TIGER LEASING GROUP

NORTH AMERICAN CAR CORPORATION

222 SOUTH RIVERSIDE PLAZA • CHICAGO, ILLINOIS 60606 U.S.A. • (312) 648-4000 • TELEX 255222

RECORDATION NO. 9462 Filed & Recorded

JUN 28 1978 • 11 45 PM

INTERSTATE COMMERCE COMMISSION

June 27, 1978

Secretary
Interstate Commerce Commission
Washington, D.C. 20423

Re: Section 20c Filing: Equipment Trust Agreement dated as of June 20, 1978, by and between North American Car Corporation ("North American") and Continental Illinois National Bank and Trust Company of Chicago, As Trustee.

Dear Mr. Secretary:

Enclosed for recording under Section 20c of the Interstate Commerce Act are five executed counterparts of the Equipment Trust Agreement ("Agreement") dated as of June 20, 1978, by and between North American and Continental Illinois National Bank and Trust Company of Chicago, as Trustee ("Trustee"), 231 S. LaSalle Street, Chicago, Illinois 60693.

Under the Agreement, North American leases the equipment described therein from the Trustee in accordance therewith and assigns to the Trustee as security for North American's obligation under the Agreement all amounts due and payable under any sublease of the Equipment or any guaranty thereof.

Also enclosed is a check, payable to the Interstate Commerce Commission in the amount of $50 as the recording fee for the Agreement.

Pursuant to the Commission's rules and regulations for the recording of certain documents under Section 20c of the Interstate Commerce Act, you are hereby requested to duly file two of the enclosed counterparts for recording in your office and to return the remaining counterparts, together with the Secretary's Certificate of Recording, to the messenger making this delivery.

If you have any questions, please contact me.

8-179A066
No.
JUN 28 1978
Date
Fee $ 50-
ICC Washington, D. C

Very truly yours,

James M. Gillespie
Attorney

JMG/mjw
Enclosures

RECEIVED
JUN 28 11 20 AM '78
I.C.C.
OPERATION BR.

T. Gmoser

Certified

Interstate Commerce Commission
Washington, D.C. 20423

6-28-78

OFFICE OF THE SECRETARY

James M. Gillespie, Attorney
North American Car Corp.
222 South Riverside Plaza
Chicago, IL. 60606

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 20(c) of the Interstate Commerce Act, 49 U.S.C. 20(c), on June 28, 1978 at 11:45 PM, and assigned recordation number(s) 9462

Sincerely yours,

Nancy L. Wilson
Acting Secretary

Enclosure(s)

RECORDATION NO. 9462 Filed & Recorded

JUN 28 1978 • 11 43 AM

INTERSTATE COMMERCE COMMISSION

NORTH AMERICAN CAR CORPORATION

TO

CONTINENTAL ILLINOIS NATIONAL BANK AND
TRUST COMPANY OF CHICAGO

Trustee

Equipment
Trust Agreement

Dated as of June 20, 1978

NORTH AMERICAN CAR CORPORATION

EQUIPMENT TRUST CERTIFICATES,
FIRST 1978 SERIES

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EQUIPMENT TRUST AGREEMENT (hereinafter called the "Trust Agreement") dated as of June 20, 1978, by and between CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO, a national banking association duly organized and existing under the laws of the United States of America, as Trustee (hereinafter called the "Trustee"), and NORTH AMERICAN CAR CORPORATION, a corporation duly organized and existing under the laws of the State of Delaware (hereinafter called the "Company").

WHEREAS, the Company has agreed to cause to be sold, transferred and delivered to the Trustee the railroad equipment described in Attachment A hereto; and

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

WHEREAS, North American Car Corporation Equipment Trust Certificates, First 1978 Series (hereinafter called the "Trust Certificates"), are to be issued and sold in an aggregate principal amount not exceeding $30,000,000, and the net proceeds of such sale together with such other cash, if any, as may be required to be deposited by the Company as hereinafter provided are to constitute a fund equal to the aggregate principal amount of Trust Certificates so issued and sold, to be known as NORTH AMERICAN CAR CORPORATION EQUIPMENT TRUST, FIRST 1978 SERIES, to be applied by the Trustee as hereinafter provided; and

WHEREAS, the texts of the Trust Certificates and the guaranty to be endorsed on the Trust Certificates by the Company are to be substantially in the following forms, respectively:

[FORM OF REGISTERED TRUST CERTIFICATE]

No. R. ....., 19....

$_____ Chicago, Illinois

NORTH AMERICAN CAR CORPORATION

EQUIPMENT TRUST CERTIFICATES,
FIRST 1978 SERIES

Interest at the Rate of 9¼% Per Annum

Due June 30, 1998

Continental Illinois National Bank and Trust Company of Chicago, *Trustee*

CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO, Trustee under an Equipment Trust Agreement (hereinafter called the "Trust Agreement") dated as of June 20, 1978, between Continental Illinois National Bank and Trust Company of Chicago, Trustee (hereinafter called the "Trustee"), and North American Car Corporation, hereby certifies that

, or registered assigns, is entitled to an interest of $ principal amount in North American Car Corporation Equipment Trust, First 1978 Series, due June 30, 1998, and to interest thereon at the rate of 9¼% per annum (computed on the basis of a 30-day month,

360-day year), from the date hereof until the principal amount hereof shall be paid (whether at stated maturity or at a date fixed for a sinking fund payment or by declaration or otherwise), payable on June 30 and December 30 of each year commencing December 30, 1978, with interest on any overdue principal and interest, to the extent legally enforceable, at the rate of 10¼% per annum; principal and interest being payable to the registered holder hereof at the corporate trust office of the Trustee, which at the date hereof is located at 231 South LaSalle Street, Chicago, Illinois 60693, in such coin or currency of the United States of America as, at the time of payment, shall be legal tender for the payment of public and private debts. The first interest paid on this Trust Certificate will include payment for the date hereof. Subject to the provisions of the Trust Agreement, payment of interest may be made by check mailed to the address of the person entitled thereto as such address shall appear on the registry books of the Trustee or by such other means as are permitted under the Trust Agreement. Said principal and interest are payable, however, only from and out of rentals, when and as received by the Trustee, under the Trust Agreement, and from and out of such moneys received by the Trustee as may be applicable thereto under the terms of the Trust Agreement.

This Trust Certificate is one of an issue of certificates, limited in aggregate principal amount to $30,000,000, all issued under the Trust Agreement under which the cars therein called "Trust Equipment" (or Deposited Cash in lieu thereof, as provided in the Trust Agreement) are held by the Trustee in trust for the equal benefit of the holders of the interests represented by such certificates, to which Trust Agreement, filed with the Trustee, reference is hereby made for a further statement of the rights of the holder hereof and the rights and obligations of North American Car Corporation and of the Trustee.

As a sinking fund for the Trust Certificates, the Trust Agreement provides for the payment by the Company to the Trustee, on or before the last day of June in each year, commencing June 30, 1979, and continuing to and including June 30, 1997, of additional rental in an amount sufficient to redeem 5% of the aggregate original principal amount of Trust Certificates in each such year.

The Trust Certificates are issuable as either registered or unregistered Trust Certificates. This Trust Certificate is a registered Trust Certificate and is transferable only by the registered holder hereof in person or by attorney duly authorized in writing on registration books to be kept for that purpose at the corporate trust office of the Trustee in Chicago, Illinois, upon surrender and cancellation of this Trust Certificate, and thereupon a new Trust Certificate or Certificates in an aggregate principal amount equal to the unpaid principal amount of this Trust Certificate, of like maturity and bearing a like rate of interest, will be issued to the transferee in exchange therefor, in the manner provided in the Trust Agreement.

In case of default in the performance or observance of any of the covenants of North American Car Corporation contained in the Trust Agreement, the principal amount represented by this certificate may become or be declared due and payable in the manner and with the effect provided in the Trust Agreement.

IN WITNESS WHEREOF, the Trustee has caused this Trust Certificate to be signed by one of its Vice Presidents or Second Vice Presidents, and its corporate seal to be hereunto affixed and to be attested by one of its Trust Officers.

CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO,

Trustee

(CORPORATE SEAL)

By _____

Vice President

ATTEST:

_____

Trust Officer

[FORM OF GUARANTY FOR REGISTERED TRUST CERTIFICATES]

GUARANTY

North American Car Corporation, for a valuable consideration, hereby unconditionally guarantees to the registered holder of the within Trust Certificate the prompt payment of the principal of said Trust Certificate, and of the interest thereon specified in said Trust Certificate, with interest on any overdue principal and interest, to the extent legally enforceable, at the rate of 10¼% per annum, all in accordance with the terms of said Trust Certificate and the Equipment Trust Agreement referred to therein.

NORTH AMERICAN CAR CORPORATION

By _____
Vice President

[FORM OF ORDER TRUST CERTIFICATE]

No. ....., 19....

$..... Chicago, Illinois

NORTH AMERICAN CAR CORPORATION

EQUIPMENT TRUST CERTIFICATES, FIRST 1978 SERIES

Interest at the Rate of 9¼% Per Annum

Due June 30, 1998

Continental Illinois National Bank and Trust Company of Chicago, *Trustee*

CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO, Trustee under an Equipment Trust Agreement (hereinafter called the "Trust Agreement") dated as of June 20, 1978, between Continental Illinois National Bank and Trust Company of Chicago, Trustee (hereinafter called the "Trustee"), and North American Car Corporation, hereby certifies that , or order, is entitled to an interest of $..... principal amount in North American Car Corporation Equipment Trust, First 1978 Series, due June 30, 1978, and to interest thereon at the rate of 9¼% per annum (computed on the basis of a 30-day month, 360-day year), from the date hereof until the principal amount hereof shall be paid (whether at stated maturity or at a date fixed for a sinking fund payment or by declaration or otherwise), payable on June 30 and December 30 of each year commencing December 30, 1978, with interest on any overdue principal and interest, to the extent legally enforceable, at the rate of 10¼% per annum; principal and interest being payable to the holder hereof at the corporate trust office of the Trustee, which at the date hereof is located at 231 South LaSalle Street, Chicago, Illinois 60693, in such coin or currency of the United States of America as, at the time of payment, shall be legal tender for the payment of public and private debts. The first interest paid on this Trust Certificate will include payment for the date hereof. Said principal and interest are payable, however, only from and out of rentals, when and as received by the Trustee, under the Trust Agreement, and from and out of such moneys received by the Trustee as may be applicable thereto under the terms of the Trust Agreement.

This Trust Certificate is one of an issue of certificates, limited in aggregate principal amount to $30,000,000, all issued under the Trust Agreement under which the cars therein called "Trust Equipment" (or Deposited Cash in lieu thereof, as provided in the Trust Agreement) are held by the Trustee in trust for the equal benefit of the holders of the interests represented by such certificates, to which Trust Agreement, filed with the Trustee, reference is hereby made for a further statement of the rights of the holder hereof and the rights and obligations of North American Car Corporation and of the Trustee.

As a sinking fund for the Trust Certificates, the Trust Agreement provides for the payment by the Company to the Trustee, on or before the last day of June in each year, commencing June 30, 1979, and continuing to and including, June 30, 1997, of additional rental in an amount sufficient to redeem 5% of the aggregate original principal amount of Trust Certificates in each such year.

The Trust Certificates are issuable as either registered or unregistered Trust Certificates. This Trust Certificate is unregistered and is transferable by endorsement and delivery.

In case of default in the performance or observance of any of the covenants of North American Car Corporation contained in the Trust Agreement, the principal amount represented by this certificate may become or be declared due and payable in the manner and with the effect provided in the Trust Agreement.

IN WITNESS WHEREOF, the Trustee has caused this Trust Certificate to be signed by one of its Vice Presidents or Second Vice Presidents, and its corporate seal to be hereunto affixed and to be attested by one of its Trust Officers.

CONTINENTAL ILLINOIS NATIONAL BANK
AND TRUST COMPANY OF CHICAGO,
Trustee

(CORPORATE SEAL)

By _____
Vice President

ATTEST:

_____
Trust Officer

[FORM OF GUARANTY FOR ORDER TRUST CERTIFICATES]

GUARANTY

North American Car Corporation, for a valuable consideration, hereby unconditionally guarantees to the holder of the within Trust Certificate the prompt payment of the principal of said Trust Certificate, and of the interest thereon specified in said Trust Certificate, with interest on any overdue principal and interest, to the extent legally enforceable, at the rate of 10¼% per annum, all in accordance with the terms of said Trust Certificate and the Equipment Trust Agreement referred to therein.

NORTH AMERICAN CAR CORPORATION

By_____
Vice President

WHEREAS, it is desired to secure to the holders of the Trust Certificates the payment of the principal thereof (whether at stated maturity or at a date fixed for a sinking fund payment or by declaration or otherwise), as hereinafter more particularly provided, with interest on such principal amount, as hereinafter provided, payable semiannually on June 30 and December 30 in each year, and to evidence the rights of the holders of the Trust Certificates in substantially the forms hereinbefore set forth;

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

ARTICLE I.

DEFINITIONS

SECTION 1.01. Unless the context otherwise specifies or requires, the terms defined in this Article I shall, for all purposes of this Trust Agreement, have the meanings herein specified, the following definitions to be equally applicable to both the singular and plural forms of any of the terms herein defined.

Affiliate of the Company:

The term "Affiliate of the Company" shall mean any person directly or indirectly controlling, controlled by, or under direct or indirect common control with, the Company. A person shall be deemed to control a corporation, for the purpose of this definition, if such person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of such corporation, whether through the ownership of voting securities, by contract, or otherwise.

Application; Request:

The term "Application" or "Request" for the issuance and delivery of Trust Certificates or for any action to be taken by the Trustee under any Section of this Trust Agreement, shall mean an instrument in writing signed by the Chairman of the Board, the President or a Vice President of the Company requesting such action under such Section of this Trust Agreement and shall consist of, and shall not be deemed made or complete until the Trustee shall have been furnished with, such resolutions, certificates, opinions, cash, property and other instruments as are required by such Section to establish the right of the Company to take such action by the Trustee, and the date of such Application or Request shall be deemed to be the date upon which such application or request shall be so completed.

Closing:

The term "Closing" shall have the meaning specified in section 3 of the Purchase Agreements.

Company:

The term "Company" shall mean North American Car Corporation, a Delaware corporation, and shall also include its successors and assigns.

Corporate Trust Office:

The term "Corporate Trust Office" shall mean the principal office of the Trustee in the City of Chicago, County of Cook, State of Illinois, at which the corporate trust business of the Trustee shall, at the time in question, be administered, which office is, at the date of execution of this Trust Agreement, located at 231 South LaSalle Street, Chicago, Illinois 60693.

Corporation:

The term "corporation" shall also include voluntary associations, joint stock companies and business trusts.

Cost:

The term "Cost", (a) when used with respect to Equipment not built by the Company, shall mean the actual cost thereof to the Company and (b) in respect of Equipment built by the Company, shall mean so-called "car-builder's cost" including direct cost of labor and material and overhead, but excluding any manufacturing profit.

Deposited Cash:

The term "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 Investment Securities purchased by the use of such proceeds pursuant to the provisions of Section 10.04, and (b) any sums restored to Deposited Cash from rentals pursuant to Section 5.04(a) (ii) and on deposit with the Trustee.

Depreciated Cost:

The term "Depreciated Cost" shall mean the Cost of the Equipment less an amount in respect of each unit of the Equipment equal to depreciation, at the rate of 4% per year, for each full year such unit has been in service.

Engineer's Certificate:

The term "Engineer's Certificate" shall mean a certificate signed by the Chairman of the Board or the President or a Vice President of the Company, or by any other officer or employee of the Company appointed by the Company and approved by the Trustee in the exercise of reasonable care; *provided, however,* any Engineer's Certificate required to be delivered hereunder shall be signed by an Independent Engineer if so requested in writing addressed to the Company and the Trustee by holders of not less than 25% in aggregate principal amount of the Trust Certificates then outstanding.

Equipment:

The term "Equipment" shall mean standard-gauge railroad equipment (other than locomotive, passenger or work equipment) and, in addition, improvements to Trust Equipment required to be added pursuant to regulations or rules issued by the United States Department of Transportation, The Association of American Railroads or other similar governmental or non-governmental organizations having jurisdiction over the operation, safety or use of railroad equipment to qualify such units for operation in railroad service or interchange and which have been and continue to be attached to Trust Equipment (any such improvements are herein also referred to as the "Improvement Equipment" and the Improvement Equipment attached to a single railroad freight car is hereby a "unit" of Improvement Equipment for purposes of this Trust Agreement).

Event of Default:

The term "Event of Default" shall mean any event specified in Section 6.01, continued for the period of time, if any, therein specified.

Holder:

The word "holder" when used with respect to Trust Certificates, shall mean the registered owner of a Trust Certificate and include the plural as well as the singular number.

Independent Engineer:

The term "Independent Engineer" shall mean an engineer, appraiser or other expert appointed by the Company and approved by the Trustee in the exercise of reasonable care, who (a) is in fact independent, (b) does not have any substantial interest, direct or indirect, in the Company or in any other obligor on the Trust Certificates or in any Affiliate of the Company or any such other obligor and (c) is not connected with the Company or any other obligor on the

Trust Certificates or any Affiliate of the Company or any such other obligor as an officer, employee, promoter, underwriter, trustee, partner, director or person performing similar functions.

Investment Securities:

The term "Investment Securities" shall mean (a) bonds, notes or other direct obligations of the United States of America or obligations for which the full faith and credit of the United States is pledged to provide for the payment of the interest and principal with a maturity of one year or less from the date of acquisition thereof, (b) certificates of deposit of or time deposits with a maturity of one year or less in banks or trust companies incorporated and doing business under the laws of the United States of America (including the Trustee) or one of the states thereof, each of which has a capital and surplus aggregating at least $100,000,000, and (c) commercial paper of any United States' issuer with a maturity of one year or less from the date of acquisition thereof and having, at the time of such investment, the highest rating obtainable from either of Moody's Investors Service, Inc. or Standard and Poor's Corporation or a successor to either of them.

Leases:

The term "Leases" shall mean all the present or future leases, subleases, bailments and agreements to lease or bail all or any of the Trust Equipment made by the Company or any Affiliate of the Company or any predecessor in title as lessor and all present or future agreements whereby the Company, any Affiliate of the Company or any predecessor in title as owner gives any other person a right to use any of the Trust Equipment and all revisions, alterations, modifications, amendments, changes, extensions, renewals, replacements or substitutions thereof or therefor which may hereafter be effected or entered into, *provided* that, if any such leases or other agreements relate to any Equipment which is not Trust Equipment, for all purposes hereof the term "Leases" shall mean the rights, obligations and interests in and under such agreements only to the extent that they relate to Trust Equipment and shall not include the rights, obligations or interests in and under such agreements to the extent that they relate to such other Equipment.

Letter of Credit:

The term "Letter of Credit" shall mean a clean, irrevocable and unconditional letter of credit (enforceable irrespective of the bankruptcy, insolvency or other financial condition of the Company) issued to the Trustee as beneficiary thereof and physically delivered to the Trustee in the ordinary course of business by a bank or trust company organized and doing business under the laws of the United States of America or any state thereof having a combined capital and surplus of at least $100,000,000 and expiring within one year of its issue.

Officers' Certificate:

The term "Officers' Certificate" shall mean a certificate signed by the Chairman of the Board or the President or any Vice President and by any other Vice President or the Treasurer or any Assistant Treasurer or the Secretary or any Assistant Secretary of the Company.

Opinion of Counsel:

The term "Opinion of Counsel" shall mean an opinion in writing signed by legal counsel who shall be satisfactory to the Trustee and who may, unless in a particular instance the Trustee shall otherwise reasonably require, be an employee of or of counsel to the Company or the Canadian Subsidiary. 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.

Order Trust Certificates:

The term "Order Trust Certificates" shall mean North American Car Corporation Equipment Trust Certificates, First 1978 Series, issued hereunder in the form of the order Trust Certificate contained herein.

Person:

The term "person" shall mean and include an individual, a partnership, a corporation, a trust, an unincorporated organization and a government or any department or agency thereof.

Purchase Agreements:

The term "Purchase Agreements" shall mean the respective Purchase Agreements dated June 20, 1978 between the Company, on the one hand, and Aetna Life Insurance Company, The National Life and Accident Insurance Company, Aid Association for Lutherans, INA Life Insurance Company, State Mutual Life Assurance Company of America, The Great-West Life Assurance Company, Lutheran Brotherhood, Occidental Life Insurance Company, Transamerica Life Insurance and Annuity Company, Pilot Life Insurance Company, The Union Labor Life Insurance Company and Liberty Life Insurance Company, severally, on the other hand.

Registered Trust Certificates:

The term "Registered Trust Certificates" shall mean North American Car Corporation Equipment Trust Certificates, First 1978 Series, issued hereunder in the form of the registered Trust Certificate contained herein.

Responsible Officer:

The term "Responsible Officer" shall mean the chairman of the board of directors, the vice chairman of the board of directors, the chairman of the executive committee, the vice chairman of the executive committee, the president, any vice president, the cashier, the secretary, the treasurer, any trust officer, any assistant trust officer, any assistant vice president, any assistant cashier, any assistant secretary, any assistant treasurer, or any other officer or assistant officer of the Trustee customarily performing functions similar to those performed by the persons who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred because of his knowledge of and familiarity with the particular subject.

Subsidiary; Significant:

The term "Subsidiary" shall mean any corporation a majority of the stock of which, having ordinary voting power, is owned by the Company, either directly or through one or more Subsidiaries. The term "Significant" as applied to any Subsidiary, shall mean any Subsidiary other than a Subsidiary (a) which is organized and existing under the laws of any jurisdiction other than the United States of America or a state thereof or the government of Canada or a province thereof, and (b) which is not engaged in railroad car leasing.

Trust Agreement:

The term "Trust Agreement" shall mean this Trust Agreement, as originally executed or as the same may from time to time be supplemented, modified or amended by any supplemental trust agreement entered into pursuant to the provisions hereof.

The term "supplemental trust agreement" or "trust agreement supplemental hereto" shall mean any trust agreement hereafter duly authorized and entered into between the Company and the Trustee in accordance with the provisions of this Trust Agreement.

All references herein to "Articles", "Sections" and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Trust Agreement; and the words "herein", "hereof", "hereunder" and other words of similar import refer to this Trust Agreement as a whole and not to any particular Article, Section or subdivision hereof.

Trust Certificates:

The term "Trust Certificates" shall mean North American Car Corporation Equipment Trust Certificates, First 1978 Series, issued hereunder.

Trust Equipment:

The term "Trust Equipment" shall mean all Equipment at the time subject to the terms of this Trust Agreement.

Trustee:

The term "Trustee" shall mean Continental Illinois National Bank and Trust Company of Chicago, as trustee hereunder, or any successor thereof in the trust hereunder, but not any additional trustee appointed hereunder, unless otherwise provided in the instrument of appointment executed pursuant thereto and only to the extent therein provided.

ARTICLE II.

TRUST CERTIFICATES AND ISSUANCE THEREOF

SECTION 2.01. *Issuance of Trust Certificates.* The net proceeds (including premium and accrued interest, if any) of the sale of any of the Trust Certificates shall, forthwith upon the issuance thereof, be deposited in cash with the Trustee or to its credit, as Trustee, in one or more special trust accounts with such banks or bankers as may be designated in a Request and approved by the Trustee.

Thereupon, 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 hereunder shall not exceed the sum of $30,000,000, except as provided in Section 2.06.

The certificates of any banks or bankers designated and approved as provided in the first paragraph of this Section 2.01, stating that they hold a stated amount subject to the order of the Trustee, shall be full protection to the Trustee for its action on the faith thereof. Such banks or bankers shall be fully protected in paying such moneys so deposited with them, and any interest thereon, to or upon the written order of the Trustee, and shall be under no obligation to see to the application thereof in accordance with the provisions of this Trust Agreement.

SECTION 2.02. *Trust Certificates.* The Trust Certificates shall be designated as "Equipment Trust Certificates, First 1978 Series." Each of the Trust Certificates shall represent an interest in the amount therein specified in the trust created hereunder.

The Trust Certificates shall be payable and bear interest as specified in the forms thereof hereinbefore set forth and shall mature on June 30, 1998. The Trust Certificates shall be in denominations of $1,000 or any amount in excess of $1,000 and shall be either Registered Trust Certificates or Order Trust Certificates.

The principal of and interest on the Trust Certificates shall be payable at the places provided in the Trust Certificates in such coin or currency of the United States of America as, at the time of payment, shall be legal tender for the payment of public and private debts. Notwithstanding the provisions of the preceding sentence or similar provisions in the Trust Certificates, the Trustee shall comply with section 13 of the Purchase Agreements in making any such payments.

Each Trust Certificate issued and delivered pursuant to the provisions of Section 2.01 shall be dated the date of issuance and delivery thereof, and each Trust Certificate issued in exchange or substitution for, or upon the transfer of, the whole or any part of one or more Trust Certificates shall, except as provided in Sections 2.05 and 2.06, be dated the date to which interest has been paid on such other Trust Certificate or Trust Certificates, *provided, however,* that each Trust Certificate so issued prior to the first interest payment date to which interest

was paid shall be dated the date of such other Trust Certificate or Trust Certificates. Trust Certificates shall bear interest from their respective dates.

SECTION 2.03. *Forms of Trust Certificates and Guaranty.* The Trust Certificates shall be in substantially the form of the Registered Trust Certificate or the Order Trust Certificate hereinbefore set forth and the guaranty to be endorsed on the Trust Certificates by the Company as hereinafter provided in Section 7.01 shall be in substantially the form hereinbefore set forth. The Trust Certificates shall be issued in definitive form and shall be printed, lithographed or engraved.

SECTION 2.04. *Execution by Trustee.* The Trust Certificates shall be signed in the name and on behalf of the Trustee by the manual signature of one of the Vice Presidents or Second Vice Presidents of the Trustee and the corporate seal of the Trustee shall be affixed or imprinted thereon and attested by the manual signature of one of its Trust Officers. In case any officer of the Trustee whose signature shall appear on any of the Trust Certificates shall cease to be such officer 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. *Transfer and Exchange.* The Trust Certificates issuable under this Agreement may be either Registered Trust Certificates or Order Trust Certificates transferable by endorsement and delivery. The Trustee shall cause to be kept at the Corporate Trust Office books for the transfer of the Registered Trust Certificates. The transfer of each Registered Trust Certificate shall be registrable by the registered holder thereof in person or by duly authorized attorney on the books of the Trustee upon surrender to the Trustee at its Corporate Trust Office of such Trust Certificate accompanied by a written instrument of transfer, duly executed by the registered holder in person or by such attorney, in form satisfactory to the Trustee. Anything herein to the contrary notwithstanding, the parties hereto may deem and treat the registered holder of any Registered Trust Certificate as the absolute owner of such Registered Trust Certificate for all purposes and shall not be affected by any notice to the contrary.

The holder of any Trust Certificate may surrender the same for exchange at such Corporate Trust Office and shall be entitled to receive in exchange therefor, without expense to the holder except as provided in the last paragraph of this Section 2.05, a new Trust Certificate or Trust Certificates which aggregate the unpaid principal amount of, and are of the same maturity as, such surrendered Trust Certificate. Each such new Trust Certificate shall, at the option of such holder, be either a Registered Trust Certificate or an Order Trust Certificate, registered in the name of or made payable to such person as such holder may request, dated so that there will be no loss of interest on such surrendered Trust Certificate.

For any such transfer or exchange the Trustee shall require the payment of a sum sufficient to cover the amount of any stamp tax or other governmental charge connected therewith.

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 Company shall endorse its guaranty on any Trust Certificates so delivered. The applicant for a new Trust Certificate 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. In the event of mutilation, destruction, loss or theft of any Trust Certificate held by a purchaser named in the Schedule of Purchasers attached to the Purchase Agreements, such purchaser's written indemnity shall be satisfactory.

ARTICLE III.

REDEMPTION

SECTION 3.01. *Redemption and Redemption Price.* On June 30, 1979 and on the last day of each June thereafter so long as any Trust Certificates shall be outstanding, as and for a sinking fund, the Trustee will redeem 5% of the original principal amount of the Trust Certificates, at the principal amount of the Trust Certificates so redeemed, without premium. The Trust Certificates are not subject to redemption prior to maturity at the option of the Company.

SECTION 3.02. *Allocation of Partial Redemptions.* In the case of each redemption in part, the principal amount of the Trust Certificates to be redeemed shall be allocated among the Trust Certificates at the time outstanding in proportion, as nearly as practicable, to the respective unpaid principal amounts thereof not theretofore called for redemption, with adjustments, to the extent practicable, to compensate for any prior redemptions not made exactly in such proportion.

SECTION 3.03. *Maturity; Surrender, etc.* In the case of each redemption, the principal amount of each Trust Certificate to be redeemed shall mature and become due and payable on the date fixed for such redemption, together with interest on such principal amount accrued to such date. From and after such date, unless the Company shall fail to pay such principal amount when so due and payable, together with interest as aforesaid, interest on such principal amount shall cease to accrue. Any Trust Certificate paid or redeemed in full shall be surrendered to the Trustee and cancelled and shall not be reissued, and no Trust Certificate shall be issued in lieu of any principal amount of any Trust Certificate so redeemed.

ARTICLE IV.

ACQUISITION OF TRUST EQUIPMENT BY TRUSTEE; DEPOSITED CASH

SECTION 4.01. *Acquisition of Equipment by Trustee.* The Company shall cause to be sold, assigned and transferred to the Trustee on the date of the Closing the Equipment described in Attachment A hereto. Such Equipment shall be delivered to the person or persons designated by the Trustee as its agent or agents to receive such delivery (who may in the case of such Equipment be one or more of the officers or agents of the Company) and the certificate of any such agent or agents as to such delivery shall be conclusive evidence of such delivery. In the event that at the Closing the Depreciated Cost of the Trust Equipment described in Attachment A hereto exceeds 111% of the principal amount of Trust Certificates issued at the Closing, the Company and the Trustee shall enter into a supplemental trust agreement pursuant to which Equipment described in Attachment A hereto will be deleted from Attachment A and will no longer be subject to the terms of this Trust Agreement, *provided* that immediately after such deletion the Depreciated Cost of the Trust Equipment will at least equal 111% of the principal amount of the Trust Certificates issued at the Closing and the Company will deliver an Officers' Certificate to the Trustee and each of the Purchasers demonstrating compliance with such test. In the event that, after final determination of the Cost of the Trust Equipment as a result of adjustments, if any, by the manufacturer of such Equipment, the Depreciated Cost of the Trust Equipment does not equal at least 111% of the principal amount of Trust Certificates issued at the Closing, the Company will convey to the Trustee additional Equipment so that immediately after such conveyance the Depreciated Cost of the Trust Equipment will at least equal 111% of the principal amount of such Trust Certificates and the Company will deliver an Officers' Certificate to the Trustee and each of the Purchasers demonstrating compliance with such test.

SECTION 4.02. *Payment of Deposited Cash.* When the Trust Equipment shall have been delivered to the Trustee or its agent or agents pursuant to Section 4.01, the Trustee shall pay to the Company out of Deposited Cash, upon Request but subject to the provisions of Section 4.03 hereof, an amount equal to not more than 90% of the sum of the aggregate Depreciated Cost of such Trust Equipment, as specified in the Officers' Certificate furnished to the Trustee pursuant to Section 4.03(b).

SECTION 4.03. *Supporting Documents and Papers.* The Trustee shall not in connection with the Request referred to in Section 4.02 pay out any Deposited Cash unless and until it shall have received at the time of such Request:

(a) a certificate of the agent or agents designated by the Trustee to receive delivery of the Trust Equipment, stating that the Trust Equipment described and specified therein by number or numbers has been delivered to such agent or agents;

(b) an Officers' Certificate which shall state (i) that such Trust Equipment is Equipment as herein defined and the Cost of each unit thereof, (ii) that the Depreciated Cost of such Trust Equipment is an amount therein specified or is not less than an amount therein specified, (iii) the date each unit of such Trust Equipment was first put into use (which shall not be earlier than January 1, 1978) or that such unit was first put into use not earlier than January 1, 1978, (iv) that, in the opinion of the signers, all conditions precedent provided for in this Trust Agreement, relating to the payment in question, have been complied with and (v) that there exists no Event of Default and no condition, event or act which, with notice or lapse of time, or both, would constitute an Event of Default hereunder;

(c) an Engineer's Certificate which shall state the fair value to the Company, in the opinion of the signer, of such Trust Equipment as of the date of the above-mentioned Request;

(d) a bill or bills of sale of such Trust Equipment from the manufacturers or the Company or other owners thereof to the Trustee, which bill or bills of sale shall contain a warranty or guaranty to the Trustee that the title to the Trust Equipment described therein is free from all liens and encumbrances other than the rights of the Company hereunder;

(e) the Opinions of Counsel referred to in Exhibits B, C and D to the Purchase Agreements; and

(f) an Opinion of Counsel to the effect that title to such Trust Equipment is vested in the Trustee free from all liens and encumbrances other than the rights of the Company hereunder.

ARTICLE V.

LEASE OF TRUST EQUIPMENT TO THE COMPANY

SECTION 5.01. *Lease of Trust Equipment.* The Trustee does hereby let and lease to the Company all of the Trust Equipment, for a term commencing on the date such Equipment is acquired by the Trustee and ending June 30, 1998.

SECTION 5.02. *Equipment Automatically Subjected.* As and when any Equipment shall from time to time be delivered hereunder to the Trustee or its agent or agents, the same shall, *ipso facto* and without further instrument of lease or transfer, pass under and become subject to all the terms and provisions hereof.

SECTION 5.03. *Substituted Equipment Subject Hereto.* In the event that the Company shall, as provided in Section 5.06 or 5.08, cause to be transferred to the Trustee other Equipment in addition to or in substitution for any of the Equipment herein specifically described or subjected hereto, such other Equipment shall be included as part of the Trust Equipment by supplement hereto and shall be subject to all the terms and conditions hereof in all respects as though it had been part of the Trust Equipment herein specifically described.

SECTION 5.04. *Rental Payments.* The Company hereby accepts the lease of all the Trust Equipment, and covenants and agrees to accept delivery and possession hereunder of the Trust Equipment; and the Company covenants and agrees to pay to the Trustee at the Corporate Trust Office (or, in the case of taxes, to the proper taxing authority), in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, rent hereunder which shall be sufficient to pay and discharge the following items, when and as the same shall become due and payable (whether or not any of such items shall become due and payable prior to the delivery and lease to the Company of any of the Trust Equipment):

(a) from time to time upon demand of the Trustee (i) the necessary and reasonable expenses of the trust hereby created, including compensation and expenses provided for herein, and (ii) an amount equal to any expenses incurred or loss of principal (including interest accrued thereupon at time of purchase) in connection with any purchase, sale or redemption by the Trustee of Investment Securities;

(b) from time to time upon demand of the Trustee any and all taxes, assessments and governmental charges upon or on account of the income or property of the trust, or upon or on account of this Trust Agreement, which the Trustee as such may be required to pay;

(c) (i) the amounts of the interest payable on the Trust Certificates, when and as the same shall become payable, and (ii) interest at the rate of 10¼% per annum from the due date, upon the amount of any instalments of rental payable under this subparagraph (c) and the following subparagraph (d) which shall not be paid when due, to the extent legally enforceable; and

(d) the principal of the Trust Certificates when and as the same shall become due and payable (whether at stated maturity or at a date fixed for a sinking fund payment or by declaration or otherwise).

Nothing herein or in the Trust Certificates contained shall be deemed to impose on the Trustee or on the Company any obligation to pay to the holder of any Trust Certificate any income or franchise tax, required by any present or future law of the United States of America, or of any state, county, municipality or other taxing authority thereof, to be paid in behalf of, or withheld from the amount payable to, the holder of any Trust Certificate except any such tax which is in substitution for or relieves the Company from the payment of taxes which it would otherwise be obligated to pay or indemnify for as herein provided or is imposed by reason of activities of the Company.

The Company shall not be required to pay any tax, assessment or governmental charge so long as it shall in good faith and by appropriate legal proceedings contest the validity thereof, provided that the rights or interests of the Trustee or of the holders of the Trust Certificates will not be materially endangered thereby and the Company shall have furnished the Trustee with an Opinion of Counsel to such effect.

SECTION 5.05. *Termination of Lease.* At the termination of the lease provided herein and after all payments due or to become due from the Company hereunder shall have been completed and fully made to the Trustee (a) such payments shall be applied and treated as purchase money and as the full purchase price of the Trust Equipment, (b) any moneys remaining in the hands of the Trustee after providing for all outstanding Trust Certificates and after paying the expenses of the Trustee, including its reasonable compensation, shall be paid to the Company, (c) title to all the Trust Equipment shall vest in the Company and (d) the Trustee shall execute for record in public offices, at the expense of the Company, such instrument or instruments in writing as reasonably shall be requested by the Company in order to make clear upon public records the Company's title to all the Trust Equipment under the laws of any

jurisdiction; *provided, however,* that until that time, title to the Trust Equipment shall not pass to or vest in the Company, but title to and ownership of all the Trust Equipment shall be and remain in the Trustee, notwithstanding the delivery of the Trust Equipment to and the possession and use thereof by the Company.

SECTION 5.06. *Substitution and Replacement of Equipment.* In the event that the Company should become legally bound to sell any unit of the Trust Equipment pursuant to any agreement of sale or purchase option contained in a Lease, the Trustee shall, upon Request, at any time and from time to time, execute and deliver a bill of sale assigning and transferring to the transferee named by the Company all the right, title and interest of the Trustee in and to any or all of such Trust Equipment; *provided, however,* that none of the Trust Equipment shall be so assigned or transferred (except as provided in Section 5.05) unless simultaneously (a) there shall be conveyed to the Trustee other Equipment of a fair value not less than the fair value, as of the date of such Request, of the Trust Equipment so assigned or transferred by the Trustee or (b) there shall be paid to the Trustee cash and/or issued to the Trustee a Letter of Credit in an amount not less than the fair value, as of such date, of the Trust Equipment so assigned or transferred by the Trustee.

At the time of delivery of any Request pursuant to the first paragraph of this Section 5.06, the Company shall, if other Equipment is to be conveyed to the Trustee in substitution for the Trust Equipment to be assigned or transferred by the Trustee, deliver to the Trustee the following papers:

(1) an Engineer's Certificate stating (a) the fair value, as of the date of such Request, of the Trust Equipment so to be assigned or transferred by the Trustee, (b) that such assignment or transfer will not impair the security under this Trust Agreement in contravention of the provisions hereof and (c) the fair value of such substituted units of Equipment as of such date;

(2) an Officers' Certificate stating (a) the date each unit of Trust Equipment so to be assigned or transferred by the Trustee was first put into use (or that such unit was first put into use not later than a specified date), (b) the original Cost of each unit of the Equipment so to be substituted and the date it was first put into use (or that such unit was first put into use not earlier than a specified date), (c) that each unit so to be substituted is Equipment as herein defined, (d) that no Event of Default has occurred and is continuing, (e) that the bill or bills of sale (referred to in subparagraph (3) below) are valid and effective, either alone or together with any other instruments referred to in and accompanying such certificate, to vest and have vested in the Trustee title to such substituted Equipment free from all liens and encumbrances other than the rights of the Company hereunder and the rights of any sublessee from the Company to purchase equipment and (f) that, in the opinion of the signers, all conditions precedent provided for in this Agreement, relating to such substitution, have been complied with;

(3) a certificate and a bill or bills of sale in respect of such substituted Equipment as provided for in subparagraphs (a) and (d), respectively, of the first paragraph of Section 4.03; and

(4) an Opinion of Counsel to the effect (a) that a proper supplement hereto in respect of such substituted Equipment has been duly executed and delivered by the Trustee and the Company and (b) that, in the opinion of such counsel, all conditions precedent provided for in this Trust Agreement, with respect to such substitution, have been complied with.

If the fair value of the Trust Equipment to be assigned or transferred by the Trustee, together with all other property so assigned or transferred in the twelve months immediately prior to the delivery of any Request, as set forth in the certificate or certificates required by this Section 5.06, is 5% or more of the aggregate principal amount of Trust Certificates at the time out-

standing, the Engineer's Certificate referred to in subparagraph (1) above shall be signed by an Independent Engineer who shall determine the fair value of such Trust Equipment.

At the time of delivery of any Request pursuant to the first paragraph of this Section 5.06, the Company shall, if cash is to be paid and/or a Letter of Credit is to be issued to the Trustee in respect of the Trust Equipment to be assigned or transferred by the Trustee, deliver to the Trustee papers corresponding to those set forth in the second paragraph of this Section 5.06 insofar as they relate to the action requested.

Any Letter of Credit deposited with the Trustee pursuant to this Section 5.06 may be drawn upon by the Trustee. Any Letter of Credit (to the extent that it has not been drawn upon by the Trustee) or cash deposited with the Trustee pursuant to this Section 5.06 shall, from time to time, be released or paid over by the Trustee to the Company upon Request, against conveyance to the Trustee of Equipment having a fair value, as of the date of such Request, not less than the amount of such Letter of Credit and/or cash so released or paid, and upon compliance by the Company with all of the provisions of this Section 5.06 insofar as they relate to the action requested.

For all purposes of this Section 5.06, fair value shall be determined as follows (and the manner of such determination shall be set forth in each Engineer's Certificate furnished in respect thereof):

(i) the fair value of any unit of Trust Equipment assigned or transferred by the Trustee as provided in this Section 5.06 shall be deemed to be the greater of (a) the actual fair value thereof, (b) the Cost thereof as theretofore certified to the Trustee less 1/25th of such Cost of such unit for each full period of one year elapsed between the date such unit was first put into use as certified to the Trustee and the date as of which fair value is to be determined and (c) the value thereof, as of such last mentioned date, as determined in accordance with the Code of Rules Governing the Condition of and Repairs to Freight and Passenger Cars for the Interchange of Traffic, adopted by the Association of American Railroads, Operations and Maintenance Department, Mechanical Division, as in effect at the time in question (or, if there is no Code then in effect, generally accepted accounting principles);

(ii) the fair value of any unit of Equipment conveyed to the Trustee as provided in this Section 5.06 shall be deemed to be the greater of (a) the actual fair value thereof and (b) the Cost of such unit, if new, or, in case of any unit of Equipment not new, (A) the Cost thereof, less 1/25th of such Cost of such unit for each full period of one year elapsed between the date such unit was first put into use and the date of the transfer thereof to the Trustee, or (B) the value thereof, as of such last mentioned date, as determined in accordance with the Code of Rules Governing the Condition of and Repairs to Freight and Passenger Cars for the Interchange of Traffic, adopted by the Association of American Railroads, Operations and Maintenance Department, Mechanical Division, as in effect at the time in question (or, if there is no such Code then in effect, generally accepted accounting principles), whichever shall be greater.

SECTION 5.07. *Marking of Trust Equipment.* The Company agrees that, as soon as practicable after the delivery to the Trustee pursuant to this Trust Agreement of each unit of the Trust Equipment, there shall be plainly, distinctly, permanently and conspicuously placed and fastened upon each side of such unit a metal plate bearing the following words, or such words shall be otherwise plainly, distinctly, permanently and conspicuously marked on each side of such unit, in either case in letters not less than seven-sixteenths of one inch in height:

TITLE TO THIS CAR IS VESTED IN A TRUSTEE UNDER AN EQUIPMENT TRUST AGREEMENT RECORDED UNDER SECTION 20C OF THE INTERSTATE COMMERCE ACT.

Such plates or marks shall be such as to be readily visible and as to indicate plainly the Trustee's ownership of each unit of the Trust Equipment.

In case, prior to the termination of the lease provided for herein, any of such plates or marks shall at any time be removed, defaced or destroyed, the Company shall forthwith cause the same to be restored or replaced. The Company shall not change or permit to be changed the numbers of any of the Trust Equipment at any time covered hereby (or any numbers which may have been substituted as herein provided) except in accordance with a statement of new numbers to be substituted therefor which previously shall have been filed with the Trustee by the Company and which shall be filed and recorded to the extent required by Section 7.05.

The Trust Equipment may be marked or lettered, "North American Car Corporation" or in some other appropriate manner for convenience of identification of the leasehold interest of the Company therein, and may also be marked or lettered, in case of a sublease of any Trust Equipment made pursuant to Section 5.10 hereof, in such manner as may be appropriate for convenience of identification of the sublease interest therein; but the Company, during the continuance of the lease provided for herein, will not allow the name of any person, firm, association or corporation to be placed on any of the Trust Equipment as a designation which might be interpreted as a claim of ownership thereof by the Company or by any person other than the Trustee.

SECTION 5.08. *Maintenance of Trust Equipment; Alterations; Purchase; Deposit of Cash or Letter of Credit.* The Company agrees that it will maintain and keep all the Trust Equipment in good order and proper repair and in compliance with applicable law and regulations at its own cost and expense, unless and until it becomes worn out, unsuitable for use, lost, destroyed or condemned, seized or expropriated for a period exceeding 90 days (hereinafter called a Casualty Occurrence). When the total fair value (determined as of a date immediately prior to the Casualty Occurrence in respect of each unit of Trust Equipment) of all units of the Trust Equipment having suffered a Casualty Occurrence (exclusive of units having suffered a Casualty Occurrence in respect of which pursuant to this Section other Equipment shall have been conveyed to, a payment shall have been made to, or a Letter of Credit deposited with, the Trustee pursuant to this Section) shall equal or exceed an amount equal to 1% of the principal amount of the Trust Certificates then outstanding, the Company, within 30 days of such event, shall deliver to the Trustee an Officers' Certificate describing each unit of such Trust Equipment and stating the fair value thereof as of a date immediately prior to the Casualty Occurrence and shall convey to the Trustee other Equipment of a fair value as of the date of such conveyance, and/or shall deposit with the Trustee cash, and/or cause to be issued to the Trustee a Letter of Credit, aggregating an amount at least equal to the fair value of the Trust Equipment having suffered a Casualty Occurrence as of a date immediately prior to the Casualty Occurrence in respect of each unit of Trust Equipment. At the time of each conveyance of Equipment to the Trustee pursuant to this Section 5.08, the Company shall deliver to the Trustee papers corresponding to those set forth in the second paragraph of Section 5.06 hereof insofar as such papers relate to the action requested. For all purposes of this Section 5.08, the fair value of units of Trust Equipment having suffered a Casualty Occurrence shall be determined in the manner provided in subparagraph (i) of the fifth paragraph of Section 5.06, and the fair value of Equipment conveyed to the Trustee in substitution therefor shall be determined in the manner provided in subparagraph (ii) of the fifth paragraph of Section 5.06. The rights and remedies of the Trustee to enforce or to recover any of the rental payments shall not be affected by reason of such Casualty Occurrence. Any Letter of Credit deposited with the Trustee pursuant to this Section may be drawn upon by the Trustee. Any Letter of Credit (to the extent that it has not been drawn upon by the Trustee) or cash deposited with the Trustee pursuant to this Section 5.08 shall upon Request be released by the Trustee to the Company against (i) conveyance to the Trustee of units of Equipment having a fair value, as of the date of such Request, not less than the amount of the Letter of Credit and cash to be released and upon delivery to the Trustee of papers as provided in the second paragraph of Section 5.06 and/or (ii) deposit with the Trustee of cash or another Letter of Credit in like amount as the Letter of Credit to be released. In the event that any Letter of Credit deposited with the Trustee pursuant to Section 5.06 or this Section

5.08 shall expire, terminate, be or become uncollectible or unenforceable, or if the Trustee shall be unable to draw on any Letter of Credit the full amount thereof, the Trustee shall release such Letter of Credit to the Company, and the Company shall convey units of Equipment and/or deposit with the Trustee cash or another Letter of Credit, as aforesaid. For all purposes of this Section 5.08, the term "unsuitable for use" shall include any condition in which Trust Equipment is no longer usable for the purpose or purposes for which the same was designed (or an alternate purpose or alternate purposes provided that no material impairment in value shall arise therefrom) whether by virtue of its physical condition or of the effect of any applicable law, rule, regulation or order. The Trustee, either individually or by its agents, shall have the right once in each calendar year, but shall be under no duty, to inspect the Trust Equipment at the then existing locations thereof.

For the purpose of enabling the Company to meet the transportation requirements of present and future sublessees, the Company may from time to time make, or cause to be made, changes and alterations in the design, structure and equipment of any of the cars constituting a part of the Trust Equipment, all at the expense of the Company; *provided* that no material impairment in value shall result therefrom.

The Company covenants and agrees, whenever required by the Trustee, and at least once, on or before April 15, 1979 and on or before April 15 in every calendar year thereafter and during the continuance of the lease provided for herein, (i) to furnish to the Trustee an Officers' Certificate, dated as of the last day of the preceding January, stating (a) the amount, description and numbers of all Trust Equipment that may have suffered a Casualty Occurrence by accident or otherwise or have been purchased by a third party since the date of the last preceding statement (or the date of this Trust Agreement in the case of the first statement), and (b) that in the case of all the Trust Equipment repainted or repaired since the date of the last preceding statement (or the date of this Trust Agreement in the case of the first statement) the plates or marks required by Section 5.07 have been preserved, or that such Trust Equipment when repainted or repaired has been again plated or marked as required thereby; and (ii) to furnish to the Trustee an Engineer's Certificate describing all Trust Equipment stated in the Officers' Certificate referred to above as having suffered a Casualty Occurrence or having been purchased by any third party and stating the fair value thereof (determined as hereinbefore provided) as of a date immediately prior to such Casualty Occurrence or purchase.

If the fair value of the Trust Equipment described in the Engineer's Certificate referred to in the preceding paragraph together with all other Trust Equipment which has suffered a Casualty Occurrence or has been purchased by a third party during the calendar year in question, as set forth in certificates required by Section 5.06 and this Section 5.08, is 5% or more of the aggregate principal amount of Trust Certificates at the time outstanding, the Engineer's Certificate shall be signed by an Independent Engineer who shall determine the fair value of the Trust Equipment described in such certificates.

SECTION 5.09. *Insurance of Trust Equipment.* The Company maintains insurance on the Trust Equipment when such Trust Equipment is in its possession or control. Such insurance is of the types customarily carried by corporations of established reputation engaged in the same or a similar business and similarly situated, and insures against risks of the kinds customarily insured against by such other corporations under similar circumstances. The Company will keep in effect its present or equivalent policies of insurance on the Trust Equipment whereby the Company is insured against loss or damage with coverage in an amount at least equal to the fair value (determined in the manner provided in subparagraph (i) of the fifth paragraph of Section 5.06) from time to time of the Trust Equipment (the "Insured Amount"). When any of the Trust Equipment is not in the Company's possession or control, in lieu of insurance, the Company's practice is to require sublessees of the Trust Equipment to bear the risk of loss of the Trust Equipment and the Company shall not be required to insure any Trust Equipment the risk of loss of which is borne by the sublessee; *provided, however,* if, in the event that (a) any of the Trust Equipment shall be lost, damaged or destroyed and (b) the

Company fails to perform its obligations under the second sentence of Section 5.08 within 60 days after the time therein required, then the holders of 10% or more of the aggregate principal amount of the Trust Certificates then outstanding may by notice to the Company and the Trustee direct and require the Company to obtain and keep in effect policies of insurance whereby the Trustee is insured against loss or damage to any of the Trust Equipment in an amount not less than the Insured Amount. The Company will pay the premiums on all policies of insurance required to be maintained by it pursuant to this Section 5.09 and deliver to the Trustee, at least once in every year, a certificate, signed by the President or by one of the Vice Presidents of the Company, stating that such insurance is in effect and naming the insurer or insurers. If the Company shall fail to maintain such insurance, the Trustee may (but shall be under no obligation so to do) cause the Trust Equipment to be insured in such amount as the Trustee shall deem advisable for the protection of the holders of the Trust Certificates and may demand and recover from the Company the premiums on such insurance plus any financing expense incurred by the Trustee in order to pay such premiums. In case the Company fails to obtain and maintain such insurance and the Trustee insures the Trust Equipment or any part thereof as above provided, the title of the Trustee to the Trust Equipment shall, notwithstanding the making of all other payments hereunder to be made by the Company, remain in the Trustee until the repayment of the amount so paid for insurance with any financing expense, as aforesaid, and the repayment of such amount is hereby expressly made one of the obligations to be performed before title to the Trust Equipment shall vest in the Company.

Any insurance moneys paid to the Trustee on account of any loss in respect of the Trust Equipment covered by insurance effected by the Trustee shall be held and retained by the Trustee in trust for the equal and proportionate benefit of the holders of the Trust Certificates, until the replacement or repair, as provided in Section 5.08, of the Trust Equipment covered by such insurance. Upon proof satisfactory to the Trustee of the proper replacement or repair of such Trust Equipment, such insurance or other moneys received by the Trustee shall be applied by the Trustee to the payment of the cost of such replacement or repair or to reimburse the Company, to the extent of such funds, for payments made by it in respect of such replacement or repair. A certificate in behalf of the Company by the President or one of the Vice Presidents of the Company as to the proper repair of such Trust Equipment, free from any lien and encumbrance, or the certificates and opinion provided in Section 5.06 or Section 5.08 hereof with respect to the replacement of such Trust Equipment, shall be full and complete protection to the Trustee.

SECTION 5.10. *Possession of Trust Equipment; Sublease.* Except as provided in Sections 5.06 and 5.08 and in this Section 5.10, the Company will not (a) assign or transfer its rights hereunder, except to an Affiliate of the Company whose rights are subordinated to the rights of the Trustee and holders of the Trust Certificates hereunder (i) incorporated under the laws of the United States or Canada or a political subdivision of either other than the provinces of Quebec and Nova Scotia, or (ii) incorporated under the laws of Mexico or a political subdivision thereof, subject however, in the case of all Trust Equipment used in Canada or Mexico to the limitations of Section 7.05(b) hereof, which agrees in a writing delivered to the Trustee to take such Trust Equipment subject to the terms hereof and to comply with the covenants and agreements of the Company in this Trust Agreement insofar as such covenants and agreements relate to the Trust Equipment sublet to such Affiliate of the Company, and to neither assign nor transfer its rights under such sublease except to sublessees as permitted to the Company hereunder; and provided that no such sublease shall relieve the Company of its obligations hereunder, or (b) transfer or sublet the Trust Equipment or any part thereof, except as herein provided; and the Company shall not, except as herein provided, part with the possession of, or suffer or allow to pass out of its possession or control, any of the Trust Equipment. An assignment or transfer to a successor corporation pursuant to Section 7.06 hereof shall not be deemed a breach of this covenant.

So long as the Company shall not be in default under this Trust Agreement, the Company and any Affiliate of the Company shall be entitled to the possession and use of the Trust Equipment in accordance with the terms hereof, and the Company and any Affiliate of the Company may also in the future (a) furnish the Trust Equipment or any part thereof to railroad companies for use upon the lines of railroad owned or operated by them or over which they have trackage rights and upon connecting and other carriers in the usual interchange of traffic, or to persons other than railroad companies for use in their businesses, or (b) sublet to others all or any part of the Trust Equipment, but only, in either case, upon and subject to all the terms and conditions of this Trust Agreement, and to all rights of the Trustee hereunder; *provided* that the aggregate Cost of any Trust Equipment under Leases to any one sublessee, or any affiliate thereof, shall not exceed 25% of the aggregate Cost of all of the Trust Equipment then subject hereto.

Any such sublease may provide that the sublessee, so long as it shall not be in default under such sublease, shall be entitled (subject to the rights of the Trustee upon the happening of an Event of Default) to the possession of the Trust Equipment included in such sublease and the use thereof, and, subject to the provisions of Section 5.07, may provide for lettering or marking upon such Equipment for convenience of identification of the leasehold interest of such sublessee therein. Every such sublease shall expressly subject the rights of the sublessee under such sublease to the rights of the Trustee in respect of the Trust Equipment covered by such sublease in the event of the happening of an Event of Default.

SECTION 5.11. *Assignment of Leases.* As further security for the Trust Certificates, the Company hereby transfers and assigns to the Trustee, and grants to the Trustee a charge on and security interest in, for the equal and proportionate benefit of the holders from time to time of the Trust Certificates, all of its right, title and interest as lessor in and to, under or in respect of each and every Lease and each and every existing and future guarantee of all or any of the obligations of any sublessee under any such Lease, and in and to, under or in respect of any amendment thereof or supplement thereto, including, without limitation, the right to all rents, proceeds and other moneys now due and payable or hereafter to become due and payable and all claims, rights, remedies, powers and privileges on the part of the Company, whether arising under the Leases or by statute or at law or in equity or otherwise, consequent on any failure on the part of any sublessee under any such Lease or any guarantor under any such guarantee to perform or comply with any of the provisions of any of the Leases or guarantees to be performed or complied with by it, together with the full power and authority, in the name of the Trustee and the Company, or either of them, or otherwise to demand, sue for, enforce, collect, receive and receipt for any and all of the foregoing (the Company hereby irrevocably constitutes and appoints the Trustee the attorney-in-fact of the Company for such purposes). Any instrument made, executed and delivered by the Trustee on behalf of the Company shall be binding upon the Company and all persons claiming by, through or under the Company, with the same effect as if the Company had itself made, executed and delivered the same.

The Company as lessor or sublessor covenants and agrees that it has caused and shall continue to cause substantially the following clause to be inserted in each Lease:

> "It is understood that some of the cars furnished Lessee under this Agreement and Lessor's rights under this Agreement may at the time of delivery to Lessee or at some future time during the term of this Agreement be subject to the terms of a Mortgage, Deed of Trust, Equipment Trust, Pledge or Assignment or similar security arrangement. Lessee agrees that the cars may be stenciled or marked to set forth the ownership of any such cars in the name of a mortgagee, trustee, pledgee, assignee or security holder and that this agreement and Lessee's rights hereunder are and shall at all times be subject and subordinated to any and all rights of any mortgagee, trustee, pledgee, assignee or security holder. As to the cars subject hereto, this Agreement and the rentals hereunder may have been assigned and may in the future be assigned to the holder, if any, of the superior lien from time to time on each

car as determined with reference to the filings under Section 20c of the Interstate Commerce Act; however, until notified to the contrary by any person reasonably proving to the Lessee's satisfaction that he is the assignee of this Agreement and of the rentals hereunder, the Lessee is to pay all rentals to the order of the Lessor. Lessee hereby consents to and accepts such assignments."

The Company further covenants and agrees that it has used and will continue to use its best efforts to cause substantially the following additional clause to be inserted in each Lease:

"Lessee agrees that no claim or defense which Lessee may have against Lessor shall be asserted or enforced against any assignee of this Agreement."

The Company hereby irrevocably directs all persons now or at any time obligated under each and every such Lease to pay to the Trustee or its agent, at its Corporate Trust Office, all payments due and to become due and all other sums assigned pursuant to this Section 5.11.

Any and all rights of the Trustee under this Section 5.11 may be exercised pursuant to or as contemplated by the provisions of this Trust Agreement and each and every Lease. The assignment provided for in this Section 5.11 shall be effective immediately and is not conditioned upon the occurrence of an Event of Default under this Trust Agreement or any other event or contingency.

The foregoing assignment shall be subject to the following additional provisions:

(a) The Trustee hereby appoints the Company as its agent, and the Company hereby accepts such appointment, to collect and receive all payments due and to become due under Leases in respect of Trust Equipment and to exercise any rights and powers of the Company as lessor arising under the Leases; *provided* that, only upon the occurrence of an Event of Default which shall be continuing, the Trustee may terminate such agency and such agency shall terminate immediately upon notice of such termination from the Trustee to the Company and *provided further* that, prior to receipt of such notice, the Company may make such use of any moneys received pursuant to its agency hereunder as it would otherwise be entitled to except for the assignment under this Section 5.11.

(b) Any action, suit or proceeding brought by the Trustee following such termination of such agency pursuant to any of the terms hereof or otherwise, and any claim made by the Trustee hereunder, may be compromised, withdrawn or otherwise dealt with by the Trustee without any notice to or approval of the Company as lessor under any Lease.

(c) The Trustee shall not be obligated to take any steps necessary to preserve any rights in any Lease against prior parties who may be liable in connection therewith and it is expressly agreed that, anything herein contained to the contrary notwithstanding, the Company shall remain liable under the Leases to which it is a party to perform all of the obligations assumed or to be assumed by it thereunder and the Trustee shall have no obligations or liability under any Lease by reason of or arising out of this assignment, nor shall the Trustee be required or obligated in any manner to perform or fulfill any obligation of the Company under or pursuant to any Lease, or to make any payment, or to make any inquiry as to the nature or sufficiency of any payment received by it, or present or file any claim, or take any other action to collect or enforce the payment of any amounts which may have been assigned to it or to which it may be entitled hereunder at any time or times, and the Company shall and does hereby agree to indemnify and hold the Trustee harmless of and from any and all liability, loss or damage which it may or might incur with respect to or arising under any Lease or this assignment.

(d) The Company agrees to mark each executed counterpart of each Lease held by it under which it is lessor and each executed counterpart of each Lease under which it is lessor hereafter executed by it with the following:

"This lease has been assigned to the holder of the superior lien from time to time on each car as determined with reference to the filings under Section 20c of the Interstate Commerce Act."

(e) The Company at its expense shall, during the first ninety days of each calendar year, cause any document confirmatory of this assignment or such other instruments as may be designated by applicable law, to be recorded, registered and filed in such manner and in such places, and will pay all such recording, registration, filing or other taxes, fees and other charges, and will comply with all such statutes and regulations, as may be required for the proper protection of the security interest under this assignment, and of the rights of the Trustee, its successors and assigns, and the holders of the Trust Certificates.

(f) The Company promptly after the execution hereof shall give notice in writing in form satisfactory to the Trustee to all sublessees located in Canada under all presently existing Leases of the existence of this assignment which notice shall direct such lessees, upon receipt of notice from the Trustee, to pay to the Trustee all rentals now or in the future due or owing in respect of Trust Equipment under any such Lease. Such notices shall be sent by certified mail, return receipt requested, and such receipts shall be directed to the Trustee. The Company shall use reasonable efforts to obtain as promptly as possible acknowledgments, in form satisfactory to the Trustee, of the receipt of all such notices with respect to such Leases; and the Company will promptly deliver all such acknowledgments to the Trustee.

(g) Upon request of the Trustee, the Company agrees to execute and deliver to the Trustee a document separate and apart from this Trust Agreement embodying the provisions of this Section 5.11 for the purpose of notifying the lessees under such Leases of this Trust Agreement and directing such lessees to make payments due under such Leases to the Trustee.

(h) The Company agrees that prior to permitting any Affiliate of the Company to possess and use any of the Trust Equipment (including as set forth in clauses (a) and (b) of the second paragraph of Section 5.10), it will cause each such Affiliate (including, without limitation, North American Car (Canada) Limited) to execute an assignment of Leases to the Trustee containing the same provisions as contained in this Section 5.11, substituting such Affiliate for the Company therein.

(i) The Company covenants that, together with the financial statements delivered pursuant to Section 7.02(b) hereof, it will deliver to the Trustee an Officers' Certificate containing (i) a report of the percentage of all units of Trust Equipment not then subleased to a person (other than the Company or an Affiliate of the Company) under a Lease with an original term of 30 days or more, (ii) a list describing each Lease with a term of three or more years executed during the preceding calendar year, and (iii) a document or documents in form satisfactory to the Trustee confirming the assignment to the Trustee of each and every Lease executed during the preceding calendar year under and pursuant to the provisions hereof and of all rents, proceeds and other monies due or to become due in respect of the Trust Equipment thereunder. The Trustee may at any time, at the request of the holders of 25% in principal amount of Trust Certificates at the time outstanding, require the Company to deliver to it comparable lists and confirming documents with respect to any existing Leases (irrespective of the terms of such Leases).

SECTION 5.12. *Indemnity.* The Company covenants and agrees to indemnify the Trustee and each holder of a Trust Certificate against any and all claims arising out of or connected with the ownership or use of any of the Trust Equipment, and particularly, but not by way of limitation, against any and all claims arising out of the use of any patented inventions in and about the Trust Equipment, or arising out of the failure of the Company to comply in all respects with the laws of the United States of America and of all the states or other jurisdictions, or any subdivision thereof, in which the Trust Equipment may be operated, and with all lawful acts, rules, regulations and orders of any commissions, boards and other legislative,

executive, administrative or judicial bodies or officers having power to regulate or supervise any of the Trust Equipment, including without limitation all lawful acts, rules, regulations and orders of any body having competent jurisdiction relating to automatic coupler devices or attachments, air brakes or other appliances, or resistance to pressure; *provided, however,* that the Company may in good faith contest the validity of any such law, act, rule, regulation or order, or the application thereof to the Trust Equipment or any part thereof, in any reasonable manner which will not in the judgment of the Trustee materially endanger the rights or interests of the Trustee or of the holders of the Trust Certificates. The Company shall not be relieved from any of its obligations hereunder by reason of the assertion or enforcement of any such claims or the commencement or prosecution of any litigation in respect thereof. The obligations of the Company under this Section shall survive any termination or satisfaction of this Trust Agreement.

SECTION 5.13. *Improvement Equipment.* Notwithstanding the proviso to the first paragraph of Section 5.06 and the provisions of the second sentence of Section 5.08, the Company shall be relieved of the requirement thereunder that it convey to the Trustee other Equipment or pay to the Trustee cash and/or issue to the Trustee a Letter of Credit to the extent of the fair value, determined as provided in subparagraph (ii) of the fifth paragraph of Section 5.06, of Improvement Equipment added to units of Trust Equipment after the date on which such Trust Equipment becomes Trust Equipment and prior to the date of the Request under Section 5.06 or up to the date immediately prior to a Casualty Occurrence under Section 5.08, *provided* that the Company has not in connection with a prior Request under Section 5.06 or a prior Casualty Occurrence under Section 5.08 deducted the fair value of such Improvement Equipment to avoid or limit the requirements of such Sections. At the time of the Request pursuant to Section 5.06 or the date on which the Company would be required to convey Equipment to the Trustee or to pay cash and/or issue a Letter of Credit to the Trustee pursuant to Section 5.08, the Company shall, if the provisions of this Section 5.13 are applicable, include in the Officers' Certificate described in Section 5.06 a description of each unit of Improvement Equipment, including the serial number of the unit of Trust Equipment to which such Improvement Equipment is attached and the rule or regulation pursuant to which such unit of Improvement Equipment has been added. Notwithstanding any other provision hereof, but subject to compliance by the Company with Section 7.05(b), the Company may, but shall not be required to, execute and deliver a supplement hereto with respect to any unit of Improvement Equipment.

ARTICLE VI.

REMEDIES IN EVENT OF DEFAULT

SECTION 6.01. *Events of Default.* The Company covenants and agrees that in case:

(a) the Company shall default in the payment of any part of the rental payable hereunder when the same shall have become due and payable, or

(b) the Company or any Affiliate of the Company to which any of the rights of the Company hereunder shall have been assigned in conformity with the provisions of this Trust Agreement shall make or suffer any unauthorized assignment or transfer of its rights hereunder or shall make any unauthorized transfer or sublease of any of the Trust Equipment, or, except as herein authorized, shall part with the possession of any of the Trust Equipment, and shall fail or refuse either to cause such assignment or transfer or sublease to be canceled by agreement of all parties having any interest therein and recover possession of such Trust Equipment within 30 days after the Trustee shall have demanded in writing such cancellation and recovery of possession, or within such 30 days to deposit with the Trustee either cash and/or a Letter of Credit in an aggregate sum equal to the Cost, or, in the case of Trust Equipment conveyed to the Trustee pursuant to Section 5.06 or Section 5.08 hereof, the fair value (as of the date of conveyance), determined as provided in subparagraph (i) of the fifth paragraph of Section 5.06, of the Trust Equipment so as-

signed or transferred or subleased or the possession of which shall have been parted with otherwise than as herein authorized, as certified to the Trustee pursuant to Section 4.03, Section 5.06 or Section 5.08 (any Letter of Credit or sum so deposited to be returned to the Company upon the cancellation of such assignment, transfer or sublease and the recovery of possession by the Company or such Affiliate of the Company of such Trust Equipment), or

(c) the Company shall default in the performance of any covenant contained in Section 5.09 (as to maintenance of insurance), Section 7.02 or clause (i) of Section 7.05(c) (if such failure shall continue for more than 30 days), clause (ii) of Section 7.05(c), Section 7.05(e) or Section 7.06, or

(d) the Company shall, for more than 30 days after the Trustee shall have demanded in writing performance thereof, fail or refuse to comply with any other of the terms and covenants hereof on its part to be kept and performed, or to make provision satisfactory to the Trustee for such compliance, or

(e) the lease provided for herein shall be terminated by operation of law, or

(f) the Company or any Significant Subsidiary shall (i) admit in writing its inability to pay its debts generally as they become due, (ii) file a petition in bankruptcy or commence proceedings under any bankruptcy, insolvency, reorganization, readjustment of debt, dissolution or liquidation law or statute now or hereafter in effect, (iii) make an assignment for the benefit of its creditors, (iv) consent to the appointment of a receiver of itself or of the whole or any substantial part of the trust estate, or (v) on a petition in bankruptcy filed against the Company or any Significant Subsidiary, be adjudicated a bankrupt, or

(g) an order, judgment or decree shall be entered by any court of competent jurisdiction appointing, without the consent of the Company or any Significant Subsidiary, a receiver of the Company or any Significant Subsidiary or of the whole or any substantial part of the Trust Equipment, and such order, judgment or decree shall not be vacated or set aside or stayed within 60 days from the date of such appointment, or

(h) a court of competent jurisdiction shall enter an order, judgment or decree approving a petition filed against the Company or any Significant Subsidiary under any bankruptcy, insolvency, reorganization, readjustment of debt, dissolution or liquidation law or statute now or hereafter in effect, and such order, judgment or decree not be vacated or set aside or stayed within 60 days from the date of the entry of such order, judgment or decree, or a stay of such proceedings be thereafter set aside, or

(i) under the provision of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the Company or any Significant Subsidiary or of the whole or any substantial part of the Trust Equipment, and such custody or control shall not be terminated within 60 days from the date of assumption of such custody or control, or

(j) default shall be made by the Company in the performance of section 6 of the Purchase Agreements, which default shall continue for more than 30 days, or default shall be made by the Company in the performance or observance of any of the other covenants, agreements or conditions on its part in the Purchase Agreements or any of the representations and warranties of the Company contained in the Purchase Agreements shall be incorrect in any material respect,

then, in any such case (herein sometimes called an "Event of Default"), the Trustee in its discretion may, and upon the written request of the holders of not less than 25% in principal amount of the then outstanding Trust Certificates shall, by notice in writing delivered to the Company, declare to be due and payable forthwith the entire amount of the rentals thereafter payable by the Company as set forth in Section 5.04 and not theretofore paid. Thereupon the

entire amount of such rentals shall forthwith become and shall be due and payable immediately without further demand, together with interest at the rate of 10¼% per annum, to the extent legally enforceable, on any portion thereof overdue.

In case one or more Events of Default shall happen, the Trustee in its discretion also may, and upon written request of the holders of not less than 25% in principal amount of the then outstanding Trust Certificates shall, by notice in writing delivered to the Company, declare the principal of all the Trust Certificates then outstanding to be due and payable, and thereupon the same shall become and be immediately due and payable, together with all interest accrued thereon.

In case the Company shall fail to pay any instalment of rental payable pursuant to Section 5.04(c) or (d) when and as the same shall have become due and payable hereunder, and such default shall have continued for a period of five days, the Trustee, in its own name and as trustee of an express trust, shall be entitled and empowered to institute any action or proceedings at law or in equity for the collection of the rentals so due and unpaid, and may prosecute any such action or proceedings to judgment or final decree, and may enforce any such judgment or final decree against the Company or other obligor upon the Trust Certificates and collect in the manner provided by law out of the property of the Company or other obligor upon the Trust Certificates wherever situated the moneys adjudged or decreed to be payable.

In case there shall be pending proceedings for the bankruptcy or for the reorganization of the Company or any obligor upon the Trust Certificates under the Bankruptcy Act or any other applicable law, or in case a receiver or trustee shall have been appointed for the property of the Company or such other obligor, or in case of any other judicial proceedings relative to the Company or such other obligor, or to the creditors or property of the Company or such other obligor, the Trustee, irrespective of whether the rental payments hereunder or the principal of the Trust Certificates shall then be due and payable as herein or therein expressed whether by declaration or otherwise and irrespective of whether the Trustee shall have made any demand or declaration pursuant to the provisions of this Section 6.01, shall be entitled and empowered, by intervention in such proceedings or otherwise, to file and prove a claim or claims for the entire amount of the rentals and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for reasonable compensation to the Trustee, its agents, attorneys and counsel, and for reimbursement of all expenses and liabilities incurred, and all advances made, by the Trustee except as a result of its negligence or bad faith) and of the holders of the Trust Certificates allowed in such proceedings and to collect and receive any moneys or other property payable or deliverable on any such claims, and to distribute all amounts received with respect to the claims of the holders of the Trust Certificates and of the Trustee on their behalf; and any receiver, assignee or trustee in bankruptcy or reorganization is hereby authorized by each of the holders of the Trust Certificates to make payments to the Trustee, and, in the event that the Trustee shall consent to the making of payments directly to the holders of the Trust Certificates, to pay to the Trustee such amount as shall be sufficient to cover reasonable compensation to the Trustee, its agents, attorneys and counsel, and all other expenses and liabilities incurred, and all advances made, by the Trustee except as a result of its negligence or bad faith.

All rights of action under this Trust Agreement or under any of the Trust Certificates may be enforced by the Trustee without the possession of any of the Trust Certificates or the production thereof at any trial or other proceedings relative thereto, and any such action or proceedings instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall be for the ratable benefit of the holders of the Trust Certificates. In any proceedings brought by the Trustee (and also any proceedings involving the interpretation of any provision of this Trust Agreement to which the Trustee shall be a party) the Trustee shall be held to represent all the holders of the Trust Certificates, and it shall not be necessary to make any holders of the Trust Certificates parties to such proceedings.

SECTION 6.02. *Remedies.* In case of the happening of any Event of Default, the Trustee may by its agents enter upon the premises of the Company and of any Affiliate of the Company or of any sublessee where any of the Trust Equipment may be and take possession of all or any part of the Trust Equipment and withdraw the same from such premises, retaining all payments which up to that time may have been made on account of rental for the Trust Equipment and otherwise, and shall be entitled to collect, receive and retain all unpaid *per diem,* mileage or other charges of any kind earned by the Trust Equipment or any part thereof, and may lease the Trust Equipment or any part thereof, or with or without retaking possession thereof (but only after declaring due and payable the entire amount of rentals payable by the Company as provided in Section 6.01 hereof) may sell the same or any part thereof, free from any and all claims of the Company at law or in equity, in one lot and as an entirety or in separate lots, insofar as may be necessary to perform and fulfill the trust hereunder, at public or private sale, for cash or upon credit, in its discretion, and may proceed otherwise to enforce its rights and the rights of the holders of interests hereunder in the manner herein provided; *provided, however,* the rights of the Trustee shall be subject to the rights of lessees of Trust Equipment under existing subleases to purchase such Trust Equipment. Upon any such sale, the Trustee itself or any holder of a Trust Certificate may bid for the property offered for sale or any part thereof and shall have the right to credit on the purchase price any and all sums of money due and payable on the Trust Certificates or otherwise hereunder. Any such sale may be held or conducted at such place and at such time as the Trustee may specify, or as may be required by law, and without gathering at the place of sale the Trust Equipment to be sold, and in general in such manner as the Trustee may determine, but so that the Company may and shall have a reasonable opportunity to bid at any such sale, but only in an amount not less than the principal and interest then unpaid and due on the Trust Certificates. Upon such taking possession or withdrawal or lease or sale of the Trust Equipment, the Company shall cease to have any rights or remedies in respect of the Trust Equipment hereunder, and all such rights and remedies shall be deemed thenceforth to have been waived and surrendered by the Company, and no payments theretofore made by the Company for the rent or use of the Trust Equipment or any of it shall, in case of the happening of any Event of Default and such taking possession, withdrawal, lease or sale by the Trustee, give to the Company any legal or equitable interest or title in or to the Trust Equipment or any of it or any cause of action at law or in equity in respect of the Trust Equipment against the Trustee or the holders of interests hereunder. No such taking possession, withdrawal, lease or sale of the Trust Equipment by the Trustee shall be a bar to the recovery by the Trustee from the Company of rentals then or thereafter due and payable, and the Company shall be and remain liable for the same until such sums shall have been realized as, with the proceeds of the lease or sale of the Trust Equipment, shall be sufficient for the discharge and payment in full of all the items mentioned in Section 5.04 (other than interest not then accrued) whether or not they shall have then matured.

In the case of the happening of any Event of Default, the Trustee may, whether or not the Trustee shall concurrently exercise any other remedy provided for in this Article VI or by law, terminate the agency provided for in Section 5.11 and collect the rentals, proceeds and other monies assigned pursuant to Section 5.11.

SECTION 6.03. *Application of Proceeds.* If, in case of the happening of any Event of Default, the Trustee shall exercise any of the powers conferred upon it by Sections 6.01 and 6.02, all payments made by the Company to the Trustee hereunder after such Event of Default, and the proceeds of any judgment collected from the Company by the Trustee hereunder, and the proceeds of every sale or lease by the Trustee hereunder of any of the Trust Equipment, together with any other sums which may then be held by the Trustee under any of the provisions hereof (other than sums held in trust for the payment of specific Trust Certificates), shall be applied by the Trustee to the payment, in the following order or priority, (a) of all proper charges, expenses or advances made or incurred by the Trustee in accordance with the provisions of this Trust Agreement and (b) of the interest then due, with interest on overdue interest at the rate of 10¼% per annum to the extent legally enforceable, and of the principal of all the outstanding

Trust Certificates, with interest thereon at the rate of 10¼% per annum to the extent legally enforceable from the last preceding interest payment date, whether such Trust Certificates shall have then matured by their terms or not, all such payments to be in full if such proceeds shall be sufficient, and if not sufficient, then *pro rata* without preference between principal and interest.

After all such payments shall have been made in full, the title to any of the Trust Equipment remaining unsold shall be conveyed by the Trustee to the Company free from any further liabilities or obligations to the Trustee hereunder. If after applying all such sums of money realized by the Trustee as aforesaid there shall remain any amount due to the Trustee under the provisions hereof, the Company agrees to pay the amount of such deficit to the Trustee. 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 6.04. *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 by their terms or through acceleration as provided in Section 6.01, the holders of not less than 66⅔% 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 Event of Default and its consequences, except an Event of Default in the payment of any instalment of rental payable pursuant to Section 5.04(c) or (d), 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 in Section 6.01 provided, but before June 30, 1998, all arrears of rent (with interest at the rate of 10¼% 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 (other than the principal of Trust Certificates, and any other rental instalments, which shall not at the time have matured according to their terms) shall be paid by the Company before any sale or lease by the Trustee of any of the Trust Equipment, and every other default in the observance or performance of any covenant or condition hereof 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 not less than 66⅔% in principal amount of the Trust Certificates then outstanding according to their terms, 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 6.05. *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 or the obligations of the Company under the guaranty endorsed on the Trust Certificates. 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 6.06. *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 Trust Agreement, the Company will, at its own expense, forthwith and in the usual manner and at usual speed, 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 Trust Agreement and upon application to any court having jurisdiction in the premises, the Trustee shall be entitled, to the extent permitted by applicable law, to a decree against the Company requiring the specific performance thereof.

SECTION 6.07. *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 its obtaining knowledge thereof, unless such default shall have been remedied or cured before the giving of such notice.

SECTION 6.08. *Limitations on Suits by Holders of Trust Certificates.* No holder of any Trust Certificate shall have any right by virtue or by availing itself of any provision of this Trust Agreement to institute any action or proceedings at law or in equity or in bankruptcy or otherwise, upon or under or with respect to this Trust Agreement, or for the appointment of a receiver or trustee, or for any other remedy hereunder, unless such holder previously shall have given to the Trustee written notice of default and of the continuance thereof, as hereinbefore provided, and unless also the holders of not less than 66⅔% in aggregate principal amount of the Trust Certificates then outstanding shall have made written request to the Trustee to institute such action or proceedings in its own name as trustee hereunder and shall have offered to the Trustee such reasonable indemnity as it may require against the costs, expenses and liabilities to be incurred therein or thereby, and the Trustee for 30 days after its receipt of such notice, request and offer of indemnity shall have failed to institute any such action or proceedings and no direction inconsistent with such written request shall have been given to the Trustee pursuant to Section 6.10; it being understood and intended, that no one or more holders of Trust Certificates shall have any right in any manner whatever, by virtue or by availing itself of any provision of this Trust Agreement, to affect, disturb, or prejudice the rights of any other holder of Trust Certificates, or to obtain or seek to obtain priority over or preference to any other such holder or to enforce any right under this Trust Agreement, except in the manner herein provided and for the equal, ratable and common benefit of all holders of Trust Certificates. For the protection and enforcement of the provisions of this Section 6.08, each and every holder of a Trust Certificate and the Trustee shall be entitled to such relief as can be given either at law or in equity.

SECTION 6.09. *Unconditional Right of Holders of Trust Certificates to Sue for Principal and Interest.* Notwithstanding any other provision in this Trust Agreement, the right of any holder of any Trust Certificate to receive payment of the principal of and interest on such Trust Certificate, on or after the respective due dates expressed in such Trust Certificates, or to institute suit for the enforcement of any such payment on or after such respective dates, shall not be impaired or affected without the consent of such holder, except no such suit shall be instituted or prosecuted if and to the extent that the institution or prosecution thereof or the entry of judgment therein would, under applicable law, result in the surrender, impairment, waiver or loss of the title reserved under this Trust Agreement upon any property subject hereto.

SECTION 6.10. *Control by Holders of Trust Certificates.* The holders of not less than 66⅔% in aggregate principal amount of the Trust Certificates at the time outstanding 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, subject to the provisions of Section 10.02, the Trustee shall have the right to decline to follow any such direction if the Trustee being advised by counsel shall determine that the action so directed may not lawfully be taken.

SECTION 6.11. *Remedies Cumulative.* The remedies in this Trust Agreement provided in favor of the Trustee and the holders of the Trust Certificates, or any of them, including any rights under the guaranty of the Company as provided in Article VII and endorsed on the Trust Certificates, 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 any such remedies and

rights 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.

ARTICLE VII.

ADDITIONAL COVENANTS AND AGREEMENTS BY THE COMPANY

SECTION 7.01. *Guaranty of Company.* The Company covenants, agrees and guarantees that the holder of each of the Trust Certificates shall receive the principal amount thereof, in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, when and as the same shall become due and payable (whether at stated maturity or at a date fixed for a sinking fund payment or by declaration or otherwise), in accordance with the provisions thereof or of this Trust Agreement (and, if not so paid, with interest thereon until paid at the rate of 10¼% per annum to the extent legally enforceable), and shall receive interest thereon in like money at the rate specified therein, at the times and places and otherwise as expressed in the Trust Certificates (and, if not so paid, with interest thereon until paid at the rate of 10¼% per annum to the extent legally enforceable); and the Company further covenants and agrees to endorse upon each of the Trust Certificates, at or before the issuance and delivery thereof by the Trustee, its guaranty of the prompt payment of the principal thereof and of the interest thereon, in substantially the form hereinbefore set forth. Such guaranty is an absolute, present and continuing guaranty of payment and not of collectibility and is in no way conditioned or contingent upon any attempt to collect from the Trustee or to realize upon any security provided therefor, or upon any other condition or contingency. Such guaranty so endorsed shall be signed in the name and on behalf of the Company by the manual signature of its President or a Vice President. In case any officer of the Company whose signature shall appear on such guaranty shall cease to be such officer 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 guaranty shall nevertheless be as effective and binding upon the Company as though the person who signed such guaranty had not ceased to be or had then been such officer.

SECTION 7.02. *Financial Statements.* The Company will deliver to the Trustee (a) as soon as practicable and in any event within 60 days after the end of each quarterly period (other than the last quarterly period) in each fiscal year, a statement of income and retained earnings of the Company for such quarterly period and (in the case of the second and third quarterly periods) for the period from the beginning of the current fiscal year to the end of such quarterly period, a balance sheet and a statement of changes in financial position of the Company as at the end of such quarterly period, setting forth in each case in comparative form figures for the corresponding period in the preceding fiscal year, all in reasonable detail and certified by an authorized financial officer of the Company, subject to changes resulting from year-end adjustments; (b) as soon as practicable and in any event within 100 days after the end of each fiscal year, a statement of income and retained earnings of the Company for such year and a balance sheet and a statement of changes in financial position of the Company as at the end of such year, setting forth in each case in comparative form corresponding figures from the preceding annual audit, all in reasonable detail and certified by independent public accountants of recognized national standing selected by the Company; (c) together with all financial statements delivered pursuant to clauses (a) and (b) above, an Officers' Certificate demonstrating compliance with the last sentence of Section 7.05(b); (d) together with the financial statements delivered pursuant to clause (b) above, an Officers' Certificate containing the information and documents set forth in Section 5.11(i); (e) copies of all regular or periodic reports which it is or may be required to file with the Securities and Exchange Commission or any governmental department, bureau, commission or agency succeeding to the functions of the Securities and Exchange Commission; and (f) with reasonable promptness, such other

financial data as the Trustee may reasonably request. All financial statements specified in clauses (a) and (b) above shall be furnished in duplicate (or in such greater quantities as may be reasonably requested) and shall be furnished in consolidated and (except for statements of changes in financial position) consolidating form (provided that consolidating financial statements need not be certified by independent public accountants) in conformity with generally accepted accounting principles for the Company and its consolidated subsidiaries, and separate financial statements shall be furnished in duplicate for any significant unconsolidated subsidiaries and for National Equipment Rental Ltd. ("NER"); *provided, however,* that financial statements for NER need not be furnished for any periods during which NER is not a subsidiary of the Company and there is no indebtedness payable to the Company from NER or secured by any shares of capital stock of NER. Together with each delivery of financial statements required by clauses (a) and (b) above, the Company will deliver to the Trustee an Officers' Certificate stating the signers have reviewed the terms of the Trust Agreement and have made, or caused to be made under their supervision, a review of the transactions and condition of the Company during the accounting period covered by such financial statements and that such review has not disclosed the existence during such accounting period, and that the signers do not have knowledge of the existence as at the date of such Officers' Certificate, of any condition or event which constitutes, or which with notice or lapse of time or both would constitute, an Event of Default under this Trust Agreement or, if any such condition or event existed or exists, specifying the nature and period of existence thereof and what action the Company has taken or is taking or proposes to take with respect thereto. Forthwith upon any officer of the Company, of Tiger International, Inc. ("TI"), of Tiger Leasing Group, Inc. ("TLG") or of any Significant Subsidiary of the Company from time to time obtaining knowledge of (x) any condition or event which constitutes, or which with notice or lapse of time or both would constitute, an Event of Default under this Trust Agreement, (y) any material default under any other obligation of the Company or any Significant Subsidiary or (z) any "reportable event", as such term is defined in section 4043 (b)(2), (5) or (6) of ERISA, or "prohibited transaction", as such term is defined in section 4975 of the Internal Revenue Code of 1954, as amended, in connection with any Pension Plan or any trust created thereunder, the Company will deliver to the Trustee an Officers' Certificate specifying the nature thereof, the period of existence thereof, and what action TI, TLG, the Company or such Significant Subsidiary of the Company, as the case may be, proposes to take with respect thereto. The Trustee is hereby authorized to deliver a copy of any financial statement delivered to it pursuant to this Section 7.02 to any regulatory body having jurisdiction over it.

SECTION 7.03. *Inspection.* The Company will permit any person designated by the Trustee in writing to visit and inspect any of the properties, corporate books and financial records of the Company or any Subsidiary and to make copies and take extracts therefrom (exclusively for use by the Trustee as Trustee), and to discuss the affairs, finances and accounts of the Company or any Subsidiary with the principal officers of the Company or any Subsidiary and its or their independent public accountants, all at such reasonable times and as often as the Trustee may reasonably request.

SECTION 7.04. *Books and Accounts.* The Company and each of its Significant Subsidiaries will at all times keep or cause to be kept correct and complete books of record and account in accordance with generally accepted accounting principles.

SECTION 7.05. *Miscellaneous Affirmative Covenants.* The Company will:

(a) promptly after the execution and delivery of this Trust Agreement, deliver to the Trustee (to the extent recorded and/or filed) recorded counterparts of this Trust Agreement, or receipts therefor and/or for the filing thereof, and other evidence of its recording and/or filing under the Uniform Commercial Code, the Interstate Commerce Act and other appropriate filing or recording legislation from all the proper recording and/or filing officers;

(b) promptly after the execution and delivery of this Trust Agreement and each supplement hereto, respectively, and each separate assignment of Leases and payments under such Leases required by Section 5.11(g): (i) cause this Trust Agreement, or such supplement or assignment, to be duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act, (ii) file under the Uniform Commercial Code financing statements covering assigned Leases and payments under such Leases in Illinois or in such other place as the principal office of the assignor thereof may be located and (iii) cause all necessary filings to be made in accordance with (a) any applicable national registration legislation of Canada (provided filings under such legislation will render the title and interests of the Trustee superior to all other claims against such title and interests), or (b) the applicable registration legislation of all mainland provinces of Canada (other than the Provinces of Quebec, Nova Scotia and New Brunswick) in which this Trust Agreement or such supplements or assignments are eligible for filing; and the Company will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register and record any and all further instruments required by the law of any jurisdiction in which use of the Trust Equipment is permitted by Section 5.10 hereof or reasonably requested by the Trustee for the purpose of proper protection of the title and interests of the Trustee and the rights of the holders of the Trust Certificates in and to the Trust Equipment and the assignments of Leases and payments under such Leases as required in Section 5.11 hereof, and of fully carrying out and effectuating this Trust Agreement and the intent hereof; *provided* that the Company shall not be required to take any such action in respect of any jurisdiction outside the United States if (1) the Company deems such action to be unduly burdensome, (2) after giving effect to the failure to take such action, the Company has taken all action required by law to protect the title and interests of the Trustee to units of Trust Equipment (and the assigned Leases and payments under such Leases in respect of units of Trust Equipment) having a Cost of not less than 90% of the aggregate Cost of all units of Trust Equipment and (3) any unit of Trust Equipment at any time located in such jurisdiction shall have been marked with the markings specified in Section 5.07 hereof. The Company covenants and represents that it shall not permit (x) units of Trust Equipment having more than 15% of the aggregate Depreciated Cost of all units of Trust Equipment to be at any one time in use primarily in Canada and (y) units of Trust Equipment having more than 5% of the aggregate Depreciated Cost of all units of Trust Equipment to be at any one time outside of the United States of America and mainland Canada;

(c) promptly after the execution and delivery of this Trust Agreement and each supplement hereto or separate assignment of Leases, (i) the Company will furnish to the Trustee an Opinion of Counsel stating that, in the opinion of such counsel, this Trust Agreement or such supplement or assignment, as the case may be, has been properly recorded and filed so as effectively to protect the title and interests of the Trustee to the Trust Equipment and all assignments of Leases and payments under such Leases required by Section 5.11 hereof and its rights and the rights of the holders of the Trust Certificates thereunder and hereunder as provided in the next preceding subparagraph and reciting the details of such action; and (ii) the Company will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register and record any and all further instruments required by law, including marking of Leases as provided in Section 5.11 hereof and the refiling of financing statements (or continuation statements, where applicable) every five years in the State of Illinois and every three years in the Province of Ontario, or when reasonably requested by the Trustee for the purpose of proper protection of the title and interests of the Trustee and the rights of the holders of the Trust Certificates and of fully carrying out and effectuating this Trust Agreement and the intent hereof. All expense incident to such recording and filing shall be paid by the Company;

(d) furnish to the Trustee, not more than three months after the anniversary in each year, commencing with the year 1979, of the first recording or filing of this Trust Agreement, an Opinion of Counsel stating either that, in the opinion of such counsel, (i) such action has been taken with respect to the recording, filing, rerecording and refiling of this Trust Agreement and each supplement and separate assignment as is necessary for the proper perfection and protection of the title and interests of the Trustee under this Trust Agreement (subject to the limitation of subparagraph (b) of this Section 7.05) in and to the Trust Equipment and the assignment of Leases and payments under such Leases required by Section 5.11 hereof and the rights of the Trustee and holders of the Trust Certificates hereunder and thereunder and reciting the details of such action, or (ii) no such action is necessary for any of such purposes, and in rendering such opinion, such counsel may rely upon an Officers' Certificate as to (a) the units of Trust Equipment with respect to which no filings have been made in Canada or Mexico, (b) the aggregate Cost of such Trust Equipment, (c) the aggregate Cost of all Trust Equipment and (d) all factual matters relating to the assignments required by Section 5.11 hereof;

(e) promptly pay and discharge, or cause to be paid and discharged, when due, or make adequate provision for the satisfaction or discharge of, all taxes, assessments and other governmental charges which may be imposed upon or with respect to any Trust Equipment or upon or with respect to the use or operation thereof or upon or with respect to the transfer of title thereto to or from the Trustee, and any other debt, obligation or claim which if unpaid might become a lien or charge upon or against any of the Trust Equipment; but this provision shall not require the payment of any such tax, charge, assessment, debt, 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 materially endanger the rights or interests of the Trustee or of the holders of the Trust Certificates and the Company shall have furnished the Trustee with an Opinion of Counsel to such effect;

(f) do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence and franchises and use its best efforts to preserve and keep in full force and effect its rights, permits and licenses to do business, *provided, however,* that nothing in this subparagraph (f) shall prevent the abandonment of any rights, permits or licenses to do business of the Company if such rights, permits or licenses are not required in the conduct of the Company's operations as may be reasonably determined by the Company; and

(g) comply, and will cause each of its Subsidiaries to comply, in all respects with the laws (including, without limitation, applicable statutes, regulations, orders and restrictions relating to equal employment opportunities and environmental standards or controls) of all jurisdictions in which the Equipment may be operated and with all lawful rules, regulations and orders of all governmental bodies having power to regulate or supervise any of the Equipment, including without limitation all lawful acts, rules, regulations and conditions of any body having competent jurisdiction relating to automatic coupler devices or attachments, air brakes or other appliances, or resistance to pressure, *provided* that the Company may in good faith contest the validity of such law, rule, regulation or order or the application thereof to the Equipment or any part thereof in any reasonable manner which will not materially endanger the rights or interests of the Trustee or of the holders of the Trust Certificates. The Company shall not be relieved from any of its obligations hereunder by reason of the assertion or enforcement of any such claims or the commencement or prosecution of any litigation in respect thereof.

SECTION 7.06. *Merger, Consolidation, Transfer of Assets.* The Company will not merge into or consolidate or amalgamate with another corporation or sell, lease (other than in the ordinary course of business), transfer or otherwise dispose of all or any substantial part of its property or assets, unless (i) the corporation formed by or surviving any such merger, consoli-

dation or amalgamation or to which such sale, lease, transfer or disposition shall have been made shall be a corporation organized under the laws of the United States of America or any state thereof, (ii) the Company (if it shall survive such transaction) shall remain bound with respect to, and such corporation (if it shall survive such transaction) shall have expressly assumed by supplemental trust agreement (which supplemental trust agreement shall be satisfactory in form and substance to the Trustee and to special counsel for the holders of the Trust Certificates), the due and punctual payment of the principal of and interest on all of the Trust Certificates and the due and punctual performance and observance of all the covenants and conditions of this Trust Agreement and the Purchase Agreements, respectively, to be performed and observed by the Company, and (iii) immediately after giving effect to such transaction (and any such assumption), no condition or event shall exist which constitutes or which, after notice or lapse of time or both, would constitute an Event of Default.

SECTION 7.07. *Further Assurances.* The Company covenants that from time to time it will do, execute, acknowledge, deliver, file and record, or cause to be done, executed, acknowledged, delivered, filed and recorded, all and every such further acts, deeds, grants, releases, conveyances, assignments, mortgages, pledges, transfers and assurances as shall be necessary, or as the Trustee shall reasonably require, for the better granting, releasing, conveying, confirming, assigning, ceding, charging, mortgaging, pledging, transferring and assuring unto the Trustee of all the property, rights and interests hereby granted, bargained, sold, aliened, remised, conveyed, confirmed, warranted, assigned, ceded, charged, mortgaged, pledged, transferred, delivered or set over or intended so to be, or which the Company may become bound to grant, bargain, sell, alien, remise, release, convey, confirm, warrant, assign, cede, charge, mortgage, transfer, deliver or set over to, or pledge with, the Trustee.

SECTION 7.08. *Consent of Certificateholders.* Subject to the limitations of the provisions of Section 11.02, anything in this Trust Agreement to the contrary notwithstanding, the Company may fail or omit in any particular instance to comply with a covenant, agreement or condition contained in Sections 5.07, 5.09, 5.10 and 7.02 to 7.07, inclusive, if the Company shall have obtained and filed with the Trustee prior to the time for such compliance the consent in writing of the holders of at least 66⅔% in principal amount of the Trust Certificates at the time outstanding, either waiving such compliance in such instance or generally waiving compliance with such covenant or condition, but no such waiver shall extend to or affect any obligations not expressly waived nor impair any right consequent thereon.

SECTION 7.09. *Notice of Failure to Comply.* The Company covenants forthwith to give written notice to the Trustee of any failure to comply with any covenant of the Company in this Trust Agreement or in the Purchase Agreements, or of the acceleration of the maturity of any amounts due under any other material obligation of the Company or any Subsidiary.

ARTICLE VIII.

EVIDENCE OF RIGHT OF HOLDERS OF TRUST CERTIFICATES

SECTION 8.01. Any demand, request, waiver, consent or other instrument which this Trust Agreement may require or permit to be signed and executed by the holders of the Trust Certificates may be in any number of concurrent instruments of similar tenor and may be signed or executed by such holders of the Trust Certificates in person or by attorney appointed in writing. Proof of the execution of any such demand, request, waiver, consent or other instrument, or of a writing appointing any such attorney, and of the holding by any person of the Trust Certificates shall be sufficient for any purpose of this Trust Agreement if made in the following manner:

(a) The fact and date of the execution by any person of such demand, request, waiver, consent or other instrument or writing may be proved by the certificate of any

notary public, or other officer authorized to take acknowledgments of deeds to be recorded in the jurisdiction in which he acts, that the person signing the same acknowledged to him the execution thereof, or by an affidavit of a witness of such execution. The Trustee may nevertheless in its discretion require further proof in cases where it deems further proof desirable.

(b) The ownership of Registered Trust Certificates shall be proved by the registry books.

(c) The ownership of Order Trust Certificates shall be proved by possession of any such Trust Certificates by the person named on any such Trust Certificate or by the person to whom any such Trust Certificate has been endorsed.

The Trustee shall not be bound to recognize any person as a holder of a Trust Certificate unless and until his title to the Trust Certificates held by him is proved in the manner in this Article VIII provided.

Any demand, request, waiver, consent or other instrument of the holder of any Trust Certificate shall bind all future holders of the same Trust Certificate, or any Trust Certificate or Trust Certificates issued in exchange therefor or in lieu thereof in respect of anything done or suffered by the Company or the Trustee in pursuance thereof.

In determining whether the holders of the requisite aggregate principal amount of Trust Certificates have concurred in any demand, request, waiver, consent or other instrument provided for by this Trust Agreement, Trust Certificates which are owned by the Company, any other obligor upon the Trust Certificates (whether or not theretofore issued) or any Affiliate of the Company shall be disregarded and deemed not to be outstanding for the purpose of any such determination, except that for the purpose of determining whether the Trustee shall be protected in relying on any such demand, request, waiver, consent or other instrument, only Trust Certificates which the Trustee knows are so owned shall be disregarded.

ARTICLE IX.

Immunity of Incorporators, Stockholders, Officers and Directors

Section 9.01. No recourse shall be had for the payment of the principal of, or interest on, any Trust Certificate, or for any claim based thereon or on this Trust Agreement or any trust agreement supplemental hereto, against any incorporator or against any stockholder, director or officer, past, present or future, of the Company, or of any predecessor or successor corporation, as such, either directly or through the Company or any such predecessor or successor corporation, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitution, statute or otherwise, of incorporators, stockholders, directors or officers, as such, being released as a condition of and consideration for the execution of this Trust Agreement and of the issue of the Trust Certificates.

ARTICLE X.

The Trustee

Section 10.01. *Expenses, Compensation and Certain Rights and Obligations.* The Trustee accepts the trusts created by this Trust Agreement upon the terms and conditions hereof, including the following, to all of which the parties hereto and the holders from time to time of the Trust Certificates agree:

(a) The Trustee shall be entitled to reasonable compensation for all services rendered by it hereunder (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust), and such compensation, as well as the reasonable compensation of its counsel, and all other reasonable expenses incurred by the Trustee hereunder, and all taxes which may have been assessed against the Trustee as such or against any funds on deposit with the Trustee hereunder which the Trustee may be required or permitted by law to deduct from such deposit and to pay, which the Company agrees to pay promptly on demand from time to time as such services shall be rendered and as such expenses shall be incurred. In default of such payment by the Company, the Trustee shall have a lien therefor on the property and moneys held by the Trustee hereunder prior to any rights in such property or moneys of the holders of the Trust Certificates. The Company also agrees to indemnify the Trustee for and to hold it harmless against any loss, liability or expense incurred without negligence or bad faith on the part of the Trustee arising out of or in connection with the acceptance or administration of the trusts contained in this Trust Agreement, as well as the costs and expenses of defending against any claim of liability in the premises.

(b) The Trustee may execute any of the trusts or powers hereof and perform any duty hereunder either directly or indirectly or by or through its agents or attorneys.

(c) The Trustee shall not be responsible in any manner whatsoever for the correctness of the recitals herein or in the Trust Certificates, all of which are made by the Company solely; and the Trustee shall not be responsible or accountable in any manner whatsoever for or with respect to the validity or execution or sufficiency of this Trust Agreement, or of any trust agreement supplemental hereto, or of the Trust Certificates, or of the Company's guaranty on the Trust Certificates or for the value of the property held by the Trustee hereunder or any part thereof, or for the title of the Trustee thereto, or for the security afforded thereby and hereby, or for the validity of any securities at any time held hereunder, or for the validity or sufficiency of any assignment of any interest to the Trustee hereunder, and the Trustee makes no representation with respect thereto nor shall the Trustee be liable (except from the Trust Estate) as assignee of any lease or sublease assigned hereunder.

(d) The Trustee shall not be under any obligation to exercise any of the trusts or powers hereof at the request, order or direction of any of the holders of the Trust Certificates, pursuant to the provisions of this Trust Agreement, unless such holders of the Trust Certificates shall have offered to the Trustee security or indemnity satisfactory to it (in the case of Trust Certificates held by a purchaser named in the Schedule of Purchasers attached to the Purchase Agreements, the written personal guaranty of such holder shall be satisfactory) against the costs, expenses and liabilities to be incurred therein or thereby; nothing herein contained shall, however, relieve the Trustee of the obligation, upon the occurrence of an Event of Default (which has not been cured), to exercise such of the rights and powers vested in it by this Trust Agreement, and to use the same degree of care and skill in their exercise as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

(e) The Trustee may consult with counsel, and, to the extent permitted by Section 10.02, the advice of such 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 the advice of such counsel which is not contrary to the express provisions of this Trust Agreement.

(f) The Trustee, to the extent permitted by Section 10.02, may rely upon the certificate of the Secretary or one of the Assistant Secretaries of the Company as to the adoption of any resolution by the Board of Directors or stockholders thereof.

(g) Any action taken by the Trustee pursuant to any provision hereof at the request or with the consent of any person who at the time is the holder of any Trust Certificate shall be conclusive and binding in respect of such Trust Certificate upon all future holders thereof, or of any Trust Certificate or Trust Certificates issued in exchange therefor, or in lieu thereof, whether or not any such Trust Certificate or Trust Certificates shall have noted thereon the fact that such request or consent had been made or given.

(h) The Trustee shall not be personally liable in case of entry by it upon or possession and operation of property constituting the trust estate for debts contracted or liability or damages incurred in the management or operation of said property.

(i) The Trustee, to the extent permitted by Section 10.02, may rely and shall be protected in acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, Trust Certificate or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties, *provided, however,* that to the knowledge of the Trustee, the foregoing instruments are not contrary to the express provisions of this Trust Agreement applicable thereto. In all cases where this Trust Agreement does not make other express provisions as to evidence on which the Trustee may act or refrain from acting, the Trustee shall be protected, to the extent permitted by Section 10.02, in acting or refraining from acting under any provision of this Trust Agreement in reliance upon an Officers' Certificate as to the existence or non-existence of any fact or facts.

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

(k) The Trustee shall not be deemed to have knowledge of any condition or event which constitutes, or which with notice or lapse of time or both would constitute, an Event of Default hereunder (other than a failure to pay any installment of rent) unless and until an officer of the Trust Division of the Trustee who customarily handles corporate trusts shall have actual knowledge thereof or the Trustee shall have received written advice thereof from the Company, any Affiliate of the Company or the holder of any Trust Certificate.

SECTION 10.02. *Duties of Trustee; Extent of Liability.* Anything in this Trust Agreement contained to the contrary notwithstanding:

(a) unless and until an Event of Default shall have happened and be continuing,

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

(ii) the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, in the absence of bad faith on the part of the Trustee, upon certificates or opinions furnished to it pursuant to the express provisions of and conforming to the requirements of this Trust Agreement; but in the case of any such certificates or opinions, which, by the provisions of this Trust Agreement, 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 Trust Agreement;

(b) the Trustee shall not be personally liable for any error of judgment made in good faith by a Responsible Officer or Officers of the Trustee, unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts; and

(c) the Trustee shall not be personally liable to any holder of Trust Certificates or to any other person 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 66⅔% in principal amount of Trust Certificates at the time outstanding, 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 by this Trust Agreement.

If an Event of Default hereunder shall have happened, then, so long as the same shall be continuing, the Trustee shall exercise such of the rights and powers vested in it by this Trust Agreement, and shall use the same degree of care and skill in their exercise, as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

SECTION 10.03. *Application of Rentals.* The Trustee agrees to apply the rentals received by it under Section 5.04 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 5.04.

The Trustee shall not be required to undertake any act or duty in the way of insuring, taking care of or taking possession of the Trust Equipment or to undertake any other act or duty under this Trust Agreement until fully indemnified 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 or refiling or re-recording of this Trust Agreement or of any supplement hereto or statement of new numbers or of any other items to be filed pursuant to the Trust Agreement.

SECTION 10.04. *Funds May be Held by Trustee; Investments.* Any funds at any time paid to or held by the Trustee hereunder until paid out by the Trustee as herein provided may be carried by the Trustee on deposit with itself, and the Trustee will allow interest upon any such moneys held by it in trust at the rate generally allowed by it upon deposits of a similar character.

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 Deposited Cash held by it or cash deposited with it pursuant to Section 5.06, 5.08 or 5.09 (hereinafter in this Section called Replacement Funds) in Investment Securities, at such prices, not in excess of the market price at the time of investment, including any premium and accrued interest, as are 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. Such Investment Securities may be purchased from or through the bond department of the Trustee.

The Trustee shall, on Request, or the Trustee may, in the event funds are required for payment against delivery of Trust Equipment or for payment of the principal of or interest on any Trust Certificate, sell such Investment Securities, or any portion thereof, and restore to Deposited Cash or Replacement Funds, as the case may be, the proceeds of any such sale up to the amount paid by the Trustee for such Investment Securities, including accrued interest, or apply such proceeds to the payment against such delivery of Trust Equipment or of such principal or interest if and to the extent such proceeds are needed therefor.

The Trustee shall restore to Deposited Cash or Replacement Funds, as the case may be, out of rent received by it for that purpose under the provisions of Section 5.04(a), an amount equal to any expenses incurred in connection with any purchase or sale of Investment Securities and also an amount equal to any loss of principal (for which it shall not be liable) incident to the sale or redemption of any Investment Securities for a sum less than the amount paid therefor, including accrued interest.

The Company, if the Trustee has no knowledge of any condition or event which constitutes, or which with notice or lapse of time or both would constitute, an Event of Default, shall be entitled to receive any interest allowed as provided in the first paragraph of this Section

and 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 Investment Securities.

SECTION 10.05. *Trustee Not Liable for Delivery Delays or Defects in Equipment or Title.* 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 manufacturers thereof or 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 (either express or implied, including, without limitation, any warranty of merchantability or fitness) 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 or otherwise.

The Trustee may perform its powers and duties with respect to the delivery and acceptance of the Trust Equipment by or through such attorney, agents and servants as it shall appoint, and shall be answerable only for its own acts, negligence and wilful defaults and not for the default or misconduct of any attorney, agent or servant appointed by it in respect thereof with reasonable care.

SECTION 10.06. *Resignation of Trustee upon Failure to Maintain Certain Qualifications.* If the Trustee shall at any time cease to be a bank or trust company in good standing organized and doing business under the laws of the United States of America or of the State of Illinois and having a combined capital and surplus of not less than $100,000,000 which is authorized under the laws of the jurisdiction of incorporation to exercise corporate trust powers and is subject to supervision or examination by Federal or state authority, then the Trustee shall resign within 30 days thereafter, such resignation to become effective upon the appointment of a successor trustee and such successor's acceptance of such appointment. If the Trustee publishes reports of condition at least annually, pursuant to law or to the requirements of the aforesaid supervising or examining authority, the combined capital and surplus of the Trustee shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If the Trustee shall fail or refuse to resign within such period, then (*a*) the Trustee shall, within ten days after the expiration of said period, transmit notice of such failure or refusal to the holders of the Trust Certificates in the manner and to the extent provided in Section 10.10; and (*b*) any holder of Trust Certificates, who has been the bona fide holder of a Trust Certificate for at least six months, may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee so failing or refusing to resign and the appointment of a successor.

SECTION 10.07. *Resignation and Removal; Successor Trustees.* The Trustee or any successor may resign and be discharged from the trust hereby created by giving notice thereof to the Company and to the holders of Trust Certificates, in the manner and to the extent provided in Section 10.10 such resignation to become effective upon the appointment of a successor trustee and such successor's acceptance of such appointment.

The Trustee, or any successor, may be removed at any time by an instrument or instruments in writing delivered to the Trustee and to the Company and a successor may be appointed by an instrument or instruments in writing delivered to such successor and to the Company, in each case signed by the holders of a majority in principal amount of Trust Certificates at the time outstanding or by their duly authorized attorneys-in-fact.

Until a successor shall be appointed by the holders of the Trust Certificates or a court of competent jurisdiction as herein authorized, the Company, by an instrument executed by order of its Board of Directors, shall appoint a successor to fill the vacancy.

If in a proper case no appointment of a successor shall be made pursuant to the foregoing provisions of this Article X within six months after a vacancy shall have occurred, the holder

of any Trust Certificate or the Trustee so retiring may apply to any court of competent jurisdiction to appoint a successor. Said court may thereupon, after such notice, if any, as such court may deem proper and prescribe, appoint a successor.

Every successor to the Trustee so appointed by the holders of the Trust Certificates, by a court of competent jurisdiction or by the Company shall be a bank or trust company in good standing organized and doing business under the laws of the United States of America or of any State and having a combined capital and surplus of not less than $100,000,000, which is authorized under the laws of the jurisdiction of incorporation to exercise corporate trust powers and is subject to supervision or examination by a Federal or state authority. If such successor publishes reports of condition at least annually, pursuant to law or to the requirements of such supervising or examining authority, the combined capital and surplus of each successor shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published.

SECTION 10.08. *Successor Trustees.* Any successor trustee appointed under any of the methods herein provided shall execute, acknowledge and deliver to its predecessor trustee and to the Company an instrument in writing accepting such appointment hereunder and thereupon such successor, without any further act, deed or conveyance, shall become fully vested with the estates, properties, rights, powers and trusts of its predecessor in the trust hereunder with like effect as if originally named as the Trustee herein; but such predecessor shall, nevertheless, at the written request of the successor, execute and deliver an instrument transferring to the successor all the estates, properties, rights, powers and trusts of such predecessor hereunder and shall duly assign, transfer and deliver all property and moneys held by it to its successor. Should any instrument in writing from the Company be required by any successor for more fully and effectually vesting in and confirming to it all estates, properties, rights, powers and duties as trustee hereunder, the Company upon the request of such successor, shall make, execute and deliver the same. The Company shall promptly give notice of the appointment of such successor to the holders of the Trust Certificates in the manner and to the extent provided in Section 10.10.

SECTION 10.09. *Merger or Consolidation of Trustee.* Any corporation into which the Trustee or any successor to it in the trust created by this Trust Agreement may be merged, or with which it or any successor to it may be consolidated, or any corporation resulting from any merger or consolidation to which the Trustee or any successor to it shall be a party, shall be the successor trustee under this Trust Agreement without the execution or filing of any instruments or any further act on the part of any of the parties hereto.

SECTION 10.10. *Transmission of Reports to Certificateholders.* All reports, requests or notices which are required by any other provision of this Trust Agreement to be transmitted in accordance with the provisions of this Section 10.10, shall be transmitted by mail to all holders of Trust Certificates, as the names and addresses of such holders appear upon the registration books maintained by the Trustee (or, in the case of any such holder which is an original purchaser of Trust Certificates pursuant to the Purchase Agreements, at such holder's address for communications set forth in the Schedule of Purchasers attached to the Purchase Agreements or at such other address for such purpose as such holder shall have furnished to the Company and the Trustee in writing).

SECTION 10.11. *Right to Acquire and Hold Trust Certificates.* The Trustee and any paying agent may each acquire and hold Trust Certificates and otherwise deal with the Company in the same manner and to the same extent and with like effect as though it was not Trustee or a paying agent hereunder.

SECTION 10.12. *Additional Trustees.* (a) If at any time or times it shall be necessary or prudent in order to conform to any law of any jurisdiction in which the Trust Equipment or any part thereof is located, or the Trustee shall be advised by counsel, satisfactory to it, that it

is so necessary or prudent in the interest of the holders of the Trust Certificates, or the holders of a majority in principal amount of Trust Certificates at the time outstanding shall in writing so request the Trustee and the Company, the Trustee and the Company shall execute and deliver all instruments and agreements necessary or proper to constitute another bank or trust company or one or more persons approved by the Trustee and the Company either to act as co-trustee or co-trustees of all or any of the Trust Equipment, jointly with the Trustee originally named herein or any successor or successors, or to act as separate trustee or trustees of any such property. In the event the Company shall not have joined in the execution of such instruments and agreements within ten days after the receipt of a written request from the Trustee so to do, or in case an Event of Default hereunder shall have happened and be continuing, the Trustee may act under the foregoing provisions of this Section 10.12 without the concurrence of the Company; and the Company hereby appoints the Trustee its agent and attorney to act for it under the foregoing provisions of this Section 10.12 in either of such contingencies.

(b) Every additional trustee hereunder shall, to the extent permitted by law, be appointed and act and be such and the Trustee and its successors shall act and be such, subject to the following provisions and conditions, namely:

(1) the Trust Certificates shall be issued and delivered and all powers, duties, obligations and rights conferred upon the Trustee in respect of the custody, control and management of moneys, papers or securities, shall be exercised solely by Continental Illinois National Bank and Trust Company of Chicago or its successor as Trustee hereunder;

(2) all rights, powers, duties and obligations conferred or imposed upon the Trustee shall be conferred or imposed upon and exercised or performed by Continental Illinois National Bank and Trust Company of Chicago, or its successor as Trustee, and such additional trustee or trustees jointly, except to the extent that under any law of any jurisdiction in which any particular act or acts are to be performed, Continental Illinois National Bank and Trust Company of Chicago, or its successor as Trustee, shall be incompetent or unqualified to perform such act or acts, in which event such rights, powers, duties and obligations shall be exercised and performed by such additional trustee or trustees;

(3) no power given hereby to, or which is provided hereby, may be exercised by such additional trustee or trustees, except jointly with, or with the consent in writing of, Continental Illinois National Bank and Trust Company of Chicago, or its successor as Trustee, anything herein contained to the contrary notwithstanding;

(4) no trustee hereunder shall be personally liable by reason of any act or omission of any other trustee hereunder; and

(5) the Company and the Trustee, at any time, by an instrument in writing, executed by them jointly, may remove any such additional trustee, and in that case, by an instrument in writing executed by them jointly, may appoint a successor or successors to such trustee or trustees, as the case may be, anything herein contained to the contrary notwithstanding; in the event that the Company shall not have joined in the execution of any such instrument within ten days after the receipt of a written request from the Trustee so to do, the Trustee shall have the power to remove any such trustee and to appoint a successor to such trustee without the concurrence of the Company, the Company hereby appointing the Trustee its agent and the attorney to act for it in such connection in such contingency; in the event that the Trustee alone shall have appointed a successor additional trustee or trustees or co-trustee or co-trustees as above provided, it may at any time, by an instrument in writing, remove any such trustee or co-trustee, the successor to any such trustee or co-trustee so removed to be appointed by the Company and the Trustee, or by the Trustee alone, as hereinbefore in this Section 10.12 provided.

(c) Any additional trustee or any successor thereof may at any time by an instrument in writing constitute the Trustee his agent or attorney-in-fact, with full power and authority, to the extent which may be authorized by law, to do all acts and things and exercise all discretion which he is authorized or permitted to do or exercise, for and in his behalf and in his name. In case any additional trustee or any successor thereof shall die, become incapable of acting, resign or be removed, all the assets, property, rights, powers, trusts, duties and obligations of such additional trustee or such successors, as the case may be, so far as permitted by law, shall vest in and be exercised by whomsoever the Trustee shall appoint, without the appointment of a new successor to such additional trustee or such successor, unless and until a successor is appointed in the manner hereinbefore provided.

ARTICLE XI.

SUPPLEMENTAL TRUST AGREEMENTS

SECTION 11.01. *Supplemental Trust Agreements without Consent of Certificateholders.* The Company, when authorized by resolution of its Board of Directors, and the Trustee from time to time and at any time, subject to the conditions and restrictions in this Trust Agreement contained, may enter into a trust agreement or trust agreements supplemental hereto which trust agreement or trust agreements shall form a part hereof, for any one or more or all of the following purposes:

(a) to add to the covenants and agreements of the Company in this Trust Agreement contained, other covenants and agreements thereafter to be observed or to surrender any right or power herein reserved to or conferred upon the Company;

(b) to sell, assign and transfer to the Trustee and to subject to this Trust Agreement any Equipment or other property, including without limitation as provided in Section 5.03, for the equal and proportionate benefit and security of the holders of the Trust Certificates at any time outstanding and to correct or amplify the description of any Equipment or property at any time subject to this Trust Agreement;

(c) to appoint a co-trustee or co-trustees, or a separate trustee or trustees, pursuant to Section 10.12;

(d) for any other purpose consistent with the terms of this Trust Agreement, or for the purpose of curing any ambiguity or curing, correcting or supplementing any defect or inconsistent provision contained in this Trust Agreement or any trust agreement supplemental hereto *provided,* for the purpose of this subparagraph (d) only, that at least 20 days and not more than 90 days prior to the Trustee's execution thereof, the Trustee shall mail notice stating the substance of such supplemental trust agreement to each holder of the Trust Certificates at the time outstanding and *provided further* that such action shall not adversely affect the rights of the holders of the Trust Certificates; or

(e) to delete Equipment from Attachment A hereto pursuant to Section 4.01.

Any supplemental trust agreement authorized by the provisions of this Section 11.01 may be executed by the Company and the Trustee without the consent of the holders of any of the Trust Certificates at the time outstanding, notwithstanding any of the provisions of Section 11.02, but the Trustee shall not be obligated to enter into any such supplemental trust agreement which affects the Trustee's rights, duties or immunities under this Trust Agreement or otherwise.

The holders of not less than 66⅔% in aggregate principal amount of the Trust Certificates at the time outstanding shall have the right at any time to direct and require the Company and the Trustee to enter into one or more trust agreements supplemental hereto in order to effectuate the purpose specified in subparagraph (d) of this Section 11.01. Upon the written request of the holders of the requisite percentage of Trust Certificates as aforesaid, the Company and

the Trustee shall with reasonable promptness execute such supplemental trust agreement or trust agreements. If the Trustee shall not be willing to execute a supplemental trust agreement as requested, it shall, within 20 days after the receipt of such request, resign as Trustee hereunder.

SECTION 11.02. *Supplemental Trust Agreements with Consent of Certificateholders.* With the consent (evidenced as provided in Section 8.01) of the holders of not less than 66⅔% in aggregate principal amount of the Trust Certificates at the time outstanding, the Company, when authorized by a resolution of its Board of Directors, and the Trustee may from time to time and at any time enter into a trust agreement or trust agreements supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Trust Agreement or of any supplemental trust agreement or modifying in any manner the rights and obligations of the holders of the Trust Certificates and of the Company; *provided, however,* that no such supplemental trust agreement shall, without the consent of the holder of each outstanding Trust Certificate affected thereby,

(1) change the stated maturity of the principal of, or the date for payment of any sinking fund or interest on, any Trust Certificate, or change the dates upon which rentals are payable with respect to principal or interest, or reduce the principal amount thereof or any interest thereon, or any rentals payable with respect to principal or interest, or change the coin or currency in which any Trust Certificate or any interest thereon or any rentals relating thereto is payable, or impair the right to institute suit for the enforcement of such payment on or after the stated maturity or date of payment thereof (or, in the case of any redemption, on or after the date fixed for redemption), or modify any of the provisions of Section 6.01(a) through (j) hereof; or

(2) modify any of the provisions of the guaranty of the Company in respect of the Trust Certificates; or

(3) create any security interest with respect to the Trust Equipment or any Lease ranking prior to, or on a parity with, the security interest created by this Trust Agreement, or deprive any holder of the benefit of the security interest created by this Trust Agreement in all or any part of the Trust Equipment, Deposited Cash, Investment Securities, Letters of Credit, Replacement Funds (as such term is defined in Section 10.04) or any Lease for the security of his Trust Certificate; or

(4) reduce the percentage in principal amount of the outstanding Trust Certificates, the consent of whose holders is required for any such supplemental trust agreement, or the consent of whose holders is required for any waiver of compliance with certain provisions of this Trust Agreement or of certain defaults hereunder and their consequences provided for in this Trust Agreement; or

(5) modify any of the provisions of this Section 11.02, Section 7.08 or Section 11.03, except to increase any such percentage or to provide that certain other provisions of this Trust Agreement cannot be modified or waived without the consent of the holder of each Trust Certificate affected thereby.

Upon the request of the Company, accompanied by a copy of a resolution of its Board of Directors certified by the Secretary or an Assistant Secretary of the Company authorizing the execution of any such supplemental trust agreement, and upon the filing with the Trustee of evidence of the consent of the holders as aforesaid, the Trustee shall join with the Company in the execution of such supplemental trust agreement unless such supplemental trust agreement affects the Trustee's own rights, duties or immunities under this Trust Agreement or otherwise, in which case the Trustee may in its discretion but shall not be obligated to enter into such supplemental trust agreement.

Promptly after the execution by the Company and the Trustee of any supplemental trust agreement pursuant to the provisions of this Article XI, the Company shall mail a copy of

such supplemental trust agreement to the holders of all Trust Certificates outstanding. Any failure of the Company to give such a copy, or any defect therein, shall not, however, in any way impair or affect the validity of any such supplemental trust agreement.

SECTION 11.03. *Effect of Supplemental Trust Agreement.* Upon the execution of any supplemental trust agreement pursuant to the provisions of this Article XI, this Trust Agreement shall be and be deemed to be modified and amended in accordance therewith and the respective rights, duties and obligations under this Trust Agreement of the Company, the Trustee and all holders of Trust Certificates outstanding thereunder shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modification and amendment, and all the terms and conditions of any such supplemental trust agreement shall be and be deemed to be part of the terms and conditions of this Trust Agreement for any and all purposes.

SECTION 11.04. *Trustee's Opinion of Counsel.* Subject to the provisions of Section 10.02, the Trustee may receive an Opinion of Counsel as conclusive evidence that any supplemental trust agreement executed pursuant to the provisions of this Article XI complies with the requirements of this Article XI.

SECTION 11.05. *Notation on Trust Certificates; Execution and Delivery of New Trust Certificates.* Trust Certificates issued and delivered after the execution of any supplemental trust agreement pursuant to the provisions of this Article XI may bear a notation in form approved by the Trustee as to any matter provided in such supplemental trust agreement. If such supplemental trust agreement shall so provide, new Trust Certificates of like tenor, so modified as to conform, in the opinion of the Trustee and the Board of Directors of the Company, to any modification or amendment of this Trust Agreement contained in any such supplemental trust agreement, may be prepared by the Company and executed by the Trustee and delivered without cost to the holders of Trust Certificates then outstanding upon surrender of such Trust Certificates in equal aggregate principal amounts.

ARTICLE XII.

MISCELLANEOUS PROVISIONS

SECTION 12.01. *Benefits Restricted to Parties and Certificateholders.* Nothing in this Trust Agreement, expressed or implied, is intended or shall be construed to confer upon, or give to, any person, firm or corporation, other than the parties hereto, and the holders of the Trust Certificates, any right, remedy or claim under or by reason of this Trust Agreement or any covenant, condition or stipulation hereof; and the covenants, stipulations and agreements in this Trust Agreement contained are and shall be for the sole and exclusive benefit of the parties hereto, their successors and assigns, and the holders of the Trust Certificates.

SECTION 12.02. *Destruction of Cancelled Trust Certificates.* Whenever in this Trust Agreement provision is made for the cancellation by the Trustee and the delivery to the Company of any Trust Certificates, the Trustee may, in lieu of such delivery, destroy such cancelled Trust Certificates and deliver a certificate of such destruction to the Company.

SECTION 12.03. *Illegality or Invalidity of Provision.* In case any one or more of the provisions contained in this Trust Agreement or in the Trust Certificates shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and therein shall not in any way be affected or impaired thereby.

SECTION 12.04. *Date of Actual Execution.* Although this Trust Agreement, for convenience and for the purpose of reference, is dated as of June 20, 1978, the actual date of execution by the Company and by the Trustee is as indicated by their respective acknowledgments hereto annexed.

SECTION 12.05. *Certificates.* The same officer or officers of the Company or the same accountant, auditor, engineer or counsel or other person, as the case may be, may, but need not,

certify to all the matters required to be certified under any Article, Section, subdivision or other portion hereof, but different officers, accountants, auditors, engineers, counsel or other persons may certify to different facts, respectively. Where any person or persons are required to make, give or execute two or more orders, requests, certificates, opinions or other instruments under this Trust Agreement, any such orders, requests, certificates, opinions or other instruments may, but need not, be consolidated and form one instrument.

Except as otherwise expressly provided in this Trust Agreement, any request, opinion, consent, demand, notice, order, appointment or other direction required or permitted to be made or given by the Company shall be deemed to have been sufficiently made or given if executed on behalf of the Company by its Chairman of the Board, its President or any of its Vice Presidents or its Treasurer or any of its Assistant Treasurers.

SECTION 12.06. *Notices.* 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 or certified mail to (a) in the case of the Company (Attention of the Vice President—Finance), 222 South Riverside Plaza, Chicago, Illinois 60693, or such other address as may hereafter be furnished to the Trustee in writing by the Company and (b) in the case of the Trustee (Attention: Corporate Trust Department), 231 South LaSalle Street, Chicago, Illinois 60606, 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 return receipt attached, shall be conclusive evidence of the giving of such demand, notice or communication.

SECTION 12.07. *Successors and Assigns.* Whenever in this Trust Agreement any of the parties hereto is named or referred to, the successors and assigns of such party shall be deemed to be included, and all the covenants, promises and agreements in this Trust Agreement contained by or on behalf of the Company or by or on behalf of the Trustee, shall bind and inure to the benefit of their respective successors and assigns, whether so expressed or not.

SECTION 12.08. *Effect of Headings.* The Article and Section headings are for convenience only and shall not affect the construction thereof.

SECTION 12.09. *Applicable Law.* The provisions of this Trust Agreement, and all the rights and obligations of the parties hereunder, shall be governed by and construed in accordance with the laws of the State of Illinois. The Company, being a body corporate, hereby agrees that The Limitation of Civil Rights Act of the Province of Saskatchewan, and amendments thereto, shall have no application to this Trust Agreement or any extensions or renewals hereof, or to any agreement collateral hereto, or to the rights, powers or remedies of the Trustee or any other person under this Trust Agreement, or any extension or renewal hereof, or any agreement collateral hereto, and hereby waives and releases all its rights, benefits and protection given it by Sections 22A, 22B, 22C and 22D of the Bills of Sale Act of the Province of British Columbia, and amendments thereto.

SECTION 12.10. *Counterparts.* This Trust Agreement is being executed in several counterparts, each of which is an original and all of which are identical. Each counterpart of this Trust Agreement is to be deemed an original hereof and all counterparts collectively are to be deemed but one instrument. It shall not be necessary in making proof of this Trust Agreement to produce or account for more than one counterpart.

IN WITNESS WHEREOF, the Company and the Trustee 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.

NORTH AMERICAN CAR CORPORATION,

(CORPORATE SEAL)

By James F. Compton
Title

Attest:

B. J. Nobel
Title

CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO,
Trustee

(CORPORATE SEAL)

By W. Yaeger
Vice President

Attest:

Trust Officer

STATE OF ILLINOIS }
COUNTY OF COOK } SS.:

On this 26th day of June, 1978, before me personally appeared James L. Compton to me personally known, who, being by me duly sworn, says that he is Vice President of NORTH AMERICAN CAR CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was on June 26, 1978 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.

M. J. Winkelman
Notary Public

My Commission Expires 4-3-82

STATE OF ILLINOIS }
COUNTY OF COOK } SS.:

On this 26th day of June, 1978, before me personally appeared M. J. KRUGER, to me personally known, who, being by me duly sworn, says that he is a Vice President of CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was on June 26, 1978 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 such corporation.

M. J. Winkelman
Notary Public

My Commission Expires 4-3-82

STATE OF ILLINOIS }
COUNTY OF COOK } ss.:

TO WIT:

IN THE MATTER OF registration of an Equipment Trust Agreement dated as of the 20th day of June, 1978 and made from North American Car Corporation to Continental Illinois National Bank and Trust Company of Chicago, as Trustee, for the purpose of securing Equipment Trust Certificates, First 1978 Series, of North American Car Corporation.

I, James F. Compton, of the City of Chicago, in the State of Illinois, MAKE OATH AND SAY THAT:

1. I am an officer holding the office of Vice President of North American Car Corporation, the mortgagor or assignor named in the annexed instrument containing a mortgage, charge or assignment made by the said North American Car Corporation to Continental Illinois National Bank and Trust Company of Chicago, as Trustee, and am aware of the circumstances connected with the transaction and have a personal knowledge of the facts herein deposed to.

2. The said instrument was executed by North American Car Corporation at the City of Chicago, in the State of Illinois, on the 26th day of June, 1978.

James F. Compton

SWORN before me at the
City of Chicago in the
State of Illinois,
the 26th day of June,
1978.

M. J. Weikelman
A Notary Public in and for said County
in the State of Illinois.
My Commission Expires 4-3-82

STATE OF ILLINOIS }
COUNTY OF COOK } SS.:

TO WIT:

IN THE MATTER OF registration of an Equipment Trust Agreement dated as of the 20th day of June, 1978 and made from North American Car Corporation to Continental Illinois National Bank and Trust Company of Chicago, as Trustee, for the purpose of securing Equipment Trust Certificates, First 1978 Series, of North American Car Corporation.

I, M. J. KRUGER, of the City of Chicago, in the State of Illinois, MAKE OATH AND SAY THAT:

1. I am an officer holding the office of Vice President of Continental Illinois National Bank and Trust Company of Chicago, the mortgagee, trustee or grantee named in the annexed instrument made from North American Car Corporation to the said Continental Illinois National Bank and Trust Company of Chicago, as Trustee, and am aware of the circumstances connected with the transaction and have a personal knowledge of the facts herein deposed to.

2. The said instrument being the instrument containing the mortgage, charge or assignment was executed in good faith and for the purpose of securing payment of the Equipment Trust Certificates, First 1978 Series, referred to therein and not for the mere purpose of protecting the chattels or book debts therein mentioned against the creditors of the mortgagor or assignor or preventing such creditors from obtaining payment of any claim against the mortgagor or assignor.

M. J. KRUGER

SWORN before me at the
City of Chicago in the
State of Illinois, this
26th day of June, 1978.

M. J. Winkelman
A Notary Public in and for said County
in the State of Illinois.
My Commission Expires 4-3-82.

NORTH AMERICAN CAR CORPORATION

Equipment Trust

First 1978 Series

DESCRIPTION OF TRUST EQUIPMENT

Quantity	*Serial Number*	*Description*
50	16101–16150	Class 111A100W3, 100 ton, 16,500 gallon capacity tank cars
25	16876–16900	Same as above
30	27475–27504	Class 105A500, 100 ton, 17,300 gallon capacity tank cars
20	29550–29569	Class 111A100W1, 100 ton, 31,000 gallon capacity tank cars
25	29575–29599	Same as above
4	33467–33470	Class 105A300W, 100 ton, 34,000 gallon capacity tank cars
18	33474–33491	Same as above
50	35500–35549	Same as above
1	35536	Same as above
6	35588–35593	Same as above
2	35595–35596	Same as above
13	35600–35612	Same as above
16	35613–35628	Same as above
3	35631, 35632, 35641	Same as above
5	35645–35649	Same as above
10	58731–58740	Class LO, 100 ton, 5,750 cu. ft. capacity covered hopper cars
8	58751–58758	Same as above
2	58801, 58802	Same as above
8	58808–58815	Same as above
2	58817, 58819	Same as above
5	58803–58807	Same as above
2	58816, 58818	Same as above
4	58820–58823	Same as above
6	58777–58782	Same as above
16	58784–58799	Same as above
1	72336	Class 111A100W3, 100 ton, 21,000 gallon capacity tank cars
68	72338–72405	Same as above
1	77025	Class 111A100W3, 100 ton, 24,000 gallon capacity tank car
2	93657–93658	Class LO, 100 ton, 3,000 cu. ft. capacity covered hopper cars
11	93675–93685	Same as above
18	93688–93705	Same as above
9	93734–93742	Same as above
4	93768–93771	Same as above
5	93780–93784	Same as above
550	478850–479399	Class LO, 100 ton, 4,750 cu. ft. capacity covered hopper cars
1,000		