

RECORDATION NO. 5817-13 Filed & Recorded

SEP 4 - 1970 - 10:00 AM

INTERSTATE COMMERCE COMMISSION

MANUFACTURING AGREEMENT

Dated as of September 1, 1970

AMONG

BETHLEHEM STEEL CORPORATION,

C. I. T. CORPORATION

AND

TRAILER TRAIN COMPANY

—————
Covering 241 Railroad Flat Cars

MANUFACTURING AGREEMENT dated as of September 1, 1970, among the corporation named in Item 1 of Annex A hereto (hereinafter called the Manufacturer), C.I.T. CORPORATION, a New York corporation (hereinafter called the Company), acting through its agent C.I.T. LEASING CORPORATION, a Delaware corporation, and TRAILER TRAIN COMPANY, a Delaware corporation (hereinafter called the Lessee).

WHEREAS the Manufacturer agrees to construct, sell and deliver to the Company and the Company agrees to purchase the units of new, standard gauge railroad equipment described in Annex B attached hereto (hereinafter called the Equipment); and

WHEREAS in consideration of the execution and delivery of this Agreement, the purchase agreements or purchase orders, if any, heretofore executed between the Lessee and the Manufacturer covering the Equipment are hereby cancelled in so far as they relate to the Equipment; and

WHEREAS the Company proposes to enter into an Equipment Trust Agreement dated as of the date hereof (hereinafter called the Equipment Trust Agreement) with Manufacturers Hanover Trust Company, as Trustee (hereinafter called the Trustee), which Equipment Trust Agreement is to be substantially in the form annexed hereto as Annex C; and

WHEREAS it is contemplated that, pursuant to the Equipment Trust Agreement, there will be paid by the Trustee and the Company to the Manufacturer on the Closing Date (as hereinafter defined) the Purchase Price (as hereinafter defined) of all the Equipment; and

WHEREAS the Company, as lessor, is executing a lease of the Equipment dated as of the date hereof to the Lessee

in substantially the form annexed to the Equipment Trust Agreement as Annex B (hereinafter called the Lease) and the Lessee has joined in this Agreement for the purpose of making certain agreements as hereinafter set forth.

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

ARTICLE 1. *Construction and Sale.* Subject to the terms and conditions hereinafter set forth, the Manufacturer will construct the Equipment at its plant set forth in Annex B hereto and will sell and deliver the Equipment as hereinbelow provided and the Company will pay or cause the Trustee to pay to the Manufacturer the Purchase Price of the Equipment, each unit of which will be constructed in accordance with the specifications referred to in Annex B hereto and in accordance with such modifications thereof as may have been agreed upon in writing by the Manufacturer and the Lessee (which specifications and modifications, if any, are hereinafter called the Specifications) and will, at or before delivery thereof to the Lessee pursuant to Article 2 hereof, have the following ownership markings stencilled on each side thereof in a conspicuous place in letters not less than one inch in height:

“OWNED BY A BANK OR TRUST COMPANY UNDER A
SECURITY AGREEMENT FILED UNDER THE INTER-
STATE COMMERCE ACT, SECTION 20c”.

The Manufacturer agrees that the design, quality and component parts of the Equipment will conform to all Department of Transportation and Interstate Commerce Commission requirements and specifications and to all standards recommended by the Association of American Railroads reasonably interpreted as being applicable to

new railroad equipment of the character of such units of the Equipment as of the date of delivery thereof.

ARTICLE 2. *Delivery.* The Manufacturer will deliver the Equipment to the Lessee, as agent of the Trustee, freight charges, if any, prepaid, at such point or points within the United States of America as shall be specified in Annex B hereto, and in accordance with the time of delivery schedule set forth in Annex B hereto, *provided, however*, that no unit of the Equipment shall be delivered under this Agreement until the Equipment Trust Agreement and the Lease shall have been filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act (and in delivering the Equipment, the Manufacturer may rely upon telegraphic advice from counsel for the Lessee that the Equipment Trust Agreement and the Lease have been so filed and recorded).

The Manufacturer and the Lessee each severally represents and warrants that, to the best of its knowledge, at the time of the delivery of the Equipment to the Lessee, as agent of the Trustee, the Equipment will be new railroad equipment, not having been used by any person after completion of manufacture and prior to delivery, and no amortization or depreciation will have been claimed by any person with respect thereto.

The Manufacturer's obligation as to time of delivery is subject to delays resulting from causes beyond the Manufacturer's reasonable control, including, but not limited to, acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, labor shortages, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities or delays in receiving necessary materials.

Notwithstanding the preceding provisions of this Article 2, any unit of the Equipment not delivered, accepted and

settled for pursuant to Article 3 hereof on or before December 15, 1970, shall be excluded from this Agreement and not included in the term "Equipment" as used in this Agreement. In the event of any such exclusion the Manufacturer, the Company and the Lessee shall execute an agreement supplemental hereto limiting this Agreement to the Equipment theretofore delivered, accepted and settled for hereunder. If the Manufacturer's failure to deliver the units of the equipment so excluded from this Agreement resulted from one or more of the causes set forth in the immediately preceding paragraph, a separate agreement shall be entered into between the Manufacturer and the Lessee providing for the purchase of such excluded equipment by the Lessee on the terms herein specified, payment to be made in cash in accordance with the terms of this Agreement after delivery of such excluded equipment either directly or by means of a conditional sale, equipment trust or such other appropriate method of financing the purchase as the Lessee and the Manufacturer shall mutually determine.

The Equipment shall be subject to inspection and approval prior to delivery by inspectors or other authorized representatives of the Company (who may be employees or authorized representatives of the Lessee), and the Manufacturer shall grant to any such inspector or other authorized representative reasonable access to its plant. From time to time upon the completion of the construction of each unit or a number of units of the Equipment, such unit or units shall thereupon be presented to an inspector or other authorized representative of the Company and the Lessee for inspection at the Manufacturer's plant and, if each such unit conforms to the Specifications and the other requirements, specifications and standards set forth or referred to in Article 1 hereof, such inspector or authorized representa-

tive shall promptly execute and deliver to the Manufacturer, in such number of counterparts or copies as may reasonably be requested, a certificate of acceptance (hereinafter called a Certificate of Acceptance) stating that such unit or units have been inspected and accepted on behalf of the Company and the Trustee and are marked in accordance with Article 1 hereof; *provided, however*, that the Manufacturer shall not thereby be relieved of its warranty contained in Item 4 of Annex A hereto.

On acceptance of each of the units of the Equipment pursuant to this Article 2 on behalf of the Company and the Trustee as aforesaid, the Company assumes with respect thereto the responsibility and risk of loss or damage and the Manufacturer shall deliver to the Trustee (i) an invoice describing such unit and any special devices, racks or assemblies the cost of which is included in the Purchase Price of such unit and stating that such unit is new standard gauge railroad equipment (other than passenger or work equipment) first put into service no earlier than the date of such delivery and acceptance, and that the Purchase Price of such unit is an amount therein specified and (ii) a bill of sale transferring title to such unit to the Trustee and warranting to the Trustee, the Company and to the Lessee that at the time of such delivery the Manufacturer had legal title to such unit and good and lawful right to sell the same and that title to such unit was, at the time of such delivery of such unit, free from all claims, liens, security interests and other encumbrances of any nature except as created by this Agreement, the Equipment Trust Agreement or as permitted by Section 7.02 thereof and except for the rights of the Lessee under the Lease.

ARTICLE 3. Purchase Price and Payment. The base price per unit of the Equipment is set forth in Annex B hereto. Such base price, which shall include freight charges,

if any, prepaid by the Manufacturer, from the Manufacturer's plant to the point of delivery, is subject to such increase or decrease as may be or has been agreed to by the Manufacturer and the Lessee including a decrease to the extent contemplated by Item 6, if any, of Annex A hereto. The term "Purchase Price" as used herein shall mean the base price or prices as so increased or decreased. If on the Closing Date (as hereinafter defined in this Article 3) the aggregate of the Invoiced Purchase Prices (as hereinafter defined in this Article 3 and in Article 3 of the Other Agreements hereinafter referred to) for which settlement has theretofore been and is then being made under this Agreement and the other manufacturing agreements referred to in Item 2 of Annex A hereto (hereinafter called the Other Agreements), would, but for the provisions of this sentence, exceed \$15,000,000 (or such larger amount as the Company may at its option agree to), the Manufacturer and the Lessee will, upon request of the Company, enter into an agreement excluding from this Agreement such unit or units of the Equipment then proposed to be settled for as specified by the Company, as will, after giving effect to such exclusion and any concurrent exclusion under the Other Agreements, reduce such aggregate Invoiced Purchase Prices under both this Agreement and the Other Agreements to not more than \$15,000,000 (or such larger amount as aforesaid); and the Lessee agrees to purchase on the terms herein specified any such unit or units of the Equipment so excluded from this Agreement from the Manufacturer for cash on the Closing Date, either directly or, if the Manufacturer and the Lessee shall mutually agree, by means of a conditional sale, equipment trust or other appropriate method of financing; in which event the Company shall execute such instruments and take such other action as shall be reasonably requested by the Lessee to vest in the Lessee or its designee, full title to such unit or units.

The Equipment shall be settled for on one or more Closing Dates (fixed as hereinafter provided) as specified in Item 3 of Annex A hereto (the Equipment settled for on each Closing Date being hereinafter called a Group).

Subject to the provisions of Article 4 hereof, the Company hereby promises to pay or cause to be paid in cash to the Manufacturer at such place as the Manufacturer may designate, on each Closing Date with respect to a Group, an amount equal to (i) the Purchase Price of all units of the Equipment in the Group as set forth in the invoice or invoices therefor (such invoiced prices being herein called the Invoiced Purchase Prices) and (ii) if such Closing Date is later than the 31st day following the date of delivery and acceptance of a unit pursuant to Article 2 hereof, interest on the Invoiced Purchase Price of such unit from such 31st day to and including such Closing Date at a rate per annum equal to the prime rate which the Trustee would charge on such Closing Date for 90-day loans to borrowers of the highest credit standing.

The term "Closing Date" with respect to any Group of the Equipment shall mean December 15, 1970 or such earlier date following the date of deposit of the net proceeds of the sale of the Equipment Trust Certificates (hereinafter called the Equipment Trust Certificates) issued pursuant to Section 2.01 of the Equipment Trust Agreement, following presentation by the Manufacturer to the Lessee of the invoice and the Certificate or Certificates of Acceptance for such Group, as shall be fixed by the Company and the Lessee by written notice delivered to the Manufacturer at least five business days prior to the Closing Date designated therein. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and legal holidays or days on which banking institutions are authorized by law to close in The City of New York.

If the Manufacturer shall not receive on the Closing Date with respect to a Group of the Equipment the amounts

payable to the Manufacturer in respect of such Group pursuant to the third paragraph of this Article 3, the Manufacturer will promptly notify the Company and the Lessee of such event and, if such amount shall not have been previously paid and the Manufacturer shall have otherwise complied with the conditions of this Agreement to entitle the Manufacturer to receive payment hereunder, the Lessee will, not later than 90 days after the Closing Date, make payment to the Manufacturer of such amounts, together with interest on the Invoiced Purchase Prices from such Closing Date to the date of payment by the Lessee at the rate of 10% per annum or the maximum rate permitted by law, whichever is the lesser; in which event the Company shall execute such instruments and take such other action as shall be reasonably requested by the Lessee to vest in the Lessee or its designee full title to such Equipment. If the Lessee shall not make payment as aforesaid, the Company shall execute such instruments and take such other action as shall be reasonably requested by the Manufacturer to vest in the Manufacturer or its designee full title to such Equipment, whereupon the Manufacturer may, at its election, sell, lease, retain or otherwise dispose of such Equipment as may be permitted by law, *provided, however*, that the Lessee shall not thereby be relieved of its obligations to make payment to the Manufacturer as aforesaid.

All payments provided for in this Agreement shall be made 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.

Upon payment to the Manufacturer for any Group of Equipment as provided for in this Agreement, any and all claims, liens, security interests or other encumbrances of any nature of the Manufacturer with respect to title to such Group of Equipment under this Agreement shall forthwith cease and determine.

ARTICLE 4. *Conditions to Obligations of the Company.* The obligation of the Company under this Agreement to pay or cause to be paid to the Manufacturer any amount required to be paid pursuant to the third paragraph of Article 3 hereof with respect to any Group of the Equipment is subject to the satisfaction, on or prior to the Closing Date, of the following conditions:

(a) the Company shall have received the following documents in such number of counterparts or copies as may reasonably be requested in form and substance satisfactory to it:

(i) the bill or bills of sale from the Manufacturer to the Trustee, referred to in the last paragraph of Article 2 hereof, with respect to the Equipment in such Group;

(ii) the Certificate or Certificates of Acceptance with respect to the Equipment in such Group, referred to in the fifth paragraph of Article 2 hereof and the Lessee's Certificate with respect thereto referred to in § 1 of the Lease;

(iii) the invoice or invoices with respect to the Equipment in such Group referred to in the last paragraph of Article 2 hereof, accompanied by or having endorsed thereon a certification by the Lessee as to the correctness of the prices of such Equipment as set forth in said invoices;

(iv) an opinion of counsel for the Lessee, dated the Closing Date, stating that (A) the Lessee is a duly organized and existing corporation in good standing under the laws of its state of incorporation, and has the power and authority to own its properties and to carry on its business as now conducted, (B) this Agreement has been duly author-

ized, executed and delivered by the Lessee and, assuming the due authorization, execution and delivery thereof by the Manufacturer and the Company, is a legal and valid instrument binding upon the Manufacturer, the Company and the Lessee and enforceable in accordance with its terms, (C) the Equipment Trust Agreement has been duly authorized, executed and delivered by the Lessee and, assuming the due authorization, execution and delivery thereof by the other parties thereto, is a legal and valid instrument binding upon the Lessee and such other parties and enforceable in accordance with its terms, (D) the Equipment Trust Certificates and the guaranty thereof have been validly authorized and have been duly executed by the Trustee and the Lessee, respectively, and delivered and are validly issued and outstanding obligations entitled to the benefits of the Equipment Trust Agreement, (E) the Lease has been duly authorized, executed and delivered by the Lessee and, assuming the due authorization, execution and delivery thereof by the Company, is a legal and valid instrument binding upon the Lessee and enforceable in accordance with its terms, (F) security title to the units of the Equipment in such Group is validly vested in the Trustee, and such units, at the time of delivery thereof pursuant to Article 2 hereof, were free of all claims, liens, security interests and other encumbrances of any nature except as created by this Agreement, the Equipment Trust Agreement or as permitted by Section 7.02 thereof and except for the rights of the Lessee under the Lease, (G) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the execution

and delivery of this Agreement, the Equipment Trust Agreement or the Lease, or if any authority is necessary it has been obtained, and (H) the Lease and the Equipment Trust Agreement have been duly filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act, and will protect the Company's title and interest in and to the units of the Equipment in such Group and the Trustee's security title and interest in and to such units, and no filing, recording or deposit (or giving of notice) with any other federal, state or local government or agency or instrumentality thereof is necessary to protect the title and interest of the Company or the security title and interest of the Trustee in and to such units in the United States of America;

(v) an opinion of counsel for the Manufacturer, dated the Closing Date, to the effect set forth in subclause (F) of clause (iv) of this subparagraph (a), and stating that (A) the Manufacturer is a duly organized and existing corporation in good standing under the laws of the state of its incorporation and (B) this Agreement has been duly authorized, executed and delivered by the Manufacturer and, assuming the due authorization, execution and delivery by the Company and the Lessee, is a legal and valid instrument binding upon and enforceable against the Manufacturer in accordance with its terms;

(vi) a Lessee's Certificate (as defined in the Equipment Trust Agreement) dated the Closing Date to the effect that no Event of Default (as defined in the Equipment Trust Agreement) which

relates to the Lessee nor an Event of Default (as defined in the Lease), nor any event which with the lapse of time and/or notice provided for in the Equipment Trust Agreement or in the Lease would constitute such an Event of Default thereunder shall have occurred and be continuing;

(vii) the opinions of counsel required by §§ 14 and 15 of the Lease;

(viii) such other documents as the Company may reasonably request; and

(b) the Company and the Lessee shall have entered into the Other Agreements with the respective parties thereto.

In giving the opinions specified in clauses (iv) and (v) of subparagraph (a) of the first paragraph of this Article 4, counsel may qualify any opinion to the effect that any agreement is a legal and valid instrument, binding and enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' or lessors' rights generally. In giving the opinion specified in Item (F) of clause (iv) of subparagraph (a) of the first paragraph of this Article 4, counsel may rely as to the Manufacturer's title to the Equipment immediately prior to the time of delivery thereof under this Agreement, on the opinion of counsel for the Manufacturer.

ARTICLE 5. *Warranties.* The agreement of the parties relating to the Manufacturer's warranty of materials and workmanship is set forth in Item 4 of Annex A hereto, which said Item 4 is by this reference made a part hereof.

ARTICLE 6. *Patent Indemnities.* Except in case of designs, processes or combinations specified by the Lessee and not developed or purported to be developed by the Manufacturer, and articles and materials specified by the Lessee and not manufactured by the Manufacturer, the Manufacturer agrees to indemnify, protect and hold harmless the Company and the Lessee from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Company and the Lessee because of the use in or about the construction or operation of the Equipment, or any unit thereof, of any design, process, combination, article or material infringing or claimed to infringe on any patent or other right. The Lessee likewise will indemnify, protect and hold harmless the Manufacturer and the Company from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Manufacturer or the Company, as the case may be, because of the use in or about the construction or operation of the Equipment, or any unit thereof, of any design, process or combination specified by the Lessee and not developed or purported to be developed by the Manufacturer, or article or material specified by the Lessee and not manufactured by the Manufacturer, which infringes or is claimed to infringe on any patent or other right. The Manufacturer agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, transfer, assign, set over and deliver to the Lessee every claim, right and cause of action which the Manufacturer has or hereafter shall have against the originator or seller or sellers of any design, process, combination, article or material specified by the Lessee and used by the

Manufacturer in or about the construction or operation of the Equipment, or any unit thereof, on the ground that any such design, process, combination, article or material or operation thereof infringes or is claimed to infringe on any patent or other right, and the Manufacturer further agrees to execute and deliver to the Lessee all and every such further assurances as may be reasonably requested by the Lessee more fully to effectuate the assignment, transfer and delivery of every such claim, right and cause of action. The Manufacturer will give notice to the Lessee of any claim known to the Manufacturer from which liability may be charged against the Lessee hereunder and the Company and the Lessee, respectively, will give notice to the Manufacturer of any claim known to the Company or the Lessee, as the case may be, on the basis of which liability may be charged against the Manufacturer hereunder.

ARTICLE 7. *Taxes.* All payments to be made or caused to be made by the Company or the Lessee hereunder will be free of expense to the Manufacturer with respect to the amount of any local, state or federal taxes (other than net income, gross receipts [except gross receipts taxes in the nature of or in lieu of sales taxes], franchise taxes measured by net income based on such receipts, excess profits and similar taxes), assessments, license fees, charges, fines or penalties levied or imposed upon, or in connection with, or measured by, this Agreement or any sale, use, payment, shipment, delivery or transfer of title under the terms hereof, all of which taxes, assessments, license fees, charges, fines or penalties the Company or the Lessee, as the case may be, assumes and agrees to pay on demand in addition to the Purchase Price of the Equipment; *provided, however,* that the Company will have no obligation to pay any such taxes, assessments, license fees, charges, fines or pen-

alties unless it shall have received payment thereof from the Lessee pursuant to § 5 of the Lease; and the Lessee hereby agrees to perform such obligation if the Company should fail to do so.

ARTICLE 8. *Notice.* Any notice hereunder to the party designated below shall be deemed to be properly served if delivered or mailed to it at the following specified addresses:

(a) to the Company, c/o C. I. T. Leasing Corporation, 650 Madison Avenue, New York, New York 10022, *attention of the President,*

(b) to the Lessee, at 1819 J. F. Kennedy Boulevard, Philadelphia, Pennsylvania 19103, *attention of the Vice President and Treasurer,*

(c) to the Manufacturer, at its address set forth in Item 5 of Annex A hereto,

or at such other addresses as may have been furnished in writing by such party to the other parties to this Agreement.

ARTICLE 9. *Article Headings.* All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

ARTICLE 10. *Effect and Modification of Agreement.* This Agreement, and the Annexes relating hereto, exclusively and completely state the rights and agreements of the Manufacturer, the Company and the Lessee with respect to the Equipment and supersede all other agreements, oral or written, with respect to the Equipment. No variation of this Agreement and no waiver of any of its provisions or

conditions shall be valid unless in writing and duly executed on behalf of the Company, the Manufacturer and the Lessee.

ARTICLE 11. *Law Governing.* The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of New York.

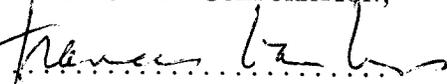
ARTICLE 12. *Successors and Assigns.* As used herein the terms Manufacturer, Company, Trustee and Lessee shall be deemed to include the successors and assigns of the Manufacturer, the Company, the Trustee and the Lessee.

ARTICLE 13. *Execution.* This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart.

ARTICLE 14. *Nondiscrimination.* The nondiscrimination clauses contained in Section 202 of the Executive Order 11246, as amended, relative to equal employment opportunities for all persons without regard to race, creed, color or national origin, and implementing rules and regulations of the President's Committee on Equal Employment Opportunity are incorporated herein.

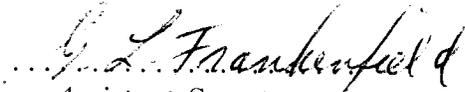
IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this Agreement to be duly executed as of the date first above written.

BETHLEHEM STEEL CORPORATION,

by 
Vice President.

[CORPORATE SEAL]

Attest:


Assistant Secretary

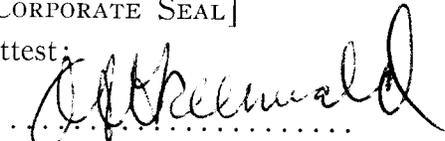
C.I.T. CORPORATION,

by C.I.T. LEASING CORPORATION,
as Agent,

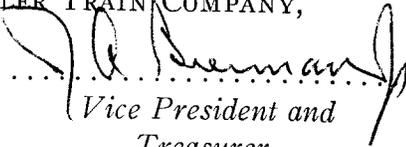
by 
Vice President.

[CORPORATE SEAL]

Attest:


Assistant Secretary

TRAILER TRAIN COMPANY,

by 
Vice President and
Treasurer.

[CORPORATE SEAL]

Attest:


Assistant Secretary

COMMONWEALTH OF PENNSYLVANIA }
COUNTY OF NORTHAMPTON } ss.:

On this 3rd day of September, 1970, before me personally appeared FRANCIS VAN NUYS, to me personally known, who, being by me duly sworn, says that he is a Vice President of BETHLEHEM STEEL CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Evelyn S. Weeks
.....
Notary Public

[NOTARIAL SEAL]

My Commission Expires
City of Bethlehem
Northampton County,
October 13, 1970

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

On this 3rd day of September, 1970, before me personally appeared THOMAS J. McPHILLIPS, to me personally known, who, being by me duly sworn, says that he is a Vice President of C.I.T. LEASING CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Olivia Treglio
.....
Notary Public

[NOTARIAL SEAL]

OLIVIA TREGLIO
Notary Public, State of New York
No. 31-4015670
Qualified in New York County
Commission Expires March 30, 1971

STATE OF NEW YORK }
 COUNTY OF NEW YORK } ss.:

On this 3rd day of September, 1970, before me personally appeared J. A. BRENNAN, JR., to me personally known, who, being by me duly sworn, says that he is the Vice President and Treasurer of TRAILER TRAIN COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Olivia Treglio
 Notary Public

[NOTARIAL SEAL]

OLIVIA TREGLIO
 Notary Public, State of New York
 No. 31-4015670
 Qualified in New York County
 Commission Expires March 30, 1971

ANNEX A—BETHLEHEM STEEL CORPORATION

- Item 1: Bethlehem Steel Corporation, a Delaware corporation.
- Item 2: The three Manufacturing Agreements dated as of September 1, 1970, among the Company, the Lessee and ACF Industries, Incorporated, Pullman Incorporated (Pullman-Standard Division) and Bethlehem Steel Corporation.
- Item 3: For the purpose of making settlement, the Equipment shall be settled for in not more than three Groups of units of the Equipment delivered to and accepted by the Lessee, as agent for the Trustee.
- Item 4: *Manufacturer's Warranty of Materials and Workmanship.* The Manufacturer warrants that the units of the Equipment will be built in accordance with the Specifications and with the other requirements, specifications and standards set forth or referred to in Article 1 of the Manufacturing Agreement to which this Annex A is attached (hereinafter called the Agreement) and warrants the Equipment will be free from defects in material (except as to specialties incorporated therein which were specified or supplied by the Lessee and not manufactured by the Manufacturer) and workmanship or design (except as to designs specified by the Lessee and not developed or purported to be developed by the Manufacturer) under normal use and service; the Manufacturer's obligation under this paragraph being limited to making good at its plant any part or parts of any unit of the Equipment which shall be returned to the Manufacturer, with transportation charges prepaid, within one year after the delivery of such unit and which the Manufacturer's examination shall disclose to its satisfaction to

have been thus defective. **This warranty is expressly in lieu of all other warranties, expressed or implied, including any implied warranty of merchantability or fitness for a particular purpose, and of all other obligations or liabilities on the part of the Manufacturer, except for its obligations under Articles 1, 2, 3 and 6 of the Agreement.** The Manufacturer neither assumes nor authorizes any person to assume for it any other liability in connection with the construction and delivery of the Equipment, except as aforesaid.

The Manufacturer further agrees that neither the inspection as provided in Article 2 of the Agreement, nor any examination, nor the acceptance of any units of the Equipment as provided in said Article 2, shall be deemed a waiver or modification by the Company and/or the Lessee of any of their rights under this Item 4.

It is further understood and agreed that the word "design(s)" as used herein and in Article 6 of the Agreement and the word "specialties" as used herein shall be deemed to include articles, materials, systems, formulae and processes.

- Item 5: Manager of Sales, Railroad Products, Bethlehem Steel Corporation, Bethlehem, Pennsylvania 18016.
- Item 6: In the event that any lower base prices than those set forth in Annex B to the Agreement are made by the Manufacturer on railroad equipment similar in type to any unit of the Equipment, the Manufacturer agrees to make a corresponding reduction in the base price of any such unit of the Equipment delivered pursuant to Article 2 of the Agreement on or after the date of said price reduction.

ANNEX B—BETHLEHEM STEEL CORPORATION

Type	Manufacturer's Specifications (1)	Manufacturer's Plant	Quantity	Lessee's Road Numbers (All Numbers Inclusive)	Unit Base Price	Total Base Price	Date and Place of Delivery
89'4" 70 Ton Capacity, Standard Level, Flat Cars with 4 Hitches	Per Latest TTX Specification	Johnstown, Pa.	90	157926-157965 158177-158226	\$20,036.65	\$1,803,298.50	Sept.-Dec., 1970 Johnstown, Pa.
89'4" 70 Ton Capacity, Standard Level, Saddleback Flat Cars	Per Latest TTX Specification	Johnstown, Pa.	38	963425-963462	21,262.65	807,980.70	Sept.-Dec., 1970 Johnstown, Pa.
89'4" 70 Ton Capacity, Standard Level, Auto Rack Flat Cars	Per Latest TTX Specification	Johnstown, Pa.	14	963117-963130	15,889.28	222,449.92	Sept.-Dec., 1970 Johnstown, Pa.
89'4" 70 Ton Capacity, Standard Level, Flat Cars with Hitch Equipment	Per Latest TTX Specification	Johnstown, Pa.	36	158166-158176 158227-158251	17,336.65	624,119.40	Sept.-Dec., 1970 Johnstown, Pa.
89'4" 70 Ton Capacity, Standard Level, Flat Cars with Hitch Equipment	Per Latest TTX Specification	Johnstown, Pa.	63	158252-158314	17,396.65	1,095,988.95	Sept.-Dec., 1970 Johnstown, Pa.
						<u>\$4,553,837.47</u>	

(1) Trailer Train Specification dated June 18, 1968, as modified in accordance with Article 1 of this Agreement.

EQUIPMENT TRUST DUE SEPTEMBER 1, 1985
Unconditionally Guaranteed as to Principal and Dividends by
TRAILER TRAIN COMPANY

Equipment Trust Agreement

Dated as of September 1, 1970

AMONG

MANUFACTURERS HANOVER TRUST COMPANY,
Trustee,

C.I.T. CORPORATION

AND

TRAILER TRAIN COMPANY

EQUIPMENT TRUST AGREEMENT dated as of September 1, 1970, among MANUFACTURERS HANOVER TRUST COMPANY, a corporation duly organized and existing under the laws of the State of New York, as Trustee (hereinafter called the Trustee), C.I.T. CORPORATION, a corporation duly organized and existing under the laws of the State of New York (hereinafter called the Company), acting through its agent C.I.T. Leasing Corporation, a corporation duly organized and existing under the laws of the State of Delaware, and TRAILER TRAIN COMPANY, a corporation duly organized and existing under the laws of the State of Delaware (hereinafter called the Guarantor or the Lessee).

WHEREAS the Company has agreed to cause to be transferred to the Trustee the railroad equipment described in Annex A hereto subject to the provisions hereof; and

WHEREAS security 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 full title is transferred to the Company under the provisions hereof; and

WHEREAS Equipment Trust Certificates, due September 1, 1985 (hereinafter called Trust Certificates), bearing the unconditional guaranty of the Guarantor, are to be issued and sold hereunder in an aggregate principal amount not exceeding \$10,500,000, at a price not less than 100% of the principal amount thereof, and the net proceeds of such sale are to be deposited with the Trustee to constitute a fund equal to the aggregate principal amount of Trust Certificates so issued and sold to be applied by the Trustee from time to time in part payment of the cost of the Trust Equipment (as hereinafter defined), the remainder of the cost thereof to be paid out of advance rentals to be paid by the Company as provided herein; and

WHEREAS the Company proposes to enter into a Lease of Equipment to be dated as of September 1, 1970 (hereinafter called the Lease) with the Lessee pursuant to which the Company will lease such railroad equipment to the Lessee; and

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

[FORM OF TRUST CERTIFICATE]

\$.....

No

EQUIPMENT TRUST DUE SEPTEMBER 1, 1985

Unconditionally Guaranteed as to Principal and Dividends by

TRAILER TRAIN COMPANY

EQUIPMENT TRUST CERTIFICATE

Total Authorized Issue
\$10,500,000

MANUFACTURERS HANOVER TRUST COMPANY, Trustee

Dividends at the Rate of % Per Annum Payable
March 1 and September 1

MANUFACTURERS HANOVER TRUST COMPANY, as Trustee under an Equipment Trust Agreement (hereinafter called the Agreement) dated as of September 1, 1970, among MANUFACTURERS HANOVER TRUST COMPANY, Trustee (hereinafter called the Trustee), C.I.T. CORPORATION (hereinafter called the Company) and TRAILER TRAIN COMPANY (hereinafter called the Guarantor), hereby certifies that

or registered assigns, is entitled to an interest in the principal amount of \$ in the EQUIPMENT TRUST DUE SEPTEMBER 1, 1985, UNCONDITIONALLY GUARANTEED AS TO PRINCIPAL AND DIVIDENDS BY TRAILER TRAIN COMPANY, payable on September 1, 1985, upon presentation and surrender of this Certificate to the Trustee at

its corporate trust office in the Borough of Manhattan, City and State of New York, and to payment of dividends on the unpaid principal amount represented by this Certificate from the date hereof until the principal amount hereof is due and payable, at the rate of % per annum, payable semiannually on March 1 and September 1 in each year, with interest at the rate of % per annum on any overdue principal and dividends to the extent that it shall be legally enforceable, all 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, but payable only out of rentals or other moneys received by the Trustee and applicable to such payment under the provisions of the Agreement.

This Certificate is one of an authorized issue of Certificates all having a final maturity of September 1, 1985, and having an aggregate principal amount of \$10,500,000, all issued or to be issued under and subject to the terms of the Agreement under which certain railroad equipment leased to the Company and in turn leased to the Guarantor (or, in lieu thereof, cash or obligations defined in the Agreement as Authorized Investments) is held by the Trustee in trust for the equal and ratable benefit of the holders of Certificates, to which Agreement (a copy of which is on file with the Trustee at its said office) reference is made for a full statement of the rights and obligations of the Company and the Guarantor, the duties and immunities of the Trustee and the rights of the holder hereof thereunder. The Company has no personal liability to the holders of the Certificates and its obligations under the Agreement are limited as provided therein.

As a sinking fund for the Certificates, the Agreement provides for the payment by the Company to the Trustee, but only out of moneys received by the Company as contemplated by the Agreement, on or before March 1 and September 1 in each year, commencing March 1, 1971, and continuing to and including March 1, 1985, of rental calculated as provided in the Agreement so that the aggregate of the dividends and sinking fund rental payments payable on each such date (other than March 1, 1971), and the aggregate of dividends and principal payable on September 1, 1985, shall be substantially equal, subject

to proportionate reduction in the event of prepayment as mentioned below out of moneys deposited with the Trustee on account of Casualty Occurrences (as defined in the Agreement). As more fully provided in the Agreement, Trust Certificates in an aggregate principal amount equal to sinking fund rental payments are subject to prepayment on March 1, 1971, and on each September 1 and March 1 thereafter to and including March 1, 1985, on not less than 30 days' prior notice given as provided in the Agreement. The Certificates are also prepayable on March 1, 1971, out of any Deposited Cash (as defined in the Agreement) held by the Trustee not required to be applied to the cost of railroad equipment to be subject to the trust, and on any March 1 or September 1, out of moneys deposited with the Trustee on account of Casualty Occurrences. Any such prepayment of Trust Certificates shall be at 100% of the principal amount thereof to be prepaid, together with accrued dividends to the date fixed for prepayment.

The Certificates are issuable only as fully registered Certificates and are interchangeable without charge upon presentation thereof for the purpose at said office of the Trustee, but only in the manner and subject to the limitations provided in the Agreement.

This Certificate is transferable in whole or in part by the registered holder hereof in person or by duly authorized attorney on the books of the Trustee upon surrender to the Trustee at its said office of this 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, and thereupon a new Certificate or Certificates in authorized denominations for the same aggregate unpaid principal amount hereof will be issued to the transferee in exchange herefor and, if less than the then entire unpaid principal amount hereof is transferred, a balance piece therefor will be issued to the transferor. The Trustee, the Company and the Guarantor may treat the person in whose name this Certificate is registered as the absolute owner hereof for the purpose of receiving payment of principal and dividends and for all other purposes, and shall not be affected by any notice to the contrary.

In case of an Event of Default (as defined in the Agreement), the principal amount represented by this Certificate (and dividends accrued thereon) may be declared due and payable, as provided in the Agreement.

IN WITNESS WHEREOF, the Trustee has caused this Certificate to be signed by the facsimile signature of one of its Assistant Vice Presidents and its corporate seal, in facsimile, to be hereunto imprinted and to be attested by one of its Assistant Trust Officers by his signature.

Dated as of:

MANUFACTURERS HANOVER TRUST COMPANY,
Trustee,

by
Assistant Vice President.

ATTEST:

.....
Assistant Trust Officer.

[FORM OF GUARANTY]

GUARANTY

TRAILER TRAIN COMPANY, for a valuable consideration, hereby unconditionally guarantees to the registered holder of the within Certificate the prompt payment of the principal of said Certificate and of the dividends thereon specified in said Certificate, with interest at the rate per annum specified in said Certificate on any overdue principal and dividends to the extent that such interest shall be legally enforceable, all in accordance with the terms of said Certificate and the Equip-

ment Trust Agreement referred to therein. The obligations of Trailer Train Company under the foregoing guaranty are superior in right of payment to all of its Thirty Year Subordinated Notes sold or to be sold pursuant to a Note Purchase Agreement dated as of January 1, 1967, between Trailer Train Company and certain of its stockholders.

TRAILER TRAIN COMPANY,

by
President.

WHEREAS it is desired to secure to the holders of the Trust Certificates the payment of the principal thereof, as hereinafter more particularly provided, with dividends thereon, as hereinafter provided, payable semiannually on March 1 and September 1 in each year, and to evidence the rights of the holders of the Trust Certificates in substantially the form hereinbefore set forth;

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

ARTICLE ONE

DEFINITIONS

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

Authorized Investments 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 are pledged to provide for the payment of the interest and principal, (b) commercial paper given

a rating of at least "prime" or its equivalent by the National Credit Office or a successor thereto or a similar rating service substituted therefor and (c) certificates of deposit of or time deposits in banks or trust companies incorporated and doing business under the laws of the United States of America or one of the States thereof having a capital and surplus aggregating at least \$50,000,000; all of which shall mature within one year or less.

Business Day shall mean any calendar day, excluding Saturday, Sunday and legal holidays or days on which banking institutions are authorized by law to close in The City of New York.

Casualty Occurrence shall mean any occurrence specified in Section 5.07 hereof to be a Casualty Occurrence.

Certificate of Acceptance shall mean a Certificate of Acceptance (as defined in a Manufacturing Agreement).

Corporate Trust Office shall mean the principal office of the Trustee in the City and State of New York, 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 Agreement, located at 40 Wall Street, New York, New York 10015.

Cost, when used with respect to the Equipment, shall mean the actual cost thereof (including freight charges, if any, from an Owner's plant to a point of delivery to the Lessee and applicable local or state sales taxes, if any, and including only such other items as may be properly included in such cost under sound accounting practice), as evidenced by an Owner's invoice with respect to such Equipment.

Deposited Cash shall mean the aggregate of (a) cash on deposit with the Trustee as provided in the first sentence of Section 2.01 hereof, (b) any sums restored to Deposited Cash from rentals pursuant to Section 5.04(a)(ii) hereof and on deposit with the Trustee and (c), when required or indicated by the context, any Authorized Investments purchased by the use of Deposited Cash pursuant to the provisions of Section 9.04 hereof and held by the Trustee.

Equipment shall mean new standard gauge railroad equipment, other than passenger equipment or work equipment, first put into service no earlier than the date of delivery to and acceptance by the Lessee, as agent for the Trustee, but shall not include any special devices, racks or assemblies, at any time attached or affixed to any such cars, the cost or purchase price of which is not included in the Cost of such cars and the title to which is in a person, firm or corporation other than the Company, the Lessee or the Trustee.

Event of Default shall mean any event specified in Section 6.01 hereof to be an Event of Default.

The *Fair Value* of any unit of Trust Equipment on any date shall be deemed to be an amount computed by multiplying the unpaid principal amount of the Trust Certificates outstanding on such date (after giving effect to any prepayment thereof on such date pursuant to Section 3.01(a) hereof) by a fraction of which the numerator shall be the Cost of such unit and the denominator shall be the Cost of all units (including such unit) subject to the trust on such date.

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

Lease shall mean the Lease of Equipment dated as of September 1, 1970, between the Company and the Lessee substantially in the form of Annex B hereto, as the same may be supplemented as contemplated hereby or thereby.

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

Manufacturing Agreement shall mean any one of the three Manufacturing Agreements dated as of September 1, 1970, among the Company, the Lessee and ACF Industries, Incorporated, Pullman Incorporated (Pullman-Standard Division) and Bethlehem Steel Corporation, respectively.

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

Opinion of Counsel shall mean an opinion of counsel (who may be counsel to the Company or the Lessee).

Owner shall mean the manufacturer or other person transferring title to any of the Equipment to the Trustee.

Penalty Rate shall mean a rate per annum in the amount of $\frac{1}{2}$ of 1% above the dividend rate specified in the Trust Certificates.

Request shall mean a written request for the action therein specified signed on behalf of the Company by the President or a Vice President or any Assistant Vice President of the Company and delivered to the Trustee.

Trust Certificates shall mean the Equipment Trust Certificates issued hereunder.

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

Trustee shall mean Manufacturers Hanover Trust Company, a corporation duly organized and existing under the laws of the State of New York, and any successor as trustee hereunder.

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

ARTICLE TWO

TRUST CERTIFICATES AND ISSUANCE THEREOF

SECTION 2.01. *Issuance of Trust Certificates.* The net proceeds of the sale of any of the Trust Certificates shall forthwith upon the

issuance thereof be deposited in cash with the Trustee; it being understood and agreed that such net proceeds will equal \$10,500,000. Thereupon, without waiting for the recording or filing of this Agreement or of any other instrument respecting the Trust Equipment, the Trustee shall issue and deliver, as the Company shall direct by Request joined in by the Guarantor, Trust Certificates substantially in the form set forth herein, bearing dividends at the rate of 10½% per annum or, if all such Trust Certificates shall not be purchased by the Company, at the rate per annum specified in said Request, and 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 be \$10,500,000 except as provided in Sections 2.03 and 2.04 hereof.

SECTION 2.02. *Interests Represented by Trust Certificates; Dividends; Maturity.* Each of the Trust Certificates shall represent an interest in the principal amount therein specified in the trust created hereunder and shall bear dividends on the unpaid principal amount thereof at the rate of 10½% per annum or, if all the Trust Certificates issued pursuant to Section 2.01 hereof shall not be purchased by the Company, at the rate per annum specified in the Request delivered pursuant to Section 2.01 hereof, payable semiannually on March 1 and September 1 in each year, with interest payable on any overdue principal and dividends at the Penalty Rate, to the extent that it shall be legally enforceable.

The Trust Certificates shall mature on September 1, 1985, subject, however, to the provisions of Article III hereof respecting prepayment of Trust Certificates prior to such maturity date.

The principal of and dividends on the Trust Certificates shall be payable at the Corporate Trust Office in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, but only from and out of rentals or other moneys received by the Trustee and applicable to such payment under the provisions hereof. Notwithstanding the pro-

visions of the preceding sentence of this paragraph, in the case of payments of principal and dividends to be made on a Trust Certificate not then to be paid in full, upon request and deposit of an agreement (or, if approved by the Trustee, a copy of an agreement) of the holder of such Trust Certificate (the responsibility of such holder to be satisfactory to the Trustee, the Company and the Guarantor) obligating such holder, prior to any transfer or other disposition thereof, to surrender the same to the Trustee for a new Trust Certificate for the unpaid principal amount represented thereby on the date of such surrender the Trustee will, subject to timely receipt of the necessary funds, mail its check, or on request of the holder the Trustee will wire by 11:00 a.m. New York time funds immediately available to such holder on such date, to such registered holder at his address shown on the registry books maintained by the Trustee or at such other address as may be directed in writing by such holder without requiring the surrender of such Trust Certificate.

SECTION 2.03. *Form, Execution and Characteristics of Trust Certificates.*

(a) The Trust Certificates and the guaranty to be endorsed thereon by the Guarantor as hereinafter in Section 7.01 hereof provided shall be in substantially the forms hereinbefore set forth.

(b) The Trust Certificates shall be signed in the name and on behalf of the Trustee by the facsimile signature of one of its Vice Presidents or one of its Assistant Vice Presidents and its corporate seal or a facsimile thereof shall be affixed or imprinted thereon and attested by the manual signature of its Secretary or one of its Assistant Secretaries or one of its Assistant Trust Officers. In case any officer of the Trustee whose signature, whether facsimile or not, shall appear on any Trust Certificate shall cease to be such officer of the Trustee before such Trust Certificate shall have been issued and delivered by the Trustee or shall not have been acting in such capacity on the date of such Trust Certificate, such Trust Certificate shall be adopted by

the Trustee and be issued and delivered as though such person had at all times been such officer of the Trustee.

(c) The Trust Certificates (i) shall be registered, as to both principal and dividends, in the names of the holders; (ii) shall be transferable in whole or in part upon presentation and surrender thereof for transfer at the Corporate Trust Office, accompanied by appropriate instruments of assignment and transfer, duly executed by the registered holder of the surrendered Trust Certificate or Certificates or by duly authorized attorney, in form satisfactory to the Trustee; (iii) shall be dated as of the date of issue thereof if issued prior to March 1, 1971, or, if issued on or after March 1, 1971, as of the dividend payment date next preceding the date of issue, unless issued on a dividend payment date, in which event they shall be dated as of the date of issue, or unless issued in exchange for another Trust Certificate or Certificates bearing unpaid dividends from an earlier date, in which case they shall be dated as of such earlier date; (iv) shall entitle the registered holders to dividends from the date thereof; and (v) shall be exchangeable at the Corporate Trust Office for an equal aggregate principal amount of Trust Certificates of authorized denominations.

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

(e) The Trustee shall cause to be kept at the Corporate Trust Office books for the registration of the Trust Certificates and the registration of transfers of the Trust Certificates and, upon presentation of any Trust Certificate for such purpose, the Trustee shall register any transfer as hereinabove provided, under such reasonable regulations as it may prescribe and subject to the provisions of subparagraph (h) of this Section 2.03.

(f) No service charge shall be made for any transfer or exchange of Trust Certificates, but the Trustee shall require the payment of a

sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any such transfer or exchange.

(g) Each Trust Certificate delivered pursuant to any provision of this Agreement in exchange or substitution for, or upon the transfer of the whole or any part, as the case may be, of one or more other Trust Certificates, shall be issued in principal amount equal to the unpaid principal amount or amounts of such one or more other Trust Certificates, shall carry all the rights to dividends accrued and unpaid and to accrue, which were carried by the whole or such part, as the case may be, of such one or more other Trust Certificates, and, notwithstanding anything contained in this Agreement, such Trust Certificate shall be so dated that neither gain nor loss in dividends shall result from such exchange, substitution or transfer.

(h) The Trustee shall not be required (i) to transfer or exchange any Trust Certificate for a period of ten Business Days next preceding any dividend payment date or (ii) to issue, transfer or exchange any Trust Certificate during a period beginning at the opening of business ten Business Days before any selection of Trust Certificates to be prepaid and ending at the close of business on the day of the mailing of the relevant notice of prepayment or (iii) to transfer or exchange any Trust Certificate so selected for prepayment in whole or in part until after the prepayment date.

SECTION 2.04. *Replacement of Mutilated, Defaced, Lost, Stolen or Destroyed Trust Certificates.* In case any Trust Certificate shall become mutilated or defaced or be lost, stolen or destroyed, then on the terms herein set forth, and not otherwise, the Trustee shall execute and deliver a new Trust Certificate, and the Guarantor shall execute its guaranty thereon, of like tenor and date as the one mutilated, defaced, lost, stolen or destroyed, in exchange and substitution for, and upon cancellation of, the mutilated or defaced Trust Certificate, or in lieu of or in substitution for the same if lost, stolen or destroyed. The applicant for a new Trust Certificate shall furnish to the Trustee,

the Company and the Guarantor evidence to their satisfaction of the loss, theft or destruction of such Trust Certificate alleged to have been lost, stolen or destroyed, and of the ownership and authenticity of such mutilated, defaced, lost, stolen or destroyed Trust Certificate, and also shall furnish such security or indemnity as may be required by the Trustee, the Company and the Guarantor, in their discretion, and shall pay all expenses and charges of such substitution or exchange. All Trust Certificates shall be issued, held and owned upon the express condition that the foregoing provisions are exclusive in respect of the replacement of mutilated, defaced, lost, stolen or destroyed Trust Certificates and shall preclude any and all other rights and remedies, any law or statute now existing or hereafter enacted to the contrary notwithstanding.

SECTION 2.05. *Legal Holidays.* If the date fixed for payment of principal of or dividends on any Trust Certificates is not a Business Day, then (notwithstanding any other provision of this Agreement or the Trust Certificates) such payment need not be made on such date but may be made on the next succeeding Business Day with the same force and effect as if made on the nominal payment date and no dividends or interest shall accrue for the period from and after such nominal payment date.

ARTICLE THREE

PREPAYMENT OF TRUST CERTIFICATES

SECTION 3.01. *Right of Prepayment.* The Trust Certificates are subject to prepayment in whole or in part (a) on March 1, 1971, and on each September 1 and March 1 thereafter to and including March 1, 1985, through the application of the rental payable to the Trustee pursuant to Section 5.04(d) hereof, (b) on any March 1 or September 1, through the application of moneys paid to the Trustee pursuant to Section 5.07 hereof and (c) on March 1, 1971, through the application

of any Deposited Cash to be applied thereto pursuant to the last paragraph of Section 4.01 hereof, at 100% of the principal amount thereof, together with accrued and unpaid dividends to the date fixed for prepayment.

SECTION 3.02. Selection of Trust Certificates for Prepayment; Notice of Prepayment.

(a) On or before the July 15th or the January 15th, as the case may be, next preceding a date on which Trust Certificates are to be prepaid pursuant to Section 3.01 hereof, the Trustee shall select for prepayment, in such manner as in its discretion it shall deem appropriate and fair (subject to the provisions of the next succeeding sentence), a principal amount of Trust Certificates so as to exhaust (i) the amount of rental to be paid by the Company to it in cash pursuant to Section 5.04(d) hereof, (ii) any amount in cash to be paid to it pursuant to Section 5.07 hereof and (iii) any Deposited Cash to be applied thereto pursuant to the last paragraph of Section 4.01 hereof, on the next succeeding March 1 or September 1, as the case may be. Any holder of Trust Certificates in whose name are registered Trust Certificates in an aggregate principal amount of \$100,000 or more may, by written notice to the Trustee delivered at least 55 days prior to a date on which Trust Certificates are to be prepaid, direct the Trustee to select for prepayment on such prepayment date and on each prepayment date thereafter, a principal amount of Trust Certificates registered in the name of such holder which bears the same proportion to the aggregate principal amount of all the Trust Certificates to be prepaid on such prepayment date as (y) the aggregate principal amount of Trust Certificates registered in the name of such holder on a date selected by the Trustee not more than ten days prior to the selection by the Trustee of Trust Certificates for prepayment on such prepayment date bears to (z) the aggregate principal amount of Trust Certificates outstanding on such date. In such event, (i) the principal amount of Trust Certificates to be selected by the

Trustee, as provided in the first sentence of this paragraph, shall be proportionately reduced and (ii) there shall not be included in the selection made, as provided in such sentence in respect of such prepayment date, any Trust Certificates registered in the name of any holder of Trust Certificates whose Trust Certificates are selected for prepayment as provided in the second sentence of this paragraph. Any notice given by any holder of Trust Certificates as provided in the second sentence of this paragraph shall remain in effect unless and until revoked by written notice delivered by such holder to the Trustee at least 55 days prior to the prepayment date or dates in respect of which such revocation is expressed to be applicable.

(b) The Trustee shall send a notice of prepayment by first class mail, postage prepaid, at least 30 days prior to each prepayment date to the holders of Trust Certificates to be prepaid in whole or in part, at their last addresses as they shall appear upon the registry books. Failure to give such notice, or any defect therein, as to any Trust Certificate shall not affect the validity of the proceedings for the prepayment of any other Trust Certificate. Any notice which is mailed in the manner herein provided shall be conclusively presumed to have been duly given, whether or not the holder receives the notice.

(c) The notice of prepayment to each holder shall (i) specify the date for prepayment, (ii) state that prepayment of the principal amount of the Trust Certificates or portions thereof to be prepaid will be made by the Trustee only from and out of rentals or other moneys paid to the Trustee by the Company or the Guarantor and applicable thereto and, unless such prepayment is to be made pursuant to the second sentence of the third paragraph of Section 2.02 hereof, that such prepayment will be made at the Corporate Trust Office, upon presentation and surrender of Trust Certificates so to be prepaid, (iii) specify whether prepayment is being made pursuant to Section 5.04(d), 5.07 or 4.01 hereof, (iv) state the aggregate principal amount of Trust Certificates to be prepaid in whole or in part and the distinctive numbers of the Trust Certificates of such holder to be prepaid and, in the case of any

such Trust Certificates to be prepaid in part, the principal amount thereof to be so prepaid, and (v) state that from and after such prepayment date dividends on such Trust Certificates or on the portions thereof to be prepaid will cease to accrue. The holders of Trust Certificates prepaid in part may, at their option and upon surrender thereof, receive new Trust Certificates for the principal amounts remaining unpaid without charge to such holders.

SECTION 3.03. *Payment of Trust Certificates Selected for Prepayment.* Notice of prepayment having been given as above provided, and there having been deposited with the Trustee on or before the prepayment date specified in the notice of prepayment, an amount in cash equal to the aggregate principal amount of all the Trust Certificates or portions thereof then to be prepaid and accrued dividends, the Trust Certificates or portions thereof to be prepaid shall become due and payable on such prepayment date and from and after such prepayment date dividends on such Trust Certificates or portions thereof shall cease to accrue and such Trust Certificates or portions thereof shall no longer be deemed to be outstanding hereunder and shall cease to be entitled to the benefits of this Agreement except to receive payment from the moneys reserved therefor in the hands of the Trustee. The Trustee shall hold the prepayment moneys in trust for the holders of the Trust Certificates or portions thereof to be prepaid and (subject to the provisions of the second sentence of the third paragraph of Section 2.02 hereof) shall pay the same to such holders respectively upon presentation and surrender of such Trust Certificates.

Except as provided in Sections 2.02 and 3.02 hereof, all Trust Certificates prepaid under this Article Three shall be canceled by the Trustee and no Trust Certificates shall be issued hereunder in place thereof.

Upon Request, the Trustee shall deliver to the Company canceled Trust Certificates held by the Trustee or, if so directed by the Company, may destroy such Trust Certificates and deliver to the Company a certificate of destruction.

ARTICLE FOUR

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, as trustee for the holders of the Trust Certificates, the Equipment described in Annex A hereto. Such Equipment shall be delivered to the Lessee, which is hereby designated by the Trustee as its agent to receive such delivery, and a Lessee's Certificate as to such delivery shall be conclusive evidence of such delivery.

In the event that it may be deemed necessary or desirable (i) to procure for the use of the Company, and to include in the trust created hereby, other Equipment in lieu of any of the Equipment specifically described in Annex A hereto prior to the delivery of such Equipment to the Lessee as agent for the Trustee or (ii) to exclude from such trust any of the Equipment specifically described in Annex A hereto after delivery of such Equipment to the Lessee as agent for the Trustee but prior to settlement therefor pursuant to Section 4.02 hereof, the Company may, in its discretion, (x) in the case of Equipment to be substituted hereunder pursuant to the foregoing clause (i), cause such other Equipment to be sold, assigned and transferred to the Trustee, to be substituted under such trust, or (y) in the case of Equipment to be excluded from such trust pursuant to the foregoing clause (ii), direct the Trustee, by Request, to execute and deliver such instruments and take such other action as may be necessary to exclude such Equipment from such trust and vest title to such Equipment in the Company or its designee. Notwithstanding the foregoing, any Equipment excluded pursuant to clause (y) above and any Equipment not delivered and settled for pursuant to this Article Four on or before December 15, 1970 (herein called the Cut-Off Date), shall be excluded from this Agreement and not included in the term Trust Equipment. In the event of any such exclusion or substitution, the Company, the Guarantor and the Trustee shall execute an agreement supplemental hereto limiting this

Agreement to the Trust Equipment theretofore accepted and settled for hereunder and, in the case of Equipment delivered but not so settled for, the Trustee shall execute a bill or bills of sale (without warranties) for such Equipment to the original Owner or Owners thereof, unless payment therefor to such Owner or Owners shall have been made pursuant to one or more of the Manufacturing Agreements, in which case the Trustee shall execute a bill or bills of sale (without warranties) for such Equipment to the party making payment therefor and the Trustee shall execute for record in public offices, at the expense of the Lessee, such instrument or instruments in writing as reasonably shall be requested by such party in order to make clear upon public records such party's full title to such Trust Equipment under the laws of any jurisdiction.

In the event that on the Cut-Off Date any Deposited Cash shall remain in the possession of the Trustee, the Trustee shall (a) sell, prior to March 1, 1971, all Authorized Investments then held by it and (b) apply Deposited Cash and any amount payable in respect of such Authorized Investments pursuant to Section 5.04(a)(ii) to the prepayment of Trust Certificates on March 1, 1971, as provided in Article Three hereof.

SECTION 4.02. *Payment of Deposited Cash.* For the purpose of settlement therefor, the Equipment shall be divided into not more than three groups of units of Equipment (each such group being hereinafter called a Group), each Group to consist of such units of the Equipment delivered to and accepted by the Company as the Guarantor may specify in the written notice delivered as provided in the next succeeding sentence. The term "Settlement Date" with respect to any Group shall mean such date (not earlier than the date of deposit of the net proceeds of the sale of the Trust Certificates pursuant to Section 2.01 hereof, and not later than the Cut-Off Date), following presentation by the Owner or Owners to the Guarantor of the invoice or invoices and Certificate or Certificates of Acceptance for such Group, as shall be fixed by the Company and the Guarantor by written notice delivered to the Owner or Owners and the Trustee at least five Business Days prior to the Settlement Date designated therein. From time to time,

when and as any Group of Trust Equipment shall have been delivered to the Lessee, as agent for the Trustee, pursuant to Section 4.01 hereof the Trustee shall, subject to the provisions of Sections 4.03 and 4.04 hereof, pay on the Settlement Date, upon Request, to the Owner or Owners of the delivered Trust Equipment out of Deposited Cash an amount equal to 70% of the aggregate Cost of Trust Equipment then delivered to the Trustee.

SECTION 4.03. *Payment of Deficiency.* The Company covenants that, contemporaneously with any payment by the Trustee pursuant to Section 4.02 hereof with respect to any Trust Equipment, but subject to the provisions of Section 4.05 hereof, it will pay to the Owner or Owners of the delivered Trust Equipment that portion of the Cost of the delivered Trust Equipment not paid out of Deposited Cash as provided for in Section 4.02 hereof. It is understood and agreed, however, that, unless the Company shall otherwise agree, the total Cost of the Trust Equipment shall not exceed \$15,000,000.

SECTION 4.04. *Supporting Papers.* The Trustee shall not pay out any Deposited Cash pursuant to Section 4.02 hereof with respect to any of the Trust Equipment unless and until it shall have received:

(a) one or more duly executed Certificates of Acceptance with respect to such Trust Equipment and a Lessee's Certificate stating that the Trust Equipment described and specified therein by number or numbers has been delivered and has been marked in accordance with the provisions of Section 5.06 hereof;

(b) an invoice or invoices from the Owner or Owners and a Lessee's Certificate which shall describe any special devices, racks or assemblies constituting a part of any unit of such Trust Equipment and shall state that such Trust Equipment is Equipment as herein defined (having been first put into service no earlier than the date of delivery to and acceptance by the Lessee, as agent for the Trustee) and that the Cost of such Trust Equipment is an

amount therein specified, together with evidence of payment of the amount to be paid to the Owner or Owners pursuant to Section 4.03 hereof;

(c) a bill or bills of sale of such Trust Equipment from the Owner or Owners to the Trustee, which bill or bills of sale shall contain a warranty or guaranty to the Trustee and to the Company that at the time of sale the Owner or Owners had legal title to the Trust Equipment described therein and good and lawful right to sell such Trust Equipment and that the title to such Trust Equipment is free from all claims, liens, security interests and other encumbrances of any nature except as created by the Manufacturing Agreement applicable to such Trust Equipment, this Agreement or as permitted by Section 7.02 hereof and except for the rights of the Lessee under the Lease;

(d) an Opinion of Counsel of the Lessee addressed to the Company and the Trustee to the effect that such bill or bills of sale are valid and effective, either alone or in connection with any other instrument referred to in and accompanying such opinion, to vest in the Trustee security title to such Trust Equipment free from all claims, liens, security interests and other encumbrances of any nature other than as provided in subparagraph (c) above; and

(e) In the case of any Trust Equipment not specifically described in Annex A hereto, an Opinion of Counsel of the Lessee addressed to the Company and the Trustee that a proper supplement hereto in respect of such Trust Equipment has been duly executed by the Trustee, the Company and the Guarantor, that a proper supplement to the Lease in respect of such Trust Equipment has been duly executed by the Company and the Lessee and that each of such supplements has been duly filed and recorded in accordance with Section 7.03 hereof.

SECTION 4.05. *Conditions to Payment of Deficiency.* The obligation of the Company to pay to the Owner or Owners of the delivered

Trust Equipment any amount required to be paid pursuant to Section 4.03 hereof with respect to any Group of the Trust Equipment is specifically subject to the following conditions:

(a) no Event of Default specified herein which relates to the Guarantor nor an Event of Default (as defined in the Lease), nor any event which with the lapse of time and/or notice provided for herein or in the Lease would constitute such an Event of Default hereunder or under the Lease shall have occurred and be continuing, and the Company shall have received a Lessee's Certificate dated the date of such payment to that effect;

(b) the Company shall have received copies of the documents specified in Section 4.04 hereof, together with evidence of payment of the amount to be paid to the Owner or Owners pursuant to Section 4.02 hereof;

(c) the Company shall have received the opinions of counsel required by §§ 14 and 15 of the Lease; and

(d) the Company shall have received such other documents relating to the transactions contemplated hereby as the Company may reasonably request.

ARTICLE FIVE

LEASE OF TRUST EQUIPMENT TO THE COMPANY

SECTION 5.01. *Lease of Trust Equipment.* The Trustee does hereby let and lease all the Trust Equipment to the Company, for the term of 15 years from and after September 1, 1970.

SECTION 5.02. *Substituted Equipment Subject Hereto.* In the event that the Company shall, as provided in Section 4.01 hereof, cause to be constructed and transferred to the Trustee other Equipment in substitution for any of the Equipment herein specifically described, such other Equipment shall be included as part of the Trust Equipment by supplement hereto to be executed by the Trustee, the Company and the Guarantor 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 5.03. *Equipment Automatically Subjected.* As and when any Equipment shall from time to time be accepted by the Company under a Manufacturing Agreement as evidenced by a Lessee's Certificate referred to in Section 4.04(a) hereof, the same shall be deemed accepted hereunder and shall, *ipso facto* and without further instrument or lease, transfer or acceptance pass under and become subject to all the terms and provisions hereof.

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 as hereinbefore provided; and the Company covenants and agrees to pay to the Trustee (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 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, redemption or payment at maturity by the Trustee of Authorized Investments;

(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 Agreement, which the Trustee as such may be required to pay;

(c) (i) the amounts of the dividends payable on the Trust Certificates, when and as the same shall become payable, and (ii) interest at the Penalty Rate from the due date, upon the amount

of any instalments of rental payable under this subparagraph (c) and the following subparagraphs (d) and (e) which shall not be paid when due, to the extent legally enforceable;

(d) as a sinking fund for the Trust Certificates, on or before March 1 and September 1 in each year, commencing March 1, 1971, and continuing to and including March 1, 1985, an amount in cash calculated on such a basis that the aggregate of dividends and sinking fund rental payments payable on each such date (and the aggregate of dividends and principal payable on September 1, 1985) shall be substantially equal (subject to proportionate reduction in the event of prepayment of Trust Certificates pursuant to Section 3.01(b) hereof and except that, for the purposes of such calculation, the aggregate of dividends and the sinking fund rental payment payable on March 1, 1971, shall be deemed to include an amount equal to the dividends which would have accrued on the Trust Certificates from September 1, 1970 to the date of issue thereof if the Trust Certificates had been issued on September 1, 1970) and shall completely amortize the principal of and dividends on the Trust Certificates; and

(e) the principal of the Trust Certificates, when and as the same shall become payable, whether upon the stated date of maturity thereof or otherwise under the provisions thereof or of this Agreement.

Nothing contained herein or in the Trust Certificates shall be deemed to impose on the Trustee or on the Company (except as provided in subparagraph (b) of this Section 5.04) any obligation to pay to the holder of any Trust Certificate any tax, assessment or governmental charge 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. The Company shall not be required to pay any tax, assessment or governmental charge pursuant to subparagraph (b) of this Section 5.04 so long as it shall in good faith and by appropriate legal proceedings contest the validity

thereof, *provided that*, in the judgment of the Trustee and as set forth in an Opinion of Counsel which shall have been furnished to the Trustee by the Company or the Lessee the rights or interests of the Trustee or of the holders of the Trust Certificates will not be materially endangered thereby.

Notwithstanding any other provisions of this Agreement, including, without limitation, Articles Six and Seven hereof, it is understood and agreed by the Trustee on behalf of itself and the holders of the Trust Certificates that liability of the Company for all payments to be made by it under and pursuant to this Agreement (other than the payments called for by Section 4.03 hereof), shall not exceed an amount equal to the income and proceeds from the Trust Equipment. As used herein the term "income and proceeds from the Trust Equipment" shall mean (i) if an Event of Default shall have occurred and while it shall be continuing so much of the following amounts as are indefeasibly received by the Company at any time after any Event of Default and during the continuance thereof: (a) all amounts of rental and amounts in respect of Casualty Occurrences paid for or with respect to the Trust Equipment pursuant to the Lease and (b) any and all payments or proceeds received by the Company pursuant to clause (i) of subparagraph (b) of the first paragraph of § 9 of the Lease or for or with respect to the Trust Equipment as the result of the sale, lease or other disposition thereof, after deducting all costs and expenses of such sale, lease or other disposition and (ii) at any other time only that portion of the amounts referred to in the foregoing clauses (a) and (b) or otherwise payable to the Company pursuant to the Lease as are indefeasibly received by the Company and as shall equal the rental payments specified in the first paragraph of this Section 5.04 due and payable by the Company on the date such amounts received by the Company were required to be paid to it pursuant to the Lease or as shall equal any other payment (including payments in respect of Casualty Occurrences) then due and payable under this Agreement; it being understood that "income and proceeds from the Trust Equipment" shall in no event include amounts referred to in the foregoing clauses (a) and (b) which were received by the Company prior to the existence of such an Event of

Default which exceeded the amounts required to make the rental payments specified in the first paragraph of this Section 5.04 due and payable by the Company on the date on which amounts with respect thereto received by the Company were required to be paid to it pursuant to the Lease or which exceeded any other payments due and payable under this Agreement at the time such amounts were payable under the Lease. Nothing contained herein shall constitute an assignment of, or lien, charge or encumbrance against, the "income and proceeds from the Trust Equipment" or any right, title or interest of the Company under or arising out of the Lease, or of or against any payments received or to be received by the Company under or in connection with the Lease. It is further specifically understood and agreed that nothing contained herein limiting the liability of the Company shall derogate from the right of the Trustee to proceed against the Equipment or the Guarantor as provided for herein for the full unpaid principal amount of the Trust Certificates and dividends thereon. The Trustee agrees, however, that it will not seek to obtain a judgment against the Company for an amount in excess of the amounts payable by the Company pursuant to the limitations set forth in this paragraph, and that if it does obtain such a judgment, it will, accordingly, limit its execution of such judgment to such amount.

SECTION 5.05. *Termination of Lease.* It is understood that the vesting in the Trustee of security title to the Trust Equipment pursuant to this Agreement is solely to secure the performance by the Company of its obligations under this Agreement and that beneficial ownership in and to the Trust Equipment shall be and remain in the Company subject to compliance by the Company with all its obligations under this Agreement. Accordingly, after all payments due or to become due from the Company hereunder shall have been completed and fully made to or for the account of the Trustee and the Company shall have performed all its other obligations hereunder, (a) such payments shall be deemed to represent the discharge in full of the Trustee's security interest in the Trust Equipment at such time, (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) full 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 Lessee, 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 full title to all the Trust Equipment under the laws of any jurisdiction; provided, however, that until that time security title to all the Trust Equipment shall be and remain in the Trustee, notwithstanding the possession and use thereof by the Company pursuant to the terms of this Agreement.

SECTION 5.06. *Marking of Trust Equipment.* The Company agrees that it will cause each unit of the Trust Equipment to be kept plainly, distinctly, permanently and conspicuously marked on each side of such unit, in letters not less than one inch in height, the following words:

“OWNED BY A BANK OR TRUST COMPANY UNDER A SECURITY AGREEMENT FILED UNDER THE INTERSTATE COMMERCE ACT, SECTION 20C.”

or other appropriate words designated by the Trustee, with appropriate changes thereof and additions thereto as from time to time may be required by law or reasonably requested in order to protect the security title of the Trustee to such unit and the rights of the Company and the Trustee under this Agreement.

The Company will not place or permit any unit of the Trust Equipment to be placed in operation or exercise any control or dominion over the same until such words have been so marked on both sides thereof and will replace or cause to be replaced promptly any such words which may be removed, defaced or destroyed. The Company shall not change, or permit to be changed, the identifying number of any unit of the Trust Equipment except in accordance with a statement of new identifying numbers to be substituted therefor, which statement previously shall have been filed by the Company with the Trustee and filed, recorded or

deposited in all public offices where this Agreement shall have been filed, recorded or deposited.

Except as above provided, the Company will not allow the name of any person, association or corporation to be placed on the units of the Trust Equipment as a designation that might be interpreted as a claim of full legal ownership; *provided, however*, that the Company may cause the Trust Equipment to be lettered with the names, initials or other insignia customarily used by the Lessee on railroad equipment used by it of the same or a similar type for convenience of identification of its right to use the Trust Equipment under the Lease, and the Trust Equipment may be lettered in an appropriate manner for convenience of identification of the interest of the Company therein.

SECTION 5.07. *Maintenance of Trust Equipment; Casualty Occurrences.* The Company agrees that it will maintain or cause to be maintained and keep or cause to be kept each unit of the Trust Equipment in good order and proper repair at its own cost and expense, unless and until worn out, lost, stolen, destroyed or irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (any of such occurrences being hereinafter called a Casualty Occurrence).

Whenever any unit of the Trust Equipment shall suffer a Casualty Occurrence, the Company shall, promptly after it is informed of such Casualty Occurrence under the Lease, deliver to the Trustee an Officer's Certificate or a Lessee's Certificate describing such Trust Equipment and stating the amount to be deposited with the Trustee as hereinafter in this Section 5.07 provided and (except as provided in the fourth paragraph of this Section 5.07) the determination of the Fair Value of such unit. On the rental payment date next succeeding the delivery of such Officer's Certificate or Lessee's Certificate (or, in the event such rental payment date will occur within 60 days after such delivery, on the following rental payment date), the Company shall deposit with the Trustee an amount in cash equal to the Fair Value of such unit as of such date and, upon such payment, the security title of the Trustee to such unit shall terminate and full title to such unit shall vest in the

Company and, upon Request, the Trustee shall execute for recording in public offices, at the expense of the Company, such instrument or instruments in writing as reasonably shall be specified by the Company and accompanying such Request in order to make clear upon public records the Company's full title to such unit under the laws of any jurisdiction. The rights and remedies of the Trustee to enforce or to recover any of the rental payments shall not be affected by reason of any Casualty Occurrence.

Any moneys deposited with the Trustee pursuant to the next preceding paragraph shall be applied by the Trustee, on the rental payment date in respect of which such moneys are required to be deposited, to the prepayment of Trust Certificates on said date as provided in Article Three hereof.

Anything contained herein to the contrary notwithstanding, in the event that any unit of the Trust Equipment shall suffer a Casualty Occurrence, and the Company shall have been informed thereof under the Lease, prior to the settlement for such unit pursuant to Section 4.02 hereof, the Lessee's Certificate describing such unit shall state the Cost of such unit (rather than the determination of the Fair Value thereof) as shown on the invoice therefor delivered or to be delivered to the Trustee pursuant to Section 4.04(b) hereof, and the Company will, in lieu of making the payments otherwise required pursuant to the second paragraph of this Section 5.07 and Section 4.03 hereof, pay or cause the Lessee to pay directly to the Owner, on the Settlement Date applicable to such unit, an amount in cash equal to such Cost, and, if such Settlement Date is later than the 31st day following the date of acceptance of such unit pursuant to Section 5.03 hereof, interest on such Cost from such 31st day to and including such Settlement Date, at a rate of interest equal to the prime rate of interest which the Trustee would charge on such Settlement Day for ninety-day loans to borrowers of the highest credit standing, which payment shall, without further action by the Company, have the same effect and entitle the Company to the same rights and privileges hereunder as if the Company had directed the Trustee to exclude such unit from the Trust created hereby pursuant to the second paragraph of Section 4.01 hereof.

The Company covenants and agrees to furnish to the Trustee, on or before April 1 in each year, commencing with the year 1971, an Officer's Certificate or a Lessee's Certificate, as of the preceding December 31, stating (1) the amount, description and numbers of all units of Trust Equipment that may have suffered a Casualty Occurrence during the preceding 12 months (or since the date of this Agreement in the case of the first such Officer's Certificate or Lessee's Certificate) and (2) that in the case of all units of Trust Equipment repainted or repaired during the period covered thereby the marks required by Section 5.06 hereof have been preserved or replaced. The Trustee, by its agents, shall have the right once in each calendar year, but shall be under no duty, to inspect, at the expense of the Company, the Trust Equipment, and the Company covenants in that event to furnish to the Trustee all reasonable facilities for the making of such inspection.

SECTION 5.08. *Possession of Trust Equipment.* So long as no Event of Default exists hereunder, the Company shall be entitled to the possession and use of the Trust Equipment and also to enter into the Lease which shall be subject and subordinate to this Agreement and to permit the use of the Trust Equipment as provided in the Lease.

The Company will not sell, assign or transfer its rights under this Agreement or, except as provided in this Section 5.08, transfer the right to possession of any unit of the Trust Equipment unless such assignment or transfer is made expressly subject in all respects to the rights and remedies of the Trustee hereunder. Any such assignment or transfer may be made by the Company without the assignee or transferee assuming any of the obligations of the Company hereunder, but subject to the rights and remedies of the Trustee hereunder (including, without limitation, rights against the Guarantor).

SECTION 5.09. *Indemnity; Compliance with Laws and Rules.* The Company covenants and agrees to indemnify the Trustee against any and all claims arising out of or connected with the ownership or use of any of the Trust Equipment, and particularly against any and all claims arising out of the use of any patented inventions in and about the Trust Equipment, and to comply in all respects with the

laws of the United States of America and of all the states and other jurisdictions in which the Trust Equipment, or any part thereof, may be operated, and with all lawful acts, rules, regulations and orders of the Department of Transportation, the Interstate Commerce Commission and all other 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; *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.

ARTICLE SIX

EVENTS OF DEFAULT AND REMEDIES

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 under Sections 5.04(c), (d) and (e) hereof for more than 30 days after the same shall have become due and payable, or

(b) the Company shall, for more than 60 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

(c) the Company shall make or suffer any unauthorized transfer or sublease (including, for the purpose of this clause, contracts for the use thereof) of any of the Trust Equipment, or, except as herein authorized or contemplated, shall part with the possession of any of the Trust Equipment, and shall fail or refuse either to cause such transfer or sublease to be canceled by agreement of all parties having any interest therein or recover possession of such Trust Equipment, as the case may be, within 30 days after the Trustee shall have demanded in writing such cancellation or recovery of possession, or within said 30 days to deposit with the Trustee a sum in cash equal to the Fair Value of such Trust Equipment (any sum so deposited to be returned to the Company upon the cancellation of such transfer or sublease or the recovery of possession by the Company of such Trust Equipment), or

(d) any proceeding shall be commenced by or against the Company or the Guarantor for any relief under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the obligations hereunder of the Company or the Guarantor, as the case may be) and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Company or the Guarantor, as the case may be, under this Agreement (and, in the case of the Guarantor, all obligations of the Guarantor under its guaranty endorsed on the Trust Certificates) shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Company or the Guarantor or for the property of the Company or the Guarantor in connection with any such proceedings in such manner that such obligations have the same

status as obligations incurred by such a trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier, or

(e) the Lessee shall default in the observance or performance of any of the covenants and agreements on its part contained in the Lease for the benefit of the Trustee or the holders of the Trust Certificates and such default shall continue for 60 days after the Trustee shall have demanded in writing performance thereof *unless* during such 60-day period the Company or the Lessee shall have cured or caused to be cured such default,

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 and the Guarantor, declare to be due and payable forthwith the entire amount of the rentals (including any unpaid rental then due, but not including rentals required for the payment of dividends accruing after the date of such declaration) payable by the Company as set forth in Section 5.04 hereof 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 Penalty Rate, to the extent legally enforceable, on any portion thereof overdue; and the Trustee shall be entitled to recover judgment for the total amount so becoming payable by the Company, together with interest thereon at the Penalty Rate, to the extent legally enforceable, and to collect such judgment out of any property of the Company wherever situated.

In addition, in case one or more Events of Default shall happen, 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 and the Guarantor, declare the principal of all the Trust Certifi-

cates then outstanding to be due and payable, and thereupon the same shall become and be immediately due and payable.

In case the Company shall fail to pay any instalment of rental payable pursuant to Section 5.04(c), (d) or (e) hereof when and as the same shall have become due and payable hereunder, and such default shall have continued for a period of 30 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 and collect in the manner provided by law out of the property of the Company 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 the Guarantor 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 the Guarantor, or in case of any other judicial proceedings relative to the Company or the Guarantor, or to the creditors or property of the Company or the Guarantor, the Trustee, irrespective of whether the rental payments hereunder or the principal amount 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 (including any unpaid rental then due, but not including rentals required for the payment of dividends accruing after the date of such declaration) 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 gross negligence

or wilful misconduct) 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 gross negligence or wilful misconduct.

All rights of action and to assert claims under this 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 on 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 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 or the Lessee or other premises 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 said 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 the Trustee may with or without retaking possession (but only after declaring due and payable the entire amount of rentals payable by the Company as provided in Section 6.01 hereof) sell the Trust Equipment or any part thereof, free from any and all claims of the Company and the Lessee at law or in equity, in one lot and as an entirety or in separate lots, in so far 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 the outstanding Trust Certificates in the manner herein provided. Upon any such sale, the Trustee itself may bid for the property offered for sale or any part thereof. 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 and the Lessee may and shall have a reasonable opportunity to bid at any such sale. Upon such taking possession or withdrawal or lease or sale of the Trust Equipment, the Company and the Lessee shall cease to have any rights or remedies in respect of the Trust Equipment hereunder, but all such rights and remedies shall be deemed thenceforth to have been waived and surrendered by the Company and the Lessee, and no payments theretofore made by the Company or the Lessee 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 or the Lessee any legal or equitable interest or title in or to the Trust Equipment or any of it or any cause or right of action at law or in equity in respect of the Trust Equipment against the Trustee or the holders of the outstanding Trust Certificates. 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 or the Guarantor of rentals then or thereafter due and payable, and the Company and the Guarantor 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 hereof (other than dividends or interest not then accrued), whether or not they shall have then matured.

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 hereof, all payments made by the Company to the Trustee hereunder after such Event of Default, and the proceeds of any judgment collected hereunder from the Company by the Trustee, and the proceeds of every sale or lease by the Trustee of any of the Trust Equipment, together with any other sums and Authorized Investments 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 of priority: (a) of all proper charges, expenses or advances made or incurred by the Trustee in accordance with the provisions of this Agreement, and (b) of the dividends then due, with interest on overdue dividends at the Penalty Rate to the extent legally enforceable, and of the principal of all the outstanding Trust Certificates, with interest thereon at the Penalty Rate to the extent legally enforceable from the last preceding dividend 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 dividends.

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.* 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 hereof provided, but before September 1, 1985, all arrears of rent (with interest at the Penalty Rate 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 a majority in principal amount of the Trust Certificates then outstanding shall by written notice to the Company waive the default by reason of which there shall have been such declaration or declarations and the consequences of such default, but no such waiver shall extend to or affect any subsequent default or impair any right consequent thereon.

SECTION 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 Guarantor under the guaranty endorsed on the Trust Certificates or under the Lease. 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 dividends on the Trust Certificates.

SECTION 6.06. *Company and Lessee to Deliver Trust Equipment to Trustee.* In case the Trustee shall demand possession of the Trust Equipment pursuant to the provisions hereof, the Company and the Lessee shall at their own expense promptly cause the Trust Equipment to be transported to such point or points as shall reasonably be designated by the Trustee and shall there deliver or cause to be delivered the same to the Trustee, or the Trustee may at its option keep the Trust Equipment, without expense to the Trustee, on any lines of railroad or premises approved by the Trustee until the Trustee shall have leased, sold or otherwise disposed of the same. It is hereby expressly covenanted and agreed that the performance of this covenant is of the essence of this Agreement and that upon application to any court having jurisdiction in the premises, the Trustee shall be entitled to a decree against the Company and the Lessee 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 Event of Default hereunder known to the Trustee, within 30 days after it learns of the same, unless remedied or cured before the giving of such notice.

SECTION 6.08. *Control by Holders of Trust Certificates.* The holders of a majority in aggregate unpaid principal amount of the then outstanding Trust Certificates, by an instrument or instruments in writing executed and delivered to the Trustee, shall have the right to direct the time, method, and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred on the Trustee; *provided, however,* that the Trustee shall have the right to decline to follow any such direction if the Trustee

shall be advised by counsel that the action so directed would be in conflict with any other provision of this Agreement or any rule of law.

SECTION 6.09. *Unconditional Right of Holders of Trust Certificates to Sue for Principal and Dividends.* Notwithstanding any other provision in this Agreement, the right of any holder of any Trust Certificate to receive payment of the principal of, and dividends on, such Trust Certificate, on or after the respective due dates expressed in such Trust Certificate, 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 that no such suit shall be instituted 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 Agreement upon any property subject hereto.

SECTION 6.10. *Remedies Cumulative; Subject to Mandatory Requirements of Law.* The remedies in this Agreement provided in favor of the Trustee and the holders of the Trust Certificates, or any of them, shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in their favor existing at law or in equity and such remedies so provided in this Agreement shall be subject in all respects to any mandatory requirements of law at the time applicable thereto, to the extent such requirements may not be waived on the part of the Company.

ARTICLE SEVEN

ADDITIONAL COVENANTS AND AGREEMENTS BY THE COMPANY AND THE GUARANTOR

SECTION 7.01. *Guaranty of Guarantor.* The Guarantor 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, in accordance with the provisions thereof or of this Agreement (and, if not so paid, with interest thereon at the Penalty Rate to the extent legally enforceable), and shall receive dividends thereon in like money at the rate specified therein from the date thereof, to the date of maturity of such Trust Certificate, at the times and places and otherwise as expressed in the Trust Certificates and this Agreement (and, if not so paid, with interest thereon at the Penalty Rate to the extent legally enforceable); and the Guarantor 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 dividends thereon, in substantially the form hereinafter set forth. Said guaranty so endorsed shall be signed in the name and on behalf of the Guarantor by the facsimile signature of its President. In case the President of the Guarantor whose signature shall appear on said 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 Guarantor as though the person who signed said guaranty had at all times been such officer.

The Guarantor further unconditionally guarantees to the Trustee and the holders of the Trust Certificates the due and punctual performance of all obligations of the Company under this Agreement and unconditionally guarantees to the Trustee and the holders of the Trust Certificates that all amounts payable by the Company under this Agreement will be promptly paid when due in accordance with the provisions of this Agreement and in case of default by the Company in any such obligations or payments the Guarantor agrees punctually to perform or pay the same, irrespective of any enforcement against the Company of any of the rights of the Trustee and the holders of the Trust Certificates under this Agreement. The Guarantor hereby agrees that its obligations hereunder and under the aforesaid guaranty on the Trust Certificates shall be unconditional (and shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever), irrespective of the genuineness, validity, regularity or enforceability of this Agree-

ment or any other circumstance which might otherwise constitute a legal or equitable discharge of a surety or guarantor or any other circumstance which might limit the recourse of the Trustee to the Company. The Guarantor hereby waives diligence, presentment, demand of payment, protest, any notice of any default hereunder or under the Trust Certificates and all notices with respect to this Agreement and all demands whatsoever hereunder. No waiver by the Trustee or the holders of any of the Trust Certificates of any of their rights hereunder or under the Trust Certificates and no action by the Trustee or the holders of any of the Trust Certificates to enforce any of their rights or failure to take, or delay in taking, any such action shall affect the obligations of the Guarantor hereunder or under said guaranty of the Trust Certificates.

In the event that the Guarantor shall make any payments to the Trustee on account of its guaranty hereunder, the Guarantor hereby covenants and agrees that it shall not acquire any rights, by subrogation or otherwise, against the Company or with respect to any of the units of the Trust Equipment by reason of such payments, all such rights being hereby irrevocably released, discharged and waived by the Guarantor; *provided, however*, that after the payment by the Guarantor to the Trustee of all amounts payable under the first paragraph of this Section 7.01, the Guarantor shall, by subrogation, be entitled to the rights of the Trustee against the Company by reason of such payment, to the extent, but only to the extent, that the Company has received "income and proceeds from the Trust Equipment" (as defined in Section 5.04 hereof) and has not applied amounts equal to such income and proceeds to the payment, in accordance with this Agreement, and subject to the limitations contained in said Section 5.04, of amounts payable by the Company to the Trustee hereunder.

If the Guarantor makes any payment hereunder or performs any obligation hereunder within the time periods set forth in Section 6.01 hereof required to be made or performed by the Company, no Event of Default shall be deemed to have occurred by reason of the Company's not having made such payment or performed such obligation.

The obligations of the Guarantor under said guaranty are superior in right of payment to all the Guarantor's Thirty Year Subordinated Notes sold or to be sold pursuant to a Note Purchase Agreement dated as of January 1, 1967, between the Guarantor and certain of its stockholders.

SECTION 7.02. *Discharge of Liens.* The Company covenants and agrees that it will pay and discharge, or cause to be paid and discharged, or make adequate provision for the satisfaction or discharge of, any debt, tax, charge, assessment, obligation or claim which if unpaid might become a lien or charge upon or against any of the Trust Equipment, except upon the leasehold interest of the Company or the Lessee therein; *provided, however,* that this provision shall not require the payment of any such debt, tax, charge, assessment, obligation or claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings, provided that such contest will not materially endanger the rights or interests of the Trustee or of the holders of the Trust Certificates and the Company or the Lessee shall have furnished the Trustee with an Opinion of Counsel to such effect.

SECTION 7.03. *Recording.* The Guarantor will, promptly after the execution and delivery of this Agreement, the Lease and each supplement hereto and thereto, respectively, cause this Agreement, the Lease and such supplement to be duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act. The Company and the Guarantor will from time to time do and perform any other act and will execute, acknowledge, deliver and the Guarantor will file, register and record any and all further instruments required by law or reasonably requested by the Trustee for the purposes of proper protection of the security title of the Trustee and the rights of the holders of the Trust Certificates and of fully carrying out and effectuating this Agreement and the intent hereof; *provided, however,* that the Company and the Guarantor shall not be required to take any such action in respect of any jurisdiction outside the United States if (1) the Guarantor deems such action to be unduly

burdensome, (2) after giving effect to the failure to take such action, the Company and the Guarantor have taken all action required by law to protect the security title of the Trustee to units of Trust Equipment having a Fair Value of not less than 85% of the aggregate Fair Value of all Trust Equipment, and (3) the Company and the Guarantor have at all times complied fully with the provisions of Section 7.02 hereof in respect of any such unit (without giving effect to the proviso contained in such Section 7.02).

Promptly after the execution and delivery of this Agreement and each supplement hereto, the Guarantor will furnish the Trustee with an Opinion of Counsel stating that, in the opinion of such counsel, this Agreement or such supplement, as the case may be, has been properly recorded and filed so as effectively to protect the security title of the Trustee to the Trust Equipment and its rights and the rights of the holders of the Trust Certificates thereunder and hereunder and reciting the details of such action.

SECTION 7.04. *Merger or Consolidation.* The Guarantor agrees not to merge or consolidate with any other corporation or transfer all or substantially all of its property unless the survivor of such merger or consolidation or such transferee shall be a solvent corporation organized under the laws of the United States of America or a State thereof or the District of Columbia and such survivor (if not the Guarantor) or such transferee shall assume all the obligations and liabilities of the Guarantor hereunder and as guarantor of the Trust Certificates.

SECTION 7.05. *Increase of User Rates.* The Guarantor covenants and agrees (i) that, if an Event of Default shall happen under Section 6.01(a) hereof by reason of the failure of the Company or the Guarantor to pay, or cause to be paid, to the Trustee within the grace period provided in Section 6.01(a) hereof, all or any part of the rentals due and payable under Section 5.04(c)(i) or (d) hereof required for the payment of the principal of or dividends on the Trust Certificates (but not including any principal or dividends payable by reason of acceleration of the date of payment thereof), the Guarantor will, upon written notice by the Trustee so to do, within ten days after receipt of such notice,

deliver to all parties to its Form A and Form B car contracts (or such other Forms as may hereafter be used in substitution or in replacement of such Form A and Form B car contracts) due and proper notice of increases in the car user charges under such contracts, (ii) that all car contracts covering any unit or units of railroad equipment of which the Guarantor is the owner or lessee will contain provisions permitting the Guarantor to require such increases and (iii) that, unless in connection with an assignment or transfer to a corporation which shall acquire all or substantially all of the property of the Guarantor pursuant to Section 7.04 hereof, the Guarantor will not assign or transfer its rights and obligations to require such increases under any such car contracts. Such increases shall commence to accrue and shall be effective on the first day of the first calendar month beginning subsequent to ten days after delivery of such notice by the Guarantor to the parties to such car contracts. Such increases shall be in such amounts or percentages as will cause to accrue and be payable to the account of the Guarantor in respect of the first calendar month during which they are in effect such additional sums of money as will be needed by the Guarantor to enable it to pay all such overdue principal and dividends (with interest on overdue principal and dividends at the Penalty Rate, to the extent legally enforceable) and to cure any defaults in payment of any principal, dividends or interest (or rentals intended to provide for payment thereof) payable under comparable provisions of any other equipment trust, conditional sale or other equipment agreement of the Guarantor not guaranteed jointly and severally by its shareholders or a group of its shareholders (except defaults arising by reason of acceleration of the date of payment of instalments of principal, dividends or interest, or rentals intended to provide for payment thereof), whether heretofore or hereafter entered into, based upon the most recent records or information available to the Guarantor relating to the use of its cars. If for any reason any such increases so made by the Guarantor shall fail to provide in 90 days sufficient cash to enable the Guarantor to cure such default or defaults hereunder and under any other such agreements, or if cash is provided but is not for any reason applied to

cure such defaults, the Guarantor will, upon receipt of written notice from the Trustee so to do, promptly make such further increases in its user charges as may from time to time be necessary to enable the Guarantor to cure all such defaults hereunder and under such other agreements.

SECTION 7.06. *Covenant Against Prepayment of Subordinated Notes.* The Guarantor covenants and agrees that if an Event of Default hereunder or an Event of Default (as defined in the Lease), or an event which with the lapse of time and/or notice provided for herein or in the Lease would constitute such an Event of Default shall have occurred and be continuing, it will not voluntarily prepay or retire any of its outstanding Thirty Year Subordinated Notes sold or to be sold pursuant to a Note Purchase Agreement dated as of January 1, 1967, between the Guarantor and certain of its stockholders.

SECTION 7.07. *Further Assurances.* The Company and the Guarantor covenant and agree from time to time to do all such acts and execute all such instruments of further assurance as they shall be reasonably requested by the Trustee to do or execute for the purpose of fully carrying out and effectuating this Agreement and the intent hereof.

ARTICLE EIGHT

CONCERNING THE HOLDERS OF TRUST CERTIFICATES

SECTION 8.01. *Evidence of Action Taken by Holders of Trust Certificates.* Whenever in this Agreement it is provided that the holders of a specified percentage in aggregate principal amount of the outstanding Trust Certificates may take any action (including the making of any demand or request, the giving of any notice, consent or waiver or the taking of any other action), the fact that at the time of taking any such action the holders of such specified percentage have joined therein may be evidenced by any instrument or any number of instruments of similar tenor executed by holders of Trust Certificates in person or by agent or proxy appointed in writing.

SECTION 8.02. *Proof of Execution of Instruments and of Holding of Trust Certificates.* Proof of the execution of any instrument by a holder of Trust Certificates or his agent or proxy and proof of the holding by any person of any of the Trust Certificates shall be sufficient if made in the following manner:

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

The ownership of Trust Certificates may be proved by the register of such Trust Certificates to be kept as provided in Section 2.03(e) hereof.

SECTION 8.03. *Trust Certificates Owned by Company.* In determining whether the holders of the requisite principal amount of the Trust Certificates have concurred in any direction, request or consent under this Agreement, Trust Certificates which are owned by the Company, the Lessee or by an affiliate of the Company or the Lessee shall be disregarded, except that for the purpose of determining whether the Trustee shall be protected in relying on any such direction, request or consent, only Trust Certificates which the Trustee knows are so owned shall be disregarded, and except that this Section 8.03 shall not be applicable to the Company or an affiliate of the Company if all the Trust Certificates are owned by the Company or by one or more affiliates of the Company.

SECTION 8.04. *Right of Revocation of Action Taken.* At any time prior to (but not after) the evidencing to the Trustee, as provided in Section 8.01 hereof, of the taking of any action by the holders of the required percentage in aggregate principal amount of the outstanding Trust Certificates specified in this Agreement, any holder of a Trust Certificate may, by filing written notice with the Trustee at the

Corporate Trust Office and upon proof of holding as provided in Section 8.02 hereof, revoke such action in so far as concerns such Trust Certificate. Except as aforesaid, any such action taken by the holder of any Trust Certificate shall be conclusive and binding upon such holder and upon all future holders and owners of such Trust Certificate and of any Trust Certificate issued in exchange or substitution therefor, irrespective of whether or not any notation in regard thereto is made upon such Trust Certificate. Any action taken by the holders of the required percentage in aggregate principal amount of the outstanding Trust Certificates specified in this Agreement shall be conclusive and binding upon the Company, the Lessee, the Trustee and the holders of all the Trust Certificates.

ARTICLE NINE

THE TRUSTEE

SECTION 9.01. *Acceptance of Trust.* The Trustee hereby accepts the trust imposed upon it by this Agreement and covenants and agrees to perform the same as herein expressed.

SECTION 9.02. *Duties and Responsibilities of the Trustee.* In case an Event of Default has occurred (which has not been cured), the Trustee shall exercise such of the rights and powers vested in it by this Agreement, and use the same degree of care and skill in their exercise, as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

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

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

(1) the duties and obligations of the Trustee shall be determined solely by the express provisions of this Agree-

ment, and the Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Agreement, and no implied covenants or obligations shall be read into this Agreement against the Trustee; and

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

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

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

(d) the Trustee may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, Trust Certificate, guaranty or other paper or document believed

by it to be genuine and to have been signed or presented by the proper party or parties;

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

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

(g) the Trustee shall not be liable for any action taken by it in good faith and believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Agreement.

SECTION 9.03. *Application of Rentals; Responsibility of Trustee to Insure or Record.* The Trustee covenants and agrees to apply and distribute the rentals received by it under Section 5.04 hereof when and as the same shall be received, and to the extent that such rentals shall be sufficient therefor, for the purposes specified in said 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 Agreement until fully indemnified to its satisfaction by the Company or the Guarantor 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 refileing or rerecording of this Agreement or of any supplement hereto.

SECTION 9.04. *Funds May be Held by Trustee; Authorized Investments.* Any moneys at any time paid to or held by the Trustee hereunder until paid out by the Trustee as herein provided may be carried as a general deposit and need not be segregated from other funds except to the extent required by law. The Trustee shall not be under any liability for interest on any moneys received by it hereunder except such as it may agree with the Company to pay thereon.

At any time, and from time to time, if at the time an Event of Default or any event (of which the Trustee has actual notice) which with notice and/or lapse of time would constitute an Event of Default shall not have occurred and be continuing hereunder, the Trustee, on Request joined in by the Guarantor, shall invest and reinvest Deposited Cash held by it in such Authorized Investments as are set forth in such Request, such Authorized Investments to be held by the Trustee in trust for the benefit of the holders of the Trust Certificates.

The Trustee may, and on Request shall, in the event funds are required in connection with a settlement for Trust Equipment pursuant to Section 4.02 hereof or in the event funds are required for the payment of dividends on or the prepayment of the Trust Certificates, sell such Authorized Investments, or any portion thereof, and restore to Deposited Cash the proceeds of any such sale up to the amount paid for such Authorized Investments, including accrued interest.

The Trustee shall restore to Deposited Cash out of rent received by it for that purpose under the provisions of Section 5.04(a)(ii) hereof, an amount equal to any expenses incurred in connection with any purchase or sale of Authorized Investments and also an amount equal to any loss of principal incident to the sale, redemption or payment at maturity of any Authorized Investments for a sum less than the amount paid therefor, including accrued interest. The Company, if no Event of Default or event (of which the Trustee has actual notice) which with notice and/or lapse of time would constitute an Event of Default shall have occurred and be continuing, shall be entitled to receive any interest or profit which may be realized from any sale, redemp-

tion or payment at maturity of Authorized Investments or any portion thereof.

SECTION 9.05. *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 Owners 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 on the part of the Trustee in respect thereof or as a representation in respect of the value thereof or in respect of the title thereto.

The Trustee may perform its powers and duties hereunder by or through such attorneys, agents and servants as it shall appoint, and shall be entitled to rely upon the advice of counsel (who may be counsel to the Company), and shall be answerable for only its own acts, negligence and wilful defaults and not for the default or misconduct of any attorney, agent or servant appointed by it with reasonable care. The Trustee shall not be responsible in any way for the recitals herein contained or for the execution or validity of this Agreement or of the Trust Certificates (except for its own execution thereof), or for the guaranty by the Guarantor, or for any mistake of fact or law.

The Trustee shall be entitled to receive payment of all its expenses and disbursements hereunder, including reasonable counsel fees, and to receive reasonable compensation for all services rendered by it in the execution of the trust hereby created, all of which shall be paid by the Company.

The Trustee in its individual capacity may own, hold and dispose of Trust Certificates with the same rights which it would have if it were not Trustee.

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

SECTION 9.06. *Resignation and Removal; Appointment of Successor Trustee.*

(a) The Trustee may resign and be discharged of the trust created by this Agreement by giving 30 days' written notice to the Company and the Guarantor and such resignation shall take effect 30 days after the delivery thereof to the Company and the Guarantor or upon receipt by the Trustee of an instrument of acceptance executed by a successor trustee as hereinafter provided in Section 9.07 hereof.

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

(c) If at any time the Trustee shall resign or be removed or otherwise become incapable of acting or, if at any time a vacancy shall occur in the office of the Trustee for any other cause, a successor trustee may be appointed by the holders of a majority of the aggregate principal amount of the then outstanding Trust Certificates by an instrument in writing delivered to the Company, the Guarantor and the Trustee. Until a successor trustee shall be appointed by the holders of Trust Certificates as herein authorized, the Company and the Guarantor, by instruments in writing executed by order of their Boards of Directors, shall appoint a trustee to fill such vacancy. A successor trustee so appointed by the Company and the Guarantor, shall immediately and without further act be superseded by a successor trustee appointed by the holders of Trust Certificates in the manner provided above. Every successor trustee appointed pursuant to this Section 9.06 shall be a national bank, or a bank or trust company incorporated under the laws of the State of New York, having its principal office in the Borough of Manhattan in The City of New York, and having capital and surplus of not less than \$50,000,000, if there be such an institution willing, qualified and able to accept the trust upon reasonable or customary terms.

(d) The Company or the Guarantor shall give notice of each resignation, removal or incapacity of the then Trustee or of a vacancy occurring in the office of the Trustee for any other cause and of each appointment by the Company and the Guarantor of a successor trustee pursuant to paragraph (c) of this Section 9.06 by mailing written notice of such event by first-class mail, postage prepaid, to the holders of all outstanding Trust Certificates.

SECTION 9.07. *Acceptance of Appointment by Successor Trustee.* Any successor trustee appointed as provided in Section 9.06 hereof shall execute, acknowledge and deliver to the Company and the Guarantor and to its predecessor trustee an instrument accepting such appointment hereunder, and thereupon the resignation or removal of the predecessor trustee shall become effective and such successor trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, duties and obligations of its predecessor hereunder, with like effect as if originally named as Trustee herein; but, nevertheless, on the written request of the Company or the Guarantor or of the successor trustee, upon payment of its charges then unpaid, the trustee ceasing to act shall execute and deliver an instrument transferring to such successor trustee all the rights and powers of the trustee so ceasing to act. Upon request of any such successor trustee, the Company and the Guarantor shall execute any and all instruments in writing for more fully and certainly vesting in and confirming to such successor trustee all such rights and powers. Any trustee ceasing to act shall, nevertheless, retain a lien upon all property or funds held or collected by such trustee to secure any amounts then due it pursuant to the provisions of Section 9.05 hereof.

SECTION 9.08. *Merger or Consolidation of Trustee.* Any corporation into which the Trustee may be merged or with which it may be consolidated or any corporation resulting from any merger or consolidation to which the Trustee shall be a party shall be the successor of the Trustee hereunder, *provided that* such corporation shall be qualified under the provisions of Section 9.06 hereof, without the execution or

filing of any paper or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

SECTION 9.09. *Return of Certain Moneys to Company.* Notwithstanding any provision of this Agreement, any moneys paid to the Trustee which are applicable to the payment of the principal of or dividends on any Trust Certificates which remain unclaimed for four years after the day when such moneys were due and payable shall then be repaid to the Company upon Request, and the holders of such Trust Certificates shall thereafter be entitled to look only to the Company for payment thereof and all liability of the Trustee with respect to such moneys shall thereupon cease; *provided, however*, that before the repayment of such moneys to the Company as aforesaid, the Trustee may first publish a notice, in such form as may be deemed appropriate by the Trustee in respect of the Trust Certificates so payable and not presented and in respect of the provisions hereof relating to the repayment to the Company of the moneys held for the payment thereof.

ARTICLE TEN

MISCELLANEOUS

SECTION 10.01. *Rights Confined to Parties and Holders.* Nothing expressed or implied herein is intended or shall be construed to confer upon or to give to any person, firm or corporation, other than the parties hereto and the holders of the Trust Certificates, any right, remedy or claim under or by reason of this Agreement or of any term, covenant or condition hereof, and all the terms, covenants, conditions, promises and agreements contained herein shall be for the sole and exclusive benefit of the parties hereto and their successors and of the holders of the Trust Certificates.

SECTION 10.02. *No Recourse.* No recourse under or upon any obligation, covenant or agreement of this Agreement, or under the guaranty endorsed on any Trust Certificate, or for any claim based thereon

or otherwise in respect thereof shall be had against any stockholder, officer or director, as such, past, present or future, of the Company or the Guarantor, by the enforcement of any assessment or by any legal or equitable proceeding, by virtue of any statute or otherwise; it being expressly agreed and understood that this Agreement and said guaranty are solely corporate obligations, and that no personal liability whatever shall attach to or be incurred by the stockholders, officers or directors, as such, of the Company or the Guarantor or any of them, under or by reason by any of the obligations, covenants and agreements contained in this Agreement or in said guaranty, or implied therefrom, and that any and all personal liability, either at common law or in equity, or by statute or constitution, of every such stockholder, officer or director is hereby expressly waived as a condition of and consideration for the execution of this Agreement and said guaranty.

SECTION 10.03. *Binding Upon Assigns.* Except as otherwise provided herein, the provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

SECTION 10.04. *Satisfaction of Obligations.* All obligations of the Company hereunder, including, without limitation, the obligations under Sections 5.04, 5.06, 5.07, 5.09, 6.06, 7.02 and 7.03, and the third paragraph of Section 9.05 hereof, but excluding the obligations under Section 4.03 hereof and any provisions requiring the execution of any instrument by the Company, shall be deemed in all respects satisfied by the Lessee's undertakings contained in the Lease. The Guarantor shall be liable in respect of its guaranty hereunder for all such obligations of the Company whether or not the Lease is in effect. The Company shall not have any responsibility for the Lessee's failure to perform such obligations, but if the same shall not be performed they may constitute the basis for any Event of Default hereunder.

SECTION 10.05. *Notices.* All demands, notices and communications hereunder shall be in writing and shall be deemed to have been

duly given if personally delivered or mailed by registered mail (a) to the Company, c/o C.I.T. Leasing Corporation, 650 Madison Avenue, New York, New York 10022, *attention of* the President, or to such other address as may hereafter be furnished to the Trustee in writing by the Company, (b) to the Guarantor, at 1819 J. F. Kennedy Boulevard, Philadelphia, Pennsylvania 19103, *attention of* the Vice President and Treasurer, or at such other address as may hereafter be furnished to the Trustee in writing by the Guarantor and (c) to the Trustee at the Corporate Trust Office, or at such other address as may hereafter be furnished to the Company and the Guarantor in writing by the Trustee. An affidavit by any person representing or acting on behalf of the Company, the Guarantor or the Trustee, as the case may be, as to such mailing, having the registry receipt attached, shall be conclusive evidence of the giving of such demand, notice or communication.

SECTION 10.06. *Amendment or Waiver.* Any provision of this Agreement may be amended or waived with the written consent of the holders of not less than 66 $\frac{2}{3}$ % of the aggregate unpaid principal amount of the Trust Certificates then outstanding; *provided, however,* that no such amendment or waiver shall (1) reduce the amount of principal, change the amount or dates of payment of instalments of principal or reduce the rate or extend the time of payment of dividends with respect to the Trust Certificates without the consent of the holders of each Trust Certificate so affected, (2) reduce the amount of or extend the time of payment of any rentals payable under this Agreement or release or provide for the release of any of the Trust Equipment or any other property or cash held by the Trustee in trust, otherwise than as expressly permitted by the present terms of this Agreement, without the consent of the holders of 100% of the aggregate unpaid principal amount of Trust Certificates then outstanding, or (3) reduce the percentage of the aggregate unpaid principal amount of Trust Certificates then outstanding, the holders of which are required to approve any amendment or to effect any waiver.

SECTION 10.07. *Effect of Headings; Counterparts; Date Executed; Governing Law.*

(a) The Article and Section headings herein are for convenience only and shall not affect the construction hereof.

(b) This Agreement has been executed in several counterparts each of which shall be deemed to be an original, and all such counterparts shall together constitute but one and the same instrument.

(c) This Agreement shall be deemed to have been executed on the date of the acknowledgment thereof by the officer of the Trustee who signed it on behalf of the Trustee.

(d) The provisions of this Agreement, and all the rights and obligations of the parties hereunder, shall be governed by the laws of the State of New York.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be duly executed as of the date first above written.

MANUFACTURERS HANOVER
TRUST COMPANY,
Trustee,

[CORPORATE SEAL]

by
Assistant Vice President.

ATTEST:

.....
Assistant Secretary.

C.I.T. CORPORATION,
by C.I.T. Leasing Corporation,
as Agent,

[CORPORATE SEAL]

by
Vice President.

ATTEST:

.....
Assistant Secretary.

TRAILER TRAIN COMPANY,

[CORPORATE SEAL]

by
Vice President and Treasurer.

ATTEST:

.....
Assistant Secretary.

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

On this day of September, 1970, before me personally appeared C. J. PURCER, to me personally known, who, being by me duly sworn, says that he an Assistant Vice President of MANUFACTURERS HANOVER TRUST COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

.....
Notary Public

[NOTARIAL SEAL]

STATE OF NEW YORK, }
COUNTY OF NEW YORK } ss.:

On this day of September, 1970, before me personally appeared THOMAS J. McPHILLIPS, to me personally known, who, being by me duly sworn, says that he is a Vice President of C.I.T. LEASING CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

.....
Notary Public

[NOTARIAL SEAL]

STATE OF NEW YORK }
COUNTY OF NEW YORK }ss.:

On this day of September, 1970, before me personally appeared J. A. BRENNAN, JR., to me personally known, who, being by me duly sworn, says that he is the Vice President and Treasurer of TRAILER TRAIN COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

.....
Notary Public

[NOTARIAL SEAL]

ANNEX A TO EQUIPMENT TRUST AGREEMENT

<u>Type</u>	<u>Quantity</u>	<u>Company's Car Numbers (both inclusive)</u>	<u>Unit Cost</u>	<u>Total Cost</u>
ACF Industries, Inc.				
89' 4" 70 Ton Capacity, All Purpose Flat Cars Standard Level	50	970595-970644	\$20,788.13	\$ 1,039,406.50
89' 4" 70 Ton Capacity, Container Flat Cars Standard Level	22	976070-976088 976067-976069	17,833.45 17,595.00	338,835.55 52,785.00
89' 4" 55 Ton Capacity, Auto Rack Flat Cars Low Level	63	810330-810356 810281, 810284 810292-810317 810322-810329	17,412.00	1,096,956.00
89' 4" 70 Ton Capacity, Standard Level Flat Cars with Hitch Equipment	100	603476-603575	17,184.18	1,718,418.00
89' 4" 55 Ton Capacity, Low Level Vert-A-Pac, Flat Cars	21	810259-810279	17,500.00	367,500.00
Bethlehem Steel Corporation				
89' 4" 70 Ton Capacity, Standard Level Flat Cars with 4 Hitches	90	157926-157965 158177-158226	20,036.65	1,803,298.50
89' 4" 70 Ton Capacity, Standard Level Saddleback Flat Cars	38	963425-963462	21,262.65	807,980.70
89' 4" 70 Ton Capacity, Standard Level Auto Rack Flat Cars	14	963117-963130	15,889.28	222,449.92
89' 4" 70 Ton Capacity, Standard Level Flat Cars with Hitch Equipment	36	158166-158176 158227-158251	17,336.65	624,119.40
89' 4" 70 Ton Capacity, Standard Level Flat Cars with Hitch Equipment	63	158252-158314	17,396.65	1,095,988.95

ANNEX A TO EQUIPMENT TRUST AGREEMENT—(Continued)

<u>Type</u>	<u>Quantity</u>	<u>Company's Car Numbers (both inclusive)</u>	<u>Unit Cost</u>	<u>Total Cost</u>
Pullman Incorporated (Pullman-Standard Division)				
89' 4" 70 Ton Capacity, Standard Level All Purpose Flat Cars	85	972881-972965	\$20,990.71	\$1,784,210.35
89' 4" 70 Ton Capacity, Standard Level Auto Rack Flat Cars	32	940360-940391	16,275.00	520,800.00
89' 4" 55 Ton Capacity, Low Level Auto Rack Flat Cars	32	801292-801323	17,438.00	558,016.00
89' 4" 55 Ton Capacity, Low Level Auto Rack Flat Cars	46	801378-801423	17,600.00	809,600.00
89' 4" 70 Ton Capacity, Standard Level Flat Cars with Hitch Equipment	124	253502, 253505, 253508, 253516, 253520, 253523, 253530-253533 253535-253644 253646-253649	17,313.68	2,146,896.32
				<u>\$14,987,261.19</u>

ANNEX B TO EQUIPMENT TRUST AGREEMENT

Lease of Equipment

BY AND BETWEEN

C.I.T. CORPORATION

AND

TRAILER TRAIN COMPANY

Dated as of September 1, 1970

LEASE OF EQUIPMENT dated as of September 1, 1970, between C.I.T. CORPORATION, a New York corporation (hereinafter called the Lessor), acting herein through its agent C.I.T. LEASING CORPORATION, a Delaware corporation, and TRAILER TRAIN COMPANY, a Delaware corporation (hereinafter called the Lessee).

WHEREAS the Lessor has entered into three Manufacturing Agreements dated as of September 1, 1970 (each such Manufacturing Agreement hereinafter called a Manufacturing Agreement) with the Lessee and ACF Industries, Incorporated, Pullman Incorporated (Pullman-Standard Division) and Bethlehem Steel Corporation, respectively, pursuant to which the Lessor has agreed to purchase and take delivery of the railroad equipment described in Schedule A hereto (hereinafter sometimes called the Equipment); and

WHEREAS the Lessee has agreed to lease from the Lessor all the units of the Equipment, or such lesser number of units as are delivered and accepted and settled for under the Equipment Trust Agreement (as hereinafter defined) on or prior to December 15, 1970 (each hereinafter called a Unit and collectively the Units) at the rentals and for the term and upon the conditions hereinafter provided; and

WHEREAS the Lessor and the Lessee have entered into an Equipment Trust Agreement dated as of September 1, 1970 (herein called the Equipment Trust Agreement), with Manufacturers Hanover Trust Company, as Trustee (hereinafter called the Trustee), under which security title to the Units will be reserved to the Trustee until the Lessor fulfills all its obligations under the Equipment Trust Agreement;

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

§ 1. *Delivery and Acceptance of Units.* The Lessor will cause each Unit accepted pursuant to a Manufacturing Agreement to be delivered to the Lessee at the same point or points within the United States of America at which such Unit is delivered to the Lessor under such Manufacturing Agreement, such point or points, however, to be mutually acceptable to the Lessor and the Lessee. Upon such delivery, the Lessee will cause an inspector of the Lessee to inspect the same, and if such Unit is found to be acceptable, to accept delivery of such Unit and to execute and deliver to the Lessor and to the Trustee a Lessee's Certificate (as defined in the Equipment Trust Agreement and complying with the provisions of Section 4.04(a) thereof), whereupon such Unit shall be deemed to have been delivered to and accepted by the Lessee under this Lease and shall be subject thereafter to all the terms and conditions of this Lease and such Lessee's Certificate shall be absolutely binding upon the Lessee. Any Unit excluded from or substituted under the Equipment Trust Agreement pursuant to the third paragraph of Section 4.01 thereof shall likewise be excluded from this Lease.

§ 2. *Rentals.* The Lessee agrees to pay to the Lessor, as rental for each Unit subject to this Lease, 30 consecutive semiannual payments, payable on March 1 and September 1 in each year commencing March 1, 1971. The first such semiannual payment shall be in an amount equal to the sum of (x) 1.00919% of the Cost (as such term is defined in the Equipment Trust Agreement) of each Unit subject to this Lease and (y) .0265215% of the Cost of such Unit for each day elapsed from and including the Settlement Date (as defined in Section 4.02 of the Equipment Trust Agreement) for such Unit to March 1, 1971, and the remaining twenty-nine such semiannual payments shall each be in an amount equal to 5.783% of the Cost of each such Unit. In addition, the Lessee shall pay to the Lessor (i) on the Settlement Date for each Unit, if such Settlement Date is later than the 31st day following the date of acceptance of such Unit pursuant to § 1 hereof, additional rental in an amount equal to interest on the Cost of such Unit from such 31st day to and including the Settlement Date, at a rate per annum equal to the prime rate which the Trustee would charge on such Settlement Date for 90-day loans to borrowers of the highest credit standing and (ii)

on March 1, 1971, additional rental in an amount equal to 10.5% per annum of the amount from time to time remaining on deposit with the Trustee as Deposited Cash (as defined in the Equipment Trust Agreement) from the original date of issue of the Trust Certificates (as defined in the Equipment Trust Agreement) to the date of application of such Deposited Cash or March 1, 1971, as the case may be. If any of the payment dates referred to above is not a Business Day (as defined in the Equipment Trust Agreement), the payment shall be payable on the next succeeding Business Day (without interest).

Notwithstanding anything to the contrary contained herein, any and all sums paid by the Lessee pursuant to its guaranty set forth in the first paragraph of Section 7.01 of the Equipment Trust Agreement in respect of the obligations set forth in Sections 5.04(c), (d) and (e) thereof not attributable to an Event of Default (as hereinafter defined) hereunder or to late payment shall be thereupon deemed to have been paid in reduction or satisfaction, to the extent thereof, of any rental payments then due and payable by the Lessee to the Lessor under this § 2.

The Lessor irrevocably instructs the Lessee to make all the payments provided for in this Lease, during the original term hereof (other than the rental payable pursuant to clause (i) of the third sentence of this § 2, and any amount payable in respect of a Unit which has not been settled for pursuant to Section 4.02 of the Equipment Trust Agreement by reason of such Unit's having suffered a Casualty Occurrence, which rental and amount shall be paid to the Lessor at the address set forth in the second sentence of this paragraph), in immediately available funds in New York City for the account of the Lessor, in care of the Trustee at its office at 40 Wall Street, New York, N. Y. 10015, attention of Corporate Trust Department, with instructions to the Trustee first to apply such payments to satisfy the obligations of the Lessor under the Equipment Trust Agreement known to the Trustee to be due and payable on the date such payments are due and payable hereunder and second, so long as no Event of Default under the Equipment Trust Agreement shall have occurred and be continuing, to pay any balance promptly to the Lessor in immediately available funds in New York City to the credit of C.I.T. Corporation,

c/o Chemical Bank, Madison Avenue and 59th Street Branch, New York, New York 10022, Special Account Number 116-013117, or to such other place as the Lessor shall specify in writing. After the original term of this Lease, all payments provided for herein shall be made to the Lessor in immediately available funds in New York City to the credit of C.I.T. Corporation, c/o Chemical Bank, Madison Avenue and 59th Street Branch, New York, New York 10022, Special Account Number 116-013117, or to such other place as the Lessor shall specify in writing. The Lessee agrees to make the payments provided for herein as contemplated by this paragraph.

This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent, reduction thereof or set-off against rent, including, but not limited to, abatements, reductions or set-offs due or alleged to be due to, or by reason of, any past, present or future claims of the Lessee against the Lessor under this Lease or otherwise or against the Trustee; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use of or destruction of all or any of the Units from whatsoever cause, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease or lack of right, power or authority of the Lessor to enter into this Lease, or by reason of any failure by the Lessor to perform any of its obligations herein contained, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease.

§ 3. *Term of Lease.* The term of this Lease as to each Unit shall begin on the date of the acceptance thereof by the Lessee pursuant to § 1 hereof and, subject to the provisions of §§ 6, 9 and 12 hereof,

shall terminate on the date on which the final semiannual payment of rent in respect thereof is due hereunder.

§ 4. *Identification Marks.* The Lessee will cause each Unit to be kept numbered with the identifying number set forth in Schedule A hereto, or in the case of any Unit not there listed such identifying number as shall be set forth in any amendment or supplement hereto extending this Lease to cover such Unit, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of such Unit, in letters not less than one inch in height, the following words: "OWNED BY A BANK OR TRUST COMPANY UNDER A SECURITY AGREEMENT FILED UNDER THE INTERSTATE COMMERCE ACT, SECTION 20c", or other appropriate words designated by the Lessor or the Trustee, with appropriate changes thereof and additions thereto as from time to time may be required by law or reasonably requested in order to protect the title of the Lessor and the security title of the Trustee to such Unit and the rights of the Lessor under this Lease and the Equipment Trust Agreement and of the Trustee under the Equipment Trust Agreement. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such words shall have been so marked on both sides thereof and will replace promptly any such words which may be removed, defaced or destroyed. The Lessee will not change or permit to be changed the identifying number of any Unit except in accordance with a statement of new numbers to be substituted therefor, which statement previously shall have been filed with the Trustee and the Lessor and filed, recorded and deposited by the Lessee in all public offices where this Lease and the Equipment Trust Agreement shall have been filed, recorded and deposited.

Each Unit may be lettered "Trailer Train Company", "T.T.X.", or in some other appropriate manner for convenience of identification of the interests of the Lessor and the Lessee therein. Except as above provided, the Lessee will not allow the name of any person, association or corporation to be placed on any of the Trust Equipment as a designation which might be interpreted as a claim of ownership.

§ 5. *Taxes.* All payments to be made by the Lessee hereunder will be free of expense to the Lessor and the Trustee for collection or other

charges and will be free of expense to the Lessor and the Trustee with respect to the amount of any local, state, federal or foreign taxes (other than any United States federal income tax [and, to the extent that the Lessor is entitled to credit therefor against its United States federal income tax liability, any foreign income tax] payable by the Lessor in consequence of the receipt of payments provided herein and other than the aggregate of all state or city income taxes or franchise taxes measured by net income based on such receipt, up to the amount of any such taxes which would be payable to the state and city in which the Lessor has its principal place of business without apportionment to any other state or city, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided, and other than any taxes payable by the Trustee in consequence of the receipt by the Trustee of fees or compensation for services rendered under the Equipment Trust Agreement) or license fees, assessments, charges, fines or penalties (all such taxes, license fees, assessments, charges, fines and penalties being hereinafter called impositions) hereafter levied or imposed upon or in connection with or measured by, this Lease, the Equipment Trust Agreement or any of the instruments or agreements referred to herein or therein or contemplated hereby or thereby, or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof, the Equipment Trust Agreement or any such instruments or agreements, all of which impositions the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. The Lessee will also pay promptly all impositions which may be imposed upon any Unit or for the use or operation thereof or upon the earnings arising therefrom (except as provided above) or upon the Lessor solely by reason of its ownership thereof or upon the Trustee solely by reason of its security title thereto and any impositions upon or on account of the trust created by the Equipment Trust Agreement or the transactions contemplated thereby (whether or not such transactions shall actually be consummated) or the instruments or agreements referred to therein or contemplated thereby, and will keep at all times all and every part of such

Unit free and clear of all impositions which might in any way affect the title of the Lessor and the security title of the Trustee (or the interests of the holders of the Equipment Trust Certificates issued under the Equipment Trust Agreement) therein or result in a lien or security interest upon any such Unit (other than the Equipment Trust Agreement and this Lease) and will supply the Lessor and the Trustee with a receipt or other evidence of such payment satisfactory to the Lessor and the Trustee; *provided, however*, that the Lessee shall be under no obligation to pay any impositions so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Lessor or the Trustee, adversely affect the title, property or rights of the Lessor or the Trustee hereunder or under the Equipment Trust Agreement. If any imposition shall have been charged or levied against the Lessor or the Trustee directly and paid by the Lessor or the Trustee, the Lessee shall reimburse the Lessor or the Trustee, as the case may be, on presentation of an invoice therefor. The Lessor agrees that if, in the opinion of independent tax counsel selected by the Lessor and acceptable to the Lessee, a bona fide claim exists to all or a portion of any imposition in respect of which the Lessee has made payment to the Lessor as aforesaid, the Lessor shall, upon request and at the expense of the Lessee, take all such legal or other appropriate action deemed reasonable by said independent counsel in order to sustain such claim. The Lessor shall not be obligated to take any such legal or other appropriate action unless the Lessee shall first have indemnified the Lessor for all liabilities and expenses which may be entailed therein and shall have furnished the Lessor with such reasonable security therefor as may be requested. The Lessee shall be entitled to the proceeds of the successful prosecution of any such claim.

In the event any reports with respect to impositions are required to be made, the Lessee will either make such reports in such manner as to show the interests of the Lessor and the Trustee in the Units, if such is necessary or appropriate, or will notify the Lessor and the Trustee of such requirement and will make such reports in such manner as shall be satisfactory to the Lessor and the Trustee.

In the event that, during the continuance of this Lease, the Lessee shall become liable for the payment or reimbursement of any impositions pursuant to this § 5, such liability shall continue, notwithstanding the termination of this Lease, until all such impositions are paid or reimbursed by the Lessee.

§ 6. *Payment for Casualty Occurrences.* Whenever any Unit shall be or become worn out, lost, stolen, destroyed or irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (such occurrences being hereinafter called Casualty Occurrences) during the term or any extended term of this Lease, or until such Unit shall have been returned in the manner provided in § 13 hereof, the Lessee shall, promptly after it shall have been determined that such Unit has suffered a Casualty Occurrence, deliver to the Lessor and the Trustee a Lessee's Certificate (as defined in the Equipment Trust Agreement) fully informing them with respect thereto and complying with the provisions of Section 5.07 of the Equipment Trust Agreement. On the rental payment date next succeeding the delivery of such Lessee's Certificate (or, in the event such rental payment date will occur within 60 days after such delivery, on the following rental payment date or, if this Lease, or any extended term hereof, as the case may be, shall expire before or within 60 days after such delivery on the expiration date of this Lease, or any such extended term, or any other date thereafter, within 60 days of such delivery or, in the event that such Unit shall not have then been settled for pursuant to Section 4.02 of the Equipment Trust Agreement at the time of such delivery, on the date such Unit would have been settled for but for such Casualty Occurrence) the Lessee shall pay to the Lessor an amount equal to the accrued rental for such Unit to the date of such payment plus a sum equal to the Casualty Value (as hereinafter defined) of such Unit as of such payment date in accordance with the schedule set out below. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit (other than additional rental payable pursuant to clause (ii) of the third sentence of the first paragraph of § 2 hereof) shall cease to accrue as of the date of such payment, the term of this Lease as to such Unit shall terminate and (except in the case of the

loss, theft or complete destruction of such Unit) the Lessor shall be entitled to recover possession of such Unit. If the date upon which the making of such payment by the Lessee in respect of any Unit is required as aforesaid shall be after the original or any extended term of this Lease in respect of such Unit, no rental for such Unit shall accrue after the end of such term but the Lessee in addition to paying the Casualty Value for such Unit shall pay interest thereon at the prime rate of interest which the Trustee would charge on the date of such payment for 90-day loans to borrowers of the highest credit standing, from the end of such term to the date of such payment. The Lessor shall, upon request of the Lessee, after payment by the Lessee of a sum equal to the Casualty Value of any Unit which shall have been lost, stolen or completely destroyed, execute and deliver to or upon the order of the Lessee a bill of sale (without warranties) for such Unit.

Except as provided in the last sentence of this paragraph, the Casualty Value of each Unit as of any rental payment date shall be the greater of (x) the Fair Value thereof as determined pursuant to Section 5.07 of the Equipment Trust Agreement or (y) that percentage of the Cost of such Unit as is set forth in the following schedule opposite the number of such rental payment date:

CASUALTY VALUE

Rental Payment Date No.	Percentage	Rental Payment Date No.	Percentage
1	100%	16	74%
2	100	17	67
3	99	18	67
4	99	19	60
5	97	20	60
6	97	21	52
7	94	22	52
8	94	23	44
9	90	24	44
10	90	25	35
11	85	26	35
12	85	27	25
13	79	28	25
14	79	29	15
15	74	30 and thereafter	15

The Casualty Value of any Unit which shall suffer a Casualty Occurrence prior to settlement for such Unit pursuant to Section 4.02 of the Equipment Trust Agreement and which, because of such Casualty Occurrence, is not settled for, shall be an amount equal to the Cost of of such Unit.

Except hereinabove in this § 6 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit after delivery to and acceptance thereof by the Lessee hereunder.

§ 7. *Annual Reports.* On or before April 1 in each year, commencing with the year 1971, the Lessee will furnish to the Lessor and the Trustee, in such number of counterparts or copies as may reasonably be requested, a Lessee's Certificate, as of the preceding December 31, (i) showing the amount, description and numbers of all Units then leased hereunder and the amount, description and numbers of all Units that may have suffered a Casualty Occurrence during the preceding 12 months (or since the date of this Lease in the case of the first such Lessee's Certificate), and such other information regarding the condition and state of repair of the Units as the Lessor or the Trustee may reasonably request and (ii) stating that, in the case of all Units repaired or repainted during the period covered thereby, the markings required by § 4 hereof and Section 5.06 of the Equipment Trust Agreement have been preserved or replaced. The Lessor shall have the right at its sole cost, risk and expense, by its agents, to inspect the Units and the records of the Lessee with respect thereto at such reasonable times as the Lessor may request during the continuance of this Lease.

§ 8. *Disclaimer of Warranties; Compliance with Laws and Rules; Maintenance; Indemnification; and Insurance.* **The Lessor makes no warranty or representation, either express or implied, as to the design or condition of, or as to the quality of the material, equipment or workmanship in, the Units delivered to the Lessee hereunder, and the Lessor makes no warranty of merchantability or fitness of the Units for any particular purpose or as to its title to the Units or any component thereof,** it being agreed that all such risks, as between the Lessor

and the Lessee, are to be borne by the Lessee; but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for the account of the Lessor and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Lessor may have against the manufacturer of the Units or of the components thereof. The Lessor shall have no responsibility or liability to the Lessee or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Units or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of any Units or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Units. The Lessee's acceptance of delivery of the Units shall be conclusive evidence as between the Lessee, the Lessor and the Trustee, that all Units described in any Lessee's Certificate confirming such acceptance are in all the foregoing respects satisfactory to the Lessee and the Lessee will not assert any claim of any nature whatsoever against the Lessor or the Trustee based on any of the foregoing matters.

The Lessee agrees, for the benefit of the Lessor and the Trustee, to comply in all respects with all laws of the jurisdictions in which operations involving any Unit subject to this Lease may extend, with the Interchange Rules of the Association of American Railroads, if applicable, and with all lawful rules of the Interstate Commerce Commission, if applicable, the Department of Transportation and any other legislative, executive, administrative or judicial body or officer exercising any power or jurisdiction over any such Unit, to the extent such laws and rules affect the operations or use of such Unit; and the Lessee shall and does hereby indemnify the Lessor and the Trustee and agrees to hold the Lessor and the Trustee harmless from and against any and all liability that may arise from any infringement or violation of any such laws or rules by the Lessee, the Lessee's employees or

any other person. In the event that such laws or rules require the alteration of the Units or in case any equipment or appliance on any such Unit shall be required to be changed or replaced, or in case any additional or other equipment or appliance is required to be installed on such Unit in order to comply with such laws and rules, the Lessee agrees to make such alterations, changes, additions and replacements at its own expense and to use, maintain and operate such Unit in full compliance with such laws and rules so long as such Unit is subject to this Lease; *provided, however*, that the Lessee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Lessor or the Trustee, adversely affect the property or rights of the Lessor or the Trustee hereunder or under the Equipment Trust Agreement.

The Lessee agrees that, at its own cost and expense, it will maintain and keep each Unit (including any special device, rack or assembly attached or affixed thereto and considered an accession thereto as hereinbelow provided) which is subject to this Lease in good order and repair.

Any and all additions to any Unit and any and all parts installed on or replacements made to any Unit (other than any special devices, racks or assemblies, at any time attached or affixed to any such Unit, the cost or purchase price of which is not included in the Cost of such Unit and the title to which is in a person, firm or corporation other than the Lessor, the Lessee or the Trustee) shall be considered accessions to such Unit and, without cost or expense to the Lessor or the Trustee, there shall immediately be vested in the Lessor and the Trustee the same interest in such accessions as the interests of the Lessor and the Trustee in such Unit. The Lessee may make alterations or modifications in any Unit so long as it does not affect the value of such Unit adversely. The Lessee shall not permit any special device, rack or assembly to be attached or affixed to any Unit unless such special device, rack or assembly is to be considered an accession to such Unit or may be readily removed from such Unit without materially impairing the value of such Unit.

The Lessee agrees to indemnify and save harmless the Lessor and the Trustee against any charge or claim made against the Lessor

or the Trustee and against any expense, loss or liability (including but not limited to counsel fees and expenses, patent liabilities, penalties and interest) which the Lessor or the Trustee may incur in any manner by reason of the issuance of the Trust Certificates or by reason of entering into or performing the Equipment Trust Agreement, this Lease, any of the instruments or agreements referred to therein or herein or contemplated thereby or hereby or the ownership of, or which may arise in any manner out of or as the result of the ordering, acquisition, purchase, use, operation, condition, delivery, rejection, storage or return of, any Unit while subject to this Lease or until no longer in the possession of or stored by the Lessee, whichever is later, and to indemnify and save harmless the Lessor and the Trustee against any charge, claim, expense, loss or liability on account of any accident in connection with the operation, use, condition, possession or storage of any Unit resulting in damage to property or injury or death to any person. The indemnities contained in this paragraph shall survive payment of all other obligations under this Lease and the termination of this Lease.

The Lessee agrees to prepare and deliver to the Lessor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of, and furnish a copy to, the Lessor) any and all reports known by the Lessee to be required to be filed by the Lessor, or requested by the Lessor to be filed, with any Federal, state or other regulatory authority by reason of the ownership by the Lessor of the Units, the security title of the Trustee to the Units or the leasing of the Units to the Lessee.

§ 9. *Default.* If, during the continuance of this Lease, one or more of the following events (hereinafter sometimes called Events of Default) shall occur:

A. default shall be made in the payment of any part of the rental provided in §§ 2, 12 or 17 hereof and such default shall continue for 15 days; or

B. the Lessee shall make or permit any unauthorized assignment or transfer of this Lease or any unauthorized sublease or use of the Units, or any thereof; or

C. default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein or in the Equipment Trust Agreement and such default shall continue for 30 days after written notice from the Lessor to the Lessee specifying the default and demanding that the same be remedied; or

D. any proceedings shall be commenced by or against the Lessee for any relief under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the obligations of the Lessee hereunder) and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease, under the Equipment Trust Agreement and under the guaranty endorsed on the Trust Certificates shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Lessee or for the property of the Lessee in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such a trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier;

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

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

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall

absolutely cease and determine as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided; and thereupon the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of the Units and thenceforth hold, possess and enjoy the same free from any right of the Lessee, its successors or assigns, to use the Units for any purposes whatever; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee (i) as damages for loss of the bargain and not as a penalty, a sum, with respect to each Unit, which represents the excess of (x) the present value, at the time of such termination, of the entire unpaid balance of all rentals for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over (y) the then present value of the rentals which the Lessor reasonably estimates to be obtainable for the Unit during such period, such present value to be computed in each case on a basis of an 8% per annum discount, compounded semiannually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, (ii) any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Lessor shall have sustained by reason of the breach of any covenant or covenants of this Lease other than for the payment of rental, and (iii) an amount which, after deduction of all taxes required to be paid by the Lessor in respect of the receipt thereof under the laws of the United States of America or any political subdivision thereof, shall, in the reasonable opinion of the Lessor, cause the Lessor's net return under this

Lease to be equal to the net return that would have been available to the Lessor if it had been entitled to utilization of all or such portion of the Rapid Amortization Deduction (as hereinafter defined) which was lost, not claimed, not available for claim or disallowed in respect of a Unit as a result of the termination of this Lease, the Lessee's loss of the right to use such Unit, any action or inaction by the Lessor or the sale or other disposition of the Lessor's interest in such Unit after the occurrence of an Event of Default.

Anything in this § 9 to the contrary notwithstanding, any default in the observance or performance of any covenant, condition or agreement on the part of the Lessee which results solely in the loss by the Lessor of, or the loss by the Lessor of the right to claim, or the disallowance with respect to the Lessor of, all or any portion of the amortization deduction with respect to a Unit provided for in Section 184 of the Internal Revenue Code of 1954, as amended to the date hereof (herein called the Rapid Amortization Deduction), available to non-railroad lessors of railroad equipment shall be for all purposes of this Lease deemed to be cured if the Lessee shall, on or before the next rental payment date after written notice from the Lessor of the loss, or the loss of the right to claim, or the disallowance of the Rapid Amortization Deduction in respect of such Unit, agree to pay to the Lessor the revised rental rate in respect of such Unit determined as provided in the second paragraph of § 17 hereof.

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is permitted by law. Subject to the provisions of the second paragraph of § 2 hereof, the Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder and agrees to make rental payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

The failure of the Lessor to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

§ 10. *Return of Units Upon Default.* If this Lease shall terminate pursuant to § 9 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor. Each Unit returned to the Lessor pursuant to this § 10 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted, (ii) have attached or affixed thereto any special device, rack or assembly considered an accession thereto as provided in § 8 hereof and have removed therefrom any special device, rack or assembly not so considered an accession thereto and (iii) meet the standards then in effect under the Interchange Rules of the Association of American Railroads, if applicable. For the purpose of delivering possession of any Unit or Units to the Lessor as above required, the Lessee shall at its own cost, expense and risk:

A. forthwith and in the usual manner and at usual speed, cause such Units to be transported to such point or points as shall reasonably be designated by the Lessor, and

B. permit the Lessor to store such Units on any lines of railroad or premises approved by the Lessor until such Units have been sold, leased or otherwise disposed of by the Lessor.

The assembling, delivery, storage and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to cause the assembly, delivery, storage and transporting of the Units. During any storage period, the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any Unit, to inspect the same; *provided, however,* that the Lessee shall

not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this § 10, the Lessee hereby irrevocably appoints the Lessor as the agent and the attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be at the time in possession of such Unit. In connection therewith the Lessee will supply the Lessor with such documents as the Lessor may reasonably request.

§ 11. *Assignment; Possession and Use.* This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. All the rights of the Lessor hereunder (including but not limited to the rights under §§ 5, 8, 9 and 17 hereof) shall inure to the benefit of the Lessor's assigns as if named herein as Lessor.

So long as no Event of Default exists hereunder and the Lessee shall have fully complied with the provisions of the fifth and sixth paragraphs of this § 11, the Lessee shall be entitled to the possession of the Units and also to sublease the Units to, or to permit their use under the terms of car contracts by, a sublessee or user incorporated in the United States of America (or any State thereof or the District of Columbia), upon lines of railroad owned or operated by such sublessee or user, or over which such sublessee or user has trackage rights or rights for operation of its trains, and upon connecting and other carriers in the usual interchange of traffic, but only upon and subject to all the terms and conditions of this Lease.

Any such sublease may provide that the sublessee, so long as it shall not be in default under such sublease, shall be entitled to the possession of the Units included in such sublease and the use thereof; *provided, however*, that every such sublease shall be subject to the

rights and remedies of the Trustee under the Equipment Trust Agreement and the Lessor under this Lease in respect of the Units covered by such sublease upon the occurrence of an Event of Default thereunder or hereunder.

The Lessor shall have the right to declare this Lease terminated in case of any unauthorized assignment or transfer of the Lessee's rights hereunder or in case of any unauthorized transfer or sublease of any of the Units.

The Lessee, at its own expense, will as soon as possible cause to be duly discharged any lien, charge, security interest or other encumbrance (except as aforesaid and other than an encumbrance resulting from claims against the Lessor or the Trustee not related to the ownership or leasing of, or the security title of the Trustee to, the Units) which may at any time be imposed on or with respect to any Unit including any accession thereto or the interest of the Lessor, the Trustee or the Lessee therein. The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provisions of this § 11.

The Lessee agrees that during the term of this Lease (i) it will not assign or permit the assignment of any Unit to service involving the regular operation and maintenance thereof outside the United States of America, (ii) any use of any Unit outside the United States of America will be limited to incidental and temporary use in Mexico and Canada, and (iii) it will not make or permit any use of a Unit which shall result in such Unit failing to qualify as "qualified railroad rolling stock" within the meaning of Section 184(d) of the Internal Revenue Code of 1954, as amended to the date hereof, or any regulations promulgated by the Internal Revenue Service thereunder.

§ 12. *Purchase and Renewal Options.* Provided that this Lease has not been earlier terminated, no Event of Default exists hereunder and the Lessee is not otherwise in default hereunder, the Lessee may, by written notice delivered to the Lessor not less than six months prior to the end of the original term of this Lease or any extended term hereof, as the case may be, elect (a) to purchase all, but not

fewer than all, the Units then covered by this Lease at the end of the original or any extended term of this Lease for a purchase price equal to the Fair Market Value of such Units as of the end of such term or (b) to extend the term of this Lease in respect of all, but not fewer than all, the Units then covered by this Lease, for up to three five-year periods commencing on the scheduled expiration of the original term of this Lease, provided that no such extended term shall extend beyond September 1, 2000, at a rental payable in 10 semiannual payments, each in an amount equal to the following percentages of the Cost of such Units: during the first five-year period, 2.8915%; during the second five-year period, 1.9276%; and during the final five-year period, 1.4458%. Such semiannual payments shall be made on March 1 and September 1 in each year of the applicable extended term.

Fair Market Value shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an arm's length transaction between an informed and willing buyer-user (other than (i) a lessee currently in possession and (ii) a used equipment dealer) and an informed and willing seller under no compulsion to sell and, in such determination, costs of removal from the location of current use shall not be a deduction from such value. If on or before four months prior to the expiration of the term of this Lease or any extended term hereof, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Value of the Units, such value shall be determined in accordance with the foregoing definition by a qualified independent Appraiser. The term Appraiser shall mean such independent appraiser as the Lessor and the Lessee may mutually agree upon, or failing such agreement, a panel of three independent appraisers, one of whom shall be selected by the Lessor, the second by the Lessee and the third designated by the first two so selected. The Appraiser shall be instructed to make such determination within a period of 30 days following appointment, and shall promptly communicate such determination in writing to the Lessor and the Lessee. The determination so made shall be conclusively binding upon both the Lessor and the Lessee. The expenses and fee of the Appraiser shall be borne by the Lessee.

§ 13. *Return of Units upon Termination of Term.* Unless a Unit is purchased by the Lessee as provided in § 12 hereof, as soon as practicable on or after the termination of the original or any extended term of this Lease, as the case may be, the Lessee will, at its own cost and expense, at the request of the Lessor, cause such Unit to be transported to such point or points as shall be reasonably designated by the Lessor immediately prior to such termination and permit the Lessor to store such Unit on any lines of railroad or premises approved by the Lessor for a period not exceeding three months; the assembly, delivery, storage and transporting of such Unit to be at the expense and risk of the Lessee. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of such Unit, to inspect the same; *provided, however*, that the Lessee shall not be liable except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to cause the assembly, delivery, storage and transporting of the Units. Each Unit returned to the Lessor pursuant to this § 13 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted, (ii) have attached or affixed thereto any special device, rack or assembly considered an accession thereto as provided in § 8 hereof and have removed therefrom any special device, rack or assembly not so considered an accession thereto and (iii) meet the standards then in effect under the Interchange Rules of the Association of American Railroads, if applicable. If the Lessor shall elect to abandon any Unit which has suffered a Casualty Occurrence or which, after expiration of this Lease the Lessor shall have deemed to have suffered a Casualty Occurrence, it may deliver written notice to such effect to the Lessee

and the Lessee shall thereupon assume, and hold the Lessor harmless from, all liability arising in respect of any responsibility of ownership thereof, from and after receipt of such notice. The Lessor shall execute and deliver to the Lessee a bill or bills of sale transferring to the Lessee, or upon its order, the Lessor's title to and property in, any Unit abandoned by it pursuant to the immediately preceding sentence. The Lessee shall have no liability to the Lessor in respect of any Unit abandoned by the Lessor after termination of the Lease; *provided, however*, that the foregoing clause shall not in any way relieve the Lessee of its obligations pursuant to § 6 hereof to make payments provided for therein in respect of any Unit experiencing a Casualty Occurrence during the original or any extended term of this Lease.

§ 14. *Opinion of Counsel.* On the date on which Trust Certificates are issued pursuant to Section 2.01 of the Equipment Trust Agreement, the Lessee will deliver to the Lessor and the Trustee the written opinion of counsel of the Lessee, in such number of counterparts as may reasonably be requested, and addressed to the Lessor and the Trustee, in scope and substance satisfactory to them and their counsel, to the effect that:

A. the Lessee is a corporation legally incorporated and validly existing, in good standing, under the laws of the State of Delaware, with full corporate power to enter into this Lease, the Equipment Trust Agreement, the Manufacturing Agreements and any equipment purchase agreements relating to the Units (and any assignment thereof);

B. this Lease, the Equipment Trust Agreement, the Manufacturing Agreements and any equipment purchase agreements relating to the Units (and any assignment thereof) have been duly authorized, executed and delivered by the Lessee and, assuming the due authorization, execution and delivery thereof by the other parties thereto, constitute valid, legal and binding agreements, enforceable in accordance with their terms;

C. this Lease and the Equipment Trust Agreement have been duly filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act,

and will protect the Lessor's title and interest in and to the Units and the Trustee's security title and interest in and to the Units, and no filing, recording or deposit (or giving of notice) with any other Federal, state or local government or agency or instrumentality thereof is necessary to protect the title and interest of the Lessor or the security title and interest of the Trustee in and to the Units in the United States of America;

D. all approvals if any, required from all public regulatory bodies with respect to the entering into or performance of this Lease, the Equipment Trust Agreement, the Manufacturing Agreements and any equipment purchase agreement relating to the Units (and any assignment thereof) have been obtained;

E. the entering into and performance of this Lease, the Equipment Trust Agreement, the Manufacturing Agreements and any equipment purchase agreement relating to the Units (and any assignment thereof) will not result in any breach of, or constitute a default under, any indenture, mortgage, deed of trust, bank loan or credit agreement or other agreement or instrument to which the Lessee is a party or by which it may be bound or contravene any provision of law, statute, rule or regulation to which the Lessee is subject or any judgment, decree, franchise, order or permit applicable to the Lessee;

F. no mortgage, deed of trust or other lien of any nature whatsoever which now covers or affects, or which may hereafter cover or affect, any property or interest therein of the Lessee, now attaches or hereafter will attach to the Units or in any manner affects or will affect adversely the Lessor's right, title and interest therein; *provided, however*, that such liens may attach to the rights of the Lessee hereunder in and to the Units; and

G. registration of the Trust Certificates under the Securities Act of 1933, as amended, and qualification of the Equipment Trust Agreement under the Trust Indenture Act of 1939, as amended, are not required.

§ 15. *Recording and Expenses.* Prior to the delivery and acceptance of any Unit, the Lessee will without expense to the Lessor cause this Lease and any assignments hereof to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act. The Lessee will undertake the filing, recording and repositing required under Section 7.03 of the Equipment Trust Agreement and will from time to time, do and perform any other act and will execute, acknowledge, deliver, file, register, record and deposit (and will refile, reregister, rerecord or redeposit whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Trustee (except as otherwise provided in Section 7.03 of the Equipment Trust Agreement) for the purpose of proper protection, to the satisfaction of the Lessor and the Trustee, of the Lessor's and the Trustee's respective interests in the Units, or for the purpose of carrying out the intention of this Lease and the Equipment Trust Agreement. The Lessee will promptly furnish to the Lessor and the Trustee evidence of all such filing, registering, recording, depositing, refile, reregistering, rerecording and/or repositing and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Lessor and the Trustee.

The Lessor will pay the reasonable costs and expenses involved in the preparation and printing of this Lease, the Equipment Trust Agreement and the Manufacturing Agreements. The Lessor and the Lessee will each bear the respective fees and disbursements, if any, of their respective counsel.

§ 16. *Interest on Overdue Rentals.* Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay also an amount equal to the Penalty Rate (as defined in the Equipment Trust Agreement) on the overdue rentals and other obligations for the period of time during which they are overdue.

§ 17. *Federal Income Taxes.* The Lessor, as the owner of the Units, shall be entitled to such deductions, credits and other benefits as are provided in the Internal Revenue Code of 1954, as amended to the

date hereof, to an owner of property, including (without limitation) an allowance for the Rapid Amortization Deduction (as defined in § 9 of this Lease) with respect to the Units, but the Lessee's liability under this § 17 shall be solely as set forth below :

If the Lessor shall lose, or shall not have or shall lose the right to claim, or there shall be disallowed with respect to the Lessor, all or any portion of the Rapid Amortization Deduction with respect to a Unit available to non-railroad lessors of railroad equipment because such Unit shall not be or continue to be "qualified railroad rolling stock" within the meaning of Section 184(d) of the Internal Revenue Code of 1954, as amended to the date hereof, or any regulations promulgated by the Internal Revenue Service thereunder, the rental rate applicable to such Unit set forth in §§ 2 and 12 of this Lease shall, on and after the next succeeding rental payment date after written notice to the Lessee by the Lessor that such Rapid Amortization Deduction has not been claimed, or if claimed and then disallowed on and after the next succeeding rental date after payment of the tax attributable thereto, be increased to such rental rate for such Unit as, in the reasonable opinion of the Lessor, will cause the Lessor's net return, after deduction of all taxes required to be paid by the Lessor in respect of the receipt of such increase under the laws of the United States of America or any political subdivision thereof, in respect of such Unit under this Lease to equal the net return that would have been available if the Lessor had been entitled to utilization of all or such portion of the Rapid Amortization Deduction which was not claimed or was disallowed and the Lessee shall forthwith pay to the Lessor the amount of any interest which is assessed by the United States against the Lessor attributable to the loss of all or any portion of the Rapid Amortization Deduction. The Lessor agrees that if, in the opinion of independent tax counsel selected by the Lessor and acceptable to the Lessee, a bona fide claim to all or a portion of the Rapid Amortization Deduction on any Unit exists in respect of which the Lessee is required to pay increased rental and interest as aforesaid to the Lessor as above provided, the Lessor shall, upon request and at the expense of the Lessee, take all such legal or other appropriate action deemed reasonable by said counsel in order to sus-

tain such claim. The Lessor may take such action prior to making payment of the amounts claimed pursuant to a notice of disallowance or may make such payment and then sue for a refund. In the latter event, if the final determination shall be adverse to the Lessor, the Lessee shall pay to the Lessor interest on the amount of the tax paid attributable to the Rapid Amortization Deduction disallowed, computed at the rate of 11% per annum from the date of payment of such tax to the date the Lessee shall reimburse the Lessor for such tax in accordance with the provisions of this § 17. The Lessor shall not be obligated to take any such legal or other appropriate action unless the Lessee shall first have indemnified the Lessor for all liabilities and expenses which may be entailed therein and shall have furnished the Lessor with such reasonable security therefor as may be requested.

The Lessee's agreement to pay any sums which may become payable pursuant to this § 17 shall survive the expiration or other termination of this Lease.

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

If to the Lessor, c/o C.I.T. Leasing Corporation, 650 Madison Avenue, New York, New York 10022, *attention of* the President;

If to the Lessee, at 1819 J. F. Kennedy Boulevard, Philadelphia, Pennsylvania 19103, *attention of* the Vice President and Treasurer;

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

§ 19. *Severability; Effect and Modification of Lease.* Any provision of this Lease which is prohibited or unenforceable in any jurisdiction, shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any

jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

This Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the Units and supersedes all other agreements, oral or written, with respect to the Units. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Lessor and the Lessee.

In the event that the Trust Certificates shall bear dividends on the unpaid principal amount thereof at a rate other than $10\frac{1}{2}\%$ per annum or in the event that all the Trust Certificates shall be issued to the Lessor, the Lessor and the Lessee shall enter into an appropriate supplement to this Lease appropriately modifying the provisions hereof, including §§ 2 and 6 hereof, in such manner that the rental payable hereunder shall be sufficient to discharge the Lessor's obligations under Sections 5.04(c), (d) and (e) of the Equipment Trust Agreement and the Lessor shall be provided with a net return hereunder equal to the net return that would have been available to the Lessor hereunder if the Trust Certificates had been issued to persons other than the Lessor and had borne dividends at a rate equal to $10\frac{1}{2}\%$ per annum.

§ 20. *Execution.* This Lease may be executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument. Although this Lease is dated as of September 1, 1970, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

§ 21. *Law Governing.* The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of New York; *provided, however,* that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording or depositing hereof and of any assignment hereof or out of the marking on the Units as shall be conferred by the laws of the several jurisdictions in which this Agree-

ment or any assignment hereof shall be filed, recorded or deposited or in which any Unit may be located.

§ 22. *Obligations of Lessor Under Equipment Trust Agreement.* In the event that the Lessor shall become obligated to make any payment (other than pursuant to Section 4.03 of the Equipment Trust Agreement) or to perform any other obligations pursuant to the Equipment Trust Agreement not covered by the provisions of this Lease, the Lessee shall pay such additional amounts to the Trustee and perform such obligations so that the Lessor's obligations (other than pursuant to Section 4.03 of the Equipment Trust Agreement) pursuant to the Equipment Trust Agreement shall be fully complied with. The Lessor will pay over to the Lessee any amounts received by it pursuant to the last sentence of Section 9.04 of the Equipment Trust Agreement.

§ 23. *No Recourse.* No recourse shall be had in respect of any obligation due under this Lease, or referred to herein, against any incorporator, stockholder, director or officer, as such, past, present or future, of the Lessor or the Lessee, or against any principal or principals, (disclosed or undisclosed) of the Lessor or assignee or assignees or transferee or transferees of the Lessor if the Lessor is acting in any agency or nominee capacity, whether by virtue of any constitutional provision, statute or rule of law or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of incorporators, stockholders, directors, officers, assignees, transferees or principals being forever released as a condition of and as consideration for the execution of this Lease.

§ 24. *Provisions Concerning Subordinated Notes.* It is the intention of the parties hereto that the obligations of the Lessee under this Lease shall be superior in right of payment to all the Lessee's Thirty Year Subordinated Notes sold or to be sold pursuant to a Note Purchase Agreement dated as of January 1, 1967, between the Lessee and certain of its stockholders. The Lessee covenants and agrees that if an Event of Default exists hereunder or an Event of Default (as defined in the Equipment Trust Agreement) exists under the Equipment Trust Agreement or any event which, with the giving of

notice or the lapse of time, or both, would constitute such an Event of Default, shall have occurred and be continuing, the Lessee will not voluntarily prepay or retire any of such Notes.

§ 25. *Increase of User Rates.* The Lessee covenants and agrees (i) that, if an Event of Default exists under § 9(A) hereof by reason of the failure of the Lessee to pay to the Trustee within the grace period provided in § 9(A) hereof, all or any part of the rentals due and payable under § 2 hereof required for the payment of the principal of or dividends on the Trust Certificates (but not including any principal or dividends payable by reason of acceleration of the date of payment thereof), the Lessee will, upon written notice by the Lessor so to do, within ten days after receipt of such notice, deliver to all parties to its Form A and Form B car contracts (or such other Forms as may hereafter be used in substitution or in replacement of such Form A and Form B car contracts) due and proper notice of increases in the car user charges under such contracts, (ii) that all car contracts covering any unit or units of railroad equipment of which the Lessee is the owner or the lessee will contain provisions permitting the Lessee to require such increases and (iii) that, unless in connection with an assignment or transfer to a corporation which shall acquire all or substantially all of the property of the Lessee pursuant to Section 5.09 of the Equipment Trust Agreement, the Lessee will not assign or transfer its rights and obligations to require such increases under any such car contracts. Such increases shall commence to accrue and shall be effective on the first day of the first calendar month beginning subsequent to ten days after delivery of such notice by the Lessee to the parties to such car contracts. Such increases shall be in such amounts or percentages as will cause to accrue and be payable to the account of the Lessee in respect of the first calendar month during which they are in effect such additional sums of money as will be needed by the Lessee to enable it to pay all such overdue principal and dividends (with interest on overdue principal and dividends at the Penalty Rate, to the extent that it shall be legally enforceable) and to cure any defaults in payment of any principal, dividends or interest (or rentals intended to provide for payment thereof) payable under comparable provisions of

any other equipment trust, conditional sale or other equipment agreement of the Lessee not guaranteed jointly and severally by its shareholders or a group of its shareholders (except defaults arising by reason of acceleration of the date of payment of instalments of principal, dividends or interest, or rentals intended to provide for payment thereof), whether heretofore or hereafter entered into, based upon the most recent records or information available to the Lessee relating to the use of its cars. If for any reason any such increases so made by the Lessee shall fail to provide in 90 days sufficient cash to enable the Lessee to cure such default or defaults hereunder and under any other such agreements, or if cash is provided but is not for any reason applied to cure such defaults, the Lessee will, upon receipt of written notice from the Lessor so to do, promptly make such further increases in its user charges as may from time to time be necessary to enable the Lessee to cure all such defaults hereunder and under such other agreements.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be duly executed as of the date first above written.

C.I.T. CORPORATION,
by C.I.T. LEASING CORPORATION,
as Agent,

[CORPORATE SEAL]

by
Vice President.

Attest:

.....
Assistant Secretary.

TRAILER TRAIN COMPANY,

[CORPORATE SEAL]

by
Vice President and Treasurer.

Attest:

.....
Assistant Secretary.

STATE OF NEW YORK }
COUNTY OF NEW YORK }ss.:

On this day of September, 1970, before me personally appeared THOMAS J. MCPHILLIPS, to me personally known, who, being by me duly sworn, says that he is a Vice President of C.I.T. LEASING CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

.....
Notary Public

[NOTARIAL SEAL]

STATE OF NEW YORK }
COUNTY OF NEW YORK }ss.:

On this day of September, 1970, before me personally appeared J. A. BRENNAN, JR., to me personally known, who, being by me duly sworn, says that he is the Vice President and Treasurer of TRAILER TRAIN COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

.....
Notary Public

[NOTARIAL SEAL]

SCHEDULE A

Type	Quantity	Company's Car Numbers (both inclusive)	Unit Cost	Total Cost
ACF Industries, Inc.				
89' 4" 70 Ton Capacity, All Purpose Flat Cars Standard Level	50	970595-970644	\$20,788.13	\$ 1,039,406.50
89' 4" 70 Ton Capacity, Container Flat Cars Standard Level	22	976070-976088 976067-976069	17,833.45 17,595.00	338,835.55 52,785.00
89' 4" 55 Ton Capacity, Auto Rack Flat Cars Low Level	63	810330-810356 810281, 810284 810292-810317 810322-810329	17,412.00	1,096,956.00
89' 4" 70 Ton Capacity, Standard Level Flat Cars with Hitch Equipment	100	603476-603575	17,184.18	1,718,418.00
89' 4" 55 Ton Capacity, Low Level Vert-A-Pac, Flat Cars	21	810259-810279	17,500.00	367,500.00
Bethlehem Steel Corporation				
89' 4" 70 Ton Capacity, Standard Level Flat Cars with 4 Hitches	90	157926-157965 158177-158226	20,036.65	1,803,298.50
89' 4" 70 Ton Capacity, Standard Level Saddleback Flat Cars	38	963425-963462	21,262.65	807,980.70
89' 4" 70 Ton Capacity, Standard Level Auto Rack Flat Cars	14	963117-963130	15,889.28	222,449.92
89' 4" 70 Ton Capacity, Standard Level Flat Cars with Hitch Equipment	36	158166-158176 158227-158251	17,336.65	624,119.40
89' 4" 70 Ton Capacity, Standard Level Flat Cars with Hitch Equipment	63	158252-158314	17,396.65	1,095,988.95

SCHEDULE A—(Continued)

Type	Quantity	Company's Car Numbers (both inclusive)	Unit Cost	Total Cost
Pullman Incorporated (Pullman-Standard Division)				
89' 4" 70 Ton Capacity, Standard Level All Purpose Flat Cars	85	972881-972965	\$20,990.71	\$1,784,210.35
89' 4" 70 Ton Capacity, Standard Level Auto Rack Flat Cars	32	940360-940391	16,275.00	520,800.00
89' 4" 55 Ton Capacity, Low Level Auto Rack Flat Cars	32	801292-801323	17,438.00	558,016.00
89' 4" 55 Ton Capacity, Low Level Auto Rack Flat Cars	46	801378-801423	17,600.00	809,600.00
89' 4" 70 Ton Capacity, Standard Level Flat Cars with Hitch Equipment	124	253502, 253505, 253508, 253516, 253520, 253523, 253530-253533 253535-253644 253646-253649	17,313.68	2,146,896.32
				<u>\$14,987,261.19</u>