any renewal thereof, the Lessee shall be obligated to return such Unit to the Owner-Trustee pursuant to § 11 or 14 hereof, as the case may be, promptly upon such return by the Government rather than at the end of the term of this Lease or any renewal thereof, but Lessee shall in all other respects comply with the provisions of said § 11 or 14, as the case may be, with respect to such Unit. All payments received by the Owner-Trustee or the Lessee from the Government for the use of such Unit during the term of this Lease or any renewal thereof shall be paid over to, or retained by, the Lessee provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing; and all payments received by the Owner-Trustee or the Lessee from the Government for the use of such Unit after the term of this Lease or any renewal thereof, shall be paid over to, or retained by, the Owner-Trustee.

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

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

All insurance policies maintained pursuant to this Lease shall: (i) name the Owner-Trustee, as owner of the Equipment, the Owner, the Vendor and any assignee thereof as additional insureds with respect to the Equipment and shall insure the Owner-Trustee's, the Owner's and such assignee's interests regardless of any breach or violation by the Lessee of any warranties, declarations or conditions contained in such policies; (ii) provide that all insurance proceeds with respect to the Equipment shall be

adjusted by the Lessee so long as no Event of Default shall have occurred and be continuing; (iii) provide that any losses with respect to the Equipment shall be payable notwithstanding any act, failure to act or negligence of any named insured or any other person; (iv) provide that any losses shall be payable notwithstanding the use of the Equipment for purposes more hazardous than permitted by the terms of the policy; (v) provide that any losses shall be payable notwithstanding any foreclosure or other proceeding or notice of sale relating to the Equipment or this Lease or the Security Document; (vi) provide that any losses shall be payable notwithstanding any change in the title or ownership of the Equipment; and (vii) provide that no cancellation thereof shall be effective until at least 30 days after the giving of notice by the insurer thereunder to the Owner-Trustee, the Owner, any assignee thereof and the Lessee. Any insurance maintained by Lessee pursuant to this §7 may be evidenced by blanket insurance policies covering the Equipment and other property or assets of the Lessee.

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

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

In the event that the Lessee shall fail to maintain insurance as herein provided, the Owner-Trustee may at its option provide such insurance (giving the Lessee prompt written notice thereof) and, in such event, the Lessee shall, upon demand from time to time, reimburse the Owner-Trustee

for the cost thereof together with interest, on the amount of the cost to the Lessor of such insurance which the Lessee shall have failed to maintain, at the rate per annum specified in §17 hereof.

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

§ 8. *Reports.* On or before April 1 in each year, commencing with the calendar year 1975, the Lessee will furnish to the Owner-Trustee, the Owner and the Vendor an accurate statement (a) setting forth as at the preceding December 31 the amount, description and numbers of all Units then leased hereunder and covered by the Security Document, the amount, description and numbers of all Units that have suffered a Casualty Occurrence or to the knowledge of the Lessee are then undergoing repairs (other than running repairs) or are then withdrawn from use pending repairs (other than running repairs) and such other information regarding the condition and state of repair of the Units as the Owner-Trustee or the Vendor may reasonably request and (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and the markings required by §5 hereof and the Security Document have been preserved or replaced. The Owner-Trustee shall have the right by its agents, to inspect the Units and the Lessee's records with respect thereto at such

reasonable times as the Owner-Trustee may request during the continuance of this Lease.

§ 9. *Disclaimer of Warranties; Compliance with Laws and Rules; Maintenance; Indemnification.* **Neither the Owner-Trustee nor the Owner makes, has made or shall be deemed to make or have made any warranty or representation, either express or implied, as to the design or condition of, or as to the quality of the material, equipment or workmanship in, the Units delivered to the Lessee hereunder, and neither the Owner-Trustee nor the Owner makes any warranty of merchantability or fitness of the Units for any particular purpose nor as to title to the Units or any component thereof, nor any other representation or warranty, express or implied, with respect to any Unit (either upon delivery thereof to the Lessee or otherwise),** it being agreed that all such risks, as between the Owner-Trustee and the Lessee, are to be borne by the Lessee; but the Owner-Trustee hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for the account of the Owner-Trustee and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Owner-Trustee may have against the Builder, including, but not limited to, any claims and rights arising under the provisions of Items 3 and 4 of Annex A to the Security Document. The Owner-Trustee and the Owner shall have no responsibility or liability to the Lessee or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Units or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of any Units or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Units. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Owner-Trustee that the Units described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Owner-Trustee based on any of the foregoing matters.

The Lessee agrees, for the benefit of the Owner-Trustee, the Owner and the Vendor, to comply in all respects (including, without limitation, with

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

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

Any and all additions to any Unit and any and all parts installed on or replacements made to any Unit (other than any special devices, racks or assemblies at any time attached or affixed to any such Unit, the cost or purchase price of which is not included in the Purchase Price of such Unit and which are not required for the operation or use of such Unit by the Interstate Commerce Commission, the United States Department of Transportation or any other legislative, executive, administrative or judicial body exercising any power or jurisdiction of such Unit) shall be considered accessions to such Unit and, without cost or expense to the Owner-Trustee or the Vendor, there shall immediately be vested in the Owner-Trustee and the Vendor the same interests in such accessions as the interests of the Owner-Trustee and the Vendor in such Unit. The Lessee may make alterations or modifications to any Unit so long as they do not affect the value of such Unit materially and adversely. The Lessee shall not permit any special device, rack or assembly to be attached or affixed to any Unit which may not be readily removed from such Unit without materially impairing such Unit or the value thereof unless such special device, rack or assembly is to be considered an accession to such Unit.

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

Person's request, will at the Lessee's expense resist and defend such action, suit or proceeding, or cause the same to be resisted or defended by counsel selected by the Lessee and approved by such Indemnified Person, as the case may be, and, in the event of any failure by the Lessee to do so, the Lessee shall pay all costs and expenses (including without limitation attorneys' fees and expenses) incurred by such Indemnified Person in connection with such action, suit or proceeding. In the event the Lessee is required to make any payment under this §9, the Lessee shall pay such Indemnified Person an amount which, after deduction of all taxes required to be paid by such Indemnified Person, as the case may be, in respect of the receipt thereof under the laws of the United States or of any political subdivision thereof (after giving credit for any savings in respect of any such taxes by reason of deductions, credits or allowances in respect of the payment of the expense indemnified against, and of any other such taxes as determined in the sole discretion of the Indemnified Person), shall be equal to the amount of such payment. The Lessee and the Owner-Trustee each agrees to give each other promptly upon obtaining knowledge thereof written notice of any claim or liability hereby indemnified against. Upon the payment in full of any indemnities as contained in this §9 by the Lessee, and provided that no Event of Default (or other event which with lapse of time or notice or both would constitute an Event of Default) shall have occurred and be continuing, it shall be subrogated to any right of such Indemnified Person in respect of the matter against which indemnity has been given. Any payments received by such Indemnified Person from any person (except the Lessee or the Guarantor) as a result of any matter with respect to which such Indemnified Person has been indemnified by the Lessee pursuant to §8 shall be paid over to the Lessee to the extent necessary to reimburse the Lessee for indemnification payments previously made.

The Lessee further agrees to indemnify, protect and hold harmless the Vendor and the Builder as third party beneficiaries hereof from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendor because of the use in or about the construction or operation of any of the Equipment of any article or material specified by the Lessee and not manufactured by the Builder or of any design, system, process, formula or combination specified by the Lessee and not developed or purported to be developed by the Builder which infringes or is claimed to infringe on any

patent or other right. The Lessee will give notice to the Builder of any claim known to the Lessee from which liability may be charged against the Builder hereunder.

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

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

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

A. payment of any part of the rental provided in § 3 hereof or payment in respect of any Casualty Occurrence pursuant to §7 hereof shall not be made by or on behalf of the Lessee, and such failure to make payment shall continue for seven days after such payment is due and for five days after the Owner-Trustee or the Vendor shall have notified the Guarantor of such default; or

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

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

petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Guarantor under the Security Document and the Guaranty shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier; or

D. any other proceedings shall be commenced by or against the Guarantor or the Lessee for any relief which includes, or might result in, any modification of the obligations of the Guarantor or the Lessee hereunder or under the Security Document or the Guaranty under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extension (other than a law which does not permit any readjustments of the obligations of the Guarantor or the Lessee hereunder or under the Security Document or the Guaranty), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Guarantor or the Lessee under this Lease or the Guaranty, as the case may be, and under the Security Document shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Guarantor or the Lessee or for the property of the Guarantor or the Lessee in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such a trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

E. an event of default set forth in Article 16 of the Security Document shall have occurred arising out of any default by the Lessee in performing any of its obligations hereunder;

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

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

(b) by notice in writing to the Lessee and the Guarantor terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided; and thereupon the Owner-Trustee may by its agents enter upon the premises of the Lessee or other premises, insofar as the Lessee may be lawfully authorized to so permit, where any of the Units may be located, without judicial process if this can be done without breach of the peace and in accordance with due process of law, and take possession of all or any of such Units and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever; but the Owner-Trustee shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which 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 Owner-Trustee reasonably estimates to be obtainable for the Unit during such period, such present value to be computed in each case on the basis of a 6% per annum discount, compounded semiannually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, and (ii) any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Lessor shall have sustained by reason of the

breach of any covenant, representation or warranty of this Lease other than for the payment of rental.

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

The failure of the Owner-Trustee to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

The Lessee also agrees to furnish the Owner-Trustee, the Owner, the Guarantor and the Vendor, promptly upon any responsible officer's becoming aware of any condition which constitutes an Event of Default under the Lease or which, after notice or lapse of time or both, would constitute such an Event of Default, written notice specifying such condition and the nature and status thereof. For the purposes of this Section, a "responsible officer" shall mean, with respect to the subject matter of any covenant, agreement or obligation of the Lessee in this Lease contained, any corporate officer of the Lessee who in the normal performance of his operational responsibilities would have knowledge of such matter and the requirements of this Lease with respect thereto.

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

I. Within 15 days of such Event of Default the Guarantor shall have certified to the Owner-Trustee and the Vendor that the Guarantor will directly assume all of the obligations of the Lessee hereunder

(except the obligations of the Lessee in respect of insurance set forth in the last five paragraphs of § 7 hereof) and under the Consent (hereinafter in this §10 called the Old Consent), by entering into a new lease (hereinafter called the New Lease) of the Units in substantially the form of this Lease (except, as aforesaid) and a new Lessee's Consent and Agreement (hereinafter called the New Consent) in respect of the New Lease and the assignment thereof to the Vendor in substantially the form of the Old Consent.

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

The Owner-Trustee agrees to execute and deliver the New Lease within 15 days after tender thereof to it by the Guarantor, provided it complies with the provisions of the foregoing paragraph and is otherwise in form and substance satisfactory to it. The Lessee agrees that, upon execution and delivery of the New Lease by the Owner-Trustee and the Guarantor, the Lessee's leasehold interest in and to the Units shall automatically terminate and the Lessee will promptly deliver possession of the Units to the Guarantor and will convey, transfer or assign to the Guarantor all the Lessee's right, title and interest in any subleases, car contracts or other agreements with respect to the Units and take any other action and execute any documents reasonably requested by the Guarantor or the Owner-

Trustee; it being understood and agreed, however, that the Guarantor's obligations under the Security Document, the New Lease and the New Consent shall not be conditioned upon or affected in any way by the failure of the Lessee to comply with the provisions of this sentence.

§ 11. *Return of Units Upon Default.* If this Lease shall terminate pursuant to § 10 hereof, the Lessee shall forthwith deliver possession of the Units to the Owner-Trustee and shall give prompt telegraphic and written notice to the Association of American Railroads and all railroads having possession of any Unit so to return such Units. Each Unit returned to the Owner-Trustee pursuant to this § 11 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear and modifications, if any, permitted by this Lease excepted, (ii) have attached or affixed thereto any special device, rack or assembly considered an accession thereto as provided in § 9 hereof and have removed therefrom any special device, rack or assembly not so considered an accession thereto and (iii) meet the standards then in effect under the Interchange Rules of the Association of American Railroads, if applicable. For the purpose of delivering possession of any Unit or Units to the Owner-Trustee as above required, the Lessee shall at its own cost, expense and risk:

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

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

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

The assembling, delivery, storage and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Owner-Trustee shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any

storage period, the Lessee will permit the Owner-Trustee or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Unit, to inspect the same. In the event that the Units or any thereof are sold pursuant to the exercise of the Vendor's remedies under the Security Document, the Lessee shall pay to the Owner-Trustee the per diem interchange for each such Unit which shall not have been assembled, delivered and stored, as hereinbefore provided, by the date of such sale for each day from the date of such sale to the date of delivery to the purchaser thereof.

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

§ 12. *Assignment; Possession and Use.* This Lease shall be assignable in whole or in part by the Owner-Trustee without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Owner-Trustee other than the Vendor except upon written notice of such assignment from the Owner-Trustee. All the rights of the Owner-Trustee hereunder (including, but not limited to, the rights under §§ 6, 7 and 10 and the rights to receive the rentals payable under this Lease) shall inure to the benefit of the Owner and the Owner's and the Owner-Trustee's assigns.

So long as no Event of Default or event of default exists hereunder or under the Security Document and the Lessee shall have fully complied with the provisions of this § 12, the Lessee shall be entitled to the possession of the Units and also to sublease the Units to, or to permit their use under the terms of car contracts by, a sublessee or user incorporated in the United States of America (or any State thereof or the District of Columbia), upon lines of railroad owned or operated by a railroad company or companies incorporated in the United States of America (or any State thereof or the District of Columbia), or over which such railroad company or companies have trackage rights or rights for operation of their trains, and upon connecting and other carriers in the usual interchange of traffic in the continental United States, Canada and Mexico, but only upon and subject to

all the terms and conditions of this Lease; *provided, however,* that if the Lessee subleases or permits the use of any Unit in Canada (or any Province or Territory thereof) or in Mexico (or any State or the Federal District thereof), the Lessee shall, except as otherwise provided in § 15 hereof, first have (a) taken all necessary action to protect the right, title and interest of the Lessor and the Vendor in the Units to be so subleased or used and (b) furnished the Owner-Trustee and the Vendor with an opinion of Canadian or Mexican counsel, as the case may be, satisfactory to the Owner-Trustee and the Vendor to the effect that such action is all that is necessary to protect the right, title and interest of the Owner-Trustee and the Vendor in such Units; *provided, further,* that no Units shall be used predominantly outside the United States of America within the meaning of Section 48(a) of the Internal Revenue Code of 1954, as amended to the date hereof, nor shall the Lessee sub-lease the Units to, or permit their use by, any person in whose hands such Units would not qualify as "section 38" property within the meaning of such Code.

Any such sublease may provide that the sublessee, so long as it shall not be in default under such sublease, shall be entitled to the possession of the Units included in such sublease and the use thereof; *provided, however,* that every such sublease shall be subject to the rights and remedies of the Vendor under the Security Document and the Owner-Trustee under this Lease in respect of the Units covered by such sublease upon the occurrence of an Event of Default thereunder or hereunder.

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

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

any state of the United States of America or the District of Columbia (which shall have specifically assumed the obligations of the Lessee hereunder and under the Consent by an appropriate instrument in writing) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety, provided that such assignee or transferee will not, upon the effectiveness of such merger, consolidation or acquisition be in default under any provision of this Lease.

§ 13. *Renewal Options.* Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may, by written notice delivered to the Owner-Trustee not less than one year prior to the end of the original term of this Lease elect to extend the term of this Lease in respect of all, but not fewer than all, the Units then covered by this Lease, for a five-year period commencing on the scheduled expiration of the original term of this Lease, at a rental payable in ten semiannual payments, payable on the semiannual anniversaries of the expiration of the original term, each in an amount equal to 50% of the amount of the final semiannual rental payable for such Units during the original term of the Lease.

Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may by written notice delivered to the Owner-Trustee not less than one year prior to the end of any extended term of this Lease, elect to extend the term of this Lease in respect of all but not fewer than all of the Units then covered by this Lease, for an additional period of not less than one year commencing on the scheduled expiration of any extended term of this Lease, at a "Fair Market Rental" payable in semiannual payments on the semiannual anniversaries of the expiration of the preceding extended term. Additional successive renewals may be made on the same terms and conditions as set forth in this paragraph.

Fair Market Rental shall be determined on the basis of, and shall be equal in amount to, the rental which would obtain in an arm's-length transaction between an informed and willing lessee (other than a lessee currently in possession) and an informed and willing lessor under no compulsion to lease and, in such determination, costs of removal from the location of current use shall not be a deduction from such rental. If, after 60 days from the giving of notice by the Lessee of the Lessee's election to extend the term of this Lease, the Owner-Trustee and the Lessee are unable

to agree upon a determination of the Fair Market Rental of the Units, such rental shall be determined in accordance with the foregoing definition by the following procedure: If either party to such determination shall have given written notice to the other requesting determination of such value by this appraisal procedure, the parties shall consult for the purpose of appointing a qualified independent appraiser by mutual agreement. If no such appraiser is so appointed within 20 business days after such notice is given, each party shall appoint an independent appraiser within 25 business days after such notice is given, and the two appraisers so appointed shall within 35 business days after such notice is given appoint a third independent appraiser. If no such third appraiser is appointed within 35 business days after such notice is given, either party may apply, to make such appointment, to the American Arbitration Association, and both parties shall be bound by any appointment so made. Any appraiser or appraisers appointed pursuant to the foregoing procedure shall be instructed to determine the Fair Market Rental of the Units subject to the proposed extended term within 90 days after his or their appointment. If the parties shall have appointed a single appraiser or if either party shall have failed to appoint an appraiser, the determination of Fair Market Rental of the single appraiser appointed shall be final. If three appraisers shall be appointed, the determination of the appraiser which differs most from the other two appraisers shall be excluded, the remaining two determinations shall be averaged and such latter average shall be final and binding upon the parties hereto as the Fair Market Rental. The appraisal proceedings shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association as in effect on the date hereof, except as modified hereby. The provision for this appraisal procedure shall be the exclusive means of determining Fair Market Rental and shall be in lieu of any judicial or other procedure for the determination thereof, and each party hereto hereby consents and agrees not to assert any judicial or other procedures. The expenses of the appraisal procedure shall be borne by the Lessee.

§ 14. *Return of Units upon Expiration of Term.* As soon as practicable on or after the termination of the original or any extended term of this Lease, and in any event not later than 90 days thereafter, the Lessee will, at its own cost and expense, at the request of the Owner-Trustee, cause each Unit to be transported to such point or points as shall be reasonably designated by the Owner-Trustee immediately prior to such termination and

arrange for the Owner-Trustee to store such Unit on any lines of railroad or premises approved by the Owner-Trustee for a period not exceeding one year from the date such Unit is first placed in storage pursuant to this §14; the assembly, delivery, storage and transporting of such Unit to be at the expense and risk of the Lessee. During any such storage period the Lessee will permit the Owner-Trustee or any person designated by it, including the authorized representative or representatives of any prospective purchaser of such Unit, to inspect the same; *provided, however,* that the Lessee shall not be liable except in the case of negligence or intentional act of the Lessee or of its employees or agents and, except to the extent otherwise provided by law, for any injury to or the death of any person exercising, either on behalf of the Owner-Trustee or any prospective purchaser, the rights of inspection granted under this sentence. The assembly, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Owner-Trustee shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to cause the assembly, delivery, storage and transporting of the Units. Each Unit returned to the Owner-Trustee pursuant to this §14 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted, (ii) have attached or affixed thereto any special device, rack or assembly considered an accession thereto as provided in §9 hereof and have removed therefrom any special device, rack or assembly not so considered an accession thereto and (iii) meet the standards then in effect under the Interchange Rules of the Association of American Railroads, if applicable. If the Owner-Trustee shall elect to abandon any Unit which has suffered a Casualty Occurrence or which after the expiration of this Lease the Owner-Trustee 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 Owner-Trustee harmless from all liability arising in respect of any responsibility of ownership thereof, from and after receipt of such notice. The Owner-Trustee shall execute and deliver to the Lessee a bill of sale or bills of sale transferring to the Lessee, or upon its order, the Owner-Trustee's title to and property in any Unit abandoned by it pursuant to the immediately preceding sentence. The Lessee shall have no additional liability to the Owner-Trustee in respect of any Unit abandoned by the Owner-Trustee after termination of this 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. *Recording.* The Lessee, at its own expense, will cause this Lease, the Security Document, the Lease Assignment, the Assignment and any assignment hereof or thereof to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act. The Lessee will undertake the filing, registering, deposit, and recording required of the Owner-Trustee under the Security Document and will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, re-register, deposit and redeposit or re-record whenever required) any and all further instruments required by law or reasonably requested by the Owner-Trustee or the Vendor for the purpose of proper protection, to their satisfaction, of the Vendor's and the Owner-Trustee's respective interests in the Units, or for the purpose of carrying out the intention of this Lease, the Security Document, the Assignment or the Lease Assignment; *provided, however,* that the Lessee shall not be required to take any such action in respect of any jurisdiction outside the United States if (1) the Lessee deems such action to be unduly burdensome, (2) after giving effect to the failure to take such action, the Lessee has taken all action required by law to protect the title of the Owner-Trustee and the Vendor to Units having a fair value of not less than 85% of the aggregate fair value of all the Units then subject to this Lease, and (3) any Unit at any time located in such jurisdiction shall have been marked with the markings specified in § 5 hereof.

The Lessee will promptly furnish to the Vendor and the Owner-Trustee evidence of all such filing, registering, depositing or recording, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Vendor and the Owner-Trustee. This Lease and the Security Document shall be filed and recorded with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Unit.

§ 16. *Guarantor's Right to Acquire Lessee's Leasehold Interest.* In addition to the rights of the Guarantor under § 10 hereof, if the Guarantor shall make any payments to the Owner, the Owner-Trustee or the Vendor on account of its guaranty under the Guaranty in order to prevent the occurrence of an Event of Default specified in subparagraph A or B of the

first paragraph of § 10 of the Lease, then upon the written request of the Guarantor the Lessee shall convey, transfer and assign to the Guarantor all the Lessee's right, title and interest in and to the Lease and the Units. Any such conveyance, transfer or assignment shall be in form reasonably satisfactory to the Guarantor, and shall be free of expense to the Guarantor.

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

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

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

§ 18. *Interest on Overdue Rentals.* Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay, to the extent legally enforceable, an amount equal to interest at a rate per annum on the overdue rentals and other obligations for the period of time during which they are overdue equal to 1% in excess of the interest rate applicable to the Conditional Sale Indebtedness from time to time in effect for the period such interest is payable, or such lesser amount as may be legally enforceable.

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

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

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

if to the Guarantor, at 3600 West Broad Street, Richmond, Virginia 23230, attention of Treasurer;

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

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

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

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

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

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

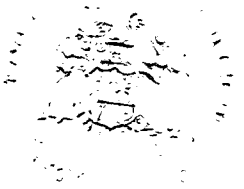
Nothing in this Lease shall be deemed to create any right in any person not a party hereto (other than the Guarantor, the Owner, the Vendor and the permitted successors and assigns of a party) and this instrument shall not be construed in any respect to be a contract in whole or in part for the benefit of any third party except as aforesaid.

§ 23. *Other Obligations.* In the event that any of the covenants of the Owner-Trustee under the first paragraph of Article 7, the second, fifth and

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

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

§ 25. *Law Governing.* The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of New York; *provided, however,* that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.



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

AMERICAN RAIL BOX CAR COMPANY,

by .....

[CORPORATE SEAL]

Attest: .....

Assistant Secretary

UNITED STATES TRUST COMPANY OF NEW YORK, as trustee,

by .....

Vice President

[CORPORATE SEAL]

Attest: .....

Assistant Secretary

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

On this 10th day of October, 1974, before me personally appeared N. V. REICHERT, to me personally known, who, being by me duly sworn, says that he is Vice President—Finance and Treasurer of American Rail Box Car Company, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Josephine D. Pignatelli
Notary Public

[NOTARIAL SEAL]

JOSEPHINE D. PIGNATELLI
NOTARY PUBLIC, State of New York
No. 24-8372250
Qualified in Kings County
Cert. filed in New York County
Commission Expires March 30, 1976

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

On this 10th day of October, 1974, before me personally appeared MALCOLM J. HOOD, to me personally known, who, being by me duly sworn, says that he is a Vice President of UNITED STATES TRUST COMPANY OF NEW YORK, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Thomas B. Zakrzewski
Notary Public

[NOTARIAL SEAL]

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

Schedule A

to Lease

Type	AAR Mechanical Designation	Quantity	Lessee's Identifying Numbers (Both Inclusive)
50'6", 70-ton capacity, general service box car	XM	1,000	10000-10999

Schedule B

to Lease

Date	Percentage
Closing Date	104.7936
April 1, 1975	104.7936
October 1, 1975	104.7204
April 1, 1976	104.6783
October 1, 1976	104.4594
April 1, 1977	104.0650
October 1, 1977	103.5041
April 1, 1978	102.7764
October 1, 1978	97.2191
April 1, 1979	96.1651
October 1, 1979	94.9516
April 1, 1980	93.5715
October 1, 1980	87.3592
April 1, 1981	85.6477
October 1, 1981	83.7749
April 1, 1982	81.7404
October 1, 1982	74.8821
April 1, 1983	72.2328
October 1, 1983	69.3304
April 1, 1984	66.3744
October 1, 1984	63.2693
April 1, 1985	59.9216
October 1, 1985	56.5545
April 1, 1986	53.0666
October 1, 1986	49.3586
April 1, 1987	45.6260
October 1, 1987	41.7641
April 1, 1988	37.6677
October 1, 1988	33.5315
April 1, 1989	29.2501
October 1, 1989	24.7177
April 1, 1990, and thereafter	20.0000