

6604 - B

RECORDATION NO. \_\_\_\_\_ Filed & Recorded

MAY 24 1972 - 12 15 PM

INTERSTATE COMMERCE COMMISSION

### ASSIGNMENT OF PURCHASE AGREEMENT

KNOW ALL MEN BY THESE PRESENTS, that as of May 1, 1972, THE PITTSBURGH AND LAKE ERIE RAILROAD COMPANY, a Delaware corporation (hereinafter called the Assignor), in consideration of the sum of \$10 and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, DOES HEREBY SELL, ASSIGN, TRANSFER AND SET OVER UNTO FIRST SECURITY STATE BANK, a Utah corporation (hereinafter called the Assignee), as Trustee under a Trust Agreement dated as of May 1, 1972, with First Security Bank of Idaho, National Association, and First Security Bank of Utah, National Association, all the Assignor's right, title and interest in and to certain purchase documents (hereinafter called the Purchase Agreement) between the Assignor and GREENVILLE STEEL CAR COMPANY (hereinafter sometimes called the Manufacturer), in so far as they relate to the railroad equipment (hereinafter called the Equipment) described in Annex A to the Conditional Sale Agreement dated as of May 1, 1972 (hereinafter called the Conditional Sale Agreement), between the Assignee and the Manufacturer, together with all and singular the Equipment and all right, title and interest now owned or hereafter acquired by the Assignor in and to the Equipment and in and to the Purchase Agreement except as provided in the Lease of Railroad Equipment dated as of May 1, 1972, between the Assignor and the Assignee, to have and to hold all and each unit of the Equipment and the Purchase Agreement to the Assignee and its assigns for its and their own use forever.

In furtherance and not in limitation of the foregoing, the Assignor recognizes that, concurrent with the execution and delivery of this Assignment, the Assignee is arranging for the purchase of the Equipment by it pursuant to the Conditional Sale Agreement, which is being assigned by the Manufacturer pursuant to an Agreement and Assignment

dated as of May 1, 1972 (hereinafter called the Assignment), between the Manufacturer and Mellon National Bank and Trust Company, and that the Conditional Sale Agreement permits (under Articles 2 and 3 thereof) the exclusion therefrom of, and (under Article 3 thereof) nonpayment for, and the Assignment permits (under Section 5 thereof) nonpayment for, all or any portion of the Equipment under the circumstances described in said Articles and said Section. In respect thereof, the Assignor covenants with the Assignee, and the Manufacturer as a third party beneficiary hereof, that, in the event of any such exclusion of or any nonpayment by either the Assignee or Mellon National Bank and Trust Company for units of the Equipment, the Assignor will be obligated to accept all units of the Equipment completed and delivered by the Manufacturer and to pay the full purchase price therefor not later than 30 days after such payment was due, together with interest from the date such payment was due to the date of payment by the Assignor at the average prime rate of interest charged by the five largest New York banks in effect at 11:00 a.m., New York time, on the date such payment was due. Such payment by the Assignor shall be made in cash, either directly or, in case the Assignor shall arrange therefor, by means of a conditional sale, equipment trust or other appropriate method of financing, as the Assignor shall determine. The Assignor warrants that none of the units of the Equipment has been delivered by the Manufacturer and no payment has been made in respect thereof to the Manufacturer.

The Assignor agrees to indemnify, protect and hold harmless the Assignee, and the Manufacturer and Mellon National Bank and Trust Company as third party beneficiaries hereof, from and against any and all liabilities, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed

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INTERSTATE COMMERCE COMMISSION

TRUST AGREEMENT

THIS TRUST AGREEMENT dated as of May 1, 1972, among FIRST SECURITY BANK OF IDAHO, NATIONAL ASSOCIATION, a national banking association, and FIRST SECURITY BANK OF UTAH, NATIONAL ASSOCIATION, a national banking association (hereinafter individually called Idaho and Utah respectively and together the Companies), and FIRST SECURITY STATE BANK, a Utah corporation, not in its individual capacity but solely as trustee hereunder (hereinafter called the Trustee).

W I T N E S S E T H:

ARTICLE I

Authority to Execute the Conditional Sale Agreement,  
the Lease and the Lease Assignment  
Declaration of Trust

Section 1.01. The Companies hereby authorize and direct the Trustee (i) to execute and deliver the Conditional Sale Agreement dated as of May 1, 1972 (hereinafter called the Conditional Sale Agreement), between Greenville Steel Car Company (hereinafter called the Builder) and the Trustee; (ii) to acknowledge the notice of the assignment to Mellon National Bank and Trust Company (hereinafter called the

furnish the Trustee for such purpose; (viii) subject to the terms of this Trust Agreement, to exercise the rights and perform the duties of vendee under the Conditional Sale Agreement, lessor under the Lease and assignor under the Lease Assignment; and (ix) to take such other action in connection with any of the foregoing as the Companies may from time to time jointly direct.

Section 1.02. The Trustee hereby declares that it will hold all estate, right, title and interest of the Trustee in and to the Equipment, the Lease and the Conditional Sale Agreement, including, without limitation, all amounts of rent, insurance proceeds, indemnity and other payments of any kind for or with respect to any Equipment (all such estate, right, title and interest being hereinafter sometimes called the Trust Estate), upon the trusts hereinafter set forth for the use and benefit of the Companies, subject, however, to the obligations of the Trustee to make payment to the Builder or the Vendor in accordance with the terms of, and to the extent expressly provided in, Article II hereof.

Section 1.03. Subject to the conditions set forth in the penultimate paragraph of Article 3 of the Conditional Sale Agreement, Idaho and Utah will make available to the Trustee 50% and 50%, respectively, of the amounts required to be paid

from time to time by the Trustee pursuant to subparagraph (a) of the third paragraph of Article 3 of the Conditional Sale Agreement, at such time and in such funds and such manner as will enable the Trustee to make such payments. The percentages set forth above shall constitute the respective interests of Idaho and Utah in the Trust Estate.

## ARTICLE II

### Receipt, Distribution and Application of Income from the Trust Estate

Section 2.01. Except as otherwise provided in Section 2.04 hereof, the Trustee shall apply each payment of rental received by it under §§ 2 and 15 of the Lease and each payment received by it under §§ 6 and 17 of the Lease as follows:

(a) Prior to payment in full of the principal of and interest on the Conditional Sale Indebtedness (as defined in the Conditional Sale Agreement), each such payment shall be applied to the payment of the Trustee's obligations under and pursuant to Articles 3 and 5, respectively, of the Conditional Sale Agreement to the extent such payments are not otherwise discharged, subject to the limitations contained in the last paragraph of Article 3 of Conditional Sale Agreement.

(b) After application in accordance with subsection

(a), the balance, if any, remaining shall be paid to the Companies in proportion to their respective interests in the Trust Estate.

Section 2.02. All payments at any time received by the Trustee from or on behalf of the Lessee pursuant to the Lessee's indemnities contained in §§ 5 and 8 of the Lease shall be applied first, to the Vendor to the extent it incurred or suffered the tax or other loss, cost or expense or liability indemnified against, second, to the Trustee to the extent of any tax, loss, cost, expense or liability incurred or suffered by the Trustee, and third, to Idaho and Utah to the extent of any tax, loss, cost, expense or liability incurred or suffered by either of them. In the event any such payment shall be insufficient to pay the taxes, losses, costs, expenses and liabilities of Idaho and Utah in full, such payment shall be apportioned to the taxes, losses, costs, expenses and liabilities incurred or suffered by each of them in proportion to their respective interests in the Trust Estate.

Section 2.03. Except as otherwise provided in Section 2.04 hereof, any payments received by the Trustee, other than those referred to in the previous Sections of this Article, for which provision as to the application thereof is made in the Lease or the Conditional Sale Agree-

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ment shall be applied to the purpose for which such payment was made in accordance with the terms of the Lease or the Conditional Sale Agreement; and any payments received by the Trustee for which no provision as to the application thereof is made in the Lease or the Conditional Sale Agreement or in this Article II shall, unless the Companies shall have jointly instructed the Trustee otherwise in writing, be distributed to the Companies in proportion to their respective interests in the Trust Estate.

Section 2.04. Except as otherwise provided in Section 2.02, all payments received and amounts realized by the Trustee after an event of default under the Conditional Sale Agreement shall have occurred and be continuing and after the Vendor shall have declared the Conditional Sale Indebtedness to be due and payable pursuant to Article 16 thereof (including any amounts realized by the Trustee or the Companies from the exercise of any remedies pursuant to § 9 of the Lease), as well as all funds then held or thereafter received by the Trustee as part of the Trust Estate while such event of default shall be continuing, shall be applied as follows:

- (a) that portion of any sums available for distribution pursuant to this Section as shall equal the lesser of (i) the aggregate amount of all such sums or (ii) the unpaid principal amount of the Conditional

Sale Indebtedness and the accrued but unpaid interest owing on such Conditional Sale Indebtedness to the date of distribution by the Trustee plus all other amounts owing to the Vendor by the Trustee under the Conditional Sale Agreement (subject to the limitations of the last paragraph of Article 3 thereof) shall be distributed by the Trustee to the Vendor in discharge of the Trustee's obligations under and pursuant to the Conditional Sale Agreement; and

(b) all amounts remaining after payment in full of the amounts required to be paid in accordance with subsection (a) shall be applied by the Trustee first, to the reimbursement of the Trustee for all expenses not reimbursed under this Trust Agreement, the Lease or otherwise, and second, any sums remaining thereafter to the Companies in proportion to their respective interests in the Trust Estate.

Section 2.05. Except as otherwise provided in Sections 2.02 and 2.04 hereof:

(a) all payments received and amounts realized by the Trustee under the Lease or otherwise with respect to any unit of Equipment (including without limitation all payments received pursuant to § 9 of the Lease and amounts realized upon the sale of such unit of

Equipment after the termination of the Lease with respect thereto) to the extent received or realized at any time after payment in full of the principal of and interest on the Conditional Sale Indebtedness plus all other amounts owing to the Vendor by the Trustee under the Conditional Sale Agreement (subject to the limitations of the last paragraph of Article 3 thereof), and

(b) moneys not included in subsection (a) or remaining as part of the Trust Estate after payment in full of all amounts required to be paid in accordance with subsection (a),

shall be applied first, to the reimbursement of the Trustee for any expenses not reimbursed under this Trust Agreement, the Lease or otherwise and second, any balance remaining thereafter to the Companies in proportion to their respective interests in the Trust Estate.

Section 2.06. The Trustee shall make distributions as follows:

(a) to Utah at 79 South Main Street, Salt Lake City, Utah 84111 and to Idaho at 119 North Ninth Street, Boise, Idaho 83707, or at such other addresses as Utah or Idaho may otherwise direct in writing; and

(b) to the Vendor by paying the amount to be

distributed to the Vendor in the manner specified in the Conditional Sale Agreement.

### ARTICLE III

#### Duties of the Trustee

Section 3.01. In the event the Trustee shall have knowledge of an Event of Default under the Lease or an event of default under the Conditional Sale Agreement, the Trustee shall give prompt notice in writing thereof to the Companies, unless the same shall have been remedied before the giving of such notice. Subject in all respects to the terms and provisions of the Conditional Sale Agreement and the Lease Assignment and the rights of the Vendor thereunder, and subject further to the terms of Section 3.03 hereof, the Trustee shall take such action with respect to such Event of Default or event of default as the Companies shall jointly direct by written notice to the Trustee, including, without limitation, the application of moneys furnished by the Companies and moneys in the Trust Estate available for the purpose to the payment of the principal of and interest on the Conditional Sale Indebtedness pursuant to Articles 16 and 17 of the Conditional Sale Agreement and Section 12 of the Lease Assignment. For all purposes of this Trust Agreement, the Trustee shall not be deemed to have knowledge of such an

Event of Default or event of default unless notified in writing by one of the Companies.

Section 3.02. Subject in all respects to the terms and provisions of the Conditional Sale Agreement, the Lease and the Lease Assignment and the rights of the Vendor and the Lessee thereunder, and subject further to the terms of Sections 3.01 and 3.03 hereof, upon the joint written request at any time and from time to time of the Companies, the Trustee will take such of the following actions as may be specified in such request: (i) give such notice or direction or exercise such right or power under the Lease or the Conditional Sale Agreement with respect thereto or to any unit of Equipment, including without limitation the right to transfer, assign or convey the Trustee's interest in the Conditional Sale Agreement, the Lease or any unit of Equipment, as shall be specified in such request; and (ii) after the expiration or earlier termination of the Lease with respect to a unit of Equipment, convey all the Trustee's right, title and interest in and to such unit of Equipment for such amount, on such terms and to such purchaser or purchasers as shall be designated in such request, or retain, lease or otherwise dispose of such unit of Equipment as shall be designated in such request.

Section 3.03. The Trustee shall not be required

to take any action under Section 3.01 or Section 3.02 hereof unless the Trustee shall have been indemnified by the Companies in manner and form satisfactory to the Trustee, against any liability, cost or expense (including counsel fees) which may be incurred in connection with such action. The Trustee shall not be required to take any action under Section 3.01 or Section 3.02 hereof, nor shall any other provision of the Trust Agreement be deemed to impose a duty on the Trustee to take any action, if the Trustee shall determine, or shall have been advised by counsel, that such action is likely to result in personal liability or is contrary to the terms of the Lease, the Lease Assignment or the Conditional Sale Agreement or is otherwise contrary to law.

Section 3.04. The Trustee shall not have any duty or obligation to manage, control, use, sell, dispose or otherwise deal with any unit of Equipment or any other part of the Trust Estate, or to otherwise take or refrain from taking any action under, or in connection with, the Lease, the Lease Assignment or the Conditional Sale Agreement, except as expressly provided by the terms of this Trust Agreement or as expressly provided in joint written instructions from the Companies received pursuant to the terms of Section 3.01 or Section 3.02 hereof; and no implied duties or obligations shall be read into this Trust

Agreement against the Trustee; provided, however, that nothing contained in this Trust Agreement shall limit in any manner (a) the obligation of the Trustee, subject to the provisions of Article 23 of the Conditional Sale Agreement, to perform and observe all the terms and provisions of the Conditional Sale Agreement imposed upon the vendee thereunder or (b) the obligations of the Trustee set forth in Article II hereof.

Section 3.05. The Trustee agrees that it will not manage, control, use, sell, dispose or otherwise deal with any unit of Equipment or any other part of the Trust Estate except (i) as required by the terms of the Lease, the Lease Assignment or the Conditional Sale Agreement or (ii) in accordance with the powers granted to, or the authority conferred upon, the Trustee pursuant to this Trust Agreement or (iii) in accordance with joint written instructions from the Companies pursuant to Section 3.01 or Section 3.02 hereof.

#### ARTICLE IV

##### The Trustee

Section 4.01. The Trustee accepts the trusts hereby created and agrees to perform the same but only upon the terms of this Trust Agreement. The Trustee shall not be answerable or accountable under any circumstances, except

for its own wilful misconduct or gross negligence.

Section 4.02. Except in accordance with written instructions furnished pursuant to Section 3.02 hereof, and without limitation of the generality of Section 3.04 hereof, the Trustee shall have no duty (i) to see to any recording, filing or depositing of the Lease, the Lease Assignment, the Conditional Sale Agreement or this Trust Agreement, or of any amendments or supplements thereto or of any other documents contemplated thereby or to see to the maintenance of any such recording or filing or depositing or to any rerecording, refiling or redepositing of any thereof, (ii) to see to any insurance on the Equipment or to effect or maintain any such insurance, (iii) to see to the payment or discharge of any tax, assessment or other governmental charge or any lien or encumbrance of any kind owing with respect to, or assessed or levied against, any part of the Trust Estate, (iv) to confirm or verify any reports of the Lessee other than to furnish the Companies with a copy of each such report furnished the Trustee by the Lessee pursuant to § 7 of the Lease or (v) to inspect the Equipment at any time or ascertain or inquire as to the performance or observance of any of the Lessee's covenants under the Lease with respect to the Equipment.

Section 4.03. The Trustee makes (i) no representa-

tion or warranty as to the value, condition or fitness for use of the Equipment or as to its title thereto, or any other representation or warranty with respect to the Equipment whatsoever, and (ii) no representation or warranty as to the validity, legality or enforceability of this Trust Agreement, the Conditional Sale Agreement, the Lease, the Lease Assignment or any document contemplated thereby, or as to the correctness of any statement contained in any thereof.

Section 4.04. No moneys received by the Trustee hereunder need be segregated in any manner except to the extent required by law and the Trustee shall not be liable for any interest thereon.

Section 4.05. The Trustee shall incur no liability to anyone in acting upon any signature, instrument, notice, resolution, request, consent, order, certificate, report, opinion, bond or other document or paper believed by it to be genuine and believed by it to be signed by the proper party or parties. The Trustee may accept a copy of a resolution of the Board of Directors of any corporate party, certified by the Secretary or an Assistant Secretary of said party, as duly adopted and in full force and effect, as conclusive evidence that such resolution has been duly adopted by said Board and that the same is in full force and effect. As to any fact or matter the manner of ascertainment of which

is not specifically described herein, the Trustee may for all purposes hereof rely on a certificate, signed by or on behalf of the proper party executing the same, as to such fact or matter, and such certificate shall constitute full protection to the Trustee for any action taken or suffered or omitted to be taken by it in good faith in reliance thereon. In the administration of the trusts hereunder, the Trustee may execute any of the trusts or powers hereof and perform its powers and duties hereunder directly or through agents or attorneys and may, at the expense of the Trust Estate, seek advice of counsel, accountants and other skilled persons to be selected and employed by it, and the Trustee shall not be liable for anything done, suffered or omitted in good faith by it in accordance with the advice or opinion of any such counsel, accountants or other skilled persons.

Section 4.06. In accepting the trusts hereby created, the Trustee acts solely as trustee hereunder and not in its individual capacity; and all persons, other than the Companies, having any claim against the Trustee by reason of the transactions contemplated hereby shall look only to the Trust Estate for payment or satisfaction thereof.

Section 4.07. The Trustee shall have the absolute right, acting independently, to take any action and to exercise any right, remedy, power or privilege conferred

upon the Trustee hereunder; any action taken by the Trustee shall be binding upon the Trustee; and no person dealing with the Trustee shall be obligated to confirm the power and authority of the Trustee to act.

Section 4.08. The Trustee shall be entitled to receive reasonable compensation for its services hereunder, under the Conditional Sale Agreement, under the Lease and under the Lease Assignment.

#### ARTICLE V

##### Indemnification of Trustee by the Companies

Section 5.01. The Companies hereby agree, jointly and severally, whether or not any of the transactions contemplated hereby shall be consummated, to assume liability for, and to indemnify, protect, save and keep harmless the Trustee and its respective successors, assigns, legal representatives, agents and servants from and against, any and all liabilities, obligations, losses, damages, penalties, taxes (such term "taxes" or the term "tax" as used in this Section 5.01 shall include all taxes specifically related to this Trust Agreement and the Trust Estate created hereby excluding, however, any income taxes on fees or other compensation received by the Trustee in its capacity as Trustee), claims, actions, suits, costs, expenses or disbursements (including legal fees and expenses) of any kind and nature whatsoever which may be

imposed on, incurred by or asserted against the Trustee (whether or not also indemnified against by the Lessee under the Lease or also indemnified against by the Builder or any other person) in any way relating to or arising out of this Trust Agreement, the Lease, the Lease Assignment, the Conditional Sale Agreement or any document contemplated thereby, or the performance or enforcement of any of the terms of any thereof, or in any way relating to or arising out of the manufacture, purchase, acceptance, rejection, ownership, delivery, lease, possession, use, operation, condition, sale, return or other disposition of the Equipment (including, without limitation, latent and other defects, whether or not discoverable, and any claim for patent, trademark or copyright infringement), or in any way relating to or arising out of the administration of the Trust Estate or the action or inaction of the Trustee hereunder, except only in the case of wilful misconduct or gross negligence on the part of the Trustee in the performance of its duties hereunder. The indemnities contained in this Section 5.01 shall survive the termination of this Trust Agreement. In addition, if necessary, the Trustee shall be entitled to indemnification from the Trust Estate for any liability, obligation, loss, damage, penalty, tax, claim, action, suit, cost, expense or disbursement indemnified against pursuant to this Section 5.01 to the

extent not reimbursed by the Lessee, the Builder, the Companies or any other person; and, to secure the same, the Trustee shall have a lien on the Trust Estate prior to any interest therein of the Companies.

#### ARTICLE VI

##### Transfer of the Companies' Interests

Section 6.01. Neither of the Companies shall assign, convey or otherwise transfer any of its right, title or interest in and to this Trust Agreement or the Trust Estate, except that all, but not less than all, of its right, title and interest in and to this Trust Agreement or the Trust Estate may be assigned, conveyed or transferred by the Companies to any banking institution having a combined capital and surplus of at least \$25,000,000 (such institution or corporation to whom such interest in the Trust Estate may be assigned, conveyed or transferred being hereinafter referred to as the Transferee). In the event of any such assignment, conveyance or transfer, the Transferee shall become a party to this Trust Agreement and will agree to be bound by all the terms of and will undertake all the obligations of the Companies contained in this Trust Agreement in such manner as is satisfactory to the Trustee and the Vendor. No such assignment, conveyance or transfer shall violate any provision of law or regula-

tion or create a relationship which would be in violation thereof. In any event, until the assigning, conveying or transferring Company shall have received the prior written consent of the Trustee and the Vendor, without limiting the primary liability of the Transferee, such Company shall remain secondarily liable to perform the obligations undertaken but not performed by the Transferee. Upon any such disposition by a Company to a Transferee as above provided, the Transferee shall be deemed a "Company" for all purposes hereof, and shall be deemed to have made all the payments previously made by such Company; and each reference herein to the Companies shall thereafter be deemed to include such Transferee.

Section 6.02. If a Company shall propose to assign, convey or transfer its interests hereunder pursuant to Section 6.01 hereof, it shall give written notice to the Trustee and the Vendor, specifying the name and address of the proposed Transferee, and enclosing the agreement or agreements referred to in Section 6.01 hereof.

## ARTICLE VII

### Successor Trustees

Section 7.01. (a) The Trustee or any successor thereto may resign at any time without cause by giving at least 30 days' prior written notice to the Companies, such

resignation to be effective on the date specified in such notice. In addition, the Companies may at any time remove the Trustee without cause by a joint instrument in writing delivered to the Trustee. In the case of the resignation or removal of any Trustee, the Companies may appoint a successor Trustee by an instrument jointly signed by the Companies. If the Companies shall not have appointed a successor Trustee within 30 days after such resignation or removal, the Trustee, if any, may apply to any court of competent jurisdiction to appoint a successor Trustee to act until such time, if any, as a successor shall have been appointed by the Companies as above provided. Any successor Trustee so appointed by such court shall immediately and without further act be superseded by any successor Trustee appointed by the Companies within one year from the date of the appointment by such court. Any successor Trustee hereunder shall be deemed the "Trustee" for all purposes hereof, and each reference herein to the Trustee shall thereafter be deemed a reference to such successor.

(b) Any successor Trustee, whether appointed by a court or by the Companies, shall execute and deliver to the predecessor Trustee an instrument accepting such appointment, and thereupon such successor Trustee, without further act, shall become vested with all the estates, properties,

rights, powers, duties and trusts of the predecessor Trustee in the trusts hereunder with like effect as if originally named as Trustee herein; but nevertheless upon the written request of such successor Trustee, such predecessor Trustee shall execute and deliver an instrument transferring to such successor Trustee, upon the trusts herein expressed, all the estates, properties, rights, powers and trusts of such predecessor Trustee, and such predecessor Trustee shall duly assign, transfer, deliver and pay over to such successor Trustee any property or moneys then held by such predecessor Trustee upon the trusts herein expressed.

(c) Any successor Trustee, however appointed, shall be a bank or trust company having a combined capital and surplus of at least 25,000,000.

(d) Any corporation into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation to which substantially all the corporate trust business of the Trustee may be transferred, shall, subject to the terms of this Section 7.01, be the Trustee under this Trust Agreement without any further act.

#### ARTICLE VIII

##### Supplements and Amendments to this Trust Agreement and Other Documents

Section 8.01. At any time and from time to time,

upon the joint written request of the Companies, (i) subject to the last sentence of Article 23 of the Conditional Sale Agreement, the Trustee and the Companies shall execute a supplement hereto for the purpose of adding provisions to, or changing or eliminating provisions of, this Trust Agreement as specified in such request and (ii) the Trustee shall enter into or consent to such written amendment of or supplement to the Lease, the Lease Assignment or the Conditional Sale Agreement as may be agreed to by the parties thereto (other than the Trustee) and as may be specified in such request, or execute and deliver such written waiver of the terms of the Lease, the Lease Assignment or the Conditional Sale Agreement as may be specified in such request.

Section 8.02. If in the opinion of the Trustee any document required to be executed pursuant to the terms of Section 8.01 hereof affects any right or duty of, or immunity or indemnity in favor of, the Trustee under this Trust Agreement, the Conditional Sale Agreement, the Lease or the Lease Assignment, the Trustee may in its discretion decline to execute such document.

Section 8.03. It shall not be necessary for any written request of the Companies furnished pursuant to Section 8.01 hereof to specify the particular form of the pro-

posed document to be executed pursuant to said Section, but it shall be sufficient if such request shall indicate the substance thereof.

Section 8.04. Promptly after the execution by the Trustee of any document entered into pursuant to Section 8.01 hereof, the Trustee shall mail a conformed copy thereof to the Companies, but the failure of the Trustee to mail such conformed copy shall not impair or affect the validity of such document.

#### ARTICLE IX

##### Miscellaneous

Section 9.01. This Trust Agreement and the trusts created hereby in any event shall terminate and this Trust Agreement shall be of no further force or effect upon the earlier of (a) the sale, transfer or other final disposition by the Trustee of all property, including all right, title and interest of the Trustee in and to the Conditional Sale Agreement, the Lease, the Lease Assignment and the Equipment, at any time part of the Trust Estate and the final distribution by the Trustee of all money, other property and proceeds constituting the Trust Estate, as the Companies may at any time direct, or (b) 21 years less one day after the date of the earliest acknowledgment of the execution of this Trust Agreement by any party hereto; otherwise this Trust Agreement and the trusts created hereby shall continue in full force and

effect in accordance with the terms hereof.

Section 9.02. The Companies shall not have legal title to any part of the Trust Estate. No transfer, by operation of law or otherwise, of the right, title and interest of a Company in and to the Trust Estate or hereunder shall operate to terminate this Trust Agreement or the trusts hereunder or entitle any successor or transferee of such Company to an accounting or to the transfer to it of legal title to any part of the Trust Estate.

Section 9.03. Any assignment, sale, transfer or other conveyance by the Trustee of the interest of the Trustee in the Conditional Sale Agreement, the Lease, the Lease Assignment or any unit of Equipment, made pursuant to the terms of this Trust Agreement, the Conditional Sale Agreement, the Lease or the Lease Assignment shall bind the Companies and shall be effective to assign, sell, transfer or convey all right, title and interest of the Trustee and the Companies in and to the Conditional Sale Agreement, the Lease, the Lease Assignment or such units of Equipment. No purchaser or other grantee shall be required to inquire as to the authorization, necessity, expediency or regularity of such assignment, sale, transfer or conveyance or as to the application of any sale or other proceeds with respect thereto by the Trustee.

Section 9.04. Nothing in this Trust Agreement,

whether express or implied, shall be construed to give to any person other than the Trustee, the Companies, the Vendor and their respective successors and assigns, any legal or equitable right, remedy or claim under or in respect of this Trust Agreement; but this Trust Agreement shall be held to be for the sole and exclusive benefit of the Trustee, the Companies, the Vendor and their respective successors and assigns.

Section 9.05. Unless otherwise expressly specified or permitted by the terms hereof, all notices shall be in writing, mailed by regular mail, postage prepaid, (i) if to the Trustee, addressed to the Trustee at its offices at P.O. Box 149, Salt Lake City, Utah 84110, attention President, and (ii) if to either of the Companies, either Utah or Idaho at 79 South Main Street, Salt Lake City, Utah 84111, attention Elmer D. Tucker, Esq., or in either case at such other address as the party to whom such communication is addressed shall have furnished in writing to the other party. Whenever any notice in writing is required to be given by the Trustee to the Companies, such notice shall also be deemed given and such requirement satisfied if such notice is mailed by regular mail, postage prepaid, addressed to the Companies at the address or addresses last known to the Trustee as the address or addresses of the Companies.

Section 9.06. Any provision of this Trust Agree-

ment 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.

Section 9.07. No term or provision of this Trust Agreement may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the party or other person against whom enforcement of the change, waiver, discharge or termination is sought; and any waiver of the terms hereof shall be effective only in the specific instance and for the specific purpose given.

Section 9.08. This Trust Agreement may be executed by the parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

Section 9.09. All covenants and agreements contained herein shall be binding upon, and inure to the benefit of, the Trustee and its successors and assigns, and the Companies and their successors and, to the extent permitted by Article VI hereof, their assigns. Any request, notice, direction, consent, waiver or other instrument or action by

the Companies shall bind their successors and assigns.

Section 9.10. The headings of the various articles herein are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

Section 9.11. This Trust Agreement shall in all respects be governed by, and construed in accordance with, the laws of the State of Utah, including all matters of construction, validity and performance.

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

FIRST SECURITY BANK OF IDAHO,  
NATIONAL ASSOCIATION,

by

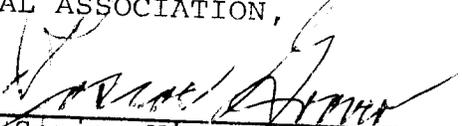
George J. Deuloid  
Vice President

Attest:

Walter F. Hawley  
Assistant Secretary

FIRST SECURITY BANK OF UTAH,  
NATIONAL ASSOCIATION,

by

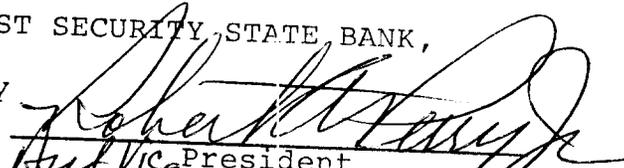
  
Senior Vice President

Attest:

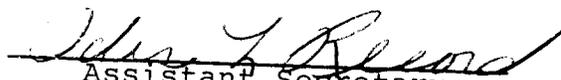
  
Assistant Secretary

FIRST SECURITY STATE BANK,

by

  
First Vice President

Attest:

  
Assistant Secretary

STATE OF UTAH,            )  
                                  ) ss.:  
COUNTY OF SALT LAKE, )

On this 22nd day of May, 1972, before me personally appeared George L. Denton, Jr., to me personally known, who, being by me duly sworn, says that he is a Vice President of FIRST SECURITY BANK OF IDAHO, NATIONAL ASSOCIATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said association, that said instrument was signed and sealed on behalf of said association 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 association.

Richard E. Peterson  
Notary Public

STATE OF UTAH,            )  
                              )    ss.:  
COUNTY OF SALT LAKE,)

On this 22nd day of May, 1972, before me personally appeared Roscoe Grover, to me personally known, who, being by me duly sworn, says that he is a Senior Vice President of FIRST SECURITY BANK OF UTAH, NATIONAL ASSOCIATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said association, that said instrument was signed and sealed on behalf of said association 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 association.

*[Handwritten Signature]*  
Notary Public

STATE OF UTAH,            )  
                              )    ss.:  
COUNTY OF SALT LAKE,)

On this 22nd day of May, 1972, before me personally appeared Robert A. Perry, Jr., to me personally known who, being by me duly sworn, says that he is an Assistant Vice President of FIRST SECURITY STATE BANK, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Robert A. Perry, Jr.

upon or accruing against the Assignee, the Manufacturer or Mellon National Bank and Trust Company or their assigns because of the use in or about the Equipment, or any unit thereof, of any design, system, process, formula or combination specified by the Assignor and not developed or purported to be developed by the Manufacturer, and any article or material specified by the Assignor and not manufactured by the Manufacturer, which infringes or is claimed to infringe on any patent or other similar right.

The Assignor does hereby represent that it is the lawful owner, free from all liens, security interests and encumbrances, of the Purchase Agreement and that the Assignor has the right to sell and assign the Purchase Agreement as set forth herein and that the Assignor will warrant and defend this Assignment against the lawful claims and demands of all persons.

Settlement for the units of Equipment to be acquired from the Manufacturer will be made under the Conditional Sale Agreement as provided in Article 3 thereof.

IN WITNESS WHEREOF, the Assignor has caused this Assignment to be duly executed as of the date first above written.

THE PITTSBURGH AND LAKE ERIE  
RAILROAD COMPANY,

by *H. G. Allyn, Jr.* .....  
President

[CORPORATE SEAL]

ATTEST:

*W. S. Darlow*  
.....  
Assistant Secretary

The foregoing Assignment is hereby  
accepted as of May 1, 1972.

FIRST SECURITY STATE BANK,  
as Trustee,

by .....  
Vice President