

8 227A014

LETTER OF TRANSMITTAL

Secretary of the Interstate  
Commerce Commission  
Constitution and 12th Streets, N.W.  
Washington, D.C. 20423

No. AUG 15 1978  
Date.....  
Fee \$.....  
ICC Washington, D. C.

Re: Equipment Trust Agreement by and between  
Continental Illinois National Bank and  
Trust Company of Chicago, as Trustee, and  
Transportation Corporation of America,  
dated as of August 14, 1978

9641  
RECORDATION NO. .... Filed & Recorded  
AUG 15 1978 - 9 32 AM  
INTERSTATE COMMERCE COMMISSION

Dear Sir:

Pursuant to Part 1116 of the regulations of the Interstate Commerce Commission, 49 CFR Part 1116, I hereby request that you record under Section 20c of the Interstate Commerce Act a certain Equipment Trust Agreement (the "Equipment Trust Agreement") dated as of August 14, 1978, by and between Continental Illinois National Bank and Trust Company of Chicago, as Trustee, and Transportation Corporation of America.

I am Vice President of Transportation Corporation of America and have knowledge of the matters set forth herein.

The parties to the instant transaction, and their addresses, are as follows:

VENDOR

Thrall Car Manufacturing Company  
Post Office Box 218  
Chicago Heights, Illinois 60411  
Attn: President

TRUSTEE-LESSOR

Continental Illinois National Bank  
and Trust Company of Chicago  
231 South LaSalle Street  
Chicago, Illinois 60604  
Attn: Corporate Trust Department

*Continental Illinois National Bank  
James A. Hoff*

RECEIVED  
AUG 15 9 32 AM '78  
I.C.C.  
FEE OPERATION BR.

LESSEE

Transportation Corporation of America  
Post Office Box 218  
Chicago Heights, Illinois 60411  
Attn: President

GUARANTOR OF LEASE

Transportation Corporation of America  
Post Office Box 218  
Chicago Heights, Illinois 60411  
Attn: President

The equipment covered by the Equipment Trust Agreement is 240 bulkhead flat cars and 74 covered hopper cars. The A.A.R. mechanical designation, the car numbers, and the sublessee of said equipment is listed in more detail in Exhibit A attached hereto.

Enclosed herewith are the original and 8 counterparts of the Equipment Trust Agreement. The original should be returned to the Trustee, at the address set forth above. The extra counterparts should be returned to Mr. Donn Beloff of Schiff Hardin & Waite.

A \$50.00 check, payable to the Interstate Commerce Commission, also is enclosed to cover the required recordation fee.

Very truly yours,

TRANSPORTATION CORPORATION OF  
AMERICA

By   
Vice President

Dated: August 14, 1978.

**Interstate Commerce Commission**  
Washington, D.C. 20423

8/15/78

OFFICE OF THE SECRETARY

Mr. Donn Beloff  
Schiff Hardin & Waite  
1750 K St. N.W.  
Washington, D.C.

Dear

**Sir:**

The enclosed document(s) was recorded pursuant to the provisions of Section 20(c) of the Interstate Commerce Act, 49 U.S.C. 20(c), on **8/15/78** at **9:35am** and assigned recordation number(s) **9641**

Sincerely yours,

H.G. Homme, Jr.,  
Acting Secretary

Enclosure(s)

SE-30-T  
(2/78)

9641

RECORDATION NO. .... Filed & Recorded

AUG 15 1978 - 9 14 AM

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INTERSTATE COMMERCE COMMISSION

TRANSPORTATION CORPORATION OF AMERICA

EQUIPMENT TRUST

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EQUIPMENT TRUST AGREEMENT

by and between

CONTINENTAL ILLINOIS NATIONAL BANK

AND TRUST COMPANY OF CHICAGO

Trustee,

and

TRANSPORTATION CORPORATION OF AMERICA

---

Dated as of August 14, 1978

---

EQUIPMENT TRUST CERTIFICATES,

FIRST 1978 SERIES

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[Filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act on August 15, 1978 at 9:35 AM, Recordation No. 9641]

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EQUIPMENT TRUST AGREEMENT dated as of August 14, 1978, by and between CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO, a national banking association duly organized and existing under the laws of the United States, as Trustee (the "Trustee"), and TRANSPORTATION CORPORATION OF AMERICA, an Illinois corporation (the "Company").

WHEREAS the Company has agreed to cause to be sold, transferred and delivered to the Trustee the railroad equipment described in Exhibit A hereto; and

WHEREAS 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 title is transferred under the provisions hereof; and

WHEREAS Transportation Corporation of America 9 1/2% Equipment Trust Certificates, First 1978 Series (the "Trust Certificate" or "Trust Certificates"), are to be issued and sold in an aggregate principal amount not exceeding \$7,500,000; and

WHEREAS, the Company has agreed to give and assign to the Trustee, as security for the obligations of the Company hereunder, a security interest in all of the Company's right, title and interest in and to the leases described in Exhibit B hereto and any and all leases hereinafter entered into with respect to the Trust Equipment, including all rents, moneys and proceeds due or to become due under such leases; and

WHEREAS the text of the Trust Certificates and the guaranty to be endorsed on the Trust Certificates by the Company are to be substantially in the following forms, respectively:

[Form of Trust Certificates]

\$

No.

TRANSPORTATION CORPORATION OF AMERICA

9 1/2% Equipment Trust Certificates

First 1978 Series

Total Authorized Issue \$7,500,000

CONTINENTAL ILLINOIS NATIONAL BANK  
AND TRUST COMPANY OF CHICAGO  
Trustee

Continental Illinois National Bank and Trust Company of Chicago, Trustee (the "Trustee"), under an Equipment Trust Agreement (the "Agreement") dated as of August 14, 1978, between the Trustee and Transportation Corporation of America, an Illinois corporation (the "Company"), certifies that

or registered assigns is entitled to an interest of

Dollars in Transportation Corporation of America, Equipment Trust, First 1978 Series, due and payable on or before September 1, 1993, in installments as hereinafter provided, and to interest on the amount of unpaid principal from time to time due and owing pursuant to this Certificate due and payable semi-annually on March 1 and September 1 in each year commencing March 1, 1979, at the rate of 9 1/2% per annum from the date hereof until such principal amount becomes due and payable, with interest on any overdue principal and interest, to the extent legally enforceable, at the rate of 10 1/2% per annum. Subject to Section 2.02 of the Agreement, payments of principal and interest shall be made by the Trustee to the registered holder hereof at the Corporate Trust Office of the Trustee at 231 South La Salle Street, Chicago, Illinois (the "Corporate Trust Office") 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. Each of such payments shall be made only from and out of rentals or other moneys received by the Trustee and applicable to such payment under the provisions of the Agreement. The principal amount of this Trust Certificate is due and payable in 30 substantially equal consecutive semi-annual instalments on March 1 and September 1 in each year commencing March 1, 1979 and ending September 1, 1993, both inclusive. Interest shall be computed hereunder on the basis of a 360-day year of twelve 30-day months.

This Certificate is one of an authorized issue of Trust Certificates, in an aggregate principal amount not exceeding \$7,500,000, all maturing on September 1, 1993 and issued or to be issued under the Agreement, under which certain railroad equipment leased to the Company (or cash or obligations defined in the Agreement as "Investments" in lieu thereof, as provided in the Agreement) is held by the Trustee in trust for the equal and ratable benefit of the holders of the outstanding Trust Certificates issued thereunder. Reference is made to the Agreement (a copy of which is on file with the Trustee at said office) for

a more complete statement of the terms and provisions thereof, to all of which the registered holder hereof, by accepting this Certificate, assents. The Certificates are issuable in any denomination equal to or greater than \$25,000 or, with the consent of the Company, in any denomination less than \$25,000.

The transfer of this Certificate is registrable 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 the Corporate Trust 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 Trust Certificate or Certificates for the then unpaid aggregate principal amount hereof and, if less than the then entire unpaid principal amount hereof is transferred, a balance piece therefor will be issued to the transferor. Prior to due presentment for registration of transfer, the Trustee and the Company may deem and treat the person in whose name this certificate is registered as the absolute owner hereof for the purpose of receiving payment of principal and interest and for all other purposes and shall not be affected by any knowledge or notice to the contrary.

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

This Trust Certificate shall not be valid or become obligatory for any purpose until it has been signed by an authorized officer of the Trustee.

IN WITNESS WHEREOF, the Trustee has caused this certificate to be signed by one of its Vice Presidents, by his signature or a facsimile thereof, and its corporate seal or a facsimile thereof to be hereunto affixed or herein imprinted and to be attested by one of its Trust Officers by his signature.

Dated as of August \_\_, 1978

BANK

CONTINENTAL ILLINOIS NATIONAL  
AND TRUST COMPANY OF CHICAGO

by  
Vice President

Attest:

Trust Officer  
(Seal)

**GUARANTY**

Transportation Corporation of America, for a valuable consideration, hereby unconditionally guarantees to the registered holder of the within Certificate the prompt payment when due of the principal of said Certificate, and of the interest thereon specified in said Certificate, with interest on any overdue principal and interest, to the extent legally enforceable, at the rate of 10 1/2% per annum, all in accordance with the terms of said Certificate and the Equipment Trust Agreement referred to therein.

**TRANSPORTATION CORPORATION OF AMERICA**

by  
Vice President

WHEREAS it is desired to secure to the holders of the Trust Certificates the payment of the principal thereof, as hereinafter provided, payable semi-annually 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 hereinafter specified:

(a) Agreement shall mean this Agreement as the same may be amended or supplemented as permitted herein.

(b) Company shall mean Transportation Corporation of America, an Illinois corporation, and any successor or successors to it complying with the provisions of Section 4.09 or 6.06.

(c) Corporate Trust Office shall mean the principal office of the Trustee in the State of Illinois, City of Chicago, at which the corporate trust business of the Trustee shall, at the time in question, be administered, which office is on the date of execution of this Agreement, located at 231 South La Salle Street, Chicago, Illinois 60693.

(d) Cost, (i) when used with respect to Trust Equipment shall mean the amount set opposite each unit of Trust Equipment in Exhibit A, and (ii) when used with respect to any other Equipment shall mean the actual cost thereof to the Company, as represented by invoice price, including a reasonable manufacturing profit on a basis consistent with sales made by the Company to other purchasers on an arms' length basis.

(e) Deposited Cash shall mean the aggregate of (i) the proceeds from the sale of the Trust Certificates deposited with the Trustee pursuant to Section 2.01 hereof

and, when required or indicated by the context, any Investments purchased by the use of such proceeds pursuant to the provisions of Section 8.04, and (ii) any sums restored to Deposited Cash from rentals pursuant to Section 4.04(1) and on deposit with the Trustee.

(f) Equipment shall mean standard-gauge, general purpose bulkhead flat cars of the type referred to in Exhibit A, the 74 covered hopper cars referred to in Exhibit A, and other types of standard-gauge, general purpose railroad cars from time to time substituted therefor pursuant to Section 3.01, 4.03, or 4.08.

(g) Event of Default shall mean any event specified in Section 5.01 to be an Event of Default.

(h) Existing Leases shall mean the leases referred to in Exhibit B hereto, in each case as the same may be amended or supplemented as permitted by the Assignment thereof.

(i) Holder, when used with respect to Trust Certificates, shall include the plural as well as the singular number and shall mean the person in whose name such Trust Certificate is registered.

(j) Interest Payment Dates shall mean the first day of March and September in each year.

(k) Investments shall mean (i) certificates of deposit of commercial banks incorporated under the laws of the United States of America or any State thereof having a capital and surplus aggregating not less than \$50,000,000, (ii) open market commercial paper rated "Prime-1" or better by NCo/Moody's Commercial Paper Division of Moody's Investors Services, Inc., or rated "A-1" or better by Standard & Poor's Corporation (or a comparable rating by any successor to either of their businesses), and (iii) 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 placed to provide for the payment of the interest and principal, in each case maturing within one year after the date of investment therein.

(l) Officer's Certificate shall mean a certificate signed by the President or a Vice President of the Company.

(m) Opinion of Counsel shall mean an opinion in writing signed by legal counsel satisfactory to the Trust-

tee and who may be counsel for the Company or an employee of the Company. The acceptance by the Trustee of, together with its action on, an Opinion of Counsel shall be sufficient evidence that such counsel is satisfactory to the Trustee.

(n) Original Purchaser shall mean The Prudential Insurance Company of America, a New Jersey corporation.

(o) Owner shall mean the manufacturer or other person transferring title to any of the Equipment to the Trustee.

(p) Purchase Agreement shall mean the Purchase Agreement, dated as of August 17, 1978, between the Company and Prudential, as the same may be amended or supplemented as permitted therein.

(q) Request shall mean a written request for the action therein specified, delivered to the Trustee, dated not more than ten days prior to the date of delivery to the Trustee and signed on behalf of the Company by the President or a Vice President of the Company.

(r) Subsidiary shall mean any corporation organized under the laws of any State of the United States of America, engaged solely in activities that are in substantially the same line of business as the Company, all of the total combined voting power of all classes of voting stock of which shall, at the time as of which any determination is being made, be owned by the Company, either directly or through Subsidiaries.

(s) Trust Certificate or Trust Certificates shall mean Transportation Corporation of America 9 1/2% Equipment Trust Certificates, First 1978 Series, together with the guaranty of the Company endorsed thereon, issued hereunder.

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

(u) Trustee shall mean Continental Illinois National Bank and Trust Company of Chicago and, subject to the provisions of Article Eight, any successor as trustee hereunder.

(v) Written Direction shall mean a direction in writing by the Original Purchaser, signed by a Vice-President or any Investment Officer of the Original Purchaser,

and addressed to the Trustee. Any provision of this Agreement requiring or authorizing a Written Direction prior to the taking of any action by the Trustee or the Company shall not be applicable if, at the time thereof, the Original Purchaser is not a holder of Trust Certificates. In that event, such action may be taken by the Trustee or the Company, as the case may be, without reference to the requirement of such Written Direction, and no other direction or authorization shall be required from any other holder of Trust Certificates unless otherwise specifically required pursuant to this Agreement.

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

## ARTICLE TWO

### Trust Certificates and Issuance Thereof

Section 2.01. Issuance of Trust Certificates. An amount equal to the proceeds of the sale of any of the Trust Certificates, but not less than the aggregate principal amount thereof, shall, forthwith upon the issuance thereof, be deposited in cash with the Trustee. The amount of such proceeds shall be specified in an Officer's Certificate delivered to the Trustee concurrently with such deposit. Thereupon, without waiting for the recording or filing of this Agreement or of any other instrument respecting the Trust Equipment, the Trustee shall from time to time issue and deliver Trust Certificates in such aggregate principal amount as the Company shall direct by Request. Subject to the provisions of Section 2.06 of this Agreement, the aggregate principal amount of Trust Certificates which shall be executed and delivered by the Trustee under this Section shall not exceed the sum of \$7,500,000, and the aggregate principal amount represented by all the Trust Certificates shall be payable as hereinafter set forth.

Section 2.02. Interests Represented by Trust Certificates; Interest; Maturity. Each of the Trust Certificates shall represent an interest in the amount therein specified in the trust created hereunder. The aggregate principal amount of the Trust Certificates will be payable in 30 consecutive equal semi-annual instalments on March 1 and September 1 of each year commencing March 1, 1979 and ending September 1, 1993. The Trust Certificates will

bear interest on the unpaid principal amounts thereof, payable on March 1 and September 1 of each year, commencing March 1, 1979, at the rate of 9 1/2% per annum, with interest payable in each case on any overdue principal and interest, to the extent legally enforceable, at the rate of 10 1/2% per annum. Interest on Trust Certificates shall be calculated on the basis of a 360-day year of twelve 30-day months. The Trust Certificates are issuable in any denomination equal to or greater than \$25,000 or, with the consent of the Company, in any denomination less than \$25,000. The principal of and interest on the Trust Certificates shall be payable at the Corporate Trust Office in such coin or currency of the United States of America as, at the time of payment, shall be legal tender for the payment of public and private debts, but only from and out of rentals or other moneys received by the Trustee and applicable to such payment under the provisions hereof. Notwithstanding the provisions of the preceding sentence of this paragraph, in the case of payments of principal and interest to be made on a Trust Certificate not then to be paid in full, upon request and deposit of an agreement of the holder of such Trust Certificate (the responsibility of such holder to be satisfactory to the Company) obligating such holder, prior to any transfer or other disposition thereof, to surrender the same to the Trustee for notation thereon of the instalments of principal amount represented thereby theretofore paid in whole or in part, the Trustee will mail its check on the date each such payment is due to such registered holder at his address shown on the registry books maintained by the Trustee; provided, however, that this Section shall not apply to the Original Purchaser, and the Company shall direct the Trustee by Request to make payments of principal and interest to the Original Purchaser by wire of immediately available funds (to the extent the Company makes such funds available to the Trustee) at the Original Purchaser's "home office" address which address shall be supplied to the Trustee by the Company; and provided further, that the Company, upon notice to the Trustee and each such other holder of Trust Certificates, may itself make such payments of principal and interest directly to the Original Purchaser or such other holders in the manner set forth in the next preceding proviso.

Section 2.03. Forms of Trust Certificates and Guaranty. The Trust Certificates and the guaranty to be endorsed on the Trust Certificates by the Company as provided in Section 6.01 shall be in substantially the forms hereinbefore set forth.

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

Section 2.05. Characteristics of Trust Certificates.

(a) The Trust Certificates shall be registered, as to both principal and interest, in the name of the holder; shall be transferable in whole or in part and exchangeable for Trust Certificates of other denominations of equal aggregate outstanding principal amount and of the same maturities, upon presentation and surrender thereof for registration of transfer or exchange at the Corporate Trust Office, accompanied, in the case of transfer, by appropriate instruments of assignment and transfer, duly executed by the registered holder of the surrendered Trust Certificate or Certificates or by duly authorized attorney, in form satisfactory to the Trustee; shall, in connection with the initial issuance of Trust Certificates, be dated as of the date of issue and shall, in connection with Trust Certificates issued in exchange for or upon registration of transfer of another Trust Certificate or Certificates, be dated as of the date to which interest has been paid or shall, if no interest has been paid thereon, be dated as of the date of initial issuance; and shall entitle the registered holder to interest from the date thereof.

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

(c) The Trustee shall cause to be kept at the Corporate Trust Office, books for the registration and regis-

tration of transfer of the Trust Certificates and, upon presentation of the Trust Certificates for such purpose, the Trustee shall register any transfer as hereinabove provided, and under such reasonable regulations as it may prescribe.

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

(e) Each Trust Certificate delivered pursuant to any provision of this Agreement in exchange for, or upon the registration of transfer of the whole or any part, as the case may be, of one or more other Trust Certificates shall carry all the rights to principal and to interest accrued and unpaid and to accrue, which were carried by the whole or such part, as the case may be, of such one or more other Trust Certificates, and, notwithstanding anything contained in this Agreement, such Trust Certificate shall be so dated that neither gain nor loss in interest or principal shall result from such exchange, substitution or registration of transfer.

(f) The Trustee shall not be required to issue, transfer or exchange Trust Certificates for a period of ten days next preceding any Interest Payment Date.

Section 2.06. Replacement of Mutilated or Lost Trust Certificates. In case any Trust Certificate shall become mutilated or defaced or be lost, destroyed or stolen, then on the terms herein set forth, and not otherwise, the Trustee shall execute and deliver a new Trust Certificate of like tenor and date, and bearing such identifying number or designation as the Trustee may determine, in exchange and substitution for, and upon cancellation of, the mutilated or defaced Trust Certificate, or in lieu of and in substitution for the same if lost, destroyed or stolen. The Company shall execute its guaranty on any Trust Certificate so delivered. The applicant for a new Trust Certificate pursuant to this Section shall furnish to the Trustee and to the Company evidence to their satisfaction of the loss, destruction or theft of such Trust Certificate alleged to have been lost, destroyed or stolen and of the ownership and authenticity of such mutilated, defaced, lost, destroyed or stolen Certificate, and also shall furnish such security or indemnity as may be required by the Trustee and by the Company in their discretion (provided that no such security or indemnity shall be required from the Original Purchaser of the Trust Certificates), and shall pay all expenses and charges of such substitution or exchange. All Trust Certificates are held and owned, upon the express condition

that the foregoing provisions are exclusive in respect of the replacement of mutilated, defaced, lost, destroyed or stolen Trust Certificates and shall preclude any and all other rights and remedies, any law or statute now existing or hereafter enacted to the contrary notwithstanding.

ARTICLE THREE

Acquisition of Trust Equipment by Trustee;

Deposited Cash

Section 3.01. Acquisition of Equipment by Trustee. (a) Contemporaneously with the sale of Trust Certificates to the Original Purchaser, in the aggregate principal amount of \$7,500,000, on the Closing Date under, and as defined in, the Purchase Agreement, the Company shall sell, assign and transfer to the Trustee for the holders of the Trust Certificates, against payment to the Company of the proceeds of the sale of the Trust Certificates in accordance with Section 2.01, all of the Equipment described in Exhibit A hereto, all of which the Company represents and warrants was new Equipment when first put into service, was first put into service not earlier than the dates set forth below, has an aggregate Cost as set forth below and has an estimated useful life beyond September 1, 1993.

Bulkhead Flat Cars

aggregate Cost of not less  
than \$10,136,500.00

January 1, 1977

Covered Hopper Cars

aggregate Cost of not less  
than \$1,553,260.00

January 1, 1973

(b) In the event that (i) the Company shall deem it necessary or desirable to procure for the use of the Company, and to include in the trust hereby created, other new Equipment in lieu of any units of the Equipment specifically described in Exhibit A hereto prior to the acceptance of such Equipment by the Trustee, (ii) any unit of the Equipment described in Exhibit A hereto shall suffer a Casualty Occurrence, as defined in Section 4.08, before being accepted by the Trustee pursuant to this Section and Section 3.03, or (iii) it is necessary to include in the trust hereby created additional Equipment in order to utilize all of the Deposited Cash, the Company may, subject to the receipt by the Trustee of a Written Direction consent thereto, cause to be sold to the Trustee such other Equipment (first put into service not earlier than January 1, 1977), to be substituted under the trust. At the time of delivery of any Request pursuant to the first paragraph

of this Section, the Company shall, if other Equipment is to be conveyed to the Trustee in substitution for the Trust Equipment to be assigned or transferred by the Trustee, deliver to the Trustee:

(1) an Officer's Certificate stating (i) the Cost, as of the date of such Request, of the Trust Equipment so to be assigned or transferred by the Trustee and the date such Trust Equipment was first put into service (or that such Trust Equipment was first put into service not later than a specified date), (ii) the Cost, as of the date of such Request, of such substituted Equipment and the date such substituted Equipment was first put into service (or that such substituted Equipment was first put into service not earlier than a specified date), (iii) that each such unit so to be substituted is Equipment as herein defined and is marked in accordance with the provisions of Section 4.06 hereof, (iv) that each unit to be so substituted has an estimated useful life beyond September 1, 1993, and (v) that no default hereunder has occurred or is continuing;

(2) an Opinion of Counsel to the effect that (i) the Trustee is vested with title to such substituted Equipment free from all claims, liens, security interests and other encumbrances (except as permitted by Section 6.02 and except for this Agreement, the rights of the Company hereunder and any lease permitted by Section 4.09) and (ii) a proper supplement hereto in respect of each substituted unit of Equipment has been duly authorized, executed and delivered by the parties thereto and has been recorded with the Interstate Commerce Commission pursuant to the requirements of Section 20c of the Interstate Commerce Act; and

(3) copies of the leases of such substituted Trust Equipment.

Section 3.02. Payment of Deposited Cash. When and as any Equipment shall have been accepted by the Trustee pursuant to Sections 3.01 and 3.03, the Trustee shall pay, upon Request, the Deposited Cash to the Company.

Section 3.03. Supporting Papers. The Trustee shall not pay out any Deposited Cash against the delivery of the Trust Equipment unless and until all of the conditions set forth in the Purchase Agreement to the purchase

by the Original Purchaser of Trust Certificates on the Closing Date under, and as defined in, the Purchase Agreement shall have been satisfied, and it shall have received:

(1) a bill of sale covering each unit of Trust Equipment from the Owner to the Company which bill of sale shall specify each such unit of Trust Equipment described therein by number or numbers and shall contain a warranty or guaranty to the Company that the title of each such unit of Trust Equipment described therein is free from all claims, liens, security interests and other encumbrances (except as permitted by Section 6.02 and except for this Agreement and any lease permitted by Section 4.09);

(2) a bill of sale covering each such unit of Trust Equipment from the Company to the Trustee, which bill of sale shall specify each such unit of Trust Equipment described therein by number or numbers and shall contain a warranty or guaranty to the Trustee that the title of each such unit of Trust Equipment described therein is free from all claims, liens, security interests and other encumbrances (except as permitted by Section 6.02 and except for this Agreement and any lease permitted by Section 4.09) and the receipt of such bill of sale by the Trustee shall constitute acceptance by the Trustee hereunder of each such unit of Trust Equipment;

(3) an Officer's Certificate, which shall state (i) that each such unit of Trust Equipment is Equipment as herein defined and was not put into service prior to the date specified therein, (ii) that the Cost of each such unit of Trust Equipment is an amount therein specified or is not less than an amount therein specified, and (iii) that each such unit of Trust Equipment is subject to one of the leases described in Exhibit A hereto, as such Exhibit may, subject to approval thereof contained in a Written Direction, have been supplemented by the Company;

(4) an Opinion of Counsel for the Owner to the effect that such bill of sale is valid and effective, either alone or in connection with any other instrument referred to in and accompanying such opinion, to vest in the Company title to each such unit of Trust Equipment free from all claims, liens, security interests

and other encumbrances (except as permitted by Section 6.02 and except for this Agreement and any lease permitted by Section 4.09); and

(5) an opinion from Messrs. Carroll, Connelly, Hartigan & Hillery, counsel for the Company, to the effects that (i) such bill of sale is valid and effective, either alone or in connection with any other instrument referred to in and accompanying such opinion, to vest in the Trustee title to each such unit of Trust Equipment free from all claims, liens, security interests and other encumbrances (except as permitted by Section 6.02 and except for this Agreement and any lease permitted by Section 4.09); (ii) this Agreement has been duly authorized, executed and delivered by the Company, and constitutes, insofar as the Company is concerned, legal, valid and binding obligations; (iii) the Trustee is vested with all the right, title and interest of the Company in and to all leases then in effect and covering the Trust Equipment; and (iv) this Agreement has been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act; and (v) no further filing, recordation or deposit is necessary (or will be necessary in the future, except as stated in such opinion) for the protection of the rights of the Trustee in and to such unit of Equipment or this Agreement in any state of the United States of America or the District of Columbia.

#### ARTICLE FOUR

##### Lease of Trust Equipment to the Company

Section 4.01. Lease of Trust Equipment. The Trust does hereby let and lease to the Company all the Trust Equipment for a period ending September 1, 1993.

Section 4.02. Equipment Automatically Subjected. As and when any Equipment shall from time to time be accepted hereunder by the Trustee, the same shall, ipso facto and without further instrument of lease or transfer, become subject to all the terms and provisions hereof.

Section 4.03. Additional and Substituted Equipment Subject Hereto. In the event that the Company shall, as provided in Section 3.01, elect to sell to the Trustee

other Equipment in addition to or in substitution for any of the Equipment herein specifically described or subjected hereto, such other Equipment shall be included as part of the Trust Equipment by supplement hereto to be executed by the Trustee and the Company, and to be recorded with the Interstate Commerce Commission pursuant to the requirements of Section 20c of the Interstate Commerce Act. Such Equipment shall be subject to all the terms and conditions hereof in all respects as though it had originally been part of the Equipment herein specifically described.

Section 4.04. Rental Payments. The Company hereby accepts the lease of all the Trust Equipment; and the Company covenants and agrees to pay to the Trustee at the Corporate Trust Office (or, in the case of taxes, to the proper taxing authority), in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, rental hereunder which shall be sufficient in time and in immediately available funds to be adequate to pay and discharge the following items, when and as the same shall become due and payable (whether or not any of such items shall become due and payable prior to the acceptance of and lease to the Company of any unit of the Trust Equipment):

- (1) (a) the necessary and reasonable expenses of the trust hereby created, including compensation and expenses provided for herein, and (b) an amount equal to any expenses incurred or loss of principal (including interest accrued thereupon at the time of purchase) in connection with any purchase, sale or redemption by the Trustee of Investments;
- (2) any and all taxes, assessments and governmental charges upon or on account of the income or property of the trust, or upon or on account of this Agreement, which the Trustee as such shall be required to pay;
- (3) (a) the amounts of the interest payable on the Trust Certificates, when and as the same shall become payable, and (b) interest at the rate of 10 1/2% per annum from the due date, upon the amount of any installments of rental payable under this and the following subparagraph which shall not be paid when due, to the extent legally enforceable; and
- (4) the installments of principal of all the Trust Certificates when and as the same shall become

payable, whether upon the date of maturity thereof or by declaration or otherwise.

Nothing contained herein or in the Trust Certificates shall be deemed to impose on the Trustee or on the Company [except as provided in Section 4.04(2)] any obligation to pay to the registered holder of any Trust Certificate any tax, assessment or governmental charge required by any present or future law of the United States of America, or of any state, county, municipality or other taxing authority thereof, to be paid in behalf of, or withheld from the amount payable to, the holder of any Trust Certificate. The Company shall not be required to pay any tax, assessment or governmental charge so long as it shall in good faith and by appropriate legal proceedings contest the validity thereof, provided that, in the judgment of the Trustee and as set forth in an Opinion of Counsel which shall have been furnished to the Trustee by the Company, the rights or interests of the Trustee or of the holders of the Trust Certificates will not be materially endangered thereby.

Section 4.05. Termination of Trust and Lease.

After all payments due or to become due from the Company hereunder shall have been completed and fully made to and received by the Trustee (1) such payments shall be deemed to represent payment of the full purchase price for the Company's purchase at such time of the Trust Equipment from the Trustee, (2) any moneys remaining in the hands of the Trustee after providing for all outstanding Trust Certificates and after paying the expenses of the Trustee, including its reasonable compensation, shall be paid to the Company, (3) title to all the Trust Equipment shall vest in the Company and (4) the Trustee shall execute for record in public offices, at the expense of the Company, such instrument or instruments in writing as reasonably shall be requested by the Company in order to make clear upon public records the Company's title to all the Trust Equipment under the laws of any jurisdiction; provided, however, that until that time title to the Trust Equipment shall not pass to or vest in the Company, but title to and ownership of all the Trust Equipment shall be and remain in the Trustee, notwithstanding the delivery of the Trust Equipment to and the possession and use thereof by the Company pursuant to the terms of this Agreement.

Section 4.06. Marking of Trust Equipment.

The Company agrees that it will immediately at its own cost and expense prepare and deliver to its lessees the appro-

private form of stencil or plate for marking purposes and will forthwith exercise its rights and powers under any leases to direct such lessees thereunder to affix a plate or otherwise mark plainly, distinctly, permanently and conspicuously on each side of such unit of the Trust Equipment, in letters not less than one inch in height the following legend:

"Title To This Car Subject To Documents Recorded Under Section 20c Of Interstate Commerce Act".

Such marks shall be such as to be readily visible. The Company will also promptly so mark each unit of the Trust Equipment not subject to a lease. In case, prior to the termination of the lease provided for in this Article Four, any of such marks shall at any time be removed, defaced or destroyed, the Company shall cause the same to be restored or replaced. The Company shall not change, or permit to be changed, the numbers of any of the Trust Equipment at any time covered hereby (or any numbers which may have been substituted as herein provided) except in accordance with a statement of new numbers to be substituted therefor which previously shall have been filed with the Trustee and which shall be filed and recorded by the Company in like manner as this Agreement.

Section 4.07. Identification of Leasehold Interest. The Trust Equipment may be lettered in an appropriate manner for convenience of identification of the leasehold interest of the Company therein, and may also be lettered, in case of any leases permitted by Section 4.09, in such manner as may be appropriate for convenience of identification of such leasehold interest therein; but the Company, during the continuance of the lease provided for herein, will not allow the name of any person, firm, association or corporation to be placed on any of the Trust Equipment as a designation which might reasonably be interpreted as a claim of ownership thereof by the Company or by any person, firm, association or corporation other than the Trustee.

Section 4.08. Maintenance of Trust Equipment; Casualty Occurrences. (a) The Company agrees that it will maintain and keep or cause others to maintain and keep all the Trust Equipment in good order and proper repair at no cost or expense to the Trustee, unless and until it becomes worn out, unsuitable for use, lost, destroyed or damaged beyond economical repair, condemned, seized or expropriated (a "Casualty Occurrence"). Whenever any unit of the Trust

Equipment shall suffer a Casualty Occurrence, the Company shall, within 10 days after actual knowledge of such Casualty Occurrence deliver to the Trustee an Officer's Certificate describing such Trust Equipment. Within 30 days after actual knowledge of such Casualty Occurrence, the Company shall deposit with the Trustee an amount in cash equal to the percent of the Cost of the unit of Trust Equipment which was the subject of the Casualty Occurrence, as determined by the Schedule of Casualty Value set forth in Exhibit C. The rights and remedies of the Trustee to enforce or to recover any of the rental payments shall not be affected by reason of such Casualty Occurrence. Cash deposited with the Trustee pursuant to this Section shall be held and applied to prepay instalments of principal pro rata on each Trust Certificate in the inverse order of the maturity thereof. The term "unsuitable for use" shall include any condition in which Trust Equipment is no longer usable for the purpose or purposes for which the same was designed (or an alternate purpose or alternate purposes provided that no material impairment in value shall arise therefrom) whether by virtue of its physical condition or of the effect of any applicable law, rule, regulation, or order. The Trustee, by its agents, shall have the right once in each calendar year, but shall be under no duty, to inspect the Trust Equipment at the then existing locations thereof.

(b) The Company agrees to furnish to the Trustee, on or before May 1 in each year commencing with 1979, an Officer's Certificate dated as of the preceding December 31, (1) stating the amount, description and numbers of all Trust Equipment that may have suffered or did suffer a Casualty Occurrence since the date of that last preceding statement (or the date of this Agreement in the case of the first statement), (2) identifying the units of Trust Equipment then being leased by the Company as permitted by Section 4.09 (including the name of the lessee, the term of the lease and the date of the agreement pursuant to which such Trust Equipment is leased) and specifying which units of Equipment are not then being leased by the Company (3) stating that in the case of all the Trust Equipment repainted or repaired since the date of the last preceding statement (or the date of this Agreement in the case of the first statement) the plates or marks required by Section 4.06 have been preserved, or that such Trust Equipment when repainted or repaired has been again plated or marked as required thereby, and (4) certifying that the Company is not in default under any provision of this Agreement or speci-

fyng all such defaults and the action being taken by the Company to remedy the same.

Section 4.09. Possession of Trust Equipment; Sub-leases. (a) Except as provided in this Section, the Company will not assign or transfer its rights hereunder, or transfer or lease the Trust Equipment or any part thereof or assign, pledge, transfer or otherwise dispose of any of its rights under any leases permitted hereunder, without the written consent of the Trustee and the Original Purchaser first had and obtained; and the Company shall not, without such written consent, except as herein provided, part with the possession of, or suffer or allow to pass out of its possession or control, any of the Trust Equipment. An assignment or transfer to a solvent corporation which shall acquire all or substantially all of the property of the Company and which, by execution of an appropriate instrument satisfactory to the Trustee and the Original Purchaser, shall assume and agree to perform each and all of the obligations and covenants of the Company hereunder and under the guaranty endorsed on the Trust Certificates shall not be deemed a breach of this covenant.

(b) So long as the Company shall not be in default under this Agreement, the Company shall be entitled to the possession of the Trust Equipment and, subject to the provisions of paragraph (e) of this Section 4.09, to maintain, amend, terminate and enter into leases of the Trust Equipment and to permit its use by, one or more lessees or users in the United States of America (or any state thereof or the District of Columbia) provided, however, that if the lessee is a railroad or shipper having its principal place of business in Canada or intends to base the Trust Equipment to be leased thereunder in Canada, the lease shall not permit the use of such Trust Equipment (other than occasional and intermittent use) in any Province of Canada where the Company is unable to perfect through filing, recordation, registration or other means satisfactory to the Original Purchaser adequate protection of the Trustee's title to such equipment and the Trustee's first lien and security interest in such lease pursuant to the Assignment thereof. Any lease by the Company entered into pursuant to this Section 4.09 may provide (and such provision shall be binding upon the Trustee) that the lessee so long as it shall not be in default under such lease, shall be entitled to the possession of the Trust Equipment included in such lease and the use thereof, and, subject to the provisions of Sec-

tion 4.06, may provide for lettering or marking upon such Trust Equipment for convenience of identification of the leasehold interest of such lessee therein, subject to the provisions of Section 4.07.

(c) As security for the payment and performance of the obligations of the Company hereunder, the Company hereby grants, pledges and assigns unto the Trustee all of its rights, title and interest in and to all rentals, moneys and proceeds payable to or receivable by the Company with respect to any lease (including the leases referred to in Exhibit B hereto) of any unit of the Trust Equipment existing as of the date hereof or entered into in the future (the "Assignment"); provided, however, that (i) so long as no Event of Default shall have occurred and be continuing the Company shall be entitled to collect and receive all such rentals, moneys and proceeds, and (ii) during the continuance of any Event of Default, all such rentals, moneys and proceeds shall be paid to the Trustee and applied to the payment or prepayment of the principal of, and to the payment of interest due and owing on, the Trust Certificates, all as may be specified in a Written Direction or, in the absence thereof, as may be determined by the Trustee.

(d) In the event that either of the following shall occur with respect to any leases permitted hereunder, any Existing Lease, or any lease of Equipment substituted therefor:

(1) the occurrence of any event of default under such Existing Lease or lease, or

(2) the termination of any such Existing Lease or lease, whether by the terms thereof, by the failure of the lessee thereof to exercise any option to extend the term or terms thereof, by the exercise by the lessee thereunder of any purchase option thereunder, by action of law, as a consequence of any default or event of default thereunder, or for any other reason,

prior to the payment in full of the Trust Certificates, the Company shall within 20 days after actual knowledge of the occurrence of such event of default or such termination deliver to the Trustee and to the Original Purchaser an Officer's Certificate giving notice thereof and stating the Equipment subject to such lease (with specific identification by manufacturer, type, A.A.R. mechanical designation

code, and car number), the Cost of the Equipment, the lessee under such lease, and the term of and rate of rental payable under such lease. Before executing any new lease of the Trust Equipment subject to such lease, the Company shall furnish to the Trustee and the Original Purchaser an Officer's Certificate setting forth the identity of the proposed new lessee, and the term of and rate of rental payable under such proposed new lease. Within 30 days after the furnishing of such Officer's Certificate, the Original Purchaser by a Written Direction shall indicate its approval or disapproval of such proposed new lessee and the terms of such proposed new lease (it being understood that such approval shall not be withheld unreasonably). If the Company has not entered into a new lease to said Trust Equipment, on terms and with a lessee approved by the Original Purchaser, within 120 days after the effective date of termination of any such lease, the Company shall give further notice of that fact to the Original Purchaser and Thrall, and within 5 days thereafter, the Company shall enter into a lease of such Trust Equipment to Thrall, substantially in the form then customarily in use by the Company, at a rental rate at least equal to the rental theretofore payable by the lessee under the terminated lease; provided, that any such lease to Thrall shall be subject to cancellation by the Company on 5 days' notice in the event that the Company thereafter procures a substitute lessee for such Trust Equipment which is acceptable to the Original Purchaser. In the event that the Company shall fail to submit, or the Original Purchaser shall fail to approve, a substitute lease for any such Trust Equipment, and if the Company shall so request and the Original Purchaser consents thereto in writing, then upon the Original Purchaser's Written Direction the Company and Thrall shall have the right to prepay the Equipment Trust Certificates, without premium for such prepayment, in an amount equal to the Cost of such Trust Equipment, by depositing said amount, with interest to and including the date of deposit, with the Trustee within 90 days after such Written Direction. Cash deposited with the Trustee pursuant to this Section shall be held and applied to prepay installments of principal pro rata on each Trust Certificate in the inverse order of the maturity thereof.

(e) Notwithstanding anything to the contrary contained herein, the Company will not modify, terminate or replace any lease covering any of the Trust Equipment without the prior written consent of the Original Purchaser if such modification, termination, or replacement would impair the security provided hereunder by the Assignment

to the Trustee of the lease in respect to the Trust Equipment hereunder. The Company will deliver to the Trustee and the Original Purchaser copies of all leases assigned hereunder and copies of all modifications thereof.

Section 4.10. Indemnity. The Company covenants and agrees to indemnify the Trustee against any and all claims, suits, losses, penalties, demands, causes of action and judgments of any nature whatsoever, including all costs and expenses (including reasonable attorneys' fees and expenses) arising out of or connected with the ownership, lease or use of any of the Trust Equipment and particularly against any and all claims or loss arising out of the use of any patented inventions in and about the Trust Equipment, and to comply in all respects with the laws of the United States of America, and of all the states and other jurisdictions in which the Trust Equipment, or any unit thereof, may be operated, and with all lawful acts, rules, regulations and orders of any commissions, boards and other legislative, executive, administrative or judicial bodies or officers having power to regulate or supervise any of the Trust Equipment, including without limitation all lawful acts, rules, regulations and orders of any body having competent jurisdiction relating to automatic coupler devices or attachments, air brakes or other appliances; provided, however, that the Company may in good faith contest the validity of any such law, act, rule, regulation or order, or the application thereof to the Trust Equipment or any part thereof, in any reasonable manner which will not in the judgment of the Trustee materially endanger the rights or interests of the Trustee or of the holders of the Trust Certificates. The Company shall not be relieved from any of its obligations hereunder by reason of the assertion or enforcement of any such claims or the commencement or prosecution of any litigation in respect thereof.

## ARTICLE FIVE

### Events Of Default And Remedies

Section 5.01. Events of Default. (a) The Company covenants and agrees that in case:

(1) the Company shall default in the payment of any part of the rental payable hereunder when the same shall be due and payable, or

(2) the Company shall enter into any lease or car contract prohibited by Section 4.09 or make or

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

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

(4) the lease provided for herein shall be terminated by operation of law, or

(5) any proceedings shall be commenced by or against the Company under any federal or state law relating to bankruptcy or insolvency, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions, or appointing a receiver or decreeing or ordering the winding up or liquidation of the affairs of the Company or similar proceedings for any relief which includes or might result in, any material modification of the obligations of the Company hereunder, under the guaranty endorsed on the Trust Certificates and under any instrument made in connection with the purchase of the Trust Certificates by the Original Purchaser (unless such proceedings shall have been discharged, dismissed, stayed or otherwise rendered ineffective within 60 days from the date of the filing thereof [but then only so long as such stay shall continue in force or such ineffectiveness shall continue]) and all the obligations of the Company hereunder, as

the case may be, under the guaranty endorsed on the Trust Certificates and under any instrument made in connection with the purchase of the Trust Certificates by the Original Purchaser, shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Company or for its property in connection with such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier, or

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

(7) default shall be made by the Company in the performance or observance of any of the covenants, agreements or conditions on its part in the Purchase Agreement dated as of August 17, 1978 between the Company and the Original Purchaser; or there shall be any material breach of any of the representations and warranties of the Company contained in said Purchase Agreement, and such default or breach shall continue for a period of 30 days after written notice to the Company by the Trustee or to the Company and the Trustee by the Original Purchaser or the holder or holders of 10% or more in aggregate principal amount of the Trust Certificates then outstanding, or

(8) default shall be made by the Company or Thrall in the performance or observance of any of the covenants, agreements or conditions under any Debt obligations, or

(9) all the outstanding capital stock of the Company shall not be owned and held, legally and beneficially, by Thrall, or any corporation that succeeds to all or substantially all the business of Thrall,

then, in any such case in this Agreement (sometimes called an Event of Default), the Trustee in its discretion may, and upon the Written Direction of the Original Purchaser or the holders of a majority in unpaid principal amount of the then outstanding Trust Certificates shall, by notice in writing delivered to the Company, declare to be due and payable forthwith the entire amount of the rentals (but not including rentals required for the payment of interest accruing after the date of such declaration) payable by the Company as set forth in Section 4.04 and not theretofore paid. Thereupon the entire amount of such rentals shall forthwith become and shall be due and payable immediately without further demand, together with interest at the rate of 10 1/2% per annum, to the extent legally enforceable, on any portion thereof overdue; and the Trustee shall be entitled to judgment for the total amount so becoming payable by the Company, together with interest thereon, at the rate of 10 1/2% per annum, to the extent legally enforceable, and to collect such judgment out of any property of the Company wherever situated.

(b) In case one or more Events of Default shall happen, the Trustee in its discretion also may, and upon the Written Direction of the Original Purchaser or the holders of a majority in unpaid principal amount of the then outstanding Trust Certificates shall, by notice in writing delivered to the Company, declare the unpaid 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.

(c) In case the Company shall fail to pay any installment of rental payable pursuant to Section 4.04(3) or (4) when and as the same shall have become due and payable hereunder, and such default shall have continued for a period of 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.

(d) In case there shall be pending proceedings for the bankruptcy or for the reorganization of the Company under the Bankruptcy Act or any other applicable law, or in case a receiver or trustee shall have been appointed for the property of the Company, or in case of any other judicial proceedings relative to the Company or to the creditors or property of the Company, the Trustee, irrespective of whether the rental payments hereunder or the unpaid 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 this Section, shall be entitled and empowered, by intervention in such proceedings or otherwise, to file and prove a claim or claims for the entire amount of the rentals (but not including rentals required for the payment of interest accruing after the date of such payment of all amounts due), 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 willful 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 willful misconduct.

(e) All rights of action and 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 provisions of this Agreement to which the Trustee shall be a party) the Trustee shall be held to represent all the holders of the Trust Certificates, and it shall not be necessary to make any holders of the Trust Certificates parties to such proceedings.

Section 5.02. Remedies. (a) In case of the happening of any Event of Default, the Trustee may, by its agents, enter upon the premises of the Company or of any corporation which, directly or indirectly, controls or is controlled by, or is under common control with the Company, or of any lessee (or other person having acquired the use of the Trust Equipment) where any of the Trust Equipment may be and take possession of all or any part of the Trust Equipment and withdraw the same from said premises, retaining all payments which up to that time may have been made on account of rental for the Trust Equipment and otherwise, and shall be entitled to collect, receive and retain all unpaid mileage or other charges of any kind earned by the Trust Equipment or any part thereof, and may lease or otherwise contract for the use of the Trust Equipment or any part thereof; or the Trustee may with or without retaking possession (but only after declaring due and payable the entire amount of rentals payable by the Company and the unpaid principal of all the then outstanding Trust Certificates, as provided in Section 5.01 hereof) sell the Trust Equipment or any part thereof, free from any and all claims of the Company at law or in equity, in one lot and as an entirety or in separate lots, at public or private sale, for cash or upon credit, in its discretion, and may proceed otherwise to enforce its rights and the rights of the holders of then outstanding Trust Certificates, all subject to any mandatory requirements of law applicable thereto. Upon any such sale, the Trustee itself may bid for the property offered for sale or any part thereof. Any such sale may be held or conducted at such place and at such time as the Trustee may specify, or as may be required by law, and without gathering at the place of sale the Trust Equipment to be sold, and in general in such manner as the Trustee may determine, but so that the Company may and shall have a reasonable opportunity to bid at any such sale. Upon such taking possession or withdrawal or lease or sale of the Trust Equipment, the Company shall cease to have any rights or remedies in respect of the Trust Equipment here-

under, and all such rights and remedies shall be deemed thenceforth to have been waived and surrendered by the Company, and no payments theretofore made by the Company for the rent or use of the Trust Equipment or any of it shall give to the Company any legal or equitable interest or title in or to the Trust Equipment or any of it or any cause or right of action at law or in equity in respect of the Trust Equipment against the Trustee or the holders of interests hereunder. No such taking of possession, withdrawal, lease or sale of the Trust Equipment by the Trustee shall be a bar to the recovery by the Trustee from the Company of rentals then or thereafter due and payable, or of principal and interest in respect of the Trust Certificates, and the Company shall be and remain liable for the same until such sums have been realized as, with the proceeds of the lease or sale of the Trust Equipment, shall be sufficient for the discharge and payment in full of all the obligations of the Company under this Agreement.

(b) In case the Trustee shall demand possession of the Equipment pursuant to this Section 5.02 and shall designate a reasonable point or points for the delivery of the Trust Equipment to the Trustee, the Company shall, at its own expense and risk:

(i) forthwith and in the usual manner cause the Trust Equipment to be delivered to the Trustee at the reasonable point of delivery designated by the Trustee; and

(ii) if the delivery point is upon storage tracks of the Company, permit the Trustee to store the Trust Equipment on such tracks at the risk of the Company without charge for insurance, rent or storage until the Trust Equipment has been sold, leased or otherwise disposed of by the Trustee.

The Trustee may keep such Trust Equipment, at the expense of the Company, on any lines of a railroad or premises approved by the Original Purchaser until the Trustee shall have leased, sold or otherwise disposed of the same. During any storage period, the Company will, at its own cost and expense, insure, maintain and keep each such unit of Trust Equipment in good order and repair and will permit the inspection of the Trust Equipment by the Trustee, the Trustee's representatives and prospective purchasers, lessees and users. This agreement to deliver the Trust Equipment and furnish facilities as hereinbefore provided is of the es-

sence of the agreement between the parties, and, upon application to any court having jurisdiction, the Trustee shall be entitled to a decree against the Company requiring specific performance hereof. The Company hereby expressly waives any and all claims against the Trustee and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Trust Equipment in any reasonable manner.

Section 5.03. Application of Proceeds. If the Trustee shall exercise any of the powers conferred upon it by Sections 5.01 and 5.02, all payments made by the Company to the Trustee, and the proceeds of any judgment collected from the Company by the Trustee, and the proceeds of every sale or lease by the Trustee of any of the Trust Equipment, together with any other sums which may then be held by the Trustee under any of the provisions hereof (other than sums held in trust for the payment of specific Trust Certificates or a part thereof, or interest thereon) shall be applied by the Trustee to the payment, in the following order of priority: (1) of all proper charges, expenses or advances made or incurred by the Trustee in accordance with the provisions of this Agreement and (2) of the interest then due, with interest on overdue interest at the rate of 10 1/2% per annum, to the extent legally enforceable, and (3) of the principal of all the outstanding Trust Certificates, with interest thereon at the rate of 10 1/2% per annum, to the extent legally enforceable, from the last preceding Interest Payment 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 interest, provided that each holder of Trust Certificates shall be entitled to allocate such proceeds between principal and interest as such holder may elect. After all such payments in full shall have been made, the title to any of the Trust Equipment remaining unsold shall be conveyed, without warranties of any kind, 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 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 5.04. Waivers of Default. (a) Prior to the declaration of the acceleration of the maturity of the rentals and of the maturity of all the Trust Certificates as provided in Section 5.01, the holders of a majority in aggregate unpaid principal amount of the Trust Certificates at the time outstanding may on behalf of the holders of all the Trust Certificates waive by an instrument in writing delivered to the Trustee any past or existing Event of Default and its consequences, except a default in the payment of any instalment of rental payable pursuant to Section 4.04(3) or (4), but no such waiver shall extend to or affect any subsequent default or impair any right consequent thereon.

(b) If at any time after the principal of all the Trust Certificates shall have been declared and become due and payable or if at any time after the entire amount of rentals shall have been declared and become due and payable, all as provided in Section 5.01, but before September 1, 1993, all arrears of rent (with interest at the rate of 10 1/2% per annum upon any overdue instalments, to the extent legally enforceable), the expenses and reasonable compensation of the Trustee, together with all expenses of the trust occasioned by the Company's default, and all other sums which shall have become due and payable by the Company hereunder (other than the principal of Trust Certificates, and any other rental instalments, the maturity of which shall at the time have been accelerated) shall be paid by the Company before any sale or lease by the Trustee of any of the Trust Equipment, and every other default shall be made good or secured to the satisfaction of the Trustee, or provision deemed by the Trustee to be adequate shall be made therefor, then, and in every such case, the Trustee, if so requested by the holders of a majority in unpaid principal amount of the Trust Certificates then outstanding, shall by written notice to the Company waive the default by reason of which there shall have been such declaration or declarations and the consequences of such default, but no such waiver shall extend to or affect any subsequent default or impair any right consequent thereon.

Section 5.05. Obligations of Company Not Affected by Remedies. (a) 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 Company under the guaranty endorsed on the Trust Certificates.

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

Section 5.06. Trustee to Give Notice of Default. The Trustee shall give to the holders of the Trust Certificates notice of each Event of Default hereunder actually known to the Trustee within 30 days after the occurrence thereof unless remedied or cured before the giving of such notice.

Section 5.07. Control by Holders of Trust Certificates. The registered 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 (i) if the Trustee shall be advised by counsel that the action so directed may not lawfully be taken or (ii) if the Trustee shall be advised by counsel that the action so directed would involve it in personal liability. The Trustee may take any other action deemed proper by the Trustee which is not inconsistent with any such direction given hereunder.

Section 5.08. Unconditional Right of Holders of Trust Certificates to Sue for Principal and Interest. Notwithstanding any other provisions in this Agreement, the right of any holder of any Trust Certificate to receive payment of the principal of and interest 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 (whether against the Trustee under such Trust Certificate, or against Company under its guaranty endorsed thereon), shall not be impaired or affected without the consent of such holder, except 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 applicable law, result in the surrender, impairment, waiver or loss of the title reserved under this Agreement upon any property subject hereto.

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

## ARTICLE SIX

### Additional Covenants and Agreements by the Company

Section 6.01. Guaranty of Company. The Company unconditionally covenants, agrees and guarantees that the holder of each of the Trust Certificates shall receive the principal amount thereof, 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, when and as the same shall become due and payable, in accordance with the provisions thereof or of this Agreement (and, if not so paid, with interest thereon until paid at the rate of 10 1/2% per annum, to the extent legally enforceable), and shall receive interest thereon in like money at the rate specified therein, at the times and place and otherwise as expressed in the Trust Certificates or this Agreement (and, if not so paid, with interest thereon until paid at the rate of 10 1/2% per annum, to the extent legally enforceable); and the Company agrees to endorse upon each of the Trust Certificates, at or before the issuance and delivery thereof by the Trustee, its guaranty of the prompt payment of the principal thereof and of the interest thereon, in substantially the form hereinbefore set forth. Said guaranty so endorsed shall be signed in the name and on behalf of the Company by the manual or facsimile of its President or a Vice President. In case any officer of the Company whose signature shall appear on said guaranty shall cease to be such officer before the Trust Certificates shall have been issued and delivered by the Trustee, or shall

not have been acting in such capacity on the date of the Trust Certificate, such guaranty shall nevertheless be as effective and binding upon the Company as though the person who signed said guaranty had not ceased to be or had then been such officer. No waiver by the Trustee or the holders of any of the Trust Certificates of any of their rights hereunder or under the Trust Certificates and no action by the Trustee or the holders of any of the Trust Certificates to enforce any of their rights or failure to take, or delay in taking, any such action shall affect the obligations of the Company under said guaranty of the Trust Certificates.

Section 6.02. Discharge of Liens. The Company covenants and agrees that it will pay and discharge, or cause to be paid and discharged, or make adequate provision for the satisfaction or discharge of, any debt, tax, charge, assessment, obligation or claim which if unpaid might become a lien, charge, security interest or other encumbrance upon or against any of the Trust Equipment; but this provision shall not require the payment of any such debt, tax, charge, assessment, obligation or claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings, provided that such contest will not materially endanger the rights or interests of the Trustee or of the holders of the Trust Certificates and the Company shall have furnished the Trustee with an Opinion of Counsel to such effect. If the Company does not forthwith pay and discharge, or cause to be paid and discharged, or make adequate provisions for the satisfaction or discharge of, any such debt, tax, charge, assessment, obligation or claim as required by this Section, the Trustee may, but shall not be obligated to, pay and discharge the same and any amount so paid shall be secured by and under this Agreement until reimbursed by the Company.

Section 6.03. Recording; Payment of Expenses. The Company will, promptly after the execution and delivery of this Agreement and each Existing Lease and any lease of any of the Trust Equipment, supplement or amendment hereto or thereto, respectively, cause the same to be duly filed, recorded or deposited with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act, provided, the Company covenants and agrees that, if the lessee under any Existing Lease or lease of Trust Equipment and any Assignments thereof is a railroad or shipper having its principal place of business in Canada or intends to base or use the cars in Canada, it will cause each such

lease and Assignment to be duly filed, recorded or deposited in the office of the Registrar General of Canada, if permitted, and otherwise in the appropriate office in every Province and Territory of Canada, provided further, that the term use in the next preceding provision means other than occasional and intermittent use. The Company will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register and record and will refile, reregister and rerecord any and all further instruments required by law (including all applicable laws of Canada and any other jurisdiction) or reasonably requested by the Trustee for the purpose of proper protection of the security interests of the Trustee in and to the Trust Equipment and the Assignment hereunder, as additional security, of the interests of the Company in and to the leases of the Trust Equipment and the rights of the holders of the Trust Certificates and of fully carrying out and effectuating this Agreement and the intent hereof. Promptly after the execution and delivery of this Agreement and of each supplement or amendment hereto, the Company will furnish to the Trustee and the Original Purchaser an Opinion of Counsel stating that, in the opinion of such counsel, such document or financing statement relating to such document has been properly deposited, filed, registered and recorded and redeposited, refiled, reregistered and rerecorded, if necessary, so as effectively to protect the security interests of the Trustee in and to the Trust Equipment and the Assignment hereunder, as additional security, of the interests of the Company in and to the leases of the Trust Equipment described in Exhibit B hereto, as supplemented and its rights and the rights of the holders of the Trust Certificates hereunder and reciting the details of such action.

Section 6.04. Further Assurances. The Company covenants and agrees from time to time to do all such acts and execute all such instruments of further assurance as it shall be reasonably requested by the Trustee to do or execute for the purpose of fully carrying out and effectuating this Agreement and the intent hereof.

Section 6.05. Merger or Consolidation. The Company covenants and agrees that it shall not merge or consolidate with another corporation unless the survivor of such merger or consolidation 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 Company, shall assume all the obligations and liabilities of the Company hereunder and as guarantor of the Trust Certificates.

Section 6.06. Insurance. The Company covenants and agrees that, so long as any of the Trust Certificates are outstanding, it will, at its own expense, cause to be carried and maintained public liability insurance in amounts and against risks customarily insured against by the Company with respect to railroad equipment owned by it. The Company will forthwith give notice to the Trustee of the cancellation of any such insurance.

Section 6.07. Books and Records; Inspection of Property. The Company covenants that it will keep accurate corporate books and financial records, and that so long as any Trust Certificate shall be outstanding, it will permit any person designated by the Trustee in writing, at the Trustee's expense, to visit and inspect the Trust Equipment, all at such reasonable times and as often as the Trustee may reasonably request.

Section 6.08. Notice of Cross-Default Provisions. The Company covenants and agrees that in the event that it shall execute any lease, equipment trust agreement, indenture or other security agreement or any other secured obligation for borrowed money or instrument relating thereto under which the Company is an obligor or guarantor, or any amendment thereto, containing a Cross-Default Provision similar to the type in Section 5.01(8), it will give prompt written notice thereof to the Trustee and the Original Purchaser which notice shall include a copy of the instrument in which such provision is contained.

## ARTICLE SEVEN

### Concerning the Holders of Trust Certificates

Section 7.01. Evidence of Action Taken by Holders of Trust Certificates. Whenever in this Agreement it is provided that the holders of a specified percentage in aggregate unpaid principal amount of the Trust Certificates may take any action (including the making of any demand or request, the giving of any notice, consent or waiver or the taking of any other action), the fact that at the time of taking any such action the holders of such specified percentage have joined therein may be evidenced by any instrument or any number of instruments of similar tenor executed by holders of Trust Certificates in person or by agent or proxy appointed in writing.

Section 7.02. Proof of Execution of Instruments and of Holding of Trust Certificates. Proof of the execution of any instrument by a holder of Trust Certificates

or his agent or proxy and proof of the holding by any person of any of the Trust Certificates shall be sufficient if made in the following manner:

(a) 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. Where such execution is by or on behalf of any legal entity other than an individual, such certificate or affidavit shall also constitute proof of the authority of the person executing the same.

(b) The ownership of Certificates may be proved by the register of such Trust Certificates or by a certificate of the registrar thereof.

The Trustee may require such additional proof of any matter referred to in this Section 7.02 as it shall deem necessary.

Section 7.03. Trust Certificates Owned by Company. In determining whether the holders of the requisite unpaid 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 or by any corporation which, directly or indirectly, controls or is controlled by, or is under common control with the Company or any such other obligor 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 are actually known to the Trustee to be so owned shall be disregarded.

Section 7.04. Right of Revocation of Action Taken. At any time prior to (but not later than) the evidencing to the Trustee, as provided in Section 7.01, of the taking of any action by the holders of the percentage in aggregate unpaid principal amount of the Trust Certificates specified in this Agreement in connection with such action, any holder of a Trust Certificate the serial number of which is shown by the evidence to be included in the Trust Certificates the holders of which have consented to such action may,

by filing written notice with the Trustee at its Corporate Trust Office and upon proof of holding as provided in Section 7.02, revoke such action in so far as concerns such Trust Certificate. Except as aforesaid any such action taken by the holder of any Trust Certificate shall be conclusive and binding upon such holder and upon all further holders and owners of such Trust Certificate and of any Trust Certificate issued in exchange or substitution therefor, irrespective of whether or not any notation in regard thereto is made upon such Trust Certificate. Any action taken by the holders of the percentage in aggregate unpaid principal amount of the Trust Certificates specified in this Agreement in connection with such action shall be conclusive and binding upon the Company and the holders of all the Trust Certificates subject to the provisions of Section 5.07.

## ARTICLE EIGHT

### The Trustee

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

Section 8.02. Duties and Responsibilities of the Trustee. (a) 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. The Trustee shall not be deemed to have knowledge of any default or Event of Default under this Agreement prior to the time it shall have obtained actual knowledge thereof.

(b) 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 willful misconduct, except that

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

(i) the duties and obligations of the Trustee shall be determined solely by the express provisions of this Agreement, and the Trustee shall not be liable except for the performance

of such duties and obligations as are specifically set forth in this Agreement, and no implied covenants or obligations shall be read into this Agreement against the Trustee; and

(ii) 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;

(2) 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; provided, however, that the foregoing provisions of this subparagraph (b) shall not excuse the Trustee from liability for its action or inaction which was contrary to the express provisions of this Agreement;

(3) the Trustee shall not be liable with respect to any action taken, suffered 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;

(4) 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;

(5) 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,

suffered or omitted by it hereunder in good faith and in accordance with such Opinion of Counsel; and

(6) 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.

(c) None of the provisions contained in this Agreement shall require the Trustee to expend or risk its own funds or otherwise incur personal financial liability in the performance of any of its duties or in the exercise of any of its rights or powers, if there is reasonable ground for believing that the repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it. Whether or not therein expressly so provided, every provision of this Agreement relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section.

Section 8.03. Application of Rentals. The Trustee covenants and agrees to apply the rentals received by it under Section 4.04 when and as the same shall be received, and to the extent that such rentals shall be sufficient therefor, for the purposes specified in Section 4.04. The Trustee shall not be required to undertake any act or duty in 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 by the Company or by one or more holders of the Trust Certificates against all liability and expenses; and the Trustee shall not be responsible for the filing or recording or refiling or rerecording of this Agreement or of any supplement hereto or statement of new numbers or any other statement or document that may be permitted or required to be filed, recorded, refiled or rerecording in any jurisdiction to protect or perfect any of the security interests contemplated hereby.

Section 8.04. Funds Held by Trustee; Investments.  
(a) 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 by the Trustee on deposit with itself, and, if and to the extent permitted by applicable law or regulations of governmental authorities having jurisdiction

over the Trustee, the Trustee may allow interest upon any such moneys held by it in trust at the rate generally prevailing among banks and trust companies in the locality of the Trustee's Corporate Trust Office or allowed by it upon deposits of a similar character.

(b) At any time, and from time to time, if at the time no Event of Default shall have occurred and be continuing, the Trustee, on Request, shall invest and reinvest Deposited Cash held by it or cash deposited with it pursuant to Section 4.08 or 4.09 (hereinafter in this Section called Replacement Funds) in Investments, at such prices, including any premium and accrued interest, as are set forth in such Request, such Investments to be held by the Trustee in trust for the benefit of the holders of the Trust Certificates. The Trustee shall, on Request, or the Trustee may, in the event funds are required for payment against acceptance of Trust Equipment, sell such Investments, or any portion thereof, and restore to Deposited Cash or Replacement Funds, as the case may be, the proceeds of any such sale up to the amount paid for such Investments, including accrued interest. The Trustee shall restore to Deposited Cash or Replacement Funds, as the case may be, out of rent received by it for that purpose under the provisions of Section 4.04(1), an amount equal to any expenses incurred in connection with any purchase or sale of Investments and also an amount equal to any loss of principal incident to the sale or redemption of any Investments for a sum less than the amount paid therefor, including interest. Until such time as, to the actual knowledge of the Trustee, the Company shall be in default under the terms hereof, the Company shall be entitled to receive any interest (in excess of accrued interest paid from Deposited Cash or Replacement Funds at the time of purchase) or other profit which may be realized from any sale or redemption of Investments.

Section 8.05. Trustee Not Liable for Delivery Delays or Defects in Equipment or Title. (a) 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 manufacturers 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 on the part of the Trustee in respect of the value thereof or in respect of the title thereto.

(b) The Trustee may perform its powers and duties hereunder by or through such attorneys and agents as it

shall appoint, and shall be answerable only for its own negligent acts, negligent failures to act and willful misconduct and not for the default or misconduct of any attorney or agent appointed by it with reasonable care. The Trustee shall not be responsible in any way for, and makes no representation with respect to, the recitals herein contained or the execution or validity or enforceability of this Agreement or the Trust Certificates (except for its own execution thereof) or the guaranty by the Company.

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

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

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

Section 8.06. Resignation and Removal; 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 holders of Trust Certificates and such resignation shall take effect upon receipt by the Trustee of an instrument of acceptance executed by a successor trustee as provided herein.

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

(c) If at any time the Trustee shall resign or be removed or otherwise become incapable of acting or, if at any time a vacancy shall occur in the office of the Trustee for any other cause, a successor trustee may be appointed by the holders of a majority in aggregate unpaid principal amount of the then outstanding Trust Certificates by an

instrument in writing delivered to the Company and the Trustee. Until a successor trustee shall be appointed by the holders of Trust Certificates as herein authorized, the Company by an instrument in writing executed by order of its board of directors shall appoint a trustee to fill such vacancy. A successor trustee so appointed by the Company shall immediately and without further act be superseded by a successor trustee appointed by the holders of Trust Certificates in the manner provided above if such appointment is made within one year after completion of the notice, in the manner provided in the next succeeding paragraph, of the appointment of a successor trustee by the Company. Every successor trustee appointed pursuant to this Section shall be a national bank or a bank or trust company incorporated under the laws of the United States of America or the State of Illinois, having its principal office in the City of Chicago and having a capital and surplus of not less than \$50,000,000, if there be such an institution willing, qualified and able to accept the trust upon reasonable or customary terms.

(d) The Company shall give notice to the holders of all outstanding Trust Certificates of each resignation or removal of the then Trustee and of each appointment by the Company of a successor trustee pursuant to this Section.

Section 8.07. Acceptance of Appointment by Successor Trustee. Any successor trustee appointed as provided in Section 8.06 shall execute, acknowledge and deliver to the Company and to its predecessor trustee an instrument accepting such appointment hereunder, and, subject to the provisions of Section 8.06(a), 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 Request of the Company or written request 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 written request of any such successor trustee, the Company shall execute any and all instruments in writing for more fully and certainly vesting in and confirming to such successor trustee all such rights and powers. Any trustee ceasing to act shall, nevertheless, retain a lien upon all property or funds held or collected by such trustee

to secure any amounts then due it pursuant to the provisions of Section 8.05.

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

## ARTICLE NINE

### Miscellaneous

Section 9.01. Rights Confined to Parties and Holders. Nothing expressed or implied herein is intended or shall be construed to confer upon or to give to any person, firm or corporation, other than the parties hereto 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 benefits of the parties hereto and their successors and of the holders of the Trust Certificates.

Section 9.02. No Recourse. No recourse under any obligation, covenant or agreement of this Agreement, or of the guaranty endorsed on any Trust Certificate, shall be had against any incorporator, stockholder, officer or director, past, present or future, of the Company, as such, solely by reason of the fact that such person is an incorporator, stockholder, officer or director, whether by virtue of any constitutional provision, statute or rule of law or by the enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of incorporators, stockholders, officers or directors being forever released as a condition of and as consideration for the execution of this Agreement.

Section 9.03. 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 2/3% of the agree-

gate unpaid principal amount of the Trust Certificates then outstanding; provided, however, that without the consent of the holders of 100% of the aggregate unpaid principal amount of Trust Certificates then outstanding, 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 interest 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, or (3) reduce the percent 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 9.04. Binding Upon Assigns. Except as otherwise provided herein, the provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

Section 9.05. Notices. All notices and other communications contemplated herein shall be made in writing and shall be deemed delivered two business days after deposit thereof at any United States main or branch post office, certified or registered mail, postage prepaid, addressed as follows:

For notices and communications to the Original Purchaser:

The Prudential Insurance Company of America  
Prudential Plaza  
Chicago, Illinois 60601  
Attn: General Investment Manager  
Corporate Finance Department

For notices and communications to the Company:

Transportation Corporation of America  
Post Office Box 218  
Chicago Heights, Illinois 60411  
Attn: President

For notices and communications to the Trustee:

Continental Illinois National Bank  
and Trust Company of Chicago  
231 South La Salle Street  
Chicago, Illinois 60604  
Attn: Corporate Trust Department

provided, that any notice or communication to the Company may also, at the option of the Original Purchaser or the Trustee, be delivered to the Company at the office of its President at 26th and State Streets, Chicago Heights, Illinois. By notice complying with the foregoing provisions of this Section, each party and the Original Purchaser shall have the right to change the address to which future notices and communications to such person shall be mailed or delivered.

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

Section 9.07. Date Executed. 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.

Section 9.08. Illinois Law Governs. The provisions of this Agreement, and all the rights and obligations of the parties hereunder, shall be governed by the laws of the State of Illinois.

Section 9.10. Counterparts. This Agreement has been 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.

Section 9.11. Separability Clause. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

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

CONTINENTAL ILLINOIS NATIONAL BANK  
AND TRUST COMPANY OF CHICAGO  
Trustee,

[Corporate Seal]

by



Vice President

Attest:



Trust Officer

TRANSPORTATION CORPORATION  
OF AMERICA,

[Corporate Seal]

by



Vice President

Attest:



Assistant Secretary

STATE OF ILLINOIS )  
 ) SS.:  
COUNTY OF COOK )

On this *14<sup>th</sup>* day of August , 1978, before me personally appeared DONALD W. ALFVIN , to me personally known, who, being by me duly sworn, says that he is a Vice President of CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO, that one of the seals affixed to the foregoing instrument is the corporate seal of said national banking association, that said instrument was signed and sealed on behalf of said national banking association by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said association.

[NOTARIAL SEAL]

*Harold J. Wolf*  
Notary Public

*Harold J. Wolf*

My Commission expires: December 6, 1981

STATE OF ILLINOIS )  
 ) SS.:  
COUNTY OF COOK )

On this *14<sup>th</sup>* day of August , 1978, before me personally appeared *John P. Lynch*, to me personally known, who, being by me duly sworn, says that he is a Vice President of TRANSPORTATION CORPORATION OF AMERICA, that the seal 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.

[NOTARIAL SEAL]

*Leana L. Krey*  
Notary Public

My Commission expires: *1/11/81*

E X H I B I T A

<u>TYPE OF CAR</u>	<u>AAR MECHANICAL DESIGNATION</u>	<u>NO. OF CARS</u>	<u>COST PER CAR</u>	<u>TOTAL COST</u>	<u>LESSEE</u>	<u>ICC RECORDATION NUMBER</u>	<u>DATE</u>	<u>LEASE DATE</u>	<u>TERM (YEARS)</u>	<u>C A R N U M B E R S</u>
Bulkhead Flat	FBS	40	\$39,100	\$ 1,564,000	Western Pacific <sup>a</sup>	9089-A	2-16-78	1-03-78	3	WP 1451 thru WP 1490 Both inclusive
Bulkhead Flat	FBS	50	42,300	2,115,000	Boise Cascade <sup>b</sup>	9241-A	7-11-78	6-30-78	15	MDW 1100 thru MDW 1149 Both inclusive
Bulkhead Flat	FBS	50	45,150	2,257,500	Boise Cascade <sup>b</sup>	9241-A	7-11-78	6-30-78	15	MDW 1150 thru MDW 1199 Both inclusive
Bulkhead Flat	FBS	10	41,200	412,000	Weyerhaeuser <sup>c</sup>	9315	4-07-78	3-30-78	15	MSV 300 thru MSV 309 Both inclusive
Bulkhead Flat	FBS	15	43,200	648,000	Weyerhaeuser <sup>c</sup>	9315	4-07-78	3-30-78	15	MSV 310 thru MSV 325 Both inclusive
Bulkhead Flat	FBS	25	43,200	1,080,000	Illinois Terminal <sup>d</sup>	6725-D	6-16-78	5-23-78	5	ITC 1425 thru ITC 1449 Both inclusive
Bulkhead Flat	FBS	50	41,200	2,060,000	Georgia Pacific <sup>e</sup>	9266	3-06-78	2-20-78	5	ADN 550 thru ADN 599 Both inclusive
Covered Hopper	LO	74	20,990	1,553,260	Ashland Chemical Co. <sup>f</sup>	5646-D	2-11-74	12-18-73	15	HTCX 4700 thru HTCX 4700 Both inclusive, and HTCX 4710 thru 4774 Both inclusive
TOTAL		<u>314</u>		<u>\$11,689,760</u>						

- \* a) "Western Pacific" means Western Pacific Railroad Company.  
 b) "Boise Cascade" means Minnesota, Dakota & Western Railway.  
 c) "Weyerhaeuser" means Mississippi and Skuna Valley Railroad Company.  
 d) "Illinois Terminal" means Illinois Terminal Railroad Company.  
 e) "Georgia Pacific" means Ashley, Drew & Northern Railway Company.  
 f) "Ashland Chemical Co." means Ashland Chemical Company, Division of Ashland Oil, Inc.

E X H I B I T B

<u>NO. OF CARS</u>	<u>NAME OF LESSEE</u>	<u>DATE OF LEASE</u>	<u>INITIAL LEASE TERM</u>	<u>ICC RECORDATION NO. &amp; DATE OF RECORDATION</u>	
40	Western Pacific <sup>a</sup>	1-03-78	3 Years	9089-A	2-16-78
100	Boise Cascade <sup>b</sup>	6-30-78	15 Years	9241-A	7-11-78
25	Weyerhaeuser <sup>c</sup>	3-30-78	15 Years	9315	4-07-78
25	Illinois Terminal <sup>d</sup>	5-23-78	5 Years	6725-D	6-16-78
50	Georgia Pacific <sup>e</sup>	2-20-78	5 Years	9266	3-06-78
74	Ashland Chemical Co. <sup>f</sup>	12-18-73	15 Years	5646-D	2-11-74

314 CARS

\*See footnotes to Exhibit A for complete identification of Lessees.

EXHIBIT C

SCHEDULE OF CASUALTY VALUE

The Casualty Value of a unit of Trust Equipment payable as a result of any Casualty Occurrence shall mean an amount equal to the percent of the Cost (as set forth in Exhibit A of this Agreement) of such unit determined in accordance with the following schedule:

<u>DATE OF CASUALTY OCCURRENCE</u>	<u>PERCENTAGE OF COST PAYABLE AS CASUALTY VALUE</u>
1978	100%
1979	100%
1980	100%
1981	95%
1982	90%
1983	85%
1984	80%
1985	75%
1986	70%
1987	65%
1988	55%
1989	50%
1990	40%
1991	30%
1992	20%
1993	20%