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INTERSTATE COMMERCE COMMISSION

CONDITIONAL SALE AGREEMENT

Dated as of October 15, 1974

among

ACF INDUSTRIES, INCORPORATED

UNITED STATES TRUST COMPANY OF NEW YORK,
as Trustee

and

THE WESTERN PACIFIC RAILROAD COMPANY

CONDITIONAL SALE AGREEMENT

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CONDITIONAL SALE AGREEMENT dated as of October 15, 1974 among the corporation named in Annex A hereto (hereinafter called the Vendor or Builder as more particularly set forth in Article 1); 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 (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 Builder has agreed to construct, sell and deliver to the Vendee, and the Vendee has agreed to purchase, the railroad equipment described in Annex B hereto (hereinafter called the Equipment); and

WHEREAS, the Vendee is entering into a Lease of Railroad Equipment dated as of the date hereof (hereinafter called the Lease), substantially in the form of Annex C hereto, with the Lessee, and the Lessee is willing to provide for the payment to the Builder of certain sums and to guarantee to the Vendor that the principal of, and interest on the Conditional Sale Indebtedness (as defined in Article 4) will be duly and punctually paid when due and has joined in this Agreement for the purpose of setting forth the terms and conditions of such payment and of such guarantee and making certain further agreements as hereinafter set forth;

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

ARTICLE 1. *Assignment; Definitions.* The parties hereto contemplate (subject to the limitations set forth in the third paragraph of Article 3 and the first paragraph of Article 4) that the Vendee will furnish that portion of the purchase price for the Equipment as is required under subparagraph (a) of the third paragraph of Article 4 and that an amount equal to the balance of such purchase price shall be paid to the Builder by an assignee of the Builder's right, title and interest under this Agreement pursuant to an Agreement and Assignment dated as of the date hereof (hereinafter called the Assignment) between the Builder 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 Beneficiary, the Lessee and the parties named in Annex A thereto (hereinafter called the Investors).

The term "Vendor," whenever used in this Agreement, means, before any assignment of its rights hereunder, the party hereto which has manufactured the Equipment and any successor or successors for the time being to its manufacturing properties and business, and, after any such assignment, both any assignee or assignees for the time being of such particular assigned rights as regards such rights, and also any assignor as regards any rights hereunder that are retained and excluded from any such assignment; the term "Builder," whenever used in this Agreement, means, both before and after any such assignment, the party hereto which has manufactured the Equipment and any successor or successors for the time being to its manufacturing properties and business. In case of such assignment, the Vendee will assign to the Vendor, as security for the payment and performance of all the Vendee's obligations hereunder, certain rights, titles and interests of the Vendee in and to the Lease pursuant to an Assignment of Lease and Agreement dated as of the date hereof (hereinafter called the Lease Assignment), substantially in the form of Annex D hereto. The term "Other Agreement," whenever used

in this Agreement, means the Conditional Sale Agreement dated as of the date hereof described in Item 5 of Annex A hereto.

Additional Agreements, if any, set forth in Annex A hereto shall be deemed to be a part of this Agreement as fully as though such Additional Agreements had been set forth in this Agreement.

ARTICLE 2. *Construction and Sale.* Pursuant to this Agreement, the Builder shall construct the Equipment at its plant set forth in Annex B hereto and will sell and deliver to the Vendee, and the Vendee will purchase from the Builder and accept delivery of and pay for as hereinafter provided, the Equipment, each unit of which shall be constructed in accordance with the specifications referred to in Annex B hereto and in accordance with such modifications thereof as may be agreed upon in writing between the Builder, the Vendee and the Lessee (which specifications and modifications, if any, are hereinafter called the Specifications). The design, quality and component parts of each unit of the Equipment shall conform, on the date of delivery thereof, to all United States Department of Transportation and Interstate Commerce Commission requirements and standards for new equipment and to all standards recommended by the Association of American Railroads reasonably interpreted as being applicable to railroad equipment of the character of such units; and each such unit will be new railroad equipment.

ARTICLE 3. *Inspection and Delivery.* The Builder will deliver the units of the Equipment to the Vendee at the place specified in Annex B hereto, freight charges, if any, prepaid, in accordance with the delivery schedule set forth in Annex B hereto; *provided, however,* that delivery of any unit of the Equipment shall not be made until this Agreement and the Lease shall have been filed pursuant to Section 20c of the Interstate Commerce Act.

The Builder's obligation as to time of delivery is subject, however, to delays resulting from causes beyond the Builder's reasonable control, including, but not limited to, acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, delays in receiving necessary materials or delays of carriers or subcontractors.

Notwithstanding the preceding provisions of this Article 3, any Equipment not delivered, accepted and settled for on or before the Cut-Off Date (as defined in Article 4) shall be excluded from this Agreement and not included in the term "Equipment." In the event of any such exclusion, the parties hereto shall execute an agreement supplemental hereto limiting this Agreement to the Equipment not so excluded herefrom; and if the Builder's failure to deliver the Equipment so excluded resulted from one or more of the causes set forth in the immediately preceding paragraph, the Lessee shall be obligated to purchase such Equipment and pay the full purchase price therefor, determined as provided in this Agreement, if and when such Equipment shall be completed and delivered by the Builder. Such payment shall be in cash on the delivery of such Equipment, either directly or, if the Builder and the Lessee shall mutually agree, by means of a conditional sale agreement, equipment trust or other appropriate method of financing.

During construction, the Equipment shall be subject to inspection and approval by the authorized inspectors of the Vendee (who may be employees of the Lessee), and the Builder shall grant to such authorized inspectors reasonable access to its plant. The Builder agrees to

inspect all materials used in the construction of the Equipment in accordance with the standard quality control practices of the Builder. Upon completion of each unit or of a number of units of the Equipment, such unit or units shall be presented to an inspector of the Vendee for inspection at the place specified for delivery of such unit or units, and if each such unit conforms to the Specifications, requirements and standards applicable thereto, such inspector or an authorized representative of the Vendee (who may be an employee of the Lessee) shall execute and deliver to the Builder a certificate of acceptance (hereinafter called a Certificate of Acceptance) stating that such unit or units have been inspected and accepted on behalf of the Vendee and are marked in accordance with Article 9; *provided, however,* that the Builder shall not thereby be relieved of its warranties referred to in Article 13.

On delivery of each such unit hereunder at the place specified for delivery, the Builder shall have no further responsibility for, nor bear any risk of, any damage to or the destruction or loss of such unit; *provided, however,* that the Builder shall not thereby be relieved of its warranties referred to in Article 13.

ARTICLE 4. *Purchase Price and Payment.* The base price per unit of the Equipment is set forth in Annex B hereto. Such base price is subject to such increase or decrease as is agreed to by the Builder, the Vendee and the Lessee. The term "Purchase Price" shall mean the base price as so increased or decreased. If on any Closing Date (as hereinafter defined in this Article 4) the aggregate invoiced Purchase Price of Equipment for which settlement has theretofore been and is then being made under this Agreement and the Other Agreement would, but for the provisions of this sentence, exceed $1,992,375 (or such greater amount as the Vendee with the consent of the Lessee may at its option agree to), the Builder (and any assignee of the Builder) and the Lessee will, upon request of the Vendee, enter into an agreement excluding from this Agreement or such Other Agreement such unit or units of Equipment then proposed to be settled for and specified by the Vendee as will, after giving effect to such exclusion, reduce such aggregate invoiced Purchase Price under this Agreement and the Other Agreement to not more than $1,992,375 (or such greater amount as aforesaid). The Lessee agrees to purchase any unit or units of Equipment so excluded from this Agreement from the Builder for cash on the date such unit or units would otherwise have been settled for under this Agreement, either directly or, if the Builder and the Lessee shall mutually agree, by means of a conditional sale agreement, equipment trust or other appropriate method of financing.

The Equipment shall be settled for in such number of groups of units of the Equipment delivered to and accepted by the Vendee as is provided in Item 2 of Annex A hereto (each such group being hereinafter called a Group). The term "Closing Date" with respect to any Group shall mean such date, not earlier than November 1, 1974 and not later than December 31, 1974 (such later date being hereinafter called the Cut-Off Date), occurring not more than 10 Business Days following presentation by the Builder to the Vendee of the invoice for such Group and the Certificates of Acceptance in respect thereof and written notice thereof by the Builder to the Lessee, as shall be fixed by the Lessee by written notice delivered to the Vendee and the Vendor at least six Business Days prior to the Closing Date designated therein. The term "Business Days" as used herein means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in New York, New York, Chicago, Illinois, Baltimore, Maryland or San Francisco, California are authorized or obligated to remain closed.

Subject to the provisions of the final paragraph of this Article 4, the Vendee hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay in cash to the Vendor at such place as the Vendor may designate, the Purchase Price of the Equipment, as follows:

(a) On the Closing Date with respect to each Group, an amount equal to 40% of the aggregate Purchase Price of such Group; and

(b) In 30 consecutive semi-annual installments, as hereinafter provided, an amount equal to the aggregate Purchase Price of the units of Equipment for which settlement is then being made, less the aggregate amount paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph.

The portion of the Purchase Price payable pursuant to subparagraph (b) of the preceding paragraph (hereinafter called the Conditional Sale Indebtedness) shall be payable on April 1 and October 1 of each year, commencing October 1, 1975 and terminating April 1, 1990 (or if any such date is not a Business Day, on the next succeeding Business Day), each such date being hereinafter called a Payment Date. The unpaid balance of the Conditional Sale Indebtedness shall bear interest (i) from the Closing Date in respect of which such Indebtedness was incurred to April 1, 1975 (hereinafter called the Take-Out Date) at 11½% per annum (hereinafter called the Interim Rate) and (ii) from the Take-Out Date at 11⅛% per annum. Such interest shall be payable, to the extent accrued, on April 1 and October 1 of each year, commencing April 1, 1975 and terminating April 1, 1990. The installments of Conditional Sale Indebtedness payable on each Payment Date shall be calculated so that the aggregate of Conditional Sale Indebtedness and interest payable on each Payment Date shall be substantially equal and such installments shall completely amortize the Conditional Sale Indebtedness. The Vendee will furnish to the Vendor and the Lessee promptly after each Closing Date a schedule, in such number of counterparts as shall be requested by the Vendor, showing the respective amounts of Conditional Sale Indebtedness and interest payable on each Payment Date.

Interest under this Agreement shall be determined on the basis of a 360-day year of twelve 30-day months.

Subject to the provisions of the final paragraph of this Article 4, the Vendee will pay interest, to the extent legally enforceable, at a rate of 1% per annum in excess of the interest rate from time to time payable on the Conditional Sale Indebtedness upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof or such lesser amount as shall be legally enforceable, anything herein to the contrary notwithstanding.

All payments provided for in this Agreement shall be made in immediately available funds. Except as provided in Article 7 or Section 18 of the Lease, the Vendee shall not have the privilege of prepaying any portion of the Conditional Sale Indebtedness prior to the date it becomes due.

If the Long-Term Investor shall not acquire the interest of the Interim Investor as contemplated by the Finance Agreement, then the entire unpaid balance of the Conditional Sale Indebtedness, together with accrued and unpaid interest at the Interim Rate, shall become due and payable on April 1, 1975.

The obligation of the Vendee to pay to the Vendor any amount required to be paid pursuant to the third paragraph of this Article 4 with respect to any Group is specifically subject

to the fulfillment, on or before the Closing Date in respect of such Group, of the following conditions (any of which may be waived by the Vendee, and payment by the Vendee of the amount specified in subparagraph (a) of such third paragraph with respect to such Group shall be conclusive evidence that such conditions have been fulfilled or irrevocably waived):

(a) the Assignee shall have paid or caused to have been paid to the Builder the amounts contemplated to be paid by it as provided in Article 1 and in the Assignment and the documents required by the Assignment shall have been delivered;

(b) no event of default specified herein or Event of Default of the Lessee under the Lease, nor any event which, with notice, demand and/or lapse of time provided for herein or in the Lease, would constitute such an event of default or Event of Default shall have occurred and be continuing; and

(c) the Vendee and the Beneficiary shall have received (i) the opinions of counsel required by Section 15 of the Lease and (ii) such other documents as the Vendee may reasonably request.

Notwithstanding any other provision of this Agreement (including, but not limited to, any provision of Articles 15 and 16), it is understood and agreed by the Vendor that the liability of the Vendee for all payments to be made by it under and pursuant to this Agreement, with the exception only of the payments to be made pursuant to subparagraph (a) of the third paragraph of this Article 4, shall not exceed an amount equal to, and shall be payable only out of, the "income and proceeds from the Equipment" as hereinafter defined, and such payments shall be made by the Vendee only to the extent that the Vendee or any assignee of the Vendee shall have actually received sufficient "income and proceeds from the Equipment" to make such payments. Except as provided in the next preceding sentence, the Vendor agrees that the Vendee shall have no personal liability to make any payments under this Agreement whatsoever except from the "income and proceeds from the Equipment" to the extent actually received by the Vendee or any assignee of the Vendee. In addition, the Vendor agrees that the Vendee (i) makes no representation or warranty, and is not responsible for, the due execution, validity, sufficiency or enforceability of the Lease (or any document relative thereto) in so far as it relates to the Lessee or of any of the Lessee's obligations thereunder and (ii) shall not be responsible for the performance or observance by the Lessee of any of its agreements, representations, indemnities, obligations or other undertakings under the Lease, it being understood that as to all such matters the Vendor will look solely to the Vendor's rights under this Agreement against the Lessee and the Equipment and to the Vendee's rights under the Lease against the Lessee and the Equipment. As used herein, the term "income and proceeds from the Equipment" shall mean (i) if one of the events of default specified in Article 15 shall have occurred and while it shall be continuing, so much of the following amounts as are free and clear of all claims and liens by, through or under the Lessee received by the Vendee or the Assignee at any time after any such event of default and during the continuance thereof: (a) all amounts of rental (other than payments pursuant to Section 17 of the Lease which shall be made directly to the Beneficiary) and amounts in respect of Casualty Occurrences (as hereinafter defined in Article 7) paid for or with respect to the Equipment pursuant to the Lease, (b) any and all payments or proceeds received by the Vendee or any assignee of the Vendee for or with respect to the Equipment as the result of the sale, lease or other disposition thereof, after deducting all costs and expenses of such sale, lease or other disposition, and (c) any and all other payments

received by the Vendee or any assignee of the Vendee under Section 10 or Section 18 of the Lease; and (ii) at any other time, only that portion of the amounts referred to in the foregoing clauses (a), (b) and (c) as are free and clear of all claims and liens by, through or under the Lessee received by the Vendee or the Assignee and as shall equal the portion of the Conditional Sale Indebtedness (including prepayments thereof required in respect of Casualty Occurrences) and/or interest and premium, if any, thereon due and payable on, or within six days after, the date such amounts received by the Vendee or any assignee of the Vendee were required to be paid over pursuant to the Lease or as shall equal any other payments then due and payable under this Agreement; it being understood that "income and proceeds from the Equipment" shall in no event include amounts referred to in the foregoing clauses (a), (b) and (c) which were received by the Vendee or any assignee of the Vendee prior to the existence of such an event of default and which exceeded the amounts required to discharge the portion of the Conditional Sale Indebtedness (including prepayments thereof required in respect of Casualty Occurrences) and/or interest and premium, if any, thereon due and payable on, or within six days after, the date on which amounts with respect thereto received by the Vendee or any assignee of the Vendee were required to be paid over pursuant to the Lease or which exceeded any other payments due and payable under this Agreement at the time such amounts were payable under the Lease. It is further understood and agreed that nothing contained herein limiting the liability of the Vendee shall derogate from the right of the Vendor to proceed against the Equipment for the full unpaid Purchase Price of the Equipment and interest and premium, if any, thereon and for all other payments and obligations hereunder. Notwithstanding anything contained in Article 15 or Article 16, the Vendor agrees that in the event it shall obtain a judgment against the Vendee for an amount in excess of the amounts payable by the Vendee on account of the limitations set forth in this paragraph, it will, accordingly, limit its execution of such judgment to amounts payable within the limitations set forth in this paragraph.

ARTICLE 5. *Title to the Equipment.* The Vendor shall and hereby does retain the full security title to the Equipment until the Vendee shall have made all its payments under this Agreement and shall have kept and performed all its agreements herein contained, notwithstanding any provision of this Agreement limiting the liability of the Vendee and notwithstanding the delivery of the Equipment to and the possession and use thereof by the Vendee and the Lessee as provided in this Agreement. Any and all additions to the Equipment, and any and all parts installed on and additions and replacements made to any unit of the Equipment, shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

Except as otherwise specifically provided in Article 7, when and only when the Vendor shall have been paid the full indebtedness in respect of the Purchase Price of the Equipment, together with interest and all other payments as herein provided, and all the Vendee's obligations herein contained shall have been performed, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee without further transfer or action on the part of the Vendor; however, the Vendor, if so requested by the Vendee, will (a) execute a bill or bills of sale for the Equipment transferring its security title thereto and property therein to the Vendee, or upon its order, free of all liens, security interests and other

encumbrances created or retained hereby or which result from claims against the Vendor not related to the ownership of the Equipment, the performance of the Vendor's duties and responsibilities under this Agreement or any instrument referred to herein or any other transaction pursuant to or contemplated by this Agreement or any instrument referred to herein and deliver such bill or bills of sale to the Vendee at its address referred to in Article 21, (b) execute and deliver at the same place, for filing, recording, registering or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Vendee to the Equipment and (c) pay to the Vendee any money paid to the Vendor pursuant to Article 7 and not theretofore applied as therein provided. The Vendee hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or instrument or instruments within a reasonable time after written demand by the Vendee.

ARTICLE 6. *Taxes.* All payments to be made by the Vendee hereunder will be free of expense to the Vendor for collection or other charges and will be free of expense to the Vendor and the Builder with respect to the amount of any local, state, federal or foreign taxes (other than net income taxes, gross receipts taxes [except gross receipts taxes in the nature of or in lieu of sales, use or rental taxes], franchise taxes measured by net income based upon receipt of such payments, excess profits taxes and similar taxes), license fees, assessments, charges, fines or penalties hereafter levied or imposed upon or in connection with or measured by this Agreement, or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called collectively Impositions), all of which Impositions the Vendee assumes and agrees to pay on demand. The Vendee will also pay promptly all Impositions which may be imposed upon the Equipment delivered to it or for the use or operation thereof or upon the earnings arising therefrom or upon the Vendor solely by reason of its ownership thereof and will keep at all times all and every part of the Equipment free and clear of all Impositions which might in any way affect the title of the Vendor or result in a lien upon any part of the Equipment; *provided, however,* that the Vendee 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 Vendor, adversely affect the security title, property or rights of the Vendor in or to the Equipment or otherwise under this Agreement. If any Imposition shall have been charged or levied against the Vendor directly and paid by the Vendor, the Vendee shall reimburse the Vendor upon presentation of an invoice therefor, and any amounts so paid by the Vendor shall be secured by and under this Agreement; *provided, however,* that the Vendee shall not be obligated to reimburse the Vendor for any Imposition so paid unless the Vendor shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Vendor, which counsel is satisfactory to the Vendee) or unless the Vendee shall have approved the payment thereof.

ARTICLE 7. *Maintenance; Casualty Occurrences; Insurance.* The Vendee, at its own cost and expense, shall maintain and keep each unit of the Equipment in good order and repair.

In the event that any unit of the Equipment 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), the Vendee shall, promptly after it shall have determined that such unit has suffered a Casualty Occurrence, cause the Vendor to be fully informed in regard thereto. The Vendee shall pay to the Vendor, on the next succeeding date for the payment of interest on the Conditional Sale Indebtedness (hereinafter called a Casualty Payment Date), a sum equal to the Casualty Value (as hereinafter defined in this Article 7) of such unit or units as of the Casualty Payment Date and shall file, or cause to be filed, with the Vendor a certificate setting forth the Casualty Value of such unit or units. Any money paid to the Vendor pursuant to this paragraph or received as the proceeds of insurance maintained in accordance with this Article 7 shall be applied to prepay, without penalty or premium, ratably in accordance with the unpaid balance thereof, each installment of the Conditional Sale Indebtedness, and the Vendee will promptly furnish to the Vendor and the Lessee a revised schedule of payments of installments of Conditional Sale Indebtedness and interest thereafter to be made, in such number of counterparts as the Assignee may request, calculated as provided in the fourth paragraph of Article 4.

Upon payment by the Vendee to the Vendor of the Casualty Value of any unit of the Equipment having suffered a Casualty Occurrence, absolute right to the possession of, title to and property in such unit shall pass to and vest in the Vendee, without further transfer or action on the part of the Vendor; however, the Vendor, if so requested by the Vendee, will execute and deliver to the Vendee, at the expense of the Vendee, a bill of sale for such unit transferring the Vendor's security title thereto and property therein to the Vendee, or upon its order, free of all liens, security interests and other encumbrances created or retained hereby or which result from claims against the Vendor not related to the ownership of the Equipment, the performance of the Vendor's duties and responsibilities under this Agreement or any instrument referred to herein or any other transaction pursuant to or contemplated by this Agreement or any instrument referred to herein.

The Casualty Value of each unit of the Equipment suffering a Casualty Occurrence shall be deemed to be that portion of the original Purchase Price thereof remaining unpaid on the date as of which such Casualty Value shall be determined (without giving effect to any prepayment or prepayments theretofore made under this Article 7), plus interest accrued thereon but unpaid as of such date. For the purpose of this paragraph, each payment of the Purchase Price in respect of Equipment made pursuant to Article 4 shall be deemed to be a payment on each unit of the Equipment in like proportion as the original Purchase Price of such unit bears to the aggregate original Purchase Price of all the Equipment.

The Lessee will at all times prior to the payment of the full indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon and all other payments required hereby, at its own expense, cause to be carried and maintained property insurance in respect of the Equipment at the time subject hereto, and public liability insurance, in amounts and against risks customarily insured against by railroad companies in respect of similar equipment owned or operated by it, and in any event comparable in amounts and against risks insured against by the Lessee on equipment owned or operated by it.

ARTICLE 8. *Reports and Inspections.* On or before August 31 in each year, commencing with the year 1975, the Vendee shall cause to be furnished to the Vendor an accurate statement (a) setting forth as at the preceding June 30 the amount, description and numbers of all units of the Equipment that have suffered a Casualty Occurrence during the 12 month period preceding such June 30 (or since the date of this Agreement in the case of the first such statement) and such other information regarding the condition and state of repair of the Equipment as the Vendor may reasonably request and (b) stating that, in the case of all Equipment repaired or repainted during the period covered by such statement, the numbers and markings required by Article 9 have been preserved or replaced. The Vendor shall have the right, by its agents, to inspect the Equipment and the Lessee's records with respect thereto at such reasonable times as the Vendor may request during the term of this Agreement.

ARTICLE 9. *Marking of Equipment.* The Vendee will cause each unit of the Equipment to be kept numbered with its identifying number as set forth in Annex B hereto, 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 Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Vendor's interest in the Equipment and its rights under this Agreement. The Vendee will not permit any such unit to be placed in operation or exercise any control or dominion over the same until such markings shall have been made thereon and will replace or will cause to be replaced promptly any such markings which may be removed, defaced or destroyed. The Vendee will not permit the identifying number of any unit of the Equipment to be changed except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Vendor and filed, recorded, registered and deposited by the Vendee in all public offices where this Agreement shall have been filed, recorded, registered and deposited.

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

ARTICLE 10. *Compliance with Laws and Rules.* During the term of this Agreement, the Vendee will comply, and will cause every user of the Equipment to comply, in all respects with all laws (including, without limitation, laws with respect to the use, maintenance and operation of the Equipment) of the jurisdictions in which operations involving the Equipment may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the United States Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the title, operation or use of the Equipment; and in the event that such laws or rules require any alteration, replacement or addition of or to any part of any unit of the Equipment, the Vendee will conform therewith at its own expense; *provided, however,* that the Vendee or the

Lessee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor under this Agreement.

ARTICLE 11. *Possession and Use.* The Vendee, so long as an event of default shall not have occurred and be continuing under this Agreement, shall be entitled, from and after delivery of the Equipment by the Builder to the Vendee, to the possession of the Equipment and the use thereof, but only upon and subject to all the terms and conditions of this Agreement.

The Vendee may lease the Equipment to the Lessee as permitted by, and for use as provided in, the Lease, but the rights of the Lessee and its permitted assigns under the Lease shall at all times be subordinated and junior in rank to the rights, and shall be subject to the remedies, of the Vendor under this Agreement; *provided, however,* that so long as the Lessee shall not be in default under the Lease or under this Agreement, the Lessee shall be entitled to the possession and use of the Equipment in accordance with the terms of the Lease. The Lessee acknowledges and agrees to the subordination of the Lease as provided in the next preceding sentence. The Vendee hereby agrees that it will not exercise any of the remedies permitted in the case of an Event of Default under the Lease until the Vendor shall have received notice in writing of the Vendee's intended exercise thereof, and hereby further agrees to furnish to the Vendor copies of all summonses, writs, processes and other documents served by the Vendee upon the Lessee or served by the Lessee upon it in connection therewith. The Lease shall not be amended, modified or terminated (except in accordance with its terms) without the prior written consent of the Vendor. Disposal by the Lessee of any Unit of the Equipment pursuant to Section 7 of the Lease after a Casualty Occurrence shall not be deemed to be a breach of this Agreement.

The Vendee may also lease the Equipment to any other railroad company, but only with the prior written consent of the Vendor, which consent may be subject to such conditions as the Vendor shall specify, including that (i) such lease shall provide that the rights of such lessee are made expressly subordinate to the rights and remedies of the Vendor under this Agreement, (ii) such lessee shall expressly agree not to assign or permit the assignment of any unit of the Equipment to service involving the operation and maintenance thereof outside the United States of America and (iii) a copy of such lease shall be furnished to the Vendor.

ARTICLE 12. *Prohibition Against Liens.* The Vendee will pay or discharge any and all sums claimed by any party from, through or under the Vendee or its successors or assigns which, if unpaid, might become a lien, charge, security interest or other encumbrance on or with respect to the Equipment, or any unit thereof, equal or superior to the Vendor's security title therein, and will promptly discharge any such lien, charge, security interest or other encumbrance which arises, *provided, however,* that the Vendee shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the security title of the Vendor in or to the Equipment or otherwise adversely affect its rights under this Agreement. Any amounts paid by the Vendor in discharge of liens, charges, security interests or other encumbrances upon the Equipment shall be secured by and under this Agreement.

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.

ARTICLE 13. *Indemnities and Warranties.* The Vendee agrees to indemnify, protect and hold harmless the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including counsel fees and expenses, penalties and interest, arising out of or as the result of the entering into or the performance of this Agreement, the retention by the Vendor of title to or a security interest in the Equipment, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any of the Equipment, any accident in connection with the operation, use, condition, possession, storage or return of any of the Equipment resulting in damage to property or injury or death to any person during the period when security title thereto remains in the Vendor or arising out of the transfer of security title to the Equipment by the Vendor pursuant to any of the provisions of this Agreement, except, however, any losses, damages, injuries, liabilities, claims and demands whatsoever arising out of any tort, breach of warranty or failure to perform any covenant hereunder by the Builder. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the indebtedness in respect of the Purchase Price of, and the conveyance of security title to, the Equipment, as provided in Article 5, or the termination of this Agreement in any manner whatsoever.

The Vendee will bear the responsibility for and risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of any unit of or all the Equipment.

The agreement of the parties hereto with respect to the Builder's warranties and patent indemnities are set forth in Items 3 and 4 of Annex A hereto.

ARTICLE 14. *Assignments.* The Vendee will not (a) except as provided in Article 11, transfer the right to possession of any unit of the Equipment or (b) sell, assign, transfer or otherwise dispose of its rights under this Agreement unless such sale, assignment, transfer or disposition (i) is made expressly subject in all respects to the rights and remedies of the Vendor hereunder (including, without limitation, rights and remedies against the Vendee and the Lessee) and (ii) provides that the Vendee shall remain liable for all the obligations of the Vendee under this Agreement. Subject to the preceding sentence, any such sale, assignment, transfer or disposition may be made by the Vendee without the vendee, assignee or transferee assuming any of the obligations of the Vendee hereunder.

All or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Vendee and the benefits arising from the undertakings of the Lessee hereunder, may be assigned by the Vendor and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve the Builder from, any of the obligations of the Builder to construct and deliver the Equipment in accordance herewith or to respond to its warranties and indemnities contained or referred to in Article 13, or relieve the Vendee or the Lessee of

their respective obligations to the Builder under Articles 2, 3, 4, 6, 13, 17 and this Article 14, Annex A hereto or any other obligation which, according to its terms and context, is intended to survive an assignment.

Upon any assignment or reassignment referred to in the immediately preceding paragraph, either the assignor or the assignee shall give written notice to the Vendee and the Lessee, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall, by virtue of such assignment, acquire all the assignor's right, title and interest in and to the Equipment and this Agreement, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Vendee and the Lessee, respectively, of the notification of any such assignment, all payments thereafter to be made by the Vendee or the Lessee under this Agreement shall, to the extent so assigned, be made to the assignee in such manner as it may direct.

The Vendee and the Lessee recognize that it is the custom of railroad equipment manufacturers or sellers to assign agreements of this character and understand that the assignment of this Agreement, or of some of or all the rights of the Vendor hereunder, is contemplated. The Vendee and the Lessee expressly represent, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Vendor hereunder, and for the purpose of inducing such acquisition, that in the event of such assignment by the Vendor, as hereinbefore provided, the rights of such assignee to the entire unpaid indebtedness in respect of the Purchase Price of the Equipment, or such part thereof as may be assigned, together with interest and premium, if any, thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, set-off, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Builder in respect of the Equipment, or the manufacture, construction, delivery or warranty thereof, or in respect of any indemnity herein contained, nor subject to any defense, set-off, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Vendee or the Lessee by the Builder. Any and all such obligations, indebtedness or liability, howsoever arising, shall be and remain enforceable by the Vendee or the Lessee, as the case may be, against and only against the Builder.

In the event of any such assignment by the Vendor or successive assignments, the Vendee will, upon request by the assignee, change the markings on each side of each unit of the Equipment so as to be consistent with the interest of such assignee in the Equipment, to the extent necessary to conform to any requirements of the laws of the jurisdictions in which the Equipment shall be operated. The cost of such markings in the event of an assignment of all the Equipment at the time covered by this Agreement shall be borne by the Vendee, and in the event of an assignment of less than all such Equipment shall be borne by such assignee.

In the event of any such assignment by the Vendor, the Vendee and the Lessee will (a) in connection with each settlement for a Group of Equipment, deliver to the assignee, at the time of delivery of notice fixing the Closing Date for such Group, all documents required by the terms of such assignment to be delivered by each of them, respectively, to such assignee

in connection with such settlement, in such number of counterparts or copies as may reasonably be requested, and (b) furnish to such assignee such number of counterparts of any other certificate or paper required by the Vendor as may reasonably be requested.

If the Builder shall not receive on any Closing Date the full Purchase Price in respect of all of the Equipment proposed to be settled for on such Closing Date, the Builder will promptly notify the Vendee and the Lessee of such event and, if such amount shall not have been previously paid, the parties hereto will, upon the request of the Builder, enter into an appropriate written agreement excluding from this Agreement those units of Equipment for which the full Purchase Price shall not have been received, but fully preserving Builder's security interest in such Equipment, in a manner acceptable to Builder, and the Lessee will, not later than 90 days after such Closing Date, pay or cause to be paid to the Builder the unpaid Purchase Price of such units, together with interest thereon from such Closing Date to the date of payment by the Lessee at the highest prime rate of interest of Bank of America, N.A. in effect on such Closing Date.

ARTICLE 15. *Defaults.* In the event that any one or more of the following events of default shall occur and be continuing, to wit:

(a) the Vendee shall fail to pay in full any sum payable by the Vendee when payment thereof shall be due hereunder (irrespective of any provision of this Agreement limiting the liability of the Vendee), and such default shall continue for 15 days; or

(b) the Vendee shall, for more than 30 days after the Vendor shall have demanded performance thereof by written notice to the Vendee, the Beneficiary and the Lessee, fail or refuse to comply with any other covenant, agreement, term or provision of this Agreement, or of any agreement entered into concurrently herewith relating to the financing or lease of the Equipment, on the part of the Vendee to be kept or performed or to make provision satisfactory to the Vendor for such compliance; or

(c) the Lessee shall, for more than 30 days after the Vendor shall have demanded performance thereof by written notice to the Lessee, the Vendee and the Beneficiary, fail or refuse to comply with any other covenant, agreement, term or provision of this Agreement, or of any agreement entered into concurrently herewith relating to the financing or lease of the Equipment, on the part of the Lessee to be kept or performed or to make provision satisfactory to the Vendor for such compliance, and neither the Vendee nor the Beneficiary shall have made such provision; or

(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 this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings, in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier; or

(e) any other proceeding shall be commenced by or against the Vendee or the Lessee for any relief which includes, or might result in, any modification of the obligations of the Lessee or the Vendee hereunder under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustment of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the obligations of the Vendee or the Lessee under this Agreement), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Vendee or the Lessee, as the case may be, under this Agreement 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 Vendee or the Lessee, as the case may be, or for their respective property in connection with any such proceedings, in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

(f) the Vendee shall make or suffer any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession of any unit of the Equipment; or

(g) an event of default shall occur under the Other Agreement;

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Vendee and the Lessee and upon compliance with any legal requirements then in force and applicable to such action by the Vendor, (i) subject to the rights of the Lessee set forth in Article 11, cause the Lease immediately (upon such notice) to terminate (and the Vendee and the Lessee each acknowledge the right of the Vendor to terminate the Lease) and/or (ii) declare (hereinafter called a Declaration of Default) the entire unpaid indebtedness in respect of the Purchase Price of the Equipment, together with the interest and premium, if any, thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest and premium, if any, shall bear interest from the date of such Declaration of Default at the rate per annum specified in Article 4 as being applicable to amounts remaining unpaid after becoming due and payable, to the extent legally enforceable. Upon a Declaration of Default, the Vendor shall be entitled to recover judgment for the entire unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment so payable, with interest and premium, if any, as aforesaid, and to collect such judgment out of any property of the Vendee wherever situated. The Vendee or the Lessee, as the case may be, shall promptly notify the Vendor of any event which has come to its attention which constitutes, or with notice, demand and/or lapse of time could constitute, an event of default under this Agreement.

The Vendor may, at its election, waive any such event of default and its consequences and rescind and annul any Declaration of Default or notice of termination of the Lease by notice to the Vendee and the Lessee in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such event of default had occurred and no

Declaration of Default or notice of termination of the Lease had been made or given. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Vendee and the Lessee that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

ARTICLE 16. *Remedies.* At any time during the continuance of a Declaration of Default, the Vendor may, subject to the rights of the Lessee set forth in Article 11, and compliance with any mandatory requirements of law then in force and applicable to the action to be taken by the Vendor, take or cause to be taken by its agent or agents immediate possession of the Equipment, or one or more of the units thereof, without liability to return to the Vendee or the Lessee any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 16 expressly provided, and may remove the same from the possession and use of the Vendee, the Lessee or any other person having such possession and use and for such purpose may enter upon the premises of the Lessee or any other premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Lessee.

In case the Vendor shall rightfully demand possession of the Equipment pursuant to this Agreement and shall designate a reasonable point or points for the delivery of the Equipment to the Vendor, the Vendee and the Lessee shall (subject to the rights of the Lessee set forth in Article 11), at their own expense, forthwith and in the usual manner (including giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any part of the Equipment has been interchanged to return the Equipment so interchanged), cause the Equipment to be moved to such point or points and shall there deliver the Equipment or cause it to be delivered to the Vendor. At the option of the Vendor, the Vendor may keep the Equipment, at the expense of the Lessee, on any lines of railroad or premises approved by the Vendor until the Vendor shall have leased, sold or otherwise disposed of the same, and the Vendee and the Lessee, at their expense, shall then cause the Equipment so leased, sold or disposed of to be moved to such interchange point or points as the Vendor shall direct. During any period of storage, the Vendor, the Vendor's representatives and prospective purchasers shall be entitled to inspect the Equipment. The agreement to deliver and store the Equipment (and permit inspection thereof) as hereinbefore provided is of the essence of this Agreement, and, upon application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled to a decree against the Vendee and/or the Lessee requiring specific performance hereof. The Vendee and the Lessee hereby expressly waive any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 16 provided) may, at its election and upon such notice as is hereinafter set forth, retain the Equipment in satisfaction of the entire indebtedness in respect of the Purchase Price of the Equipment and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Vendee and the Lessee by telegram or registered mail, addressed as provided in Article 21, and to any other persons to whom the law may require notice, within 30 days after such Declaration of Default. In the event that the Vendor should elect to retain

the Equipment, all the Vendee's rights in the Equipment shall thereupon terminate and all payments made by the Vendee and the Lessee may be retained by the Vendor as compensation for the use of the Equipment; *provided, however*, that if the Vendee, before the expiration of the 30-day period described in the next proviso, should pay or cause to be paid to the Vendor the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid (but without premium) and all other payments due under this Agreement, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee; and *provided further*, that if the Vendee, the Lessee or any other persons notified under the terms of this paragraph object in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall not have given notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 16.

At any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession of the Equipment, at its election and upon reasonable notice to the Vendee, the Lessee and any other persons to whom the law may require notice of the time and place, may, subject to the rights of the Lessee set forth in Article 11, sell the Equipment, or one or more units thereof, free from any and all claims of the Vendee, the Lessee or any other person claiming from, through or under the Vendee or the Lessee at law or in equity, at public or private sale and with or without advertisement, as the Vendor may determine; *provided, however*, that if, prior to such sale and prior to the making of a contract for such sale, the Vendee should tender full payment of the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid (but without premium) and all other payments due under this Agreement, as well as the expenses of the Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, such sale and the Vendor's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee. The proceeds of any sale or other disposition, less the attorneys' fees and any other expenses incurred by the Vendor in retaking possession of, removing, storing, holding, preparing for sale and selling or otherwise disposing of the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement.

Any sale hereunder may be held or conducted at Baltimore, Maryland or at such other place or places and at such time or times as the Vendor may specify, in one lot and as an entirety or in separate lots, and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine, so long as such sale shall be in a commercially reasonable manner. The Vendee, the Lessee and all other persons to whom the law requires notice shall be given written notice of such sale not less than 30 days prior thereto, by telegram or registered mail, addressed as provided in Article 21. If such sale is to be a private sale, it shall be subject to the rights of the Vendee and the Lessee to purchase or provide a purchaser, within 10 days prior to the proposed sale date, at the same price offered by the intending purchaser or a better price. The Vendor, the Vendee or the Lessee may bid for

and become the purchaser of the Equipment, or any unit thereof, so offered for sale. In the event that the Vendor shall be the purchaser thereof, it shall not be accountable to the Vendee or the Lessee (except to the extent of surplus money received as hereinafter provided in this Article 16), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all sums due to the Vendor hereunder.

Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or remedy, and no renewal or extension of any payments due hereunder, shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly granted to the Vendee or the Lessee shall not otherwise alter or affect the Vendor's rights or the Vendee's or the Lessee's obligations hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Vendee's or the Lessee's obligations or the Vendor's rights hereunder with respect to any subsequent payments or default therein.

Subject to the limitation set forth in the following paragraph, if, after applying all sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Vendee shall pay the amount of such deficiency to the Vendor upon demand; and if the Vendee shall fail to pay such deficiency, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Vendee. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Vendee or the Lessee, as the case may be, to the extent of their respective interests therein.

The Vendee will pay all reasonable expenses, including attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable expenses, including reasonable attorneys' fees, and the amount thereof shall be included in such judgment. The provisions of this paragraph and of the immediately preceding paragraph are subject to the limitations set forth in the last paragraph of Article 4 and in Article 22.

The foregoing provisions of this Article 16 are subject in all respects to all mandatory requirements of law at the time in force and applicable thereto.

ARTICLE 17. *Guarantee of Lessee.* The Lessee represents and warrants to the Vendor that the rentals and other obligations under the Lease have been calculated so as to provide for the due and punctual payment of the principal of, and interest on, the Conditional Sale Indebtedness when due and payable in accordance with Article 4 and the due and punctual performance of all other obligations of the Vendee under this Agreement (except the obligations of the Vendee under subparagraph (a) of the third paragraph of Article 4 and under Article 14) and that, pur-

suant to the Assignment of Lease, the Vendor will have the indefeasible right to apply such rental payments and other payments under the Lease (other than payments pursuant to Section 17 of the Lease which shall be made directly to the Beneficiary) to the payment of the principal of, and interest on, the Conditional Sale Indebtedness and the payment of such other obligations under this Agreement. The Lessee, for value received, hereby unconditionally guarantees to the Vendor that the principal of, and interest on, the Conditional Sale Indebtedness will be duly and punctually paid when due and all other obligations of the Vendee will be duly and punctually performed (except for the obligations of the Vendee under subparagraph (a) of the third paragraph of Article 4 and under Article 14), whether at stated maturity or by declaration or otherwise, by the due and punctual payment of the rentals and the due and punctual performance of the other obligations of the Lessee under the Lease or otherwise, irrespective of any enforcement against the Vendee of any of the rights of the Vendor hereunder, as more fully described in the next paragraph of this Article 17.

The Lessee hereby agrees that its aforesaid guarantee hereunder shall be unconditional (and shall not be subject to any set-off, counterclaim or recoupment whatsoever), irrespective of the genuineness, validity, regularity or enforceability of this Agreement, the Lease, the Lease Assignment, any failure of the Lessee to make its rental or other payments under the Lease to the Vendor pursuant to the Lease Assignment, any failure of the Lessee to perform any obligation under the Lease for any reasons whatsoever (including termination of the Lease by operation of law or otherwise) or any interference with the right of the Vendor to apply such rental or other payments as provided in the Lease Assignment, and irrespective of the last paragraph of Article 4 or any other circumstances which might otherwise limit the recourse of the Vendor to the Vendee. The Lessee hereby waives diligence, presentment, demand of payment, protest, any notice of any assignment hereof in whole or in part or of any default hereunder and all notices with respect to this Agreement and all demands whatsoever hereunder. No waiver by the Vendor of any of its rights hereunder and no action by the Vendor to enforce any of its rights hereunder or failure to take, or delay in taking, any such action shall affect the obligations of the Lessee hereunder. The Lessee hereby agrees that any rights that it may acquire by reason of performance of its obligations hereunder, by subrogation or otherwise, may not be exercised against the Vendee under this Agreement or with respect to any of the units of the Equipment until the Vendor has been paid all sums payable to it under this Agreement.

ARTICLE 18. *Applicable Laws.* Any provision of this Agreement 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 Vendee and the Lessee to the full extent permitted by law, to the end that this Agreement shall be deemed to be a conditional sale and enforced as such.

Except as otherwise provided in this Agreement, the Vendee and the Lessee, to the full extent permitted by law, hereby waive all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment, or one or more units thereof, and any other requirements as to the time, place and terms of the sale or

lease thereof, any other requirements with respect to the enforcement of the Vendor's rights under this Agreement and any and all rights of redemption.

ARTICLE 19. *Recording.* The Vendee or the Lessee will cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto to be filed and recorded in accordance with Section 20c of the Interstate Commerce Act; and the Vendee and the Lessee will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record any and all further instruments required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its security title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Vendee or the Lessee will promptly furnish to the Vendor certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Vendor.

ARTICLE 20. *Article Headings; Effect and Modification of Agreement.* All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

This Agreement, including the Annexes hereto, exclusively and completely states the rights of the Vendor, the Vendee and the Lessee hereunder with respect to the Equipment and supersedes all other agreements, oral or written, with respect thereto. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized representatives of the Vendor, the Vendee and the Lessee.

ARTICLE 21. *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 Builder, at the address specified in Item 1 of Annex A hereto;

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

(c) To the Vendee, 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;

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

(e) To any other assignee of the Vendor or of the Vendee, at such address as may have been furnished in writing to the other parties hereto by such assignee;

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

ARTICLE 22. *Immunities of Certain Individuals; Satisfaction of Undertakings.* No recourse shall be had in respect of any obligation due under this Agreement, or referred to herein, against any incorporator, stockholder, director or officer, past, present or future, of the Builder (or the Vendor) or of the Lessee, whether by virtue of any constitutional provision, statute or rule of law, or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of such in-

corporators, stockholders, directors or officers being forever released as a condition of and as consideration for the execution of this Agreement.

The obligations of the Vendee under the first paragraph of Article 7, the second paragraph of Article 16 and under Articles 6, 8, 9, 10, 12, 13 and 19 shall be deemed in all respects satisfied by the Lessee's undertakings contained in the Lease. Lessee shall be liable in respect of its guarantee hereunder for such obligations under said Articles regardless of whether or not the Lease provides for the discharge of such obligations or is in effect. The Vendee shall not have any responsibility for the Lessee's failure to perform such obligations, but if the same shall not be performed they shall constitute the basis for an event of default pursuant to Article 15. No waiver or amendment of the Lessee's undertakings under the Lease shall be effective unless joined in by the Vendor.

It is expressly understood and agreed by and between the parties hereto that, anything herein to the contrary notwithstanding: (i) each and all of the representations, undertakings and agreements herein made on the part of the Vendee are each and every one of them made and intended not as personal representations, undertakings and agreements by the Vendee, or for the purpose or with the intention of binding the Vendee personally, but are made and intended for the purpose of binding only the Trust Estate (as such term is used in the Trust Agreement); (ii) this Agreement is executed and delivered by the Vendee solely in the exercise of the powers expressly conferred upon the Vendee as Trustee under the Trust Agreement; and (iii) no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against the Vendee or the Beneficiary on account of any representation, undertaking or agreement of the Vendee, either expressed or implied, all such personal liability, if any, being expressly waived and released by the Vendor and by all persons claiming by, through or under the Vendor; *provided, however*, that the Vendor or any person claiming by, through or under the Vendor may look to the Trust Estate for satisfaction of the same. Nothing herein contained shall limit, restrict or impair the rights of the Vendor to take all actions to enforce the rights and remedies provided for herein and to bring suit and obtain a judgment against the Vendee (provided that neither the Vendee in its fiduciary or individual capacity nor the Beneficiary shall have any personal liability on any such judgment and the satisfaction thereof shall be limited to the Trust Estate, including any interest therein of the Vendee or the Beneficiary) or, subject to the terms and conditions of the Lease, to foreclose the lien and security interest created by this Agreement or otherwise realize upon the Trust Estate, including the right to proceed against the Lessee under the Lease.

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

ARTICLE 24. *Execution.* This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument, which shall be sufficiently evidenced by any

such original counterpart. Although this Agreement 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 Agreement 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.

ACF Industries, Incorporated

By W. H. Wilson
Vice President

(Corporate Seal)

Attest:
Assistant Secretary

United States Trust Company of New York, *as Trustee*

By
Vice President

(Corporate Seal)

Attest:
Gene R. Scocca
Assistant Secretary

The Western Pacific Railroad Company

By Chester G. Freeman
Vice President

(Corporate Seal)

Attest:
Secretary

STATE OF NEW YORK }
COUNTY OF NEW YORK } SS

W. W. WILSON

On this 7th ... day of ~~October,~~ November 1974, before me personally appeared ..... to me personally known, who, being by me duly sworn, says that he is a Vice President of ACF INDUSTRIES, INCORPORATED, 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.

Edwin F. Meyer
Notary Public

(NOTARIAL SEAL)

EDWIN F. MEYER
NOTARY PUBLIC, State of New York
No. 30-7917803
Qualified in Nassau County
Certificate filed in New York County
Commission Expires March 30, 1976

My commission expires .....

STATE OF NEW YORK }
COUNTY OF NEW YORK } SS

MALCOLM J. HOOD

On this 7th day of ~~October,~~ November 1974, before me personally appeared ....., 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

(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

My commission expires .....

STATE OF CALIFORNIA
City and COUNTY OF SAN FRANCISCO } SS

On this 6th day of ~~October~~ NOVEMBER, 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.

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

Diane L. Fafoutis
Notary Public

(NOTARIAL SEAL)

My Commission expires Dec. 14, 1975.

Annex A to
Conditional Sale Agreement

ACF INDUSTRIES, INCORPORATED

Item 1: ACF INDUSTRIES, INCORPORATED, a New Jersey corporation, having an address at 750 Third Avenue, New York, New York 10017.

Item 2: The Equipment shall be settled for in two Groups of units of Equipment delivered to and accepted by the Vendee unless a greater number shall be agreed to by the parties hereto.

Item 3: The Builder warrants that the Equipment will be built in accordance with the requirements, specifications and standards set forth in Article 2 of the Conditional Sale Agreement to which this Annex A is attached (hereinafter called the Agreement) and warrants the Equipment will be free from defects in material (except as to specialties incorporated therein which were specified or supplied by the Lessee and not manufactured by the Builder) and workmanship under normal use and service, the Builder's obligation under this Item 3 being limited to making good at its factory any part or parts of any unit of the Equipment which shall be returned to the Builder with transportation charges prepaid, within one year after the delivery of such unit to the Vendee, and which the Builder's examination shall disclose to its satisfaction to have been thus defective. **The foregoing warranty of the Builder is expressly in lieu of all other warranties, express or implied, including any implied warranty of merchantability or fitness for a particular purpose, and of all other obligations or liabilities except under Articles 2, 3 and 4 of the Agreement and Item 4 of this Annex A,** and the Builder neither assumes nor authorizes any person to assume for it any other liability in connection with the construction and delivery of the Equipment except as aforesaid.

The Builder further agrees with the Lessee and the Vendee that neither the inspection as provided in Article 3 of the Agreement nor any examination nor the acceptance of any units of the Equipment as provided in said Article 3 shall be deemed a waiver or a modification by the Lessee or the Vendee of any of their rights under this Item 3.

Item 4: Except in cases of articles or materials specified by the Lessee and not manufactured by the Builder and in cases of designs, systems, processes, formulae or combinations specified by the Lessee and not developed or purported to be developed by the Builder, the Builder agrees to indemnify, protect and hold harmless the Lessee and the Vendee from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendee, the Lessee, its assigns or the users of the Equipment because of the use in or about the construction or operation of any of the Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Lessee likewise will indemnify, protect and hold harmless the Vendor from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendor because of the use in or about the construction or operation of any of the Equipment of any article or material specified by the 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 Builder agrees to and hereby does, to the extent legally possible with-

out impairing any claim, right or cause of action hereinafter referred to, assign, set over and deliver to the Lessee every claim, right and cause of action which the Builder has or hereafter shall have against the seller or sellers of any designs, systems, processes, formulae, combinations, articles or materials specified by the Lessee and purchased or otherwise acquired by the Builder for use in or about the construction or operation of any of the Equipment on the ground that any such design, system, process, formula, combination, article or material or operation thereof infringes or is claimed to infringe on any patent or other right. The Builder further agrees to execute and deliver to the Lessee or the users of the Equipment all and every such further assurance as may be reasonably requested by the Lessee more fully to effectuate the assignment and delivery of every such claim, right and cause of action. The Builder will give notice to the Lessee of any claim known to the Builder from which liability may be charged against the Lessee hereunder and 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. Such covenants of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under the Agreement, the satisfaction and discharge of the Agreement or the termination of this Agreement in any manner.

Item 5: Conditional Sale Agreement dated as of October 15, 1974 among Paccar Inc, the Vendee and the Lessee.

Annex B to
Conditional Sale Agreement

ACF INDUSTRIES, INCORPORATED

Type	Builder's Specifications	Builder's Plant	Quantity	Lessee's Road Numbers (Both Inclusive)	Unit Base Price	Total Base Price	Estimated Time and Place of Delivery
100-ton (4,650 cu. ft.) covered hopper cars	ACF 73-011186 Revised July 18, 1973	Huntington, W. Va.	65	WP 11901-11965	$23,940*	$1,556,100*	October, 1974 at Builder's Plant†

*Sales taxes, if applicable, will be added.

†Freight charges to be added to the price if the cars are delivered at other than Builder's Plant at request of Lessee.

Annex C to
Conditional Sale Agreement

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

LEASE OF RAILROAD EQUIPMENT

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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:

Rental Payment Date	Percentage	Rental Payment Date	Percentage
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 12⅛% 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 12⅛% 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 12⅛% 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.

United States Trust Company of New York, *as Trustee*

(Corporate Seal)

By .....
Vice President

Attest:

.....
Assistant Secretary

The Western Pacific Railroad Company

(Corporate Seal)

By .....
Vice President

Attest:

.....
Secretary

STATE OF NEW YORK
COUNTY OF NEW YORK } ss

On this .... day of October, 1974, before me personally appeared ....., 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.

.....
Notary Public

(NOTARIAL SEAL)

My Commission expires .....

STATE OF CALIFORNIA
CITY AND COUNTY OF SAN FRANCISCO } ss

On this .... day of October, 1974, before me personally appeared....., 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.

.....
Notary Public

(NOTARIAL SEAL)

My Commission expires .....

Annex A to
Lease of Railroad Equipment

Type	Quantity	Car Numbers (Both Inclusive)	Estimated Time and Place of Delivery
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.

Annex D to
Conditional Sale Agreement

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

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.

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

(CORPORATE SEAL)

By .....
Vice President

Attest:

.....
Assistant Secretary

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

(CORPORATE SEAL)

By .....
Assistant Vice President

Attest:

.....
Corporate Trust Officer

STATE OF NEW YORK
COUNTY OF NEW YORK } ss

On this .... day of October, 1974, before me personally appeared ....., 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.

.....
Notary Public

(NOTARIAL SEAL)

My Commission expires .....

STATE OF MARYLAND
CITY OF BALTIMORE } ss

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

.....
Notary Public

(NOTARIAL SEAL)

My commission expires .....

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

By .....
Vice President

RECORDATION NO. 7707-A Filed & Recorded
NOV 13 1974 - 8 45 AM
INTERSTATE COMMERCE COMMISSION

AGREEMENT AND ASSIGNMENT

Dated as of October 15, 1974

between

ACF INDUSTRIES, INCORPORATED

and

MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY,

as Agent

AGREEMENT AND ASSIGNMENT dated as of October 15, 1974 between the corporation first executing this instrument below (hereinafter called the Builder) and MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, acting 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 Builder; 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 (hereinafter called the Trust Agreement) with GENERAL ELECTRIC CREDIT CORPORATION (hereinafter called the Beneficiary); and THE WESTERN PACIFIC RAILROAD COMPANY (hereinafter called the Lessee) have entered into a Conditional Sale Agreement dated as of the date hereof (hereinafter called the Conditional Sale Agreement) covering the construction, sale and delivery, on the conditions therein set forth, by the Builder and the purchase by the Vendee of the railroad equipment described in Annex B to the Conditional Sale Agreement (hereinafter called the Equipment); and

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 of the units of equipment described in Annex B to the Other Agreement (as defined in the Conditional Sale Agreement), and the Vendee and the Assignee have entered into an Assignment of Lease and Agreement dated as of the date hereof (hereinafter called the Lease Assignment) assigning for security purposes certain of the Vendee's rights in, to and under the Lease to the Assignee as further security for the Conditional Sale Indebtedness (as defined in the Conditional Sale Agreement);

NOW, THEREFORE, THIS AGREEMENT AND ASSIGNMENT (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 Builder, 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 Builder hereby assigns, transfers and sets over unto the Assignee, its successors and assigns:

(a) All the right, security title and interest of the Builder in and to each unit of the Equipment when and as severally delivered to and accepted by the Vendee, subject to the payment by the Assignee to the Builder of the amount required to be paid under Section 5 and of the amount due from the Vendee to the Builder under subparagraph (a) of the third paragraph of Article 4 of the Conditional Sale Agreement;

(b) All the right, title and interest of the Builder in and to the Conditional Sale Agreement (except the right to construct and deliver the Equipment; the right to receive the payments specified in the third paragraph of Article 3 thereof, in the first paragraph and in subparagraph (a) of the third paragraph of Article 4 thereof and in the last paragraph of Article 14 thereof; and reimbursement for taxes paid or incurred by the Builder under Article 6 thereof), in and to any and all amounts which may be or become due or owing under the Conditional Sale Agreement on account of the indebtedness in respect of the Purchase Price (as defined in the Conditional Sale Agreement) of the Equipment and interest thereon and in and to any other sums becoming due from the Vendee or the Lessee under the Conditional Sale Agreement other than those hereinabove excluded; and

(c) Except as limited by subparagraph (b) of this paragraph, all the Builder's rights, powers, privileges and remedies under the Conditional Sale Agreement;

without any recourse, however, against the Builder for or on account of the failure of the Vendee or the Lessee to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the Conditional Sale Agreement; *provided, however*, that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the obligations of the Builder to deliver the Equipment in accordance with the Conditional Sale Agreement or with respect to its warranties and agreements contained or referred to in Article 13 of the Conditional Sale Agreement or relieve the Vendee or the Lessee from their respective obligations to the Builder contained in Articles 2, 3, 4, 6, 13, 14 and 17 of the Conditional Sale Agreement, it being understood and agreed that, notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Article 14 of the Conditional Sale Agreement, all obligations of the Builder to the Vendee with respect to the Equipment shall be and remain enforceable by the Vendee, its successors and assigns, against and only against the Builder. In furtherance of the foregoing assignment and transfer, the Builder 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 Builder, 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 Vendee and the Lessee with the terms and agreements on their parts to be performed under the Conditional Sale Agreement, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. The Builder covenants and agrees that it shall construct the Equipment in full accordance with the Conditional Sale Agreement and will deliver the same upon completion to the Vendee in accordance with the provisions of the Conditional Sale Agreement; and that, notwithstanding this Assignment, it will perform and fully comply with each and all of the covenants and conditions of the Conditional Sale Agreement to be performed and complied with by the Builder. The Builder further covenants and agrees that it will warrant to the Assignee, the Vendee and the Lessee that at the time of delivery of each unit of the Equipment under the Conditional Sale Agreement it had legal title to such unit and good and lawful right to sell such unit and that title to such unit was free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Vendee and the Lessee under the Conditional Sale Agreement and the rights of the Lessee under the Lease; and the Builder further covenants and agrees that it will defend the title to such unit against the demands of all persons whomsoever based on claims originating prior to the delivery of such unit by the Builder under the Conditional Sale Agreement; all *subject, however*, to the provisions of the Conditional Sale Agreement and the rights of the Vendee and the Lessee thereunder. The Builder will not deliver any of the Equipment to the Vendee under the Conditional Sale Agreement until the Conditional Sale Agreement and the Lease have been filed and recorded in accordance with Section 20c of the Interstate Commerce Act (the Builder and its counsel being entitled to rely on advice from the Lessee that such filing and recordation have occurred).

SECTION 3. The Builder covenants and agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the Conditional Sale Agreement for any installment of,

or interest on, indebtedness in respect of the Purchase Price of the Equipment or to enforce any provision of the Conditional Sale Agreement, the Builder 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 Vendee or the Lessee arising out of a breach by the Builder of any obligation with respect to the Equipment or the manufacture, construction, delivery or warranty thereof or arising by reason of any other indebtedness or liability at any time owing to the Vendee or the Lessee by the Builder. Any and all such obligations shall be and remain enforceable by the Vendee or the Lessee against and only against the Builder and shall not be enforceable against the Assignee or any person or persons in whom title to the Equipment, or any unit thereof, or any of the rights of the Builder under the Conditional Sale Agreement shall vest by reason of this assignment or of successive assignments or transfers. The Assignee will give notice to the Builder of any suit, proceeding or action by the Assignee herein described, and shall promptly move or take other appropriate action, on the basis of Article 14 of the Conditional Sale Agreement, to strike any defense, set-off, counterclaim or recoupment asserted by the Vendee or the Lessee therein; and if the court or other body having jurisdiction in such suit, proceeding or action denies such motion or other action and accepts such defense, set-off, counterclaim or recoupment as a triable issue in such suit, proceeding or action, the Assignee shall promptly notify the Builder of any such defense, set-off, counterclaim or recoupment asserted by the Vendee or the Lessee and thereafter give the Builder the right, at the Builder's expense, to compromise, settle or defend against such defense, set-off, counterclaim or recoupment.

Except in cases of articles or materials specified by the Vendee or the Lessee and not manufactured by the Builder and in cases of designs, systems, processes, formulae or combinations specified by the Vendee or the Lessee and not developed or purported to be developed by the Builder, the Builder agrees to indemnify, protect and hold harmless the Assignee 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 Assignee or its assigns because of the use in or about the construction or operation of any of the Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Assignee will give prompt notice to the Builder of any claim actually known to the Assignee from which liability may be charged hereunder, and the Builder shall have the right, at the Builder's expense, to compromise, settle or defend against such claim. The Builder agrees that any amounts payable to it by the Vendee or the Lessee with respect to the Equipment, whether pursuant to the Conditional Sale Agreement or otherwise, not hereby assigned to the Assignee shall not be secured by any lien, charge or security interest upon the Equipment or any unit thereof.

SECTION 4. The Builder will cause to be plainly, distinctly, permanently and conspicuously marked on each side of each unit of the Equipment, at the time of delivery thereof under the Conditional Sale Agreement, 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."

SECTION 5. The Assignee, on each Closing Date fixed as provided in Article 4 of the Conditional Sale Agreement with respect to a Group (as defined in said Article 4) of the Equipment,

shall pay to the Builder an amount equal to the portion of the Purchase Price thereof which, under the terms of said Article 4, is payable in installments, provided that there shall have been delivered to the Assignee (with an executed counterpart to the Vendee and the Beneficiary), as provided in Article 14 of the Conditional Sale Agreement and at least five Business Days prior to such Closing Date, the following documents, in form and substance satisfactory to it and to its special counsel hereinafter mentioned, in such number of counterparts as may be reasonably requested by said special counsel:

(a) A bill of sale, dated such Closing Date, from the Builder to the Assignee transferring to the Assignee security title to the units of the Equipment in such Group and warranting to the Assignee, the Vendee and the Lessee that at the time of delivery of such units under the Conditional Sale Agreement the Builder had legal title to such units and good and lawful right to sell such units and that title to such units was free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Vendee and the Lessee under the Conditional Sale Agreement and the rights of the Lessee under the Lease, and covenanting to defend the title to such units against the demands of all persons whomsoever based on claims originating prior to the delivery of such units by the Builder under the Conditional Sale Agreement;

(b) A Certificate or Certificates of Acceptance with respect to the units of the Equipment in such Group as contemplated by Article 3 of the Conditional Sale Agreement and Section 2 of the Lease;

(c) A certificate of an officer of the Lessee to the effect that (i) Lessee is a corporation duly incorporated, validly existing and in good standing under the laws of the State of California with full power to enter into the Finance Agreement, the Conditional Sale Agreement and the Lease and to carry on its business as now conducted; (ii) the instruments referred to in clause (i) above have been duly authorized, and have been executed and delivered by an officer of the Lessee authorized to execute and deliver such instruments, and are each valid and binding instruments, enforceable in accordance with their respective terms, except as enforcement thereof may be affected by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally; (iii) neither the execution, delivery or performance by the Lessee of the instruments referred to in clause (i) nor consummation of the transactions therein contemplated or the fulfillment of the terms thereof, will conflict with or result in a breach of the Articles of Incorporation or By-laws of the Lessee or of any order, writ, injunction or decree of any court or governmental instrumentality, domestic or foreign, or any agreement or instrument to which the Lessee is now a party or is bound or constitutes a default thereunder and (iv) none of the units of the Equipment in such Group was placed in the service of the Lessee or otherwise was used by the Lessee prior to delivery and acceptance of such units under the Conditional Sale Agreement and the Lease;

(d) An invoice or invoices of the Builder to the Vendee for the units of the Equipment in such Group accompanied by or having endorsed thereon a certification by the Vendee and the Lessee as to their approval thereof;

(e) An opinion, dated such Closing Date, of Messrs. Sidley & Austin, who are acting as special counsel for the Assignee and the Investors named in the Finance Agreement, addressed to the Assignee, to the effect that (i) the Finance Agreement, assuming the due authorization, execution and delivery thereof by such Investors, has been duly authorized, executed and delivered and is a legal, valid and binding instrument, (ii) the Conditional Sale Agreement has been duly authorized, executed and delivered by the respective parties thereto and is a legal, valid and binding instrument enforceable in accordance with its

terms, (iii) this Assignment has been duly authorized, executed and delivered by the respective parties thereto and is a legal, valid and binding instrument, (iv) the Assignee is vested with all the rights, titles and interests of the Builder purported to be assigned to the Assignee by this Assignment, (v) the Lease has been duly authorized, executed and delivered by the respective parties thereto and is a legal, valid and binding instrument enforceable in accordance with its terms, (vi) the Lease Assignment has been duly authorized, executed and delivered by the respective parties thereto and is a legal, valid and binding instrument, (vii) the Assignee is vested with all the rights, titles and interests of the Vendee purported to be assigned to the Assignee by the Lease Assignment, (viii) security title to the units of the Equipment is validly vested in the Assignee, (ix) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the valid execution and delivery of the Finance Agreement, the Conditional Sale Agreement, this Assignment, the Lease or the Lease Assignment, or, if any such authority is necessary, it has been obtained, (x) the Conditional Sale Agreement, this Assignment, the Lease and the Lease Assignment have been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act, as amended, and no other filing or recordation is necessary for the protection of the rights of the Assignee in any state of the United States of America or in the District of Columbia and (xi) registration of the Conditional Sale Agreement, this Assignment or the certificates of interest delivered pursuant to the Finance Agreement is not required under the Securities Act of 1933, as amended, and qualification of an indenture with respect thereto is not required under the Trust Indenture Act of 1939, as amended, and covering such other matters as may reasonably be requested by the Assignee or such Investor;

(f) An opinion, dated such Closing Date, of Messrs. Sullivan & Cromwell, addressed to the Assignee and the Lessee, stating that the Trust Agreement, the Conditional Sale Agreement, the Lease and the Lease Assignment have each been duly authorized, executed and delivered by the Vendee and, assuming the due authorization, execution and delivery thereof by the other parties thereto, each is a legal, valid and binding instrument and, in the case of the Trust Agreement, the Conditional Sale Agreement and the Lease, enforceable against the Vendee in accordance with its respective terms;

(g) An opinion, dated such Closing Date, of Counsel for the Lessee, addressed to the Assignee, the Vendee and the Beneficiary, to the effect set forth in clauses (i), (ii), (v) and (x) of subparagraph (e) above and to the effect that (i) the Lessee is a corporation duly incorporated, validly existing and in good standing under the laws of the State of California, with full power to enter into the Finance Agreement, the Conditional Sale Agreement and the Lease and to own its properties and to carry on its business as now conducted, (ii) neither the execution and delivery of the Finance Agreement, the Conditional Sale Agreement or the Lease, nor the consummation of the transactions therein contemplated or the fulfillment of the terms thereof, will conflict with or result in a breach of the terms, conditions or provisions of the Articles of Incorporation or By-Laws of the Lessee or of any order, writ, injunction or decree of any court or governmental instrumentality, domestic or foreign, or any agreement or instrument to which the Lessee is now a party or is bound or constitutes a default thereunder and (iii) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the valid execution and delivery by the Lessee of the Finance Agreement, the Conditional Sale Agreement or the Lease;

(h) An opinion, dated such Closing Date, of counsel for the Builder, addressed to the Assignee, the Vendee and the Lessee, to the effect that (i) the Builder is a corporation duly incorporated, validly existing and in good standing under the laws of its state of incorporation and has the power and authority to own its properties and to carry on its business as

now conducted, (ii) the Conditional Sale Agreement has been duly authorized, executed and delivered by the Builder and, assuming the due authorization, execution and delivery thereof by the other parties thereto, is a legal, valid and binding instrument enforceable against the Builder in accordance with its terms, (iv) this Assignment has been duly authorized, executed and delivered by the Builder and, assuming the due authorization, execution and delivery hereof by the other party hereto, is a legal, valid and binding instrument, (v) the Assignee is vested with all the rights, titles and interests of the Builder purported to be assigned to the Assignee by this Assignment and (vi) security title to the units of the Equipment in such Group is validly vested in the Assignee and it had, at the time of delivery of such units under the Conditional Sale Agreement, legal title to such units and good and lawful right to sell such units and that title to such units was free from all claims, liens, security interests and other encumbrances (except only the rights of the Vendee and the Lessee under the Conditional Sale Agreement and the rights of the Lessee under the Lease);

(i) An opinion, dated such Closing Date, of counsel for the Beneficiary, addressed to the Assignee, the Vendee and the Lessee, stating that the Finance Agreement and the Trust Agreement have each been duly authorized, executed and delivered by the Beneficiary and, assuming the due authorization, execution and delivery thereof by the other parties thereto, each is a legal, valid and binding instrument enforceable against the Beneficiary in accordance with its respective terms; and

(j) A receipt from the Builder for any payment (other than the payment being made by the Assignee pursuant to this first paragraph of this Section 5) required to be made on such Closing Date to the Builder with respect to the Equipment, unless such payment is made by the Assignee with funds furnished to it for that purpose by the Vendee.

In giving the opinions specified in subparagraphs, (e) (f), (g), (h) and (i) of this Section 5, counsel may qualify any opinion to the effect that any agreement is a legal, valid and binding instrument enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally. In giving the opinions specified in said subparagraphs (e) and (g), counsel may rely as to the authorization, execution and delivery by the Builder of the documents executed by the Builder and, to the extent applicable, title to the Equipment at the time of delivery thereof under the Conditional Sale Agreement on the opinion of counsel for the Builder delivered pursuant to said subparagraph (h), as to the authorization, execution and delivery by the Vendee of the documents executed by the Vendee on the opinion of counsel for the Vendee delivered pursuant to said subparagraph (f) and as to the authorization, execution and delivery by the Beneficiary of the documents executed by the Beneficiary on the opinion of counsel for the Beneficiary delivered pursuant to said subparagraph (i). In giving the opinions specified in said subparagraph (e), counsel may rely as to any matters governed by the laws of any jurisdiction other than the United States or Illinois on the opinions of counsel for the Vendee or other counsel named herein. In giving the opinions specified in said subparagraph (f), counsel may rely as to any matters governed by the laws of any jurisdiction other than the United States or New York on the opinions of special counsel for the Assignee and the Investors or other counsel named herein.

The obligation of the Assignee hereunder to make payment for any Group of Equipment is hereby expressly conditioned upon the Assignee's having on deposit, pursuant to the terms of the Finance Agreement, sufficient funds available to make such payment and upon payment

by the Vendee of the amount required to be paid by it pursuant to subparagraph (a) of the third paragraph of Article 4 of the Conditional Sale Agreement. The Assignee shall not be obligated to make any of the above-mentioned payments at any time while an event of default or any event which, with notice, demand and/or lapse of time, would constitute an event of default shall have occurred and be continuing under the Conditional Sale Agreement. In the event that the Assignee shall not make any such payment, the Assignee shall reassign to the Builder, without recourse to the Assignee, all right, title and interest of the Assignee in and to the units of the Equipment with respect to which payment has not been made by the Assignee.

SECTION 6. The Assignee may assign all or any of its rights under the Conditional Sale Agreement, including the right to receive any payments due or to become due to it from the Vendee or the Lessee 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 the written notice required in Article 14 of the Conditional Sale Agreement, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 7. The Builder hereby:

(a) represents and warrants to the Assignee, its successors and assigns, that the Conditional Sale Agreement was duly authorized by it and lawfully executed and delivered by it for a valid consideration; and, assuming the due authorization, execution and delivery thereof by the Vendee and the Lessee, the Conditional Sale Agreement is, in so far as the Builder is concerned, a legal, valid and binding agreement upon the Builder in accordance with its terms and it is now in force without amendment thereto;

(b) 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; and

(c) agrees that, upon request of the Assignee or its successors or assigns, it will execute any and all instruments which may be necessary or proper in order to discharge of record the Conditional Sale Agreement or any other instrument evidencing any interest of the Builder therein or in the Equipment.

SECTION 8. 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 Conditional Sale Agreement or this Assignment as shall be conferred by the laws of the several jurisdictions in which the Conditional Sale Agreement or this Assignment shall be filed, recorded, registered or deposited.

SECTION 9. 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.

ACF INDUSTRIES, INCORPORATED

By W. W. Wilson
Vice President

(CORPORATE SEAL)

Attest: ASSISTANT *Secretary*

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

By ASSISTANT *Vice President*

(CORPORATE SEAL)

Attest: CORPORATE TRUST OFFICER

STATE OF NEW YORK }
COUNTY OF NEW YORK } SS

On this 7th day of ~~October~~ November, 1974, before me personally appeared W. W. WILSON, to me personally known, who, being by me duly sworn, says that he is a Vice President of ACF Industries, Incorporated, 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.

Edwin F. Meyer
Notary Public

(NOTARIAL SEAL)

EDWIN F. MEYER
NOTARY PUBLIC, State of New York
No. 30-7917803
Qualified in Nassau County
Certificate filed in New York County
Commission Expires March 30, 1976

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. Scharf
Notary Public

(NOTARIAL SEAL)

DOROTHY E. SCHARF
NOTARY PUBLIC
My Commission Expires July 1, 1976

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 Agreement and Assignment is hereby acknowledged as of October 15, 1974.

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

By ..... *Vice President*

THE WESTERN PACIFIC RAILROAD COMPANY

By Walter G. Leanor
Vice President