

6653-C
RECORDATION NO. _____

Filed & Recorded

SEP 27 1972 - 11 28 AM

INTERSTATE COMMERCE COMMISSION

AMENDMENT AGREEMENT dated as of August 15, 1972, among MANUFACTURERS HANOVER TRUST COMPANY, a New York corporation (hereinafter called the Trustee), THE FIFTH THIRD BANK, an Ohio banking corporation (hereinafter called the Company), and TRAILER TRAIN COMPANY, a Delaware corporation (hereinafter called the Lessee).

WHEREAS the Trustee, the Company and the Lessee have entered into an Equipment Trust Agreement dated as of July 1, 1972 (hereinafter called the Original Equipment Trust Agreement), filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act on July 14, 1972, Recordation No. 6653; and

WHEREAS the Company and the Lessee have entered into a Lease of Equipment dated as of July 1, 1972 (hereinafter called the Original Lease), filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act on July 14, 1972, Recordation No. 6653-A; and

WHEREAS the parties hereto desire to amend the Original Equipment Trust Agreement and the Original Lease;

NOW, THEREFORE, in consideration of the mutual

agreements herein contained, the parties hereto agree as follows:

1. The Original Equipment Trust Agreement is hereby amended so as to read in its entirety as set forth in Exhibit A hereto.

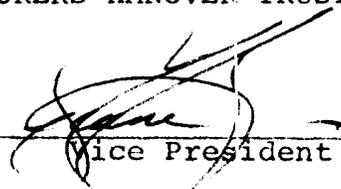
2. The Original Lease is hereby amended so as to read in its entirety as set forth in Annex B to Exhibit A hereto.

3. The Lessee will promptly cause this Amendment Agreement to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act.

IN WITNESS WHEREOF, the parties hereto 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 above written.

MANUFACTURERS HANOVER TRUST COMPANY,

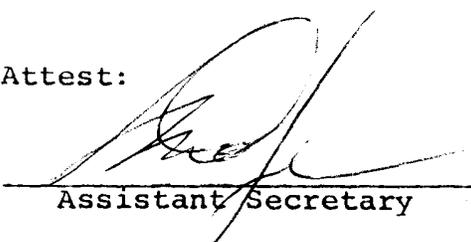
by



Vice President

[Corporate Seal]

Attest:



Assistant Secretary

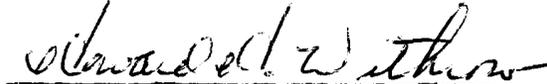
THE FIFTH THIRD BANK,

by

[Corporate Seal]


Vice President

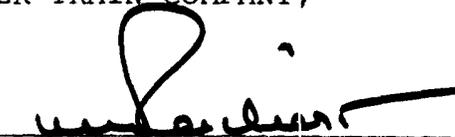
Attest:


Assistant Secretary

TRAILER TRAIN COMPANY,

by

[Corporate Seal]


Vice President-Finance

Attest:


Assistant Secretary

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

On this ^{September} 12th day of ~~August~~ 1972, before me personally appeared T. C. CRANE, to me personally known, who, being by me duly sworn, says that he is a Vice-President of MANUFACTURERS HANOVER TRUST COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Kathleen Costine
Notary Public

[NOTARIAL SEAL]

KATHLEEN COSTINE
Notary Public, State of New York
No. 31-5832352 - New York
Qualified in New York County
Commission Expires March 30, 1974

STATE OF OHIO,)
) ss.:
COUNTY OF HAMILTON,)

On this 15 day of ~~August~~ Sept. 1972, before me personally appeared C. P. Reynolds, Jr. to me personally known, who, being by me duly sworn, says that he is a Vice President of THE FIFTH THIRD BANK, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was a free act and deed of said corporation.

Irma S. Martin
Notary Public

[NOTARIAL SEAL]

IRMA S. MARTIN
Notary Public, Hamilton County, Ohio
My Commission Expires Oct. 14, 1974

EQUIPMENT TRUST AGREEMENT dated as of July 1, 1972, among MANUFACTURERS HANOVER TRUST COMPANY, a corporation duly organized and existing under the laws of the State of New York, as Trustee (hereinafter called the Trustee), THE FIFTH THIRD BANK, a corporation duly organized and existing under the laws of the State of Ohio (hereinafter called the Company), and TRAILER TRAIN COMPANY, a corporation duly organized and existing under the laws of the State of Delaware (hereinafter called the Guarantor or the Lessee).

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

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

WHEREAS Equipment Trust Certificates, due November 1, 1987 (hereinafter called Trust Certificates), bearing the unconditional guaranty of the Guarantor, are to be issued and sold hereunder in an aggregate principal amount not exceeding \$4,000,000 at a price not less than 100% of the principal amount thereof, and the net proceeds of such sale are to be deposited with the Trustee to constitute a fund equal to the aggregate principal amount of Trust Certificates so issued and sold to be applied by the Trustee from time to time in part payment of the cost of the Trust Equipment (as hereinafter defined), the remainder of the cost thereof to be paid out of advance rentals to be paid by the Company as provided herein; and

WHEREAS the Company proposes to enter into a Lease of Equipment to be dated as of July 1, 1972 (hereinafter called the Lease) with the Lessee pursuant to which the Company will lease such railroad equipment to the Lessee; and

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

[FORM OF TRUST CERTIFICATE]

\$ No

EQUIPMENT TRUST DUE NOVEMBER 1, 1987

Unconditionally Guaranteed as to Principal and Dividends by

TRAILER TRAIN COMPANY

EQUIPMENT TRUST CERTIFICATE

Total Authorized Issue
\$4,000,000

MANUFACTURERS HANOVER TRUST COMPANY, Trustee

Dividends at the Rate of 7 $\frac{7}{8}$ % Per Annum Payable
May 1 and November 1

MANUFACTURERS HANOVER TRUST COMPANY, as Trustee under an Equipment Trust Agreement (hereinafter, as amended by an Amendment Agreement dated as of August 15, 1972, called the Agreement) dated as of July 1, 1972, among MANUFACTURERS HANOVER TRUST COMPANY, Trustee (hereinafter called the Trustee), THE FIFTH THIRD BANK (hereinafter called the Company) and TRAILER TRAIN COMPANY (hereinafter called the Guarantor), hereby certifies that

or registered assigns, is entitled to an interest in the principal amount of \$ in the EQUIPMENT TRUST DUE NOVEMBER 1, 1987, UNCONDITIONALLY GUARANTEED AS TO PRINCIPAL AND DIVIDENDS BY TRAILER TRAIN COMPANY, payable on November 1, 1987,

upon presentation and surrender of this Certificate to the Trustee at its corporate trust office in the Borough of Manhattan, City and State of New York, and to payment of dividends on the unpaid principal amount represented by this Certificate from the date hereof until the principal amount hereof is due and payable, at the rate of $7\frac{7}{8}\%$ per annum, payable semiannually on May 1 and November 1 in each year, with interest at the rate of $8\frac{7}{8}\%$ per annum on any overdue principal and dividends to the extent that it shall be legally enforceable, all in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, but payable only out of rentals or other moneys received by the Trustee and applicable to such payment under the provisions of the Agreement.

This Certificate is one of an authorized issue of Certificates all having a final maturity of November 1, 1987, and having an aggregate principal amount of \$4,000,000, all issued or to be issued under and subject to the terms of the Agreement under which certain railroad equipment leased to the Company and in turn leased to the Guarantor (or, in lieu thereof, cash or obligations defined in the Agreement as Authorized Investments) is held by the Trustee in trust for the equal and ratable benefit of the holders of Certificates, to which Agreement (a copy of which is on file with the Trustee at its said office) reference is made for a full statement of the rights and obligations of the Company and the Guarantor, the duties and immunities of the Trustee and the rights of the holder hereof thereunder. The Company has no personal liability to the holders of the Certificates and the obligations of the Company under the Agreement are limited as provided therein.

As a sinking fund for the Certificates, the Agreement provides for the payment by the Company to the Trustee, but only out of moneys received by the Company as contemplated by the Agreement, on or before May 1 and November 1 in each year, commencing May 1, 1978, and continuing to and including May 1, 1987, of rental calculated as provided in the Agreement so that the aggregate of the dividends and sinking fund rental payments payable on each such date

and the aggregate of dividends and principal payable on November 1, 1987, shall be substantially equal, subject to proportionate reduction in the event of prepayment as mentioned below out of moneys deposited with the Trustee on account of Casualty Occurrences (as defined in the Agreement). As more fully provided in the Agreement, Trust Certificates in an aggregate principal amount equal to sinking fund rental payments are subject to prepayment on May 1, 1978, and on each May 1 and November 1 thereafter to and including May 1, 1987, on not less than ten days' prior notice given as provided in the Agreement. The Certificates are also prepayable on November 1, 1972, out of any Deposited Cash (as defined in the Agreement) held by the Trustee not required to be applied to the cost of railroad equipment to be subject to the trust, and on any May 1 or November 1, out of moneys deposited with the Trustee on account of Casualty Occurrences. Any such prepayment of Trust Certificates shall be at 100% of the principal amount thereof to be prepaid, together with accrued dividends to the date fixed for prepayment.

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

The registered holder hereof has represented to the Company that it has acquired this Certificate for investment and not for resale. Accordingly, this Certificate has not been registered under the Securities Act of 1933, and may not be sold, transferred, pledged or hypothecated unless an exemption from registration is available.

Subject to the restrictions set forth in the next preceding paragraph, this Certificate is transferable in whole or in part by the registered holder hereof in person or by duly authorized attorney on the books of the Trustee upon surrender to the Trustee at its said office of this Certificate accompanied by a written instrument of transfer, duly executed by the registered holder in person or by such attorney, in form satisfactory to the Trustee, and thereupon a new Certificate or Certificates in authorized denominations for the same aggregate unpaid principal amount hereof will be issued to the transferee in exchange herefor and, if less than the then entire unpaid principal amount hereof

is transferred, a balance piece therefor will be issued to the transferor. The Trustee, the Company and the Guarantor may treat the person in whose name this Certificate is registered as the absolute owner hereof for the purpose of receiving payment of principal and dividends and for all other purposes, and shall not be affected by any notice to the contrary.

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

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

Dated as of:

MANUFACTURERS HANOVER TRUST COMPANY,
Trustee,

by
Vice President.

ATTEST:

.....
Assistant Trust Officer.

[FORM OF GUARANTY]

GUARANTY

TRAILER TRAIN COMPANY, for a valuable consideration, hereby unconditionally guarantees to the registered holder of the within Certificate the prompt payment of the principal of said Certificate and

of the dividends thereon specified in said Certificate, with interest at the rate per annum specified in said Certificate on any overdue principal and dividends to the extent that such interest shall be legally enforceable, all in accordance with the terms of said Certificate and the Equipment Trust Agreement referred to therein. The obligations of Trailer Train Company under the foregoing guaranty are superior in right of payment to all of its Thirty Year Subordinated Notes sold or to be sold pursuant to a Note Purchase Agreement dated as of January 1, 1967, between Trailer Train Company and certain of its stockholders.

TRAILER TRAIN COMPANY,

President.

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

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

ARTICLE ONE

DEFINITIONS

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

Amendment shall mean the Amendment Agreement dated as of August 15, 1972, among the Trustee, the Company and the Lessee and the terms *Agreement* and *Lease* as used herein shall mean such documents as amended by the Amendment.

Authorized Investments shall mean (a) bonds, notes or other direct obligations of the United States of America or obligations for which the full faith and credit of the United States are pledged to provide for

the payment of the interest and principal, (b) commercial paper of any company incorporated and doing business under the laws of the United States of America or one of the states thereof which are rated within the first two grades by Standard & Poor's Corporation and (c) certificates of deposit of or time deposits in banks or trust companies incorporated and doing business under the laws of the United States of America or one of the states thereof having a capital and surplus aggregating at least \$50,000,000; all of which shall mature within one year or less.

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

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

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

Corporate Trust Office shall mean the principal office of the Trustee in the City and State of New York, at which the corporate trust business of the Trustee shall, at the time in question, be administered, which office is, at the date of execution of this Agreement, located at 40 Wall Street, New York, New York 10015.

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

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

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

(a) On or before the day next preceding a date on which Trust Certificates are to be prepaid pursuant to Section 3.01 hereof, the Trustee shall select for prepayment, subject to the provisions of the next succeeding sentence, a principal amount of Trust Certificates so as to exhaust (i) the amount of rental to be paid by the Company to it in cash pursuant to Section 5.04(d) hereof, (ii) any amount in cash to be paid to it pursuant to Section 5.07 hereof and (iii) any Deposited Cash to be applied thereto pursuant to the last paragraph of Section 4.01 hereof, on the next succeeding May 1 or November 1, as the case may be. The Trustee shall select for prepayment on each prepayment date a principal amount of Trust Certificates registered in the name of each holder which bears the same proportion to the aggregate principal amount of all the Trust Certificates to be prepaid on such prepayment date as (y) the aggregate principal amount of Trust Certificates registered in the name of such holder on a date selected by the Trustee not more than 15 days prior to the selection by the Trustee of Trust Certificates for prepayment on such prepayment date bears to (z) the aggregate principal amount of Trust Certificates outstanding on such date.

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

(c) The notice of prepayment to each holder shall (i) specify the date for prepayment, (ii) state that prepayment of the principal amount

of the Trust Certificates or portions thereof to be prepaid will be made by the Trustee only from and out of rentals or other moneys paid to the Trustee by the Company or the Guarantor and applicable thereto and, unless such prepayment is to be made pursuant to the second sentence of the third paragraph of Section 2.02 hereof, that such prepayment will be made at the Corporate Trust Office, upon presentation and surrender of Trust Certificates so to be prepaid, (iii) specify whether prepayment is being made pursuant to Section 5.04(d), 5.07 or 4.01 hereof, (iv) state the aggregate principal amount of Trust Certificates to be prepaid in whole or in part and the distinctive numbers of the Trust Certificates of such holder to be prepaid and, in the case of any such Trust Certificates to be prepaid in part, the principal amount thereof to be so prepaid, and (v) state that from and after such prepayment date dividends on such Trust Certificates or on the portions thereof to be prepaid will cease to accrue. The holders of Trust Certificates prepaid in part may, at their option and upon surrender thereof, receive new Trust Certificates for the principal amounts remaining unpaid without charge to such holders.

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

the second sentence of the third paragraph of Section 2.02 hereof) shall pay the same to such holders respectively upon presentation and surrender of such Trust Certificates.

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

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

ARTICLE FOUR

ACQUISITION OF TRUST EQUIPMENT BY TRUSTEE; DEPOSITED CASH

SECTION 4.01. *Acquisition of Equipment by Trustee.* The Company shall cause to be sold, assigned and transferred to the Trustee, as trustee for the holders of the Trust Certificates, and as security for the payment thereof, the Equipment described in Annex A hereto. Such Equipment shall be delivered to the Lessee, which is hereby designated by the Trustee as its agent to receive such delivery, and a Lessee's Certificate as to such delivery shall be conclusive evidence of such delivery.

In the event that it may be deemed necessary or desirable (i) to procure for the use of the Company, and to include in the trust created hereby, other Equipment in lieu of any of the Equipment specifically described in Annex A hereto prior to the delivery of such Equipment to the Lessee as agent for the Trustee or (ii) to exclude from such trust any of the Equipment specifically described in Annex A hereto prior to settlement therefor pursuant to Section 4.02 hereof, the Company may, in its discretion, (x) in the case of Equipment to be substituted hereunder pursuant to the foregoing clause (i), cause such

other Equipment to be sold, assigned and transferred to the Trustee, to be substituted under such trust, or (y) in the case of Equipment to be excluded from such trust pursuant to the foregoing clause (ii), direct the Trustee, by Request, to execute and deliver such instruments and take such other action as may be necessary to exclude such Equipment from such trust and vest title to such Equipment in the Company or its designee. Notwithstanding the foregoing, any Equipment excluded pursuant to clause (y) above and any Equipment not delivered and settled for pursuant to this Article Four on or before October 15, 1972 (herein called the Cut-Off Date), shall be excluded from this Agreement and not included in the term Trust Equipment. In the event of any such exclusion or substitution, the Company, the Guarantor and the Trustee shall execute an agreement supplemental hereto limiting this Agreement to the Trust Equipment theretofore accepted and settled for hereunder and, in the case of Equipment delivered but not so settled for, the Trustee shall execute a bill or bills of sale (without warranties) for such Equipment to the original Owner or Owners thereof, unless payment therefor to such Owner or Owners shall have been made pursuant to one or more of the Manufacturing Agreements, in which case the Trustee shall execute a bill or bills of sale (without warranties) for such Equipment to the party making payment therefor and the Trustee shall execute for record in public offices, at the expense of the Lessee, such instrument or instruments in writing as reasonably shall be requested by such party in order to make clear upon public records such party's full title to such Trust Equipment under the laws of any jurisdiction.

In the event that on the Cut-Off Date any Deposited Cash shall remain in the possession of the Trustee, the Trustee shall (a) sell, prior to November 1, 1972, all Authorized Investments then held by it and (b) apply Deposited Cash and any amount payable in respect of such Authorized Investments pursuant to Section 5.04(a)(ii) to the prepayment of Trust Certificates on November 1, 1972, as provided in Article Three hereof.

SECTION 4.02. *Payment of Deposited Cash.* For the purpose of settlement therefor, the Equipment shall be divided into not more than six groups of units of Equipment (each such group being hereinafter called a Group), each Group to consist of such units of the Equipment delivered to and accepted by the Company as the Guarantor may specify in the written notice delivered as provided in the next succeeding sentence. The term "Settlement Date" with respect to any Group shall mean such date (not earlier than the date of deposit of the net proceeds of the sale of the Trust Certificates pursuant to Section 2.01 hereof, and not later than the Cut-Off Date), following presentation by the Owner or Owners to the Guarantor of the invoice or invoices and Certificate or Certificates of Acceptance for such Group, as shall be fixed by the Company and the Guarantor by written notice delivered to the Owner or Owners and the Trustee at least five Business Days prior to the Settlement Date designated therein. From time to time, when and as any Group of Trust Equipment shall have been delivered to the Lessee, as agent for the Trustee, pursuant to Section 4.01 hereof the Trustee shall, subject to the provisions of Sections 4.03 and 4.04 hereof, pay on the Settlement Date, upon Request, to the Owner or Owners of the delivered Trust Equipment out of Deposited Cash an amount specified in such Request not exceeding 64% of the aggregate Cost of Trust Equipment then delivered to the Trustee.

SECTION 4.03. *Payment of Deficiency.* The Company covenants that, contemporaneously with any payment by the Trustee pursuant to Section 4.02 hereof with respect to any Trust Equipment, but subject to the provisions of Section 4.05 hereof, it will pay to the Owner or Owners of the delivered Trust Equipment that portion of the Cost of the delivered Trust Equipment not paid out of Deposited Cash as provided for in Section 4.02 hereof. It is understood and agreed, however, that, unless the Company shall otherwise agree, the total Cost of the Trust Equipment shall not exceed \$6,250,000.

then, in any such case (herein sometimes called an Event of Default), the Trustee in its discretion may, and upon the written request of the holders of not less than 25% in principal amount of the then outstanding Trust Certificates shall, by notice in writing delivered to the Company and the Guarantor, declare to be due and payable forthwith the entire amount of the rentals (including any unpaid rental then due, but not including rentals required for the payment of dividends accruing after the date of such declaration) payable by the Company as set forth in Section 5.04 hereof and not theretofore paid. Thereupon the entire amount of such rentals shall forthwith become and shall be due and payable immediately without further demand, together with interest at the Penalty Rate, to the extent legally enforceable, on any portion thereof overdue.

In addition, in case one or more Events of Default shall happen, the Trustee in its discretion may, and upon the written request of the holders of not less than 25% in principal amount of the then outstanding Trust Certificates shall, by notice in writing delivered to the Company and the Guarantor, declare the principal of all the Trust 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 5.04(c), (d) or (e) hereof when and as the same shall have become due and payable hereunder, and such default shall have continued for a period of ten 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 (subject to the provisions of the last paragraph of Section 5.04 hereof).

In case there shall be pending proceedings for the bankruptcy or for the reorganization of the Company or the Guarantor under the Bankruptcy Act or any other applicable law, or in case a receiver or

trustee shall have been appointed for the property of the Company or the Guarantor, or in case of any other judicial proceedings relative to the Company or the Guarantor, or to the creditors or property of the Company or the Guarantor, the Trustee, irrespective of whether the rental payments hereunder or the principal amount of the Trust Certificates shall then be due and payable as herein or therein expressed whether by declaration or otherwise and irrespective of whether the Trustee shall have made any demand or declaration pursuant to the provisions of this Section 6.01, shall be entitled and empowered, by intervention in such proceedings or otherwise, to file and prove a claim or claims for the entire amount of the rentals (including any unpaid rental then due, but not including rentals required for the payment of dividends accruing after the date of such declaration) and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for reasonable compensation to the Trustee, its agents, attorneys and counsel, and for reimbursement of all expenses and liabilities incurred, and all advances made, by the Trustee except as a result of its gross negligence or wilful misconduct) and of the holders of the Trust Certificates allowed in such proceedings and to collect and receive any moneys or other property payable or deliverable on any such claims, and to distribute all amounts received with respect to the claims of the holders of the Trust Certificates and of the Trustee on their behalf; and any receiver, assignee or trustee in bankruptcy or reorganization is hereby authorized by each of the holders of the Trust Certificates to make payments to the Trustee, and, in the event that the Trustee shall consent to the making of payments directly to the holders of the Trust Certificates, to pay to the Trustee such amount as shall be sufficient to cover reasonable compensation to the Trustee, its agents, attorneys and counsel, and all other expenses and liabilities incurred, and all advances made, by the Trustee except as a result of its gross negligence or wilful misconduct.

All rights of action and to assert claims under this Agreement, or under any of the Trust Certificates, may be enforced by the Trustee without the possession of any of the Trust Certificates or the production

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

(a) On or before the day next preceding a date on which Trust Certificates are to be prepaid pursuant to Section 3.01 hereof, the Trustee shall select for prepayment, subject to the provisions of the next succeeding sentence, a principal amount of Trust Certificates so as to exhaust (i) the amount of rental to be paid by the Company to it in cash pursuant to Section 5.04(d) hereof, (ii) any amount in cash to be paid to it pursuant to Section 5.07 hereof and (iii) any Deposited Cash to be applied thereto pursuant to the last paragraph of Section 4.01 hereof, on the next succeeding May 1 or November 1, as the case may be. The Trustee shall select for prepayment on each prepayment date a principal amount of Trust Certificates registered in the name of each holder which bears the same proportion to the aggregate principal amount of all the Trust Certificates to be prepaid on such prepayment date as (y) the aggregate principal amount of Trust Certificates registered in the name of such holder on a date selected by the Trustee not more than 15 days prior to the selection by the Trustee of Trust Certificates for prepayment on such prepayment date bears to (z) the aggregate principal amount of Trust Certificates outstanding on such date.

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

(c) The notice of prepayment to each holder shall (i) specify the date for prepayment, (ii) state that prepayment of the principal amount

of the Trust Certificates or portions thereof to be prepaid will be made by the Trustee only from and out of rentals or other moneys paid to the Trustee by the Company or the Guarantor and applicable thereto and, unless such prepayment is to be made pursuant to the second sentence of the third paragraph of Section 2.02 hereof, that such prepayment will be made at the Corporate Trust Office, upon presentation and surrender of Trust Certificates so to be prepaid, (iii) specify whether prepayment is being made pursuant to Section 5.04(d), 5.07 or 4.01 hereof, (iv) state the aggregate principal amount of Trust Certificates to be prepaid in whole or in part and the distinctive numbers of the Trust Certificates of such holder to be prepaid and, in the case of any such Trust Certificates to be prepaid in part, the principal amount thereof to be so prepaid, and (v) state that from and after such prepayment date dividends on such Trust Certificates or on the portions thereof to be prepaid will cease to accrue. The holders of Trust Certificates prepaid in part may, at their option and upon surrender thereof, receive new Trust Certificates for the principal amounts remaining unpaid without charge to such holders.

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

the second sentence of the third paragraph of Section 2.02 hereof) shall pay the same to such holders respectively upon presentation and surrender of such Trust Certificates.

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

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

ARTICLE FOUR

ACQUISITION OF TRUST EQUIPMENT BY TRUSTEE; DEPOSITED CASH

SECTION 4.01. *Acquisition of Equipment by Trustee.* The Company shall cause to be sold, assigned and transferred to the Trustee, as trustee for the holders of the Trust Certificates, and as security for the payment thereof, the Equipment described in Annex A hereto. Such Equipment shall be delivered to the Lessee, which is hereby designated by the Trustee as its agent to receive such delivery, and a Lessee's Certificate as to such delivery shall be conclusive evidence of such delivery.

In the event that it may be deemed necessary or desirable (i) to procure for the use of the Company, and to include in the trust created hereby, other Equipment in lieu of any of the Equipment specifically described in Annex A hereto prior to the delivery of such Equipment to the Lessee as agent for the Trustee or (ii) to exclude from such trust any of the Equipment specifically described in Annex A hereto prior to settlement therefor pursuant to Section 4.02 hereof, the Company may, in its discretion, (x) in the case of Equipment to be substituted hereunder pursuant to the foregoing clause (i), cause such

other Equipment to be sold, assigned and transferred to the Trustee, to be substituted under such trust, or (y) in the case of Equipment to be excluded from such trust pursuant to the foregoing clause (ii), direct the Trustee, by Request, to execute and deliver such instruments and take such other action as may be necessary to exclude such Equipment from such trust and vest title to such Equipment in the Company or its designee. Notwithstanding the foregoing, any Equipment excluded pursuant to clause (y) above and any Equipment not delivered and settled for pursuant to this Article Four on or before October 15, 1972 (herein called the Cut-Off Date), shall be excluded from this Agreement and not included in the term Trust Equipment. In the event of any such exclusion or substitution, the Company, the Guarantor and the Trustee shall execute an agreement supplemental hereto limiting this Agreement to the Trust Equipment theretofore accepted and settled for hereunder and, in the case of Equipment delivered but not so settled for, the Trustee shall execute a bill or bills of sale (without warranties) for such Equipment to the original Owner or Owners thereof, unless payment therefor to such Owner or Owners shall have been made pursuant to one or more of the Manufacturing Agreements, in which case the Trustee shall execute a bill or bills of sale (without warranties) for such Equipment to the party making payment therefor and the Trustee shall execute for record in public offices, at the expense of the Lessee, such instrument or instruments in writing as reasonably shall be requested by such party in order to make clear upon public records such party's full title to such Trust Equipment under the laws of any jurisdiction.

In the event that on the Cut-Off Date any Deposited Cash shall remain in the possession of the Trustee, the Trustee shall (a) sell, prior to November 1, 1972, all Authorized Investments then held by it and (b) apply Deposited Cash and any amount payable in respect of such Authorized Investments pursuant to Section 5.04(a)(ii) to the prepayment of Trust Certificates on November 1, 1972, as provided in Article Three hereof.

SECTION 4.02. *Payment of Deposited Cash.* For the purpose of settlement therefor, the Equipment shall be divided into not more than six groups of units of Equipment (each such group being hereinafter called a Group), each Group to consist of such units of the Equipment delivered to and accepted by the Company as the Guarantor may specify in the written notice delivered as provided in the next succeeding sentence. The term "Settlement Date" with respect to any Group shall mean such date (not earlier than the date of deposit of the net proceeds of the sale of the Trust Certificates pursuant to Section 2.01 hereof, and not later than the Cut-Off Date), following presentation by the Owner or Owners to the Guarantor of the invoice or invoices and Certificate or Certificates of Acceptance for such Group, as shall be fixed by the Company and the Guarantor by written notice delivered to the Owner or Owners and the Trustee at least five Business Days prior to the Settlement Date designated therein. From time to time, when and as any Group of Trust Equipment shall have been delivered to the Lessee, as agent for the Trustee, pursuant to Section 4.01 hereof the Trustee shall, subject to the provisions of Sections 4.03 and 4.04 hereof, pay on the Settlement Date, upon Request, to the Owner or Owners of the delivered Trust Equipment out of Deposited Cash an amount specified in such Request not exceeding 64% of the aggregate Cost of Trust Equipment then delivered to the Trustee.

SECTION 4.03. *Payment of Deficiency.* The Company covenants that, contemporaneously with any payment by the Trustee pursuant to Section 4.02 hereof with respect to any Trust Equipment, but subject to the provisions of Section 4.05 hereof, it will pay to the Owner or Owners of the delivered Trust Equipment that portion of the Cost of the delivered Trust Equipment not paid out of Deposited Cash as provided for in Section 4.02 hereof. It is understood and agreed, however, that, unless the Company shall otherwise agree, the total Cost of the Trust Equipment shall not exceed \$6,250,000.

then, in any such case (herein sometimes called an Event of Default), the Trustee in its discretion may, and upon the written request of the holders of not less than 25% in principal amount of the then outstanding Trust Certificates shall, by notice in writing delivered to the Company and the Guarantor, declare to be due and payable forthwith the entire amount of the rentals (including any unpaid rental then due, but not including rentals required for the payment of dividends accruing after the date of such declaration) payable by the Company as set forth in Section 5.04 hereof and not theretofore paid. Thereupon the entire amount of such rentals shall forthwith become and shall be due and payable immediately without further demand, together with interest at the Penalty Rate, to the extent legally enforceable, on any portion thereof overdue.

In addition, in case one or more Events of Default shall happen, the Trustee in its discretion may, and upon the written request of the holders of not less than 25% in principal amount of the then outstanding Trust Certificates shall, by notice in writing delivered to the Company and the Guarantor, declare the principal of all the Trust 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 5.04(c), (d) or (e) hereof when and as the same shall have become due and payable hereunder, and such default shall have continued for a period of ten 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 (subject to the provisions of the last paragraph of Section 5.04 hereof).

In case there shall be pending proceedings for the bankruptcy or for the reorganization of the Company or the Guarantor under the Bankruptcy Act or any other applicable law, or in case a receiver or

trustee shall have been appointed for the property of the Company or the Guarantor, or in case of any other judicial proceedings relative to the Company or the Guarantor, or to the creditors or property of the Company or the Guarantor, the Trustee, irrespective of whether the rental payments hereunder or the principal amount of the Trust Certificates shall then be due and payable as herein or therein expressed whether by declaration or otherwise and irrespective of whether the Trustee shall have made any demand or declaration pursuant to the provisions of this Section 6.01, shall be entitled and empowered, by intervention in such proceedings or otherwise, to file and prove a claim or claims for the entire amount of the rentals (including any unpaid rental then due, but not including rentals required for the payment of dividends accruing after the date of such declaration) and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for reasonable compensation to the Trustee, its agents, attorneys and counsel, and for reimbursement of all expenses and liabilities incurred, and all advances made, by the Trustee except as a result of its gross negligence or wilful misconduct) and of the holders of the Trust Certificates allowed in such proceedings and to collect and receive any moneys or other property payable or deliverable on any such claims, and to distribute all amounts received with respect to the claims of the holders of the Trust Certificates and of the Trustee on their behalf; and any receiver, assignee or trustee in bankruptcy or reorganization is hereby authorized by each of the holders of the Trust Certificates to make payments to the Trustee, and, in the event that the Trustee shall consent to the making of payments directly to the holders of the Trust Certificates, to pay to the Trustee such amount as shall be sufficient to cover reasonable compensation to the Trustee, its agents, attorneys and counsel, and all other expenses and liabilities incurred, and all advances made, by the Trustee except as a result of its gross negligence or wilful misconduct.

All rights of action and to assert claims under this Agreement, or under any of the Trust Certificates, may be enforced by the Trustee without the possession of any of the Trust Certificates or the production

thereof on any trial or other proceedings relative thereto, and any such action or proceedings instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall be for the ratable benefit of the holders of the Trust Certificates. In any proceedings brought by the Trustee (and also any proceedings involving the interpretation of any provision of this Agreement to which the Trustee shall be a party) the Trustee shall be held to represent all the holders of the Trust Certificates, and it shall not be necessary to make any holders of the Trust Certificates parties to such proceedings.

SECTION 6.02. *Remedies.* In case of the happening of any Event of Default, the Trustee may by its agents enter upon the premises of the Company or the Lessee or other premises where any of the Trust Equipment may be and take possession of all or any part of the Trust Equipment and withdraw the same from said premises, retaining all payments which up to that time may have been made on account of rental for the Trust Equipment and otherwise, and shall be entitled to collect, receive, retain and apply in accordance with Section 6.03 hereof all unpaid per diem, mileage or other charges of any kind earned by the Trust Equipment or any part thereof, and may lease the Trust Equipment or any part thereof; or the Trustee may with or without retaking possession (but only after declaring due and payable the entire amount of rentals payable by the Company as provided in Section 6.01 hereof) sell the Trust Equipment or any part thereof, free from any and all claims of the Company and the Lessee at law or in equity, in one lot and as an entirety or in separate lots, in so far as may be necessary to perform and fulfill the trust hereunder, at public or private sale, for cash or upon credit, in its discretion, and may proceed otherwise to enforce its rights and the rights of the holders of the outstanding Trust Certificates in the manner herein provided. Upon any such public sale, the Trustee itself or any holder of Trust Certificates 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 any sale is held in a commercially reasonable manner and the Company and the Lessee are duly notified of and have a reasonable opportunity to bid at any such sale. Upon such taking possession or withdrawal or lease or sale of the Trust Equipment, the Company and the Lessee shall cease to have any rights or remedies in respect of the Trust Equipment hereunder, but all such rights and remedies shall be deemed thenceforth to have been waived and surrendered by the Company and the Lessee, and no payments theretofore made by the Company or the Lessee for the rent or use of the Trust Equipment or any of it shall, in case of the happening of any Event of Default and such taking possession, withdrawal, lease or sale by the Trustee, give to the Company or the Lessee any legal or equitable interest or title in or to the Trust Equipment or any of it or any cause or right of action at law or in equity in respect of the Trust Equipment against the Trustee or the holders of the outstanding Trust Certificates. No such taking possession, withdrawal, lease or sale of the Trust Equipment by the Trustee shall be a bar to the recovery by the Trustee from the Company or the Guarantor of rentals then or thereafter due and payable, and the Company (subject to the provisions of the last paragraph of Section 5.04 hereof) and the Guarantor shall be and remain liable for the same until such sums shall have been realized as, with the proceeds of the lease or sale of the Trust Equipment, shall be sufficient for the discharge and payment in full of all the items mentioned in Section 5.04 hereof (other than dividends or interest not then accrued), whether or not they shall have then matured.

SECTION 6.03. *Application of Proceeds.* If, in case of the happening of any Event of Default, the Trustee shall exercise any of the powers conferred upon it by Sections 6.01 and 6.02 hereof, all payments made by the Company to the Trustee hereunder after such Event of Default, and the proceeds of any judgment collected hereunder from the Company by the Trustee, and the proceeds of every sale or lease by the Trustee of any of the Trust Equipment, together with any other sums and Authorized Investments which may then be held by the Trustee under any of the provisions hereof (other than sums held in trust for the payment of specific Trust Certificates pursuant to Section

3.03 hereof), shall be applied by the Trustee to the payment in the following order of priority: (a) of all proper charges, expenses or advances made or incurred by the Trustee in accordance with the provisions of this Agreement, and (b) of the dividends then due, with interest on overdue dividends at the Penalty Rate to the extent legally enforceable, and of the principal of all the outstanding Trust Certificates, with interest thereon at the Penalty Rate to the extent legally enforceable from the last preceding dividend date, whether such Trust Certificates shall have then matured by their terms or not, all such payments to be in full if such proceeds shall be sufficient, and if not sufficient, then *pro rata* without preference between principal and dividends.

After all such payments shall have been made in full, the title to any of the Trust Equipment remaining unsold shall be conveyed by the Trustee to the Company free from any further liabilities or obligations to the Trustee hereunder. If after applying all such sums of money realized by the Trustee as aforesaid there shall remain any amount due to the Trustee under the provisions hereof, the Company (subject to the provisions of the last paragraph of Section 5.04 hereof) agrees to pay the amount of such deficit to the Trustee. If after applying as aforesaid the sums of money realized by the Trustee there shall remain a surplus in the possession of the Trustee, such surplus shall be paid to the Company.

SECTION 6.04. *Waivers of Default.* If at any time after the principal of all the Trust Certificates shall have been declared and become due and payable or if at any time after the entire amount of rentals shall have been declared and become due and payable, all as in Section 6.01 hereof provided, but before November 1, 1987, all arrears of rent (with interest at the Penalty Rate upon any overdue instalments to the extent legally enforceable), the expenses and reasonable compensation of the Trustee, together with all expenses of the trust occasioned by the Company's default, and all other sums which shall have become due and payable by the Company hereunder (other than the principal of Trust Certificates and any other rental instalments which shall not at the time have matured according to their

terms), shall be paid by the Company (irrespective of the provisions of the last paragraph of Section 5.04 hereof) before any sale or lease by the Trustee of any of the Trust Equipment, and every other default in the observance or performance of any covenant or condition hereof shall be made good or secured to the satisfaction of the Trustee, or provision deemed by the Trustee to be adequate shall be made therefor, then, and in every such case, the Trustee, *if* so requested by the holders of a majority in principal amount of the Trust Certificates then outstanding shall by written notice to the Company waive the default by reason of which there shall have been such declaration or declarations and the consequences of such default, but no such waiver shall extend to or affect any subsequent default or impair any right consequent thereon.

SECTION 6.05. *Obligations of Company Not Affected by Remedies.* No retaking of possession of the Trust Equipment by the Trustee, or any withdrawal, lease or sale thereof, nor any action or failure or omission to act against the Company or in respect of the Trust Equipment, on the part of the Trustee or on the part of the holder of any Trust Certificate, nor any delay or indulgence granted to the Company by the Trustee or by any such holder, shall affect the obligations of the Company hereunder or the obligations of the Guarantor under the guaranty endorsed on the Trust Certificates or under the Lease. The Company hereby waives presentation and demand in respect of any of the Trust Certificates and waives notice of presentation, of demand and of any default in the payment of the principal of and dividends on the Trust Certificates.

SECTION 6.06. *Company and Lessee to Deliver Trust Equipment to Trustee.* In case the Trustee shall demand possession of the Trust Equipment pursuant to the provisions hereof, the Company and the Lessee shall at their own expense promptly cause the Trust Equipment to be transported to such point or points as shall reasonably be designated by the Trustee and shall there deliver or cause to be delivered the same to the Trustee, or the Trustee may at its option keep the Trust Equipment, without expense to the Trustee, on any lines of

railroad or premises approved by the Trustee until the Trustee shall have leased, sold or otherwise disposed of the same. It is hereby expressly covenanted and agreed that the performance of this covenant is of the essence of this Agreement and that upon application to any court having jurisdiction in the premises, the Trustee shall be entitled to a decree against the Company and the Lessee requiring the specific performance thereof.

SECTION 6.07. *Trustee To Give Notice of Default.* The Trustee shall give to the holders of the Trust Certificates notice of each Event of Default hereunder known to the Trustee, within 30 days after it learns of the same, unless remedied or cured before the giving of such notice.

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

SECTION 6.09. *Unconditional Right of Holders of Trust Certificates to Sue for Principal and Dividends.* Notwithstanding any other provision in this Agreement, the right of any holder of any Trust Certificate to receive payment of the principal of, and dividends on, such Trust Certificate, on or after the respective due dates expressed in such Trust Certificate, or to institute suit for the enforcement of any such payment on or after such respective dates, shall not be impaired or affected without the consent of such holder, except that no such suit shall be instituted if and to the extent that the institution or prosecution thereof or the entry of judgment therein would, under

THE FIFTH THIRD BANK,

[CORPORATE SEAL]

by C. L. BUENGER
Vice President.

ATTEST:

HOWARD H. WITHROW
Assistant Secretary.

TRAILER TRAIN COMPANY,

[CORPORATE SEAL]

by N. V. REICHERT
Vice President—Finance.

ATTEST:

R. E. ZIMMERMAN
Assistant Secretary.

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

On this 12th day of July, 1972, before me personally appeared T. C. CRANE, to me personally known, who, being by me duly sworn, says that he is a Vice President of MANUFACTURERS HANOVER TRUST COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

KATHLEEN COSTINE
Notary Public

KATHLEEN COSTINE
 Notary Public, State of New York
 No. 31-5832352—New York
 Qualified in New York County
 Commission Expires March 30, 1974

[NOTARIAL SEAL]

STATE OF OHIO }
 COUNTY OF HAMILTON } ss.:

On this 13th day of July, 1972, before me personally appeared C. L. BUENGER, to me personally known, who, being by me duly sworn, says that he is a Vice President of THE FIFTH THIRD 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.

IRMA S. MARTIN
Notary Public

IRMA S. MARTIN
 Notary Public, Hamilton County, Ohio
 My Commission Expires Oct. 14, 1974

[NOTARIAL SEAL]

STATE OF ILLINOIS }
COUNTY OF COOK } ss.:

On this 14th day of July, 1972, before me personally appeared N. V. REICHERT, to me personally known, who, being by me duly sworn, says that he is the Vice President—Finance of TRAILER TRAIN COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

W. J. EVANS
Notary Public

My Commission expires July 24, 1975

[NOTARIAL SEAL]

ANNEX A TO EQUIPMENT TRUST AGREEMENT

<u>Type</u>	<u>Quantity</u>	<u>Lessee's Car Numbers (All Inclusive)</u>	<u>Unit Cost</u>	<u>Total Cost</u>
89'4" 70-ton capacity, standard level, container flat cars	100	975215 to 975314	\$20,100.00	\$2,010,000.00
89'4" 55-ton capacity, low level, vert-a-pac flat cars	61	802149 to 802209	21,026.02	1,282,587.22
89'4" 70-ton capacity, standard hydraulic flush deck flat cars	30	940780 to 940809	17,550.91	526,527.30
89'4" 70-ton capacity, standard level, all purpose flat cars	100	971000 to 971099	23,160.00	2,316,000.00
	<u>291</u>			<u>\$6,135,114.52</u>

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

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

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

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

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

then, in any such case (herein sometimes called an Event of Default), the Trustee in its discretion may, and upon the written request of the holders of not less than 25% in principal amount of the then outstanding Trust Certificates shall, by notice in writing delivered to the Company and the Guarantor, declare to be due and payable forthwith the entire amount of the rentals (including any unpaid rental then due, but not including rentals required for the payment of dividends accruing after the date of such declaration) payable by the Company as set forth in Section 5.04 hereof and not theretofore paid. Thereupon the entire amount of such rentals shall forthwith become and shall be due and payable immediately without further demand, together with interest at the Penalty Rate, to the extent legally enforceable, on any portion thereof overdue.

In addition, in case one or more Events of Default shall happen, the Trustee in its discretion may, and upon the written request of the holders of not less than 25% in principal amount of the then outstanding Trust Certificates shall, by notice in writing delivered to the Company and the Guarantor, declare the principal of all the Trust 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 5.04(c), (d) or (e) hereof when and as the same shall have become due and payable hereunder, and such default shall have continued for a period of ten 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 (subject to the provisions of the last paragraph of Section 5.04 hereof).

In case there shall be pending proceedings for the bankruptcy or for the reorganization of the Company or the Guarantor under the Bankruptcy Act or any other applicable law, or in case a receiver or

trustee shall have been appointed for the property of the Company or the Guarantor, or in case of any other judicial proceedings relative to the Company or the Guarantor, or to the creditors or property of the Company or the Guarantor, the Trustee, irrespective of whether the rental payments hereunder or the principal amount of the Trust Certificates shall then be due and payable as herein or therein expressed whether by declaration or otherwise and irrespective of whether the Trustee shall have made any demand or declaration pursuant to the provisions of this Section 6.01, shall be entitled and empowered, by intervention in such proceedings or otherwise, to file and prove a claim or claims for the entire amount of the rentals (including any unpaid rental then due, but not including rentals required for the payment of dividends accruing after the date of such declaration) and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for reasonable compensation to the Trustee, its agents, attorneys and counsel, and for reimbursement of all expenses and liabilities incurred, and all advances made, by the Trustee except as a result of its gross negligence or wilful misconduct) and of the holders of the Trust Certificates allowed in such proceedings and to collect and receive any moneys or other property payable or deliverable on any such claims, and to distribute all amounts received with respect to the claims of the holders of the Trust Certificates and of the Trustee on their behalf; and any receiver, assignee or trustee in bankruptcy or reorganization is hereby authorized by each of the holders of the Trust Certificates to make payments to the Trustee, and, in the event that the Trustee shall consent to the making of payments directly to the holders of the Trust Certificates, to pay to the Trustee such amount as shall be sufficient to cover reasonable compensation to the Trustee, its agents, attorneys and counsel, and all other expenses and liabilities incurred, and all advances made, by the Trustee except as a result of its gross negligence or wilful misconduct.

All rights of action and to assert claims under this Agreement, or under any of the Trust Certificates, may be enforced by the Trustee without the possession of any of the Trust Certificates or the production

thereof on any trial or other proceedings relative thereto, and any such action or proceedings instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall be for the ratable benefit of the holders of the Trust Certificates. In any proceedings brought by the Trustee (and also any proceedings involving the interpretation of any provision of this Agreement to which the Trustee shall be a party) the Trustee shall be held to represent all the holders of the Trust Certificates, and it shall not be necessary to make any holders of the Trust Certificates parties to such proceedings.

SECTION 6.02. *Remedies.* In case of the happening of any Event of Default, the Trustee may by its agents enter upon the premises of the Company or the Lessee or other premises where any of the Trust Equipment may be and take possession of all or any part of the Trust Equipment and withdraw the same from said premises, retaining all payments which up to that time may have been made on account of rental for the Trust Equipment and otherwise, and shall be entitled to collect, receive, retain and apply in accordance with Section 6.03 hereof all unpaid per diem, mileage or other charges of any kind earned by the Trust Equipment or any part thereof, and may lease the Trust Equipment or any part thereof; or the Trustee may with or without retaking possession (but only after declaring due and payable the entire amount of rentals payable by the Company as provided in Section 6.01 hereof) sell the Trust Equipment or any part thereof, free from any and all claims of the Company and the Lessee at law or in equity, in one lot and as an entirety or in separate lots, in so far as may be necessary to perform and fulfill the trust hereunder, at public or private sale, for cash or upon credit, in its discretion, and may proceed otherwise to enforce its rights and the rights of the holders of the outstanding Trust Certificates in the manner herein provided. Upon any such public sale, the Trustee itself or any holder of Trust Certificates 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 any sale is held in a commercially reasonable manner and the Company and the Lessee are duly notified of and have a reasonable opportunity to bid at any such sale. Upon such taking possession or withdrawal or lease or sale of the Trust Equipment, the Company and the Lessee shall cease to have any rights or remedies in respect of the Trust Equipment hereunder, but all such rights and remedies shall be deemed thenceforth to have been waived and surrendered by the Company and the Lessee, and no payments theretofore made by the Company or the Lessee for the rent or use of the Trust Equipment or any of it shall, in case of the happening of any Event of Default and such taking possession, withdrawal, lease or sale by the Trustee, give to the Company or the Lessee any legal or equitable interest or title in or to the Trust Equipment or any of it or any cause or right of action at law or in equity in respect of the Trust Equipment against the Trustee or the holders of the outstanding Trust Certificates. No such taking possession, withdrawal, lease or sale of the Trust Equipment by the Trustee shall be a bar to the recovery by the Trustee from the Company or the Guarantor of rentals then or thereafter due and payable, and the Company (subject to the provisions of the last paragraph of Section 5.04 hereof) and the Guarantor shall be and remain liable for the same until such sums shall have been realized as, with the proceeds of the lease or sale of the Trust Equipment, shall be sufficient for the discharge and payment in full of all the items mentioned in Section 5.04 hereof (other than dividends or interest not then accrued), whether or not they shall have then matured.

SECTION 6.03. *Application of Proceeds.* If, in case of the happening of any Event of Default, the Trustee shall exercise any of the powers conferred upon it by Sections 6.01 and 6.02 hereof, all payments made by the Company to the Trustee hereunder after such Event of Default, and the proceeds of any judgment collected hereunder from the Company by the Trustee, and the proceeds of every sale or lease by the Trustee of any of the Trust Equipment, together with any other sums and Authorized Investments which may then be held by the Trustee under any of the provisions hereof (other than sums held in trust for the payment of specific Trust Certificates pursuant to Section

3.03 hereof), shall be applied by the Trustee to the payment in the following order of priority: (a) of all proper charges, expenses or advances made or incurred by the Trustee in accordance with the provisions of this Agreement, and (b) of the dividends then due, with interest on overdue dividends at the Penalty Rate to the extent legally enforceable, and of the principal of all the outstanding Trust Certificates, with interest thereon at the Penalty Rate to the extent legally enforceable from the last preceding dividend date, whether such Trust Certificates shall have then matured by their terms or not, all such payments to be in full if such proceeds shall be sufficient, and if not sufficient, then *pro rata* without preference between principal and dividends.

After all such payments shall have been made in full, the title to any of the Trust Equipment remaining unsold shall be conveyed by the Trustee to the Company free from any further liabilities or obligations to the Trustee hereunder. If after applying all such sums of money realized by the Trustee as aforesaid there shall remain any amount due to the Trustee under the provisions hereof, the Company (subject to the provisions of the last paragraph of Section 5.04 hereof) agrees to pay the amount of such deficit to the Trustee. If after applying as aforesaid the sums of money realized by the Trustee there shall remain a surplus in the possession of the Trustee, such surplus shall be paid to the Company.

SECTION 6.04. *Waivers of Default.* If at any time after the principal of all the Trust Certificates shall have been declared and become due and payable or if at any time after the entire amount of rentals shall have been declared and become due and payable, all as in Section 6.01 hereof provided, but before November 1, 1987, all arrears of rent (with interest at the Penalty Rate upon any overdue instalments to the extent legally enforceable), the expenses and reasonable compensation of the Trustee, together with all expenses of the trust occasioned by the Company's default, and all other sums which shall have become due and payable by the Company hereunder (other than the principal of Trust Certificates and any other rental instalments which shall not at the time have matured according to their

terms), shall be paid by the Company (irrespective of the provisions of the last paragraph of Section 5.04 hereof) before any sale or lease by the Trustee of any of the Trust Equipment, and every other default in the observance or performance of any covenant or condition hereof shall be made good or secured to the satisfaction of the Trustee, or provision deemed by the Trustee to be adequate shall be made therefor, then, and in every such case, the Trustee, *if* so requested by the holders of a majority in principal amount of the Trust Certificates then outstanding shall by written notice to the Company waive the default by reason of which there shall have been such declaration or declarations and the consequences of such default, but no such waiver shall extend to or affect any subsequent default or impair any right consequent thereon.

SECTION 6.05. *Obligations of Company Not Affected by Remedies.* No retaking of possession of the Trust Equipment by the Trustee, or any withdrawal, lease or sale thereof, nor any action or failure or omission to act against the Company or in respect of the Trust Equipment, on the part of the Trustee or on the part of the holder of any Trust Certificate, nor any delay or indulgence granted to the Company by the Trustee or by any such holder, shall affect the obligations of the Company hereunder or the obligations of the Guarantor under the guaranty endorsed on the Trust Certificates or under the Lease. The Company hereby waives presentation and demand in respect of any of the Trust Certificates and waives notice of presentation, of demand and of any default in the payment of the principal of and dividends on the Trust Certificates.

SECTION 6.06. *Company and Lessee to Deliver Trust Equipment to Trustee.* In case the Trustee shall demand possession of the Trust Equipment pursuant to the provisions hereof, the Company and the Lessee shall at their own expense promptly cause the Trust Equipment to be transported to such point or points as shall reasonably be designated by the Trustee and shall there deliver or cause to be delivered the same to the Trustee, or the Trustee may at its option keep the Trust Equipment, without expense to the Trustee, on any lines of

railroad or premises approved by the Trustee until the Trustee shall have leased, sold or otherwise disposed of the same. It is hereby expressly covenanted and agreed that the performance of this covenant is of the essence of this Agreement and that upon application to any court having jurisdiction in the premises, the Trustee shall be entitled to a decree against the Company and the Lessee requiring the specific performance thereof.

SECTION 6.07. *Trustee To Give Notice of Default.* The Trustee shall give to the holders of the Trust Certificates notice of each Event of Default hereunder known to the Trustee, within 30 days after it learns of the same, unless remedied or cured before the giving of such notice.

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

SECTION 6.09. *Unconditional Right of Holders of Trust Certificates to Sue for Principal and Dividends.* Notwithstanding any other provision in this Agreement, the right of any holder of any Trust Certificate to receive payment of the principal of, and dividends on, such Trust Certificate, on or after the respective due dates expressed in such Trust Certificate, or to institute suit for the enforcement of any such payment on or after such respective dates, shall not be impaired or affected without the consent of such holder, except that no such suit shall be instituted if and to the extent that the institution or prosecution thereof or the entry of judgment therein would, under

THE FIFTH THIRD BANK,

[CORPORATE SEAL]

by C. L. BUENGER
Vice President.

ATTEST:

HOWARD H. WITHROW
Assistant Secretary.

TRAILER TRAIN COMPANY,

[CORPORATE SEAL]

by N. V. REICHERT
Vice President—Finance.

ATTEST:

R. E. ZIMMERMAN
Assistant Secretary.

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

On this 12th day of July, 1972, before me personally appeared T. C. CRANE, to me personally known, who, being by me duly sworn, says that he is a Vice President of MANUFACTURERS HANOVER TRUST COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

KATHLEEN COSTINE
Notary Public

KATHLEEN COSTINE
 Notary Public, State of New York
 No. 31-5832352—New York
 Qualified in New York County
 Commission Expires March 30, 1974

[NOTARIAL SEAL]

STATE OF OHIO }
 COUNTY OF HAMILTON } ss.:

On this 13th day of July, 1972, before me personally appeared C. L. BUENGER, to me personally known, who, being by me duly sworn, says that he is a Vice President of THE FIFTH THIRD 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.

IRMA S. MARTIN
Notary Public

IRMA S. MARTIN
 Notary Public, Hamilton County, Ohio
 My Commission Expires Oct. 14, 1974

[NOTARIAL SEAL]

STATE OF ILLINOIS }
COUNTY OF COOK } ss.:

On this 14th day of July, 1972, before me personally appeared N. V. REICHERT, to me personally known, who, being by me duly sworn, says that he is the Vice President—Finance of TRAILER TRAIN COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

W. J. EVANS
Notary Public

My Commission expires July 24, 1975

[NOTARIAL SEAL]

ANNEX A TO EQUIPMENT TRUST AGREEMENT

<u>Type</u>	<u>Quantity</u>	<u>Lessee's Car Numbers (All Inclusive)</u>	<u>Unit Cost</u>	<u>Total Cost</u>
89'4" 70-ton capacity, standard level, container flat cars	100	975215 to 975314	\$20,100.00	\$2,010,000.00
89'4" 55-ton capacity, low level, vert-a-pac flat cars	61	802149 to 802209	21,026.02	1,282,587.22
89'4" 70-ton capacity, standard hydraulic flush deck flat cars	30	940780 to 940809	17,550.91	526,527.30
89'4" 70-ton capacity, standard level, all purpose flat cars	100	971000 to 971099	23,160.00	2,316,000.00
	<u>291</u>			<u>\$6,135,114.52</u>

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

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

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

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

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

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

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

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

ARTICLE EIGHT

CONCERNING THE HOLDERS OF TRUST CERTIFICATES

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

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

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

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

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

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

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

ARTICLE NINE

THE TRUSTEE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 9.03. *Application of Rentals; Responsibility of Trustee to Insure or Record.* The Trustee covenants and agrees to apply and distribute the rentals received by it under Section 5.04 hereof when and as the same shall be received, and to the extent that such rentals shall be sufficient therefor, for the purposes specified in said Section 5.04.

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

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

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

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

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

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

SECTION 9.05. *Trustee Not Liable for Delivery Delays or Defects in Equipment or Title.* The Trustee shall not be liable to anyone for any delay in the delivery of any of the Trust Equipment, or for any default on the part of the Owners thereof or of the Company, or for any defect in any of the Trust Equipment or in the title thereto, nor shall anything herein be construed as a warranty on the part of the Trustee in respect thereof or as a representation in respect of the value thereof or in respect of the title thereto.

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

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

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

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

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

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

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

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

(d) The Company or the Guarantor shall give notice of each resignation, removal or incapacity of the then Trustee or of a vacancy occur-

ring in the office of the Trustee for any other cause and of each appointment by the Company and the Guarantor of a successor trustee pursuant to paragraph (c) of this Section 9.06 by mailing written notice of such event by first-class mail, postage prepaid, to the holders of all outstanding Trust Certificates.

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

SECTION 9.08. *Merger or Consolidation of Trustee.* Any corporation into which the Trustee may be merged or with which it may be consolidated or any corporation resulting from any merger or consolidation to which the Trustee shall be a party shall be the successor of the Trustee hereunder, *provided that* such corporation shall be qualified under the provisions of Section 9.06 hereof, without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

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

ARTICLE TEN

MISCELLANEOUS

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

SECTION 10.02. *No Recourse.* No recourse under or upon any obligation, covenant or agreement of this Agreement, or under the guaranty endorsed on any Trust Certificate, or for any claim based thereon or otherwise in respect thereof shall be had against any stockholder,

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

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

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

SECTION 10.05. *Notices.* All demands, notices and communications hereunder shall be in writing and shall be deemed to have been duly given if personally delivered or mailed by registered mail (a) to the Company, at Fifth Third Center, Cincinnati, Ohio 45202, *attention of* Charles P. Reynolds, Jr., Vice President, or to such other address as may hereafter be furnished to the Trustee in writing by the Company, (b) to the Guarantor, at 300 South Wacker Drive, Chicago, Illinois 60606, *attention of* the Vice President—Finance, or at such other address as may hereafter be furnished to the Trustee in writing by the Guarantor and (c) to the Trustee at the Corporate Trust Office, or at such other address as may hereafter be furnished to the Company and the Guarantor in writing by the Trustee. An affidavit by any person representing or acting on behalf of the Company, the Guarantor or the Trustee, as the case may be, as to such mailing, having the registry receipt attached, shall be conclusive evidence of the giving of such demand, notice or communication.

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

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

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

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

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

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

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

MANUFACTURERS HANOVER
TRUST COMPANY,
Trustee,

[CORPORATE SEAL]

by T. C. CRANE
Vice President.

ATTEST:

W. B. DODGE
Assistant Secretary.

THE FIFTH THIRD BANK,

[CORPORATE SEAL]

by C. L. BUENGER
Vice President.

ATTEST:

HOWARD H. WITHROW
Assistant Secretary.

TRAILER TRAIN COMPANY,

[CORPORATE SEAL]

by N. V. REICHERT
Vice President—Finance.

ATTEST:

R. E. ZIMMERMAN
Assistant Secretary.

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

On this 12th day of July, 1972, before me personally appeared T. C. CRANE, to me personally known, who, being by me duly sworn, says that he is a Vice President of MANUFACTURERS HANOVER TRUST COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

KATHLEEN COSTINE
Notary Public

KATHLEEN COSTINE
 Notary Public, State of New York
 No. 31-5832352—New York
 Qualified in New York County
 Commission Expires March 30, 1974

[NOTARIAL SEAL]

STATE OF OHIO }
 COUNTY OF HAMILTON } ss.:

On this 13th day of July, 1972, before me personally appeared C. L. BUENGER, to me personally known, who, being by me duly sworn, says that he is a Vice President of THE FIFTH THIRD 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.

IRMA S. MARTIN
Notary Public

IRMA S. MARTIN
 Notary Public, Hamilton County, Ohio
 My Commission Expires Oct. 14, 1974

[NOTARIAL SEAL]

STATE OF ILLINOIS }
COUNTY OF COOK } ss.:

On this 14th day of July, 1972, before me personally appeared N. V. REICHERT, to me personally known, who, being by me duly sworn, says that he is the Vice President—Finance of TRAILER TRAIN COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

W. J. EVANS
Notary Public

My Commission expires July 24, 1975

[NOTARIAL SEAL]

ANNEX A TO EQUIPMENT TRUST AGREEMENT

<u>Type</u>	<u>Quantity</u>	<u>Lessee's Car Numbers (All Inclusive)</u>	<u>Unit Cost</u>	<u>Total Cost</u>
89'4" 70-ton capacity, standard level, container flat cars	100	975215 to 975314	\$20,100.00	\$2,010,000.00
89'4" 55-ton capacity, low level, vert-a-pac flat cars	61	802149 to 802209	21,026.02	1,282,587.22
89'4" 70-ton capacity, standard hydraulic flush deck flat cars	30	940780 to 940809	17,550.91	526,527.30
89'4" 70-ton capacity, standard level, all purpose flat cars	100	971000 to 971099	23,160.00	2,316,000.00
	<u>291</u>			<u>\$6,135,114.52</u>

ANNEX B TO EQUIPMENT TRUST AGREEMENT

Lease of Equipment

BY AND BETWEEN

THE FIFTH THIRD BANK

AND

TRAILER TRAIN COMPANY

Dated as of July 1, 1972

LEASE OF EQUIPMENT dated as of July 1, 1972, between THE FIFTH THIRD BANK, an Ohio corporation (hereinafter called the Lessor), and TRAILER TRAIN COMPANY, a Delaware corporation (hereinafter called the Lessee).

WHEREAS as the Lessor is entering into two Manufacturing Agreements dated as of July 1, 1972 (each such Manufacturing Agreement hereinafter called a Manufacturing Agreement) with the Lessee and Pullman Incorporated (Pullman-Standard Division) and Bethlehem Steel Corporation, respectively, pursuant to which the Lessor has agreed to purchase and take delivery of the railroad equipment described in Schedule A hereto (hereinafter sometimes called the Equipment); and

WHEREAS the Lessee has agreed to lease from the Lessor all the units of the Equipment, or such lesser number of units as are delivered and accepted and settled for under the Equipment Trust Agreement (as hereinafter defined) on or prior to October 15, 1972 (each such unit hereinafter called a Unit and collectively the Units) at the rentals and for the term and upon the conditions hereinafter provided; and

WHEREAS the Lessor and the Lessee are entering into an Equipment Trust Agreement dated as of July 1, 1972 (herein called the Equipment Trust Agreement), with Manufacturers Hanover Trust Company, as Trustee (hereinafter called the Trustee), under which security title to the Units will be reserved to the Trustee until the Lessor fulfills all its obligations under the Equipment Trust Agreement;

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

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

§ 2. *Rentals.* The Lessee agrees to pay to the Lessor, as rental for each Unit subject to this Lease, 31 consecutive semiannual payments, payable on May 1 and November 1 in each year commencing November 1, 1972. The first such semiannual payment shall be in an amount equal to 0.014% of the Cost (as such term is defined in the Equipment Trust Agreement) of each Unit subject to this Lease for each day elapsed from and including the Settlement Date (as defined in Section 4.02 of the Equipment Trust Agreement) for such Unit to November 1, 1972. The next 10 semiannual payments shall each be in an amount equal to 2.520% of the Cost of each such Unit subject to this Lease on the date of such payment and the next 20 such semiannual payments shall each be in an amount equal to 5.69901% of the Cost of each such Unit subject to this Lease on the date of such payment. In addition, the Lessee shall pay to the Lessor (i) on the Settlement Date for each Unit, if such Settlement Date is later than the 31st day following the date of acceptance of such Unit pursuant to § 1 hereof, additional rental

in an amount equal to interest on the Cost of such Unit from such 31st day to and including the Settlement Date, at a rate per annum equal to the prime rate which the Trustee would charge on such Settlement Date for 90-day loans to borrowers of the highest credit standing and (ii) on November 1, 1972, additional rental in an amount equal to $7\frac{7}{8}\%$ per annum of the amount from time to time remaining on deposit with the Trustee as Deposited Cash (as defined in the Equipment Trust Agreement) from the date or dates of deposit of such Deposited Cash to the date of application of such Deposited Cash or November 1, 1972, as the case may be. If any of the payment dates referred to above is not a Business Day (as defined in the Equipment Trust Agreement), the payment shall be payable on the next succeeding Business Day (without interest).

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

The Lessor irrevocably instructs the Lessee to make all the payments provided for in this Lease, during the original term hereof (other than the rental payable pursuant to clause (i) of the fourth sentence of this § 2, and any amount payable in respect of a Unit which has not been settled for pursuant to Section 4.02 of the Equipment Trust Agreement by reason of such Unit's having suffered a Casualty Occurrence, which rental and amount shall be paid to the Lessor at the address set forth in the second sentence of this paragraph), in immediately available funds in New York City for the account of the Lessor, in care of the Trustee at its office at 40 Wall Street, New York, N. Y. 10015, attention of Corporate Trust Department, with instructions to the Trustee first to apply such payments to satisfy the obligations of the Lessor under the Equipment Trust Agreement known to the Trustee to be due and payable on the date such payments are due

and payable hereunder and second, so long as no Event of Default under the Equipment Trust Agreement shall have occurred and be continuing, to pay any balance promptly to the Lessor in immediately available funds at Fifth Third Center, Cincinnati, Ohio 45202, *attention of* Charles P. Reynolds, Jr., Vice President, or at such other place as the Lessor shall specify in writing. The Lessee agrees to make the payments provided for herein as contemplated by this paragraph.

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

§ 3. *Term of Lease.* The term of this Lease as to each Unit shall begin on the date of the acceptance thereof by the Lessee pursuant to § 1 hereof and, subject to the provisions of §§ 6, 9 and 12 hereof, shall terminate on the date on which the final semiannual payment of rent in respect thereof is due hereunder.

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

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

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

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

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

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

In the event that, during the continuance of this Lease, the Lessee shall become liable for the payment or reimbursement of any imposi-

tions pursuant to this § 5, the Lessee shall become liable for all impositions accrued or levied during, or based on or applicable to, the term of this Lease, and such liability shall continue, notwithstanding the termination of this Lease, until all such impositions are paid or reimbursed by the Lessee.

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

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

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

CASUALTY VALUE

Rental Payment Date No.	Percentage	Rental Payment Date No.	Percentage
1	124.0942%	17	87.6182%
2	112.4901	18	83.9172
3	113.8952	19	80.1004
4	115.1545	20	76.1657
5	116.2810	21	72.1268
6	117.2718	22	67.9821
7	113.6530	23	63.7454
8	114.3961	24	59.4153
9	115.0275	25	55.0062
10	115.5448	26	50.5169
11	111.4746	27	45.9464
12	108.6100	28	41.2938
13	105.5951	29	36.5607
14	102.4273	30	31.7461
15	94.6350	31 and thereafter	15.0000
16	91.1900		

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

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

§ 7. *Annual Reports.* On or before April 1 in each year, commencing with the year 1973, the Lessee will furnish to the Lessor and the Trustee, in such number of counterparts or copies as may reasonably be requested, a Lessee's Certificate, as of the preceding December 31, (i) showing the amount, description and numbers of all Units then leased hereunder and the amount, description and numbers of all Units that may have suffered a Casualty Occurrence during the preceding 12 months (or since the date of this Lease in the case of the first such Lessee's Certificate), and such other information regarding the condition and state of repair of the Units as the Lessor or the Trustee may reasonably request and (ii) stating that, in the case of all Units repaired or repainted during the period covered thereby, the markings required by § 4 hereof and Section 5.06 of the Equipment Trust Agreement have been preserved or replaced. The Lessor shall have the right at its sole cost, risk and expense, by its agents, to inspect the Units and the records of the Lessee with respect thereto at such reasonable times as the Lessor may request during the continuance of this Lease.

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

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

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

D. no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the execution, delivery, or performance of this Lease, the Equipment Trust Agreement, the Manufacturing Agreements and any equipment purchase agreement relating to the Units (and any assignment thereof), or if any approval is necessary it has been obtained;

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

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

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

§ 15. *Recording and Expenses.* Prior to the delivery and acceptance of any Unit hereunder, the Lessee will without expense to the Lessor cause this Lease and any assignments hereof to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act. The Lessee will undertake the filing, recording and redepositing required under Section 7.03 of the Equipment Trust Agreement and will from time to time, do and

perform any other act and will execute, acknowledge, deliver, file, register, record and deposit (and will refile, reregister, rerecord or redeposit whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Trustee (except as otherwise provided in Section 7.03 of the Equipment Trust Agreement) for the purpose of proper protection, to the satisfaction of the Lessor and the Trustee, of the Lessor's and the Trustee's respective interests in the Units, or for the purpose of carrying out the intention of this Lease and the Equipment Trust Agreement. The Lessee will promptly furnish to the Lessor and the Trustee evidence of all such filing, registering, recording, depositing, refile, reregistering, rerecording and/or redepositing and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Lessor and the Trustee.

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

§ 17. *Federal Income Taxes.* The Lessor, as the owner of the Units, shall be entitled to such deductions, credits and other benefits as are provided by the Internal Revenue Code of 1954, as amended to the date hereof (hereinafter called the Code), to an owner of property, including, without limitation, the Investment Credit (as defined in § 9 hereof), with respect to the Units.

Lessee agrees that neither it nor any corporation controlled by it, in control of it, or under common control with it, directly or indirectly, will at any time take any action or file any returns or other documents inconsistent with the foregoing and that each of such corporations will file such returns, take such action and execute such documents as may be reasonable and necessary to facilitate accomplishment of the intent hereof.

Notwithstanding anything to the contrary contained in § 11 hereof, the Lessee represents and warrants that (i) all of the Units

constitute property the entire Cost of which qualifies for the Investment Credit under Section 50 of the Code; (ii) at the time the Lessor becomes the owner of the Units, the Units will constitute "new section 38 property" within the meaning of Section 48(b) of the Code and at the time the Lessor becomes the owner of the Units, the Units will not have been used by any person so as to preclude "the original use of such property" within the meaning of Section 48(b) and 167(c)(2) of the Code from commencing with the Lessor; (iii) at all times during the term of this Lease, each Unit will constitute "Section 38 property" within the meaning of Section 48(a) of the Code, will not be used predominately outside the United States within the meaning of said Section 48(a) (or any exception thereto) and will be used by railroad companies; and (iv) the Lessee will maintain sufficient records to verify such use.

If the Lessor shall lose or shall, in the opinion of independent tax counsel for the Lessor, not have the right to claim, or if there shall be disallowed with respect to the Lessor the Investment Credit (as defined in § 9 hereof) with respect to the Units and such loss, inability to claim or disallowance is based on the inaccuracy in law or in fact of the representations and warranties set forth in the next preceding paragraph, the rental rate for the Units set forth in § 2 hereof shall, on the next succeeding rental payment date after written notice to the Lessee by the Lessor of such fact, be increased to such amount as shall, in the reasonable opinion of the Lessor, equal the net return that would have been realized by the Lessor if the Lessor had been entitled to utilize such Investment Credit, and the Lessee shall forthwith pay to the Lessor as additional rental the amount of any interest which may be assessed by the United States against the Lessor attributable to the loss of any portion of such Investment Credit.

The Lessee understands that the rental rate provided in § 2 hereof has been calculated on the basis of depreciation deductions with respect to the Units being available on the basis of an 11-year life on one of the accelerated methods of depreciation provided in Section 167(b) of the Code. If in the opinion of independent tax counsel for the Lessor such

deductions may only be taken on the basis of a 12-year life, or if such deductions are disallowed because an 11-year life, as distinguished from a 12-year life, was utilized, the rental rate for the Units set forth in § 2 hereof shall, on the next succeeding rental payment date after written notice to the Lessee by the Lessor of such fact, be increased to such amount as shall, in the reasonable opinion of the Lessor, equal the net return that would have been realized by the Lessor if the Lessor had been entitled to utilize such 11-year life as distinguished from a 12-year life and the Lessee shall forthwith pay to the Lessor as additional rental the amount of any interest that may be assessed by the United States against the Lessor attributable to the utilization of such 11-year life as distinguished from a 12-year life.

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

If to the Lessor, at Fifth Third Center, Cincinnati, Ohio 45202, *attention of* Charles P. Reynolds, Jr., Vice President;

If to the Lessee, at 300 South Wacker Drive, Chicago, Illinois 60606, *attention of* the Vice President—Finance;

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

§ 19. *Severability; Effect and Modification of Lease.* Any provision of this Lease which is prohibited or unenforceable in any jurisdiction, shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

This Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the Units and supersedes all other

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

§ 20. *Execution.* This Lease may be executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument. Although this Lease is dated as of July 1, 1972, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

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

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

§ 23. *No Recourse.* No recourse shall be had in respect of any obligation due under this Lease, or referred to herein, against any incorporator, stockholder, director or officer, as such, past, present or future, of the Lessor or the Lessee, or against any beneficiary of a trust for which the Lessor is acting as Trustee, 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.

§ 24. *Provisions Concerning Subordinated Notes.* It is the intention of the parties hereto that the obligations of the Lessee under this Lease shall be superior in right of payment to all the Lessee's Thirty Year Subordinated Notes sold or to be sold pursuant to a Note Purchase Agreement dated as of January 1, 1967, between the Lessee and certain of its stockholders. The Lessee covenants and agrees that if an Event of Default exists hereunder or an Event of Default (as defined in the Equipment Trust Agreement) exists under the Equipment Trust Agreement or any event which, with the giving of notice or the lapse of time, or both, would constitute such an Event of Default, shall have occurred and be continuing, the Lessee will not voluntarily prepay or retire any of such Notes.

§ 25. *Increase of User Rates.* The Lessee covenants and agrees (i) that, if an Event of Default exists under § 9(A) hereof by reason of the failure of the Lessee to pay to the Trustee within the grace period provided in § 9(A) hereof, all or any part of the rentals due and payable under § 2 hereof required for the payment of the principal of or dividends on the Trust Certificates (but not including any principal or dividends payable by reason of acceleration of the date of payment thereof), the Lessee will, upon written notice by the Lessor so to do, within ten days after receipt of such notice, deliver to all parties to its Form A and Form B car contracts (or such other Forms as may here-

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

may from time to time be necessary to enable the Lessee to cure all such defaults hereunder and under such other agreements.

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

THE FIFTH THIRD BANK,

[CORPORATE SEAL]

by C. L. BUENGER
Vice President.

Attest:

HOWARD H. WITHROW
Assistant Secretary.

TRAILER TRAIN COMPANY,

[CORPORATE SEAL]

by N. V. REICHERT
Vice President—Finance.

Attest:

R. E. ZIMMERMAN
Assistant Secretary.

STATE OF OHIO }
 COUNTY OF HAMILTON } ss.:

On this 13th day of July, 1972, before me personally appeared C. L. BUENGER, to me personally known, who, being by me duly sworn, says that he is a Vice President of THE FIFTH THIRD 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.

IRMA S. MARTIN
Notary Public

IRMA S. MARTIN
 Notary Public, Hamilton County Ohio
 My Commission Expires Oct. 14 1974

[NOTARIAL SEAL]

STATE OF ILLINOIS }
 COUNTY OF COOK } ss.:

On this 14th day of July, 1972, before me personally appeared N. V. REICHERT, to me personally known, who, being by me duly sworn, says that he is the Vice President—Finance of TRAILER TRAIN COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

W. J. EVANS
Notary Public

My Commission expires July 24, 1975

[NOTARIAL SEAL]

SCHEDULE A

<u>Type</u>	<u>Quantity</u>	<u>Lessee's Car Numbers (All Inclusive)</u>	<u>Unit Cost</u>	<u>Total Cost</u>
89'4" 70-ton capacity, standard level, container flat cars	100	975215 to 975314	\$20,100.00	\$2,010,000.00
89'4" 55-ton capacity, low level, vert-a-pac flat cars	61	802149 to 802209	21,026.02	1,282,587.22
89'4" 70-ton capacity, standard hydraulic flush deck flat cars	940780 to 940809 30	17,550.91		526,527.30
89'4" 70-ton capacity, standard level, all purpose flat cars	100	971000 to 971099	23,160.00	2,316,000.00
	<u>291</u>			<u>\$6,135,114.52</u>

that the foregoing clause shall not in any way relieve the Lessee of its obligations pursuant to § 6 hereof to make payments provided for therein in respect of any Unit experiencing a Casualty Occurrence during the original or any extended term of this Lease.

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

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

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

C. this Lease and the Equipment Trust Agreement have been duly filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act, and will protect the Lessor's title and interest in and to the Units and the Trustee's security title and interest in and to the Units, and no filing, recording or deposit (or giving of notice) with any other Federal, state or local government or agency or instrumentality thereof is necessary to protect the title and interest of the Lessor or the security title and interest of the Trustee in and to the Units in the United States of America;

D. no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the execution, delivery, or performance of this Lease, the Equipment Trust Agreement, the Manufacturing Agreements and any equipment purchase agreement relating to the Units (and any assignment thereof), or if any approval is necessary it has been obtained;

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

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

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

§ 15. *Recording and Expenses.* Prior to the delivery and acceptance of any Unit hereunder, the Lessee will without expense to the Lessor cause this Lease and any assignments hereof to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act. The Lessee will undertake the filing, recording and redepositing required under Section 7.03 of the Equipment Trust Agreement and will from time to time, do and

perform any other act and will execute, acknowledge, deliver, file, register, record and deposit (and will refile, reregister, rerecord or redeposit whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Trustee (except as otherwise provided in Section 7.03 of the Equipment Trust Agreement) for the purpose of proper protection, to the satisfaction of the Lessor and the Trustee, of the Lessor's and the Trustee's respective interests in the Units, or for the purpose of carrying out the intention of this Lease and the Equipment Trust Agreement. The Lessee will promptly furnish to the Lessor and the Trustee evidence of all such filing, registering, recording, depositing, refile, reregistering, rerecording and/or redepositing and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Lessor and the Trustee.

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

§ 17. *Federal Income Taxes.* The Lessor, as the owner of the Units, shall be entitled to such deductions, credits and other benefits as are provided by the Internal Revenue Code of 1954, as amended to the date hereof (hereinafter called the Code), to an owner of property, including, without limitation, the Investment Credit (as defined in § 9 hereof), with respect to the Units.

Lessee agrees that neither it nor any corporation controlled by it, in control of it, or under common control with it, directly or indirectly, will at any time take any action or file any returns or other documents inconsistent with the foregoing and that each of such corporations will file such returns, take such action and execute such documents as may be reasonable and necessary to facilitate accomplishment of the intent hereof.

Notwithstanding anything to the contrary contained in § 11 hereof, the Lessee represents and warrants that (i) all of the Units

constitute property the entire Cost of which qualifies for the Investment Credit under Section 50 of the Code; (ii) at the time the Lessor becomes the owner of the Units, the Units will constitute "new section 38 property" within the meaning of Section 48(b) of the Code and at the time the Lessor becomes the owner of the Units, the Units will not have been used by any person so as to preclude "the original use of such property" within the meaning of Section 48(b) and 167(c)(2) of the Code from commencing with the Lessor; (iii) at all times during the term of this Lease, each Unit will constitute "Section 38 property" within the meaning of Section 48(a) of the Code, will not be used predominately outside the United States within the meaning of said Section 48(a) (or any exception thereto) and will be used by railroad companies; and (iv) the Lessee will maintain sufficient records to verify such use.

If the Lessor shall lose or shall, in the opinion of independent tax counsel for the Lessor, not have the right to claim, or if there shall be disallowed with respect to the Lessor the Investment Credit (as defined in § 9 hereof) with respect to the Units and such loss, inability to claim or disallowance is based on the inaccuracy in law or in fact of the representations and warranties set forth in the next preceding paragraph, the rental rate for the Units set forth in § 2 hereof shall, on the next succeeding rental payment date after written notice to the Lessee by the Lessor of such fact, be increased to such amount as shall, in the reasonable opinion of the Lessor, equal the net return that would have been realized by the Lessor if the Lessor had been entitled to utilize such Investment Credit, and the Lessee shall forthwith pay to the Lessor as additional rental the amount of any interest which may be assessed by the United States against the Lessor attributable to the loss of any portion of such Investment Credit.

The Lessee understands that the rental rate provided in § 2 hereof has been calculated on the basis of depreciation deductions with respect to the Units being available on the basis of an 11-year life on one of the accelerated methods of depreciation provided in Section 167(b) of the Code. If in the opinion of independent tax counsel for the Lessor such

deductions may only be taken on the basis of a 12-year life, or if such deductions are disallowed because an 11-year life, as distinguished from a 12-year life, was utilized, the rental rate for the Units set forth in § 2 hereof shall, on the next succeeding rental payment date after written notice to the Lessee by the Lessor of such fact, be increased to such amount as shall, in the reasonable opinion of the Lessor, equal the net return that would have been realized by the Lessor if the Lessor had been entitled to utilize such 11-year life as distinguished from a 12-year life and the Lessee shall forthwith pay to the Lessor as additional rental the amount of any interest that may be assessed by the United States against the Lessor attributable to the utilization of such 11-year life as distinguished from a 12-year life.

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

If to the Lessor, at Fifth Third Center, Cincinnati, Ohio 45202, *attention of* Charles P. Reynolds, Jr., Vice President;

If to the Lessee, at 300 South Wacker Drive, Chicago, Illinois 60606, *attention of* the Vice President—Finance;

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

§ 19. *Severability; Effect and Modification of Lease.* Any provision of this Lease which is prohibited or unenforceable in any jurisdiction, shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

This Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the Units and supersedes all other

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

§ 20. *Execution.* This Lease may be executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument. Although this Lease is dated as of July 1, 1972, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

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

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

§ 23. *No Recourse.* No recourse shall be had in respect of any obligation due under this Lease, or referred to herein, against any incorporator, stockholder, director or officer, as such, past, present or future, of the Lessor or the Lessee, or against any beneficiary of a trust for which the Lessor is acting as Trustee, 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.

§ 24. *Provisions Concerning Subordinated Notes.* It is the intention of the parties hereto that the obligations of the Lessee under this Lease shall be superior in right of payment to all the Lessee's Thirty Year Subordinated Notes sold or to be sold pursuant to a Note Purchase Agreement dated as of January 1, 1967, between the Lessee and certain of its stockholders. The Lessee covenants and agrees that if an Event of Default exists hereunder or an Event of Default (as defined in the Equipment Trust Agreement) exists under the Equipment Trust Agreement or any event which, with the giving of notice or the lapse of time, or both, would constitute such an Event of Default, shall have occurred and be continuing, the Lessee will not voluntarily prepay or retire any of such Notes.

§ 25. *Increase of User Rates.* The Lessee covenants and agrees (i) that, if an Event of Default exists under § 9(A) hereof by reason of the failure of the Lessee to pay to the Trustee within the grace period provided in § 9(A) hereof, all or any part of the rentals due and payable under § 2 hereof required for the payment of the principal of or dividends on the Trust Certificates (but not including any principal or dividends payable by reason of acceleration of the date of payment thereof), the Lessee will, upon written notice by the Lessor so to do, within ten days after receipt of such notice, deliver to all parties to its Form A and Form B car contracts (or such other Forms as may here-

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

may from time to time be necessary to enable the Lessee to cure all such defaults hereunder and under such other agreements.

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

THE FIFTH THIRD BANK,

[CORPORATE SEAL]

by C. L. BUENGER
Vice President.

Attest:

HOWARD H. WITHROW
Assistant Secretary.

TRAILER TRAIN COMPANY,

[CORPORATE SEAL]

by N. V. REICHERT
Vice President—Finance.

Attest:

R. E. ZIMMERMAN
Assistant Secretary.

STATE OF OHIO }
 COUNTY OF HAMILTON } ss.:

On this 13th day of July, 1972, before me personally appeared C. L. BUENGER, to me personally known, who, being by me duly sworn, says that he is a Vice President of THE FIFTH THIRD 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.

IRMA S. MARTIN
Notary Public

IRMA S. MARTIN
 Notary Public, Hamilton County Ohio
 My Commission Expires Oct. 14 1974

[NOTARIAL SEAL]

STATE OF ILLINOIS }
 COUNTY OF COOK } ss.:

On this 14th day of July, 1972, before me personally appeared N. V. REICHERT, to me personally known, who, being by me duly sworn, says that he is the Vice President—Finance of TRAILER TRAIN COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

W. J. EVANS
Notary Public

My Commission expires July 24, 1975

[NOTARIAL SEAL]

SCHEDULE A

<u>Type</u>	<u>Quantity</u>	<u>Lessee's Car Numbers (All Inclusive)</u>	<u>Unit Cost</u>	<u>Total Cost</u>
89'4" 70-ton capacity, standard level, container flat cars	100	975215 to 975314	\$20,100.00	\$2,010,000.00
89'4" 55-ton capacity, low level, vert-a-pac flat cars	61	802149 to 802209	21,026.02	1,282,587.22
89'4" 70-ton capacity, standard hydraulic flush deck flat cars	940780 to 940809 30	17,550.91		526,527.30
89'4" 70-ton capacity, standard level, all purpose flat cars	100	971000 to 971099	23,160.00	2,316,000.00
	<u>291</u>			<u>\$6,135,114.52</u>