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INTERSTATE COMMERCE COMMISSION

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# SECURITY AGREEMENT

RSP CAR COMPANY

and

UNITED STATES RAILWAY EQUIPMENT CO.

RE: \$500,000 EQUIPMENT PROMISSORY NOTE



Dated as of April 1, 1971

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BORG/CHICAGO, U.S.A.

## SECURITY AGREEMENT

RE:

RSP CAR COMPANY

THIS SECURITY AGREEMENT (the "Security Agreement") dated as of April 1, 1971 from RSP Car Company (the "Debtor"), whose address is 2200 East Devon Avenue, Des Plaines, Illinois 60018 to United States Railway Equipment Co. (the "Secured Party"), having its principal office at 2200 East Devon Avenue, Des Plaines, Illinois 60018.

### RECITALS:

A. In order to obtain funds for its proper corporate purposes Debtor will issue its Equipment Promissory Note (the "Note") in the aggregate principal amount of \$500,000 expressed to mature upon demand or in any event eight (8) years from its date, without interest and to be otherwise substantially in the form attached hereto as Exhibit A. The Secured Party hereby agrees to purchase and the Debtor hereby agrees to sell to the Secured Party the Note at par. The Secured Party, or its assignee is herein sometimes referred to as the "Noteholder".

B. The Note and all principal thereof and all additional amounts and other sums at any time due and owing from or required to be paid by the Debtor under the terms of the Note or this Security Agreement are hereinafter sometimes referred to as "indebtedness hereby secured".

C. All of the requirements of law have been fully complied with; all other acts and things necessary to make this Security Agreement a valid, binding and legal instrument for the security of the Note have been done and performed.

## ARTICLE ONE

### GRANT OF SECURITY

The Debtor in consideration of the premises and other good and valuable consideration, receipt whereof is hereby acknowl-

edged, and in order to secure the payment of the principal of the Note according to its tenor and effect, and to secure the payment of all other indebtedness hereby secured and the performance and observance of all covenants and conditions in the Note and in this Security Agreement contained, does hereby convey, warrant, mortgage, assign, pledge, and grant the Secured Party, its successors and assigns, a security interest in, all and singular of the Debtor's right, title and interest in and to the properties, rights, interests and privileges described in Sections 1.1 and 1.2 hereof (all of which properties hereby mortgaged, assigned and pledged or intended so to be are hereinafter collectively referred to as the "Collateral").

**SECTION 1.1. *Equipment Collateral.*** Collateral includes the equipment described in Exhibit B attached hereto and made a part hereof (hereinafter referred to collectively as the "Equipment") leased and delivered under those certain Leases (the "Leases") between the Debtor, as lessor, and certain lessees (the "Lessees") which Leases and Lessees are described in Exhibit B hereto (where applicable herein, the term "Leases" and "Lessees" shall apply to all present and future leases and lessees with respect to the Equipment); together with all accessories, equipment, parts and appurtenances appertaining or attached to any of the Equipment hereinabove described, whether now owned or hereafter acquired, and all substitutions, renewals or replacements of and additions, improvements, accessions and accumulations to any and all of said Equipment together with all the rents, issues, income, profits and avails therefrom.

**SECTION 1.2. *Rental Collateral.*** Collateral also includes the Leases and any future leases with respect to the Equipment or substitutions therefor during the term of this Agreement and all rents and other sums due and to become due thereunder including any and all extensions or renewals thereof insofar as the same cover or relate to the Equipment which shall be assigned in the form set forth in Exhibit C attached hereto and made a part hereof.

SECTION 1.3. *Limitations to Security Interest.* The Security Interest granted by this Article 1 is subject to the right, title and interest of the Lessees under the Leases.

SECTION 1.4. *Duration of Security Interest.* The Secured Party, its successors and assigns shall have and hold the Collateral forever; provided, always, however, that such security interest is granted upon the express condition that if the Debtor shall pay or cause to be paid all the indebtedness hereby secured and shall observe, keep and perform all the terms and conditions, covenants and agreements herein and in the Note contained, then these presents and the estate hereby granted and conveyed shall cease and this Security Agreement shall become null and void; otherwise to remain in full force and effect. It is understood that the Debtor shall not have the option to prepay any installment on the Note except as provided in Section 4.1 hereof.

## ARTICLE TWO

### COVENANTS AND WARRANTIES

The Debtor covenants, warrants and agrees as follows:

SECTION 2.1. *Debtor's Duties.* The Debtor covenants and agrees well and truly to perform, abide by and to be governed and restricted by each and all of the terms, provisions, restrictions, covenants and agreements set forth in this Security Agreement.

SECTION 2.2. *Warranty of Title.* The Debtor will, at the date of the subjection of the Collateral to the lien hereof, own and be possessed of the Collateral subject to no mortgage, pledge, lien, charge or encumbrance other than the Leases, the lien hereof and such liens or encumbrances as are specifically permitted by this Security Agreement; and will at such date have full power and lawful authority to assign, transfer, deliver and pledge or cause to be assigned, transferred, delivered and pledged, the entire Collateral in the manner and form aforesaid. As long as the Note is outstanding hereunder, the Debtor will not subject the Equip-

ment to any mortgage, security interest, pledge, lien, charge or encumbrance other than the Leases, this Security Agreement or the Assignments. The Debtor hereby does and will forever warrant and defend the title to the Collateral against the claims and demands of all persons whomsoever.

**SECTION 2.3. *Further Assurances.*** The Debtor will, at its own expense, do, execute, acknowledge and deliver all and every further acts, deeds, conveyances, transfers and assurance necessary or proper for the perfection of the security interest being herein provided for in the Collateral, whether now owned or hereafter acquired. Without limiting the foregoing but in furtherance of the security interest herein granted in the rents and other sums due and to become due under the Leases, the Debtor covenants and agrees that it will notify the Lessees of such assignment and direct the Lessees to make all payments of such rents and other sums due and to become due under the Leases directly to the Secured Party or its assignee as set forth in the Assignment of Lease and Agreement attached hereto as Exhibit C, and made a part hereof. Debtor agrees to use all reasonable efforts to keep the Equipment continuously under lease and upon the expiration of any of the Leases in existence at the execution of this Security Agreement, to re-let the cars covered by the expired Leases, to execute an Assignment as herein provided and to cause an opinion of counsel to be delivered as required by paragraph 4 of Exhibit C hereto.

**SECTION 2.4. *After-acquired Property.*** Any and all property described or referred to in the granting clauses hereof which is hereafter acquired shall ipso facto, and without any further conveyance, assignment or act on the part of the Debtor or the Secured Party, become and be subject to the security interest herein granted as fully and completely as though specifically described herein, but nothing in this Section 2.4 contained shall be deemed to modify or change the obligation of the Debtor under Section 2.3 hereof.

SECTION 2.5. *Recordation and Filing.* The Debtor will cause this Security Agreement and all supplements hereto, the Leases and all supplements thereto, and all financing and continuation statements and similar notices required by applicable law, at all times to be kept, recorded and filed at its own expense in such manner and in such places as may be required by law in order fully to preserve and protect the rights of the Secured Party hereunder, and will at its own expense furnish to the Secured Party promptly after the execution and delivery of this Security Agreement and of each supplemental Security Agreement an opinion of counsel stating that in the opinion of such counsel this Security Agreement or such supplement, as the case may be, has been properly recorded or filed for record so as to make effective of record the security interest intended to be created hereby.

SECTION 2.6. *Modification of the Leases.* The Debtor will not:

(a) Without the prior written consent of the Secured Party or its assignee, enter into any agreement amending, modifying or terminating any Lease and that any amendment, modification or termination thereof without such consent shall be void. The Secured Party or its assignee shall consent to any such agreement if it does not affect the rentals, the term, the maintenance or the possession and use provisions or any other provision which the Secured Party or its assignee or its counsel deems to materially and adversely affect the security provided hereby; or

(b) by affirmative act consent to the creation or existence of any security interest or other lien to secure the payment of indebtedness upon the leasehold estate created by the Leases or any part thereof; or

(c) receive or collect or permit the receipt or collection of any rental payment under the Leases prior to the date for payment thereof provided for by the Leases or assign, transfer or hypothecate (other than to the Secured Party hereunder) any rent payment then due or to accrue in the future under the Leases in respect of the Equipment; or

(d) sell, mortgage, transfer, assign or hypothecate (other than to the Secured Party hereunder) its interest in the

Equipment or any part thereof or in any amount to be received by it from the use or disposition of the Equipment.

**SECTION 2.7. *Representations and Warranties by the Debtor.***

The Debtor represents and warrants that:

A. The Debtor is a duly organized and validly existing corporation in good standing under the laws of the State of Texas and is duly qualified to conduct its business as a foreign corporation in the State of Illinois, has the corporate power to own its properties and conduct its business and is duly qualified and/or licensed to transact business in, and is in good standing in, every jurisdiction in which it transacts business and wherein such qualification and/or licensing is required. The Debtor has full power, authority and legal right to execute and deliver the Security Agreement, Leases, Assignment of Leases and the Note and to perform and observe the terms and conditions of each thereof.

B. There are not any (i) actions at law or suits in equity pending or threatened against or affecting the Debtor or any of its assets or (ii) proceedings by or before any governmental commission, bureau or other administrative agency pending or threatened against the Debtor which, in either the case of (i) or (ii), if adversely determined, would materially and adversely affect the respective business or condition, financial or other, of the Debtor or the ability of the Debtor to pay, when due, the principal of the Note.

C. The consummation of the transactions herein contemplated and the fulfillment of the terms hereof and the compliance by the Debtor with the terms and provisions of the Security Agreement, Assignment of Leases and the Note will not result in any breach of any applicable law or of any of the terms, conditions or provisions of, or constitute a default under, or with notice or lapse of time, or both, constitute a default under, or result in the creation of any lien, charge or encumbrance upon any property or assets of the Debtor pursuant to (i) the corporate charter or by-laws of the Debtor or (ii) any indenture, agreement or other instrument to which the Debtor is a party or by which it may be bound.

D. The Debtor is not in default in the performance of any covenant or condition made in respect of any outstanding

indebtedness, indenture, material agreement or other instrument, and no holder of any such outstanding indebtedness or party to any such indenture, agreement or other instrument has given the Debtor notice of any asserted default thereunder.

E. No consent or approval of any governmental agency or commission or public or quasi-public body is necessary for the due execution and delivery of the Security Agreement, Assignment of Leases or the Note or for the validity, payment or enforceability of any thereof.

All representations and warranties shall be true on and as of the date of the purchase of the Note by the Secured Party with the same effect as though made on and as of such date.

SECTION 2.8. *Power of Attorney in respect of the Leases.* Debtor does hereby irrevocably constitute and appoint the Secured Party, its true and lawful attorney with full power of substitution, for it and in its name, place and stead, to ask, demand, collect, receive, receipt for, sue for, compound and give acquittance for any and all rents, income and other sums which are assigned under Sections 1.1 and 1.2 hereof with full power to settle, adjust or compromise any claim thereunder as fully as the Debtor could itself do, and to endorse the name of the Debtor on all commercial paper given in payment or in part payment thereof, and in its discretion to file any claim or take any other action or proceedings, either in its own name or in the name of the Debtor or otherwise, which the Secured Party may deem necessary or appropriate to protect and preserve the right, title and interest of the Secured Party in and to such rents and other sums and the security intended to be afforded hereby.

### ARTICLE THREE

#### POSSESSION, USE AND RELEASE OF PROPERTY

SECTION 3.1. *Possession of Collateral.* While the Debtor is not in default hereunder it shall be suffered and permitted to remain in full possession, enjoyment and control of the Equipment and to manage, operate, lease and use the same and each part

thereof with the rights and franchises appertaining thereto, provided always, that the possession, enjoyment, control and use of the Equipment shall at all times be subject to the observance and performance of the terms of this Security Agreement and provided further that any Lease whether existing on the date hereof or hereafter entered into shall forthwith be assigned to the Secured Party as security for the obligations of the Debtor hereunder. It is expressly understood that the use and possession of the Equipment by the Lessees under and subject to the Leases shall not constitute a violation of this Section 3.1.

SECTION 3.2. *Release of Property.* So long as no default has occurred and is continuing to the knowledge of the Secured Party, the Secured Party shall execute a release in respect of any Equipment stolen, lost, destroyed or damaged beyond repair provided that settlement monies on account thereof shall be applied as provided in Article Four hereof.

SECTION 3.3. *Protection of Purchaser.* No purchaser in good faith of property purporting to be released hereunder shall be bound to ascertain the authority of the Secured Party to execute the release, or to inquire as to any facts required by the provisions hereof for the exercise of such authority; nor shall any purchaser, in good faith, of any item or unit of the mortgaged property be under obligation to ascertain or inquire into the conditions upon which any such sale is hereby authorized.

## ARTICLE FOUR

### APPLICATION OF ASSIGNED RENTALS AND CERTAIN OTHER MONEYS RECEIVED BY THE SECURED PARTY

#### SECTION 4.1. *Proceeds.*

(a) The Debtor agrees that it will pay over to the Secured Party all moneys paid to it pursuant to a Lease as settlement for theft, loss, destruction or damage beyond repair of any Equipment and the amounts from time to time so received by the Secured Party shall be used to prepay the principal of the Note at par, provided however, that the Debtor shall

not be required to pay over such monies (and the Secured Party will pay over to Debtor any such monies that might be paid to it) if Debtor exercises its option to substitute as provided in this Section.

(b) The Debtor shall also have the right to substitute any Equipment for any Equipment destroyed, lost, stolen or damaged beyond repair, and any difference in value shall be paid over to the Secured Party for redemption as aforesaid, provided, however, that the Debtor (i) shall have executed and delivered a supplemental Security Agreement imposing a security interest upon the Equipment being substituted, and (ii) shall deliver to the Secured Party or its assignee a certificate of an officer of the Debtor stating the value of any destroyed Equipment being replaced, and the value of any Equipment being substituted therefor together with such documents, opinions of counsel and other matters and things as may be reasonably requested by the Secured Party or its assignee to impose and confirm the security interest upon the substituted Equipment.

SECTION 4.2. *Application of Assigned Rentals.* Any rentals received by the Secured Party pursuant to a Lease, whether by reason of the assignment thereof hereunder or otherwise, shall be considered a payment on the principal of the Note and reduce the outstanding principal of the Note accordingly, provided however, that the amount so received in excess of \$15,625 in the three month period immediately following the date of the Note and each three month period thereafter shall not be used to reduce the principal of the Note, but shall be paid over to the Debtor so long as Debtor is not in default hereunder.

## ARTICLE FIVE

### DEFAULTS AND OTHER PROVISIONS

SECTION 5.1. *Events of Default.* The term "Event of Default" for the purpose hereof shall mean any one or more of the following:

A. Default in the prompt payment of principal of the Note after demand therefor;

B. Default for a period of fifteen (15) days in the payment of any other amounts required to be paid hereunder;

C. Default in the due observance or performance, or breach by the Debtor of any warranty or other covenant, condition or agreement required to be observed or performed by the Debtor in the Note or this Security Agreement (other than a covenant or warranty a default in whose performance or whose breach is elsewhere in this Section 5.1 specifically dealt with), and continuance of such default or breach for a period of 30 days after notice thereof has been given to the Debtor by the Secured Party;

D. If any representation or warranty made by the Debtor to the Secured Party in writing herein or in any Assignment of Lease or in any statement or certificate furnished by the Debtor to the Secured Party pursuant to any terms of this Security Agreement or in connection with the making of any loan or loans evidenced by the Note, shall prove to be untrue in any material respect;

E. The entry of a decree or order by a court having jurisdiction in the premises adjudging the Debtor a bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Debtor under the Federal Bankruptcy Act or any other applicable Federal or State law, or appointing a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the Debtor or of any substantial part of its property, or ordering the winding up or liquidation of its affairs; and the continuance of any such decree or order unstayed and in effect for a period of 30 consecutive days;

F. The institution by the Debtor of proceedings to be adjudicated a bankrupt or insolvent, or the consent by it to the institution of bankruptcy or insolvency proceedings against it, or the filing by it of a petition or answer or consent by it to the filing of any such petition or to the appointment of a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the Debtor, or of any substantial part of its property, or the making by the Debtor of an assignment for the benefit of creditors, or the admission in writing of its inability to pay its debts generally as they become due,

STATE OF ILLINOIS }  
COUNTY OF COOK } SS

I, ..... Robert H. Hansen ....., a Notary Public in and for said County in the State aforesaid, do hereby certify that John C. Felten, Vice President of RSP Car Company, a Texas Corporation, and Paul R. Leak ~~Leonard Schanfield~~, Assistant Secretary of said corporation, personally known to me to be the same persons whose signatures are subscribed to the foregoing instrument as such Vice President and Assistant Secretary, respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said corporation for the uses and purposes therein set forth; and the said ~~Leonard Schanfield~~ Paul R. Leak then and there acknowledged that he, as custodian of the corporate seal of said corporation, did affix the corporate seal of said corporation to said instrument as his own free and voluntary act and as the free and voluntary act of said corporation for the uses and purposes therein set forth.

Given under my and and notarial seal this ..... 12 ..... day of ..... May ....., 1971.

..... Robert H. Hansen .....  
Notary Public

My commission expires:  
.....

(SEAL)

STATE OF ILLINOIS }  
COUNTY OF COOK } SS

I, Robert Shennor, a Notary Public in and for said County in the State aforesaid, do hereby certify that John C. Felten, President of United States Railway Equipment Co., an Illinois corporation, and ~~Leonard Schanfield~~ Paul K. Slack, Assistant Secretary of said corporation, personally known to be the same persons whose signatures are subscribed to the foregoing instrument as such President and Assistant Secretary, respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said corporation for the uses and purposes therein set forth; and the said Assistant Secretary then and there acknowledged that he, as custodian of the corporate seal of said corporation, did affix the corporate seal of said corporation to said instrument as his own free and voluntary act and as the free and voluntary act of said corporation for the uses and purposes therein set forth.

Given under my and and notarial seal this 12<sup>th</sup> day of May, 1971.

Robert Shennor  
Notary Public

My commission expires:

.....

(SEAL)

EXHIBIT A TO SECURITY AGREEMENT

RSP CAR COMPANY  
EQUIPMENT PROMISSORY NOTE

\$.....

FOR VALUE RECEIVED, RSP Car Company, a Texas corporation (hereinafter called the Company), hereby promises to pay to the order of United States Railway Equipment Co. (hereinafter called the Payee), the principal amount of ..... Dollars (\$.....), upon demand or in any event eight (8) years from the date hereof, without interest, in lawful money in the United States.

This Note (hereinafter called the "Note") is issued by the Company in consideration of a loan by the Payee of \$500,000. The Note upon its issuance will be secured by and subject to the terms of a Security Agreement (the "Security Agreement") dated as of April 1, 1971 between the Company and the Payee, as Secured Party, and Assignments of Lease (hereinafter called "Assignment"), each dated as of April 1, 1971, made by the Company to the Payee, acting pursuant to the Security Agreement. The Assignment and the Security Agreement relate to certain units of railroad equipment. Reference is hereby made to the Security Agreement for a description of the property assigned and mortgaged, the nature of the property assigned and mortgaged, the nature and extent of the security and the rights of the Payee as Secured Party thereunder, of the holder of the Note and of the Company in respect of such security, copies of each of which are available for inspection at the head office of the Payee.

The Note may be prepaid in part as provided in the Security Agreement.

This Note is transferable by assignment, and if assigned, the Company, upon notice of such assignment, shall deem and treat such assignee as the absolute owner hereof for the purpose of payment and for all other purposes.

IN WITNESS WHEREOF, the Company has caused this Note to be duly executed under its corporate seal.

Dated:

RSP CAR COMPANY

By .....  
*President*

ATTEST:

.....  
*Secretary*

## EXHIBIT B TO SECURITY AGREEMENT

<u>No. of Cars</u>	<u>Description</u>	<u>Lessee</u>	<u>Lease Term</u>
64	A frame flat cars (RSPX 701-764, inclusive)	Di Giorgio Corporation	3
11	A frame flat cars (RSPS 765-775, inclusive)	Di Giorgio Corporation	3
9	A frame flat cars (RSPX 776-784, inclusive)	Evans Products Company	10

## EXHIBIT C TO SECURITY AGREEMENT

**ASSIGNMENT OF LEASE AND AGREEMENT** dated as of \_\_\_\_\_, 19\_\_\_\_, by and between RSP CAR COMPANY, a Texas corporation (hereinafter called the "Company"), and UNITED STATES RAILWAY EQUIPMENT Co., an Illinois corporation, as Secured Party (hereinafter called the "Secured Party"), under Security Agreement dated as of April 1, 1971, (hereinafter called the "Security Agreement"), by and between the Company and the Secured Party.

WHEREAS, the Company and

(hereinafter called the Lessee) have entered into a Lease Agreement dated \_\_\_\_\_, 19\_\_\_\_ (hereinafter called the Lease), providing for the leasing by the Company to the Lessee of the \_\_\_\_\_ units of railroad equipment (hereinafter called Units) described in the Lease, which has been filed and recorded with the Interstate Commerce Commission and bears Recordation Number \_\_\_\_\_, an executed counterpart of the Lease being delivered to the Secured Party concurrently herewith; and

WHEREAS, this Assignment of Lease and Agreement is being made pursuant to Section 1.2 of the Security Agreement to secure the payment and performance by the Company of all obligations of the Company arising under an Equipment Promissory Note of the Company in the principal amount of \$500,000 (hereinafter called the "Note") and the Security Agreement securing the Note (all such obligations hereinafter collectively called the "Liabilities");

Now, THEREFORE, in consideration of the sum of \$10 duly paid by the Secured Party to the Company and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. As security for the payment and performance of the Liabilities, the Company hereby assigns, transfers, and sets over

unto the Secured Party all the Company's right, title and interests as lessor under the Lease, together with all rights, powers, privileges, and other benefits of the Company as lessor under the Lease, including, without limitation, the immediate right to receive and collect all rentals, profits and other sums payable to or receivable by the Company under or pursuant to the provisions of the Lease and the right to make all waivers and agreements, to give all notices, consents and releases, to take all action upon the happening of an event of default specified in the Lease, and to do any and all other things whatsoever which the Company, as lessor, is or may become entitled to do under the Lease; *provided, however*, that until an Event of Default under the Security Agreement, or any event which notice or lapse of time or both, would constitute such an Event of Default, shall occur, it is understood that the Company shall be entitled for the benefit of the Secured Party to give all notices and to take all action upon the happening of an event of default specified in the Lease provided that the Secured Party is first advised of such action proposed to be taken. In furtherance of the foregoing assignment, the Company hereby irrevocably authorizes and empowers the Secured Party in its own name, or in the name of its nominee, or in the name of the Company or as its attorney, to ask, demand, sue for, collect and receive any and all sums to which the Company is or may become entitled under the Lease, and to enforce compliance by the Lessee with all the terms and provisions thereof.

The Company will cause notice of this Assignment forthwith to be given to the Lessee (together with a copy of this Assignment) and will direct the Lessee to pay all rentals, profits and other sums payable to or receivable by the Company under or pursuant to the provisions of the Lease on and after such notice of this Assignment is given (hereinafter called Rentals) directly to the Secured Party (a copy of such notice and direction to be given to the Secured Party). If under the provisions of the Lease the Lessee is entitled to a credit in respect of the Rentals thereunder on account of mileage payments

payable to the Lessor, the lessor will furnish the Secured Party with a duplicate copy of its current rental invoice to the Lessee setting forth the amount of the credit to be applied against the Rentals payable under the Lease on or before each Rental payment date under the Lease and the net amount of Rentals payable to the Secured Party by the Lessee. The Secured Party may conclusively rely upon such duplicate invoice as to the facts stated therein and shall be under no duty or obligation whatsoever to investigate or verify the mileage payments credited against the Rentals or the Rentals payable under the Lease. The Secured Party will accept payments of Rentals made to it by the Lessee pursuant to the Lease and this Assignment and the Trustee will apply the Rentals as provided in Section 4.2 of the Security Agreement. The Secured Party hereby agrees that should it assign its interest in the Security Agreement, the Note and this Assignment in such a manner that the Rentals are paid directly to such assignee, and any balance of Rentals remaining after the amounts due and payable under the Note are paid by such assignee to the Secured Party, then such moneys shall promptly be paid over to the Company. The Secured Party hereby appoints the Company as its agent, and the Company hereby accepts such appointment, to collect and receive for the account of the Secured Party all mileage payments payable in respect of the Units, and the Company agrees to segregate and hold all such payments in trust for the account of the Secured Party. Three months from the date of this Note and on the same day of every third month thereafter, the Company, as such agent, will apply all such mileage payments as follows: *first*, to pay the principal of the Note in accordance with Section 4.2 of the Security Agreement, and the Secured Party shall credit such payment to the amounts then due and payable by the Company under the Note and the Secured Party shall endorse such payment on the Note; and, *second*, so long as, to the actual knowledge of the Secured Party, the Company is not in default under any provision of the Note or the Security Agreement, any balance

remaining may be released by the Company, as such agent, to the Company in its individual capacity.

So long as, to the actual knowledge of the Secured Party, the Company shall be in default under any provision of the Security Agreement or the Note or at the option of the Secured Party or its assignee, (i) the Secured Party shall not pay over any of the Rentals to the Company, but, during the continuance of such default, shall apply all Rentals received by the Secured Party to the payment of all amounts then or thereafter due and payable under the Note and (ii) the Company shall forthwith upon receipt thereof deposit with the Secured Party all mileage payments received in respect of the Units, which payments shall also be applied by the Secured Party in like manner as Rentals under clause (i) above.

2. The assignment made hereby is executed only as security and, therefore, the execution and delivery of this Assignment shall not subject the Secured Party to, or transfer, or pass, or in any way affect or modify the liability of the Company under the Lease, it being understood and agreed that notwithstanding such assignment or any subsequent assignment all obligations of the Company to the Lessee shall be and remain enforceable by the Lessee, its successors and assigns, against, and only against, the Company.

3. Upon the full discharge and satisfaction of the Liabilities, the assignment made hereby shall terminate, and all estate, right, title and interest of the Secured Party in and to the Lease shall revert to the Company.

Upon the terms and conditions set forth in the Security Agreement the Secured Party shall execute and deliver to the Company a release or reassignment of this Assignment as to such Units.

4. The Company warrants and covenants that (a) the execution and delivery by the Company of the Lease and this As-

signment have each been duly authorized, and the Lease and this Assignment are and will remain the valid and binding obligations of the Company in accordance with their terms; (b) the Company has not executed any other assignment of the Lease or of its right to receive all payments under the Lease and the Lease will continue to be free and clear of any and all claims, liens, agreements, security interests or other encumbrances (except this Assignment and except to the extent the Company is contesting the validity of the same in good faith by appropriate proceedings), (c) notwithstanding this Assignment, the Company will conform and comply with each and all of the covenants and conditions in the Lease set forth to be complied with by it and (d) to the knowledge of the Company, it has performed all obligations on its part to be performed under the Lease on or prior to the date hereof.

Unless the Lease is a lease specifically described in Exhibit B of the Security Agreement, the Company will, concurrently with the execution and delivery of this Assignment, deliver to the Secured Party the favorable opinion of the lessee's counsel stating with respect to the Lease the matters set forth in paragraph 20 of the leases specifically described in Exhibit B of the Security Agreement and the opinion of Messrs. Rosenthal and Schanfield, counsel for the Company, or an opinion of other counsel satisfactory to the Secured Party, to the effect that this Assignment has been duly authorized, executed and delivered by the Company and constitutes the legal, valid and binding obligation of the Company enforceable in accordance with its terms except to the extent limited by laws affecting creditors' rights generally.

5. The Company covenants and agrees with the Secured Party that in any suit, proceeding or action brought by the Secured Party under the Lease for any Rental, or to enforce any provisions of the Lease, the Company will save, indemnify and keep the Secured Party harmless from and against all expense,

STATE OF ILLINOIS }  
COUNTY OF COOK } SS

I, ..... Robert H. Hansen ....., a Notary Public in and for said County in the State aforesaid, do hereby certify that John C. Felten, Vice President of RSP Car Company, a Texas Corporation, and Paul R. Leak ~~Leonard Schanfield~~, Assistant Secretary of said corporation, personally known to me to be the same persons whose signatures are subscribed to the foregoing instrument as such Vice President and Assistant Secretary, respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said corporation for the uses and purposes therein set forth; and the said ~~Leonard Schanfield~~ Paul R. Leak then and there acknowledged that he, as custodian of the corporate seal of said corporation, did affix the corporate seal of said corporation to said instrument as his own free and voluntary act and as the free and voluntary act of said corporation for the uses and purposes therein set forth.

Given under my and and notarial seal this ..... 12 ..... day of ..... May ....., 1971.

..... Robert H. Hansen .....  
Notary Public

My commission expires:  
.....

(SEAL)

STATE OF ILLINOIS }  
COUNTY OF COOK } SS

I, Robert Shennor, a Notary Public in and for said County in the State aforesaid, do hereby certify that John C. Felten, President of United States Railway Equipment Co., an Illinois corporation, and ~~Leonard Schanfield~~ Paul K. Slack, Assistant Secretary of said corporation, personally known to be the same persons whose signatures are subscribed to the foregoing instrument as such President and Assistant Secretary, respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said corporation for the uses and purposes therein set forth; and the said Assistant Secretary then and there acknowledged that he, as custodian of the corporate seal of said corporation, did affix the corporate seal of said corporation to said instrument as his own free and voluntary act and as the free and voluntary act of said corporation for the uses and purposes therein set forth.

Given under my and and notarial seal this 12<sup>th</sup> day of May, 1971.

Robert Shennor  
Notary Public

My commission expires:

.....

(SEAL)

EXHIBIT A TO SECURITY AGREEMENT

RSP CAR COMPANY  
EQUIPMENT PROMISSORY NOTE

\$.....

FOR VALUE RECEIVED, RSP Car Company, a Texas corporation (hereinafter called the Company), hereby promises to pay to the order of United States Railway Equipment Co. (hereinafter called the Payee), the principal amount of ..... Dollars (\$.....), upon demand or in any event eight (8) years from the date hereof, without interest, in lawful money in the United States.

This Note (hereinafter called the "Note") is issued by the Company in consideration of a loan by the Payee of \$500,000. The Note upon its issuance will be secured by and subject to the terms of a Security Agreement (the "Security Agreement") dated as of April 1, 1971 between the Company and the Payee, as Secured Party, and Assignments of Lease (hereinafter called "Assignment"), each dated as of April 1, 1971, made by the Company to the Payee, acting pursuant to the Security Agreement. The Assignment and the Security Agreement relate to certain units of railroad equipment. Reference is hereby made to the Security Agreement for a description of the property assigned and mortgaged, the nature of the property assigned and mortgaged, the nature and extent of the security and the rights of the Payee as Secured Party thereunder, of the holder of the Note and of the Company in respect of such security, copies of each of which are available for inspection at the head office of the Payee.

The Note may be prepaid in part as provided in the Security Agreement.

This Note is transferable by assignment, and if assigned, the Company, upon notice of such assignment, shall deem and treat such assignee as the absolute owner hereof for the purpose of payment and for all other purposes.

IN WITNESS WHEREOF, the Company has caused this Note to be duly executed under its corporate seal.

Dated:

RSP CAR COMPANY

By .....  
*President*

ATTEST:

.....  
*Secretary*

## EXHIBIT B TO SECURITY AGREEMENT

<u>No. of Cars</u>	<u>Description</u>	<u>Lessee</u>	<u>Lease Term</u>
64	A frame flat cars (RSPX 701-764, inclusive)	Di Giorgio Corporation	3
11	A frame flat cars (RSPS 765-775, inclusive)	Di Giorgio Corporation	3
9	A frame flat cars (RSPX 776-784, inclusive)	Evans Products Company	10

## EXHIBIT C TO SECURITY AGREEMENT

**ASSIGNMENT OF LEASE AND AGREEMENT** dated as of \_\_\_\_\_, 19\_\_\_\_, by and between RSP CAR COMPANY, a Texas corporation (hereinafter called the "Company"), and UNITED STATES RAILWAY EQUIPMENT Co., an Illinois corporation, as Secured Party (hereinafter called the "Secured Party"), under Security Agreement dated as of April 1, 1971, (hereinafter called the "Security Agreement"), by and between the Company and the Secured Party.

WHEREAS, the Company and

(hereinafter called the Lessee) have entered into a Lease Agreement dated \_\_\_\_\_, 19\_\_\_\_ (hereinafter called the Lease), providing for the leasing by the Company to the Lessee of the \_\_\_\_\_ units of railroad equipment (hereinafter called Units) described in the Lease, which has been filed and recorded with the Interstate Commerce Commission and bears Recordation Number \_\_\_\_\_, an executed counterpart of the Lease being delivered to the Secured Party concurrently herewith; and

WHEREAS, this Assignment of Lease and Agreement is being made pursuant to Section 1.2 of the Security Agreement to secure the payment and performance by the Company of all obligations of the Company arising under an Equipment Promissory Note of the Company in the principal amount of \$500,000 (hereinafter called the "Note") and the Security Agreement securing the Note (all such obligations hereinafter collectively called the "Liabilities");

Now, THEREFORE, in consideration of the sum of \$10 duly paid by the Secured Party to the Company and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. As security for the payment and performance of the Liabilities, the Company hereby assigns, transfers, and sets over

unto the Secured Party all the Company's right, title and interests as lessor under the Lease, together with all rights, powers, privileges, and other benefits of the Company as lessor under the Lease, including, without limitation, the immediate right to receive and collect all rentals, profits and other sums payable to or receivable by the Company under or pursuant to the provisions of the Lease and the right to make all waivers and agreements, to give all notices, consents and releases, to take all action upon the happening of an event of default specified in the Lease, and to do any and all other things whatsoever which the Company, as lessor, is or may become entitled to do under the Lease; *provided, however*, that until an Event of Default under the Security Agreement, or any event which notice or lapse of time or both, would constitute such an Event of Default, shall occur, it is understood that the Company shall be entitled for the benefit of the Secured Party to give all notices and to take all action upon the happening of an event of default specified in the Lease provided that the Secured Party is first advised of such action proposed to be taken. In furtherance of the foregoing assignment, the Company hereby irrevocably authorizes and empowers the Secured Party in its own name, or in the name of its nominee, or in the name of the Company or as its attorney, to ask, demand, sue for, collect and receive any and all sums to which the Company is or may become entitled under the Lease, and to enforce compliance by the Lessee with all the terms and provisions thereof.

The Company will cause notice of this Assignment forthwith to be given to the Lessee (together with a copy of this Assignment) and will direct the Lessee to pay all rentals, profits and other sums payable to or receivable by the Company under or pursuant to the provisions of the Lease on and after such notice of this Assignment is given (hereinafter called Rentals) directly to the Secured Party (a copy of such notice and direction to be given to the Secured Party). If under the provisions of the Lease the Lessee is entitled to a credit in respect of the Rentals thereunder on account of mileage payments

payable to the Lessor, the lessor will furnish the Secured Party with a duplicate copy of its current rental invoice to the Lessee setting forth the amount of the credit to be applied against the Rentals payable under the Lease on or before each Rental payment date under the Lease and the net amount of Rentals payable to the Secured Party by the Lessee. The Secured Party may conclusively rely upon such duplicate invoice as to the facts stated therein and shall be under no duty or obligation whatsoever to investigate or verify the mileage payments credited against the Rentals or the Rentals payable under the Lease. The Secured Party will accept payments of Rentals made to it by the Lessee pursuant to the Lease and this Assignment and the Trustee will apply the Rentals as provided in Section 4.2 of the Security Agreement. The Secured Party hereby agrees that should it assign its interest in the Security Agreement, the Note and this Assignment in such a manner that the Rentals are paid directly to such assignee, and any balance of Rentals remaining after the amounts due and payable under the Note are paid by such assignee to the Secured Party, then such moneys shall promptly be paid over to the Company. The Secured Party hereby appoints the Company as its agent, and the Company hereby accepts such appointment, to collect and receive for the account of the Secured Party all mileage payments payable in respect of the Units, and the Company agrees to segregate and hold all such payments in trust for the account of the Secured Party. Three months from the date of this Note and on the same day of every third month thereafter, the Company, as such agent, will apply all such mileage payments as follows: *first*, to pay the principal of the Note in accordance with Section 4.2 of the Security Agreement, and the Secured Party shall credit such payment to the amounts then due and payable by the Company under the Note and the Secured Party shall endorse such payment on the Note; and, *second*, so long as, to the actual knowledge of the Secured Party, the Company is not in default under any provision of the Note or the Security Agreement, any balance

remaining may be released by the Company, as such agent, to the Company in its individual capacity.

So long as, to the actual knowledge of the Secured Party, the Company shall be in default under any provision of the Security Agreement or the Note or at the option of the Secured Party or its assignee, (i) the Secured Party shall not pay over any of the Rentals to the Company, but, during the continuance of such default, shall apply all Rentals received by the Secured Party to the payment of all amounts then or thereafter due and payable under the Note and (ii) the Company shall forthwith upon receipt thereof deposit with the Secured Party all mileage payments received in respect of the Units, which payments shall also be applied by the Secured Party in like manner as Rentals under clause (i) above.

2. The assignment made hereby is executed only as security and, therefore, the execution and delivery of this Assignment shall not subject the Secured Party to, or transfer, or pass, or in any way affect or modify the liability of the Company under the Lease, it being understood and agreed that notwithstanding such assignment or any subsequent assignment all obligations of the Company to the Lessee shall be and remain enforceable by the Lessee, its successors and assigns, against, and only against, the Company.

3. Upon the full discharge and satisfaction of the Liabilities, the assignment made hereby shall terminate, and all estate, right, title and interest of the Secured Party in and to the Lease shall revert to the Company.

Upon the terms and conditions set forth in the Security Agreement the Secured Party shall execute and deliver to the Company a release or reassignment of this Assignment as to such Units.

4. The Company warrants and covenants that (a) the execution and delivery by the Company of the Lease and this As-

signment have each been duly authorized, and the Lease and this Assignment are and will remain the valid and binding obligations of the Company in accordance with their terms; (b) the Company has not executed any other assignment of the Lease or of its right to receive all payments under the Lease and the Lease will continue to be free and clear of any and all claims, liens, agreements, security interests or other encumbrances (except this Assignment and except to the extent the Company is contesting the validity of the same in good faith by appropriate proceedings), (c) notwithstanding this Assignment, the Company will conform and comply with each and all of the covenants and conditions in the Lease set forth to be complied with by it and (d) to the knowledge of the Company, it has performed all obligations on its part to be performed under the Lease on or prior to the date hereof.

Unless the Lease is a lease specifically described in Exhibit B of the Security Agreement, the Company will, concurrently with the execution and delivery of this Assignment, deliver to the Secured Party the favorable opinion of the lessee's counsel stating with respect to the Lease the matters set forth in paragraph 20 of the leases specifically described in Exhibit B of the Security Agreement and the opinion of Messrs. Rosenthal and Schanfield, counsel for the Company, or an opinion of other counsel satisfactory to the Secured Party, to the effect that this Assignment has been duly authorized, executed and delivered by the Company and constitutes the legal, valid and binding obligation of the Company enforceable in accordance with its terms except to the extent limited by laws affecting creditors' rights generally.

5. The Company covenants and agrees with the Secured Party that in any suit, proceeding or action brought by the Secured Party under the Lease for any Rental, or to enforce any provisions of the Lease, the Company will save, indemnify and keep the Secured Party harmless from and against all expense,

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

6. The Company will from time to time execute all such financing statement and supplemental instruments as the Secured Party may from time to time reasonably request in order to confirm or further assure the assignment made hereby and the provisions hereof.

7. The Secured Party may assign all or any of its rights under the Lease, including the right to receive any payments due or to become due to it from the Lessee thereunder. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Secured Party hereunder.

8. Notwithstanding anything to the contrary contained in Section 1 of this Assignment, the Company agrees that it will not, without the prior written consent of the Secured Party, enter into any agreement amending, modifying or terminating the Lease and that any amendment, modification or termination thereof without such consent shall be void.

9. This Assignment shall be governed by the laws of the State of Illinois, but the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

IN WITNESS, WHEREOF the Company and the Secured Party have caused this instrument to be signed in their respective names by their respective officers thereunto duly authorized, as of the date first above written.

RSP CAR COMPANY

by .....

Attest:

.....

[CORPORATE SEAL]

UNITED STATES RAILWAY EQUIPMENT Co.

by .....

Attest:

.....

STATE OF ILLINOIS }  
COUNTY OF COOK } SS

I, ....., a Notary Public in and for said County in the State aforesaid, do hereby certify that ....., of RSP Car Company, a Texas corporation, and ....., of said corporation, personally known to me to be the same persons whose signatures are subscribed to the foregoing instrument as such ..... and ....., respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said corporation for the uses and purposes therein set forth; and the said ..... then and there acknowledged that he, as custodian of the corporate seal of said corporation, did affix the corporate seal of said corporation to said instrument as his own free and voluntary act and as the free and voluntary act of said corporation for the uses and purposes therein set forth.

Given under my hand and notarial seal this ..... day of ....., 1971.

.....  
*Notary Public*

My commission expires:

.....

(SEAL)

STATE OF ILLINOIS }  
COUNTY OF COOK } SS

I, ....., a Notary Public in and for said County in the State aforesaid, do hereby certify that ....., .....of United States Railway Equipment Co., an Illinois corporation, and ..... of said corporation, personally known to me to be the same persons whose signatures are subscribed to the foregoing instrument as such ..... and ....., respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said corporation for the uses and purposes therein set forth; and the said ..... then and there acknowledged that he, as custodian of the corporate seal of said corporation, did affix the corporate seal of said corporation to said instrument as his own free and voluntary act and as the free and voluntary act of said corporation for the uses and purposes therein set forth.

Given under my hand and notarial seal this ..... day of ....., 1971.

.....  
*Notary Public*

My commission expires:

.....

(SEAL)