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INTERSTATE COMMERCE COMMISSION

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**FIRST WESTERN BANK AND TRUST COMPANY**

**9½% EQUIPMENT TRUST CERTIFICATES**

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**EQUIPMENT TRUST AGREEMENT**

**Dated as of August 1, 1971**

**by and between**

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

**and**

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

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

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

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

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

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

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



limited by Section 4.03 of the Agreement. The principal amount of the Trust Certificates is due and payable in 140 monthly instalments of principal payable on the first day of each month commencing on the first day of the 41st calendar month following the Average Date of Acceptance, calculated as provided in the Agreement so that the aggregate of the principal and interest payable on each such date shall be substantially equal. Interest shall be computed hereunder on the basis of a 360-day year of twelve 30-day months. **Since partial payments of principal on this Certificate are not required to be noted on this Certificate, inquiry should be made at said office of the Trustee as to the principal amount at any time remaining unpaid hereon.**

This Certificate is one of an authorized issue of Trust Certificates, in an aggregate principal amount not exceeding \$17,850,720 and issued or to be issued under the Agreement, under which security title to certain railroad equipment (or cash or obligations defined in the Agreement as "Investments" in lieu thereof, as provided in the Agreement) and the above-mentioned Collateral Assignment of Lease and Agreement are held by the Trustee in trust for the equal and ratable benefit of the holders of the Trust Certificates issued thereunder. Reference is made to the Agreement and the Annexes thereto (copies of which are on file with the Trustee at its said office) for a more complete statement of the terms and provisions thereof, to all of which the registered holder hereof, by accepting this Certificate, assents. The Company has no personal liability to the holders of the Certificates and its obligations under the Agreement are limited as provided therein.

This Certificate is transferable in whole or in part upon the terms and conditions set forth in the Agreement by the registered holder hereof in person or by duly authorized attorney on the books of the Trustee upon surrender to the Trustee at said office of the Trustee of this Certificate accompanied by a written instrument of transfer, duly executed by the registered holder in person or by such attorney, in form satisfactory to the Trustee. The Trustee and the Company may deem and treat the person in whose name this Certificate is registered as the absolute owner hereof for the purpose of receiving payment of

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

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

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

Dated as of

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

by .....  
*Assistant Vice President.*

Attest:

.....  
*Assistant Secretary.*

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

Please insert Social Security or other identifying number of Assignee

[Redacted box]

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

Dated: .....

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

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

ARTICLE ONE  
DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## ARTICLE TWO

### TRUST CERTIFICATES AND ISSUANCE THEREOF

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

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

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

SECTION 2.02. *Interests Represented by Trust Certificates; Interest; Maturity.* Each of the Trust Certificates shall represent an interest in the amount therein specified in the trust created hereunder. The Trust Certificates will bear interest from the date thereof, payable on the first day of each month of each year commencing January 1, 1972, at the rate of 9½% per annum, with interest payable on overdue principal and interest as set forth in the Trust Certificates. The first payment of principal of the Trust Certificates shall be payable on the

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

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

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

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

SECTION 2.05. *Characteristics of Trust Certificates.*

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

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

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

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

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

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

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

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

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

### ARTICLE THREE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## ARTICLE FOUR

### LEASE OF TRUST EQUIPMENT TO THE COMPANY

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

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

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

Trustee pursuant to the Assignment or the Consent) at any time after any Event of Default and during the continuance thereof: (a) all amounts of rental and all other amounts paid by the Lessee pursuant to the Lease and (b) any and all payments or proceeds received by the Company pursuant to Section 11 of the Lease or for or with respect to the Trust Equipment as the result of the sale, lease or other disposition thereof, after deducting all costs and expenses of such sale, lease or other disposition; and (ii) at any other time only that portion of the amounts referred to in the foregoing clause (a) as are indefeasibly received by the Company (or the Trustee pursuant to the Assignment or the Consent) and as shall equal the rental payments specified in the first paragraph of Section 4.04 due and payable by the Company on the date (or the next succeeding Business Day) such amounts received by the Company were required to be paid to it pursuant to the Lease or as shall equal any other payment (including payments in respect of Casualty Occurrences) then due and payable under this Agreement; it being understood that "income and proceeds from the Trust Equipment" shall in no event include amounts referred to in the foregoing clause (a) which were received by the Company prior to the existence of such an Event of Default which exceeded the amounts required to make the rental payments specified in the first paragraph of Section 4.04 due and payable by the Company on the date (or the next succeeding Business Day) on which amounts with respect thereto received by the Company were required to be paid to it pursuant to the Lease or which exceeded any other payments due and payable under this Agreement at the time such amounts were payable under the Lease. It is further specifically understood and agreed that nothing contained herein limiting the liability of the Company shall derogate from the right of the Trustee to proceed against the Trust Equipment or the Lessee pursuant to the Lease, the Assignment or the Consent for the full unpaid principal amount of the Trust Certificates and interest thereon and all other amounts payable pursuant to this Agreement. The Trustee agrees on behalf of the holders of the Trust Certificates, however, that it will not seek to execute a judgment against the Company for an amount in excess of the amounts payable by the Company pursuant to the limitations set forth in this paragraph.

SECTION 4.04. *Rental Payments.* The Company covenants and agrees to pay to the Trustee at the Corporate Trust Office (or, in the case of taxes, to the proper taxing authority), in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, rental hereunder which shall be sufficient to pay and discharge the following items, when and as the same shall become due and payable (whether or not any of such items shall become due and payable prior to the delivery of the Trust Equipment and notwithstanding that any of the Trust Certificates shall have been acquired by the Company or any Affiliate of the Company or shall not have been presented for payment):

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

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

(3) (a) the interest payable on the Trust Certificates, when and as the same shall become due and payable, and (b) interest, at the rate of  $10\frac{1}{2}\%$  per annum from the due date, upon the amount of any instalments of interest or principal payable under this and the following subparagraph which shall not be paid when due; and

(4) the instalments of principal on the Trust Certificates when and as the same shall become due and payable (whether upon the date of maturity thereof or by declaration or otherwise).

Nothing herein or in the Trust Certificates contained shall be deemed to impose on the Trustee or on the Company any obligation to pay to the holder of any Trust Certificate any tax, assessment or gov-

ernmental charge required by any present or future law of the United States of America or of any state, county, municipality or other taxing authority thereof to be paid in behalf of, or withheld from the amount payable to, the holder of any Trust Certificate. The Company shall not be required to pay any tax, assessment or governmental charge pursuant to subparagraph (2) of this Section 4.04 so long as it shall in good faith and by appropriate legal proceedings contest the validity thereof, unless in the judgment of the Trustee the right or interests of the Trustee or of the holders of the Trust Certificates may be materially endangered thereby.

SECTION 4.05. *Security Title; Termination of Lease.* It is understood that the transfer to the Trustee of security title to the Trust Equipment pursuant to this Agreement is being made solely to secure the performance by the Company of its obligations under this Agreement and that beneficial ownership in and to the Trust Equipment shall be and remain in the Company subject to compliance by the Company with all of its obligations under this Agreement. Accordingly, after all payments due or to become due from the Company hereunder shall have been completed and fully made to or for the account of the Trustee and the Company shall have performed all of its other obligations hereunder, (1) such payments shall be deemed to represent the discharge in full of the Trustee's interest in the Trust Equipment at such time, (2) any moneys remaining in the hands of the Trustee after providing for all outstanding Trust Certificates and after paying the expenses of the Trustee, including its reasonable compensation, shall be paid to the Company, (3) full title to all the Trust Equipment shall vest in the Company and (4) the Trustee shall execute for record in public offices, at the expense of the Company, such instrument or instruments in writing as reasonably shall be requested by the Company in order to make clear upon public records the Company's full title to all the Trust Equipment and the Company's full right, title and interest as lessor under the Lease under the laws of any jurisdiction; *provided, however*, that until that time the Trustee shall retain a security interest in and to all the Trust Equipment and in and to the Lease.

SECTION 4.06. *Marking of Trust Equipment.* The Company agrees that it will cause each unit of the Trust Equipment to be kept numbered with the identifying number set forth in Annex A hereto and will keep and maintain plainly, distinctly, permanently and conspicuously marked on each side of such unit in letters not less than one inch in height, the following words:

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

or other appropriate words designated by the Trustee, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the security title of the Trustee to such unit and the rights of the Company and the Trustee under this Agreement. The Company will not place or permit any unit of the Trust Equipment to be placed in operation or exercise any control or dominion over the same until such words shall have been so marked on both sides thereof and will replace or cause to be replaced promptly any such words which may be removed, defaced or destroyed. The Company will not permit the identifying number of any unit of the Trust Equipment to be changed except in accordance with a statement of new identifying numbers to be substituted therefor, which statement previously shall have been filed with the Trustee by the Company and filed, recorded or deposited in all public offices where this Agreement will have been filed, recorded or deposited.

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

SECTION 4.07. *Maintenance of Trust Equipment; Casualty Occurrences; Annual Report.* The Company agrees that it will maintain or cause to be maintained and keep or cause to be kept all the Trust Equipment in good order and repair at no cost or expense to the Trustee, unless and until it becomes lost or stolen or is destroyed or damaged beyond economic repair from any cause whatsoever (such occurrences being hereinafter called a Casualty Occurrence).

Whenever any unit of the Trust Equipment shall suffer a Casualty Occurrence the Company shall, promptly after it is informed of a Casualty Occurrence under the Lease, notify the Trustee in writing with respect thereto as of the date it receives such information under the Lease. On the Business Day preceding the first day of each month in each year, next succeeding the date of such notice from the Company (or, in the event such payment date shall occur within 15 days after notice of such Casualty Occurrence is given by the lessee to the Company, on the Business Day preceding the first day of the following month), the Company shall deposit with the Trustee an amount in cash equal to the value of such unit as of such payment date and, upon such payment, the security title of the Trustee to such unit shall terminate and full title to such unit shall vest in the Company. The rights and remedies of the Trustee to enforce or to recover any of the rental payments shall not be affected by reason of such Casualty Occurrence. For all purposes of this paragraph, value shall be set forth in an Officer's Certificate and shall be determined as follows (and the manner of such determination shall be set forth in such Officer's Certificate):

The value of any unit of Trust Equipment having suffered a Casualty Occurrence shall be deemed to be 80% of the Cost thereof as theretofore certified to the Trustee, less an amount equal to the aggregate of payments of rental theretofore made pursuant to Section 4.04(4) applicable to such unit. Rentals paid pursuant to Section 4.04(4) shall be deemed to be applied *pro rata* to each unit on each rental payment date in the same proportion as the Cost of such unit bears to the aggregate Cost of all units of Trust Equipment hereunder on such date.

Cash deposited with the Trustee pursuant to this Section 4.07 shall be applied to the *pro rata* prepayment on such date of each instalment of principal remaining unpaid on the Trust Certificates (in proportion to the principal amount represented by each such instalment), each of the holders of the Trust Certificates to share proportionately in such prepayment. The Company will promptly furnish to the Trustee and each of the holders of outstanding Trust Certificates a revised schedule of payments of the principal and interest thereafter to be made calculated as provided in Section 2.02.

On or before April 1 in each year, commencing with the year 1973, the Company will furnish or cause to be furnished to the Trustee, in such number of counterparts or copies as may reasonably be requested, an accurate statement (1) showing as of a recent date not earlier than the preceding December 31, the amount, description and numbers of all units of the Trust Equipment that may have suffered a Casualty Occurrence whether by accident or otherwise since the date of the previous statement (or since the date of this Agreement in the case of the first such statement), and such other information regarding the condition and state of repair of the Trust Equipment as the Trustee may reasonably request, (2) identifying the units of the Trust Equipment then subject to the Lease, and (3) stating that, in the case of all units of the Trust Equipment repaired or repainted during the period covered by such statement, the markings required by Section 4.06 have been preserved or replaced.

SECTION 4.08. *Possession of Trust Equipment.* So long as the Company shall not be in default under this Agreement, the Company shall be entitled to the possession and use of the Trust Equipment and also to enter into the Lease and the Sublease which shall be subject and subordinate to this Agreement and to permit the Trust Equipment to be used as provided therein; *provided, however*, that the Lease shall forthwith be assigned to the Trustee as security for the obligations of the Company hereunder pursuant to the Assignment.

The Company may not assign and/or transfer any or all of its rights under this Agreement and/or any or all of its rights to any of the Trust Equipment to any person, nor may the Company amend the

Owner Trust Agreement, without the consent of all holders of the Trust Certificates except that the Company may make such an assignment or transfer, subject to this Agreement, to a successor trustee as provided in the Owner Trust Agreement or to The Northern Trust Company if, in either case such successor trustee or The Northern Trust Company, assumes in writing all of the obligations of the Company hereunder.

SECTION 4.09. *Compliance With Laws and Rules; Additions; Indemnity.* The Company covenants and agrees to comply in all respects with all laws of the jurisdictions in which operations involving any unit of the Trust Equipment may extend, with the Interchange Rules of the Association of American Railroads, if applicable, and with all lawful rules of the Federal Railroad Administration and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over any unit of the Trust Equipment, to the extent such laws and rules affect the operations, maintenance or use of such unit. In the event that such laws or rules require the alteration of any such unit of the Trust Equipment, the Company will cause such unit to be conformed therewith and will cause the same to be maintained in proper condition or operation under such laws and rules; *provided, however,* that the Company or the Lessee may in good faith contest the validity or application of any such law or rule in any reasonable manner which does not in the opinion of the Trustee adversely affect the property or rights of the Trustee hereunder.

Any and all additions to any unit of the Trust Equipment and any replacements thereto and of parts thereof made by the Company or the Lessee or the Sublessee shall constitute accessions to such unit and, without cost or expense to the Trustee, there shall immediately be vested in the Trustee the same security interest in such accessions as the security interest of the Trustee in such unit; *provided, however,* that this shall not apply to special equipment installed in any unit of Trust Equipment by the Lessee or Sublessee provided that such equipment is removed by the Lessee or Sublessee before the units are returned to the Trustee and all damage resulting from such installation and removal

is repaired by the Lessee or Sublessee and further provided that removal of such equipment does not affect the units' serviceability or use in unrestricted interchange.

The Company agrees to cause to be indemnified and held harmless the Trustee against any charge or claim made against the Trustee, and against any expense, loss or liability (including but not limited to counsel fees and expenses, patent liabilities, penalties and interest) which the Trustee may incur in any manner by reason of entering into or performing this Agreement, the Trust Certificates, any of the instruments referred to herein or contemplated hereby or which may arise in any manner out of the security ownership of any unit of the Trust Equipment while subject to this Agreement, and to cause to be indemnified and held harmless the Trustee against any charge, claim, expense, loss or liability on account of any accident in connection with the operation, use, condition, possession or storage of such unit of the Trust Equipment resulting in damage to property or injury or death to any person. The indemnities contained in this paragraph shall survive payment of all other obligations under this Agreement or the termination of this Agreement.

SECTION 4.10. *Taxes.* All payments to be made by the Company hereunder will be free of expense to the Trustee for collection or other charges and will be free of expense to the Trustee with respect to the amount of any local, state or federal taxes, assessments or license fees (and any charges, fines or penalties in connection therewith) (hereinafter called impositions) hereafter levied or imposed upon or in connection with or measured by, this Agreement or any of the instruments or agreements referred to herein or contemplated hereby or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof, all of which impositions the Company assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. The Company will also pay or cause to be paid promptly all impositions which may be imposed upon any unit of the Trust Equipment or for the use or operation thereof or upon the earnings arising therefrom or upon the Trustee solely by reason of its

security interest therein, and any and all impositions upon or on account of the trust created by this Agreement, or the instruments or agreements referred to herein or contemplated hereby, and will keep at all times all and every part of such unit free and clear of all impositions which might in any way affect the security title of the Trustee or result in a lien upon or security interest upon such unit and will supply the Trustee with a receipt or other evidence of such payment satisfactory to the Trustee; *provided, however*, that the Company shall be under no obligation to pay any impositions so long as it or the Lessee is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Trustee, adversely affect the property or rights of the Trustee hereunder. If any impositions shall have been charged or levied against the Trustee directly and paid by the Trustee, the Company shall reimburse the Trustee, on presentation of invoice therefor; *provided, however*, that the Company shall not be obligated to reimburse the Trustee for any impositions so paid unless the Trustee shall have been legally liable with respect thereto, or unless the Company shall have approved the payment thereof.

In the event any reports with respect to impositions are required to be made on the basis of individual units of the Trust Equipment the Company will either make or cause to be made such reports in such manner as to show the security interest of the Trustee in such units or will notify the Trustee of such requirement and will make or cause to be made such reports in such manner as shall be satisfactory to the Trustee.

In the event that, during the continuance of this Agreement, the Company becomes liable for the payment or reimbursement of any impositions, pursuant to this Section 4.10, such liability shall continue, notwithstanding the expiration of the term of this Agreement, until all such impositions are paid or reimbursed by the Company.

## ARTICLE FIVE

## EVENTS OF DEFAULT AND REMEDIES

SECTION 5.01. *Events of Default.* The Company covenants and agrees that in case:

(a) the Company shall default in the payment of any part of the rental payable hereunder for more than 15 days after the same shall have become due and payable, or

(b) the Company shall make or suffer any unauthorized assignment or transfer of its rights hereunder or under the Lease or shall make any unauthorized transfer or lease (including, for the purpose of this clause, contracts for the use thereof) of any of the Trust Equipment, or, except as herein authorized or contemplated, shall part with the possession of any of the Trust Equipment, and shall fail or refuse either to cause such assignment or transfer or lease to be cancelled by agreement of all parties having any interest therein and recover possession of such Trust Equipment within 30 days after the Trustee shall have demanded in writing such cancellation and recovery of possession, or within said 30 days to deposit with the Trustee a sum in cash equal to the value, as of the date of such unauthorized action (determined in the manner provided in Section 4.07), of such Trust Equipment (any sum so deposited to be returned to the Company upon the cancellation of such assignment, transfer or lease and the recovery of possession by the Company of such Trust Equipment), or

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

(d) a decree or order shall have been entered by a court of competent jurisdiction adjudging the Company bankrupt or insolvent or approving as properly filed a petition seeking reorgani-

zation or arrangement of the Company under the Bankruptcy Act, or any other federal or state law relating to bankruptcy or insolvency, or appointing a receiver for the Trust Equipment or decreeing or ordering the winding up or liquidation of the affairs of the Company, and any such decree or order shall remain in force undischarged and unstayed for a period of 60 days, or

(e) the Company shall institute proceedings to be adjudicated bankrupt or insolvent or shall consent to the institution of bankruptcy or insolvency proceedings against it or shall file a petition or answer or consent seeking reorganization or relief under the Bankruptcy Act or any other federal or state law relating to bankruptcy or insolvency or shall consent to the filing of any such petition or shall consent to the appointment of a receiver for the Trust Equipment or shall make an assignment for the benefit of creditors or shall admit in writing its inability to pay its debts generally as they become due, or action shall be taken by the Company in furtherance of any of the aforesaid purposes, or

(f) an event of default shall occur under Section 9(e) of the Lease, or

(g) the Lessee shall default in the observance or performance of any of the covenants and agreements on its part contained in the Lease (other than those relating to payment of any part of the rental provided in Section 3 of the Lease) and such default shall continue for 25 days after the Trustee shall have demanded in writing performance thereof *unless* during such 25 day period the Company shall have cured or caused to be cured such default,

then, in any such case (herein sometimes called an Event of Default), if the same shall then be continuing, the Trustee in its discretion may, and upon the written request of the holders of a majority in principal amount of the then outstanding Trust Certificates shall, by notice in writing delivered to the Company, declare to be due and payable forthwith the entire amount of the rentals (except rentals required for the payment of interest accruing after the date of such declaration) payable by the Company as set forth in Section 4.04 and not theretofore

paid. Thereupon the entire amount of such rentals shall forthwith become and shall be due and payable immediately without further demand, together with interest at the rate of  $10\frac{1}{2}\%$  per annum, to the extent legally enforceable, or any portion thereof overdue.

In case one or more Events of Default shall happen, and if the same shall then be continuing, the Trustee in its discretion also may, and upon the written request of the holders of a majority in principal amount of the then outstanding Trust Certificates shall, by notice in writing delivered to the Company, declare the principal of all the Trust Certificates then outstanding to be due and payable, and thereupon the same shall become and be immediately due and payable.

In case the Company shall fail to pay any instalment of rental payable pursuant to Section 4.04(3) or (4) when and as the same shall have become due and payable hereunder, and such default shall have continued for a period of 15 days, the Trustee, in its own name and as trustee of an express trust, shall be entitled and empowered to institute any action or proceedings at law or in equity for the collection of the rentals so due and unpaid, and may prosecute any such action or proceedings to judgment or final decree, and may enforce any such judgment or final decree against the Company and collect in the manner provided by law out of the property of the Company wherever situated the moneys adjudged or decreed to be payable.

In case there shall be pending proceedings for the bankruptcy or for the reorganization of the Company under the Bankruptcy Act or any other applicable law, or in case a receiver or trustee shall have been appointed for the Trust Equipment, or in case of any other judicial proceedings relative to the Company, or to the creditors of the Company or the Trust Equipment, the Trustee, irrespective of whether the rental payments hereunder or the principal of the Trust Certificates shall then be due and payable as herein or therein expressed whether by declaration or otherwise and irrespective of whether the Trustee shall have made any demand or declaration pursuant to the provisions of this Section, shall be entitled and empowered, by intervention in such proceedings or otherwise, to file and prove a claim or claims for the entire amount of the rentals (except rentals required for the payment of interest accruing after the date of

such declaration), and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for reasonable compensation to the Trustee, its agents, attorneys and counsel, and for reimbursement of all expenses and liabilities incurred, and all advances made, by the Trustee except as a result of its gross negligence or wilful misconduct) and of the holders of the Trust Certificate allowed in such proceedings and to collect and receive any moneys or other property payable or deliverable on any such claims, and to distribute all amounts received with respect to the claims of the holders of the Trust Certificates and of the Trustee on their behalf; and any receiver, assignee or trustee in bankruptcy or reorganization is hereby authorized by each of the holders of the Trust Certificates to make payments to the Trustee, and, in the event that the Trustee shall consent to the making of payments directly to the holders of the Trust Certificates, to pay to the Trustee such amount as shall be sufficient to cover reasonable compensation to the Trustee, its agents, attorneys and counsel, and all other expenses and liabilities incurred, and all advances made, by the Trustee except as a result of its gross negligence or wilful misconduct.

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

SECTION 5.02. *Remedies.* Upon the happening of any Event of Default, the Trustee may by its agents enter upon the premises of the Company, any Affiliate of the Company or any lessee (or other person

having acquired the use of the Trust Equipment) where any of the Trust Equipment may be and take possession of all or any part of the Trust Equipment and withdraw the same from said premises, retaining all payments which up to that time may have been made on account of rental for the Trust Equipment and otherwise, and shall be entitled to collect, receive and retain all unpaid per diem, mileage or other charges of any kind earned by the Trust Equipment or any part thereof, and may lease or otherwise contract for the use of the Trust Equipment or any part thereof; or the Trustee may with or without retaking possession (but only after declaring due and payable the entire amount of rentals payable by the Company and the principal of all the then outstanding Trust Certificates, as provided in Section 5.01) sell the Trust Equipment or any part thereof, free from any and all claims of the Company or any lessee (or other person having acquired the use of the Trust Equipment) at law or in equity, in one lot and as an entirety or in separate lots, at public or private sale, for cash or upon credit, in its discretion, and may proceed otherwise to enforce its rights and the rights of the holders of then outstanding Trust Certificates, all subject to any mandatory requirements of law applicable thereto. Upon any such sale, the Trustee itself may bid for the property offered for sale or any part thereof. Any such sale may be held or conducted at such place and at such time as the Trustee may specify, or as may be required by law, and without gathering at the place of sale the Trust Equipment to be sold, and in general in such manner as the Trustee may determine, but so that the Company may and shall have a reasonable opportunity to bid at any such sale. After the Trustee has fully exercised its remedies hereunder, the Company shall cease to have any rights or remedies in respect of the Trust Equipment hereunder, but all such rights and remedies shall be deemed thenceforth to have been waived and surrendered by the Company, and no payments theretofore made by the Company for the rent or use of the Trust Equipment or any of it shall give to the Company any legal or equitable interest or title in or to the Trust Equipment or any of it or any cause or right of action at law or in equity in respect of the Trust Equipment against the Trustee or the holders of interests hereunder. No such taking

possession, withdrawal, lease or sale of the Trust Equipment by the Trustee shall be a bar to the recovery by the Trustee from the Company of rentals then or thereafter due and payable, or of principal and interest in respect of the Trust Certificates, and the Company shall be and remain liable for the same until such sums have been realized as, with the proceeds of the lease or sale of the Trust Equipment, shall be sufficient for the discharge and payment in full of all the obligations of the Company under this Agreement (other than interest not then accrued), whether or not they shall have then matured.

SECTION 5.03. *Application of Proceeds.* If the Trustee shall exercise any of the powers conferred upon it by Sections 5.01 and 5.02, all payments made by the Company to the Trustee and the proceeds of any judgment collected from the Company by the Trustee, and the proceeds of every sale or lease by the Trustee of any of the Trust Equipment, together with any other sums which may then be held by the Trustee under any of the provisions hereof (other than sums held in trust for the payment of specific Trust Certificates or a part thereof, or interest thereon) shall be applied by the Trustee to the payment, in the following order of priority, (a) of all proper charges, expenses or advances made or incurred by the Trustee in accordance with the provisions of this Agreement and (b) of the interest then due, with interest on overdue interest at the rate of  $10\frac{1}{2}\%$  per annum to the extent legally enforceable, and of the principal of all the outstanding Trust Certificates, with interest thereon at the rate of  $10\frac{1}{2}\%$  per annum to the extent legally enforceable from the date of default, whether such Trust Certificates shall have then matured by their terms or not, all such payments to be in full if such proceeds shall be sufficient, and if not sufficient, then *pro rata* without preference between principal and interest.

After all such payments shall have been made in full, the security title to any of the Trust Equipment remaining unsold shall be conveyed by the Trustee to the Company free from any further liabilities or obligations to the Trustee hereunder. If after applying all such sums of money realized by the Trustee as aforesaid there shall remain any

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

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

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

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

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

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

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

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

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

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

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

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

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

## ARTICLE SIX

### ADDITIONAL COVENANTS AND AGREEMENTS BY THE COMPANY

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

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

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

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

## ARTICLE SEVEN

### CONCERNING THE HOLDERS OF TRUST CERTIFICATES

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

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

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

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

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

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

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

## ARTICLE EIGHT

### THE TRUSTEE

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

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

No provision of this Agreement shall be construed to relieve the Trustee from liability for its own grossly negligent action, its own

grossly negligent failure to act, or its own wilful misconduct, except that

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

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

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

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

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

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

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

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

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

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

The Trustee shall not be required to undertake any act or duty in way of insuring, taking care of or taking possession of the Trust Equipment or to undertake any other act or duty under this Agreement until fully indemnified to its satisfaction by the Company or by one or more of the holders of the Trust Certificates against all liability and expenses; and the Trustee shall not be responsible for the filing of re-

ording, required under Section 6.02, of this Agreement or of any supplement hereto or statement of new identifying numbers.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## ARTICLE NINE

### MISCELLANEOUS

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

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

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

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

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

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

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

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

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

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

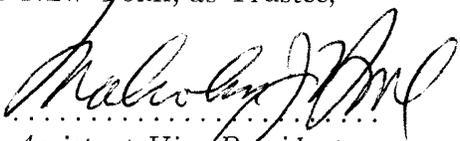
SECTION 9.09. *New York Law Governs.* The provisions of this Agreement, and all the rights and obligations of the parties hereunder, shall be governed by the laws of the State of New York, *provided, however,* that the parties shall be entitled to all rights conferred by Section

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

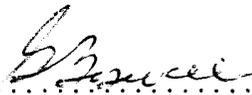
IN WITNESS WHEREOF, the Trustee and the Company have caused their names to be signed hereto by their respective officers thereunto duly authorized and their respective corporate seals, duly attested, to be hereunto affixed as of the day and year first written.

UNITED STATES TRUST COMPANY  
OF NEW YORK, as Trustee,

[CORPORATE SEAL]

by   
Assistant Vice President.

Attest:

  
Assistant Secretary.

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

[CORPORATE SEAL]

by   
Vice President and  
Trust Officer.

Attest:

  
~~Assistant~~ Secretary.

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

On this 27<sup>th</sup> day of July, 1971, before me personally appeared **MALCOLM J. HOOD** to me personally known, who, being by me duly sworn, says that he is an Assistant Vice President of UNITED STATES TRUST COMPANY OF NEW YORK, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its By-Laws, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

..... Irene B. Scocca

[NOTARIAL SEAL]

**IRENE R. SCOCCA**  
Notary Public, State of New York  
No. 41-8385475  
Qualified in Queens County  
Certificate filed in New York County  
Commission Expires March 30, 1972

STATE OF CALIFORNIA }  
CITY AND COUNTY OF SAN FRANCISCO } ss.:

On this 28 day of July, 1971, before me personally appeared **EDGAR H. CANFIELD**, to me personally known, who, being by me duly sworn, says that he is a Vice-President and Trust Officer of FIRST WESTERN BANK AND TRUST COMPANY, that one of seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

..... *[Signature]*

Notary Public

[NOTARIAL SEAL]

My commission expires:

OFFICIAL SEAL  
**C. S. WHITE**  
NOTARY PUBLIC - CALIFORNIA  
PRINCIPAL OFFICE IN  
SAN FRANCISCO COUNTY  
My Commission Expires Mar. 8, 1975

## ANNEX A

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

**LEASE OF RAILROAD EQUIPMENT**

**DATED AS OF AUGUST 1, 1971**

**By and Between**

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

and

**PULLMAN INCORPORATED,**  
*Lessee*

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**[Covering 1,251 Covered Hopper Cars]**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Lessee will pay, to the extent legally enforceable, interest at the rate of ~~10~~<sup>10 1/2</sup>% per annum upon rentals remaining unpaid after the same shall have become due and payable under any of the provisions of this Lease.

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

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

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

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

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

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

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

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

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

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

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

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

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

in all public offices where this Lease will have been filed, recorded or deposited.

SECTION 7. *Taxes.* Lessee agrees that, during the continuance of this Lease, in addition to the payments herein provided, Lessee will promptly pay all taxes, assessments and other governmental charges levied or assessed upon or in respect of the Cars or any thereof or upon the use or operation thereof or the earnings arising therefrom, if and to the extent that any such taxes, assessments or other governmental charges may give rise to any lien upon the Cars or may become a claim entitled to priority over any of the rights of Lessor or the Trustee in and to the Cars, and as additional rental will promptly pay or reimburse Lessor and the Trustee for all taxes, assessments and other governmental charges levied or assessed against Lessor or the Trustee or any predecessor or successor in title of Lessor or the Trustee solely on account of ownership of the Cars or any thereof or on account of the use or operation thereof or on account of the earnings arising therefrom (exclusive, however, of any tax in the nature of an income tax on the net income from the payments herein provided), including any sales, use or similar taxes payable on account of the sale or delivery of the Cars by the Manufacturer to Lessor and the Trustee or the leasing of the Cars hereunder; but Lessee shall not be required to pay the same so long as it shall in good faith and by appropriate legal or administrative proceedings contest the validity or amount thereof unless thereby, in the judgment of Lessor or the Trustee, the rights or interest of Lessor or the Trustee hereunder or under the Equipment Trust Agreement will be materially endangered nor shall the Lessee be required to make any tax payment which is deferred by order of a court having jurisdiction, provided that such deferment shall not subject the title of Lessor or of the Trustee in and to the Cars to any lien or encumbrance and the Lessee shall have furnished the Trustee with an opinion of counsel to that effect. In the event any tax reports are required to be made on the basis of individual Cars, Lessee will either make such reports in such manner as to show the ownership of such Cars by Lessor or will notify Lessor of such requirement and will make such report in such manner as shall be satisfactory to Lessor.

In the event Federal legislation is enacted prior to April 22, 1972, granting an investment tax credit which is applicable to the Cars and Lessor earns, obtains and retains in a permanently nonrefundable manner a benefit from such investment credit attributable to the Cars which it would not otherwise have enjoyed and retained had it not consummated this Lease, Lessor will pass on to Lessee in a mutually acceptable form such benefit derived by Lessor provided Lessee is not in default hereunder.

SECTION 8. *Maintenance, Additions, Liens and Insurance.*

(a) Lessee agrees, during the continuance of this Lease, at Lessee's own cost and expense, to maintain and keep all of the Cars in first class condition and repair and in good and efficient working order, reasonable wear and tear excepted, and acceptable for use in unrestricted interchange.

(b) Except for alterations or changes required by law, Lessee shall not, without the prior written approval of Lessor, effect any change in the design, construction or body of the Cars.

(c) Any parts installed or replacements made by Lessee upon any Car shall be considered accessions to such Car and title thereto shall be immediately vested in Lessor, without cost or expense to Lessor except that this shall not apply to special equipment installed in any Car by Lessee or the Sublessee provided that such equipment is removed before the Cars are returned to Lessor and all damage resulting from such installation and removal is repaired by Lessee and further provided that removal of such equipment does not affect the Cars' serviceability or use in unrestricted interchange.

(d) Lessee shall pay or satisfy and discharge any and all sums claimed by any party which, if unpaid, might become a lien or a charge upon the Cars or entitled to priority over or be *pari passu* with any of the rights of Lessor or the Trustee in and to the Cars, but Lessee shall not be required to discharge any such claim so long as it shall in good faith and by appropriate legal proceedings contest the validity thereof in any reasonable manner which, in the opinion of Lessor and the Trustee,

will not affect or endanger the title and interest of Lessor and the Trustee in and to the Cars. Lessee, at its own expense, will as soon as possible cause to be duly discharged any lien, charge, security interest or other encumbrance prior to or *pari passu* with the security title of the Trustee or the title of Lessor (other than an encumbrance resulting from claims against Lessor or the Trustee not related to the ownership or leasing of, or the security title of the Trustee to, the Cars) which may at any time be imposed on or with respect to any Car including any accession thereto or the interest of Lessor, the Trustee or Lessee therein.

(e) Lessee shall cause Sublessee to insure each Car with a reputable insurance company or companies from the time of delivery and acceptance thereof and at all times thereafter until Sublessee's obligation under the Sublease with respect to such Car have been discharged, against loss, damage or destruction thereof caused by fire, lightning, wreck, derailment, collision, flood, tornado, cyclone, sabotage, riot or civil commotion, such insurance, in the case of each Car, to be in an amount satisfactory to Lessor, except that such coverage may be limited so that no loss (1) amounting to not less than \$1,000 per Car or (2) amounting to more than \$100,000 per occurrence, shall be payable. All such insurance shall be taken for the benefit of the Trustee, Lessor, Lessee and Sublessee, as their respective interests may appear. All insurance proceeds received by the Trustee or Lessor with respect to any Car shall

(i) be paid to Lessee, in the case of repairable damage to such Car or Cars, upon receipt by Lessor from Lessee of proof in duplicate satisfactory to Lessor of the proper repair of such damage; or

(ii) be applied by Lessor, in the case of the loss, destruction or damage beyond repair of such Car or Cars, towards the satisfaction of Lessee's obligation to make the payment required by Section 9 hereof.

(f) All such policies required above shall contain a provision to the effect that the insurer will give Lessor thirty (30) days prior written notice before cancellation or modification of any such policy is effective.

(g) The proceeds of any insurance received by Lessor on account of a lost, stolen, destroyed or damaged Car in respect of which Lessee shall have made payment to Lessor pursuant to Section 9 hereof, shall be released to Lessee upon a written application signed by Lessee or a person duly authorized by the Lessee, *provided, however*, that if an Event of Default has occurred and is continuing hereunder, such proceeds may be applied by Lessor against any liability of Lessee to Lessor hereunder.

SECTION 9. *Loss, Theft or Destruction of Car.* In the event any Car is lost or stolen or is destroyed or damaged beyond economic repair from any cause whatsoever during the Initial Term of this Lease, Lessee shall promptly and fully inform Lessor and the Trustee of such occurrence. On the business day next preceding the first day of each month in each year next succeeding such notice (or in the event such payment date shall occur within 15 days after such notice, on the business day preceding the first day of the following month) Lessee shall pay to Lessor, as liquidated damages in lieu of any further claim of Lessor hereunder in respect of such Car, except for such claims as arise or exist under Sections 7 and 8 hereof, an amount equal to the accrued unpaid rental for such Car to such payment date plus a sum equal to the greater of (a) the value thereof as determined pursuant to Section 4.07 of the Equipment Trust Agreement and (b) that percentage of the Cost of such Car as is set forth in the following schedule opposite each payment date:

<u>Payment Date</u>	<u>Percentage of Cost</u>	<u>Payment Date</u>	<u>Percentage of Cost</u>
1 .....	101.33409	11 .....	104.02852
2 .....	101.65044	12 .....	104.23917
3 .....	101.95658	13 .....	104.43881
4 .....	102.25243	14 .....	104.62735
5 .....	102.53790	15 .....	104.80471
6 .....	102.81293	16 .....	104.97080
7 .....	103.07742	17 .....	105.12555
8 .....	103.33131	18 .....	105.26886
9 .....	103.57451	19 .....	105.40065
10 .....	103.80694	20 .....	105.52084

<u>Payment Date</u>	<u>Percentage of Cost</u>	<u>Payment Date</u>	<u>Percentage of Cost</u>
21 .....	105.62933	61 .....	96.13728
22 .....	105.72604	62 .....	95.60435
23 .....	105.81087	63 .....	95.06936
24 .....	105.88375	64 .....	94.93230
25 .....	105.94457	65 .....	93.99315
26 .....	105.99325	66 .....	93.45191
27 .....	106.02971	67 .....	92.90858
28 .....	106.05383	68 .....	92.36313
29 .....	106.07152	69 .....	91.81556
30 .....	106.08531	70 .....	91.26585
31 .....	106.09521	71 .....	90.71400
32 .....	106.10120	72 .....	90.16000
33 .....	106.10328	73 .....	89.60384
34 .....	106.10144	74 .....	89.04550
35 .....	106.09568	75 .....	88.48497
36 .....	106.08598	76 .....	87.92225
37 .....	106.07234	77 .....	87.35732
38 .....	106.05476	78 .....	86.79018
39 .....	106.03322	79 .....	86.22080
40 .....	106.00773	80 .....	85.64919
41 .....	105.59733	81 .....	85.07533
42 .....	105.18108	82 .....	84.49920
43 .....	104.75898	83 .....	83.92080
44 .....	104.33100	84 .....	83.34012
45 .....	103.89713	85 .....	82.75715
46 .....	103.45733	86 .....	82.17187
47 .....	103.01160	87 .....	81.58427
48 .....	102.55992	88 .....	80.99434
49 .....	102.10226	89 .....	80.40207
50 .....	101.63861	90 .....	79.80746
51 .....	101.16895	91 .....	79.21047
52 .....	100.69325	92 .....	78.61111
53 .....	100.21150	93 .....	78.00937
54 .....	99.72369	94 .....	77.40522
55 .....	99.22977	95 .....	76.79867
56 .....	98.72975	96 .....	76.19969
57 .....	98.22360	97 .....	75.57828
58 .....	97.71130	98 .....	74.96442
59 .....	97.19282	99 .....	74.34811
60 .....	96.66815	100 .....	73.72932

<u>Payment Date</u>	<u>Percentage of Cost</u>	<u>Payment Date</u>	<u>Percentage of Cost</u>
101 .....	73.10805	141 .....	46.07099
102 .....	72.48428	142 .....	45.33543
103 .....	71.85801	143 .....	44.59379
104 .....	71.22921	144 .....	43.85308
105 .....	70.59788	145 .....	43.11427
106 .....	69.96401	146 .....	42.36734
107 .....	69.32758	147 .....	41.61729
108 .....	68.68857	148 .....	40.86408
109 .....	68.04699	149 .....	40.10772
110 .....	67.40280	150 .....	39.34818
111 .....	66.75601	151 .....	38.58544
112 .....	66.10659	152 .....	37.81949
113 .....	65.45453	153 .....	37.05032
114 .....	64.79983	154 .....	36.27790
115 .....	64.14247	155 .....	35.50222
116 .....	63.48242	156 .....	34.72327
117 .....	62.81969	157 .....	33.94102
118 .....	62.15426	158 .....	33.15546
119 .....	61.48611	159 .....	32.36657
120 .....	60.81523	160 .....	31.57434
121 .....	60.14160	161 .....	30.77874
122 .....	59.46522	162 .....	29.97977
123 .....	58.78606	163 .....	29.17739
124 .....	58.10412	164 .....	28.37151
125 .....	57.41938	165 .....	27.56239
126 .....	56.73183	166 .....	26.74972
127 .....	56.04145	167 .....	25.93358
128 .....	55.34822	168 .....	25.11396
129 .....	54.65214	169 .....	24.29034
130 .....	53.95319	170 .....	23.46419
131 .....	53.25135	171 .....	22.63401
132 .....	52.54661	172 .....	21.80026
133 .....	51.83896	173 .....	20.96294
134 .....	51.12837	174 .....	20.12203
135 .....	50.41484	175 .....	19.27750
136 .....	49.69836	176 .....	18.42934
137 .....	48.97889	177 .....	17.57752
138 .....	48.25644	178 .....	16.72204
139 .....	47.53098	179 .....	15.86287
140 .....	46.80251	180 .....	15.00000

In the event any Car is lost or stolen or is destroyed or damaged beyond economic repair from any cause whatsoever during either the First Extended Term or the Second Extended Term of this Lease, Lessee shall promptly and fully inform Lessor and the Trustee of such occurrence. On the business day next preceding the first day of each month in each year next succeeding such notice (or in the event such payment shall occur within 15 days after such notice, on the business day preceding the first day of the following month), Lessee shall pay to Lessor, as liquidated damages in lieu of any further claim of Lessor hereunder in respect of such Car, except for accrued rent and such claims as arise or exist under Sections 7 and 8 hereof, an amount equal to the present worth, as hereinafter defined, of the total remaining rental for such Car during such First Extended Term or Second Extended Term, whichever is applicable, plus the Net Scrap Value, as hereinafter defined, for such Car.

The present worth of the total remaining rental for such Car as used in the next preceding paragraph of this Section 9 shall mean an amount equal to such total remaining rental for such Car discounted on a 9% per annum basis compounded monthly from the date of such occurrence to the Terminal Date of the then current Term, as defined in Section 2 hereof.

The Net Scrap Value of each Car shall mean an amount equal to the current quoted price per gross ton of No. 1 Heavy Railroad Melting Steel Scrap, prevailing at Butler, Pennsylvania, as published in Iron Age or other reputable industrial journals, on the first day of the month preceding the month in which payment of such Net Scrap Value is required to be made, multiplied by 26.

This Lease shall continue in full force and effect irrespective of the cause, place or extent of any damage, loss or destruction of any of the Cars, the risk of which shall be borne by Lessee; *provided, however,* that this Lease shall terminate with respect to any Car which is lost, stolen, destroyed or damaged beyond repair on the date Lessor shall receive payment of the amount required to be paid to it on account of such Car under this Section 9.

SECTION 10. *Compliance with Laws and Rules; Indemnification.*

Lessee agrees to comply in all respects with all laws of the jurisdictions in which its operations involving the Cars may extend and with all lawful rules of the Federal Railroad Administration and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over Lessee or over the Cars, to the extent that such laws and rules affect the operation, maintenance or use of the Cars. In the event such laws or rules require the alteration of the Cars, Lessee will conform therewith, at Lessee's expense, and will maintain the same in proper condition for operation under such laws and rules; *provided, however*, that Lessee may, in good faith, contest the validity and application of any such law or rule in any reasonable manner which does not, in the opinion of Lessor, adversely affect the property or rights of Lessor as owner hereunder or the property or rights of the Trustee.

If Lessee (by any officer, employee or agent thereof) shall make any representation, warranty or statement herein, which shall prove to be fraudulent, untrue, incorrect or inaccurate in whole or in part; or take any action in respect of its income tax returns which shall be inconsistent with, or in contravention of, this transaction; and if Lessor (or The Northern Trust Company, as beneficiary of the trust created by the Trust Agreement) shall thereby lose or not be entitled to claim the Rapid Amortization Deduction (as hereinafter defined in Section 11 hereof) in respect of any Car or Cars, then Lessee shall pay Lessor, as supplemental rent, an amount which, after deduction of all taxes required to be paid by Lessor (or such beneficiary) in respect of the receipt of such supplemental rent, shall be equal to the benefit so lost plus any interest or penalty assessed against Lessor (or such beneficiary) in connection with such loss. Lessor agrees to notify promptly Lessee of any claim made by the Internal Revenue Service with respect to such loss which relates to information which may be particularly within the knowledge of Lessor.

Lessee hereby agrees to indemnify, reimburse and hold Lessor and Trustee harmless from any and all expense, loss, or liability (including but not limited to patent liabilities, penalties and interest) which the Lessor or the Trustee may incur in any manner by reason

of their ownership or security title to the Cars and claims, demands, suits, judgments or causes of action for or on account of injury to or death of persons, or loss or damage to property which may result from or grow in any manner out of the control, use or operation of the Cars under this Lease whether or not in the possession of Lessee, *provided, however,* that Lessee does not assume liability in respect of representatives, agents or employees of the Lessor, and *provided, further, however,* that Lessor will assign or pay over to Lessee any and all claims which it may have against third parties in respect of loss or damage to the Cars if Lessee is not in default under this Lease.

SECTION 11. *Default.* If, during the continuance of this Lease or any extension thereof, one or more of the following events shall occur:

(a) default shall be made in the payment of any part of the rental provided in Section 3 hereof and such default shall continue for ten (10) days after written notice from Lessor to Lessee;

(b) Lessee shall make or suffer any unauthorized assignment or transfer of this Lease or any unauthorized sublease or any unauthorized transfer of possession of the Cars or any of them and shall fail or refuse to cause the same to be cancelled by agreement of all parties having any interest therein and to recover possession of such Car or Cars within thirty (30) days after written notice from Lessor to Lessee demanding such cancellation and recovery of possession;

(c) any Car is requisitioned, taken over or nationalized by any governmental authority under the power of eminent domain or otherwise during the term of this Lease (except by any corporation or governmental agency which acquires the greater portion of the lines of railroad comprised in Sublessee's estate upon termination of the present trusteeship of the property of Sublessee and any successor if, in any case, it (i) shall have assumed all of the obligations of the Sublessee under the Sublease and (ii) such action does not impair the lien of the Trustee on the Equipment) and all of the obligations of Lessee hereunder are not assumed by such

governmental authority within sixty (60) days after such nationalization, and in which event, Lessor shall be entitled to the full amount of any award or recovery from such occurrence and Lessee hereby expressly waives any right or claim to any part of such award or recovery as damages or otherwise;

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

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

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

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

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

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

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

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

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

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

The remedies in this Lease provided in favor of Lessor shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its favor existing at law or in equity. Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify any of the remedies herein provided, to the extent that such waiver is permitted by law. No delay or omission of Lessor in the exercise of any power or remedy given herein shall be deemed a waiver of such power or remedy. In the event that Lessor shall bring suit and be entitled to judgment hereunder, then Lessor shall be entitled to recover reasonable expenses, including attorneys' fees and the amount thereof shall be included in such judgment.

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

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

SECTION 13. *Assignment.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

If to Lessor:

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

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

If to Lessee:

Pullman Incorporated  
200 South Michigan Avenue  
Chicago, Illinois 60604

Attention:

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

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

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

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

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

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

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

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

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

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

By .....  
*Vice President and  
Trust Officer.*

ATTEST:

.....  
*Assistant Secretary.*

PULLMAN INCORPORATED,

By .....  
*Vice President.*

ATTEST:

.....  
*Assistant Secretary.*



**EXHIBIT A**

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



**Collateral Assignment of Lease and Agreement**

**between**

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

**and**

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

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**Dated as of August 1, 1971**

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### **COLLATERAL ASSIGNMENT OF LEASE AND AGREEMENT**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[CORPORATE SEAL]

by .....  
*Vice President and Trust Officer.*

Attest:

.....  
*Assistant Secretary.*

Accepted:

UNITED STATES TRUST COMPANY  
OF NEW YORK, as Trustee,

by .....  
*Assistant Vice President.*



## LESSEE'S CONSENT AND AGREEMENT

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

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

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

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

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

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

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

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

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

Dated as of August 1, 1971.

PULLMAN INCORPORATED,

by .....  
*Vice President.*

[CORPORATE SEAL]

Attest:

.....  
*Assistant Secretary.*

Accepted:

UNITED STATES TRUST COMPANY OF  
NEW YORK, as Trustee,

by .....  
*Assistant Vice President.*



## Equipment Purchase Agreement

Dated as of August 1, 1971

between

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

and

PULLMAN INCORPORATED

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (i) the documents required by Section 3.04 of the Equipment Trust Agreement; and
- (ii) a favorable ruling from the Internal Revenue Service, in form satisfactory to The Northern Trust Company, as to the tax aspects of the transactions contemplated by this Agreement, the Lease and the Sublease.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

by .....  
*Vice President and  
Trust Officer.*

[CORPORATE SEAL]

Attest:

.....  
*Assistant Secretary.*

PULLMAN INCORPORATED,

by .....  
*Vice President.*

[CORPORATE SEAL]

Attest:

.....  
*Assistant Secretary.*

**SCHEDULE I**

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