

RECORDATION NO.

6263D
Filed & Recorded

SEP 30 1971 - 11 00 AM

AMENDMENT AGREEMENT dated as of August 15,

INTERSTATE COMMERCE COMMISSION

1971, between UNITED STATES TRUST

COMPANY OF NEW YORK, as Trustee (herein-

after called the Trustee), and FIRST

WESTERN BANK AND TRUST COMPANY, as Owner-

Trustee (hereinafter called Owner-Trustee).

WHEREAS the Trustee and Owner-Trustee have heretofore entered into an Equipment Trust Agreement dated as of August 1, 1971 (hereinafter called the Original Equipment Trust Agreement), filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act on July 30, 1971, Recordation No. 6263-B and deposited with the Registrar General of Canada;

NOW, THEREFORE, in consideration of the mutual agreements herein contained, the parties hereto agree that the Original Equipment Trust Agreement be and it hereby is amended so as to read in its entirety as set forth in Exhibit A hereto.

IN WITNESS WHEREOF, the parties hereto have caused their names to be signed hereto by their respective officers thereunto duly authorized and their respective corporate seals, duly attested, to be hereunto affixed as of the day and year

first written.

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

by

Malcolm J. Bond
Assistant Vice President

Attest:

G. Bruce
Assistant Secretary

FIRST WESTERN BANK AND TRUST COMPANY,
as Owner-Trustee,

by

Eugene S. Crawford
Vice President and Trust
Officer

Attest:

Howard G. McElhatton
Assistant Secretary

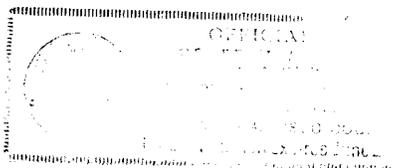
STATE OF CALIFORNIA,)
) ss.:
CITY AND COUNTY OF SAN FRANCISCO,)

On this *26* day of *August* 1971, before me personally appeared **EDGAR H. CANFIELD**, to me personally known, who, being by me duly sworn, says that he is a Vice President and Trust Officer of FIRST WESTERN BANK AND TRUST 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.

Corrado E. Sances

Notary Public

My Commission expires:



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INTERSTATE COMMERCE COMMISSION

EXHIBIT A

FIRST WESTERN BANK AND TRUST COMPANY

9½% EQUIPMENT TRUST CERTIFICATES

EQUIPMENT TRUST AGREEMENT

Dated as of August 1, 1971

by and between

UNITED STATES TRUST COMPANY OF NEW YORK,
Trustee

and

FIRST WESTERN BANK AND TRUST COMPANY,
Owner-Trustee

EQUIPMENT TRUST AGREEMENT dated as of August 1, 1971, between UNITED STATES TRUST COMPANY OF NEW YORK, a New York corporation, as trustee (hereinafter called the Trustee), and FIRST WESTERN BANK AND TRUST COMPANY, as Owner-Trustee under a Trust Agreement (hereinafter called the Trust Agreement and said Owner-Trustee being hereinafter called the Company) dated as of August 1, 1971, with The Northern Trust Company.

WHEREAS, the Company has agreed to caused to be sold, assigned and transferred to the Trustee security title to the railroad equipment described in Annex A hereto subject to the provisions hereof; and

WHEREAS, such security title is to be vested in and is to be retained by the Trustee and leased to the Company hereunder until such security title is transferred to the Company under the provisions hereof; and

WHEREAS, the Company proposes to enter into a Lease of Equipment dated as of August 1, 1971, with the Lessee (as hereinafter defined) pursuant to which the Company will lease such railroad equipment to the Lessee, and such Lease of Equipment is to be assigned to the Trustee pursuant to the Assignment (as hereinafter defined); and

WHEREAS, First Western Bank and Trust Company, Owner-Trustee, 9½% Equipment Trust Certificates (hereinafter called the Trust Certificates), are to be issued and sold, and the proceeds of such sale are to be held in trust by the Trustee, and are to constitute a fund to be known as FIRST WESTERN BANK AND TRUST COMPANY, OWNER-TRUSTEE, 1971 EQUIPMENT TRUST, to be applied by the Trustee as provided herein; and

WHEREAS, the text of the Trust Certificates is to be substantially in the following form:

principal and interest and for all other purposes and shall not be affected by any notice to the contrary.

In case of the happening of an Event of Default (as defined in the Agreement) all instalments of principal and interest represented by this Certificate may become or be declared due and payable in the manner and with the effect provided in the Agreement.

IN WITNESS WHEREOF, the Trustee has caused this Certificate to be signed by one of its Vice Presidents or one of its Assistant Vice Presidents, by his signature or a facsimile thereof, and its corporate seal or a facsimile thereof to be hereunto affixed or hereon imprinted and to be attested by the manual signature of one of its Assistant Secretaries.

Dated as of

UNITED STATES TRUST COMPANY
OF NEW YORK,
Trustee,

by
Assistant Vice President.

Attest:

.....
Assistant Secretary.

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto

Please insert Social Security or other identifying number of Assignee

[Redacted box]

.....

.....
the within First Western Bank and Trust Company, Owner-Trustee, 9½% Equipment Trust Certificate and does hereby irrevocably constitute and appoint attorney to transfer the said Certificate on the books of the within named Trustee, with full power of substitution in the premises.

Dated:

WHEREAS, it is desired to secure to the holder or holders of the Trust Certificates the payment of the principal thereof and interest thereon, as hereinafter provided, and to evidence the rights of the holder or holders of the Trust Certificates in substantially the form hereinbefore set forth;

Now, THEREFORE, in consideration of the mutual covenants and promises herein contained, the parties hereto hereby agree as follows:

ARTICLE ONE

DEFINITIONS

SECTION 1.01. *Definitions.* The following terms (except as otherwise expressly provided or unless the context otherwise requires) for all purposes of this Agreement shall have the respective meanings hereinafter specified:

Affiliate of any corporation shall mean any corporation which, directly or indirectly, controls or is controlled by, or is under common control with, such corporation. For the purposes of this definition, *control* (including *controlled by* and *under common control with*), as

used with respect to any corporation, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such corporation, whether through the ownership of voting securities or by contract or otherwise.

Assignment shall mean the Collateral Assignment of Lease and Agreement dated as of August 1, 1971, by the Company to the Trustee substantially in the form of Annex C hereto.

Average Date of Acceptance shall have the meaning specified in Section 2 of the Lease as certified to the Trustee by the Lessee in a Lessee's Certificate delivered to the Trustee pursuant to the Lease. If the Lessee's Certificate is not so delivered within ten business days after the Cut-Off Date, the Average Date of Acceptance shall be deemed to be December 1, 1971.

Business Day shall mean a calendar day, excluding Saturdays, Sundays and holidays or other days on which banks are authorized by law to close in New York, New York.

Company shall mean First Western Bank and Trust Company, a California banking corporation, as Owner-Trustee, under a Trust Agreement dated as of August 1, 1971, with The Northern Trust Company.

Consent shall mean the Lessee's Consent and Agreement dated as of August 1, 1971 in the form annexed to the Assignment.

Corporate Trust Office shall mean the office of the Trustee in New York, New York, at which the corporate trust business of the Trustee shall, at the time in question, be administered, which office is, on the date of execution of this Agreement, located at 130 John Street, New York, New York 10038.

Cost, when used with respect to any Equipment, shall mean the amount set forth in the Lessee's Certificate delivered pursuant to Section 3.04 hereof.

Cut-Off Date shall mean the earlier of (a) April 1, 1972, (b) a date certified to the Trustee in a Lessee's Certificate delivered at least two business days prior to such date as the date of final settlement for

all the Trust Equipment or (c) two business days after delivery to the Trustee of a Lessee's Certificate certifying that the transactions contemplated by the Equipment Purchase Agreement will not be consummated due to the failure to obtain the tax ruling referred to in Article 3 thereof.

Deposited Cash shall mean the aggregate of (a) the proceeds from the sale of the Trust Certificates deposited with the Trustee pursuant to Section 2.01 and, when required or indicated by the context, any Investments (and the proceeds thereof) purchased by the use of such proceeds pursuant to the provisions of Section 8.04, subject, however, to the provisions of the last paragraph of Section 8.04, and (b) any sums restored to Deposited Cash from rentals pursuant to Section 4.04 (1) (b) and on deposit with the Trustee.

Equipment shall mean the new standard gauge railroad equipment described in Annex A hereto.

Equipment Purchase Agreement shall mean The Equipment Purchase Agreement dated as of August 1, 1971, between the Seller and the Company substantially in the form of Annex D hereto.

Event of Default shall mean any event specified in Section 5.01 to be an Event of Default.

The word *holder*, when used with respect to Trust Certificates, shall mean the registered holder thereof and shall include the plural as well as the singular number.

Investments shall mean such (i) direct obligations of the United States of America or obligations for which the faith of the United States is pledged to provide for the payment of principal and interest or (ii) open market commercial paper rated prime by a national credit agency or (iii) certificates of deposit of or time deposits in commercial banks, including those of the Trustee, in the United States of America having capital and surplus aggregating at least \$50,000,000, in each case maturing less than one year from the date of such investment.

Lease shall mean the Lease of Equipment dated as of August 1, 1971, between the Company and the Lessee substantially in the form of Annex B hereto.

Lessee shall mean Pullman Incorporated, a Delaware corporation, the Lessee under the Lease, and its successors and assigns.

Lessee's Certificate shall mean a certificate signed by the President, any Vice President, or any Assistant Vice President and the Treasurer, any Assistant Treasurer, the Secretary or any Assistant Secretary of the Lessee.

Lessor shall mean the Company, the Lessor under the Lease.

Officer's Certificate shall mean a certificate signed by the President, any Vice President or any Assistant Vice President of the Company.

Opinion of Counsel shall mean an opinion in writing signed by legal counsel who shall be satisfactory to the Trustee and who may be an employee of the Company or the Lessee. The acceptance by the Trustee of, and its action on, an Opinion of Counsel shall be sufficient evidence that such counsel is satisfactory to the Trustee.

Purchase Agreement shall mean the Purchase Agreement dated as of August 1, 1971, among the Company, Pullman Incorporated and the Purchasers named in Annex I thereto.

Purchaser shall mean each Purchaser named in Annex I to the Purchase Agreement and *Purchasers* shall mean all such Purchasers.

Request shall mean a written request for the action therein specified received by the Trustee at least two Business Days prior to the time the action requested thereby is to be taken and signed on behalf of the Company by the President, any Vice President or any Assistant Vice President of the Company.

Seller shall mean Pullman Incorporated, a Delaware Corporation, the Seller under the Equipment Purchase Agreement.

Sublease shall mean the Lease of Railroad Equipment dated as of April 21, 1971, between the Seller and the Trustees of the Property of the Penn Central Transportation Company, Debtor (hereinafter called the Sublessee).

Trust Certificates shall mean First Western Bank and Trust Company, Owner-Trustee, 9½% Equipment Trust Certificates, issued hereunder.

Trust Equipment shall mean all Equipment at any time subject to the terms of this Agreement.

Trustee shall mean United States Trust Company of New York, a New York Corporation, and, subject to the provisions of Article Eight, any successor as trustee hereunder.

The words *herein*, *hereof*, *hereby*, *hereto*, *hereunder* and words of similar import refer to this Agreement as a whole and not to any particular Article, Section, paragraph or subdivision hereof.

ARTICLE TWO

TRUST CERTIFICATES AND ISSUANCE THEREOF

SECTION 2.01. *Issuance of Trust Certificates.* An amount equal to the proceeds of the sale of the Trust Certificates, but not less than the aggregate principal amount thereof, shall forthwith be deposited with the Trustee.

Thereupon, without waiting for the recording or filing of this Agreement or of any other instrument respecting the Trust Equipment, the Trustee shall issue and deliver, as the Company shall direct by Request, Trust Certificates in the aggregate principal amount so sold.

The aggregate principal amount of Trust Certificates which shall be executed and delivered by the Trustee under this Section shall not exceed the sum of \$17,850,720, and the aggregate principal amount represented by all the Trust Certificates shall be payable as hereinafter set forth.

SECTION 2.02. *Interests Represented by Trust Certificates; Interest; Maturity.* Each of the Trust Certificates shall represent an interest in the amount therein specified in the trust created hereunder. The Trust Certificates will bear interest from the date thereof, payable on the first day of each month of each year commencing January 1, 1972, at the rate of $9\frac{1}{2}\%$ per annum, with interest payable on overdue principal and interest as set forth in the Trust Certificates. The first payment of principal of the Trust Certificates shall be payable on the

first day of the 41st calendar month following the Average Date of Acceptance, and subsequent instalments shall be payable monthly thereafter on the first day of each month to and including the fifteenth anniversary of the Average Date of Acceptance, each such date being hereinafter called a Principal Payment Date. The principal amount of the Trust Certificates payable on each of the 140 monthly Principal Payment Dates shall be calculated on such a basis that the aggregate of the principal and interest payable on each Principal Payment Date shall be substantially equal and so that the 140 instalments of principal will completely amortize the Trust Certificates. The Trustee will furnish to the Company and each Purchaser, within ten days after receipt of the Lessee's Certificate specifying the Average Date of Acceptance, a schedule showing the respective amounts of principal and interest payable on each Principal Payment Date.

The principal of and interest on the Trust Certificates shall be payable at the Corporate Trust Office, in such coin or currency of the United States of America as, at the time payable, shall be legal tender for the payment of public and private debts, but only from and out of rentals or other moneys received by the Trustee and applicable to such payment under the provisions hereof. Notwithstanding the provisions of the preceding sentence of this paragraph, in the case of payments of principal and interest to be made on a Trust Certificate not then to be paid in full, upon request and deposit with the Trustee of an agreement of the holder of such Trust Certificate (the responsibility of such holder to be satisfactory to the Company) obligating such holder, prior to any transfer or other disposition thereof, to surrender the same to the Trustee for notation thereon of the instalments of principal amount represented thereby theretofore paid in whole or in part, the Trustee will mail its check to such registered holder at his address shown on the registry books maintained by the Trustee; *provided, however*, that this sentence shall not apply to any Purchaser so long as such Purchaser is a holder of Trust Certificates, and the Trustee shall make payments of principal and interest to each Purchaser at its "home office" address set forth in Annex I to the Purchase Agreement.

SECTION 2.03. *Form of Trust Certificates.* The Trust Certificates shall be in substantially the form hereinbefore set forth.

SECTION 2.04. *Execution by Trustee.* The Trust Certificates shall be signed in the name and on behalf of the Trustee by the manual or facsimile signature of one of its Vice Presidents or Assistant Vice Presidents and its corporate seal or a facsimile thereof shall be affixed or imprinted thereon and attested by the manual signature of its Secretary or one of its Assistant Secretaries. In case any officer of the Trustee whose signature, whether facsimile or not, shall appear on any of the Trust Certificates shall cease to be such officer of the Trustee before the Trust Certificates shall have been issued and delivered by the Trustee or shall not have been acting in such capacity on the date of the Trust Certificates, such Trust Certificates may be adopted by the Trustee and be issued and delivered as though such person had not ceased to be or had then been such officer of the Trustee.

SECTION 2.05. *Characteristics of Trust Certificates.*

(a) The Trust Certificates: shall be registered, as to both principal and interest, in the name of the holder; shall be (i) transferable in whole or in part and (ii) exchangeable for Trust Certificates of other denominations of equal aggregate outstanding principal amount, upon presentation and surrender thereof for registration of transfer or exchange at the Corporate Trust Office, accompanied, in the case of transfer, by appropriate instruments of transfer, duly executed by the registered holder of the surrendered Trust Certificate or Certificates or by duly authorized attorney, in form satisfactory to the Trustee; *provided, however,* that no Trust Certificate shall be issued in a principal amount less than \$10,000 except in the case of the transfer or exchange of a Trust Certificate which at the time is in an unpaid principal amount of less than \$10,000; shall be dated as of the date of issue unless issued in exchange for another Trust Certificate or Certificates bearing unpaid interest from an earlier date, in which case they shall be dated as of such earlier date; and shall entitle the registered holder to interest from the date thereof. The Trustee shall, if any

prepayment shall theretofore have been made pursuant to Section 3.01 or 4.07 attach to each Trust Certificate issued upon transfer or exchange a revised schedule of payments of principal and interest as provided in Sections 3.01 and 4.07.

(b) Anything contained herein to the contrary notwithstanding, the parties hereto may deem and treat the registered holder of any Trust Certificate as the absolute owner of such Trust Certificate for all purposes and shall not be affected by any notice to the contrary.

(c) The Trustee shall cause to be kept at the Corporate Trust Office books for the registration and transfer of the Trust Certificates and, upon presentation of the Trust Certificates for such purpose, the Trustee shall register any transfer as hereinabove provided, and under such reasonable regulations as it may prescribe.

(d) For any registration, transfer or exchange, the Trustee shall require payment by the person requesting same of a sum sufficient to reimburse it for any governmental charge connected therewith.

(e) Each Trust Certificate delivered pursuant to any provision of this Agreement in exchange for, or upon the transfer of the whole or any part, as the case may be, of one or more other Trust Certificates, shall carry all the rights to principal and to interest accrued and unpaid and to accrue, which were carried by the whole or such part, as the case may be, of such one or more other Trust Certificates, and, notwithstanding anything contained in this Agreement, the Trust Certificates shall be so dated that neither gain or loss in interest or principal shall result from such exchange, substitution or transfer.

(f) The Trustee shall not be required to issue, register the transfer or exchange any Trust Certificates for a period of ten Business Days next preceding any interest payment date.

SECTION 2.06. *Replacement of Lost Trust Certificates.* In case any Trust Certificate shall become mutilated or defaced or be lost, destroyed or stolen, then on the terms herein set forth, and not otherwise, the Trustee shall execute and deliver a new Trust Certificate of

like tenor and date, and bearing such identifying number or designation as the Trustee may determine, in exchange and substitution for, and upon cancellation of, the mutilated or defaced Trust Certificate, or in lieu of and in substitution for the same if lost, destroyed or stolen. The applicant for a new Trust Certificate pursuant to this Section shall furnish to the Trustee and to the Company evidence to their satisfaction of the loss, destruction or theft of such Trust Certificate alleged to have been lost, destroyed or stolen and of the ownership and authenticity of such mutilated, defaced, lost, destroyed or stolen Trust Certificate, and also shall furnish such security or indemnity as may be required by the Trustee and by the Company in their discretion, and shall pay all expenses and charges of such substitution or exchange. All Trust Certificates are held and owned upon the express condition that the foregoing provisions are exclusive in respect of the replacement of mutilated, defaced, lost, destroyed or stolen Trust Certificates and shall preclude any and all other rights and remedies, any law or statute now existing or hereafter enacted to the contrary notwithstanding.

ARTICLE THREE

ACQUISITION OF SECURITY TITLE TO TRUST EQUIPMENT BY TRUSTEE; DEPOSITED CASH

SECTION 3.01. *Acquisition and Exclusion of Equipment; Prepayment of Deposited Cash.* The Company shall cause to be sold, assigned and transferred to the Trustee, as Trustee for the holders of the Trust Certificates, security title to all the Trust Equipment described in Annex A hereto; *provided, however,* that any Equipment not accepted pursuant to Section 4.02 and settled for pursuant to this Article Three on or before the Cut-Off Date shall be excluded from this Agreement and not included in the term Trust Equipment. In the event of any such exclusion, the Company and the Trustee shall execute an agreement supplemental hereto limiting this Agreement to the Trust Equipment theretofore accepted and settled for hereunder.

In the event that on the Cut-Off Date any Deposited Cash shall remain in the possession of the Trustee, the Trustee shall (a) sell all

Investments then held by it as soon as practicable and (b) apply Deposited Cash to the *pro rata* prepayment, in New York Clearing House funds, of each instalment of principal remaining unpaid on the Trust Certificates (in proportion to the principal amount represented by each such instalment), each of the holders of the Trust Certificates to share proportionately in such prepayment; *provided, however*, that in the event that the aggregate amount of such prepayment shall be \$100,000 or less, the Trustee may, if requested so to do by any holder of the Trust Certificates and if such request is consented to by each other holder of an outstanding Trust Certificate, apply such prepayment to such *pro rata* prepayment of each instalment of principal remaining unpaid on the Trust Certificates held by such holder. Thereupon the Company will promptly furnish to the Trustee and each of the holders of outstanding Trust Certificates a revised schedule of payments of principal thereafter to be made hereunder calculated as provided in Section 2.02.

SECTION 3.02. *Payment of Deposited Cash.* From time to time, when and as any of the Trust Equipment shall have become subject to the terms and provisions hereof as provided in Section 4.02, the Trustee shall (subject to the Company's compliance with the provisions of Section 3.03) pay to the Seller out of Deposited Cash then held by the Trustee, an amount not in excess of 80% of the aggregate Cost of such Trust Equipment, as specified in the certificate furnished to the Trustee pursuant to Section 3.04(c).

SECTION 3.03. *Payment of Deficiency.* The Company covenants that, contemporaneously with any payment by the Trustee pursuant to Section 3.02 with respect to any Trust Equipment, it will pay to the Seller that portion of the Cost of such Trust Equipment not paid out of Deposited Cash as provided in Section 3.02; *provided, however*, that the Company shall have no obligation to make any such payment unless (i) all of the provisions of Articles 1, 2 and 3 of the Equipment Purchase Agreement shall have been duly complied with and all conditions set forth therein shall have been satisfied in a manner acceptable to the

Company, and (ii) anything contained in Article 3 of the Equipment Purchase Agreement to the contrary notwithstanding, 80% of the Cost of such Trust Equipment shall not exceed the amount of Deposited Cash then held by the Trustee.

SECTION 3.04. *Supporting Papers.* The Trustee shall not pay out any Deposited Cash pursuant to Section 3.02 with respect to any Trust Equipment unless the Trustee shall have received, in form and substance satisfactory to it and its counsel:

(a) one or more duly executed certificates of acceptance (as specified in the Equipment Purchase Agreement and the Lease) with respect to such Trust Equipment;

(b) a bill or bills of sale from the Seller confirming the transfer of security title to such Trust Equipment to the Trustee as contemplated herein and of the beneficial ownership thereof, subject to such security title, to the Company, which bill or bills of sale shall specify the Trust Equipment described therein by number or numbers and shall contain a warranty to the Trustee and the Company that such title is free from all liens, security interests and other encumbrances prior to or *pari passu* with the security title of the Trustee and, subject to this Agreement and the Sublease, the beneficial ownership of the Company;

(c) a Lessee's Certificate, which shall state, (i) that such Trust Equipment is Equipment as herein defined, (ii) that the Cost of such Trust Equipment is an amount therein specified and (iii) that the Cost of such Trust Equipment does not exceed the lesser of the fair value thereof and so called "car-builder's cost" plus normal profit margin;

(d) an opinion of counsel for the Lessee addressed to the Trustee and the Company to the effect (i) that such bill or bills of sale are valid and effective, either alone or in connection with any other instrument referred to in and accompanying such opinion, to vest in the Trustee security title to such Trust Equipment as specified in such bill or bills of sale and to vest in the

Company the beneficial ownership of such Trust Equipment, (ii) that the Trust Equipment has come under and is subject to the Lease, (iii) that the Lease and the Consent have been duly authorized, executed, acknowledged and delivered by the Lessee and are legal, valid and binding instruments enforceable against the Lessee in accordance with their terms except as enforcement of the same may be limited by any applicable bankruptcy, reorganization, insolvency, moratorium or other laws affecting the enforcement of creditors' rights generally from time to time in effect; and (iv) that this Agreement, the Lease, the Assignment and the Sublease have been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act, have been deposited in the office of the Registrar General of Canada and notice of such deposit has been duly published in the *Canada Gazette* in accordance with Section 148 of the Railway Act of Canada, and no further act, filing, recording or deposit (or giving of notice) is required in order fully to protect in Canada or any Province or Territory thereof the rights of the Seller under the Sublease against any and all subsequent purchasers or mortgagees from the Sublessee and/or from creditors of the Sublessee, and no other filing or recordation or refiling or recordation is necessary for the protection of the rights of the Trustee hereunder and in and to the Lease in any state of the United States of America or the District of Columbia. In giving such opinion, counsel may rely on the opinion of counsel for the Company referred to in subsection (e) below as to the matters set forth therein and on the opinion of counsel for the Sublessee with respect to matters of Canadian law;

(e) an opinion of counsel for the Company to the effect (i) that this Agreement, the Lease and the Assignment have been duly authorized, executed, acknowledged and delivered by the Company and are legal, valid and binding instruments enforceable against the Company in accordance with their terms except as enforcement of the same may be limited by any applicable bankruptcy, reorganization, insolvency, moratorium or other laws

affecting the enforcement of creditors' rights generally from time to time in effect; and (ii) that the Trustee is vested with all the right, title and interest of the Company in and to the Lease purported to be assigned to the Trustee by the Assignment; and

(f) a receipt of the Seller for the amounts specified in Section 3.02 and Section 3.03.

ARTICLE FOUR

LEASE OF TRUST EQUIPMENT TO THE COMPANY

SECTION 4.01. *Lease of Trust Equipment.* The Trustee does hereby let and lease to the Company, from and after the date of acceptance thereof hereunder to the fifteenth anniversary of the Average Date of Acceptance, each unit of the Trust Equipment.

SECTION 4.02. *Equipment Automatically Subjected.* As and when any Equipment shall from time to time be accepted by the Company under the Equipment Purchase Agreement as evidenced by a certificate or certificates referred to in Section 3.04(a), the same shall be deemed accepted hereunder and shall, *ipso facto* and without further instrument of lease, transfer or acceptance, become subject to all the terms and provisions hereof.

SECTION 4.03. *General Limitation of Liability.* Notwithstanding any other provisions of this Agreement, including, without limitation, Articles Five and Six, it is understood and agreed by the Trustee on behalf of itself and the holders of the Trust Certificates that liability of the Company for all payments to be made by it under and pursuant to this Agreement (other than the payments called for by Section 3.03 and the rentals required under Section 4.04(1)(a)) shall not exceed an amount equal to the income and proceeds from the Trust Equipment. As used herein the term "income and proceeds from the Trust Equipment" shall mean (i) if an Event of Default shall have occurred and while it shall be continuing so much of the following amounts as are indefeasibly received by the Company (or the

amount due to the Trustee under the provisions hereof (hereinafter called the Deficiency) the Company agrees to pay the amount of the Deficiency to the Trustee, upon demand; and if the Company shall fail to pay the Deficiency, the Trustee may bring suit therefor and shall be entitled to recover judgment therefor against the Company. If after applying as aforesaid the sums of money realized by the Trustee there shall remain a surplus in the possession of the Trustee, such surplus shall be paid to the Company.

SECTION 5.04. *Waivers of Default.* Prior to the declaration of the acceleration of the maturity of the rentals and of the maturity of all the Trust Certificates as provided in Section 5.01, the holders of a majority in aggregate principal amount of the Trust Certificates at the time outstanding may on behalf of the holders of all the Trust Certificates waive any past default and its consequences, except a default in the payment of any instalment of rental payable pursuant to Section 4.04(3) or (4), but no such waiver shall extend to or affect any subsequent default or impair any right consequent thereon.

If at any time after the principal of all the Trust Certificates shall have been declared and become due and payable or if at any time after the entire amount of rentals shall have been declared and become due and payable, all as provided in Section 5.01, but before the fifteenth anniversary of the Average Date of Acceptance, all arrears of rent (with interest at the rate of 10½% per annum upon any overdue instalments, to the extent legally enforceable), the expenses and reasonable compensation of the Trustee, together with all expenses of the trust occasioned by the Company's default, and all other sums which shall have become due and payable by the Company hereunder (otherwise than by such declaration or declarations) shall be paid by the Company before any sale or lease by the Trustee of any of the Trust Equipment (or the making of any agreement for such sale or lease), and every other default shall be made good or secured to the satisfaction of the Trustee, or provision deemed by the Trustee to be adequate shall be made therefor, then, and in every such case, the Trustee, if so requested by the holders of a majority in principal amount of the Trust Certificates then outstanding, shall by written notice to the Company waive the

default by reason of which there shall have been such declaration or declarations and the consequences of such default, but no such waiver shall extend to or affect any subsequent default or impair any right consequent thereon.

SECTION 5.05. *Obligations of Company Not Affected by Remedies.* No retaking of possession of the Trust Equipment by the Trustee, or any withdrawal, lease or sale thereof, nor any action or failure or omission to act against the Company or in respect of the Trust Equipment, on the part of the Trustee or on the part of the holder of any Trust Certificate, nor any delay or indulgence granted to the Company by the Trustee or by any such holder, shall affect the obligations of the Company hereunder.

The Company hereby waives presentation and demand in respect of any of the Trust Certificates and waives notice of presentation, of demand and of any default in the payment of the principal of and interest on the Trust Certificates.

SECTION 5.06. *Company to Deliver Trust Equipment to Trustee.* In case the Trustee shall rightfully demand possession of any of the Trust Equipment in pursuance of this Agreement, the Company will, at its own expense, promptly cause such Trust Equipment to be drawn to such point or points as shall reasonably be designated by the Trustee and will there deliver or cause to be delivered the same to the Trustee; or, at the option of the Trustee, the Trustee may keep such Trust Equipment, at the expense of the Company, on any lines of railroad or premises approved by the Trustee until the Trustee shall have leased, sold or otherwise disposed of the same. The performance of the foregoing covenant is of the essence of this Agreement and upon application to any court having jurisdiction in the premises, the Trustee shall be entitled to a decree against the Company requiring the specific performance thereof.

SECTION 5.07. *Trustee to Give Notice of Default.* The Trustee shall give to the holders of the Trust Certificates notice of each default

hereunder known to the Trustee, within 30 days after it has actual knowledge of the same, unless remedied or cured before the giving of such notice.

SECTION 5.08. *Control by Holders of Trust Certificates.* The holders of a majority in aggregate principal amount of the then outstanding Trust Certificates, by an instrument or instruments in writing executed and delivered to the Trustee, shall have the right to direct the time, method, and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred on the Trustee; *provided, however,* that the Trustee shall have the right to decline to follow any such direction if the Trustee shall be advised by counsel (other than counsel for the Company or the Lessee) that the action so directed may not lawfully be taken.

SECTION 5.09. *Remedies Cumulative; Subject to Mandatory Requirements of Law.* The remedies in this Agreement provided in favor of the Trustee and the holders of the Trust Certificates, or any of them, shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in their favor existing at law or in equity; and such remedies so provided in this Agreement shall be subject in all respects to any mandatory requirements of law at the time applicable thereto, to the extent such requirements may not be waived on the part of the Company.

SECTION 5.10. *Transfer of Trust Certificates to the Company.* At any time after the occurrence and during the continuation of an Event of Default and upon request of the Company made to each holder of an outstanding Trust Certificate, each holder of a Trust Certificate agrees that, unless the holders of a majority in aggregate principal amount of the Trust Certificates shall have waived such Event of Default, it will, upon receipt from the Company of an amount equal to the aggregate unpaid principal of and accrued interest on all Trust Certificates then held by such holder plus all other sums then due and payable to such holder hereunder or under such Trust Certificates, forthwith sell, assign, transfer and convey to the Company all of the right, title and interest of such holder in and to the Trust Equipment,

this Agreement, all Trust Certificates then held by such holder, the Purchase Agreement, the Lease, the Assignment and the Consent. Anything contained in this Section to the contrary notwithstanding, no holder of any outstanding Trust Certificate shall have any obligation to sell such Trust Certificate to the Company unless the event constituting the Event of Default shall also constitute an Event of Default under the Lease. If the Company shall request, such holder will comply with all the provisions of Section 2.05 to enable new Trust Certificates to be issued to the Company in such denominations as the Company shall request. All charges and expenses required pursuant to Section 2.05 in connection with the issuance of any new Trust Certificates shall be borne by the Company. In the event that the Company shall have acquired all the Trust Certificates in the manner contemplated by this Section and all amounts owing to the Trustee pursuant to this Agreement shall have been paid, the Trustee shall not exercise any remedies under this Agreement, the Assignment, the Lease or the Consent without the approval of the Company.

ARTICLE SIX

ADDITIONAL COVENANTS AND AGREEMENTS BY THE COMPANY

SECTION 6.01. *Discharge of Liens.* The Company covenants and agrees that it will pay and discharge, or cause to be paid and discharged, or make adequate provision for the satisfaction or discharge of, any debt, tax, charge, assessment, obligation or claim which if unpaid might become a lien, charge or security interest upon or against any of the Trust Equipment prior to or *pari passu* with the security title of the Trustee; but this provision shall not require the payment of any such debt, tax, charge, assessment, obligation or claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings, provided that such contest will not adversely affect the rights or interests of the Trustee or the holders of the Trust Certificates and the Company and the Lessee shall have furnished the Trustee with an Opinion of Counsel to such effect.

SECTION 6.02. *Recording.* The Company will at its own expense, promptly after the execution and delivery of this Agreement, the Lease and the Assignment, and each supplement or amendment hereto or thereto, respectively, cause the same to be duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and to be deposited with the Registrar General of Canada, and cause notice of such deposit to be forthwith thereafter given in the *Canada Gazette*, pursuant to Section 148 of the Railway Act of Canada. The Company will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record and deposit (and will refile, reregister, rerecord or re-deposit whenever required) any and all further instruments required by law or reasonably requested by the Trustee for the purposes of proper protection, to the satisfaction of the Trustee, of the security title of the Trustee to the Trust Equipment and the rights of the holders of the Trust Certificates, or for the purpose of carrying out the intention of this Agreement.

Promptly after the execution and delivery of this Agreement and of the Assignment, and of each supplement or amendment hereto or thereto, the Company will furnish or cause to be furnished to the Trustee an Opinion of Counsel stating that, in the opinion of such counsel, the action specified in the next preceding paragraph has been taken but such counsel need not express any opinion as to the effectiveness of any action taken in Canada.

SECTION 6.03. *Further Assurances.* The Company covenants and agrees from time to time at its expense to do all such acts and execute all such instruments of further assurance as it shall be reasonably requested by the Trustee to do or execute for the purpose of fully carrying out and effectuating this Agreement and the intent hereof.

ARTICLE SEVEN

CONCERNING THE HOLDERS OF TRUST CERTIFICATES

SECTION 7.01. *Evidence of Action Taken by Holders of Trust Certificates.* Whenever in this Agreement it is provided that the holders

of a specified percentage in aggregate principal amount of the Trust Certificates may take any action (including the making of any demand or request, the giving of any notice, consent or waiver or the taking of any other action), the fact that at the time of taking any such action the holders of such specified percentage have joined therein may be evidenced by any instrument or any number of instruments of similar tenor executed by holders of Trust Certificates in person or by agent or proxy appointed in writing.

SECTION 7.02. *Proof of Execution of Instruments and of Holding of Trust Certificates.* Proof of the execution of any instrument by a holder of Trust Certificates or his agent or proxy and proof of the holding by any person of any of the Trust Certificates shall be sufficient if made in the following manner:

The fact and date of the execution by any such person of any instrument may be proved by the certificate of any notary public or other officer of any jurisdiction within the United States of America authorized to take acknowledgments of deeds to be recorded in such jurisdiction that the person executing such instrument acknowledged to him the execution thereof, or by an affidavit of a witness to such execution sworn to before any such notary or other such officer.

The ownership of Trust Certificates and the unpaid principal amount thereof may be proved by the register of such Trust Certificates or by a certificate of the Trustee.

SECTION 7.03. *Trust Certificates Owned by Company or Lessee.* In determining whether the holders of the requisite principal amount of the Trust Certificates have concurred in any direction, request or consent under this Agreement, Trust Certificates (other than those acquired by the Company in the manner specified in Section 5.10) which are owned by the Company, the Lessee or by an Affiliate of the Company or the Lessee shall (unless all of the Trust Certificates are so owned) be disregarded, except that for the purpose of determining whether the Trustee shall be protected in relying on any such direction, request or consent, only Trust Certificates which the Trustee actually knows are so owned shall be disregarded.

SECTION 7.04. *Right of Revocation of Action Taken.* At any time prior to (but not after) the evidencing to the Trustee, as provided in Section 7.01, of the taking of any action by the holders of the percentage in aggregate principal amount of the Trust Certificates specified in this Agreement in connection with such action, any holder of a Trust Certificate the serial number of which is shown by the evidence to be included in the Trust Certificates the holders of which have consented to such action may, by filing written notice with the Trustee at its Corporate Trust Office and upon proof of holding as provided in Section 7.02, revoke such action in so far as concerns such Trust Certificate. Except as aforesaid, any such action taken by the holder of any Trust Certificate shall be conclusive and binding upon such holder and upon all future holders and owners of such Trust Certificate and of any Trust Certificate issued in exchange or substitution therefor, irrespective of whether or not any notation in regard thereto is made upon such Trust Certificate. Any action taken by the holders of the percentage in aggregate principal amount of the Trust Certificate specified in this Agreement in connection with such action shall be conclusive and binding upon the Company, the Trustee and the holders of all the Trust Certificates.

SECTION 7.05. *Amendment or Waiver.* Any provision of this Agreement may be amended or waived with the written consent of the holders of not less than $66\frac{2}{3}\%$ of the aggregate unpaid principal amount of the Trust Certificates then outstanding; *provided, however,* that, without the consent of the holders of 100% of the aggregate unpaid principal amount of the Trust Certificates, no such amendment or waiver shall (1) reduce the amount of principal, change the amount or dates of payment of instalments of principal or reduce the rate or extend the time of payment of interest with respect to the Trust Certificates without the consent of the holders of each Trust Certificate so affected, (2) reduce the amount of or extend the time of payment of any rentals payable under the Equipment Trust Agreement or release or provide for the release of any of the Trust Equipment or any other property or cash held by the Trustee in trust, otherwise than as expressly permitted by the present terms of this Agreement, or (3) reduce the percentage of the aggregate unpaid principal amount of Trust Certificates then outstanding, the holders of which are required to approve any amendment or to effect any waiver.

ARTICLE EIGHT

THE TRUSTEE

SECTION 8.01. *Acceptance of Trust.* The Trustee hereby accepts the trust imposed upon it by this Agreement, and covenants and agrees to perform the same as herein expressed.

SECTION 8.02. *Duties and Responsibilities of the Trustee.* (A) In case an Event of Default has occurred (which has not been cured), the Trustee shall exercise such of the rights and powers vested in it by this Agreement and use the same degree of care and skill in its exercise, as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

No provision of this Agreement shall be construed to relieve the Trustee from liability for its own negligent action, its own negligent failure to act, or its own wilful misconduct, except that

(a) prior to the occurrence of an Event of Default and after the curing of all Events of Default which may have occurred:

(1) the duties and obligations of the Trustee shall be determined solely by the express provisions of this Agreement, and the Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Agreement, and no implied covenants or obligations shall be read into this Agreement against the Trustee; and

(2) in the absence of bad faith on the part of the Trustee, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificates or opinions furnished to the Trustee and conforming to the requirements of this Agreement; but in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Agreement;

(b) the Trustee shall not be liable for any error of judgment made by it in good faith, unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts or that its action or inaction was contrary to the express provisions of this Agreement;

(c) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the holders of a majority in aggregate principal amount of the then outstanding Trust Certificates relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred upon the Trustee under this Agreement;

(B) Except as otherwise provided in subdivision (A) of this Section 8.02:

(a) the Trustee may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, Trust Certificate, guaranty or other paper or document reasonably believed by it to be genuine and to have been signed or presented by the proper party or parties;

(b) the Trustee may consult with counsel, and any Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder in good faith and in accordance with such Opinion of Counsel (other than counsel for the Company or the Lessee) and not contrary to any express provision of this Agreement;

(c) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Agreement at the request, order or direction of any of the holders of the Trust Certificates, pursuant to the provisions of this Agreement, unless such holders shall have offered to the Trustee reasonable security or indemnity against the costs, expenses and liabilities which might be incurred therein or thereby.

SECTION 8.03. *Application of Rentals; Responsibility of Trustee to Insure or Record.* The Trustee covenants and agrees to apply the rentals received by it under Section 4.04 when and as the same shall be received, and to the extent that such rentals shall be sufficient therefor, for the purposes specified in Section 4.04.

The Trustee shall not be required to undertake any act or duty in way of insuring, taking care of or taking possession of the Trust Equipment or to undertake any other act or duty under this Agreement

until fully indemnified to its satisfaction by the Company or by one or more of the holders of the Trust Certificates against all liability and expenses; and the Trustee shall not be responsible for the filing or recording, required under Section 6.02, of this Agreement or of any supplement hereto or statement of new identifying numbers.

SECTION 8.04. *Funds May be Held by Trustee.* Any money at any time paid to or held by the Trustee hereunder until paid out or invested by the Trustee as herein provided need not be segregated in any manner except to the extent required by law and may be carried by the Trustee on deposit with its general banking department, and the Trustee shall not be liable for any interest thereon.

At any time, and from time to time, if at the time no Event of Default shall have occurred and be continuing, the Trustee, on Request shall invest and reinvest at the Company's risk Deposited Cash held by it in Investments, at such prices, including any premium and accrued interest, as set forth in such Request, such Investments to be held by the Trustee in trust for the benefit of the holders of the Trust Certificates.

The Trustee shall, on Request, in the event funds are required in connection with a settlement for Trust Equipment pursuant to Section 3.02 or in the event funds are required for the prepayment of the Trust Certificates pursuant to Section 3.01 or Section 4.07, sell such Investments, or any portion thereof, and restore to Deposited Cash the proceeds of any such sale up to the amount paid for such Investments, including any accrued interest.

The Trustee shall restore to Deposited Cash, out of rentals received by it for that purpose under the provisions of Section 4.04(1)(b), an amount equal to any expenses incurred in connection with any purchase, sale or redemption of Investments and also an amount equal to any loss of principal (including interest accrued thereupon at the time of purchase) incurred in connection with any such purchase, sale or redemption.

Any interest (in excess of accrued interest paid from Deposited Cash at the time of purchase) or other profit which may be realized from any sale or redemption of Investments and held by the Trustee shall be paid to the Company on the Cut-off Date, *provided, however*, the Company is not, to the actual knowledge of the Trustee, in default hereunder.

SECTION 8.05. *Trustee Not Liable for Delivery Delays or Defects in Equipment or Title; Agents; Expenses; etc.* The Trustee shall not be liable to anyone for any delay in the delivery of any of the Trust Equipment, or for any default on the part of the Company, or for any defect in any of the Trust Equipment or in the title thereto, nor shall anything herein be construed as a warranty on the part of the Trustee in respect thereof or as a representation on the part of the Trustee in respect of the value thereof or in respect of the title thereto.

The Trustee may perform its powers and duties hereunder by or through such attorney and agents as it shall appoint, and shall be answerable only for its own acts, and not for the acts of any attorney or other agent appointed by it with reasonable care. The Trustee shall not be responsible in any way for the recitals herein contained or for the execution or validity of this Agreement, the Lease, the Assignment, the Consent, or of the Trust Certificates (except for the Trustee's own execution thereof).

The Trustee shall be entitled to receive payment of all of its expenses and disbursements hereunder, including reasonable counsel fees, and to receive reasonable compensation for all services rendered by it in the execution of its duties hereunder, all of which shall (unless otherwise specifically provided herein to be paid by some other person) be paid by the Company.

The Trustee may in its individual capacity own, hold and dispose of Trust Certificates.

Any moneys at any time held by the Trustee shall, until paid out or invested as herein provided, be held by it in trust as herein provided for the benefit of the holders of the Trust Certificates.

SECTION 8.06. *Resignation and Removal of Trustee; Appointment of Successor Trustee.*

(a) The Trustee may resign and be discharged of the trust created by this Agreement by giving 30 days' written notice to the Company and to the registered holders of the Trust Certificates and such resignation shall take effect upon receipt by the Trustee of an instrument of acceptance executed by a successor trustee as hereinafter provided in this Section.

(b) The Trustee may be removed at any time by an instrument in writing signed by the holders of a majority in principal amount of the Trust Certificates then outstanding, delivered to the Trustee and the Company.

(c) If at any time the Trustee shall resign or be removed or otherwise become incapable of acting or, if at any time a vacancy shall occur in the office of the Trustee for any other cause, a successor trustee may be appointed by the holders of a majority of the aggregate principal amount of the then outstanding Trust Certificates by an instrument in writing delivered to the Company and the Trustee. Until a successor trustee shall be appointed by the holders of Trust Certificates as herein authorized, the Company by an instrument in writing executed by order of its Board of Directors shall appoint a trustee to fill such vacancy. A successor trustee so appointed by the Company shall immediately and without further act be superseded by a successor trustee appointed by the holders of Trust Certificates in the manner provided above. Every successor trustee appointed pursuant to this Section shall be a bank or trust company incorporated under the laws of the United States of America, or any state thereof, and having a capital and surplus of not less than \$50,000,000, if there be such an institution willing, qualified and able to accept the trust upon reasonable or customary terms.

(d) The Company shall give notice to the holders of all outstanding Trust Certificates of each resignation or removal of the then Trustee and of each appointment by the Company of a successor trustee pursuant to this Section by mailing written notice of such event by first-class mail, postage prepaid.

SECTION 8.07. *Acceptance of Appointment by Successor Trustee.* Any successor trustee appointed as provided in Section 8.06 shall execute, acknowledge and deliver to the Company and to its predecessor trustee an instrument accepting such appointment hereunder, and thereupon the resignation or removal of the predecessor trustee shall become effective and such successor trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, duties and

obligations of its predecessor hereunder, with like effect as if originally named as Trustee herein; but, nevertheless, on the written request of the Company or of the successor trustee, upon payment of its charges then unpaid, the trustee ceasing to act shall execute and deliver an instrument transferring to each successor trustee all the rights and powers of the trustee so ceasing to act. Upon request of any such successor trustee, the Company shall execute any and all instruments in writing for more fully and certainly vesting in and confirming to such successor trustee all such rights and powers. Any trustee ceasing to act shall, nevertheless, retain a lien upon all property or funds held or collected by such trustee by it or for its account to secure any amounts then due it pursuant to the provisions of Section 8.05.

SECTION 8.08. *Merger or Consolidation of Trustee.* Any corporation into which the Trustee may be merged or with which it may be consolidated or any corporation resulting from any merger or consolidation to which the Trustee shall be a party shall be the successor of the Trustee hereunder, provided such corporation shall be qualified under the provisions of Section 8.06, without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

ARTICLE NINE

MISCELLANEOUS

SECTION 9.01. *Rights Confined to Parties and Holders.* Nothing expressed or implied herein is intended or shall be construed to confer upon or to give to any person, firm or corporation, other than the parties hereto, the holders of the Trust Certificates and the assignees and/or transferees contemplated by the second paragraph of Section 4.08 any right, remedy or claim under or by reason of this Agreement or of any term, covenant or condition hereof, and all the terms, covenants, conditions, promises and agreements contained herein shall be for the sole and exclusive benefit of the parties hereto and their suc-

cessors and of the holders of the Trust Certificates and such assignees and transferees.

SECTION 9.02. *No Recourse.* No recourse shall be had in respect of any obligation due under this Agreement, or referred to herein against any incorporator, stockholder, director or officer, past, present or future, of the Company, or against the beneficiary or beneficiaries of the Trust under the Trust Agreement (disclosed or undisclosed), solely by reason of the fact that such person is an incorporator, stockholder, director, officer or beneficiary, whether by virtue of any constitutional provision, statute or rule of law or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, or incorporators, stockholders, directors, officers or beneficiaries being forever released as a condition of and as consideration for the execution of this Agreement.

SECTION 9.03. *Binding Upon Assigns.* Except as otherwise provided herein, the provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

SECTION 9.04. *Satisfaction of Obligations.* The obligations of the Company under Section 4.04(2), Section 4.06, the first and last paragraphs of Section 4.07 and Section 4.09, Section 4.10, Section 5.06, Section 6.01 and Section 6.02 shall be deemed in all respects satisfied by the Lessee's undertakings contained in the Lease. The Company shall not have any responsibility for the Lessee's failure to perform such obligations, but if the same shall not be performed by the Lessee such non-performance shall constitute the basis for an Event of Default hereunder pursuant to Section 5.01.

SECTION 9.05. *Notices.* Except as otherwise expressly provided herein, all demands, notices and communications hereunder shall be in writing and shall be deemed to have been duly given if personally delivered at or mailed by registered mail to (a) in the case of the

Company, 235 Montgomery Street, San Francisco, California 94104, attention of Edgar Canfield, Vice President and Trust Officer (with a copy to The Northern Trust Company, 50 South LaSalle Street, Chicago, Illinois 60690, attention of Richard W. Resseguie, Vice President, Banking Division II), or such other address as may hereafter be furnished to the Trustee in writing by the Company, (b) in the case of the Trustee, at its Corporate Trust Office, or such other address as may hereafter be furnished to the Company in writing by the Trustee. An affidavit by any person representing or acting on behalf of the Company or the Trustee as to such mailing, having the registry receipt attached, shall be conclusive evidence of the giving of such demand, notice or communication.

SECTION 9.06. *Effect of Headings.* The Article and Section headings herein are for convenience only and shall not affect the construction hereof.

SECTION 9.07. *Execution.* Although this Agreement is dated as of August 1, 1971, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

SECTION 9.08. *Applicable Laws.* Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, the Company hereby waives any provision of law which renders any provision hereof prohibited or unenforceable in any respect.

SECTION 9.09. *New York Law Governs.* The provisions of this Agreement, and all the rights and obligations of the parties hereunder, shall be governed by the laws of the State of New York, *provided, however*, that the parties shall be entitled to all rights conferred by Section

amount due to the Trustee under the provisions hereof (hereinafter called the Deficiency) the Company agrees to pay the amount of the Deficiency to the Trustee, upon demand; and if the Company shall fail to pay the Deficiency, the Trustee may bring suit therefor and shall be entitled to recover judgment therefor against the Company. If after applying as aforesaid the sums of money realized by the Trustee there shall remain a surplus in the possession of the Trustee, such surplus shall be paid to the Company.

SECTION 5.04. *Waivers of Default.* Prior to the declaration of the acceleration of the maturity of the rentals and of the maturity of all the Trust Certificates as provided in Section 5.01, the holders of a majority in aggregate principal amount of the Trust Certificates at the time outstanding may on behalf of the holders of all the Trust Certificates waive any past default and its consequences, except a default in the payment of any instalment of rental payable pursuant to Section 4.04(3) or (4), but no such waiver shall extend to or affect any subsequent default or impair any right consequent thereon.

If at any time after the principal of all the Trust Certificates shall have been declared and become due and payable or if at any time after the entire amount of rentals shall have been declared and become due and payable, all as provided in Section 5.01, but before the fifteenth anniversary of the Average Date of Acceptance, all arrears of rent (with interest at the rate of $10\frac{1}{2}\%$ per annum upon any overdue instalments, to the extent legally enforceable), the expenses and reasonable compensation of the Trustee, together with all expenses of the trust occasioned by the Company's default, and all other sums which shall have become due and payable by the Company hereunder (otherwise than by such declaration or declarations) shall be paid by the Company before any sale or lease by the Trustee of any of the Trust Equipment (or the making of any agreement for such sale or lease), and every other default shall be made good or secured to the satisfaction of the Trustee, or provision deemed by the Trustee to be adequate shall be made therefor, then, and in every such case, the Trustee, if so requested by the holders of a majority in principal amount of the Trust Certificates then outstanding, shall by written notice to the Company waive the

default by reason of which there shall have been such declaration or declarations and the consequences of such default, but no such waiver shall extend to or affect any subsequent default or impair any right consequent thereon.

SECTION 5.05. *Obligations of Company Not Affected by Remedies.* No retaking of possession of the Trust Equipment by the Trustee, or any withdrawal, lease or sale thereof, nor any action or failure or omission to act against the Company or in respect of the Trust Equipment, on the part of the Trustee or on the part of the holder of any Trust Certificate, nor any delay or indulgence granted to the Company by the Trustee or by any such holder, shall affect the obligations of the Company hereunder.

The Company hereby waives presentation and demand in respect of any of the Trust Certificates and waives notice of presentation, of demand and of any default in the payment of the principal of and interest on the Trust Certificates.

SECTION 5.06. *Company to Deliver Trust Equipment to Trustee.* In case the Trustee shall rightfully demand possession of any of the Trust Equipment in pursuance of this Agreement, the Company will, at its own expense, promptly cause such Trust Equipment to be drawn to such point or points as shall reasonably be designated by the Trustee and will there deliver or cause to be delivered the same to the Trustee; or, at the option of the Trustee, the Trustee may keep such Trust Equipment, at the expense of the Company, on any lines of railroad or premises approved by the Trustee until the Trustee shall have leased, sold or otherwise disposed of the same. The performance of the foregoing covenant is of the essence of this Agreement and upon application to any court having jurisdiction in the premises, the Trustee shall be entitled to a decree against the Company requiring the specific performance thereof.

SECTION 5.07. *Trustee to Give Notice of Default.* The Trustee shall give to the holders of the Trust Certificates notice of each default

hereunder known to the Trustee, within 30 days after it has actual knowledge of the same, unless remedied or cured before the giving of such notice.

SECTION 5.08. *Control by Holders of Trust Certificates.* The holders of a majority in aggregate principal amount of the then outstanding Trust Certificates, by an instrument or instruments in writing executed and delivered to the Trustee, shall have the right to direct the time, method, and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred on the Trustee; *provided, however,* that the Trustee shall have the right to decline to follow any such direction if the Trustee shall be advised by counsel (other than counsel for the Company or the Lessee) that the action so directed may not lawfully be taken.

SECTION 5.09. *Remedies Cumulative; Subject to Mandatory Requirements of Law.* The remedies in this Agreement provided in favor of the Trustee and the holders of the Trust Certificates, or any of them, shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in their favor existing at law or in equity; and such remedies so provided in this Agreement shall be subject in all respects to any mandatory requirements of law at the time applicable thereto, to the extent such requirements may not be waived on the part of the Company.

SECTION 5.10. *Transfer of Trust Certificates to the Company.* At any time after the occurrence and during the continuation of an Event of Default and upon request of the Company made to each holder of an outstanding Trust Certificate, each holder of a Trust Certificate agrees that, unless the holders of a majority in aggregate principal amount of the Trust Certificates shall have waived such Event of Default, it will, upon receipt from the Company of an amount equal to the aggregate unpaid principal of and accrued interest on all Trust Certificates then held by such holder plus all other sums then due and payable to such holder hereunder or under such Trust Certificates, forthwith sell, assign, transfer and convey to the Company all of the right, title and interest of such holder in and to the Trust Equipment,

this Agreement, all Trust Certificates then held by such holder, the Purchase Agreement, the Lease, the Assignment and the Consent. Anything contained in this Section to the contrary notwithstanding, no holder of any outstanding Trust Certificate shall have any obligation to sell such Trust Certificate to the Company unless the event constituting the Event of Default shall also constitute an Event of Default under the Lease. If the Company shall request, such holder will comply with all the provisions of Section 2.05 to enable new Trust Certificates to be issued to the Company in such denominations as the Company shall request. All charges and expenses required pursuant to Section 2.05 in connection with the issuance of any new Trust Certificates shall be borne by the Company. In the event that the Company shall have acquired all the Trust Certificates in the manner contemplated by this Section and all amounts owing to the Trustee pursuant to this Agreement shall have been paid, the Trustee shall not exercise any remedies under this Agreement, the Assignment, the Lease or the Consent without the approval of the Company.

ARTICLE SIX

ADDITIONAL COVENANTS AND AGREEMENTS BY THE COMPANY

SECTION 6.01. *Discharge of Liens.* The Company covenants and agrees that it will pay and discharge, or cause to be paid and discharged, or make adequate provision for the satisfaction or discharge of, any debt, tax, charge, assessment, obligation or claim which if unpaid might become a lien, charge or security interest upon or against any of the Trust Equipment prior to or *pari passu* with the security title of the Trustee; but this provision shall not require the payment of any such debt, tax, charge, assessment, obligation or claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings, provided that such contest will not adversely affect the rights or interests of the Trustee or the holders of the Trust Certificates and the Company and the Lessee shall have furnished the Trustee with an Opinion of Counsel to such effect.

SECTION 6.02. *Recording.* The Company will at its own expense, promptly after the execution and delivery of this Agreement, the Lease and the Assignment, and each supplement or amendment hereto or thereto, respectively, cause the same to be duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and to be deposited with the Registrar General of Canada, and cause notice of such deposit to be forthwith thereafter given in the *Canada Gazette*, pursuant to Section 148 of the Railway Act of Canada. The Company will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record and deposit (and will refile, reregister, rerecord or re-deposit whenever required) any and all further instruments required by law or reasonably requested by the Trustee for the purposes of proper protection, to the satisfaction of the Trustee, of the security title of the Trustee to the Trust Equipment and the rights of the holders of the Trust Certificates, or for the purpose of carrying out the intention of this Agreement.

Promptly after the execution and delivery of this Agreement and of the Assignment, and of each supplement or amendment hereto or thereto, the Company will furnish or cause to be furnished to the Trustee an Opinion of Counsel stating that, in the opinion of such counsel, the action specified in the next preceding paragraph has been taken but such counsel need not express any opinion as to the effectiveness of any action taken in Canada.

SECTION 6.03. *Further Assurances.* The Company covenants and agrees from time to time at its expense to do all such acts and execute all such instruments of further assurance as it shall be reasonably requested by the Trustee to do or execute for the purpose of fully carrying out and effectuating this Agreement and the intent hereof.

ARTICLE SEVEN

CONCERNING THE HOLDERS OF TRUST CERTIFICATES

SECTION 7.01. *Evidence of Action Taken by Holders of Trust Certificates.* Whenever in this Agreement it is provided that the holders

of a specified percentage in aggregate principal amount of the Trust Certificates may take any action (including the making of any demand or request, the giving of any notice, consent or waiver or the taking of any other action), the fact that at the time of taking any such action the holders of such specified percentage have joined therein may be evidenced by any instrument or any number of instruments of similar tenor executed by holders of Trust Certificates in person or by agent or proxy appointed in writing.

SECTION 7.02. *Proof of Execution of Instruments and of Holding of Trust Certificates.* Proof of the execution of any instrument by a holder of Trust Certificates or his agent or proxy and proof of the holding by any person of any of the Trust Certificates shall be sufficient if made in the following manner:

The fact and date of the execution by any such person of any instrument may be proved by the certificate of any notary public or other officer of any jurisdiction within the United States of America authorized to take acknowledgments of deeds to be recorded in such jurisdiction that the person executing such instrument acknowledged to him the execution thereof, or by an affidavit of a witness to such execution sworn to before any such notary or other such officer.

The ownership of Trust Certificates and the unpaid principal amount thereof may be proved by the register of such Trust Certificates or by a certificate of the Trustee.

SECTION 7.03. *Trust Certificates Owned by Company or Lessee.* In determining whether the holders of the requisite principal amount of the Trust Certificates have concurred in any direction, request or consent under this Agreement, Trust Certificates (other than those acquired by the Company in the manner specified in Section 5.10) which are owned by the Company, the Lessee or by an Affiliate of the Company or the Lessee shall (unless all of the Trust Certificates are so owned) be disregarded, except that for the purpose of determining whether the Trustee shall be protected in relying on any such direction, request or consent, only Trust Certificates which the Trustee actually knows are so owned shall be disregarded.

SECTION 7.04. *Right of Revocation of Action Taken.* At any time prior to (but not after) the evidencing to the Trustee, as provided in Section 7.01, of the taking of any action by the holders of the percentage in aggregate principal amount of the Trust Certificates specified in this Agreement in connection with such action, any holder of a Trust Certificate the serial number of which is shown by the evidence to be included in the Trust Certificates the holders of which have consented to such action may, by filing written notice with the Trustee at its Corporate Trust Office and upon proof of holding as provided in Section 7.02, revoke such action in so far as concerns such Trust Certificate. Except as aforesaid, any such action taken by the holder of any Trust Certificate shall be conclusive and binding upon such holder and upon all future holders and owners of such Trust Certificate and of any Trust Certificate issued in exchange or substitution therefor, irrespective of whether or not any notation in regard thereto is made upon such Trust Certificate. Any action taken by the holders of the percentage in aggregate principal amount of the Trust Certificate specified in this Agreement in connection with such action shall be conclusive and binding upon the Company, the Trustee and the holders of all the Trust Certificates.

SECTION 7.05. *Amendment or Waiver.* Any provision of this Agreement may be amended or waived with the written consent of the holders of not less than $66\frac{2}{3}\%$ of the aggregate unpaid principal amount of the Trust Certificates then outstanding; *provided, however,* that, without the consent of the holders of 100% of the aggregate unpaid principal amount of the Trust Certificates, no such amendment or waiver shall (1) reduce the amount of principal, change the amount or dates of payment of instalments of principal or reduce the rate or extend the time of payment of interest with respect to the Trust Certificates without the consent of the holders of each Trust Certificate so affected, (2) reduce the amount of or extend the time of payment of any rentals payable under the Equipment Trust Agreement or release or provide for the release of any of the Trust Equipment or any other property or cash held by the Trustee in trust, otherwise than as expressly permitted by the present terms of this Agreement, or (3) reduce the percentage of the aggregate unpaid principal amount of Trust Certificates then outstanding, the holders of which are required to approve any amendment or to effect any waiver.

ARTICLE EIGHT

THE TRUSTEE

SECTION 8.01. *Acceptance of Trust.* The Trustee hereby accepts the trust imposed upon it by this Agreement, and covenants and agrees to perform the same as herein expressed.

SECTION 8.02. *Duties and Responsibilities of the Trustee.* (A) In case an Event of Default has occurred (which has not been cured), the Trustee shall exercise such of the rights and powers vested in it by this Agreement and use the same degree of care and skill in its exercise, as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

No provision of this Agreement shall be construed to relieve the Trustee from liability for its own negligent action, its own negligent failure to act, or its own wilful misconduct, except that

(a) prior to the occurrence of an Event of Default and after the curing of all Events of Default which may have occurred:

(1) the duties and obligations of the Trustee shall be determined solely by the express provisions of this Agreement, and the Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Agreement, and no implied covenants or obligations shall be read into this Agreement against the Trustee; and

(2) in the absence of bad faith on the part of the Trustee, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificates or opinions furnished to the Trustee and conforming to the requirements of this Agreement; but in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Agreement;

(b) the Trustee shall not be liable for any error of judgment made by it in good faith, unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts or that its action or inaction was contrary to the express provisions of this Agreement;

(c) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the holders of a majority in aggregate principal amount of the then outstanding Trust Certificates relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred upon the Trustee under this Agreement;

(B) Except as otherwise provided in subdivision (A) of this Section 8.02:

(a) the Trustee may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, Trust Certificate, guaranty or other paper or document reasonably believed by it to be genuine and to have been signed or presented by the proper party or parties;

(b) the Trustee may consult with counsel, and any Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder in good faith and in accordance with such Opinion of Counsel (other than counsel for the Company or the Lessee) and not contrary to any express provision of this Agreement;

(c) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Agreement at the request, order or direction of any of the holders of the Trust Certificates, pursuant to the provisions of this Agreement, unless such holders shall have offered to the Trustee reasonable security or indemnity against the costs, expenses and liabilities which might be incurred therein or thereby.

SECTION 8.03. *Application of Rentals; Responsibility of Trustee to Insure or Record.* The Trustee covenants and agrees to apply the rentals received by it under Section 4.04 when and as the same shall be received, and to the extent that such rentals shall be sufficient therefor, for the purposes specified in Section 4.04.

The Trustee shall not be required to undertake any act or duty in way of insuring, taking care of or taking possession of the Trust Equipment or to undertake any other act or duty under this Agreement

until fully indemnified to its satisfaction by the Company or by one or more of the holders of the Trust Certificates against all liability and expenses; and the Trustee shall not be responsible for the filing or recording, required under Section 6.02, of this Agreement or of any supplement hereto or statement of new identifying numbers.

SECTION 8.04. *Funds May be Held by Trustee.* Any money at any time paid to or held by the Trustee hereunder until paid out or invested by the Trustee as herein provided need not be segregated in any manner except to the extent required by law and may be carried by the Trustee on deposit with its general banking department, and the Trustee shall not be liable for any interest thereon.

At any time, and from time to time, if at the time no Event of Default shall have occurred and be continuing, the Trustee, on Request shall invest and reinvest at the Company's risk Deposited Cash held by it in Investments, at such prices, including any premium and accrued interest, as set forth in such Request, such Investments to be held by the Trustee in trust for the benefit of the holders of the Trust Certificates.

The Trustee shall, on Request, in the event funds are required in connection with a settlement for Trust Equipment pursuant to Section 3.02 or in the event funds are required for the prepayment of the Trust Certificates pursuant to Section 3.01 or Section 4.07, sell such Investments, or any portion thereof, and restore to Deposited Cash the proceeds of any such sale up to the amount paid for such Investments, including any accrued interest.

The Trustee shall restore to Deposited Cash, out of rentals received by it for that purpose under the provisions of Section 4.04(1)(b), an amount equal to any expenses incurred in connection with any purchase, sale or redemption of Investments and also an amount equal to any loss of principal (including interest accrued thereupon at the time of purchase) incurred in connection with any such purchase, sale or redemption.

Any interest (in excess of accrued interest paid from Deposited Cash at the time of purchase) or other profit which may be realized from any sale or redemption of Investments and held by the Trustee shall be paid to the Company on the Cut-off Date, *provided, however*, the Company is not, to the actual knowledge of the Trustee, in default hereunder.

SECTION 8.05. *Trustee Not Liable for Delivery Delays or Defects in Equipment or Title; Agents; Expenses; etc.* The Trustee shall not be liable to anyone for any delay in the delivery of any of the Trust Equipment, or for any default on the part of the Company, or for any defect in any of the Trust Equipment or in the title thereto, nor shall anything herein be construed as a warranty on the part of the Trustee in respect thereof or as a representation on the part of the Trustee in respect of the value thereof or in respect of the title thereto.

The Trustee may perform its powers and duties hereunder by or through such attorney and agents as it shall appoint, and shall be answerable only for its own acts, and not for the acts of any attorney or other agent appointed by it with reasonable care. The Trustee shall not be responsible in any way for the recitals herein contained or for the execution or validity of this Agreement, the Lease, the Assignment, the Consent, or of the Trust Certificates (except for the Trustee's own execution thereof).

The Trustee shall be entitled to receive payment of all of its expenses and disbursements hereunder, including reasonable counsel fees, and to receive reasonable compensation for all services rendered by it in the execution of its duties hereunder, all of which shall (unless otherwise specifically provided herein to be paid by some other person) be paid by the Company.

The Trustee may in its individual capacity own, hold and dispose of Trust Certificates.

Any moneys at any time held by the Trustee shall, until paid out or invested as herein provided, be held by it in trust as herein provided for the benefit of the holders of the Trust Certificates.

SECTION 8.06. *Resignation and Removal of Trustee; Appointment of Successor Trustee.*

(a) The Trustee may resign and be discharged of the trust created by this Agreement by giving 30 days' written notice to the Company and to the registered holders of the Trust Certificates and such resignation shall take effect upon receipt by the Trustee of an instrument of acceptance executed by a successor trustee as hereinafter provided in this Section.

(b) The Trustee may be removed at any time by an instrument in writing signed by the holders of a majority in principal amount of the Trust Certificates then outstanding, delivered to the Trustee and the Company.

(c) If at any time the Trustee shall resign or be removed or otherwise become incapable of acting or, if at any time a vacancy shall occur in the office of the Trustee for any other cause, a successor trustee may be appointed by the holders of a majority of the aggregate principal amount of the then outstanding Trust Certificates by an instrument in writing delivered to the Company and the Trustee. Until a successor trustee shall be appointed by the holders of Trust Certificates as herein authorized, the Company by an instrument in writing executed by order of its Board of Directors shall appoint a trustee to fill such vacancy. A successor trustee so appointed by the Company shall immediately and without further act be superseded by a successor trustee appointed by the holders of Trust Certificates in the manner provided above. Every successor trustee appointed pursuant to this Section shall be a bank or trust company incorporated under the laws of the United States of America, or any state thereof, and having a capital and surplus of not less than \$50,000,000, if there be such an institution willing, qualified and able to accept the trust upon reasonable or customary terms.

(d) The Company shall give notice to the holders of all outstanding Trust Certificates of each resignation or removal of the then Trustee and of each appointment by the Company of a successor trustee pursuant to this Section by mailing written notice of such event by first-class mail, postage prepaid.

SECTION 8.07. *Acceptance of Appointment by Successor Trustee.* Any successor trustee appointed as provided in Section 8.06 shall execute, acknowledge and deliver to the Company and to its predecessor trustee an instrument accepting such appointment hereunder, and thereupon the resignation or removal of the predecessor trustee shall become effective and such successor trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, duties and

obligations of its predecessor hereunder, with like effect as if originally named as Trustee herein; but, nevertheless, on the written request of the Company or of the successor trustee, upon payment of its charges then unpaid, the trustee ceasing to act shall execute and deliver an instrument transferring to each successor trustee all the rights and powers of the trustee so ceasing to act. Upon request of any such successor trustee, the Company shall execute any and all instruments in writing for more fully and certainly vesting in and confirming to such successor trustee all such rights and powers. Any trustee ceasing to act shall, nevertheless, retain a lien upon all property or funds held or collected by such trustee by it or for its account to secure any amounts then due it pursuant to the provisions of Section 8.05.

SECTION 8.08. *Merger or Consolidation of Trustee.* Any corporation into which the Trustee may be merged or with which it may be consolidated or any corporation resulting from any merger or consolidation to which the Trustee shall be a party shall be the successor of the Trustee hereunder, provided such corporation shall be qualified under the provisions of Section 8.06, without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

ARTICLE NINE

MISCELLANEOUS

SECTION 9.01. *Rights Confined to Parties and Holders.* Nothing expressed or implied herein is intended or shall be construed to confer upon or to give to any person, firm or corporation, other than the parties hereto, the holders of the Trust Certificates and the assignees and/or transferees contemplated by the second paragraph of Section 4.08 any right, remedy or claim under or by reason of this Agreement or of any term, covenant or condition hereof, and all the terms, covenants, conditions, promises and agreements contained herein shall be for the sole and exclusive benefit of the parties hereto and their suc-

cessors and of the holders of the Trust Certificates and such assignees and transferees.

SECTION 9.02. *No Recourse.* No recourse shall be had in respect of any obligation due under this Agreement, or referred to herein against any incorporator, stockholder, director or officer, past, present or future, of the Company, or against the beneficiary or beneficiaries of the Trust under the Trust Agreement (disclosed or undisclosed), solely by reason of the fact that such person is an incorporator, stockholder, director, officer or beneficiary, whether by virtue of any constitutional provision, statute or rule of law or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, or incorporators, stockholders, directors, officers or beneficiaries being forever released as a condition of and as consideration for the execution of this Agreement.

SECTION 9.03. *Binding Upon Assigns.* Except as otherwise provided herein, the provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

SECTION 9.04. *Satisfaction of Obligations.* The obligations of the Company under Section 4.04(2), Section 4.06, the first and last paragraphs of Section 4.07 and Section 4.09, Section 4.10, Section 5.06, Section 6.01 and Section 6.02 shall be deemed in all respects satisfied by the Lessee's undertakings contained in the Lease. The Company shall not have any responsibility for the Lessee's failure to perform such obligations, but if the same shall not be performed by the Lessee such non-performance shall constitute the basis for an Event of Default hereunder pursuant to Section 5.01.

SECTION 9.05. *Notices.* Except as otherwise expressly provided herein, all demands, notices and communications hereunder shall be in writing and shall be deemed to have been duly given if personally delivered at or mailed by registered mail to (a) in the case of the

Company, 235 Montgomery Street, San Francisco, California 94104, attention of Edgar Canfield, Vice President and Trust Officer (with a copy to The Northern Trust Company, 50 South LaSalle Street, Chicago, Illinois 60690, attention of Richard W. Resseguie, Vice President, Banking Division II), or such other address as may hereafter be furnished to the Trustee in writing by the Company, (b) in the case of the Trustee, at its Corporate Trust Office, or such other address as may hereafter be furnished to the Company in writing by the Trustee. An affidavit by any person representing or acting on behalf of the Company or the Trustee as to such mailing, having the registry receipt attached, shall be conclusive evidence of the giving of such demand, notice or communication.

SECTION 9.06. *Effect of Headings.* The Article and Section headings herein are for convenience only and shall not affect the construction hereof.

SECTION 9.07. *Execution.* Although this Agreement is dated as of August 1, 1971, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

SECTION 9.08. *Applicable Laws.* Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, the Company hereby waives any provision of law which renders any provision hereof prohibited or unenforceable in any respect.

SECTION 9.09. *New York Law Governs.* The provisions of this Agreement, and all the rights and obligations of the parties hereunder, shall be governed by the laws of the State of New York, *provided, however*, that the parties shall be entitled to all rights conferred by Section

20c of the Interstate Commerce Act, such additional rights arising out of the filing, recording or depositing hereof and of any assignment hereof or out of the marking of the Trust Equipment as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited or in which any Trust Equipment may be located.

IN WITNESS WHEREOF, the Trustee and the Company have caused their names to be signed hereto by their respective officers thereunto duly authorized and their respective corporate seals, duly attested, to be hereunto affixed as of the day and year first written.

UNITED STATES TRUST COMPANY
OF NEW YORK, as Trustee,

[CORPORATE SEAL.]

by
Assistant Vice President.

Attest:

.....
Assistant Secretary.

FIRST WESTERN BANK AND TRUST
COMPANY, as Owner-Trustee,

[CORPORATE SEAL]

by
*Vice President and
Trust Officer.*

Attest:

.....
Assistant Secretary.

ANNEX A

<u>Quantity</u>	<u>Type and Specifications</u>	<u>Cost</u>	<u>Identifying Numbers (both inclusive)</u>
1,000	4,785 cubic foot, 100-ton capacity, covered hopper cars, without center sill, with gravity gate unloading and lined; Manufacturer's Specifications	\$17,925,000	PCB 888749 through 889748, both inclusive
200	4,785 cubic foot, 100-ton capacity, covered hopper cars, without center sill, with gravity gate unloading and unlined; Manufacturer's Specifications	3,450,000	PCB 889749 through 889948, both inclusive
51	4,785 cubic foot, 100-ton capacity, covered hopper cars, without center sill, with pneumatic unloading and lined; Manufacturer's Specifications	938,400	PCB 889949 through 889999, both inclusive

LEASE OF RAILROAD EQUIPMENT

DATED AS OF AUGUST 1, 1971

By and Between

FIRST WESTERN BANK AND TRUST COMPANY,
as Owner-Trustee,
Lessor

and

PULLMAN INCORPORATED,
Lessee

[Covering 1,251 Covered Hopper Cars]

LEASE OF RAILROAD EQUIPMENT, dated as of August 1, 1971, between FIRST WESTERN BANK AND TRUST COMPANY, a California banking corporation, as Owner-Trustee, under a Trust Agreement (hereinafter called the "Trust Agreement" and said Owner-Trustee being hereinafter called "Lessor"), dated as of August 1, 1971, with The Northern Trust Company and PULLMAN INCORPORATED, a Delaware corporation (hereinafter called "Lessee" or "Manufacturer").

WHEREAS, Lessor has entered into an Equipment Trust Agreement dated as of August 1, 1971 (hereinafter called the "Equipment Trust Agreement") with United States Trust Company of New York, as Trustee (hereinafter called the "Trustee"), under which Lessor has agreed to cause to be sold, assigned and transferred to the Trustee security title to all the covered hopper cars (hereinafter called the "Cars") described in Annex A thereto and under which security title to the Cars will be reserved to the Trustee until Lessor fulfills all its obligations under the Equipment Trust Agreement;

WHEREAS, Lessee desires to lease from Lessor all the Cars as are delivered and accepted and settled for under the Equipment Trust Agreement on or prior to April 1, 1972, at the rentals and for the terms and upon the conditions, hereinafter provided;

WHEREAS, Lessee will sublease the Cars to the Trustees of the Property of the Penn Central Transportation Company, Debtor (hereinafter called "Sublessee"), pursuant to a Lease of Railroad Equipment dated as of April 21, 1971 (hereinafter called the "Sublease");

NOW, THEREFORE, in consideration of the promises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by Lessee, Lessor hereby leases the Cars to Lessee upon the following terms and conditions, but subject and subordinate to all the rights and remedies of the Trustee under the Equipment Trust Agreement.

SECTION 1. *Delivery and Acceptance of Cars.* During the manufacture of each Car Lessee will cause the materials and other components which are to be incorporated in, and used in the construction of,

such Car to be inspected by its authorized representative at Manufacturer's Butler, Pennsylvania plant. Promptly after completion of manufacture thereof Lessor will require Manufacturer to cause such Car to be tendered to Lessor and, on behalf of Lessor, to Lessee at said plant. Upon such tender Lessee will forthwith cause such Car to be further inspected by the authorized representative referred to above and, if such Car complies fully with the specifications and is in good order and ready for service, Lessee will cause such representative to execute and deliver to Lessor and to Manufacturer a certificate of inspection and a Certificate of Inspection and Acceptance of an authorized representative of Sublessee as contemplated by the Sublease, whereupon such Car shall be deemed to have been delivered to and accepted by Lessee, and shall be subject thereafter to all the terms and conditions of this Lease.

At all times during the continuance of this Lease title to the Cars shall be vested in Lessor to the exclusion of Lessee and Sublessee, and any rights of Lessee and Sublessee in respect of the Cars shall constitute a leasehold interest only.

Any of the Cars not delivered by Manufacturer to Lessor and accepted by Lessee and Sublessee on or before April 1, 1972, shall be excluded from this Lease and this Lease shall not be effective as to any Cars not so delivered and accepted.

SECTION 2. Term of the Lease. The initial term of this Lease, (hereinafter called the "Initial Term"), as to each Car shall commence on the date of delivery to Lessee specified in the certificate of inspection for such Car and, subject to the provisions of Sections 9 and 11 hereof, shall terminate on the day, (hereinafter called the "Initial Term Terminal Day"), preceding the fifteenth anniversary of the Average Date of Acceptance, as hereinafter defined in this Section 2. The term of this Lease shall expire on the Initial Term Terminal Day unless Lessee exercises either or both of its rights and options to extend the term of this Lease as hereinafter provided in this Section 2.

Unless an Event of Default under Section 11 hereof shall have occurred and be continuing, Lessee shall have the right and option, by written notice given to Lessor not less than ninety (90) days prior to the Initial Term Terminal Day, to extend, subject to the provisions of Section 9 hereof, the term of this Lease with respect to the Cars then subject to this Lease for an additional period of five (5) years, (hereinafter called the "First Extended Term"), commencing on the fifteenth anniversary of the Average Date of Acceptance, as hereinafter defined in this Section 2, and ending on the day, (hereinafter called the "First Extended Term Terminal Day"), preceding the twentieth anniversary of the Average Date of Acceptance, as hereinafter defined in this Section 2.

Unless an Event of Default under Section 11 hereof shall have occurred and be continuing, Lessee shall have the right and option, by written notice given to Lessor not less than ninety (90) days prior to the First Extended Term Terminal Day, to further extend, subject to the provisions of Section 9 hereof, the term of this Lease with respect to the Cars then subject to this Lease for an additional period of five (5) years, (hereinafter called the "Second Extended Term"), commencing on the twentieth anniversary of the Average Date of Acceptance, as hereinafter defined in this Section 2, and ending on the day, (hereinafter called the "Second Extended Term Terminal Day"), preceding the twenty-fifth anniversary of the Average Date of Acceptance, as hereinafter defined in this Section 2.

In the event that Sublessee exercises either or both of its rights and options to extend the term of the Sublease, the Lessee shall exercise its corresponding right and option hereunder to extend the term of the Lease.

From and after the date of execution hereof until the expiration or termination of the Initial Term or any extension thereof, as to any Car as set forth in this Section, this Lease shall not be subject to termination by Lessor except pursuant to Section 11 hereof upon the occurrence of an Event of Default, or by Lessee except pursuant to Section 9 hereof.

For the purposes of this Lease, the "Average Date of Acceptance" shall be the first day of the calendar month next succeeding a date

determined as follows: the number of Cars accepted by Lessee on each date of acceptance on or prior to April 1, 1972 shall in each case be multiplied by the number of days elapsed subsequent to the date of the acceptance of the first Car accepted; the products so obtained shall be added together and divided by the total number of Cars so accepted; and the quotient so obtained (rounded out to the nearest whole number) will be the number of days elapsed subsequent to the date of the acceptance of the first Car to and including the date which is the Average Date of Acceptance; *provided, however*, that the Average Date of Acceptance may be such other date as shall be agreed upon in writing by the Trustee, Lessor and Lessee.

Lessee shall deliver to the Trustee as promptly as possible a Lessee's Certificate (as defined in the Equipment Trust Agreement) setting forth the date of the Average Date of Acceptance as determined according to the next preceding paragraph. If the Lessee's Certificate is not so delivered within ten business days after the Cut-Off Date (as defined in the Equipment Trust Agreement), the Average Date of Acceptance shall be deemed to be December 1, 1971.

SECTION 3. *Rentals.* Lessee agrees to pay to Lessor, in cash, for the Initial Term of this Lease rental for each of the Cars subject to this Lease at the monthly rate specified for such type of Car in Exhibit A hereof. Such rental shall begin to accrue on the date on which such Car is delivered to and accepted by Lessee hereunder and continuing during the period ending on the earlier of (i) the Initial Term Terminal Day or (ii) the date, if any, on which this Lease shall terminate with respect to such Car pursuant to Section 9 or Section 11 hereof. The Lessee shall also pay to the Lessor as additional rental on the first day of each calendar month, such amounts, if any, when added to the rentals paid, if any, on such date as aforesaid, as will equal all payments due and payable to the Trustee pursuant to the Equipment Trust Agreement (without giving effect to any acceleration of the principal payments under the Equipment Trust Agreement due to an Event of Default [as defined in the Equipment Trust Agreement] not attributable to the Lessee), other than payments due and payable under Sections 3.03,

4.04(1) and 8.05 of the Equipment Trust Agreement. Lessor and Lessee further agree that any Investments (as defined in the Equipment Trust Agreement) will be made only at the direction of Lessee and (i) Lessor shall pay over to Lessee any amounts received by it pursuant to the last paragraph of Section 8.04 of the Equipment Trust Agreement; and (ii) Lessee will pay to Lessor as additional rental all amounts required to be paid by Lessor pursuant to Section 4.04(1)(b) of the Equipment Trust Agreement whether or not any of the Cars have been delivered hereunder.

In the event that Lessee exercises its first right and option to extend the term of this Lease, Lessee agrees to pay to Lessor, in cash, during the First Extended Term rental for each of the Cars then subject to this Lease at the monthly rate specified for such type of Car in Exhibit A hereof beginning on the fifteenth anniversary of the Average Date of Acceptance and ending on the earlier of (i) the First Extended Term Terminal Day or (ii) the date, if any, on which this Lease shall terminate with respect to such Car pursuant to Section 9 or Section 11 hereof.

In the event that Lessee exercises its second right and option to further extend the term of this Lease, Lessee agrees to pay to Lessor, in cash, during the Second Extended Term rental for each of the Cars then subject to this Lease equal to the Fair Rental Value, as hereinafter defined in this Section 3, of such Car on the twentieth anniversary of the Average Date of Acceptance beginning on such twentieth anniversary and ending on the earlier of (i) the Second Extended Term Terminal Day or (ii) the date, if any, on which this Lease shall terminate with respect to such Car pursuant to Section 9 or Section 11 hereof.

If on or before two months prior to the expiration of the First Extended Term of this Lease, Lessor and Lessee are unable to agree upon a determination of the Fair Rental Value of such Cars, the Fair Rental Value shall be determined by an independent appraiser mutually agreed upon by Lessor and Lessee, or failing such agreement, a panel of three independent appraisers, one of whom shall be selected by Lessor, the second by Lessee and the third designated by the first

two so selected. The appraiser or appraisers shall be instructed to make such determination within a period of thirty days following appointment and shall promptly communicate such determination in writing to Lessor and Lessee. The determination so made shall be conclusively binding upon both Lessor and Lessee. The expenses and fees of the appraiser or appraisers shall be borne by Lessee.

Fair Rental Value shall mean at any time for the determination thereof an amount determined on the basis of, and equal to, the value which would obtain in an arms'-length transaction between an informed and willing lessee-user (other than a lessee-user currently in possession) and an informed and willing lessor under no compulsion to lease and, in such determination, costs of removal from the location of current use shall not be a deduction from such value.

Lessee agrees to pay the rentals set forth in Exhibit A hereto (or the Fair Rental Value) to Lessor as follows: for the calendar month during which a Car is delivered and accepted a daily pro rata rental rate for such Car will be payable from the date of acceptance through the last day of that month on or before the 10th day of the following month and the rental for each succeeding month will be payable on the first business day of the calendar month next succeeding the calendar month in which the rental accrued.

Lessee will pay, to the extent legally enforceable, interest at the rate of $10\frac{1}{2}\%$ per annum upon rentals remaining unpaid after the same shall have become due and payable under any of the provisions of this Lease.

This Lease is a net lease and Lessee shall not be entitled to any abatement of rent, reduction thereof or set-off against rent, including, but not limited to, abatements, reductions or set-offs due or alleged to be due to, or by reason of, any past, present or future claims of Lessee against Lessor under this Lease or otherwise or against the Trustee; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of Lessor or Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use of or destruction of all or any of the Cars from whatsoever cause, the prohibition of or other restriction against Les-

see's use of all or any of the Cars, the interference with such use by any private person or entity, the invalidity or unenforceability or lack of due authorization of this Lease or lack of right, power or authority of Lessor to enter into this Lease, or by reason of any failure by Lessor to perform any of its obligations herein contained, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease.

Lessor irrevocably instructs Lessee to make, and Lessee agrees to make, all the payments provided for in this Lease in immediately available New York funds (for the account of Lessor, care of the Trustee at its office at 130 John Street, New York, New York 10038, attention of Corporate Trust Department). Such payments shall be applied by the Trustee to satisfy the obligations of Lessor under the Equipment Trust Agreement due and payable on the date (or the next succeeding Business Day as defined in the Equipment Trust Agreement) such payments are due and payable hereunder and, so long as no Event of Default under the Equipment Trust Agreement shall have occurred and be continuing, any balance shall be paid directly to Lessor at its offices at 235 Montgomery Street, San Francisco, California 94104.

SECTION 4. *Covenants, Representations, Warranties and Disclaimers Thereof.* Lessor makes no warranty or representation, either express or implied, as to the design, compliance with specifications, or condition of, or as to the quality of the material, equipment or workmanship in, or as to the suitability, adequacy, operation, use or performance of, the Cars delivered to Lessee hereunder, and Lessor makes no warranty of merchantability or fitness of the Cars for any particular purpose, it being agreed that all such risks, as between Lessor and Lessee, are to be borne by Lessee. Lessor shall have no responsibility or liability under this Lease to Lessee or any other person with respect to any of the following: (i) any liability, loss or

damage caused directly or indirectly by any Cars or by any inadequacy thereof or deficiency or defect therein or by any other circumstance in connection therewith; (ii) the use, operation or performance of any Cars or any risks relating thereto; (iii) any interruption of service, loss of business or anticipatory profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Cars. Lessee's acceptance of delivery of the Cars shall be conclusive evidence as between Lessee, Lessor and Trustee, that all Cars described in a Certificate of Inspection and Acceptance are in all the foregoing respects satisfactory to Lessee and Lessee will not assert any claim of any nature whatsoever against Lessor or Trustee based on any of the foregoing matters.

Lessor represents and warrants that at the time of delivery of each Car under this Lease, Lessor shall have such title to such Car as is derived from the Manufacturer, unimpaired by any act or omission of Lessor which will in any manner prevent the performance of this Lease in accordance with its terms and, in addition, such Car shall be free and clear of all claims, liens and encumbrances (other than the Equipment Trust Agreement) which may result from claims against Lessor not arising out of the ownership thereof which will prevent the performance of this Lease in accordance with its terms.

Lessor covenants and agrees not to alter, amend or modify the Equipment Trust Agreement without the prior written consent of Lessee.

SECTION 5. *Opinion of Counsel.* Promptly after the execution and delivery of this Lease, Lessee will deliver to Lessor the written opinion of counsel for Lessee, in such number of counterparts as may reasonably be requested, and addressed to Lessor, in scope and substance satisfactory to it and its counsel, to the effect that (i) Lessee is a corporation legally incorporated and validly existing, in good standing, under the laws of the State of Delaware, with full corporate power to enter into this Lease; and (ii) this Lease has been duly authorized, executed and delivered by Lessee and constitutes a valid, legal and binding agreement, of Lessee, enforceable against Lessee in accordance with its terms.

SECTION 6. *Identification of Cars; Numbering.* Upon or before the delivery to Lessee of each of the Cars, Manufacturer has agreed to cause to be plainly, distinctly, permanently and conspicuously placed or fastened upon each side of such Car a legend bearing the following words in letters not less than one inch in height:

OWNED BY UNITED STATES TRUST COMPANY OF NEW YORK,
130 JOHN STREET, NEW YORK, NEW YORK,
AS TRUSTEE UNDER THE TERMS OF AN
EQUIPMENT TRUST AGREEMENT

or other appropriate words designated by Lessor or the Trustee, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the title of Lessor and the security title of the Trustee to each of the Cars and the rights of Lessor under this Lease and the Equipment Trust Agreement and of the Trustee under the Equipment Trust Agreement.

In case, during the continuance of this Lease, any such legend shall at any time be painted over or otherwise made inconspicuous, removed, defaced or destroyed on any Car, Lessee shall immediately cause the same to be restored or replaced. Lessee will not allow the name of any person, association or corporation to be placed on any of the Cars as a designation which might be interpreted as indicating a claim of ownership thereof by any person, association or corporation other than Lessor or its assignee; but the Cars may be lettered with the names or initials or other insignia customarily used by Lessee or any sublessee on equipment of the same or a similar type for convenience of identification of the rights to use and operate the Cars under this Lease.

On or prior to the time of delivery of each Car to Lessee, Manufacturer has agreed to cause to be placed on each side of such Car the identifying reporting mark PCB and the Sublessee's Road Number, such numbers to commence with 888749 and to run consecutively upwards. At all time thereafter, during the continuance of this Lease, Lessee will cause each Car to bear the numbers and reporting marks so assigned to it, and Lessee will not change or permit to be changed the numbers of any Car except in accordance with a statement of new numbers to be substituted therefor which previously shall have been filed with Lessor and Trustee by Lessee and filed, recorded or deposited

alization, and in which event, Lessor shall be entitled to the full amount of any award or recovery from such occurrence and Lessee hereby expressly waives any right or claim to any part of such award or recovery as damages or otherwise;

(d) default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of Lessee contained herein and such default shall continue for thirty (30) days after written notice from Lessor to Lessee specifying the default and demanding the same to be remedied;

(e) any proceedings shall be commenced by or against Lessee for any relief under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of Lessee hereunder), unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such effectiveness shall continue), and all the obligations of Lessee under this Lease shall not have been duly assumed in writing by a trustee or trustees or receiver or receivers appointed for Lessee or for its property in connection with any such proceedings or otherwise given the same status as obligations assumed by such a trustee or trustees or receiver or receivers, within thirty (30) days after such appointment; if any, or sixty (60) days after such proceedings shall have been commenced, whichever shall be earlier; or

(f) any representation or warranty of the Lessee contained herein, in the Purchase Agreement (as defined in the Equipment Trust Agreement), or in any document or certificate furnished to the Trustee, any of the Purchasers (as defined in the Equipment Trust Agreement) or the Lessor pursuant hereto or thereto shall be false or incorrect in any material respect on the date as of which made;

then, in any such case (herein sometimes called Events of Default), Lessor, at its option, may

(1) proceed by appropriate court action or actions, either at law or in equity, to enforce performance by Lessee of the appli-

cable covenants of this Lease or to recover damages for the breach thereof; or

(2) by notice in writing to Lessee terminate this Lease, whereupon all right of Lessee to the use of the Cars shall absolutely cease and determine as though this Lease had never been made, but Lessee shall remain liable as herein provided; and thereupon Lessee shall deliver possession of the Cars to Lessor in accordance with Section 15 hereof unless such delivery is impossible because the Cars or any portion thereof were requisitioned, taken over or nationalized as described in paragraph (c) of this Section 11 and Lessor may by its agents enter upon the premises of Lessee or other premises where any of the Cars may be and take possession of all or any of such Cars (damages occasioned by such taking of possession are hereby expressly waived by Lessee) and thenceforth hold, possess and enjoy the same free from any right of Lessee, or Lessee's successors or assigns or sublessees, to use the Cars for any purpose whatever; but Lessor shall, nevertheless, have a right to recover from Lessee any and all amounts which under the terms of this Lease may be then due or which may become due and unpaid for the use of the Cars (including rentals accruing on the Cars after the date of default); and also to recover forthwith from Lessee (to the extent not recovered pursuant to the foregoing) the following:

(i) as damages for loss of the bargain and not as a penalty, a sum, with respect to Cars whose term has not expired, which represents the excess of the present worth, at the time of such termination, of the aggregate of the rentals for the Cars which would otherwise have accrued hereunder from the date of such termination to the Terminal Day of the then current term over the then present worth of the Fair Rental Value of such Cars for such period; plus interest on such excess at the rate of 10% per annum commencing on the date of such notice. Such present worths are to be computed in each case by discounting such rental payments at a rate of 9% per annum compounded monthly from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated to the time of such termination,

(ii) any expenses incurred in the retaking, storage, repairing and lease, sale or other disposition, and reasonable attorneys' fees incurred by Lessor, plus an amount equal to accrued taxes and other amounts payable hereunder by Lessee with respect to the Cars, all costs, expenses, losses and damages incurred or sustained by Lessor by reason of such default, and interest at the rate of 10% per annum on each of the foregoing items in this subparagraph (ii) and on all other sums not paid when due under this Lease; and

(iii) an amount which, after deduction of all taxes required to be paid by Lessor (or the beneficiary under the Trust Agreement) in respect of the receipt thereof under the laws of the United States or any political subdivision thereof, shall be equal to any portion of the increase in the tax liability of Lessor (or such beneficiary) attributable to the loss or reduction of the Rapid Amortization Deduction (as hereinafter defined) in respect of a Car which is so lost or reduced as a result of the sale or other disposition of Lessor's interest in such Car after the occurrence of an Event of Default.

Anything in this Section 11 to the contrary notwithstanding, any default in the observance or performance of any covenant, condition or agreement on the part of Lessee which results solely in the loss by Lessor of, or the loss by Lessor of the right to claim, or the disallowance with respect to Lessor of, all or any portion of the amortization deduction with respect to a Car provided for in Section 184 of the Internal Revenue Code of 1954, as amended, or any successor section thereto (herein called the Rapid Amortization Deduction), shall be, for all purposes of this Lease, deemed to be cured if Lessee shall, on or before the next rental payment date after written notice from Lessor of the loss, or the loss of the right to claim, or the disallowance of the Rapid Amortization Deduction in respect of such Car, have been paid to Lessor the supplemental rent in respect of such Car determined as provided in the second paragraph of Section 10 of the Lease.

If on the date of such termination or repossession, any Car is damaged, lost, stolen or destroyed or is subject to any levy, seizure, assignment, application or sale for or by any creditor, Lessee shall also remain liable for payment of the amounts specified in Section 9 hereof.

The remedies in this Lease 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. Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify any of the remedies herein provided, to the extent that such waiver is permitted by law. No delay or omission of Lessor in the exercise of any power or remedy given herein shall be deemed a waiver of such power or remedy. In the event that Lessor shall bring suit and be entitled to judgment hereunder, then Lessor shall be entitled to recover reasonable expenses, including attorneys' fees and the amount thereof shall be included in such judgment.

SECTION 12. *Possession and Use of the Cars.* Lessee, so long as it shall not be in default under this Lease, shall be entitled to the possession and use of the Cars. Such possession and use shall be limited (a) to subletting all of the Cars to Sublessee pursuant to the Sublease, or (b) upon the occurrence of an event of default under the Sublease, to resubletting all of the Cars to other users. If Lessee elects to so resublease during the first five (5) years of the Initial Term of this Lease, Lessee agrees that it will use its best efforts to resublet all or as many of the Cars as it can, to other domestic common carriers in such manner as to permit a continuation of amortization under Section 184 of the Internal Revenue Code of 1954, as amended. Such resubletting shall be upon terms and conditions and at rental rates substantially similar to those that would apply to the remainder of the term of the Sublease and upon and subject to all the terms and conditions of the Equipment Trust Agreement and this Lease, and to all rights of the Trustee under the Equipment Trust Agreement and of Lessor hereunder. Upon Lessee's election to resublease the Cars, Lessee shall immediately notify Lessor and Lessor shall have the right, but not

the obligation, during a sixty (60) day period from the date of such notice to resublet for and on behalf of Lessee and on the same terms and conditions as would apply if Lessee had resublet such Cars. During such period Lessor shall use its best efforts so that the term of the Sublease shall continue in full force and effect in order to avoid a constructive termination under Section 184 (e) (6) of the Internal Revenue Code of 1954 or any existing election of amortization under Section 184 (b) of the Code. Any of the Cars not resublet during such sixty (60) day period may be resublet by Lessee to any other user upon terms and conditions and at rental rates acceptable to Lessee and upon and subject to all the terms and conditions of the Equipment Trust Agreement and this Lease, and to all of the rights of the Trustee under the Equipment Trust Agreement and of Lessor hereunder.

SECTION 13. *Assignment.*

(a) All rights, benefits and advantages of Lessor hereunder may be assigned, pledged, mortgaged, transferred or otherwise disposed of, either in whole or in part and/or Lessor may assign, pledge, mortgage, transfer or otherwise dispose of title to the Cars, with or without notice to Lessee. In the event of any such assignment, pledge, mortgage, transfer or other disposition, this Lease and all of Lessee's rights under this Lease, and all rights of any person, firm or corporation who claims or who may hereafter claim any rights under this Lease under or through Lessee, are hereby made subject and subordinate to the terms, covenants and conditions of any chattel mortgages, conditional sale agreements, agreements and assignments, and/or equipment trust agreements (including the Equipment Trust Agreement) covering the Cars or any of them heretofore or hereafter created and entered into by Lessor, its successors or assigns, and to all of the rights of any such chattel mortgagee, assignee, trustee or other holder of the legal title to the Cars. Any assignment or transfer of Lessee's leasehold interest hereunder in the Cars and possession thereof permitted by this Section 13 that is made by Lessee, its successors or assigns, shall contain language which expressly makes such sublease subject to the subordination contained in this Section 13 (a).

(b) Lessee, without the prior written consent of Lessor, shall not sell, assign, transfer or encumber its leasehold interest under this Lease in any of the Cars, except that Lessee may assign and transfer its leasehold interest hereunder in the Cars and the possession thereof as provided in Section 12 and also to any corporation which shall have assumed all of the obligations hereunder of Lessee and into or with which Lessee shall have merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety. No such assignment or transfer shall be made if, after giving effect thereto, any Car would not be deemed to be "qualified railroad rolling stock" within the meaning of Section 184(d) of the Internal Revenue Code of 1954, as amended. No such sale, assignment or transfer made with the permission of Lessor shall relieve the Lessee of its obligation under this Lease. Any assignment prohibited by this Section 13 shall be void.

SECTION 14. *Reports; Right to Inspect the Cars.*

(a) During the continuance of this Lease, Lessee will immediately report to Lessor each accident which causes any damage to the Cars, including but not limited to any accident arising out of the alleged or apparent manufacturing, functioning or operation of any of the Cars. Such report shall contain the time, place and nature of the accident and the damage suffered, the names and addresses of parties involved, persons injured, if any, witnesses and owners of property damaged, if any, and such other information as may be known, and promptly advise Lessor of all correspondence, papers, notices and documents whatsoever received by Lessee in connection with any claim or demand involving or relating to such accident or charging Lessor with liability. Lessee agrees that it and its agents, employees and representatives will cooperate with Lessor in the investigation and defense of all such claims and that they will aid in the recovery of damages from any third parties responsible therefor.

(b) During the term hereof, Lessee will furnish to Lessor and the Trustee on or before April 1 in each year (commencing with the year 1973) and on such other dates as Lessor or the Trustee may from time to time reasonably request, an accurate report certified by a duly authorized agent of Lessee or officer stating as of a recent date (but,

in the case of each annual statement, not earlier than the preceding December 31 and in the case of any other such statement, not earlier than a date ninety (90) days preceding the date of such statement): (a) (i) the car numbers of the Cars then subject to this Lease, (ii) the car numbers of all Cars that have become worn out, lost, destroyed, irreparably damaged or rendered permanently unfit for use since the date of the previous report (or since the date hereof in the case of the first such report), (iii) the car numbers of all Cars being repaired or awaiting repairs, and (iv) the car numbers of all Cars that have been requisitioned, taken over or nationalized by any governmental authority since the date of the previous report (or since the date hereof in the case of the first such report); (b) that all Cars then subject to the Lease have been maintained in accordance with Section 8(a) hereof or, if such be the case, are then being repaired in accordance with Section 8 hereof, and that the legend placed on the Cars as required by Section 6 hereof and Section 4.06 of the Equipment Trust Agreement has been preserved or repainted on each side of each Car and that the identifying reporting mark and the appropriate car number have been preserved or repainted on each side of each Car as required by those Sections; (c) certifying that no default has occurred and is continuing under the Lease, or specifying all such defaults and the action being taken by the Lessee to remedy the same, and (d) such other information regarding the location, condition and state of repair of the Cars as Lessor or the Trustee may reasonably request.

(c) Lessor and the Trustee shall have the right, at their sole cost and expense, by their authorized agents, employees and/or representatives, to inspect the Cars and Lessee's records with respect thereto, at such times and from time to time during the continuance of this Lease as may be reasonably necessary to confirm to the satisfaction of Lessor and the Trustee the existence and proper maintenance of the Cars; *provided, however*, that notwithstanding any contrary provision hereof, Lessee does not assume liability for injury to, or the death of, any agents, employees and/or representatives of Lessor or the Trustee or other persons while exercising any right under this Section 14(c).

SECTION 15. *Return of Cars.* Upon the expiration of the term of this Lease, or if Lessor shall rightfully demand possession of the Car pursuant to this Lease or otherwise, Lessee shall forthwith remove or cause any lettering of the names or initials or other insignia customarily used by Lessee or Sublessee to be removed from the Cars at its cost and expense and deliver the possession of the Cars to Lessor.

On the termination of this Lease pursuant to its terms (otherwise than pursuant to Section 11 hereof) Lessee shall at its own cost and expense forthwith assemble the Cars and place them upon such storage tracks of Sublessee as Lessor may designate, or in the absence of such designation, as Lessee may select, and Lessor shall be permitted to store said Cars on such tracks at the expense of Lessee for a period not exceeding one hundred (100) days from the date that all Cars are so assembled at the risk of Lessor, and Lessee shall cause at Lessee's expense the Cars, or any thereof, to be transported or cause to be transported, at any time within such one hundred (100) day period, to any place or places on the lines of railroad operated by Sublessee or to any connecting carrier for shipment, all as directed by Lessor.

If the Lessor shall rightfully demand possession of the Cars pursuant to Section 11 hereof, the Lessee shall at its own cost and expense forthwith assemble the Cars and place them upon such storage tracks as Lessor may reasonably request (or, if Lessor and Lessee agree, upon such storage tracks of Sublessee) as Lessor may designate, or in the absence of such designation, as Lessee may select, and Lessor shall be permitted to store said Cars at the expense of Lessee on such tracks at the risk of Lessee until the Cars have been sold, leased or otherwise disposed of by Lessor and Lessee shall at Lessee's expense cause the Cars to be transported to any connecting carrier for shipment if so directed by Lessor.

The assembling, delivery, storage and transporting of the Cars as hereinabove provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises Lessor shall be entitled to a decree against Lessee so as to assemble, deliver, store and transport the Cars.

Without in any way limiting the obligation of Lessee under the foregoing provisions of this Section 15, Lessee hereby irrevocably appoint Lessor as the agent and attorney of Lessee, with full power and authority, at any time while Lessee is obliged to deliver possession of any Car to Lessor, to demand and take possession of such Car in the name and behalf of Lessee from whomsoever shall be at the time in possession of such Car.

Except as otherwise provided in Section 9 hereof, in the event that any Car or Cars subject to this Lease are not redelivered to Lessor on or before the date on which the term of this Lease expires, all of the obligations of Lessee under this Lease with respect to such Car or Cars shall remain in full force and effect until such Car or Cars are redelivered to Lessor.

SECTION 16. *Purchase Options.* Provided that this Lease has not been earlier terminated and Lessee is not in default hereunder, Lessee may by written notice delivered to Lessor not less than six months prior to the end of the Initial Term, the First Extended Term or the Second Extended Term of this Lease, elect to purchase all of the Cars covered by this Lease at the end of such term or extension of this Lease for a purchase price equal to the Fair Market Value of such Cars as of the end of such term or extension.

If on or before four months prior to the extension of the term of this Lease or any extension thereof, Lessor and Lessee are unable to agree upon a determination of the Fair Market Value of the Cars, the Fair Market Value shall be determined by an appraiser or appraisers under the same procedures as are set forth in Section 3 hereof.

Fair Market Value shall mean at any time for the determination thereof an amount determined on the basis of, and equal to, the value which would obtain in an arm's-length transaction between an informed and willing buyer-user (other than (i) a lessee currently in possession and (ii) a used equipment dealer) and an informed and willing seller under no compulsion to sell and, in such determination, costs of removal from the location of current use shall not be a deduction from such value.

alization, and in which event, Lessor shall be entitled to the full amount of any award or recovery from such occurrence and Lessee hereby expressly waives any right or claim to any part of such award or recovery as damages or otherwise;

(d) default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of Lessee contained herein and such default shall continue for thirty (30) days after written notice from Lessor to Lessee specifying the default and demanding the same to be remedied;

(e) any proceedings shall be commenced by or against Lessee for any relief under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of Lessee hereunder), unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such effectiveness shall continue), and all the obligations of Lessee under this Lease shall not have been duly assumed in writing by a trustee or trustees or receiver or receivers appointed for Lessee or for its property in connection with any such proceedings or otherwise given the same status as obligations assumed by such a trustee or trustees or receiver or receivers, within thirty (30) days after such appointment; if any, or sixty (60) days after such proceedings shall have been commenced, whichever shall be earlier; or

(f) any representation or warranty of the Lessee contained herein, in the Purchase Agreement (as defined in the Equipment Trust Agreement), or in any document or certificate furnished to the Trustee, any of the Purchasers (as defined in the Equipment Trust Agreement) or the Lessor pursuant hereto or thereto shall be false or incorrect in any material respect on the date as of which made;

then, in any such case (herein sometimes called Events of Default), Lessor, at its option, may

(1) proceed by appropriate court action or actions, either at law or in equity, to enforce performance by Lessee of the appli-

cable covenants of this Lease or to recover damages for the breach thereof; or

(2) by notice in writing to Lessee terminate this Lease, whereupon all right of Lessee to the use of the Cars shall absolutely cease and determine as though this Lease had never been made, but Lessee shall remain liable as herein provided; and thereupon Lessee shall deliver possession of the Cars to Lessor in accordance with Section 15 hereof unless such delivery is impossible because the Cars or any portion thereof were requisitioned, taken over or nationalized as described in paragraph (c) of this Section 11 and Lessor may by its agents enter upon the premises of Lessee or other premises where any of the Cars may be and take possession of all or any of such Cars (damages occasioned by such taking of possession are hereby expressly waived by Lessee) and thenceforth hold, possess and enjoy the same free from any right of Lessee, or Lessee's successors or assigns or sublessees, to use the Cars for any purpose whatever; but Lessor shall, nevertheless, have a right to recover from Lessee any and all amounts which under the terms of this Lease may be then due or which may become due and unpaid for the use of the Cars (including rentals accruing on the Cars after the date of default); and also to recover forthwith from Lessee (to the extent not recovered pursuant to the foregoing) the following:

(i) as damages for loss of the bargain and not as a penalty, a sum, with respect to Cars whose term has not expired, which represents the excess of the present worth, at the time of such termination, of the aggregate of the rentals for the Cars which would otherwise have accrued hereunder from the date of such termination to the Terminal Day of the then current term over the then present worth of the Fair Rental Value of such Cars for such period; plus interest on such excess at the rate of 10% per annum commencing on the date of such notice. Such present worths are to be computed in each case by discounting such rental payments at a rate of 9% per annum compounded monthly from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated to the time of such termination,

(ii) any expenses incurred in the retaking, storage, repairing and lease, sale or other disposition, and reasonable attorneys' fees incurred by Lessor, plus an amount equal to accrued taxes and other amounts payable hereunder by Lessee with respect to the Cars, all costs, expenses, losses and damages incurred or sustained by Lessor by reason of such default, and interest at the rate of 10% per annum on each of the foregoing items in this subparagraph (ii) and on all other sums not paid when due under this Lease; and

(iii) an amount which, after deduction of all taxes required to be paid by Lessor (or the beneficiary under the Trust Agreement) in respect of the receipt thereof under the laws of the United States or any political subdivision thereof, shall be equal to any portion of the increase in the tax liability of Lessor (or such beneficiary) attributable to the loss or reduction of the Rapid Amortization Deduction (as hereinafter defined) in respect of a Car which is so lost or reduced as a result of the sale or other disposition of Lessor's interest in such Car after the occurrence of an Event of Default.

Anything in this Section 11 to the contrary notwithstanding, any default in the observance or performance of any covenant, condition or agreement on the part of Lessee which results solely in the loss by Lessor of, or the loss by Lessor of the right to claim, or the disallowance with respect to Lessor of, all or any portion of the amortization deduction with respect to a Car provided for in Section 184 of the Internal Revenue Code of 1954, as amended, or any successor section thereto (herein called the Rapid Amortization Deduction), shall be, for all purposes of this Lease, deemed to be cured if Lessee shall, on or before the next rental payment date after written notice from Lessor of the loss, or the loss of the right to claim, or the disallowance of the Rapid Amortization Deduction in respect of such Car, have been paid to Lessor the supplemental rent in respect of such Car determined as provided in the second paragraph of Section 10 of the Lease.

If on the date of such termination or repossession, any Car is damaged, lost, stolen or destroyed or is subject to any levy, seizure, assignment, application or sale for or by any creditor, Lessee shall also remain liable for payment of the amounts specified in Section 9 hereof.

The remedies in this Lease 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. Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify any of the remedies herein provided, to the extent that such waiver is permitted by law. No delay or omission of Lessor in the exercise of any power or remedy given herein shall be deemed a waiver of such power or remedy. In the event that Lessor shall bring suit and be entitled to judgment hereunder, then Lessor shall be entitled to recover reasonable expenses, including attorneys' fees and the amount thereof shall be included in such judgment.

SECTION 12. *Possession and Use of the Cars.* Lessee, so long as it shall not be in default under this Lease, shall be entitled to the possession and use of the Cars. Such possession and use shall be limited (a) to subletting all of the Cars to Sublessee pursuant to the Sublease, or (b) upon the occurrence of an event of default under the Sublease, to resubletting all of the Cars to other users. If Lessee elects to so resublease during the first five (5) years of the Initial Term of this Lease, Lessee agrees that it will use its best efforts to resublet all or as many of the Cars as it can, to other domestic common carriers in such manner as to permit a continuation of amortization under Section 184 of the Internal Revenue Code of 1954, as amended. Such resubletting shall be upon terms and conditions and at rental rates substantially similar to those that would apply to the remainder of the term of the Sublease and upon and subject to all the terms and conditions of the Equipment Trust Agreement and this Lease, and to all rights of the Trustee under the Equipment Trust Agreement and of Lessor hereunder. Upon Lessee's election to resublease the Cars, Lessee shall immediately notify Lessor and Lessor shall have the right, but not

the obligation, during a sixty (60) day period from the date of such notice to resublet for and on behalf of Lessee and on the same terms and conditions as would apply if Lessee had resublet such Cars. During such period Lessor shall use its best efforts so that the term of the Sublease shall continue in full force and effect in order to avoid a constructive termination under Section 184 (e) (6) of the Internal Revenue Code of 1954 or any existing election of amortization under Section 184 (b) of the Code. Any of the Cars not resublet during such sixty (60) day period may be resublet by Lessee to any other user upon terms and conditions and at rental rates acceptable to Lessee and upon and subject to all the terms and conditions of the Equipment Trust Agreement and this Lease, and to all of the rights of the Trustee under the Equipment Trust Agreement and of Lessor hereunder.

SECTION 13. *Assignment.*

(a) All rights, benefits and advantages of Lessor hereunder may be assigned, pledged, mortgaged, transferred or otherwise disposed of, either in whole or in part and/or Lessor may assign, pledge, mortgage, transfer or otherwise dispose of title to the Cars, with or without notice to Lessee. In the event of any such assignment, pledge, mortgage, transfer or other disposition, this Lease and all of Lessee's rights under this Lease, and all rights of any person, firm or corporation who claims or who may hereafter claim any rights under this Lease under or through Lessee, are hereby made subject and subordinate to the terms, covenants and conditions of any chattel mortgages, conditional sale agreements, agreements and assignments, and/or equipment trust agreements (including the Equipment Trust Agreement) covering the Cars or any of them heretofore or hereafter created and entered into by Lessor, its successors or assigns, and to all of the rights of any such chattel mortgagee, assignee, trustee or other holder of the legal title to the Cars. Any assignment or transfer of Lessee's leasehold interest hereunder in the Cars and possession thereof permitted by this Section 13 that is made by Lessee, its successors or assigns, shall contain language which expressly makes such sublease subject to the subordination contained in this Section 13 (a).

(b) Lessee, without the prior written consent of Lessor, shall not sell, assign, transfer or encumber its leasehold interest under this Lease in any of the Cars, except that Lessee may assign and transfer its leasehold interest hereunder in the Cars and the possession thereof as provided in Section 12 and also to any corporation which shall have assumed all of the obligations hereunder of Lessee and into or with which Lessee shall have merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety. No such assignment or transfer shall be made if, after giving effect thereto, any Car would not be deemed to be "qualified railroad rolling stock" within the meaning of Section 184(d) of the Internal Revenue Code of 1954, as amended. No such sale, assignment or transfer made with the permission of Lessor shall relieve the Lessee of its obligation under this Lease. Any assignment prohibited by this Section 13 shall be void.

SECTION 14. *Reports; Right to Inspect the Cars.*

(a) During the continuance of this Lease, Lessee will immediately report to Lessor each accident which causes any damage to the Cars, including but not limited to any accident arising out of the alleged or apparent manufacturing, functioning or operation of any of the Cars. Such report shall contain the time, place and nature of the accident and the damage suffered, the names and addresses of parties involved, persons injured, if any, witnesses and owners of property damaged, if any, and such other information as may be known, and promptly advise Lessor of all correspondence, papers, notices and documents whatsoever received by Lessee in connection with any claim or demand involving or relating to such accident or charging Lessor with liability. Lessee agrees that it and its agents, employees and representatives will cooperate with Lessor in the investigation and defense of all such claims and that they will aid in the recovery of damages from any third parties responsible therefor.

(b) During the term hereof, Lessee will furnish to Lessor and the Trustee on or before April 1 in each year (commencing with the year 1973) and on such other dates as Lessor or the Trustee may from time to time reasonably request, an accurate report certified by a duly authorized agent of Lessee or officer stating as of a recent date (but,

in the case of each annual statement, not earlier than the preceding December 31 and in the case of any other such statement, not earlier than a date ninety (90) days preceding the date of such statement): (a) (i) the car numbers of the Cars then subject to this Lease, (ii) the car numbers of all Cars that have become worn out, lost, destroyed, irreparably damaged or rendered permanently unfit for use since the date of the previous report (or since the date hereof in the case of the first such report), (iii) the car numbers of all Cars being repaired or awaiting repairs, and (iv) the car numbers of all Cars that have been requisitioned, taken over or nationalized by any governmental authority since the date of the previous report (or since the date hereof in the case of the first such report); (b) that all Cars then subject to the Lease have been maintained in accordance with Section 8(a) hereof or, if such be the case, are then being repaired in accordance with Section 8 hereof, and that the legend placed on the Cars as required by Section 6 hereof and Section 4.06 of the Equipment Trust Agreement has been preserved or repainted on each side of each Car and that the identifying reporting mark and the appropriate car number have been preserved or repainted on each side of each Car as required by those Sections; (c) certifying that no default has occurred and is continuing under the Lease, or specifying all such defaults and the action being taken by the Lessee to remedy the same, and (d) such other information regarding the location, condition and state of repair of the Cars as Lessor or the Trustee may reasonably request.

(c) Lessor and the Trustee shall have the right, at their sole cost and expense, by their authorized agents, employees and/or representatives, to inspect the Cars and Lessee's records with respect thereto, at such times and from time to time during the continuance of this Lease as may be reasonably necessary to confirm to the satisfaction of Lessor and the Trustee the existence and proper maintenance of the Cars; *provided, however*, that notwithstanding any contrary provision hereof, Lessee does not assume liability for injury to, or the death of, any agents, employees and/or representatives of Lessor or the Trustee or other persons while exercising any right under this Section 14(c).

SECTION 15. *Return of Cars.* Upon the expiration of the term of this Lease, or if Lessor shall rightfully demand possession of the Car pursuant to this Lease or otherwise, Lessee shall forthwith remove or cause any lettering of the names or initials or other insignia customarily used by Lessee or Sublessee to be removed from the Cars at its cost and expense and deliver the possession of the Cars to Lessor.

On the termination of this Lease pursuant to its terms (otherwise than pursuant to Section 11 hereof) Lessee shall at its own cost and expense forthwith assemble the Cars and place them upon such storage tracks of Sublessee as Lessor may designate, or in the absence of such designation, as Lessee may select, and Lessor shall be permitted to store said Cars on such tracks at the expense of Lessee for a period not exceeding one hundred (100) days from the date that all Cars are so assembled at the risk of Lessor, and Lessee shall cause at Lessee's expense the Cars, or any thereof, to be transported or cause to be transported, at any time within such one hundred (100) day period, to any place or places on the lines of railroad operated by Sublessee or to any connecting carrier for shipment, all as directed by Lessor.

If the Lessor shall rightfully demand possession of the Cars pursuant to Section 11 hereof, the Lessee shall at its own cost and expense forthwith assemble the Cars and place them upon such storage tracks as Lessor may reasonably request (or, if Lessor and Lessee agree, upon such storage tracks of Sublessee) as Lessor may designate, or in the absence of such designation, as Lessee may select, and Lessor shall be permitted to store said Cars at the expense of Lessee on such tracks at the risk of Lessee until the Cars have been sold, leased or otherwise disposed of by Lessor and Lessee shall at Lessee's expense cause the Cars to be transported to any connecting carrier for shipment if so directed by Lessor.

The assembling, delivery, storage and transporting of the Cars as hereinabove provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises Lessor shall be entitled to a decree against Lessee so as to assemble, deliver, store and transport the Cars.

Without in any way limiting the obligation of Lessee under the foregoing provisions of this Section 15, Lessee hereby irrevocably appoint Lessor as the agent and attorney of Lessee, with full power and authority, at any time while Lessee is obliged to deliver possession of any Car to Lessor, to demand and take possession of such Car in the name and behalf of Lessee from whomsoever shall be at the time in possession of such Car.

Except as otherwise provided in Section 9 hereof, in the event that any Car or Cars subject to this Lease are not redelivered to Lessor on or before the date on which the term of this Lease expires, all of the obligations of Lessee under this Lease with respect to such Car or Cars shall remain in full force and effect until such Car or Cars are redelivered to Lessor.

SECTION 16. *Purchase Options.* Provided that this Lease has not been earlier terminated and Lessee is not in default hereunder, Lessee may by written notice delivered to Lessor not less than six months prior to the end of the Initial Term, the First Extended Term or the Second Extended Term of this Lease, elect to purchase all of the Cars covered by this Lease at the end of such term or extension of this Lease for a purchase price equal to the Fair Market Value of such Cars as of the end of such term or extension.

If on or before four months prior to the extension of the term of this Lease or any extension thereof, Lessor and Lessee are unable to agree upon a determination of the Fair Market Value of the Cars, the Fair Market Value shall be determined by an appraiser or appraisers under the same procedures as are set forth in Section 3 hereof.

Fair Market Value shall mean at any time for the determination thereof an amount determined on the basis of, and equal to, the value which would obtain in an arm's-length transaction between an informed and willing buyer-user (other than (i) a lessee currently in possession and (ii) a used equipment dealer) and an informed and willing seller under no compulsion to sell and, in such determination, costs of removal from the location of current use shall not be a deduction from such value.

SECTION 17. *Modification of Lease.* This Lease exclusively and completely states the rights of Manufacturer, Lessor and Lessee with respect to the Cars. No modification, variation, termination, discharge or abandonment hereof and no waiver of any of the provisions or conditions shall be valid unless in writing and signed by duly authorized representatives of Lessor and Lessee, or the successors, transferees or assigns of either, subject, however, to the limitations on assignment hereof by Lessee. No such variation, termination, discharge or abandonment shall affect the rights and duties of Manufacturer, unless signed by a duly authorized officer of Manufacturer.

SECTION 18. *Section Headings and Certain Preferences.* All section headings are inserted for convenience only and shall not affect any construction or interpretation of this Lease. Unless otherwise indicated, all references herein to sections, subsections, clauses and other subdivisions refer to the corresponding sections, subsections, clauses and other subdivisions of this Lease; the words "herein", "hereof", "hereby", "hereto", "hereunder", and words of similar import refer to this Lease as a whole and not to any particular section, subsection, clause or other subdivision hereof; and reference to a numbered or lettered subdivision of a section shall include relevant matter within the section which is applicable to but not within such numbered or lettered subdivision.

SECTION 19. *Certain Applicable Laws.* Any provision hereof prohibited by or unlawful or unenforceable under any applicable law of any jurisdiction shall as to such jurisdiction be ineffective without modifying the remaining provisions of this Lease. Where, however, the provisions of any such applicable law may be waived, they are hereby waived by Lessee to the full extent permitted by law, to the end that this Lease shall be deemed to be a valid, binding agreement enforceable in accordance with its terms.

SECTION 20. *360-Day Year.* Computations hereunder involving the determination of interest or discount shall be made on the basis of a 360-day year of twelve 30-day months.

SECTION 21. *Notices.* All demands, notices and other communications hereunder shall be in writing and shall be deemed to have been duly given when personally delivered or delivered to a United States post office, first-class postage prepaid, or to a telegraph office, charges prepaid, addressed as follows:

If to Lessor:

First Western Bank and Trust Company
235 Montgomery Street
San Francisco, California 94104
Attention: Edgar Canfield,
Vice President and
Trust officer

(with a copy to The Northern Trust Company, 50 South La Salle Street, Chicago, Illinois 60690, *attention of* Richard W. Resseguie, Vice President, Banking Division II)

If to Lessee:

Pullman Incorporated
200 South Michigan Avenue
Chicago, Illinois 60604
Attention: Legal Department

or to such other addresses as may hereafter be furnished in writing by either party to the other.

SECTION 22. *Governing Law.* The provisions of this Lease and all rights and obligations hereunder shall be governed by and construed in accordance with the laws of the State of New York.

SECTION 23. *Survival of Covenants.* Any other provisions contained in this Lease to the contrary notwithstanding, it is hereby agreed that the provisions of Sections 7, 10, 11, 13 and 15 hereof shall survive the expiration or termination hereof.

SECTION 24. *Successors and Assigns.* Subject to the provisions of Section 13, this Lease shall be binding upon and shall inure to the benefit of Lessor and Lessee and their respective successors and assigns, and no other persons shall have or acquire any right under or by virtue of this Lease.

SECTION 25. *Execution in Counterparts.* This Lease may be executed simultaneously in several counterparts, each of which so executed shall be deemed to be an original, and all such counterparts together shall constitute but one and the same instrument.

SECTION 26. *Recording.* Lessee, without expense to Lessor, will cause the Equipment Trust Agreement, this Lease and all amendments, supplements and assignments hereof or thereof, to be duly filed and recorded and re-filed and re-recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and to be deposited with the Registrar General of Canada in accordance with Section 148 of the Railway Act (a notice of such deposit to be given in the "Canada Gazette" pursuant to said Section 148). Lessee will promptly furnish to Lessor and Trustee certificates or other evidences of such filing and recording and re-filing and re-recording and an opinion satisfactory to Lessor of counsel for Lessee, or an attorney designated by him satisfactory to Lessor, with respect thereto. In addition, Lessee shall do and perform all such other acts as may be required by law, or reasonably requested by Lessor, for the protection of Lessor's title to and Trustee's interest in the Cars.

SECTION 27. *No Recourse.* No recourse shall be had in respect of any obligation due under this Lease, or referred to herein, against any incorporator, stockholder, director or officer, past, present or future, of Lessor or Lessee, or assignee or assignees or transferee or transferees of Lessor, or against any beneficiary or beneficiaries of director, officer or beneficiary, whether by virtue of any constitutional by reason of the fact that such person is an incorporator, stockholder, Lessor under the Trust Agreement (disclosed or undisclosed), solely

provision, statute or rule of law or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of incorporators, stockholders, directors, officers or beneficiaries being forever released as a condition of and as consideration for the execution of this Lease.

IN WITNESS WHEREOF, Lessor and Lessee have each caused this Lease to be executed in its respective corporate names, by one of its officers thereunto duly authorized, and its respective corporate seal to be hereunto affixed and duly attested, and all as of the day and year first above written.

FIRST WESTERN BANK AND TRUST
COMPANY, as Owner-Trustee,

By
*Vice President and
Trust Officer.*

ATTEST:

.....
Assistant Secretary.

PULLMAN INCORPORATED,

By
Vice President.

ATTEST:

.....
Assistant Secretary.

EXHIBIT A

<u>Group</u>	<u>Description of Cars</u>	<u>Number of Cars</u>	<u>Specifications</u>	<u>Cost Per Car</u>	<u>Monthly Rental for first 40 months of Initial Term</u>	<u>Monthly Rental for subsequent 140 months of Initial Term</u>	<u>Monthly Rental for First Extended Term</u>
1.	4,785 cubic foot, 100-ton capacity, covered hopper cars, without center sill, with gravity gate unloading and lined	1,000 Numbered PCB 888749 through 889748, both inclusive	Manufacturer's Specifications	\$17,925.00	\$113.52	\$181.81	\$45.46
2.	4,785 cubic foot, 100-ton capacity, covered hopper cars, without center sill, with gravity gate unloading and unlined	200 Numbered PCB 889749 through 889948, both inclusive	Manufacturer's Specifications	17,250.00	109.25	174.98	43.75
3.	4,785 cubic foot, 100-ton capacity, covered hopper cars, without center sill, with pneumatic unloading and lined	51 Numbered PCB 889949 through 889999, both inclusive	Manufacturer's Specifications	18,400.00	116.53	186.65	46.67

Collateral Assignment of Lease and Agreement

between

FIRST WESTERN BANK AND TRUST COMPANY,
as Owner-Trustee

and

UNITED STATES TRUST COMPANY OF NEW YORK,
Trustee

Dated as of August 1, 1971

COLLATERAL ASSIGNMENT OF LEASE AND AGREEMENT

dated as of August 1, 1971, by and between FIRST WESTERN BANK AND TRUST COMPANY, as Owner-Trustee (hereinafter called the Company), and UNITED STATES TRUST COMPANY OF NEW YORK, as Trustee (hereinafter called the Trustee), under an Equipment Trust Agreement dated as of August 1, 1971 (hereinafter called the Equipment Trust Agreement), between the Trustee and the Company.

WHEREAS the Company, as Lessor, and Pullman Incorporated, as Lessee (hereinafter called the Lessee), have entered into a Lease (as defined in the Equipment Trust Agreement), providing for the leasing by the Company to the Lessee of the Cars (as defined in the Lease); and

WHEREAS, in order to provide security for the obligations of the Company under the Equipment Trust Agreement and as an inducement to the purchasers of the equipment trust certificates to be issued under the Equipment Trust Agreement to purchase said certificates, the Company has agreed to assign for security purposes its rights in, to and under the Lease to the Trustee;

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

1. As security for the payment and performance of its obligations under the Equipment Trust Agreement, the Company hereby assigns, transfers, and sets over unto the Trustee all the Company's right, title and interest as Lessor under the Lease, together with all rights, powers, privileges, and other benefits of the Company as Lessor under the Lease including, without limitation, the immediate right to receive and collect all rentals, profits and other sums payable to or receivable by the Company from the Lessee under or pursuant to the provisions of the Lease whether as rent, casualty payment, indemnity, liquidated damages or otherwise (such moneys being hereinafter called the Payments), and the right to make all waivers and agreements, to give all

notices, consents and releases, to take all action upon the happening of an Event of Default specified in the Lease, and to do any and all other things whatsoever which the Company, as Lessor, is or may become entitled to do under the Lease.

The Company agrees to cause all the Payments to be made directly to the Trustee at 130 John Street, New York, N. Y., attention of Corporate Trust Division. The Trustee will accept all Payments and all payments pursuant to this Assignment and will apply the same as follows: *first*, to or toward the payment of all amounts then due and payable (or due and payable on the first day of the next succeeding month if such Payment or payments are made prior to the first day of any month) under the Equipment Trust Agreement and the Trustee shall credit such Payments and such payments pursuant to this Assignment so applied to the amounts so due and payable by the Company under the Equipment Trust Agreement; and *second*, so long as, to the actual knowledge of the Trustee, no Event of Default (as defined in the Equipment Trust Agreement) or event which, to the actual knowledge of the Trustee with notice or lapse of time or both, could constitute an Event of Default shall have occurred and then be continuing, any balance of such Payments and such payments pursuant to this Assignment remaining shall be paid over to the Company by the Trustee. So long as, to the actual knowledge of the Trustee, an Event of Default or event which, to the actual knowledge of the Trustee with notice of lapse of time or both, could constitute an Event of Default shall then be continuing, the Trustee shall not pay over any of the Payments or such payments pursuant to this Assignment, but, during such continuance, shall apply all Payments and all such payments pursuant to this Assignment in a manner consistent with the provisions of the Equipment Trust Agreement. Anything in this Assignment to the contrary notwithstanding, no amounts shall be considered to be due and payable by the Company under the Equipment Trust Agreement in the event that such amounts shall have been paid by the Lessee pursuant to the Lease or this Assignment.

2. The assignment made hereby is executed only as security and, therefore, the execution and delivery of this Assignment shall not sub-

ject the Trustee to, or transfer, or pass, or in any way affect or modify any liability of the Company under the Lease, it being understood and agreed that notwithstanding such assignment or any subsequent assignment all obligations of the Company to the Lessee shall be and remain enforceable by the Lessee, its successors and assigns, against, and only against, the Company or persons other than the Trustee. The Trustee also shall not have any obligation or liability in respect of the provisions of Section 8(e), (f) or (g) of the Lease to the Lessor or the holders of the equipment trust certificates issued under the Equipment Trust Agreement or otherwise.

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

(a) Faithfully to abide by, perform and discharge each and every obligation, covenant and agreement of the Lease by the Company to be performed; at the sole cost and expense of the Company (except as otherwise provided herein or by any of the instruments or agreements referred to herein or in the Equipment Trust Agreement), to enforce or secure the performance of each and every obligation, covenant, condition and agreement contained in the Lease by the Lessee to be performed; without the written consent of the Trustee not to anticipate the rents under the Lease or to waive, excuse, condone, forgive or in any manner release or discharge the Lessee thereunder of or from the obligations, covenants, conditions and agreements to be performed by the Lessee, including, without limitation, the obligation to pay the rents in the manner and at the time and place specified therein; to hold any Payments received by the Company which are assigned and set over to the Trustee by this Assignment in trust for the Trustee and to turn them over to the Trustee forthwith in the same form in which they are received for application in accordance with the terms and conditions hereof.

(b) At the Company's sole cost and expense (except as otherwise provided herein or by any of the instruments or agreements referred to herein or in the Equipment Trust Agreement), to (i)

appear in and defend every action or proceeding arising under, growing out of or in any manner connected with the Lease or the obligations, duties or liabilities of the Company and the Lessee thereunder and (ii) pay all costs and expenses of the Trustee, including attorneys' fees in a reasonable sum, in any action or proceeding pertaining thereto in which the Trustee may appear.

(c) That should the Company fail to make any payment or to do any act as herein provided, then the Trustee, but without obligation so to do and without notice to or demand on the Company and without releasing the Company from any obligation hereunder, may make or do the same in such manner and to such extent as the Trustee may deem necessary to protect the security hereof, including specifically, without limiting its general powers, the right to appear in and defend any action or proceeding purporting to affect the security hereof and the rights or powers of the Trustee, and also the right to perform and discharge each and every obligation, covenant and agreement of the Company contained in the Lease; and in exercising any such powers to pay necessary costs and expenses, employ counsel and incur and pay reasonable attorneys' fees.

(d) To pay immediately upon demand, all sums expended by the Trustee under the authority hereof, together with interest thereon at the rate of $10\frac{1}{2}\%$ per annum.

4. The Company does hereby constitute the Trustee the Company's true and lawful attorney, irrevocably, with full power (in the name of the Company, or otherwise), to ask, require, demand, receive, compound and give acquittance for any and all Payments due and to become due under or arising out of the Lease to which the Company is or may become entitled, to enforce compliance by the Lessee with all the terms and provisions of the Lease, to endorse any checks or other instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings which to the Trustee may seem to be necessary or advisable in the premises.

5. Upon the full discharge and satisfaction of all the Company's obligations under the Equipment Trust Agreement, the assignment made hereby and all rights herein assigned to the Trustee shall terminate, and all estate, right, title and interest of the Trustee in and to the Lease and the Payments shall revert to the Company.

6. The Company represents and warrants that (a) the Company has not executed any other assignment of the Lease and the Trustee's right to receive all payments under the Lease is and will continue to be free and clear of any and all liens, agreements, security interests or other encumbrances prior to or *pari passu* with the interests of the Trustee, (b) notwithstanding this Assignment, the Company will perform and comply with each and all of the covenants and conditions in the Lease and the Equipment Trust Agreement set forth to be complied with by it, and (c) the Lease and the Equipment Trust Agreement are in full force and effect and have not been canceled and to the knowledge of the Company there has not occurred on or prior to the date hereof any Event of Default (as that term is defined in the Lease and the Equipment Trust Agreement) or any event which with notice and/or lapse of time could constitute such an Event of Default.

If an Event of Default (as defined in the Equipment Trust Agreement) shall occur and be continuing, the Trustee shall be entitled (i) to exercise all the rights, privileges and remedies available to the Lessor under the Lease and to the Trustee under the Equipment Trust Agreement and (ii) to do any acts which the Trustee deems proper to protect the security hereof, either with or without taking possession of the Cars. The taking possession of the Cars and the taking of any action permitted as aforesaid shall not cure or waive any default or waive, modify or affect any default hereunder or under the Lease or the Equipment Trust Agreement, or invalidate any act done hereunder.

7. The Company agrees with the Trustee that in any suit or proceeding brought by the Trustee under the Lease for any instalment of, or interest on, any rental or other sum owing thereunder, or to enforce any provisions of the Lease, the Company will save, indemnify and keep the Trustee harmless from and against all expense, loss or

damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever of the Lessee or its successors, arising out of a breach by the Company of any obligation under the Lease or arising out of any other indebtedness or liability at any time owing to the Lessee or its successors from the Company. Any and all such obligations of the Company shall be and remain enforceable against and only against the Company and shall not be enforceable against the Trustee or any party or parties in whom any of the rights of the Company under the Lease shall vest by reason of the successive assignments or transfers.

8. The Company will from time to time execute all such financing statements and supplemental instruments and documents as the Trustee may from time to time reasonably request in order to confirm or further assure the assignment made hereby and the provisions hereof.

9. The Trustee may assign to any successor trustee appointed pursuant to Section 8.06 of the Equipment Trust Agreement all or any of its rights under the Lease, including the right to receive any payments due or to become due to it from the Lessee thereunder. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all obligations of the Trustee hereunder.

10. The Company agrees that it will not, without the prior written consent of the Trustee, enter into any agreement amending, modifying or terminating the Lease and that any amendment, modification or termination thereof without such consent shall be void.

11. This Agreement shall be governed by the laws of the State of New York; *provided, however*, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act, such additional rights arising out of the filing, recording or depositing hereof and of any assignment hereof or out of the markings on the Units as

shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited or in which any Car may be located.

12. The Company shall cause copies of all notices received in connection with the Lease to be promptly delivered to the Trustee at 130 John Street, New York, New York 10038, attention of Corporate Trust Department, or at such other address as the Trustee shall designate.

13. No recourse shall be had in respect of any obligation due under this Assignment, or referred to herein, against any incorporator, stockholder, director or officer, past, present or future, of the Company, or against the beneficiary or beneficiaries of the trust under the Trust Agreement (disclosed or undisclosed), solely by reason of the fact that such person is an incorporator, stockholder, director, officer or beneficiary, whether by virtue of any constitutional provision, statute or rule of law or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of incorporators, stockholders, directors, officers or beneficiaries being forever released as a condition of and as consideration for the execution of this Assignment.

14. Any provision of this Assignment which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, the Company hereby waives any provision of law which renders any provision hereof prohibited or unenforceable in any respect.

IN WITNESS WHEREOF, the Company has caused this instrument to be signed by an officer thereunto duly authorized, as of the date first above written.

FIRST WESTERN BANK AND TRUST
COMPANY, as Owner-Trustee,

[CORPORATE SEAL]

by
Vice President and Trust Officer.

Attest:

.....
Assistant Secretary.

Accepted:

UNITED STATES TRUST COMPANY
OF NEW YORK, as Trustee,

by
Assistant Vice President.

LESSEE'S CONSENT AND AGREEMENT

The undersigned, a Delaware corporation, the Lessee named in the Lease (hereinafter called the Lease) referred to in the foregoing Collateral Assignment of Lease and Agreement (hereinafter called the Assignment), hereby (a) acknowledges receipt of a copy of the Assignment and (b) consents to all the terms and conditions of the Assignment.

As an inducement to the purchasers of the equipment trust certificates to be issued pursuant to the Equipment Trust Agreement (hereinafter called the Equipment Trust Agreement) dated of August 1, 1971, between United States Trust Company of New York, as Trustee (hereinafter called the Trustee) and First Western Bank and Trust Company, as Owner-Trustee (hereinafter called the Lessor) (a copy of which has been delivered to the undersigned) pursuant to which the Lessor is partially financing its purchase of the units of railroad equipment (hereinafter called the Cars) being leased by the Lessor to the undersigned pursuant to the Lease and in consideration of other good and valuable consideration, the undersigned agrees that:

(1) it will pay all rentals, casualty payments, liquidated damages, indemnities and other moneys provided for in the Lease (which moneys are hereinafter called the Payments) due and to become due under the Lease in respect of the Units leased thereunder, directly to the Trustee, at 130 John Street, New York, New York 10038, attention of Corporate Trust Division (or at such other address as may be furnished in writing to the undersigned by the Trustee); it being hereby agreed that the undersigned's obligation to pay all the aforesaid Payments is absolute and unconditional;

(2) the Trustee shall be entitled to the benefits of, and to receive and enforce performance of, all of the covenants to be performed by the undersigned under the Lease as though the Trustee were named therein as the Lessor;

(3) the Payments shall not be subject to any right of setoff or counterclaim or other defense which the undersigned might have against the Lessor or otherwise, and the payment thereof to the Trustee shall be final and shall not be subject to, and the undersigned hereby agrees to indemnify the Trustee against, any liens,

charges or claims of any nature whatsoever (other than liens, charges or claims created or incurred by the Trustee not arising out of the transactions contemplated by the Equipment Trust Agreement, the Lease or the Assignment) resulting from a breach by the undersigned of its obligations under the Lease, prior to or *pari passu* with the right of the Trustee to apply such Payments as provided in the Assignment;

(4) the Trustee shall not, by virtue of the Assignment or this Consent and Agreement, be or become subject to any liability or obligation under the Lease or otherwise; and

(5) the Lease shall not, without the prior written consent of the Trustee, be amended, terminated or modified, or any action be taken or omitted by the undersigned, the taking or omission of which might result in an alteration or impairment of the Lease or the Assignment or this Consent and Agreement or of any of the rights created by any thereof.

This Consent and Agreement, when accepted by the Trustee by signing the acceptance at the foot hereof, shall be deemed to be a contract under the laws of the State of New York and, for all purposes, shall be construed in accordance with the laws of said State.

Dated as of August 1, 1971.

PULLMAN INCORPORATED,

by
Vice President.

[CORPORATE SEAL]

Attest:

.....
Assistant Secretary.

Accepted:

UNITED STATES TRUST COMPANY OF
NEW YORK, as Trustee,

by
Assistant Vice President.

Equipment Purchase Agreement

Dated as of August 1, 1971

between

FIRST WESTERN BANK AND TRUST COMPANY,
as Owner-Trustee

and

PULLMAN INCORPORATED

EQUIPMENT PURCHASE AGREEMENT dated as of August 1, 1971, between PULLMAN INCORPORATED, a Delaware corporation (hereinafter called the Seller or the Lessee), and FIRST WESTERN BANK AND TRUST COMPANY, as Owner-Trustee under a Trust Agreement dated as of August 1, 1971 (hereinafter called the Company) with The Northern Trust Company.

WHEREAS the Seller has agreed to manufacture, sell and deliver to the Company, and the Company has agreed to purchase, the railroad equipment described in Annex A hereto (hereinafter called the Equipment); and

WHEREAS the Company and the Lessee are entering into a Lease of Equipment dated as of the date hereof (hereinafter called the Lease), leasing the Equipment to the Seller, subject to the Equipment Trust Agreement (hereinafter called the Equipment Trust Agreement) dated as of the date hereof between the Company and United States Trust Company of New York, as Trustee (hereinafter called the Trustee);

WHEREAS the Lessee is subleasing the Equipment to the Trustees of the Property of the Penn Central Transportation Company, Debtor (hereinafter called the Sublessee) pursuant to a Lease of Railroad Equipment dated as of April 21, 1971 (hereinafter called the Sublease);

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

1. *Construction and Sale.* Subject to the terms and conditions hereinafter set forth, the Seller will construct the Equipment at its plant and will sell and deliver the Equipment as hereinbelow provided and the Company will pay or cause the Trustee to pay to the Seller the Purchase Price (as hereinafter defined) of the Equipment, each unit of which will be constructed in accordance with the specifications referred to in Schedule I hereto and in accordance with such modifications thereof as may have been agreed upon in writing by the Seller and the Sublessee (which specifications and modifications, if any, are hereinafter called the Specifications) and will, at or before delivery thereof to

the Lessee pursuant to Article 2 hereof, have the following ownership markings stencilled on each side thereof in a conspicuous place in letters not less than one inch in height:

“OWNED BY UNITED STATES TRUST COMPANY OF NEW YORK,
130 JOHN STREET, NEW YORK, NEW YORK, AS TRUSTEE
UNDER THE TERMS OF AN EQUIPMENT TRUST AGREEMENT”.

The Seller agrees that the design, quality and component parts of the Equipment will conform to all Federal Railroad Administration requirements and specifications and to all standards recommended by the Association of American Railroads reasonably interpreted as being applicable to new railroad equipment of the character of such units of the Equipment as of the date of delivery thereof.

2. *Delivery.* Each unit of the Equipment shall be delivered to an authorized representative of the Company (who may be an employee of the Lessee) and, if such authorized representative finds that such unit complies with the terms of this Agreement, he shall execute and deliver to the Seller a certificate of acceptance (hereinafter called a Certificate of Acceptance) stating that such unit has been accepted by him on behalf of the Company and the Lessee under the Lease. Each such Certificate of Acceptance shall be conclusive evidence that the unit of Equipment covered thereby has been delivered to the Company and is acceptable to the Company; *provided, however*, that the Seller shall not thereby be relieved of its warranties contained in Article 4 hereof.

3. *Purchase Price and Payment.* The purchase price per unit of the Equipment (hereinafter called the Purchase Price) is set forth in Schedule I hereto.

The Equipment shall be settled for on four Closing Dates fixed as hereinafter provided (the Equipment to be settled for on each Closing Date being hereinafter called a Group).

Subject to the provisions hereinafter set forth in this Article 3, the Company hereby promises to pay or cause to be paid in cash to the Seller on each Closing Date with respect to a Group, an amount equal

to (x) the Purchase Price of all units of the Equipment in the Group as set forth in the invoice or invoices therefor, less (y) the amount paid to the Seller by the Trustee pursuant to Section 3.02 of the Equipment Trust Agreement.

The term "Closing Date" with respect to any Group of the Equipment shall mean such date following presentation to the Trustee of the invoice and the Certificate or Certificates of Acceptance for such Group, as shall be fixed by the Seller by written notice delivered to the Company and the Trustee at least five business days prior to the Closing Date designated therein. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and legal holidays or days on which banking institutions are authorized by law to close in the City of New York.

The obligation of the Company under this Agreement to pay or cause to be paid to the Seller any amount required to be paid pursuant to this Article 3 hereof with respect to any Group of the Equipment is subject to the conditions (a) that prior thereto or concurrently therewith the Trustee shall have paid to the Seller the amount agreed to be paid under Section 3.02 of the Equipment Trust Agreement and (b) that the Company shall have received, on or prior to the Closing Date, the following documents in such number of counterparts or copies as may reasonably be requested in form and substance satisfactory to it:

(i) the documents required by Section 3.04 of the Equipment Trust Agreement; and

(ii) a favorable ruling from the Internal Revenue Service, in form satisfactory to The Northern Trust Company, as to the tax aspects of the transactions contemplated by this Agreement, the Lease and the Sublease.

Notwithstanding any other provisions of this Agreement, any Equipment not delivered and accepted and settled for hereunder on or prior to April 1, 1972 shall be excluded from this Agreement and not included in the term "Equipment" as used in this Agreement.

In the event of any such exclusion, the Company's obligation to purchase and to pay the Purchase Price for such excluded Equipment shall terminate.

4. *Seller's Warranty.* The Seller warrants that each unit of the Equipment will be built in accordance with the Specifications and the other requirements, specifications and standards set forth or referred to in Article 1 of this Agreement and warrants that each unit of the Equipment will be free from defects in material (except as to specialties incorporated therein which were specified or supplied by the Sublessee and not manufactured by the Seller), workmanship or design (except as to designs specified by the Sublessee and not developed or purported to be developed by the Seller) under normal use and service; the Seller's obligation under this Article 4 being limited to making good at its plant any part or parts of any unit of the Equipment which shall, within one year after the delivery of such unit to the Company and the Sublessee, be returned to the Seller with transportation charges prepaid and which the Seller's examination shall disclose to its satisfaction to have been thus defective. **This warranty is expressly in lieu of all other warranties, express or implied, including any implied warrant of merchantability or fitness for a particular purpose, and of all other obligations or liabilities on the part of the Seller, except for its obligations under Articles 1, 2, 3 and 5 of this Agreement, and the Seller neither assumes nor authorizes any person to assume for it any other liability in connection with the construction and delivery of the Equipment except as aforesaid.**

The Seller further agrees with the Company that neither any examination, nor the acceptance of any units of the Equipment by the Company under Article 1 hereof, shall be deemed a waiver by the Company of any of its rights under this Article 4.

5. *Patent Indemnities.* The Seller agrees to indemnify, protect and hold harmless the Company and the Trustee from and against any

and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Company or the Trustee because of the use in or about the construction or operation of the Equipment, or any unit thereof, of any design, article or material infringing or claimed to infringe on any patent or other right.

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

(a) If to the Company, 235 Montgomery Street, San Francisco, California 94104, attention of Edgar Canfield, Vice President and Trust Officer (with a copy to The Northern Trust Company, 50 South LaSalle Street, Chicago, Illinois 60690, attention of Richard W. Resseguie, Vice President, Banking Division II),

(b) If to the Seller, 200 South Michigan Avenue, Chicago, Illinois 60604, attention of

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

7. *Immunities.* No recourse shall be had in respect of any obligation due under this Agreement, or referred to herein, against any incorporator, stockholder, director or officer, past, present or future, of the Company or the Seller, or against the beneficiary or beneficiaries of any trust for which the Company is acting as trustee, solely by reason of the fact that such person is an incorporator, stockholder, director, officer or beneficiary, whether by virtue of any constitutional provision, statute or rule of law or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of incorporators, stockholders, directors, officers or beneficiaries being forever released as a condition of and as consideration for the execution of this Agreement.

8. *Effect and Modification of Agreement.* This Agreement and Schedule I hereto exclusively and completely state the rights and agreements of the Seller and the Company with respect to the sale of and payment for the Equipment and supersede all other agreements, oral or written, with respect to the Equipment. No variation of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and duly executed on behalf of the Seller and the Company.

IN WITNESS WHEREOF the parties hereto, each pursuant to due corporate authority, have caused this instrument to be signed in their respective corporate names by duly authorized officers and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

FIRST WESTERN BANK AND TRUST
COMPANY, as Owner-Trustee,

by
*Vice President and
Trust Officer.*

[CORPORATE SEAL]

Attest:

.....
Assistant Secretary.

PULLMAN INCORPORATED,

by
Vice President.

[CORPORATE SEAL]

Attest:

.....
Assistant Secretary.

SCHEDULE I

<u>Quantity</u>	<u>Type and Specifications</u>	<u>Cost</u>	<u>Identifying Numbers (both inclusive)</u>
1,000	4,785 cubic foot, 100-ton capacity, covered hopper cars, without center sill, with gravity gate unloading and lined; Manufacturer's Specifications	\$17,925,000	PCB 888749 through 889748, both inclusive
200	4,785 cubic foot, 100-ton capacity, covered hopper cars, without center sill, with gravity gate unloading and unlined; Manufacturer's Specifications	3,450,000	PCB 889749 through 889948, both inclusive
51	4,785 cubic foot, 100-ton capacity, covered hopper cars, without center sill, with pneumatic unloading and lined; Manufacturer's Specifications	938,400	PCB 889949 through 889999, both inclusive