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INTERSTATE COMMERCE COMMISSION

## **LEASE OF RAILROAD EQUIPMENT**

**Dated as of October 15, 1974**

**between**

**UNITED STATES TRUST COMPANY OF NEW YORK,**  
*as Trustee*

**and**

**THE WESTERN PACIFIC RAILROAD COMPANY**

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# LEASE OF RAILROAD EQUIPMENT

## Table of Contents

	<u>Page</u>
Preamble.....	1
SECTION 1. <i>Net Lease</i> .....	1
SECTION 2. <i>Delivery and Acceptance of Units</i> .....	2
SECTION 3. <i>Rentals</i> .....	2
SECTION 4. <i>Term of Lease</i> .....	4
SECTION 5. <i>Identification Marks</i> .....	4
SECTION 6. <i>Taxes</i> .....	4
SECTION 7. <i>Payment for Casualty Occurrences; Insurance</i> .....	5
SECTION 8. <i>Reports</i> .....	7
SECTION 9. <i>Disclaimer of Warranties; Compliance with Laws and Rules; Maintenance; Indemnification</i> .....	7
SECTION 10. <i>Default</i> .....	9
SECTION 11. <i>Return of Units upon Default</i> .....	11
SECTION 12. <i>Assignment; Possession and Use; Liens</i> .....	11
SECTION 13. <i>Renewal Options</i> .....	13
SECTION 14. <i>Return of Units upon Expiration of Term</i> .....	13
SECTION 15. <i>Opinion of Counsel</i> .....	14
SECTION 16. <i>Recording</i> .....	14
SECTION 17. <i>Federal Income Taxes</i> .....	15
SECTION 18. <i>Purchase of the Units by the Lessee</i> .....	16
SECTION 19. <i>Interest on Overdue Rentals</i> .....	17
SECTION 20. <i>Notices</i> .....	17
SECTION 21. <i>Payment of Expenses</i> .....	17
SECTION 22. <i>Severability; Effect and Modification of Lease</i> .....	18
SECTION 23. <i>Law Governing</i> .....	18
SECTION 24. <i>Execution</i> .....	18
Signatures.....	19
Acknowledgments.....	20
Annex A. Description of Equipment.....	21

**LEASE OF RAILROAD EQUIPMENT** dated as of October 15, 1974 between UNITED STATES TRUST COMPANY OF NEW YORK, as Trustee (hereinafter, together with its successors and assigns, called the Lessor) under a Trust Agreement dated as of the date hereof (hereinafter called the Trust Agreement) with GENERAL ELECTRIC CREDIT CORPORATION (hereinafter called the Beneficiary), and THE WESTERN PACIFIC RAILROAD COMPANY (hereinafter called the Lessee).

WHEREAS, the Lessor and the Lessee have entered into Conditional Sale Agreements dated as of the date hereof (hereinafter called the Conditional Sale Agreements) with ACF Industries, Incorporated and Paccar Inc, respectively (hereinafter called the Builders), covering the construction, sale and delivery, on the conditions therein set forth, by the Builders and the purchase by the Lessor of the railroad equipment described in Annex A hereto (hereinafter called the Equipment);

WHEREAS, each of the Builders and Mercantile-Safe Deposit and Trust Company, as Agent (hereinafter, together with its successors and assigns, called the Assignee) under a Finance Agreement dated as of the date hereof (hereinafter called the Finance Agreement) with the Lessee, the Beneficiary and the Investors named therein, have entered into an Agreement and Assignment dated as of the date hereof (hereinafter called the Assignments) assigning to the Assignee the right, security title and interest of each Builder under its respective Conditional Sale Agreement as security for the payment of the aggregate Conditional Sale Indebtedness (as defined in the Conditional Sale Agreements);

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

WHEREAS, in order to provide further security for the payment of the aggregate Conditional Sale Indebtedness and as an inducement to the Investors to invest in the Conditional Sale Indebtedness, the Lessor will, concurrently with its execution and delivery of this Lease, enter into an Assignment of Lease and Agreement dated as of the date hereof (hereinafter called the Lease Assignment) with the Assignee assigning for security purposes certain of its rights in, to and under this Lease to the Assignee;

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

SECTION 1. *Net Lease.* This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent, reduction thereof or set-off against rent, including, but not limited to, abatements, reductions or set-offs due or alleged to be due by reason of any past, present or future claims of the Lessee against the Lessor under this Lease or under the Conditional Sale Agreements, including the Lessee's rights by subrogation thereunder to the Builders or the Assignee or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the

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

SECTION 2. *Delivery and Acceptance of Units.* The Lessor hereby appoints the Lessee as its agent for the inspection and acceptance of, and the approval of all invoices relating to, the Units pursuant to the Conditional Sale Agreements and the Assignments. The Lessor will cause each Unit to be delivered to the Lessee at the point or points within the United States of America at which such Unit is delivered to the Lessor under the Conditional Sale Agreements. Upon such delivery, the Lessee will cause an employee of the Lessee or an authorized representative of the Lessee to inspect the same and, if such Unit is found to be acceptable, to accept delivery of such Unit and execute and deliver to the Lessor and the appropriate Builder a certificate of acceptance (hereinafter called a Certificate of Acceptance), in accordance with the provisions of Article 3 of the Conditional Sale Agreements, stating that such Unit has been inspected and accepted on behalf of the Lessee and the Lessor on the date of such Certificate of Acceptance and is marked in accordance with Section 5, whereupon such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall thereafter be subject to all the terms and conditions of this Lease.

SECTION 3. *Rentals.* The Lessee agrees to pay to the Lessor, as rental for each Unit subject to this Lease, 31 consecutive semi-annual payments on April 1 and October 1 in each year, commencing April 1, 1975. The rental payment due on April 1, 1975 shall be in an amount equal to .031527% of the Purchase Price (as defined in the Conditional Sale Agreements), of each Unit then subject to this Lease for each day (computed on the basis of a 360-day year of twelve 30-day months) elapsed from the Closing Date (as defined in the Conditional Sale Agreements) for such Unit to and including the date of such payment. The next 30 semi-annual rental payments shall each be in an amount equal to 5.417% of the Purchase Price of each Unit then subject to this Lease.

The rental payments hereinbefore set forth are subject to adjustment pursuant to Section 17. If any of the semi-annual rental payment dates referred to above is not a Business Day (as defined in Article 4 of the Conditional Sale Agreement) the semi-annual rental payment otherwise payable on such date shall be payable on the next succeeding Business Day.

The Lessee agrees that if for any reason whatsoever (i) any rental or other moneys payable by the Lessee under this Lease (all such rentals and moneys being hereinafter in this paragraph collectively called Rents) shall be diminished or subject to any diminution for any reason, or shall be subject to withholding at the source by reason of any taxes, assessments or liabilities of any character, foreseen or unforeseen, incurred by or against any person, including the Lessor, or by reason of any claims, charges or liens of any nature, foreseen or unforeseen, incurred by any person, including the Lessor, so that the Rents would thereby be rendered unavailable or would be less in amount than contemplated by this Lease, (ii) the payment in full of the Rents when the same are due and payable under this Lease shall be delayed, hindered or prevented or in any way adversely affected, (iii) the use or application of the Rents by the Assignee shall be hindered, delayed or prevented or the right of the Assignee to use or apply the same shall in any way be adversely affected, (iv) the Assignee shall refuse to apply the Rents as provided in the Conditional Sale Agreements and the Finance Agreement because of a threatened or pending suit in any court as a result of which the Assignee in good faith considers it may have personal liability if it does apply the Rents or (v) the holders of the Certificates of Interest issued by the Assignee under the Finance Agreement shall be subject to any liability or obligation to refund or pay over the Rents, then, in any such event, the Lessee will promptly pay as additional rent under this Lease, and take any action and incur any additional expense that may be necessary to the proper application of, an amount sufficient to (x) pay fully and discharge or otherwise eliminate or nullify the cause of such diminution or withholding, (y) eliminate or prevent any delay, hindrance or obstacle in the payment in full of the Rents when the same are due and payable under this Lease and in the use or application thereof by the Assignee and (z) protect fully the right of the Assignee to use or apply the Rents, indemnifying the Assignee against any personal liability which may arise from the application of the Rents and such holders against any liability or obligation to repay, or any loss in repaying, any moneys received from the Assignee.

The Lessor irrevocably instructs the Lessee to make all the payments (other than payments pursuant to Section 17 which shall be made directly to the Beneficiary) provided for in this Lease at the principal office of the Assignee, for the account of the Lessor, in care of the Assignee, with instructions to the Assignee first to apply such payments to satisfy the obligations of the Lessor under the Conditional Sale Agreements known to the Assignee 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 Conditional Sale Agreements shall have occurred and be continuing, to pay any balance promptly to the Beneficiary at such place as the Beneficiary shall specify in writing, unless and until the Lessor shall otherwise direct the Assignee in writing. The Lessee agrees to make each payment provided for herein as contemplated by this paragraph in immediately available funds in the city where such payment is to be made. The Lessee further agrees that no payments shall be made to the Beneficiary pursuant to Section 17 unless concurrently therewith the Lessee shall pay to the Assignee for the account of the Lessor, all amounts which are then due to the Lessor under the other provisions of this Lease; and the making of such concurrent payment is of the essence of this Lease, and, upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the same.

SECTION 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 Sections 7, 10, 13 and 18, shall terminate on the date on which the final payment of rent in respect thereof is due pursuant to Section 3.

Anything herein to the contrary notwithstanding, upon default by the Lessee hereunder or under the Conditional Sale Agreements, all rights and obligations under this Lease and in and to the Units are subject to the rights of the Assignee under the Conditional Sale Agreements and the Assignments. If an event of default should occur under the Conditional Sale Agreements, the Assignee may terminate this Lease (or rescind its termination) all as provided therein, unless the Lessee is not in default under this Lease.

SECTION 5. *Identification Marks.* The Lessee will cause each Unit to be kept numbered with an identifying number as set forth in Annex A hereto, or in the case of any Unit not there listed such identifying number as shall be set forth in any amendment or supplement hereto extending this Lease to cover such Unit, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the words "Ownership Subject to a Security Agreement Filed under the Interstate Commerce Act, Section 20c" or other appropriate words designated by the Lessor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Lessor's and the Assignee's title to and property in such Unit and the rights of the Lessor under this Lease and of the Assignee under the Conditional Sale Agreements. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such markings shall have been made thereon and will replace promptly any such markings 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 Assignee and the Lessor and filed, recorded, registered and deposited by the Lessee in all public offices where this Lease and the Conditional Sale Agreements shall have been filed, recorded, registered and deposited and (ii) the Lessee shall have furnished the Assignee and the Lessor an opinion of counsel for the Lessee with respect thereto satisfactory to the Assignee and the Lessor.

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

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

has its principal place of business without apportionment to any other state, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided), license fees, assessments, charges, fines and penalties (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter collectively called Impositions) hereafter levied or imposed upon or in connection with or measured by this Lease or any sale, rental, use, payment, shipment, delivery or transfer of title to the Units or otherwise under the terms hereof or the Conditional Sale Agreements, all of which Impositions the Lessee assumes and agrees to pay on demand in addition to the other payments to be made by it provided for herein.

The Lessee will also pay promptly all Impositions which may be imposed upon any Unit or for the use or operation thereof or upon the earnings arising therefrom (except as provided above in this Section 6) or upon the Lessor solely by reason of its ownership thereof and will keep at all times all and every part of each Unit free and clear of all Impositions which might in any way affect the title of the Lessor or result in a lien upon any such Unit; *provided, however*, that the Lessee shall be under no obligation to pay any Imposition so long as it is contesting in good faith and by appropriate legal proceedings such Imposition and the nonpayment thereof does not, in the opinion of the Lessor, adversely affect the title, property or rights of the Lessor in or to the Units or hereunder or the Assignee under the Conditional Sale Agreements. If any Imposition shall have been charged or levied against the Lessor directly and paid by the Lessor, the Lessee shall reimburse the Lessor upon presentation of an invoice therefor.

In the event that the Lessor shall become obligated to make any payment to the Builders or the Assignee or otherwise pursuant to any correlative provision of the Conditional Sale Agreements not covered by the foregoing paragraph of this Section 6, the Lessee shall pay such additional amounts (which shall also be deemed Impositions hereunder) to the Lessor as will enable the Lessor to fulfill completely its obligations pursuant to said provision.

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

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

**SECTION 7. *Payment for Casualty Occurrences; Insurance.*** In the event that any Unit shall become worn out, lost, stolen, destroyed, irreparably damaged from any cause whatsoever or taken or requisitioned by condemnation or otherwise (such occurrences being hereinafter called Casualty Occurrences) during the term of this Lease, the Lessee shall promptly and fully notify the Lessor and the Assignee with respect thereto. On the rental payment date next succeeding such notice, the Lessee shall pay to the Lessor an amount equal to the rental payment or payments in respect of such Unit or Units due and payable on such date, plus a sum equal to the Casualty Value of such Unit or Units as of the date of such payment in accordance with the schedule set out below. Upon (but not prior to) the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall thereafter cease to accrue, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft or complete

destruction of such Unit) the Lessor shall be entitled to recover possession of such Unit. The Lessor hereby appoints the Lessee as 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. If the Lessee shall have previously paid the Casualty Value to the Lessor, the Lessee shall be entitled to the proceeds of such sale to the extent that such proceeds do not exceed the Casualty Value of such Unit, and shall pay any excess to the Lessor.

Subject to adjustment pursuant to the provisions of Section 3 and Section 17, the Casualty Value of each Unit as of the rental payment date on which payment is to be made as aforesaid shall be that percentage of the Purchase Price of such Unit as is set forth in the following schedule opposite such date:

<u>Rental Payment Date</u>	<u>Percentage</u>	<u>Rental Payment Date</u>	<u>Percentage</u>
April 1, 1975.....	102.3198%	April 1, 1983.....	71.4314%
October 1, 1975.....	102.2744	October 1, 1983.....	68.7838
April 1, 1976.....	102.2101	April 1, 1984.....	65.9887
October 1, 1976.....	102.1211	October 1, 1984.....	62.9965
April 1, 1977.....	101.9311	April 1, 1985.....	59.8592
October 1, 1977.....	101.5617	October 1, 1985.....	56.5628
April 1, 1978.....	101.0440	April 1, 1986.....	53.1054
October 1, 1978.....	95.6281	October 1, 1986.....	49.4908
April 1, 1979.....	94.7161	April 1, 1987.....	45.7521
October 1, 1979.....	93.6181	October 1, 1987.....	41.7816
April 1, 1980.....	92.3331	April 1, 1988.....	37.6915
October 1, 1980.....	86.2012	October 1, 1988.....	33.4423
April 1, 1981.....	84.5548	April 1, 1989.....	29.0281
October 1, 1981.....	82.7342	October 1, 1989.....	24.4671
April 1, 1982.....	80.7386	April 1, 1990 (and thereafter).	20.0000
October 1, 1982.....	73.9153		

Except as hereinabove in this Section 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 will, at all times while this Lease is in effect, at its own expense, cause to be carried and maintained property insurance in respect of the Units at the time subject hereto, and public liability insurance, in amounts and against risks customarily insured against by railroad companies on similar equipment owned or operated by them, and in any event in amounts and against risks comparable to those insured against by the Lessee on equipment owned or operated by the Lessee. If the Lessor shall receive any condemnation payments after the Lessee shall have made payments pursuant to this Section 7 without deduction for such condemnation payments, the Lessor shall pay such condemnation payments to the Lessee up to an amount equal to the Casualty Value with respect to a Unit paid by the Lessee unless an Event of Default or other event which, with notice, demand and/or lapse of time, would constitute such an Event of Default shall have occurred and be continuing, in which case the amount otherwise payable to the Lessee may be retained by the Lessor and applied to discharge the liabilities of the Lessee under Section 10. The balance of such condemnation payments shall remain the property of the Lessor. Any condemnation payments received with respect to a Unit not suffering a Casualty Occurrence shall be the property of the Lessor.

**SECTION 8. Reports.** On or before August 31 in each year, commencing with the year 1975, the Lessee will furnish to the Lessor and the Assignee an accurate statement (a) setting forth as at the preceding June 30 the amount, description and numbers of all Units then leased hereunder and covered by the Conditional Sale Agreements, the amount, description and numbers of all Units that have suffered a Casualty Occurrence or are then undergoing repairs (other than running repairs) or have been withdrawn from use pending repairs (other than running repairs) during the 12 month period preceding such June 30 and such other information regarding the condition and state of repair of the Units as the Lessor or the Assignee may reasonably request and (b) stating that, in the case of all Units repaired or repainted during the period covered by such statement, the numbers and markings required by Section 5 and the Conditional Sale Agreements have been preserved or replaced. The Lessor shall have the right, by its agents, to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Lessor may request during the term of this Lease.

Within 120 days after the close of each of its fiscal years, the Lessee will promptly furnish to the Lessor and the Assignee financial statements of Lessee's parent for such fiscal year, including a consolidated balance sheet and income statement, prepared in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year and certified by such parent's independent public accountants and (b) Lessee's consolidated financial statements for such fiscal year (as filed with the Interstate Commerce Commission in Form R-1), including a consolidated balance sheet and income statement, prepared in conformity with generally accepted accounting principles or the regulations of the Interstate Commerce Commission, in either case applied on a basis consistent with that of the preceding year. Lessee shall also furnish to the Lessor and the Assignee as soon as available, and in any event within 45 days after the end of each of the first three quarterly periods of each such fiscal year, copies of Lessee's Form RE&I and Form CBS comprising quarterly reports of consolidated revenue, expense and income and condensed consolidated balance sheets, respectively, for such quarterly period, as filed by the Lessee with the Interstate Commerce Commission.

No later than 120 days after receipt by the Lessee of a written request therefor from the Lessor or the Assignee, the Lessee will deliver to the Lessor and the Assignee a certificate signed by the President, any Vice President, the Treasurer or any Assistant Treasurer of the Lessee stating that a review of the activities of the Lessee during the last fiscal year ended prior to the date of such request has been made under his supervision with a view to determining whether the Lessee has kept, observed, performed and fulfilled all of its covenants and obligations under this Lease and the Conditional Sale Agreements and that, to the best of his knowledge, the Lessee during such fiscal year has kept, observed, performed and fulfilled each and every covenant and obligation contained herein and in the Conditional Sale Agreements, or if an Event of Default under this Lease or the Conditional Sale Agreements shall exist or if an event has occurred which, with notice, demand and/or lapse of time, would constitute such an Event of Default, specifying such Event of Default or such event and the nature and status thereof.

**SECTION 9. Disclaimer of Warranties; Compliance with Laws and Rules; Maintenance; Indemnification.** The Lessor makes no warranty or representation, either express or implied, as to the design or condition of, or as to the quality of the material, equipment or workmanship in, the Units delivered to the Lessee hereunder, and the Lessor makes no warranty of merchantability or fitness of the Units for any particular purpose or as to title to the Units or any component thereof, it being agreed that all such risks, as between the Lessor and the Lessee,

are to be borne by the Lessee; but the Lessor hereby irrevocably appoints and constitutes the Lessee as 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 Lessor and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Lessor may have against the Builders under the provisions of Article 13 of the Conditional Sale Agreements. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Lessor that the Units described therein are in all of the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

The Lessee agrees, for the benefit of the Lessor and the Assignee, to comply in all respects with all laws (including, without limitation, laws with respect to the use, maintenance and operation of each Unit) of the jurisdictions in which 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 of any Unit, the Lessee will conform therewith at its own expense; *provided, however,* that the Lessee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Lessor or the Assignee, adversely affect the property or rights of the Lessor or the Assignee under this Lease or under the Conditional Sale Agreements.

The Lessee, at its own cost and expense, shall maintain and keep each Unit in good order and repair.

Any and all additions to any Unit, and any and all parts installed on and additions and replacements made to any Unit, shall constitute accessions to such Unit and ownership thereof, free from any lien, charge, security interest or encumbrance (except for those created by the Conditional Sale Agreements or this Lease), shall immediately be vested in the Lessor and the Assignee as their respective interests appear in such Unit.

The Lessee agrees to indemnify, protect and hold harmless the Lessor and the Assignee from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including counsel fees and expenses, patent liabilities, penalties and interest, arising out of or as the result of the entering into or the performance of the Conditional Sale Agreements or this Lease, the ownership of any Unit, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any Unit or any accident in connection with the operation, use, condition, possession, storage, sale or return of any Unit resulting in damage to property or injury or death to any person, except as otherwise provided in Section 14. The indemnities arising under this paragraph shall continue in full force and effect notwithstanding the full payment of all obligations under this Lease or the termination of this Lease.

The Lessee agrees to prepare, deliver to the Lessor for execution within a reasonable time prior to the required date of filing and file (or, to the extent permissible, to prepare for and file

on behalf of the Lessor directly) any and all reports (other than income tax returns) to be filed by the Lessor with any federal, state or other regulatory authority by reason of the ownership by the Lessor or the Assignee of the Units or the leasing thereof to the Lessee.

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

(A) default shall be made in payment of any part of the rental provided in Section 3, and such default shall continue for five days;

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

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

(D) a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as hereafter amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under the Conditional Sale Agreements and this Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier; or

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

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

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

(2) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the possession and use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided; and thereupon the Lessor may, by its agents, enter upon the premises of the Lessee or any other premises where any of the Units may be located 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 whatsoever; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee (a) as damages for loss of the bargain and not as a penalty, a sum, with respect to each Unit, which represents the excess of (x) the present value, at the time of such termination, of the entire unpaid balance of all rental for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over (y) the then present value of the rentals which the Lessor reasonably estimates to be obtainable for such Unit during such period, such present value to be computed in both cases on a basis of a 3.63% per annum discount, compounded semi-annually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, (b) any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Lessor shall have sustained by reason of the breach of any covenant, representation or warranty of this Lease other than for the payment of rental and (c) an amount which, after deduction of all taxes required to be paid by the Lessor in respect of the receipt thereof under the laws of the United States of America or any political subdivision thereof, shall, in the reasonable opinion of the Lessor, cause the Lessor's net return under this Lease to be equal to the net return that would have been available to the Lessor if it had been entitled to utilization of all or such portion of the Investment Credit (as defined in Section 17) lost, not claimed, not available for claim, disallowed or recaptured by or from the Lessor as a result of the breach of one or more of the representations, warranties and covenants made by the Lessee in Section 17 or any other provision of this Lease or the sale or other disposition of the Lessor's interest in any Unit after the occurrence of an Event of Default, plus such sum as shall, in the reasonable opinion of the Lessor, cause the Lessor's net return under this Lease to be equal to the net return that would have been available to the Lessor if it had been entitled to utilization of all or such portion of the ADR Deduction (as defined in Section 17) with respect to each Unit from the applicable Closing Date which was lost, not claimed, not available for claim or disallowed or recaptured in respect of such Unit as a result of the breach of one or more of the representations, warranties and covenants made by the Lessee in Section 17 or any other provision of this Lease, the inaccuracy of any statement in any letter or document furnished to the Lessor by the Lessee, the termination of this Lease, the Lessee's loss of the right to use such Unit or the sale or other disposition of the Lessor's interest in such Unit after the occurrence of an Event of Default.

It is expressly understood and agreed that upon the occurrence of any of the defaults or conditions described in clauses (A) through (E), both inclusive, of the first paragraph of this Section 10, and prior to the time that such default or condition shall constitute an Event of Default hereunder, either the Lessor or the Beneficiary may make such payment or perform such other act as will cure such default or condition, and the amount of all payments by the Lessor or the Beneficiary on behalf of the Lessee, plus the amount of all reasonable expenses incurred

in connection therewith, together with interest thereon at the rate of  $12\frac{1}{8}\%$  per annum from the date of expenditure to the date of reimbursement, shall constitute additional rental payable hereunder from the Lessee to the Lessor on demand.

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

The failure of the Lessor to exercise any of 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 foregoing provisions of this Section 10 are subject in all respects to all mandatory requirements of law at the time in force and applicable thereto.

**SECTION 11. *Return of Units upon Default.*** If this Lease shall terminate pursuant to Section 10, the Lessee shall forthwith deliver possession of the Units to the Lessor and shall:

- (a) forthwith place such Units upon such storage tracks as the Lessor reasonably may designate;
- (b) permit the Lessor to store such Units on such tracks at the risk of the Lessee until such Units have been sold, leased or otherwise disposed of by the Lessor; and
- (c) transport the same to any place on the lines of railroad operated by the Lessee or any of its affiliates or to any connecting carrier for shipment, all as directed by the Lessor.

The assembling, delivery, storage and transporting of the Units as in this Section 11 provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and, upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the same. During any storage period, the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Unit, to inspect the same.

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

**SECTION 12. *Assignment; Possession and Use; Liens.*** This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. All the rights of the Lessor hereunder (including, but not limited to, the rights under Sections 6, 7, 10, 17 and 18 and the rights to receive the rentals payable under this Lease) shall inure to the benefit of the Lessor's assigns (including the partners or any beneficiary of any such

assignee if such assignee is a partnership or a trust, respectively). Whenever the term "Lessor" is used in this Lease, it shall apply and refer to the Lessor and the Beneficiary and each such assignee of the Lessor and, where the context so requires (including, but not limited to, certain of the provisions of Sections 6, 10 and 17), shall refer only to the Beneficiary. The term "Beneficiary" as used herein shall include any affiliated group of corporations which includes the Beneficiary and which file a consolidated federal income tax return.

So long as the Lessee shall not be in default under this Lease or under the Conditional Sale Agreements, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease and the Conditional Sale Agreements, but, without the prior written consent of the Lessor, the Lessee shall not assign or transfer its leasehold interest under this Lease in the Units or any of them; *provided, however*, that this sentence shall not be deemed to prohibit any lien attaching to the leasehold interest of the Lessee under this Lease by reason of the existence of an after-acquired property clause in any existing or future mortgage to which the Lessee is a party covering substantially all of its railroad property. The Lessee, at its own expense, will promptly pay or discharge any and all sums claimed by any person which, if unpaid, might become a lien, charge, security interest or other encumbrance (other than an encumbrance created by the Lessor or the Assignee or resulting from claims against the Lessor or the Assignee not related to the ownership of the Units) on or with respect to any Unit, including any accession thereto, or the interest of the Lessor, the Assignee or the Lessee therein, and will promptly discharge any such lien, charge, security interest or other encumbrance which arises; *provided, however*, that the Lessee shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Lessor, adversely affect the title of the Lessor in or to the Units or otherwise adversely affect its rights or the rights of the Assignee under this Lease or the Conditional Sale Agreements; and *provided further*, that this covenant will not be breached by reason of the existence of liens for taxes, assessments or governmental charges or levies, in each case so long as not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent. The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provisions of the immediately succeeding paragraph.

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

Nothing in this Section 12 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any railroad corporation incorporated under the laws of any state of the United States of America or the District of Columbia (which shall have duly assumed the obligations of the Lessee hereunder and under the Conditional Sale Agreements) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety, provided that such assignee or transferee will not, upon the effectiveness of such merger or consolidation, be in default under any provision of this Lease.

SECTION 13. *Renewal Options.* Provided this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may, by written notice delivered to the Lessor not less than six months prior to the end of the original term or the extended term of this Lease, as the case may be, elect to extend the term of this Lease in respect of all of such Units then covered by this Lease for two additional three-year periods commencing on the scheduled expiration of the original term or the extended term of this Lease, as the case may be, provided that no such extended term shall extend beyond April 1, 1996. In the event that the term of this Lease is extended pursuant to the preceding sentence, the Lessee shall pay rentals at the "Fair Market Rental" of such Units in semi-annual payments on April 1 and October 1 in each year of such extended term.

Fair Market Rental shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an arm's-length transaction between an informed and willing lessee (other than a lessee currently in possession) and an informed and willing lessor under no compulsion to lease and, in such determination, costs of removal from the location of current use shall not be a deduction from such value. If on or before four months prior to the expiration of the term of this Lease or extended term of the Lease, as the case may be, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Rental of the relevant Units, such rental shall be determined in accordance with the foregoing definitions by a qualified independent Appraiser. The term "Appraiser" shall mean such independent appraiser as the Lessor may select with the approval of the Lessee, or, failing such approved selection, a panel of three independent Appraisers, one of whom shall be selected by the Lessor, the second by the Lessee and the third designated by the first two so selected. The Appraiser shall be instructed to make such determination within a period of 30 days following appointment, and shall promptly communicate such determination in writing to the Lessor and the Lessee. The determination so made shall be conclusively binding upon both the Lessor and the Lessee. The expenses and fees of the Appraiser shall be borne by the Lessee.

SECTION 14. *Return of Units upon Expiration of Term.* As soon as practicable on or after the expiration of the original or any extended term of this Lease, the Lessee will, at its own cost and expense, at the request of the Lessor, deliver such Units to the Lessor upon such storage tracks as the Lessor may reasonably designate, or, in the absence of such designation, as the Lessee may select, and store such Units on such tracks for a period not exceeding three months and cause the same to be delivered, at any time within such three-month period, to any reasonable place directed by the Lessor. The movement and storage of such Units shall be at the expense and risk of the Lessee. During any such storage period, the Lessor or any person designated by it, including the authorized representative or representatives of any prospective

purchaser of such Units, may inspect the same; *provided, however*, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the right of inspection granted under this sentence. The assembling, delivery, storage and transporting of the Units as in this Section 14 provided are of the essence of this Lease, and, upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the same. If the Lessor shall elect to abandon any Unit which has suffered a Casualty Occurrence or which after the expiration of this Lease the Lessor shall deem to have suffered a Casualty Occurrence, it may deliver written notice to such effect to the Lessee and the Lessee shall thereupon assume and hold the Lessor harmless from all liability arising in respect of any responsibility of ownership thereof, from and after receipt of such notice. With respect to any Unit so abandoned, the Lessor shall execute and deliver to the Lessee a bill of sale (without representations or warranties except that such Units are free and clear of all liens, charges, security interests and other encumbrances by or in favor of any person claiming by, through or under the Lessor) for such Units, and such other documents as may be required to release such Units from the terms and scope of this Lease and to transfer title thereto to the Lessee, in such form as may reasonably be requested by the Lessee, all at Lessee's expense. The Lessee shall have no liability to the Lessor in respect of any Unit abandoned by the Lessor after termination of this Lease; *provided, however*, that this sentence shall not in any way relieve the Lessee of its obligation pursuant to Section 7 to make payments equal to the Casualty Value of any Unit experiencing a Casualty Occurrence while this Lease is in effect.

SECTION 15. *Opinion of Counsel.* On each Closing Date, the Lessee will deliver to the Lessor and the Beneficiary two counterparts of the written opinions of counsel for the Lessee, addressed to the Lessor and the Beneficiary, to the effect provided in subparagraph (g) of the first paragraph of Section 5 of the Assignments.

SECTION 16. *Recording.* The Lessee, at its own expense, will cause this Lease, the Lease Assignment, the Conditional Sale Agreements and the Assignments, and any amendments or supplements hereto or thereto, and any further assignments hereof and thereof, to be filed and recorded in accordance with Section 20c of the Interstate Commerce Act, and the Lessee will undertake the filing, registering, depositing and recording required of the Lessor under the Conditional Sale Agreements and will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record (and will refile, re-register, re-deposit or re-record whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Assignee for the purpose of proper protection, to their satisfaction, of the Lessor's and the Assignee's respective interests in the Units, or for the purpose of carrying out the intention of and their respective rights under this Lease, the Lease Assignment, the Conditional Sale Agreements and the Assignments; and the Lessee will promptly furnish to the Lessor and the Assignee evidences of all such filing, registering, depositing and recording, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Lessor and the Assignee. This Lease and the Conditional Sale Agreements shall be filed and recorded with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Unit.

SECTION 17. *Federal Income Taxes.* The Lessor, as the owner of the Units, shall be entitled to such deductions, credits and other benefits as are provided by the Internal Revenue Code of 1954, as amended to the date hereof (hereinafter called the Code), to an owner of property, including, without limitation, the maximum depreciation deduction with respect to the Units authorized under section 167 of the Code utilizing the "class life" prescribed in accordance with section 167(m) of the Code (hereinafter called the ADR Deduction), deductions with respect to interest payable under the Conditional Sale Agreements pursuant to section 163 of the Code (hereinafter called the Interest Deduction) and the 7% investment credit (hereinafter called the Investment Credit) with respect to the Purchase Price of the Units pursuant to section 38 and related sections of the Code.

If the deductions, credits or other benefits to which the Lessor is so entitled are increased or decreased by changes in the Code which became effective on or before December 31, 1974, then the rental payments and the Casualty Values under this Lease shall be adjusted so that the Lessor's net return shall not be increased or decreased by reason of such changes. Similarly, the indemnity provisions and payments provided for in this Section 17 shall reflect and include such changes in the Code, if any.

The Lessee agrees that neither it nor any corporation controlled by it, in control of it or under common control with it, directly or indirectly, will at any time take any action or file any returns or other documents inconsistent with the foregoing and that each of such corporations will file such returns, take such actions and execute such documents as may be reasonable and necessary to facilitate accomplishment of the intent hereof.

The Lessee represents and warrants that (i) all the Units constitute property the full Purchase Price of which qualifies for the Investment Credit under section 50 of the Code; (ii) at the time the Lessor becomes the owner of the Units, the Units will constitute "new section 38 property" within the meaning of section 48(b) of the Code and at the time the Lessor becomes the owner of the Units, the Units will not have been used by any person so as to preclude "the original use of such property" within the meaning of sections 48(b) and 167(c)(2) of the Code from commencing with the Lessor; (iii) at all times during the term of this Lease, each Unit will constitute "Section 38 property" within the meaning of section 48(a) of the Code and no Unit will be used outside the United States within the meaning of section 48(a) of the Code (or any exception thereto); (iv) the Lessee will maintain sufficient records to verify such use; and (v) upon request of the Lessor, the Lessee will provide written reports establishing such use.

If by reason of any act or omission of the Lessee or the inaccuracy in law or in fact of the representations and warranties set forth in the preceding paragraph or the inaccuracy of any statement in any letter or document furnished to the Lessor by the Lessee the Lessor shall lose, or, in the Lessor's reasonable judgement, shall not have, or shall lose the right to claim or shall suffer a disallowance of or shall be required to recapture (any such event being hereinafter called a Loss), all or any portion of the Investment Credit, the ADR Deduction or the Interest Deduction with respect to all or part of any Unit, then the rentals for the Units set forth in Section 3 shall, on the next succeeding rental payment date after written notice to the Lessee by the Lessor of such fact, be increased to such amount or amounts as shall, in the reasonable opinion of the Lessor, cause the Lessor's net return (computed on the same assumptions as utilized by the Lessor in originally evaluating this transaction) to equal the net return that

would have been realized by the Lessor if the Lessor had been entitled to utilize all the Investment Credit, the ADR Deduction and the Interest Deduction, and the Lessee shall forthwith pay to the Lessor as additional rental the amount of any interest and/or penalties which may be assessed by the United States of America against the Lessor attributable to the loss of all or such portion of the Investment Credit, the ADR Deduction or Interest Deduction; *provided, however,* that such rental shall not be so increased if the Lessor shall have lost, or shall not have, or shall have lost the right to claim, or shall have suffered a disallowance of or shall have been required to recapture all or any portion of, the Investment Credit, the ADR Deduction or the Interest Deduction with respect to all or part of such Unit as a direct result of the occurrence of any of the following events:

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

(ii) a voluntary transfer or other voluntary disposition by the Lessor of any interest in such Unit or the voluntary reduction by the Lessor of its interest in the rentals from such Unit under this Lease (except pursuant to an assignment of this Lease to the Assignee), unless, in each case, an Event of Default shall have occurred and be continuing;

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

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

In the event the rental shall be adjusted as hereinbefore provided, the Casualty Values set forth in Section 7 and the damages and amounts set forth in subparagraph (1) of the first paragraph of Section 10 shall be adjusted accordingly.

SECTION 18. *Purchase of the Units by the Lessee.* If on April 1, 1975 the Long-Term Investor (as defined in the Finance Agreement) shall not have acquired all of the right, title and interest of the Interim Investor (as there defined) in the aggregate Conditional Sale Indebtedness as contemplated by the Finance Agreement, then, in such event, the Lessee agrees that it will immediately pay to the Lessor, as the purchase price of the Units, an amount equal to (i) the unpaid principal balance of the aggregate Conditional Sale Indebtedness, plus accrued and unpaid interest thereon at the Interim Rate (as defined in the Conditional Sale Agreements), plus (ii) the sum of (a) 40% of the Purchase Price of the Units, (b) the Lessor's reasonable out-of-pocket fees and expenses incurred in connection with the entering into of the transactions contemplated hereby (including without limitation brokerage commissions, legal and printing fees and attorneys' fees) and (c) interest on the amounts set forth in the preceding clauses (a) and (b) at the rate of 12 $\frac{1}{8}$ % per annum from the date such amounts were paid or incurred by the Lessor, less (d) any rental or Casualty Payment or portion thereof theretofore paid by the Lessee which has not been applied by the Lessor to the payment of Conditional Sale Indebtedness or interest thereon and is not then owing with respect thereto. Upon receipt of such payment, the Lessor shall convey absolute right to the possession of, title to and property in the Units to the Lessee by bill or bills of sale warranting such title to be free of all liens, security interests and other encumbrances which result from claims against the Lessor not related to the ownership of the Units, the performance of the Lessor's duties and responsibilities under this Lease or any

instrument referred to herein or any other transactions pursuant to or contemplated by this Lease or any instrument referred to herein.

SECTION 19. *Interest on Overdue Rentals.* Anything herein to the contrary 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  $12\frac{1}{8}\%$  per annum of the overdue rentals and other obligations for the period of time during which they are overdue or such lesser amount as may be legally enforceable.

SECTION 20. *Notices.* Any notice hereunder to any of the persons designated below shall be deemed to have been properly served if delivered personally or if mailed, certified mail postage prepaid, at the following specified addresses:

(a) To the Lessor, 130 John Street, New York, New York 10038, attention of Corporate Trust and Agency Division, with a copy to the Beneficiary at P. O. Box 8300, Stamford, Connecticut 06904, attention of Loan Officer—Rail;

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

(c) To the Assignee, P.O. Box 2258, Baltimore, Maryland 21203, attention of Corporate Trust Department;

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

SECTION 21. *Payment of Expenses.* The Lessee agrees to pay (i) all of the costs and expenses incurred by the Lessee in connection with the preparation, execution and delivery of this Lease, the Finance Agreement, the Trust Agreement, the Conditional Sale Agreements, the Assignments and the Lease Assignment, or any amendments, supplements or waivers with respect hereto or thereto, including the reasonable fees and disbursements of its counsel, and, (ii) any and all commissions, fees, judgments or expenses of any nature or kind which may become payable by reason of any claim by or on behalf of brokers, finders or agents in connection with the transactions contemplated by the Finance Agreement or any litigation or similar proceedings arising from such claims, other than the fees and disbursements of Halsey, Stuart & Co. Inc. and any other amount claimed by or on behalf of any broker, finder or agent by reason of any arrangement or understanding directly with the person or persons asserting any rights under this sentence. The Lessor agrees to pay (i) all of the costs and expenses incurred by the Investors and the Assignee in connection with the preparation, execution and delivery of this Lease, the Finance Agreement, the Trust Agreement, the Conditional Sale Agreements, the Assignments and the Lease Assignment, or any amendments, supplements or waivers with respect hereto or thereto, including the reasonable fees and disbursements of Messrs. Sidley & Austin as special counsel for the Investors and the Assignee, (ii) the fees and disbursements of the Assignee, (iii) the cost of printing this Lease, the Finance Agreement, the Conditional Sale Agreements, the Assignments, the Lease Assignment and the Certificates of Interest (as defined in the Finance Agreement), or any amendments, supplements or waivers with respect hereto or thereto, (iv) the fees of Halsey, Stuart & Co. Inc., (v) all of the fees, costs and expenses incurred by the Lessor in connection with the preparation, execution and delivery of this Lease, the Finance Agreement,

the Trust Agreement, the Conditional Sale Agreements, the Assignments and the Lease Assignment, or any amendments, supplements or waivers with respect hereto or thereto, including the reasonable fees and disbursements of Messrs. Sullivan & Cromwell as special counsel for the Lessor and any other special local counsel retained by the Lessor and (vi) the cost of printing or otherwise reproducing the Trust Agreement, or any amendment, supplement or waiver with respect thereto.

SECTION 22. *Severability; Effect and Modification of Lease.* Any provision of this Lease prohibited or unenforceable by any applicable law of any jurisdiction shall as to such jurisdiction be 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. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Lessee to the full extent permitted by law, to the end that this Lease shall be enforced as written.

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

All Section headings are inserted for convenience only and shall not affect any construction or interpretation of this Lease.

SECTION 23. *Law Governing.* The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of Illinois; *provided, however,* that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording, registering or depositing, if any, of this Lease and the Lease Assignment as shall be conferred by the laws of the several jurisdictions in which this Lease or the Lease Assignment shall be filed, recorded, registered or deposited.

SECTION 24. *Execution.* This Lease may be executed in any number of counterparts, but the counterpart delivered to the Assignee shall be deemed to be the original counterpart. Although this Lease is dated as of October 15, 1974 for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this Lease to be signed in their respective corporate names by duly authorized officers and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

(CORPORATE SEAL)

Attest:

*Gene R. Scocca*  
.....  
*Assistant Secretary*

UNITED STATES TRUST COMPANY OF  
NEW YORK, *as Trustee*

By .....

*Malcolm B. ...*  
.....  
*Vice President*



(CORPORATE SEAL)

Attest:

*H. A. Brew*  
.....  
*Secretary*

THE WESTERN PACIFIC RAILROAD COMPANY

By .....

*Walter G. ...*  
.....  
*Vice President*



STATE OF NEW YORK }  
COUNTY OF NEW YORK } SS

On this <sup>7<sup>th</sup></sup> day of ~~October~~<sup>NOVEMBER</sup>, 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 and that said instrument was signed and sealed on behalf of said corporation by authority of its By-laws, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

*Thomas B. Zakrzewski*  
Notary Public

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

(NOTARIAL SEAL)

My Commission expires .....

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

On this <sup>6<sup>th</sup></sup> day of ~~October~~<sup>NOVEMBER</sup>, 1974, before me personally appeared ~~WALTER G. TREANOR~~, to me personally known, who, being by me duly sworn, says that he is a Vice President of The Western Pacific Railroad Company, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

*Diane L. Fafoutis*  
Notary Public

(NOTARIAL SEAL)



My Commission expires *Dec. 14, 1975*

Annex A to  
Lease of Railroad Equipment

<u>Type</u>	<u>Quantity</u>	<u>Car Numbers (Both Inclusive)</u>	<u>Estimated Time and Place of Delivery</u>
100-ton (4,650 cu. ft.) covered hopper cars	65	WP 11901- 11965	November, 1974 at Huntington, W. Va.
60' 100-ton insulated box cars	10	WP 67042- 67051	November- December, 1974 at Renton, Wash.

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**ASSIGNMENT OF LEASE AND AGREEMENT**

**Dated as of October 15, 1974**

**between**

**UNITED STATES TRUST COMPANY OF NEW YORK,  
*as Trustee***

**and**

**MERCANTILE-SAFE DEPOSIT  
AND TRUST COMPANY,  
*as Agent***

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**ASSIGNMENT OF LEASE AND AGREEMENT** dated as of October 15, 1974 between UNITED STATES TRUST COMPANY OF NEW YORK, as Trustee (hereinafter, together with its successors and assigns, called the Vendee) under a Trust Agreement dated as of the date hereof with GENERAL ELECTRIC CREDIT CORPORATION (hereinafter called the Beneficiary), and MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, as Agent (hereinafter, together with its successors and assigns, called the Assignee) under a Finance Agreement dated as of the date hereof (hereinafter called the Finance Agreement).

WHEREAS, the Vendee; and THE WESTERN PACIFIC RAILROAD COMPANY (hereinafter called the Lessee) have entered into Conditional Sale Agreements dated as of the date hereof (hereinafter called the Conditional Sale Agreements) with ACF INDUSTRIES, INCORPORATED and PACCAR INC, respectively (hereinafter called the Builders), covering the construction, sale and delivery, on the conditions therein set forth, by the Builders and the purchase by the Vendee of the railroad equipment described in Annex B to the respective Conditional Sale Agreements (hereinafter called the Equipment);

WHEREAS, each Builder and the Assignee have entered into an Agreement and Assignment dated as of the date hereof (hereinafter called the Conditional Sale Assignments) assigning to the Assignee the right, security title and interest of such Builder under its respective Conditional Sale Agreement as security for the payment of the aggregate Conditional Sale Indebtedness (as defined in the Conditional Sale Agreements);

WHEREAS, the Vendee and the Lessee have entered into a Lease of Railroad Equipment dated as of the date hereof (hereinafter called the Lease) providing for the lease to the Lessee of the Equipment; and

WHEREAS, in order to provide further security for the payment of the aggregate Conditional Sale Indebtedness and as an inducement to the Investors (as defined in the Finance Agreement) to invest in the Conditional Sale Indebtedness, the Vendee has agreed to assign for security purposes certain of its rights in, to and under the Lease to the Assignee;

NOW, THEREFORE, THIS ASSIGNMENT OF LEASE AND AGREEMENT (hereinafter called this Assignment) WITNESSETH That, in consideration of the sum of One Dollar and other good and valuable consideration paid by the Assignee to the Vendee, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained, the parties hereto do hereby agree as follows:

**SECTION 1.** The Vendee hereby assigns, transfers and sets over unto the Assignee, its successors and assigns, (i) all the Vendee's right, title and interest as lessor under the Lease, together with all rights, powers, privileges and other benefits of the Vendee as lessor under the Lease, including, without limitation, the immediate right to receive and collect all rentals, profits and other sums payable to or receivable by the Vendee under or pursuant to the provisions of the Lease, whether as rent, casualty payment, termination payment, indemnity, liquidated damages or otherwise (other than payments pursuant to Section 17 which shall be made directly to the Beneficiary) (such moneys being hereinafter called the Payments), it being expressly understood and agreed by the Assignee that such assignment of the Payments shall not thereby increase the amount of funds applicable to the payment or prepayment of the Conditional Sale Indebtedness or interest thereon as provided in the last paragraph of Article 4 of the Conditional Sale Agreements; and (ii) the right to make all waivers and agreements, to give all notices, consents and releases, to take all action upon the happening of an Event of Default

specified in the Lease and to do any and all other things whatsoever which the Vendee as lessor is or may become entitled to do under the Lease. In furtherance of the foregoing assignment and transfer, the Vendee hereby authorizes and empowers the Assignee, in the Assignee's own name or in the name of the Assignee's nominee, or in the name of or as attorney hereby irrevocably constituted for the Vendee as lessor, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and compliance by the Lessee with the terms and agreements on its part to be performed under the Lease.

The Assignee agrees to accept any Payments made by the Lessee for the account of the Vendee as lessor pursuant to the Lease. To the extent received, the Assignee shall apply such Payments to satisfy the obligations of the Vendee under the Conditional Sale Agreements, subject to the limitations contained in the last paragraph of Article 4 of the Conditional Sale Agreements, and any balance shall be paid as promptly as possible, and in any event within five Business Days, to and retained by the Beneficiary, unless and until the Vendee shall otherwise direct the Assignee in writing. If the Assignee shall not receive any rental payment under the first paragraph of Section 3 of the Lease when due, the Assignee shall forthwith notify the Vendee at the addresses set forth in the Lease.

SECTION 2. This Assignment is executed only as security and, therefore, the execution and delivery of this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the liability of the Vendee under the Lease, it being understood and agreed that, notwithstanding this Assignment, or any subsequent assignment, all obligations of the Vendee to the Lessee shall be and remain enforceable by the Lessee only against the Vendee or persons other than the Assignee.

SECTION 3. To protect the security afforded by this Assignment, the Vendee further agrees as follows:

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

(b) at the Vendee's sole cost and expense (subject to Articles 4 and 22 of the Conditional Sale Agreements), the Vendee will appear in and defend every action or proceeding arising under, growing out of or in any manner connected with the obligations, duties or liabilities of the Vendee under the Lease if such action or proceeding shall arise out of the willful misconduct or reckless disregard of duty of the Vendee; and

(c) should the Vendee fail to make any payment or to do any act which this Assignment requires the Vendee to make or do, then the Assignee may (but shall not be obligated), after first making written demand upon the Vendee and affording the Vendee a reasonable period of time within which to make such payment or do such act, and without releasing

the Vendee from any obligation hereunder or under the Lease, make such payment or do such act in such manner and to such extent as the Assignee may deem necessary to protect the security hereof, including, without limitation, the right to appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of the Assignee and also the right to perform and discharge each and every obligation, covenant and agreement of the Vendee contained in the Lease. In exercising any such powers, the Assignee may pay necessary costs and expenses, employ counsel and incur and pay reasonable attorneys' fees, and the Vendee will reimburse the Assignee for such costs, expenses and fees.

SECTION 4. Upon the full discharge and satisfaction of all the Vendee's and the Lessee's obligations under the Conditional Sale Agreements, this Assignment and all rights herein assigned to the Assignee shall terminate, and all estate, right, title and interest of the Assignee in and to the Lease shall revert to the Vendee.

SECTION 5. The Vendee represents and warrants that (a) the Trust Agreement, the Conditional Sale Agreements, the Conditional Sale Assignments, the Lease and this Assignment have each been duly authorized, executed and delivered by the Vendee and each is and will remain the valid and binding obligation of the Vendee enforceable in accordance with its respective terms; (b) the Vendee has not executed any other assignment of the Conditional Sale Agreements or the Lease and its right to receive all payments under the Lease is and will continue to be free and clear of any and all liens, charges, security interests or other encumbrances (except this Assignment) created or suffered by any act or omission on the part of the Vendee (other than any act or omission in respect of which the Lessee has assumed responsibility under the Lease), and the Vendee has not received any advance rental payments under the Lease; and (c) to the best knowledge of the Vendee, it has performed all obligations on its part to be performed under the Lease on or prior to the date hereof and there has not occurred on or prior to the date hereof any Event of Default as defined in the Lease.

SECTION 6. The Vendee agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the Lease for any installment of, or interest on, any rental or other sum owing thereunder, or to enforce any provisions of the Lease, the Vendee will indemnify, protect and hold harmless the Assignee from and against all expense (including without limitation counsel fees), loss or damage suffered by reason of any defense, set-off, counterclaim or recoupment whatsoever claimed by the Lessee arising out of a breach by the Vendee of any obligation under the Lease or arising by reason of any other indebtedness or liability at any time owing to the Lessee from the Vendee. Any and all such obligations shall be and remain enforceable against and only against the Vendee and shall not be enforceable against the Assignee or any person or persons in whom any of the rights of the Vendee under the Lease shall vest by reason of this assignment or of successive assignments or transfers.

SECTION 7. The Assignee may assign all or any of its rights under the Lease, including the right to receive any Payments due or to become due thereunder. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, and upon giving by the Assignee of written notice of such assignment to the Vendee, and by the Vendee of the written notice required in Section 12 of the Lease, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 8. The Vendee hereby agrees that it will from time to time and at all times, at the request of the Assignee or its successors or assigns, make, execute and deliver all such further

instruments of assignment, transfer and assurance and do such further acts and things as may be necessary and appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Assignee or intended so to be, including the execution and acknowledgment of any instrument necessary or appropriate to file, record, register or deposit this Assignment or notice hereof.

SECTION 9. The Vendee shall cause copies of all notices received in connection with the Lease to be promptly delivered to the Assignee at its address set forth in Article 21 of the Conditional Sale Agreements, or at such other address as the Assignee shall designate in writing. The Assignee shall give immediate notice by telegram, promptly confirmed in writing, to the Vendee and the Beneficiary of any default by the Lessee described in clause (A) of Section 10 of the Lease and of any other default by the Lessee described in such Section 10 of which the Assignee has actual knowledge.

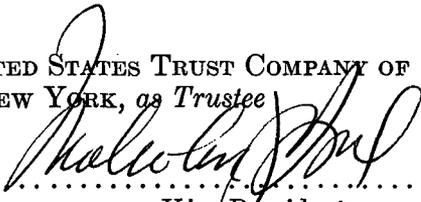
SECTION 10. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the State of Illinois; *provided, however*, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording, registering or depositing, if any, of the Lease or this Assignment as shall be conferred by the laws of the several jurisdictions in which the Lease or this Assignment shall be filed, recorded, registered or deposited.

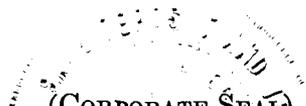
SECTION 11. This Assignment may be executed in any number of counterparts, but the counterpart delivered to the Assignee shall be deemed to be the original counterpart. Although this Assignment is dated as of October 15, 1974 for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this Assignment to be signed in their respective corporate names by duly authorized officers and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

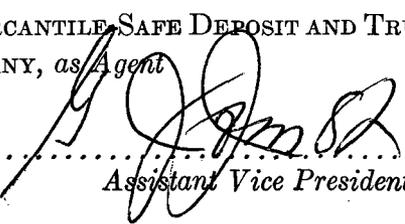
  
(CORPORATE SEAL)

Attest: Gene R. Scocco  
Assistant Secretary

UNITED STATES TRUST COMPANY OF  
NEW YORK, *as Trustee*  
By   
Vice President

  
(CORPORATE SEAL)

Attest:   
Corporate Trust Officer

MERCANTILE SAFE DEPOSIT AND TRUST COM-  
PANY, *as Agent*  
By   
Assistant Vice President

STATE OF NEW YORK }  
COUNTY OF NEW YORK } SS

On this ~~7th~~ <sup>NOVEMBER</sup> 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 and that said instrument was signed and sealed on behalf of said corporation by authority of its By-laws, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

*Thomas B. Zakrzewski*  
.....  
Notary Public

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

(NOTARIAL SEAL)

My Commission expires .....

STATE OF MARYLAND }  
CITY OF BALTIMORE } SS

On this ~~12th~~ day of October, 1974, before me personally appeared **G. J. Johnston**, to me personally known, who, being by me duly sworn, says that he is an Assistant Vice President of Mercantile-Safe Deposit and Trust Company, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

*Dorothy E. Scharr*  
.....  
Notary Public

DOROTHY E. SCHARR  
NOTARY PUBLIC  
My Commission Expires July 1, 1978

(NOTARIAL SEAL)

My commission expires ~~7-1-78~~.....

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

Receipt of a copy of, and due notice of the assignment made by, the foregoing Assignment of Lease and Agreement is hereby acknowledged as of October 15, 1974.

THE WESTERN PACIFIC RAILROAD COMPANY  
*Victor Keane*  
.....  
Vice President