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U.S. DEPARTMENT OF COMMERCE

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LEASE OF RAILROAD EQUIPMENT

Dated as of July 1, 1977

between

CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY

and

THE CONNECTICUT BANK AND TRUST COMPANY,  
as Trustee

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# Lease of Railroad Equipment

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Schedule I--Schedule of Equipment

Schedule 2--Casualty Values

LEASE OF RAILROAD EQUIPMENT dated as of July 1, 1977, between CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY, a Delaware corporation (hereinafter called the Lessee), and THE CONNECTICUT BANK AND TRUST COMPANY, a Connecticut banking corporation, as Trustee (hereinafter called the Lessor) under a Trust Agreement dated as of the date hereof (hereinafter called the Trust Agreement) with HFC Leasing Inc. (hereinafter called the Owner).

WHEREAS the Lessor is entering into a conditional sale agreement dated as of the date hereof with Whittaker Corporation (Berwick Forge & Fabricating Division), a California corporation (hereinafter called the Builder), (such agreement being hereinafter called the Security Documentation), wherein the Builder has agreed to manufacture, sell and deliver to the Lessor the units of railroad equipment described in Schedule 1 hereto (hereinafter called the Equipment);

WHEREAS the Builder is assigning its interests in the Security Documentation to Continental Illinois National Bank and Trust Company of Chicago, acting as agent (hereinafter, together with its successors and assigns, called the Vendor) under a Participation Agreement dated as of the date hereof (hereinafter called the Participation Agreement) with the Lessee and the parties named in Schedule A thereto;

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

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

§ 1. Net Lease. This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent, reduc-

tion thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs due or alleged to be due by reason of any past, present or future claims of the Lessee against the Lessor under this Lease or under the Security Documentation, or against the Builder or the Vendor or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency of or any 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.

§ 2. Delivery and Acceptance of Units. The Lessor hereby appoints the Lessee its agent for inspection and acceptance of the Units pursuant to the Security Documentation. The Lessor will cause the Units to be delivered to the Lessee at the point within the United States of America at which the Units are delivered to the Lessor under the Security Documentation. Upon such delivery, the Lessee will cause an employee of the Lessee to inspect the same, and if such Unit is found to be acceptable, to accept delivery of such Unit and the Lessee shall execute and deliver to the Lessor a certificate of acceptance (hereinafter called the Certificate of Acceptance) in accordance with the pro-

visions of Article 3 of the Security Documentation, 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 § 5 hereof, whereupon, except as provided in the next sentence hereof, such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease. The delivery, inspection and acceptance hereunder of any unit of Equipment excluded from the Security Documentation pursuant to the first paragraph of Article 4 thereof shall be null and void and ineffective to subject such unit to this Lease.

§ 3. Rentals. The Lessee agrees to pay to the Lessor as rental for each Unit subject to this Lease one interim and 40 consecutive semiannual payments. The interim payment for each Unit subject to this Lease is payable on January 5, 1978, and shall be in an amount equal to the product of the Purchase Price for such Unit multiplied by .025% for each day elapsed from and including the Closing Date (as defined in the Security Documentation) for such Unit under the Security Documentation to but not including January 5, 1978. The 40 semiannual payments are payable on January 5 and July 5 in each year, commencing July 5, 1978, to and including January 5, 1998, as follows: the first 15 such payments shall be in an amount equal to 3.9499998% of the Purchase Price of each such Unit then subject to this Lease; the next 15 such payments shall each be in an amount equal to 3.4200003% of the Purchase Price of each such Unit then subject to this Lease; and the next 10 such payments shall each be in an amount equal to 4.1450000% of the Purchase Price of each such Unit then subject to this Lease.

The Lessee shall pay as additional rental the following: (1) on the Cut-Off Date (as defined in Paragraph 8 of the Participation Agreement), an amount equal to any amounts payable by the Lessor pursuant to clause (a) of the final paragraph of Paragraph 8 of the Participation Agreement on such date and an amount equal to any amounts payable by the Lessor pursuant to the first paragraph of Paragraph 8 of the Participation Agreement; provided, however, that such payment shall be decreased by an amount equal to any funds payable by the Agent to the Lessor pursuant to the third paragraph of Paragraph 8 of the Participation Agreement to the extent such funds are credited by the Agent against such

payment; provided further, however, that if such funds payable by the Agent to the Lessor exceed the amount so payable by the Lessee, then that portion of the rentals payable by the Lessee under this Lease in an amount equal to such excess shall be deemed to be an overpayment of rental and the Lessor shall refund such excess to the Lessee when received from the Agent; and (2) on January 5, 1978, an amount equal to any amounts payable by the Lessor pursuant to clause (b) of such final paragraph of Paragraph 8 on such date.

Notwithstanding any other provision hereof, to the extent that the Lessee shall be denied possession of a Unit or Units because of the occurrence of a default under the Security Documentation which is not an Event of Default (as such term is hereinafter defined) under this Lease, the Lessee shall have no further obligation to make any additional rental payments for such Unit or Units with regard to periods subsequent to its loss of possession of such Unit or Units.

The rental payments hereinbefore set forth are subject to adjustment pursuant to § 16 hereof.

If any of the rental payment dates referred to above is not a business day the rental payment otherwise payable on such date shall be payable on the next succeeding business day. The term "business day" as used herein means a calendar day, excluding Saturdays, Sundays and any other day on which banking institutions in Chicago, Illinois, are authorized or obligated to remain closed.

The Lessor irrevocably instructs the Lessee to make all the payments provided for in this Lease, including, but not limited to, the payments provided for in this § 3 and in § 7 hereof, but excluding payments due to the Lessor by reason of § 16 hereof, at the principal office of the Vendor, for the account of the Lessor in care of the Vendor, with instructions to the Vendor first, to apply such payments to satisfy the obligations of the Lessor under the Security Documentation, and second, so long as no event of default or event which with the lapse of time and/or demand provided for in the Security Documentation could constitute an event of default under the Security Documentation shall have occurred and be continuing, to pay any balance promptly to the Lessor at such place as the Lessor shall specify in writing. The Lessee agrees to make each payment provided for herein as contemplated by this paragraph in Federal or other funds immediately available to the Vendor by 11:00 a.m., Chicago time, on the date such payment is due.

§ 4. Term of Lease. The term of this Lease as to each Unit shall begin on the date of delivery and acceptance of such Unit hereunder and, subject to the provisions of §§ 7 and 10 hereof, shall terminate on the date on which the final payment of rent in respect thereof is due pursuant to § 3 hereof. The obligations of the Lessee hereunder (including, but not limited to, the obligations under §§ 6, 7, 9, 14 and 16 hereof) shall survive the expiration of the term of this Lease.

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

§ 5. Identification Marks. The Lessee (at its own expense) will cause each Unit to be kept numbered with the road number set forth in Schedule 1 hereto, or in the case of any Unit not there listed, such road 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 Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Lessor's and Vendor's title to and interest in such Unit and the rights of the Lessor under this Lease and of the rights of the Vendor under the Security Documentation. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such words shall have been so marked and will replace promptly any such markings which may be removed, defaced or destroyed. The Lessee will not change the road number of any Unit unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with the Vendor and the Lessor and duly filed, recorded and deposited by the Lessee in all public offices where this Lease and the Security Documentation shall have been filed, recorded and deposited and (ii) the Lessee shall have furnished the Vendor and the Lessor an opinion of

counsel to such effect. The Units may be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates.

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.

§ 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 payable by the Lessor in consequence of the receipt of payments provided for herein and, to the extent that the Lessor receives credit therefor against its United States Federal income tax liability, any foreign income tax, and other than the aggregate of all state or local taxes measured by net income based on such receipts and value added taxes in lieu of such net income taxes up to the amount of any such taxes which would be payable to the state and city in which the Lessor has its principal place of business without apportionment to any other state and other than any state franchise tax which is not based on or measured by net income, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided) or license fees, assessments, charges, fines or penalties (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called impositions) hereafter levied or imposed upon or in connection with or measured by this Lease or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof or the Security Documentation, all of which impositions the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. The Lessee will also pay promptly all impositions which may be imposed upon any Unit or for the use or operation thereof or upon the earnings arising therefrom (except as provided above) or upon the Lessor by reason of its ownership thereof and will keep at all times all and every part of such Unit free and clear of all impositions which might in any way affect the title of the Lessor or the

interest of the Lessor or result in a lien upon any such Unit; provided, however, that the Lessee shall be under no obligation to pay any impositions of any kind so long as such imposition remains unpaid and Lessee is contesting in its own name and in good faith and by appropriate legal or administrative proceedings such impositions, or the Lessor is required to contest such impositions as provided in this § 6, and the nonpayment thereof does not, in the reasonable opinion of the Lessor, adversely affect the title, property or rights of the Lessor hereunder or the Lessor or the Vendor under the Security Documentation. The Lessee agrees to give the Lessor notice of such contest brought in Lessee's name within 30 days after institution thereof and the Lessor agrees to provide such information as may be reasonably requested by the Lessee in furtherance of such contest. If any impositions shall have been charged or levied against the Lessor directly and paid by the Lessor, the Lessee shall pay the Lessor on presentation of an invoice therefor if the Lessor shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Lessor) or the Lessee shall have approved the payment thereof, and the Lessor agrees to give the Lessee written notice promptly after it first obtains knowledge of the making of such charge or levy, and agrees to take such other action as may reasonably be requested by the Lessee for the purpose of contesting payment or obtaining refund of all or a portion of such imposition, as hereinafter provided in this § 6.

In the event that the Lessor shall become obligated to make any payment to the Builder or the Vendor or otherwise pursuant to any correlative provision of the Security Documentation not covered by the foregoing paragraph of this § 6, the Lessee shall pay such additional amounts (which shall also be deemed impositions hereunder) to the Lessor to fulfill completely its obligations pursuant to said provision; provided, however, that the Lessor shall have contested (if required to do so under this § 6) such impositions in good faith and to the extent permitted under the Security Documentation.

In the event any returns, statements or reports with respect to impositions involving any Unit are required to be made, the Lessee will make such returns, statements and reports in such manner as to show the interest of the Lessor

and the Vendor in such Units, as shall be satisfactory to the Lessor and the Vendor or, where not so permitted, will notify the Lessor and the Vendor of such requirement and will prepare and deliver such reports to the Lessor and the Vendor within a reasonable period of time prior to the time such reports are to be filed in such manner as shall be satisfactory to the Lessor and the Vendor.

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

In the event the Lessee may be prohibited by law or is impaired from contesting in its own name any imposition covered by this § 6 in respect of which the Lessee would otherwise be required to make payments to the Lessor pursuant hereto, the Lessor shall, upon request and at the expense of the Lessee, take all legal and other appropriate action reasonably requested by the Lessee to contest such imposition. The Lessor shall not be obligated to take any such legal or other appropriate action unless the Lessee shall first have indemnified the Lessor for all liabilities and expenses which may be entailed therein. Further, the Lessee shall indemnify and hold the Lessor harmless from and against any and all claims, costs, expenses, damages, losses and liabilities incurred in connection therewith as a result of, or incident to, any action taken by the Lessor or Lessee under this § 6. The Lessee shall be entitled to any refund received by the Lessor or the Lessee in respect of any imposition paid by the Lessee, provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing.

The Lessee shall, whenever reasonably requested by the Lessor, submit to the Lessor copies of returns, statements, reports, billings and remittances, or furnish other evidence satisfactory to the Lessor of the Lessee's performance of its duties under this § 6. The Lessee shall also furnish promptly upon request such data as the Lessor reasonably may require to permit the Lessor's compliance with the requirements of taxing jurisdictions.

The amount which the Lessee shall be required to pay with respect to any imposition which is subject to

indemnification under this § 6 shall be an amount sufficient to restore the Lessor to the same net after tax rate of return and after tax cash position, after considering the effect of such payment on its United States Federal income taxes and state and city income taxes or franchise taxes based on net income, that the Lessor would have been in had such imposition not been imposed.

§ 7. Maintenance; Casualty Occurrences; Insurance.

The Lessee agrees that, at Lessee's own cost and expense, it will be responsible for ordinary maintenance and repairs required to maintain and keep all of the Units which are subject to this Lease in good operating order, repair and condition and eligible for interchange service.

In the event that any Unit shall be or become worn out, lost, stolen, destroyed, or irreparably damaged, from any cause whatsoever, returned to the Builder pursuant to the patent indemnity provisions of the Security Documentation, or taken or requisitioned by condemnation or otherwise by the United States Government or any political subdivision thereof for a stated period which shall exceed the then remaining term of the Security Documentation or for an indefinite period, but only when such period shall exceed the term hereof, or by any other governmental entity resulting in loss of possession by the Lessee for a period of 90 consecutive days (such occurrences being hereinafter called Casualty Occurrences), prior to the return of such Unit in the manner set forth in § 14 hereof, the Lessee shall promptly and fully notify the Lessor and the Vendor with respect thereto. On the rental payment date next succeeding such notice the Lessee shall pay to the Lessor an amount equal to the rental payment or payments in respect of such Unit due and payable on such date plus a sum equal to the Casualty Value (as hereinafter defined) of such Unit as of the date of such payment in accordance with the schedule referred to below. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft, complete destruction or return to the Builder of such Unit) the Lessor shall be entitled to recover possession of such Unit and the Lessee shall pay all costs of removal of such Unit and of freight to the place designated pursuant to § 14 hereof.

The Casualty Value of each Unit as of the payment date on which payment is to be made as aforesaid

shall be that percentage of the Purchase Price of such Unit as is set forth in Schedule 2 hereto opposite such date, provided, however, that if the Casualty Value for any Unit as of such payment date as determined pursuant to Schedule 2 reflects an amount representing investment credit recapture to the Owner that is greater or lesser than the actual amount of investment credit recapture incurred by the Owner as a result of the Casualty Occurrence to such Unit, the Casualty Value for such Unit as so determined shall be appropriately decreased or increased so as to reflect the actual amount of investment credit recapture incurred by the Owner as a result of the Casualty Occurrence to such Unit.

Whenever any Unit shall suffer a Casualty Occurrence after termination of this Lease at the expiration of the original or extended term hereof and before such Unit shall have been returned in the manner provided in § 14 hereof, the Lessee shall promptly and fully notify the Lessor with respect thereto and pay to the Lessor an amount equal to the Casualty Value of such Unit, which shall be 20.350% of the Purchase Price of such Unit (unless such termination occurs after the term of this Lease has been extended pursuant to § 13 hereof, in which case the amount of such Casualty Value shall be as agreed upon between the Lessor and the Lessee at the time of such extension). Upon the making of any such payment by the Lessee in respect of any Unit (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 irrevocably appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof, at the best price obtainable on an "as is, where is" basis. Provided that the Lessee has previously paid the Casualty Value to the Lessor, the Lessee shall be entitled to the proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Lessor.

In the event of the requisition for use (which is not a Casualty Occurrence) by the United States Government or any political subdivision thereof (hereinafter called the Government) of any Unit during the term of this Lease all of the Lessee's obligations under this Lease with respect to such Unit shall continue to the same extent as if such requisition had not occurred, except that if such Unit is returned by the Government at any time after the end of the term of this Lease, the Lessee shall be obligated to return such Unit to the Lessor pursuant to § 11 or 14 hereof, as the case may be, promptly upon such return by the Government rather than at the end of the term of

this Lease, but the Lessee shall in all other respects comply with the provisions of said § 11 or 14, as the case may be, with respect to such Unit. All payments received by the Lessor or the Lessee from the Government for the use of such Unit during the term of this Lease shall be paid over to, or retained by, the Lessee provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing; and all payments received by the Lessor or the Lessee from the Government for the use of such Unit after the term of this Lease, shall be paid over to, or retained by, the Lessor.

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

The Lessee will, at all times prior to the return of the Equipment to the Lessor, at its own expense, cause to be carried and maintained property insurance and public liability insurance in respect of the Units at the time subject hereto, in amounts (subject to customary deductibles) and against risks customarily insured against by railroad companies in respect of similar equipment, and, in any event, comparable in amounts and against risks customarily insured against by the Lessee in respect of similar equipment owned by it. If the Lessor shall receive any insurance proceeds or condemnation payments in respect of a Unit suffering a Casualty Occurrence, the Lessor shall, subject to the Lessee's having made payment of the Casualty Value in respect of such Unit, pay such proceeds or condemnation payments to the Lessee up to an amount equal to the Casualty Value with respect to a Unit paid by the Lessee and any balance of such proceeds or condemnation payments shall remain the property of the Lessor. All insurance proceeds received by the Lessor from the Lessee's insurance coverage in respect of any Unit not suffering a Casualty Occurrence shall be paid to the Lessee upon proof satisfactory to the Lessor that any damage to such Unit in respect of which such proceeds were paid has been fully repaired.

§ 8. Reports and Inspection. On or before April 30 in each year, commencing with the calendar year 1978, the Lessee will furnish to the Lessor and the Vendor (a) an accurate statement (i) setting forth as at the preceding December 31 the amount, description and numbers of all Units then leased hereunder and covered by the Security Documentation, the amount, description and numbers of all Units

that have suffered a Casualty Occurrence during the preceding calendar year or are then undergoing repairs (other than running repairs) or then withdrawn from use pending such repairs (other than running repairs) and such other information regarding the condition and state of repair of the Units as the Lessor or the Vendor may reasonably request, (ii) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and markings required by § 5 hereof and by the Security Documentation have been preserved or replaced and (iii) setting forth a description of the insurance in effect with respect to the Equipment pursuant to § 7 hereof and (b) a certification of insurance coverage from the Lessee's independent broker stating the amounts of such insurance in effect and the amount of deductible. The Lessor, at its sole cost and expense, shall have the right by its agents, to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Lessor may request during the continuance of this Lease. The Lessee shall promptly notify the Lessor and the Vendor of any material changes or any material proposed changes of which the Lessee has knowledge in its insurance coverage in effect with respect to the Equipment pursuant to § 7 hereof.

The Lessee shall furnish to the Lessor the reports required to be furnished to the Lessor pursuant to Paragraph 10 of the Participation Agreement.

§ 9. Disclaimer of Warranties; Compliance with Laws and Rules; 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, OR AS TO THE LESSEE'S RIGHT TO QUIET ENJOYMENT THEREOF (EXCEPT AS TO ACTS OF THE LESSOR), OR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT, EITHER UPON DELIVERY THEREOF TO THE LESSEE OR OTHERWISE, it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee; but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for 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 Builder under the provisions of Items 3 and 4 of Annex A of the Security Documentation; provided, however, that if at any

time an Event of Default shall have occurred and be continuing, the Lessor may assert and enforce, at the Lessee's sole cost and expense, such claims and rights. The Lessor shall have no responsibility or liability to the Lessee or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Units or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of any Units or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Units. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Lessor that the Units described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

The Lessee agrees, for the benefit of the Lessor and the Vendor, to comply in all respects (including without limitation, with respect to the use, maintenance and operation of each Unit) with all applicable laws of the jurisdictions in which its operations involving the Units may extend, with all lawful rules of the Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units and with all applicable interchange rules, to the extent that such laws and rules affect the title, operation or use of the Units, and in the event that, prior to the expiration of this Lease or any renewal thereof, such laws or rules require any alteration, replacement, addition or modification of or to any part on any Unit, the Lessee will conform therewith at its own expense; provided, however, that the Lessee may at its own expense, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the reasonable opinion of the Lessor or the Vendor, adversely affect the property or rights of the Lessor or the Vendor under this Lease or under the Security Documentation. The Lessee, at its own cost and expense, may furnish other additions, modifications and improvements to the Units during the term of this Lease. Any additions, modifications and improvements made by the Lessee which are readily removable without causing material damage to the Units shall be owned by the Lessee and may be removed by the Lessee at any time during the term of this Lease or any renewal thereof and prior to the return thereof to the Lessor pursuant to § 11 or

14 hereof, except additions, modifications and improvements required to maintain each Unit's eligibility for interchange service or to comply with the provisions of the first paragraph of § 7 or the first sentence of this paragraph.

The Lessee agrees to indemnify, protect and hold harmless the Lessor (in both its individual and fiduciary capacities) and the Vendor from and against all losses, damages, injuries, liabilities, claims (including without limitation claims for strict liability in tort) and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including, but not limited to, counsel fees and expenses, patent liabilities, penalties and interest, arising out of or as the result of the entering into or the performance of or the occurrence of a default, an event of default or an Event of Default under the Security Documentation, the Participation Agreement, this Lease, or any sublease entered into pursuant to § 12 hereunder, the ownership of any Unit, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any Unit or any accident in connection with the operation, use, condition, possession, storage or return of any Unit resulting in damage to property or injury or death to any person, except as otherwise provided in § 14 of this Lease, or the transfer of title to the Equipment by the Vendor pursuant to any provision of the Security Documentation. The indemnities arising under this paragraph shall continue in full force and effect with respect to all events, facts, conditions or other circumstances occurring or existing prior to the expiration or termination of the term of this Lease and return of the Units as provided in § 14 of this Lease; provided, however, that the foregoing indemnification shall not apply to any failure of payment of the principal of or interest on the Conditional Sale Indebtedness and shall not be deemed to operate as a guaranty of the residual value of any Unit. The amount the Lessee shall be required to pay with respect to any of its obligations under this paragraph shall include a payment to the indemnified party sufficient to restore such party to the same position, after considering the effect of such payment on its United States Federal income taxes and state and city income taxes or franchise taxes based on net income, that the indemnified party would have been in had the liability or expense indemnified against not been incurred.

The Lessee further agrees to indemnify, protect and hold harmless the Vendor and the Builder as third party beneficiaries hereof from and against any and all liability,

claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendor or the Builder because of the use in or about the construction or operation of any of the Units of any article of material specified by the Lessee and not manufactured by the Builder or of any design, system, process, formula or combination specified by the Lessee and not developed or purported to be developed by the Builder which infringes or is claimed to infringe on any patent or other right. The Lessee will give notice to the Builder of any claim known to the Lessee from which liability may be charged against the Builder under the Security Documentation.

The Lessee shall not be released from its obligations hereunder in the event of any damage to or the destruction or loss of any or all of the Units.

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

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

A. default shall be made in payment of any amount provided for in § 3 or § 7 of this Lease and such default shall continue for ten business days, or default shall be made in payment of any other amount provided for in this Lease and such default shall continue for ten days after written notice from the Lessor or the Vendor to the Lessee specifying the default and demanding that the same be remedied;

B. the Lessee shall make or permit any unauthorized assignment or transfer of this Lease, or any interest herein, or of the right to possession of the Units, or any thereof and shall fail or refuse to cause such assignment or transfer to be canceled by agreement

of all parties having any interest therein and to recover possession of such Units within 15 days after written notice from the Lessor to the Lessee demanding such cancellation and recovery of possession;

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 Participation Agreement, and such default shall continue for 30 days after written notice from the Lessor or the Vendor to the Lessee specifying the default and demanding that the same be remedied;

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

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, under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of the Lessee hereunder or under the Consent), 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 the Consent shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier; or

ness shall continue), all the obligations of the Lessee under this Lease and the Consent shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Lessee or for the property of the Lessee in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such a trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier;

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

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

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as herein provided; and thereupon the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess, sell, operate, lease to others and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever and without any duty to account to the Lessee for such action or inaction or for any proceeds arising therefrom; 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 as damages for loss of the bargain and not as a penalty, an amount

equal to the excess, if any, of the Casualty Value as of the rental payment date on or next preceding the date of termination over the amount the Lessor reasonably estimates to be the sales value of such Unit at such time; provided, however, that in the event the Lessor shall have sold any Unit, the Lessor, in lieu of collecting any amounts payable to the Lessor by the Lessee pursuant to the preceding clause of this part (b) with respect to such Unit, may, if it shall so elect, demand that the Lessee pay the Lessor and the Lessee shall pay to the Lessor on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty Value for such Unit, as of the rental payment date on or next preceding the date of termination over the net proceeds of such sale.

In addition, the Lessee shall be liable, except as otherwise provided above, for any and all unpaid amounts due hereunder before, during or after the exercise of any of the foregoing remedies and for all reasonable attorneys' fees and other costs and expenses incurred by reason of the occurrence of any Event of Default or the exercise of the Lessor's remedies with respect thereto, including all costs and expenses incurred in connection with the return of any Unit.

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative and may be exercised concurrently or consecutively, 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 not, at the time in question, prohibited 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 such payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

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

§ 11. Return of Units Upon Default. If this Lease shall terminate pursuant to § 10 hereof, the Lessor may, upon such further notice, if any, as may be required for compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Lessor, take or cause to be taken by its agent or agents, immediate possession of each of the Units, or one or more of the Units and may remove the same from possession and use of the Lessee or any other person and for such purpose may enter upon the premises of the Lessee or any other premises where the Units 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, subject to all mandatory requirements of due process of law.

If this Lease shall terminate pursuant to § 10 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor. Each Unit so delivered shall be in the same operating order, repair and condition as when originally delivered to the Lessee, ordinary wear and tear excepted. For the purpose of delivering possession of any Unit or Units to the Lessor as above required, the Lessee shall at its own cost, expense and risk:

(a) forthwith and in the usual manner place such Units upon such storage tracks of the Lessee or any of its affiliates as the Lessor reasonably may designate;

(b) permit the Lessor to store such Units on such tracks at the risk of the Lessee without charge for insurance, rent or storage 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, insurance and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the cov-

enants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will, at its own cost and expense, maintain and keep the Equipment in good order and repair and will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser, lessee or user of any such Unit, to inspect the same. All amounts earned in respect of the Units after the date of termination of this Lease shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor. In the event any Unit is not assembled, delivered and stored, as hereinabove provided, within 60 days after such termination the Lessee shall, in addition, pay to the Lessor for each day after such termination an amount equal to the amount, if any, by which the product of (i) a fraction the numerator of which is 10% and the denominator of which is 360, and (ii) the Purchase Price of such Unit for each such day exceeds the actual earnings received by the Lessor on such Unit for each such day; such payment shall not affect the obligation of the Lessee to redeliver the Equipment pursuant to the first sentence of this paragraph.

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

§ 12. Assignment; Possession and Use. This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. All the rights of the Lessor hereunder (including, but not limited to, the rights under §§ 6, 7, 10 and 16 and the rights to receive the rentals payable under this Lease) shall inure to the benefit of the Lessor's assigns.

So long as the Lessee shall not be in default under this Lease and the Lessee shall have fully complied with the provisions of the fourth paragraph of this § 12, the Lessee shall be entitled to the possession and use of the Units and, without the Lessor's consent, to sublease the Units to, or to permit their use by, a user incorpo-

rated in the United States of America (or any State thereof or the District of Columbia), upon lines of railroad owned or operated by the Lessee or such user or by a railroad company or companies incorporated in the United States of America (or any State thereof or the District of Columbia), or over which the Lessee, such user, or such railroad company or companies have trackage rights or rights for operation of their trains, and upon the lines of railroad of connecting and other carriers in the usual interchange of traffic or in through or run-through service, but only upon and subject to all the terms and conditions of this Lease; provided, however, that the Lessor's consent, not to be unreasonably withheld, must be obtained for any sublease that is for a term or terms that aggregate more than six months in any one year; provided, further, however, that the Lessee shall not sublease or permit the sublease or use of any Unit to service involving regular operation and maintenance outside the United States of America; and provided further, however, that any such sublease or use shall be consistent with the provision of § 16 hereof. No such assignment or sublease shall relieve the Lessee of its obligations hereunder which shall be and remain those of principal and not a surety.

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

The Lessee, at its own expense, will as soon as possible cause to be duly discharged any lien, charge, security interest or other encumbrance (except any sublease as aforesaid and other than an encumbrance resulting from claims against the Lessor, the Vendee or the Vendor not related to the ownership or leasing of, or the security title of the Vendor to, the Units) which may at any time be imposed on or with respect to any Unit including any accession thereto or the interest of the Lessor, the Vendor or the Lessee therein; except that this covenant will not be breached

by reason of liens for taxes, assessments or governmental charges or levies, in each case 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; and, furthermore, the Lessee shall be under no obligation to discharge any such lien, charge, security interest or encumbrance so long as it is contesting the same in good faith and by appropriate legal proceedings and the failure to discharge the same does not, in the opinions of the Lessor and the Vendor, adversely affect the title, property or rights of the Lessor hereunder or the Vendor under the Security Document.

Nothing in this § 12 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any railroad corporation incorporated under the laws of any state of the United States of America or the District of Columbia (which shall have duly assumed the obligations of the Lessee hereunder) into or with which the Lessee shall have become merged or consolidated or which shall have acquired or leased all or substantially all the lines of railroad of the Lessee; provided, however, that such assignee, lessee or transferee will not, upon the effectiveness of such merger, consolidation, lease or acquisition be in default under any provision of this Lease and that such acquisition or lease of railroad lines of the Lessee shall not alter in any way the Lessee's obligation to the Lessor and Vendor hereunder which shall be and remain those of a principal and not a surety.

§ 13. Renewal Options and Right of First Refusal. Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may by written notice delivered to the Lessor not less than six months prior to the end of the original term of this Lease elect to extend the term of this Lease in respect of all but not fewer than all of the Units then covered by this Lease, for a five year period commencing on the scheduled expiration of the original term of this Lease. Such extension shall be on the same terms and conditions as are contained in this Lease, except as to the amount of rentals, which shall be at a "Fair Market Rental" (as such term is defined in this § 13) payable semiannually in arrears, and except as to applicable Casualty Values, which shall be as agreed upon between the Lessor and the Lessee at the time of such extension.

If the Lessee shall not have elected to extend the term of this Lease but shall have given the Lessor notice of its intention to exercise a right of first refusal with respect to the Units not less than six months prior to the expiration of the original term of this Lease and the Lessor elects to sell the Units to third parties effective upon the expiration of the original term of this Lease, the Lessor shall (a), as promptly as practicable after the Lessee shall have given such notice, engage an appraiser appointed as provided in the fifth paragraph of this § 13 to determine the Fair Market Sale Value of the Units and, upon receipt of such determination, deliver a true copy thereof to the Lessee, and (b), in a commercially reasonable manner, solicit offers to buy such Units (excepting additions, modifications and improvements which may be removed by Lessee pursuant to § 9 hereof), and upon receipt thereof shall exhibit to the Lessee a true copy of the most favorable bona fide offer, and the Lessee shall have a right of first refusal, exercisable by written notice delivered within 15 days of the receipt of said copy, to purchase such Units at the higher of the Fair Market Sale Value determined by the Appraiser and the sale price set forth in such offer.

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

Fair Market Rental and Fair Market Sale Value shall be determined on the basis of, and shall be equal in amount to, the rental or sale value which would obtain in an arm's length transaction between an informed and willing lessee or vendee, as the case may be (other than a lessee currently in possession), and an informed and willing lessor

or vendor, as the case may be, under no compulsion to lease or sell, as the case may be, and, in such determination, costs of removal from the location of current use shall not be a deduction from such rental or sale value out there shall be excluded any rental value or sale value attributable to additions, modifications and improvements which the Lessee is entitled to remove pursuant to § 9 hereof; provided, however, that Fair Market Rental shall be determined as provided in the preceding sentences on the basis of the term and other terms and conditions of the lease being considered.

If (a), after 45 days from the giving of notice by the Lessee of the Lessee's election to extend the term of this Lease, as provided in the first paragraph of this § 13, the Lessor and the Lessee are unable to agree upon a determination of Fair Market Rental, or (b) the Lessor shall be required to engage an appraiser to determine Fair Market Sale Value as provided in the second paragraph of this § 13, such Rental or Sale Value, as the case may be, shall be determined in accordance with the foregoing definitions by the following procedure: If either party to such determination shall have given written notice to the other requesting determination of Fair Market Rental by this appraisal procedure, or the Lessor shall be required to engage an appraiser as aforesaid, the parties shall consult for the purpose of appointing a qualified independent appraiser by mutual agreement. If no such appraiser is so appointed within 20 business days after such notice is given, each party shall appoint an independent appraiser within 25 business days after such notice is given, and the two appraisers so appointed shall within 35 business days after such notice is given appoint a third independent appraiser. If no such third appraiser is appointed within 35 business days after such notice is given, either party may apply, to make such appointment, to the American Arbitration Association, and both parties shall be bound by any appointment so made. Any appraiser or appraisers appointed pursuant to the foregoing procedure shall be instructed to determine the Fair Market Rental or the Fair Market Sale Value, as the case may be, of the Units subject to the proposed extended term within 90 days after his or their appointment. If the parties shall have appointed a single appraiser or if either party shall

have failed to appoint an appraiser, the determination of the single appraiser appointed shall be final. If three appraisers shall be appointed, the determination of the appraiser which differs most from the other two appraisers shall be excluded, the remaining two determinations shall be averaged and such latter average shall be final and binding upon the parties hereto. The appraisal proceedings shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association as in effect on the date hereof, except as modified hereby. The provision for this appraisal procedure shall be the exclusive means of determining Fair Market Rental and Fair Market Sale Value and shall be in lieu of any judicial or other procedure for the determination thereof, and each party hereto hereby consents and agrees not to assert any judicial or other procedures. The expenses of the appraisal procedure shall be borne equally by the Lessee and the Lessor.

§ 14. Return of Units upon Expiration of Lease Term. As soon as practicable on or after the expiration of the original term or the extended term of this Lease with respect to any Unit which Lessee does not purchase or re-lease pursuant to § 13, the Lessee will, at its own cost and expense, at the request of the Lessor, deliver possession of such unit to the Lessor upon such storage tracks of the Lessee as the Lessee may reasonably designate, in such city on the lines of Lessee as Lessor may reasonably designate, or in the absence of Lessor's designation, in such city on the lines of Lessee as Lessee may designate, and permit the Lessor to store such Unit on such tracks for a period not exceeding three months and transport the same, at any time within such three-month period, to any reasonable place on the lines of railroad operated by the Lessee, or to any connecting carrier for shipment, all as directed by the Lessor, the movement and storage of such Units to be at the expense and risk of the Lessee. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser, lessee or user of such Unit, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, lessee or user, the rights of inspection granted under this sentence. Each Unit returned to the Lessor pursuant to this § 14 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, ordinary wear and

tear excepted, and (ii) except for additions, modifications and improvements which the Lessee is entitled to remove under the provisions of § 9 of this Lease, meet all operating standards then in effect under the applicable rules of any governmental agency or other organization with jurisdiction. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. All amounts earned in respect of the Units after the date of termination of this Lease shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor. In the event any Unit is not assembled, delivered and stored, as hereinabove provided, within 60 days after such termination, the Lessee shall, in addition, pay to the Lessor for each day thereafter an amount equal to the amount, if any, by which the product of (i) a fraction the numerator of which is 10% and the denominator of which is 360, and (ii) the Purchase Price of such Unit for each such day exceeds the actual earnings received by the Lessor on such Unit for each such day.

§ 15. Recording. The Lessee, at its own expense, will cause this Lease, the Security Documentation and any assignment hereof or thereof to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act. The Lessee will undertake the filing, registering, deposit, and recording required of the Lessor under the Security Documentation and will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, reregister, deposit and redeposit or rerecord whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Vendor for the purpose of proper protection, to their satisfaction, of the Vendor's and the Lessor's respective interests in the Units, or for the purpose of carrying out the intention of this Lease, the Security Documentation and the assignment thereof to the Vendor; and the Lessee will promptly furnish to the Vendor and the Lessor evidence of all such filing, registering, depositing or recording, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Vendor and the Lessor. This Lease and the Security Documentation shall be filed and recorded with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Unit.

§ 16. Income Taxes.

(a) Loss of Assumed Tax Benefits. If

(i) on the date of delivery of any Unit of Equipment the Owner is not entitled to an investment credit under Section 38 and related sections of the Internal Revenue Code of 1954 (hereinafter called the Code) with respect to such Unit of not less than 10% of the Purchase Price with respect to such Unit; or

(ii) the Owner is not allowed the benefit of current deductions for depreciation on any one or more of the Units under Section 167(a) of the Code (x) computed pursuant to any method of depreciation authorized by Section 167(b)(2) or (3) of the Code and pursuant to the asset depreciation range system of Section 167(m) of the Code and Section 1.167(a)-11 of the income tax regulations, (y) computed on the basis (A) of a net salvage value of zero, (B) that the basis of such Unit or Units under Section 167(g) of the Code is at least equivalent to the Purchase Price with respect to such Unit or Units, and (C) that such Unit or Units are entitled to an asset depreciation period of 12 years, which is the lower limit listed in Rev. Proc. 77-10, 1977-12 I.R.B. 4, for property classified in Asset Guideline Class 00.25, and (z) determined on the basis of the "half-year convention" of Section 1.167(a)-11(c)(2)(iii) of the income tax regulations; or

(iii) the Owner is not allowed the benefit of current deductions under Section 163 of the Code for interest payable under the Security Documentation; or

(iv) any investment credits or deductions for depreciation with respect to any one or more of the Units are disallowed, or are recaptured in whole or in part pursuant to Section 47 or Section 1245 of the Code or any successor provision or provisions thereto; or

(v) any amount includible in the gross income of the Owner with respect to any one or more of the Units or any deduction allowable to the Owner with respect to such Unit or Units or with respect to any interest payable under the Security Documentation shall be treated as derived from, or allocable to, sources outside the United States; or

(vi) any amount is included, at any time prior to the disposition of any one or more of the Units in a taxable transaction, in the gross income of the Owner as a result of any repair, improvement, alteration, modification or addition (including replacement of parts) to such Unit or Units made by Lessee (herein called a "Capital Expenditure"); provided that in the event a Capital Expenditure is included in the gross income of the Owner, the Owner shall attempt to maximize the future tax benefits from such Capital Expenditure by making such elections (including where advantageous accelerated depreciation elections and election of the applicable asset guideline repair allowance if then permitted) as will increase the Owner's tax deductions;

then the Owner shall be entitled to such indemnities by Lessee as are provided in paragraph (b) of this § 16. For purposes of this § 16, any such aforementioned failure to allow, such recapture, such treatment of income or deductions as derived from or allocable to sources without the United States, or such inclusion in gross income as a result of a Capital Expenditure shall be hereinafter called a "Loss".

(b) Indemnities and Exceptions. In the event the Owner suffers a Loss as defined in paragraph (a) of this § 16 due to:

(A) a Loss described in clause (i) of paragraph (a) of this § 16, if such Loss results from the use of a Unit by any person so as to preclude the "original use of such property" within the meaning of Section 48(b)(2) of the Code from commencing with the Owner;

(B) a determination by the Internal Revenue Service in which Lessee has acquiesced (or a final determination by the courts, in the event of a contest pursuant to paragraph (c) of this § 16) that this Lease should not be treated as a lease for tax purposes unless such determination results from the Owner's failure to satisfy the requirements of Section 4(1)(A) and (B) of Rev. Proc. 75-21, 1975-1 C.B. 715, as in effect on the date hereof;

(C) a Loss described in clause (ii) of paragraph (a) of this § 16, if such Loss results from the use of a Unit by any person so as to preclude the "original use of such property" within the meaning of Section 167(c)(2) of the Code from commencing with the Owner;

(D) Lessee's use of a Unit or Units in such a manner as to result in a Loss described in clause (iv) or (v) of paragraph (a) of this § 16;

(E) a Capital Expenditure; or

(F) any action, or omission to act, at any time, on the part of Lessee or any of its officers, employees or agents (including, without limitation, any action, or omission to act, in respect of the income tax returns of the Lessee);

then, subject to the exceptions in the following subparagraph and the rights of the Lessee to contest any Loss as set forth in paragraph (c), the rental payable for the Unit or Units to which such Loss is attributable shall be adjusted in the manner set forth in paragraph (d), and with respect to a Loss for which lump sum indemnity payments are provided in the third subparagraph of paragraph (d) of this § 16, the Lessee shall, subject to the exceptions set forth in the following subparagraph and Lessee's rights of contest set forth in paragraph (c), pay to the Owner such lump sum indemnity payments as are provided by paragraph (d).

Notwithstanding the provisions of the immediately preceding subparagraph, there shall be no increase made in rentals nor any payment be required to be made by Lessee if the Owner shall have suffered such Loss with respect to all or part of such Unit as a direct result of the occurrence of any of the following events (hereinafter called Excluded Events):

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

(ii) a voluntary transfer or other voluntary disposition by the Owner or any transfer or disposition by the Owner resulting from bankruptcy or other proceedings for relief of debtors in which the Owner is the debtor, whether voluntary or involuntary, of any interest in such Unit or the voluntary reduction by the Owner of its interest in the rentals from such Unit under the Lease (other than pursuant to the assignment of this Lease to the Vendor), unless, in each case, an Event of Default (or an event that, with the lapse of time or the giving of notice, or

both, would constitute an Event of Default pursuant to clauses A, D or E of § 10 hereof; provided, however, that for purposes of this § 16 a default pursuant to clause A of § 10 shall be an Event of Default only if a payment referred to therein shall not have been made within two business days following written notice of demand therefor from the Owner) shall have occurred and be continuing; or

(iii) the failure of the Owner to claim in a timely and proper manner (including all appropriate elections) on its income tax returns for the appropriate years any credits or deductions contemplated by paragraph (a) of this § 16, subject to the provisions of the fifth subparagraph of paragraph (c) of this § 16; or

(iv) the failure of the Owner to have sufficient Federal income tax liability against which to apply such credits or sufficient income to benefit from such depreciation or interest deductions; or

(v) the failure of the Owner to take timely action in contesting a claim made by the Internal Revenue Service, but only if such action is required by the terms of paragraph (c) of this § 16; or

(vi) with respect to any Unit, any amendment to, or change in (A) the Code or the income tax regulations thereunder, or (B) published Revenue Rulings or Revenue Procedures which lengthen beyond 12 years the minimum period over which such Unit may be depreciated, which in either case become effective after the Closing Date with respect to such Unit, except that this clause (vi) shall not apply with respect to any amendment or change which precludes the Owner from depreciating any Unit to a net salvage value of zero, to the extent that the Owner's Loss is attributable to the difference between (A) a net salvage value of 10% of the Purchase Price of such Unit, and (B) a net salvage value of zero with respect to such Unit; or

(vii) any participation in the residual value of any Unit at the end of the term of this Lease by any party other than the Owner; or

(viii) the taking or failure to take at any time by the Owner or any of its officers, employees or agents

of any other action whatsoever which is inconsistent with the Owner's obligations under the Trust Agreement, the Participation Agreement and this Lease, except at a time when an Event of Default (or an event that, with the lapse of time or the giving of notice, or both, would constitute an Event of Default pursuant to clauses A, D or E of § 10 hereof; provided, however, that for purposes of this § 16 a default pursuant to clause A of § 10 shall be an Event of Default only if a payment referred to therein shall not have been made with two business days following written notice of demand therefor from the Owner) has occurred and is continuing.

(c) Lessee's Rights of Contest. The Owner shall promptly, upon its knowledge thereof, give written notice to Lessee of any claim or proceeding in respect of which Lessee would be required to make indemnification payments. The Owner shall, without further action by Lessee, contest any such claim or proceeding until the conclusion of the audit or other proceeding at the first administrative level. If at the conclusion of any audit the Owner receives a preliminary or "30 day" letter from the Internal Revenue Service proposing an adjustment in any item that, if agreed to by the Owner, would result in a Loss with respect to which Lessee would be required to indemnify the Owner pursuant to this § 16, the Owner shall promptly notify Lessee of such proposed adjustment and shall furnish to Lessee a statement describing such Loss in reasonable detail. The Owner agrees, if so requested by Lessee, to contest such adjustment; provided, however, that the Owner shall not be obligated to contest such adjustment unless Lessee shall first have furnished to the Owner a written opinion of independent tax counsel, selected by the Owner after consultation with Lessee (hereinafter called the Special Tax Counsel), that there is a meritorious basis for contesting such proposed adjustment; and provided further, however, that prior to entering into such contest, the Owner shall have been first indemnified in a manner reasonably satisfactory to it by Lessee for any Loss that results from an adverse determination with respect to the proposed adjustment and for all expenses which may be entailed therein.

If Lessee shall have established the Owner's obligation to contest such proposed adjustment as provided in the immediately preceding paragraph, then the Owner's obligation to pursue such contest shall be continuous and unlimited

until the matter is concluded at the highest judicial level; provided that the Owner may at any time, whether before or after commencing to take any action with respect to a proposed adjustment, decline to take any further action with respect thereto. If the Owner, at the time it so declines, is furnished a written opinion of Special Tax Counsel, which the Owner shall obtain at its expense, to the effect that there is no meritorious basis for further contesting such adjustment, then Lessee shall remain obligated to indemnify the Owner for any Loss that results from the proposed adjustment. The Owner may so decline to take any further action with respect to a proposed adjustment without obtaining the opinion of Special Tax Counsel described in the preceding sentence; provided that the Owner shall thereby waive its right to any indemnity with respect to any Loss that will result from acceptance of such proposed adjustment.

The Owner, in its sole discretion, shall determine whether to contest any proposed adjustment beyond the level of the Internal Revenue Service auditing agent by any further administrative proceedings and shall determine the initial and any appellate judicial forum for so contesting any proposed adjustment and, if the adjustment relates to an item claimed on a tax return, shall determine whether the proceedings shall be for redetermination of the deficiency proposed to be assessed by the Internal Revenue Service or for refund of taxes paid based on such deficiency.

If any such proposed adjustment results from a determination that this Lease is not a true lease, which determination would result in an indemnity payable by Lessee to the Owner under the provision of clause (B) of paragraph (b) of this § 16, then, unless otherwise agreed to by Lessee, the Owner may not decline to contest such determination without waiving its right to any indemnity payment that would result from acceptance of such proposed determination.

If the Owner furnishes to Lessee a written opinion of the Owner's Counsel that there is no meritorious basis to support a claim for any credit or deduction contemplated by paragraph (a) of this § 16, the Lessee may contest such opinion by engaging, at its expense, independent tax counsel, selected by Lessee with approval of the Owner (not to be unreasonably withheld) to determine if it would be proper to claim any such credit or deduction. If Lessee fails to contest within 30 days after receipt of the opinion of the Owner's Counsel, or its independent tax counsel concurs with

such opinion, the Owner's failure to claim such credit or deduction shall not constitute an Excluded Event, and the Lessee shall commence payment of indemnities as provided by paragraphs (a) and (d) of this § 16. Except as expressly provided in the preceding sentence, the failure of the Owner to claim such credit or deduction in a timely and proper manner shall constitute an Excluded Event.

(d) Amount and Time of Payment of Indemnity. The amount of indemnity payable by Lessee pursuant to this § 16 with respect to a Loss shall be such amount as will result, in the Owner's reasonable judgment, after due consultation with Lessee, in preserving for the Owner the after-tax rate of return and after-tax cash flow that would have been realized by the Owner if such Loss had not occurred, based on the rates of Federal, state and local taxes on, based on, or measured by, net income in effect from time to time, but not more than such after-tax rate of return and after-tax cash flow that would have been realized on the bases and assumptions (including, without limitation, tax rates) used by the Owner in originally evaluating this transaction. The Owner shall furnish Lessee with a notice setting forth in reasonable detail the computations and methods used in computing such amount of indemnity.

Lessee's obligation to pay any indemnity payable pursuant to this § 16 shall become unconditional (1) in the case of a Loss that is required to be reflected on a tax return of the Owner, 30 days after the date such tax return is filed; (2) in the case of a Loss that results from a proposed adjustment of the Internal Revenue Service that is not contested pursuant to paragraph (c) of this § 16, 30 days after Lessee's receipt of the statement referred to in the third sentence of paragraph (c) of this § 16; and (3) in the case of a Loss that results from a proposed adjustment of the Internal Revenue Service that is contested pursuant to paragraph (c) of this § 16, 30 days after the day on which such contest is finally concluded.

Lessee shall pay to the Owner a lump sum indemnity at the time its obligation to pay indemnity pursuant to this § 16 becomes unconditional, (A) with respect to a Loss described in clause (i) of paragraph (a) of this § 16, and (B) with respect to any other Loss, if Lessee's obligation to pay indemnity pursuant to this § 16 becomes unconditional on or after the termination of this Lease. Any other indemnity payable pursuant to this § 16 shall be structured as level

future rent increases, and Lessee shall commence payment of such increased rent on the first rental payment date after Lessee's obligation to pay indemnity pursuant to this § 16 becomes unconditional. The amount of rental resulting from any one Loss shall be adjusted from time to time for each change in the Code and the income tax regulations (including, without limitation, tax rates) which affects the Owner's net after-tax rate of return and after-tax cash flow but such adjustment shall not result in an after-tax rate of return and after-tax cash flow more than that contemplated by the Owner in originally evaluating this transaction.

The amount of each payment of indemnity payable pursuant to this § 16 with respect to a Loss shall (A) reflect the amount of interest, additions to tax and penalties payable by the Owner with respect to such Loss, and (B) reflect the amount of Federal, state and local taxes on, based on, or measured by, net income (at the rates in effect from time to time), interest, additions to tax and penalties incurred by the Owner as a result of the receipt of such indemnity payment.

(e) Adjustment of Casualty Values. In the event that Lessee shall be required to indemnify the Owner pursuant to this § 16 with respect to a Loss relating to a Unit or Units, the Casualty Value of such Unit or Units shall be appropriately reduced to reflect the reduction, if any, in taxes that will be payable by the Owner with respect to such Unit or Units upon a Casualty Occurrence with respect thereto; provided, however, that such Casualty Values shall not be reduced below the amounts required to satisfy the obligations of the Lessor under the Security Documentation.

(f) Definition of Owner. For purposes of this Lease, the term "Owner" shall include any affiliated group, within the meaning of Section 1504 of the Code, of which the Owner is a member, if consolidated returns are filed for such affiliated group for Federal income tax purposes.

(g) Payments to Owner. Lessee expressly acknowledges that this § 16 is for the benefit of the Owner as a third party beneficiary. All payments to be made pursuant to this § 16 shall be made directly to the Owner at its address set forth in § 12 of the Participation Agreement.

(h) Change in Tax Law Prior to Closing. If any amendment to the Code or income tax regulations (including,

without limitation, a change in tax rates) is made effective with respect to any Unit prior to the Closing Date for such Unit, and such amendment causes a change in the tax benefits contemplated by the Owner, then the rental rate specified in § 3 of this Lease (and the Casualty Value percentages set forth in Schedule 2 hereto) shall be increased or decreased as necessary so as to preserve the Owner's net after-tax return and after-tax cash flow (computed on the same assumptions as were utilized by the Owner in originally evaluating this transaction) at the same level as if such tax benefits had not been changed; provided, however, such rental rate shall not be reduced below the amounts required to satisfy the obligations of the Trustee under the Security Documentation; and provided further, that the rentals, as so adjusted, shall be sufficient to enable the Owner to satisfy the pre-tax cash flow and pre-tax profit requirements set forth in Rev. Proc. 75-21, 1975-1 C.B. 715, as amended through the Closing Date for such Unit. The adjustments to the amount of the rentals under the Lease pursuant to this paragraph shall be made by the Owner after due consultation with the Lessee. In this connection the Owner shall provide Lessee with a schedule setting forth in reasonable detail the computations and methods used in computing such adjustments.

(i) Lessee agrees to cooperate and join with the Owner, at the Owner's expense, in any administrative or judicial proceeding in which the Owner is engaged in order to sustain its entitlement to any of the tax benefits the Loss of which is specified in paragraph (a) of this § 16 if such Loss is the result of an amendment or change described in subparagraph (vi) of paragraph (b) of this § 16.

§ 17. Interest on Overdue Rentals. Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay, to the extent legally enforceable, interest at a rate per annum equal to 10% on 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.

§ 18. Notices. Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when mailed, first class, postage prepaid, addressed as follows:

(a) if to the Lessor, at One Constitution Plaza, Hartford, Connecticut 06115, attention of Corporate Trust Department, with copies to Donald G. Lohmann, Vice

President, and E. Lowell Dinius, Vice President and General Counsel, American Fletcher Leasing Corporation, 111 Monument Circle, Indianapolis, Indiana 46277; and

(b) if to the Lessee, at 400 West Madison Street, Chicago, Illinois 60606; Attention Treasurer;

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing. Copies of each such notice shall be given to the Vendor at 231 South La Salle Street, Chicago, Illinois 60693, Attention of Corporate Trust Department.

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

Except for the Participation Agreement and the Trust Agreement, 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 signatories for the Lessor and the Lessee.

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

§ 21. 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.

§ 22. Definitions. Whenever the term "Lessor" is used in this Lease, it shall also include the Owner and any assignee of the Owner and, where the context so requires (including but not limited to certain of the provisions of § 6 hereof), shall, except for purposes of any assignment of the "Lessor's" rights under this Lease, refer only to the Owner or such assignee of the Owner.

§ 23. Concerning the Lessor. Each and all of the warranties, representations, undertakings and agreements herein made on the part of the Lessor are each and every one of them made and intended not as personal representations, undertakings and agreements by The Connecticut Bank and Trust Company, or for the purpose or with the intention of binding said bank personally but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement, and this Lease is executed and delivered by the said bank solely in the exercise of the powers expressly conferred upon said bank as trustee under the Trust Agreement, and that no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against said bank, except for wilful misconduct or gross negligence, or against the Owner under the Trust Agreement (except under the last paragraph of Section 5.01 thereof) or on account of any representation, undertaking or agreement herein of the Lessor or the Owner, either expressed or implied, all such personal liability (except as aforesaid), if any, being expressly waived and released by the Lessee and by all persons claiming by, through or under the Lessee.

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

CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY,

[Corporate Seal]

by

Attest:

-----  
Vice President

\_\_\_\_\_  
Assistant Secretary

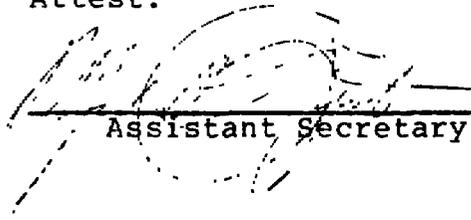
THE CONNECTICUT BANK AND TRUST  
COMPANY, as Trustee

[Corporate Seal]

by

  
\_\_\_\_\_  
Vice President

Attest:

  
\_\_\_\_\_  
Assistant Secretary

STATE OF ILLINOIS, )  
 ) ss.:  
COUNTY OF COOK, )

On this            day of            1977, before me personally appeared            , to me personally known, who, being by me duly sworn, says that he is a Vice President of CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

\_\_\_\_\_  
Notary Public

[Notarial Seal]

My Commission expires

STATE OF CONNECTICUT, )  
 ) ss.: *Hartford*  
COUNTY OF HARTFORD, )

On this the *30th* day of *August*, 1977, before me, **BARBARA S. KACICH**, the undersigned officer, personally appeared **F. W. KAWAM**, who acknowledged himself to be the **VICE PRESIDENT** of THE CONNECTICUT BANK AND TRUST COMPANY, a corporation, and that he, as such **VICE PRESIDENT**, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as **VICE PRESIDENT**.

IN WITNESS WHEREOF, I hereunto set my hand.

*Barbara S. Kacich*  
\_\_\_\_\_  
Notary Public

[Notarial Seal]

My Commission expires

**BARBARA S. KACICH**  
**NOTARY PUBLIC**  
MY COMMISSION EXPIRES *MARCH 31 1978*

SCHEDULE 1 TO LEASE

<u>Type</u>	<u>Quantity</u>	<u>Lessee's Road Numbers (Both Inclusive)</u>
50' 6" 70-ton XM Box Cars	344	CNW 155794 through 156137

SCHEDULE 2 TO LEASE  
CASUALTY VALUES

<u>Rent Payments</u>	<u>Percentage of Purchase Price</u>
Interim Payment	106.154
No. 1	105.600
No. 2	105.094
No. 3	104.703
No. 4	104.303
No. 5	103.973
No. 6	96.768
No. 7	96.376
No. 8	95.814
No. 9	95.242
No. 10	87.646
No. 11	86.786
No. 12	85.617
No. 13	84.364
No. 14	75.956
No. 15	74.988
No. 16	73.632
No. 17	72.171
No. 18	70.270
No. 19	68.235
No. 20	65.708
No. 21	63.018
No. 22	59.849
No. 23	56.364
No. 24	52.548
No. 25	48.519
No. 26	44.267
No. 27	39.531
No. 28	34.801
No. 29	29.815
No. 30	29.068
No. 31	28.389
No. 32	27.775
No. 33	27.226
No. 34	26.741
No. 35	26.320
No. 36	25.712
No. 37	25.416
No. 38	25.182
No. 39	25.011
No. 40	20.350

B



LEASE OF RAILROAD EQUIPMENT

Dated as of July 1, 1977

between

CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY

and

THE CONNECTICUT BANK AND TRUST COMPANY,  
as Trustee



# Lease of Railroad Equipment

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Schedule I--Schedule of Equipment

Schedule 2--Casualty Values

LEASE OF RAILROAD EQUIPMENT dated as of July 1, 1977, between CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY, a Delaware corporation (hereinafter called the Lessee), and THE CONNECTICUT BANK AND TRUST COMPANY, a Connecticut banking corporation, as Trustee (hereinafter called the Lessor) under a Trust Agreement dated as of the date hereof (hereinafter called the Trust Agreement) with HFC Leasing Inc. (hereinafter called the Owner).

WHEREAS the Lessor is entering into a conditional sale agreement dated as of the date hereof with Whittaker Corporation (Berwick Forge & Fabricating Division), a California corporation (hereinafter called the Builder), (such agreement being hereinafter called the Security Documentation), wherein the Builder has agreed to manufacture, sell and deliver to the Lessor the units of railroad equipment described in Schedule 1 hereto (hereinafter called the Equipment);

WHEREAS the Builder is assigning its interests in the Security Documentation to Continental Illinois National Bank and Trust Company of Chicago, acting as agent (hereinafter, together with its successors and assigns, called the Vendor) under a Participation Agreement dated as of the date hereof (hereinafter called the Participation Agreement) with the Lessee and the parties named in Schedule A thereto;

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

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

§ 1. Net Lease. This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent, reduc-

tion thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs due or alleged to be due by reason of any past, present or future claims of the Lessee against the Lessor under this Lease or under the Security Documentation, or against the Builder or the Vendor or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency of or any 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.

§ 2. Delivery and Acceptance of Units. The Lessor hereby appoints the Lessee its agent for inspection and acceptance of the Units pursuant to the Security Documentation. The Lessor will cause the Units to be delivered to the Lessee at the point within the United States of America at which the Units are delivered to the Lessor under the Security Documentation. Upon such delivery, the Lessee will cause an employee of the Lessee to inspect the same, and if such Unit is found to be acceptable, to accept delivery of such Unit and the Lessee shall execute and deliver to the Lessor a certificate of acceptance (hereinafter called the Certificate of Acceptance) in accordance with the pro-

visions of Article 3 of the Security Documentation, 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 § 5 hereof, whereupon, except as provided in the next sentence hereof, such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease. The delivery, inspection and acceptance hereunder of any unit of Equipment excluded from the Security Documentation pursuant to the first paragraph of Article 4 thereof shall be null and void and ineffective to subject such unit to this Lease.

§ 3. Rentals. The Lessee agrees to pay to the Lessor as rental for each Unit subject to this Lease one interim and 40 consecutive semiannual payments. The interim payment for each Unit subject to this Lease is payable on January 5, 1978, and shall be in an amount equal to the product of the Purchase Price for such Unit multiplied by .025% for each day elapsed from and including the Closing Date (as defined in the Security Documentation) for such Unit under the Security Documentation to but not including January 5, 1978. The 40 semiannual payments are payable on January 5 and July 5 in each year, commencing July 5, 1978, to and including January 5, 1998, as follows: the first 15 such payments shall be in an amount equal to 3.9499998% of the Purchase Price of each such Unit then subject to this Lease; the next 15 such payments shall each be in an amount equal to 3.4200003% of the Purchase Price of each such Unit then subject to this Lease; and the next 10 such payments shall each be in an amount equal to 4.1450000% of the Purchase Price of each such Unit then subject to this Lease.

The Lessee shall pay as additional rental the following: (1) on the Cut-Off Date (as defined in Paragraph 8 of the Participation Agreement), an amount equal to any amounts payable by the Lessor pursuant to clause (a) of the final paragraph of Paragraph 8 of the Participation Agreement on such date and an amount equal to any amounts payable by the Lessor pursuant to the first paragraph of Paragraph 8 of the Participation Agreement; provided, however, that such payment shall be decreased by an amount equal to any funds payable by the Agent to the Lessor pursuant to the third paragraph of Paragraph 8 of the Participation Agreement to the extent such funds are credited by the Agent against such

payment; provided further, however, that if such funds payable by the Agent to the Lessor exceed the amount so payable by the Lessee, then that portion of the rentals payable by the Lessee under this Lease in an amount equal to such excess shall be deemed to be an overpayment of rental and the Lessor shall refund such excess to the Lessee when received from the Agent; and (2) on January 5, 1978, an amount equal to any amounts payable by the Lessor pursuant to clause (b) of such final paragraph of Paragraph 8 on such date.

Notwithstanding any other provision hereof, to the extent that the Lessee shall be denied possession of a Unit or Units because of the occurrence of a default under the Security Documentation which is not an Event of Default (as such term is hereinafter defined) under this Lease, the Lessee shall have no further obligation to make any additional rental payments for such Unit or Units with regard to periods subsequent to its loss of possession of such Unit or Units.

The rental payments hereinbefore set forth are subject to adjustment pursuant to § 16 hereof.

If any of the rental payment dates referred to above is not a business day the rental payment otherwise payable on such date shall be payable on the next succeeding business day. The term "business day" as used herein means a calendar day, excluding Saturdays, Sundays and any other day on which banking institutions in Chicago, Illinois, are authorized or obligated to remain closed.

The Lessor irrevocably instructs the Lessee to make all the payments provided for in this Lease, including, but not limited to, the payments provided for in this § 3 and in § 7 hereof, but excluding payments due to the Lessor by reason of § 16 hereof, at the principal office of the Vendor, for the account of the Lessor in care of the Vendor, with instructions to the Vendor first, to apply such payments to satisfy the obligations of the Lessor under the Security Documentation, and second, so long as no event of default or event which with the lapse of time and/or demand provided for in the Security Documentation could constitute an event of default under the Security Documentation shall have occurred and be continuing, to pay any balance promptly to the Lessor at such place as the Lessor shall specify in writing. The Lessee agrees to make each payment provided for herein as contemplated by this paragraph in Federal or other funds immediately available to the Vendor by 11:00 a.m., Chicago time, on the date such payment is due.

§ 4. Term of Lease. The term of this Lease as to each Unit shall begin on the date of delivery and acceptance of such Unit hereunder and, subject to the provisions of §§ 7 and 10 hereof, shall terminate on the date on which the final payment of rent in respect thereof is due pursuant to § 3 hereof. The obligations of the Lessee hereunder (including, but not limited to, the obligations under §§ 6, 7, 9, 14 and 16 hereof) shall survive the expiration of the term of this Lease.

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

§ 5. Identification Marks. The Lessee (at its own expense) will cause each Unit to be kept numbered with the road number set forth in Schedule 1 hereto, or in the case of any Unit not there listed, such road 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 Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Lessor's and Vendor's title to and interest in such Unit and the rights of the Lessor under this Lease and of the rights of the Vendor under the Security Documentation. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such words shall have been so marked and will replace promptly any such markings which may be removed, defaced or destroyed. The Lessee will not change the road number of any Unit unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with the Vendor and the Lessor and duly filed, recorded and deposited by the Lessee in all public offices where this Lease and the Security Documentation shall have been filed, recorded and deposited and (ii) the Lessee shall have furnished the Vendor and the Lessor an opinion of

counsel to such effect. The Units may be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates.

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.

§ 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 payable by the Lessor in consequence of the receipt of payments provided for herein and, to the extent that the Lessor receives credit therefor against its United States Federal income tax liability, any foreign income tax, and other than the aggregate of all state or local taxes measured by net income based on such receipts and value added taxes in lieu of such net income taxes up to the amount of any such taxes which would be payable to the state and city in which the Lessor has its principal place of business without apportionment to any other state and other than any state franchise tax which is not based on or measured by net income, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided) or license fees, assessments, charges, fines or penalties (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called impositions) hereafter levied or imposed upon or in connection with or measured by this Lease or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof or the Security Documentation, all of which impositions the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. The Lessee will also pay promptly all impositions which may be imposed upon any Unit or for the use or operation thereof or upon the earnings arising therefrom (except as provided above) or upon the Lessor by reason of its ownership thereof and will keep at all times all and every part of such Unit free and clear of all impositions which might in any way affect the title of the Lessor or the

interest of the Lessor or result in a lien upon any such Unit; provided, however, that the Lessee shall be under no obligation to pay any impositions of any kind so long as such imposition remains unpaid and Lessee is contesting in its own name and in good faith and by appropriate legal or administrative proceedings such impositions, or the Lessor is required to contest such impositions as provided in this § 6, and the nonpayment thereof does not, in the reasonable opinion of the Lessor, adversely affect the title, property or rights of the Lessor hereunder or the Lessor or the Vendor under the Security Documentation. The Lessee agrees to give the Lessor notice of such contest brought in Lessee's name within 30 days after institution thereof and the Lessor agrees to provide such information as may be reasonably requested by the Lessee in furtherance of such contest. If any impositions shall have been charged or levied against the Lessor directly and paid by the Lessor, the Lessee shall pay the Lessor on presentation of an invoice therefor if the Lessor shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Lessor) or the Lessee shall have approved the payment thereof, and the Lessor agrees to give the Lessee written notice promptly after it first obtains knowledge of the making of such charge or levy, and agrees to take such other action as may reasonably be requested by the Lessee for the purpose of contesting payment or obtaining refund of all or a portion of such imposition, as hereinafter provided in this § 6.

In the event that the Lessor shall become obligated to make any payment to the Builder or the Vendor or otherwise pursuant to any correlative provision of the Security Documentation not covered by the foregoing paragraph of this § 6, the Lessee shall pay such additional amounts (which shall also be deemed impositions hereunder) to the Lessor to fulfill completely its obligations pursuant to said provision; provided, however, that the Lessor shall have contested (if required to do so under this § 6) such impositions in good faith and to the extent permitted under the Security Documentation.

In the event any returns, statements or reports with respect to impositions involving any Unit are required to be made, the Lessee will make such returns, statements and reports in such manner as to show the interest of the Lessor

and the Vendor in such Units, as shall be satisfactory to the Lessor and the Vendor or, where not so permitted, will notify the Lessor and the Vendor of such requirement and will prepare and deliver such reports to the Lessor and the Vendor within a reasonable period of time prior to the time such reports are to be filed in such manner as shall be satisfactory to the Lessor and the Vendor.

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

In the event the Lessee may be prohibited by law or is impaired from contesting in its own name any imposition covered by this § 6 in respect of which the Lessee would otherwise be required to make payments to the Lessor pursuant hereto, the Lessor shall, upon request and at the expense of the Lessee, take all legal and other appropriate action reasonably requested by the Lessee to contest such imposition. The Lessor shall not be obligated to take any such legal or other appropriate action unless the Lessee shall first have indemnified the Lessor for all liabilities and expenses which may be entailed therein. Further, the Lessee shall indemnify and hold the Lessor harmless from and against any and all claims, costs, expenses, damages, losses and liabilities incurred in connection therewith as a result of, or incident to, any action taken by the Lessor or Lessee under this § 6. The Lessee shall be entitled to any refund received by the Lessor or the Lessee in respect of any imposition paid by the Lessee, provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing.

The Lessee shall, whenever reasonably requested by the Lessor, submit to the Lessor copies of returns, statements, reports, billings and remittances, or furnish other evidence satisfactory to the Lessor of the Lessee's performance of its duties under this § 6. The Lessee shall also furnish promptly upon request such data as the Lessor reasonably may require to permit the Lessor's compliance with the requirements of taxing jurisdictions.

The amount which the Lessee shall be required to pay with respect to any imposition which is subject to

indemnification under this § 6 shall be an amount sufficient to restore the Lessor to the same net after tax rate of return and after tax cash position, after considering the effect of such payment on its United States Federal income taxes and state and city income taxes or franchise taxes based on net income, that the Lessor would have been in had such imposition not been imposed.

§ 7. Maintenance; Casualty Occurrences; Insurance.

The Lessee agrees that, at Lessee's own cost and expense, it will be responsible for ordinary maintenance and repairs required to maintain and keep all of the Units which are subject to this Lease in good operating order, repair and condition and eligible for interchange service.

In the event that any Unit shall be or become worn out, lost, stolen, destroyed, or irreparably damaged, from any cause whatsoever, returned to the Builder pursuant to the patent indemnity provisions of the Security Documentation, or taken or requisitioned by condemnation or otherwise by the United States Government or any political subdivision thereof for a stated period which shall exceed the then remaining term of the Security Documentation or for an indefinite period, but only when such period shall exceed the term hereof, or by any other governmental entity resulting in loss of possession by the Lessee for a period of 90 consecutive days (such occurrences being hereinafter called Casualty Occurrences), prior to the return of such Unit in the manner set forth in § 14 hereof, the Lessee shall promptly and fully notify the Lessor and the Vendor with respect thereto. On the rental payment date next succeeding such notice the Lessee shall pay to the Lessor an amount equal to the rental payment or payments in respect of such Unit due and payable on such date plus a sum equal to the Casualty Value (as hereinafter defined) of such Unit as of the date of such payment in accordance with the schedule referred to below. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft, complete destruction or return to the Builder of such Unit) the Lessor shall be entitled to recover possession of such Unit and the Lessee shall pay all costs of removal of such Unit and of freight to the place designated pursuant to § 14 hereof.

The Casualty Value of each Unit as of the payment date on which payment is to be made as aforesaid

shall be that percentage of the Purchase Price of such Unit as is set forth in Schedule 2 hereto opposite such date, provided, however, that if the Casualty Value for any Unit as of such payment date as determined pursuant to Schedule 2 reflects an amount representing investment credit recapture to the Owner that is greater or lesser than the actual amount of investment credit recapture incurred by the Owner as a result of the Casualty Occurrence to such Unit, the Casualty Value for such Unit as so determined shall be appropriately decreased or increased so as to reflect the actual amount of investment credit recapture incurred by the Owner as a result of the Casualty Occurrence to such Unit.

Whenever any Unit shall suffer a Casualty Occurrence after termination of this Lease at the expiration of the original or extended term hereof and before such Unit shall have been returned in the manner provided in § 14 hereof, the Lessee shall promptly and fully notify the Lessor with respect thereto and pay to the Lessor an amount equal to the Casualty Value of such Unit, which shall be 20.350% of the Purchase Price of such Unit (unless such termination occurs after the term of this Lease has been extended pursuant to § 13 hereof, in which case the amount of such Casualty Value shall be as agreed upon between the Lessor and the Lessee at the time of such extension). Upon the making of any such payment by the Lessee in respect of any Unit (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 irrevocably appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof, at the best price obtainable on an "as is, where is" basis. Provided that the Lessee has previously paid the Casualty Value to the Lessor, the Lessee shall be entitled to the proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Lessor.

In the event of the requisition for use (which is not a Casualty Occurrence) by the United States Government or any political subdivision thereof (hereinafter called the Government) of any Unit during the term of this Lease all of the Lessee's obligations under this Lease with respect to such Unit shall continue to the same extent as if such requisition had not occurred, except that if such Unit is returned by the Government at any time after the end of the term of this Lease, the Lessee shall be obligated to return such Unit to the Lessor pursuant to § 11 or 14 hereof, as the case may be, promptly upon such return by the Government rather than at the end of the term of

this Lease, but the Lessee shall in all other respects comply with the provisions of said § 11 or 14, as the case may be, with respect to such Unit. All payments received by the Lessor or the Lessee from the Government for the use of such Unit during the term of this Lease shall be paid over to, or retained by, the Lessee provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing; and all payments received by the Lessor or the Lessee from the Government for the use of such Unit after the term of this Lease, shall be paid over to, or retained by, the Lessor.

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

The Lessee will, at all times prior to the return of the Equipment to the Lessor, at its own expense, cause to be carried and maintained property insurance and public liability insurance in respect of the Units at the time subject hereto, in amounts (subject to customary deductibles) and against risks customarily insured against by railroad companies in respect of similar equipment, and, in any event, comparable in amounts and against risks customarily insured against by the Lessee in respect of similar equipment owned by it. If the Lessor shall receive any insurance proceeds or condemnation payments in respect of a Unit suffering a Casualty Occurrence, the Lessor shall, subject to the Lessee's having made payment of the Casualty Value in respect of such Unit, pay such proceeds or condemnation payments to the Lessee up to an amount equal to the Casualty Value with respect to a Unit paid by the Lessee and any balance of such proceeds or condemnation payments shall remain the property of the Lessor. All insurance proceeds received by the Lessor from the Lessee's insurance coverage in respect of any Unit not suffering a Casualty Occurrence shall be paid to the Lessee upon proof satisfactory to the Lessor that any damage to such Unit in respect of which such proceeds were paid has been fully repaired.

§ 8. Reports and Inspection. On or before April 30 in each year, commencing with the calendar year 1978, the Lessee will furnish to the Lessor and the Vendor (a) an accurate statement (i) setting forth as at the preceding December 31 the amount, description and numbers of all Units then leased hereunder and covered by the Security Documentation, the amount, description and numbers of all Units

that have suffered a Casualty Occurrence during the preceding calendar year or are then undergoing repairs (other than running repairs) or then withdrawn from use pending such repairs (other than running repairs) and such other information regarding the condition and state of repair of the Units as the Lessor or the Vendor may reasonably request, (ii) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and markings required by § 5 hereof and by the Security Documentation have been preserved or replaced and (iii) setting forth a description of the insurance in effect with respect to the Equipment pursuant to § 7 hereof and (b) a certification of insurance coverage from the Lessee's independent broker stating the amounts of such insurance in effect and the amount of deductible. The Lessor, at its sole cost and expense, shall have the right by its agents, to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Lessor may request during the continuance of this Lease. The Lessee shall promptly notify the Lessor and the Vendor of any material changes or any material proposed changes of which the Lessee has knowledge in its insurance coverage in effect with respect to the Equipment pursuant to § 7 hereof.

The Lessee shall furnish to the Lessor the reports required to be furnished to the Lessor pursuant to Paragraph 10 of the Participation Agreement.

§ 9. Disclaimer of Warranties; Compliance with Laws and Rules; 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, OR AS TO THE LESSEE'S RIGHT TO QUIET ENJOYMENT THEREOF (EXCEPT AS TO ACTS OF THE LESSOR), OR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT, EITHER UPON DELIVERY THEREOF TO THE LESSEE OR OTHERWISE, it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee; but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for 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 Builder under the provisions of Items 3 and 4 of Annex A of the Security Documentation; provided, however, that if at any

time an Event of Default shall have occurred and be continuing, the Lessor may assert and enforce, at the Lessee's sole cost and expense, such claims and rights. The Lessor shall have no responsibility or liability to the Lessee or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Units or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of any Units or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Units. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Lessor that the Units described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

The Lessee agrees, for the benefit of the Lessor and the Vendor, to comply in all respects (including without limitation, with respect to the use, maintenance and operation of each Unit) with all applicable laws of the jurisdictions in which its operations involving the Units may extend, with all lawful rules of the Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units and with all applicable interchange rules, to the extent that such laws and rules affect the title, operation or use of the Units, and in the event that, prior to the expiration of this Lease or any renewal thereof, such laws or rules require any alteration, replacement, addition or modification of or to any part on any Unit, the Lessee will conform therewith at its own expense; provided, however, that the Lessee may at its own expense, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the reasonable opinion of the Lessor or the Vendor, adversely affect the property or rights of the Lessor or the Vendor under this Lease or under the Security Documentation. The Lessee, at its own cost and expense, may furnish other additions, modifications and improvements to the Units during the term of this Lease. Any additions, modifications and improvements made by the Lessee which are readily removable without causing material damage to the Units shall be owned by the Lessee and may be removed by the Lessee at any time during the term of this Lease or any renewal thereof and prior to the return thereof to the Lessor pursuant to § 11 or

14 hereof, except additions, modifications and improvements required to maintain each Unit's eligibility for interchange service or to comply with the provisions of the first paragraph of § 7 or the first sentence of this paragraph.

The Lessee agrees to indemnify, protect and hold harmless the Lessor (in both its individual and fiduciary capacities) and the Vendor from and against all losses, damages, injuries, liabilities, claims (including without limitation claims for strict liability in tort) and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including, but not limited to, counsel fees and expenses, patent liabilities, penalties and interest, arising out of or as the result of the entering into or the performance of or the occurrence of a default, an event of default or an Event of Default under the Security Documentation, the Participation Agreement, this Lease, or any sublease entered into pursuant to § 12 hereunder, the ownership of any Unit, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any Unit or any accident in connection with the operation, use, condition, possession, storage or return of any Unit resulting in damage to property or injury or death to any person, except as otherwise provided in § 14 of this Lease, or the transfer of title to the Equipment by the Vendor pursuant to any provision of the Security Documentation. The indemnities arising under this paragraph shall continue in full force and effect with respect to all events, facts, conditions or other circumstances occurring or existing prior to the expiration or termination of the term of this Lease and return of the Units as provided in § 14 of this Lease; provided, however, that the foregoing indemnification shall not apply to any failure of payment of the principal of or interest on the Conditional Sale Indebtedness and shall not be deemed to operate as a guaranty of the residual value of any Unit. The amount the Lessee shall be required to pay with respect to any of its obligations under this paragraph shall include a payment to the indemnified party sufficient to restore such party to the same position, after considering the effect of such payment on its United States Federal income taxes and state and city income taxes or franchise taxes based on net income, that the indemnified party would have been in had the liability or expense indemnified against not been incurred.

The Lessee further agrees to indemnify, protect and hold harmless the Vendor and the Builder as third party beneficiaries hereof from and against any and all liability,

claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendor or the Builder because of the use in or about the construction or operation of any of the Units of any article of material specified by the Lessee and not manufactured by the Builder or of any design, system, process, formula or combination specified by the Lessee and not developed or purported to be developed by the Builder which infringes or is claimed to infringe on any patent or other right. The Lessee will give notice to the Builder of any claim known to the Lessee from which liability may be charged against the Builder under the Security Documentation.

The Lessee shall not be released from its obligations hereunder in the event of any damage to or the destruction or loss of any or all of the Units.

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

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

A. default shall be made in payment of any amount provided for in § 3 or § 7 of this Lease and such default shall continue for ten business days, or default shall be made in payment of any other amount provided for in this Lease and such default shall continue for ten days after written notice from the Lessor or the Vendor to the Lessee specifying the default and demanding that the same be remedied;

B. the Lessee shall make or permit any unauthorized assignment or transfer of this Lease, or any interest herein, or of the right to possession of the Units, or any thereof and shall fail or refuse to cause such assignment or transfer to be canceled by agreement

of all parties having any interest therein and to recover possession of such Units within 15 days after written notice from the Lessor to the Lessee demanding such cancellation and recovery of possession;

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 Participation Agreement, and such default shall continue for 30 days after written notice from the Lessor or the Vendor to the Lessee specifying the default and demanding that the same be remedied;

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

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, under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of the Lessee hereunder or under the Consent), 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

ness shall continue), all the obligations of the Lessee under this Lease and the Consent shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Lessee or for the property of the Lessee in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such a trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier;

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

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

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as herein provided; and thereupon the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess, sell, operate, lease to others and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever and without any duty to account to the Lessee for such action or inaction or for any proceeds arising therefrom; 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 as damages for loss of the bargain and not as a penalty, an amount

equal to the excess, if any, of the Casualty Value as of the rental payment date on or next preceding the date of termination over the amount the Lessor reasonably estimates to be the sales value of such Unit at such time; provided, however, that in the event the Lessor shall have sold any Unit, the Lessor, in lieu of collecting any amounts payable to the Lessor by the Lessee pursuant to the preceding clause of this part (b) with respect to such Unit, may, if it shall so elect, demand that the Lessee pay the Lessor and the Lessee shall pay to the Lessor on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty Value for such Unit, as of the rental payment date on or next preceding the date of termination over the net proceeds of such sale.

In addition, the Lessee shall be liable, except as otherwise provided above, for any and all unpaid amounts due hereunder before, during or after the exercise of any of the foregoing remedies and for all reasonable attorneys' fees and other costs and expenses incurred by reason of the occurrence of any Event of Default or the exercise of the Lessor's remedies with respect thereto, including all costs and expenses incurred in connection with the return of any Unit.

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative and may be exercised concurrently or consecutively, 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 not, at the time in question, prohibited 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 such payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

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

§ 11. Return of Units Upon Default. If this Lease shall terminate pursuant to § 10 hereof, the Lessor may, upon such further notice, if any, as may be required for compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Lessor, take or cause to be taken by its agent or agents, immediate possession of each of the Units, or one or more of the Units and may remove the same from possession and use of the Lessee or any other person and for such purpose may enter upon the premises of the Lessee or any other premises where the Units 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, subject to all mandatory requirements of due process of law.

If this Lease shall terminate pursuant to § 10 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor. Each Unit so delivered shall be in the same operating order, repair and condition as when originally delivered to the Lessee, ordinary wear and tear excepted. For the purpose of delivering possession of any Unit or Units to the Lessor as above required, the Lessee shall at its own cost, expense and risk:

(a) forthwith and in the usual manner place such Units upon such storage tracks of the Lessee or any of its affiliates as the Lessor reasonably may designate;

(b) permit the Lessor to store such Units on such tracks at the risk of the Lessee without charge for insurance, rent or storage 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, insurance and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the cov-

enants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will, at its own cost and expense, maintain and keep the Equipment in good order and repair and will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser, lessee or user of any such Unit, to inspect the same. All amounts earned in respect of the Units after the date of termination of this Lease shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor. In the event any Unit is not assembled, delivered and stored, as hereinabove provided, within 60 days after such termination the Lessee shall, in addition, pay to the Lessor for each day after such termination an amount equal to the amount, if any, by which the product of (i) a fraction the numerator of which is 10% and the denominator of which is 360, and (ii) the Purchase Price of such Unit for each such day exceeds the actual earnings received by the Lessor on such Unit for each such day; such payment shall not affect the obligation of the Lessee to redeliver the Equipment pursuant to the first sentence of this paragraph.

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

§ 12. Assignment; Possession and Use. This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. All the rights of the Lessor hereunder (including, but not limited to, the rights under §§ 6, 7, 10 and 16 and the rights to receive the rentals payable under this Lease) shall inure to the benefit of the Lessor's assigns.

So long as the Lessee shall not be in default under this Lease and the Lessee shall have fully complied with the provisions of the fourth paragraph of this § 12, the Lessee shall be entitled to the possession and use of the Units and, without the Lessor's consent, to sublease the Units to, or to permit their use by, a user incorpo-

rated in the United States of America (or any State thereof or the District of Columbia), upon lines of railroad owned or operated by the Lessee or such user or by a railroad company or companies incorporated in the United States of America (or any State thereof or the District of Columbia), or over which the Lessee, such user, or such railroad company or companies have trackage rights or rights for operation of their trains, and upon the lines of railroad of connecting and other carriers in the usual interchange of traffic or in through or run-through service, but only upon and subject to all the terms and conditions of this Lease; provided, however, that the Lessor's consent, not to be unreasonably withheld, must be obtained for any sublease that is for a term or terms that aggregate more than six months in any one year; provided, further, however, that the Lessee shall not sublease or permit the sublease or use of any Unit to service involving regular operation and maintenance outside the United States of America; and provided further, however, that any such sublease or use shall be consistent with the provision of § 16 hereof. No such assignment or sublease shall relieve the Lessee of its obligations hereunder which shall be and remain those of principal and not a surety.

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

The Lessee, at its own expense, will as soon as possible cause to be duly discharged any lien, charge, security interest or other encumbrance (except any sublease as aforesaid and other than an encumbrance resulting from claims against the Lessor, the Vendee or the Vendor not related to the ownership or leasing of, or the security title of the Vendor to, the Units) which may at any time be imposed on or with respect to any Unit including any accession thereto or the interest of the Lessor, the Vendor or the Lessee therein; except that this covenant will not be breached

by reason of liens for taxes, assessments or governmental charges or levies, in each case 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; and, furthermore, the Lessee shall be under no obligation to discharge any such lien, charge, security interest or encumbrance so long as it is contesting the same in good faith and by appropriate legal proceedings and the failure to discharge the same does not, in the opinions of the Lessor and the Vendor, adversely affect the title, property or rights of the Lessor hereunder or the Vendor under the Security Document.

Nothing in this § 12 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any railroad corporation incorporated under the laws of any state of the United States of America or the District of Columbia (which shall have duly assumed the obligations of the Lessee hereunder) into or with which the Lessee shall have become merged or consolidated or which shall have acquired or leased all or substantially all the lines of railroad of the Lessee; provided, however, that such assignee, lessee or transferee will not, upon the effectiveness of such merger, consolidation, lease or acquisition be in default under any provision of this Lease and that such acquisition or lease of railroad lines of the Lessee shall not alter in any way the Lessee's obligation to the Lessor and Vendor hereunder which shall be and remain those of a principal and not a surety.

§ 13. Renewal Options and Right of First Refusal. Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may by written notice delivered to the Lessor not less than six months prior to the end of the original term of this Lease elect to extend the term of this Lease in respect of all but not fewer than all of the Units then covered by this Lease, for a five year period commencing on the scheduled expiration of the original term of this Lease. Such extension shall be on the same terms and conditions as are contained in this Lease, except as to the amount of rentals, which shall be at a "Fair Market Rental" (as such term is defined in this § 13) payable semiannually in arrears, and except as to applicable Casualty Values, which shall be as agreed upon between the Lessor and the Lessee at the time of such extension.

If the Lessee shall not have elected to extend the term of this Lease but shall have given the Lessor notice of its intention to exercise a right of first refusal with respect to the Units not less than six months prior to the expiration of the original term of this Lease and the Lessor elects to sell the Units to third parties effective upon the expiration of the original term of this Lease, the Lessor shall (a), as promptly as practicable after the Lessee shall have given such notice, engage an appraiser appointed as provided in the fifth paragraph of this § 13 to determine the Fair Market Sale Value of the Units and, upon receipt of such determination, deliver a true copy thereof to the Lessee, and (b), in a commercially reasonable manner, solicit offers to buy such Units (excepting additions, modifications and improvements which may be removed by Lessee pursuant to § 9 hereof), and upon receipt thereof shall exhibit to the Lessee a true copy of the most favorable bona fide offer, and the Lessee shall have a right of first refusal, exercisable by written notice delivered within 15 days of the receipt of said copy, to purchase such Units at the higher of the Fair Market Sale Value determined by the Appraiser and the sale price set forth in such offer.

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

Fair Market Rental and Fair Market Sale Value shall be determined on the basis of, and shall be equal in amount to, the rental or sale value which would obtain in an arm's length transaction between an informed and willing lessee or vendee, as the case may be (other than a lessee currently in possession), and an informed and willing lessor

or vendor, as the case may be, under no compulsion to lease or sell, as the case may be, and, in such determination, costs of removal from the location of current use shall not be a deduction from such rental or sale value out there shall be excluded any rental value or sale value attributable to additions, modifications and improvements which the Lessee is entitled to remove pursuant to § 9 hereof; provided, however, that Fair Market Rental shall be determined as provided in the preceding sentences on the basis of the term and other terms and conditions of the lease being considered.

If (a), after 45 days from the giving of notice by the Lessee of the Lessee's election to extend the term of this Lease, as provided in the first paragraph of this § 13, the Lessor and the Lessee are unable to agree upon a determination of Fair Market Rental, or (b) the Lessor shall be required to engage an appraiser to determine Fair Market Sale Value as provided in the second paragraph of this § 13, such Rental or Sale Value, as the case may be, shall be determined in accordance with the foregoing definitions by the following procedure: If either party to such determination shall have given written notice to the other requesting determination of Fair Market Rental by this appraisal procedure, or the Lessor shall be required to engage an appraiser as aforesaid, the parties shall consult for the purpose of appointing a qualified independent appraiser by mutual agreement. If no such appraiser is so appointed within 20 business days after such notice is given, each party shall appoint an independent appraiser within 25 business days after such notice is given, and the two appraisers so appointed shall within 35 business days after such notice is given appoint a third independent appraiser. If no such third appraiser is appointed within 35 business days after such notice is given, either party may apply, to make such appointment, to the American Arbitration Association, and both parties shall be bound by any appointment so made. Any appraiser or appraisers appointed pursuant to the foregoing procedure shall be instructed to determine the Fair Market Rental or the Fair Market Sale Value, as the case may be, of the Units subject to the proposed extended term within 90 days after his or their appointment. If the parties shall have appointed a single appraiser or if either party shall

have failed to appoint an appraiser, the determination of the single appraiser appointed shall be final. If three appraisers shall be appointed, the determination of the appraiser which differs most from the other two appraisers shall be excluded, the remaining two determinations shall be averaged and such latter average shall be final and binding upon the parties hereto. The appraisal proceedings shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association as in effect on the date hereof, except as modified hereby. The provision for this appraisal procedure shall be the exclusive means of determining Fair Market Rental and Fair Market Sale Value and shall be in lieu of any judicial or other procedure for the determination thereof, and each party hereto hereby consents and agrees not to assert any judicial or other procedures. The expenses of the appraisal procedure shall be borne equally by the Lessee and the Lessor.

§ 14. Return of Units upon Expiration of Lease Term. As soon as practicable on or after the expiration of the original term or the extended term of this Lease with respect to any Unit which Lessee does not purchase or re-lease pursuant to § 13, the Lessee will, at its own cost and expense, at the request of the Lessor, deliver possession of such Unit to the Lessor upon such storage tracks of the Lessee as the Lessee may reasonably designate, in such city on the lines of Lessee as Lessor may reasonably designate, or in the absence of Lessor's designation, in such city on the lines of Lessee as Lessee may designate, and permit the Lessor to store such Unit on such tracks for a period not exceeding three months and transport the same, at any time within such three-month period, to any reasonable place on the lines of railroad operated by the Lessee, or to any connecting carrier for shipment, all as directed by the Lessor, the movement and storage of such Units to be at the expense and risk of the Lessee. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser, lessee or user of such Unit, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, lessee or user, the rights of inspection granted under this sentence. Each Unit returned to the Lessor pursuant to this § 14 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, ordinary wear and

tear excepted, and (ii) except for additions, modifications and improvements which the Lessee is entitled to remove under the provisions of § 9 of this Lease, meet all operating standards then in effect under the applicable rules of any governmental agency or other organization with jurisdiction. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. All amounts earned in respect of the Units after the date of termination of this Lease shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor. In the event any Unit is not assembled, delivered and stored, as hereinabove provided, within 60 days after such termination, the Lessee shall, in addition, pay to the Lessor for each day thereafter an amount equal to the amount, if any, by which the product of (i) a fraction the numerator of which is 10% and the denominator of which is 360, and (ii) the Purchase Price of such Unit for each such day exceeds the actual earnings received by the Lessor on such Unit for each such day.

§ 15. Recording. The Lessee, at its own expense, will cause this Lease, the Security Documentation and any assignment hereof or thereof to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act. The Lessee will undertake the filing, registering, deposit, and recording required of the Lessor under the Security Documentation and will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, reregister, deposit and redeposit or rerecord whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Vendor for the purpose of proper protection, to their satisfaction, of the Vendor's and the Lessor's respective interests in the Units, or for the purpose of carrying out the intention of this Lease, the Security Documentation and the assignment thereof to the Vendor; and the Lessee will promptly furnish to the Vendor and the Lessor evidence of all such filing, registering, depositing or recording, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Vendor and the Lessor. This Lease and the Security Documentation shall be filed and recorded with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Unit.

§ 16. Income Taxes.

(a) Loss of Assumed Tax Benefits. If

(i) on the date of delivery of any Unit of Equipment the Owner is not entitled to an investment credit under Section 38 and related sections of the Internal Revenue Code of 1954 (hereinafter called the Code) with respect to such Unit of not less than 10% of the Purchase Price with respect to such Unit; or

(ii) the Owner is not allowed the benefit of current deductions for depreciation on any one or more of the Units under Section 167(a) of the Code (x) computed pursuant to any method of depreciation authorized by Section 167(b)(2) or (3) of the Code and pursuant to the asset depreciation range system of Section 167(m) of the Code and Section 1.167(a)-11 of the income tax regulations, (y) computed on the basis (A) of a net salvage value of zero, (B) that the basis of such Unit or Units under Section 167(g) of the Code is at least equivalent to the Purchase Price with respect to such Unit or Units, and (C) that such Unit or Units are entitled to an asset depreciation period of 12 years, which is the lower limit listed in Rev. Proc. 77-10, 1977-12 I.R.B. 4, for property classified in Asset Guideline Class 00.25, and (z) determined on the basis of the "half-year convention" of Section 1.167(a)-11(c)(2)(iii) of the income tax regulations; or

(iii) the Owner is not allowed the benefit of current deductions under Section 163 of the Code for interest payable under the Security Documentation; or

(iv) any investment credits or deductions for depreciation with respect to any one or more of the Units are disallowed, or are recaptured in whole or in part pursuant to Section 47 or Section 1245 of the Code or any successor provision or provisions thereto; or

(v) any amount includible in the gross income of the Owner with respect to any one or more of the Units or any deduction allowable to the Owner with respect to such Unit or Units or with respect to any interest payable under the Security Documentation shall be treated as derived from, or allocable to, sources outside the United States; or

(vi) any amount is included, at any time prior to the disposition of any one or more of the Units in a taxable transaction, in the gross income of the Owner as a result of any repair, improvement, alteration, modification or addition (including replacement of parts) to such Unit or Units made by Lessee (herein called a "Capital Expenditure"); provided that in the event a Capital Expenditure is included in the gross income of the Owner, the Owner shall attempt to maximize the future tax benefits from such Capital Expenditure by making such elections (including where advantageous accelerated depreciation elections and election of the applicable asset guideline repair allowance if then permitted) as will increase the Owner's tax deductions;

then the Owner shall be entitled to such indemnities by Lessee as are provided in paragraph (b) of this § 16. For purposes of this § 16, any such aforementioned failure to allow, such recapture, such treatment of income or deductions as derived from or allocable to sources without the United States, or such inclusion in gross income as a result of a Capital Expenditure shall be hereinafter called a "Loss".

(b) Indemnities and Exceptions. In the event the Owner suffers a Loss as defined in paragraph (a) of this § 16 due to:

(A) a Loss described in clause (i) of paragraph (a) of this § 16, if such Loss results from the use of a Unit by any person so as to preclude the "original use of such property" within the meaning of Section 48(b)(2) of the Code from commencing with the Owner;

(B) a determination by the Internal Revenue Service in which Lessee has acquiesced (or a final determination by the courts, in the event of a contest pursuant to paragraph (c) of this § 16) that this Lease should not be treated as a lease for tax purposes unless such determination results from the Owner's failure to satisfy the requirements of Section 4(1)(A) and (B) of Rev. Proc. 75-21, 1975-1 C.B. 715, as in effect on the date hereof;

(C) a Loss described in clause (ii) of paragraph (a) of this § 16, if such Loss results from the use of a Unit by any person so as to preclude the "original use of such property" within the meaning of Section 167(c)(2) of the Code from commencing with the Owner;

(D) Lessee's use of a Unit or Units in such a manner as to result in a Loss described in clause (iv) or (v) of paragraph (a) of this § 16;

(E) a Capital Expenditure; or

(F) any action, or omission to act, at any time, on the part of Lessee or any of its officers, employees or agents (including, without limitation, any action, or omission to act, in respect of the income tax returns of the Lessee);

then, subject to the exceptions in the following subparagraph and the rights of the Lessee to contest any Loss as set forth in paragraph (c), the rental payable for the Unit or Units to which such Loss is attributable shall be adjusted in the manner set forth in paragraph (d), and with respect to a Loss for which lump sum indemnity payments are provided in the third subparagraph of paragraph (d) of this § 16, the Lessee shall, subject to the exceptions set forth in the following subparagraph and Lessee's rights of contest set forth in paragraph (c), pay to the Owner such lump sum indemnity payments as are provided by paragraph (d).

Notwithstanding the provisions of the immediately preceding subparagraph, there shall be no increase made in rentals nor any payment be required to be made by Lessee if the Owner shall have suffered such Loss with respect to all or part of such Unit as a direct result of the occurrence of any of the following events (hereinafter called Excluded Events):

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

(ii) a voluntary transfer or other voluntary disposition by the Owner or any transfer or disposition by the Owner resulting from bankruptcy or other proceedings for relief of debtors in which the Owner is the debtor, whether voluntary or involuntary, of any interest in such Unit or the voluntary reduction by the Owner of its interest in the rentals from such Unit under the Lease (other than pursuant to the assignment of this Lease to the Vendor), unless, in each case, an Event of Default (or an event that, with the lapse of time or the giving of notice, or

both, would constitute an Event of Default pursuant to clauses A, D or E of § 10 hereof; provided, however, that for purposes of this § 16 a default pursuant to clause A of § 10 shall be an Event of Default only if a payment referred to therein shall not have been made within two business days following written notice of demand therefor from the Owner) shall have occurred and be continuing; or

(iii) the failure of the Owner to claim in a timely and proper manner (including all appropriate elections) on its income tax returns for the appropriate years any credits or deductions contemplated by paragraph (a) of this § 16, subject to the provisions of the fifth subparagraph of paragraph (c) of this § 16; or

(iv) the failure of the Owner to have sufficient Federal income tax liability against which to apply such credits or sufficient income to benefit from such depreciation or interest deductions; or

(v) the failure of the Owner to take timely action in contesting a claim made by the Internal Revenue Service, but only if such action is required by the terms of paragraph (c) of this § 16; or

(vi) with respect to any Unit, any amendment to, or change in (A) the Code or the income tax regulations thereunder, or (B) published Revenue Rulings or Revenue Procedures which lengthen beyond 12 years the minimum period over which such Unit may be depreciated, which in either case become effective after the Closing Date with respect to such Unit, except that this clause (vi) shall not apply with respect to any amendment or change which precludes the Owner from depreciating any Unit to a net salvage value of zero, to the extent that the Owner's Loss is attributable to the difference between (A) a net salvage value of 10% of the Purchase Price of such Unit, and (B) a net salvage value of zero with respect to such Unit; or

(vii) any participation in the residual value of any Unit at the end of the term of this Lease by any party other than the Owner; or

(viii) the taking or failure to take at any time by the Owner or any of its officers, employees or agents

of any other action whatsoever which is inconsistent with the Owner's obligations under the Trust Agreement, the Participation Agreement and this Lease, except at a time when an Event of Default (or an event that, with the lapse of time or the giving of notice, or both, would constitute an Event of Default pursuant to clauses A, D or E of § 10 hereof; provided, however, that for purposes of this § 16 a default pursuant to clause A of § 10 shall be an Event of Default only if a payment referred to therein shall not have been made with two business days following written notice of demand therefor from the Owner) has occurred and is continuing.

(c) Lessee's Rights of Contest. The Owner shall promptly, upon its knowledge thereof, give written notice to Lessee of any claim or proceeding in respect of which Lessee would be required to make indemnification payments. The Owner shall, without further action by Lessee, contest any such claim or proceeding until the conclusion of the audit or other proceeding at the first administrative level. If at the conclusion of any audit the Owner receives a preliminary or "30 day" letter from the Internal Revenue Service proposing an adjustment in any item that, if agreed to by the Owner, would result in a Loss with respect to which Lessee would be required to indemnify the Owner pursuant to this § 16, the Owner shall promptly notify Lessee of such proposed adjustment and shall furnish to Lessee a statement describing such Loss in reasonable detail. The Owner agrees, if so requested by Lessee, to contest such adjustment; provided, however, that the Owner shall not be obligated to contest such adjustment unless Lessee shall first have furnished to the Owner a written opinion of independent tax counsel, selected by the Owner after consultation with Lessee (hereinafter called the Special Tax Counsel), that there is a meritorious basis for contesting such proposed adjustment; and provided further, however, that prior to entering into such contest, the Owner shall have been first indemnified in a manner reasonably satisfactory to it by Lessee for any Loss that results from an adverse determination with respect to the proposed adjustment and for all expenses which may be entailed therein.

If Lessee shall have established the Owner's obligation to contest such proposed adjustment as provided in the immediately preceding paragraph, then the Owner's obligation to pursue such contest shall be continuous and unlimited

until the matter is concluded at the highest judicial level; provided that the Owner may at any time, whether before or after commencing to take any action with respect to a proposed adjustment, decline to take any further action with respect thereto. If the Owner, at the time it so declines, is furnished a written opinion of Special Tax Counsel, which the Owner shall obtain at its expense, to the effect that there is no meritorious basis for further contesting such adjustment, then Lessee shall remain obligated to indemnify the Owner for any Loss that results from the proposed adjustment. The Owner may so decline to take any further action with respect to a proposed adjustment without obtaining the opinion of Special Tax Counsel described in the preceding sentence; provided that the Owner shall thereby waive its right to any indemnity with respect to any Loss that will result from acceptance of such proposed adjustment.

The Owner, in its sole discretion, shall determine whether to contest any proposed adjustment beyond the level of the Internal Revenue Service auditing agent by any further administrative proceedings and shall determine the initial and any appellate judicial forum for so contesting any proposed adjustment and, if the adjustment relates to an item claimed on a tax return, shall determine whether the proceedings shall be for redetermination of the deficiency proposed to be assessed by the Internal Revenue Service or for refund of taxes paid based on such deficiency.

If any such proposed adjustment results from a determination that this Lease is not a true lease, which determination would result in an indemnity payable by Lessee to the Owner under the provision of clause (B) of paragraph (b) of this § 16, then, unless otherwise agreed to by Lessee, the Owner may not decline to contest such determination without waiving its right to any indemnity payment that would result from acceptance of such proposed determination.

If the Owner furnishes to Lessee a written opinion of the Owner's Counsel that there is no meritorious basis to support a claim for any credit or deduction contemplated by paragraph (a) of this § 16, the Lessee may contest such opinion by engaging, at its expense, independent tax counsel, selected by Lessee with approval of the Owner (not to be unreasonably withheld) to determine if it would be proper to claim any such credit or deduction. If Lessee fails to contest within 30 days after receipt of the opinion of the Owner's Counsel, or its independent tax counsel concurs with

such opinion, the Owner's failure to claim such credit or deduction shall not constitute an Excluded Event, and the Lessee shall commence payment of indemnities as provided by paragraphs (a) and (d) of this § 16. Except as expressly provided in the preceding sentence, the failure of the Owner to claim such credit or deduction in a timely and proper manner shall constitute an Excluded Event.

(d) Amount and Time of Payment of Indemnity. The amount of indemnity payable by Lessee pursuant to this § 16 with respect to a Loss shall be such amount as will result, in the Owner's reasonable judgment, after due consultation with Lessee, in preserving for the Owner the after-tax rate of return and after-tax cash flow that would have been realized by the Owner if such Loss had not occurred, based on the rates of Federal, state and local taxes on, based on, or measured by, net income in effect from time to time, but not more than such after-tax rate of return and after-tax cash flow that would have been realized on the bases and assumptions (including, without limitation, tax rates) used by the Owner in originally evaluating this transaction. The Owner shall furnish Lessee with a notice setting forth in reasonable detail the computations and methods used in computing such amount of indemnity.

Lessee's obligation to pay any indemnity payable pursuant to this § 16 shall become unconditional (1) in the case of a Loss that is required to be reflected on a tax return of the Owner, 30 days after the date such tax return is filed; (2) in the case of a Loss that results from a proposed adjustment of the Internal Revenue Service that is not contested pursuant to paragraph (c) of this § 16, 30 days after Lessee's receipt of the statement referred to in the third sentence of paragraph (c) of this § 16; and (3) in the case of a Loss that results from a proposed adjustment of the Internal Revenue Service that is contested pursuant to paragraph (c) of this § 16, 30 days after the day on which such contest is finally concluded.

Lessee shall pay to the Owner a lump sum indemnity at the time its obligation to pay indemnity pursuant to this § 16 becomes unconditional, (A) with respect to a Loss described in clause (i) of paragraph (a) of this § 16, and (B) with respect to any other Loss, if Lessee's obligation to pay indemnity pursuant to this § 16 becomes unconditional on or after the termination of this Lease. Any other indemnity payable pursuant to this § 16 shall be structured as level

future rent increases, and Lessee shall commence payment of such increased rent on the first rental payment date after Lessee's obligation to pay indemnity pursuant to this § 16 becomes unconditional. The amount of rental resulting from any one Loss shall be adjusted from time to time for each change in the Code and the income tax regulations (including, without limitation, tax rates) which affects the Owner's net after-tax rate of return and after-tax cash flow but such adjustment shall not result in an after-tax rate of return and after-tax cash flow more than that contemplated by the Owner in originally evaluating this transaction.

The amount of each payment of indemnity payable pursuant to this § 16 with respect to a Loss shall (A) reflect the amount of interest, additions to tax and penalties payable by the Owner with respect to such Loss, and (B) reflect the amount of Federal, state and local taxes on, based on, or measured by, net income (at the rates in effect from time to time), interest, additions to tax and penalties incurred by the Owner as a result of the receipt of such indemnity payment.

(e) Adjustment of Casualty Values. In the event that Lessee shall be required to indemnify the Owner pursuant to this § 16 with respect to a Loss relating to a Unit or Units, the Casualty Value of such Unit or Units shall be appropriately reduced to reflect the reduction, if any, in taxes that will be payable by the Owner with respect to such Unit or Units upon a Casualty Occurrence with respect thereto; provided, however, that such Casualty Values shall not be reduced below the amounts required to satisfy the obligations of the Lessor under the Security Documentation.

(f) Definition of Owner. For purposes of this Lease, the term "Owner" shall include any affiliated group, within the meaning of Section 1504 of the Code, of which the Owner is a member, if consolidated returns are filed for such affiliated group for Federal income tax purposes.

(g) Payments to Owner. Lessee expressly acknowledges that this § 16 is for the benefit of the Owner as a third party beneficiary. All payments to be made pursuant to this § 16 shall be made directly to the Owner at its address set forth in § 12 of the Participation Agreement.

(h) Change in Tax Law Prior to Closing. If any amendment to the Code or income tax regulations (including,

without limitation, a change in tax rates) is made effective with respect to any Unit prior to the Closing Date for such Unit, and such amendment causes a change in the tax benefits contemplated by the Owner, then the rental rate specified in § 3 of this Lease (and the Casualty Value percentages set forth in Schedule 2 hereto) shall be increased or decreased as necessary so as to preserve the Owner's net after-tax return and after-tax cash flow (computed on the same assumptions as were utilized by the Owner in originally evaluating this transaction) at the same level as if such tax benefits had not been changed; provided, however, such rental rate shall not be reduced below the amounts required to satisfy the obligations of the Trustee under the Security Documentation; and provided further, that the rentals, as so adjusted, shall be sufficient to enable the Owner to satisfy the pre-tax cash flow and pre-tax profit requirements set forth in Rev. Proc. 75-21, 1975-1 C.B. 715, as amended through the Closing Date for such Unit. The adjustments to the amount of the rentals under the Lease pursuant to this paragraph shall be made by the Owner after due consultation with the Lessee. In this connection the Owner shall provide Lessee with a schedule setting forth in reasonable detail the computations and methods used in computing such adjustments.

(i) Lessee agrees to cooperate and join with the Owner, at the Owner's expense, in any administrative or judicial proceeding in which the Owner is engaged in order to sustain its entitlement to any of the tax benefits the Loss of which is specified in paragraph (a) of this § 16 if such Loss is the result of an amendment or change described in subparagraph (vi) of paragraph (b) of this § 16.

§ 17. Interest on Overdue Rentals. Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay, to the extent legally enforceable, interest at a rate per annum equal to 10% on 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.

§ 18. Notices. Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when mailed, first class, postage prepaid, addressed as follows:

(a) if to the Lessor, at One Constitution Plaza, Hartford, Connecticut 06115, attention of Corporate Trust Department, with copies to Donald G. Lohmann, Vice

President, and E. Lowell Dinius, Vice President and General Counsel, American Fletcher Leasing Corporation, 111 Monument Circle, Indianapolis, Indiana 46277; and

(b) if to the Lessee, at 400 West Madison Street, Chicago, Illinois 60606; Attention Treasurer;

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing. Copies of each such notice shall be given to the Vendor at 231 South La Salle Street, Chicago, Illinois 60693, Attention of Corporate Trust Department.

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

Except for the Participation Agreement and the Trust Agreement, 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 signatories for the Lessor and the Lessee.

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

§ 21. 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.

§ 22. Definitions. Whenever the term "Lessor" is used in this Lease, it shall also include the Owner and any assignee of the Owner and, where the context so requires (including but not limited to certain of the provisions of § 6 hereof), shall, except for purposes of any assignment of the "Lessor's" rights under this Lease, refer only to the Owner or such assignee of the Owner.

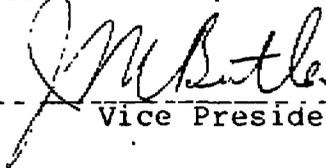
§ 23. Concerning the Lessor. Each and all of the warranties, representations, undertakings and agreements herein made on the part of the Lessor are each and every one of them made and intended not as personal representations, undertakings and agreements by The Connecticut Bank and Trust Company, or for the purpose or with the intention of binding said bank personally but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement, and this Lease is executed and delivered by the said bank solely in the exercise of the powers expressly conferred upon said bank as trustee under the Trust Agreement, and that no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against said bank, except for wilful misconduct or gross negligence, or against the Owner under the Trust Agreement (except under the last paragraph of Section 5.01 thereof) or on account of any representation, undertaking or agreement herein of the Lessor or the Owner, either expressed or implied, all such personal liability (except as aforesaid), if any, being expressly waived and released by the Lessee and by all persons claiming by, through or under the Lessee.

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

CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY,

[Corporate Seal]

by



-----  
Vice President

Attest:

  
Assistant Secretary

THE CONNECTICUT BANK AND TRUST  
COMPANY, as Trustee

[Corporate Seal]

by

Attest:

\_\_\_\_\_  
Vice President

\_\_\_\_\_  
Assistant Secretary

STATE OF ILLINOIS, )  
 ) ss.:  
COUNTY OF COOK, )

On this 30<sup>th</sup> day of August 1977, before me personally appeared J. M. Butler, to me personally known, who, being by me duly sworn, says that he is a Vice President of CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Margaret Hanlon  
Notary Public

[Notarial Seal]

My Commission expires

MARGARET HANLON  
Notary Public  
Du Page Co. Illinois  
My Commission Expires Feb. 25, 1978

STATE OF CONNECTICUT, )  
 ) ss.:  
COUNTY OF HARTFORD, )

On this the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me, \_\_\_\_\_, the undersigned officer, personally appeared \_\_\_\_\_, who acknowledged himself to be the \_\_\_\_\_ of THE CONNECTICUT BANK AND TRUST COMPANY, a corporation, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as \_\_\_\_\_.

IN WITNESS WHEREOF, I hereunto set my hand.

\_\_\_\_\_  
Notary Public

[Notarial Seal]

My Commission expires

SCHEDULE 1 TO LEASE

<u>Type</u>	<u>Quantity</u>	<u>Lessee's Road Numbers (Both Inclusive)</u>
50' 6" 70-ton XM Box Cars	344	CNW 155794 through 156137

SCHEDULE 2 TO LEASE  
CASUALTY VALUES

<u>Rent Payments</u>	<u>Percentage of Purchase Price</u>
Interim Payment	106.154
No. 1	105.600
No. 2	105.094
No. 3	104.703
No. 4	104.303
No. 5	103.973
No. 6	96.768
No. 7	96.376
No. 8	95.814
No. 9	95.242
No. 10	87.646
No. 11	86.786
No. 12	85.617
No. 13	84.364
No. 14	75.956
No. 15	74.988
No. 16	73.632
No. 17	72.171
No. 18	70.270
No. 19	68.235
No. 20	65.708
No. 21	63.018
No. 22	59.849
No. 23	56.364
No. 24	52.548
No. 25	48.519
No. 26	44.267
No. 27	39.531
No. 28	34.801
No. 29	29.815
No. 30	29.068
No. 31	28.389
No. 32	27.775
No. 33	27.226
No. 34	26.741
No. 35	26.320
No. 36	25.712
No. 37	25.416
No. 38	25.182
No. 39	25.011
No. 40	20.350

CHICAGO AND



TRANSPORTATION COMPANY

8959

8959  
SEP 1 1977

August 29, 1977

File No.: A-10333

BERNARD J. ALLEN  
DIANE KOHLER-RAUSCH  
JOAN A. SCHRAMM  
ASSISTANT SECRETARIES  
DIRECT DIAL NUMBER  
312/454-6534

BY MESSENGER

Interstate Commerce Commission  
Washington, D. C.  
Attn: Mr. Robert L. Oswald, Secretary

7-244A125

Gentlemen:

Enclosed for recordation pursuant to Section 20c of the Interstate Commerce Act are counterparts of the following:

- (1) Conditional Sale Agreement dated as of July 1, 1977, between Whittaker Corporation (Berwick Forge & Fabricating Division) and The Connecticut Bank and Trust Company, as Trustee.
- (2) Agreement and Assignment dated as of July 1, 1977, between Whittaker Corporation (Berwick Forge & Fabricating Division), Builder, and Continental Illinois National Bank and Trust Company of Chicago, Assignee.
- (3) Lease of Railroad Equipment dated as of July 1, 1977, between Chicago and North Western Transportation Company, Lessee, and The Connecticut Bank and Trust Company, Lessor.
- (4) Assignment of Lease and Agreement, dated as of July 1, 1977, between The Connecticut Bank and Trust Company, Lessor/Vendee, and Continental Illinois National Bank and Trust Company of Chicago, Agent/Vendor.

The addresses of the parties to the aforementioned agreements are:

Chicago and North Western  
Transportation Company  
400 West Madison Street  
Chicago, Illinois 60606

*Nathan Greenfar*  
*Quintana*

Interstate Commerce Commission  
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Continental Illinois National  
Bank and Trust Company of Chicago  
231 South LaSalle Street  
Chicago, Illinois 60693  
Attn: Corporate Trust Department

The Connecticut Bank and Trust  
Company  
One Constitution Plaza  
Hartford, Connecticut 06115  
Attn: Corporate Trust Department

Whittaker Corporation  
(Berwick Forge & Fabricating Division)  
P. O. Box 188  
Berwick, Pennsylvania 18603

The equipment covered by the aforementioned documents  
consist of 344 box cars.

Enclosed are checks totalling \$120.00 for the required  
recordation fees. Please accept for recordation one  
counterpart of each of the enclosed agreements, stamp  
the remaining counterparts with your recordation number,  
and return them to the delivering messenger along with  
your fee receipt.

Very truly yours,

  
Diane Kohler-Rausch  
Assistant Secretary

dk:db  
Encls.

cc: M. W. Payette  
R. D. Smith

J. Truman Bidwell, Jr., Esq.  
Messrs. Donovan Leisure Newton & Irvine  
30 Rockefeller Plaza  
New York, NY 10020

E. Lowell Dinius, Esq.  
Vice President and General Counsel  
American Fletcher Leasing Corporation  
111 Monument Circle  
Indianapolis, Indiana 46277

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Messrs. Rogers & Wells  
Pan Am Building  
200 Park Avenue  
New York, New York 10017

Corporate Trust Department  
The Connecticut Bank and Trust Company  
One Constitution Plaza  
Hartford, Connecticut 06103

John C. Mull, Jr., Esq.  
Trust Officer  
Continental Illinois National Bank and  
Trust Company of Chicago  
231 South LaSalle Street  
Chicago, Illinois 60693

Robert W. Olsen  
One Chase Manhattan Plaza  
New York, New York 10005