

WILMER, CUTLER & PICKERING

2445 M STREET, N. W.

WASHINGTON, D. C. 20037-1420

TELEPHONE (202) 663-6000

FACSIMILE (202) 293-0074

293-5929, 429-4930, 429-9893

TELEX 440239 WCPI UI

892402 WICRING WSH

ABA NET ABA1354

SOURCE WCPOOL

EUROPEAN OFFICE

4 CARLTON GARDENS

PALL MALL

LONDON SW1Y 5AA, ENGLAND

TELEPHONE 011 (44) 839-4466

FACSIMILE 011 (44) 839-3537

TELEX 661391B WCP LON

ALLEN H. HARRISON, JR.

DIRECT LINE (202)

663-6093

RECORDATION NO. 1 583  
SEP 20 1988 - 2 15 PM  
INTERSTATE COMMERCE COMMISSION

September 20, 1988

Dear Ms. McGee:

*#13. as filing fee*

On behalf of Valley Bank Leasing, Inc., I submit for filing and recording under 49 U.S.C. Section 11303(a) and the regulations promulgated thereunder, two executed counterparts of a primary document, not previously recorded, entitled Equipment Lease Agreement dated as of August 1, 1988.

The parties to the enclosed Equipment Lease Agreement are:

Valley Bank Leasing, Inc. - LESSOR  
2700 North Central  
Suite 9000  
Phoenix, Arizona 85004

The B.F. Goodrich Company - LESSEE  
3925 Embassy Parkway  
Akron, Ohio 44313

100 of 101  
SEP 20 2 09 PM '88  
MOTOR OPERATED UNIT

*News  
Number*

The said Equipment Lease Agreement covers, among other things, the leasing of certain designated covered hopper cars by Lessor to Lessee.

The units of equipment covered by the Equipment Lease Agreement are those 150 covered hopper cars identified in the Schedule thereto, namely BFGX 1400 - 1549.

A short summary of the document to appear in the ICC Index is as follows:

"Covers 150 covered hopper cars<sup>o</sup> BFGX 1400 - 1549."

Enclosed is a check in the amount of thirteen dollars (\$13) in payment of the filing fee.

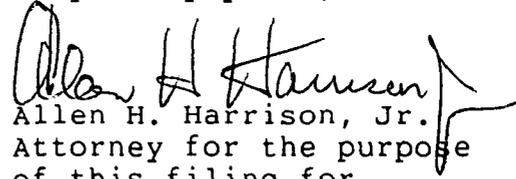
*Candace  
Dorell Wilson*

8 264A047  
Date SEP 20 1988  
Fee \$ 13.00

ICC Washington, D. C.

Once the filing has been made, please return to bearer the stamped counterpart of the Equipment Lease Agreement not needed for your files, together with the fee receipt, the letter from the ICC acknowledging the filing, and the two extra copies of this letter of transmittal.

Very truly yours,

  
Allen H. Harrison, Jr.  
Attorney for the purpose  
of this filing for  
Valley Bank Leasing, Inc.

Honorable Noreta R. McGee  
Secretary  
Interstate Commerce Commission  
Washington, D.C. 20423

Enclosures

AHH/sc

BY HAND

**Interstate Commerce Commission**  
Washington, D.C. 20423

9/20/88

OFFICE OF THE SECRETARY

Allen H. Harrison, Jr.  
Wilmer Cutler & Pickering  
2445 M. Street N.W.  
Washington-D.C. 20037-1420

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 9/20/88 at 2:15pm, and assigned recordation number(s). 15831

Sincerely yours,

*Nerita R. McGee*  
Secretary

Enclosure(s)

1 5831

REGISTRATION NO. \_\_\_\_\_ FILE NO.

SEP 20 1988 2 10 PM

**INTERSTATE COMMERCE COMMISSION**

**EQUIPMENT LEASE AGREEMENT**

Dated as of

August 1, 1988

Between

VALLEY BANK LEASING, INC.,

as Lessor

and

THE B.F. GOODRICH COMPANY,

as Lessee

Table of Contents

<u>Section</u>	<u>Title</u>	<u>Page</u>
1	Definitions.....	1
2	Lease of Units.....	4
3	Procurement and Delivery of Units.....	4
4	Rental Payments.....	6
5	Representations and Warranties of Lessor.....	7
6	Representations and Warranties of Lessee.....	8
7	Possession and Use of Units.....	10
8	Maintenance of Units.....	12
9	Replacements, Accessories and Alterations.....	13
10	Insurance.....	14
11	Loss, Damage, Destruction and Seizure.....	15
12	Indemnification, Release and Waiver.....	17
13	General Tax Indemnity.....	18
14	Defaults and Remedies.....	19
15	Return of Units.....	23
16	Inspection and Reports.....	24
17	Identification.....	25
18	Recordation and Filing.....	26
19	Assignment by Lessor.....	26
20	Financial and Other Information.....	28
21	Right of Lessor to Perform.....	28
22	Miscellaneous.....	29
	Exhibit A - Acceptance Supplement	
	Exhibit B - Schedule	
	Exhibit C - Purchase Order Assignment	
	Exhibit D - Bill of Sale	
	Tax Indemnity Agreement	

## EQUIPMENT LEASE AGREEMENT

EQUIPMENT LEASE AGREEMENT, dated as of August 1, 1988, between Valley Bank Leasing, Inc., an Arizona corporation having its principal office at 2700 North Central - 9th Floor, Phoenix, AZ 85004 ("Lessor"), and The B.F. GOODRICH COMPANY, a New York corporation having its principal office at 3925 Embassy Parkway, Akron, OH 44313 ("Lessee").

### W I T N E S S E T H:

WHEREAS, Lessee has agreed to purchase 150 covered hopper cars from ACF Industries, Incorporated ("Builder") pursuant to purchase order no. GH-01-80435, dated July 21, 1988, as the same has been amended, modified or supplemented (collectively the "Purchase Order"); and

WHEREAS, Lessee desires to have Lessor acquire the Units (as hereinafter defined) from Builder and lease the same to Lessee; and

WHEREAS, Lessor is willing to acquire all of Lessee's rights and interests under the Purchase Order and to purchase the Units and lease them to Lessee, subject to the terms and conditions hereof;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

### SECTION 1

#### DEFINITIONS

The following terms shall have the following meanings (such definitions to be equally applicable to both the singular and plural forms of the terms defined):

"Acceptance Supplement" shall mean a certificate substantially in the form of Exhibit A attached hereto, evidencing the acceptance of one or more Units by Lessee pursuant to Section 3 hereof.

"Agency Agreement" shall mean that certain Agency Agreement of even date herewith between Lessor and Lessee in the form attached hereto as Exhibit B.

"Agent" shall mean The B.F. Goodrich Company acting in the capacity of agent under the Agency Agreement.

"Business Day" shall mean any day other than a Saturday, Sunday or legal holiday on which banking institutions located in Akron, Ohio or Phoenix, Arizona are authorized or obligated to remain closed.

"Basic Rent" shall mean the rent payable pursuant to Section 3(b) of the Schedule.

"Bill of Sale" for any Unit shall mean a warranty bill of sale for such Unit from Builder to Lessor delivered pursuant hereto.

"Commencement Date" shall mean November 1, 1988 or such other date agreed upon by Lessor and Lessee.

"Code" shall mean the Internal Revenue Code of 1986, as amended, or any comparable successor law.

"Default" shall mean an event which with the passing of time or the giving of notice or both would become an Event of Default.

"Delivery Date" shall mean each date on which one or more Units are delivered to and accepted by Lessee pursuant to Section 3 hereof.

"Event of Default" shall have the meaning specified in Section 14.1 hereof.

"Funding Date" shall mean each of those dates on which Lessor pays the Builder and/or reimburses Agent for the Units accepted on such date.

"IRS" shall mean the United States Internal Revenue Service and any successor thereto.

"Lease" shall mean collectively this Equipment Lease Agreement, the Schedule hereto, the Acceptance Supplements executed pursuant hereto and all other documents incorporated herein by reference.

"Lessor's Cost" shall be the aggregate amount of manufacturers' or vendors' invoices, including sales taxes, if any, paid by Lessor in connection with the acquisition of one or more of the Units, as context shall require. The aggregate Lessor's Cost of all of the Units shall not exceed the maximum amount set forth in the Schedule hereto without Lessor's prior written consent.

"Lessor Liens" shall mean any lien which (a) results from claims against Lessor not related or connected to the ownership, leasing, use or operation of any of the Units or its status as Lessor under this Lease or (b) results from an affirmative act of Lessor to create a lien, which act is neither consented to by Lessee nor created in connection with an Event of Default.

"Officer's Certificate" shall mean a certificate duly signed in the name of Lessee by its President, one of its Vice Presidents, its Treasurer, its Secretary, or any Assistant Treasurer.

"Operative Agreements" shall mean this Lease, the Acceptance Supplements, the Agency Agreement, the Purchase Order Assignment, the Schedule and the Tax Indemnity Agreement.

"Permitted Liens" shall mean (i) liens for taxes, assessments and other federal, state or local governmental charges and levies either not yet due and delinquent or not yet subject to penalty or interest for non-payment, (ii) undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's, employees' or other like liens arising in the ordinary course of Lessee's business and not delinquent, and (iii) Lessor Liens.

"Purchase Order Assignment" shall mean an agreement in the form of Exhibit C hereto.

"Person" shall mean an individual, a corporation, a partnership, and unincorporated organization, an association, a joint stock company, a joint venture, a trust, an estate, a government or any agency or political subdivision thereof, or other entity, whether acting in an individual, fiduciary or other capacity.

"Prime Rate" shall mean the lowest rate of interest publicly announced by The Valley National Bank, Phoenix, Arizona, or its successor, as its rate on short-term loans to its best commercial customers, as such rate may change from time to time.

"Schedule" shall mean the Schedule attached hereto as Exhibit A and by this reference made a part hereof, setting forth, among other things, a description of the Units and certain specific terms under which the Units are leased.

"Stipulated Loss Value" shall mean the value of a Unit at a particular time determined from the table set forth in Section 4 of the Schedule.

"Tax Indemnity Agreement" shall mean the Tax Indemnity Agreement in the form attached hereto as Exhibit D.

"Transaction Costs" shall include Transaction Expenses together with out-of-pocket fees and expenses of Lessor incurred in the documentation and closing of this transaction.

"Transaction Expenses" shall include appraisal fees (not to exceed \$5,000) and fees and expenses of PNC Merchant Banking Company, in its capacity as advisor to Lessee on this transaction.

"Unit" shall mean an item of equipment described in Section 1 of the Schedule.

## SECTION 2

### LEASE OF UNITS

2.1 In consideration of and subject to the terms and conditions of this Lease, Lessor agrees to purchase the Units and lease the same to Lessee, and Lessee agrees to lease the Units from Lessor.

2.2 The base lease term for each Unit shall be as specified in Section 2 of the Schedule. If the base lease term is renewed pursuant to Section 7 (a) of the Schedule, the word "term" as used in this Lease shall be deemed to refer to the term as so renewed and all provisions of this Lease shall, except as provided herein, apply during and until the termination or expiration of such renewal term(s).

2.3 Except as permitted by Section 7(e) of the Schedule, this Lease may not be terminated by Lessee for any reason whatsoever. To the extent permitted by applicable law, Lessee hereby waives any right which it may now have or hereafter acquire to terminate or cancel this Lease or to surrender any of the Units. Subject to Lessee's due, timely and complete performance of all the terms and conditions hereof, Lessor agrees that it will not cause this Lease to be terminated.

## SECTION 3

### PROCUREMENT AND DELIVERY OF UNITS

3.1 So long as there is no Default or Event of Default hereunder, Lessor hereby appoints Lessee as its agent to accept delivery of the Units from the Builder, and Lessee hereby accepts its appointment and agrees to accept the Units on Lessor's behalf.

3.2 Lessor shall cause the Units to be delivered by the Builder to the Lessee. Lessee shall accept the Units by executing and delivering to Lessor an Acceptance Supplement identifying the Units whereupon the Units shall (i) be deemed accepted by Lessee on the Delivery Date specified in such Acceptance Supplement and (ii) become subject to and governed by this Lease. Upon satisfaction of the conditions set forth in Section 3.3 below, Lessor shall purchase the Units on not more than two funding dates (each a "Funding Date").

3.3 Lessor's obligation to purchase Units for lease to Lessee hereunder is subject to the satisfaction of the following conditions:

(a) Lessor shall have received not less than five days written notice of a Funding Date.

(b) The first Funding Date shall occur on September 30, 1988 and shall cover not less than 90 Units and the second Funding Date shall occur on October 15, 1988 and shall cover the remaining Units.

(c) On the date of execution and delivery hereof, Lessor shall have received:

(1) the favorable opinion of legal counsel to Lessee, in form and substance satisfactory to Lessor, with respect to each of the matters referred to in Section 6 hereof and as to such other matters as Lessor may reasonably request;

(2) a certified copy of the authorization of Lessee's board of directors, approving the execution and delivery of this Lease and the other documents referred to herein and performance by Lessee of its obligations hereunder and thereunder;

(3) an appraisal, satisfactory in form and substance to Lessor, with respect to the estimated useful life and fair market value of each Unit at the expiration of the base lease term;

(4) certified copies of Lessee's Restated Certificate of Incorporation and Bylaws;

(5) evidence satisfactory in form and substance to Lessor of the insurance coverage required by Section 10 hereof; and

(6) a fully executed Purchase Order Assignment in the form of Exhibit C hereto together with a certified copy of the original Purchase Order.

(d) On or before the first Delivery Date, the Lessee will, at its sole expense, cause this Lease to be duly filed, recorded and deposited in conformity with 49 U.S.C. Section 11303 of the Interstate Commerce Act and in such other places within the United States as the Lessor may reasonably request for the protection of the title of the Lessor to the Units and will furnish the Lessor proof thereof.

(e) On each Funding Date, the representations and warranties contained in Section 6 hereof shall be true and there shall exist on such date no Default or Event of Default; and Lessor shall have received an Officer's Certificate, dated such Funding Date, to such effect.

(f) As of each Funding Date, there shall not have occurred any material adverse change in the financial condition or results of operations of Lessee and its consolidated subsidiaries taken as a whole, whether or not arising from transactions in the ordinary course of business, since the date first above written; and Lessor shall have received an Officer's Certificate, dated such Funding Date, to such effect.

(g) On or before each Funding Date, Lessor shall have received (1) copies of invoices from the Builder setting forth the purchase price of the Units being purchased on such date together with the certification of Lessee that the aggregate purchase price stated thereon has been paid by Lessee (as agent for Lessor), and (2) a bill of sale from the Builder conveying title to the Units subject thereto to Lessor and warranting that the Builder had legal title thereto and good and lawful right to sell the same, and that title to said Units was free of claims, liens and encumbrances of any nature except only the rights of the Lessee under this Lease.

(h) On each Funding Date the Lessor shall have received the opinions of (1) counsel to the Builder in the form of Exhibit E hereto, and (2) counsel to the Lessee confirming the continuing accuracy of the opinion delivered pursuant to Section 3.3(c)(1) above.

(i) On or before each Funding Date, Lessor shall have received all other documents and Lessee shall have performed all other acts as Lessor shall have reasonably requested.

#### SECTION 4

##### RENTAL PAYMENTS

4.1 Lessee agrees to pay Lessor rent on each Unit. Such rent shall be paid at the times set forth in, and in the amounts computed in accordance with, Section 3 of the Schedule. If any rental payment date referred to in the Schedule is a day other than a Business Day, the rent otherwise payable on such date shall be payable on the next succeeding Business Day. Lessee's obligation to pay rent and all other amounts payable under this Lease shall be absolute and unconditional and shall not be affected by, and such payment shall be made without abatement, suspension, deferment or diminution by reason of any circumstance or occurrence whatsoever including, without limitation, any offset, counterclaim, recoupment, defense or other right which Lessee may now or hereafter have against Lessor or any legal person controlled by it, in control of it, or under common control with it, directly or indirectly, or any assignee of Lessor.

4.2 Except as provided in Section 19 hereof, all payments made by Lessee to Lessor under this Lease shall be made to Lessor at its address set forth in or provided pursuant to Section 22.2 hereof. All amounts payable to Lessor shall be deemed paid when received by Lessor at such address. Lessee shall pay interest at a rate equal to the greater of 10% per annum or the Prime Rate plus 3% per annum, but in no event greater than the maximum rate permitted by applicable law, on any installment of rent or other amount payable by Lessee hereunder which is overdue. Interest shall be computed on the basis of a 360-day year and actual number of days elapsed. All payments under this Lease shall be made in lawful money of the United States of America. If four consecutive or four of six consecutive monthly rental payments are late, Lessor may thereafter require all payments to be made by wire transfer of immediately available funds to the bank and account specified by Lessor in such notice.

4.3 Lessee acknowledges that any invoices for payments due under this Lease sent to Lessee by Lessor shall be for Lessee's convenience only. Lessee's nonreceipt of an invoice shall not relieve Lessee of its obligation to make any payment payable hereunder on the due date thereof.

4.4 Application of Payments. Any payment received from Lessee may be applied by Lessor at any time against any obligation due and owing by Lessee under this Lease, in Lessor's sole discretion, notwithstanding any statement appearing on or referred to in any remittance from Lessee or any prior application of such payment; provided, however, that in the event any bankruptcy proceedings are instituted by or against Lessee under Title 11 of the United States Code within ninety (90) days after receipt by Lessor of any payments hereunder, such payments shall be deemed applied to unpaid obligations due hereunder at the time of Lessor's receipt of such payment in the inverse order of maturity.

## SECTION 5

### REPRESENTATIONS AND WARRANTIES OF LESSOR

5.1 Lessor represents and warrants that it has the lawful right to purchase the Units and lease the same to Lessee in accordance with the terms hereof.

5.2 THE WARRANTY SET FORTH IN SECTION 5.1 HEREOF IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES OF LESSOR WHETHER WRITTEN, ORAL OR IMPLIED, AND LESSOR SHALL NOT BY VIRTUE OF HAVING LEASED THE UNITS UNDER THIS LEASE BE DEEMED TO HAVE MADE ANY OTHER REPRESENTATION OR WARRANTY. LESSEE ACKNOWLEDGES AND AGREES THAT: (A) LESSOR IS NOT A MANUFACTURER OF OR A DEALER IN PROPERTY OF SUCH KIND AS THE UNITS; (B) LESSOR HAS NOT MADE, AND DOES NOT HEREBY MAKE, ANY REPRESENTATION, WARRANTY OR COVENANT WITH RESPECT TO THE

DESIGN, OPERATION, MERCHANTABILITY, CONDITION, QUALITY OR DURABILITY OF THE UNITS, THEIR SUITABILITY FOR THE PURPOSES AND USES OF LESSEE, THE PRESENCE OR ABSENCE OF ANY DEFECTS (WHETHER LATENT OR PATENT), THE POSSIBLE INFRINGEMENT OF ANY PATENT OR TRADEMARK, OR ANY OTHER REPRESENTATION, WARRANTY OR COVENANT OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT TO THE UNITS; AND (C) LESSOR SHALL NOT BE LIABLE TO LESSEE FOR ANY LIABILITY, CLAIM, LOSS, DAMAGE OR EXPENSE OF ANY KIND OR NATURE CAUSED, DIRECTLY OR INDIRECTLY, BY ANY UNIT OR ANY INADEQUACY THEREOF FOR ANY PURPOSE, ANY DEFICIENCY OR DEFECT THEREIN, THE USE OR MAINTENANCE THEREOF, ANY REPAIRS, SERVICING OR ADJUSTMENTS THERETO, OR ANY INTERRUPTION OR LOSS OF SERVICE OR USE THEREOF; OR ANY LOSS OF BUSINESS OR FOR ANY DAMAGE WHATSOEVER OR HOWSOEVER CAUSED, as all such risks are to be borne by Lessee. Lessor makes no representation as to the treatment of this Lease, the Units or the rent for financial reporting or tax purposes. Lessee hereby waives any claim Lessee may have or acquire in the future against Lessor for any loss, damage or expense caused by any Unit or any defect therein or the use or maintenance thereof excluding those arising from Lessor's gross negligence in the actual operation of any of the Units.

5.3 So long as there is no Event of Default hereunder, nothing contained in this Lease shall be deemed to limit Lessee, acting as Lessor's agent, from pursuing any warranty, covenant or representation of any vendor, manufacturer or supplier of any Unit or any component part thereof. So long as there is no Event of Default hereunder, Lessor hereby appoints and authorizes Lessee to act as Lessor's agent in pursuing all claims and causes of action which Lessor may have against vendors, manufacturers or suppliers in connection with any Unit, and Lessor shall permit Lessee to prosecute any such claim or cause of action, at Lessee's sole expense; provided, however, that (a) no lawsuit shall be instituted in Lessor's name nor shall Lessee waive any warranty rights without the prior written consent of Lessor, (b) Lessee shall not seek termination or rescission of this Lease or revocation of its acceptance of any Unit as a remedy or relief in such lawsuit and (c) Lessee's agency shall immediately terminate upon the occurrence of an Event of Default.

5.4 Lessor covenants that, provided no Default or Event of Default exists and is continuing, Lessor shall not interfere with Lessee's quiet enjoyment of the Units.

## SECTION 6

### REPRESENTATIONS AND WARRANTIES OF LESSEE

Lessee represents and warrants that:

6.1 Lessee is a corporation duly organized, validly existing and in good standing under the laws of the State of New York and

is duly qualified and authorized to do business in every state in which the nature of its activities or properties requires such qualification and authorization.

6.2 Lessee has the full power, authority and legal right to execute and deliver this Lease and the Purchase Order Assignment and perform the terms hereof and thereof. The Operative Agreements have been duly authorized, executed and delivered and constitute valid and binding obligations of Lessee enforceable in accordance with their respective terms.

6.3 Neither the execution and delivery of this Lease and the Purchase Order Assignment nor the performance of the terms hereof or thereof by Lessee do or will contravene any law, regulation, judgment, order or permit affecting Lessee or result in any breach of, or constitute an event of default under, any contract or agreement, corporate charter or by-law or other instrument to which Lessee or any of its subsidiaries is a party or by which Lessee or any such subsidiary or any of its or their properties may be bound.

6.4 No consent of the shareholders or the trustee or holder of any indebtedness or obligation of Lessee is a condition to the performance of the terms hereof by Lessee or the validity of this Lease.

6.5 No notice to, filing with, or approval of, any governmental agency or commission (except the filing of this Lease with the Interstate Commerce Commission) is a condition to the performance of the terms hereof by Lessee or to the validity or enforceability of this Lease.

6.6 There is no action or proceeding pending or, insofar as Lessee knows, threatened against Lessee or any of its subsidiaries before any court or administrative agency which might have a materially adverse effect on the business, condition or operations of Lessee.

6.7 There is no person, partnership, corporation or governmental agency who or which is entitled to a lien, other than a Permitted Lien, on any Unit.

6.8 Lessee has filed all federal, state and local tax returns which are required to be filed, and has paid or made adequate provisions for the payment of all taxes which have or may become due pursuant to said returns or pursuant to any assessment received by it, other than taxes which are being contested in good faith or which in the aggregate do not involve a material amount in the reasonable opinion of Lessee's Vice President-Taxes.

6.9 Lessee has furnished to Lessor the most recently available consolidated balance sheet of Lessee and the related consolidated statement of income and retained earnings for the year then ended and its most recently available unaudited quarterly consolidated income statement. Such financial statements (a) were prepared in accordance with generally accepted accounting principles, applied on a consistent basis throughout the periods covered thereby and on a basis consistent with prior periods, (b) are correct and complete in all material respects and present fairly the financial position of Lessee and its consolidated subsidiaries as of such date and the results of their operations for such periods. There has not occurred any material adverse change in the general affairs, management, financial condition or results of operations of Lessee and its consolidated subsidiaries taken as a whole, whether or not arising from transactions in the ordinary course of business since the date of the most recent financial statement provided to Lessor as specified in the first sentence of this Section 6.9.

6.10 Lessee is not in default in the payment of the principal of or interest on any material indebtedness for borrowed money and no event has occurred and is continuing which, with notice or lapse of time or both, would constitute a default or permit the holders of (or a trustee for the holders of) any material indebtedness of Lessee for borrowed money to accelerate the stated maturity thereof.

## SECTION 7

### POSSESSION AND USE OF UNITS

7.1 At all times during the term of this Lease, title to the Units shall be vested in Lessor to the exclusion of Lessee, and the delivery of the Units to Lessee and Lessee's possession thereof shall constitute a letting and bailment for hire only.

7.2 Unless an Event of Default shall have occurred and be continuing, Lessee shall be entitled to use the Units in accordance with the terms of this Lease in the ordinary course of its regular business.

7.3 Lessee shall not assign or transfer or attempt to assign or transfer, by operation of law or otherwise, this Lease or any of Lessee's rights or interests herein or obligations hereunder, and any assignment or transfer consummated shall be null and void and any payments made thereunder shall be held in trust for the benefit of Lessor. Notwithstanding the foregoing, Lessee may sublease the Units provided: (a) Lessor is given 30 days' notice of the terms and conditions of such sublease; (b) any such sublease is expressly subject and subordinate to the terms and conditions of this Lease; (c) no such sublease shall operate to relieve

Lessee of any of its obligations hereunder; (d) the term of any such sublease does not extend beyond the term of this Lease and any extensions or renewals hereof (provided Lessee renews the Lease term pursuant to Section 7(a) of the Schedule); and (e) a copy of such sublease is provided to Lessor promptly after execution thereof by Lessee and sublessee.

7.4 Lessee shall pay or satisfy and discharge (a) any and all claims against, through or under Lessee and its successors or assigns which, if unpaid, might constitute or become a lien or a charge upon any Unit, (b) any liens or charges which may be levied against or imposed upon any Unit as a result of the failure of Lessee to perform or observe any of its covenants or agreements under this Lease or (c) any other liens or charges which arise by virtue of claims against, through or under any other party other than any Lessor Liens, but Lessee shall not be required to pay or discharge any such claims so long as it shall, in good faith and by appropriate legal proceedings contest the validity thereof in any reasonable manner which will not, in the reasonable opinion of Lessor, affect or endanger the title and interest of Lessor in and to the Units or diminish the value thereof. Lessee's obligations under this Section 7 shall survive the termination of this Lease.

7.5 Lessee agrees to comply with all governmental laws, regulations, requirements and rules, including, without limitation, the rules of the United States Department of Transportation, Federal Railroad Administration ("FRA"), the Interstate Commerce Commission and the current Interchange Rules or supplements thereto of the Mechanical Division, Association of American Railroads ("AAR") as described in the Field Manual of the AAR as the same may be in effect from time to time, or rules then in effect in substitution therefor (the "Interchange Rules"), with respect to the use and maintenance of each Unit. In case any equipment or appliance is required to be altered, added, replaced or modified on any Unit in order to comply with such laws, regulations, requirements and rules (including, without limitation, the Interchange Rules), Lessee agrees to make such alterations, additions, replacements and/or modifications at its own expense and title thereto shall be immediately vested in Lessor.

7.6 Lessee shall not use or permit any Unit to be used in an improper or unsafe manner, in violation of any contract of insurance applicable to the Unit or in violation of any applicable law, statute, ordinance, rule or regulation (collectively "applicable law") or manufacturers' warranties. In the event that, prior to the expiration of the term hereof, any such applicable law or manufacturers' warranty requires the alteration, modification, replacement or addition of or to any component part of any Unit, Lessee shall promptly comply therewith. Notwithstanding the foregoing, Lessee may, at its expense, in good faith contest the validity or application of any such applicable law or conditions of

warranty in any manner which does not, in the opinion of Lessor, adversely affect Lessor's title to the Units or the rights of Lessor under this Lease.

7.7 Lessee shall use or permit the use of the Units only in the manner for which they were originally designed and intended and so as to subject them only to ordinary wear and tear. In no event shall Lessee permit any Unit to be exposed to or to be used for the transportation of caustic, corrosive or explosive materials.

7.8 Lessee shall not permit any Unit to be located, operated or transported in or through Mexico. Lessee shall not permit any Unit to be used or located in Canada in excess of 180 days in any calendar year; provided, however, that during the first 30 months after the Commencement Date no more than 10% of the use of the Units taken as a whole in any calendar year may be in Canada, such percentage increasing to 50% in any calendar year thereafter.

## SECTION 8

### MAINTENANCE OF UNITS

8.1 Lessee shall, at its own expense, maintain, service and repair the Units in compliance with the Interchange Rules, in a manner designed to keep the Units in as good operating condition, state of repair and appearance as when delivered to Lessee, ordinary wear and tear excepted and in any event at the same level of maintenance at which the Lessee keeps similar equipment which it owns or leases.

8.2 Lessee shall, at its own expense, promptly comply with (a) all safety and environmental regulations, directives and instructions of applicable governmental authorities regardless of on whom such requirements are, by their terms, nominally imposed and (b) all applicable maintenance, service, repair and overhaul manuals and service bulletins published by the manufacturer of the Units or of any of their component parts. Lessee shall maintain all manufacturers' warranties. Lessee shall keep in effect all records, logs and other materials required by any applicable governmental authority to be maintained in respect of the Units after delivery, regardless of on whom such requirements are, by their terms, nominally imposed.

8.3 Lessee shall pay for any and all materials and other supplies consumed by or required for the operation of the Units.

8.4 The Lessee shall, at its sole cost and expense, maintain and renew all car linings (including existing linings and new linings) in respect of each Unit during the term of this lease whenever reasonably necessary, including when necessitated by

repairs to other portions of such Unit; and the Lessee shall insure that the lining of each Unit is in serviceable condition prior to the return thereof upon expiration or termination of this Lease unless the Lessor shall have relieved Lessee of this requirement by notice as provided in Section 22.2.

## SECTION 9

### REPLACEMENTS, ACCESSORIES AND ALTERATIONS

9.1 Lessee shall, at its own expense, replace any part of any Unit where necessary in accordance with a prudent operation and maintenance program. All replacement parts shall be of new manufacture or warranted as rebuilt or reconditioned by Lessee or a manufacturer approved by Lessor and meet all of the requirements of this Lease.

9.2 Lessee may, at its discretion and expense, affix any insubstantial accessory to, or make any insubstantial alteration in, any Unit. Except as may be required by Section 7.6 hereof, Lessee shall not, without the prior written consent of Lessor, affix any substantial accessory or make any substantial alteration to any Unit.

9.3 An accessory or improvement shall be deemed "substantial" if (a) it decreases the productivity or capacity of any Unit in any amount, (b) materially affects the function, use or value of the affected Unit, or (c) unless an accessory not deemed an accession pursuant to Section 9.4 hereof, the cost of the accessory or improvement when added to the cost of all previously affixed accessories so deemed accessions and all prior alterations exceeds 10% of the Lessor's Cost of the affected Unit.

9.4 Any part or accessory installed in or affixed to any Unit by Lessee in accordance with the provisions hereof, other than an accessory the affixing of which is permitted by the first sentence of Section 9.2 hereof and which may be readily removed without damage to the related Unit, shall be deemed an accession to such Unit. Title to all accessions shall immediately vest in Lessor, without cost or expense to Lessor, and such accessions shall be subject to all of the terms and provisions hereof as completely and to the same extent as if they had been components of said Unit at the time it originally became subject hereto; provided, however, that title to accessories and parts which shall have been replaced by such accessions shall be vested in Lessee when such replacement has been completed in accordance herewith. The removal of accessories not deemed accessions shall be accomplished by Lessee, at its sole expense, prior to the return of the related Unit(s).

9.5 Lessor shall bear no liability or responsibility whatever for the cost of any alteration made to any Unit by Lessee during the term hereof.

## SECTION 10

### INSURANCE

10.1 Lessee shall, at its own cost, maintain in effect throughout the term hereof and during any storage period thereafter, with financially sound and reputable insurers, "all risk" insurance, in form and substance satisfactory to Lessor, insuring against loss or damage to the Units in an amount equal to or greater than the Stipulated Loss Value of the Units. Such insurance shall not provide for a deductible or a self-insured exposure in excess of the amount set forth in the Schedule.

10.2 Lessee shall, at its own cost, maintain in effect throughout the term hereof and until the redelivery of the final Unit to the storage areas specified in Section 15.1(a) and in accordance with the notice provisions of Section 2 of the Schedule with financially sound and reputable insurers, and reasonably acceptable to Lessor, (a) combination of primary and excess (umbrella) limits or on a combined single limit basis, comprehensive general liability (including without limitation, contractual liability and sudden pollution), insuring against loss or damage to the persons and property of others, in amounts which shall be not less than those set forth in the Schedule and (b) such other insurance with respect to the Units, in form and substance satisfactory to Lessor, as Lessor may reasonably request. Each liability policy shall expressly provide that all the provisions thereof (except limits of liability) shall operate as if there were a separate policy covering each insured.

10.3 All insurance policies carried in accordance with this Section 10 shall name Lessor and its successors and assigns as additional insureds or loss payees or both, as appropriate, and shall insure their interests regardless of any breach or violation by Lessee of any representation, warranty or condition contained in such policies. Such insurance policies shall further provide that (a) the insurers waive all rights of subrogation against Lessor and Lessee, (b) the insurers waive all right to any set-off, counter-claim or other deduction, whether by attachment or otherwise, in respect of any liability of Lessee, (c) they will not be invalidated by any foreclosure or other remedial proceedings or notices thereof relating to the Units or by any change in the title to or ownership of the Units or by the use or operation of any Units for purposes or in a manner more hazardous than permitted by such policies, (d) no termination, expiration, suspension or change shall be effective until the 30th day after written notice of the same shall have been given by the insurer to Lessor,

and (e) each policy is primary without any right of contribution from any other insurance effected by Lessor or any company affiliated with Lessor.

10.4 Not less than ten days prior to the expiration date of each expiring policy of insurance evidence of which has been delivered to Lessor pursuant to Section 3.3 hereof or this Section 10.4, Lessee shall deliver to Lessor certificates of insurance issued by the insurers or their duly authorized agents demonstrating that Lessee is in compliance with the provisions of this Section 10; provided, however, that, if the delivery of any certificate shall be delayed, Lessee shall deliver an executed binder with respect thereto and shall deliver the certificate promptly after its receipt thereof. Lessee shall deliver to Lessor from time to time, upon Lessor's request, an Officer's Certificate certifying payment of all premiums then due for the policies required by this Section 10.

10.5 Lessor may, at its option, place insurance on the Units at its own cost for its sole benefit with respect to risks of any kind insurable by Lessor. Lessee agrees that it shall cooperate with Lessor in any reasonable manner to enable Lessor to obtain such additional insurance.

## SECTION 11

### LOSS, DAMAGE, DESTRUCTION AND SEIZURE

11.1 Lessee shall bear the risk of the Units being lost, stolen, destroyed, damaged or seized by governmental authority for any reason whatsoever at any time during the term of this Lease and until the commencement of the 60-day storage period specified in Section 15.1(b)(ii). If any Unit shall be lost, destroyed, damaged or seized by governmental authority for any reason whatsoever during such term, Lessor and Lessee shall proceed diligently and cooperate fully to recover any and all insurance proceeds or condemnation awards or both.

11.2 If during the term of this Lease or until the commencement of the 60-day storage period specified in Section 15.1(b)(ii) any Unit shall be lost, stolen, destroyed or irreparably damaged, as certified by Lessee to Lessor, or seized by governmental authority for a period equal to at least the remainder of the term of this Lease, Lessor shall receive from the proceeds of insurance obtained pursuant to Section 10.1 hereof, from any award paid by the seizing governmental authority and, to the extent not received from the proceeds of such insurance or award or both, from Lessee, on or before the rental payment date next succeeding such loss, theft, destruction, damage or governmental seizure: (a) all accrued and unpaid rent in respect of such Unit; (b) the Stipulated

Loss Value of such Unit, determined as of such rental payment date succeeding such loss; (c) all other sums, if any, that shall have become due and payable hereunder; and (d) interest on the foregoing at the rate set forth in Section 4.2 hereof from the due date(s) of such payment(s) to the date of payment.

On receipt by Lessor of the amount specified hereinabove with respect to each such Unit so lost, stolen, destroyed, damaged or seized, this Lease shall be deemed terminated as to such Unit, rent in respect of such Unit shall be deemed abated, as of the rental payment date next succeeding such loss, theft, damage, destruction or seizure, and Lessor shall convey title to such Unit to Lessee "as-is, where-is" without warranty. If Lessor shall have received the Stipulated Loss Value with respect to a Unit from Lessee, rather than from the proceeds of insurance obtained pursuant to Section 10.1 hereof or an award paid by a seizing governmental authority or both, provided that no Default or Event of Default exists and is continuing, Lessee shall be entitled to receive therefrom an amount equal to the entire insurance proceeds or condemnation award. If Lessor shall have received Stipulated Loss Value with respect to a Unit from the proceeds of insurance obtained pursuant to Section 10.1 hereof or from an award paid by a seizing governmental authority or both, rather than from Lessee, Lessee shall not be entitled to retain any part of the proceeds of such insurance or any such reward or both. Any proceeds of insurance obtained by Lessor pursuant to Section 10.5 hereof received by Lessee shall be paid to Lessor promptly upon their receipt by Lessee.

11.3 Any proceeds of insurance obtained pursuant to Section 10.1 hereof received with respect to any Unit the repair of which is practical shall, at the election of Lessee, be applied either to the repair of such Unit or, upon Lessor's receipt of evidence of the repair of the Unit satisfactory to Lessor, to the reimbursement of Lessee for the cost of such repair. No Unit shall be deemed "irreparably damaged" unless the estimated cost of repair shall exceed the Stipulated Loss Value therefor.

11.4 If during the term of this Lease any Unit is seized by a governmental authority for a period less than the then unexpired term of this Lease, this Lease shall continue in full force and effect as if such taking had not occurred and rent hereunder shall not be diminished or abated. Provided that no Default or Event of Default exists and is continuing, Lessee shall be entitled to receive and retain any award paid by the seizing governmental authority as compensation for the interruption of Lessee's leasehold interest in such Unit.

## SECTION 12

### INDEMNIFICATION, RELEASE AND WAIVER

12.1 Lessee shall defend, indemnify, reimburse and hold Lessor and its successors, assigns, agents and employees harmless from and against:

(a) any and all loss or damage to the Units, usual wear and tear excepted; and

(b) any claim, cause of action, damages, liability, cost or expense (including, without limitation, counsel fees and costs in connection therewith) which may be incurred in any manner by or for the account of any of them (i) relating to any Unit or any part thereof, including, without limitation, the construction, purchase, delivery, acceptance, rejection, ownership, sale, leasing, return or storage of any Unit or as a result of the use, maintenance, repair, replacement, operation or the condition thereof (whether defects are latent or discoverable by Lessee or any indemnified party), (ii) by reason or as the result of any act or omission (whether negligent or otherwise) of the Lessee for itself or as agent or attorney-in-fact for the Lessor hereunder, (iii) as a result of claims for patent, trademark or copyright infringements, or (iv) as a result of claims for negligence or strict liability in tort.

The Lessee shall not be required to indemnify any party against any loss, damage, injury, claim or demand which arises out of or is caused by the gross negligence or wilful misconduct of such party (it being understood that the gross negligence or wilful misconduct of such party shall not be imputed to any other party).

12.2 The indemnities and assumptions of liability contained in this Section 12 shall continue in full force and effect notwithstanding the termination of this Lease, or the termination of the term hereof in respect of any one or more Units, whether by expiration of time, by operation of law or otherwise; provided, however, that such indemnities and assumptions of liability shall not apply in respect of any events arising out of matters referred to in subsection (a) or clause (i), (ii) or (iv) of subsection (b) of Section 12.1 hereof, occurring after the termination of this Lease, except for any such events occurring after the termination arising in connection with the Lessee's assembling, delivering, storing or transporting of the Units as provided in Sections 14 or 15, as the case may be.

12.3 Upon Lessor's written demand, Lessee shall assume and conduct promptly and diligently, at its sole cost and expense, the entire defense of Lessor and its agents, employees, successors and

assigns against any claim set forth in Section 12.1 hereof. Lessee shall not settle or compromise any claim against Lessor without first obtaining Lessor's written consent thereto.

### SECTION 13

#### GENERAL TAX INDEMNITY

All payments to be made by Lessee to Lessor hereunder or otherwise in connection with the transactions contemplated herein shall be free of, and Lessee shall pay, any tax, exaction, fee, assessment, charge, fine, penalty, or interest thereon levied or imposed in connection with or measured by the ownership, sale, rental, use, operation, possession, shipment or delivery of, payment for, or transfer of title to, any Unit or on the earnings arising therefrom, including, but not limited to, any business and occupation tax, gross receipts tax, retail sales or use tax or property tax (all of which are hereinafter called "impositions") whether such impositions be assessed against Lessor, Lessee or any vendor or manufacturer of any of the Units; provided, however, Lessee shall not be liable for (a) any federal income tax liability of Lessor, (b) state and local taxes measured by net income realized by Lessor (excluding any such tax which would be in substitution for or relieve Lessee from the payment of impositions which it would otherwise be obligated to pay or reimburse Lessor for as herein provided) up to the amount of all state and local taxes measured by net income realized by Lessor which would be payable with respect to such net income to the state and locality in which Lessor has its principal place of business if the Units were located at the principal place of business of Lessor, (c) any income tax liability of any vendor or manufacturer of any of the Units, or (d) franchise taxes, doing-business taxes and business and occupation taxes imposed on Lessor by state and local taxing authorities in which Lessor is present and doing business prior to the inception of this Lease, provided, however, Lessee shall be responsible for any increase in such taxes resulting from this transaction.

Lessee shall at all times keep each and every part of the Units free and clear of all impositions which might in any way affect the title of Lessor or result in a lien, other than a Permitted Lien, thereupon; provided, however, that Lessee shall not be required to pay an imposition so long as (i) it is contesting such imposition in good faith by appropriate legal proceedings (which proceedings, if instituted, shall be conducted at Lessee's expense and with the prior written consent of Lessor), and (ii) the nonpayment thereof does not, in the opinion of Lessor, adversely affect the title, property or rights of Lessor in the Units or hereunder.

Lessee shall promptly pay such impositions as are assessed or billed to Lessee, and Lessee, at its own expense, shall promptly file all returns and other documents and take all such other actions as are required in connection therewith. Upon Lessor's request, Lessee shall provide Lessor with written evidence of the payment of such impositions and copies of all such returns and other documents. If Lessee may not cause impositions billed or assessed to Lessor to be submitted to Lessor in care of Lessee or if Lessee may not directly make payment of impositions billed or assessed to Lessor, Lessee will promptly notify Lessor to such effect, and Lessee shall reimburse or advance to Lessor, on demand, the amount of any impositions paid or to be paid by Lessor.

#### SECTION 14

##### DEFAULTS AND REMEDIES

14.1 The following events shall constitute "Events of Default" for purposes of this Lease:

(a) Lessee shall fail or be unable to make any rental or other payment required hereby in full within 10 days after written notice from Lessor;

(b) Lessee shall fail to procure or maintain any insurance coverage required hereby;

(c) Lessee shall fail or be unable to observe or perform any covenant, condition, or agreement of Lessee contained herein, other than such as are referred to in clause (a) and (b) above, and such failure shall continue for 30 days after the giving of notice thereof by Lessor;

(d) Any representation or warranty of Lessee contained herein or any representation or warranty contained in any document or certificate furnished to Lessor in connection herewith or pursuant hereto shall be untrue or incorrect in any material respect when made;

(e) Lessee shall apply for or consent to the appointment of, or the taking of possession by, a custodian, receiver, trustee or liquidator of itself or a substantial part of its property, shall become insolvent, shall fail or be unable to pay its debts generally as they become due, or shall cease to conduct its business in its ordinary course;

(f) Lessee shall file a voluntary petition in bankruptcy or a petition or answer seeking reorganization or an arrangement with creditors or to take advantage of any other federal or state bankruptcy, insolvency or other law relating to the relief of debtors, the readjustment, composition or extension of indebted-

ness or reorganization; file an answer admitting the material allegations of a petition filed against it in a case under Title 11 of the United States Code or in proceedings relating to the relief of debtors, the readjustment, composition or extension of indebtedness or reorganization; or taking corporate action for the purpose of effecting any of the foregoing; or

(g) Without the application, approval or consent of Lessee, a proceeding shall be instituted in any court of competent jurisdiction, seeking in respect of Lessee an order for relief under the aforesaid Title 11, reorganization, dissolution, winding up, liquidation, a composition or arrangement with creditors, a readjustment of debts, the appointment of a custodian, receiver, trustee or liquidator of Lessee, any substantial part of its property or any of the Units, or other such like relief in respect of Lessee under any bankruptcy, insolvency or other similar law, and the same shall continue undismissed or unstayed for any period of 120 days.

14.2 Upon the occurrence of an Event of Default, Lessor may, at its option:

(a) enforce performance by Lessee of the terms hereof;

(b) recover damages for Lessee's breach of the terms hereof;

(c) by giving notice to Lessee specifying the Event of Default, accelerate the due date with respect to all rents contemplated by this Lease and, but for the giving of such notice, due after the date thereof, and all such rents and any other amounts due hereunder shall be immediately due and payable;

(d) by giving notice to Lessee specifying the Event of Default, terminate this Lease effective on the date specified in such notice (hereinafter the "Date of Termination"), and on the Date of Termination, this Lease shall expire and terminate and all rights of Lessee under this Lease shall absolutely cease (but Lessee shall remain liable as herein set forth), and Lessee shall deliver possession of the Units to Lessor in accordance with Section 15 hereof. Upon such termination, Lessor shall have the right to immediate possession of the Units free of any claims of Lessee whatsoever, and Lessor may remove all or any of the Units, whether or not affixed or attached to real or personal property, from the possession of Lessee, its agents and affiliates, at Lessee's sole cost and expense, and for such purpose may enter premises where the Units are located, and may use and employ any supplies, services, means or other facilities of Lessee, its agents and affiliates, with or without process of law, and Lessor shall not be liable for, and shall be held harmless by Lessee from any liability for, damage caused to real or personal property

during any such removal. Lessee shall, without further demand, within five days of the Date of Termination pay to Lessor an amount equal to any unpaid rent due and payable for all periods up to and including the Date of Termination, plus all other sums due Lessor hereunder, plus, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the Stipulated Loss Value, computed as of the rent payment date immediately prior to the Date of Termination. Following the return of the Units to Lessor pursuant to this paragraph, Lessor shall, at a commercially practicable time, proceed to either sell or re-let the Units in a commercially reasonable manner. If Lessor re-lets the Units, the present value of the rentals payable to and mileage credits received and retained by Lessor in connection with such re-letting for the period from the commencement date of such new lease to the date on which this Lease would normally have terminated (absent default or renewal) computed on the basis of a 10.0% per annum discount (compounded on the same periodicity as the payment of rents under this Lease) shall be referred to hereinafter as the "Proceeds of Re-letting." The proceeds of such sale or the Proceeds of Re-letting, as the case may be, shall be applied by Lessor (A) first, to pay all costs, charges and expenses, including reconditioning expenses and legal fees and disbursements, incurred by Lessor as a result of the default and the exercise of its remedies with respect thereto, (B) second, to pay interest on past due rentals and other unpaid amounts due Lessor and on the Stipulated Loss Value, (C) third, to pay to Lessor an amount equal to any unpaid rentals or other amounts due and payable and the Stipulated Loss Value, to the extent not previously paid, (D) fourth, to reimburse Lessee for the Stipulated Loss Value to the extent previously paid by Lessee as liquidated damages. Any surplus remaining thereafter shall be retained by Lessor. Upon receipt of such sale proceeds or Proceeds of Re-letting, to the extent that all rent and other sums then due and payable with respect to the Units and the Stipulated Loss Value in respect of the Units have not been previously paid, Lessee shall forthwith pay to Lessor the sum of (1) the amount by which (X) the sum of (a) all rent and other sums then due and payable with respect to the Units, (b) the Stipulated Loss Value or portion thereof not theretofore paid, and (c) the amount payable under clause (A) of the preceding sentence, exceeds (Y) the sale price or the Proceeds of Re-letting, as the case may be, of the Units, and (2) interest at the rate specified in Section 4.2 hereof on the full amount of all due and unpaid rent and the Stipulated Loss Value, computed for the date or dates such rent or the Stipulated Loss Value is payable hereunder until such rent or Stipulated Loss Value is paid by Lessee.

(e) Lessee shall, upon demand, reimburse Lessor for all expenses, costs and commissions (including attorneys' fees) incurred by Lessor in enforcing its rights hereunder and in taking possession of, overhauling, repairing, storing or modifying the Units determined by Lessor to be required to place such Units in

condition suitable for sale, re-lease or use. Amounts recoverable under this subsection shall include expenses incurred after the Date of Termination.

14.3 Lessor shall have the option, upon the occurrence of an Event of Default, whether or not it shall then have possession thereof, to conclusively establish the present worth at the Date of Termination of the prevailing rental value of a Unit by entering into a bona fide lease of the Unit with a third party which lease shall be free from any and all claims at law or in equity of Lessee. If Lessor exercises such option, the present worth at the Date of Termination of the prevailing rental value of the Units shall be conclusively deemed to be the proceeds of such bona fide lease, to the date on which the term hereof would have expired but for such termination, discounted at the Prime Rate in effect at the Date of Termination from the dates such proceeds are to be paid to Lessor thereunder to the Date of Termination.

14.4 Lessor shall also have the option, upon the occurrence of an Event of Default, whether or not it shall have possession thereof, to conclusively establish the prevailing sale value of a Unit as of the rental payment date preceding the Date of Termination by consummating a bona fide arm's length sale of the Unit to a third party which sale shall be free from any and all claims at law or in equity of Lessee. There shall be deducted from any such sale proceeds all costs and expenses of such sale, and preparation of the Units for such Sale, in determining the "sale value". The aforementioned option may be exercised by public or private sale, with or without advertisement or publication, as Lessor may determine. Lessor may otherwise dispose of the Units, hold the Units idle, or lease the Units to others (for a period greater or lesser than the balance of the term of this Lease in the absence of the termination), all on such terms and conditions as Lessor may determine and all free and clear of any rights of Lessee and of any claim or right of redemption of Lessee in equity, at law or by statute, whether for loss or damage or otherwise.

14.6 Lessor may at its election waive any Event of Default and its consequences and rescind and annul any notice of termination by notice to Lessee in writing to that effect and thereupon the respective rights of the parties shall be as they would have been if no Event of Default had occurred and no such notice had been given. No such waiver, rescission or annulment shall extend to or affect any other or Event of Default or impair any right or remedy consequent thereto.

14.7 Each and every power and remedy hereby specifically given to Lessor shall be in addition to every other power and remedy specifically so given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time or simultaneously and as often and in such order

as may be deemed expedient by Lessor. All such powers and remedies shall be cumulative and the exercise of one shall not be deemed a waiver of the right to exercise any others. No delay or omission of Lessor in the exercise of any such power or remedy and no renewal or extension of time with regard to any payment due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or any acquiescence therein.

## SECTION 15

### RETURN OF UNITS

15.1 If Lessor shall rightfully demand possession of the Units pursuant to Section 14 hereof or at the expiration of the term hereof, Lessee shall forthwith return the Units to Lessor. Accordingly, Lessee shall:

(a) assemble the Units and place them in storage in not more than three locations on storage tracks owned or leased by Lessee or in any other reasonable location, in either case as is mutually agreeable to Lessee and Lessor; and

(b) permit Lessor to store all or part of the Units in such storage locations until the earlier of (i) the date such Units are sold, leased or otherwise disposed of by Lessor or (ii) 60 days from the delivery of all Units being returned to Lessor to the designated storage locations, as the case may be, provided, however, that such 60 days shall not commence until Lessee has given the notice required by Section 2 of the Schedule.

The assembling and storing of the Units as hereinabove provided shall be at the expense and risk of Lessee and are of the essence with respect to this Lease. On application to any court of equity having jurisdiction in the premises, Lessor shall be entitled to a decree against Lessee requiring specific performance of the covenants of Lessee to assemble and store the Units. During any storage period, Lessee shall permit Lessor or any person designated by it, including the authorized representatives of any prospective purchaser of any Unit, to inspect the same. Lessor shall be responsible for and agrees to indemnify and hold Lessee harmless from any claims, demands, liabilities or expenses arising out of the inspection of the Units by Lessor, Lessor's agent or prospective purchasers/users as provided in the foregoing sentence, unless such claim, demand, liability or expense is the result of Lessee's gross negligence or willful misconduct. All rental, per diem or similar charges earned in respect of the use, lease or rental of the Units after the date of expiration of this Lease shall belong to Lessor and, if received by Lessee, shall be promptly turned over to Lessor. In the event any Unit is not assembled,

delivered and stored, as hereinabove provided, within thirty (30) days after the expiration of this Lease, or other date on which the same is required hereby, Lessee shall, in addition, pay to Lessor for each day thereafter an amount equal to the amount, if any, by which the Fair Rental Value for such Unit on such day exceeds the amount, if any, received by Lessor (either directly or from Lessee) for such day for such Unit pursuant to the preceding sentence.

Without limiting its obligations under this Section 15.1, Lessee irrevocably appoints Lessor as the agent and attorney of Lessee, with full power and authority, at any time while Lessee is obligated to deliver possession of any Unit to Lessor, to demand and take possession thereof in the name and on behalf of Lessee from whomever shall be in possession of such Unit at such time.

15.2 Any Unit delivered to Lessor hereunder shall have all accessories and parts installed thereon as were installed at the commencement of the term hereof (or replacements therefor made in accordance with Section 9.1 hereof), shall be equipped with all accessions thereto, and shall be in as good condition, state of repair and appearance as when delivered to Lessee, ordinary wear and tear and changes or alterations as permitted by Section 9.2 excepted, including a serviceable lining, suitable for the transport of items normally transported by railcars of similar design, size and age, conforming to all applicable Department of Transportation, FRA (or successor agency) safety rules and regulations, and meeting the Interchange Rules, or if none are then in effect, the Interchange Rules last in effect. Lessee shall pay for any repairs necessary to restore any Unit to such condition, whether made by Lessee prior to redelivery or by Lessor thereafter. Lessee shall provide Lessor with a certificate of an officer of Lessee stating that the Units have no basic structural weaknesses or damage that would cause an unsafe operating condition and the Units meet all Interchange Rules. The term "ordinary wear and tear" shall not be construed as permitting any broken, damaged or missing items or components of any Unit. Lessee shall remove all markings using methods approved by Lessor and specified to Lessee at least 60 days prior to the expiration of the term of the Lease. Lessee shall also deliver to Lessor with each Unit, all manuals and inspection, modification, overhaul and maintenance records applicable to such Unit.

## SECTION 16

### INSPECTION AND REPORTS

16.1 During the term hereof, Lessee shall furnish to Lessor such information concerning the location, condition, use and operation of the Units as Lessor may reasonably request, shall permit any person designated by Lessor to visit and inspect the Units and

the records maintained in connection therewith, and shall permit Lessor to discuss the status of Lessee's finances and accounts with Lessee's principal officers, all at such reasonable times and as often as Lessor may request.

16.2 Lessee shall without demand:

(a) Immediately notify Lessor, with respect to each accident relating to the alleged improper construction, functioning or operation of any Unit and involving a claim or estimated damage to persons, property or both in excess of \$150,000, of (i) the time, place and nature of the accident and damage; (ii) the names and addresses of the parties involved, persons injured, witnesses and owners of property damaged and (iii) such other material information as is known by Lessee;

(b) Immediately notify Lessor of all correspondence, papers, notices and documents of any kind received by Lessee in connection with any claim or demand relating to the alleged improper construction, functioning or operation of any Unit, or charging Lessor with liability of any kind, and Lessee shall cooperate with Lessor in the investigation and defense of all such claims and in the recovery of damages from third persons liable therefor; and

(c) Notify Lessor in writing, within ten days after any day on which any tax lien shall attach to any Unit, of the location of any such Unit on such day.

SECTION 17

IDENTIFICATION

Lessee shall, at its own expense, cause each Unit to be legibly and permanently marked, in a reasonably prominent location, with a plate or other marking to evidence the fact that such Unit is owned by Lessor and subject to this Lease, which plate or other marking shall be in a form specified in Exhibit B.

Lessee shall not remove or deface, or permit to be removed or defaced, either the identifying manufacturer's serial number of any Unit or any such plate or other marking so placed on any Unit. In the event of such removal or defacement, Lessee shall promptly cause such manufacturer's serial number or such plate or other marking to be replaced.

## SECTION 18

### RECORDATION AND FILING

Lessee shall, at its own expense, cause the Lease, including the Acceptance Supplement(s), and any and all additional instruments which shall be executed pursuant hereto, so far as permitted by applicable law or regulations, to be filed and recorded at such times and in such places as Lessor may reasonably request. Lessor, shall, at Lessee's expense, execute, file and re-file Uniform Commercial Code financing statements, or the equivalents thereof, with respect to some or all of the Units, in the various states where the Units or Lessee's principal place of business may be located. The filing of any such financing statement shall be for informational purposes only and shall not imply that Lessor has less than full legal and beneficial ownership of the Units.

## SECTION 19

### ASSIGNMENT BY LESSOR

19.1 Lessee acknowledges and agrees that Lessor shall have the absolute right to transfer or assign any or all of Lessor's rights, obligations, benefits and interests under this Lease, including, without limitation, the right to receive rent or any other payment due under this Lease, the right to transfer or assign title to the Units or to transfer or assign the right to purchase all or some of the Units, and the right to make all waivers and agreements, to give all notices, consents and releases, to take all action upon the occurrence of an Event of Default, or to do any and all other things which Lessor is or may become entitled to do under this Lease. Any such transfer by Lessor to a bank, lending institution, leasing company, industrial finance company or insurance company shall be at Lessor's sole discretion; provided, however, Lessor agrees to give Lessee prior written notice of the transfer. In the event that Lessor proposes to make such a transfer to any person, corporation or entity not covered by the foregoing sentence, Lessor agrees to give Lessee notice of the proposed transferee no less than 10 days prior to the effective date thereof. Lessee shall notify Lessor within 10 days after receipt of such notice if Lessee has any objection to such transfer. If no objection is received by Lessor within such 10 day period, Lessee shall be deemed to have waived any objection. Lessee's sole ground for objection to a proposed transferee shall be that such transferee, or an affiliate of the transferee, is a direct competitor of Lessee. If Lessee does make timely written objection to a proposed transferee, Lessor and Lessee agree to work together to resolve the objection.

Lessee acknowledges that, if Lessor should sell or transfer to a third party all of Lessor's interest under this Lease and in the Units, Lessor shall thereupon be relieved of all of its obligations hereunder and Lessor's transferee shall succeed to all of Lessor's rights, interests and obligations under this Lease as though Lessor's transferee had been the initial lessor hereunder; provided, however, that, in the event of a transfer or assignment of a security interest in the Units, Lessor shall remain liable under this Lease.

19.2 Without limiting the generality of Section 19.1, Lessee acknowledges and agrees that the terms and conditions of this Lease have been agreed to by Lessor in anticipation of its being able to assign for security its rights under and interests in this Lease and its rights in the Units and its being able to grant a security interest in all or any of its rights under and interests in this Lease and its rights in all or some of the Units to one or more lenders, to an agent or trustee representing such lenders, or to any other party having an interest in the Units or participation in the transaction which is the subject of this Lease, any or all of which may rely on and shall be entitled to the benefit of the provisions of this Section 19.2 hereof. Lessee shall, so long as any such assignment may be effective: (a) acknowledge such assignment, (b) accept the directions or demands of such assignee in place of those of Lessor, (c) surrender any leased property only to such assignee, (d) pay all rent payable hereunder and do any and all things required of Lessee hereunder, and not terminate this Lease (except as may be specifically provided for herein), notwithstanding any default by Lessor or the existence of any other liability or obligation of any kind or character on the part of Lessor to Lessee whether or not arising hereunder, (e) not require such assignee to perform any duty, covenant or condition required to be performed by Lessor hereunder, all rights of Lessee in any such connection being hereby waived as to such assignee, and (f) execute any documents which Lessor may reasonably request in order to effectuate the foregoing; provided, however, that nothing in this Section 19.2 shall relieve Lessor from its obligations to Lessee hereunder, and such transfer or assignment shall be subject and subordinate to the terms and provisions of this Lease and the rights and interest of Lessee in the Units hereunder.

19.3 Any assignment, pledge or other conveyance, for security or otherwise, of this Lease by Lessor shall not be effective unless and until Lessee shall have been given notice of such assignment identifying the assignee or transferee of this Lease.

## SECTION 20

### FINANCIAL AND OTHER INFORMATION

Until all obligations of Lessee under this Lease are fulfilled, Lessee shall furnish to Lessor:

(a) Within 60 days after the end of each fiscal quarter or 120 days after the end of the fiscal year, as the case may be, a consolidating and consolidated balance sheet and income statement of Lessee and its consolidated subsidiaries, if any, for, or as at the end of, such quarter or year prepared in accordance with generally accepted accounting principles consistently applied and, in the case of annual statements, audited by Lessee's independent accountants;

(b) Together with the annual financial statements required by paragraph (a) above, an Officer's Certificate stating that there exists no Default or Event of Default or, if any Default or Event of Default has occurred, specifying the nature thereof, the period of its existence thereof and what action Lessee proposes to take with respect thereto;

(c) Within five days of their being distributed or filed, all proxy statements, financial statements, registration statements and reports as Lessee shall distribute to its stockholders or shall file with any governmental authority having jurisdiction over transactions involving securities; and

(d) Promptly after the same becomes available, such other financial information respecting Lessee as Lessor may reasonably request from time to time.

## SECTION 21

### RIGHT OF LESSOR TO PERFORM

If Lessee shall fail at any time to comply with its covenants herein, including the maintenance of insurance, the payment of taxes, assessments and other charges and the keeping of the Units in good operating condition and state of repair and free of liens, charges and encumbrances, other than Permitted Liens, Lessor may, but shall not be obligated to (a) make advances to perform the same and (b) enter Lessee's premises to take all such action as in Lessor's opinion may be necessary or appropriate therefor. All payments so made by Lessor and all costs and expenses (including attorneys' fees) incurred by Lessor in connection therewith shall be payable by Lessee upon demand as additional rent, with interest thereon from the date(s) of such payments by Lessor until paid by Lessee at the rate set forth in Section 4.2 hereof. No such entry by Lessor shall be deemed an eviction of Lessee or a repossession

of the Units, and no such advance, performance or other act shall be deemed to relieve Lessee from any default hereunder.

## SECTION 22

### MISCELLANEOUS

22.1 Lessee and Lessor shall from time to time do and perform such other and further acts and execute and deliver any and all such other and further instruments as may be required by law or reasonably requested by the other to establish, maintain and protect their respective rights and remedies and to carry out and effect the intents and purposes of this Lease.

22.2 All demands, notices and other communications hereunder shall be in writing, and shall be deemed to have been duly given when delivered, if personally delivered; or when sent, if mailed certified or registered mail, postage prepared, or if sent by cable or telex, charges prepaid; in each case addressed to the parties at the locations specified in the Schedule hereto, or such other location(s) as may hereafter be furnished in writing by either party to the other.

22.3 This Lease shall be binding upon and shall inure to the benefit of Lessee, Lessor and, to the extent assignment hereof is permitted hereby, their respective successors and assigns.

22.4 The headings of the respective sections hereof are inserted for convenience only and form no part of this Lease.

22.5 This Lease constitutes the entire agreement between the parties hereto. No term or provision of this Lease may be changed, waived, amended or terminated except by a written agreement signed by both Lessor and Lessee.

22.6 Lessee's obligations hereunder shall survive the expiration or termination of this Lease and any renewals hereof to the extent required for full performance and satisfaction thereof.

22.7 This Lease may be executed in counterparts. Only the counterpart marked "Lessor's Copy" shall evidence a monetary obligation of Lessee.

22.8 This Lease shall be governed by and construed in accordance with the substantive laws of the State of Arizona. Lessee agrees that any legal proceeding brought by Lessor or any assignee of Lessor concerning this Lease or the Units may be brought in any State or Federal court in the State of Arizona and Lessee irrevocably submits to the jurisdiction of such court. Lessee hereby appoints C T Corporation System, 3225 North Central Avenue, Phoenix, Arizona 85012 as its agent for service of process in the State of Arizona.

22.9 If any term or provision hereof or the application thereof to any circumstances shall, in any jurisdiction and to any extent, be invalid or unenforceable, such term or provision shall be ineffective as to such jurisdiction to the extent of such invalidity or unenforceability without invalidating or rendering the application of such term or provision to circumstances other than those as to which it is held invalid or unenforceable. To the extent permitted by applicable law, the parties hereto hereby waive any provision of law which renders any term or provision hereof invalid or unenforceable in any respect.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed by their respective duly authorized officers as of the date first above written.

VALLEY BANK LEASING, INC.,  
as Lessor

By: [Signature]  
Its: President

State of Arizona )  
County of Maricopa )

On this 16th day of September, 1988, before me Nancy C. Schwanitz, the Undersigned Notary Public, personally appeared Alvin E. Wilson, personally known to me to be the person who executed the within instrument as President or on behalf of the corporation therein named, and acknowledged to me that the corporation executed it.

WITNESS my hand and official seal.

[seal of Notary]

Nancy C. Schwanitz  
My Commission Expires Oct 31, 1991

THE B.F. GOODRICH COMPANY,  
as Lessee

By: [Signature]  
Its: Vice President & Treasurer [Signature]

State of Ohio )  
County of Summit )

On this 14th day of September, 1988, before me Zella M. Meyers, the Undersigned Notary Public, personally appeared Robert A. McMillan, personally known to me to be the person who executed the within instrument as Vice Pres. & Treasurer or on behalf of the corporation therein named, and acknowledged to me that the corporation executed it.

WITNESS my hand and official seal.

[seal of Notary]

Zella M. Meyers  
-30-

ZELLA M. MEYERS, Notary Public  
State Of Ohio - Res. d. at Co.nty, Summit  
My Commission Expires 9-4-91

Acceptance Supplement No. \_\_\_\_\_

Delivery Date: \_\_\_\_\_, 1988

This Acceptance Supplement is executed pursuant to the Equipment Lease Agreement, dated as of August 1, 1988 (the "Lease"), between Valley Bank Leasing, Inc. and The B.F. Goodrich Company.

The terms used herein shall have the meanings given to such terms in the Lease.

Lessee represents and warrants that (i) it has inspected the Units fully and completely as to the size, model, function and conformity to the Purchase Order and all of the Units described in Annex A attached hereto have been fully assembled and conform to all applicable performance criteria, (ii) the Units are in good working order and appearance and are suitable for their intended purpose and any specific purpose of Lessee, and (iii) upon Lessor's payment in full of the Lessor's Cost thereof set forth below, Lessor shall have good title to the Units free and clear of all liens of mechanics, laborers, materialmen and suppliers.

Lessee certifies that the requirements of the Lease with respect to the identification of the Units have been met and further that each Unit has been marked on each side with the following legend in letters not less than one inch in height: "Owned by Valley Bank Leasing, Inc., and Subject to a Lease Recorded with the I.C.C."

Lessee confirms that on the date hereof (i) all of the Units described in Annex A attached hereto are duly and unconditionally accepted by Lessee, are in the possession of the Lessee and become subject to the Lease; (ii) the term of the Lease with respect to said Units commenced; and (iii) Lessee became obligated to pay to Lessor rent as provided in the Lease and the Schedule.

The total Lessor's Cost of the Units subject to this Acceptance Supplement is \$\_\_\_\_\_.

THE B.F. GOODRICH COMPANY

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Accepted:

VALLEY BANK LEASING, INC.

By: \_\_\_\_\_  
Its: \_\_\_\_\_

EXHIBIT A  
to Equipment Lease

Delivery Date: \_\_\_\_\_, 19\_\_

Annex A to Acceptance Supplement No. \_\_\_\_  
to Equipment Lease Agreement  
dated as of August 1, 1988  
between  
Valley Bank Leasing, Inc.  
and  
The B.F. Goodrich Company

<u>Description of Unit</u>	<u>Manufacturer or Vendor</u>	<u>Location of Unit</u>	<u>Road Number(s)</u>	<u>Lessor's Cost of Unit</u>
--------------------------------	-----------------------------------	-----------------------------	---------------------------	----------------------------------

Total Lessor's Cost of all  
Units Subject to this Accept-  
ance Supplement \$\_\_\_\_\_

amr\bfaceptsup

SCHEDULE

This Schedule is a part of the Equipment Lease Agreement, dated as of August 1, 1988 ("Lease"), between VALLEY BANK LEASING, INC., and THE B.F. GOODRICH COMPANY. The terms used in this Schedule shall have the meanings given them in the Lease.

1. Description and Estimated Cost of Units:

	<u>Description</u>	<u>Estimated Cost</u>
150	100-ton center-flow covered railroad hopper cars manufactured by ACF Industries, Inc., bearing Road Numbers BFGX 1400 through BFGX 1549, inclusive, each car with Amercoat 320 protective linings.	\$ _____
	Total Estimated Cost	\$ _____

The total Lessor's Cost of all Units subject to the Lease shall not exceed \$\_\_\_\_\_ without the express written consent of Lessor.

2. Term:

There shall be an interim lease term for each Unit commencing on its Funding Date and extending to October 31, 1988. The base lease term for all Units shall commence on November 1, 1988 (the "Commencement Date") and extend to the later of November 1, 2000 or the date on which all of the Units then subject to the Lease which are being returned are redelivered to Lessor pursuant to Section 15 of the Lease. Lessee shall give Lessor no less than five business days written notice of the date on which the last Unit being returned will be redelivered. All terms and conditions of the Lease shall apply throughout the interim and base lease terms and the renewal term(s), if any. No Delivery Date or Funding Date of any Unit shall be after October 31, 1988 without the written agreement of Lessor.

3. Rent:

(a) Interim Rent. Interim rent shall be payable on each Unit from and including its Funding Date to November 1, 1988 in an amount equal to the Lessor's Cost (as shown on the applicable Acceptance Supplement) times the number of days elapsed times .0322% ("Interim Rent"). All Interim Rent shall be paid on the Commencement Date.

EXHIBIT B  
to Equipment Lease

(b) Basic Rent. Commencing on the Commencement Date, the rent for each Unit shall be paid by Lessee in 144 consecutive monthly installments, in advance, on the first day of each month, each such installment equal to 0.9651% of the Lessor's Cost of such Unit ("Basic Rent").

(d) Adjustments. In the event that (i) the two Funding Dates are other than September 30, 1988, and October 15, 1988, (ii) less than 100 Units have a Funding Date of September 30, 1988, (iii) less than 66.666% of Lessor's Cost of all Units funds on September 30, 1988, (iv) the Tax Benefits (as defined in the Tax Indemnity Agreement) are not available in full on the Commencement Date, or (v) Transaction Costs are other than 1.75% of Lessor's Cost, then the Lessor shall adjust Basic Rent and Stipulated Loss Values to maintain Lessor's after-tax rate of return and after-tax cash flows. No adjustment shall be made for the effect of the mid-quarter convention. Lessor shall notify Lessee of the fact and amount of any such adjustment within 30 days after the Commencement Date and the parties shall execute a Lease amendment setting forth the appropriate changes.

The Lessee shall have no right to receive such information as is used in making the calculations or to inspect the books, records, tax returns or other documents of or relating to the Lessor in order to verify such calculations or for any other purpose. If requested in writing by the Lessee within 15 days after the giving of such notice by the Lessor, the Lessor hereby agrees to have the Lessor's independent certified public accountants (which shall be a "Big Eight" accounting firm, or such other accounting firm reasonably acceptable to Lessee) review such calculation and verify to the Lessee that such calculation was correctly made using the same assumptions used in computing the Basic Rent required to be paid under the Lease; provided, however, that the Lessor shall not be required to so employ its independent certified public accountants to verify such calculation unless the Lessee has agreed, in the event the Lessor's computation is not in error by more than five percent (plus or minus), to pay all fees and expenses of such accountants for making such review and verification.

#### 4. Stipulated Loss Values:

The Stipulated Loss Value payable at any given time by Lessee pursuant to Section 11.2 of the Lease shall be that percentage of Lessor's Cost of the affected Unit(s) set forth in the following table opposite the rental payment date next following the event giving rise to Lessee's obligation to pay Stipulated Loss Value. Stipulated Loss Values and rents shall not be prorated.

Rental  
Payment Date

Stipulated Loss Value  
as a Percentage of  
Lessor's Cost

Thereafter

\*

\*If Lessee renews the Lease, the Stipulated Loss Value during any renewal term shall be an amount equal to the fair market value of such Units as at the end of the base Lease term, as reasonably determined by Lessor, or in the event of disagreement between Lessor and Lessee, as determined by the independent appraiser selected under the provisions of Paragraph 7(c) hereof; provided, however, that such Stipulated Loss Value shall not be less than 35% or more than 55% of Lessor's Cost of the Units. The Stipulated Loss Values for the renewal term shall decline on a straight-line basis from the fair market value of the Units as at the end of the base Lease term as established above to the anticipated fair market value of the Units at end

of the renewal term, assuming compliance with all of the provisions of the Lease (as agreed between Lessor and Lessee or as determined by appraisal).

5. [intentionally left blank]

6. Insurance:

Notwithstanding the requirement of Section 10.1 of the Lease, the Lessee may self-insure the Units against physical loss or damage provided that (1) the Units are not used in "unit-train" service (as defined below), and (2) Lessee's long-term bond rating from Moody's Investors Services, Inc., does not fall below "BBB" or "investment grade" (as defined by the New York State Insurance Commissioner), whichever is higher. In the event Lessee fails to comply with either (1) or (2) above, Lessee shall within five Business Days procure insurance in full compliance with Section 10.1 of the Lease. "Unit-train" service shall mean any coupling, whether or not contiguous, of 25 or more of the Units in a single length of railroad cars in motion.

Subject to the foregoing paragraph, the insurance to be obtained by Lessee pursuant to Section 10.1 of the Lease shall not provide for a deductible or self-insured exposure in excess of \$1,000,000 (one million dollars).

The amounts of comprehensive general public liability insurance coverage required by Section 10.2 of the Lease shall be in an aggregate amount of not less than \$200,000,000.00 (Two hundred million dollars).

In the event Lessee is unable to procure insurance coverage in accordance with the requirements of Section 10 of the Lease and this Section 6, Lessee shall immediately notify Lessor and shall provide Lessor with the certificate of Lessee's independent insurance broker stating that the coverages required by this Lease are not commercially available at a reasonable cost and specifying what coverages are available and the cost thereof. In the event Lessor and Lessee are unable to agree on acceptable modifications to the required insurance coverages, Lessee shall, prior to the expiration of the then-applicable insurance, purchase all, but not less than all the Units for the greater of Fair Market Value or Stipulated Loss Value plus all other amounts due Lessor from Lessee hereunder.

7. Options:

(a) Lessee's Options to Renew: Unless the Lease shall have been terminated or a Default or an Event of Default shall have occurred and be continuing, Lessee may elect to renew the Lease

on the same terms and conditions with respect to any group of not less than 50 Units (or, if there are not then 50 Units subject to this Lease, then such remaining number of Units).

(i) at the expiration of the base term of the Lease, for a renewal period of four additional years, and also at the expiration of the first renewal term for a subsequent term of three years, or such longer period as Lessor and Lessee may agree, for a rent equal to the "Fair Rental Value" (defined below) of such Units for such additional period, which rent shall be paid monthly in advance; or

(ii) at the expiration of the base lease term for a renewal period of three years and also at the expiration of the first renewal term for a subsequent term of two years, both such renewals at a monthly rent equal to 50% of the Basic Rent per Unit, payable monthly in advance.

An election to renew shall be irrevocable. Lessee may, at the expiration of the base lease term, elect either or both renewal options (with respect to different Units), but Units subject to one renewal option may not be subsequently renewed under the other renewal plan. All renewal options must be exercised by written notice delivered to Lessor not more than 180 days and not less than 90 days prior to the expiration of the then applicable lease term. If a Default exists on the date notice of the exercise of the renewal options must be delivered, Lessee may deliver such notice, but if a Default exists 30 days after the delivery of such notice, the notice shall be of no force or effect and Lessee's renewal options shall be null and void as of such date.

(b) Lessee's Option to Purchase: Unless the Lease shall have been terminated or a Default or an Event of Default shall have occurred and be continuing, Lessee may elect to purchase any group of at least 50 (or, if there are less than 50 Units subject to this Lease, then such remaining balance) at the expiration of the base term of the Lease for a purchase price equal to the "Fair Market Value" thereof as of the end of the base Lease term, but in no event more than .55% of the Lessor's Cost, plus any applicable sales or other transfer taxes. This option must be exercised by written notice delivered to Lessor not more than 180 days and not less than 90 days prior to the expiration of the base lease term. If a Default exists on the date notice of the exercise of the purchase option must be delivered, Lessee may deliver such notice but if a Default exists 30 days after the delivery of such notice, the notice shall be of no force or effect and Lessee's purchase option shall be null and void as of such date. The purchase price shall be due and payable on the last day of the base lease term.

(c) Fair Market Value and Fair Rental Value: Fair Market Value or Fair Rental Value, as the case may be, 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 or lessee-user (other than a used equipment dealer) and an informed and willing seller or lessor under no compulsion to sell or lease, on the assumption that such Units are free and clear of all liens and encumbrances, and in the condition required upon the return of the Units under Section 15 of the Lease. In such determination, costs of transport from the location of current use shall not be a deduction from such values. If Lessor and Lessee are unable to agree on the Fair Market Value or Fair Rental Value of such Units within 20 days after notice of exercise of one of the options provided above has been received by Lessor, such value shall be determined in accordance with the foregoing definitions by a qualified independent appraiser mutually agreeable to Lessor and Lessee or, failing such agreement, by Marshall and Stevens Incorporated, Los Angeles, California, or its successor. Such appraiser shall be furnished with a copy of the Lease and this Schedule and be instructed to deliver its determination in writing to Lessor and Lessee within 20 days following appointment. Lessor and Lessee shall share equally the fees and expenses of such appraiser.

(d) Warranties: The purchase of the Units by Lessee pursuant to its option herein shall be "as-is, where-is", without recourse to or any warranty by Lessor, other than a warranty that the Units are free and clear of liens resulting from acts of Lessor.

(e) Early Termination: Unless the Lease shall have been terminated or a Default or an Event of Default shall have occurred and be continuing, Lessee may, commencing November 1, 1993, on at least 90 days' prior written notice to Lessor, terminate the base term (but not a renewal term) of the Lease with respect to not less than 25 of the Units on a day when a rental payment with respect to the Units is due (hereinafter for purposes of this paragraph called a "Termination Date"), provided that Lessee shall have made a good faith determination that the Units are obsolete or surplus to Lessee's requirements. In making such determination Lessee shall not discriminate between the Units being terminated and other railcars owned or leased by Lessee. Lessee shall deliver to Lessor together with such notice an Officer's Certificate setting forth Lessee's basis for such determination and specifying the make, model and road numbers of other similar railcars disposed of by Lessee in the preceding 18 months. If a Default exists on the date notice of the early termination must be delivered, Lessee may deliver such notice, but if a Default

exists 30 days after the delivery of such notice, the notice shall be of no force or effect and Lessee's early termination shall be null and void as of such date. During the period from the giving of notice until the Termination Date, Lessee as agent for Lessor shall, upon Lessor's request, use its best efforts to obtain bids for the purchase of the Units being terminated. Lessee shall certify to Lessor in writing the amount in terms of each bid received by Lessee and the name and address of the party (who shall not be Lessee or any person, firm or corporation affiliated with Lessee) submitting such bid. On the Termination Date, Lessee shall deliver the Units to Lessor, and Lessor shall, at its option:

(i) Either sell the Units, without recourse or warranty (except for a warranty that the Units are free and clear of liens resulting from acts of Lessor), for cash to the bidder who shall have submitted the highest bid to Lessee prior to such date or, if there shall have been no bid submitted, retain the Units and thereafter retain or dispose of the Units as Lessor in its sole discretion shall determine; or

(ii) Reject the bid and take possession of the Units and thereafter retain or dispose of the Units as Lessor in its sole discretion shall determine.

If either procedure specified in (i) above is followed, the total sale price realized at such sale shall be retained by Lessor and, in addition, on the Termination Date, Lessee shall pay to Lessor: (A) all accrued and unpaid rent, if any; (B) the excess, if any, of (1) the Stipulated Loss Value with respect to the Units, computed in accordance with the attached tables as of the Termination Date, over (2) the net sale price of the Units or in the event the Units are not sold, the Fair Market Value of the Units, determined in accordance with Section 7(c) above, after deduction for all out-of-pocket expenses incurred by Lessor in connection with such sale; (C) all other sums, if any, that shall have become due and payable under the Lease; and (D) interest on the foregoing at the rate set forth in Section 4.2 of the Lease from the due date(s) of such payment(s) to the Termination Date. In the event of such a sale, neither Lessee nor any affiliate of Lessee may at any time after the Termination Date and prior to the expiration of three years from the Termination Date, lease, possess, use or operate the Units in any manner whatsoever. If Lessor shall elect to sell the Units pursuant to (i) above and, through no fault of Lessor, no such sale shall have occurred on or as of such Termination Date, the Lease shall continue in full force and effect as to the Units. If Lessor shall elect to take possession of the Units pursuant to (ii) above, Lessee shall, on the Termination Date, pay to Lessor any unpaid rental accrued through that date, together

with any other amounts due from Lessee to Lessor, but Lessee shall not be obliged to pay any differential between the Stipulated Loss Value and the net sales price, if any. Upon compliance by Lessee with the provisions of this subparagraph, the obligation of Lessee to pay rent hereunder shall cease effective as of such Termination Date. Lessor shall be under no duty to solicit bids, to inquire into the efforts of Lessee to obtain bids or otherwise take any action in connection with any proposed termination, except that, in the event Lessor elects to sell the Units to Lessee's highest bidder, Lessor shall transfer to the purchaser named in such highest bid Lessor's interest in the Units on an "as-is, where-is" basis, without recourse or warranty (except a warranty that the Units are free and clear of liens, other than liens required to be discharged by Lessee hereunder, or defects in title resulting from acts by or claims against Lessor) against receipt of the payments provided for herein.

8. Notices:

All notices shall be addressed as follows:

If to Lessor: Valley Bank Leasing, Inc.  
2700 North Central - Suite 9000  
Phoenix, AZ 85004  
Attn: Contract Administration

with a copy in all cases to:

GATX Leasing Corporation  
Four Embarcadero Center, Suite 2200  
San Francisco, CA 94111  
Attn: Contract Administration

If to Lessee: The B.F. Goodrich Company  
3925 Embassy Parkway  
Akron, OH 44313  
Attn: \_\_\_\_\_

VALLEY BANK LEASING, INC.  
as Lessor

By \_\_\_\_\_  
Its: \_\_\_\_\_

THE B.F. GOODRICH COMPANY,  
as Lessee

By \_\_\_\_\_  
Its: \_\_\_\_\_

amr\bfexa

PURCHASE ORDER ASSIGNMENT

THIS PURCHASE ORDER ASSIGNMENT, dated as of August 1, 1988 ("Assignment"), between THE B.F. GOODRICH COMPANY ("Assignor") and VALLEY BANK LEASING, INC. ("Assignee");

W I T N E S S E T H :

WHEREAS, Assignor has submitted its Purchase Order No. GH-01-80435, dated July 21, 1988 ("Purchase Order"), to ACF Industries, Inc. ("Vendor") concerning 150 100-ton center-flow covered hopper cars, with Amercoat 320 protective linings (the "Units");

WHEREAS, Assignor and Assignee have entered into an Equipment Lease Agreement, dated as of August 1, 1988 ("Lease"), pursuant to which the Assignee, as lessor, shall lease the Units to Assignor, as lessee;

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, the parties hereto agree as follows:

1. Assignor does hereby sell, assign, transfer and set over unto Assignee, all of the Assignor's rights to and interests in the Purchase Order. The assignment herein shall include, without limitation, the right of Assignee to purchase the Units pursuant to the Purchase Order and to take title to the Units, all claims for damages in respect of the Units arising as a result of any default by Vendor under the Purchase Order, together with any and all rights of Assignor to compel performance of the terms of the Purchase Order in respect of the Units.

2. The exercise by Assignee of any of the rights assigned hereunder shall not release Assignor from any of its duties or obligations to Vendor under the Purchase Order except to the extent that such exercise by Assignee shall constitute performance of such duties and obligations.

3. Upon full satisfaction of the conditions set forth in Section 3 of the Lease with respect to the Units, Assignee shall purchase such Unit by paying or causing to be paid, by check mailed or delivered to Vendor, on such date or thereafter as permitted by Vendor, an amount equal to the purchase price of the Unit, as such amount may be adjusted in accordance with the terms of the Purchase Order and invoiced by Vendor to Assignee on or before the date of delivery and acceptance of the Unit.

EXHIBIT C  
to Equipment Lease

4. Assignor agrees that it will, at any time and from time to time, upon the written consent of Assignee, promptly and duly exercise and deliver any and all such further instruments and documents and take such further action as Assignee may reasonably request in order that Assignee may obtain the full benefits of this Agreement and of the rights and powers herein granted.

5. Assignor does hereby represent and warrant that the Purchase Order is in full force and effect and that Assignor is not in default thereunder. Assignor does hereby further represent and warrant that Assignor has not assigned or pledged, and so long as this Assignment shall remain in effect, will not assign or pledge, the whole or any part of the rights hereby assigned or any of its rights with respect to the Units under the Purchase Order to anyone other than Assignee.

IN WITNESS WHEREOF, the parties hereto have caused this Purchase Order Assignment to be duly executed as of the day and year first above written.

THE B.F. GOODRICH COMPANY

By: \_\_\_\_\_  
Its: \_\_\_\_\_

VALLEY BANK LEASING, INC.

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Acknowledged and Consented to this  
\_\_\_\_ day of \_\_\_\_\_, 1988.

ACF INDUSTRIES, INC.

By: \_\_\_\_\_  
Its: \_\_\_\_\_

amr\bfpoas

BILL OF SALE

ACF INDUSTRIES, INC. (the "Seller"), for \$10.00 and other good and valuable consideration paid by VALLEY BANK LEASING, INC. (the "Buyer"), the receipt and the sufficiency of which are hereby acknowledged by the Seller, does hereby grant, bargain, sell and deliver to the Buyer, its successors and assigns, the following equipment (the "Equipment"):

Description of Equipment

Road Numbers

100-ton Center Flow Covered  
Railroad Hopper Cars, each  
with Amercoat 320 protective  
lining.

The Seller hereby warrants that the Seller is the owner and holder of, and has good title to, the Equipment, and hereby transfers to the Buyer all of the Seller's right, title and interest in and to the Equipment, free and clear of all liens, charges and encumbrances, howsoever created.

The Seller, its successors and assigns, covenant and agree to warrant and defend the sale of the Equipment unto the Buyer, its successors and assigns, against all persons whomsoever and hereby agree to indemnify the Buyer against, and to hold the Buyer harmless from, any and all liabilities, claims, suits, actions, demands, debts or obligations of every nature or kind resulting from the claim of any party or parties in any way arising from title to the Equipment on or prior to the date hereof.

TO HAVE AND TO HOLD the Equipment unto the Buyer, its successors and assigns, for its and their own use, forever.

IN WITNESS WHEREOF, the Seller has caused its corporate seal to be affixed hereto and has caused this bill of sale to be executed on its behalf by a duly authorized officer thereof this \_\_\_\_ day of September, 1988.

ACF INDUSTRIES, INC.

By: \_\_\_\_\_

Its: \_\_\_\_\_

[seal]

Attest: \_\_\_\_\_

EXHIBIT D  
to Equipment Lease

TAX INDEMNITY AGREEMENT

TAX INDEMNITY AGREEMENT dated as of August 1, 1988 between VALLEY BANK LEASING, INC. ("Lessor") and THE B.F. GOODRICH COMPANY ("Lessee").

W I T N E S S E T H:

WHEREAS, Lessor and Lessee are parties to that certain Equipment Lease Agreement dated as of even date herewith ("Lease"); and

WHEREAS, Lessor has assumed certain Federal and state income tax consequences as a result of the purchase of the equipment subject to the Lease and the rental of that equipment to the Lessee; and

WHEREAS, in order to induce Lessor to purchase the equipment and enter into the Lease, Lessee has agreed to indemnify Lessor against the loss of the assumed tax benefits;

NOW, THEREFORE, in consideration of the premises the parties hereto agree as follows:

1. Definitions. All terms defined in the Lease shall have the same meanings herein.

2. Tax Assumptions. The transactions contemplated by the Operative Documents have been entered into, and the Lessor's Net Economic Return (as defined in Section 5(d) below) has been computed, on the basis of the following tax assumptions which the parties hereto acknowledge:

(a) For income tax purposes the Lessor will be entitled to take into account, in computing its Federal, state and local income tax liability, all of the items of income, gain, loss and deduction of the Lessor;

(b) The Lessor will be treated as the purchaser, owner and lessor of the Units;

(c) At all times during the term of the Lease the Lease will constitute a "true lease" under which the Lessor will be treated as the lessor and the Lessee will be treated as the lessee;

(d) For purposes of computing the depreciation deductions with respect to the Units, the Lessor's unadjusted basis (within the meaning of section 1012 of the Internal

Revenue Code of 1986, as amended (the "Code") and the regulations thereunder) in the Units will be at least equal to the amount paid by the Lessor to the Builder for the acquisition of the Units (the "Purchase Price");

(e) The Lessor will be entitled to (i) depreciate its basis in the Units in accordance with the methods prescribed in Section 168(b)(1) of the Code, as "7-year property" within the meaning of Section 168(e) of the code (the "Depreciation Deductions");

(f) Current deductions will be allowed for amortization of an amount equal to the Transaction Costs, paid or incurred by the Lessor in connection with the transactions contemplated by the Operative Agreements, computed on a straight-line basis over a period not longer than the initial Lease Term (the "Amortization Deductions");

(g) The Lessor will have at all relevant times sufficient gross income against which to apply the Depreciation Deductions and the Amortization Deductions;

(h) The Lessor will not at any time during the Term of the Lease be required to include any amounts in the gross income for Federal, state or local income tax purposes with respect to the transactions contemplated by the Operative Agreements other than (i) payments of Interim Rent, Basic Rent, Renewal Rent or Supplemental Rent in the amounts and at the times required to be paid in accordance with the Lease, (ii) other amounts to the extent they are offset by deductions attributable to the transactions contemplated by the Operative Agreements (which deductions are not otherwise referred to in this Section 2) in the same taxable year of the Lessor in which such other amounts were includable in gross income, (iii) payments of Stipulated Loss Value and Fair Market Value or other amounts paid pursuant to the exercise of the Lessee's purchase option under Section 7(b) of the Schedule to the Lease, and (iv) any payments which may be paid under this Tax Indemnity Agreement;

(i) The Lessor's original equity investment in the Units will be an amount equal to one hundred percent of Purchase Price thereof;

(j) The Funding Dates will be September 30, 1988 for 100 Units and October 15, 1988, for 50 Units and no Funding Date will be after October 30, 1988;

(k) For Federal income tax purposes, the Lessor will be entitled to report all items of income, gain, loss, credit or deduction relating to the transactions contemplated by the Operative Agreements using the accrual method of accounting;

(l) One hundred percent of all items of income, gain, loss and deduction attributable to the transactions contemplated by the Operative Agreements will be treated as derived from, or allocable to, sources within the United States;

(m) The taxable year of the Lessor is the calendar year;

(n) Each Unit will be "placed in service" by the Lessor for purposes of sections 167 and 168 on the Funding Date with respect thereto;

(o) Lessor's net income will be taxed at a 34% rate for Federal income tax purposes and at a 6.4% rate for state and local income tax purposes;

(p) The Lessor will not recapture, pursuant to Section 1245 of the Code or otherwise, any Depreciation Deduction or Amortization Deduction during the Interim and Basic Lease Terms and any Renewal Term of the Lease (the "Lease Term"); and

(q) Rents provided for under the Lease will not be reallocated under Section 467 of the Code.

The Depreciation Deductions and Amortization Deductions are referred to herein collectively as the "Tax Benefits".

3. Representations, Warranties and Covenants of the Lessee. Regardless of whether any of the following is permitted or required by the Lease, the Lessee represents and warrants to, and covenants with, the Lessor that:

(a) Neither the Lessee, an Affiliate of the Lessee, nor any other person has claimed or at any time will claim all or any portion of the Tax Benefits in respect of the Units;

(b) The Units will constitute in the hands of the Lessor "tangible property" within the meaning of the sections 167 and 168 of the Code qualifying as "7-year property" within the meaning of Section 168(e) of the Code and may be depreciated in accordance with the methods prescribed in Section 168(b)(1) of the Code;

(c) Each Unit will be "placed in service" by the Lessor for purposes of sections 167 and 168 of the Code on the Funding Date with respect thereto;

(d) Throughout the term of the Lease, no Unit will be used in a manner so as to disqualify it as property qualifying for the Depreciation Deductions as set for in 2(e) hereof;

(e) Neither a Unit nor any part or portion thereof will be used by, or leased to, a "tax-exempt entity" (within the meaning of section 168(h)(2) of the Code);

(f) No addition, alteration or improvement to, or modification of any Unit made by any person during the Lease Term (i) will constitute a lessee investment, within the meaning of Section 4(4) of Revenue Procedure 75-21, in such Unit that violates Revenue Procedure 75-21, Revenue Procedure 75-28, or Revenue Procedure 79-48, or any statute, regulation, Revenue Procedure, Revenue Ruling or published policy of the Internal Revenue Service effective as of the time of such addition, alteration, improvement or modification, or (ii) will cause any Unit to become limited use property within the meaning of Revenue Procedure 76-30, 1976-2 C.B. 647 or any statute, regulation, Revenue Procedure, Revenue Ruling or published policy of the Internal Revenue Service effective as of the time of such addition, alteration, improvement or modification; ~~and the Lessor shall not deduct any depreciation or amortization deduction during the term and basic lease term and shall~~ (g) No loss, damage, condemnation, seizure, forfeiture of title, destruction of, or repair or replacement of, or made to, any Unit (whether temporary or permanent) or any part or portion thereof which does not give rise to a payment of Stipulated Loss Value will result in (i) the disallowance, loss, recapture or deferral of all or any portion of the Tax Benefits originally contemplated to be available to the Lessor in respect of such Unit, (ii) the inclusion in the Lessor's gross income of any amount other than those amounts expressly assumed to be includable in its gross income as a Tax Assumption set forth in Section 2 hereof or (iii) the Lessor being required to treat less than one hundred percent of any item of loss or deduction in respect of any Unit as allocable to sources within the United States;

(h) When delivered and accepted under the Lease, no Unit will require any improvements, modifications or additions in order to be rendered complete for its intended use by the Lessee within the meaning of Revenue Procedure 79-48;

(i) The Lessor will not at any time during the Term of the Lease be required to include any amounts in gross income for Federal, state or local income tax purposes with respect to the transactions contemplated by the Operative Agreements other than (i) payments of Basic Rent, Renewal Rent or Supplemental Rent, in the amounts and at the times required to be paid in accordance with the Lease, (ii) amounts to the extent they are offset by deductions attributable to the transactions contemplated by the Operative Agreements (which deductions are not otherwise referred to in Section 1) in the same taxable year of the Lessor in which such amounts were includable in gross income, (iii) payments of Stipulated Loss Value and Fair Market Value or other

amounts paid pursuant to the exercise of the Lessee's Purchase Option under Section 7 (b) of the Schedule to the Lease and (iv) any payments which may be payable under this Tax Indemnity Agreement;

(j) No Unit shall be subleased to, or used by, any person or entity if such sublease or use would result in a Loss or Tax Benefits;

(k) Upon the delivery of each Unit and payments of the Purchase Price, the Lessee shall not have furnished any part of the cost of such Unit which has not been reimbursed to the Lessee;

(l) The Purchase Price of each Unit will not exceed the fair market value of such Unit on the date such Unit is delivered to the Lessor;

(m) No Unit constitutes nor will it constitute "tangible property" which is used predominantly outside the United States" within the meaning of section 168(g)(1)(A) of the Code and the Regulations thereunder;

(n) Neither Lessee nor any person claiming by, through or under Lessee will assert any claim of ownership to any Unit or conduct itself in a manner inconsistent with Lessor's ownership of full legal and beneficial ownership of the Units; provided, however, the painting and marking of the Units with the name of Lessee shall not violate the foregoing; and

(o) No amount shall be included in the gross income of Lessor as a result of any repair, improvement, modification or addition to any Unit.

4. Consistent Tax Returns. The Lessee agrees that neither it nor any corporation controlled by it, in control of it, or under common control with it, directly or indirectly, will at any time during the term of the Lease or any extended term thereof take any action or fail to take any action or file any income tax returns, certificates or other documents inconsistent with the foregoing contemplated Tax Benefits, except that each of such corporations may take such action as they may deem necessary in consequence of, and file returns in connection with the de minimis use of any Unit outside the United States, and that each of such corporations will file such returns, take such action and execute such documents, and keep and, upon receipt of 30 days' written notice from the Lessor, make available for inspection and copying such records (other than the Lessee's corporate income tax returns) as may be reasonable and necessary to facilitate accomplishment of the intent hereof.

5. Income Tax Indemnification. (a) A "Loss of Tax Benefits" shall have occurred if the Lessor shall lose, or shall

lose the right to claim, or shall not claim (based on an opinion by Lessor's outside, independent tax counsel, who shall be reasonably acceptable to Lessee, that the basis in law and fact in favor of the allowance of such claim is not as great as the basis in law and fact to the contrary), or shall lose the benefit of, shall suffer a disallowance of, or shall be required to recapture all or any portion of, the Tax Benefits with respect to all or part of the Units or shall be required to include any amount in taxable income with respect to this transaction other than amounts described in Section 1(i) hereof as the direct result of any one or more of the following:

(i) the misrepresentation or incorrectness of any representation or warranty or breach of any warranty or covenant made by the Lessee herein or in the Operative Agreements;

(ii) any act or failure to act by Lessee or any Affiliate of the Lessee or any sublessee (excluding, however, any act expressly permitted or required in the Lease) including without limitation, the use of any Unit in a manner inconsistent with the claim of the lessor to any of the Tax Benefits; or

(iii) the occurrence of an Event of Default under the Lease.

(b) Upon the occurrence of any Loss of Tax Benefits, the Lessee shall pay to the Lessor either (i) in a lump sum or (ii) on each Rent payment date commencing with the date determined under Section 6(n) hereof, at the option of the Lessor, such sums (the "Payment Amount") which (after deduction of all income taxes required to be paid by the Lessor on the receipt of such sums under the laws of any federal, state or local government or foreign taxing authority) when taken together with the portion of the Basic Rent installments due on such dates, will maintain the Lessor's Net Economic Return (as defined in Section 4(d) hereof).

(c) Except with respect to a termination of the Lease in connection with a payment of Stipulated Loss Value which has been increased pursuant to paragraph (e) of this Section 5, if the Lease is terminated prior to the time Lessee is obligated to make payments to the Lessor as set forth in paragraph (b) of this Section 5 (either because no such payment obligation had become fixed prior to such termination or because the due date of such payment or payments pursuant to said paragraph (b) shall occur following such termination), then Lessee shall pay to the Lessor, in lieu of such payment or payments pursuant to said paragraph (b), 30 days after the earlier of a Final Determination or a Tax Payment (as such terms are defined in Sections 7(b) and 7(e) hereof) such lump sum which (after deduction of all income taxes required to be paid by the Lessor on the

receipt of such lump sum under the laws of any federal, state or local government or foreign taxing authority) will maintain Lessor's Net Economic Return (as defined in Section 5(d) hereof).

(d) In all cases where a calculation of a Payment Amount is required to maintain the "Lessor's Net Economic Return," such calculation shall be made by the Lessor in such manner as will, in the reasonable opinion of the Lessor, cause the rates and amounts of the Lessor's after-tax rate of return and after-tax cash flows to equal the rates and amounts of after-tax return on equity and cash flows that would have been realized by the Lessor had the event giving rise to such calculation not occurred. Calculations involving present value shall be based on the quoted rate for U.S. Treasury Bills or Notes for a similar period of time plus one percent, on the date such payment is made. Each notice to Lessee from the Lessor setting forth the results of any such calculation shall be accompanied by a letter from the Lessor setting forth the reasons for such calculation and stating that such calculation was made using the same assumptions used in computing the Basic Rent required to be paid under the Lease. The Lessee shall have no right to receive such information as is used in making the calculations or to inspect the books, records, tax returns or other documents of or relating to the Lessor in order to verify such calculations or for any other purpose. If requested in writing by the Lessee within 15 days after the giving of such notice by the Lessor, the Lessor hereby agrees to have the Lessor's independent certified public accountants (which shall be a "Big Eight" accounting firm, or such other accounting firm reasonably acceptable to Lessee) review such calculation and verify to the Lessee that such calculation was correctly made using the same assumptions used in computing the Basic Rent required to be paid under the Lease; provided, however, that the Lessor shall not be required to so employ its independent certified public accountants to verify such calculation unless the Lessee has agreed, in the event the Lessor's computation is not in error by more than five percent (plus or minus), to pay all fees and expenses of such accountants for making such review and verification. In calculating the amount of any Payment Amount under Section 5(b) hereof, (x) in determining that portion of a Payment Amount attributable to a Loss of Tax Benefits, the Lessor shall be deemed to be a person that (i) is subject to federal, state and local income taxes at a 38.3% composite rate, and (ii) has sufficient taxable income to utilize the full benefit of the Tax Benefits, and (y) in determining the amount of the Lessor's federal, state, local or foreign tax liability attributable to the receipt of a Payment Amount, such liability shall be calculated on the basis of the actual federal, state, local or foreign tax liability attributable to the receipt of a Payment Amount, such liability shall be calculated on the basis of the actual federal, state, local or foreign tax liability of the Lessor for the year or years in which the Payment Amount accrues.

(e) The Schedule of Stipulated Loss Values set forth in the Schedule to the Lease has been computed on the assumption that the Lessor shall be entitled to the Tax Benefits. Accordingly, in the event Lessee becomes obligated to pay additional sums to the Lessor pursuant to Section 5(b) hereof, the said Schedule of Stipulated Loss Values shall be revised as may be necessary so that the amount payable by Lessee thereunder shall be sufficient to maintain the Lessor's Net Economic Return. The Stipulated Loss Value from the revised Schedules shall be applied to any payment of Stipulated Loss Value paid after the liability of Lessee under this Section shall have become fixed as provided hereunder regardless of the date of the Event of Loss or termination. Furthermore, with respect to any payment of Stipulated Loss Values by Lessee prior to the aforementioned revision of the Stipulated Loss Values with respect to any Unit, Lessee shall pay to the Lessor, in a lump sum, the additional amount, in excess of the Stipulated Loss Value actually paid, that Lessee would have been required to pay had the liability of Lessee under this Section become fixed prior to the date of the original payment, and the Stipulated Loss Values had, accordingly, been revised as above provided.

(f) If, as the direct result of an event described in Section 5(a)(i), (ii) or (iii) hereof, there is any loss or reduction in the Foreign Tax Credit ("Loss of Foreign Tax Credit") then, the Lessee shall pay to the Lessor as an indemnity such amount or amounts which, after deduction of all taxes, fees, withholdings and other charges which are required to be paid by the Lessor as a direct result of the receipt or accrual of such amount under the laws of any federal, state, local, or foreign taxing authority shall be with respect to each taxable year of the Lessor equal to the sum of (i) the aggregate amount of additional federal income taxes payable by the Lessor from time to time as a direct result of such loss or reduction in Foreign Tax Credit, plus (ii) the aggregate amount of any interest, penalties or additions to tax payable by the Lessor with respect to such year as a direct result of such loss or reduction in Foreign Tax Credit (a "Payment Amount"). For purposes of this Section 5(f), any additions to federal income tax, interest, penalties or additions to tax payable by the Lessor shall be calculated on the basis of the actual tax liability of the Lessor for the year or years in which such loss or reduction in Foreign Tax Credit occurs.

(g) Notwithstanding anything herein to the contrary, if Lessor is required to include in its gross income (other than as a direct result of the return of a Unit to the Lessor at the end of the Basic term of the Lease or any renewal thereof) for any taxable year of the Lessor which includes part of the Term of the Lease, an amount in respect of the replacement, improvement, modification, pooling of parts, or addition to a Unit made

by Lessee or any sublessee then, in either case, the Lessee shall pay to the Lessor as an indemnity an amount or amounts which, after deduction of all taxes, fees, withholdings and other charges which are required to be paid by the Lessor as a direct result of the receipt or accrual of such amount under the laws of any federal, state, local, or foreign taxing authority shall be with respect to each taxable year of the Lessor equal to the sum of (i) the aggregate amount of additional federal, state and local income taxes payable by the Lessor from time to time as a direct result of such inclusion in income, plus (ii) the aggregate amount of any interest, penalties or additions to tax payable by the Lessor with respect to such year as a direct result of such inclusion in income (a "Payment Amount"). For purposes of this Section 5(g), any additions to federal, state and local income tax, interest, penalties or additions to tax payable or realized by the Lessor shall be calculated on the basis of the actual tax liability of the Lessor for the year or years in which such inclusion in income occurs.

that Lessee would have been required to pay had the liability of Lessee 6. Excluded Events. Anything in Section 3 hereof to the contrary notwithstanding, Lessee shall not be required to make any payment to Lessor in respect of any Loss of Tax Benefits arising solely as a direct result of the occurrence of any one or more of the following events ("Excluded Events"):

(a) The loss, destruction or irreparable damage of the Unit or the governmental seizure of the Unit for at least the remainder of the term of this Lease, if Lessee shall have paid Lessor the amounts required by Section 11.2 of the Lease;

(b) The transfer or other disposition by Lessor of any interest in the Units, unless, in each case, an Event of Default shall have occurred and be continuing; provided, however, that the execution and delivery of the Lease and the other documents herein referred to and the carrying out of the transactions contemplated herein and therein shall not be deemed to be a transfer or disposition under this clause (b);

(c) The failure of the Lessor to timely claim any Tax Benefit in its federal income tax return for the appropriate year (unless the Lessor's outside independent tax counsel shall have opined that the basis in law and fact in favor of the allowance of such claim is not as great as the basis in law and fact to the contrary) or the failure of the Lessor to follow proper procedure or to make any necessary elections in claiming any Tax Benefit which is properly allowable;

(d) Any interest, penalties or additions to the tax resulting from the failure of the Lessor to file returns which are proper and timely, unless such failure is due to a failure by Lessee to timely provide information which Lessee is required to provide to Lessor, provided that such information is necessary in order to enable Lessor to file such returns;

(e) The incorrectness of any representation or warranty made by the Lessor herein or in the Lease;

(f) Any change in the Code, any other federal statute relating to income taxes, any IRS Regulation, Revenue Ruling, Revenue Procedure, or executive order, or any judicial interpretation thereof which shall be either enacted or adopted after the Commencement Date and which alters or eliminates any of the Tax Benefits with respect to any Unit;

(g) Any failure of the Lessor to take timely action in contesting a claim made by the Internal Revenue Service with respect to a Loss of Tax Benefits if the Lessor was required to take such action pursuant to Section 7 hereof;

(h) The application to the Lessor of the provisions of the Code relating to the alternative minimum tax or the mid-quarter convention;

(i) The failure of the Lease to constitute a "true lease" for income tax purposes;

(j) The inability of the Lessor to include any amount in the Lessor's basis for the purpose of computing the Depreciation Deductions in excess of the Lessor's Cost as specified in the appropriate Acceptance Supplements;

(k) The fact that Lessor may have procured a residual value guarantee on the Units;

(l) The fact that the Lease grants the Lessee an option to acquire the Units at the expiration of the initial term at a fixed price; and

(m) The failure of the Lessor (i) to have sufficient income to utilize (in full or in part) the Tax Benefits, or (ii) to have sufficient Federal income tax liability to utilize any foreign tax credits generated as a result of this transaction.

7. Contest. If a written claim shall be made by the IRS or any state or local taxing authority, which, if successful, would require Lessee to indemnify Lessor pursuant to this Agreement and the amount of such indemnity payment by Lessee to Lessor would likely exceed \$25,000, Lessor shall promptly notify Lessee of such claim. Provided that (i) within 45 days after Lessor's giving Lessee notice of such claim, Lessee shall have requested that such claim be contested, (ii) Lessee is not in default under any of its obligations under the Lease, (iii) Lessee shall have furnished Lessor with an opinion of independent tax counsel satisfactory to Lessor to the effect that a meritorious defense exists to such claim, and (iv) Lessee shall have agreed to indemnify Lessor, on an after-tax basis, for all

liabilities and expenses which might arise out of Lessor's contesting such claim, including, without limitation (A) attorneys', accountants' and investigators' fees and disbursements and (B) the amount of any interest or penalty which may ultimately be payable as a result of contesting such claim; Lessor shall contest such claim in any manner Lessor shall, in good faith, deem appropriate. If any claim referred to above shall be made and Lessee shall have requested Lessor to contest such claim as above provided and shall have duly complied with all of the terms of this paragraph, and Lessor shall nonetheless fail to contest such claim or shall (without the written consent of Lessee, such consent not to be unreasonably withheld) or to discontinue any proceedings previously commenced as of a consequence of such request, thereupon, unless such discontinuance shall occur after a conference with the Appellate Office of the IRS or a more advance proceeding, Lessee shall be relieved of all liability to indemnify Lessor with respect to such claim. If such discontinuance shall follow such a conference or a more advanced proceeding, Lessee shall be relieved of 50% of its liability to indemnify Lessor with respect to such claim. If Lessee does not request Lessor to contest a claim, then Lessee's liability under Section 14.2 or 14.3 hereof, as the case may be, shall become fixed when Lessee receives notice of Lessor's making the payment of any tax, interest or penalty attributable to the disallowance or recapture of all or any portion of the Tax Benefits with respect to any Unit (a "Tax Payment").

If Lessor sues for a refund after making a Tax Payment, and if the Final Determination (as hereinafter defined) shall be in favor of Lessor, no future payments shall be due hereunder in respect of such matter (or an appropriate reduction shall be made therein if the Final Determination is partly in favor of and partly adverse to Lessor). In addition, Lessor shall pay to Lessee (a) an amount equal to the sum or sums theretofore paid by Lessee to Lessor in respect of the Tax Payment (or a proportionate part thereof if the Final Determination, is partly adverse to Lessor) on or before the rent payment next succeeding the Final Determination, together with interest thereon at the interest rate currently paid on tax overpayments by the relevant taxing authority, for the period from the date such sums were paid to Lessor to the date Lessor pays to Lessee an amount equal to such sums, and (b) the amount of any penalty or interest refunded to Lessor as a result of such Final Determination together with any interest thereon paid to Lessor by the relevant taxing authority; and Lessee shall pay to Lessor an amount equal to interest, at the rate set forth in Section 4.2 of the Lease, on the amount of the tax refund made in respect of the Tax Payment (excluding any interest or penalty included therein) for the period from the date of the original payment of the Tax Payment by Lessor to the date such tax refund is received by Lessor.

If the Lessee requests Lessor to appeal the decision of any court of competent jurisdiction, the Lessor shall appeal such decision, (but, not beyond a final decision of the United States Court of Appeals) provided Lessee shall have furnished to the Lessor an opinion of independent tax counsel acceptable to Lessor that it is more likely than not that such appeal would result in a reversal of the opinion of the trial court and shall have agreed to indemnify the Lessor in the manner specified in Section 7(b) hereof.

For purposes of this Agreement, a "Final Determination" shall be deemed to occur with respect to a Loss of Tax Benefits or a Loss of Foreign Tax Credit when (i) there is a decision, judgment, decree or other order by any court of competent jurisdiction, which decision, judgment, decree or other order has become final, i.e., all allowable appeals requested by the Lessee pursuant to this Section have been exhausted by either party to the action (taking into account such limitations as described in paragraph 7(b) hereof); (ii) there is a closing agreement made under Section 7121 of the Code; (iii) the time for instituting a claim for refund has expired, or if a claim was filed, the time for instituting a lawsuit with respect thereto has expired, or (iv) there is a settlement with the Internal Revenue Service to which the Lessee consents.

8. Affiliates. For purposes of this Agreement, the term "Lessor" shall mean and include the affiliated group of corporations and each member thereof, within the meaning of Section 1504 of the Code, of which Lessor is a member, if such group is filing a consolidated United States Federal income tax return, and it shall also mean any consolidated or combined group of corporations of which Lessor is a member which is treated as such for state franchise tax purposes.

9. Survival. The obligations and liabilities of the parties hereto which arise under this Agreement shall continue in full force and effect, notwithstanding the expiration or other termination of the Lease, until all such obligations have been met and such liabilities have been paid in full. The obligations and liabilities of the parties hereto which arise under this Agreement are expressly made for the benefit of, and shall be enforceable by, the parties hereto and their successors and assigns.

10. Notices. (a) Any notices provided for in this Agreement shall be in writing and shall be deemed to have been duly given when delivered personally or when deposited in the United States mail, registered or certified, postage prepaid, addressed as follows:

If to the Lessor: Valley Bank Leasing, Inc.  
2700 North Central - 9th Floor  
Phoenix, AZ 85004  
Attention: President

If to the Lessee: The B.F. Goodrich Company  
3925 Embassy Parkway  
Akron, OH 44313  
Attention: Vice President - Taxes

with a copy to the Attention of: General Counsel

or at such other place as any party may designate by notice given in accordance with this Section 10.

11. Counterparts. This Agreement may be executed in any number of counterparts, each executed counterpart constituting an original but all together only one Agreement.

12. Governing Law. This Agreement shall be governed by and construed in accordance with the substantive laws of the State of Arizona.

13. Amendments. The terms of this Agreement shall not be terminated (except by its terms) or waived, altered, modified, amended, or supplemented in any manner whatsoever except by written instrument signed by the parties hereto.

14. Severability. Any provision of this Agreement which may be determined by competent authority to be prohibited or unenforceably in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, the parties hereto waive any provision of law which renders any provision hereof prohibited or unenforceable in any respect.

IN WITNESS WHEREOF, each of the parties hereto has executed this Agreement as of August 1, 1988.

VALLEY BANK LEASING, INC.

By: \_\_\_\_\_  
Its: \_\_\_\_\_

THE B.F. GOODRICH COMPANY

By: \_\_\_\_\_  
Its: \_\_\_\_\_

## SCHEDULE

This Schedule is a part of the Equipment Lease Agreement, dated as of August 1, 1988 ("Lease"), between VALLEY BANK LEASING, INC., and THE B.F. GOODRICH COMPANY. The terms used in this Schedule shall have the meanings given them in the Lease.

### 1. Description and Estimated Cost of Units:

	<u>Description</u>	<u>Estimated Cost</u>
150	100-ton center-flow covered railroad hopper cars manufactured by ACF Industries, Inc., bearing Road Numbers BFGX 1400 through BFGX 1549, inclusive, each car with Amercoat 320 protective linings.	\$ 49,943.12 (each)
	Total Estimated Cost	\$7,491,468.

The total Lessor's Cost of all Units subject to the Lease shall not exceed \$7,996,725 without the express written consent of Lessor.

### 2. Term:

There shall be an interim lease term for each Unit commencing on its Funding Date and extending to October 31, 1988. The base lease term for all Units shall commence on November 1, 1988 (the "Commencement Date") and extend to the later of November 1, 2000 or the date on which all of the Units then subject to the Lease which are being returned are redelivered to Lessor pursuant to Section 15 of the Lease. Lessee shall give Lessor no less than five business days written notice of the date on which the last Unit being returned will be redelivered. All terms and conditions of the Lease shall apply throughout the interim and base lease terms and the renewal term(s), if any. No Delivery Date or Funding Date of any Unit shall be after October 31, 1988 without the written agreement of Lessor.

### 3. Rent:

(a) Interim Rent. Interim rent shall be payable on each Unit from and including its Funding Date to November 1, 1988 in an amount equal to the Lessor's Cost (as shown on the applicable Acceptance Supplement) times the number of days elapsed times .0322% ("Interim Rent"). All Interim Rent shall be paid on the Commencement Date.

(b) Basic Rent. Commencing on the Commencement Date, the rent for each Unit shall be paid by Lessee in 144 consecutive monthly installments, in advance, on the first day of each month, each such installment equal to 0.9651% of the Lessor's Cost of such Unit ("Basic Rent").

(d) Adjustments In the event that (i) the two Funding Dates are other than September 30, 1988, and October 15, 1988, (ii) less than 100 Units have a Funding Date of September 30, 1988, (iii) less than 66.666% of Lessor's Cost of all Units funds on September 30, 1988, (iv) the Tax Benefits (as defined in the Tax Indemnity Agreement) are not available in full on the Commencement Date, or (v) Transaction Costs are other than 1.75% of Lessor's Cost, then the Lessor shall adjust Basic Rent and Stipulated Loss Values to maintain Lessor's after-tax rate of return and after-tax cash flows. No adjustment shall be made for the effect of the mid-quarter convention. Lessor shall notify Lessee of the fact and amount of any such adjustment within 30 days after the Commencement Date and the parties shall execute a Lease amendment setting forth the appropriate changes.

The Lessee shall have no right to receive such information as is used in making the calculations or to inspect the books, records, tax returns or other documents of or relating to the Lessor in order to verify such calculations or for any other purpose. If requested in writing by the Lessee within 15 days after the giving of such notice by the Lessor, the Lessor hereby agrees to have the Lessor's independent certified public accountants (which shall be a "Big Eight" accounting firm, or such other accounting firm reasonably acceptable to Lessee) review such calculation and verify to the Lessee that such calculation was correctly made using the same assumptions used in computing the Basic Rent required to be paid under the Lease; provided, however, that the Lessor shall not be required to so employ its independent certified public accountants to verify such calculation unless the Lessee has agreed, in the event the Lessor's computation is not in error by more than five percent (plus or minus), to pay all fees and expenses of such accountants for making such review and verification.

#### 4. Stipulated Loss Values:

The Stipulated Loss Value payable at any given time by Lessee pursuant to Section 11.2 of the Lease shall be that percentage of Lessor's Cost of the affected Unit(s) set forth in the following table opposite the rental payment date next following the event giving rise to Lessee's obligation to pay Stipulated Loss Value. Stipulated Loss Values and rents shall not be prorated.

Rental  
Payment Date

Stipulated Loss Value  
as a Percentage of  
Lessor's Cost

Thereafter

\*

\*If Lessee renews the Lease, the Stipulated Loss Value during any renewal term shall be an amount equal to the fair market value of such Units as at the end of the base Lease term, as reasonably determined by Lessor, or in the event of disagreement between Lessor and Lessee, as determined by the independent appraiser selected under the provisions of Paragraph 7(c) hereof; provided, however, that such Stipulated Loss Value shall not be less than 35% or more than 55% of Lessor's Cost of the Units. The Stipulated Loss Values for the renewal term shall decline on a straight-line basis from the fair market value of the Units as at the end of the base Lease term as established above to the anticipated fair market value of the Units at end

of the renewal term, assuming compliance with all of the provisions of the Lease (as agreed between Lessor and Lessee or as determined by appraisal).

5. [intentionally left blank]

6. Insurance:

Notwithstanding the requirement of Section 10.1 of the Lease, the Lessee may self-insure the Units against physical loss or damage provided that (1) the Units are not used in "unit-train" service (as defined below), and (2) Lessee's long-term bond rating from Moody's Investors Services, Inc., does not fall below "BBB" or "investment grade" (as defined by the New York State Insurance Commissioner), whichever is higher. In the event Lessee fails to comply with either (1) or (2) above, Lessee shall within five Business Days procure insurance in full compliance with Section 10.1 of the Lease. "Unit-train" service shall mean any coupling, whether or not contiguous, of 25 or more of the Units in a single length of railroad cars in motion.

Subject to the foregoing paragraph, the insurance to be obtained by Lessee pursuant to Section 10.1 of the Lease shall not provide for a deductible or self-insured exposure in excess of \$1,000,000 (one million dollars).

The amounts of comprehensive general public liability insurance coverage required by Section 10.2 of the Lease shall be in an aggregate amount of not less than \$200,000,000.00 (Two hundred million dollars).

In the event Lessee is unable to procure insurance coverage in accordance with the requirements of Section 10 of the Lease and this Section 6, Lessee shall immediately notify Lessor and shall provide Lessor with the certificate of Lessee's independent insurance broker stating that the coverages required by this Lease are not commercially available at a reasonable cost and specifying what coverages are available and the cost thereof. In the event Lessor and Lessee are unable to agree on acceptable modifications to the required insurance coverages, Lessee shall, prior to the expiration of the then-applicable insurance, purchase all, but not less than all the Units for the greater of Fair Market Value or Stipulated Loss Value plus all other amounts due Lessor from Lessee hereunder.

7. Options:

(a) Lessee's Options to Renew: Unless the Lease shall have been terminated or a Default or an Event of Default shall have occurred and be continuing, Lessee may elect to renew the Lease

on the same terms and conditions with respect to any group of not less than 50 Units (or, if there are not then 50 Units subject to this Lease, then such remaining number of Units).

(i) at the expiration of the base term of the Lease, for a renewal period of four additional years, and also at the expiration of the first renewal term for a subsequent term of three years, or such longer period as Lessor and Lessee may agree, for a rent equal to the "Fair Rental Value" (defined below) of such Units for such additional period, which rent shall be paid monthly in advance; or

(ii) at the expiration of the base lease term for a renewal period of three years and also at the expiration of the first renewal term for a subsequent term of two years, both such renewals at a monthly rent equal to 50% of the Basic Rent per Unit, payable monthly in advance.

An election to renew shall be irrevocable. Lessee may, at the expiration of the base lease term, elect either or both renewal options (with respect to different Units), but Units subject to one renewal option may not be subsequently renewed under the other renewal plan. All renewal options must be exercised by written notice delivered to Lessor not more than 180 days and not less than 90 days prior to the expiration of the then applicable lease term. If a Default exists on the date notice of the exercise of the renewal options must be delivered, Lessee may deliver such notice, but if a Default exists 30 days after the delivery of such notice, the notice shall be of no force or effect and Lessee's renewal options shall be null and void as of such date.

(b) Lessee's Option to Purchase: Unless the Lease shall have been terminated or a Default or an Event of Default shall have occurred and be continuing, Lessee may elect to purchase any group of at least 50 (or, if there are less than 50 Units subject to this Lease, then such remaining balance) at the expiration of the base term of the Lease for a purchase price equal to the "Fair Market Value" thereof as of the end of the base Lease term, but in no event more than 55% of the Lessor's Cost, plus any applicable sales or other transfer taxes. This option must be exercised by written notice delivered to Lessor not more than 180 days and not less than 90 days prior to the expiration of the base lease term. If a Default exists on the date notice of the exercise of the purchase option must be delivered, Lessee may deliver such notice but if a Default exists 30 days after the delivery of such notice, the notice shall be of no force or effect and Lessee's purchase option shall be null and void as of such date. The purchase price shall be due and payable on the last day of the base lease term.

(c) Fair Market Value and Fair Rental Value: Fair Market Value or Fair Rental Value, as the case may be, 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 or lessee-user (other than a used equipment dealer) and an informed and willing seller or lessor under no compulsion to sell or lease, on the assumption that such Units are free and clear of all liens and encumbrances, and in the condition required upon the return of the Units under Section 15 of the Lease. In such determination, costs of transport from the location of current use shall not be a deduction from such values. If Lessor and Lessee are unable to agree on the Fair Market Value or Fair Rental Value of such Units within 20 days after notice of exercise of one of the options provided above has been received by Lessor, such value shall be determined in accordance with the foregoing definitions by a qualified independent appraiser mutually agreeable to Lessor and Lessee or, failing such agreement, by Marshall and Stevens Incorporated, Los Angeles, California, or its successor. Such appraiser shall be furnished with a copy of the Lease and this Schedule and be instructed to deliver its determination in writing to Lessor and Lessee within 20 days following appointment. Lessor and Lessee shall share equally the fees and expenses of such appraiser.

(d) Warranties: The purchase of the Units by Lessee pursuant to its option herein shall be "as-is, where-is", without recourse to or any warranty by Lessor, other than a warranty that the Units are free and clear of liens resulting from acts of Lessor.

(e) Early Termination: Unless the Lease shall have been terminated or a Default or an Event of Default shall have occurred and be continuing, Lessee may, commencing November 1, 1993, on at least 90 days' prior written notice to Lessor, terminate the base term (but not a renewal term) of the Lease with respect to not less than 25 of the Units on a day when a rental payment with respect to the Units is due (hereinafter for purposes of this paragraph called a "Termination Date"), provided that Lessee shall have made a good faith determination that the Units are obsolete or surplus to Lessee's requirements. In making such determination Lessee shall not discriminate between the Units being terminated and other railcars owned or leased by Lessee. Lessee shall deliver to Lessor together with such notice an Officer's Certificate setting forth Lessee's basis for such determination and specifying the make, model and road numbers of other similar railcars disposed of by Lessee in the preceding 18 months. If a Default exists on the date notice of the early termination must be delivered, Lessee may deliver such notice, but if a Default

exists 30 days after the delivery of such notice, the notice shall be of no force or effect and Lessee's early termination shall be null and void as of such date. During the period from the giving of notice until the Termination Date, Lessee as agent for Lessor shall, upon Lessor's request, use its best efforts to obtain bids for the purchase of the Units being terminated. Lessee shall certify to Lessor in writing the amount in terms of each bid received by Lessee and the name and address of the party (who shall not be Lessee or any person, firm or corporation affiliated with Lessee) submitting such bid. On the Termination Date, Lessee shall deliver the Units to Lessor, and Lessor shall, at its option:

(i) Either sell the Units, without recourse or warranty (except for a warranty that the Units are free and clear of liens resulting from acts of Lessor), for cash to the bidder who shall have submitted the highest bid to Lessee prior to such date or, if there shall have been no bid submitted, retain the Units and thereafter retain or dispose of the Units as Lessor in its sole discretion shall determine; or

(ii) Reject the bid and take possession of the Units and thereafter retain or dispose of the Units as Lessor in its sole discretion shall determine.

If either procedure specified in (i) above is followed, the total sale price realized at such sale shall be retained by Lessor and, in addition, on the Termination Date, Lessee shall pay to Lessor: (A) all accrued and unpaid rent, if any; (B) the excess, if any, of (1) the Stipulated Loss Value with respect to the Units, computed in accordance with the attached tables as of the Termination Date, over (2) the net sale price of the Units or in the event the Units are not sold, the Fair Market Value of the Units, determined in accordance with Section 7(c) above, after deduction for all out-of-pocket expenses incurred by Lessor in connection with such sale; (C) all other sums, if any, that shall have become due and payable under the Lease; and (D) interest on the foregoing at the rate set forth in Section 4.2 of the Lease from the due date(s) of such payment(s) to the Termination Date. In the event of such a sale, neither Lessee nor any affiliate of Lessee may at any time after the Termination Date and prior to the expiration of three years from the Termination Date, lease, possess, use or operate the Units in any manner whatsoever. If Lessor shall elect to sell the Units pursuant to (i) above and, through no fault of Lessor, no such sale shall have occurred on or as of such Termination Date, the Lease shall continue in full force and effect as to the Units. If Lessor shall elect to take possession of the Units pursuant to (ii) above, Lessee shall, on the Termination Date, pay to Lessor any unpaid rental accrued through that date, together

with any other amounts due from Lessee to Lessor, but Lessee shall not be obliged to pay any differential between the Stipulated Loss Value and the net sales price, if any. Upon compliance by Lessee with the provisions of this subparagraph, the obligation of Lessee to pay rent hereunder shall cease effective as of such Termination Date. Lessor shall be under no duty to solicit bids, to inquire into the efforts of Lessee to obtain bids or otherwise take any action in connection with any proposed termination, except that, in the event Lessor elects to sell the Units to Lessee's highest bidder, Lessor shall transfer to the purchaser named in such highest bid Lessor's interest in the Units on an "as-is, where-is" basis, without recourse or warranty (except a warranty that the Units are free and clear of liens, other than liens required to be discharged by Lessee hereunder, or defects in title resulting from acts by or claims against Lessor) against receipt of the payments provided for herein.

8. Notices:

All notices shall be addressed as follows:

If to Lessor: Valley Bank Leasing, Inc.  
2700 North Central - Suite 9000  
Phoenix, AZ 85004  
Attn: Contract Administration

with a copy in all cases to:

GATX Leasing Corporation  
Four Embarcadero Center, Suite 2200  
San Francisco, CA 94111  
Attn: Contract Administration

If to Lessee: The B.F. Goodrich Company  
3925 Embassy Parkway  
Akron, OH 44313  
Attn: \_\_\_\_\_

VALLEY BANK LEASING, INC.  
as Lessor

By A. E. Wilson  
Its: President

THE B.F. GOODRICH COMPANY,  
as Lessee

By R. A. McMillan  
Its: Vice President & Treasurer

amr\bfexa

*VB*  
*GW*

This notarization is attached to Schedule which is a part of the Equipment Lease Agreement, dated as of August 1, 1988 ("Lease"), between VALLEY BANK LEASING, INC., and THE B.F. GOODRICH COMPANY.

State of Arizona )  
County of Maricopa )

On this 16<sup>th</sup> day of September, 1988, before me Nancy A. Schmauty, the Undersigned Notary Public, personally appeared Allen S. Wilson, personally known to me to be the person who executed the within instrument as President or on behalf of the corporation therein named, and acknowledged to me that the corporation executed it.

WITNESS my hand and official seal.

[seal of Notary]

Nancy A. Schmauty

My Commission Expires Oct. 31, 1991

State of Ohio )  
County of Summit )

On this 14<sup>th</sup> day of September, 1988, before me Zella M. Meyers, the Undersigned Notary Public, personally appeared Robert A. McMillon, personally known to me to be the person who executed the within instrument as Vice Pres. & Treasurer or on behalf of the corporation therein named, and acknowledged to me that the corporation executed it.

WITNESS my hand and official seal.

[seal of Notary]

Zella M. Meyers

ZELLA M. MEYERS, Notary Public  
State Of Ohio - Resident County, Summit  
My Commission Expires 9-4-91