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INTESTATE COMMERCE COMMISSION

NORTH AMERICAN CAR CORPORATION
AND
NORTH AMERICAN CAR (CANADA) LIMITED
TO
HARRIS TRUST AND SAVINGS BANK,
TRUSTEE

**Indenture of Mortgage
and
Deed of Trust**

Dated as of July 1, 1971

North American Car Corporation
Equipment Bonds, First 1971 Series

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INDENTURE OF MORTGAGE AND DEED OF TRUST, dated as of July 1, 1971, among NORTH AMERICAN CAR CORPORATION, a corporation duly organized and existing under and by virtue of the laws of the State of Delaware (herein called the "Company"), party of the first part, NORTH AMERICAN CAR (CANADA) LIMITED, a corporation duly organized and existing under and by virtue of the laws of the Province of Ontario, Canada (herein called the "Guarantor"), party of the second part, and HARRIS TRUST AND SAVINGS BANK, a corporation duly organized and existing under and by virtue of the laws of the State of Illinois (herein called the "Trustee"), party of the third part.

WHEREAS, the Company is authorized by law and deems it necessary to borrow money for its proper corporate purposes and to issue its equipment bonds therefor, and to mortgage, convey, assign and pledge its property hereinafter described to secure the payment of said equipment bonds and to that end has duly authorized the issue hereunder of its equipment bonds limited to the aggregate principal amount of Twenty-Five Million Dollars (\$25,000,000), to be known and designated as its "Equipment Bonds, First 1971 Series" (herein called the "Bonds");

WHEREAS, the Guarantor is authorized by law and desires to make the guarantee provided for herein (herein called the "Guarantee") in consideration for the Company making available to the Guarantor such funds as it may require for its general corporate purposes up to and including the maximum amount of the Guarantee hereunder, and to that end has duly authorized the execution of this Indenture; and

WHEREAS, the Bonds maturing serially are to be substantially in the following form:

[FORM OF SERIAL BOND]

NORTH AMERICAN CAR CORPORATION

EQUIPMENT BONDS, FIRST 1971 SERIES

Due July 1, 197

HARRIS TRUST AND SAVINGS BANK,
Trustee

\$.....

No. S

NORTH AMERICAN CAR CORPORATION, a Delaware corporation (herein called the "Company"), for value received, hereby promises to pay to , or registered assigns, on July 1, 197 ,

the principal sum of _____ Dollars in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public or private debts, and to pay interest thereon in like coin or currency from the date hereof until the principal hereof shall have become due and payable, whether at the stated maturity, by declaration or otherwise, at the Prime Rate [____ % in excess of the Prime Rate] (computed on the basis of a 30-day month—360-day year), payable semi-annually on the first days of January and July in each year commencing with the January 1 or July 1 next succeeding the date hereof, and to pay interest on any overdue principal and (to the extent that payment of such interest is enforceable under applicable law) on any overdue installment of interest at the rate of 10% per annum if payment of interest at such rate is enforceable under applicable law, and otherwise at the rate above provided. For purposes of the preceding sentence "Prime Rate" shall mean the rate per annum extended from time to time by Continental Illinois National Bank and Trust Company of Chicago to prime commercial borrowers and shall be determined for the period ending on September 30, 1971 as of July 1, 1971, and for each calendar quarter thereafter as of the first business day of such calendar quarter. The principal hereof and interest hereon are payable at the principal corporate trust office of Harris Trust and Savings Bank, Trustee under the indenture mentioned below, or its successor as trustee, in the City of Chicago, County of Cook, State of Illinois.

This Bond is one of a duly authorized issue of Bonds of the Company, designated as its "Equipment Bonds, First 1971 Series" (herein called the "Bonds"), limited to \$25,000,000 aggregate principal amount and consisting of not to exceed \$5,000,000 aggregate principal amount of Bonds maturing serially in the principal amount of \$1,000,000 on July 1 in each of the years 1972 to 1976, both inclusive (herein called the "Serial Bonds"), and not to exceed \$20,000,000 aggregate principal amount of Bonds maturing on July 1, 1986, all issued and to be issued under and equally secured by an indenture of mortgage and deed of trust dated as of July 1, 1971 (said indenture of mortgage and deed of trust, together with all indentures supplemental thereto, herein called the "Indenture") from the Company and North American Car (Canada) Limited (herein called the "Guarantor") to Harris Trust and Savings Bank, Trustee (herein, together with its successors, called the "Trustee"), to which Indenture reference is hereby made for a description of the properties mortgaged, conveyed, pledged and assigned, the nature and extent of the security, the rights and limitations of said

rights of the registered owners of the Bonds, the rights, powers, duties and immunities of the Trustee, the rights and obligations of the Company and the Guarantor, and the terms and conditions upon which the Bonds are, and are to be, issued and secured. This Bond is one of the Serial Bonds.

The Indenture provides that the Bonds shall be redeemed upon the happening of certain events, on such dates and in such amounts as more fully provided for therein, by the giving of notice in the manner therein provided, upon payment of the principal amount thereof to be redeemed together with accrued interest thereon to the date fixed for redemption. The Bonds shall not be subject to redemption or prepayment at the option of the Company.

To the extent permitted by, and as provided in, the Indenture, modifications or alterations of the Indenture and of the rights and obligations of the Company and the Guarantor and of the holders of the Bonds may be made with the consent of the Company and the Guarantor, upon the written consent of the holders of not less than $66\frac{2}{3}\%$ in principal amount of the Bonds then outstanding; provided, however, without the consent of the holder hereof no such modification or alteration shall be made which will permit the extension of the time or times of payment of the principal of, or the interest on, this Bond or a reduction in the rate of interest hereon or otherwise affect the amount or terms of payment of the principal of, or the interest on, this Bond or permit the creation of any lien equal or prior to the lien of the Indenture with respect to any of the trust estate or deprive the holder hereof of the benefit of the lien on the trust estate or modify or affect in any manner adverse to the holders of the Bonds the terms and conditions of the obligations of the Guarantor or reduce the aforesaid percentage of the principal amount of the Bonds, the holders of which are required to consent to modification or alteration of the Indenture or to effectuate certain waivers as provided in the Indenture.

In case an event of default, as defined in the Indenture, shall occur, the principal of all the Bonds at any such time outstanding under the Indenture may be declared or may become due and payable upon the conditions and in the manner and with the effect provided in the Indenture. The Indenture provides that such declaration may in certain events be rescinded by the holders of $66\frac{2}{3}\%$ in principal amount of the Bonds at the time outstanding.

This Bond is transferable by the registered owner hereof, in person or by duly authorized attorney, at the principal corporate trust office of the Trustee, in the City of Chicago, County of Cook, State of Illinois, on books to be kept for that purpose at said office, upon surrender and cancellation of this Bond and upon presentation of a duly executed written instrument of transfer, and thereupon a new Serial Bond or Bonds, of the same maturity, the same aggregate principal amount and in authorized denominations, will be issued to the transferee or transferees in exchange herefor; and this Bond, with or without others of like form, may in like manner be exchanged for one or more new Serial Bonds of other authorized denominations but of the same maturity and of the same aggregate principal amount; all subject to the terms and conditions set forth in the Indenture but without expense to the transferor, the transferee or exchanging holder.

The Company, the Trustee and any paying agent may deem and treat the person in whose name this Bond is registered as the absolute owner of this Bond (whether or not this Bond shall be overdue), for the purpose of receiving payment of or on account of the principal hereof and interest due hereon, and for all other purposes, and neither the Company, the Trustee nor any paying agent shall be affected by any notice to the contrary.

No recourse shall be had for the payment of the principal of, or the interest on, this Bond, or for any claim based hereon or on the Indenture or the Guarantee contained therein, against any incorporator, or against any stockholder, director or officer, past, present, or future, of the Company or the Guarantor, or of any predecessor or successor corporation, as such, either directly or through the Company or the Guarantor or any such predecessor or successor corporation, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitution, statute or otherwise, of incorporators, stockholders, directors or officers, as such, being released by every registered owner hereof by the acceptance of this Bond and as part of the consideration for the issue hereof, and being likewise released by the terms of the Indenture.

This Bond shall not be entitled to any benefit under the Indenture or become valid or obligatory for any purpose until Harris Trust and Savings Bank, the Trustee under the Indenture, or a successor Trustee thereto under the Indenture, shall have signed the form of certificate hereon.

IN WITNESS WHEREOF, North American Car Corporation has caused this Bond to be executed in its name by the manual or facsimile signature of its President or a Vice President, and its corporate seal to be hereto affixed (or a facsimile thereof to be imprinted hereon) and attested by the manual or facsimile signature of its Secretary or an Assistant Secretary as of the day of , 19 .

NORTH AMERICAN CAR CORPORATION

By
President

Attest:

.....
Secretary

WHEREAS, the Bonds maturing on July 1, 1986 are to be substantially in the following form:

[FORM OF SINKING FUND BOND]

NORTH AMERICAN CAR CORPORATION

9¼ % EQUIPMENT BONDS, FIRST 1971 SERIES

Due July 1, 1986

HARRIS TRUST AND SAVINGS BANK,
Trustee

\$.....

No. SF

NORTH AMERICAN CAR CORPORATION, a Delaware corporation (herein called the "Company"), for value received, hereby promises to pay to , or registered assigns, on July 1, 1986, the principal sum of Dollars in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public or private debts, and to pay interest thereon in

like coin or currency from the date hereof until the principal hereof shall have become due and payable, whether at the stated maturity, pursuant to the sinking fund, by declaration or otherwise, at the rate of 9¼% per annum (computed on the basis of a 30 day-month—360 day-year), payable semi-annually on the first days of January and July in each year commencing with the January 1 or July 1 next succeeding the date hereof, and to pay interest on any overdue principal and (to the extent that payment of such interest is enforceable under applicable law) on any overdue installment of interest at the rate of 10% per annum if payment of interest at such rate is enforceable under applicable law, and otherwise at the rate above provided. The principal hereof and interest hereon are payable at the principal corporate trust office of Harris Trust and Savings Bank, Trustee under the indenture mentioned below, or its successor as trustee, in the City of Chicago, County of Cook, State of Illinois.

This Bond is one of a duly authorized issue of Bonds of the Company, designated as its Equipment Bonds, First 1971 Series (herein called the "Bonds"), limited to \$25,000,000 aggregate principal amount and consisting of not to exceed \$5,000,000 aggregate principal amount of Bonds maturing serially in the principal amount of \$1,000,000 on July 1 in each of the years 1972 to 1976, both inclusive, and not to exceed \$20,000,000 aggregate principal amount of Bonds maturing on July 1, 1986 (herein called the "Sinking Fund Bonds"), all issued and to be issued under and equally secured by an indenture of mortgage and deed of trust dated as of July 1, 1971 (said indenture of mortgage and deed of trust, together with all indentures supplemental thereto, herein called the "Indenture") from the Company and North American Car (Canada) Limited (herein called the "Guarantor") to Harris Trust and Savings Bank, Trustee (herein, together with its successors, called the "Trustee"), to which Indenture reference is hereby made for a description of the properties mortgaged, conveyed, pledged and assigned, the nature and extent of the security, the rights and limitations of said rights of the registered owners of the Bonds, the rights, powers, duties and immunities of the Trustee, the rights and obligations of the Company and the Guarantor, and the terms and conditions upon which the Bonds are, and are to be, issued and secured. This Bond is one of the Sinking Fund Bonds.

The Indenture contains provisions for a sinking fund for the redemption of Sinking Fund Bonds, and the Sinking Fund Bonds are subject to pro rata redemption for the sinking fund on July 1 of each year from and including

July 1, 1972 to and including July 1, 1985, upon payment of the principal amount of Sinking Fund Bonds to be redeemed together with accrued interest thereon to the date fixed for redemption, all as provided in the Indenture. The Indenture further provides that the Bonds shall be redeemed upon the happening of certain events, on such dates and in such amounts as more fully provided for therein, by the giving of notice in the manner therein provided, upon payment of the principal amount thereof to be redeemed together with accrued interest thereon to the date fixed for redemption. The Bonds shall not be subject to redemption or prepayment at the option of the Company.

To the extent permitted by, and as provided in, the Indenture, modifications or alterations of the Indenture and of the rights and obligations of the Company, the Guarantor and of the holders of the Bonds may be made with the consent of the Company and the Guarantor, upon the written consent of the holders of not less than 66 $\frac{2}{3}$ % in principal amount of the Bonds then outstanding; provided, however, without the consent of the holder hereof no such modification or alteration shall be made which will permit the extension of the time or times of payment of the principal of, or the interest on, this Bond or a reduction in the rate of interest hereon or otherwise affect the amount or terms of payment of the principal of, or the interest on, this Bond or affect the sinking fund obligations of the Company or permit the creation of any lien equal or prior to the lien of the Indenture with respect to any of the trust estate or deprive the holder hereof of the benefit of the lien on the trust estate or modify or affect in any manner adverse to the holders of the Bonds the terms and conditions of the obligations of the Guarantor or reduce the aforesaid percentage of the principal amount of the Bonds, the holders of which are required to consent to modification or alteration of the Indenture or to effectuate certain waivers as provided in the Indenture.

In case an event of default, as defined in the Indenture, shall occur, the principal of all the Bonds at any such time outstanding under the Indenture may be declared or may become due and payable upon the conditions and in the manner and with the effect provided in the Indenture. The Indenture provides that such declaration may in certain events be rescinded by the holders of 66 $\frac{2}{3}$ % in principal amount of the Bonds at the time outstanding.

This Bond is transferable by the registered owner hereof, in person, or by duly authorized attorney, at the principal corporate trust office of the Trustee, in the City of Chicago, County of Cook, State of Illinois, on books

to be kept for that purpose at said office, upon surrender and cancellation of this Bond and upon presentation of a duly executed written instrument of transfer, and thereupon a new Sinking Fund Bond or Bonds of the same aggregate principal amount and in authorized denominations, will be issued to the transferee or transferees in exchange herefor; and this Bond, with or without others of like form, may in like manner be exchanged for one or more new Sinking Fund Bonds of other authorized denominations but of the same aggregate principal amount; all subject to the terms and conditions set forth in the Indenture but without expense to the transferor, transferee or exchanging holder.

The Company, the Trustee and any paying agent may deem and treat the person in whose name this Bond is registered as the absolute owner of this Bond (whether or not this Bond shall be overdue), for the purpose of receiving payment of or on account of the principal hereof and interest due hereon, and for all other purposes, and neither the Company, the Trustee nor any paying agent shall be affected by any notice to the contrary.

No recourse shall be had for the payment of the principal of, or the interest on, this Bond, or for any claim based hereon or on the Indenture or the Guarantee contained therein, against any incorporator, or against any stockholder, director or officer, past, present, or future, of the Company or the Guarantor, or of any predecessor or successor corporation, as such, either directly or through the Company or the Guarantor or any such predecessor or successor corporation, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitution, statute or otherwise, of incorporators, stockholders, directors or officers, as such, being released by every registered owner hereof by the acceptance of this Bond and as part of the consideration for the issue hereof, and being likewise released by the terms of the Indenture.

This Bond shall not be entitled to any benefit under the Indenture or become valid or obligatory for any purpose until Harris Trust and Savings Bank, the Trustee under the Indenture, or a successor Trustee thereto under the Indenture, shall have signed the form of certificate hereon.

IN WITNESS WHEREOF, North American Car Corporation has caused this Bond to be executed in its name by the manual or facsimile signature of its President or a Vice President, and its corporate seal to be hereto affixed (or a facsimile thereof to be imprinted hereon) and attested by the

manual or facsimile signature of its Secretary or an Assistant Secretary as of the day of , 19 .

NORTH AMERICAN CAR CORPORATION

By

Attest:

President

.....

Secretary

WHEREAS, the form of the Trustee's certificate of authentication to be endorsed on all Bonds shall be substantially as follows:

[FORM OF TRUSTEE'S CERTIFICATE]

This Bond is one of the Bonds described in the within-mentioned Indenture.

HARRIS TRUST AND SAVINGS BANK,
as Trustee

By

Authorized Officer

WHEREAS, all the requirements of law and of the certificate of incorporation and by-laws of the Company have been fully complied with and all other acts and things necessary to make the Bonds, when executed by the Company, authenticated and delivered by the Trustee and duly issued, the valid and legally binding obligations of the Company, and to constitute this Indenture a valid and legally binding instrument for the security of the Bonds, have been done and performed; and

WHEREAS, all the requirements of law and of the charter and by-laws of the Guarantor have been fully complied with and all other acts and things necessary to make the Guarantee contained in this Indenture a valid and legally binding instrument for the security of the Guarantee have been done and performed;

Now, THEREFORE, THIS INDENTURE WITNESSETH, that in order to declare the terms and conditions upon and subject to which the Bonds are and are to be issued and received, and for and in consideration of the premises and of the mutual covenants herein contained and of the purchase and acceptance of the Bonds by the holders thereof, and of the sum of One Dollar (\$1) duly paid to the Company and the Guarantor, respectively, by the Trustee at or before the ensembling and delivery hereof, and for other valuable considerations, the receipt whereof is hereby acknowledged, the Company and the Guarantor, for the equal and proportionate benefit and protection, except as in this Indenture otherwise expressly provided, of the holders of the Bonds when delivered as herein provided, have executed and delivered this Indenture; the Company has granted, bargained, sold, aliened, remised, released, conveyed, confirmed, warranted, assigned, ceded, charged, mortgaged, pledged, hypothecated, transferred, delivered and set over, and by these presents does grant, bargain, sell, alien, remise, release, convey, confirm, warrant, assign, cede, charge, mortgage, pledge, hypothecate, transfer, deliver and set over unto the Trustee, as herein provided, and to its successors in the trust and its assigns forever, and has granted and does hereby grant to the Trustee, such successors and assigns a security interest in, all the right, title and interest of the Company in and to any and all of the following described property:

FIRST

A. The following described railroad cars:

<u>Number of Cars</u>	<u>Serial Number and Description of Cars</u>	<u>Depreciated Cost</u>
58	Class RB, 70-ton, 50 foot refrigerator cars. Serial numbers 43,074 to 43,106 both inclusive 43,120 to 43,144 both inclusive	\$ 1,337,011.17
75	Class LU, 70-ton, 50 foot All door cars. Serial numbers 4,175 to 4,199 both inclusive 4,351 to 4,400 both inclusive	1,733,171.56
10	Class LU, 100-ton, 50 foot All door cars. Serial numbers 4,401 to 4,410 both inclusive	271,963.39

<u>Number of Cars</u>	<u>Serial Number and Description of Cars</u>	<u>Depreciated Cost</u>
543	Class LO, 100-ton, 4,427 cubic foot capacity covered hopper cars. Serial numbers 47,600 to 48,142 both inclusive	\$ 8,482,263.58
2	Class LO, 100-ton, 4,740 cubic foot capacity covered hopper cars. Serial numbers 47,398 47,399	32,900.00
124	Class 111A100W1, 100-ton, 16,000 gallon capacity tank cars. Serial numbers 8,328 to 8,377 both inclusive 16,210 to 16,283 both inclusive	2,331,835.43
224	Class 111A100W1, 100-ton, 20,000 gallon capacity tank cars. Serial numbers 23,473 to 23,689 both inclusive 23,700 to 23,706 both inclusive	3,808,748.48
1	Class 111A100W6, 100-ton, 20,000 gallon capacity tank car. Serial number 28,250	39,099.17
1	Class 111A100W6, 100-ton, 21,000 gallon capacity tank car. Serial number 28,200	53,106.00
1	Class 111A100W1, 100-ton, 22,000 gallon capacity tank car. Serial number 23,008	23,925.65
15	Class 111A100W1, 100-ton, 30,000 gallon capacity tank cars. Serial numbers 29,975 to 29,983 both inclusive 29,986 to 29,987 both inclusive 29,989 to 29,990 both inclusive 29,993 to 29,994 both inclusive	265,837.62
5	Class 111A100W1, 125-ton, 30,000 gallon capacity tank cars. Serial numbers 29,984 29,985 29,988 29,991 29,992	109,731.22
10	Class 111A100W1, 125-ton, 31,000 gallon capacity tank cars. Serial numbers 29,026 to 29,035 both inclusive	218,101.22
275	Class 112A340W, 100-ton, 34,000 gallon capacity tank cars. Serial numbers 34,559 to 34,619 both inclusive 34,704 to 34,724 both inclusive 34,739 to 34,861 both inclusive 37,500 to 37,569 both inclusive	5,941,474.00
		<u>\$24,649,168.49</u>

; subject, however, to the rights of lessees and purchase optionees under the leases and subleases listed in Schedule I annexed hereto.

B. All additional property of any kind or description, including cash, which may from time to time on or after the date of this Indenture be delivered or by writing of any kind be conveyed, mortgaged, pledged, assigned or transferred to the Trustee by the Company as expressly permitted by the terms of this Indenture and accepted by the Trustee, to be held as part of the trust estate; and the Trustee is hereby authorized to accept and receive any such property and any such conveyance, mortgage, pledge, assignment and transfer, as and for additional security hereunder, and to hold and control any and all such property subject to and in accordance with the terms and provisions upon which such conveyance, mortgage, pledge, assignment or transfer shall be made.

C. All property, whether now owned by the Company or hereafter acquired, conveyed, mortgaged, pledged, assigned or transferred to the Trustee in replacement of or substitution for any of the property described or referred to in Granting Clauses A and B of this Subdivision First.

D. All property, whether now owned by the Company or hereafter acquired, which may be at any time installed in, attached to or incorporated in any of the properties described or referred to in Granting Clauses A, B and C of this Subdivision First so long as the same shall be so installed, attached or incorporated therein or thereto or shall be appurtenant thereto.

E. All tolls, rents, revenues, issues, income, insurance proceeds, products and profits, and all the estate, right, title, interest and claims whatsoever, at law as well as in equity, which the Company now has or now possesses or to which the Company may hereafter become legally or equitably entitled, in or to the property subjected or required to be subjected to the lien of the Indenture;

and, as security for the Guarantor's obligations under the Guarantee, the Guarantor has granted, bargained, sold, aliened, remised, released, conveyed, confirmed, warranted, assigned, ceded, charged, mortgaged, pledged, hypothecated, transferred, delivered and set over, and by these presents does

grant, bargain, sell, alien, remise, release, convey, confirm, warrant, assign, cede, charge, mortgage, pledge, hypothecate, transfer, deliver and set over unto the Trustee as herein provided, and to its successors in the trust and its assigns forever, and has granted and does hereby grant to the Trustee, such successors and assigns a security interest in, all the right, title and interest of the Guarantor in and to any and all of the following described property:

SECOND

A. The demand equipment debenture of the Guarantor in the principal amount of \$3,250,000 (herein called the "Debenture"), issued under and pursuant to the Deed of Trust and Mortgage between the Guarantor and Montreal Trust Company, trustee, dated as of July 1, 1971 (herein called the "Deed of Trust"), which has been registered in the name of the Trustee or its nominee and physically delivered in pledge to the Trustee hereunder.

B. All additional property of any kind or description, including cash, which may from time to time on or after the date of this Indenture be delivered or by writing of any kind be conveyed, mortgaged, pledged, assigned or transferred to the Trustee by the Guarantor as expressly permitted by the terms of this Indenture and accepted by the Trustee, to be held as part of the trust estate; and the Trustee is hereby authorized to accept and receive any such property and any such conveyance, mortgage, pledge, assignment and transfer, as and for additional security for the obligations of the Guarantor hereunder, and to hold and control any and all such property subject to and in accordance with the terms and provisions upon which such conveyance, mortgage, pledge, assignment or transfer shall be made.

C. All tolls, rents, revenues, issues, income, insurance proceeds, products and profits, and all the estate, right, title, interest and claims whatsoever at law as well as equity, which the Guarantor now has or now possesses or to which the Guarantor may hereafter become legally or equitably entitled in or to the property subjected or required to be subjected to the lien of the Indenture.

TO HAVE AND TO HOLD all and singular the above property, whether now owned or hereafter acquired, unto the Trustee, and its successors in the trust, and its assigns forever;

SUBJECT, HOWEVER, to permitted liens, the Company hereby representing that the restrictions, exceptions, reservations, limitations, interests and other matters, set forth immediately following the specific descriptions of the property in Granting Clause A of Subdivision First above constitute permitted liens;

BUT IN TRUST, NEVERTHELESS, with power of sale, for the equal and proportionate benefit and security of the holders of all Bonds authenticated and delivered hereunder pursuant to the provisions hereof, and for the enforcement of the payment of the Bonds when payable and the performance of and compliance with the covenants and conditions of this Indenture, without any preference, distinction or priority as to lien or otherwise of any Bond or Bonds over others by reason of the difference in time of the actual authentication, delivery, issue, sale or negotiation thereof or for any other reason whatsoever, except as herein otherwise expressly provided; and so that each and every Bond authenticated and delivered hereunder shall have the same lien, and so that the principal of and interest on every Bond shall, subject to the terms hereof, be equally and proportionately secured hereby, as if it had been made, executed, authenticated, delivered, sold and negotiated simultaneously with the execution and delivery hereof;

PROVIDED, HOWEVER, and these presents are upon the condition that if the Company, its successors or assigns, shall pay or cause to be paid, or shall make provision in the same manner provided in Article XIII for payment, unto the holders of the Bonds of the principal and interest to become due in respect thereof at the times and in the manner stipulated therein and herein, and shall keep, perform and observe all and singular the covenants and promises in the Bonds, in this Indenture and in the Purchase Agreements expressed as to be kept, performed and observed by or on the part of the Company, then this Indenture and the estate and rights hereby granted shall cease, determine and be void, otherwise to remain in full force and effect; and

PROVIDED FURTHER, HOWEVER, and these presents are upon the condition that if the Guarantor, its successors or assigns shall pay or cause to be paid, or shall make provision in the manner provided in Article XIII for payment, unto the Trustee of the aggregate amount due and payable in respect of the Guarantee at the times and in the manner stipulated herein, and shall keep, perform and observe all and singular the covenants and promises in this

Indenture and in the Deed of Trust expressed as to be kept, performed and observed by or on the part of the Guarantor, then the Guarantor shall have no further obligation under this Indenture and the estate and rights hereby granted by the Guarantor shall cease, determine and be void, otherwise to remain in full force and effect;

AND IT IS HEREBY COVENANTED, DECLARED AND AGREED by and between the parties hereto that all Bonds authenticated and delivered hereunder and secured hereby are to be issued, authenticated and delivered, and all the trust estate is to be dealt with and disposed of, under, upon and subject to the terms, conditions, stipulations, covenants, agreements, trusts, uses and purposes hereinafter expressed.

ARTICLE I.

Definitions.

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

Actual fair market value:

The term "actual fair market value" shall mean the amount which the Company reasonably could expect to obtain in a bona fide sale of the property in question to a person other than an affiliate of the Company, less the expenses normally attendant upon such a sale.

Affiliate of the Company:

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

Application; request:

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

Assignment:

The term “Assignment” shall refer collectively to the assignment described in Section 3.01, and to the document referred to in Section 3.03, as originally executed or as it may from time to time be supplemented, modified or amended.

Authorized Newspaper:

The term “authorized newspaper” shall mean a newspaper customarily published on each business day, printed in the English language and published and of general circulation in the City of Chicago, County of Cook, State of Illinois.

Whenever successive publications in an authorized newspaper are required by any provision of this Indenture, such successive publications may be made in the same or in different authorized newspapers.

Bondholders:

The term “Bondholders” or “holders of the Bonds” or “holders” shall mean the registered owners of the Bonds.

Bonds:

The term “Bond” or “Bonds” shall mean any Bond or all the Bonds, as the case may be, authenticated and delivered under this Indenture.

The term "outstanding under this Indenture" or "outstanding hereunder" or "outstanding", when used with reference to Bonds, shall, subject to the provisions of the last paragraph of Section 9.01, mean as of any particular time all Bonds issued under this Indenture, except:

(a) Bonds cancelled by the Trustee or delivered to the Trustee cancelled or for cancellation at or prior to the particular time,

(b) Bonds or portions thereof for the payment or redemption of which cash sufficient to provide for such payment or redemption shall have theretofore been irrevocably deposited with the Trustee in trust (whether upon or prior to the maturity or the redemption date of such Bonds), and said cash shall be unconditionally available for payment to the holders of such Bonds, provided that if such Bonds or portions thereof are to be redeemed prior to the maturity thereof, notice of such redemption shall have been given as in Article VI provided or provisions satisfactory to the Trustee shall have been made for such notice, and

(c) Bonds in lieu of and in substitution for which other Bonds shall have been authenticated and delivered pursuant to Section 2.07.

The term "issued", when used with respect to Bonds, shall mean authenticated and delivered under this Indenture and sold or otherwise disposed of for value by the Company.

Business Day:

The term "business day" shall mean any day of the week other than Saturday, Sunday or a day which shall be in the City of Chicago, County of Cook, State of Illinois, a legal holiday or a day on which banking institutions are authorized or obligated by law or executive order to close.

Certified resolution:

The term "certified resolution" shall mean a copy of a resolution certified by the Secretary or an Assistant Secretary of the Company or the Guarantor, as the case may be, under its corporate seal, to have been duly adopted by its Board of Directors and to be in full force and effect on the date of such certification.

Company:

The term "Company" shall mean the party of the first part hereto, North American Car Corporation, a Delaware corporation, and shall also include its successors and assigns.

Corporate trust office:

The term "corporate trust office" shall mean the principal office of the Trustee in the City of Chicago, County of Cook, State of Illinois, at which the corporate trust business of the Trustee shall, at the time in question, be administered, which office is, at the date of execution of this Indenture, located at 111 West Monroe Street, Chicago, Illinois 60690.

Corporation:

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

Cost:

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

Counsel:

The term "counsel" shall mean counsel, who may be of counsel to the Company or the Guarantor, as the case may be, acceptable to the Trustee.

Debenture:

The term "Debenture" shall have the meaning specified in the Grant and Conveyance, Subdivision Second, Granting Clause A, as originally executed or as it may from time to time be supplemented, modified or amended.

Deed of Trust:

The term "Deed of Trust" shall have the meaning specified in the Grant and Conveyance, Subdivision Second, Granting Clause A, as originally executed or as it may from time to time be supplemented, modified or amended.

Engineer's certificate:

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

Equipment:

The term "Equipment" shall mean standard-gauge railroad equipment (other than passenger or work equipment), first put into use after original assembly or purchase on or after August 1, 1968.

Event of default:

The term "event of default" shall mean any event specified in Section 8.01, continued for the period of time, if any, therein designated.

Fair value:

The term "fair value" shall be determined as follows (and the manner of such determination set forth in any officer's certificate furnished in respect thereof, including a statement of actual fair market value without reference to the provisions of clauses (b) of paragraphs (1) and (2) below):

(1) The fair value of any unit of Equipment worn out, unsuitable for use, lost or destroyed as referred to in Section 7.01 or released by the Trustee as provided in Section 7.02 or valued for the purposes of Section 5.10, 5.12 or Section 7.01(a) shall be deemed to be the greater of (a) the actual fair market value thereof and (b) the Cost thereof (as theretofore certified to the Trustee) less 1/25th of such Cost for each full period of one year elapsed between the last day of the month during which such unit was first put into use (as certified) and the date as of which fair value is to be determined.

(2) The fair value of any unit of Equipment mortgaged to the Trustee as provided in Section 7.01 or Section 7.02 or valued for the purposes of Section 4.01(e) or Section 5.08(b) shall be deemed to be the lesser of (a) the actual fair market value thereof and (b) the Cost of

such unit, if new (i.e., not put into use more than twelve months prior to such mortgage), or, in case of any unit of Equipment not new, the Cost thereof, less 1/25th of such Cost for each full period of one year elapsed between the last day of the month during which such unit was first put into use and the date as of which fair value is to be determined.

Flying Tiger:

The term "Flying Tiger" shall mean The Flying Tiger Corporation, a Delaware corporation and the Company's parent, and shall also include its successors and assigns.

Guarantee:

The term "Guarantee" shall refer to the guarantee described in Section 2.08.

Guarantor:

The term "Guarantor" shall mean the party of the second part hereto, North American Car (Canada) Limited, an Ontario corporation, and shall also include its successors and assigns.

Indenture:

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

The term "supplemental indenture" or "indenture supplemental hereto" shall mean any indenture hereafter duly authorized and entered into between the Company, the Guarantor and the Trustee in accordance with the provisions of this Indenture.

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

Independent engineer:

The term "independent engineer" shall mean an engineer, appraiser or other expert appointed by the Company and approved by the Trustee

in the exercise of reasonable care, who (a) is in fact independent, (b) does not have any substantial interest, direct or indirect, in the Company or in any other obligor on the Bonds or in any affiliate of the Company or any such other obligor and (c) is not connected with the Company or any other obligor on the Bonds or any affiliate of the Company or any such other obligor as an officer, employee, promoter, underwriter, trustee, partner, director or person performing similar functions.

Investment Securities:

The term "Investment Securities" shall mean (a) bonds, notes or other direct obligations of the United States of America or obligations for which the full faith and credit of the United States is pledged to provide for the payment of the interest and principal and (b) 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 \$100,000,000.

Issued:

The term "issued", when used with respect to Bonds, shall have the meaning specified in the definition of Bonds.

Leases:

The term "Leases" shall mean all the present or future leases, subleases, bailments and agreements to lease or bail all or any of the Mortgaged Equipment made by the Company (referred to herein as "U. S. Leases") or the Guarantor (referred to herein as "Canadian Leases") or any of their respective predecessors in title as lessor and all present or future agreements whereby the Company or the Guarantor or any of their respective predecessors in title as owners gives any other person a right to use any of the Mortgaged Equipment and all revisions, alterations, modifications, amendments, changes, extensions, renewals, replacements or substitutions thereof or therefor which may hereafter be effected or entered into. The terms, "Lease" and "Leases," shall refer to either or to both U. S. Leases and Canadian Leases.

Lien of the Indenture:

The term "lien hereof" or "lien of the Indenture" or "lien of this Indenture" shall mean the lien created or intended to be created by these

presents, or created or intended to be created by any subsequent conveyance or delivery to or pledge with the Trustee hereunder (whether made by the Company, the Guarantor or any other person) or otherwise created, constituting or intended to constitute any property a part of the security held by the Trustee for the benefit of the Bonds outstanding hereunder.

Mortgaged Equipment:

The term "Mortgaged Equipment" shall mean all Equipment at any time subjected to the lien of this Indenture which shall, as of the date of any determination, be included in the trust estate.

Officer's certificate:

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

Opinion of counsel:

The term "opinion of counsel" shall mean an opinion in writing signed by legal counsel who shall be satisfactory to the Trustee and who may, unless in a particular instance the Trustee shall otherwise require, be an employee of or of counsel to the Company or the Guarantor. The acceptance by the Trustee of, and its action on, an opinion of counsel shall be sufficient evidence that such counsel is satisfactory to the Trustee.

Outstanding:

The term "outstanding", when used with respect to Bonds, shall have the meaning specified in the definition of Bonds.

Permitted liens:

The term "permitted liens" shall mean with respect to any property, real or personal, which the Company or the Guarantor owns or shall own or in which it has or shall acquire an interest:

- (a) the lien of taxes, assessments or governmental charges which are not at the time delinquent;
- (b) the lien of specified taxes, assessments or governmental charges which are delinquent but the validity of which is being contested at the time in good faith by the Company or the Guarantor or

by the owner of such property, unless thereby in the opinion of counsel any part of or all of such property may be lost or forfeited;

(c) rights reserved to or vested in any municipality or public authority to control or regulate any such property, or to use such property in any manner which has no material adverse effect on the use of such property for the Company's or the Guarantor's purposes;

(d) liens of employees and laborers for current wages, not yet due, incidental to current operations, and liens of others for current indebtedness, not yet due, incidental to current operations, including maintenance, repair and alteration; mechanics', materialmen's, workmen's, repairmen's, contractors', or engineers' liens, or statutory or other similar liens arising out of the construction or improvement of property or the furnishing of materials or supplies therefor (i) which are not fixed as to amount, or (ii) which have not been filed or perfected pursuant to law against the Company or the Guarantor, or (iii) which are not yet due and payable, or (iv) which are being contested in good faith;

(e) leases and subleases (including purchase options) referred to in Granting Clause First of this Indenture and Section 3.01(a) of the Deed of Trust, and permitted by the provisions of Section 5.12 hereof and Section 5.10 of the Deed of Trust; and

(f) this Indenture.

Person:

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

Prime Rate:

The term "Prime Rate" shall mean the rate per annum extended from time to time by Continental Illinois National Bank and Trust Company of Chicago to prime commercial borrowers, determined for the period ending on September 30, 1971, as of July 1, 1971, and for each calendar quarter thereafter as of the first business day of such calendar quarter.

Purchase Agreements:

The term "Purchase Agreements" shall mean the respective Bond Purchase Agreements dated July 1, 1971 between the Company, on the one hand, and Continental Illinois National Bank and Trust Company of Chicago, John Hancock Investors Inc., State Treasurer of the State of Michigan as Custodian of Michigan Public School Employees' Retirement System Funds,

State Treasurer of the State of Michigan as Custodian of State Employees' Retirement System Funds, Massachusetts Mutual Life Insurance Company, Aetna Life Insurance Company, Provident Mutual Life Insurance Company of Philadelphia, Northwestern National Life Insurance Company, Berkshire Life Insurance Company, Commonwealth Life Insurance Company, Life Insurance Company of Georgia, Fidelity Life Association, Federal Kemper Life Assurance Company and Empire State Mutual Life Insurance Company, severally, on the other hand.

Registered owner:

The term "registered owner" shall mean the person or persons in whose name or names the particular Bond shall be registered on the books kept for that purpose in accordance with Section 2.02.

Replacement Funds:

The term "Replacement Funds" shall have the meaning specified in Section 6.02.

Responsible Officer:

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

Serial Bonds:

The term "Serial Bond" or "Serial Bonds" shall mean any Bond or all of the Bonds, as the case may be, which mature serially on July 1 of each of the years 1972 to 1976, both inclusive.

Sinking Fund Bonds:

The term "Sinking Fund Bond" or "Sinking Fund Bonds" shall mean any Bond or all of the Bonds, as the case may be, which mature on July 1, 1986 and are subject to redemption as provided in Section 6.01.

Subsidiary:

The term "Subsidiary" shall mean any corporation a majority of the stock of which, having ordinary voting power, is owned by the Company, either directly or through one or more Subsidiaries, except any corporation which is not consolidated with the Company, is inactive and the gross assets of which are immaterial.

Trust estate:

The term "trust estate" shall mean as of any particular time the property which at said time is subject or intended to be subject to the lien of this Indenture, including the Debenture and all rights of the Trustee under the Assignment. Moneys held by the Trustee in trust for the payment or redemption, at maturity or on the redemption date, of specific Bonds, and moneys held by the Trustee for the payment of specific sinking fund payments and interest installments shall not be deemed to be part of the trust estate.

Trustee:

The term "Trustee" shall mean Harris Trust and Savings Bank, the party of the third part hereto, and any successor thereof in the trust hereunder, but not any additional trustee appointed under the provisions of Section 11.09, unless otherwise provided in the instrument of appointment executed pursuant thereto and only to the extent therein provided.

ARTICLE II.**Description and Manner of Execution, Authentication and Registration of Bonds.**

SECTION 2.01. *Description and form of Bonds; limited in amount; place of payment.* The Bonds and certificates of authentication of the Trustee shall be substantially of the tenor and in the forms set forth or provided for in the recitals hereto with appropriate insertions, omissions and variations as provided in this Indenture, and the Bonds shall be executed, authenticated and delivered in accordance with the provisions of, and shall in all respects be subject to, all of the terms, conditions and

covenants of this Indenture. The Bonds shall be designated "Equipment Bonds, First 1971 Series."

The Serial Bonds shall be payable as specified in the form thereof hereinbefore recited and shall mature in the following amounts on the following dates and bear interest at the following rates per annum:

<u>Principal Amount</u>	<u>Date of Maturity</u>	<u>Interest Rate</u>
\$1,000,000	July 1, 1972	Prime Rate
1,000,000	July 1, 1973	1/8 % over Prime Rate
1,000,000	July 1, 1974	1/4 % over Prime Rate
1,000,000	July 1, 1975	3/8 % over Prime Rate
1,000,000	July 1, 1976	1/2 % over Prime Rate

The Sinking Fund Bonds shall be payable and bear interest as specified in the form thereof hereinbefore recited and shall mature on the date specified in such form. The aggregate principal amount of Bonds which may be executed by the Company and authenticated by the Trustee hereunder shall be limited to \$5,000,000 principal amount of Serial Bonds and \$20,000,000 principal amount of Sinking Fund Bonds except as provided in this Article II, Section 6.05 and Section 12.05. The Bonds shall be fully registered without coupons and shall be in denominations of \$1,000 or any integral multiple thereof, bearing appropriate distinctive numbers. Each Bond authenticated and delivered pursuant to the provisions of Section 4.01 shall be dated the date of authentication and delivery thereof, and each Bond issued in exchange or substitution for, or upon the transfer of, the whole or any part of one or more Bonds shall, except as provided in Sections 2.05 and 2.07, be dated as of the date to which interest has been paid on such other Bond or Bonds, provided, however, that each Bond so issued prior to the first interest payment date to which interest was paid shall be dated the date of such other Bond or Bonds. Bonds shall bear interest from their respective dates. The Bonds shall be payable as to principal and interest at the corporate trust office of the Trustee in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts. The Bonds in definitive form may be printed, lithographed or fully engraved.

This Indenture shall be and constitute a continuing Guarantee and lien to secure the full and final payment of the principal of and interest on all Bonds

which may from time to time be executed, authenticated and delivered hereunder. Except as otherwise herein expressly provided, all Bonds issued hereunder shall in all respects be equally and ratably guaranteed and secured hereby without preference, priority or distinction, as to lien or otherwise, on account of the actual time or times of the authentication and delivery of the Bonds, or any of them, so that all Bonds at any time outstanding hereunder shall have the same right, lien and preference under and by virtue of this Indenture, and shall all be equally guaranteed and secured hereby, with like effect as if they had all been executed, authenticated and delivered simultaneously on the date hereof, whether the same or any of them shall actually be sold or disposed of at such date, or whether they, or any of them, shall be sold or disposed of at some future date, or whether they shall be authenticated and delivered hereafter pursuant to Section 4.01 or other provisions of this Indenture.

SECTION 2.02. *Registration and Transfer of Bonds.* The Company shall keep or cause to be kept at the office of the Company designated for such purposes in Section 5.04 books for the registration and transfer of Bonds.

Any Bond may be transferred at the office of the Company designated for such purpose in Section 5.04, upon surrendering such Bond for cancellation accompanied by delivery of a written instrument of transfer in form approved by the Company and the Trustee, duly executed by the registered owner of such Bond, and thereupon the Company shall execute in the name of the transferee or transferees and the Trustee shall authenticate and deliver, without expense to the transferor or transferee, a new Bond or new Bonds, having the same maturity and for the same aggregate principal amount, in authorized denominations.

SECTION 2.03. *Owners of Bonds.* The person in whose name Bonds are registered shall be deemed and regarded as the absolute owner thereof, for all purposes whatsoever, and the Company, the Trustee and any paying agent shall not be affected by any notice to the contrary; and payment of or on account of the principal of and interest on such Bond shall be made only to or upon the order in writing of such registered owner thereof, but such registration may be changed as above provided. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bonds to the extent of the sum or sums so paid.

SECTION 2.04. *Issue of Bonds in temporary form.* Until Bonds in definitive form are ready for delivery, the Company may execute, and upon its request in writing, the Trustee shall authenticate and deliver in lieu of any thereof, and subject to the same provisions, limitations and conditions, one or more printed, lithographed or typewritten Bonds in temporary form, all substantially of the tenor of the Serial Bonds and Sinking Fund Bonds hereinbefore described. Such Bond or Bonds in temporary form may be in such authorized denomination or denominations as the Company may determine. Until exchanged for Bonds in definitive form such Bonds in temporary form shall be entitled to the lien and benefit of this Indenture. The Company shall, without unreasonable delay, prepare, execute and deliver to the Trustee at its corporate trust office, and thereupon, upon the presentation and surrender of the Bond or Bonds in temporary form, the Trustee shall authenticate and deliver, in exchange therefor, a Bond or Bonds in definitive form, with the same maturity and for the same aggregate principal amount, as the Bond or Bonds in temporary form surrendered. Such exchange shall be made by the Company at its own expense and without making any charge therefor. When and as interest is paid upon Bonds in temporary form, the fact of such payment shall be noted thereon. Until such Bonds in definitive form are ready for delivery, the holder of one or more Bonds in temporary form may, with the consent of the Company, exchange the same on the surrender thereof to the Trustee for cancellation and shall be entitled to receive Bonds in temporary form, with the same maturity and of like aggregate principal amount.

SECTION 2.05. *Exchange of Bonds.* Bonds may, upon surrender thereof to the Company, be exchanged for one or more Bonds, having the same maturity and for the same aggregate principal amount, in authorized denominations.

In all cases in which the privilege of exchanging Bonds exists and is exercised, the Bonds to be exchanged shall be surrendered at the office of the Company designated for such purpose in Section 5.04, accompanied by duly executed instruments of transfer if required, and the Company shall execute and the Trustee shall authenticate and deliver in exchange therefor the Bond or Bonds which the Bondholder making the exchange shall be entitled to receive.

Each Bond delivered pursuant to the exercise of any such privilege of exchange or in substitution for or upon transfer of the whole or any part

of one or more other Bonds shall carry all of the rights to interest accrued and unpaid, and to accrue, which were carried by the whole or such part of such one or more other Bonds, and notwithstanding anything contained in this Indenture, such Bonds shall be so dated that neither gain nor loss in interest shall result from such exchange or substitution or transfer.

All Bonds so surrendered for exchange or for transfer shall be presented to the Trustee for cancellation, and the Trustee shall forthwith cancel the same, and deliver the same to the Company.

All Bonds executed, authenticated and delivered in exchange for Bonds so surrendered or upon transfer of Bonds shall be the valid obligations of the Company, evidencing the same debts as the Bonds surrendered, and such Bonds shall be secured by the lien of and guaranteed by this Indenture to the same extent as the Bonds in exchange for which they were authenticated and delivered.

SECTION 2.06. *Execution of Bonds.* All the Bonds shall, from time to time, be executed on behalf of the Company by the manual or facsimile signature of its Chairman of the Board, its President or one of its Vice Presidents and its corporate seal (which may be in facsimile) shall be thereunto affixed or imprinted thereon and attested by the manual or facsimile signature of its Secretary or one of its Assistant Secretaries.

In case any of the officers whose manual or facsimile signature shall appear upon any of said Bonds shall cease to be such officers of the Company before the Bonds so executed or upon which the seal is so attested shall have been actually authenticated by the Trustee or delivered by the Company, such Bonds nevertheless may be authenticated, issued, and delivered with the same force and effect as though such person or persons had not ceased to be such officer or officers of the Company; and also any such Bond may be executed on behalf of the Company, and the seal thereon may be attested, by the manual or facsimile signature of such persons as at the actual date of the execution of such Bond shall be the proper officers of the Company, although at the nominal date of such Bond any such person shall not have been such officer of the Company.

SECTION 2.07. *Mutilated, destroyed, lost or stolen Bonds.* Upon receipt by the Company and the Trustee of evidence satisfactory to both of them that any Bond has been mutilated, destroyed, lost or stolen, and of

indemnity satisfactory to both of them, in their reasonable discretion, the Company shall execute, and thereupon the Trustee shall authenticate and deliver, a new Bond of like tenor, in exchange and substitution for, and upon surrender and cancellation of, the mutilated Bond or in lieu of and in substitution for the Bonds so destroyed, lost or stolen.

Any Bond issued under the provisions of this Section 2.07 in lieu of any Bond alleged to be destroyed, lost or stolen shall constitute original additional contractual obligations on the part of the Company whether or not the Bond so alleged to be destroyed, lost or stolen be at any time enforceable by anyone; and such Bond shall be equally and proportionately entitled to the benefits of this Indenture, including the Guarantee, with all other Bonds issued under this Indenture. All Bonds shall be held and owned upon the express condition that the foregoing provisions are exclusive in respect of the replacement or payment of mutilated, destroyed, lost or stolen Bonds and shall preclude any and all other rights or remedies, any law or statute now existing or hereafter enacted, respecting such replacement or the payment of notes, bonds, negotiable instruments or other securities without their surrender to the contrary notwithstanding.

SECTION 2.08. *Guarantee.* The Guarantor hereby unconditionally guarantees to the Trustee for the equal and proportionate benefit of the holders of all Bonds authenticated and delivered hereunder pursuant to the provisions hereof, the due and punctual payment of the principal of and interest on such Bonds, the due and punctual payment of the sinking fund payments provided for by Section 6.01 and the performance of and compliance with the covenants and conditions of this Indenture, without any preference, distinction or priority of any Bond or Bonds over others for any reason whatsoever except as otherwise expressly provided herein; provided, however, the aggregate liability of the Guarantor pursuant to this Guarantee with respect to all Bonds at any time outstanding under this Indenture shall be limited to \$3,250,000 in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts. In case of the failure of the Company punctually to pay any such principal, interest or sinking fund payment, the Guarantor hereby agrees to cause such payment to be made to the Trustee punctually when and as the same shall become due and payable, whether by declaration thereof or otherwise, subject, however, to the limitation provided in the preceding sentence of this Section 2.08. The Guarantor hereby agrees that its obligations

under this Section 2.08 shall be unconditional, irrespective of the validity, regularity or enforceability of any Bond, the absence of any action to enforce the same, the waiver or consent by the holder of any Bond or the Trustee with respect to any provisions thereof or of this Indenture, the recovery of any judgment against the Company or any action to enforce the same, or any other circumstance which might otherwise constitute a legal or equitable discharge or defense of a guarantor. The Guarantor hereby waives diligence, presentment, demand of payment, filing of claims with a court in the event of merger or bankruptcy of the Company, any right to require a proceeding first against the Company, protest, notice and all demands whatsoever, with respect to any Bond or the indebtedness evidenced thereby, and covenants that this Guarantee will not be discharged except by satisfying the Guarantee and fulfilling all its obligations contained in this Indenture.

Until the principal of and interest on all outstanding Bonds shall have been paid in full, the Guarantor shall not be entitled to enforce, or to receive any payments arising out of or based upon, any right of subrogation against the Company with respect to any amounts paid by the Guarantor hereunder.

SECTION 2.09. *Authentication of Bonds.* Subject to the qualifications hereinbefore set forth, no Bond shall be secured hereby or entitled to the benefit hereof, or shall be or become valid or obligatory for any purpose unless there shall be on such Bond a certificate of authentication, substantially in the form hereinbefore recited, executed by the Trustee; and such certificate on any such Bond issued by the Company shall be conclusive evidence and the only competent evidence that it has been duly executed, authenticated and delivered hereunder.

ARTICLE III.

Assignment.

SECTION 3.01. *Assignment as security.* As further security for the Bonds, the Company and the Guarantor, respectively, hereby transfer and assign to the Trustee, for the equal and proportionate benefit of the holders from time to time of the Bonds, all of their respective right, title and interest as lessor, or sublessor, as the case may be, in, to, under or in respect of, and grant a charge on and security interest in, all rents, proceeds and other moneys now due and payable or hereafter to become due and payable in

respect of Mortgaged Equipment under, (i) in the case of the Company, each and every U. S. Lease and (ii) in the case of the Guarantor, each and every existing Canadian Lease, and under each and every existing and future guarantee of all or any of the obligations of any lessee under any such Lease including (without limitation) all claims for damages arising out of any breach of any such Lease or any such guarantee, together with the full power and authority, in the name of the Trustee, the Company, the Guarantor or any of them, or otherwise to demand, sue for, enforce, collect, receive and receipt for any and all of the foregoing (the Company and the Guarantor hereby irrevocably constituting and appointing the Trustee the attorney-in-fact of the Company and the Guarantor, respectively, for such purposes); and further, the Guarantor, with the consent of the Company as lessor, for the equal and proportionate benefit of the holders from time to time of the Bonds, hereby transfers, assigns and grants a charge on and a security interest in all of its right, title and interest as lessee in, to, under or in respect of Mortgaged Equipment under existing U. S. Leases. The transfer, assignment and charge given in this Section 3.01 by the Guarantor to the Trustee is given as security for the Guarantor's obligation to pay to the Trustee rents, proceeds and other moneys pursuant to the assignment thereof by the Company to the Trustee under this Section 3.01. Any instrument made, executed and delivered by the Trustee on behalf of the Company or the Guarantor shall be binding upon the Company or the Guarantor and all persons claiming by, through or under the Company or the Guarantor, with the same effect as if the Company or the Guarantor had itself made, executed and delivered the same.

After delivery to the Trustee of the U. S. and Canadian Leases and leases of Equipment mortgaged under the Deed of Trust pursuant to Section 4.01(b), the Trustee may at the request of the Company or the Guarantor deliver any U. S. Lease or Canadian Lease, or any lease of Equipment mortgaged under the Deed of Trust, as the case may be, to the Company or the Guarantor provided that (a) the Trustee shall cause to be placed thereon a notation in substantially the following form, in the case of any U. S. or Canadian Lease:

This lease, or a portion thereof, and the railroad cars, or a portion thereof, covered by this lease have been assigned by North American Car Corporation to and are held by a trustee under a mortgage, equipment trust or other lien recorded under Section 20(c) of the Interstate Commerce Act as security for indebtedness of North American Car Corporation.

and in similar form referring to the Deed of Trust in the case of any Equipment mortgaged under the Deed of Trust, and (b) the Trustee shall be furnished with a copy of such lease.

The Company and the Guarantor, respectively, hereby irrevocably direct all persons now or at any time obligated under each and every Lease to pay to the Trustee, at its corporate trust office, all payments due and to become due and all other sums assigned pursuant to this Section 3.01.

Any and all rights of the Trustee under this Section 3.01 may be exercised pursuant to or as contemplated by the provisions of this Indenture and each and every Lease. The assignment provided for in this Section 3.01 shall be effective immediately and is not conditioned upon the occurrence of an event of default under this Indenture or any other event or contingency.

SECTION 3.02. *Additional provisions.* (a) The Trustee hereby appoints the Company and the Guarantor, respectively, as its agent and the Company and the Guarantor, respectively, hereby accept such appointments, to collect and receive all payments due and to become due under U. S. Leases and existing Canadian Leases, respectively, in respect of Mortgaged Equipment, provided, that if an event of default shall happen and be continuing, the Trustee may terminate either or both such agencies and either or both such agencies shall terminate immediately upon notice of such termination from the Trustee to the Company or the Guarantor, and provided further, that prior to receipt of such notice, the Company and the Guarantor, respectively, may make such use of any moneys received pursuant to its agency under this Section 3.02 (a) as it would otherwise be entitled to except for the Assignment.

(b) Any action, suit or proceeding brought by the Trustee pursuant to any of the terms hereof or otherwise, and any claim made by the Trustee hereunder, may be compromised, withdrawn or otherwise dealt with by the Trustee without any notice to or approval of the Company or the Guarantor.

(c) The Trustee shall not be obligated to take any steps necessary to preserve any rights in any Lease against prior parties who may be liable in connection therewith and it is expressly agreed that, anything herein contained to the contrary notwithstanding, the Company and the Guarantor shall remain liable under U.S. Leases and Canadian Leases, respectively, to perform all of the obligations assumed or to be assumed by either of them thereunder and the Trustee shall have no obligation or liability under any Lease by reason of or arising out of the Assignment, nor shall the Trustee be required or obligated in any manner to perform or fulfill any obligation of the Company or the Guarantor under or pursuant to any Lease, or to make any payment, or to make any inquiry as to the nature or

sufficiency of any payment received by it, or present or file any claim, or take any other action to collect or enforce the payment of any amounts which may have been assigned to it or to which it may be entitled hereunder at any time or times, and the Company and the Guarantor shall and do hereby agree to indemnify and hold the Trustee harmless of and from any and all liability, loss or damage which it may or might incur with respect to or arising under any Lease or the Assignment.

(d) The Company at its expense shall, during the first ninety days of each calendar year, cause any document confirmatory of an assignment required under Section 3.02(f), or such other instrument as may be designated by applicable law, to be recorded, registered and filed in such manner and in such places, and will pay all such recording, registration, filing or other taxes, fees and other charges, and will comply with all such statutes and regulations, as may be required for proper protection of the security interest under the Assignment, and of the rights of the Trustee, its successors and assigns and the holders of Bonds.

(e) The Company and the Guarantor, promptly after the execution hereof, shall give notice in writing in form satisfactory to the Trustee to all lessees under all presently existing Leases of the existence of the Assignment which notice shall direct such lessees, upon receipt of notice from the Trustee, to pay to the Trustee all rentals now or in the future due or owing in respect of Mortgaged Equipment under any such Lease. Such notices shall be sent by registered mail, return receipt requested, and such receipts shall be delivered to the Trustee. The Guarantor shall obtain as promptly as possible acknowledgments, in form satisfactory to the Trustee, of the receipt of all such notices with respect to existing Canadian Leases; and the Company will use reasonable efforts to obtain such acknowledgments with respect to existing U. S. Leases. The Company and the Guarantor will promptly deliver all such acknowledgments to the Trustee.

(f) The Company covenants that every U. S. Lease not presently in existence which shall have an original term of three years or more shall contain a notation in form similar in substance to that set forth in Section 3.01. The Company further covenants that, during the first ninety days of each calendar year, it will deliver to the Trustee (i) a copy of each such Lease executed during the preceding calendar year, and (ii) a document or documents in form satisfactory to the Trustee confirming the assignment to the Trustee of all rents, proceeds and other moneys due or to become due in respect of Mortgaged Equipment under each and every such Lease executed during the preceding calendar year under and pursuant to the provisions hereof.

SECTION 3.03. *Separate documentation.* The provisions of this Article III may be embodied in a document substantially in the form of Exhibit B, separate and apart from this Indenture, and in the event of any discrepancy between the provisions of this Article III and the provisions of such separate document, the provisions of this Article III shall prevail.

ARTICLE IV.

Original Authentication and Delivery of Bonds.

SECTION 4.01. The Trustee, from time to time after the execution and delivery by the parties hereto of this Indenture, the execution and delivery to it by the Company of the Bonds, as herein provided, and application therefor, shall authenticate Serial Bonds in an aggregate principal amount of not to exceed \$5,000,000 and Sinking Fund Bonds in an aggregate principal amount of not to exceed \$20,000,000 and shall deliver them to, or upon the written order of, the Company signed by its Chairman of the Board, its President or a Vice President, but only upon simultaneous receipt in the case of the first original authentication and delivery of Bonds of:

(a) A certified resolution of the Company, certified as of the date of such application, authorizing the execution and requesting the authentication and delivery of Serial Bonds and Sinking Fund Bonds in the applicable aggregate principal amount and naming the officer or officers of the Company to whom or upon whose order such Bonds shall be delivered.

(b) An executed counterpart of the Assignment described in Section 3.03 and all executed counterparts of all leases and subleases assigned under the Assignment and the Deed of Trust.

(c) Copies, certified by the Company as of the date of such application, of the Purchase Agreements and the Deed of Trust.

(d) An officer's certificate which shall state that (i) the railroad equipment listed above in the Grant and Conveyance, Subdivision First, Granting Clause A, is Equipment as herein defined, (ii) the aggregate Cost (adjusted as provided in the next succeeding sentence) of such Equipment and of the Mortgaged Equipment specifically described in Section 3.01 (a) of the Deed of Trust is not less than U. S. \$27,800,000, (iii) in the opinion of the signers, all conditions precedent provided for in this Indenture relating to the original authentication and delivery of Bonds

have been complied with, (iv) there exists no default and no condition, event or act which, with notice or lapse of time, or both, would constitute a default hereunder or under the Deed of Trust, and (v) the Company is in full compliance with Section 5.10 and the Guarantor is in full compliance with Section 5.08 of the Deed of Trust. If any unit of the aforesaid Equipment and Mortgaged Equipment has been in use for a period of one year or more prior to the date it is mortgaged to the Trustee hereunder, there shall be deducted from the Cost thereof an amount equal to 1/25th of the Cost for each full period of one year elapsed between the last day of the month during which such unit was first put into use and the date it was so mortgaged.

(e) An engineer's certificate which shall state that the aggregate fair value of such Equipment and of the Mortgaged Equipment specifically described in Section 3.01(a) of the Deed of Trust as of the date of such application, in the opinion of the signer, is not less than U. S. \$27,800,000.

(f) The officer's certificate, dated the date of such application and either addressed to the Trustee or confirmed by separate letter to the Trustee and stating that the Trustee may rely thereon as if the same had been addressed to the Trustee, referred to in paragraph 2K of the Purchase Agreements.

(g) The opinions of counsel, dated the date of such application and either addressed to the Trustee or confirmed by separate letter to the Trustee and stating that the Trustee may rely thereon as if the same had been addressed to the Trustee, referred to in paragraphs 2A, 2B, 2C, 2D, 2E and 2F of the Purchase Agreements.

In the case of subsequent original authentications and deliveries of Bonds, the Trustee shall authenticate and deliver Bonds as provided in this Section 4.01 upon simultaneous receipt of the certified resolution required by Section 4.01(a) and an officer's certificate containing the statements required by clauses (iii), (iv) and (v) of Section 4.01(d).

ARTICLE V.

PARTICULAR COVENANTS OF THE COMPANY AND THE GUARANTOR.

SECTION 5.01. *Payment of Principal and Interest.* The Company will punctually pay the principal and interest to become due in respect of all the

Bonds at the times and place and in the manner specified herein, 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.

SECTION 5.02. *Issuance of Bonds pursuant to Indenture.* The Company will not issue, or permit to be issued, any Bonds hereunder in any manner other than in accordance with the provisions of this Indenture.

SECTION 5.03. *Title to Trust Estate.* The Company and the Guarantor each has good right and lawful authority to mortgage, convey, pledge and assign all of the property intended to be mortgaged, conveyed, pledged and assigned by it under this Indenture; and the said property is free and clear of any deed of trust, mortgage, lien, charge or encumbrance thereon or affecting the title thereto prior to this Indenture, except permitted liens. The Company and the Guarantor hereby do and will forever warrant and defend their respective title to the said property against the claims and demands of all persons whomsoever.

SECTION 5.04. *Agency for payment, transfer and exchange.* The Company hereby designates the corporate trust office of the Trustee as, and so long as any of the Bonds remain outstanding the corporate trust office of the Trustee shall be, the office or agency of the Company at which the principal of and interest on the Bonds shall be payable, where the Bonds may be presented for transfer and exchange as in this Indenture provided, and where the Bonds may be presented for payment.

SECTION 5.05. *Financial statements.* The Company will deliver to the Trustee (a) as soon as practicable and in any event within 60 days after the end of each quarterly period (other than the last quarterly period) in each fiscal year, a statement of income and retained earnings of the Company for the period from the beginning of the current fiscal year to the end of such quarterly period, and a balance sheet of the Company as at the end of such quarterly period, setting forth in each case in comparative form figures for the corresponding period in the preceding fiscal year, all in reasonable detail and certified by an authorized financial officer of the Company, subject to changes resulting from year-end adjustments; (b) as soon as practicable and in any event within 120 days after the end of each fiscal year, a statement

of income and retained earnings of the Company for such year and a balance sheet of the Company as at the end of such year, setting forth in each case in comparative form corresponding figures from the preceding annual audit, all in reasonable detail and certified to the Trustee by independent public accountants of recognized standing selected by the Company; (c) promptly upon receipt thereof, copies of any detailed reports submitted to Flying Tiger (to the extent available to the Company), the Company or any Subsidiary by independent accountants of recognized standing in connection with each annual or interim audit of the books of Flying Tiger, the Company or any Subsidiary made by such accountants; (d) copies of all such financial statements, reports and returns as Flying Tiger or the Company shall send to its stockholders and of all regular or periodic reports which either of them is or may be required to file with the Securities and Exchange Commission or any governmental department, bureau, commission or agency succeeding to the functions of the Securities and Exchange Commission; and (e) with reasonable promptness, such other financial data as the Trustee may reasonably request. All financial statements specified in clauses (a) and (b) above shall be furnished in duplicate and shall also be furnished in consolidated form, and also in consolidating form to the extent that consolidating statements are prepared, for the Company and its Subsidiaries. Together with each delivery of financial statements required by clauses (a) and (b) above, the Company will deliver to the Trustee an officer's certificate stating that there exists no event of default or default under the Indenture or the Deed of Trust, or, if any thereof exists, specifying the nature thereof, the period of existence thereof and what action the Company proposes to take with respect thereto. Together with each delivery of financial statements required by clause (b) above, the Company will deliver to the Trustee a certificate of such independent public accountants, addressed to the Trustee, stating that in making the audit of the books of the Company no facts have come to the attention of such independent public accountants which would lead them to believe that there exists an event of default or default under the Indenture or the Deed of Trust, or, if any thereof exists, specifying the nature thereof and the period of existence thereof. Forthwith upon any officer of the Company obtaining knowledge of an event of default or default under the Indenture or the Deed of Trust, or any default under any other obligation of Flying Tiger, the Company or the Guarantor, the Company will deliver to the Trustee an officer's certificate specifying the nature thereof, the period of existence thereof,

and what action the Company or the Guarantor proposes to take with respect thereto. The Trustee is hereby authorized to deliver a copy of any financial statement delivered to it pursuant to this Section 5.05 to any regulatory body having jurisdiction over it.

SECTION 5.06. *Inspection.* The Company will permit any person designated by the Trustee in writing to visit and inspect any of the properties, corporate books and financial records of the Company or any Subsidiary, and to discuss the affairs, finances and accounts of the Company or any Subsidiary with the principal officers of the Company or any Subsidiary, all at such reasonable times and as often as the Trustee may reasonably request.

SECTION 5.07. *Books and accounts.* The Company and each of its Subsidiaries will at all times keep or cause to be kept complete books of record and account in accordance with generally accepted accounting principles consistently applied.

SECTION 5.08. *Miscellaneous affirmative covenants.* The Company and the Guarantor will:

(a) promptly after the execution and delivery of this Indenture, deliver to the Trustee (to the extent recorded and/or filed) a recorded counterpart of this Indenture, the Assignment and the Deed of Trust or short forms of such instruments, or receipts therefor and/or for filing thereof, or other evidence of such recording and/or filing from the proper recording and/or filing officers;

(b) cause this Indenture, the Assignment and the Deed of Trust and all indentures and instruments supplemental to any thereof, or short forms of such instruments, to be kept recorded and filed in such manner and in such offices in all such domestic and foreign jurisdictions as may be required by law in order to make effective the lien or interest intended to be created hereby or thereby and to maintain the lien or interest hereof or thereof and will pay all taxes and fees incident thereto, provided that (i) this Indenture need not be recorded or filed other than pursuant to Section 20c of the Interstate Commerce Act and the corporation securities registration acts of all mainland Provinces of Canada other than Quebec if this Indenture shall have been so recorded and

filed as to make effective and maintain at all times the lien or interest hereof with respect to units of Mortgaged Equipment with an aggregate fair value constituting not less than 95% of the aggregate fair value of all Mortgaged Equipment, (ii) initial recording and filing in respect of future U. S. Leases shall be required only in respect of U. S. Leases assigned by confirmation to the Trustee pursuant to Section 3.02(f) and shall not be required prior to the date occurring 90 days after the close of the calendar year in which such U. S. Lease was executed, and (iii) no recording or filing shall be required in respect of future Canadian Leases;

(c) furnish to the Trustee within 90 to 120 days after the close of each calendar year commencing with the year 1972 an opinion of counsel either stating that in the opinion of such counsel all necessary action has been taken with respect to the re-recording and re-filing of such instruments in all offices where it is necessary (or in the opinion of counsel giving such opinion, advisable) so to re-record and re-file in order to maintain the lien or interest hereof or thereof, and reciting the details of such action, or stating that in the opinion of such counsel no such re-recording or re-filing is necessary;

(d) furnish to the Trustee within a reasonable time after the date of this Indenture acknowledgments from all lessees under leases assigned under the Deed of Trust, in form satisfactory to the Trustee, that they have received the notices referred to in paragraph 2J of the Purchase Agreements;

(e) promptly pay and discharge or cause to be paid and discharged all taxes, assessments and governmental charges or levies imposed upon them or upon their income or profits or upon any of their property, real, personal or mixed, or upon any part thereof, and all claims for labor, materials and supplies which, if unpaid, might by law become a lien or charge upon their property; provided, however, that neither the Company nor the Guarantor shall be required to pay any such tax, assessment, charge, levy or claim if the validity thereof shall currently be contested in good faith by appropriate proceedings and the security afforded hereby or by the Assignment or Deed of Trust shall not, in the opinion of counsel, be materially and adversely affected;

(f) do or cause to be done all things necessary to preserve and keep in full force and effect their corporate existence and franchises and use their best efforts to preserve and keep in full force and effect their rights, permits and licenses to do business, provided, however, that nothing in this subparagraph (f) shall prevent the abandonment of any rights, permits or licenses to do business of the Company or the Guarantor if such abandonment is not disadvantageous in any material respect to any Bondholder;

(g) promptly pay and discharge or cause to be paid and discharged all of their obligations when due, provided, however, that neither the Company nor the Guarantor shall be required to pay or discharge any such obligation if the validity thereof shall currently be contested in good faith by appropriate proceedings and the security afforded hereby or by the Assignment or Deed of Trust shall not, in the opinion of counsel, be materially and adversely affected;

(h) comply with all of the terms and provisions of all contracts and agreements at the time constituting a part of the trust estate, including the Deed of Trust, and will allow no default on the part of the Company or the Guarantor to exist thereunder, and will at all times do all things necessary to compel performance by other parties thereto of all obligations, covenants and agreements to be performed by such parties unless such compulsion, in the reasonable judgment of the Company or the Guarantor, as the case may be, would not be in the best interests of its business, and will not permit any supplement thereto or amendment or modification thereof, provided that, the Company or the Guarantor may alter, amend, extend or otherwise deal with existing or future leases or subleases of Mortgaged Equipment in such manner as is required in the ordinary course of its business;

(i) maintain and keep their properties (including their properties included in the trust estate), or cause the same to be maintained and kept in good condition, repair and working order and supplied with all necessary equipment and will make or cause to be made all necessary repairs, renewals and replacements, provided that the Company may from time to time, for the purpose of meeting transportation requirements of present and future lessees, make or cause to be made changes or alterations in design, structure and equipment of any rail-

road cars included in the Mortgaged Equipment, all at the expense of the Company, but only as and to the extent that no material impairment in actual fair market value shall result therefrom; and

(j) comply in all respects with the laws of all jurisdictions in which the Mortgaged Equipment may be operated and with all lawful rules, regulations and orders of all governmental bodies having power to regulate or supervise any of the Mortgaged Equipment, and make or cause to be made all repairs and changes in the Mortgaged Equipment necessary in order to make the Mortgaged Equipment acceptable for interchange in accordance with general railroad rules and regulations, provided, however, that the Company or the Guarantor may in good faith contest the validity of any such law, rule, regulation or order or the application thereof to the Mortgaged Equipment or any part thereof in any reasonable manner which will have no material adverse effects on the rights or interests of the Trustee or of the Bondholders.

SECTION 5.09. *Miscellaneous negative covenants.* Neither the Company nor the Guarantor will, without the written consent of the holders of 66 $\frac{2}{3}$ % of the principal amount of the Bonds at the time outstanding:

(a) create, assume or suffer to exist any deed of trust, mortgage, pledge, encumbrance, lien or charge of any kind upon any of its property or assets included in the trust estate, except permitted liens;

(b) merge into or consolidate with another corporation or sell, lease, transfer or otherwise dispose of all or any substantial part of its property or assets, unless (i) the corporation formed by or surviving any such merger or consolidation or to which such sale, lease, transfer or disposition shall have been made shall be a corporation organized under the laws of the United States of America or any state thereof or, in the case of the Guarantor, Canada or any Province thereof, and (ii) the Company and the Guarantor respectively shall remain bound with respect to, and such corporation shall have expressly assumed by supplemental indenture, the due and punctual payment of the principal of and interest on all of the Bonds in the case of the Company, and the Debenture in the case of the Guarantor and the due and punctual performance and observance of all the covenants and conditions of this Indenture, the Assignment, the Guarantee, the Deed of Trust and the Purchase

Agreements respectively to be performed and observed by the Company or the Guarantor, as the case may be; or

(c) cause or permit, whether by sale of the shares of the Guarantor or issuance of additional shares thereof, the Company to own less than 80% of the stock of the Guarantor having ordinary voting power, other than director's qualifying shares, provided that such percentage may be reduced to the extent required by the laws of Canada, if the Company shall have delivered to the Trustee an opinion of Canadian counsel satisfactory to the Trustee setting forth such requirement of law.

SECTION 5.10. *Insurance of Mortgaged Equipment.* The Company shall keep in effect policies of insurance pursuant to which all railroad cars included in the Mortgaged Equipment are insured against loss or damage, the risk of which is customarily insured by railroad companies, up to at least the replacement values of such cars as established by the Association of American Railroads, the aggregate of which replacement values will equal or exceed the fair value thereof as of the date of any determination. The Company shall cause all such insurance to be written by one or more insurance carriers of recognized responsibility and shall contain an agreement by such insurance carriers that such policies shall not be cancelled without at least 10 days prior written notice to the Trustee. The Company will deliver to the Trustee within 120 days after the close of each calendar year, and at such other reasonable times as the Trustee may request, an officer's certificate to the effect that during such calendar year this Section 5.10 was complied with.

In the event that any insurance required to be maintained by this Section 5.10 shall not be in effect, the Trustee may (but shall be under no obligation so to do) cause the Mortgaged Equipment to be insured in such manner as the Trustee shall deem advisable for the protection of the Bondholders and may demand and recover from the Company all premiums paid on such insurance with interest on the amount thereof at the rate of 10% per annum. If the Trustee should insure the Mortgaged Equipment or any part thereof, any Mortgaged Equipment so insured shall in no event be released from the lien of this Indenture until repayment of all insurance premiums and interest thereon has been made to the Trustee.

SECTION 5.11. *Marking of Mortgaged Equipment.* The Company agrees that, as soon as practicable after the original issuance of the Bonds pursuant to this Agreement, there shall be plainly, distinctly, permanently and conspicuously placed and fastened upon each side of each railroad car included in the Mortgaged Equipment a metal plate bearing the following words, or such words shall be otherwise plainly, distinctly, permanently and conspicuously marked on each side of such unit, in either case in letters not less than seven-sixteenths of one inch in height:

THIS CAR IS MORTGAGED TO A TRUSTEE UNDER AN INDENTURE OF
MORTGAGE AND DEED OF TRUST RECORDED UNDER SECTION 20C OF
THE INTERSTATE COMMERCE ACT.

Any railroad cars to be mortgaged under this Indenture by supplemental indenture shall also be so marked prior to or simultaneously with being so mortgaged. Such plates or marks shall be such as to be readily visible and as to indicate plainly the Trustee's interest in each unit of the Mortgaged Equipment. Notwithstanding the foregoing, the Company shall not be required so to mark any car in service on the date hereof which is at such time marked by a legend indicating that it is subject to an equipment trust or a mortgage or other lien recorded under said Section 20c.

In case any of such plates or marks shall at any time be removed, defaced or destroyed, the Company shall forthwith cause the same to be restored or replaced in accordance with the requirements contained in the first sentence of this Section 5.11. The Company shall not change or permit to be changed the numbers of any of the Mortgaged Equipment at any time covered hereby (or any numbers which may have been substituted as herein provided) except in accordance with a statement of new numbers to be substituted therefor which previously shall have been filed with the Trustee by the Company and which shall be filed and recorded in like manner as this Indenture.

SECTION 5.12. *Disposition of Mortgaged Equipment.* Except as provided in this Section 5.12 or Section 7.02, the Company will not sell, assign, transfer, lease, permit sublease of, bail or in any fashion entrust to any third party the Mortgaged Equipment or any part thereof without the written consent first had and obtained of the holders of 66 $\frac{2}{3}$ % of the principal amount of the Bonds at the time outstanding.

Certain units of the Mortgaged Equipment are presently leased to various shippers and railroads which are not affiliates of the Company and

certain units thereof are presently leased to the Guarantor and subleased by it to various shippers and railroads which are not affiliates of the Company, all pursuant to the Leases described in Schedule I hereto. In addition to such Leases, the Company and any of its affiliates shall be entitled to (a) lease or sublease Mortgaged Equipment, (b) otherwise furnish Mortgaged Equipment or any unit thereof to railroad companies for use upon the lines of railroads owned or operated by them or over which they have trackage rights and upon connecting and other carriers in the usual interchange of traffic, or to persons other than railroad companies for use in their business and (c) include in any such lease, sublease or other instrument or contract pursuant to which such Mortgaged Equipment shall be leased, subleased or furnished a grant by the Company of an option to purchase such Equipment; provided, however, every such lease, sublease or other instrument or contract (including any such option) pursuant to which such Mortgaged Equipment shall be leased, subleased or furnished shall expressly subject the rights with respect to such Mortgaged Equipment of the lessee, sublessee or other party to the rights of the Trustee and Bondholders under this Indenture. In connection with any such Lease or other instrument or contract the Company may grant the lessee or other person to whom such Mortgaged Equipment is furnished an option to purchase such equipment.

Upon determination by the Board of Directors of the Company that the same is necessary or advisable by reason of a change in Canadian tax or customs law and upon application to the Trustee, the Company may transfer to the Guarantor its right, title and interest in a number of units of the Mortgaged Equipment having an aggregate fair value constituting not more than 34% of the aggregate fair value of all Mortgaged Equipment and the Mortgaged Equipment described in Section 3.01 of the Deed of Trust as of the date of such transfer; provided, however, (i) the Trustee shall have received an opinion of Canadian counsel, satisfactory to the Trustee, to the effect that such transfer is necessary or advisable by reason of such change in Canadian tax or customs law, (ii) all units so transferred to the Guarantor shall remain in all respects subject to the lien of this Indenture, (iii) the Trustee shall receive from the Guarantor its acknowledgment that such units are so subject and shall receive all such other documents as the Trustee, in its reasonable discretion, shall deem necessary or advisable for the protection of its rights and of the rights of the Bondholders hereunder, and (iv) all corporate and other proceedings, all bills of sale and related documents and all recording and filing connected therewith shall be satisfactory to the Trustee, in its reasonable discretion.

SECTION 5.13. *Further assurances.* The Company and the Guarantor covenant that from time to time they will do, execute, acknowledge, deliver, file and record, or cause to be done, executed, acknowledged, delivered, filed and recorded, all and every such further acts, deeds, grants, releases, conveyances, assignments, mortgages, pledges, transfers and assurances as shall be necessary, or as the Trustee shall reasonably require, for the better granting, releasing, conveying, confirming, assigning, ceding, charging, mortgaging, pledging, transferring and assuring unto the Trustee of all the property, rights and interests hereby granted, bargained, sold, aliened, remised, conveyed, confirmed, warranted, assigned, ceded, charged, mortgaged, pledged, transferred, delivered or set over or intended so to be, or which the Company or the Guarantor may become bound to grant, bargain, sell, alien, remise, release, convey, confirm, warrant, assign, cede, charge, mortgage, transfer, deliver or set over to, or pledge with, the Trustee.

SECTION 5.14. *Delivery of Independent Engineer's Certificate under Deed of Trust.* The Company covenants that, upon the written request of not less than 25% in principal amount of Bonds then outstanding, it will cause the Guarantor to deliver to the trustee under the Deed of Trust an independent engineer's certificate at any time when delivery of an engineer's certificate is provided for in the Deed of Trust.

SECTION 5.15. *Consent of Bondholders.* Anything in this Indenture to the contrary notwithstanding, the Company or the Guarantor may fail or omit in any particular instance to comply with a covenant, agreement or condition contained in Sections 5.05 to 5.14, inclusive, if the Company shall have obtained and filed with the Trustee prior to the time for such compliance the consent in writing of the holders of at least $66\frac{2}{3}\%$ in principal amount of the Bonds at the time outstanding, either waiving such compliance in such instance or generally waiving compliance with such covenant or condition, but no such waiver shall extend to or affect any obligation not expressly waived nor impair any right consequent thereon.

SECTION 5.16. *Notice of failure to comply.* The Company and the Guarantor each covenants forthwith to give written notice to the Trustee of any failure to comply with any covenant of the Company or the Guarantor, respectively, in this Indenture.

ARTICLE VI.

SINKING FUND.

REDEMPTION OF BONDS.

SECTION 6.01. *Sinking fund.* The Company covenants that, so long as any of the Sinking Fund Bonds are outstanding, it will, (a) on the business day next preceding July 1, 1972 and on each business day next preceding each July 1 thereafter to and including July 1, 1976, deposit or cause to be deposited with the Trustee cash in the amount of \$500,000, and it will call for redemption and redeem, on July 1, 1972 and on each July 1 thereafter to and including July 1, 1976, Sinking Fund Bonds in the aggregate principal amount of \$500,000, and (b) on the business day next preceding July 1, 1977 and on each business day next preceding each July 1 thereafter to and including July 1, 1985, deposit or cause to be deposited with the Trustee cash in the amount of \$1,750,000, and it will call for redemption and redeem on July 1, 1977 and on each such July 1 thereafter to and including July 1, 1985, Sinking Fund Bonds in the aggregate principal amount of \$1,750,000, all as and for a Sinking Fund for the retirement of the Sinking Fund Bonds and at a price equal to the principal amount thereof together with accrued interest thereon to the date fixed for redemption.

SECTION 6.02. *Redemption from Replacement Funds.* In the event that the Trustee shall hold during any period of 90 consecutive days an amount of cash deposited pursuant to Sections 7.01 and 7.02 (herein called "Replacement Funds") which shall exceed 10% of the maximum aggregate amount of Bonds outstanding during such 90-day period, the Trustee shall notify the Company and the Bondholders thereof within 30 days after the close of such 90-day period. Unless the holders of at least 66 $\frac{2}{3}$ % in principal amount of the Bonds at the time outstanding shall waive in writing their rights under this Section 6.02 within 30 days after the close of such 30-day period, the Bonds shall be subject to redemption on the next succeeding interest payment date in a principal amount equal to the highest integral multiple of \$1,000 contained in the Replacement Funds held by the Trustee at the close of such 90-day period at a price equal to the principal amount of Bonds to be redeemed together with accrued interest thereon to the date fixed for redemption, and the Company shall give notice of such redemption in the manner provided in Section 6.03, and the Trustee shall apply the Replacement Funds so held to the redemption of such principal amount of Bonds on such date.

SECTION 6.03. *Notice of redemption.* Notice of redemption of Bonds shall be sent by the Company through the mails, postage prepaid, at least 30 days and not more than 60 days prior to the date of redemption, to the registered owners of Bonds at their addresses as the same shall appear on the transfer register provided for in Section 2.02; provided that notice by mail of redemption in accordance with Section 6.01 shall be deemed to have been given to the registered owner of any Sinking Fund Bond who shall have received an un superseded schedule of redemption of such Sinking Fund Bond to be made pursuant to Section 6.01 which correctly sets forth the redemption as to which notice by mail in the manner set forth above would otherwise be required.

Such notice shall be to the effect that the Company will redeem all the Bonds or a part thereof, as the case may be, on a date therein designated, specifying, in the case of partial redemption, the distinctive numbers and respective portions of the Bonds to be redeemed in part, and in every case stating that on said date there will become and be due and payable upon each Bond so to be redeemed in part, at the principal office of the Trustee, the specified amount of the principal thereof, together with the accrued interest to such date, as is specified in such Bonds, and that from and after such date interest thereon shall cease to accrue.

SECTION 6.04. *Selection of Bonds for redemption.* In the case of redemptions of less than the aggregate principal amount of all outstanding Bonds, the principal amount of Bonds to be redeemed shall be allocated (in units of \$1,000 or multiples thereof) among the registered owners of all Bonds subject to the applicable redemption, in proportion, as nearly as practicable, to the respective aggregate outstanding principal amounts of such Bonds then held by each registered owner thereof, with adjustments, to the extent practicable, to equalize for any prior unequal redemptions of such Bonds; provided, however, in the case of any exchange of Bonds pursuant to Section 2.05 such further adjustments may be made as may be necessary in order to eliminate any effect of such exchange upon the holders of Bonds not involved in such exchange.

If any registered owner of two or more Bonds shall have so requested by written notice to the Trustee, any such Bonds as shall have been specified by such owner in such notice shall be treated for purposes of this Section 6.04 as owned by separate registered owners.

SECTION 6.05. *Payment of redemption price.* Notice having been given as provided in Section 6.03, the Bonds designated for redemption or the specified portions thereof shall become due and payable upon the date specified in said notice as the redemption date at the applicable redemption price at the time, together with accrued interest to the redemption date. Payment of the redemption price with accrued interest shall be made to the registered owners of Bonds designated for redemption, upon presentation and (except as provided below) surrender of such Bonds at the place stated in the notice of redemption. If there shall be selected for redemption a portion of the principal amount but less than the entire principal amount of any Bond, the Company shall execute and the Trustee shall authenticate and deliver without charge to the holder thereof a new Bond for the unredeemed balance of the principal amount of such Bond or, at the option of such holder the Trustee shall, upon presentation of such Bond for the purpose, make notation thereon of the payment of the portion thereof so called for redemption.

SECTION 6.06. *Deposit of redemption moneys.* In any case where the notice of redemption shall have been mailed, the Company will on or before the redemption date deposit or cause to be deposited with the Trustee moneys required, if any, to effect the redemption of the Bonds specified in such notice. From and after the redemption date designated in such notice (such deposit, if required, having been made as aforesaid), notwithstanding that any Bonds so called for redemption shall not have been surrendered for the notation provided for in Section 6.05, no further interest shall accrue upon the principal of any of the Bonds so called for redemption and such Bonds shall, to the extent so called for redemption, cease to be entitled to the lien, benefits or security of this Indenture.

Moneys which the Company shall have deposited with the Trustee for the redemption of any Bonds, or which are to be applied by the Trustee for the redemption of any Bonds pursuant to Section 6.02, shall be held by the Trustee as a separate trust fund for the account of the respective holders of the Bonds to be redeemed, and shall be paid to them respectively as hereinabove provided.

SECTION 6.07. *Cancellation of redeemed Bonds.* All Bonds surrendered for redemption under this Article VI shall be forthwith cancelled by the Trustee and delivered to the Company and no Bonds shall be issued, authenticated or delivered in lieu thereof, except as hereinabove provided in respect of the partial redemption of any such Bond.

SECTION 6.08. *Sufficiency of action taken for redemption.* In case any question shall arise (other than any question as to whether a default shall have occurred) as to whether proper and sufficient action has been taken for the redemption of Bonds, the question shall be decided by the Trustee, and the decision of the Trustee shall, subject to Section 11.02, be final and binding upon all parties in interest.

SECTION 6.09. *Payment upon redemption without presentation.* Notwithstanding the provisions of Sections 6.05 and 6.06, payment of interest on, and payment of the redemption price of a portion of, any Bond shall be made by the Trustee directly to the registered owner thereof without surrender or presentation thereof to the Trustee if the Company shall have filed with the Trustee a copy of an agreement between the Company and such registered holder (or the person for whom such registered holder is a nominee) providing that (a) such payments will be so made and (b) such registered holder (or the person for whom such registered holder is a nominee) will, before selling, transferring or otherwise disposing of any such Bond, submit the same to the Trustee for notation thereon of the portion of the principal so redeemed or surrender the same to the Trustee in exchange for a Bond or Bonds in authorized denominations aggregating the same principal amount as the unredeemed principal amount of the Bond surrendered.

SECTION 6.10. *Trustee as agent of Company for giving of notices.* The Trustee, on behalf of the Company, may give all notices required by this Article VI to be given by the Company.

SECTION 6.11. *Optional redemption or prepayment.* The Bonds shall not be subject to redemption or prepayment at the option of the Company.

ARTICLE VII.

DESTRUCTION AND SUBSTITUTION OF MORTGAGED EQUIPMENT. APPLICATION OF CERTAIN MONEYS RECEIVED BY THE TRUSTEE.

SECTION 7.01. *Destruction of Mortgaged Equipment; deposit of cash.* Whenever any of the Mortgaged Equipment shall become worn out, unsuitable for use, lost or destroyed, or whenever the Company shall bene-

officially own or be entitled to vote less than 51% of the stock of the Guarantor having ordinary voting power, the Company shall forthwith (a) deliver to the Trustee an engineer's certificate describing and stating the fair value of, as the case may be, (i) the Mortgaged Equipment so worn out, unsuitable for use, lost or destroyed or (ii) all Mortgaged Equipment then owned by the Guarantor and all Equipment mortgaged under the Deed of Trust at the time such stock ownership is so diminished, and (b) either (i) mortgage to the Trustee hereunder other Equipment having a fair value not less than, as the case may be, the fair value of the Mortgaged Equipment so worn out, unsuitable for use, lost or destroyed, or the aggregate fair value of the Mortgaged Equipment so owned by the Guarantor and the Equipment mortgaged under the Deed of Trust at the time such stock ownership is so diminished, or (ii) deposit with the Trustee an amount in cash equal to such fair value or to such aggregate fair value, as the case may be. In connection therewith the Company shall comply with the provisions of the second paragraph of Section 7.02 (with appropriate variations) in so far as they relate to the action taken. Cash deposited with the Trustee pursuant to this Section 7.01 shall be held and applied as provided in the final paragraph of Section 7.02. For all purposes of this paragraph the terms "unsuitable for use" and "unsuitableness for use" shall include any condition in which Mortgaged Equipment is no longer usable for the purpose or purposes for which the same was designed (or an alternate purpose or alternate purposes provided that no material impairment in value shall arise therefrom), whether by virtue of its physical condition or of the effect of any applicable law, rule, regulation or order.

The Company covenants and agrees to furnish to the Trustee, whenever required by the Trustee and at least once within 90 to 120 days after the close of each calendar year, an officers' certificate stating (i) the number of units of Mortgaged Equipment then included in the trust estate and then in actual service, (ii) the amount, description and numbers of all Mortgaged Equipment that may have become worn out, or that may have become unsuitable for use or lost or destroyed—by accident or otherwise—since the date of the last preceding statement (or the date of this Indenture in the case of the first statement), (iii) the number of units of the Mortgaged Equipment then undergoing repairs, other than running repairs, or then withdrawn from use for such repairs, and (iv) that in the case of all the Mortgaged Equipment repainted or repaired since the date of the last preceding statement (or the date of this

Indenture in the case of the first statement) the plates or marks required by Section 5.11 have been preserved, or that such Mortgaged Equipment when repainted or repaired has been again plated or marked as required thereby. The Trustee may, but shall be under no duty to, request the Company to furnish the Trustee with the description and numbers of the Mortgaged Equipment referred to in such officer's certificate in compliance with clause (i) or (iii) of the next preceding sentence. Upon receipt of any such request, the Company shall, by officers' certificate, furnish such information to the Trustee. The Trustee, by its agents, shall have the right once in each calendar year, but shall be under no duty, to inspect the Mortgaged Equipment at the then existing locations thereof.

SECTION 7.02. *Substitution and replacement of Equipment.* In the event that the Company should become legally bound to sell any unit of the Mortgaged Equipment pursuant to any purchase option described in Schedule I hereto or any purchase option permitted by the provisions of Section 5.12 or the exercise by any government or any subdivision or authority thereof of any power of condemnation, expropriation or similar power, the Trustee shall, upon request, duly release such Mortgaged Equipment from the lien of this Indenture for transfer to such optionee, government, subdivision or authority; provided, however, none of the Mortgaged Equipment shall be so released unless simultaneously (a) there shall be mortgaged to the Trustee hereunder other Equipment of a fair value to the Company not less than the fair value, as of the date of such request, of the Mortgaged Equipment so released by the Trustee or (b) there shall be paid to the Trustee cash in an amount not less than the fair value, as of said date, of the Mortgaged Equipment so released by the Trustee.

At the time of delivery of any request pursuant to the first paragraph of this Section 7.02, the Company shall, if other Equipment is to be conveyed to the Trustee in substitution for the Mortgaged Equipment to be assigned or transferred by the Trustee, deliver to the Trustee the following papers:

- (i) an engineer's certificate stating (a) the fair value, as of the date of said request, of the Mortgaged Equipment so to be released by the Trustee, (b) that such release will not impair the lien of this Indenture in contravention of the provisions hereof and (c) the fair value of such substituted units of Equipment as of such date;

(ii) an officer's certificate stating (a) the month and year during which each unit of Mortgaged Equipment so to be released by the Trustee was first put into use (or that such unit was first put into use not later than a specified date), (b) the original Cost of each unit of the Equipment so to be substituted and the month and year during which it was first put into use (or that such unit was first put into use not earlier than a specified date), (c) that each such unit so to be substituted is Equipment as herein defined, (d) that no event of default has occurred and is continuing and (e) that, in the opinions of the signers, all conditions precedent provided for in this Indenture, relating to such substitution, have been complied with;

(iii) a supplemental indenture entered into pursuant to Article XII, warranting that the title to the Equipment so to be substituted is free from all liens, claims and encumbrances other than permitted liens and subjecting such Equipment to the lien of this Indenture; and

(iv) an opinion of counsel to the effect (a) that such supplemental indenture is valid and effective, either alone or together with any other instruments referred to in and accompanying such opinion, to vest in the Trustee a valid prior perfected security interest in and a charge on the Equipment so to be substituted, (b) that such supplemental indenture has been duly executed by the Company, the Guarantor and the Trustee and (c) that, in the opinion of such counsel, all conditions precedent provided for in this Indenture with respect to such substitution, including any recording or filing required by Section 5.08(b), have been complied with.

At the time of delivery of any request pursuant to the first paragraph of this Section 7.02, the Company shall, if cash is to be paid to the Trustee in respect of the Mortgaged Equipment to be released by the Trustee, deliver to the Trustee papers corresponding to those set forth in the second paragraph of this Section 7.02 in so far as they relate to the action requested.

Replacement funds shall from time to time be paid over by the Trustee to the Company upon request, against mortgage to the Trustee of Equipment having a fair value, as of the date of said request, not less than the amount of Replacement Funds so paid, and upon compliance by the Company with all of the provisions of the second paragraph of this Section 7.02 in so far as they relate to the action requested.

SECTION 7.03. *Funds held by and investments made by Trustee.* Any money at any time paid to or held by the Trustee hereunder until paid out by the Trustee as herein provided may be carried by the Trustee on deposit with itself, and the Trustee will allow interest upon any such moneys held by it in trust at the rate generally prevailing among Chicago banks and trust companies or allowed by it upon deposits of a similar character.

At any time, and from time to time, if at the time no event of default shall have occurred and be continuing, the Trustee, on request, shall invest and reinvest Replacement Funds in Investment Securities at such prices, including any premium and accrued interest, as are set forth in such request, such Investment Securities to be held by the Trustee in trust for the benefit of the holders of the Bonds.

The Trustee shall, on request, or the Trustee may, in the event funds are required for payment against mortgage of Equipment, sell such Investment Securities, or any portion thereof, and restore to Replacement Funds the proceeds of any such sale up to the amount paid for such Investment Securities, including accrued interest.

The Trustee shall restore to Replacement Funds out of amounts received by it for that purpose under the provisions of Section 11.01(a), an amount equal to any expenses incurred in connection with any purchase or sale of Investment Securities and also an amount equal to any loss of principal incident to the sale or redemption of any Investment Securities for a sum less than the amount paid therefor, including accrued interest.

The Company, if not to the knowledge of the Trustee in default under the terms hereof, shall be entitled to receive any interest allowed as provided in the first paragraph of this Section 7.03, or any interest (in excess of accrued interest paid at the time of purchase) or other profit which may be realized from any sale or redemption of Investment Securities.

ARTICLE VIII.

REMEDIES UPON DEFAULT.

SECTION 8.01. *Definition of events of default.* In case any one or more of the following events (herein called "events of default") shall happen and be continuing, that is to say:

(a) if default shall be made in the due and punctual payment of the principal of or interest on any Bond when and as the same shall become

due and payable, whether at maturity or in the due and punctual deposit with the Trustee of moneys for the sinking fund under Section 6.01 or otherwise;

(b) if default shall be made by the Company or the Guarantor in the performance of any covenant contained in Section 5.09 or Section 5.12;

(c) if an event of default under the Deed of Trust shall occur;

(d) if default shall be made by the Company or the Guarantor in the performance or observance of any of the covenants, agreements or conditions on its part in this Indenture, the Bonds, the Guarantee, the Assignment, the Deed of Trust or the Debenture contained, and such default shall continue for a period of 30 days after written notice to the Company by the Trustee or to the Company and the Trustee by the holder of any Bond at the time outstanding;

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

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

(g) if a court of competent jurisdiction shall enter an order, judgment or decree approving a petition filed against the Company under any bankruptcy, insolvency, reorganization, readjustment of debt, dissolution or liquidation law or statute of the Federal government or any

state or territorial government or any subdivision of either now or hereafter in effect, and such order, judgment or decree shall not be vacated or set aside or stayed within 60 days from the date of the entry of such order, judgment or decree, or a stay of such proceedings be thereafter set aside; or

(h) if, under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the Company or of the whole or any substantial part of the trust estate, and such custody or control shall not be terminated within 60 days from the date of assumption of such custody or control;

then, and in each and every such case, either the Trustee or the holders of not less than 25% in principal amount of Bonds at the time outstanding may declare the principal amount of all Bonds, if not already due and payable, to be immediately due and payable; and upon any such declaration all Bonds shall become and be immediately due and payable, anything in this Indenture or in any of the Bonds contained to the contrary notwithstanding. Any such declaration by the Trustee may be made by notice in writing delivered by the Trustee to the Company, and any such declaration by the holders of not less than 25% in principal amount of Bonds at the time outstanding may be made by notice in writing delivered by such holders to the Company and to the Trustee. The right of the Trustee or of the holders of not less than 25% in principal amount of the Bonds at the time outstanding to make any such declaration as aforesaid, however, is subject to the condition that, if at any time after the principal of the Bonds shall have been so declared due and payable and prior to the date of maturity thereof as stated in the Bonds and before any sale of the trust estate shall have been made, all arrears of interest upon all such Bonds (with interest, if and to the extent permitted by law, at the rate specified in such Bonds on any overdue installment of interest) and the expenses of the Trustee, its agents and attorneys shall either be paid by the Company or be collected and paid out of the trust estate, and all defaults as aforesaid (other than the payment of principal which has been so declared due and payable) shall have been 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 holders of 66 $\frac{2}{3}$ % in principal amount of Bonds at the time outstanding may waive such default and its consequences and rescind such declaration (whether or not such declara-

tion shall have been made by the Trustee or by the holders of not less than 25% in principal amount of Bonds at the time outstanding, as aforesaid); but no such waiver shall extend to or affect any subsequent default or impair or exhaust any right or power consequent thereon.

SECTION 8.02. *Right to enter and operate; application of income.* The Company and the Guarantor each agrees, to the full extent that it may lawfully so agree, that if an event of default shall happen and be continuing, the Company and the Guarantor upon demand of the Trustee shall forthwith surrender to the Trustee the possession of, and it shall be lawful for the Trustee, by such officer or agent as it may appoint, to enter and take possession of, all of the trust estate not already in possession and to hold, operate and manage the trust estate and from time to time make all necessary repairs and such alterations, additions, advances and improvements as it may deem wise; and to lease the same, receive the rents, income and profits thereof, including lease rentals, per diem, mileage and similar charges with respect to Mortgaged Equipment and interest on the Debenture, and use the same to pay all proper costs and expenses of so taking, holding and managing the trust estate, including reasonable compensation to the Trustee, its agents and attorneys, and all charges of the Trustee hereunder and any taxes and assessments and other charges prior to the lien of this Indenture which the Trustee may deem it wise to pay and all expenses of such repairs, additions and improvements, and to apply the remainder of the moneys so received by them as follows:

(a) in case the principal of any of the Bonds shall not have become due, to the payment of the interest in default, in the order of the maturity of the installments of such interest, with interest, if and to the extent permitted by law, at the rate specified in the Bonds on the overdue installments thereof; such payments to be made ratably to the persons or parties entitled thereto, without discrimination or preference; or

(b) in case the principal of any of the Bonds shall have become due, by declaration or otherwise, first to the payment of accrued interest in the order of maturity of the installments thereof with interest, if and to the extent permitted by law, at the rate specified in the Bonds on the overdue installments thereof, and next to the payment of the principal of all Bonds then due; such payments to be made ratably to the persons or parties entitled thereto, without discrimination or preference.

Whenever all that is due upon such interest installments and upon the principal of such Bonds, and under any of the terms of this Indenture, shall have been paid and all defaults made good, the Trustee shall surrender possession to the Company, its successors or assigns, of all property indicated in Granting Subdivision First and shall surrender possession to the Guarantor, its successors and assigns, all property indicated in Granting Subdivision Second, excepting in each case property subject to a possessory security interest. The same right of entry, however, shall exist upon any subsequent default.

SECTION 8.03. *Enforcement of Assignment.* If an event of default shall happen and be continuing, then, and in every such case, the Trustee may, whether or not the Trustee shall concurrently exercise any other remedy provided in this Article VIII or by law, terminate the agency provided for in Section 3.02(a) and in paragraph 4 of the Assignment described in Section 3.03, collect the rentals, proceeds and other moneys assigned pursuant to Section 3.01 and paragraph 3 of such Assignment, and take any and all other action specified in Article III and in such Assignment, provided that the Trustee shall have no obligation to enforce the assignment of rentals under Leases described in Section 3.02(f) until the Company shall have delivered to the Trustee a document confirmatory of such assignment required in said Section 3.02(f). The Trustee shall use any funds so received by it in the manner provided in the first paragraph of Section 8.02.

Whenever all that is due upon the interest installments and upon the principal of the Bonds referred to in Section 8.02, and under any of the terms of this Indenture, shall have been paid and all defaults made good, the Trustee shall surrender to the Company or the Guarantor, as the case may be, any remaining funds so collected and held by it and shall reinstate the agency provided for in Section 3.02(a) and in paragraph 4 of such Assignment. The same right to terminate such agency and proceed in accordance with the provisions of this Section 8.03, shall exist upon any subsequent default.

SECTION 8.04. *Power of sale.* If an event of default shall happen and be continuing, then, and in every such case, the Trustee may, if and to the extent permitted by law, by such officer or agent as it may appoint, with or without entry, sell the trust estate as an entirety or in such parcels as the holders of 66⅔% in principal amount of Bonds at the time outstanding shall in writing request, or, in the absence of such request, as the Trustee may determine, at (a) private sale or (b) public auction at some convenient place,

or at such other place or places as may be required by law, having first published notice of such sale in an authorized newspaper in the City of Chicago, County of Cook, State of Illinois at least once in each of four successive calendar weeks preceding such sale, and in each case having given any other notice which may be required by law; and the Trustee may from time to time adjourn such sale in its discretion by announcement at the time and place appointed for such sale or for such adjourned sale or sales without further notice except such as may be required by law; and upon such sale the Trustee shall make or deliver to the purchaser or purchasers a good and sufficient assignment and transfer to the same. The Trustee, its successors and appointees are each hereby irrevocably appointed the true and lawful attorneys of the Company or the Guarantor, as the case may be, in its name and stead, to make all necessary assignments and transfers of property thus sold; and for that purpose they may execute all necessary bills of sale and instruments of assignment and transfer, and may substitute one or more persons, firms or corporations with like power, the Company or the Guarantor, as the case may be, hereby ratifying and confirming all that its said attorneys, or such substitute or substitutes, shall lawfully do by virtue hereof. Nevertheless, if so requested by the Trustee or by any purchaser, the Company or the Guarantor, as the case may be, shall ratify and confirm any such sale or transfer by executing and delivering to the Trustee or to such purchaser or purchasers all proper assignments, instruments of transfer and releases as may be designated in any such request.

SECTION 8.05. *Judicial proceedings.* If an event of default shall happen and be continuing, then, and in every such case, the Trustee may in its discretion, and shall at the request in writing of the holders of 66 $\frac{2}{3}$ % in principal amount of Bonds at the time outstanding, proceed by suit or suits at law or in equity or by any other appropriate remedy to enforce payment of the Bonds and of the Guarantee and to foreclose this Indenture and to sell all or any part of the trust estate under a judgment or decree of a court or courts of competent jurisdiction, or by the enforcement of any other appropriate legal or equitable remedy as the Trustee shall deem most effectual to protect and enforce any of the rights of the Trustee or any of the rights of the Bondholders.

SECTION 8.06. *Acceleration in case of sale.* Upon any sale being made either under the power of sale hereby given or under judgment or decree in any judicial proceedings for foreclosure or otherwise for the

enforcement of this Indenture, the principal of all Bonds, if not previously due, and the interest accrued thereon, shall at once become and be immediately due and payable.

SECTION 8.07. *Conditions of sale.* The Company and the Guarantor, to the full extent that they may lawfully do so, for themselves, and for all who may claim through or under them, hereby expressly waive and release all right to have the trust estate or any part thereof marshalled upon any foreclosure, sale or other enforcement hereof, and the Trustee, or any court in which the foreclosure of this Indenture or the administration of the trust hereby created is sought, shall have the right to sell the entire trust estate as a whole in a single parcel or as a whole in integral parcels.

Upon any sale made pursuant to public or judicial proceedings, any Bondholder or Bondholders may bid for and purchase the trust estate, and upon compliance with the terms of sale, may hold, retain and possess and dispose of such property in his or their own absolute right without further accountability; and any purchaser at any such sale may, in paying the purchase money, turn in any of the Bonds in lieu of cash to the amount which shall, upon distribution of the net proceeds of such sale, be payable thereon. Said Bonds, in case the amount so payable thereon shall be less than the amount due thereon, shall be returned to the holder thereof after being properly stamped to show partial payment.

Upon any sale, whether made under the power of sale hereby given or by virtue of judicial proceedings, the receipt of the Trustee or of the officer making a sale under judicial proceedings shall be a sufficient discharge to the purchaser or purchasers at any sale for his or their purchase money, and such purchaser or purchasers, his or their assigns or personal representative, shall not, after paying such purchase money and receiving such receipt of the Trustee, or of such officer therefor, be obliged to see to the application of such purchase money, or be in any wise answerable for any loss, misapplication or non-application thereof.

Any such sale, whether under any power of sale hereby given or by virtue of judicial proceedings, shall operate to divest all right, title, interest, claim and demand whatsoever, either at law or in equity, of the Company or the Guarantor, as the case may be, in and to the property sold, and shall be a perpetual bar both at law and in equity, against the Company, its successors and assigns, or the Guarantor, its successors and assigns, as the case may be, and against any and all persons claiming or to claim the property sold or any part thereof from, through or under any of them.

SECTION 8.08. *Application of proceeds.* The proceeds of enforcement of the Guarantee and of any sale, whether made under any power of sale herein granted or pursuant to judicial proceedings, together with any other sums which then may be held by the Trustee under any of the provisions of this Indenture as part of the trust estate, shall be applied as follows:

First: to the payment of the costs and expenses of such sale, including a reasonable compensation to the Trustee and to any co-trustee or additional trustee appointed pursuant to Section 11.09, their agents, attorneys and counsel, and of all necessary or proper expenses and advances made or incurred by the Trustee under this Indenture, and to the payment of all taxes, assessments or liens superior to the lien of this Indenture, except any taxes, assessments or other superior liens subject to which such sale shall have been made;

Second: to the payment of the whole amount then owing or unpaid upon the Bonds for principal and interest, with interest at the rate of 10% per annum on overdue principal and, if and to the extent permitted by law, on overdue installments of interest, and, in case such proceeds shall be insufficient to pay in full the whole amount so due and unpaid upon the Bonds, then to the payment of such principal and interest, without preference or priority, ratably according to the aggregate amount so due for such principal and interest; such payments shall be made on the date fixed therefor by the Trustee, upon presentation of the several Bonds and stamping thereon the amount paid, if such Bonds be only partly paid, and upon surrender and cancellation thereof if fully paid; and

Third: all surplus then remaining to the Company, its successors or assigns, or to the Guarantor, its successors, or assigns, in accordance with their respective interests, or to whomsoever may be lawfully entitled to receive the same, or as a court of competent jurisdiction may direct.

SECTION 8.09. *Judgment for principal and interest.* In case

(a) default shall be made in the payment of any installment of interest on any Bond, when and as the same shall become due and payable; or

(b) default shall be made in the payment of the principal of any Bond when the same shall have become due and payable, whether at maturity thereof, in the due and punctual deposit with the Trustee of moneys for the sinking fund under Section 6.01, by declaration as authorized in Section 8.01, or upon a sale as provided in Section 8.06, or otherwise;

then, upon demand of the Trustee, the Company will pay to the Trustee, for the benefit of the holders of the Bonds, the whole amount then due and payable on all such Bonds, for interest and principal, as the case may be, with interest, at the rate specified in such Bonds, upon the overdue principal and, if and to the extent permitted by law, on the overdue installments of interest, and, in case the Company shall fail to pay the same forthwith upon such demand, the Trustee, in its own name and as trustee of an express trust, shall be entitled to recover judgment against the Company or any other obligor upon the Bonds or the Guarantor (subject, however, to the limitation of the Guarantor's liability provided in Section 2.08) for the whole amount so due and unpaid.

The Trustee shall, if permitted by law, be entitled to recover judgment as aforesaid either before or after or during the pendency of any proceedings for the enforcement of the Guarantee or of the lien of this Indenture upon the trust estate, and in the case of enforcement of the Guarantee or sale of the trust estate and of the application of the proceeds thereof to the payment of the indebtedness hereby secured, the Trustee, in its own name and as trustee of an express trust, shall be entitled to enforce payment of and to receive all amounts then remaining due and unpaid upon any and all of the Bonds, for the benefit of the holders thereof, and shall be entitled to recover judgment for any portion of the indebtedness remaining unpaid, with interest, as aforesaid. No recovery of any such judgment by the Trustee and no enforcement of the Guarantee or levy of any execution under any such judgment upon the trust estate or any part thereof, or upon any other property, shall in any manner or to any extent affect the lien of this Indenture upon the trust estate or any part hereof, or any rights, powers or remedies of the Trustee hereunder, or any lien, rights, powers or remedies of the holders of the Bonds, but such lien, rights, powers and remedies shall continue unimpaired as before.

Any moneys collected by the Trustee under this Section 8.09 shall be applied by the Trustee towards payment of the amounts then due and unpaid upon such Bonds in respect whereof such moneys shall have been collected,

ratably and without any preference or priority of any kind, according to the amounts due and payable upon such Bonds at the date fixed by the Trustee for the distribution of such moneys, upon presentation of the several Bonds and stamping such payment thereon, if partially paid, and upon surrender and cancellation thereof, if fully paid.

SECTION 8.10. *Appointment of receiver.* If an event of default shall happen and be continuing and upon filing a bill in equity or other commencement of judicial proceedings to enforce the rights of the Trustee and of the Bondholders, the Trustee as a matter of right shall, to the extent permitted by law, be entitled to the appointment of a receiver or receivers of the trust estate and of the income, rents, issues and profits thereof pending such proceedings, with such powers as the court making such appointment shall confer, but notwithstanding the appointment of any receiver the Trustee shall be entitled to retain possession and control of any property deposited or pledged with it hereunder or agreed or provided to be delivered or deposited or pledged with it hereunder.

SECTION 8.11. *Assembly of Mortgaged Equipment.* In case the Trustee shall demand possession of the Mortgaged Equipment pursuant to the provisions hereof, and shall reasonably designate a point or points for the delivery of the Mortgaged Equipment to it, the Company, subject to the rights of any lessees and purchase optionees of the Mortgaged Equipment under the leases and subleases listed in Schedule I hereto, shall at its own expense forthwith and in the usual manner cause the Mortgaged Equipment to be moved to such point or points as shall 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 Mortgaged Equipment on any of the lines of railroads or premises of the Company until the Trustee shall have leased, sold or otherwise disposed of the same, and for such purpose the Company agrees to furnish without charge for rent or storage the necessary facilities at any convenient point or points selected by the Trustee. It is hereby expressly covenanted and agreed that the performance of this covenant is of the essence of this Indenture and that, upon application to any court having jurisdiction in the premises, the Trustee shall be entitled to a decree against the Company requiring the specific performance thereof.

SECTION 8.12. *Waiver of extension and other laws.* The Company and the Guarantor each agrees, to the full extent that it may lawfully so agree,

that in case of a default, as aforesaid, neither the Company or the Guarantor nor anyone claiming through or under it shall or will set up, claim or seek to take advantage of any appraisalment, valuation, stay, extension or redemption laws now or hereafter in force in any locality where any property subject to the lien hereof may be situated, in order to prevent or hinder the enforcement or foreclosure of this Indenture, the absolute sale of the trust estate or any portion thereof, or the final and absolute putting into possession thereof, immediately after such sale, of the purchaser or purchasers thereat, and the Company and the Guarantor each, to the full extent that it may lawfully do so, for itself, and all who may claim through or under it, hereby waives the benefit of all such laws.

SECTION 8.13. *Control by Bondholders.* Subject to the provisions of Section 11.01, the holders of 66 $\frac{2}{3}$ % in principal amount of Bonds at the time outstanding shall have the right, by an instrument in writing executed and delivered to the Trustee, to direct the time, method and place of conducting any proceeding for any remedy open to the Trustee and of exercising any power or trust conferred upon the Trustee under this Indenture; provided, however, in the absence of any such direction of Bondholders, nothing in this Section 8.13 shall in any way limit the rights of the Trustee with respect to any such remedy, power or trust.

SECTION 8.14. *Suit by individual Bondholder.* No holder of any Bond shall have the right to institute any suit, action or proceeding in equity or at law for the foreclosure of this Indenture, or for the execution of any trust or power hereof, or for the appointment of a receiver, or for the enforcement of the Guarantee, or for the enforcement of any other remedy under or upon this Indenture, unless such holder previously shall have given to the Trustee written notice of some existing default and of the continuance thereof, as hereinbefore provided, nor unless also the holders of at least 25% in principal amount of the Bonds at the time outstanding shall have made written request upon the Trustee and shall have afforded to it a reasonable opportunity either to proceed to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in its own name, nor unless also such holder or holders shall have offered to the Trustee security and indemnity satisfactory to it against the costs, expenses and liabilities to be incurred therein or thereby, and the Trustee shall have refused or neglected to comply with such request within a reasonable time; and such notification, request and offer of indemnity

are hereby declared, in every such case, at the option of the Trustee, to be conditions precedent to the execution of the powers and trusts of this Indenture by any Bondholder and to any action or cause of action for foreclosure or for the appointment of a receiver or for any other remedy hereunder taken by any Bondholder, it being understood and intended that no one or more holders of Bonds shall have any right in any manner whatever hereunder or under the Bonds by his or their action to affect, disturb or prejudice the lien of this Indenture or to enforce any right under the Guarantee or hereunder, except in the manner herein provided, and that all proceedings under the Guarantee or hereunder, at law or in equity, shall be instituted, had and maintained in the manner herein provided and for the ratable benefit of all holders of such Bonds. Nothing herein contained shall, however, affect or impair the right of any Bondholder, which is absolute and unconditional, to enforce the payment of the principal of and interest on his Bonds at and after the same become due and payable, whether by maturity, declaration, redemption or otherwise, or the obligation of the Company, which is also absolute and unconditional, to pay the principal of and interest on each of the Bonds to the respective holders thereof, in either case at the time and place in the Bonds expressed.

SECTION 8.15. *Discontinuance of proceedings on default.* In case the Trustee shall have proceeded to enforce any right under this Indenture by foreclosure, entry or otherwise and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Trustee, then, and in every such case, the Company, the Guarantor and the Trustee shall be restored to their former positions and rights hereunder in respect to the trust estate, and all rights, remedies and powers of the Trustee, shall continue as though no such proceedings had been taken.

SECTION 8.16. *Action without possession of Bonds.* All rights of action under this Indenture, or under any of the Bonds, enforceable by the Trustee, may be enforced by the Trustee without the possession of any of such Bonds, or the production thereof on the trial or other proceedings relative thereto, and any such suit or proceedings instituted by the Trustee shall be brought in its own name as trustee, for the ratable benefit of the holders of the Bonds, subject to the provisions of this Indenture.

SECTION 8.17. *Proof of claim.* The Trustee shall be entitled and empowered in its own name or as trustee of an express trust, or as attorney-in-fact for the holders of the Bonds, or in any one or more of such capacities, to file such proof of debt, amendment of proof of debt, claim, petition or other document as may be necessary or advisable in order to have the claims of the Trustee and of the holders of the Bonds allowed in any equity receivership, insolvency, bankruptcy, liquidation, readjustment, reorganization or other similar proceedings relative to the Company, the Guarantor or any other obligor upon the Bonds or its creditors or affecting its property. The Trustee is hereby irrevocably appointed (and the successive respective holders of the Bonds by taking and holding the same shall be conclusively deemed to have so appointed the Trustee) the true and lawful attorney-in-fact of the respective holders of the Bonds, with authority to make and file in the respective names of the holders of the Bonds, or on behalf of the holders of the Bonds as a class, subject to deduction from any such claims of the amounts of any claims filed by any of the holders of the Bonds themselves, any proof of debt, amendment of proof of debt, claims, petition or other documents in any such proceedings and to receive payment of any sums becoming distributable on account thereof, and to execute any other papers and documents and to do and perform any and all acts and things for and on behalf of such holders of the Bonds, as may be necessary or advisable in the opinion of the Trustee in order to have the respective claims of the Trustee and of the holders of the Bonds against the Company or its property, and the claims of the Trustee against the Guarantor or its property, allowed in any such proceeding, and to receive payment of or on account of such claims; provided, that in no case shall the Trustee have any right to accept or consent to any plan of reorganization or by other action of any character in any such proceeding to waive or change in any way any right of any Bondholder even though it may otherwise be entitled so to do under any present or future law, all such power or authorization being hereby expressly denied.

SECTION 8.18. *Delay or omission not a waiver.* No delay or omission of the Trustee or of the Bondholders to exercise any right or power accruing upon any event of default shall impair any such right or power or shall be construed to be a waiver of any such default or acquiescence therein; and every right and power given by this Article VIII to the Trustee may be exercised from time to time and as often as may be deemed expedient by the Trustee.

SECTION 8.19. *Bonds owned by Company.* No Bonds owned or held by, for the account of or for the benefit of, the Company shall be deemed entitled to share in any payment or distribution provided for in this Article VIII.

SECTION 8.20. *Not required to pursue particular remedy.* Nothing in this Indenture contained shall be construed as requiring the Trustee to pursue any particular remedy for the purpose of procuring the satisfaction of the indebtedness secured hereby, but the Trustee may exercise all or any of the rights herein provided or which may be given by statute, law or equity or otherwise, in the discretion of the Trustee.

SECTION 8.21. *Remedies subject to applicable law.* All rights, remedies and powers provided by this Article VIII may be exercised only to the extent that the exercise thereof does not violate any applicable provision of law in the premises, and all the provisions of this Article VIII are intended to be subject to all applicable mandatory provisions of law that may be controlling in the premises and to be limited to the extent necessary so that they will not render this Indenture invalid, unenforceable or not entitled to be recorded or filed under the provisions of any applicable law.

SECTION 8.22. *Demand for payment of principal of Debenture.* Notwithstanding that the Debenture is expressed to be payable upon demand, the Trustee agrees not to demand payment thereof unless and until an event of default shall have occurred under this Indenture.

ARTICLE IX.

EVIDENCE OF RIGHTS OF BONDHOLDERS.

SECTION 9.01. Any demand, request, consent or other instrument, which this Indenture may require or permit to be signed and executed by the Bondholders may be in any number of concurrent instruments of similar tenor and may be signed or executed by such Bondholders in person or by attorney appointed in writing. Proof of the execution of any such demand, request, consent or other instrument, or of a writing appointing any such attorney, and of the holding by any person of the Bonds shall be sufficient for any purpose of this Indenture if made in the following manner:

(a) The fact and date of the execution by any person of such demand, request, consent or other instrument or writing may be proved by the certificate of any notary public, or other officer authorized to take acknowledgments of deeds to be recorded in the jurisdiction in which he acts, that the person signing the same acknowledged to him the execution thereof, or by an affidavit of a witness of such execution. The Trustee may nevertheless in its discretion require further proof in cases where it deems further proof desirable.

(b) The ownership of Bonds shall be proved by the registry books.

The Trustees shall not be bound to recognize any person as a Bondholder unless and until his title to the Bonds held by him is proved in the manner in this Article IX provided.

Any demand, request or consent of the holder of any Bond shall bind all future holders of the same Bond, or any Bond or Bonds issued in exchange therefor, in respect of anything done or suffered by the Company or the Trustee in pursuance thereof.

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

ARTICLE X.

IMMUNITY OF INCORPORATORS, STOCKHOLDERS, OFFICERS AND DIRECTORS.

SECTION 10.01. No recourse shall be had for the payment of the principal of, or the interest on, any Bond, or for any claim based thereon or on the Guaranty or this Indenture or any indenture supplemental hereto, against any incorporator or against any stockholder, director or officer, past, present or future, of the Company or the Guarantor, or of any predecessor or successor corporation, as such, either directly or through the Company or the Guarantor or any such predecessor or successor corporation, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assess-

ment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitution, statute or otherwise, of incorporators, stockholders, directors or officers, as such, being released as a condition of and consideration for the execution of this Indenture and of the issue of the Bonds.

ARTICLE XI.

THE TRUSTEES.

SECTION 11.01. *Expenses, compensation and certain rights and obligations.* The Trustee accepts the trusts created by this Indenture upon the terms and conditions hereof, including the following, to all of which the parties hereto and the holders from time to time of the Bonds agree:

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

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

(c) The Trustee shall not be responsible in any manner whatsoever for the correctness of the recitals herein or in the Bonds (except the Trustee's certificate of authentication thereon as to which the Trustee shall be responsible), all of which are made by the Company solely; and the Trustee shall not be responsible or accountable in any manner whatsoever for or with respect to the validity or execution or sufficiency of this Indenture, or of any indenture supplemental hereto, or of the Bonds, or for the value of the property subject to the lien of this Indenture or any part thereof, or for the title of the Company thereto, or for the security afforded thereby and hereby, or for the validity of any securities at any time held hereunder, and the Trustee makes no representation with respect thereto. The Trustee shall not be accountable for the use or application by the Company of any Bonds authenticated and delivered hereunder, or for the use or application of any moneys paid over by the Trustee in accordance with any provision of this Indenture.

(d) The Trustee shall not be under any obligation to exercise any of the trusts or powers hereof at the request, order or direction of any of the Bondholders, pursuant to the provisions of this Indenture, unless such Bondholders shall have offered to the Trustee security or indemnity satisfactory to it against the cost, expenses and liabilities to be incurred therein or thereby; nothing herein contained shall, however, relieve the Trustee of the obligation, upon the occurrence of an event of default (which has not been cured), to exercise such of the rights and powers vested in them by this Indenture, and to use the same degree of care and skill in their exercise as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

(e) The Trustee may consult with counsel, and, to the extent permitted by Section 11.02, the advice of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder in good faith and in accordance with the advice of such counsel.

(f) The Trustee, to the extent permitted by Section 11.02, may rely upon the certificate of the Secretary or one of the Assistant Secretaries of the Company or the Guarantor as to the adoption of any resolution by the Boards of Directors or stockholders thereof.

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

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

(i) The Trustee, to the extent permitted by Section 11.02, may rely and shall be protected in acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, Bond or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties. In all cases where this Indenture does not make other express provision as to evidence on which the Trustee may act or refrain from acting, the Trustee shall be protected, to the extent permitted by Section 11.02, in acting or refraining from acting under any provision of this Indenture in reliance upon an officer's certificate as to the existence or non-existence of any fact or facts.

(j) Subject to the provisions of Section 7.03, all moneys received by the Trustee under or pursuant to any provision of this Indenture (including any moneys received by the Trustee as paying agent) shall be held by the Trustee in trust for the purposes for which they were paid or are held, but, except as otherwise provided herein, need not be segregated in any manner from any other moneys except to the extent required by law, and may be deposited by the Trustee, under such general conditions as may be prescribed by law, in the Trustee's general banking department and the Trustee shall not be liable for any interest thereon, except such as the Trustee may agree to pay.

SECTION 11.02. *Duties of Trustee; extent of liability.* Anything in this Indenture contained to the contrary notwithstanding:

(a) unless and until an event of default, specified in Section 8.01 hereof, shall have happened and be continuing,

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

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

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

(c) the Trustee shall not be personally liable to any holder of Bonds or to any other person with respect to any action taken or omitted to be taken by either of them in good faith, in accordance with the direction of the holders of $66\frac{2}{3}\%$ in principal amount of Bonds at the time outstanding, relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred upon the Trustee by this Indenture.

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

SECTION 11.03. *Resignation of Trustee upon failure to maintain certain qualifications.* If the Trustee shall at any time cease to be a bank or trust company in good standing organized and doing business under the

laws of the United States or of the State of Illinois and having a combined capital and surplus of not less than \$100,000,000 which is authorized under the laws of the jurisdiction of incorporation to exercise corporate trust powers and is subject to supervision or examination by Federal or State authority, then the Trustee shall resign within 30 days thereafter, such resignation to become effective upon the appointment of a successor trustee and such successor's acceptance of such appointment. If the Trustee publishes reports of condition at least annually, pursuant to law or to the requirements of the aforesaid supervising or examining authority, the combined capital and surplus of the Trustee shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If the Trustee shall fail or refuse to resign within said period, then (a) the Trustee shall, within ten days after the expiration of said period, transmit notice of such failure or refusal to the Bondholders in the manner and to the extent provided in Section 11.07; and (b) any Bondholder, who has been the bona fide holder of a Bond for at least six months, may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee so failing or refusing to resign and the appointment of a successor.

SECTION 11.04. *Resignation and removal; successor Trustees.* The Trustee or any successor may resign and be discharged from the trust hereby created by giving notice thereof to the Company and the Guarantor, specifying the date when such resignation shall take effect, and by giving notice thereof to the Bondholders, in the manner and to the extent provided in Section 11.07. Such resignation shall take effect on the date specified in such notice unless previously a successor shall have been appointed as hereinafter provided, in which event such resignation shall take effect upon the appointment of such successor.

The Trustee, or any successor, may be removed at any time by an instrument or instruments in writing delivered to the Trustee and to the Company and the Guarantor, and a successor may be appointed by an instrument or instruments in writing delivered to such successor and to the Company and the Guarantor, in each case signed by the holders of 66⅔% in principal amount of Bonds at the time outstanding or by their duly authorized attorneys-in-fact.

Until a successor shall be appointed by the Bondholders or a court of competent jurisdiction as herein authorized, the Company and the Guarantor,

by an instrument executed by order of their respective Boards of Directors, shall appoint a successor to fill the vacancy.

If in a proper case no appointment of a successor shall be made pursuant to the foregoing provisions of this Article XI within six months after a vacancy shall have occurred, the holder of any Bond or the Trustee so retiring may apply to any court of competent jurisdiction to appoint a successor. Said court may thereupon, after such notice, if any, as such court may deem proper and prescribe, appoint a successor.

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

SECTION 11.05. *Successor Trustees.* Any successor to the Trustee appointed under any of the methods herein provided shall execute, acknowledge and deliver to its predecessor trustee and to the Company and the Guarantor an instrument in writing accepting such appointment hereunder and thereupon such successor, without any further act, deed or conveyance, shall become fully vested with the estates, properties, rights, powers and trusts of its predecessor in the trust hereunder with like effect as if originally named as the Trustee herein; but such predecessor shall, nevertheless, at the written request of the successor, execute and deliver an instrument transferring to the successor all the estates, properties, rights, powers and trusts of such predecessor hereunder and shall duly assign, transfer and deliver all property and moneys held by it to its successor. Should any instrument in writing from the Company and the Guarantor be required by any successor for more fully and effectually vesting in and confirming to it all estates, properties, rights, powers and duties as trustee hereunder, the Company and the Guarantor, upon the request of such successor, shall make, execute and deliver the same. The Company shall promptly give notice of the appointment of such successor to the Bondholders in the manner and to the extent provided in Section 11.07.

SECTION 11.06. *Merger or Consolidation of Trustee.* Any corporation into which the Trustee or any successor to it in the trust created by this Indenture may be merged, or with which it or any successor to it may be consolidated, or any corporation resulting from any merger or consolidation to which the Trustee or any successor to it shall be a party, shall be the successor to the Trustee under this Indenture without the execution or filing of any instruments or any further act on the part of any of the parties hereto.

SECTION 11.07. *Transmission of reports to Bondholders.* All reports, requests or notices which are required by any other provision of this Indenture to be transmitted in accordance with the provisions of this Section 11.07, shall be transmitted by mail to all registered owners of Bonds, as the names and addresses of such owners appear upon the registration books provided for in Section 2.02.

SECTION 11.08. *Right to acquire and hold Bonds.* The Trustee and any paying agent may each acquire and hold Bonds and otherwise deal with the Company and the Guarantor in the same manner and to the same extent and with like effect as though it was not Trustee or a paying agent hereunder.

SECTION 11.09. *Additional Trustees.* (a) If at any time or times it shall be necessary or prudent in order to conform to any law of any jurisdiction in which the Company or the Guarantor shall at the time hold any property subject to the lien hereof, or the Trustee shall be advised by counsel, satisfactory to it, that it is so necessary or prudent in the interest of the Bondholders, or the holders of 66 $\frac{2}{3}$ % in principal amount of Bonds at the time outstanding shall in writing so request the Trustee and the Company and the Guarantor, the Trustee and the Company and the Guarantor shall execute and deliver all instruments and agreements necessary or proper to constitute another bank or trust company or one or more persons approved by the Trustee and the Company and the Guarantor, either to act as co-trustee or co-trustees of all or any of the property subject to the lien hereof, jointly with the Trustee originally named herein or any successor or successors, or to act as separate trustee or trustees of any such property. In the event the Company and the Guarantor shall have not joined in the execution of such instruments and agreements within ten days after the receipt of a written request from the Trustee so to do, or in case an event of default hereunder shall happen and be continuing, the Trustee may act under the foregoing

provisions of this Section 11.09 without the concurrence of the Company and the Guarantor; and the Company and the Guarantor hereby appoint the Trustee its agent and attorney to act for it under the foregoing provisions of this Section 11.09 in either of such contingencies.

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

(1) the Bonds shall be authenticated and delivered and all powers, duties, obligations and rights conferred upon the Trustee in respect of the custody, control and management of moneys, papers or securities, shall be exercised solely by said Harris Trust and Savings Bank, or its successor as Trustee hereunder;

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

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

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

(5) the Company and the Guarantor and the Trustee, at any time, by an instrument in writing, executed by them jointly, may remove any such additional trustee, and in that case, by an instrument in writing executed by them jointly, may appoint a successor or successors to such trustee or trustees, as the case may be, anything herein contained to the contrary notwithstanding; in the event that the Company and the Guar-

antor shall not have joined in the execution of any such instrument within ten days after the receipt of a written request from the Trustee so to do, the Trustee shall have the power to remove any such trustee and to appoint a successor to such trustee without the concurrence of the Company and the Guarantor, the Company and the Guarantor hereby appointing the Trustee its agent and the attorney to act for it in such connection in such contingency; in the event that the Trustee alone shall have appointed a successor or additional trustee or trustees or co-trustee or co-trustees as above provided, it may at any time, by an instrument in writing, remove any such trustee or co-trustee, the successor to any such trustee or co-trustee so removed to be appointed by the Company and the Guarantor and the Trustee, or by the Trustee alone, as hereinbefore in this Section 11.09 provided.

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

ARTICLE XII.

SUPPLEMENTAL INDENTURES.

SECTION 12.01. *Supplemental Indentures without Bondholders' consent.* The Company and the Guarantor, when authorized by resolution of their respective Boards of Directors, and the Trustee from time to time and at any time, subject to the conditions and restrictions in this Indenture contained, may enter into an indenture or indentures supplemental hereto which indenture or indentures shall form a part hereof, for any one or more or all of the following purposes:

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

(b) to grant, bargain, sell, alien, remise, release, convey, confirm, warrant, assign, cede, charge, mortgage, pledge, transfer, deliver and set over unto the Trustee and to subject to the lien of this Indenture property or properties of the Company or the Guarantor, for the equal and proportionate benefit and security, except as herein otherwise expressly provided, of the holders of all Bonds at any time outstanding under this Indenture, and to correct or amplify the description of any properties at any time subject to the lien of this Indenture;

(c) to appoint a co-trustee or co-trustees, or a separate trustee or trustees, pursuant to Section 11.09; or

(d) for any other purpose consistent with the terms of this Indenture, or for the purpose of curing any ambiguity or curing, correcting or supplementing any defect or inconsistent provision contained in this Indenture or any indenture supplemental hereto.

Any supplemental indenture authorized by the provisions of this Section 12.01 may be executed by the Company, the Guarantor and the Trustee without the consent of the holders of any of the Bonds at the time outstanding, notwithstanding any of the provisions of Section 12.02, but the Trustee shall not be obligated to enter into any such supplemental indenture which affects the Trustee's rights, duties or immunities under this Indenture or otherwise.

The holders of not less than 66⅔% in principal amount of the Bonds at the time outstanding shall have the right at any time to direct and require the Company, the Guarantor and the Trustee to enter into one or more indentures supplemental hereto in order to effectuate the purpose specified in subsection (d) of this Section 12.01. Upon the written request of the holders of the requisite percentage of Bonds as aforesaid, the Company, the Guarantor and the Trustee shall with reasonable promptness execute such supplemental indenture or indentures. If the Trustee shall not be willing to execute a supplemental indenture as requested, it shall, within 20 days after the receipt of such request, resign as Trustee hereunder.

SECTION 12.02. *Supplemental Indentures with Bondholders' consent.* With the consent (evidenced as provided in Article IX) of the holders of

not less than 66 $\frac{2}{3}$ % in principal amount of the Bonds at the time outstanding, the Company and the Guarantor, when authorized by resolution of their respective Boards of Directors, and the Trustee may, from time to time and at any time, enter into an indenture or indentures supplemental hereto for the purpose of adding any provision to or changing in any manner or eliminating any of the provisions of this Indenture or of any supplemental indenture; provided, however, no such supplemental indenture shall (a) permit the extension of the time or times of payment of the principal of, or the interest on, any Bond or a reduction in the rate of interest thereon, or otherwise affect the amount or terms of payment of the principal of, or the interest on, any Bond, or affect the sinking fund obligations of the Company under Section 6.01, or permit the creation of any lien ranking prior to, or on a parity with, the lien of this Indenture with respect to any of the trust estate, or deprive the holder of any Bond of the benefit of the lien on the trust estate or modify or affect in any manner adverse to the holders of the Bonds the terms and conditions of the obligations of the Guarantor hereunder, without the consent of the holder of each Bond so affected, or (b) reduce the aforesaid percentage of the principal amount of the Bonds, the holders of which are required to consent to any such supplemental indenture or to effectuate a waiver under Section 5.15, without the consent of the holders of all the Bonds then outstanding. Upon receipt by the Trustee of certified resolutions authorizing the execution of any such supplemental indenture, and upon the filing with the Trustee of evidence of the consent of Bondholders, as aforesaid, the Trustees shall join with the Company and the Guarantor in the execution of such supplemental indenture unless such supplemental indenture affects the Trustee's rights, duties or immunities under this Indenture or otherwise, in which case the Trustee may in its discretion but shall not be obligated to enter into such supplemental indenture.

Promptly after the execution by the Company and the Trustee of any supplemental indenture pursuant to the provisions of this Article XII, the Company shall give notice, setting forth in general terms the substance of such supplemental indenture, to the holders of all Bonds outstanding; such notice shall be sent by the Company through the mails, postage prepaid. Any failure of the Company to give such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such supplemental indenture.

SECTION 12.03. *Effect of supplemental Indenture.* Upon the execution of any supplemental indenture pursuant to the provisions of this

Article XII, this Indenture shall be and be deemed to be modified and amended in accordance therewith and the respective rights, duties and obligations under this Indenture of the Company, the Guarantor, the Trustee and all holders of Bonds outstanding thereunder shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modification and amendment, and all the terms and conditions of any such supplemental indenture shall be and be deemed to be part of the terms and conditions of this Indenture for any and all purposes.

SECTION 12.04. *Trustee's opinion of counsel.* Subject to the provisions of Section 11.02, the Trustees may receive an opinion of counsel as conclusive evidence that any supplemental indenture executed pursuant to the provisions of this Article XII complies with the requirements of this Article XII.

SECTION 12.05. *Notation on Bonds; execution and delivery of new Bonds.* Bonds authenticated and delivered after the execution of any supplemental indenture pursuant to the provisions of this Article XII may bear a notation in form approved by the Trustee as to any matter provided in such supplemental indenture. If such supplemental indenture shall so provide, new Bonds of like tenor, so modified as to conform, in the opinion of the Trustee and the Boards of Directors of the Company and the Guarantor, to any modification or amendment of this Indenture contained in any such supplemental indenture, may be prepared and executed by the Company, authenticated by the Trustee and delivered without cost to the holders of Bonds then outstanding, upon surrender of such Bonds in equal aggregate principal amounts.

ARTICLE XIII.

DEFEASANCE.

SECTION 13.01. If the Company, its successors or assigns, shall pay or cause to be paid unto the holders of the Bonds, the principal and interest to become due thereon, at the times and in the manner stipulated therein, then these presents and the estate and rights hereby granted shall (at the option of the Company evidenced by a certified resolution delivered to the Trustee) cease, determine and be void, and thereupon the Trustee shall, upon the request of the Company, cancel and discharge the lien of this Indenture, and execute

and deliver to the Company and the Guarantor such deeds as shall be requisite to satisfy the lien hereof, and reconvey to the Company and the Guarantor the estate and title hereby conveyed, and assign and deliver to the Company and the Guarantor any property at the time subject to the lien of this Indenture which may then be in its possession, all in accordance with their respective interests.

If the Guarantor, its successors or assigns shall fully satisfy all obligations which it may have under the Guarantee and this Indenture, then these presents and the estate and rights hereby granted by the Guarantor shall (at the option of the Guarantor evidenced by a certified resolution delivered to the Trustee) cease, determine and be void, and thereupon the Trustee shall, upon the request of the Guarantor, cancel and discharge the lien of this Indenture from properties hereby granted by the Guarantor, and execute and deliver to the Guarantor such deeds as shall be requisite to satisfy the lien hereof on such properties, and reconvey to the Guarantor the estate and title thereto hereby granted by the Guarantor, and assign and deliver to the Guarantor any such properties which may then be in its possession.

Bonds for the payment or redemption of which moneys in the full amount required therefor shall have been irrevocably deposited in trust with the Trustee, whether at or prior to the maturity or the redemption date of such Bonds, shall for the purposes of this Article XIII be deemed to have been paid, provided, however, that the moneys so deposited shall forthwith upon such deposit be unconditionally available to the holders of such Bonds, and further provided, however, that if such Bonds are to be redeemed prior to the maturity thereof, notice of such redemption shall have been duly given or provision satisfactory to the Trustee shall have been made therefor.

At or before the time of the delivery by the Trustee of the instruments discharging the lien of this Indenture, the Trustee shall then and thereafter hold, as a special trust fund for the benefit of the holders of the unpaid Bonds, the moneys on deposit with it for the payment of such Bonds.

ARTICLE XIV.

MISCELLANEOUS PROVISIONS.

SECTION 14.01. *Benefits restricted to parties and Bondholders.* Nothing in this Indenture, expressed or implied, is intended or shall be construed to confer upon, or give to, any person, firm or corporation, other

than the parties hereto, and the holders of the Bonds, any right, remedy or claim under or by reason of this Indenture or any covenant, condition or stipulation hereof; and the covenants, stipulations and agreements in this Indenture contained are and shall be for the sole and exclusive benefit of the parties hereto, their successors and assigns, and the holders of the Bonds.

SECTION 14.02. *Cremation of cancelled Bonds.* Whenever in this Indenture provision is made for the cancellation by the Trustee and the delivery to the Company of any Bonds, the Trustee may, in lieu of such delivery, cremate such cancelled Bonds and deliver a certificate of such cremation to the Company.

SECTION 14.03. *Illegality or invalidity of provision.* In case any one or more of the provisions contained in this Indenture or in the Bonds shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and therein shall not in any way be affected or impaired thereby.

SECTION 14.04. *Date of actual execution.* Although this Indenture, for convenience and for the purpose of reference, is dated as of July 1, 1971, the actual date of execution by the Company and by the Guarantor and by the Trustee is as indicated by their respective acknowledgments hereto annexed.

SECTION 14.05. *Substituted publication.* In case, by reason of the temporary or permanent suspension of publication of any newspaper, or by reason of any other cause, it shall be impossible to make publication of any notice required hereby in the newspaper or newspapers as herein provided, then such publication in lieu thereof as shall be made with the approval of the Trustee shall constitute a sufficient publication of such notice. Such publication shall, so far as may be, approximate the terms and conditions of the publication in lieu of which it is given.

SECTION 14.06. *Certificates.* The same officer or officers of the Company or of the Guarantor, or the same accountant, auditor, engineer or counsel or other person, as the case may be, may, but need not, certify to all the matters required to be certified under any Article, Section, subdivision or other portion hereof, but different officers, accountants, auditors, engineers,

counsel or other persons may certify to different facts, respectively. Where any person or persons are required to make, give or execute two or more orders, requests, certificates, opinions or other instruments under this Indenture, any such orders, requests, certificates, opinions or other instruments may, but need not, be consolidated and form one instrument.

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

SECTION 14.07. *Notices.* All demands, notices and communications hereunder shall be in writing and shall be deemed to have been duly given if personally delivered at or mailed by registered mail to (a) in the case of the Company (Attention of the Vice President—Finance) or the Guarantor (Attention of the Secretary), 77 South Wacker Drive, Chicago, Illinois 60606, or such other address as may hereafter be furnished to the Trustee in writing by the Company and (b) in the case of the Trustee, 111 West Monroe Street, Chicago, Illinois 60690, or such other address as may hereafter be furnished to the Company in writing by the Trustee. An affidavit by any person representing or acting on behalf of the Company, the Guarantor or the Trustee, as to such mailing, having the registry receipt attached, shall be conclusive evidence of the giving of such demand, notice or communication.

SECTION 14.08. *Successors and Assigns.* Whenever in this Indenture any of the parties hereto is named or referred to, the successors and assigns of such party shall be deemed to be included, and all the covenants, promises and agreements in this Indenture contained by or on behalf of the Company, by or on behalf of the Guarantor or by or on behalf of the Trustee, shall bind and inure to the benefit of their respective successors and assigns, whether so expressed or not.

SECTION 14.09. *Effect of Deposit of Moneys.* In case the principal of any of the Bonds shall not be punctually paid when due at maturity, whether by declaration or a lapse of time, and/or in case any installment of interest

thereon shall not be punctually paid when due, then upon deposit with or receipt by the Trustee of moneys sufficient to pay such overdue principal and/or such overdue installment or installments of interest thereon (together with moneys sufficient to pay interest due and to become due thereon up to the date when interest upon such overdue principal and/or installment or installments of interest shall cease as herein provided), interest on such overdue principal and/or installment or installments of interest thereon shall cease to accrue 30 days after the date of mailing of a notice to such effect to the holders of the Bonds.

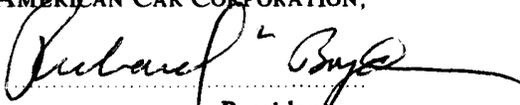
SECTION 14.10. *Applicable law.* The provisions of this Indenture, and all the rights and obligations of the parties hereunder, shall be governed by and construed in accordance with the laws of the State of Illinois.

SECTION 14.11. *Withholding taxes.* The Company and the Guarantor hereby covenant and agree that all principal and interest and all other sums due and payable to the Trustee pursuant to this Indenture, the Guarantee, the Assignment (including rentals payable under leases and subleases assigned to the Trustee thereunder), the Debenture or the Deed of Trust (including any rentals payable under leases and subleases assigned thereunder) shall be payable net of all Canadian withholding taxes, and in addition to each such sum, the Company and the Guarantor shall pay such additional amounts as shall be necessary to assure that the amount paid, after deduction of withholding for or on account of any present or future income tax, assessment or other governmental charge imposed upon or as a result of such payment by Canada or any province or other subdivision or any agency thereof, will be no less than the sum so due and payable. Neither the Company nor the Guarantor will be required to make any such additional payment to or for the benefit of any person who is subject to taxation in Canada for any reason other than solely by reason of receiving the sum so paid.

SECTION 14.12. *Counterparts.* This Indenture is being executed in several counterparts, each of which is an original and all of which are identical. Each counterpart of this Indenture is to be deemed an original hereof and all counterparts collectively are to be deemed but one instrument. It shall not be necessary in making proof of this Indenture to produce or account for more than one counterpart.

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

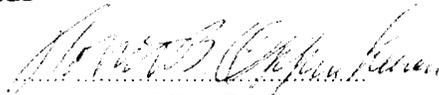
NORTH AMERICAN CAR CORPORATION,

By 
President.

Attest:


Secretary.

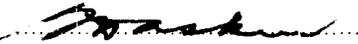
NORTH AMERICAN CAR (CANADA)
LIMITED

By 
Vice President.

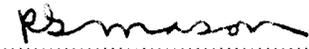
Attest:


Secretary.

HARRIS TRUST AND SAVINGS BANK,
Trustee,

By 
Vice President.

Attest:


Assistant Secretary.

STATE OF ILLINOIS, }
COUNTY OF COOK, } ss.:

On this *2nd* day of July, 1971, before me personally appeared RICHARD M. BOYD, to me personally known, who, being by me duly sworn, says that he is the President of NORTH AMERICAN CAR CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was 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.

Maryll Saenger
.....
Notary Public

My Commission Expires
My Commission Expires Mar. 29, 1974

STATE OF ILLINOIS, }
COUNTY OF COOK, } ss.:

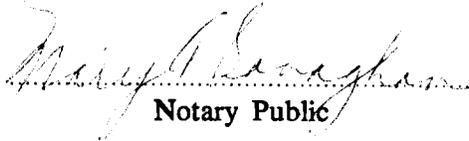
On this *2nd* day of July, 1971, before me personally appeared ROBERT B. OPPENHEIMER, to me personally known, who, being by me duly sworn, says that he is a Vice President of NORTH AMERICAN CAR (CANADA) LIMITED, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and 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.

Maryll Saenger
.....
Notary Public

My Commission Expires
My Commission Expires Mar. 29, 1974

STATE OF ILLINOIS, }
COUNTY OF COOK, } ss.:

On this 2nd day of July, 1971, before me personally appeared **G. N. ASKEY** to me personally known, who, being by me duly sworn, says that he is a Vice President of HARRIS TRUST AND SAVINGS BANK, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and 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

My Commission Expires

 My Commission Expires Mar. 29, 1974

STATE OF ILLINOIS
COUNTY OF COOK

To WIT:

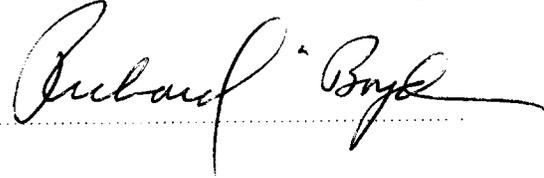
IN THE MATTER OF registration of an Indenture of Mortgage and Deed of Trust dated as of the 1st day of July, 1971 and made from North American Car Corporation and North American Car (Canada) Limited to Harris Trust and Savings Bank, as Trustee, for the purpose of Securing Equipment Bonds, First 1971 Series, of North American Car Corporation.

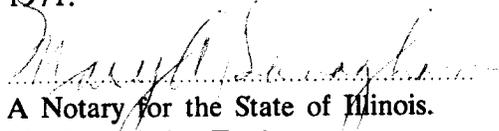
I, RICHARD M. BOYD, of the City of Chicago, in the State of Illinois, MAKE OATH AND SAY THAT:

1. I am an officer holding the office of President of North American Car Corporation, the mortgagor or assignor named in the annexed instrument containing a mortgage charge or assignment made by the said North American Car Corporation and North American Car (Canada) Limited to Harris Trust and Savings Bank, and am aware of the circumstances connected with the transaction and have a personal knowledge of the facts herein deposed to.

2. The said instrument was executed by North American Car Corporation at the City of Chicago, in the State of Illinois, on the _____ day of July, 1971.

SWORN before me at the
City of Chicago in the
State of Illinois,
This _____ day of July,
1971.




A Notary for the State of Illinois.
My Commission Expires
My Commission Expires Mar. 29, 1974

STATE OF ILLINOIS
COUNTY OF COOK

To WIT:

IN THE MATTER OF registration of an Indenture of Mortgage and Deed of Trust dated as of the 1st day of July, 1971 and made from North American Car Corporation and North American Car (Canada) Limited to Harris Trust and Savings Bank, as Trustee, for the purpose of Securing Equipment Bonds, First 1971 Series, of North American Car Corporation.

I, ROBERT B. OPPENHEIMER, of the City of Chicago, in the State of Illinois, MAKE OATH AND SAY THAT:

1. I am an officer holding the office of Vice President of North American Car (Canada) Limited, the guarantor named in the annexed instrument containing a mortgage charge or assignment made by North American Car Corporation and the said North American Car (Canada) Limited to Harris Trust and Savings Bank, and am aware of the circumstances connected with the transaction and have a personal knowledge of the facts herein deposed to.

2. The said instrument was executed by North American Car (Canada) Limited at the City of Chicago, in the State of Illinois, on the _____ day of July, 1971.

SWORN before me at the
City of Chicago in the
State of Illinois,
This _____ day of July,
1971.

Robert B. Oppenheimer

Mary H. Danoghera
A Notary for the State of Illinois.
My Commission Expires

[Stamp: Notary Public, State of Illinois, Commission Expires 12/31/74]

STATE OF ILLINOIS
COUNTY OF COOK

To WIT:

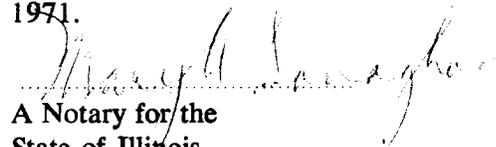
IN THE MATTER OF registration of an Indenture of Mortgage and Deed of Trust dated as of the 1st day of July, 1971 and made from North American Car Corporation and North American Car (Canada) Limited to Harris Trust and Savings Bank, as Trustee, for the purpose of securing Equipment Bonds, First 1971 Series of North American Car Corporation.

I, G. N. ASKEW, of the City of Chicago, in the State of Illinois, MAKE OATH AND SAY THAT:

1. I am an officer holding the office of Vice President of Harris Trust and Savings Bank, the mortgagee, trustee or grantee named in the annexed indenture made from North American Car Corporation and North American Car (Canada) Limited to the said Harris Trust and Savings Bank, and am aware of the circumstances connected with the transaction and have a personal knowledge of the facts herein deposed to.

2. The said indenture being the instrument containing the mortgage charge or assignment was executed in good faith and for the purpose of securing payment of the Equipment Bonds, First 1971 Series, referred to therein and not for the mere purpose of protecting the chattels or book debts therein mentioned against the creditors of the mortgagor or assignor or preventing such creditors from obtaining payment of any claim against the mortgagor or assignor.

SWORN before me at the
City of Chicago in the
State of Illinois,
This 1st day of July,
1971.



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SCHEDULE I

LEASES FROM COMPANY

<u>Number of Cars</u>	<u>Serial Number of Cars</u>	<u>Lessee</u>	<u>Date of Leases</u>	<u>Purchase Options</u>
25	43120 - 43144	The Nestle Company	7/23/70	
33	43074 - 43106	S. C. Johnson & Son, Inc.	11/26/69	
25	4175 - 4199	Armstrong Cork Company	5/19/69	
50	4351 - 4400	Weyerhaeuser Company	4/ 7/69	
10	4401 - 4410	Burlington Northern, Inc.	4/17/69	
295	47775 - 48069	North American Car (Canada) Ltd.	10/22/69	
2	47398, 47399	North American Car (Canada) Ltd.	4/29/70	
70	47600 - 47669	Illinois Central Railroad and Canadian Pacific Railway Company	12/ 2/69	
105	47670 - 47774	North American Car (Canada) Ltd.	10/22/69	
3	48070 - 48072	Charles Pfizer & Company, Inc.	12/ 9/69	
65	48078 - 48142	Morton Salt Company Division of Morton International, Inc.	4/10/69	
1	48073	Hershey Foods Corporation	3/20/70	
4	48074, 48075 48076, 48077	The Quaker Oats Company	3/24/70	
50	8328 - 8377	A. E. Staley Manufacturing Company	12/16/69	
15	16210 - 16224	Cargill Incorporated	12/ 4/69	
15	16264 - 16278	Cargill Incorporated	5/ 7/70	
10	16225 - 16234	The Hubinger Company	2/13/70	
15	16235 - 16249	The Hubinger Company	3/23/70	
10	16250 - 16259	Grain Processing Corporation	4/17/70	
5	16279 - 16283	Upjohn Company	7/15/70	
4	16260 - 16263	The Great Western Sugar Company	7/29/70	
6	23473, 23474 23536 - 23539	C & T Refinery Incorporated	9/30/69	
5	23550 - 23554		1/12/70	
3	23608 - 23610		1/28/70	

<u>Number of Cars</u>	<u>Serial Number of Cars</u>	<u>Lessee</u>	<u>Date of Leases</u>	<u>Purchase Options</u>
1	23500	Tag Chemical Company Division of Miller Oil Company	8/15/69	
10	23501 - 23510	U.S. Industrial Chemical Company Division of National Distillers and Chemical Corporation	9/18/69	
4	23511 - 23514	Pennwalt Corporation	9/17/69	
1	23515	APCO Oil Corporation	10/ 3/69	
2	23595, 23596		5/ 6/70	
2	23668, 23669		7/21/70	
3	23516 - 23518	Sun Oil Company	10/ 1/69	Yes
3	23524		1/28/70	Yes
	23590 - 23591			
40	23627 - 23631		7/15/70	Yes
	23672 - 23674			
	23677 - 23679			
	23683			
	23632 - 23639			
	23670 - 23671			
	23675 - 23676			
	23680 - 23682			
	23684 - 23686			
	23617 - 23626			
2	23519, 23520	Union Texas Petroleum, Division of Allied Chemical Corporation	10/ 1/69	
1	23521	Soil Enrichment Material Corporation	9/24/70	
36	23597 - 23604 23640 - 23667		4/29/70	
2	23522 - 23523	Union Camp Corporation	1/12/70	
9	23525 - 23533	John Morrell & Company	11/21/69	
2	23534, 23535	Wilson Pharmaceutical & Chemical Company	11/18/69	
2	23581, 23582		12/15/69	
2	23611, 23612		3/23/70	
2	23478, 23496		1/ 1/71	
3	23475, 23490 23495		3/ 1/71	

<u>Number of Cars</u>	<u>Serial Number of Cars</u>	<u>Lessee</u>	<u>Date of Leases</u>	<u>Purchase Options</u>
10	23540 - 23549	Clinton Corn Processing Company, Division of Standard Brands Inc.	10/14/69	
10	23555 - 23564	Industrial Solvents Corporation	1/ 1/70	
1	23594		4/29/70	
1	23565	Packerland Packing Company	12/ 9/69	
15	23566 - 23580	Wilson Certified Foods, Inc.	3/ 1/70	
2	23592 - 23593	Midwest Solvents Company	2/24/70	
4	23687 - 23689 23705	Geo. A. Hormel & Company	7/27/70	
5	23700 - 23704	Wilson Sinclair Company, Inc.	7/27/70	
1	23706		9/ 4/70	
10	23583 - 23589 23605 - 23607	Cargill Incorporated	4/ 1/70	
24	23476 - 23477 23479 - 23489 23491 - 23494 23497 - 23499 23613 - 23616	Not leased		
1	28250	Heublein Incorporated	8/ 6/69	Yes
1	28200	American Distilling Company, Inc.	1/17/69	
1	23008	APCO Oil Corporation	11/ 3/69	
2	29975, 29976	Skelly Oil Company	9/16/69	
1	29986		10/14/69	
4	29977, 29981 29989, 29993	Publicker Industries, Inc.	11/ 3/69	Yes
6	29978 - 29980 29982, 29983 29987	Hooker Chemical Corporation	1/ 7/70	
2	29990, 29994	Grain Processing Corporation	4/27/70	
5	29984, 29985 29988, 29991 29992	Monoco Oil Company, Inc.	10/14/69	
6	29026 - 29031	Monoco Oil Company, Inc.	5/ 7/69	
4	29032 - 29035		9/ 8/69	
12	34559 - 34570	Noble Petroleum Company, Inc.	2/ 3/70	
25	34591 - 34615		4/ 1/70	

<u>Number of Cars</u>	<u>Serial Number of Cars</u>	<u>Lessee</u>	<u>Date of Leases</u>	<u>Purchase Options</u>
15	34571 - 34585	United Petroleum Gas Division of Northern Propane Gas Co.	1/28/70	
1	34719	Industrial Solvent Corporation	12/12/69	
5	34720 - 34724	Skelly Oil Company	1/ 1/70	
100	34739 - 34748	North American Car (Canada) Ltd.	9/15/70	
	34757 - 34846			
15	34847 - 34861		10/ 1/70	
70	37500 - 37569	E. I. DuPont de Nemours and Company	9/29/69	Yes
8	34749 - 34756	North American Car (Canada) Ltd.	8/27/70	
2	34616 - 34617	Aeropres Corporation	7/15/70	
1	34618		8/ 7/70	
1	34619		10/14/70	
1	34717	First Mississippi Corporation	2/ 1/71	
19	34586 - 34590 34704 - 34716 34718	Not leased		
SUBLEASES FROM GUARANTOR				
295	47775 - 48069	Canadian Pacific Railway Com- pany	10/22/69	
2	47398 - 47399	North Pacific Feeds Ltd.	4/29/70	
105	47670 - 47774	Canadian Pacific Railway Com- pany	10/22/69	
100	34739 - 34748 34757 - 34846	Pacific Petroleums Ltd.	9/15/70	
15	34847 - 34861	Pacific Petroleums Ltd.	10/ 1/70	
8	34749 - 34756	Union Oil Company of Canada Limited	8/27/70	