

CRAVATH, SWAINE & MOORE

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CABLE ADDRESSES  
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JUN 10 1977  
Date  
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8852 MA, B, SC  
RECORDATION NO. 8852 MA, B, SC

JUN 10 1977 - 1 55 PM

ICC Washington, D. C. (INTERSTATE COMMERCE COMMISSION)  
June 9, 1977

Dear Mr. Oswald:

Pursuant to Section 20c of the Interstate Commerce Act and the Commission's rules and regulations thereunder, as amended, I enclose herewith on behalf of First Security State Bank for filing and recordation six copies of the following document:

Equipment Trust Agreement dated as of May 15, 1977, between First Security Bank of Utah, National Association, and First Security State Bank.

The names and addresses of the parties to the aforementioned document are as follows:

(1) Lessee:

First Security State Bank  
Main Street at Broadway  
Salt Lake City, Utah 84111.

(2) Trustee-Lessor:

First Security Bank of Utah, National Association  
Deseret Building  
79 South Main Street  
Salt Lake City, Utah 84111.

Please file and record the Equipment Trust Agreement submitted with this letter and cross-index said Equipment Trust Agreement under the names of the parties thereto and the names of SSI Rail Corp., Camino, Placerville & Lake Tahoe Railroad Company, and Apalachicola Northern Railroad Company.

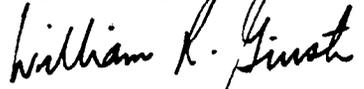
The equipment covered by the Equipment Trust Agreement consists of the following:

Two hundred fifty (250) 70-ton, 50'6" Boxcars, AAR Designation XM, bearing Road Numbers CPLT 7700-CPLT 7749, both inclusive, and AN 5000-AN 5199, both inclusive.

There is also enclosed a check for \$50 payable to the Interstate Commerce Commission, representing the fee for recording the Equipment Trust Agreement pursuant to 49 CFR 1116.1.

Please stamp all six copies of the enclosed document and the three attached copies of this transmittal letter with your official recording stamp. You will wish to retain two copies of the document and the original of this transmittal letter for your files. It is requested that the remaining copies of the document and the three copies of this transmittal letter be delivered to the bearer of this letter.

Very truly yours,



William R. Giusti

Robert L. Oswald, Esq., Secretary,  
Interstate Commerce Commission,  
Washington, D.C. 20423

Encls.

77A

BY HAND

RECORDATION NO. 8852-B Filed Recorded

JUN 10 1977 - 1 55 PM

INTERSTATE COMMERCE COMMISSION

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LEASE OF RAILROAD EQUIPMENT

(No. 2)

Dated as of May 15, 1977,

between

SSI RAIL CORP.,

and

FIRST SECURITY STATE BANK,  
not in its individual capacity  
but solely as Owner-Trustee

---

LEASE OF RAILROAD EQUIPMENT (No. 2), dated as of May 15, 1977, between SSI RAIL CORP., a Delaware corporation (hereinafter called the Lessee), and FIRST SECURITY STATE BANK, a Utah corporation, acting not in its individual capacity but solely as Trustee (hereinafter, together with its successors and assigns, called the Owner-Trustee) under a Trust Agreement dated as of the date hereof (hereinafter called the Trust Agreement), with PACIFIC SYSTEMS, INC. (hereinafter called the Owner).

WHEREAS the Lessee, ITEL Corporation (hereinafter called the Guarantor), the Owner, the Owner-Trustee and the Purchasers (hereinafter called the Purchasers) named in Exhibit A thereto are entering into a Participation Agreement (hereinafter called the Participation Agreement) dated as of the date hereof;

WHEREAS the Lessee is assigning to the Owner-Trustee pursuant to a Purchase Order Assignment (hereinafter called the Purchase Order Assignment), substantially in the form attached to the Participation Agreement as Exhibit B, the Lessee's rights under Purchase Orders (hereinafter called the Manufacturing Agreement and with respect to each Builder (as hereinafter defined) its Manufacturing Agreement) with each of FMC Corporation and ACF Industries, Incorporated (hereinafter called collectively the Builders) to purchase and take delivery of those units of railroad equipment described in Schedule A hereto (such railroad equipment being hereinafter sometimes called the Equipment);

WHEREAS the Lessee agrees to lease from the Owner-Trustee all the units of the Equipment, or such lesser number of units as are delivered and accepted under the Purchase Order Assignment, at the rentals and for the term and upon the conditions hereinafter provided (each such unit being hereinafter called a Unit);

WHEREAS the Lessee intends to lease the Units to certain railroad companies pursuant to Subleases (hereinafter each sometimes called a Sublease), substantially in the form of Schedule E hereof and to assign the Subleases and any other subleases of the Units to the Owner-Trustee pursuant to Assignments of Sublease (hereinafter each called a Sublease Assignment), substantially in the form of Schedule F hereof;

WHEREAS the Owner-Trustee intends to assign certain of its rights under the Sublease Assignments to the Trustee (as hereinafter defined) for security purposes pursuant to Reassignments of Sublease (hereinafter each called a Second Assignment), substantially in the form attached to the Sublease Assignment as Annex A until the Owner-Trustee fulfills all its obligations under the Security Document (as hereinafter defined);

WHEREAS the Owner-Trustee is entering into an Equipment Trust Agreement (hereinafter called the Security Document) with First Security Bank of Utah, National Association (herein, together with its successors and assigns as trustee under the Security Document, called the Trustee), pursuant to which equipment trust certificates (hereinafter called the Trust Certificates) will be issued and sold to finance a portion of the purchase price of the Equipment, and the Owner-Trustee will be obligated to make payments equal to the principal of and interest on the Trust Certificates out of the rentals received hereunder and security title and interest in the Units will be conveyed to the Trustee until the Owner-Trustee fulfills all its obligations under the Security Document;

WHEREAS the Lessee is entering into an Income Tax Indemnification Agreement (hereinafter called the Indemnity Agreement) with the Owner, substantially in the form attached hereto as Schedule C, pursuant to which the Lessee agrees to indemnify the Owner under certain circumstances against the loss of certain tax benefits contemplated to accrue to the Owner under this Lease;

WHEREAS the Guarantor is willing to guarantee the observance and performance of the covenants, obligations and agreements of the Lessee under this Lease and the Indemnity Agreement pursuant to a Guaranty Agreement (hereinafter called the Guaranty Agreement), with the Owner-Trustee, substantially in the form attached hereto as Schedule D;

WHEREAS the Owner-Trustee will assign this Lease and the Guaranty Agreement (in so far as the Guaranty Agreement provides a guaranty of the observance and performance of the covenants, obligations and agreements of the Lessee under this Lease) to the Trustee pursuant to an Assignment of Lease and Agreement (hereinafter called the Lease Assignment), substantially in the form attached to the Security Document as Annex II, and the Lessee and the Guarantor will consent to the Lease Assignment pursuant to a Consent and Agreement

(hereinafter called the Consent); and

WHEREAS the Lessee and the Guarantor have entered into a Covenant Agreement dated as of March 15, 1977 (hereinafter called the Covenant Agreement), in the form attached to the Participation Agreement as Exhibit D, pursuant to which the Lessee and the Guarantor make certain covenants and agreements;

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

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

it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Owner-Trustee, the Owner, any holder of the Trust Certificates or the Trustee for any reason whatsoever.

§ 2. Delivery and Acceptance of Units. The Owner-Trustee hereby appoints the Lessee its agent for inspection and acceptance of the Units pursuant to the Purchase Order Assignment; provided, however, that such acceptance shall be in accordance with the provisions of Section 3.01 of the Security Document. Each delivery of a Unit to the Owner-Trustee under the Purchase Order Assignment shall be deemed to be a delivery hereunder to the Lessee at the point or points within the United States of America at which such Unit is delivered to the Owner-Trustee under the Purchase Order Assignment. Upon such delivery, the Lessee will cause an employee or agent of the Lessee to inspect the same, and if such Unit is found to be acceptable, to accept delivery of such Unit on behalf of the Owner-Trustee under the Purchase Order Assignment, on behalf of the Trustee under the Security Document and on behalf of itself hereunder, and execute and deliver to the Owner-Trustee and the Trustee a certificate of acceptance (hereinafter called the Certificate of Acceptance) in accordance with the provisions of the Purchase Order Assignment, stating that such Unit has been inspected and accepted on behalf of the Lessee, the Owner-Trustee and the Trustee on the date of such Certificate of Acceptance and is marked in accordance with § 5 hereof, whereupon such Unit shall be deemed to have been delivered to and accepted by the Lessee, the Owner-Trustee and the Trustee, and shall be subject thereafter to all the terms and conditions of this Lease and the Security Document. The Lessee hereby represents and warrants to the Owner-Trustee that no Unit shall be put into service earlier than the date of delivery to and acceptance by the Lessee as agent for the Owner-Trustee hereunder.

§ 3. Rentals. The Lessee agrees to pay to the Owner-Trustee, as rental for each Unit subject to this Lease, 61 consecutive payments payable on July 31, 1977, and on each January 31, April 30, July 31 and October 31 thereafter, commencing October 31, 1977. The first rental payment shall be in an amount equal to the sum of (a) the product of (i) the

aggregate principal amount of Trust Certificates issued pursuant to Section 2.01 of the Security Document, times (ii) .02639% for each day elapsed from the date on which such Trust Certificates were so issued until such rental payment date, plus (b) the product of (i) that portion of the Purchase Price (as defined in the Purchase Order Assignment) of each Unit then subject to this Lease paid by the Owner-Trustee pursuant to Section 3.03 of the Security Document, times (ii) .02639% for each day elapsed from the Closing Date (as defined in the Purchase Order Assignment) with respect to such Unit until such rental payment date. The next 60 quarterly rental payments shall each be in an amount equal to 2.49064% of the Purchase Price of each Unit subject to this Lease on the date of such payment. The foregoing amounts and rental rates have been calculated on the assumption that 71.27253% of the Purchase Price of the Units will be provided out of the proceeds of the sale of Trust Certificates having an interest rate of 9-1/2% per annum. If for any reason the Owner-Trustee pays more than 28.72747% of the Purchase Price of any Unit pursuant to Section 3.03 of the Security Document or Trust Certificates are sold at an interest rate other than that hereinabove specified, the Owner-Trustee and the Lessee agree that the rentals payable hereunder and the Casualty Value percentages set forth in Schedule B hereto will be appropriately adjusted in order that the Owner's net after-tax return and net income (computed on the same assumptions, including, without limitation, tax rates, as were utilized by the Owner in originally evaluating the transaction) will not be decreased by reason thereof; provided, however, that the rentals and Casualty Value percentages, as so adjusted, shall not be reduced in any case from the amounts set forth herein other than to reflect any reduction in the interest rate on any Trust Certificate as aforesaid.

If any of the rental payment dates referred to above is not a Business Day (as such term is defined in the Security Document), the rental payment otherwise payable on such date shall then be payable on the next succeeding Business Day, and no interest shall be payable on such rental payment for the period from and after the nominal date for payment thereof to such next succeeding Business Day.

For so long as the Security Document shall remain in effect, the Owner-Trustee irrevocably instructs the Lessee

to make all the payments due the Owner-Trustee provided for in this Lease to the Trustee, for the account of the Owner-Trustee, in care of the Trustee, with instructions to the Trustee (a) first to apply such payments to satisfy the obligations of the Owner-Trustee under the Security Document known to the Trustee to be due and payable on the date such payments are due and payable hereunder and (b) second, so long as no Event of Default under the Security Document shall have occurred and be continuing, to pay any balance promptly to the Owner-Trustee or to the order of the Owner-Trustee in immediately available funds at such place as the Owner-Trustee shall specify in writing.

The Lessee agrees to make each payment provided for herein as contemplated by this § 3 in immediately available or federal funds at or prior to 11:00 a.m. Salt Lake City time at the Corporate Trust Office (as defined in the Security Document) on the date due, or if the Security Document shall no longer be in effect, at the office of the Owner-Trustee.

§ 4. Term of Lease. The term of this Lease as to each Unit shall begin on the date of delivery and acceptance of such Unit hereunder and, subject to the provisions of §§ 7, 10 and 13 hereof, shall terminate on July 31, 1992. Except for obligations of the Lessee hereunder which are not specifically stated to terminate at a fixed time, the obligations of the Lessee hereunder (including, but not limited to, the obligations under §§ 3, 6, 7, 9 and 14 hereof) shall survive the expiration of the term of this Lease.

Notwithstanding anything to the contrary contained herein, all rights and obligations of the Lessee under this Lease and in and to the Units are subject to the rights of the Trustee under the Security Document. If an Event of Default should occur under the Security Document, the Trustee may terminate this Lease (or rescind its termination), all as provided therein; provided, however, that so long as (i) no Event of Default exists hereunder, (ii) the Lessee is complying with the provisions of the Consent and (iii) the Trustee is entitled to apply the Payments (as defined in the Lease Assignment) in accordance with the Lease Assignment, this Lease may not be terminated and the Lessee shall be entitled to the rights of possession, use and assignment provided under § 12 hereof.

§ 5. Identification Marks. The Lessee agrees that it will cause each Unit to be marked plainly, distinctly,

permanently and conspicuously on each side of each Unit, in letters not less than one inch in height, the following legend:

"OWNED BY A BANK OR TRUST COMPANY UNDER A SECURITY AGREEMENT FILED UNDER THE INTERSTATE COMMERCE ACT, SECTION 20c"

or such other words as shall be approved by the Owner-Trustee. Such marks shall be such as to be readily visible.

If any of such marks shall at any time be removed, defaced or destroyed, the Lessee shall cause the same to be restored or replaced. The Lessee shall not change, or permit to be changed, the numbers of any of the Units (or any numbers which may have been substituted as herein provided) except in accordance with a statement of new numbers to be substituted therefor which previously shall have been filed with the Owner-Trustee and which shall be filed and recorded in like manner as this Lease.

The Units may be lettered in an appropriate manner for convenience of identification of the leasehold interest of the Lessee therein, and may also be lettered in the case of any of the sublessees under subleases permitted in § 12 hereof in such manner as may be appropriate for convenience of identification of such leasehold interest therein; but the Lessee will not allow the name of any person, firm, association or corporation to be placed on any of the Units as a designation which might reasonably be interpreted as a claim of ownership; provided, however, that the Units may be lettered with the names or initials or other insignia customarily used by the Lessee or its Affiliates (as defined in the Security Document) or by the sublessees under subleases permitted in § 12 hereof.

§ 6. Taxes. Whether or not any of the transactions contemplated hereby are consummated, the Lessee agrees to pay, and to indemnify and hold the Owner-Trustee, the Owner, the Trustee, the holders of Trust Certificates and the respective estates held in trust by the Owner-Trustee under the Trust Agreement and by the Trustee under the Security Document harmless from all taxes (income, gross receipts, franchise, sales, use, property [real or personal, tangible or intangible] and stamp taxes), assessments, fees and charges of any nature whatsoever, together with any penalties, fines, additions to tax or interest thereon, howsoever

imposed, whether levied or imposed upon the Owner-Trustee, the Owner, the Trustee, the holders of Trust Certificates, the Lessee, the trust estates created by the Trust Agreement, either Builder (except for those taxes which are the responsibility of such Builder pursuant to the Purchase Order Assignment) or otherwise, by any federal, state or local government or governmental subdivision in the United States or by any foreign country or subdivision thereof, upon or with respect to: any Unit or any part thereof; the manufacture, purchase, ownership, delivery, leasing, subleasing, possession, use, operation, transfer of title, return or other disposition thereof; the rentals, receipts or earnings arising therefrom or value added thereto; this Lease, the Lease Assignment, the Consent, the Trust Agreement, the Participation Agreement, the Security Document, either Manufacturing Agreement, the Purchase Order Assignment, the Subleases and any other subleases covering any of the Units, the Sublease Assignments, the Second Assignments, the Trust Certificates or the issuance thereof under the Security Document, any payment made pursuant to any such agreement, or the property, the income or other proceeds received with respect to property held in trust by the Owner-Trustee under the Trust Agreement or by the Trustee under the Security Document (all such taxes, assessments, fees, charges, penalties, fines, additions to tax and interest imposed as aforesaid being hereinafter called "Taxes"); excluding, however: (i) Taxes of the United States or of any state or political subdivision thereof and (if and to the extent that any person indemnified hereunder is currently allowed a credit therefor against its United States Federal income taxes or is indemnified by the Lessee pursuant to the Indemnity Agreement) of any foreign country or subdivision thereof, imposed on or measured solely by the net income or excess profits of the Owner-Trustee (in its individual capacity), the Owner, the holders of Trust Certificates or the Trustee (in its individual capacity), other than Taxes arising out of or imposed in respect of the receipt of indemnification payments pursuant to this Lease or the Indemnity Agreement, provided that such Taxes of any foreign country or subdivision thereof incurred as a result of the indemnified party being taxed by such foreign country or jurisdiction on its worldwide income without regard to the transactions contemplated by this Lease shall be excluded whether or not the indemnified party is currently allowed a credit against its United States Federal income taxes; (ii) any Taxes imposed as a direct result of a voluntary transfer or other voluntary disposition by the Owner or any transfer or disposition by the Owner resulting from bankruptcy or other proceedings for the

relief of creditors in which the Owner is the debtor, whether voluntary or involuntary, of any interest in any Unit or interest in rentals under this Lease without the consent of the Lessee, unless, in each case, such transfer or disposition is required or contemplated by this Lease or an Event of Default shall have occurred and be continuing; and (iii) any Taxes imposed on or measured by any trustee fees received by the Owner-Trustee or the Trustee; provided, however, that the Lessee shall not be required to pay any Taxes during the period it may be contesting the same in the manner provided in the fourth paragraph of this § 6. The Lessee further agrees to pay on or before the time or times prescribed by law any tax imposed on or measured solely by the net income of the Lessee (or the affiliated group, within the meaning of section 1504 of the Internal Revenue Code of 1954, as amended, of which the Lessee is a member) under the laws of the United States or of any state or political subdivision thereof, or of any foreign country or subdivision thereof which, if unpaid, might result in a lien or other encumbrance upon any Unit; provided, however, that the Lessee shall not be required to pay any such tax during the period it may be contesting the same.

The amount which the Lessee shall be required to pay with respect to any Taxes indemnified against pursuant to this § 6 shall be an amount sufficient to restore the indemnified party to the same after-tax position such indemnified party would have been in had such Taxes not been imposed.

If claim is made against any indemnified party for any Taxes indemnified against under this § 6, such party shall promptly notify the Lessee. If reasonably requested by the Lessee in writing within 45 days after the giving of such notice as provided in the next preceding sentence, such indemnified party shall, upon receipt of indemnity satisfactory to it for all costs, expenses, losses, legal and accountants' fees and disbursements, penalties, fines, additions to tax and interest, and at the expense of the Lessee, contest in good faith the validity, applicability or amount of such Taxes by (a) resisting payment thereof if possible, (b) not paying the same except under protest, if protest is necessary and proper, and (c) if payment is made, using reasonable efforts to obtain a refund thereof in appropriate administrative or judicial proceedings, or both. The Lessee may also contest, at its own expense, the validity, applicability or amount of such Taxes in the name of such indemnified party; provided, however, that no proceeding or action relating to

such contest shall be commenced (nor shall any pleading, motion, brief or other paper be submitted or filed in the name of such indemnified party in any such proceeding or action) without the prior written consent of such indemnified party, which consent may not be unreasonably withheld. If such indemnified party shall obtain a refund of all or any part of such Taxes previously reimbursed by the Lessee in connection with any such contest or an amount representing interest thereon applicable to the amount paid by the Lessee and the period of such payment, such indemnified party shall pay to the Lessee the amount of such refund or interest net of expenses; provided, however, that no Event of Default and no event which, with notice or lapse of time or both, would constitute an Event of Default shall have occurred and be continuing.

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

All the obligations of the Lessee under this § 6 shall survive and continue, but only with respect to periods included in the term of this Lease, notwithstanding payment in full of all amounts due under the Security Document or the termination of this Lease. All amounts payable by the Lessee pursuant to this § 6 shall be payable directly to the indemnified party entitled to indemnification, except to the extent paid to a governmental agency or taxing authority. The foregoing indemnities by the Lessee shall not constitute a guaranty by the Lessee of the payment of any instalments of principal or interest payable under the Trust Certificates.

The Lessee shall furnish promptly, upon request, such information and data as is normally available to the Lessee and which the Owner-Trustee, the Trustee or the Owner reasonably may require to permit compliance with the requirements of any taxing authorities.

§ 7. Payment for Casualty Occurrences; Insurance.

In the event that any Unit shall be or become worn out, lost, stolen, destroyed, irreparably damaged, or permanently rendered unfit for use from any cause whatsoever, or taken or requisitioned by condemnation or otherwise by the United States Government for a stated period which shall exceed the then remaining term of this Lease or for an indefinite period, but only if such requisition for an indefinite period shall be in effect on the expiration date of this Lease, or by any other governmental entity resulting in loss of possession by the Lessee for a period of 90 consecutive days or until the end of the term of this Lease (such occurrences being hereinafter called Casualty Occurrences) during the term of this Lease, or until such Unit shall have been returned in the manner provided in §§ 11 or 14 hereof, the Lessee shall promptly and fully notify the Owner-Trustee and the Trustee with respect thereto. On the rental payment date next succeeding the delivery of such notice, the Lessee shall pay to the Owner-Trustee an amount equal to the rental payment or payments in respect of such Unit due and payable on such date plus an amount equal to the Casualty Value (as hereinafter defined) of such Unit which suffered a Casualty Occurrence as of the date of such payment in accordance with Schedule B hereto. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue as of the date of such payment, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft or complete destruction of such Unit) the Lessor shall be entitled to recover possession of such Unit.

The Owner-Trustee hereby appoints the Lessee its agent to dispose of any Unit or Replacement Unit (as hereinafter defined), or any component thereof, suffering a Casualty Occurrence before or after the expiration of this Lease, at the best price obtainable on an "as is, where is" basis. Provided that the Lessee has previously paid the Casualty Value to the Owner-Trustee and is not in default hereunder and no event then exists which after notice or lapse of time or both would become a default hereunder, the Lessee shall be entitled to the proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit or Replacement Unit, and shall pay any excess to the Owner-Trustee.

The Casualty Value of each Unit as of the date on which payment therefor is made as aforesaid shall be an amount equal to that percentage of the Purchase Price of such

Unit as is set forth in Schedule B hereto opposite such date.

Whenever any Unit shall suffer a Casualty Occurrence at the end of the term of this Lease and before such Unit shall have been returned in the manner provided in § 14 hereof, and whenever any Unit or Replacement Unit shall suffer a Casualty Occurrence while being stored as provided in § 14 hereof, the Lessee shall promptly and fully notify the Owner-Trustee with respect thereto and pay to the Owner-Trustee an amount equal to the Casualty Value of such Unit or Replacement Unit, which shall be an amount equal to 20% of the Purchase Price of such Unit or the Unit replaced by such Replacement Unit. Upon the making of any such payment by the Lessee in respect of any Unit or Replacement Unit (except in the case of the loss, theft or complete destruction of such Unit or Replacement Unit), the Owner-Trustee shall be entitled to recover possession of such Unit or Replacement Unit.

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 or Replacement Unit.

The Lessee agrees that it will, at all times prior to the return of the Units to the Owner-Trustee in accordance with the provisions of this Lease, and at its own cost and expense, keep or cause to be kept each Unit insured against loss by fire, windstorm and explosion and with extended coverage and against such other risks as are customarily insured against by companies owning property of a similar character and engaged in a business similar to that engaged in by the Lessee at not less than the value of such Unit from time to time payable by railroad companies in possession of such Unit in the event the same should then be destroyed beyond repair pursuant to applicable rules of the Interstate Commerce Commission, the United States Department of Transportation and the Association of American Railroads and will maintain general public liability insurance with respect to the Units against damage because of bodily injury, including death, or damage to property or others, such insurance to afford protection to the limit of not less than \$5,000,000 per occurrence. Any such insurance may have applicable thereto deductible provisions to the extent of \$25,000 per occurrence and may be carried under blanket policies maintained by the Lessee so long as such policies otherwise comply with the provisions of this Section.

The benefits of such insurance coverage shall be payable to the Trustee, the Owner-Trustee and the Lessee, as their interests may appear, so long as the Trust Certificates shall not have been paid in full, and thereafter to the Owner-Trustee and the Lessee as their interests may appear. Any policies of insurance carried in accordance with this § 7 (i) shall require 30 days' prior notice of cancelation to the Owner-Trustee, (ii) shall name the Trustee, the Owner and the Owner-Trustee as additional named insureds as their respective interests may appear and (iii) shall not be invalidated by any act or neglect of the Trustee, the Owner-Trustee or the Lessee or by any foreclosure or other remedial proceedings or notices thereof relating to the Units or any interest therein nor by any change in the title or ownership of the Units or any interest therein or with respect thereto, or by the use or operation of the Units for purposes more hazardous or in a manner more hazardous than is permitted by such policy.

Any policies of insurance carried in accordance with this § 7 shall be substantially in conformity with the form of insurance policy referred to in the certificate delivered pursuant to Paragraph 8(f)(iv) of the Participation Agreement.

§ 8. Reports. On or before April 1 in each year, commencing with the calendar year 1978, the Lessee will furnish to the Owner-Trustee, the Owner and the Trustee an Officer's Certificate (as defined in the Security Document) (a) setting forth as at the preceding December 31 (or as of the date of this Lease in the case of the first such Officer's Certificate) the amount, description and numbers of all Units then leased hereunder and covered by the Security Document, the amount, description and numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year (or since the date of this Lease in the case of the first such Officer's Certificate) (specifying the dates of such Casualty Occurrences) or to the knowledge of the Lessee are then undergoing repairs (other than running repairs) or are then withdrawn from use pending repairs (other than running repairs) and such other information regarding the condition and state of repair of the Units as the Owner-Trustee or the Trustee may reasonably request, (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and the markings required by § 5 hereof and the Security Document have been preserved or replaced, and (c) identifying the Units then being subleased by the Lessee as permitted hereunder (including the name of each sublessee and the term

of each sublease covering the Units) and specifying which Units, if any, are not then being subleased by the Lessee. The Owner-Trustee shall have the right, at its own expense and risk, by its agents to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Owner-Trustee may request during the continuance of this Lease.

§ 9. Disclaimer of Warranties; Compliance with Laws and Rules; Maintenance; Indemnification. NEITHER THE OWNER-TRUSTEE NOR THE OWNER MAKES, HAS MADE OR SHALL BE DEEMED TO MAKE OR HAVE MADE ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN, COMPLIANCE WITH SPECIFICATIONS, OPERATION OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS OR ANY COMPONENT THEREOF DELIVERED TO THE LESSEE HEREUNDER, AND NEITHER THE OWNER-TRUSTEE NOR THE OWNER MAKES ANY WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS OR ANY COMPONENT THEREOF FOR ANY PARTICULAR PURPOSE NOR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, NOR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT OR ANY COMPONENT THEREOF (EITHER UPON DELIVERY THEREOF TO THE LESSEE OR OTHERWISE), it being agreed that all such risks, as between the Owner-Trustee and the Lessee, are to be borne by the Lessee; but the Owner-Trustee hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for the account of the Owner-Trustee and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Owner-Trustee may have against either Builder, including, but not limited to, any claims and rights arising under the provisions of the Manufacturing Agreement of such Builder. The Owner-Trustee and the Owner shall have no responsibility or liability to the Lessee or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Units or by any inadequacy thereof or deficiency or defect therein or by any other circumstance in connection therewith; (ii) the use, operation or performance of any Units or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Units. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Owner-Trustee (but not as between the Lessee and the Builder of such Units) that the Units described therein are in all the foregoing respects satisfac-

tory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Owner-Trustee based on any of the foregoing matters.

The Lessee agrees, for the benefit of the Owner-Trustee, the Owner and the Trustee, to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each Unit) with all laws of the jurisdictions in which its operations involving the Units may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the United States Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units (including, without limitation, applicable statutes, regulations, orders and restrictions relating to equal employment opportunities and environmental standards or controls), to the extent that such laws and rules affect the title, operation or use of the Units and in the event that such laws or rules require any alteration, replacement, modification or addition of or to any part of any Unit, the Lessee will fully conform therewith at its own expense; provided, however, that the Lessee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Owner-Trustee or the Trustee, adversely affect the property or rights of the Owner-Trustee or the Trustee under this Lease or under the Security Document.

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

The Lessee and its affiliates, at their own cost and expense, may from time to time make or permit to be made such alterations, modifications and additions (including, without limitation, any special devices or assemblies at any time attached or affixed to any Unit, the cost of which is not included in the Purchase Price of such Unit and which are not required for the operation or use of such Unit by the Interstate Commerce Commission, the United States Department of Transportation or any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over such Unit) (hereinafter collectively called Additions) to the Units as the Lessee may deem desirable in the proper conduct of its business so long as

such Additions shall not be inconsistent with the continuing operation of the Units or the original conventional purpose of the Units, and shall not diminish the value, utility or condition of the Units below the value, utility and condition thereof immediately prior to the making of such Additions, assuming the Units were then in the condition required to be maintained by the terms of this Lease; provided, however, that no such Addition shall be made if it is not readily removable from the Unit to which it relates without material damage thereto and without diminishing or impairing the value or utility which the Unit would have had immediately prior to such time had such Addition not been made.

Title to all Parts (as hereinbelow defined) incorporated in or installed as part of the Units shall without further act vest in the Owner-Trustee in the following cases: (i) such Part is in replacement of or in substitution for, and not in addition to, any Part originally incorporated in or installed as part of a Unit at the time of the acceptance thereof hereunder or any Part in replacement of, or in substitution for any such original Part, (ii) such Part is required to be incorporated in or installed as part of the Units pursuant to the terms of the second or third paragraph of this § 9, or (iii) notwithstanding the provisions of the fourth paragraph of this § 9, such Part cannot be readily removed from the Unit to which it relates without material damage thereto and without diminishing or impairing the value or utility which such Unit shall have had at such time had such alteration or addition not occurred. In all other cases, if no Event of Default under § 10 hereof (or other event which after lapse of time or notice or both would constitute an Event of Default) shall have occurred and be continuing, title to Parts incorporated in or installed as parts of the Units as a result of such alterations or additions shall vest in the Lessee. The term Part for the purposes of this paragraph and § 14 hereof shall be defined to include any appliance, part, instrument, accessory, furnishing or other equipment of any nature which may from time to time be incorporated in or installed as part of any Unit.

The Lessee shall pay, and shall protect, indemnify and hold the Owner-Trustee, the Owner, the holders of Trust Certificates and the Trustee, and their respective successors, assigns, agents and servants (hereinafter called Indemnified Persons), harmless from and against any and all causes of action, suits, penalties, claims, demands or judgments, of

any nature whatsoever which may be imposed on, incurred by or asserted against any Indemnified Person (including any or all liabilities, obligations, damages, costs, disbursements, expenses [including without limitation attorneys' fees and expenses of any Indemnified Person] relating thereto) in any way relating to or arising or alleged to arise out of this Lease or the Units, including without limitation those in any way relating to or arising or alleged to arise out of (i) the manufacture, construction, purchase, acceptance, rejection, ownership, delivery, nondelivery, lease, sublease, possession, use, operation, condition, sale, return or other disposition of any Unit or portion thereof; (ii) any latent or other defects whether or not discoverable by any Indemnified Person or the Lessee; (iii) any claim for patent, trademark or copyright infringement; (iv) any claims based on strict liability in tort; (v) any injury to or the death of any person or any damage to or loss of property on or near the Units or in any manner growing out of or concerned with, or alleged to grow out of or be connected with, the ownership, use, replacement, adaptation or maintenance of the Units or of any other equipment in connection with the Units (whether owned or under the control of the Owner-Trustee, the Lessee or any other person) or resulting or alleged to result from the condition of any thereof; provided, however, that the Lessee shall not be obligated to protect, indemnify or hold harmless any Indemnified Person under this clause (v), except in the case of any negligence or intentional act of the Lessee or of its employees or agents and except to the extent otherwise provided by law, in respect of any injury to or the death of any person exercising, either on behalf of the Owner-Trustee or any prospective purchaser or lessee, the rights of inspection granted in § 8, § 11 or § 14 hereof; (vi) any violation, or alleged violation, of any provision of this Lease (except by the Owner-Trustee) or of any agreement, law, rule, regulation, ordinance or restriction affecting or applicable to the Units or the leasing, ownership, use, replacement, adaptation or maintenance thereof; (vii) any claim arising out of any of the Owner-Trustee's obligations under the Lease Assignment, the Sublease Assignments, the Security Document or the Participation Agreement, except to the extent such claim arises from an act or omission of the Owner-Trustee; or (viii) any claim arising out of the Trustee's holding a security interest under the Security Document, the Lease Assignment or the Second Assignments. All payments hereunder shall be made directly to the Indemnified Person. The Lessee shall be obligated under this § 9, irrespective of whether any Indemnified Person shall also be

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

The Lessee further agrees to indemnify, protect and hold harmless the holders of Trust Certificates, the Trustee, the Owner and the Owner-Trustee, 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 holders of Trust Certificates, the Trustee, the Owner and the Owner-Trustee because of the use in or about the construction or operation of any unit of the Equipment of any article or material specified by the Lessee and not manufactured or ordered by the Builder of such unit or of any design, system, process, formula or combination specified by the Lessee and not developed or purported to be developed by such Builder which infringes or is claimed to infringe on any patent or other right. The Lessee will give notice to the appropriate Builder of any claim known to the Lessee from which liability may be charged against such Builder hereunder.

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

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

The indemnities arising under this § 9 shall not be deemed to operate as a guaranty of the residual value of the Units or as a guaranty of the payment of the principal of or interest on the Trust Certificates.

§ 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. payment of any part of the rental provided in

§ 3 hereof or payment in respect of any Casualty Occurrence pursuant to § 7 hereof shall not be made by or on behalf of the Lessee, and such failure to make payment shall continue for five days after such payment is due; or

B. default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein, in the Participation Agreement, the Covenant Agreement (other than those set out in Sections 3.01, 3.04, 3.10, 3.11 and 3.13 thereof), the Consent or any Sublease Assignment, and such default shall continue, or provision satisfactory to the Owner-Trustee and the Trustee for compliance with such covenant, condition or agreement as to which the Lessee shall be in default shall not be made, for 30 days after written notice from the Owner-Trustee or the Trustee to the Lessee specifying the default and demanding that the same be remedied; or

C. the Lessee or the Guarantor shall institute proceedings to be adjudicated a bankrupt or insolvent or shall consent to the institution of bankruptcy or insolvency proceedings against it or shall file a petition or answer or consent seeking reorganization or relief under the Bankruptcy Act or any other Federal or state law relating to bankruptcy or insolvency or shall consent to the filing of any such petition or shall consent to the appointment of a receiver or shall make an assignment for the benefit of creditors or shall admit in writing its inability to pay its debts generally as they become due, or action shall be taken by the Lessee or the Guarantor in furtherance of any of the aforesaid purposes; or

D. an Event of Default set forth in Article Five of the Security Document shall have occurred arising out of any default by the Lessee in performing any of its obligations hereunder or under the Participation Agreement; or

E. any material representation or warranty made by the Lessee herein or in the Participation Agreement, the Indemnity Agreement or the Covenant Agreement or by the Guarantor in the Participation Agreement, the Covenant Agreement or the Guaranty Agreement or in any document or certificate furnished the Owner-Trustee, the Owner, the Trustee or the holder of any Trust Certificate by the Lessee or the Guarantor in connection herewith or

therewith or pursuant hereto or thereto shall be incorrect as of the date as of which made in any material respect; or

F. the Guarantor shall fail to pay when due either at the stated maturity thereof or through acceleration or otherwise any indebtedness of the Guarantor and as a result thereof the Guarantor shall be in default at any one time in the payment of \$5,000,000 of indebtedness, or any event of default under any conditional sales agreement, leveraged lease agreement, equipment trust agreement, or any other financing agreement or agreement relating to any indebtedness for borrowed money to which the Guarantor is a party shall occur and be continuing and as a result thereof the Guarantor is obligated to pay at any one time prior to the stated maturity thereof an aggregate amount of \$5,000,000 of Funded Debt (as defined in Section 4.08 of the Covenant Agreement); or

G. default shall be made in the observance or performance of any of the covenants and agreements on the part of the Guarantor contained in the Guaranty Agreement or the Covenant Agreement (other than those set out in Sections 4.04 and 4.08 thereof) and such default shall continue for 30 days after written notice from the Owner-Trustee or the Trustee to the Lessee and the Guarantor specifying the default and demanding that the same be remedied; or

H. an event of default arising out of any action or inaction of the Lessee permitting the acceleration of the Lessee's obligations thereunder shall occur and be continuing under any conditional sales agreement, leveraged lease agreement, equipment trust agreement, or any other financing agreement or agreement relating to any indebtedness for borrowed money to which the Lessee is a party; provided, however, that an event of default under any conditional sales agreement, leveraged lease agreement, equipment trust agreement or any such other financing agreement or agreement relating to any indebtedness for borrowed money to which the Lessee is a party shall not constitute an Event of Default under this Lease to the extent that such event of default is with respect to any failure by the Lessee to pay when due any amounts in respect thereof and the Guarantor makes such payment or payments as to which the Lessee is in default as provided in such agreement or in any agreement

referred to therein; or

I. the Lessee shall be in default in its observance or performance of any of its covenants and agreements contained in Sections 3.01, 3.04, 3.10, 3.11 and 3.13 of the Covenant Agreement and concurrently therewith the Guarantor shall be in default in its observance or performance of any of its covenants and agreements contained in Sections 4.04 and 4.08 of the Covenant Agreement and such concurrent defaults shall continue for 30 days after written notice from the Owner-Trustee or the Trustee to the Lessee and the Guarantor specifying such defaults and demanding that the same be remedied; or

J. a decree or order shall have been entered by a court of competent jurisdiction adjudging the Lessee or the Guarantor a bankrupt or insolvent or approving as properly filed a petition seeking reorganization or arrangement of the Lessee or the Guarantor under the Bankruptcy Act, or any other Federal or state law relating to bankruptcy or insolvency, or appointing a receiver or decreeing or ordering the winding up or liquidation of the affairs of the Lessee or the Guarantor (unless such decree or order shall have been discharged, stayed or otherwise rendered ineffective [but then only so long as such stay shall continue in force or such ineffectiveness shall continue]);

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

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

(b) by notice in writing to the Lessee 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 Owner-Trustee may by its agents enter upon the premises of the Lessee or other premises where any of the Units may be located, without judicial process if this can be done without breach of the peace, and take possession of all or any of the Units and subleases covering the Units and thenceforth hold, possess, sell, operate, lease to others and enjoy the same free from

any right of the Lessee or any sublessees of the Units, or their respective successors or assigns (the rights and interests of all sublessees of the Units being subordinate and junior to the rights of the Owner-Trustee and 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 Owner-Trustee shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee as damages for loss of the bargain and not as a penalty, whichever of the following amounts the Owner-Trustee, in its sole discretion, shall specify: (x) a sum with respect to each Unit which represents the excess of (1) the present value, at the time of such termination, of the entire unpaid balance of all rental for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over (2) the then present value of the rentals which the Owner-Trustee reasonably estimates to be obtainable for the Unit during such period, such present value to be computed in each case on the basis of a 6.05% per annum discount, compounded quarterly from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, together with any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Owner-Trustee shall have sustained by reason of the breach of any covenant, representation or warranty of this Lease other than for the payment of the rental; or (y) an amount with respect to each Unit equal to the excess, if any, of the Casualty Value thereof as of the rental payment date on or next preceding the date of termination over the amount the Owner reasonably estimates to be the sales value (after deduction of all estimated expenses of such sale) of such Unit at such time; provided, however, that in the event the Owner-Trustee shall have sold any Unit, the Owner-Trustee, in lieu of collecting any amounts payable to the Owner-Trustee by the Lessee pursuant to the preceding clauses (x) or (y)

of this part (b) with respect to such Unit, may, if it shall so elect, demand that the Lessee pay the Owner-Trustee and the Lessee shall pay to the Owner-Trustee 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; provided, further, however, that the Owner-Trustee shall not be entitled to enforce the remedies provided in this subparagraph (b) with respect to an Event of Default specified in § 10(A) hereof as long as the Guarantor shall be in compliance with the provisions of the Guaranty Agreement; or

(c) direct sublessees of the Units to make all rental payments and to pay all other amounts and render all performances due to the Lessee under any subleases covering the Units to the Owner-Trustee and its successors or assigns hereunder, which direction shall be joined in by the Lessee.

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 Owner's or the Owner-Trustee'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 Owner and the Owner-Trustee shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in their favor existing at law or in equity. The Lessee hereby waives any requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is permitted by law.

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

constitute a waiver of such right as to any other occasion and shall not be effective unless in writing signed by the Owner-Trustee.

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

Notwithstanding anything to the contrary contained in this Lease or in any other of the Operative Agreements (as defined in the Participation Agreement), in case the Trustee shall have declared pursuant to Section 5.01 of the Security Document the unpaid principal of all the Trust Certificates then outstanding to be due and payable and such amount, plus all other amounts payable by the Owner-Trustee pursuant to Section 4.04 of the Security Document, shall have been paid in full, the Owner-Trustee shall have the right to terminate this Lease as provided in subparagraph (b) of this § 10.

§ 11. Return of Units upon Default. If this Lease shall terminate pursuant to § 10 hereof, the Lessee shall forthwith deliver possession of the Units to the Owner-Trustee and shall cause to be given prompt telegraphic and written notice to the Association of American Railroads and all railroads having possession of any Unit so to return such Units. Each Unit returned to the Owner-Trustee pursuant to this § 11 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear and modifications, if any, permitted by this Lease excepted and (ii) meet the applicable standards then in effect with respect to such Units under the Interchange Rules of the Association of American Railroads. For the purpose of delivering possession of any Unit or Units to the Owner-Trustee as above required, the Lessee shall at its own cost, expense and risk:

(a) forthwith and in the usual manner cause such

Units to be transported to such location as shall reasonably be designated by the Owner-Trustee and there assembled;

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

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

The performance of the foregoing covenant is of the essence of this Lease and upon application to any court having jurisdiction in the premises, the Owner-Trustee shall be entitled to a decree against the Lessee, requiring the specific performance thereof. During any storage period, the Lessee will, at its own cost and expense, maintain and keep the Units in good order and repair and will permit the Owner-Trustee or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Unit, to inspect the same; provided, however, that the Lessee shall not be liable except in the case of any negligence or intentional act of the Lessee or of its employees or agents and, except to the extent otherwise provided by law, for any injury to or the death of any person exercising, either on behalf of the Owner-Trustee or any prospective purchaser or lessee, the rights of inspection granted under the sentence. All amounts earned in respect of the Units after the date of termination of this Lease shall belong to the Owner-Trustee and, if received by the Lessee, shall be promptly turned over to the Owner-Trustee. 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 Owner-Trustee for each day thereafter an amount equal to the amount, if any, by which 6.05% of the Purchase Price of such Unit for each such day exceeds the actual earnings received by the Owner-Trustee on such Unit for each such day.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this § 11, the Lessee hereby irrevocably appoints the Owner-Trustee

as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Owner-Trustee, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

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

So long as (i) no Event of Default, or an event which with notice or lapse of time or both could constitute an Event of Default, exists hereunder, (ii) the Lessee is complying with the provisions of the Consent, (iii) the Trustee is entitled to apply the Payments (as defined in the Lease Assignment) in accordance with the Lease Assignment and (iv) the Lessee is fully complying with the provisions of this § 12, the Lessee shall be entitled to and shall have the exclusive use and possession of the Units. The Lessee agrees that the Units will be used exclusively within the continental United States, the State of Alaska, the Dominion of Canada and the Republic of Mexico. The Lessee shall at all times remain in compliance with the terms and provisions of this Lease in respect of each of the Units wherever located. The Lessee agrees that it will not assign this Lease or any of its rights hereunder or sublease any Unit; provided, however, that nothing contained in this Lease shall be deemed to prevent the sublease of any Unit in accordance with the provisions set forth in the next succeeding paragraph of this § 12. No such sublease or permitted use shall relieve the Lessee of any of the obligations, liabilities or duties hereunder, which shall be and remain those of a principal and not a surety.

So long as (i) no Event of Default, or an event which with notice or lapse of time or both could constitute an Event of Default, exists hereunder, (ii) the Lessee is complying with the provisions of the Consent, (iii) the

Trustee is entitled to apply the Payments (as defined in the Lease Assignment) in accordance with the Lease Assignment, and (iv) the Lessee is fully complying with the provisions of this § 12, the Lessee shall be entitled to sublease the Units pursuant to Subleases or any other sublease; provided, however, that (1) each such Sublease and other sublease covering the Units and the rights and interests of the sublessee thereunder shall in all events be subject and subordinate to this Lease and the rights, interests and remedies of the Owner-Trustee under this Lease and of the Trustee under the Security Document and their respective successors and assigns hereunder or thereunder, (2) the Lessee shall not without the prior written consent of the Owner-Trustee and the Trustee enter into any Sublease or other sublease relating to the use of the Units with any sublessee which is not a railroad company duly incorporated under the laws of the United States or any state thereof, and (3) no Units shall be used predominantly outside the United States of America within the meaning of section 48(a) of the Internal Revenue Code of 1954, as amended to the date hereof, nor shall the Lessee sublease the Units to, or permit their use by, any person in whose hands such Units would not qualify as "section 38" property within the meaning of such Code.

So long as the Lessee shall not be in default under this Lease, each Unit may, under the terms of this Lease and pursuant to any Sublease or other sublease relating to the use of the Units, be used upon connecting and other carriers in the usual interchange of traffic, but only upon and subject to all the terms and conditions of this Lease.

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

Nothing in this § 12 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any corporation incorporated under the laws of any state of the United States of America or the District of Columbia (which shall have specifically assumed the obligations of the Lessee hereunder, under the Participation Agreement, under the Covenant Agreement and under the Consent by an appropriate instrument in writing) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety, provided that such assignee or transferee will not, upon the effectiveness of such merger, consolidation or acquisition be in default under any provision of this Lease, the Participation Agreement or the Covenant Agreement and that the financial and credit risks of the transaction contemplated hereby shall not, in the reasonable opinion of the Owner-Trustee, become unsatisfactory as a consequence of such merger or consolidation or acquisition and that such merger or consolidation or acquisition shall not alter in any way Lessee's obligations to the Owner-Trustee 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 Owner-Trustee not less than six months prior to the end of the original term or any extended term, as the case may be, of this Lease, elect to extend the term of this Lease in respect of Units then covered by this Lease, for three additional five-year periods commencing on the scheduled expiration of the original term or any extended term, as the case may be, of this Lease, at a "Fair Market Rental" payable in quarterly payments on the quarterannual anniversaries of the expiration of the original term, or any extended term, as the case may be, of this Lease; provided, however, that no such extended term shall extend beyond July 31, 2007.

Fair Market Rental shall be determined on the basis of, and shall be equal in amount to, the rental which would obtain in an arm's-length transaction between an informed and willing lessee (other than a lessee currently in possession) and an informed and willing lessor under no compulsion to lease and, in such determination, costs of removal from the location of current use shall not be a

deduction from such rental. If, after 60 days from the giving of notice by the Lessee of the Lessee's election to extend the term of this Lease, the Owner-Trustee and the Lessee are unable to agree upon a determination of the Fair Market Rental of the Units, such rental shall be determined in accordance with the foregoing definition by the following procedure: If either party to such determination shall have given written notice to the other requesting determination of such value by this appraisal procedure, the parties shall consult for the purpose of appointing a qualified independent appraiser by mutual agreement. If no such appraiser is so appointed within 20 business days after such notice is given, 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 appointed pursuant to the foregoing procedure shall be instructed to determine the Fair Market Rental of the Units subject to the proposed extended term within 90 days after his appointment. If the parties shall have appointed a single appraiser the determination of Fair Market Rental of the single appraiser appointed shall be final. The appraisal proceedings shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association as in effect on the date hereof, except as modified hereby. The provision for this appraisal procedure shall be the exclusive means of determining Fair Market Rental and shall be in lieu of any judicial or other procedure for the determination thereof, and each party hereto hereby consents and agrees not to assert any judicial or other procedures. The expenses of the appraisal procedure shall be borne by the Lessee.

In the event that the Lessee shall in its reasonable judgment determine that it is not economically feasible for the Lessee to comply with the provisions of the second paragraph of § 9 hereof or clause (iii) of the first paragraph of § 14 hereof during any extended term of this Lease as extended pursuant to the provisions of the first paragraph of this § 13, with respect to any Unit, the Lessee shall have the right at its option, on at least 30 days' prior written notice to the Owner-Trustee to terminate this Lease as to such Unit (subject to the provisions for the survival of indemnification obligations contained in § 9 hereof) as of the next scheduled rental payment date during such extended term upon payment to the Owner-Trustee of the present value as of such date of termination of the remaining rental for such Unit during such extended term with the quarterannual

rentals discounted quarterannually at an annual rate of 6.05%.

Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, in the event the Owner-Trustee elects to sell any Units to third parties at the expiration of the original or any extended term of this Lease, the Lessee shall be given written notice of such intention prior to the expiration of the term of this Lease. In the event that the Owner-Trustee shall receive, prior to the end of the then term of this Lease, a bona fide offer in writing from another party to purchase the Units and the Owner-Trustee elects to sell the Units pursuant to such offer at the expiration of the term of this Lease, the Owner-Trustee shall give written notice to the Lessee of such offer. Such notice shall be given to the Lessee on or prior to the end of the then term of this Lease, and shall include the price offered by the other party in writing to the Owner-Trustee. The Lessee shall have the sole right and option, for a period of 10 business days from the date of receipt of such notice, to elect to purchase the Units for cash at the price at which the Units are proposed to be sold. The Lessee shall exercise such purchase right by delivery to the Owner-Trustee of a written notice specifying a date of purchase, which date shall not be later than the later of (i) 15 days after the date of delivery of such notice by the Lessee to the Owner-Trustee or (ii) the end of the then term of this Lease. In the event that the Lessee shall have delivered a notice of its election to purchase the Units, this Lease (including the obligation to pay rent) shall be extended upon the same terms and conditions set forth herein from the date such notice is delivered to the Owner-Trustee until the date of such purchase.

§ 14. Return of Units upon Expiration of Term.

On or prior to the termination of the original term or any extended term, as the case may be, of this Lease or as soon as practicable on or after the termination of the original term or any extended term, as the case may be, of this Lease and in any event not later than 60 days after the termination of the original term or any extended term, as the case may be, of this Lease with respect to Units not purchased by the Lessee, the Lessee will, at its own cost and expense, cause each such Unit to be transported (a) to any point within 500 miles of Chicago, Illinois, St. Louis, Missouri, Memphis, Tennessee or New Orleans, Louisiana, (b) to the lines of railroad or premises of the sublessee under the sublease permitted in § 12 hereof then covering such Unit or which

covered such Unit at the expiration of the term of this Lease as to such Unit, provided that such lines of railroad or premises are located within the continental United States, or (c) to such other point or points as shall be reasonably designated by the Lessee with the approval of the Owner-Trustee, and will arrange for the Owner-Trustee to store such Unit at such point for a period not exceeding 60 days from the date at which at least 75% of such Units are first placed in storage pursuant to this § 14, the assembly, delivery, storage and transporting of such Units to be at the expense and risk of the Lessee. During any such storage period the Lessee will permit the Owner-Trustee or any person designated by it, including the authorized representative or representatives of any prospective purchaser or lessee of such Unit, to inspect the same; provided, however, that the Lessee shall not be liable except in the case of negligence or any intentional act of the Lessee or of its employees or agents and, except to the extent otherwise provided by law, for any injury to or the death of any person exercising, either on behalf of the Owner-Trustee or any prospective purchaser or lessee, the rights of inspection granted under this sentence. The assembly, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Owner-Trustee shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to cause the assembly, delivery, storage and transporting of the Units. Each Unit returned to the Owner-Trustee pursuant to this § 14 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted, (ii) have attached or affixed thereto any Part title to which is in the Owner-Trustee pursuant to § 9 hereof and have removed therefrom at Lessee's expense any Part title to which is in the Lessee or any other person pursuant to such § 9 and (iii) meet the applicable standards then in effect for such Unit under the Interchange Rules of the Association of American Railroads.

In connection with the return of the Units pursuant to clause (a), (b) or (c) above, the Lessee may, after exercising best efforts to return the Units pursuant to the first paragraph of this § 14, substitute for a Unit a replacement unit of Equipment of substantially identical type, quality, age, specifications, material, usage and utility as the Unit for which such unit is so substituted (herein called a Replacement Unit) and the Replacement

Unit shall be free and clear of all liens, encumbrances or rights of others whatsoever, shall comply with the applicable standards then in effect under the Interchange Rules of the Association of American Railroads, and the Lessee at its expense will promptly furnish the Owner-Trustee with a bill of sale in form and substance satisfactory to the Owner-Trustee with respect to the Replacement Unit; provided, however, that the Lessee's obligation to exercise best efforts to return the Units pursuant to the first paragraph of this § 14 shall, without limiting said obligation whatsoever, require that the Lessee shall return to the Owner-Trustee any Unit which at any time within 60 days immediately following the expiration of the original term or any extended term, as the case may be, of this Lease with respect to such Unit is in Lessee's possession or control within 500 miles of any city listed in clause (a) above, is not then subject to a sublease permitted in § 12 hereof, and is, or can be placed, in the condition specified in clauses (i), (ii) and (iii) of the first paragraph of this § 14. The Lessee shall provide the Owner-Trustee with such documentation as the Owner-Trustee may reasonably request to establish that the Lessee has exercised, or is exercising, its best efforts to redeliver the Units pursuant to this § 14.

In connection with the Owner-Trustee's sale of the Units so returned or any Replacement Units, the Owner-Trustee may warrant to a purchaser of such Units or Replacement Units that such Units or Replacement Units are owned by the Owner-Trustee free and clear of all liens, encumbrances, and rights of others, and the Lessee shall hold the Owner-Trustee harmless from and against any liability arising by virtue of said warranty other than for liability arising by virtue of liens against the Owner-Trustee not related to, or arising out of, the transactions contemplated by the Operative Agreements (as defined in the Participation Agreement).

If any Unit or Replacement Unit suffers a Casualty Occurrence during any storage period provided for in this § 14, the Lessee shall pay to the Owner-Trustee the Casualty Value of such Unit or Replacement Unit as determined in accordance with § 7 hereof. All gross amounts earned in respect of any Unit or Replacement Unit shall, from and after the termination of this Lease as to such Unit or as to the Unit replaced by such Replacement Unit, belong to and be the property of the Owner-Trustee. If, on or prior to the 60th day after the termination of this Lease with respect to any

Units, any such Units (including any Replacement Units) have not been transported to such point or points as provided in this § 14, the Lessee shall pay to the Owner-Trustee the Fair Market Value of each such Unit not so transported or replaced by a Replacement Unit.

Fair Market Value shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an arm's-length transaction between an informed and willing buyer-user (other than (i) a lessee currently in possession or (ii) a used-equipment dealer) and an informed and willing seller under no compulsion to sell and, in such determination, costs of removal from the location of then current use shall not be a deduction from such value. If, after 60 days from the end of the first 60 day period after the termination of this Lease with respect to any Unit not transported to any such point or not replaced by a Replacement Unit as provided in this § 14, the Owner-Trustee and the Lessee are unable to agree upon a determination of the Fair Market Value of such Unit, such value shall be determined in accordance with the foregoing definition by the procedure set out in the second paragraph of § 13 of this Lease for the determination of Fair Market Rental.

Commencing with the expiration of the original term or any extended term, as the case may be, of this Lease with respect to any Units, the Lessee will deliver to the Owner-Trustee Officer's Certificates (as that term is defined in the Security Document) in the manner described in the next succeeding sentence and to the effect that (a) no Event of Default or any event which with lapse of time or notice or both would constitute an Event of Default had occurred or was continuing as of such date; (b) no liens, charges, security interests or other encumbrances (except for any encumbrances resulting from any claims against the Owner-Trustee or the Owner not related to, or arising out of, the transaction contemplated by the Operative Agreements) were, as of such date, imposed on or with respect to any such Unit or any Replacement Unit, any accession thereto, or the interest of the Owner-Trustee or the Owner therein; and (c) such Units and any Replacement Units have been returned to the Owner-Trustee pursuant to this § 14 in the same operating order, repair and condition required by the first or second paragraph of this § 14, as appropriate. The Officer's Certificate described in clause (a) in the preceding sentence shall be furnished on the expiration of the original term and any extended term of this Lease, and the Officer's Certifi-

cates described in clauses (b) and (c) in the preceding sentence shall be furnished on a monthly basis, beginning 30 calendar days after the expiration of the original term and any extended term of this Lease, and such Officer's Certificate shall cover each Unit and each Replacement Unit returned during the preceding 30 calendar days and shall apply to each such Unit or Replacement Unit as of the date such Unit or Replacement Unit was returned pursuant to the provisions of the first or second paragraph of this § 14, as appropriate.

§ 15. Recording. The Lessee, at its sole cost and expense, will cause this Lease, the Security Document, the Lease Assignment, each Sublease and any other sublease relating to the use of Units, each Sublease Assignment, each Second Assignment and any assignment hereof or thereof to be duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act. The Lessee will undertake the filing, registering, deposit, and recording required of the Owner-Trustee under the Security Document and will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, reregister, deposit and redeposit or rerecord whenever required) any and all further instruments required by law or reasonably requested by the Owner-Trustee or the Trustee for the purpose of proper protection, to their satisfaction, of the Owner-Trustee's and the Trustee's respective interests in the Units, or for the purpose of carrying out the intention of this Lease, the Security Document, the Lease Assignment, each Sublease Assignment and each Second Assignment.

The Lessee will promptly furnish to the Trustee and the Owner-Trustee evidence of all such filing, registering, depositing or recording, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Trustee and the Owner-Trustee.

§ 16. Obligations of Owner-Trustee Under Security Document; Additional Rentals. In the event that there are any expenses incurred or loss of principal (including interest accrued thereon at time of purchase) in connection with any purchase, sale or redemption by the Trustee of Investments made pursuant to Section 8.04 of the Security Document, the rentals thereafter payable by the Lessee in respect of Units settled for after such expenses or loss arose shall be increased by such amount as shall, in the reasonable opinion

of the Owner, cause the Owner's net return (computed on the same assumptions as were utilized by the Owner in originally evaluating this transaction) to equal the net return that would have been realized by the Owner if such expenses or loss had not arisen.

In the event that the Owner-Trustee shall become obligated to make any payment (other than payments in settlement for Equipment pursuant to the Security Document or the Purchase Order Assignment or payments or rentals required to be made in respect of the principal of or interest on the Trust Certificates) or to perform any obligations pursuant to the Security Document not covered by the provisions of this Lease, the Lessee shall pay such additional rentals hereunder and perform such obligations so that all of the Owner-Trustee's obligations (other than as aforesaid) pursuant to the Security Document shall be fully complied with, without regard for any limitation of liability of the Owner-Trustee contained in the Security Document.

§ 17. Owner-Trustee's Right To Perform for the Lessee. If the Lessee fails to perform or comply with any of its agreements contained herein, the Owner-Trustee may upon notice to the Lessee itself perform or comply with such agreement, and the amount of the reasonable cost and expenses of the Owner-Trustee incurred in connection with such performance or compliance, together with interest on such amount at the rate of 10-1/2% per annum or such lesser amount as shall be legally enforceable, shall be payable by the Lessee upon demand.

§ 18. Interest on Overdue Rentals. Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay an amount equal to interest at a rate of 10-1/2% per annum 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.

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

if to the Owner-Trustee, at Main Street at Broadway, Salt Lake City, Utah 84111, with a copy to First Security Bank of Utah, National Association, at 79 South Main Street, Salt Lake City, Utah 84111, attention of Trust Department, Corporate Trust Division;

if to the Lessee, at Two Embarcadero Center, San Francisco, California 94111, attention of Vice President, Finance;

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

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

It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, undertakings and agreements herein made on the part of the Owner-Trustee are each and every one of them made and intended not as personal representations, undertakings and agreements by the Owner-Trustee, or for the purpose or with the intention of binding the Owner-Trustee personally but are made and intended for the purpose of binding only the Trust Estate (as defined in the Trust Agreement) and this Lease is executed and delivered by the Owner-Trustee solely in the exercise of the powers expressly conferred upon the

Owner-Trustee as Owner-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 the Owner-Trustee (except as provided in Section 4.01 of the Trust Agreement) or on account of any representation, undertaking or agreement of the Owner-Trustee, as Owner-Trustee (except as provided in Section 4.01 of the Trust Agreement) either expressed or implied, all such personal liability, if any, being expressly waived and released by the Lessee and by all persons claiming by, through or under the Lessee; provided, however, that the Lessee or any person claiming by, through or under the Lessee making claim hereunder, may look to said Trust Estate for satisfaction of the same.

§ 21. 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.

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

§ 22. 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 Trustee shall be deemed to be the original counterpart. Although for convenience this Lease is dated as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

§ 23. Law Governing. The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of Utah; provided, however, that the parties shall be entitled to all rights conferred

by Section 20c of the Interstate Commerce Act.

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

SSI RAIL CORP.,

by *[Signature]*  
Vice President

[CORPORATE SEAL]

Attest:

*[Signature]*  
Secretary

FIRST SECURITY STATE BANK,  
not in its individual capacity  
but solely as Owner-Trustee,

by *[Signature]*  
Authorized Officer

[SEAL]

Attest:

*[Signature]*  
Authorized Officer

STATE OF CALIFORNIA, )  
 ) ss.:  
COUNTY OF SAN FRANCISCO, )

On this 7th day of June 1977, before me personally appeared Donald Gleason, to me personally known, who, being by me duly sworn, says that he is a Vice President of SSI RAIL CORP., 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.

Terry L. Russell  
Notary Public

[Notarial Seal]

My Commission Expires



STATE OF UTAH, )  
 ) ss.:  
COUNTY OF SALT LAKE, )

On this 8 day of June 1977, before me personally appeared Jay D. Knudsen, to me personally known, who, being by me duly sworn, says that he is an Authorized Officer of First Security State Bank, that one of the seals affixed to the foregoing instrument is the seal of said bank, that said instrument was signed and sealed on behalf of said bank by authority of its By-laws, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said bank.

Luchia B. Fisher  
Notary Public

[Notarial Seal]

My Commission Expires

November 21, 1979

## Schedule A to the Lease

<u>Type</u>	<u>Quantity</u>	<u>Company Car Numbers (Incl.)</u>	<u>Estimated Base Price</u>	<u>Total</u>	<u>Estimated Time of Delivery</u>
70 ton, 50' 6" Boxcars with double 8' sliding doors and 10" end- of-car cushioning AAR Mechanical Designation XM	50	CPLT 7700- 7749	\$30,000	\$1,500,000	June 23, 1977
70 ton, 50' 6" Boxcars with 10' sliding doors and 10" end-of- car cushioning AAR Mechanical Designation XM	200	AN 5000- 5199	30,000	6,000,000	June 10, 1977

## Schedule B to the Lease

Casualty Values\*

<u>Rental Payment Date</u>	<u>Percentage</u>	<u>Rental Payment Date</u>	<u>Percentage</u>
July 31, 1977	107.8351	April 30, 1985	69.5142
October 31, 1977	107.8351	July 31, 1985	68.0818
January 31, 1978	109.1137	October 31, 1985	66.6144
April 30, 1978	108.8974	January 31, 1986	65.1109
July 31, 1978	109.2466	April 30, 1986	63.5907
October 31, 1978	109.4958	July 31, 1986	62.0533
January 31, 1979	109.6725	October 31, 1986	60.4983
April 30, 1979	109.7738	January 31, 1987	58.9252
July 31, 1979	109.8409	April 30, 1987	57.3345
October 31, 1979	109.8222	July 31, 1987	55.7260
January 31, 1980	109.7391	October 31, 1987	54.0990
April 30, 1980	109.5892	January 31, 1988	52.4532
July 31, 1980	109.4039	April 30, 1988	50.7892
October 31, 1980	102.3481	July 31, 1988	49.1066
January 31, 1981	101.8410	October 31, 1988	47.4048
April 30, 1981	101.2458	January 31, 1989	45.6862
July 31, 1981	100.6000	April 30, 1989	43.9514
October 31, 1981	99.8576	July 31, 1989	42.1915
January 31, 1982	99.0370	October 31, 1989	40.4234
April 30, 1982	98.1349	January 31, 1990	38.6379
July 31, 1982	97.1835	April 30, 1990	36.8359
October 31, 1982	89.1056	July 31, 1990	34.9952
January 31, 1983	88.0022	October 31, 1990	33.1586
April 30, 1983	86.8504	January 31, 1991	31.3042
July 31, 1983	85.6703	April 30, 1991	29.4327
October 31, 1983	84.4613	July 31, 1991	27.5121
January 31, 1984	83.2226	October 31, 1991	25.8542
April 30, 1984	81.9535	January 31, 1992	23.8852
July 31, 1984	80.6534	April 30, 1992	21.8678
October 31, 1984	72.2771	July 31, 1992	20.5000
January 31, 1985	70.9124		

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\* The Casualty Value of each Unit as of any rental payment date shall be that percentage of the Purchase Price of such Unit as is set forth in the above schedule opposite each such rental payment date.

SCHEDULE C  
TO THE LEASE

THIS INCOME TAX INDEMNIFICATION AGREEMENT, dated as of \_\_\_\_\_, 1977 is between SSI RAIL CORP., a Delaware corporation ("Lessee"), and PACIFIC SYSTEMS, INC., a California corporation ("Trustor" and sometimes "Lessor").

Trustor has created a trust under the Trust Agreement dated as of the date hereof ("Trust Agreement") with First Security State Bank, as Trustee ("Owner Trustee") and pursuant to the Trust Agreement has authorized and directed Owner Trustee, solely on behalf of the Trust to enter into an Equipment Trust Agreement ("Security Agreement") dated as of the date hereof between Owner Trustee and First Security Bank of Utah, National Association, as Trustee, providing for the leasing by Owner Trustee of certain Units of railroad equipment ("Equipment") therein described and for the leasing by Owner Trustee to Lessee pursuant to a Lease of Railroad Equipment ("Lease") dated as of the date hereof, between Owner Trustee and Lessee, of the Equipment.

WHEREAS, as an inducement to Trustor to direct Owner Trustee to enter into the Lease and to lease the Equipment to Lessee, and as an inducement to Trustor to provide funds to Owner Trustee for a portion of the purchase price of the Equipment, Lessee agrees to indemnify Trustor against the loss of certain benefits under the Lease;

NOW, THEREFORE, in consideration of the premises and of other good and valuable consideration, the parties hereto agree as follows:

ARTICLE ONE

1. Definitions

The following terms, (except as otherwise expressly provided or unless the context otherwise requires) for all purposes of this Agreement shall have the respective meanings as specified below:

(a) "Affiliate", "Cost", "Owner", "Trust Certificates" and "Trustee", as defined in Article One of the Security Agreement;

(b) "Code" shall mean the Internal Revenue Service Code of 1954, as amended;

(c) "Documents" shall mean collectively the:

(i) Participation Agreement, dated the date hereof, among Lessee, Itel Corporation, Lessor, Owner Trustee and the several Purchasers named in Exhibit A thereto;

(ii) the Security Agreement;

(iii) the Lease;

(iv) the Trust Agreement; and

(v) all Exhibits, Annexes and Schedules which form part of any of the foregoing agreements.

(d) "Casualty Value" as defined in Section 7 of the Lease.

(e) "Event of Default" as defined in Section 10 of the Lease.

## ARTICLE TWO

### 2. Indemnity for Loss of Tax Benefits. Assumptions.

It is agreed by and between Lessee and Lessor that they have made the following assumptions in their negotiation of and agreement to the terms of this Agreement and the Lease:

2.01 For all federal, state and local income tax purposes:

(a) The trust under the Trust Agreement (the "Trust") will be treated as a grantor trust under §671 et seq. of the Code and Trustor shall be treated as the owner thereof;

(b) Trustor, as owner of such grantor trust, will be entitled in computing its taxable income to take into account each item of income, gain, loss, credit or deduction of the Trust (for federal income tax purposes in accordance with §671 of the Code, and for state and local tax purposes in accordance with applicable provisions of law);

(c) The Lease will be treated as a lease, under which the Trust will be treated as purchaser, original user, owner and lessor of the Equipment and Lessee will be treated as lessee.

(d) The Trust as the owner of the Equipment, and Trustor as owner of the Trust, shall be entitled to such deductions, credits and other benefits to which an owner of property is entitled.

(e) The basis of the Equipment in the hands of the Trust will be equal to the Equipment Cost (determined for federal income tax purposes without regard to increases in basis under section 1012 of the Code attributable to expenditures made by or on behalf of Owner Trustee or Trustor other than Equipment Cost, and in a similar manner for state and local tax purposes).

(f) The gross income of the Trust from the Equipment shall not exceed the rent as set forth in the Lease ("Rent") and that such Rent will be paid on the dates and in the amounts set forth in the Lease.

(g) The Trust will be entitled to deduct

- (i) the interest paid or accrued on the Trust Certificates (for federal income tax purposes pursuant to section 163 of the Code, and for state and local income tax purposes pursuant to applicable provisions of law),
- (ii) the fees, if any, payable to Owner Trustee under the terms of the Trust Agreement and by Owner Trustee under the Security Agreement (for federal income tax purposes pursuant to section 162 of the Code, and for state and local income tax purposes pursuant to applicable provisions of law) (such deductions being hereinafter in this Agreement called the "Interest and Fees Deduction").

2.02 For all federal income tax purposes:

- (a) The Equipment constitutes "section 38 property" (within the meaning of section 48(a) of the Code) and the Trust will be entitled to take into account in its taxable year ending December 31, 1977 as "qualified investment" (within the meaning of section 46(c) of the Code) not less than the Equipment Cost (determined without regard to increases in basis under section 1012 of the Code attributable to expenditures made by or on behalf of Owner Trustee or Trustor other than Equipment Cost) and such qualified investment will result in

Trustor being entitled to investment credit under section 38 of the Code equal to not less than 10 percent of such qualified investment in its taxable year or years during which or with which ends the taxable year of the Trust referred to above and such investment credit will not be recaptured (such investment credit being hereinafter in this Agreement called the "Investment Credit").

(b) (i) The Trust will be entitled to depreciation on the Equipment from and after January 1, 1977;

(ii) the Trust will be entitled to elect to use any method of accelerated depreciation permitted by section 167(b)(2) or (3) of the Code and to determine the "reasonable allowance" for depreciation of the Equipment pursuant to section 167(m) of the Code and section 1.167(a)-(11) of the Income Tax Regulations under the Code;

(iii) the Equipment falls within Asset Guideline Class No. 00.25 of Revenue Procedure 77-10;

(iv) the Equipment may be depreciated over a period of 12 years to 10% salvage value (after taking into account the reduction in salvage value provided for in section 167(f) of the Code); and

(v) the Trust may at any time during the asset depreciation period for the Equipment and without the prior consent of the Commissioner of Internal Revenue (or other governmental agency) change from the double-declining balance method of depreciation to the sum-of-the-years-digits method. None of the depreciation referred to herein shall be recaptured prior to the expiration of the anticipated term of the Lease. (The depreciation with respect to the Equipment as so computed is hereinafter in this Agreement called the "ADR Deduction".)

(c) Subject to Section 4.05 hereof all amounts received by the Trust pursuant to the Lease with respect to the Equipment (hereinafter in this Agreement called the "Income") and all losses or deductions incurred by the Trust in connection with the Equipment (hereinafter in this Agreement called "Deductions") shall constitute income or deductions, as the case may be, from sources within the United States for purposes of the foreign tax credit provisions of the Code (sections 78 and 901 through 905) and section 861 of the Code (hereinafter in this Agreement called "U.S. Source Income" or "U.S. Source Deductions", as the case may be).

2.03 For all state and local income tax purposes:

(a) The Trust will be entitled to depreciation on the Equipment for state and local tax purposes under the most accelerated method of depreciation allowable by applicable state or local law in effect on the date of the execution of this Agreement on Equipment used as permitted in the Lease. None of such depreciation shall be recaptured during the term of the Lease. Trustor will be entitled to take into account such depreciation in the manner provided by Section 2.01(b). (Such depreciation is hereinafter in this Agreement called the "State Depreciation Deduction".)

### ARTICLE THREE

3.01 Certain Representations Warranties, Covenants, etc. of Lessee. Lessee represents, warrants, covenants and agrees that neither Lessee nor any of its Affiliates will at any time take any action or file any returns or other documents inconsistent with the provisions of this Agreement and that Lessee and any of its Affiliates will file such returns, maintain such records, take such actions and execute such documents as may be reasonable and necessary to facilitate accomplishment of the intent thereof. Lessee covenants and agrees to maintain sufficient records as shall be reasonably necessary to verify the actual basis for the matters referred

to above and will upon request by five days' prior notice make copies of such records available for inspection by Trustor or the authorized agent of Trustor. Lessee also covenants and agrees to maintain sufficient records to establish the physical locations of the Equipment during the term of the Lease and any renewal period or such other information as Trustor shall reasonably request in order to make a determination as to whether the income from and deductions with respect to the Equipment are derived from, or allocable to, sources within the United States. Lessee shall make the records referred to in the preceding two sentences available for inspection by Owner Trustee and Trustor, or their respective authorized agents, during normal business hours at its office at Two Embarcadero Center, San Francisco, California 94111 upon request by fifteen days' prior notice from Owner Trustee or Trustor. Lessee shall, at its expense, upon request by Owner Trustee or Trustor, provide to such party a copy of such records which shall be certified to be a true copy by an affidavit attached thereto and executed by an officer of Lessee. Notwithstanding the preceding sentence, Owner Trustee and Trustor or the authorized agents of either of them shall have the right to make copies and extracts of any such records at their own expense.

ARTICLE FOUR

4.01 Loss of Investment Credit. If for any reason there shall be a disallowance, elimination, reduction, disqualification or recapture ("Loss of Investment Credit"), in whole or in part, with respect to Trustor, of the Investment Credit, Lessee shall pay to Trustor an amount equal to the sum of (i) an amount which, after deduction of all taxes required to be paid by Trustor in respect of the receipt of such amount under the laws of any Federal, state or local government or taxing authority, shall equal (A) the amount of Investment Credit lost and (B) the amount of any interest and Additions to Tax payable by Trustor as a result of such Loss of Investment Credit which do not reduce Trustor's Federal, state and local income taxes payments in the year paid or accrued, plus (ii) the amount of any interest and any Additions to Tax payable by Trustor as a result of such Loss of Investment Credit which reduce Trustor's Federal, state and local income tax payments in the year paid or accrued. (For purposes of this Agreement, "Additions to Tax" shall mean those penalties imposed under Federal, state and local income tax laws and those payments described in Sections 6651(a)(3), 6653, 6655 of the Code and corresponding provisions of the state and local income tax laws.)

4.02 Loss of Depreciation Deduction. If for any reason there shall be a disallowance, elimination, recapture, reduction or disqualification ("Loss of Depreciation Deduction"), in whole or in part, with respect to Trustor, of any ADR Deduction or State Depreciation Deduction, Lessee shall pay to Trustor with respect to any such Loss of Depreciation Deduction an amount equal to: (i) for the period prior to the payment by Trustor of additional Federal, state and local tax(es) as a result of such Loss of Depreciation Deduction, an amount equal to the sum of (A) an amount which, after deduction of all taxes required to be paid by Trustor in respect of the receipt of such amount under the laws of any Federal, state and local taxing authority, shall equal the amount of (1) any additional Federal, state and local tax liability plus (2) any interest and Additions to Tax payable by Trustor as a result of such Loss of Depreciation Deduction which do not reduce Trustor's Federal, state and local income tax payments in the year paid or accrued, plus (B) the amount of any interest and any Additions to Tax payable by Trustor as a result of such Loss of Depreciation Deduction which reduce Lessor's Federal, state and local income tax payments in the year paid or accrued, and (ii) for the period after such payment by Trustor, an amount, computed and paid separately for each taxable year of Trustor, equal to the sum of (A) an amount which, after deduction of all taxes required to be

paid by Trustor in respect to the receipt of such amount under the laws of any Federal, state or local government or taxing authority, shall equal the amount of any additional Federal or state and local taxes payable by Trustor as a result of such Loss of Depreciation Deduction for the taxable year of Trustor for which computation is made, plus (B) the amount of any interest and any Additions to Tax payable by Trustor as a result of such Loss of Depreciation Deduction which reduce Trustor's Federal, state and local income tax payments in the year paid or accrued.

4.03 Loss of Interest Deduction. If for any reason, regarding interest paid or payable under the Trust Certificates, there shall be a disallowance, elimination, reduction or disqualification of the applicable interest expense ("Loss of Interest Deduction") as a deductible expense, by Trustor, for Federal, state and local income tax purposes, Lessee shall pay an amount equal to the sum of (a) an amount which, after deduction of all taxes required to be paid by the Trustor in respect of the receipt of such amount under the laws of any Federal, state or local government or taxing authority, shall be equal to the amount of any additional tax liability of, plus any interest and Additions to Tax payable by, Trustor as a result of such Loss of Interest Deduction which do not reduce Trustor's Federal, state and local income tax liability in the year paid or accrued,

plus (b) the amount of any interest and Additions to Tax payable by Trustor as a result of such Loss of Interest Deduction which reduce Trustor's Federal, state and local income tax liability in the year paid or accrued.

4.04 Inclusion. If for any reason, Trustor shall be required to include in gross income with respect to the transactions contemplated by the Documents an amount other than Rent in the amounts and at the times specified in the Lease (hereinafter referred to as an "Inclusion") and there is no equal deduction by reason of such Inclusion in the same taxable year of Trustor, Lessee shall pay to Trustor with respect to an Inclusion an amount equal to the sum of (a) an amount which, after deduction of all taxes required to be paid by Trustor in respect of the receipt of such amount under the laws of any Federal or state and local taxing authority, shall equal (i) the amount of any additional Federal or state and local tax liability resulting from such Inclusion and (ii) the amount of any interest and any Additions to Tax payable by Trustor as a result of such Inclusion which do not reduce Trustor's Federal, state and local income tax payments in the year paid or accrued, plus (b) the amount of any interest and Additions to Tax payable by Trustor as a result of such Inclusion which reduce Trustor's Federal or state and local income tax payments in the year paid or accrued.

4.05 Source of Income. If for any reason whatsoever any income or deductions shall not constitute U.S. source income or U.S. source deductions, as the case may be, for a taxable year of Trustor, Lessee shall pay an amount which shall after taking into consideration all fees, taxes, and/or other charges attributable thereto be equal to (i) the excess of the foreign tax credit under §901 of the Code which would have been allowed to Trustor with respect to the taxable year and all prior taxable years if such Trustor had not participated in the transaction contemplated by the agreement over the foreign tax credit actually allowed to Trustor under the notification or filing which gave rise to the loss with respect to such years and (ii) the amount of any interest or penalties (including any Additions to Tax because of underpayment of estimated tax) which may be payable by Trustor in connection with such foreign tax credit. Such amount payable under this Section 4.05 shall be paid in a single payment payable on or prior to the later of (a) the date Trustor shall pay the tax increase resulting from such loss (or suffers a reduction in the amount of any refund Trustor would have been entitled to receive but for the loss) or (b) 30 days after written notice to Lessee by Trustor.

If Trustor actually receives an amount paid by Lessee pursuant to this Section 4.05 with respect to a taxable year and if with respect to any subsequent taxable year the

foreign tax credit allowed to Trustor shall exceed the foreign tax credit which would have been allowed with respect to such taxable year if Trustor had not participated in the transactions contemplated by this agreement, then Trustor shall pay Lessee an amount equal to the sum of such excess, plus any tax savings realized under the laws of any Federal, state or local government or taxing authority of the United States, or under the laws of any taxing authority or governmental subdivision of any foreign country as a result of any payment made pursuant to this sentence, when, as, if and to the extent such Federal income or other tax savings are realized; provided that (a) such sum shall not exceed the amount previously paid by Lessee to Trustor pursuant to this Agreement with respect to such Loss of Tax Benefits for the amounts previously paid to Lessee pursuant to this Section 4.05, (b) such amounts shall not be payable before such time as Lessee shall have made all payments or indemnities then due pursuant to this Agreement, (c) no event of default (or an event which with notice or elapse of time or both would constitute an event of default) shall have occurred or be continuing.

4.06 Trustee Taxes. If for any reason Owner-Trustee or the entity created by the Trust Agreement shall be required to pay any taxes, fees or other charges (including interest and Additions to Tax thereon) imposed by any Federal, state or local government or tax authority which are based

on or measured by net income or items of tax preference (or any such taxes, fees or other charges which are based on or measured by gross income or gross receipts which may hereafter be imposed as a substitute for or in relief of (and not in addition to) taxes based on or measured by net income), other than taxes, fees or other charges which are based on or measured by (a) compensation received by Owner Trustee for its services as Owner Trustee, (b) indemnity payments (and interest thereon) pursuant to this Agreement as a result of their participation in the transactions contemplated by the Documents, and (c) payments pursuant to Sections 6 and 9 of the Lease ("Trustee Taxes"), Lessee shall compensate Owner Trustee or the entity created by the Trust Agreement for Trustee Taxes. For purposes of definition and explanation, the amount payable by reason of any Trustee Taxes shall be equal to the sum (i) an amount which, after deduction of all taxes required to be paid by Owner Trustee or the entity created by the Trust Agreement in respect of the receipt of such amount under the laws of any Federal, state or local government or taxing authority, shall be equal to the amount of any Trustee Taxes plus any interest and Additions to Tax payable by Owner Trustee or the entity created by the Trust Agreement as a result of the imposition of the Trustee Taxes which do not reduce the Federal, state and local income tax payments of Owner Trustee or the entity created by the Trust Agreement in the year paid or

accrued, plus (ii) the amount of any interest and Additions to Tax payable by Owner Trustee or the entity created by the Trust Agreement as a result of the imposition of Trustee Taxes which reduce the Federal, state and local tax payments of Owner Trustee or the entity created by the Trust Agreement in the year paid or accrued.

#### ARTICLE FIVE

5.01 Payments; Notice. If Trustor becomes entitled to claim payment under this Agreement on account of any Loss of Investment Credit, Loss of Depreciation Deduction, Loss of Interest Deduction or Inclusion (collectively referred to as "Loss of Tax Benefits"), Trustor shall give Lessee written notice of such claim, which notice shall be accompanied by a statement describing the Loss of Tax Benefits and setting forth the computation of the amount so payable. The amount payable to Trustor shall be paid on or prior to the later of (i) the date that Trustor (or the consolidated Federal taxpayer group of which Trustor is a party) shall pay the tax increase resulting from such Loss of Tax Benefits (or suffers a reduction in the amount of any refund which Trustor would have been entitled to receive but for the Loss of Tax Benefits) or (ii) 30 days after the date of the notice described in this Section 5.01.

5.02 Offsetting Benefits. Notwithstanding any provision to the contrary herein, if the event which results in Loss of Tax Benefits for which the full amount has been paid pursuant to this Agreement has the effect of reducing Lessor's tax liability in such year or any prior or subsequent years, Trustor shall pay to Lessee, provided that no Event of Default or event which with the lapse of time or notice, or both, would become an Event of Default shall have occurred or be continuing, within 30 days after Trustor has filed its income tax return for the year in which its tax payments have been reduced the sum of (a) the amount by which Trustor's tax liability has been reduced as a result of such Loss of Tax Benefits, and (b) the reduction in tax payments attributable to the deduction of the amount described in clause (a) of this sentence, provided however that no amount paid under this Section 5.02 shall exceed the amounts paid by Lessee to Trustor under this Agreement in respect of such loss of Tax Benefits.

5.03 Exceptions. Notwithstanding any provision to the contrary herein, trustor shall not be entitled to a payment under this Agreement on account of any Loss of Tax Benefits which result solely from one or more of the following events (hereinafter collectively "Exclusions from Indemnity"):

(a) a voluntary disposition of the Equipment or the Lease or its interest in the Trust by Owner Trustee or Trustor other than pursuant to its rights resulting from Event of Default.

(b) a failure of Trustor to timely or properly claim as contemplated herein the Investment Credit, the ADR Deduction, the State Depreciation Deduction or the Interest and Fees Deduction in its tax return (or the consolidated Federal taxpayer group of which Trustor is a part), provided such failure shall not result from actions which Trustor would have been eligible or allowed to take if the event which results in the Loss of Tax Benefits had not occurred, or

(c) any event which by the terms of this Lease requires payment by Lessee of the Casualty Value, if such Casualty Value is thereafter actually paid by Lessee, or

(d) the failure of Trustor to have sufficient liability for Federal income tax against which to credit the Investment Credit or sufficient income to benefit from the ADR Deduction, the State Depreciation Deduction, or the Interest and Fees Deduction.

(e) an act of Lessor which results in a disqualifying change in the nature of Lessor's business or Lessor's liquidation thereof.

(f) a foreclosure by any person other than Lessor or Owner Trustee or either of their agents or employees, of a lien on either of their interests in the Equipment, which foreclosure results solely from an act of Lessor or Owner Trustee and does not arise in connection with the transactions contemplated by the Documents.

5.04 Procedure. Upon receipt by Trustor of a written notification from any Federal, state or local taxing authority of a proposed Loss of Benefits for which an amount may be payable by Lessee in accordance with this indemnity (called a "Disallowance"), Trustor shall promptly notify Lessee of said Disallowance after receipt of such written notification from the applicable taxing authority (which notice to Lessee shall include all relevant information relating to such Disallowance which may be particularly within the knowledge of Trustor).

Trustor shall be under no obligation whatsoever to contest such Disallowance unless:

(a) Lessee requests Trustor to contest such Disallowance within fifteen days after receipt by Lessee of notice from Trustor and within thirty days thereafter independent tax counsel satisfactory to Trustor selected by Lessee ("Independent Tax Counsel") renders a written opinion that there is a reasonable basis to contest such Disallowance; and

(b) Lessee agrees to pay on demand all reasonable expenses, including, without limitation, the fees and disbursements of such Independent Tax Counsel, accountants, and investigators, paid or incurred by Trustor in connection with contesting such claim.

Trustor, at its sole option, may choose to forego any and all administrative appeals, proceedings, hearings and conferences with the relevant taxing authority in respect of such Disallowance, but shall contest the Disallowance in a court of competent jurisdiction which court shall be selected by Trustor at its sole option.

At all stages of any contest of a Disallowance, Trustor shall conduct the contest by any proceedings available under applicable law, regulations or court rules in which in its sole discretion it determines to pursue, and shall determine in its sole and exclusive discretion whether (A) to petition (in the case of a Disallowance by the Internal Revenue Service, the Tax Court of the United States, or in the case of a Disallowance by another taxing authority, in a similar forum), for a redetermination of the deficiency proposed to be assessed by the taxing authority as a result of the Disallowance or (B) to pay the deficiency and institute an action in a court of competent jurisdiction for a refund of taxes paid.

If after actual receipt by Trustor of an amount paid by Lessee and attributable to a Disallowance, the extent of such Disallowance shall be established by the final judgment or decree of a court or administrative agency having jurisdiction thereof or a settlement with the consent of Lessee, within 30 days, Trustor shall pay to Lessee all or the portion of the amount received by Trustor and paid by Lessee with respect to such Disallowance which Trustor did not incur because of such final judgment or compromise, plus simple interest (at the rate which is applicable under Section 6621 of the Code from time to time) from the date of actual receipt by Trustor to the date of payment by Trustor to Lessee hereunder.

Notwithstanding the foregoing, Trustor shall not be required to make any payment hereunder so long as an Event of Default (or an event which with the passage of time or notice or both would constitute an Event of Default) shall have occurred and be continuing.

#### ARTICLE SIX

6.01 Survival. All of Trustor's rights and privileges arising from the indemnities contained in this Agreement shall survive the expiration or other termination of the Lease.

6.02 Miscellaneous.

(a) For purposes of this Agreement wherever reference is made to the income tax liability or the income tax return of Trustor, such reference shall, for any taxable year of Trustor for which Trustor is a member of an affiliated group of domestic corporations which files a consolidated, joint or combined income tax return for federal, state, or local tax purposes, as the case may be, in which Trustor joins, be deemed to refer to the consolidated, joint or combined income tax liability of such group or to the consolidated, joint or combined income tax return of such group, as the case may be.

(b) The provisions of this Agreement shall control and supersede anything to the contrary contained in the Lease and, subject to the Exclusions from Indemnity in Section 5.04 hereof, shall apply even if the Loss (as defined herein) is a result of an act or failure to act permitted under this Agreement or under the Lease.

(c) All communications and notices provided for herein shall be in writing and shall become effective when deposited in the U.S. mail with proper postage for first-class mail pre-paid addressed (i) if to Trustor, at its Leasing Department #656, P. O. Box 37070, San Francisco, California 94137, and (ii) if to Lessee, at Two Embarcadero Center, San Francisco, California 94111, Attention: President.

(d) This Agreement shall be governed by and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the parties hereto have each caused this Agreement to be duly executed by their respective officers thereunto duly authorized as of the day and year first above written.

PACIFIC SYSTEMS, INC.

SSI RAIL CORP.

By \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_

GUARANTY AGREEMENT

GUARANTY AGREEMENT dated as of May 15, 1977, between ITEL CORPORATION, a Delaware corporation (hereinafter called the Guarantor) and First Security State Bank, not in its individual capacity but solely as Owner-Trustee (hereinafter called the Owner-Trustee) under a Trust Agreement dated as of the date hereof with Pacific Systems, Inc. (hereinafter called the Beneficiary).

WHEREAS the Owner-Trustee and SSI Rail Corp. (hereinafter called the Lessee) are entering into a Lease of Railroad Equipment dated as of the date hereof (hereinafter called the Lease), providing for the leasing by the Owner-Trustee to the Lessee of certain units of railroad equipment (hereinafter called the Units);

WHEREAS the Lessee and the Beneficiary are entering into an Income Tax Indemnification Agreement dated as of the date hereof (hereinafter called the Indemnity Agreement), pursuant to which the Lessee makes certain representations and warranties with respect to the Units and agrees to indemnify the Beneficiary under certain circumstances for the unavailability or loss of certain tax benefits; and

WHEREAS as an inducement to the Beneficiary to finance a portion of the purchase price of the Units, and as an inducement to the Owner-Trustee to lease the Units to the Lessee, the Guarantor agrees to guarantee as hereinafter provided all obligations and covenants of the Lessee under the Lease and the Indemnity Agreement;

NOW, THEREFORE, in consideration of the execution and delivery of the Lease and of other good and valuable consideration and the covenants hereinafter contained, the parties hereto agree as follows:

SECTION 1. Upon the failure of the Lessee to pay to the Owner-Trustee or the Beneficiary, as and when due, any sum of money, whether for rental, interest, fees, charges, indemnification to the Owner-Trustee or the Beneficiary, or otherwise, under the Lease or the Indemnity Agreement (all such sums being hereinafter collectively called Amounts,

and any portion thereof which is then due and unpaid by the Lessee being hereinafter called Defaulted Amounts), the Owner-Trustee may make a written demand upon the Guarantor to perform hereunder.

SECTION 2. The Guarantor hereby irrevocably and unconditionally agrees upon receipt of the demand referred to in Section 1 hereof to pay all sums of Defaulted Amounts required to be made by the Lessee pursuant to the Lease or the Indemnity Agreement to the Owner-Trustee or the Beneficiary, respectively, at the times and in the manner therein specified including any grace period with respect thereto specified in the Lease or the Indemnity Agreement, as though the Owner-Trustee had not exercised its option with respect to such Defaulted Amounts or any portion thereof to accelerate Amounts pursuant to the terms of the Lease or exercised its remedies thereunder and whether or not such option shall have been exercised; provided, however, that if the written demand referred to in Section 1 hereof shall specify that the Lessee has failed to make payment of any sum of money due and owing as a result of an Event of Default specified in (a) § 10(C) or § 10(J) of the Lease as such section relates directly to the Guarantor or (b) § 10(I) of the Lease, the Guarantor shall upon receipt of said notice pay to the Owner-Trustee at the times and in the manner specified in the Lease all sums of Defaulted Amounts, including any portion of said Defaulted Amounts due and owing by the Lessee as a result of the Owner-Trustee's having exercised its option to accelerate Amounts or having exercised its remedies with respect to such Event of Default pursuant to the Lease.

SECTION 3. The Guarantor's obligation to make such payments as provided in Section 2 hereof shall continue so long as and to the extent that the Lessee shall not make such payments and the Guarantor's obligation provided in Section 2 hereof shall be suspended over any period of time during which and to the extent that all regularly scheduled payments shall have been made timely by and on behalf of the Lessee, such suspension to begin in the calendar month in which any such payment is made by the Lessee. If the Owner-Trustee or the Beneficiary shall exercise its remedies under the Lease or the Indemnity Agreement, respectively, and any deficiency remains owing, as provided in the Lease or the Indemnity Agreement, the Guarantor agrees to continue to make payments under Section 2 to the extent necessary until such deficiency has been paid in full.

SECTION 4. All payments made by the Guarantor hereunder shall pro tanto discharge the Lessee of its obligation to pay the Amounts.

SECTION 5. Nothing in this Agreement shall be deemed or construed to impair, alter or modify any right or remedy the Owner-Trustee or the Beneficiary may have against the Lessee under the Lease or the Indemnity Agreement, respectively, including the Owner-Trustee's or the Beneficiary's right under the Lease or the Indemnity Agreement, respectively, to enforce its remedies under the Lease or the Indemnity Agreement, respectively.

SECTION 6. The Guarantor's obligations hereunder are independent of the obligations of the Lessee under the Lease and the Indemnity Agreement, and shall be unconditional, irrespective of the genuineness, validity, regularity or enforceability of the Lease or the Indemnity Agreement, or of any other circumstance which might otherwise constitute a discharge of the Guarantor from its obligations under this Agreement. A separate action or actions may be brought and prosecuted against the Guarantor whether action is brought against the Lessee or whether the Lessee is joined in any such actions, and the Guarantor waives the benefit of any statute of limitations affecting its liability hereunder or the enforcement thereof.

SECTION 7. The Guarantor authorizes the Owner-Trustee and the Beneficiary, without notice or demand and without affecting its liability hereunder, from time to time to (a) review, compromise, extend, accelerate or otherwise change the time for payment of, or otherwise change the terms of, the Amounts or any part thereof; and (b) take and enforce any and all rights and remedies under the Lease, including the repossession, sale, exchange or other disposition of the Units or any other security for the payment of the Amounts without notice to the Guarantor and to waive or release any such Units or security.

SECTION 8. The Guarantor waives any right to require the Owner-Trustee or the Beneficiary to (a) proceed against the Lessee; (b) proceed against or exhaust any security held from the Lessee; or (c) pursue any other remedy within the Owner-Trustee's or the Beneficiary's power whatsoever. Until all the Amounts shall have been paid in full, the Guarantor shall have no right of subrogation, and waives any right to enforce any remedy which the Owner-Trustee or the Beneficiary now has or may hereafter have against

the Lessee, and waives any benefit of, and any right to participate in, any security now or hereafter held by the Owner-Trustee or the Beneficiary. The Guarantor waives all presentments, demands for performance, notices of nonperformance, protests, notices of protest, notices of dishonor and notices of acceptance of this Agreement.

SECTION 9. Until all the Amounts shall have been paid in full to the Owner-Trustee, the Guarantor shall maintain direct or indirect ownership of 100% of the Lessee's issued and outstanding capital stock and shall keep itself informed with respect to and apprised of the operations and financial condition of the Lessee. The Guarantor shall not create, permit or suffer to exist any lien, charge, security interest or other encumbrance on such capital stock.

SECTION 10. The Guarantor covenants and agrees that in the event that it should merge or consolidate with another corporation, the survivor of such merger or consolidation shall be a solvent corporation organized under the laws of the United States of America or a state thereof or the District of Columbia and such survivor (if not the Guarantor) shall not, upon consummation of such merger, be in default under any of the terms of this Agreement and shall have assumed in writing all the obligations and liabilities of the Guarantor hereunder.

SECTION 11. In the event that the Guarantor shall fail to make any payment required to be made by it under the provisions of Sections 2 and 3 hereof, the Owner-Trustee and the Beneficiary may, at their respective options, require the Guarantor to pay to the Owner-Trustee and the Beneficiary, without further notice or demand of any kind, all the Amounts then due and owing to the Owner-Trustee and the Beneficiary.

SECTION 12. The Owner-Trustee and the Beneficiary may assign all or any of their rights under this Agreement, including without limitation, the right to receive any Amounts due or to become due. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Owner-Trustee and the Beneficiary hereunder. The Guarantor hereby acknowledges notice of the fact that the Owner-Trustee concurrently with the execution of this Agreement is assigning its rights and interests hereunder (in so far as such rights and interests relate to the guaranty herein provided of the observance, payment and

performance of the Lessee's covenants, obligations and agreements under the Lease) to First Security Bank of Utah, National Association (hereinafter called the Trustee), as security for the obligations of the Owner-Trustee under an Equipment Trust Agreement dated as of May 15, 1977, between the Trustee and the Owner-Trustee.

SECTION 13. This Agreement shall be governed by and construed under the laws of the State of California.

SECTION 14. The Guarantor shall pay to the Owner-Trustee, on demand, the Owner-Trustee's costs, including attorney's fees, which may be incurred in the enforcement of this Agreement.

IN WITNESS WHEREOF, this Agreement is executed as of the 15th day of May 1977.

ITEL CORPORATION,

by

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

Accepted as of May 15, 1977, by

FIRST SECURITY STATE BANK,  
on behalf of itself, not in  
its individual capacity but  
solely as Owner-Trustee,  
and on behalf of Pacific  
Systems, Inc.,

by

\_\_\_\_\_  
Authorized Officer

SCHEDULE E  
TO THE LEASE

LEASE AGREEMENT

THIS LEASE AGREEMENT, made as of this  
day of \_\_\_\_\_, 197\_\_\_\_, between SSI  
RAIL CORP., a Delaware corporation, Two  
Embarcadero Center, San Francisco, California  
94111 ("SSI"), as Lessor, and \_\_\_\_\_,  
\_\_\_\_\_, a \_\_\_\_\_ cor-  
poration ("Lessee"), as Lessee.

1. Scope of Agreement

A. SSI agrees to lease to Lessee, and Lessee agrees to lease from SSI, boxcars and/or other railroad equipment of the types and descriptions as set forth in any lease schedules executed by the parties concurrently herewith or hereafter and made a part of this Agreement. The word "Schedule" as used herein includes the Schedule or Schedules executed herewith and any additional Schedules and amendments thereto whether for boxcars or other railroad equipment, each of which when signed by both parties shall be a part of this Agreement. The scheduled items of equipment are hereinafter called collectively the "Boxcars".

B. It is the intent of the parties to this Agreement that SSI shall at all times be and remain the lessor of all Boxcars. Lessee agrees that it will at no time take any action or file any document which is inconsistent with the foregoing intent and that it will take such action and execute such documents as may be necessary to accomplish this intent.

2. Term

A. This Agreement shall remain in full force until it shall have been terminated as to all of the Boxcars as provided herein. The term of lease with respect to all of the Boxcars described on each Schedule shall be for fifteen (15) years commencing upon the date when all Boxcars on such Schedule have been delivered as set forth in Section 3A hereof.

B. If this Agreement has not been earlier terminated and no default has occurred and is continuing, it shall automatically be extended for not more than five consecutive

periods of twelve months each with respect to all of the Boxcars described on each Schedule, provided, however, that SSI or Lessee may terminate this Agreement as to all, but not fewer than all, of the Boxcars on any such Schedule by written notice delivered to the other not less than twelve months prior to the end of the initial lease term or any extended lease term.

### 3. Supply Provisions

A. SSI will inspect each of the Boxcars tendered by the manufacturer for delivery to Lessee. Prior to such inspection, however, Lessee shall confirm in writing to SSI that the sample Boxcar which will be made available for Lessee's inspection prior to the commencement of deliveries conforms to the specifications of the equipment agreed to by Lessee. Upon such approval by Lessee and SSI's determination that the Boxcar conforms to the specifications ordered by SSI and to all applicable governmental regulatory specifications, and this Agreement has not been terminated, SSI will accept delivery thereof at the manufacturer's facility and shall notify Lessee in writing of such acceptance. Each of the Boxcars shall be deemed delivered to Lessee upon acceptance by SSI. The Boxcars shall be moved to Lessee's railroad line at no cost to Lessee as soon after acceptance of delivery by SSI as is consistent with mutual convenience and economy. Due to the nature of railroad operations in the United States, SSI can neither control nor determine when the Boxcars leased hereunder will actually be available to Lessee for its use on its railroad tracks. Notwithstanding that Lessee may not have immediate physical possession of the Boxcars leased hereunder, Lessee agrees to pay to SSI the rent set forth in this Agreement. To move the Boxcars to Lessee's railroad line and insure optimal use of the Boxcars after the first loading of freight for each Boxcar on the railroad line of Lessee (the "initial loading"), SSI agrees to assist Lessee in monitoring Boxcar movements and, when deemed necessary by Lessee and SSI, to issue movement orders with respect to such Boxcars to other railroad lines in accordance with ICC and AAR interchange agreements and rules.

B. Lessee agrees that so long as it shall have on lease any Boxcars, it shall not lease boxcars from any other party until it shall have received all of the Boxcars on the Schedule or Schedules. Once Boxcars have been delivered to

Lessee, it shall then not lease boxcars from any other party until it shall have given SSI at least three (3) months' prior written notice of its desire to lease boxcars similar to the type on lease and SSI shall then have the opportunity to procure and lease such boxcars to Lessee subject to the terms and conditions of this Agreement and manufacturers' delivery schedules and at terms not less favorable to Lessee than those offered by such other parties. The foregoing, however, shall not be deemed to prohibit Lessee from leasing from other parties if SSI does not offer lease terms equal to or better than those offered by such other parties. Lessee shall give preference to SSI and shall load the Boxcars leased from SSI prior to loading boxcars leased from other parties or purchased by Lessee subsequent to the date of this Agreement or interchanged with railroads; provided, however, that this shall in no event prevent or prohibit Lessee from fulfilling its obligations to provide transportation and facilities upon reasonable request therefor to shippers on its railroad tracks.

C. Additional Boxcars may be leased from SSI by Lessee only upon the mutual agreement of the parties hereto. Upon such agreement, such additional Boxcars shall be identified in Schedules to this Agreement and shall benefit from and be subject to this Agreement upon execution of the Schedules by SSI and Lessee. Notwithstanding the execution of any Schedules, including Schedules for additional Boxcars, the delivery of Boxcars to Lessee shall be subject to manufacturer's delivery schedules, financing satisfactory to SSI and the mutual acknowledgment of the parties that the addition of such Boxcars is not likely to reduce utilization of all Boxcars on lease to Lessee to less than 87.5 per cent in any calendar quarter. If, due to the factors listed in the preceding sentence, fewer than all of the Boxcars listed on a Schedule shall be delivered to Lessee, the term of the lease shall be deemed to have commenced on the date the final Boxcar of the most recent group of Boxcars was delivered to Lessee.

#### 4. Railroad Markings and Record Keeping

A. SSI and Lessee agree that on or before delivery of any Boxcars to Lessee, said Boxcars will be lettered with the railroad markings of Lessee and may also be marked with the name and/or other insignia used by Lessee. Such name and/or insignia shall comply with all applicable regulations.

B. At no cost to Lessee, SSI shall during the term of this Agreement prepare for Lessee's signature and filing all documents relating to the registration, maintenance and record keeping functions involving the Boxcars. Such documents shall include but are not limited to the following: (i) appropriate AAR documents including an application for relief from AAR Car Service Rules 1 and 2; (ii) registration in the Official Railway Equipment Register and the Universal Machine Language Equipment Register; and (iii) such reports as may be required from time to time by the ICC and/or other regulatory agencies.

C. Each Boxcar leased hereunder shall be registered at no cost to Lessee in the Official Railway Equipment Register and the Universal Machine Language Equipment Register. SSI shall, on behalf of Lessee, perform all record keeping functions related to the use of the Boxcars by Lessee and other railroads in accordance with AAR railroad interchange agreements and rules, such as car hire reconciliation. Correspondence from railroads using such Boxcars shall be addressed to Lessee at such address as SSI shall select.

D. All record keeping performed by SSI hereunder and all record of payments, charges and correspondence related to the Boxcars shall be separately recorded and maintained by SSI in a form suitable for reasonable inspection by Lessee from time to time during regular SSI business hours. Lessee shall supply SSI with such reports, including daily telephone reports of the number of Boxcars on Lessee's tracks, regarding the use of the Boxcars by Lessee on its railroad line as SSI may reasonably request.

## 5. Maintenance, Taxes and Insurance

A. Except as otherwise provided herein, SSI will pay all costs, expenses, fees and charges incurred in connection with the use and operation of each of the Boxcars during its lease term and any extension thereof, including but not limited to repairs, maintenance and servicing, unless the same was occasioned by the fault of Lessee while such Boxcar is in the physical possession of Lessee. Lessee shall inspect all Boxcars interchanged to it to insure that such Boxcars are in good working order and condition and shall be liable to SSI for any repairs required for damage not noted at the time of interchange. Lessee hereby transfers and assigns to SSI for and during the lease term of each Boxcar all of its right, title and interest in any warranty in

respect to the Boxcars. All claims or actions on any warranty so assigned shall be made and prosecuted by SSI at its sole expense and Lessee shall have no obligation to make any claim on such warranty. Any recovery under such warranty shall be payable solely to SSI.

B. Except as provided above, SSI shall make or cause to be made such inspections of, and maintenance and repairs to, the Boxcars as may be required. Upon request of SSI, Lessee shall perform any necessary maintenance and repairs to Boxcars on Lessee's railroad tracks as may be reasonably requested by SSI. SSI shall also make, at its expense, all alterations, modifications or replacement of parts, as shall be necessary to maintain the Boxcars in good operating condition throughout the term of the lease of such Boxcars. Lessee may make running repairs to facilitate continued immediate use of a Boxcar, but shall not otherwise make any repairs, alterations, improvements or additions to the Boxcars without SSI's prior written consent. If Lessee makes an alteration, improvement or addition to any Boxcar without SSI's prior written consent, Lessee shall be liable to SSI for any revenues lost due to such alteration. Title to any such alteration, improvement or addition shall be and remain with SSI.

C. Lessee will at all times while this Agreement is in effect be responsible for the Boxcars while on Lessee's railroad tracks in the same manner that Lessee is responsible under Rule 7 of the AAR Car Service and Car Hire Agreement Code of Car Service Rules--Freight for cars not owned by Lessee on Lessee's railroad tracks. Lessee shall protect against the consequences of an event of loss involving the Boxcars while on Lessee's railroad tracks by either obtaining insurance or maintaining a self insurance program which conforms to sound actuarial principles. If Lessee elects to carry insurance, it shall furnish SSI concurrently with the execution hereof and thereafter at intervals of not more than 12 calendar months with a certificate of insurance with respect to the insurance carried on the Boxcars signed by an independent insurance broker. All insurance shall be taken out in the name of Lessee and SSI (or its assignee) as their interests may appear.

D. SSI agrees to reimburse Lessee for all taxes, assessments and other governmental charges of whatsoever kind or character paid by Lessee relating to each Boxcar and on the lease, delivery or operation thereof which may remain unpaid as of the date of delivery of such Boxcar to Lessee or

which may be accrued, levied, assessed or imposed during the lease term, except taxes on income imposed on Lessee and sales or use taxes imposed on the mileage charges and/or car hire revenues. SSI shall forward to Lessee all sales and use tax payments received by it on behalf of Lessee. SSI and Lessee will comply with all state and local laws requiring the filing of ad valorem tax returns on the Boxcars. SSI shall review all applicable tax returns prior to filing.

## 6. Lease Rental

A. Lessee agrees to pay the following rent to SSI for the use of the Boxcars:

(i) SSI shall receive all payments made to Lessee by other railroad companies for their use or handling of the Boxcars, including but not limited to mileage charges, straight car hire payments and incentive car hire payments (all of which payments made to Lessee are hereinafter collectively referred to as "payments") if the utilization of all of the Boxcars delivered to Lessee on an aggregate basis for each calendar year shall be equal to or less than 90 per cent. For the purpose of this Agreement, utilization of the Boxcars shall be determined by a fraction, the numerator of which is the aggregate number of days in each calendar year that car hire payments are earned by Lessee on the Boxcars, commencing from the initial loading, and the denominator of which is the aggregate number of days in each year that the Boxcars are on lease to Lessee, commencing from the initial loading (such term referred to as "utilization"). In addition, SSI will receive, as additional rental, all moneys earned by the Boxcars prior to their initial loading.

(ii) In the event utilization exceeds 90 percent in any calendar year, SSI shall receive an amount equal to the SSI Base Rental plus an amount equal to one-half of the payments earned in excess of the SSI Base Rental. For the purpose hereof, SSI Base Rental shall be an amount equal to the total payments for the calendar year multiplied by a fraction, the numerator of which is 90 percent and the denominator of which is the utilization for such calendar year. (The above determination of SSI Base Rental insures that Lessee will, if utilization is greater than 90 percent in any calendar year, receive one-half of all the payments made by other railroads for

use or handling of the Boxcars in excess of the SSI Base Rental.)

(iii) If SSI pays other railroads to move Boxcars in accordance with Section 3A hereof, except for any payments incurred to deliver such Boxcars to Lessee's railroad line, Lessee shall reimburse SSI for such payments only from and out of the monies received by Lessee pursuant to subsection 6A(ii) hereof.

(iv) The rental charges payable to SSI by Lessee shall be paid from the payments received by Lessee in the following order until SSI receives the amounts due it pursuant to this section: (1) incentive car hire payments; (2) straight car hire payments; (3) mileage charges; and (4) other.

(v) In the event damage beyond repair or destruction of a Boxcar has been reported in accordance with Rule 7 of the AAR Car Service and Car Hire Agreement Code of Car Hire Rules--Freight and the appropriate amount due as a result thereof is received by SSI, said damaged or destroyed Boxcar will be removed from the coverage of this Agreement as of the date that payment of car hire payments ceased.

B. The calculations required above shall be made within five months after the end of each calendar year. However, to enable SSI to meet its financial commitments, SSI may, prior to such calculations, retain the payments received by it on behalf of Lessee. However, since the parties desire to determine on a quarterly basis the approximate amount of the rental charges due SSI, SSI shall within three months after the end of each calendar quarter calculate on a quarterly basis rather than a yearly basis the amount due it pursuant to this section. Any amounts payable pursuant to the preceding sentence shall be paid promptly following such calculation, provided, however, that following the yearly calculation, any amount paid to either party in excess of the amounts required by the yearly calculation shall be promptly refunded to the appropriate party.

C. In the event utilization in any calendar quarter is less than 87.5 percent or if at any time during a calendar quarter the number of days that the Boxcars have not earned car hire payments is such as to make it mathematically certain that the utilization cannot be equal to or greater than 87.5 percent, SSI may, at its option and

upon not less than 10 days' prior written notice to Lessee, terminate this Agreement as to such Boxcars as SSI shall determine.

D. SSI may, at its option, terminate this Agreement if the ICC shall, at any time, (1) issue an order reducing incentive car hire for Boxcars on an annual basis to three months or less without a corresponding increase in straight car hire or other moneys available to both SSI and Lessee at least equal in amount to such reduction, (2) determine that Lessee may not apply its incentive car hire receipts in payment of the rental charges set forth in this section or (3) require that Lessee spend funds not earned by the Boxcars in order for Lessee to continue to meet its obligations set forth in this section.

E. Subsequent to the initial loading, if any Boxcar remains on Lessee's railroad tracks for more than seven consecutive days, SSI may, at its option and upon not less than 24 hours' prior written notice, terminate this Agreement as to such Boxcar and withdraw such Boxcar from Lessee's railroad tracks. If any such Boxcar remains on Lessee's railroad tracks more than seven consecutive days because Lessee has not given preference to the Boxcars as specified in Section 3B, Lessee shall be liable for and remit to SSI an amount equal to the car hire revenues Lessee would have earned if such Boxcars were in the physical possession and use of another railroad for the entire period.

## 7. Possession and Use

A. So long as Lessee shall not be in default under this Agreement, Lessee shall be entitled to the possession, use and quiet enjoyment of the Boxcars in accordance with the terms of this Agreement and in the manner and to the extent Boxcars are customarily used in the railroad freight business, provided that Lessee retain on its railroad tracks no more Boxcars than are necessary to fulfill its immediate requirements to provide transportation and facilities upon reasonable request therefor to shippers on its railroad tracks. However, Lessee's rights shall be subject and subordinate to the rights of any owner or secured party under any financing agreement entered into by SSI in connection with the acquisition of Boxcars, i.e., upon notice to Lessee from any such secured party or owner that an event of default has occurred and is continuing under such financing

agreement, such party may require that all rent shall be made directly to such party and/or that the Boxcars be returned to such party. Lessee agrees that to the extent it has physical possession and can control use of the Boxcars, the Boxcars will at all times be used and operated under and in compliance with the laws of the jurisdiction in which the same may be located and in compliance with all lawful acts, rules and regulations and orders of any governmental bodies or officers having power to regulate or supervise the use of such property, except that either SSI or Lessee may in good faith and by appropriate proceedings contest the application of any such rule, regulation or order in any reasonable manner at the expense of the contesting party.

B. Lessee will not directly or indirectly create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or other security interest or claim on or with respect to the Boxcars or any interest therein or in this Agreement or any of the Schedules hereto. Lessee will promptly, at its expense, take such action as may be necessary to duly discharge any such mortgage, pledge, lien, charge, encumbrance, security interest or claim if the same shall arise at any time.

## 8. Default

A. The occurrence of any of the following events shall be an Event of Default:

(i) The nonpayment by Lessee of any sum required herein to be paid by Lessee within ten days after the date any such payment is due.

(ii) The breach by Lessee of any other term, covenant or condition of this Agreement, which is not cured within ten days thereafter.

(iii) Any act of insolvency by Lessee, or the filing by Lessee of any petition or action under any bankruptcy, reorganization, insolvency or moratorium law, or any other law or laws for the relief of, or relating to, debtors.

(iv) The filing of any involuntary petition under any bankruptcy, reorganization, insolvency or moratorium law against Lessee that is not dismissed within sixty (60) days thereafter, or the appointment of any receiver

or trustee to take possession of the properties of Lessee, unless such petition or appointment is set aside or withdrawn or ceases to be in effect within sixty (60) days from the date of said filing or appointment.

(v) The subjection of any of Lessee's property to any levy, seizure, assignment, application or sale for or by any creditor or governmental agency.

(vi) Any action by Lessee to discontinue rail service on all or a portion of its tracks or abandon any of its rail properties pursuant to applicable provisions of the Interstate Commerce Act or the laws of any state.

B. Upon the occurrence of any event of default, SSI may, at its option, terminate this Agreement and may

(i) proceed by any lawful means to enforce performance by Lessee of this Agreement or to recover damages for a breach thereof (and Lessee agrees to bear SSI's costs and expenses, including reasonable attorneys' fees, in securing such enforcement), or

(ii) by notice in writing to Lessee, terminate Lessee's right of possession and use of the Boxcars, whereupon all right and interest of Lessee in the Boxcars shall terminate; and thereupon SSI may enter upon any premises where the Boxcars may be located and take possession of them and thenceforth hold, possess and enjoy the same free from any right of Lessee. SSI shall nevertheless have the right to recover from Lessee any and all rental amounts which under the terms of this Agreement may then be due or which may have accrued to that date.

## 9. Termination

At the expiration or termination of this Agreement as to any Boxcars, Lessee will surrender possession of such Boxcars to SSI by delivering the same to SSI. A Boxcar shall be no longer subject to this Agreement upon the removal of Lessee's railroad markings from the Boxcar and the placing thereon of such markings as may be designated by SSI, either, at the option of SSI, (1) by Lessee upon return of such Boxcars to Lessee's railroad line or (2) by another railroad line which has physical possession of the Boxcar at the time of or subsequent to termination of the lease term as to such

Boxcar. If such Boxcars are not on the railroad line of Lessee upon termination, any cost of assembling, delivering, storing and transporting such Boxcars to Lessee's railroad line or the railroad line of a subsequent lessee shall be borne by SSI. If such Boxcars are on the railroad line of Lessee upon such expiration or termination or are subsequently returned to Lessee's railroad line, Lessee shall at its own expense within five working days remove Lessee's railroad markings from the Boxcars and place thereon such markings as may be designated by SSI. After the removal and replacement of markings, Lessee shall use its best efforts to load such Boxcars with freight and deliver them to a connecting carrier for shipment. Lessee shall provide up to thirty (30) days' free storage on its railroad tracks for SSI or the subsequent lessee of any terminated Boxcar. If any Boxcar is terminated pursuant to subsections 6C or 6E or section 8 prior to the end of its lease term, Lessee shall be liable to SSI for all costs and expenses incurred by SSI to repaint the Boxcars and place thereon the markings and name or other insignia of SSI's subsequent lessee.

#### 10. Indemnities

SSI will defend, indemnify and hold Lessee harmless from and against (1) any and all loss or damage of or to the Boxcars, usual wear and tear excepted, unless occurring while Lessee has physical possession of Boxcars and (2) any claim, cause of action, damage, liability, cost or expense which may be asserted against Lessee with respect to the Boxcars other than loss or physical damage (unless occurring through the fault of Lessee), including without limitation the construction, purchase and delivery of the Boxcars to Lessee's railroad line, ownership, leasing or return of the Boxcars, or as a result of the use, maintenance, repair, replacement, operation or the condition thereof (whether defects, if any, are latent or are discoverable by SSI or Lessee).

#### 11. Representations, Warranties and Covenants

Lessee represents, warrants and covenants that:

(i) Lessee is a corporation duly organized, validly existing and in good standing under the laws of the state where it is incorporated and has the corporate power, authority and is duly qualified and authorized to do business wherever necessary, to carry out its present

business and operations and to own or hold under lease its properties and to perform its obligations under this Agreement.

(ii) The entering into and performance of this Agreement will not violate any judgment, order, law or regulation applicable to Lessee, or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon any assets of Lessee or on the Boxcars pursuant to any instrument to which Lessee is a party or by which it or its assets may be bound.

(iii) There is no action or proceeding pending or threatened against Lessee before any court or administrative agency or other governmental body which might result in any material adverse effect on the business, properties and assets, or conditions, financial or otherwise, of Lessee.

(iv) There is no fact which Lessee has not disclosed to SSI in writing, nor is Lessee a party to any agreement or instrument or subject to any charter or other corporate restriction which, so far as the Lessee can now reasonably foresee, will individually or in the aggregate materially adversely affect the business, condition or any material portion of the properties of the Lessee or the ability of the lessee to perform its obligations under this Agreement.

(v) Lessee has during the years 1964-1968 neither leased nor purchased any boxcars.

## 12. Inspection

SSI shall at any time during normal business hours have the right to enter the premises where the Boxcars may be located for the purpose of inspecting and examining the Boxcars to insure Lessee's compliance with its obligations hereunder. Lessee shall immediately notify SSI of any accident connected with the malfunctioning or operation of the Boxcars, including in such report the time, place and nature of the accident and the damage caused, the names and addresses of any persons injured and of witnesses, and other information pertinent to Lessee's investigation of the accident. Lessee shall also notify SSI in writing within five (5) days after any attachment, tax lien or other judi-

cial process shall attach to any Boxcar. Lessee shall furnish to SSI promptly upon its becoming available, a copy of its annual report submitted to the ICC and, when requested, copies of any other income or balance sheet statements required to be submitted to the ICC.

### 13. Miscellaneous

A. This Agreement and the Schedules contemplated hereby shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns, except that Lessee may not without the prior written consent of SSI assign this Agreement or any of its rights hereunder or sublease the Boxcars to any party, and any purported assignment or sublease in violation hereof shall be void.

B. Both parties agree to execute the documents contemplated by this transaction and such other documents as may be required in furtherance of any financing agreement entered into by SSI in connection with the acquisition of the Boxcars in order to confirm the financing party's interest in and to the Boxcars, this Agreement and Schedules hereto and to confirm the provisions contained in Section 7 hereof and in furtherance of this Agreement.

C. It is expressly understood and agreed by the parties hereto that this Agreement constitutes a lease of the Boxcars only and no joint venture or partnership is being created. Notwithstanding the calculation of rental payments, nothing herein shall be construed as conveying to Lessee any right, title or interest in the Boxcars except as a lessee only.

D. No failure or delay by SSI shall constitute a waiver or otherwise affect or impair any right, power or remedy available to SSI nor shall any waiver or indulgence by SSI or any partial or single exercise of any right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

E. This Agreement shall be governed by and construed according to the laws of the State of California.

F. All notices hereunder shall be in writing and shall be deemed given when delivered personally or when deposited in the United States mail, postage prepaid, cer-

tified or registered, addressed to the president of the other party at the address set forth above.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

SSI RAIL CORP.,

by

\_\_\_\_\_  
Title:

Date:

by

\_\_\_\_\_  
Title:

Date:

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

On this            day of                    , before me personally appeared                    , to me personally known, who being by me duly sworn says that such person is of                    that the foregoing Lease Agreement was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

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

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

On this            day of                    , before me personally appeared                    , to me personally known, who being by me duly sworn says that such person is of SSI Rail Corp., that the foregoing Lease Agreement was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of such corporation.

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

SCHEDULE F  
TO THE LEASE

SUBLEASE ASSIGNMENT and AGREEMENT dated as of \_\_\_\_\_, 197 (hereinafter called this Assignment), by and between SSI Rail Corp., a Delaware corporation (hereinafter, together with its successors and assigns, called SSI) and FIRST SECURITY STATE BANK, not in its individual capacity but solely as Owner-Trustee (hereinafter called the Owner-Trustee).

WHEREAS SSI has entered into a Lease of Railroad Equipment dated as of May 15, 1977 (hereinafter, together with any amendments and supplements thereto, called the Agreement);

WHEREAS SSI and (hereinafter called the Lessee) have entered into a Sublease (as defined in the Agreement) dated as of \_\_\_\_\_, 19 , (hereinafter, together with any amendments and supplements thereto, called the Lease), providing for the leasing by SSI to the Lessee of certain Units (as defined in the Agreement);

WHEREAS the Lease may also cover the leasing to the Lessee of equipment other than Units; and

WHEREAS in order to provide security for the obligations of SSI under the Agreement and as an inducement to the party for which First Security State Bank is acting as Owner-Trustee to pay a portion of the Purchase Price (as defined in the Agreement) of the Units, SSI agrees to assign for security purposes its rights in, to and under the Lease to the Owner-Trustee as and only to the extent that the Lease relates to Units;

NOW, THEREFORE, in consideration of the payments to be made and the covenants hereinafter mentioned to be kept and performed, the parties hereto agree as follows:

1. SSI hereby assigns, transfers and sets over unto the Owner-Trustee, as collateral security for the payment and performance of SSI's obligations under the Agreement, all of SSI's right, title and interest, powers, privileges and other benefits under the Lease as and only to the extent that the Lease relates to Units, including, without limitation, all rights to receive and collect all rentals, profits and

other sums payable to or receivable by SSI from the Lessee under or pursuant to the provisions of the Lease to the extent that the same are payable in respect of Units, whether as rent, casualty payment, indemnity, liquidated damages or otherwise (such moneys being hereinafter called the Payments); provided, however, that until an Event of Default under the Agreement, or any event which with notice or lapse of time or both, could constitute such an Event of Default, shall occur, it is understood that SSI shall be entitled to collect and receive all such Payments and to make all waivers and agreements, to give all notices, consents and releases, to take all action upon the happening of an Event of Default specified in the Lease, and to apply all Payments to which SSI is entitled to the payment of any and all of SSI's obligations under the Agreement. In furtherance of the foregoing assignment, but subject to the foregoing provisions of this paragraph, SSI hereby irrevocably authorizes and empowers the Owner-Trustee in its own name, or in the name of its nominee, or in the name of SSI or as its attorney, to ask, demand, sue for, collect and receive any and all Payments to which SSI is or may become entitled under the Lease, and to enforce compliance by the Lessee with all the terms and provisions thereof. Whenever a Lease covers other equipment not included as part of the Units and the amount of any payment due to SSI under such Lease as car hire payments (including both straight and incentive per diem), mileage charges or other rental revenues is calculated on an aggregate basis for all equipment leased thereunder, for the purposes of this Assignment an amount equal to the Assigned Fraction (as hereinafter defined) of each such payment shall be deemed to be payable with respect to the Units leased under such Lease. The term "Assigned Fraction" as used herein shall mean a fraction the numerator of which shall be the number of Units leased under such Lease and the denominator of which shall be the aggregate number of units of equipment (including the Units) at the time leased under such Lease.

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

3. To protect the security afforded by this Assignment, SSI agrees as follows:

(a) SSI will faithfully abide by, perform and discharge each and every obligation, covenant and agreement which the Lease provides is to be performed by SSI.

(b) At SSI's sole cost and expense, SSI will appear in and defend every action or proceeding arising under, growing out of or in any manner connected with the obligations, duties or liabilities of SSI under the Lease.

(c) Should SSI fail to make any payment or to do any act which this Assignment requires SSI to make or do, then the Owner-Trustee, but without obligation so to do, after first making written demand upon SSI and affording SSI a reasonable period of time within which to make such payment or do such act, but without releasing SSI from any obligation hereunder, may make or do the same in such manner and to such extent as the Owner-Trustee may deem necessary to protect the security provided hereby, including specifically, without limiting its general powers, the right to appear in and defend any action or proceeding purporting to affect the security hereof and the rights or powers of the Owner-Trustee, and also the right to perform and discharge each and every obligation, covenant and agreement of SSI contained in the Lease; and in exercising any such powers, the Owner-Trustee may pay necessary costs and expenses, employ counsel and incur and pay reasonable attorneys' fees, and SSI will reimburse the Owner-Trustee for such costs, expenses and fees.

4. Upon the full discharge and satisfaction of all of SSI's obligations under the Agreement and this Assignment, all rights herein assigned to the Owner-Trustee shall terminate, and all estate, right, title and interest of the Owner-Trustee in and to the Lease shall revert to SSI.

5. SSI will, from time to time, do and perform any other act and will execute, acknowledge, deliver and file, register, deposit and record (and will refile, reregister, rerecord or redeposit whenever required) any and all further instruments required by law or reasonably requested by the Owner-Trustee in order to confirm or further assure, the interests of the Owner-Trustee hereunder.

6. The Owner-Trustee may assign all or any of the rights assigned to it hereby or arising under the Lease, including without limitation, the right to receive any Payments due or to become due. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Owner-Trustee hereunder. SSI hereby acknowledges notice of the fact that the Owner-Trustee concurrently with the execution of this Assignment is assigning its rights and interests hereunder to First Security Bank of Utah, National Association (hereinafter called the Trustee), as security for the obligations of the Owner-Trustee under an Equipment Trust Agreement dated as of March 15, 1977, between the Trustee and the Owner-Trustee.

7. This Assignment shall be governed by the laws of the State of Utah, but the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective names, by officers thereunto duly authorized, and their respective seals to be affixed and duly attested, all as of the date first above written.

SSI RAIL CORP.,

by

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

[Corporate Seal]

Attest:

\_\_\_\_\_  
Secretary

FIRST SECURITY STATE BANK,  
not in its individual capacity but  
solely as Owner-Trustee,

by

\_\_\_\_\_  
Authorized Officer

[Seal]

Attest:

\_\_\_\_\_  
Authorized Officer

STATE OF CALIFORNIA,        )  
                                  )  ss.:  
COUNTY OF SAN FRANCISCO,)

On this            day of            19   , before me personally appeared                                   , to me personally known, who, being by me duly sworn, says that he is a Vice President of SSI RAIL CORP., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its By-laws and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

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Notary Public

[Notarial Seal]

My Commission expires

STATE OF UTAH,            )  
                                  )  ss.:  
COUNTY OF SALT LAKE,)

On this            day of            19   , before me personally appeared                                   , to me personally known, who, being by me duly sworn, says that he is an Authorized Officer of FIRST SECURITY STATE BANK, that one of the seals affixed to the foregoing instrument is the seal of said bank and that said instrument was signed and sealed on behalf of said bank 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 bank.

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Notary Public

[Notarial Seal]

My Commission expires

ANNEX A  
TO SUBLEASE  
ASSIGNMENT

REASSIGNMENT OF SUBLEASE dated as of \_\_\_\_\_, 1977 (hereinafter called this Agreement), by and between FIRST SECURITY STATE BANK, not in its individual capacity but solely as Owner-Trustee (hereinafter called the Owner-Trustee) and FIRST SECURITY BANK OF UTAH, National Association, not in its individual capacity but solely as Trustee (hereinafter called the Trustee).

WHEREAS SSI Rail Corp. (hereinafter called SSI) has assigned to the Owner-Trustee certain of its rights and interests under the Sublease therein described (hereinafter called the Sublease), pursuant to a Sublease Assignment and Agreement dated as of the date hereof (hereinafter called the Assignment) between SSI and the Owner-Trustee, as collateral security for the performance of the obligations of SSI under a Lease of Railroad Equipment (hereinafter called the Lease), dated as of May 15, 1977, between SSI and the Owner-Trustee; and

WHEREAS in order to provide security for the obligations of the Owner-Trustee under an Equipment Trust Agreement (hereinafter called the Equipment Trust Agreement), dated as of May 15, 1977, between the Trustee and the Owner-Trustee, and as an inducement to the investors for which the Trustee is acting as Trustee to purchase Trust Certificates (as that term is defined in the Equipment Trust Agreement), the Owner-Trustee agrees to assign for security purposes its rights in, to and under the Assignment to the Trustee;

NOW, THEREFORE, in consideration of the payments to be made and the covenants hereinafter mentioned to be kept and performed, the parties hereto agree as follows:

1. The Owner-Trustee hereby assigns, transfers and sets over unto the Trustee, as collateral security for the payment and performance of the Owner-Trustee's obligations under the Equipment Trust Agreement, all of the Owner-Trustee's right, title and interest, powers, privileges and other benefits under the Assignment including, without limitation, all rights to receive and collect all rentals, profits and other sums payable to or receivable by the Owner-Trustee under the Sublease pursuant to the provisions of the Assign-

ment, whether as rent, casualty payment, indemnity, liquidated damages or otherwise (such moneys being hereinafter called the Payments); provided, however, that until an Event of Default under the Equipment Trust Agreement, or any event which with notice or lapse of time or both, could constitute such an Event of Default, shall occur, it is understood that the Owner-Trustee shall be entitled to collect and receive all such Payments and to make all waivers and agreements, to give all notices, consents and releases, to take all action upon the happening of an Event of Default specified in the Sublease, and to apply all Payments to which the Owner-Trustee is entitled under the Assignment to the payment of any and all of the Owner-Trustee's obligations under the Equipment Trust Agreement. In furtherance of the foregoing assignment, but subject to the foregoing provisions of this paragraph, the Owner-Trustee hereby irrevocably authorizes and empowers the Trustee in its own name, or in the name of its nominee, or in the name of the Owner-Trustee or as its attorney, to ask, demand, sue for, collect and receive any and all Payments to which the Owner-Trustee is or may become entitled under the Assignment, and to enforce compliance by SSI with all the terms and provisions thereof.

2. To protect the security afforded by this Agreement, the Owner-Trustee agrees that, should the Owner-Trustee fail to make any payment or to do any act which this Agreement requires the Owner-Trustee to make or do, then the Trustee, but without obligation so to do, after first making written demand upon the Owner-Trustee and affording the Owner-Trustee a reasonable period of time within which to make such payment or do such act, but without releasing the Owner-Trustee from any obligation hereunder, may make or do the same in such manner and to such extent as the Trustee may deem necessary to protect the security provided hereby, including specifically, without limiting its general powers, the right to appear in and defend any action or proceeding purporting to affect the security hereof and the rights or powers of the Trustee; and in exercising any such powers, the Trustee may pay necessary costs and expenses, employ counsel and incur and pay reasonable attorneys' fees, and the Owner-Trustee will reimburse the Trustee for such costs, expenses and fees.

3. Upon the full discharge and satisfaction of all of the Owner-Trustee's obligations under the Equipment Trust Agreement and this Agreement, all rights herein assigned to the Trustee shall terminate, and all estate, right, title and

interest of the Trustee in and to the Assignment shall revert to the Owner-Trustee.

4. The Owner-Trustee will, from time to time, do and perform any other act and will execute, acknowledge, deliver and file, register, deposit and record (and will refile, reregister, rerecord or redeposit whenever required) any and all further instruments required by law or reasonably requested by the Trustee in order to confirm or further assure, the interests of the Trustee hereunder.

5. If an Event of Default shall occur and be continuing under the Equipment Trust Agreement, the Trustee may assign all or any of the rights assigned to it hereby or arising under the Sublease and the Assignment, including without limitation, the right to receive any Payments due or to become due. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Trustee hereunder. The Trustee will give written notice to SSI, the Owner-Trustee and the lessee under the Sublease of any such assignment.

6. This Agreement shall be governed by the laws of the State of Utah, but the parties hereto shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective names, by officers thereunto duly authorized, and their respective seals to be affixed and duly attested, all as of the date first above written.

FIRST SECURITY STATE BANK,  
not in its individual capacity  
but solely as Owner-Trustee,

by

\_\_\_\_\_  
Authorized Officer

[Seal]

Attest:

\_\_\_\_\_  
Authorized Officer

FIRST SECURITY BANK OF UTAH,  
National Association, not in its  
individual capacity but solely as  
Trustee,

by

\_\_\_\_\_  
Authorized Officer

[Seal]

Attest:

\_\_\_\_\_  
Authorized Officer

