

Mellon National Leasing Corporation

Suite 3829
Mellon Bank Building
Pittsburgh, Pennsylvania 15219

412/232-5081

No. 061180
Date DEC 21 1979
Fee \$ 50.00
ICC Washington, D. C.

RECORDATION NO. 11262 Filed 1425

DEC 27 1979 -12:40:PM

December 24, 1979

INTERSTATE COMMERCE COMMISSION

Interstate Commerce Commission
Twelfth Street and Constitution
Avenue, NW
Washington, D.C. 20423

Dear Sirs:

I have enclosed for recordation three executed copies of an Agreement and Lease dated as of December 14, 1979, by and between Mellon National Leasing Corporation, Lessor, and The Western Pacific Railroad Company, Lessee. The Lease covers 117 reconstructed box cars bearing identifying road numbers WP68601 through WP68717.

Please return the original document to:

Ann H. Still, Esquire
Reed Smith Shaw & McClay
747 Union Trust Building
Pittsburgh, Pennsylvania 15219

Very truly yours,

MELLON NATIONAL LEASING CORP.

BY *[Signature]*
its Vice President

DEC 27 1979

DEC 27 1979

Open Report
Elizabeth R. Maul

Interstate Commerce Commission
Washington, D.C. 20423

OFFICE OF THE SECRETARY

Ann H. Still, Esquire
Reed Smith Shaw & McClay
747 Union Trust Building
Pittsburgh, Pennsylvania 15219

Dear Madam:

The enclosed document (s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 12/27/79 at 12:40PM, and assigned re-
recording number (s). 11262

Sincerely yours,

Agatha L. Mergenovich
Agatha L. Mergenovich
Secretary

Enclosure (s)

RECORDATION NO. 11262 Filed 1425

DEC 27 1979 12 45 PM

INTERSTATE COMMERCE COMMISSION

AGREEMENT AND LEASE

dated as of December 14, 1979

between

MELLON NATIONAL LEASING CORPORATION,

Lessor

and

THE WESTERN PACIFIC RAILROAD COMPANY,

Lessee

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Attachments:

- Lease Supplement
- Lease Schedule (with Annex, Stipulated Loss Value)
- Exhibits
 - A. Form of Certificate of Acceptance
 - B. Form of Hulk Purchase Agreement
 - C. Form of Equipment Reconstruction Agreement
 - D. Form of Bill of Sale

AGREEMENT AND LEASE

THIS AGREEMENT AND LEASE, dated as of December 14, 1979 between MELLON NATIONAL LEASING CORPORATION, a Pennsylvania corporation ("Lessor"), and THE WESTERN PACIFIC RAILROAD COMPANY, a Delaware corporation ("Lessee");

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

WHEREAS, Lessee has requested that Lessor purchase and lease to Lessee the personal property described in the Lease Schedule (attached hereto), and Lessor is willing to do so upon the terms and subject to the conditions hereinafter set forth;

NOW, THEREFORE, the parties hereto, in consideration of their mutual covenants hereinafter set forth and intending to be legally bound hereby, agree as follows:

ARTICLE I. Certain Definitions

In addition to the words and terms defined elsewhere in this Agreement, the following words and terms shall have the following meanings, respectively, unless the context hereof clearly otherwise requires:

"Additional Rent" shall mean any and all amounts, liabilities and obligations which Lessee assumes or agrees to pay hereunder pursuant to Section 4.3 of this Agreement, other than Basic Rent and Interim Rent.

"Agreement" shall mean this Agreement and Lease, as amended or supplemented from time to time, and shall include the Lease Schedule, the Lease Supplement and each Certificate of Acceptance executed and delivered from time to time pursuant to this Agreement. Each reference herein to "this Agreement", "herein", "hereunder", "hereof" or other like words shall include this Agreement, the Lease Schedule, the Lease Supplement, each such Certificate of Acceptance and any annex, exhibit or schedule attached hereto or thereto.

"Basic Rent" shall mean the amount payable as Basic Rent by Lessee pursuant to Section 4.2 of this Agreement.

"Certificate of Acceptance" shall mean the certificate of Lessee substantially in the form of Exhibit A hereto executed and delivered from time to time under this Agreement.

"Certificate of Acceptance Upon Reconstruction" shall mean the certificate of Lessor (in its capacity as Owner) in substantially the form of Annex I to the Equipment Reconstruction Agreement to be executed and delivered from time to time pursuant to the Equipment Reconstruction Agreement.

"Default" and "Event of Default" shall mean any of the events described in Section 14.1 hereof.

"Equipment" shall mean all the Units described in the respective bills of sale executed and delivered from time to time under the Hulk Purchase Agreement.

"Equipment Reconstruction Agreement" shall mean the Equipment Reconstruction Agreement dated of even date herewith to be executed and delivered by Lessor and Reconstructor in substantially the form of Exhibit C hereto.

"Final Delivery Date" shall mean the date identified as such in the Lease Schedule.

"Hulk Purchase Agreement" shall mean the Hulk Purchase Agreement dated of even date herewith to be executed and delivered by Lessor (as Buyer) and Lessee (as Seller) in substantially the form of Exhibit B hereto.

"Interest Payment Rate" shall mean the lesser of the rate per annum identified as such in the Lease Schedule or the maximum rate permitted by law.

"Interim Rent" shall mean the amount, if any, payable as Interim Rent by Lessee pursuant to Section 4.2 of this Agreement.

"Lease Schedule" shall mean the Lease Schedule executed and delivered by Lessor and Lessee as of the date hereof, attached hereto and hereby incorporated herein.

"Lease Supplement" shall mean the Lease Supplement executed and delivered by Lessor and Lessee as of the date hereof, attached hereto and hereby incorporated herein.

"Lessee's Right to Contest" shall mean, when used herein to modify Lessee's obligation to make payments to a governmental authority or other third party (other than payments required to be made pursuant to Section 11.2 hereof) or to take any action with respect to the Equipment imposed by law or by governmental authority, that Lessee shall have the right to contest such

obligation by appropriate proceedings diligently conducted in good faith by Lessee so long as (i) Lessee shall first notify Lessor of its intention to exercise such right and shall supply Lessor with all such information with respect thereto as Lessor shall reasonably request, (ii) such contest does not, in Lessor's reasonable judgment, involve any danger of sale, forfeiture or loss of any Unit or create any danger of Lessor incurring criminal liability or other liability for which indemnification, satisfactory to Lessor and its counsel, of Lessor, its successors, assigns, representatives, directors, officers, employees, agents and servants by Lessee is not provided, and (iii) no Event of Default (or other condition, event, act or omission which with notice or lapse of time or both would be an Event of Default) has occurred and is continuing.

"Lessor's Cost" shall mean the purchase price, including the Reconstruction Cost, of each Unit to Lessor (which shall not exceed the amount set forth in the Lease Schedule), plus any excise, sales and use taxes paid or payable by Lessor with respect to the purchase or reconstruction thereof, and plus any costs and expenses approved and paid by Lessor in connection with the delivery and installation thereof.

"Reconstruction Cost" shall mean the total cost of the work to be performed by the Reconstructor pursuant to the Equipment Reconstruction Agreement.

"Reconstructor" shall mean Pacific Fruit Express Company, a Utah corporation.

"Rent" shall mean Additional Rent, Basic Rent and Interim Rent, collectively.

"Rental Payment Date" shall mean each date on which Basic Rent (and Interim Rent, if any) is payable hereunder.

"Stipulated Loss Value" shall mean with respect to each Unit the amount equal to the applicable percentage of Lessor's Cost determined in accordance with the table set forth on Annex 1 to the Lease Schedule.

"Term" shall mean the period of time for which any one or more of the Units is leased hereunder.

"Unit" shall mean each individual item of personal property described in any bill of sale executed and delivered from time to time under the Hulk Purchase Agreement.

ARTICLE II. Agreement to Lease

Lessor and Lessee agree that Lessor shall purchase from Lessee and accept title to the respective Units in accordance with the terms of the Hulk Purchase Agreement, and that Lessee, on behalf of Lessor, shall forthwith thereafter deliver the Units to the Reconstructor in accordance with the terms of the Equipment Reconstruction Agreement.

Upon redelivery of the Units from the Reconstructor on or before the Final Delivery Date and the acknowledgment by Lessor and Lessee, by execution of a Certificate of Acceptance with respect thereto as provided in Article III hereof, that the reconstruction work has been performed in accordance with the terms of the Equipment Reconstruction Agreement, Lessor shall execute a Certificate of Acceptance Upon Reconstruction with respect to the Units provided that the purchase price, including Reconstruction Cost, therefor shall not exceed individually or collectively the amount assigned to such Units in the Lease Schedule. Simultaneously therewith Lessor shall lease the Units to Lessee and Lessee shall hire same from Lessor, all upon the terms and subject to the conditions of this Agreement.

ARTICLE III. Delivery and Acceptance

3.1. Delivery and Acceptance of Equipment. Forthwith upon redelivery of each Unit by Reconstructor, Lessor and Lessee shall inspect and determine whether to accept same from the Reconstructor. The execution and delivery of a Certificate of Acceptance by Lessee shall, without further act, irrevocably constitute acceptance by Lessee of such Unit for all purposes of this Agreement, and shall constitute Lessee's approval and authorization for execution and delivery by Lessor (in the capacity of Owner) of a Certificate of Acceptance Upon Reconstruction with respect thereto.

Lessee hereby acknowledges and represents and warrants to Lessor with respect to each Unit so accepted that (i) such Unit is of a size, design, capacity and manufacture selected by Lessee, (ii) such Unit conforms to the applicable description set forth in the Lease Schedule, and (iii) Lessee is satisfied that such Unit is suitable for its purposes; provided, however, that nothing contained in this Agreement or in any Certificate of Acceptance shall in any way diminish or otherwise affect any rights which Lessor or Lessee may have against the vendor or manufacturer of any Unit or any subcontractor of such vendor or manufacturer or against the Reconstructor.

3.2. Certificate of Acceptance. Lessee shall promptly complete, execute and deliver to Lessor a Certificate of Acceptance with respect to each Unit so determined acceptable, and in conjunction shall take such other action as may be necessary to fulfill the applicable conditions specified in Article VI hereof. With respect to any Unit for which a

Certificate of Acceptance has not been executed by the Final Delivery Date, title to each such Unit shall be transferred back to the Lessee pursuant to the Hulk Purchase Agreement, and all obligations of Lessor with respect to each such Unit shall cease.

ARTICLE IV. Term and Rent

4.1. Term. The Term shall commence on the date of acceptance by Lessee and Lessor of the first Unit accepted for lease hereunder, as evidenced by the execution and delivery by Lessee and Lessor of the Certificate of Acceptance with respect thereto. Unless earlier terminated or extended in accordance with the express provisions hereof, the Term shall expire on the date determined in accordance with the Lease Schedule.

4.2. Basic Rent and Interim Rent. Lessee shall pay to Lessor Basic Rent for each Unit, in the amount and in the installments and on the Rental Payment Dates as specified in the Lease Schedule and in the Certificate of Acceptance covering such Unit, and if so provided in the Lease Schedule, Lessee shall pay to Lessor Interim Rent in the amount determined as therein provided and on the Rental Payment Dates therein specified.

4.3. Additional Rent. The lease created pursuant to this Agreement is a "net" lease. Lessee shall pay as Additional Rent all amounts (in addition to Basic Rent and Interim Rent, if any) required to be paid under this Agreement and (except as expressly provided herein and subject to Lessee's Right to Contest) all costs, taxes, assessments and other expenses of every character (whether seen or unforeseen and whether or not expressly provided for herein) relating to or arising in connection with the use, occupancy, ownership, maintenance, repair, replacement or reconstruction of any Unit from the date of the execution and delivery hereof through the end of the Term and, to the extent expressly provided herein, thereafter. Lessee shall also pay to Lessor as Additional Rent interest at the Interest Payment Rate on each overdue installment of Basic Rent (and Interim Rent, if any) and on each overdue payment of Additional Rent.

4.4. Payment of Rent. Each installment of Basic Rent (and Interim Rent, if any) shall be paid to Lessor at its office at 3629 Mellon Bank Building, Pittsburgh, Pennsylvania 15219, or as directed by Lessor, and all Additional Rent shall be paid directly to the person entitled thereto and if such person is Lessor at its office or as it directs as aforesaid. All payments of Rent shall become due at 12:00 noon Pittsburgh time on the Rental Payment Date when due.

4.5. No Set-Off. Lessee shall not be entitled to any abatement of Rent, reduction thereof or set-off, counterclaim, recoupment or defense against Rent, including, but not limited to, abatements, reductions, set-offs, counterclaims, recoupments

or defenses due or alleged to be due by reason of any past, present or future claims of Lessee against Lessor or any other person for any reason whatsoever; nor except as otherwise expressly provided herein, shall this Lease terminate or the obligations of Lessee be otherwise affected by reason of any defect in the title, condition, design, operation or fitness for use of any Unit or damage to or loss of possession or loss of use or destruction of all or any of such Units from whatsoever cause and of whatever duration or any presently existing or hereafter created liens, encumbrances or rights of others with respect to any Unit or the prohibition of or other restriction against Lessee's use of all or any of such Units or the interference with such use by any person or entity or the invalidity or unenforceability or lack of due authorization of this Agreement or any insolvency of or the bankruptcy, reorganization or similar proceeding against Lessee, or for any combination of such causes or any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the Rent payable by Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Agreement. To the extent permitted by applicable law, Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each payment of Rent made by Lessee hereunder shall be final, and Lessee shall not seek to recover all or any part of such payment from Lessor for any reason whatsoever.

ARTICLE V. Representations and Warranties

5.1. Lessor's Representations and Warranties. Lessor represents and warrants that it has full power and authority to lease the Equipment to Lessee in accordance with the terms hereof. THIS WARRANTY OF LESSOR SET FORTH IN THIS SECTION 5.1 IS EXCLUSIVE AND IN LIEU OF ALL OTHER REPRESENTATIONS OR WARRANTIES OF LESSOR WHETHER STATUTORY, WRITTEN, ORAL OR IMPLIED, AND LESSOR HAS NOT MADE AND DOES NOT HEREBY MAKE, NOR SHALL IT BE DEEMED BY VIRTUE OF HAVING LEASED THE EQUIPMENT PURSUANT TO THIS AGREEMENT TO HAVE MADE, ANY REPRESENTATION OR WARRANTY AS TO THE MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE WORKMANSHIP IN, THE EQUIPMENT, but Lessor authorizes Lessee, at Lessee's expense, to assert from the date of the execution and delivery hereof through the end of the Term, so long as no Event of Default and no event which with notice or lapse of time or both would be an Event of Default shall have occurred and be continuing, all of Lessor's rights under any manufacturer's, vendor's or dealer's warranty with respect to the Equipment or under any warranty made by the Reconstructor with respect to the reconstruction of the Units,

and Lessor agrees to cooperate with Lessee in asserting such rights; provided, however, that Lessee shall not attempt to enforce such rights unless (i) Lessee shall first notify Lessor of Lessee's intention to enforce such rights and shall furnish to Lessor such information with respect thereto as Lessor may reasonably request and (ii) the enforcement of such rights does not, in Lessor's reasonable judgment, involve any danger of sale, forfeiture or loss of any Unit or create the danger of Lessor's incurring criminal liability or other liability for which indemnification by Lessee, satisfactory to Lessor and its counsel, of Lessor and its successors, assigns, representatives, directors, officers, employees, agents and servants is not provided. Any amount received by Lessee as payment under any warranty pursuant to the above authorization shall be applied to restore the Equipment to as good a condition as it was or should have been (but for defects giving rise to such payment under warranty) when delivered to Lessee hereunder, ordinary wear and tear excepted, with the balance of such amount, if any, to be paid over to Lessor. The provisions of this Section 5.1 have been negotiated and agreed to by the parties hereto and, except to the extent otherwise expressly provided in this Section 5.1, are intended to be a complete negation and exclusion of any representations or warranties by Lessor, express or implied, whether arising pursuant to the Uniform Commercial Code or any similar law now or hereafter in effect, or otherwise.

5.2. Lessee's Representations and Warranties. Lessee represents and warrants that:

(a) Lessee is a corporation duly organized and existing in good standing under the laws of the state of its incorporation, and is duly qualified to do business in those jurisdictions where such qualification is necessary;

(b) Lessee has full power, authority and legal right to execute, deliver and perform in accordance with this Agreement and the Hulk Purchase Agreement. This Agreement and the Hulk Purchase Agreement have each been duly authorized by all necessary corporate action on the part of Lessee; do not require the approval of, or the giving of notice to, any federal, state, local or foreign governmental authority (except such as has already been given or obtained); do not contravene any law, governmental regulation or judicial or administrative order or decree binding on Lessee; and do not contravene Lessee's charter or by-laws or any indenture or agreement to which Lessee is a party or by which it or its property is bound;

(c) This Agreement and the Hulk Purchase Agreement constitute in each case a legal, valid and binding obligation of Lessee, enforceable in accordance with its terms;

(d) Except as disclosed in a letter furnished by Lessee to Lessor at or before the time of execution of this Agreement, there are no pending or threatened actions or proceedings against Lessee or any of its affiliates before any court, administrative agency or other tribunal or body which may materially adversely affect Lessee's financial condition or operations or which question the legality or validity of this Agreement or the Hulk Purchase Agreement or which may affect Lessee's ability to perform its obligations hereunder or thereunder; and

(e) Lessee has furnished to Lessor copies of its unaudited balance sheet as of September 30, 1979, and of the related statements of income and retained earnings of the Lessee for the quarter then ended, together with a copy of the Prospectus of the Lessee dated March 28, 1979, and all filings made by the Lessee with the Securities and Exchange Commission between March 28, 1979, and November 15, 1979 (said financial statements, Prospectus and filings being hereinafter called the "SEC Filings"). The SEC Filings do not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained therein not misleading; and the financial statements contained therein have been prepared in conformity with generally accepted accounting principles for railroad companies applied on a consistent basis, subject to any exceptions stated therein and in the notes thereto, and correctly and fairly present the financial condition of the Lessee (and its predecessor corporation) as of the dates and the results of its operations for the periods indicated in such statements. No material adverse change has occurred in the condition, financial or otherwise, of the Lessee since September 30, 1979.

ARTICLE VI. Conditions to Lessor's Obligations

6.1. Conditions. Lessor's duties and obligations under this Agreement with respect to each Unit are subject to due and proper execution, delivery and performance by Lessee of the Hulk Purchase Agreement and by Reconstructor of the Equipment Reconstruction Agreement and to the execution and delivery by Lessor and Lessee of a Certificate of Acceptance with respect to such Unit on or before the Final Delivery Date and to fulfillment of the applicable conditions precedent set forth in Sections 6.2 through 6.5 hereof, in each case in form, substance and manner satisfactory to Lessor and its counsel.

6.2. Accuracy of Representations and Warranties; No Default. The representations and warranties contained in Section 5.2 hereof shall have been true and correct when made and shall be true and correct on and as of the date of delivery of each Certificate of Acceptance; on each such delivery date no Event of Default and no condition, event, act or omission which, with

notice or the lapse of time or both, would constitute an Event of Default shall have occurred and be continuing; and on each such delivery date Lessee shall deliver to Lessor a certificate to both such effects, dated such date and signed by the President, any Vice President or the Treasurer of Lessee.

6.3. Initial Acceptance. Prior to or simultaneously with delivery of the first Certificate of Acceptance (the "Initial Closing Date"), Lessee shall have furnished to Lessor:

(a) A copy of the resolutions of the Board of Directors (and if applicable the shareholders) of Lessee, certified as of the Initial Closing Date by the Secretary or an Assistant Secretary of Lessee, duly authorizing the sale of the Equipment under the Hulk Purchase Agreement and the lease of the Equipment hereunder and the execution, delivery and performance of this Agreement and the Hulk Purchase Agreement.

(b) A certificate of the Secretary or an Assistant Secretary of Lessee dated the Initial Closing Date as to the incumbency and signatures of the person or persons authorized to execute this Agreement and the other documents contemplated hereby on behalf of Lessee.

(c) An opinion of counsel for Lessee dated the Initial Closing Date as to the matters set forth in Section 5.2 other than subparagraph (e) thereof and as to such other matters as Lessor may reasonably request.

(d) A statement, in form and content satisfactory to Lessor, prepared and signed by an "expert" (who may be an employee of Lessee) to the effects that (i) the Equipment will have an expected residual value at the end of the Term of at least 20% of Lessor's Cost, disregarding inflation or deflation, and (ii) the Term shall not exceed 80% of the useful economic life of the Equipment.

6.4. Each Acceptance. Prior to or simultaneously with delivery of a Certificate of Acceptance with respect to each Unit, Lessee shall have furnished to Lessor evidence satisfactory to Lessor that Lessee has obtained insurance with respect to the Unit as required by Article X.

6.5. Other Matters. All other legal proceedings and details relative to this Agreement shall be reasonably satisfactory to Lessor and its counsel, and Lessor shall have been furnished with original or certified copies of such other documents as it or its counsel may reasonably request.

ARTICLE VII. Reports

7.1. Financial Reports. Lessee shall, as soon after the end of each fiscal year of Lessee as practicable (and in any event within 120 days thereafter), furnish to Lessor duplicate copies of Lessee's most recent financial reports, including Lessee's most recent annual report and balance sheet and profit and loss statement, certified by a recognized firm of certified public accountants. Interim quarterly financial statements, certified by the chief financial or accounting officer of Lessee, shall be furnished to Lessor within 45 days after the close of each of the first three fiscal quarters of each fiscal year of Lessee.

7.2. Annual Certificates. Lessee shall furnish to Lessor, concurrently with the delivery of the annual financial statements of Lessee required by Section 7.1 hereof, a certificate signed on behalf of Lessee by the chief financial or accounting officer of Lessee stating as of a recent date (but not more than three months prior thereto) that the signer of the certificate has made, or caused to be made by persons under his authority and direction, a reasonable investigation concerning the Equipment and Lessee's compliance with its obligations hereunder, and that no Event of Default, and no condition, event, act or omission which with notice or lapse of time or both would be an Event of Default, has occurred and is continuing or, if any such Event or condition, event, act or omission has occurred and is continuing, the nature thereof and the steps which Lessee has taken or is taking to cure the same. Lessee shall also furnish to Lessor on or before August 1 of each year a report describing the condition of each Unit as of the preceding June 30.

7.3. Additional Reports. Upon the written request of Lessor at any time and from time to time, Lessee will also deliver to Lessor, within fifteen (15) days of such request, a certificate executed on behalf of Lessee by a duly authorized officer containing the information, as of a date not earlier than the date of such request, called for by Section 7.2. Lessee shall also furnish to Lessor such additional information concerning the location, condition, use and operation of the Equipment and the financial condition and operations of Lessee as Lessor may reasonably request from time to time, and Lessee shall permit any person designated by Lessor to visit and inspect the Equipment and the records maintained in connection therewith and to discuss the affairs, finances and accounts of Lessee with the principal officers of Lessee, all at such reasonable times and as often as Lessor may reasonably request.

7.4. Accidents. In the event of an accident arising out of alleged or apparent defective design or manufacture or out of the use or operation of any Unit, Lessee shall promptly file with the appropriate governmental agencies all notices required by law and shall promptly deliver to its insurance carriers all notices called for under each policy of insurance relating to

such Unit. Concurrently with such filing or delivery, Lessee shall deliver to Lessor a copy of the notice so filed or delivered. Lessee shall also deliver to Lessor any additional information with respect to such accident which Lessor shall reasonably request and shall promptly make available to Lessor all correspondence, papers, notices and documents whatsoever received by Lessee in connection with any claim or demand involving or relating to any such accident.

7.5. Tax Liens. Lessee shall notify Lessor in writing, within ten days after any day on which any tax lien shall attach to any Unit, of such lien and of the location of such Unit on such day; provided, however, this Section shall not apply to liens for taxes not delinquent.

ARTICLE VIII. Maintenance, Use and Operation

8.1. Maintenance and Operation. Lessee, at its own cost and expense, shall service, repair, maintain and overhaul each Unit so as to keep it (i) in as good operating condition as it was when delivered to Lessee hereunder following reconstruction, ordinary wear and tear excepted, and (ii) subject to Lessee's Right to Contest, in such condition as shall meet all applicable federal, state or local laws or regulations and the applicable rules of the American Association of Railroads. Lessee shall not use, operate or store any Unit in violation of this Agreement, of any instructions therefor furnished by the manufacturer or vendor thereof or, subject to Lessee's Right to Contest, of any applicable federal, state or local law or regulation or the applicable rules of the American Association of Railroads; nor use or operate any Unit other than in a manner and for the use contemplated by the manufacturer thereof.

8.2. Location and Insignia. Lessee shall not assign or permit the assignment of any Unit to service involving the regular operation and maintenance thereof outside the contiguous 48 states of the United States. Lessee shall maintain on each Unit the following identification: "Property of and leased from Mellon National Leasing Corporation subject to an agreement filed with the Interstate Commerce Commission"; and shall not remove, or permit the removal of, such identification without the prior written consent of Lessor.

8.3. Supplies. Lessee shall pay for and provide all power, fuel and supplies consumed by and required for each Unit and all repairs, parts and supplies necessary therefor.

8.4. Accessories. Lessee shall not, without the prior written consent of Lessor, affix or install any accessory, equipment or device on any Unit if such addition will impair the value or the originally intended function or use of such Unit. All repairs, parts, supplies, accessories, equipment and devices furnished or affixed to the Equipment shall thereupon become the property of Lessor (except such as may be removed without in any

way affecting or impairing the value or the originally intended function or use of the Equipment). Immediately upon any replacement part becoming incorporated or installed in or attached to the Equipment, without further act, title to the removed part shall thereon vest in Lessee, free and clear of all rights of Lessor.

8.5. Personal Property. Lessee shall not, without the prior written consent of Lessor and subject to such conditions as Lessor may impose for its protection, affix or install any Unit to or in any real property, it being the mutual intention of the parties that the Equipment at all times shall be and remain personal property of Lessor. Lessee shall take such steps as may be necessary to prevent any person from acquiring any rights in any Unit by reason of such Unit being claimed or deemed to be real property.

8.6. Sublease and Assignment. Lessee shall not, without the prior written consent of Lessor (it being understood that written consent in one instance shall apply only in the given instance and shall not constitute a waiver of any of the terms of this Agreement) assign this Agreement or sublease or let any Unit except to a corporation which shall acquire all or substantially all of the business and properties of the Lessee and which shall assume and agree to perform the obligations and covenants of Lessee hereunder.

ARTICLE IX. Liens

Lessee will not permit any Unit to be subject to any lien, charge or encumbrance whatsoever except (i) the respective rights of Lessor and Lessee as herein provided, (ii) liens asserted by any person claiming by, through or under Lessor and resulting from acts or omissions of Lessor, except to the extent that such liens, charges or encumbrances arise from the failure of Lessee to perform any of Lessee's obligations hereunder, (iii) liens for taxes either not yet due or which are subject to Lessee's Right to Contest, (iv) inchoate, materialmen's, mechanics', workmen's, repairmen's, employees' or other like liens arising in the ordinary course of business and not delinquent and (v) liens arising out of judgments or awards against Lessee which are subject to Lessee's Right to Contest.

ARTICLE X. Insurance

10.1. Public Liability and Property Damage. Lessee will, without cost to Lessor or any other named insured (other than Lessee), carry or cause to be carried with commercial insurers of recognized responsibility insurance, payable in United States Dollars, with respect to the Units which is of the type and amounts usually carried by corporations engaged in the same or similar business, similarly situated with Lessee, and owning or leasing units of the same or comparable type and which

covers risks of the kind customarily insured against by such corporations, including public liability and property damage and risk of physical loss insurance with respect to the Units. This insurance shall be in no event less than the public liability and property damage insurance applicable to other units of equipment of same or comparable type operated by Lessee.

10.2. Reports and Payments. Unless the Lessor waives the following requirements in writing to the Lessee, Lessee will furnish Lessor concurrently with the execution hereof and thereafter at intervals of not more than twelve (12) calendar months, a detailed report signed by an independent insurance broker with respect to the insurance carried on the Units, together with the opinion of such brokers as to its compliance with the provisions of this Article 10. Lessee will cause such firm to agree to advise Lessor promptly of any lapse of any such insurance by expiration, failure to renew, or otherwise, or of any default of payment in any premium and of any other act or omission on the part of Lessee of which it has knowledge and which might, in its opinion, invalidate or render unenforceable, in whole or in part, any insurance on Units. Lessee will also cause such firm to agree to mark its records and use its best efforts to advise Lessor, at least five (5) business days prior to the expiration date of any insurance carried pursuant to this Lease, that said insurance has been renewed or replaced with new insurance which complies with the provisions of this Article 10 and such advice shall be in the same detail.

ARTICLE XI. Assumption of Risk; Indemnification

11.1 General. Lessee does hereby assume liability for, and does hereby agree to indemnify, protect, save and keep harmless Lessor and its successors, assigns, representatives, directors, officers, employees, agents and servants from and against, and, subject to Lessee's Right to Contest, does hereby agree to pay, when due, as Additional Rent, all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs, expenses and disbursements, including legal fees and expenses, of whatsoever kind or nature, whether seen or unforeseen, imposed upon, incurred by or with respect to or asserted against any Unit, Lessor or its successors, assigns, representatives, directors, officers, employees, agents or servants, in any way relating to or arising out of the manufacture, purchase, acceptance or rejection, ownership, delivery, lease, use, possession, operation, condition, repair, replacement, reconstruction, return or other disposition of any Unit, including without limitation those in any way relating to or arising out of or alleged to arise out of (i) any latent or other defects whether or not discoverable by Lessor or Lessee, (ii) any claim for patent, trademark or copyright infringement, (iii) any claim based on strict liability in tort, (iv) any claim by or on behalf of Reconstructor arising under or by virtue of the Equipment Reconstruction Agreement or for work performed in respect of any Unit, except as and to the extent that Lessor (in

the capacity of Owner) shall have expressly agreed to be obligated to the Reconstructor under the Equipment Reconstruction Agreement and (v) any and all license fees, assessments and sales, use, rent, property and other taxes now or hereafter imposed by any federal, state or local government upon any Unit or its use or payments hereunder, or upon this Agreement (excluding, however, taxes, fees and other charges based upon or measured by Lessor's net income, together with interest and penalties with respect thereto), whether the same shall be payable by or billed or assessed to Lessor or Lessee, together with any penalties or interest in connection therewith; provided, however, that nothing in this Section 11.1 shall be construed so as to require Lessee to indemnify Lessor for its own gross negligence or willful misconduct. Lessee shall be obligated under this Section 11.1 irrespective of whether Lessor or any of its successors, assigns, representatives, directors, officers, employees, agents or servants shall also be indemnified with respect to the same matter under any other agreement by any other person. In the event Lessee is required to make any payment under this Section 11.1, Lessee shall pay to Lessor an amount which after deduction of all taxes required to be paid by Lessor or any other person indemnified hereunder in respect of the receipt of such payment (after giving credit for any savings in respect of any such taxes by reason of deductions, credits or allowances in respect of the payment of the expense indemnified against, and of such other taxes) shall be equal to the amount of such payment. Lessee and Lessor each agree to give the other promptly upon obtaining knowledge thereof written notice of any claim or liability hereunder indemnified against; provided, however, that the failure to give such notice shall not in any way affect, impair or diminish Lessee's obligations hereunder.

11.2. Federal Income Tax Matters.

(a) As between Lessor and Lessee, Lessor, as the owner of each Unit, shall be entitled to such deductions, credits and other benefits as are provided by the Code to an owner of property, including, without limitation, (i) an allowance for an investment tax credit as provided by Section 38 of the Code and (ii) an allowance for depreciation as provided by Section 167 of the Code. Accordingly, Lessee represents and warrants that (i) the reconstruction work to be performed by the Reconstructor pursuant to the Equipment Reconstruction Agreement with respect to the Equipment constitutes "new Section 38 property" within the meaning of Section 48(b) of the Code and following delivery of the Units to the Reconstructor pursuant to the Equipment Reconstruction Agreement none of the Units will have been used by any person so as to preclude "the original use" of the Reconstruction Cost of any Unit, within the meaning of Sections 48(b) and 167(c)(2) of the Code, from commencing with Lessor by virtue of this Agreement and (ii) at all times during the Term relating to the respective Units, each Unit will constitute "Section 38 property" within the meaning of Section 48(a) of the Code.

(b) Lessee acknowledges that the anticipated availability to Lessor of a specified amount of investment tax credit and an annual allowance for depreciation is fundamental to the economics of this Agreement. Lessee further acknowledges that certain factors affecting such investment tax credit and allowance for depreciation are within the knowledge, control and experience of Lessee. Accordingly, the basis upon which the investment tax credit and allowance for depreciation will be determined are set forth on the Lease Schedule.

(c) As used in this Agreement: (i) the term "ITC" shall mean the amount of the investment tax credit shown in the Lease Schedule; (ii) the term "Depreciation Deductions" shall mean an allowance for depreciation calculated under the criteria set forth in the Lease Schedule; and (iii) the term "Code" shall mean the Internal Revenue Code of 1954, as amended to the date hereof and as in effect on the date hereof.

(d) If there shall be a disallowance, elimination, recomputation, reduction, recapture or disqualification (hereinafter called "Loss"), in whole or in part, of the ITC for any Unit which results from:

- (i) the failure of at least 51% of Lessor's Cost of the Equipment to qualify as "new Section 38 property" at the time a Certificate of Acceptance is executed with respect to such Unit; or
- (ii) the failure of any Unit to continue to qualify as "Section 38 property" throughout the Term; or
- (iii) any amendment to, or change in, the Code, the income tax regulations promulgated thereunder or published administrative interpretations of the Code or such regulations occurring on or before December 31, 1980; or
- (iv) any act, or failure to act, at any time by Lessee or any of its officers, employees or agents (including without limitation, any act, or failure to act, in respect of the income tax returns of Lessee and any misrepresentation in this Agreement),

Lessee shall pay to Lessor as Additional Rent, within ten days after receipt of written request from Lessor, an amount which, after deduction of federal, state and local income taxes, and interest and penalties required to be paid by Lessor with respect to the receipt of such Additional Rent, is equal to such Loss of the ITC.

(e) If there shall be a Loss, in whole or in part, of Depreciation Deductions for any Unit which results from:

- (i) the use of a Unit by any person following delivery of such Unit to the Reconstructor pursuant to the Equipment Reconstruction Agreement so as to preclude the "original use of such property" within the meaning of Section 167(c)(2) of the Code from commencing with Lessor with respect to the Reconstruction Cost by virtue of this Agreement; or
- (ii) the failure of at least 51% of Lessor's Cost of the Equipment to qualify as property "the original use" of which, as defined in Section 167(c)(2) of the Code, commenced with Lessor under this Agreement; or
- (iii) a change in the 12-year "Useful Life" of any Unit for purposes of the Depreciation Deductions; or
- (iv) any amendment to, or change in, the Code, the income tax regulations promulgated thereunder or published administrative interpretations of the Code or such regulations occurring on or before December 31, 1980; or
- (v) any act, or failure to act, at any time by Lessee or any of its officers, employees or agents (including without limitation, any act, or failure to act, in respect of the income tax returns of Lessee and any misrepresentation in this Agreement),

Lessee shall pay to Lessor as Additional Rent, after written request of Lessor, an amount which, after deduction of federal, state and local income taxes, and interest and penalties required to be paid by Lessor with respect to the receipt of such Additional Rent, will (in the reasonable opinion of Lessor) cause Lessor's net yield and cash flows in respect of such Unit to equal the net yield and cash flows that Lessor had expected to receive if Lessor had not suffered a Loss with respect to the Depreciation Deductions. Such Additional Rent shall be payable over the then remaining Term commencing with the first Rental Payment Date occurring more than ten days after Lessor notifies Lessee of the required Additional Rent, or upon demand if no part of the Term shall then remain.

(f) Notwithstanding the provisions of paragraph (d) of this Section 11.2, Lessee shall not be required to make any payment on account of any Loss of the ITC due solely to (i)

the failure of Lessor to have any federal income tax liability against which to apply the ITC or the inability of Lessor to utilize the ITC as a result of the limitation imposed by Section 46(a)(3) of the Code, (ii) the failure to properly claim the ITC in the tax returns filed by Lessor, (iii) the sale or disposition of the Equipment, any Unit or this Agreement by Lessor prior to any Default by Lessee or (iv) any amendment to, or change in, the Code, the income tax regulations promulgated thereunder or published administrative interpretations of the Code or such regulations occurring after December 31, 1980.

(g) Notwithstanding the provisions of paragraph (e) of this Section 11.2, Lessee shall not be required to make any payment on account of any Loss of the Depreciation Deductions due solely to (i) the failure to properly claim the Depreciation Deductions in the tax returns filed by Lessor, (ii) the sale or disposition of the Equipment, any Unit or this Agreement by Lessor prior to any Default by Lessee, or (iii) any amendment to, or change in, the Code, the income tax regulations promulgated thereunder or published administrative interpretations of the Code or such regulations occurring after December 31, 1980.

(h) In the event the Internal Revenue Service or any state or local taxing authority proposes adjustments to the ITC or Depreciation Deductions which, if successful, could result in a Loss for which Lessee would be required to indemnify Lessor pursuant to this Section 11.2, Lessor hereby agrees to notify Lessee promptly of such proposed adjustment, to withhold payment of the tax claimed to be due for a period of 30 days after giving such notice, and to exercise in good faith its best efforts (determined by Lessor in Lessor's sole discretion to be reasonable, proper and consistent with the overall tax interests of Lessor and its affiliated companies) to avoid requiring Lessee to pay such indemnity, provided that Lessee shall have agreed to indemnify Lessor in a manner satisfactory to Lessor for any liability or loss which Lessor may incur as a result of contesting such adjustments and shall have agreed to pay Lessor on demand all costs and expenses which Lessor may incur in connection with contesting such adjustments including without limitation reasonable attorneys', accountants', engineers' and like professional fees and disbursements.

(i) In the event that Lessor shall elect to contest the adjustments referred to in paragraph (h) above by paying the tax claimed and then seeking a refund thereof, Lessee shall pay to Lessor an amount equal to the Interest Payment Rate on the amount of such tax computed from the date of payment of such tax to the date of final determination of such adjustment, such interest to be payable in equal installments within each calendar year on each Rental

Payment Date. Upon receipt by Lessor of a refund of any federal income tax paid by it in respect of which Lessee has paid interest as set forth above while such tax payment was contested by Lessor, any interest on such refund paid to Lessor by the United States Government shall be paid to Lessee forthwith upon receipt by Lessor.

(j) Lessee acknowledges that Lessor has entered into this Agreement with the expectation that all Rent received hereunder and all deductions relating to such Rent will, for Federal income tax purposes, be treated as being from a "United States source." Lessee agrees to notify Lessor, no later than March 1 of each year, of the amount of Rent, if any, paid under this Agreement which is deemed to be derived from or allocable to sources outside the United States as a result of Lessee's use of any Unit or Units outside the United States.

In the event any amount includable in the gross income of Lessor with respect to any one or more of the Units or any deduction allowable to Lessor with respect to such Unit or Units shall be treated as derived from or allocable to sources outside the United States, Lessee shall pay to Lessor as Additional Rent, after written request of Lessor, an amount which, after deduction of Federal, state and local income taxes, and interest and penalties required to be paid by Lessor with respect to the receipt of such Additional Rent, will (in the reasonable opinion of Lessor) cause Lessor's net yield and cash flows in respect of such Unit or Units to equal the net yield and cash flows that Lessor had expected to realize had such income or deductions not been treated as having been derived from or allocable to sources outside the United States. Such Additional Rent shall be payable within ten days after receipt of written request from Lessor. In determining the Additional Rent due under this paragraph, Lessor shall take into account any additional Federal income tax benefits actually realized by Lessor for the taxable year as a result of such income or deductions being treated as "foreign source" items, provided however, Lessor shall not be required to maximize such additional Federal income tax benefits available to Lessor with respect to such "foreign source" items if it is not in the best tax interests of Lessor as determined by Lessor, in its sole discretion.

(k) If for any reason all or part of the cost of any alterations, modifications, additions, maintenance or repairs of or to any Unit (hereinafter called "Additional Expenditures") is required to be included in the gross income of Lessor under the Code or the Income Tax Regulations at any time prior to the expiration of the Term of this Agreement and is not fully deductible in the same taxable period, then Lessee shall pay to Lessor as Additional Rent, within ten days after receipt of written

request from Lessor, the sum of (i) the net amount of any increase in state, local or federal income tax liability resulting from the inclusion of such Additional Expenditures in the gross income of Lessor, (ii) the amount of any interest (net of any actual decrease in state, local or federal income tax resulting from any allowable deduction of such interest from taxable income) or penalties, including any additions to tax because of underpayment of estimated tax, which may be assessed against Lessor in connection therewith and (iii) the amount of any state, local or federal income taxes which are or will be required to be paid by (or, if previously paid, which will not be refunded to) Lessor as a result of the receipt of amounts pursuant to this paragraph (k).

(1) Reference in this Section 11.2 to Lessor shall include any affiliated group of which Lessor is a member for purposes of filing consolidated tax returns, provided that only Lessor shall be obligated with respect to the covenants and duties imposed herein on Lessor.

11.3 Survival of Obligations. This Article XI shall become and be effective and in full force and effect from the date of this Agreement (even though no Equipment may have been accepted by Lessee and even though the Term may not have commenced) and shall remain in effect notwithstanding the expiration or other termination of the Term insofar as it relates to an event or state of facts which occurred or existed or which is alleged to have occurred or existed prior to such expiration or termination.

ARTICLE XII. Damage to Property

12.1. Duty to Notify. In the event any Unit shall be lost, stolen, destroyed, damaged beyond repair or permanently rendered unfit for use for any reason whatsoever, or title thereto shall be requisitioned or taken by any governmental authority under the power of eminent domain or otherwise (herein referred to as an "Event of Loss"), Lessee shall promptly notify Lessor as to the circumstances and time of such event.

12.2. Stipulated Loss Value. Effective upon the happening of an Event of Loss with respect to any Unit Lessee shall become obligated, without demand or notice, to pay to Lessor on the Rental Payment Date next following its notification of such Event of Loss to Lessor pursuant to Section 12.1 hereof an amount equal to the Stipulated Loss Value for such Unit as of the Rental Payment Date immediately following the Event of Loss together with interest thereon at the Interest Payment Rate from the Rental Payment Date immediately following the Event of Loss to the date of payment of the Stipulated Loss Value. The obligation of Lessee to pay Basic Rent for such Unit shall cease with the payment of all Basic Rent due for such Unit on the

Rental Payment Date immediately following the Event of Loss, and such Unit shall cease to be part of the Equipment leased hereunder effective as of the payment of the Stipulated Loss Value with respect to such Unit. Upon request of Lessee, Lessor will execute and deliver an appropriate document cancelling or amending the Certificate of Acceptance pursuant to which such Unit was leased under this Agreement, but Lessor's failure to do so shall not affect Lessee's obligations under this Agreement, and Lessor will transfer to Lessee, without recourse or warranty, all of Lessor's right, title and interest, if any, in and to such Unit.

12.3 Insurance and Condemnation Proceeds. Any and all insurance or other payments received by Lessor or Lessee (except under any insurance policy maintained pursuant to Section 10.1 hereof) as a result of any Event of Loss of a Unit shall be paid to or retained by Lessor and applied against Lessee's obligation to pay the Stipulated Loss Value.

ARTICLE XIII. Return of Property

At the expiration or sooner termination of the Term, Lessee shall return the respective Units to Lessor, free of all Lessee advertising or insignia placed thereon by Lessee, and in the same operating order, repair, condition and appearance as when originally received by Lessee, excepting only for reasonable wear and tear and damage by any cause covered by collectible insurance. Lessee shall pay or reimburse Lessor for the cost of all repairs necessary to restore such Unit to such condition. Lessee shall return each Unit to Lessor at any location on Lessee's lines designated by Lessor, or if the Unit is of a nature that so permits and if Lessor shall so request, Lessee shall load the same at Lessee's expense on such carrier as Lessor shall designate and ship the same, freight collect, as directed by Lessor to any location on Lessee's lines. If Lessor so requests, Lessee will defer such return of any of the Units and will, without expense to Lessor, store same at premises of Lessee approved by Lessor, for a period not to exceed 100 days from the date of the expiration or sooner termination of the Term, the obligations of Lessee during that interval in respect to the Units being that of reasonable care under all the circumstances; provided, however, that the foregoing shall not impose upon Lessee any responsibility for maintenance, overhaul, or any other expense during such storage. If Lessor so requests, Lessee shall continue to maintain insurance upon such Units in accordance with Article X hereof.

ARTICLE XIV. Defaults; Remedies

14.1. Defaults; Remedies. If from the date of the execution and delivery hereof through the end of the Term one or more of the followings events ("Events of Default") shall occur:

(a) Default shall be made in the payment when due of any Rent herein provided; or

(b) Lessee shall attempt to sell, transfer, encumber or sublet (except as expressly permitted under this Agreement) any Unit; or

(c) Default shall be made in the observance or performance of any other covenants, conditions and agreements on the part of Lessee contained herein and such Default shall continue for ten days after written notice from Lessor to Lessee specifying the Default and demanding the same to be remedied; or

(d) A proceeding shall have been instituted in a court having jurisdiction in the premises, seeking a decree or order (i) for relief in respect of Lessee in an involuntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect or (ii) for the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official of Lessee or of its property, or (iii) for the winding up or liquidation of the affairs of Lessee; and either (I) any such proceeding shall remain undismissed or unstayed and in effect for a period of 30 consecutive days or (II) such court shall enter a decree or order granting the relief sought in such proceeding; or

(e) Lessee shall commence a voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, shall consent to the entry of an order for relief in an involuntary case under any such law, or shall consent to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator or other similar official of Lessee or for any substantial part of its property, or shall make a general assignment for the benefit of creditors, or shall fail generally to pay its debts as they become due, or shall take any corporate action in furtherance of any of the foregoing; or

(f) An event of default under any mortgage, indenture or other agreement or lease evidencing indebtedness of the Lessee shall have occurred which shall result in the declaring due and payable of indebtedness of Lessee in an amount in excess of \$500,000 prior to the date on which it would otherwise have become due and payable, and such declaration shall not have been satisfied, rescinded or annulled within ten days; or

(g) Lessee shall have knowledge that there has occurred and is continuing any condition, event, act or omission which it reasonably believes constitutes, or with notice or lapse of time would constitute, an Event of

Default, and shall fail promptly to notify Lessor of such condition, event, act or omission; or

(h) Any representation or warranty made by Lessee in this Agreement, or in any Certificate of Acceptance, or any information furnished by Lessee in any instrument, certificate or other document delivered by or on behalf of Lessee pursuant hereto, shall prove to be false and misleading in any material respect;

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

A. Proceed by appropriate court action or actions either at law or in equity to enforce performance by Lessee of the applicable duties and obligations of Lessee under this Agreement or to recover from Lessee any and all damages or expenses, including reasonable attorneys' fees, which Lessor shall have sustained by reason of Lessee's Default or on account of Lessor's enforcement of its remedies hereunder; or

B. By notice in writing to Lessee, terminate this Agreement, whereupon all right of Lessee to the use of the Equipment shall absolutely cease and terminate as though this Agreement had never been made, but Lessee shall deliver possession of the Equipment to Lessor in accordance with Article XIII hereof and Lessee shall remain liable as hereinafter provided; and thereupon, Lessor may by its agents and without notice to Lessee enter upon the premises of Lessee or other premises where the Units may be located and take possession of all or any such Units and thenceforth hold, possess and enjoy the same free from any right of Lessee, or its successors or assigns, to use the Units for any purpose whatever.

Upon such termination, Lessor shall have the right to recover forthwith from Lessee as damages for loss of the bargain and not as a penalty and as reasonable rent for the use of the Equipment and for the depreciation thereof, the sum of the following:

(1) an amount with respect to each Unit which represents the excess of the Stipulated Loss Value of such Unit over one of the following, as Lessor may in its sole discretion elect: (x) in the event Lessor shall sell such Unit, the net proceeds of such sale, (y) in the event Lessor shall re-lease such Unit, the net rents payable under the terms of such re-leasing for a period equal to the remaining term of this Agreement, discounted to the time of computation at the Interest Payment Rate, or (z) the fair market value of such Unit at the time of such termination;

(2) all due and unpaid Rent for the Equipment to the date of termination;

(3) an amount equal to accrued taxes and other amounts payable hereunder by Lessee with respect to the Equipment;

(4) all costs, expenses, losses and damages incurred or sustained by Lessor by reason of such Default; and

(5) interest at the Interest Payment Rate on each of the foregoing from the date upon which such amounts were first payable which date, in the case of the amounts payable pursuant to clause (1) above, shall be the date upon which the Event of Default which results in the termination of this Agreement first occurs.

If on the date of such termination or repossession, any Unit be damaged, lost, stolen or destroyed, or be subject to any levy, seizure, assignment, application or sale for or by any creditor or governmental agency, Lessee shall remain liable for the Stipulated Loss Value pertaining to such Unit less the amount of any insurance recovery received by Lessor in connection therewith.

14.2. Remedies Cumulative; Waiver of Requirements. The remedies in this Agreement provided in favor of Lessor shall not be deemed exclusive, but shall be cumulative and shall be in addition to all other remedies in its favor existing at law or in equity. TO THE EXTENT THAT SUCH WAIVER IS PERMITTED BY LAW, LESSEE HEREBY WAIVES ANY MANDATORY REQUIREMENTS OF LAW, NOW OR HEREAFTER IN EFFECT, WHICH MIGHT LIMIT OR MODIFY ANY OF THE REMEDIES HEREIN PROVIDED, INCLUDING WITHOUT LIMITATION ANY RIGHT WHICH LESSEE MAY HAVE TO NOTICE AND HEARING PRIOR TO THE REPOSSESSION AND SALE OR LEASING OF ANY UNIT.

ARTICLE XV. Assignment by Lessor

Lessor hereby reserves the right, without the consent of Lessee at any time to assign its interest under the Agreement and in and to the Equipment leased hereunder to a bank or other lending institution or to others having an interest in the Equipment or this transaction, all or some of which will rely upon and be entitled to the benefit of the provisions of this Article XV. Lessee agrees with Lessor and with such bank or other lending institution or such other party (for whose benefit this covenant is expressly made) and in consideration of the provisions hereof, as follows: (i) to recognize any such assignment, (ii) to accept the directions or demands of such assignee in place of those of Lessor, (iii) to surrender the Equipment only to such assignee, (iv) to pay all Rent payable hereunder and to do any and all things required of Lessee hereunder and not to terminate this Agreement, notwithstanding any Default by Lessor or the existence of any offset as between Lessor and Lessee 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, and (v) not to require

any assignee of this Agreement to perform any duty, covenant or condition required to be performed by Lessor under the terms of this Agreement, all rights of Lessee in any such connection being hereby waived as to any and all of such assignees; provided, however, that nothing contained in this Article XV shall relieve Lessor from its obligations to Lessee hereunder.

ARTICLE XVI. Quiet Possession

So long as no Event of Default hereunder shall have occurred and be continuing, Lessor shall not do (nor suffer to be done by any person claiming by, through or under Lessor with respect to matters not related to the transactions contemplated by this Agreement) any act which will interfere with the right of Lessee peaceably and quietly to hold, possess and use the Equipment during the Term and in accordance with the provisions of this Agreement.

ARTICLE XVII. Further Assurances

Lessee and Lessor will promptly and duly execute and deliver to the other party hereto such further documents and assurances and take such further action as Lessor or Lessee may from time to time reasonably request in order to carry out more effectively the intent and purpose of this Agreement and to establish and protect the rights and remedies created or intended to be created in favor of Lessor or Lessee hereunder, including, without limitation, if requested by Lessor or Lessee, in either case at the expense of Lessee, the execution and delivery of supplements or amendments hereto, in recordable form subjecting to this Agreement any replacement property and the recording or filing of counterparts hereof, or of financing statements with respect thereto in accordance with the laws of such jurisdiction as Lessor or Lessee may from time to time deem advisable.

ARTICLE XVIII. Miscellaneous

Nothing herein contained shall give or convey to Lessee any right, title or interest in and to any Unit leased hereunder except as a lessee. The obligations of Lessor hereunder shall be suspended to the extent that it is hindered or prevented from complying therewith because of labor disturbances (including strikes and lockouts), war, Acts of God, fires, storms, accidents, governmental regulations or interference or any cause whatever beyond its control. No obligation of Lessor hereunder shall survive the Term, and should Lessor permit the use of any Unit beyond such Term, the obligations of Lessee hereunder shall continue and such permissive use shall not be construed as a renewal of the Term hereof nor as a waiver of any right or continuation of any obligation of Lessor hereunder, and Lessor may take possession of any such Unit at any time after the Term upon demand after five days' notice. Any cancellation or

termination by Lessor pursuant to the provisions of this Agreement shall not release Lessee from any then outstanding obligations to Lessor hereunder. This Agreement constitutes the entire agreement between the parties and there are no warranties (in respect of the Equipment or otherwise), express or implied, or collateral or contemporaneous agreements that affect its import other than such as are contained herein. This Agreement may be modified, amended or mutually rescinded only by a written instrument executed by each of the parties hereto. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and, subject to Section 8.6 hereof, their respective successors and assigns. Time is of the essence of this Agreement. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the Commonwealth of Pennsylvania. Any document required to be delivered hereunder in executed form or otherwise may be delivered by telecopier.

ARTICLE XIX. Notices

Any notices required or permitted under this Agreement, or by law in respect of this Agreement, shall be in writing and shall be deemed to have been duly given when personally delivered or when deposited in the mail, first class, postage prepaid, or when sent by telex or prepaid telegraph, addressed to the party required to receive the same at the address set forth below such party's signature hereto, or to such other address as such party shall specify by like notice.

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

MELLON NATIONAL LEASING
CORPORATION

Lessor

By: *Allen Johnson*
Title: *Vice President*

Address: 3629 Mellon Bank Building
Pittsburgh, Pennsylvania 15219

THE WESTERN PACIFIC RAILROAD
COMPANY

Lessee

By: *Wesley Skumbo, Jr.*
Title: *Sr. Vice President - Finance*

Address: 526 Mission Street
San Francisco, California 94105

Attest:

By: *A. D. Brew*

Title: *Corporate Secretary*

[CORPORATE SEAL]

STATE OF CALIFORNIA)
) ss.
CITY AND COUNTY OF SAN FRANCISCO)

On this 21st day of December, 1979, before me personally appeared R. W. STUMBO, JR., to me personally known, who, being by me duly sworn, says that he is the Senior Vice President of THE WESTERN PACIFIC RAILROAD COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Diane Lorette Fafoutis
Notary Public

[Notarial Seal]

My Commission expires Dec. 14, 1983.



STATE OF Pennsylvania)
) ss.
COUNTY OF Allegheny)

On this 26th day of December, 1979, before me personally appeared Arthur Folsom, Jr., to me personally known, who, being by me duly sworn, says that he is Vice-President, of MELLON NATIONAL LEASING CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Nancy R. Lewis
Notary Public

[Notarial Seal]

NANCY R. LEWIS, Notary Public
Pittsburgh, Allegheny County, Pa.
My Commission Expires Jan. 29, 1980

My Commission expires _____, 19__.

LEASE SUPPLEMENT

to

AGREEMENT AND LEASE

dated as of December 14, 1979

between

MELLON NATIONAL LEASING CORPORATION, Lessor

and

THE WESTERN PACIFIC RAILROAD COMPANY, Lessee

Option to Lease. If Lessee is not in default hereunder, Lessee shall have the right to lease all, but not less than all, of the Units at the expiration of the Base Term or of the first Option Term (as hereinafter defined) therefor at a price equal to their then "fair market rental value" (as herein defined) for an additional period of one year (the "Option Term"). Lessee shall give Lessor written notice 120 days prior to the end of the Base Term or Option Term, as the case may be, of its election to exercise such option. Rent with respect to the Option Term shall be paid in equal installments semi-annually in arrears during the Option Term. The "fair market rental value" of each Unit shall be determined by an appraiser selected by mutual agreement of Lessor and Lessee. If Lessor and Lessee are not able to agree upon the appraiser, the fair market value shall be determined by American Appraisal Company. Lessee shall pay the fees and expenses of the appraiser in making such determination.

MELLON NATIONAL LEASING CORPORATION

Lessor

By: _____
Title: _____

THE WESTERN PACIFIC RAILROAD COMPANY

Lessee

By: _____
Title: _____

Attest:

By: _____
Title: _____

[CORPORATE SEAL]

LEASE SCHEDULE

to

AGREEMENT AND LEASE

dated as of December 14, 1979

between

MELLON NATIONAL LEASING CORPORATION, Lessor and
THE WESTERN PACIFIC RAILROAD COMPANY, Lessee

1. Description of Equipment: 117 Box Cars, bearing identifying road numbers WP68601 through WP68717, inclusive, to be reconstructed pursuant to the Equipment Reconstruction Agreement.

2. Location of Equipment: Continental United States - 48 contiguous states.

3. Final Delivery Date: July 1, 1980

4. Interest Payment Rate: The lesser of 15% or the maximum amount permitted by law.

5. Term:
 - a. Interim Term. From the date as of which the parties execute and deliver a Certificate of Acceptance with respect to a Unit until the commencement of the Base Term with respect to the Unit.

 - b. Base Term. A period of 144 months beginning on the Final Delivery Date.

6. Purchase Price: Not to exceed \$18,000 per hulk plus Reconstruction Cost of \$2,223,000 (average of \$19,000 per hulk); provided, however, that Lessor agrees to increase the amount of such Reconstruction Cost by ten percent (10%) for additional work performed on the hulk which, in the reasonable opinion of Lessor, increases the value or utility of the Units.

7. Rent:

a. Interim Rent. On the Interim Rental Payment Date, Lessee shall pay to Lessor by wire transfer Interim Rent with respect to each Unit determined as follows:

$$C \times \frac{12.75\%}{360} \times D$$

As used in this formula, "C" means Lessor's Cost of the Unit and "D" means the number of days in the Interim Term of the Unit.

b. Basic Rent: On the first Basic Rental Payment Date and on each of the 23 succeeding Basic Rental Payment Dates Lessee shall pay to Lessor by wire transfer Basic Rent equal to 6.5432% of Lessor's Cost of the Unit; provided, however, in the event that that portion of the Reconstruction Cost of the Equipment which qualifies as "new Section 38 property," within the meaning of Section 48(d) of the Code, shall be less than 51% of Lessor's Cost of the Equipment, Lessor shall have the right to increase such percentage by an amount which will (in the reasonable opinion of Lessor) cause Lessor's net yield and cash flow in respect of such Unit to equal the net yield and cash flow that Lessor had expected to receive in the event the amount of "new Section 38 Property" had equalled 51% of Lessor's Cost. Each installment of Basic Rent shall be for the six months immediately preceding the Basic Rental Payment Date on which such installment is due and payable.

8. Rental Payment Dates:

a. Interim Rental Payment Date: The first day of the Base Term.

b. Basic Rental Payment Dates: January 1, 1981 and the same calendar day of each succeeding six-month period during the Base Term.

9. [THIS PARAGRAPH INTENTIONALLY LEFT BLANK]

10. Bases for Computation of ITC and Depreciation Deductions:

a. ITC. 10% of 51% of the aggregate Lessor's Cost of the Equipment as "new Section 38 Property" available to Lessor in the calendar year in which Lessee and Lessor accept the Equipment pursuant to Section 3.1 of the Agreement.

b. Depreciation Deduction-Method. With respect to the portion of Lessor's Cost not depreciated in accordance with paragraph 10(c) below, 150% declining

balance switching to straight line. Salvage value 20% of Lessor's Cost less Reconstruction Cost, 10% ignored per Section 167(f) of the Code.

c. Depreciation Deduction-Method. With respect to the Reconstruction Cost, 200% declining balance switching to sum of the years digit method. Salvage value 20% of Reconstruction Cost, 10% ignored per Section 167(f) of the Code.

d. Depreciation Deduction-Useful Life. ADR Asset Guideline Class 00.25, 12 year lower limit, per Rev. Proc. 77-10.

11. Stipulated Loss Value: See Annex 1 to this Lease Schedule; provided, however that in the event that there shall be an adjustment in Basic Rent pursuant to the proviso in paragraph 7(b) of this Lease Schedule, there shall be a corresponding adjustment in Stipulated Loss Value.

APPROVED AND AGREED TO as of the 14th day of December as the Lease Schedule to and forming a part of the above-described Agreement and Lease.

MELLON NATIONAL LEASING CORPORATION
Lessor

By: _____

Title: _____

THE WESTERN PACIFIC RAILROAD COMPANY
Lessee

By: _____

Title: _____

ANNEX I
TO LEASE SCHEDULE

MELLON NATIONAL LEASING CORPORATION

"STIPULATED LOSS VALUES" OF ANY UNIT OF THE EQUIPMENT AS OF ANY PARTICULAR DATE SHALL MEAN THE PRODUCT DEPRIVED FROM MULTIPLYING (1) THE PERCENTAGE FIGURE OPPOSITE THE NOTATION FOR THE APPROPRIATE TIME PERIOD AS SET FORTH IN THE TABLE BELOW BY (2) THE LESSOR'S COST OF SUCH UNIT.

STIPULATED LOSS VALUES TABLE

WESTERN PACIFIC RAILROAD COMPANY

BETWEEN MONTHS	% OF PRICE
1 - 6	103.8122
7 - 12	104.9828
13 - 18	105.8118
19 - 24	106.2992
25 - 30	106.4451
31 - 36	106.2494
37 - 42	99.5393
43 - 48	98.6605
49 - 54	97.4401
55 - 60	95.8781
61 - 66	87.8017
67 - 72	85.5566
73 - 78	82.9699
79 - 84	80.0417
85 - 90	70.5990
91 - 96	66.9876
97 - 102	63.0347
103 - 108	58.7402
109 - 114	54.1041
115 - 120	49.1264
121 - 126	43.8071
127 - 132	38.1463
133 - 138	32.1440
139 - 144	25.8000
and thereafter	

EXHIBIT A TO LEASE

CERTIFICATE OF ACCEPTANCE

No. _____ dated the _____ day of _____

to Agreement and Lease (the
"Agreement") dated as of December 14, 1979
between MELLON NATIONAL LEASING CORPORATION ("Lessor") and
THE WESTERN PACIFIC RAILROAD COMPANY ("Lessee")

THIS CERTIFICATE OF ACCEPTANCE is executed pursuant to
the Agreement and the terms herein shall have the meanings
ascribed to them in the Agreement.

Lessor and Lessee do hereby confirm and agree that (i)
the Units described in Attachment 1 hereto, having an aggregate
Lessor's Cost as set forth below, have been delivered as of the
date hereof at the location or locations indicated on said
Attachment 1, (ii) such Units have been duly accepted by Lessee
as part of the Equipment for leasing under the Agreement, (iii)
such Units are hereby made subject to, and the rights and duties
of the parties with respect thereto shall be governed by, the
Agreement, and (iv) Lessee has become obligated to pay Interim
Rent, if any, and Basic Rent in the amounts set forth below:

Lessor's Cost: \$ _____

Rent

Interim	\$ _____	per day
Basic	\$ _____	semi-annually

Lessee confirms that it has caused to be affixed to
each Unit described in Attachment 1 hereto the identification tag
indicating Lessor's ownership of such Unit as required by the
Agreement.

Lessee hereby authorizes Lessor to execute and deliver a Certificate of Acceptance Upon Reconstruction with respect to such Units.

WITNESS the due execution hereof as of the day and year first above written.

LESSEE:
THE WESTERN PACIFIC RAILROAD
COMPANY

LESSOR:
MELLON NATIONAL LEASING
CORPORATION

By: _____

By: _____

Title: _____

Title: _____

EXHIBIT B TO LEASE
HULK PURCHASE AGREEMENT

Dated as of December 14, 1979

Mellon National Leasing Corporation ("Buyer")
3629 Mellon Bank Building
Pittsburgh, Pennsylvania 15219

Attention: President

Gentlemen:

The Western Pacific Railroad Company, a Delaware corporation ("Seller"), owns or will own the railroad equipment described in Annex A hereto (collectively the "Hulks" and individually a "Hulk") and hereby agrees to sell the Hulks to Buyer for the purchase price set forth in said Annex, and on the terms and conditions hereof.

The Seller will deliver the Hulks to Buyer's representative authorized to accept delivery thereof at the delivery point or points designated by Buyer together with a Bill or Bills of Sale of the Seller transferring title to the Hulks to Buyer and warranting that at the time of delivery of such Hulks, the Seller had good and marketable title thereto and good and lawful right to sell the same and that title to such Hulks transferred to Buyer by such Bill or Bills of Sale was, at the time of delivery thereof, free of all claims, liens and encumbrances of any nature. No later than two (2) business days after delivery of a group or groups of Hulks (each of which groups shall contain such number of Hulks as shall be mutually agreed upon by Buyer and the Seller from time to time) to such authorized representative, the Seller will deliver to Buyer (a) a Hulk Acceptance Certificate in the form of Annex II attached hereto, for signature by such authorized representative, stating that the Hulks in such group have been delivered to such authorized representative and accepted on Buyer's behalf, and (b) Seller's invoice covering the purchase price of the Hulks in such group.

Delivery of the Hulks pursuant to this Agreement shall commence as soon as practicable and shall be completed in sufficient time for reconstruction to occur on or before July 1, 1980 under the Reconstruction Agreement dated as of December 14, 1979 ("Reconstruction Agreement"), between Buyer and Pacific Fruit Express Company ("Rebuilder").

In the event that the reconstruction of any Hulk sold to Buyer pursuant hereto shall not have been completed on or before

July 1, 1980 under the Reconstruction Agreement, or any such Item of Reconstructed Equipment (as defined in the Reconstruction Agreement) shall not have been leased and delivered to Lessee on or before July 1, 1980 pursuant to the Equipment Lease Agreement dated as of December 14, 1979 (the "Lease") (as evidenced by execution and delivery by Lessor of a Certificate of Acceptance, as described in the Lease) the Buyer agrees to sell and the Seller agrees to purchase immediately such Hulk or Item of Reconstructed Equipment (irrespective of the status of its reconstruction) from Buyer AS-IS-WHERE-IS without representation or warranty whatever, express or implied, at a price equal to the purchase price, if any, paid by Buyer to the Seller for such Hulk.

Payment of the purchase price of each Hulk shall be made to Seller by Buyer five (5) business days after the date that the Certificate of Acceptance in respect of the Item of Reconstructed Equipment made from such Hulk is executed and delivered by Lessor and Lessee pursuant to the Lease.

If the foregoing arrangement concerning sale of the Equipment is satisfactory, please confirm by signing and returning the enclosed copy of this letter to the undersigned.

Very truly yours,

THE WESTERN PACIFIC RAILROAD
COMPANY
Seller

SEAL

By _____

Its _____

ACCEPTED:

MELLON NATIONAL LEASING CORPORATION
Buyer

By _____

Its _____

ANNEX I
TO HULK PURCHASE AGREEMENT

EQUIPMENT DESCRIPTION
HULK PURCHASE AGREEMENT

<u>Quantity</u>	<u>Description</u>	<u>Numbers</u>	<u>Hulk Purchase Price</u>	<u>Total Purchase Price</u>
117	Box Cars	Series WP68001 to WP 68225	\$18,000	\$2,106,000

ANNEX II
TO HULK PURCHASE AGREEMENT

HULK ACCEPTANCE CERTIFICATE

TO: The Western Pacific Railroad Company

I, duly appointed representative for Mellon National Leasing Corporation, under the Hulk Purchase Agreement dated as of December 14, 1979 between Western Pacific Railroad Company and Mellon National Leasing Corporation, do hereby certify that I inspected, received, approved and accepted delivery under the Hulk Purchase Agreement of the following items:

TYPE OF EQUIPMENT:

DATE ACCEPTED:

NUMBER OF UNITS:

NUMBERED:

The execution of this Hulk Acceptance Certificate will in no way relieve or decrease the responsibility of The Western Pacific Railroad Company for any warranties it has made with respect to the Hulks.

Inspector and Authorized
Representative of Mellon
National Leasing Corporation

EXHIBIT C TO LEASE

EQUIPMENT RECONSTRUCTION AGREEMENT

THIS EQUIPMENT RECONSTRUCTION AGREEMENT ("Reconstruction Agreement") dated as of December 14, 1979, between Pacific Fruit Express Company, a Utah corporation ("Rebuilder"), and Mellon National Leasing Corporation, a Pennsylvania corporation ("Owner").

R E C I T A L S

The Owner is the owner of the Hulks described in Schedule A hereto (collectively the "Hulks" and individually a "Hulk") which are to be reconstructed by the Rebuilder in accordance with the specifications therefor set forth in Exhibit I of Schedule A hereto and incorporated herein by reference (hereinafter, with such modifications therein as may be approved by the Owner and the Rebuilder, called the "Specifications"); and the Owner proposes to pay for the reconstructed equipment described in Schedule A (collectively the "Reconstructed Equipment" and individually an "Item of Reconstructed Equipment") at the price, in the manner and upon the terms and conditions hereinafter provided;

NOW THEREFORE, in consideration of the premises and of the covenants and agreements hereinafter set forth, the Owner and the Rebuilder hereby agree as follows:

Section 1. Reconstruction of the Equipment. The Rebuilder agrees (i) to reconstruct the Hulks in accordance with the Specifications for the Owner, (ii) to number and mark each Item of Reconstructed Equipment as specified by the Owner and (iii) to deliver the Reconstructed Equipment to the Owner, as and when so reconstructed, marked and numbered, at the reconstruction price as set forth in Schedule A hereto, or prices as may be mutually agreed upon by the parties hereto set forth in amended Schedule A. The design, quality and component parts of the Reconstructed Equipment will conform to all United States Department of Transportation specifications and to all other requirements reasonably interpreted by the Rebuilder as being applicable to railroad equipment of the character of the Reconstructed Equipment as of the date of delivery of the Reconstructed Equipment.

Section 2. Delivery.

2.1 Place. The Owner will deliver the Hulks at the plants of the Rebuilder, as the Rebuilder shall direct. The Rebuilder will deliver the Reconstructed Equipment to an authorized representative of the Owner at the delivery point in accordance

with the delivery schedule each as set forth in Schedule A.

2.2. Outside Delivery Date. In the event that all Hulks have not been reconstructed, delivered and accepted hereunder and under the Equipment Lease Agreement ("Lease") dated December 14, 1979 between Owner, as Lessor, and The Western Pacific Railroad, as Lessee, on or prior to the outside delivery date set forth in Schedule A, then, according to the terms of the Lease, Lessee shall repurchase from Lessor any Hulks not reconstructed, delivered and accepted on or prior to said outside delivery date. Upon such repurchase, this Reconstruction Agreement shall be deemed to apply only to such Hulks as have been reconstructed, delivered and accepted on or prior to said date and, as used herein, the term Reconstructed Equipment shall be deemed to mean only such Hulks as have been reconstructed, delivered and accepted on or prior to said date and the Owner shall have no liability for any part of the reconstruction cost of any Hulks not reconstructed, delivered and accepted on or prior to said outside delivery date.

2.3. Inspection and Acceptance. Acceptance by an authorized representative of Owner, who may be an employee of the Lessee, shall constitute acceptance by the Owner hereunder upon execution of a Certificate of Acceptance Upon Reconstruction in the form attached hereto as Annex I.

Owner shall have the right to visit, at the time convenient to Rebuilder, the plants of the Rebuilder where the reconstruction of the Equipment shall take place and there observe said reconstruction; provided, however, that Owner shall release and indemnify Rebuilder from and against all liability, cost and expense for the death of or injury to any person exercising said right to visit, regardless of the negligence of Rebuilder.

Section 3. Payment for Reconstruction of the Equipment. The Owner agrees that the Owner will pay to the Rebuilder ten (10) business days after an Item of Reconstructed Equipment is accepted by the Owner, the reconstruction price of the Item of Reconstructed Equipment provided that the Owner shall have first received, in form and substance satisfactory to the Owner, all of the following:

(a) A Certificate or Certificates of Acceptance under the Lease from Lessee with respect to such Item of Reconstructed Equipment;

(b) An invoice or invoices covering the reconstruction cost of such Item of Reconstructed Equipment; provided, however, that notwithstanding the actual dates of acceptance of delivery of the Items of Reconstructed Equipment, invoices therefor shall be rendered only in respect of Items of Reconstructed Equipment which shall have been delivered and accepted by the authorized representatives of the Lessee

and accepted by the authorized representatives of the Lessee and the Owner;

(c) A certificate by a duly authorized employee of the Rebuilder to the effect that he has inspected such Item of Reconstructed Equipment and determined that the same conforms to the Specifications as of the time of delivery of same to the Owner;

(d) An opinion of counsel for the Rebuilder to the effect that this Agreement has been duly authorized, executed and delivered by the Rebuilder and constitutes a valid, legal and binding agreement of the Rebuilder enforceable in accordance with its terms.

Section 4. Notices. Any notice permitted or required to be given by either party thereto to the other shall be in writing and deemed to be properly served if delivered, or addressed and deposited in the United States mail, first class postage prepaid, as follows:

If to the Rebuilder: Pacific Fruit Express Company
116 New Montgomery Street
San Francisco, California 94105

If to the Owner: Mellon National Leasing Corporation
3629 Mellon Bank Building
Pittsburgh, Pennsylvania 15219

or delivered or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing.

Section 5. Successors and Assigns. As used herein, the terms "Rebuilder" and "Owner" shall be deemed to include the successors and assigns of the Rebuilder and the Owner, provided, however, that no assignment by the Rebuilder or any assignee thereof shall subject any assignee to, or relieve the Rebuilder from, any of the obligations of the Rebuilder hereunder. Each party hereto may conclusively assume that there has been no assignment of the other party's rights under this Reconstruction Agreement unless and until it shall have been notified in writing of any such assignment by said assignor.

Section 6. Execution in Counterparts. This Reconstruction Agreement may be executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the Owner and the Rebuilder, pursuant to due corporate authority as appropriate, have caused this

Reconstruction Agreement to be signed in their respective corporate names by duly authorized officers and their respective corporate seals to be hereunto affixed and duly attested.

PACIFIC FRUIT EXPRESS COMPANY

By _____

Title _____

MELLON NATIONAL LEASING CORPORATION

By _____

Title _____

SCHEDULE A TO EQUIPMENT RECONSTRUCTION AGREEMENT
DATED AS OF December 14, 1979 BETWEEN
MELLON NATIONAL LEASING CORPORATION AND

Description of Used Railroad
Equipment: 117 Box Car Hulks

Reconstruction Specifications: See Exhibit 1 to this
Schedule A

Description of Reconstructed
Equipment: 117 Box Cars, bearing numbers
WP68601 - WP68717, inclusive

Reconstruction Cost: Not to exceed \$2,223,000
(average of \$19,000 per Unit);
provided, however, that Owner
agrees to increase the amount
of such Reconstruction Cost by
ten percent (10%) for
additional work performed on
the Unit which, in the
reasonable opinion of Owner,
increases the value of the
Unit.

Outside Delivery Date: All deliveries shall have been
completed on or before July 1,
1980

Deliver to: Authorized Representative of
Mellon National Leasing
Corporation, at the applicable
plant or plants of Rebuilder
where the Equipment was
reconstructed.

ANNEX I
TO EQUIPMENT RECONSTRUCTION AGREEMENT

CERTIFICATE OF ACCEPTANCE UPON RECONSTRUCTION

To: Pacific Fruit Express Company

I, duly appointed representative for Mellon National Leasing Corporation, under the Equipment Reconstruction Agreement dated as of December 14, 1979, between Pacific Fruit Express Company and Mellon National Leasing Corporation, do hereby certify that I accepted delivery of and agree to pay for the following items according to the terms of the Equipment Reconstruction Agreement:

TYPE OF EQUIPMENT:

DATE ACCEPTED:

NUMBER OF UNITS:

NUMBERED:

The execution of this Certificate of Acceptance Upon Reconstruction will in no way waive any rights of Mellon National Leasing Corporation under the Equipment Reconstruction Agreement.

Inspector and Authorized
Representative of Mellon National
Leasing Corporation

EXHIBIT 1 OF SCHEDULE A
TO EQUIPMENT RECONSTRUCTION AGREEMENT

1. DESCRIPTION OF CAR

These cars were built by Pacific Car and Foundry Co. in September 1966, and have the following salient features:

- Sliding Sill - 20" Travel with Keystone Double Acting Hydraulic Shock Control Units (in 52 cars in Series 68001-68100).
20" Travel with National 3-C Single Acting Hydraulic Cushioning Units (in 65 cars in Series 68101-68225).
- Trucks - Barber S-2-C, 3-11/16" Spring Travel, 6" x 11" Roller Bearings.
- Brakes - Standard AB Body Mounted with Cast Iron Brake Shoes.
- Decking - 2" Thick Hardwood Doweloc excepting for 52 cars in Series 68001-68100 which have 2" Laminated Soft Wood for 8 Ft. at each end of car with Hardwood Doweloc in center of car.
- Draft Gears - WM-CG5.
- Side Doors - 15 Ft. Double Plug Type by Youngstown Steel Door Co., their door arrangement drawing 66-32171-D.
- Interior - Equipco One Piece Load Dividers with Non-Cleanable Floor Keepers.
- Insulation - Polyurethane Foam.

2. GENERAL REQUIREMENTS

This specification covers inspection and rehabilitation of a 50 Ft., 70 Ton, equipped insulated box car. Repairs will consist generally of items enumerated herein but the absence of specific mention of certain parts does not mean they are not to be repaired in keeping with good maintenance and shop practices. When repaired, car is expected to remain in service for a minimum of twelve (12) years except for minor running repairs.

Completed car is to conform to all applicable A.A.R. Interchange and F.R.A. Bureau of Safety rules and regulations and comply with the reconditioning requirements of the F.R.A. Railroad Freight Car Safety Standards.

Completed car is to conform to all requirements of AAR Interchange Rule 88 excepting those pertaining to re-built cars. Some of those requirements for AAR re-build status are to be accomplished and each is individually and separately described hereinafter.

3. INTERIOR

Existing inside length, width, height and clear door opening dimensions are to be maintained.

4. UNDERFRAME (Cont'd)

- a. Couplers are to be removed. Entire draft attachment area is to be carefully inspected and defects repaired.

All E60-HT and E60-AHT couplers are to be replaced with either new or reconditioned E60-BHT or E60-CHT couplers and the couplers removed are to remain the property of Western Pacific and held for further disposition from Western Pacific.

- b. Return spring arrangement is to be carefully inspected and any necessary repairs made to assure its proper functioning.
- c. Body Center Plates. See WP Drawing 144-F-420. The male portion (doughnut) is to be carefully removed by air or carbon arc and the base plate ground smooth. If any portion of the base plate is undercut when removing the doughnut, the undercuts must be filled by welding and ground smooth.

A new doughnut made per WP Drg. 143-F-4020 (or a forged or cast equivalent) is to be applied as shown on that drawing.

As an alternate to removing the centerplate doughnut, if Freightmaster Centerplate Refinishing Equipment is available, the following may be done:

- (1) Extend height of the male portion by welding on a 1/2" plate of T-1 or C-1045 steel to the horizontal bearing surface.
 - (2) Build up the vertical surfaces of the male portion sufficiently by welding such that it will clean up when machined to 13-3/4" O.D.
- d. Remove the sliding sill carrier at each end of car, then arc off the 2 - 5" x 8" support wear plates thereon and grind the remaining surface smooth. Apply Dayco Duraguard wear plates as shown on WP Drg. 373-F-280. Apply a 16-3/8" x 40" x 1/4" thick mild steel plate to the underside of the draft gear support plate as shown on WP Drg. 373-F-280.
- Reapply sliding sill carriers.
- e. The striker bottom face angle (coupler carrier) shown on WP Drg. 373-F-6030 is to be modified at its rear edge to accept an AAR Standard Plate 215 Wear Plate and Dayco Duraguard Coupler Carrier Wear Plates per Dayco Drg. 7520-5071-A are to be applied.

5. AIR BRAKES

- a. Air brakes are to be given complete COT&S if within two years of date next due. Cars not given COT&S are to be given an IDT&S.
- b. The foundation brake rigging is to be modified per WP Drg. 203-F-3120 which modification involves:

5. AIR BRAKES (Cont'd)

- b. (1) Making and applying a new floating lever bracket.
 - (2) Furnishing new floating and cylinder levers (per drawing)
 - (3) Replacing all cast iron brake shoes with new 2" High Friction Composition Brake Shoes (AAR H-4).
 - (4) Application of rejection lugs (to reject cast iron brake shoes) to Brake Beam Heads per Plate E-84C-1974 of the AAR Manual of Standards and Recommended Practices and stamping the letter "C" after "AAR 18" on the strut.
- c. All slack adjusters are to be replaced with either new or reconditioned Group E Slack Adjusters.

6. BODY

- a. The wood decking is to be inspected and repaired as required. Any replacement decking is to be laminated hardwood, Doweloc or equal.
- b. Existing Interior Equipment is Equipco Swivel Type, One Piece Load Dividers per Equipco General Arrangement Drawing 221-K-16806. With respect to this equipment, the following is to be done:
 - (1) The existing floor keepers are to be removed full length of car and 28 ft. (each side of car) of new cleanable floor keepers, per Equipco Drg. 245-C-24820 installed centered on cross-centerline of car. The remaining 11 ft. (each end of car) is to be replaced with 2" x 3" vertical grain wood (to fill the void left by the old floor keepers).
 - (2) The existing upper load divider tracks and supporting brackets are to be removed full length of car. The track should be removed from the brackets first, then the brackets removed from the side posts. Care must be exercised in removal of the brackets so as not to damage the side posts. Following this, the sheet metal flashing should be removed and saved for later reapplication. The side posts then should be ground smooth where brackets were removed.
 - (3) New upper load divider tracks and brackets are to be applied to provide 28 Ft. each side of car centered on the cross centerline of car. The sheet metal flashing should be modified if necessary to provide clear weld area for the brackets and then reapplied before application of the new brackets.
 - (4) All components and installation of the new load dividers is to be such that there will be 2-1/2" clearance between the top of the load divider carriage and the ceiling of car when built new.
- c. The inside lining, sides and ends, is 1/2" plywood which, because of continued growth or expansion of the foamed insulation, has bulged inward toward inside of car. This lining is to be removed, the foam insulation shaved to be flush with the inside of the side posts, and new 1/2" thick exterior grade (AC) plywood applied, with the grain running horizontally on sides and vertically on the ends.

6. BODY (Cont'd)

- d. Roof and ends are to be thoroughly inspected, renewing individual sheets, as required, to make car serviceable. Limited spot patching will be permissible where deterioration is confined to a small area. All corrugated ends to be straightened where required.
- e. Side Doors are to be carefully inspected and necessary repairs made to assure easy operation of doors and that doors seal properly around all edges. All door mechanisms must be lubricated with molybdenum disulphide in accordance with AAR and Youngstown Steel Door Co's recommended procedures. Door gaskets are DG-409 One Piece Type made by Landis Industrial Sales.
- f. Each of the side doors (4 per car) is to be fitted with an upper third crank arm identified as Monarch Model 300 "Hold-It", manufactured by Monarch Machine Co., Springfield, Missouri.

7. TRUCKS

Trucks are to be completely overhauled and such work is to include the following:

- a. Build up bolster bowl rim and machine same for application of a 1-1/8" x 14" I.D. stainless steel vertical wear liner. The wear liner is to be continuously welded. Restoration of the bolster bowl by the Chemetron method will also be acceptable.
- b. Friction casting pockets and bolster gibs are to be built up, by welding, to original dimensions using methods and gauges prescribed by Standard Car Truck Co. and ground smooth.
- c. Worn surfaces of side frame column guides are to be built up to original condition by welding and ground smooth.
- d. Side frame column guide wear plates are to be replaced if missing. If any welds for same are cracked, the weld is to be removed and the plate re-welded.
- e. Faces of side frame pedestal legs, if worn by roller bearings, are to be built up by welding and ground smooth.
- f. Roller Bearing adapters are to be gauged and replaced if condemnable by AAR Rules.
- g. Wheel assemblies are to be replaced when flange thickness reaches 1-1/16" when measured by an AAR wheel defect gauge, or for other condemnable defects described in the AAR Wheel and Axle Manual.
- h. Reconditioned roller bearings are to be used on all wheel assemblies that are exchanged.
- i. Other truck parts are to be replaced if condemnable by AAR Rules.

7. TRUCKS (Cont'd)

- j. Truck Center plates are to be cleaned and lubricated with an AAR approved lubricant in the prescribed amount.
- k. Side Bearings are to be adjusted to minimum AAR specification.

8. PAINTING AND STENCILLING

- a. Exterior of cars including entire roof is to be thoroughly shot, grit, or sandblasted to remove all rust and old paint. Contractor to advise railroad which method he proposes to use.
- b. Cars are to be given one coat of Rust-Oleum 769 Red Damp Proof Primer followed by one finish coat of a good grade of freight car paint matching, in color, Color Drift Control for Box Car Red. Contractor to advise railroad description (manufacturer, paint number, etc.) of the finish paint he proposes to use. Dry film thickness of completed system is to be 3 mils minimum.

Interior of car is not to be painted except for touch up or repaired areas.

- c. Cars are to be stencilled in accordance with WP Drg. 624-F-1860, a copy of which is enclosed and considered part of this specification.
- d. ACI labels are to be omitted.
- e. FRA/AAR consolidated stencil to comply with the requirements of the FRA Railroad Freight Car Safety Standards, is to be applied to each side of the car.

9. Repairs, not specifically covered, are to be performed as shown below, unless otherwise instructed:

- a. Safety Appliances: To be repaired in kind, if defective.
- b. Completed car to be lightweighed and stenciled in accordance with A.A.R. Rule 70. Complete listing of new lightweights to be furnished railroad's Chief Mechanical Officer.
- c. Miscellaneous: Defects which do not have specific AAR condemning limits and/or are not specifically covered herein are to be repaired, as required, in keeping with good maintenance and shop practices.

10. DRAWINGS

The following drawings are included as a part of this specification:

- WP Drg. 395-F-1680 - Cross Sections
- " " 525-F-1400 - Gen. Arr'g't Equipco One Pc. Load Divider
- " " 425-F-1010 - Gen. Arr'g't

10. DRAWINGS (Cont'd)

WP Drg. 395-F-1690 - Framing - Steel Side Ass'y
" " 894-F-3340 - Truck Side Frames
" " 394-F-70430 - Decking Details
" " 394-F-70330 - Side & Corner Post Furring
" " 394-F-70310 - Decking Arr'g't
" " 394-F-51960 - Corner, Door & Side Posts
" " 144-F-420 - Bolster Center Plate Ass'y & Details
" " 144-F-2330 - Truck Bolster
" " 893-F-1030 - Truck Arr'g't
" " 205-F-1180 - Brake Arr'g't
" " 394-F-70380 - Carline and Ceiling Nailers
" " 395-F-1670 - Underframe Arrangement
" " 372-F-170 - Waughmat Cushion, Type WM-CG-5
" " 143-F-4020 - Application of New Male Portion of Body Center Plate
" " 373-F-280 - Modification of Draft Sill Carrier and Application
of Duraguard Wear Plates
" " 373-F-6030 - Striker Assembly and Details
" " 203-F-3120 - Convert Lever Ratios for Use of
Composition Brake Shoes
" " 624-F-1860 - Painting and Stenciling Arr'g't
" " 331-F-6380 - Main Door Gasket
" " 331-F-6370 - Aux. Door Gasket
" " 335-F-5120 - Arrangement, Double Sliding Flush Doors
" " 142-F-5370 - Body Side Bearing
" " 395-F-1700 - End Arrangement
" " 392-F-52530 - Ceiling Flashing
" " 392-F-52620 - " "

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11. ALTERNATES

- a. Furnish cost to apply new body side bearings per WP Drg. 142-F-5370 and Stucki Resilient Side Bearings.
- b. Furnish cost to apply Landis Third Upper Crank Arms in lieu of Monarch "Hold It" as specified.
- c. Furnish cost to equip car with Preco Load Divider Equipment in lieu of Equipco specified.

12. BILLING

A separate detailed billing repair card will be required when billing for each car rehabilitated to cover variable repair work not covered in the quotation.

13. WARRANTY OF MATERIAL AND WORKMANSHIP

Pacific Fruit Express Company ("Rebuilder") guarantees that the equipment will be rebuilt or repaired in accordance with the final agreed specifications and drawings, and warrants the equipment to be free from defects in material (except as to the specialties incorporated therein not manufactured by Rebuilder) and workmanship under normal use and service, Rebuilder's obligation being limited to making good at its plants any part or parts of any unit of the equipment which shall, at any time within two years after release of such unit from our shop, be returned to Rebuilder with transportation charges prepaid and which Rebuilder's examination shall disclose to its satisfaction to have been thus defective. REBUILDER MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE. Buyer's rights under the foregoing warranty shall be its solo and exclusive remedy and Rebuilder will have no liability for lost profits or for incidental, consequential or commercial losses. The foregoing warranty of Rebuilder is expressly in lieu of all other warranties expressed or implied and of all other obligations or liabilities on the part of Rebuilder, and Rebuilder neither assumes nor authorizes any person to assume for it any other liability in connection with the construction and delivery of the equipment.