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INTERSTATE COMMERCE COMMISSION

FIRST SECURITY BANK OF UTAH, N.A.,
as Owner-Trustee

EQUIPMENT TRUST CERTIFICATES

(Secured by Lease Obligations of
Canadian National Railway Company)

First 1974, Series 3

EQUIPMENT TRUST AGREEMENT NO. 3

Dated as of January 1, 1974

by and between

INTER NATIONAL BANK OF MIAMI,
Trustee

and

FIRST SECURITY BANK OF UTAH, N.A.,
as Owner-Trustee

EQUIPMENT TRUST AGREEMENT NO. 3 dated as of January 1, 1974, between Inter National Bank of Miami, as Trustee (hereinafter with its successors and assigns called the Trustee), and FIRST SECURITY BANK OF UTAH, N.A., a national banking association (hereinafter with its successors and assigns called the Company), as Owner-Trustee under Owner Trust Agreement No. 2 dated as of January 1, 1974, with a certain equity investor (said Trust Agreement being hereinafter called the Trust Agreement).

WHEREAS the Company has agreed to cause the sale, assignment and transfer to the Trustee of title to the railroad equipment described in Schedule I hereto (or such other new railroad equipment as may be substituted therefor pursuant to Section 7.05 by supplement hereto) which is accepted hereunder and not excepted under the Other Equipment Trust Agreements (as defined herein) and settled for after July 15, 1974 up to an aggregate Cost of $7,100,000 (U. S.) (or such other amount as may be determined by supplement hereto pursuant to Section 7.05) and which is to be specifically described in a supplement hereto to be executed and delivered by the Trustee and the Company and recorded as provided in Section 6.02 hereto and settled for on or prior to December 30, 1974 subject to the provisions hereof; and

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

WHEREAS the Company proposes to enter into a Lease of Equipment No. 3 to be dated as of January 1, 1974 (hereinafter called the Lease), with Canadian National Railway Company (hereinafter, with its successors and assigns, called the Lessee), substantially in the form of Annex A hereto, pursuant to which the Company will lease such railroad equipment to the Lessee, and such Lease is to be assigned to the Trustee pursuant to the Assignment (as hereinafter defined); and

WHEREAS FIRST SECURITY BANK OF UTAH, N.A., as Owner-Trustee Equipment Trust Certificates (Secured by Lease Obligations of Canadian National Railway Company) [First 1974, Series 3] are to be issued and sold, and the proceeds of such sale are to be held in trust by the Trustee and are to constitute a fund to be known as First Security Bank of Utah, N.A., as Owner-Trustee Equipment Trust (Secured by Lease Obligations of Canadian National Railway Company) [First 1974, Series 3] to be applied by the Trustee as provided herein; and

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

[FORM OF TRUST CERTIFICATE]

NOTE: *This Trust Certificate has not been registered under the Securities Act of 1933 and must be held until so registered unless a disposition hereof is exempt from the registration requirements of said Act.*

$ No.

First Security Bank of Utah, N.A., as Owner-Trustee
Equipment Trust Certificate
Due 1989
(Secured by Lease Obligations of Canadian National Railway Company)
[First 1974, Series 3]

Inter National Bank of Miami, as Trustee (hereinafter called the Trustee) under an Equipment Trust Agreement No. 3 dated as of January 1, 1974 (hereinafter called the Agreement), between the Trustee and First Security Bank of Utah, N.A., as Owner-Trustee, a national banking association (hereinafter called the Company), certifies that

or registered assigns is entitled to an interest of $ (U. S.) in First Security Bank of Utah, N.A., as Owner-Trustee Equipment Trust Due 1989 (Secured by Lease Obligations of Canadian National Railway Company), [First 1974, Series 3] due and payable as hereinafter provided and to interest on the amount of unpaid principal from time to time owing pursuant to this Certificate from and including the date hereof, due and payable semiannually on January 15 and July 15 in each year commencing July 15, 1974, at the rate of 8½% per annum 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 9½% per annum. Payments of principal and interest shall be made to the registered holder at its "home office address", in such coin or currency of the United States of America as 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 or under the provisions of an Assignment of Lease and Agreement No. 3 dated as of

January 1, 1974, between the Company and the Trustee. The liability of the Company for all payments to be made by it to the Trustee under the Agreement is limited by Section 4.03 of the Agreement. The principal amount of this Certificate is due and payable in 20 semiannual instalments of principal payable on January 15 and July 15 of each year, commencing January 15, 1980, calculated as provided in Section 2.02 of the Agreement so that the aggregate of the principal and interest payable on each such date shall be substantially equal. Interest shall be computed hereunder on the basis of a 360-day year of twelve 30-day months. *Since partial payments of principal on this Certificate are not required to be noted on this Certificate, inquiry should be made at said office of the Trustee as to the principal amount at any time remaining unpaid hereon.*

This Certificate is one of an authorized issue of Trust Certificates in an aggregate principal amount which, together with the Other Equipment Trust Agreements (as defined in the Agreement) may not exceed, at any one time outstanding, $38,750,000(U.S.). Under the Agreement, title to certain railroad equipment (or cash or obligations defined in the Agreement as "Investments" in lieu thereof, as provided in the Agreement) and the above-mentioned Assignment of Lease and Agreement are held by the Trustee in trust for the equal and ratable benefit of the holders of the Trust Certificates issued thereunder. Reference is made to the Agreement and the Schedule and Annexes thereto (copies of which are on file with the Trustee at its said office) for a more complete statement of the terms and provisions thereof, to all of which the registered holder hereof, by accepting this Certificate, assents.

This Certificate is transferable in whole or in part by the registered holder hereof in person or by duly authorized attorney on the books of the Trustee upon surrender to the Trustee at said office of the Trustee of this Certificate accompanied by a written instrument of transfer, duly executed by the registered holder in person or by such attorney, in form satisfactory to the Trustee. The Trustee and the Company may deem and treat the person in whose name this Certificate is registered as the absolute owner hereof for the purpose of receiving payment of principal and interest and for all other purposes and shall not be affected by any notice to the contrary.

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

IN WITNESS WHEREOF, the Trustee has caused this Certificate to be signed by one of its Authorized Officers by his manual signature.

Dated as of

INTER NATIONAL BANK OF MIAMI,
Trustee,

by .....
Authorized Officer

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

Please insert Social Security or other identifying number of Assignee.

.....

.....

the within First Security Bank of Utah, N.A., as Owner-Trustee, Equipment Trust Certificate (Secured by Lease Obligations of Canadian National Railway Company) [First 1974, Series 3] and does hereby irrevocably constitute and appoint .....
attorney to transfer the said Certificate on the books of the within named Trustee, with full powers of substitution in the premises.

Dated ....

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

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

ARTICLE ONE

DEFINITIONS

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

Affiliate of any corporation shall mean any corporation which, directly or indirectly controls or is controlled by, or is under common control with, such corporation. For the purposes of this definition, *control* (including *controlled by* and *under common control with*), as used with respect to any corporation, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such corporation, whether through the ownership of voting securities or by contract or otherwise.

Agent shall mean Bank of Montreal-California with offices at 425 California Street, San Francisco, California 94104 for purposes of Sections 3.02 and 3.03 hereof.

Assignment shall mean the Assignment of Lease and Agreement dated as of January 1, 1974 substantially in the form of Annex B hereto.

Authorized Officer shall mean such person or persons as are duly authorized or designated by or on behalf of the board of directors or executive committee of the Trustee or the Company to sign, certify, countersign or attest documents on behalf of the Trustee or the Company, as the case may be.

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

Casualty Payment Date shall mean January 15 or July 15 for purposes of Section 4.07.

Company's Office shall mean the principal office of the Company, in Salt Lake City, Utah, which office is, on the date of execution of this Agreement, located at 79 South Main Street, Salt Lake City, Utah

84111, attention: Corporate Trust Department. Copies of any notice sent to the Company pursuant to Section 9.05 hereof should be sent to Itel Leasing Corporation, One Embarcadero Center, San Francisco, California 94111, attention: Contract Administration Department.

Consent shall mean the Lessee's Consent and Agreement dated as of January 1, 1974 in the form annexed to the Assignment.

Corporate Trust Office shall mean the principal office of the Trustee in Miami, Florida, 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 627 Southwest 27th Avenue, Miami, Florida 33135.

Cost, when used with respect to the Equipment, shall mean the actual cost thereof (including freight charges, if any, from each Manufacturer's plant to a point of delivery to the Lessee and applicable Canadian federal sales taxes, if any, and including only such other items as may be properly included in such cost under sound accounting practice) as evidenced by such Manufacturer's invoice with respect to such Equipment, but expressed in United States dollars based on the actual cost to the Trustee and the Company of the Canadian dollars used to make the payments to such Manufacturer contemplated by Sections 3.02 and 3.03, *provided* that the Lessee's consent shall be obtained for any exchange, prior to the date of such payments (but not on the date of such payments), of United States dollars for Canadian dollars for the purpose of obtaining Canadian dollars to make such payments and *provided further,* that such exchange shall be made at the selling price quoted on the Montreal market of Canadian dollars for bank transfers in the United States for payments abroad and that each such exchange for the purpose of payment under Section 3.02 shall be made at the same time and at the same such selling price as the exchange for the purpose of contemporaneous payment under Section 3.03.

Cut-Off Date shall mean the earliest of (i) December 30, 1974, (ii) the date of the final settlement date of Equipment pursuant to Article Three herein or under the Other Equipment Trust Agreements (but in

no event earlier than June 26, 1974) or (iii) the date as of which the Trustee has actual knowledge of any Event of Default or the date of commencement of any proceedings of the type described in clause D of Section 9 of the Lease.

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

Equipment shall mean the units of new standard gauge railroad equipment described in Schedule I hereto or any supplement hereto executed by the Trustee, the Company and the Lessee as provided in Section 7.05.

Equipment Delivery Date shall mean the final date for delivery and acceptance of Equipment hereunder which shall not be later than December 30, 1974.

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

Execution Date shall mean January 1, 1974, for purposes of Section 9.07 hereof.

Final Trust Certificates shall mean Trust Certificates issued to the Purchasers pursuant to Section 2.01.

Governing State Law shall mean the laws of the State of Utah.

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

Investments shall mean (i) direct obligations of the United States of America or obligations for which the faith of the United States of America is pledged to provide for the payment of principal and interest, or (ii) certificates of deposit of or time deposits of commercial banks or trust companies, including those of the Trustee, in the United States of America having capital and surplus aggregating at least $50,000,000, in

each case maturing in not more than one year from the date of such investment.

Investment Payment Date shall mean the earlier of December 30, 1974, or the final date of settlement of Equipment pursuant to Article Three hereof and Article Three of the Other Equipment Trust Agreements on which payment is to be made to the Lessee pursuant to the fifth paragraph of Section 8.04 hereof.

Legend for Marking the Trust Equipment shall mean for purposes of Section 4.06 "Owned by Inter National Bank of Miami, 627 Southwest 27th Avenue, Miami, Florida 33135, as Trustee under the terms of an Equipment Trust Agreement."

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

Manufacturers shall mean the builders of the Equipment subjected to this Agreement.

Manufacturing Agreements shall mean the agreements under which the Company has contracted to purchase the Equipment from the Manufacturers thereof, copies of which are to be delivered to the Trustee.

Maximum Aggregate Principal Amount shall mean $38,750,000 (U.S.) for purposes of Section 2.01.

Maximum Cost shall mean $50,000,000 (U.S.).

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

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

Other Assignments shall mean Assignments of Lease and Agreement No. 1 and No. 2 dated as of January 1, 1974, between the Trustee and the Company.

Other Consents shall mean Lessee's Consents and Agreement No. 1 and No. 2 dated as of January 1, 1974.

Other Equipment Trust Agreements shall mean Equipment Trust Agreement No. 1 and No. 2 dated as of January 1, 1974, between the Trustee and the Company pursuant to which First Security Bank of Utah N.A., Equipment Trust Certificates [First 1974, Series 1] First Security Bank of Utah, N.A. as Owner-Trustee, Equipment Trust Certificates [First 1974, Series 2] shall be issued.

Other Leases shall mean Leases of Equipment No. 1, No. 2A and No. 2B dated as of January 1, 1974, between the Company and the Lessee.

Penalty Interest Rate shall mean a rate of interest of 9½% per annum.

Percentage of Debt shall mean 77.5%.

Purchase Agreement shall mean the Purchase Agreement dated as of January 1, 1974 among the Company and the Purchasers named in Annex I thereto.

Purchasers shall mean the Purchasers named in Annex I to the Purchase Agreement.

Reporting Date for purposes of Section 4.07 hereof shall mean April 1.

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

Trust Certificates shall mean Trust Certificates issued pursuant to Section 2.01 hereof.

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

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, from time to time, of the Trust Certificates, but not less

than the aggregate principal amount thereof, shall forthwith be deposited with the Trustee to be applied as provided in Section 3.02 hereof and Section 3.02 of the Other Equipment Trust Agreements.

Thereupon, the Trustee shall issue and deliver, as the Company shall direct by Request, Trust Certificates in the aggregate principal amount so sold.

The aggregate principal amount of Trust Certificates which shall be executed and delivered by the Trustee under this Section and under Section 2.01 of the Other Equipment Trust Agreements shall not exceed the Maximum Aggregate Principal Amount and the aggregate principal amount represented by all the Trust Certificates shall be payable as hereinafter set forth. Upon Request, any proceeds of Trust Certificates hereunder not applied pursuant to Section 3.02 hereof may be deposited with the Trustee pursuant to Section 2.01 of the Other Equipment Trust Agreements to be applied as provided in Section 3.02 of such Other Equipment Trust Agreements, whereupon, the Trustee shall deliver, to holders of Trust Certificates issued hereunder, trust certificates so issued under the Other Equipment Trust Agreements in an aggregate principal amount specified in such Request and such holder or the Trustee, as the case may be, shall make appropriate notation on the Trust Certificates issued hereunder of the reduction of the aggregate principal amount then outstanding.

Upon the earlier of the Cut-Off Date or the completion of delivery of all the Equipment to be settled for under this Agreement and the Other Equipment Trust Agreements (as evidenced by a Lessee's Certificate), the Trustee shall issue and deliver Final Trust Certificates to the holder of Trust Certificates in an aggregate principal amount representing such holder's pro rata interest in the trust created hereunder as set forth in the Purchase Agreement, upon surrender of the Trust Certificates theretofore issued to such holder, and will make the interest adjustments as provided in Paragraph 1 thereof.

SECTION 2.02. *Interests Represented by Trust Certificates; Interest; Maturity.* Each of the Trust Certificates shall represent an interest in the amount therein specified in the trust created hereunder. The Trust Certificates will bear interest from the date thereof on the unpaid principal amounts thereof, payable on January 15 and July 15 of each year, commencing July 15, 1974, at the rate of 8½% per annum. All Trust

Certificates shall bear interest on overdue instalments of principal and interest at the rate per annum of the Penalty Interest Rate. The first instalment of principal of the Trust Certificates shall be payable on January 15, 1980, and subsequent instalments shall be payable semiannually thereafter on each January 15 and July 15 to and including July 15, 1989. Each date upon which principal is payable on a Trust Certificate is hereinafter called the Payment Date. The principal amount of the Trust Certificates payable on each Payment Date shall be calculated on such a basis that the aggregate of the principal and interest payable on each such Payment Date shall be substantially equal and such instalments of principal and interest will completely amortize such Trust Certificates. The Company will cause to be furnished to the Trustee and the Trustee will forward to the Purchaser of Trust Certificates a schedule showing the respective amounts of principal and interest payable on each Payment Date.

The principal of and interest on the Trust Certificates shall be payable (a) at the "home office" address in the case of any Purchaser while such Purchaser is a holder of Trust Certificates as is set forth in Annex I to the Purchase Agreement which shall be entered on the registry books of the Trustee and for any other holder thereof as shall be designated in written notice thereof to the Trustee for entry on the registry books maintained by the Trustee, in such coin or currency of the United States of America as at the time payable shall be legal tender for the payment of public and private debts, but (b) only from and out of rentals or other moneys received by the Trustee and applicable to such payment under the provisions hereof. The Trustee will mail its check on the Business Day preceding the date each such payment is due to such Purchaser or registered holder at his "home office" address shown on the registry books maintained by the Trustee or will pay by wire transfer on the date such payment is due to any such Purchaser while such Purchaser is a holder of Trust Certificates to such "home office" address, if so requested by such Purchaser.

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

SECTION 2.04. *Execution by Trustee.* The Trust Certificates shall be signed in the name and on behalf of the Trustee by the manual signature of one of its Authorized Officers. In case any officer of the Trustee whose signature shall appear on any of the Trust Certificates shall cease to be such

officer of the Trustee before the Trust Certificates shall have been issued and delivered by the Trustee or shall not have been acting in such capacity on the date of the Trust Certificates, such Trust Certificates may be adopted by the Trustee and be issued and delivered as though such person had not ceased to be or had then been such officer of the Trustee.

SECTION 2.05. *Characteristics of Trust Certificates.*

(a) The Trust Certificates shall be registered, as to both principal and interest, in the name of the holder or its nominee; shall be transferable on the books of the Trustee in whole or in part and exchangeable for Trust Certificates of the same class of other denominations of equal aggregate outstanding principal amount, in each case upon presentation and surrender thereof for registration of transfer or exchange at the Corporate Trust Office, accompanied, in the case of registration of transfer, by appropriate instruments of transfer, duly executed by the registered holder of the surrendered Trust Certificate or Certificates or by duly authorized attorney, in form satisfactory to the Trustee; *provided, however,* that no Trust Certificate shall be issued in a principal amount less than $10,000 except in the case of the transfer or exchange of a Trust Certificate which at the time is in an unpaid principal amount of less than $10,000; each Trust Certificate shall be dated as of the date of issue unless issued in exchange for another Trust Certificate or Certificates bearing unpaid interest from an earlier date, in which case they shall be dated as of such earlier date; and each Trust Certificate shall entitle the registered holder to interest from the date thereof. The Trustee shall, if any prepayment shall theretofore have been made pursuant to Sections 3.01 and 4.07, attach to each Trust Certificate issued upon registration of transfer or exchange a revised schedule of payments of principal and interest thereon.

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

(c) The Trustee shall cause to be kept at the Corporate Trust Office books for the registration and registration of transfer of the Trust Certificates and, upon presentation of the Trust Certificates for such purpose, the Trustee shall subject to subparagraph (f) below 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, the Trust Certificates 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, register the transfer of or exchange any Trust Certificates for a period of ten Business Days next preceding any interest payment date.

SECTION 2.06. *Replacement of Lost Trust Certificates.* In case any Trust Certificate shall become mutilated or defaced or be lost, destroyed or stolen, then on the terms herein set forth, and not otherwise, the Trustee shall execute and deliver a new Trust Certificate of like class, tenor and date, and bearing such identifying number or designation as the Trustee may determine, in exchange and substitution for, and upon cancellation of, the mutilated or defaced Trust Certificate, or in lieu of and in substitution for the same if lost, destroyed or stolen. The applicant for a new Trust Certificate pursuant to this Section shall furnish to the Trustee and to the Company evidence to their satisfaction of the loss, destruction or theft of such Trust Certificate alleged to have been lost, destroyed or stolen and of the ownership and authenticity of such mutilated, defaced, lost, destroyed or stolen Trust Certificate, and also shall furnish a letter of indemnity in the case of any Purchaser or, if other than a Purchaser, such security or indemnity as may be required by the Trustee and by the Company in their discretion, and shall pay all expenses and charges of such substitution or exchange. All Trust Certificates are held and owned upon the express condition that the foregoing provisions, to the extent permitted by law, 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

SECTION 3.01. *Acquisition and Exclusion of Equipment.* The Company shall cause the sale, assignment and transfer from each Manufacturer to the Trustee, as Trustee for the holders of the Trust Certificates, of title to all Equipment described in Schedule I hereto, as supplemented pursuant to Section 7.05; it being understood that any Equipment shown on Schedule I hereto not accepted pursuant to Section 4.02 on or before the Equipment Delivery Date and settled for pursuant to this Article Three on or before ~~the earlier of August 30, 1974, or~~ the Cut-Off Date, shall be excluded from this Agreement and not included in the term Trust Equipment. In the event of any such exclusion, the Company and the Trustee shall execute an agreement supplemental hereto limiting this Agreement to the Trust Equipment theretofore accepted and settled for hereunder.

In the event that it is anticipated that on the Cut-Off Date any Deposited Cash will remain in the possession of the Trustee, the Trustee shall so notify each holder of Trust Certificates to whom a prepayment is to be made as provided below at least five business days preceding the Cut-Off Date, and, on the Cut-Off Date, shall (a) sell all Investments then held by it as soon as practicable and (b) apply Deposited Cash to the pro rata prepayment, in Clearing House funds of the City in which the Corporate Trust Office is located or in New York City Clearing House funds, of each instalment of principal remaining unpaid on the Trust Certificates (in proportion to the principal amount represented by each such instalment), each of the holders of the Trust Certificates to share proportionately in such prepayment. Thereupon the Company will promptly furnish to the Trustee and each of the holders of outstanding Trust Certificates so prepaid a revised schedule of payments of principal thereafter to be made hereunder calculated as provided in Section 2.02.

SECTION 3.02. *Payment of Deposited Cash.* From time to time, when and as any of the Equipment shall have become subject to the terms and provisions hereof as provided in Section 4.02, the Trustee or its Agent shall upon Request (subject to the provisions of Section 3.04 and the Company's

making payment as contemplated by the provisions of Section 3.03) pay to the appropriate Manufacturer out of Deposited Cash then held by the Trustee (and the Trustee shall have no duty to make any such payment except out of Deposited Cash), an amount equal to the Percentage of Debt of the aggregate Cost of such Trust Equipment, as specified in the certificate furnished to the Trustee pursuant to Section 3.04(b). The Trustee shall have no duty to make any payment to the Manufacturers pursuant to this Section in the event that the Company shall have failed to pay to the Trustee the monies required to be paid by the Company to the Trustee under Section 3.03.

SECTION 3.03. *Payment of Deficiency.* The Company covenants that, contemporaneously with any payment by the Trustee pursuant to Section 3.02 with respect to any Trust Equipment, but subject to the conditions provided for in each Manufacturing Agreement, it will cause to be paid to the Trustee or its Agent as advance rental that portion of the Cost of the delivered Trust Equipment not paid out of Deposited Cash as provided for in Section 3.02. Thereupon, the Trustee or its Agent shall upon Request, pay to the appropriate Manufacturer by the use of such advance rental, the portion of the Cost of the delivered Trust Equipment not paid out of Deposited Cash as provided for in Section 3.02. It is understood and agreed, however, that, unless the Company shall otherwise agree, the total Cost of the Trust Equipment under this Agreement and the Other Equipment Trust Agreements shall not exceed the Maximum Cost.

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

(a) one or more duly executed Certificates of Acceptance (as defined in the Lease) with respect to such Trust Equipment stating that the Trust Equipment described and specified therein by number or numbers has been delivered and has been marked in accordance with the provisions of Section 4.06;

(b) invoices from the appropriate Manufacturer and a Lessee's Certificate to the effect (i) that such Trust Equipment is Equipment as herein defined (having been first put into service no earlier than the date of delivery to and acceptance by the Lessee, as agent for the

Trustee), (ii) that an amount specified is the actual cost in Canadian dollars of such Trust Equipment and (iii) that no Event of Default or any event which with the lapse of time and/or notice could constitute such an Event of Default shall have occurred and be continuing;

(c) a bill or bills of sale of such Trust Equipment from the appropriate Manufacturer to the Trustee, which bill or bills of sale shall contain (i) a warranty or guaranty to the Trustee and to the Company that at the time of sale such Manufacturer had legal title to the Trust Equipment described therein and good and lawful right to sell such Trust Equipment and that the title to such Trust Equipment is free from all claims, liens, security interests and other encumbrances of any nature created by, through or under such Manufacturer or arising through anyone claiming by, through or under the same except as created by this Agreement or as permitted by Section 6.01 and except for the rights of the Lessee under the Lease and (ii) a warranty to the Trustee and the Company of the materials and workmanship with respect to the Trust Equipment as set forth in the applicable Manufacturing Agreement;

(d) an opinion of counsel for the appropriate Manufacturer, dated the date of such payment of Deposited Cash, to the effect (i) that such bill or bills of sale have been duly authorized, executed and delivered and are valid and effective to transfer to the Trustee title to the Trust Equipment therein free from all claims, liens, security interests and other encumbrances except as created by this Agreement or as permitted by Section 6.01 hereof and except for the rights of the Company hereunder and of the Lessee under the Lease and that, at the time of delivery of the Trust Equipment hereunder and under the Lease, the Manufacturer had good title thereto free from all liens, charges or other encumbrances except as created by this Agreement or as permitted by Section 6.01 hereof and except for the rights of the Company hereunder and of the Lessee under the Lease, (ii) that the applicable Manufacturing Agreement has been duly authorized, executed, acknowledged and delivered by the appropriate Manufacturer and is a legal, valid and binding instrument enforceable against such Manufacturer in accordance with its terms (except as enforcement of the same may be limited by any applicable bankruptcy, reorganization, insolvency, moratorium or other laws affecting the enforcement of creditors' rights generally

from time to time in effect); provided that counsel for such Manufacturer in giving such opinion may rely as to matters of fact upon a certificate of two senior officers of the Manufacturer;

(e) signed copies, addressed to the Trustee, of the opinions of counsel furnished under Paragraphs 5(a) (which shall include the opinion of special Canadian counsel for the Purchaser referred to in the last paragraph of said Paragraph 5) and Paragraph 5(b) of the Purchase Agreement; and

(f) an opinion of counsel for the Lessee, dated the date of such payment of Deposited Cash, addressed to the Trustee to the effect set forth in Section 13 of the Lease and that the Trust Equipment has come under and is subject to the Lease, in which opinion counsel may rely on the opinion of counsel for the appropriate Manufacturer referred to in subsection (d) above, and on the opinion of counsel for the Company referred to in subparagraph (b) of Paragraph 5 of the Purchase Agreement, as to the matters set forth therein insofar as they relate to laws other than the laws of Canada or any Province or Territory thereof.

ARTICLE FOUR

LEASE OF TRUST EQUIPMENT TO THE COMPANY; LIMITATION OF LIABILITY

SECTION 4.01. *Lease of Trust Equipment.* The Trustee does hereby agree to let and lease to the Company, from and after the date of acceptance thereof hereunder to the date of the stated maturity of the Trust Certificates, each unit of the Trust Equipment.

SECTION 4.02. *Equipment Automatically Subjected.* As and when any Equipment shall from time to time be accepted by the Company under the applicable Manufacturing Agreement within the limitations described in the first Whereas clause of this Agreement and Section 3.01 as evidenced by a

Lessee's Certificate of Acceptance referred to in Section 3.04(a), the same shall be deemed accepted hereunder and shall, *ipso facto* and without further instrument or lease or acceptance pass under and become subject to all the terms and provisions hereof.

SECTION 4.03. *General Limitation of Liability.* Notwithstanding any other provisions of this Agreement, including, without limitation, this Article Four and Articles Five and Six, and, notwithstanding any default or breach by the Company of any of the terms hereof, it is understood and agreed by the Trustee on behalf of itself and the holders of the Trust Certificates that liability of the Company for all payments (including without limitation, all expenses, fees, taxes, claims, penalties and liabilities) to be made by it under and pursuant to this Agreement (other than the payments called for by Section 3.03) and the Assignment shall not exceed an amount equal to, and shall be payable only out of, the income and proceeds from the Trust Equipment. As used herein the term "income and proceeds from the Trust Equipment" shall mean (i) if an Event of Default shall have occurred and while it shall be continuing so much of the following amounts as are indefeasibly received by the Company at any time after any such Event of Default and during the continuance thereof: (a) all amounts of rental and amounts in respect of Casualty Occurrences (as hereinafter defined in Section 4.07) paid for or with respect to the Trust Equipment pursuant to the Lease, (b) any and all payments or proceeds received by the Company pursuant to clause (i) of subparagraph (b) of Section 9 of the Lease or for or with respect to the Trust Equipment as the result of the sale, lease or other disposition thereof, after deducting all costs and expenses of such sale, lease or other disposition and (c) all amounts received by the Company pursuant to Section 18 of the Lease; and (ii) at any other time only that portion of the amounts referred to in the foregoing clauses (a), (b) and (c) or otherwise payable to the Company pursuant to the Lease as are indefeasibly received by the Company and as shall equal the rental payments specified in Section 4.04 due and payable by the Company on the date (or the next succeeding Business Day) such amounts received by the Company were required to be paid to it pursuant to the Lease or as shall equal any other payment (including payments in respect of Casualty Occurrences) then due and payable under this Agreement (or due and payable on such next succeeding Business Day); it being understood that "income and proceeds from the Trust Equipment" shall in no event include amounts referred to in the

foregoing clauses (a), (b) and (c) which were received by the Company prior to the existence of such an Event of Default which exceeded the amounts required to make the rental payments specified in the first paragraph of Section 4.04 due and payable by the Company on the date (or the next succeeding Business Day) on which amounts with respect thereto received by the Company were required to be paid to it pursuant to the Lease or which exceeded any other payments due and payable under this Agreement at the time (or due and payable on such next succeeding Business Day) such amounts were payable under the Lease. The Trustee agrees on behalf of the holders of the Trust Certificates, that it will not seek to obtain a judgment against the Company for an amount in excess of the amounts payable by the Company pursuant to the limitations set forth in this paragraph, and that if it does obtain such a judgment, it will, accordingly, limit its execution of such judgment to such amount except as provided in the next succeeding sentence. Subject to the first sentence of Section 5.02, it is further specifically understood and agreed that nothing contained herein limiting the liability of the Company shall derogate from the right of the Trustee to proceed against the Trust Equipment as provided herein or against the Lessee under the Lease, the Assignment or the Consent (to the extent permitted by the Lease, the Assignment or the Consent) for the full unpaid principal amount of the Trust Certificates and interest thereon and all other payments due under this Agreement.

SECTION 4.04. *Rental Payments.* The Company hereby accepts the lease of all the Trust Equipment; and the Company covenants and agrees to cause to be paid 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 payable shall be legal tender for the payment of public and private debts, rental hereunder (in addition to the advance rental required to be paid by it under Section 3.03) which shall be sufficient to pay and discharge the following items, when and as the same shall become due and payable (whether or not any of such items shall become due and payable prior to the delivery and lease to the Company of any of the Trust Equipment and notwithstanding that any of the Trust Certificates shall have been acquired by the Company or any Affiliate of the Company or shall not have been presented for payment):

(1) from time to time upon demand of the Trustee an amount equal to (a) any expenses incurred in connection with any purchase,

sale or redemption by the Trustee of Investments and (b) any loss of principal (including interest accrued thereupon at the time of purchase) incurred in connection therewith;

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

(3) (a) on the Cut-Off Date, an amount equal to interest at the rate of interest payable on the Trust Certificates on the amount, if any, prepaid to the holders of such Trust Certificates on said date from and including the date or dates of the applicable Trust Certificates to the Cut-Off Date (less any interest theretofore paid with respect of such principal amounts on any prior interest payment date), (b) except as provided in the foregoing clause (a), the amounts of the interest payable on the Trust Certificates, when and as the same shall become due and payable, and (c) interest, at the Penalty Interest Rate per annum from the due date, upon the amount of any instalments of interest or principal payable under this and the following subparagraph which shall not be paid when due, to the extent legally enforceable; and

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

Nothing herein or in the Trust Certificates contained shall be deemed to impose on the Trustee or on the Company any obligation to pay to the holder of any Trust Certificate any tax, assessment or governmental charge required by any present or future law of the United States of America or 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 cause to be paid any tax, assessment or governmental charge pursuant to subparagraph (2) of this Section 4.04 so long as it shall in good faith and by appropriate legal proceedings contest the validity thereof, unless in the judgment of the Trustee the rights or interests of the Trustee or of the holders of the Trust Certificates may be materially endangered thereby.

SECTION 4.05. *Termination of Lease.* After all payments due or to become due from the Company hereunder shall have been completed and fully made to or for the account of the Trustee and the Company shall have

performed all of its other obligations hereunder, (1) any moneys remaining in the hands of the Trustee after providing for all outstanding Trust Certificates and after paying the expenses of the Trustee shall be paid to the Company, (2) title to all the Trust Equipment shall be transferred to the Company and (3) the Trustee shall execute for record in public offices, at the expense of the Company, such instrument or instruments in writing as reasonably shall be requested by the Company in order to make clear upon public records the Company's full title to all the Trust Equipment and the Company's full right, title and interest as Lessor under the Lease under the laws of any jurisdiction.

SECTION 4.06. *Marking of Trust Equipment.* The Company agrees that it will cause each unit of the Trust Equipment to be kept numbered with the identifying number set forth in Schedule I hereto and will keep and maintain plainly, distinctly, permanently and conspicuously marked on each side of such unit in letters not less than an inch in height, the Legend for Marking the Trust Equipment or other appropriate words designated by the Trustee, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the interests of the Trustee in such unit and the rights of the Trustee under this Agreement. The Company will not place or permit any unit of the Trust Equipment to be placed in operation or exercise any control or dominion over the same until such words shall have been so marked on both sides thereof and will replace or cause to be replaced promptly any such words which may be removed, defaced or destroyed. The Company will not permit the identifying number of any unit of the Trust Equipment to be changed except in accordance with a statement of new identifying numbers to be substituted therefor, which statement previously shall have been filed with the Trustee by the Company and filed, recorded or deposited in all public offices where this Agreement will have been filed, recorded or deposited.

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

may be lettered in an appropriate manner for convenience of identification of the interest of the Company therein.

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

Whenever any unit of the Trust Equipment shall suffer a Casualty Occurrence the Company shall, promptly after it is informed of a Casualty Occurrence under the Lease, notify (or shall cause the Lessee to notify) the Trustee in writing with respect thereto. On the Casualty Payment Date next succeeding such notice by the Company (or, in the event such Casualty Payment Date shall occur within 15 days after notice of such Casualty Occurrence is given by the Company or the Lessee to the Trustee and the Lessee exercises its option provided for in Section 6 of the Lease, on the following Casualty Payment Date) the Company shall deposit with the Trustee an amount in cash equal to the value of such unit as of such Casualty Payment Date and, upon such payment, title to such unit shall be transferred to the Company. The rights and remedies of the Trustee to enforce or to recover any of the rental payments which are payable on such Casualty Payment Date with respect to such unit shall not be affected by reason of such Casualty Occurrence. For all purposes of this paragraph, value shall be set forth in an Officer's Certificate and shall be determined as follows and the manner of such determination shall be set forth in such Officer's Certificate:

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

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

On or before the Reporting Date in each year, commencing with the year immediately following the date of this Agreement, the Company will furnish or cause to be furnished to the Trustee, in such number of counterparts or copies as may reasonably be requested, an accurate statement (1) showing as of the preceding December 31, the amount, description and numbers of all units of the Trust Equipment that may have suffered a Casualty Occurrence whether by accident or otherwise during the preceding calendar year (or since the date of this Agreement in the case of the first such statement), and such other information regarding the condition and state of repair of Trust Equipment as the Trustee may reasonably request, (2) identifying the units of Trust Equipment then subject to the Lease, and (3) stating that, in the case of all units of Trust Equipment repaired or repainted during the period covered by such statement, the markings required by Section 4.06 have been preserved or replaced.

SECTION 4.08. *Possession of Trust Equipment.* So long as the Company shall not be in default under this Agreement, the Company shall be entitled to the possession and use of the Trust Equipment and also to enter into the Lease which shall be subject and subordinate to this Agreement (except as provided in the first sentence of Section 5.02) and to permit the Trust Equipment to be used as provided therein; *provided, however,* that the Lease shall forthwith be assigned to the Trustee as security for the obligations of the Company hereunder pursuant to the Assignment.

The Company may assign and transfer any or all of its rights under this Agreement and/or any or all of its rights to any of the Trust Equipment only in the event that the Company obtains the prior written consent thereto of the holders of all the Trust Certificates then outstanding.

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

Any and all additions to any unit of the Trust Equipment and any and all parts installed on or replacements made thereto by the Company or the Lessee shall be considered accessions to such unit (except such as can be removed without damage to and without impairing the originally intended function or use of such unit and without cost or expense to the Trustee) and the same shall immediately be vested in the Trustee.

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

or injury or death to any person. The indemnities contained in this paragraph shall survive payment of all other obligations under this Agreement or the termination of this Agreement.

SECTION 4.10. *Taxes.* All payments to be made by the Company hereunder will be free of expense to the Trustee for collection or other charges and will be free of expense to the Trustee with respect to the amount of any local, state, provincial or federal Canadian or United States or Mexican taxes (other than net income, gross receipts, excess profits and similar taxes imposed on the Trustee in connection with the execution of its duties under this Agreement), assessments or license fees (and any charges, fines or penalties in connection therewith) (hereinafter called "impositions") hereafter levied or imposed upon or in connection with or measured by this Agreement or any of the instruments or agreements referred to herein or contemplated hereby or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof, all of which impositions the Company agrees to cause to be paid on demand in addition to the payments to be made by it provided for herein. The Company will also cause to be paid promptly all impositions which may be imposed upon any unit of the Trust Equipment or for the use or operation thereof or upon the earnings arising therefrom or upon the Trustee solely by reason of its interest therein, and any and all impositions upon or on account of the trust created by this Agreement, or the instruments or agreements referred to herein or contemplated hereby, and will cause to be kept at all times all and every part of such unit free and clear of all impositions which might in any way affect the interest of the Trustee or result in a lien upon or encumbrance upon such unit and will supply the Trustee with a receipt or other evidence of such payment satisfactory to the Trustee; *provided, however,* that the Company shall be under no obligation to pay any impositions so long as it or the Lessee is contesting in good faith and by appropriate legal proceedings such impositions and the non-payment thereof does not, in the opinion of the Trustee, adversely affect the property or rights of the Trustee hereunder or the holders of any Trust Certificates outstanding hereunder. If any impositions shall have been charged or levied against the Trustee directly and paid by the Trustee, the Company shall reimburse the Trustee, on presentation of invoice therefor; *provided, however,* that the Company shall not be obligated to reimburse the Trustee for any impositions so paid unless the Trustee shall have been in the opinion of its counsel legally liable with

respect thereto, or unless the Company shall have approved the payment thereof.

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

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

ARTICLE FIVE

EVENTS OF DEFAULT AND REMEDIES

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

(a) the Company shall fail to pay any part of the rentals payable hereunder for more than 15 days after the same shall have become due and payable, or

(b) the Company shall make or suffer any unauthorized assignment or transfer of its rights hereunder or under the Lease, or

(c) the Company shall, for more than 35 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 reasonably satisfactory to the Trustee for such compliance, or

(d) a decree or order shall have been entered by a court of competent jurisdiction adjudging the Company bankrupt or insolvent or approving as properly filed a petition seeking reorganization or arrangement of the Company under any law relating to bankruptcy or insolvency, or appointing a receiver for the Trust Equipment or decreeing or ordering the winding up or liquidation of the affairs of the Company, and any such decree or order shall remain in force undischarged and unstayed for a period of 60 days, or

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

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

(g) the Lessee shall default in the observance or performance of any of the covenants and agreements on its part contained in the Lease or the Other Leases (other than those relating to payment of any part of the rental provided in Section 2 thereof) and such default shall continue for 35 days after the Trustee shall have demanded in writing performance thereof *unless* during such 35-day period the Company shall have cured or caused to be cured such default, or

(h) an Event of Default shall occur under Article Five of the Other Equipment Trust Agreements,

then, in any such case (herein sometimes called an Event of Default), if the same shall then be continuing, the Trustee in its discretion may, and upon the written request of the holders of not less than 50% in principal amount of the then outstanding Trust Certificates shall, by notice in writing delivered to the Company, declare to be due and payable forthwith the entire amount of the rentals (except rentals required for the payment of interest accruing after the date of such declaration) payable by the Company as set forth in Section 4.04 and not theretofore paid. Thereupon the entire amount of such rentals shall forthwith become and shall be due and payable immediately without further demand, together with interest at the Penalty Interest Rate to the extent legally enforceable, on any portion thereof overdue. It is understood and agreed that for purposes of this Section 5.01 the occurrence of an Event of Default shall be determined without regard to any limitation of liability contained in Section 4.03, *provided, however,* that the liability of the Company shall remain subject to the limitations set forth in said Section 4.03.

In case one or more Events of Default shall happen, and if the same shall then be continuing, the Trustee in its discretion also may, and upon the written request of the holders of not less than 50% in principal amount of the then outstanding Trust Certificates shall, by notice in writing delivered to the Company, declare the principal of all the Trust Certificates then outstanding to be due and payable, and thereupon the same shall become and be immediately due and payable.

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

In case there shall be pending proceedings for the bankruptcy or for the reorganization of the Company, or in case a receiver or trustee shall have been appointed for the Trust Equipment, or in case of any other judicial proceedings relative to the Company or the Trust Equipment, the Trustee, irrespective of whether the rental payments hereunder or the principal of the Trust Certificates shall then be due and payable as herein or therein expressed whether by declaration or otherwise and irrespective of whether the Trustee shall have made any demand or declaration pursuant to the provisions of this Section, shall be entitled and empowered, by intervention in such proceedings or otherwise, to file and prove a claim or claims for the entire amount of the rentals (except rentals required for the payment of interest accruing after the date of such declaration), and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for reasonable compensation to the Trustee, its agents, attorneys and counsel, and for reimbursement of all expenses and liabilities incurred, and all advances made, by the Trustee except as a result of its gross negligence or wilful misconduct) and of the holders of the Trust 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 reasonable expenses and liabilities incurred, and all advances made, by the Trustee except as a result of its gross negligence or wilful misconduct.

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

SECTION 5.02. *Remedies.* Neither the Trustee nor the Company shall have the right to terminate or impair the Lessee's possession or use of Trust Equipment subject to the Lease so long as the Lessee shall not be in default under the Lease. Subject to the preceding sentence, which qualifies this entire Agreement, upon the happening of any Event of Default the Trustee may by its agents enter upon the premises of the person having possession of the Trust Equipment and take possession of all or any part of the Trust Equipment and withdraw the same from said premises, retaining all payments which up to that time may have been made on account of rental for the Trust Equipment and otherwise, and shall be entitled to collect, receive and retain all unpaid per diem, mileage or other charges of any kind earned by the Trust Equipment or any part thereof, and may lease or otherwise contract for the use of the Trust Equipment or any part thereof; or the Trustee may with or without retaking possession (but only after declaring due and payable the entire amount of rentals payable by the Company and the principal of all the outstanding Trust Certificates, as provided in Section 5.01) sell the Trust Equipment or any part thereof, free

from any and all claims of the Company 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, or for part cash and part 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 hereto. Upon any such sale, the Trustee itself may bid for the property offered for sale or any part thereof. Any such sale may be held or conducted at such place and at such time as the Trustee may specify, or as may be required by law, and without gathering at the place of sale the Trust Equipment to be sold, and in general in such manner as the Trustee may determine, but so that the Company may and shall have a reasonable opportunity to bid at any such sale. After the Trustee has fully exercised its remedies hereunder, the Company shall cease to have any rights or remedies in respect of the Trust Equipment hereunder, 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 Trust Certificates hereunder. No such taking possession, withdrawal, lease or sale of the Trust Equipment by the Trustee shall be a bar to the recovery by the Trustee from the Company of rentals then or thereafter due and payable, or of principal and interest in respect of the Trust Certificates, and the Company shall be and remain liable for the same until such sums have been realized as, with the proceeds of the lease or sale of the Trust Equipment, shall be sufficient for the discharge and payment in full of all the obligations of the Company under this Agreement (other than interest not then accrued), whether or not they shall have then matured.

SECTION 5.03. *Application of Proceeds.* If the Trustee shall exercise any of the powers conferred upon it by Sections 5.01 and 5.02, all payments made by the Company to the Trustee and the proceeds of any judgment collected from the Company by the Trustee, and the proceeds of every sale or lease by the Trustee of any of the Trust Equipment, together with any other sums which may then be held by the Trustee under any of the provisions hereof (other than sums held in trust for the payment of specific Trust Certificates or a part thereof, or interest thereon) shall be applied by

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

After all such payments shall have been made in full, as provided in the first sentence of the immediately preceding paragraph, the interests of the Trustee to any of the Trust Equipment remaining unsold shall be conveyed by the Trustee to the Company free from any further liabilities or obligations to the Trustee hereunder. If after applying all such sums of money realized by the Trustee as aforesaid there shall remain any amount due to the Trustee under the provisions hereof (hereinafter called the Deficiency) the Company agrees to pay the amount of the Deficiency to the Trustee, upon demand; and if the Company shall fail to pay the Deficiency, the Trustee may bring suit therefor and shall be entitled to recover judgment therefor against the Company, subject to the limitations of Section 4.03 hereof. If after applying as aforesaid the sums of money realized by the Trustee there shall remain a surplus in the possession of the Trustee, such surplus shall be paid to the Company.

SECTION 5.04. *Waivers of Default.* Prior to the declaration of the acceleration of the maturity of the rentals and of the maturity of all the Trust Certificates as provided in Section 5.01, the holders of not less than 66⅔% in principal amount of the Trust Certificates at the time outstanding may on behalf of the holders of all the Trust Certificates waive any past default and its consequences, except a default in the payment of any instalment of rental payable pursuant to Section 4.04(3) or (4), but no such waiver shall extend to or affect any subsequent default or impair any right consequent thereon.

If at any time after the principal of all the Trust Certificates shall have been declared and become due and payable or if at any time after the entire amount of rentals shall have been declared and become due and payable, all as provided in Section 5.01, but before the final stated maturity date of the

Trust Certificates all arrears of rent (with interest at the rate of the Penalty Interest Rate per annum upon any overdue instalments, to the extent legally enforceable), all expenses of the trust occasioned by the Company's default, and all other sums which shall have become due and payable by the Company hereunder (otherwise than by such declaration or declarations) shall be paid by the Company before any sale or lease by the Trustee of any of the Trust Equipment (or the making of any agreement for such sale or lease), and every other default shall be made good or secured to the satisfaction of the Trustee, or provision deemed by the Trustee to be adequate shall be made therefor, then, and in every such case, the Trustee, if so requested by the holders of not less than 66⅔% in principal amount of the Trust Certificates then outstanding, shall by written notice to the Company waive the default by reason of which there shall have been such declaration or declarations and the consequences of such default, but no such waiver shall extend to or affect any subsequent default or impair any right consequent thereon.

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

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

SECTION 5.06. *Company to Deliver Trust Equipment to Trustee.* In case the Trustee shall rightfully demand possession of any of the Trust Equipment in pursuance of this Agreement, the Company will, at its own expense, promptly cause such Trust Equipment to be placed on such storage tracks of the Lessee as shall reasonably be designated by the Trustee and will there deliver or cause to be delivered the same to the Trustee; or, at the option of the Trustee, the Trustee may keep such Trust Equipment, at the expense of the Company, on any lines of railroad of the Lessee or premises of the Lessee approved by the Trustee until the Trustee shall have leased, sold or

otherwise disposed of the same subject to the limitations set forth in Section 10 of the Lease. The performance of the foregoing covenant is of the essence of this Agreement and upon application to any court having jurisdiction in the premises, the Trustee shall be entitled to a decree against the Company requiring the specific performance thereof.

SECTION 5.07. *Trustee to Give Notice of Default.* The Trustee shall give to the holders of the Trust Certificates notice of each default hereunder known to the Trustee, within 30 days after it has actual knowledge of the same, whether or not remedied or cured before the giving of such notice.

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

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

SECTION 5.10. *Transfer of Trust Certificates to the Company.* At any time after the occurrence and during the continuation of an Event of Default hereunder, which is also an Event of Default under the Lease, and upon request of the Company made to each holder of an outstanding Trust Certificate, each holder of a Trust Certificate agrees that, unless the holders of not less than 66⅔% in aggregate principal amount of the Trust Certificates shall have waived such Event of Default, it will, upon receipt from the Company of an amount equal to the aggregate unpaid principal of and accrued interest on all Trust Certificates then held by such holder plus all other sums then due and payable to such holder hereunder or under such

Trust Certificates, forthwith sell, assign, transfer and convey to the Company all of the right, title and interest of such holder in and to the Trust Equipment, this Agreement, all Trust Certificates then held by such holder, the Purchase Agreement, the Lease, the Assignment and the Consent. If the Company shall request, such holder will comply with all the provisions of Section 2.05 to enable new Trust Certificates to be issued to the Company in such denominations as the Company shall request. All charges and expenses required pursuant to Section 2.05 in connection with the issuance of any new Trust Certificates shall be borne by the Company. In the event that the Company shall have acquired all the Trust Certificates in the manner contemplated by this Section and all amounts owing to the Trustee pursuant to this Agreement shall have been paid, the Trustee shall not exercise any remedies under this Agreement, the Assignment or the Lease without the approval of the Company.

ARTICLE SIX

ADDITIONAL COVENANTS AND AGREEMENTS BY THE COMPANY

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

SECTION 6.02. *Recording.* The Company will, at its own expense, promptly after the execution and delivery of this Agreement, the Lease and the Assignment (including the Consent) and each supplement or amendment hereto or thereto, respectively, cause the same to be duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and deposited with the Registrar General of Canada (notice of such deposit to be forthwith thereafter given in *The Canada Gazette*) pursuant to Section 86 of the Railway Act of

Canada. The Company will, at its own expense, from time to time, do and perform any other act and will execute, acknowledge, deliver, file, register, record and deposit (and will refile, reregister, rerecord or redeposit whenever required) any and all further instruments required by law and reasonably requested by the Trustee, for the purpose of proper protection, to the satisfaction of the Trustee, of the title of the Trustee to the Trust Equipment and the rights of the holders of the Trust Certificates or for the purpose of carrying out the intention of this Agreement; *provided, however,* that the Company will not be required to file, record or deposit this Agreement in Canada other than with the Registrar General of Canada.

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

ARTICLE SEVEN

CONCERNING THE HOLDERS OF TRUST CERTIFICATES; AMENDMENTS

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

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

The fact and date of the execution by any such person of any instrument may be proved by the certificate of any notary public or other officer of any jurisdiction within the United States 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 or in any other manner which the Trustee deems sufficient.

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

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

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

SECTION 7.05. *Supplemental Indentures.* Without the consent of the holders of any of the Trust Certificates, the Trustee, at any time and from time to time, may, with the consent of the Company, enter into one or more indentures supplemental hereto or to the Lease, in form satisfactory to the

Trustee (A) to cure any ambiguity, to correct or supplement any provision herein which may be inconsistent with any other provision herein or to make any other provisions with respect to matters or questions arising under this Agreement or the Lease which shall not be inconsistent with the provisions of this Agreement or the Lease, including but not limited to an adjustment of the aggregate Cost of the equipment delivered under this Agreement as set forth in the First Whereas Clause of this Agreement, *provided* such action shall not adversely affect the interests of the holders of the Trust Certificates hereunder or under the Lease or (B) to substitute other units of new standard gauge railroad equipment (other than passenger or work equipment) for any of the equipment described in Schedule I hereto that is delivered by a Manufacturer prior to the time it can be settled for hereunder or under the Other Equipment Trust Agreements (as evidenced by a Lessee's Certificate); *provided* such other units are at the same time subjected to the Lease or (C) to reflect the entering into of additional leases with the Lessee on substantially the same terms of the Lease and the Other Leases (which may have different rental payment terms and casualty value schedules and such other variations not adversely affecting the interests of the holders of the Trust Certificates), but such leases will provide, when taken together with the Lease and the Other Leases, full amortization of the principal and interest of the Trust Certificates and the trust certificates issued pursuant to the Other Equipment Trust Agreements.

With the written consent of the holders of not less than 66⅔% in principal amount of the outstanding Trust Certificates, the Trustee may enter into an indenture or indentures supplement hereto or the Lease for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Agreement or the Lease or of modifying in any manner the rights of the holders of the Trust Certificates under this Agreement or the Lease; *provided, however,* that no such supplemental indenture shall, without the consent of the holder of each outstanding Trust Certificate affected thereby:

(1) change the stated maturity of the principal of or any instalment of interest on (or the rentals payable in respect thereof), or the coin or currency in which, any Trust Certificate or the interest thereon (or the rentals payable in respect thereof) is payable, or impair the right to institute suit for the enforcement of any such payment on or after the stated maturity thereof (or, in the case of prepayment, on or after the prepayment date); or

(2) release any Equipment from this Agreement, which has been accepted and settled for under Article Three hereof, otherwise than as specifically contemplated by the provisions hereof or of the Purchase Agreement; or

(3) reduce the percentage in principal amount of the outstanding Trust Certificates, the consent of whose holders is required for any such supplemental indenture or the consent of whose holders is required for any waiver or other action provided for in this Agreement; or

(4) modify any of the provisions of this Section 7.05.

ARTICLE EIGHT

THE TRUSTEE

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

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

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

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

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

(2) in the absence of bad faith on the part of the Trustee, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificates or opinions furnished to the Trustee and conforming to the

requirements of this Agreement; but in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Agreement;

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

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

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

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

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

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

SECTION 8.03. *Application of Rentals; Responsibility of Trustee.* 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 to its satisfaction by the Company or by one or more of the holders of the Trust Certificates against all liability and expenses; and the Trustee shall not be responsible for the filing or recording, required under Section 6.02 of this Agreement or of any supplement or amendment hereto or statement of new identifying numbers.

Other than as provided in Section 3.04, the Trustee has not received and is not expected to receive any assurance as to the validity or perfection under Canadian law of the title to the Trust Equipment sold, assigned and transferred to it pursuant to Section 3.01 as to the protection of its rights hereunder in Canada, and the Trustee shall have no responsibility with respect to such title or the protection of such rights in Canada.

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

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

The Trustee shall, on Request, in the event funds are required in connection with a settlement for Trust Equipment pursuant to Section 3.02 or in the event funds are required for the prepayment of the Trust Certificates pursuant to Section 3.01 or 4.07, sell such Investments, or any

portion thereof, and restore to Deposited Cash the proceeds of any such sale up to the amount paid for such Investments, including any accrued interest.

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

Any interest (in excess of accrued interest paid from Deposited Cash held hereunder at the time of purchase) or other profit which may be realized from any sale or redemption of Investments and held by the Trustee shall be paid to the Lessee, as a third-party beneficiary of the Trustee's agreement under this paragraph, on the Investment Payment Date, *provided* that the Company is not in default hereunder and the Lessee is not in default under the Lease.

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

The Trustee may perform its powers and duties hereunder by or through such attorney and agents as it shall appoint, and shall be answerable only for its own acts, and not for the acts of any co-trustee or separate trustee appointed under Section 8.09 or for the acts of any attorney or other agent appointed by it with reasonable care. The Trustee shall not be responsible in any way for the recitals herein contained or for the execution or validity of this Agreement, the Lease, the Assignment, the Consent, or of the Trust Certificates (except the Trustee for its own execution thereof).

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

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

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

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

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

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

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

SECTION 8.07. *Acceptance of Appointment by Successor Trustee.* Any successor trustee appointed as provided in Section 8.06 shall execute, acknowledge and deliver to the Company and to its predecessor trustee an instrument accepting such appointment hereunder, and thereupon (unless

such resignation shall have become effective earlier pursuant to Section 8.06(a)) the resignation or removal of the predecessor trustee shall become effective and such successor trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, duties and obligations of its predecessor hereunder, with like effect as if originally named as Trustee herein; but, nevertheless, on the written request of the Company or of the successor trustee, upon payment of its charges then unpaid, the trustee ceasing to act shall execute and deliver an instrument transferring to such successor trustee all the rights and powers of the trustee so ceasing to act. Upon request of any such successor trustee, the Company shall execute any and all instruments in writing for more fully and certainly vesting in and confirming to such successor trustee all such rights and powers.

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

SECTION 8.09. *Appointment of Co-Trustees and Separate Trustees.* If at any time or times the holders of a majority in principal amount of the then outstanding Trust Certificates shall in writing request the Trustee and the Company, or the Trustee shall in writing request the Company, the Trustee and the Company shall execute and deliver all instruments and agreements necessary or proper to appoint another bank or trust company, either to act hereunder as co-trustee or co-trustees with respect to all or any of the Trust Equipment jointly with the Trustee or to act hereunder as separate trustee or trustees with respect to any such equipment, with such power and authority and entitled to the benefit of such provisions hereunder as shall be specified in the instrument of appointment. In the event the Company shall not have joined in the execution of such instruments and agreements within 10 days after the receipt of a written request so to do from the Trustee or from the holders of a majority in principal amount of the then outstanding Trust Certificates, or in case an Event of Default shall have occurred and be continuing, the Trustee may act under the foregoing provisions of this

Section 8.09 without the concurrence of the Company; and the Company hereby fully empowers the Trustee so to act and appoints the Trustee its agent and attorney to act for it under the foregoing provision of this Section 8.09 in either of such contingencies. Every co-trustee or separate trustee appointed hereunder shall be a national bank or a bank or trust company incorporated under the laws of the United States or Canada or any State or Province thereof and having a capital and surplus of not less than $50,000,000, if there be such an institution willing, qualified and able to accept the position of co-trustee or separate trustee upon reasonable or customary terms.

SECTION 8.10. *Transfer of Title by the Trustee.* In any transfer hereunder by the Trustee of title to a unit, the Trustee shall covenant that it has not charged or encumbered such unit except as provided herein and the Trustee shall not be required to give any further covenant as to title to such unit.

ARTICLE NINE

MISCELLANEOUS

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

SECTION 9.02. *Law Governing.* The provisions of this Agreement, and all the rights and obligations of the parties hereunder, shall be governed by the Governing State Law; *provided, however,* that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act of the United States, the applicable recording laws of Canada and the Provinces and Territories thereof and such additional rights arising out of the filing, recording or depositing hereof and of any assignment hereof or out of the marking of the Trust Equipment as shall be conferred by the laws of the

several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited or in which any Trust Equipment may be located.

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

SECTION 9.04. *Satisfaction of Obligations; Immunities.* The obligations of the Company under Section 4.04(1) and (2), Section 4.06, the first and last paragraphs of Section 4.07, Section 4.09, Section 4.10, Section 5.06 and Section 6.01 shall be deemed in all respects satisfied by the Lessee's undertakings contained in the Lease. The Company shall not have any responsibility for the Lessee's failure to perform such obligations, but if the same shall not be performed by the Lessee such non-performance shall constitute the basis for an Event of Default hereunder pursuant to Section 5.01.

It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, undertakings and agreements herein made on the part of the Company, while in form purporting to be the representations, undertakings and agreements of the Company, are nevertheless each and every one of them made and intended not as personal representations, undertakings and agreements by the Company or for the purpose or with the intention of binding the Company personally but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement, and this Agreement is executed and delivered by the Company not in its own right but solely in the exercise of the powers expressly conferred upon it as trustee under the Trust Agreement; and that no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against the Company, or any beneficiary of the trust under which the Company is acting on account of this Agreement or on account of any representation, undertaking or agreement of the Company or any beneficiary under the Trust Agreement, either expressed or implied, all such personal liability, if any, being expressly waived and released by the Trustee and by all persons claiming by, through or under the Trustee; *provided, however,* that the Trustee or any person claiming by, through or under any of it, making claim hereunder, may look to said Trust Estate for satisfaction of the same.

SECTION 9.05. *Notices.* Except as otherwise expressly provided herein, all demands, notices and communications hereunder shall be in writing and shall be deemed to have been duly given if personally delivered at or mailed by certified mail to (a) in the case of the Company, at the Company's Office or such other address as may hereafter be furnished to the Trustee in writing by the Company; (b) in the case of the Trustee, at its Corporate Trust Office, attention of the Corporate Trust Department or such other address as may hereafter be furnished to the Company in writing by the Trustee. An affidavit by any person representing or acting on behalf of the Company or the Trustee as to such mailing, having the receipt for certified mail attached, shall be conclusive evidence of the giving of such demand, notice or communication.

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

SECTION 9.07. *Execution.* Although this Agreement is dated as of the Execution Date for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed. This Agreement shall be signed first by the Trustee and then by the Company and shall be valid and binding only after execution and delivery by the Company.

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

SECTION 9.09. *Irrevocability.* The parties hereto agree that the trust hereby created shall be irrevocable.

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

Inter National Bank of Miami, as Trustee,

by: .....

Authorized Officer

[CORPORATE SEAL]

Attest:

.....

Authorized Officer

First Security Bank of Utah, N.A.,
Owner-Trustee, under Owner Trust Agreement No. 2

by: .....

Authorized Officer

[CORPORATE SEAL]

Attest:

.....

Authorized Officer

STATE OF UTAH
COUNTY OF SALT LAKE } ss.:

On this 12th day of June, 1974, before me personally appeared Scott O. Allen to me personally known, whom, being by me duly sworn, says that he is an Authorized Officer of FIRST SECURITY BANK OF UTAH, N.A., 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 By Laws, and they acknowledged that the execution of the foregoing instrument was the free act and deed of said national banking association.

Peggy Ann Kerbert
Notary Public

My commission expires

My Commission Expires Nov. 10, 1976

[NOTARIAL SEAL]

STATE OF FLORIDA
COUNTY OF DADE } ss.:

On this 7 day of June, 1974, before me personally appeared C. J. Barber, to me personally known, who, being by me duly sworn, says that he is an Authorized Officer of INTER NATIONAL BANK OF MIAMI, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

NOTARY PUBLIC STATE OF FLORIDA AT LARGE
MY COMMISSION EXPIRES SEP. 23, 1977
BONDED THRU GENERAL INSURANCE UNDERWRITERS

Caridad Lopez
Notary Public

My commission expires

[NOTARIAL SEAL]

SCHEDULE I—Equipment Trust Agreement No. 3*

Quantity	Type	Identifying Numbers (both inclusive)
91	G.P. 40-2 3000 H.P. 4-axle, 4-motor Diesel Electric Locomotives	CN9400-9490

* The units of Equipment set forth herein include units which will be covered by this Equipment Trust Agreement and one or more of the Other Equipment Trust Agreements. Upon delivery of all of the units, an appropriate supplement will be entered into setting forth the specific units and identifying numbers to be covered by this Equipment Trust Agreement.

ANNEX A

LEASE OF EQUIPMENT NO. 3

between

FIRST SECURITY BANK OF UTAH, N.A.,
as Owner-Trustee

and

CANADIAN NATIONAL RAILWAY COMPANY

Dated as of January 1, 1974

LEASE OF EQUIPMENT NO. 3 dated as of January 1, 1974, between FIRST SECURITY BANK OF UTAH, N.A. (hereinafter called the Lessor) as Owner-Trustee under Owner-Trust Agreement No. 2 dated as of January 1, 1974, with a certain equity investor (said Owner Trust Agreement being hereinafter called the Trust Agreement and said investor being hereinafter called the Beneficiary) and CANADIAN NATIONAL RAILWAY COMPANY, a corporation duly incorporated under the laws of Canada (hereinafter called the Lessee).

WHEREAS, the Lessor has entered into Manufacturing Agreement No. 1 dated as of January 1, 1974 (hereinafter called the Manufacturing Agreement) with General Motors of Canada Limited (Diesel Division), (hereinafter called the Manufacturer) and the Lessee, wherein the Manufacturer has agreed to construct, sell and deliver the units of railroad equipment described in Schedule I hereto; and

WHEREAS, the Lessor has entered into an Equipment Trust Agreement No. 3 dated as of January 1, 1974 (hereinafter called the Equipment Trust Agreement) with Inter National Bank of Miami (hereinafter called the Trustee), under which the Lessor has agreed to cause the Manufacturer to sell, assign and transfer to the Trustee title to all such Units (as hereinafter defined) of railroad equipment not covered by the Other Leases (as defined in the Equipment Trust Agreement) which are accepted hereunder up to an aggregate cost of $7,100,000 (U.S.) (or such other amount as may be determined by the Company and the Lessee by supplement hereto) and settled for after July 15, 1974 but on or prior to December 30, 1974 under the Manufacturing Agreement and under which such title to the Units will be reserved to the Trustee until the Lessor fulfills its obligations under the Equipment Trust Agreement (such units so delivered and settled for and described in Schedule I hereto being hereinafter called the Units), and under which the Trustee has agreed to lease all the Units to the Lessor;

WHEREAS, the Lessee desires to lease from the Lessor the Units at the rentals and for the terms and upon the conditions hereinafter provided;

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

Section 1. *Delivery and Acceptance of Units.* The Lessor will cause each Unit accepted pursuant to the Manufacturing Agreement to be tendered to the Lessee at such point or points as may be mutually acceptable to the Lessor and the Lessee. Immediately upon such tender, the Lessee will cause its authorized inspectors or representatives to inspect the same, and if such Unit is found to be in good operating order and repair, to accept delivery of such Unit and to execute and deliver to the Lessor a certificate of acceptance (hereinafter called a Certificate of Acceptance) certifying as to the actual date of acceptance of delivery by the Lessee; whereupon such Unit shall be deemed to have been delivered to and accepted by the Lessee under this Lease and shall be subject thereafter to all the terms and conditions of this Lease and such Certificate of Acceptance shall be absolutely binding upon the Lessee. Any Unit or Units excluded from the Equipment Trust Agreement pursuant to Section 3.01 thereof shall likewise be excluded from this Lease.

Section 2. *Rentals.* The Lessee agrees to pay to the Lessor, in such coin or currency of the United States of America as, at the time payable, shall be legal tender for the payment of public and private debts, as rental for each Unit subject to this Lease, one interim rental payment on the Business Day (as defined in the Equipment Trust Agreement) next preceding January 15, 1975 and 30 consecutive semi-annual rental payments payable on the Business Day next preceding January 15 and July 15 of each year, commencing July 15, 1975. In respect of each Unit subject to this Lease, (a) the interim payment shall be an amount equal to the Interim Lease Rate set forth in Schedule II multiplied by the Cost (as defined in the Equipment Trust Agreement) plus an amount equal to the Daily Lease Rate set forth in Schedule II multiplied by the Cost of each such Unit for each day elapsed from and including the date such Unit is settled for under the Equipment Trust Agreement and the Manufacturing Agreement to January 15, 1975, and (b) the 30 semi-annual payments shall each be in an amount equal to the applicable basic lease rate therefor set forth in Schedule II multiplied by the Cost of such Unit subject to this Lease.

All rental and other payments provided for in this Lease to be made to the Lessor shall be made to the Lessor by the deposit of the funds to the account of the Lessor at the branch of such bank or trust company as shall be from time to time specified in writing by the Lessor.

This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent, reduction thereof or set-off against rent, including but not limited to, abatements, reductions or set-offs due or alleged to be due to, or by reason of, any past, present or future claims of the Lessee against the Lessor under this Lease or otherwise or against the Trustee or the Manufacturer; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use of or destruction of all or any of the Units from whatever cause, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease or lack of right, power or authority of the Lessor to enter into this Lease, the breach by the Lessor of the representations and warranties of the Lessor contained in the second paragraph of Section 8 hereof, or by reason of any failure by the Lessor to perform any of its obligations herein contained, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. The Lessee shall have a right of action against the Lessor for any such breach of such representations and warranties or any such failure to perform such obligations, but without any right of set-off of such rents and other amounts payable by the Lessee hereunder.

Section 3. *Terms of Lease.* The term of this Lease as to each Unit shall begin upon acceptance thereof by the Lessee pursuant to Section 1 hereof, and, subject to the provisions of Sections 6, 9, 17 and 19 hereof, shall terminate on the date on which the final semi-annual payment of rent in respect thereof is due hereunder.

Notwithstanding anything to the contrary contained herein, all rights and obligations under this Lease and in and to the Units, upon default by the Lessee hereunder, are subordinate, junior in rank and subject to the rights of the Trustee under the Equipment Trust Agreement.

Section 4. *Identification Marks.* The Lessee will cause each Unit to be kept numbered with its identifying number as set forth in Schedule I hereto and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of such Unit, in letters not less than an inch in height, the following words: "OWNED BY INTER NATIONAL BANK OF MIAMI, 627 SOUTHWEST 27TH AVENUE, MIAMI, FLORIDA 33135, AS TRUSTEE UNDER THE TERMS OF AN EQUIPMENT TRUST AGREEMENT", or other appropriate words designated by the Trustee, with appropriate changes thereof and additions thereto as from time to time may be required by law or reasonably requested by the Lessor in order to protect the interest of the Lessor and/or the Trustee in and to such Unit and the rights of the Lessor under this Lease and the Equipment Trust Agreement and of the Trustee under the Equipment Trust Agreement. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such words shall have been so marked on both sides thereof and will replace promptly any such words which may be removed, defaced or destroyed. The Lessee will not change or permit the identifying number of any Unit to be changed except in accordance with a statement of new identifying numbers to be substituted therefor, which statement previously shall have been filed with the Trustee and the Lessor by the Lessee and filed, recorded or deposited in all public offices where this Lease will have been filed, recorded or deposited.

Except as above provided the Lessee will not allow the name of any person, association or corporation to be placed on the Units as a designation that might be interpreted as a claim of ownership; *provided, however,* that the Lessee may cause the Units to be lettered with the names, initials or other insignia customarily used by the Lessee or any permitted sublessee on railroad equipment used by it of the same or similar type for convenience of identification of their right to use the Units.

Section 5. *Taxes.* All payments to be made by the Lessee hereunder will be free of expense to the Lessor and the Trustee for collection or other charges and will be free of expense to the Lessor and the Trustee with respect to the amount of any local, state, provincial or federal United States, Canadian or Mexican taxes (other than any local, state, provincial or federal United States or Canadian or Mexican income taxes [to the extent that the Lessor receives credit for such Canadian or Mexican taxes against its United States income tax liability] payable by the Lessor in consequence of the

receipt of payments provided herein, and other than the aggregate of all franchise taxes measured by net income based on such receipts, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided), assessments or license fees (and any charges, fines or penalties of any kind in connection therewith) (hereinafter called "impositions") hereafter levied or imposed upon or in connection with or measured by this Lease, the Equipment Trust Agreement or any of the instruments or agreements referred to herein or therein or contemplated hereby or thereby, or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof, the Equipment Trust Agreement or any such instruments or agreements, all of which impositions the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. The Lessee will also pay promptly all impositions which may be imposed upon any Unit or for the use or operation thereof or upon the earnings arising therefrom or upon the Lessor or the Trustee solely by reason of its interest therein and any and all impositions upon or on account of the trust created by the Equipment Trust Agreement or upon or on account of the Equipment Trust Agreement, or the transactions contemplated thereby (whether or not such transactions shall actually be consummated) or the instruments or agreements referred to therein or contemplated thereby, and will keep at all times all and every part of such Unit free and clear of all such impositions which might in any way affect the interests of the Lessor or the Trustee or results in a claim, lien, security interest or other encumbrance upon any such Unit and will supply the Lessor and the Trustee with a receipt or other evidence of such payment satisfactory to the Lessor and the Trustee; *provided, however,* that the Lessee shall be under no obligation to pay any impositions so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Lessor or the Trustee, adversely affect the property or rights of the Lessor or the Trustee hereunder or under the Equipment Trust Agreement and the Lessee shall have furnished the Trustee with an opinion of counsel to such effect. If any such impositions shall have been charged or levied against the Lessor or the Trustee directly and paid by the Lessor or the Trustee, the Lessee shall reimburse the Lessor or the Trustee, as the case may be, on presentation of an invoice therefor and such amount shall be due on such presentation; *provided, however,* that the Lessee shall not be obliged to reimburse the Lessor or the Trustee for any such imposition so paid unless

(a) prior to such payment, the Lessor or the Trustee shall have obtained the opinion of either of their respective counsel that either the Lessor or the Trustee was liable to pay such imposition and a copy shall be sent to the Lessor when such opinion is rendered, or (b) unless the Lessee shall have approved the payment thereof.

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

In the event that, during the continuance of this Lease, the Lessee becomes liable for the payment or reimbursement of any impositions, pursuant to this Section 5, such liability shall continue, notwithstanding the termination of this Lease, until all such impositions are paid or reimbursed by the Lessee.

Section 6. *Payment for Casualty Occurrences.* In the event that any Unit shall be or become worn out, lost, stolen, destroyed or damaged beyond economic repair, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (any such occurrence being hereinafter called a Casualty Occurrence) during the term of this Lease or until such Unit shall have been returned to the Lessor in the manner provided in Section 12 hereof, the Lessee shall, within 30 days after it shall have determined that such Unit has suffered a Casualty Occurrence, fully notify the Lessor and the Trustee with respect thereto. On the rental payment date next succeeding such notice (or, at the option of the Lessee, in the event such rental date shall occur within 15 days after such notice, on the next succeeding rental payment date) or within 60 days if such unit is being returned under Section 12 hereof the Lessee shall pay to the Lessor an amount equal to the unpaid rental for such Unit due and payable on such date plus a sum equal to the Casualty Value (as hereinafter defined) of such Unit as of such rental payment date in accordance with Schedule III hereto. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall thereafter cease to accrue and the terms of this Lease as to such Unit shall terminate. The Lessor shall, upon request of the Lessee, after payment by the Lessee of a sum equal to such unpaid rental for and the Casualty Value of any Unit, execute and deliver to or upon the order

of the Lessee a bill of sale (without warranties) for such Unit such as will transfer to the Lessee such title to such Unit as the Lessor and the Trustee derived from the Manufacturer free and clear of all liens, security interests and other encumbrances arising through the Lessor or the Trustee.

The Casualty Value of each Unit for any rental payment date shall be determined by multiplying the Cost (as defined in the Equipment Trust Agreement) of such Unit by the percentage set forth opposite the applicable rental payment date number in Schedule III hereto.

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

Section 7. *Annual Reports.* On or before April 1 in each year, commencing with the year 1975, the Lessee will furnish to the Lessor and the Trustee, in such number of counterparts or copies as may reasonably be requested an accurate statement signed by an authorized representative, (i) showing, as of the preceding December 31, the amount, description and numbers of all Units that may have suffered a Casualty Occurrence, whether by accident or otherwise, during the preceding calendar year (or since the date of this Lease in the case of the first such statement), and such other information regarding the condition and state of repair of the Units as the Lessor or the Trustee may reasonably request, (ii) identifying the Units then subject to this Lease and (iii) stating that, in the case of all Units repaired or repainted during the period covered by such statement, the markings required by Section 4 hereof and Section 4.06 of the Equipment Trust Agreement have been preserved or replaced. The Lessor shall have the right, by its agents, but shall be under no obligation, to inspect the Units and the records of the Lessee with respect thereto at any reasonable time during the continuance of this Lease.

The Lessee shall in each year deliver to each holder of Trust Certificates (as defined in the Equipment Trust Agreement) after the end of the Lessee's fiscal year, in such number of copies as may reasonably be requested, its annual report, including audited financial statements of the Lessee for the fiscal period ended, as soon as it is completed and is available for distribution.

Section 8. *Disclaimer of Warranties; Compliance With Laws and Rules; Maintenance; Indemnification.* THE LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN, COMPLIANCE WITH SPECIFICATIONS, OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, OR AS TO THE SUITABILITY, ADEQUACY, OPERATION, USE OR PERFORMANCE OF, THE UNITS DELIVERED TO THE LESSEE HEREUNDER, AND THE LESSOR MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE, IT BEING AGREED THAT ALL SUCH RISKS, AS BETWEEN THE LESSOR AND THE LESSEE, ARE TO BE BORNE BY THE LESSEE; but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name and for the account of the Lessor and/or the Lessee as their interests may appear, whatever claims and rights the Lessor may have against the Manufacturer of the Units or of the components thereof. The Lessor shall have no responsibility or liability under this Lease to the Lessee or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Units or by any inadequacy thereof or deficiency or defect therein or by any other circumstance in connection therewith; (ii) the use, operation or performance of any Units or any risks relating thereto; (iii) any interruption of service, loss of business or anticipatory profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Units. The Lessee's acceptance of delivery of the Units shall be conclusive evidence as between the Lessee, the Lessor and the Trustee, that all Units described in a Certificate of Acceptance are in all the foregoing respects satisfactory to the Lessee and the Lessee will not assert any claim of any nature whatsoever against the Lessor or the Trustee based on any of the foregoing matters.

The Lessor represents and warrants as follows:

(i) At the time of delivery of each Unit under this Lease, the Lessor shall have such title to such Unit as is derived from each Manufacturer, unimpaired by any act or omission of the Lessor which will in any manner prevent the performance of this Lease in accordance with its terms and, in addition, such Unit shall be free and clear of all

claims, liens, security interests and encumbrances, except those created or arising under the Equipment Trust Agreement, which may result from claims against the Lessor not arising out of the lease or ownership thereof which will prevent the performance of this Lease in accordance with its terms; and

(ii) So long as the Lessee shall not be in default under this Lease, the Lessor shall not do (or suffer to be done by any person claiming through or against the Lessor and not against the Lessee or any sublessee) any act which interferes with any and all rights of the Lessee to peaceably and quietly hold, possess and use the Units in accordance with the terms of this Lease.

The Lessor (which for the purposes of this sentence shall not include the Beneficiary whose rights in regard hereto are governed by the Trust Agreement) covenants that any sale, assignment, transfer, mortgage or other disposition which it may make of this Lease or of any Unit, whether prior or subsequent to delivery to the Lessee, shall be expressly subject to the terms and provisions of this Lease; *provided, however,* that any such sale, transfer, assignment (other than a first assignment of this Lease), mortgage or other disposition shall be only to a bank or trust company having a combined capital and surplus of at least $25,000,000 or any corporation which holds 95% of the voting securities of the Lessor or any wholly-owned subsidiary thereof. It is further understood and agreed that this Lease shall be subordinated to the rights of the Trustee under the Equipment Trust Agreement and the Lessor shall not have the right to terminate or impair the Lessee's possession or use of the property subject to this Lease so long as the Lessee shall not be in default under this Lease; and, subject to the foregoing, covenants that the Lessor has not done and will not do (or suffer to be done by any person claiming through or against the Lessor) any act which interferes with or impairs (i) the Lessee's possession and use in accordance with the terms of this Lease of the Units or (ii) the title to the Units which may be transferred or conveyed to the Lessee under the provisions of Sections 6 and 19 of this Lease and that any title so conveyed shall then be free of any lien, claim, security interest or other encumbrance by or in favor of any person claiming by, through or under the Lessor.

The Lessor covenants and agrees not to alter, amend or modify the Equipment Trust Agreement or the Assignment of Lease and Agreement, pursuant to which this Lease is assigned to the Trustee, without the prior written consent of the Lessee.

The Lessee agrees, for the benefit of the Lessor and the Trustee, to comply in all respects with all laws of the jurisdiction in which operations involving any Unit subject to this Lease may extend, with the Interchange Rules of the Association of American Railroads, if applicable, and with all lawful rules of any legislative, executive, administrative or judicial body or officer exercising any power or jurisdiction over any such Unit, to the extent such laws and rules affect the operations or use of such Unit; and the Lessee shall and does hereby indemnify the Lessor and the Trustee and agrees to hold the Lessor and the Trustee harmless from and against any and all liability that may arise from any infringement or violation of any such laws or rules by the Lessor or the Lessee, or their employees, or any other person. In the event that such laws or rules require the alteration of the Units or in case any equipment or appliance on any such Unit shall be required to be changed or replaced, or in case any additional or other equipment or appliance is required to be installed on such Unit in order to comply with such laws, regulations, requirements and rules, the Lessee agrees, at its own expense, to make such alterations, changes, additions and replacements and to use, maintain and operate such Unit in full compliance with such laws, regulations, requirements and rules so long as such Unit is subject to this Lease; *provided, however,* that the Lessee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Lessor or the Trustee, adversely affect the property or rights of the Lessor or the Trustee hereunder or under the Equipment Trust Agreement.

The Lessee agrees that, at its own cost and expense, it will maintain and keep each Unit which is subject to this Lease in good order and repair, reasonable wear and tear excepted.

Any and all additions to any Unit and any and all parts installed on or replacements made to any Unit shall be considered accessions to such Unit (except such as can be removed without damage to and without impairing the originally intended function or use of such Unit and without cost or expense to the Lessor or the Trustee) and there shall be immediately vested in the Lessor and the Trustee the same interest in such accessions, parts or replacements as the interests of the Lessor and the Trustee in such Unit. The Lessee may make alterations or modifications to any Unit so long as they do not affect the value of such Unit adversely.

The Lessee agrees to indemnify and save harmless the Lessor and the Trustee against any charge or claim made against the Lessor or the Trustee

and against any expense, loss or liability (including, but not limited to, strict liability in tort, counsel fees and expenses, patent liabilities, penalties and interest, but excluding any liability under Section 14 hereof) which the Lessor or the Trustee may incur in any manner by reason of the ownership of, or which may arise in any manner out of or as the result of the ordering, acquisition, purchase, use, operation, condition, delivery, rejection, storage or return of, any Unit while subject to this Lease or until no longer in the possession of or stored by the Lessee, whichever is later, and to indemnify and save harmless the Lessor and the Trustee against any charge, claim, expense, loss or liability on account of any accident in connection with the operation, use, condition, possession or storage of any Unit resulting in damage to property or injury or death to any person; *provided, however,* that the Lessee shall not be required to indemnify the Lessor or the Trustee under this paragraph for gross negligence on the part of the Lessor or the Trustee, *provided, further, however,* that the Lessor and the Trustee will not be deemed negligent as a result of any act or omission of the designer or any Manufacturer of the Units or as a result of any act or omission of the Lessee. The indemnities arising under this paragraph shall survive payment of all other obligations under this Lease or the termination of this Lease. Anything herein to the contrary notwithstanding, the Lessee shall not be obligated to indemnify under this paragraph in respect of any charge, claim, expense, loss or liability (except for patent liability) attributable to a Unit which shall have been returned to the Lessor pursuant to Section 10 or 12 hereof or after this Lease with respect to such Unit has otherwise terminated, *provided* that such charge, claim, expense, loss or liability is attributable to an event occurring after such Unit was so returned or this Lease with respect to such Unit terminated, and *provided, further,* that such charge, claim, expense, loss or liability does not arise as a result of mechanical defects of such Unit which existed at the time such Unit was so returned or this Lease with respect to such Unit terminated.

The Lessee agrees to prepare and deliver to the Lessor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor) any and all reports known by the Lessee to be required to be filed by the Lessor, or requested by the Lessor to be filed, with any federal, state or other regulatory authority by reason of the interest of the Trustee and the Lessor in the Units or the leasing of the Units to the Lessee.

Section 9. *Default.* If, during the continuance of this Lease, one or more of the following events (hereinafter sometimes called Events of Default) shall occur:

A. default shall be made in the payment of any part of the rental provided in Section 2 hereof and such default shall continue for 10 days; or

B. the Lessee shall make or permit any unauthorized assignment or transfer of this Lease; or

C. default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein or in the Consent (as defined in Section 13 hereof) and such default shall continue (and the Lessee shall not make effective provisions for curing such default) for 30 days after written notice to the Lessee specifying the default and demanding that the same be remedied; or

D. any proceedings shall be commenced by or against the Lessee for any relief under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganization, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of the Lessee hereunder or under the Consent, as defined in Section 13 hereof), unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), and all the obligations of the Lessee under this Lease and the Consent 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 Lessee or for the property of the Lessee in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such a 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

E. an Event of Default (as defined therein) shall have occurred under the Other Leases (as defined in the Equipment Trust Agreement);

then, in any such case, the Lessor, at its option, may:

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

(b) by notice in writing to the Lessee terminate this Lease, whereupon all right of the Lessee to the use of the Units shall absolutely cease and determine as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided; and thereupon, the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever; but the Lessor shall, nevertheless, have the right to recover from the Lessee any and all amounts which under the terms of this Lease may then be due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period), plus (i) as liquidated damages for loss of the bargain and not as a penalty, a sum with respect to each Unit subject to this Lease which represents the excess of (x) the present value at the time of such termination of the entire unpaid balance of all rentals for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over (y) the then present value of the net rentals which the Lessor reasonably estimates to be obtainable for the lease of the Unit during such periods, such present value to be computed in each case on a basis of 5% per annum discount compounded semi-annually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated; (ii) any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Lessor shall have sustained by reason of the breach of any covenant or covenants of this Lease other than for the payment of rental; and (iii) an amount which, after deduction of all taxes required to be paid by the Lessor in respect of the receipt thereof under the laws of the United States or Canada or any political subdivision thereof, in the reasonable opinion of the

Lessor, will cause the Lessor's net after tax yield under this Lease to be equal to the net after tax yield that would have been available to the Lessor if it had been entitled to utilization of all or such portion of (x) the maximum depreciation deduction authorized with respect to a Unit under Section 167 of the United States Internal Revenue Code of 1954, as amended (hereinafter called the Code) utilizing the "asset guideline period" of 15 years for the Units prescribed in accordance with Section 167(m) of said Code, for an asset described in Asset Guideline Class No. 00.25 as described in Revenue Procedure 72-10, 1972 IRB8 taking into account an estimated Gross Salvage Value of 10% of Cost (as defined in the Equipment Trust Agreement) of such Unit which will be reduced by 10% of Cost as provided in Section 167(f) of the Code, (hereinafter called the Depreciation Deduction), and (y) the deductions in each taxable year of the Lessor for all interest paid during such year on the Trust Certificates (as defined in the Equipment Trust Agreement) computed in accordance with Section 163 of the Code (hereinafter called the Interest Deduction), which was lost, not claimed, not available for claim, disallowed or recaptured in respect of a Unit as a result of a breach of one or more of the representations, warranties and covenants made by the Lessee in Section 14 or any other provision of this Lease, the termination of this Lease, the Lessor's loss of the right to use such Unit, any action or inaction by the Lessor or the sale or other disposition of the Lessor's interest in such Unit after the occurrence of an Event of Default. Notwithstanding anything to the contrary contained in this clause (b), it is understood and agreed that the Lessee shall receive a credit in respect of the amounts payable or paid pursuant to subclause (i) of this clause (b) to the extent that the sum of (x) the then present value of any net rentals receivable by the Lessor upon the releasing of the Units during the period specified in subclause (i) (x) hereof, such present value to be computed on a basis of a 5% per annum discount compounded semiannually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, and (y) any net proceeds actually received by the Lessor upon the sale of said Units prior to the end of the term of this Lease, less an amount equal to the then present value of an amount equal to 15% of the Cost of the Units, as defined in the Equipment Trust Agreement, such present value to be computed on a basis of 5% per

annum discount compounded semiannually from the date of such termination to the end of the term of this Lease, exceeds the amount estimated pursuant to subclause (i) (y) hereof; *provided, however,* in no event shall such credit exceed the amount paid or payable by the Lessee pursuant to subclause (i) hereof.

Anything in this Section 9 to the contrary notwithstanding, any default in the observance or performance of any covenant, condition or agreement on the part of the Lessee which results solely in the loss by the Lessor of, or the loss by the Lessor of the right to claim, or the disallowance with respect to the Lessor of, all or any portion of the above-mentioned deductions, credits or other benefits, shall be, for all purposes of this Lease, deemed to be cured if the Lessee shall, on or before the next rental payment date after written notice from the Lessor of the loss, or the loss of the right to claim, or the disallowance of such deductions, credits or other benefits in respect of such Unit, agree to pay to the Lessor the revised rental rate in respect of such Units determined as provided in the second paragraph of Section 14 of this Lease.

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive but shall be cumulative, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is permitted by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make rental payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

The failure of the Lessor to exercise the rights granted it hereunder upon any occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

Section 10. *Return of Units Upon Default.* If the Lease shall terminate pursuant to Section 9 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor. For the purpose of delivering possession of any Unit or Units to the Lessor as above required, the Lessee shall at its own cost, expense and risk:

A. forthwith place such Units upon such storage tracks of the Lessee as the Lessor may reasonably designate,

B. permit the Lessor to store such Units on such tracks at the risk of the Lessee until the earlier of the date all such Units have been sold, leased or otherwise disposed of by the Lessor and the 270th day from the day the Lessee shall have placed the Units on such storage tracks, and

C. transport the same to any place on the tracks of the Lessee or any of its affiliates or to any connecting carrier for shipment, all as directed by the Lessor.

The assembling, delivery, storage and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any Unit, to inspect the same; *provided, however,* that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this Section 10, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be at the time in possession of such Unit. In connection therewith the Lessee will supply the Lessor with such documents as the Lessor may reasonably request.

Section 11. *Assignment; Possession and Use.* This Lease and the rentals and other sums due hereunder shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. All the rights of the Lessor hereunder shall inure to the benefit of any Beneficiary of the Lessor if the Lessor is a trust, *subject, however,* to the terms of such trust, and to the Lessor's assigns (including any beneficiary of any such assignee if such assignee is a trust).

So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession and use of the Units in accordance

with the terms of this Lease, but, without the prior written consent of the Lessor, the Lessee shall not sublease the Units or any of them except as provided in this Lease and shall not assign or transfer its leasehold interest under this Lease in the Units or any of them (except to the extent that the provisions of any mortgage now or hereafter created on any of the lines of railroad of the Lessee may subject the Lessee's leasehold interest to the lien thereof). In addition, the Lessee, at its own expense, will promptly cause to be duly discharged any lien, charge, security interest or other encumbrance (other than an encumbrance resulting from claims against the Lessor or the Trustee not related to the ownership of the Units or to the extent that the provisions of any mortgage now or hereafter created on any of the lines of railroad of the Lessee may subject the Lessee's leasehold interest to the lien thereof) which may at any time be imposed on or with respect to any Unit including any accession thereto or the interests of the Lessor, the Trustee or the Lessee therein. The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provisions of the immediately succeeding paragraph hereof.

So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession of the Units and to the use thereof by it or by any affiliated or subsidiary corporation upon its or their lines of railroad or upon lines of railroad over which the Lessee or such other corporation has trackage or other operating rights or over which railroad equipment of the Lessee or any such other corporation is regularly operated pursuant to contract, and also to permit the use of the Units upon other railroads in the usual interchange of traffic (if such interchange is customary at the time), but only upon and subject to all the terms and conditions of this Lease and the Equipment Trust Agreement.

Nothing in this Section 11 shall be deemed to restrict the right of the Lessee (i) to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any corporation incorporated under the laws of Canada (which shall have duly assumed the obligations of the Lessee hereunder) into or with which the Lessee shall have become amalgamated, merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety; or (ii) to sublease any Unit to any subsidiary or affiliated corporations of the Lessee; *provided, however,* that the rights of such sublessee are made expressly subordinate to the rights and remedies of the Trustee under the Equipment Trust Agreement and the Lessor under this Lease.

The Lessor shall have the right to declare the lease provided for herein terminated in case of any unauthorized sublease of the Units or any unauthorized assignment or transfer of the Lease.

Section 12. *Return of Units Upon Termination of Term.* As soon as practicable on or after the termination of this Lease (other than pursuant to Section 9 hereof) as to any or all of the Units, the Lessee will (unless the Units shall have suffered a Casualty Occurrence), at its own cost and expense, at the request of the Lessor, assemble such Units and deliver possession of such Units to the Lessor upon such storage tracks of the Lessee as the Lessor may reasonably designate and permit the Lessor to store such Unit on such tracks for a period not exceeding three months and transport the same, at any time within such three-month period, to any reasonable place on the lines of railroad operated by the Lessee or to any connecting carrier for shipment, all as directed by the Lessor upon not less than 30 days' written notice to the Lessee; the movement and storage of the Units to be at the expense and risk of the Lessee. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any Unit, to inspect the same; *provided, however,* that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. If any Unit shall have suffered a Casualty Occurrence, the Lessee shall thereupon assume and hold the Lessor harmless from all liability arising in respect of any responsibility of ownership thereof. Each Unit returned to Lessor pursuant to this Section (other than a Unit which has suffered a Casualty Occurrence) shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted and (ii) meet the standards then in effect under the interchange rules of the Association of American Railroads and the United States Federal Railroad Administration if applicable and the Canadian Transport Commission.

Section 13. *Opinion of Counsel for the Lessee; Representations and Warranties of Lessee.* On each Closing Date as defined in the Manufac-

turing Agreement for Units subject to this Lease, the Lessee will deliver to the Lessor and the Trustee the written opinion of counsel for the Lessee, in such number of counterparts as may reasonably be requested, and addressed to the Lessor and the Trustee, in scope and substance satisfactory to them and their counsel, to the effect that:

A. the Lessee is a corporation legally incorporated and validly existing in good standing, under the laws of Canada, with full corporate power to enter into this lease and the consent and agreement dated as of the date hereof executed by the Lessee (hereinafter called the Consent) to the assignment of this Lease to the Trustee (hereinafter called the Assignment);

B. this Lease and the Consent have been duly authorized, executed and delivered by the Lessee and constitute valid, legal and binding agreements, enforceable in accordance with their terms;

C. upon deposit of the Equipment Trust Agreement, this Lease and the Assignment (including the Consent) in the office of the Registrar General of Canada and, upon publication of notice of such deposit in *The Canada Gazette* in accordance with Section 86 of the Railway Act of Canada, no further act, filing, recording or deposit (or giving of notice) is required in order fully to protect in Canada or any Province or Territory thereof the rights of the Lessor under this Lease against any and all subsequent purchasers or mortgagees from the Lessee and/or from creditors of the Lessee;

D. no approval is required from any public regulatory body with respect to the entering into or performance of this Lease or the Consent, or all such approvals (which shall be specifically described) have been obtained; and

E. the entering into and performance of this Lease and the Consent will not result in any breach of, or constitute a default under, any indenture, mortgage, deed of trust, bank loan or credit agreement or other agreement or instrument to which the Lessee is a party or by which it may be bound or contravene any provision of law, statute, rule or regulation to which the Lessee is subject or any judgment, decree, franchise, order or permit applicable to the Lessee.

The Lessee represents and warrants as follows:

A. the Lessee is a corporation legally incorporated and validly existing in good standing, under the laws of Canada, with full corporate

power to enter into this lease and the consent and agreement dated as of the date hereof executed by the Lessee (hereinafter called the Consent) to the assignment of this Lease to the Trustee (hereinafter called the Assignment);

B. this Lease and the Consent have been duly authorized, executed and delivered by the Lessee and constitute valid, legal and binding agreements, enforceable in accordance with their terms;

C. upon deposit of the Equipment Trust Agreement, this Lease and the Assignment (including the Consent) in the office of the Registrar General of Canada and, upon publication of notice of such deposit in *The Canada Gazette* in accordance with Section 86 of the Railway Act of Canada, no further act, filing, recording or deposit (or giving of notice) is required in order fully to protect in Canada or any Province or Territory thereof the rights of the Lessor under this Lease against any and all subsequent purchasers or mortgagees from the Lessee and/or from creditors of the Lessee;

D. no approval is required from any public regulatory body with respect to the entering into or performance of this Lease or the Consent, or all such approvals have been obtained;

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

F. the balance sheet of the Lessee as of December 31, 1972, and the statement of income for the year then ended, reviewed by consulting accountants, copies of which have been furnished in the annual report to the Purchasers (as defined in the Equipment Trust Agreement), have been prepared in conformity with generally accepted accounting principles applied on a consistent basis, subject to any exceptions stated therein and in the notes thereto, and correctly and fairly present the financial condition of the Lessee as of the date of such balance sheet and the results of its operations for the period indicated in such statements. No material adverse change has occurred in the condition, financial or otherwise, of the Lessee since December 31, 1972; and

G. neither the Lease nor any other document or certificate heretofore furnished by or on behalf of the Lessee in connection with the Lease contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained herein and therein not misleading.

The Lessee agrees that on each Closing Date the Lessee will deliver to the Lessor and the Trustee a certificate of a Vice President or the Treasurer of the Lessee to the effect that such representations and warranties are true and correct on such date.

The Lessee also agrees to furnish to the Lessor and the Trustee a copy, certified by the Secretary or an Assistant Secretary of the Lessee, of resolutions of the Board of Directors of the Lessee authorizing the Lessee to enter into this Lease and the Consent. The Lessee also agrees to furnish to the Lessor on the first Closing Date a certificate as to the economic useful life of the Units subject to this Lease in form and substance satisfactory to the Lessor.

The Lessor agrees to furnish to the Lessee signed copies, addressed to the Lessee, of the opinion of counsel referred to in Paragraph 5(b) of the Purchase Agreement (as defined in the Equipment Trust Agreement), which opinion shall in addition state that the Lessor is a national banking association duly organized, validly existing and in good standing, under the laws of the United States with full corporate power to enter into this Lease, the Manufacturing Agreements, the Equipment Trust Agreement and the Assignment, and of the opinion of counsel for the appropriate Manufacturer referred to in Section 3.04 (d) of the Equipment Trust Agreement.

Section 14. *Indemnity in Respect of Tax Matters.* This Lease, the Equipment Trust Agreement and each Manufacturing Agreement have been entered into on the basis that the Lessor shall be entitled to such deductions, credits and other benefits as are provided by the United States Internal Revenue Code of 1954, as amended to the date hereof (hereinafter called the Code) to an owner of property including, (without limitation) an allowance for the Depreciation Deduction and the Interest Deduction (both as defined in Section 9 of this Lease).

With respect to any Unit, if (other than for the reasons set forth below) the Lessor shall lose or shall not have or shall lose the right to claim, or if (other than for the reasons set forth below) there shall be disallowed or recaptured with respect to the Lessor all or any portion of the Interest

Deduction or the Depreciation Deduction with respect to a Unit in computing taxable income under one of the accelerated methods of depreciation provided in Section 167(b) of the Code for the period this Lease is in effect, then, after written notice thereof to the Lessee by the Lessor, the rental rate applicable to such Unit set forth in Section 2 of this Lease shall be increased by an amount for such Unit which, in the reasonable opinion of the Lessor, will cause the Lessor's net after tax return in respect of such Unit under this Lease to equal the net after tax return that would have been available if the Lessor had been entitled to utilization of all or such portion of the Interest Deduction or Depreciation Deduction which was not claimed or was disallowed and the Lessee shall forthwith pay to the Lessor as additional rental the amount of any interest or penalty which may be assessed by the United States against the Lessor attributable to the loss of all or any portion of the Interest Deduction or Depreciation Deduction, *provided, however,* that such rental rate shall not be so increased nor shall the Lessee be obliged to the Lessor for such interest or penalty if the Lessor shall have lost, or shall not have or shall have lost the right to claim, or if there shall have been disallowed with respect to the Lessor all or any portion of the Interest Deduction or Depreciation Deduction with respect to such Unit as a direct result of the occurrence of any of the following events:

(i) a Casualty Occurrence with respect to such Unit, if the Lessee shall have paid to the Lessor the amounts stipulated under Section 6 hereof;

(ii) a voluntary transfer by the Lessor of legal title to such Unit, the disposition by the Lessor of any interest in such Unit or the reduction by the Lessor of its interest in the rentals from such Unit under the Lease (other than as contemplated by the Equipment Trust Agreement) unless, in each case, an Event of Default shall have occurred and be continuing;

(iii) the amendment of the Equipment Trust Agreement without the prior written consent of the Lessee;

(iv) the failure of the Lessor to claim the Depreciation Deduction or the Interest Deduction in its income tax return for the appropriate year or the failure of the Lessor to follow proper procedure in claiming the Depreciation Deduction or the Interest Deduction with respect to such Unit; or

(v) the failure of the Lessor to have sufficient income to benefit from the Depreciation Deduction or the Interest Deduction, as applicable.

The Lessor agrees that if, in the opinion of its or the Lessee's independent tax counsel (herein referred to as Counsel), a bona fide claim to all or a portion of the Depreciation Deduction or the Interest Deduction on any Unit, exists in respect of which the Lessee is required to pay increased rental and interest and/or penalty as aforesaid to the Lessor as above provided, the Lessor shall, upon request and at the expense of the Lessee, take all such legal or other appropriate action deemed reasonable by Counsel in order to sustain such claim. The Lessor may take such action prior to making payment of the amounts claimed pursuant to a notice of disallowance or recapture or make such payment and then sue for a refund. In the latter event, if the final determination shall be adverse to the Lessor, the Lessee shall pay to the Lessor interest on the amount of the tax paid attributable to the Depreciation Deduction and/or the Interest Deduction disallowed, at a rate per annum equal to the prime rate of First Security Bank of Utah, N.A. in effect on the date of such final determination, from the date of payment of such tax to the date the Lessee shall reimburse the Lessor for such tax in accordance with the provisions of this Section 14. The Lessor shall not be obligated to take any such legal or other appropriate action unless the Lessee shall first have agreed in writing to indemnify the Lessor for all liabilities and expenses which may be entailed therein and shall have furnished the Lessor with such reasonable security therefor as may be requested.

Notwithstanding any provision herein to the contrary, if any Canadian governmental authority, dominion or provincial, shall withhold or cause to be withheld from any rental payment made under Section 2 of this Lease or any additional rental payment or other payment made under this Section 14 or Section 18 hereof or Section 5 hereof (if any such payments under Section 5 are deemed to be rental payments) any amounts in respect of taxes (hereinafter called "withholding taxes"), the following provisions will apply:

A. The Lessee will, on the date when such payment is made, pay to the Lessor as additional rental a sum sufficient to cause the Lessor to receive an amount equivalent to the amount the Lessor would have received had no withholding taxes been withheld.

B. The Lessee will pay such withholding taxes and will forthwith furnish to the Lessor all tax receipts obtainable by the Lessee in connection therewith and all information and documents necessary or appropriate to enable the Lessor to substantiate a claim for credit or deduction for U. S. federal or any other income tax purposes with respect thereto.

C. Upon receipt by the Lessor of (i) such tax receipts and other information and documents and (ii) the benefit of any reduction in the federal or any other income tax liability as determined by the Lessor in its sole discretion, resulting from the crediting or deducting of such withholding taxes in the computation of such tax, the Lessor will forthwith reimburse the Lessee an amount so that the Lessor shall be in the same position it would have been if such withholding taxes had not been imposed. It is agreed that such determination may be revised and the Lessee will make an appropriate adjustment with the Lessor after any disallowance of such credit or deduction upon audit by the U. S. Internal Revenue Service. The obligation of the Lessee under this Subparagraph C will survive the termination of this Lease.

The Lessee's agreement to pay any sums which may become payable pursuant to this Section 14 shall survive the expiration or other termination of this Lease.

The Lessee represents and warrants that at the time the Lessor becomes the owner of the Units, such Units will not have been used by any person so as to preclude "the original use of such property" within the meaning of Section 167(c) (2) of the Code from commencing with the Lessor.

Section 15. *Recording; Expenses.* Prior to the delivery and acceptance of any Unit, the Lessor will, at its own expense, cause the Equipment Trust Agreement, Lease and the Assignment (including the Consent) to be filed and recorded with the United States Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and deposited with the Registrar General of Canada (notice of such deposit to be forthwith thereafter given in *The Canada Gazette*) pursuant to Section 86 of the Railway Act of Canada. The Lessee will, at its own expense (except in the case of actions on the part of the Lessor resulting in a request as hereinafter mentioned, in which case the action taken by the Lesee will be at the Lessor's expense) from time to time, do and perform any other act and will execute, acknowledge, deliver, file, register, record and deposit (and will refile, reregister, rerecord or redeposit whenever required) any and all further instruments required by law and reasonably requested by the Trustee, for the purpose of proper protection, to the satisfaction of the Trustee, of the Lessor's and the Trustee's respective interests in the Units, or for the purpose of carrying out the intention of this Lease, the Assignment, the Consent and the Equipment Trust Agreement. The Lessor will promptly furnish to the Trustee evidence of all such filing, registering, recording, depositing, refiling, reregistering, rerecording and/or redepositing and an opinion or opinions of counsel with respect thereto satisfactory to the Lessor and the Trustee.

The Lessor will pay the reasonable costs and expenses involved in the preparation and printing of this Lease and the fees and disbursements of any counsel which it may retain, unless such costs, expenses, fees and disbursements are paid by some other person. The Lessee will bear the fees and disbursements of any counsel which it may retain.

Section 16. *Interest on Overdue Rentals.* Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay also an amount equal to 9½% per annum compounded semiannually of the overdue rentals for the period of time during which they are overdue.

Section 17. *Termination.* In the event that all of the Units shall have been excluded from this Lease as provided in Section 1 hereof, this Lease shall terminate and, except as otherwise expressly provided in the Lease, the rights and obligations hereunder of the parties hereto shall cease and determine as if the Lease had never been made.

Section 18. *Additional Payments by Lessee.* In addition to the rentals specified in Section 2 hereof:

(a) The Lessee agrees to pay to the Lessor on the Business Day (as defined in the Equipment Trust Agreement) next preceding the Cut-Off Date (as defined in the Equipment Trust Agreement), an amount equal to the rental payment payable by the Lessor to the Trustee on the Cut-Off Date under Section 4.04(3) (a) and (c) of the Equipment Trust Agreement [if under (c) the Lessor has not received such rental payment from the Lessee on the date when such payment is due and payable] in respect of interest payable on the Trust Certificates (as defined in the Equipment Trust Agreement) issued under the Equipment Trust Agreement.

(b) The Lessee agrees to pay to the Lessor on the Business Day next preceding July 15, 1974, all accrued and unpaid interest at the rate of 8½% per annum from and including the date of issuance of such Trust Certificates (i) on that portion of the proceeds from the sale of the Trust Certificates as are applied under Section 3.02 of the Equipment Trust Agreement to the respective dates such proceeds are applied under Section 3.02 of the Equipment Trust Agreement and (ii) on that portion of the proceeds from the sale of the Trust Certificates remaining on deposit with the Trustee on July 15, 1974, to July 15, 1974.

(c) The Lessee agrees to pay to the Lessor promptly amounts equal to any rental payments which may become payable by the Lessor to the

Trustee on or before the Cut-Off Date, under Section 4.04 (1) of the Equipment Trust Agreement in respect of (i) any expenses incurred in connection with any purchase, sale or redemption by the Trustee of Investments (as defined in the Equipment Trust Agreement), and (ii) any loss of principal (including interest accrued thereon at the time of purchase) incurred in connection therewith.

(d) It is understood and agreed that the Trustee is obligated under the last paragraph of Section 8.04 of the Equipment Trust Agreement to pay to the Lessee on or before the Investment Payment Date (as defined in the Equipment Trust Agreement) any interest in excess of accrued interest paid from Deposited Cash (held under the Equipment Trust Agreement at the time of purchase) or other profit which may be realized from any sale or redemption of Investments.

Section 19. *Purchase and Renewal Options.* Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may by written notice delivered to the Lessor not less than six months prior to the end of the term of this Lease or any extended term hereof, as the case may be, elect (a) to purchase some or all, the Units covered by this Lease at the end of such term or such extended term of this Lease for a purchase price equal to the "Fair Market Value" of such Units as of the end of such term or such extended term and/or (b) to extend the term of this Lease in respect of all, but not fewer than all, of such Units then covered by this Lease not purchased pursuant to clause (a), for one additional five-year period commencing on the scheduled expiration of the original term of this Lease, and (c) to extend the extended term of this Lease in respect of all but not fewer than all of such Units then covered by this Lease not purchased pursuant to clause (a) for one additional five-year period commencing on the scheduled expiration of such extended term, *provided* that no such extended term shall extend beyond ten years from the date of expiration of the original term of this Lease, at a rental equal to the "Fair Rental Value" of such Units, payable in arrears in 10 semi-annual payments for each five-year period; such semi-annual payments to be made on January 15 and July 15 of each year of the applicable extended term.

Fair Market Value shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an arm's-length transaction between an informed and willing buyer-user (other than (i) a lessee currently in possession or (ii) a used equipment dealer) and an informed and willing seller under no compulsion to sell and, in such

determination, costs of removal from the location of current use shall not be a deduction from such value.

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

If on or before four months prior to the expiration of the term of this Lease, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Value or the Fair Rental Value of the relevant Units, such value shall be determined in accordance with the foregoing definition by a qualified independent Appraiser. The term Appraiser shall mean such independent appraiser as the Lessor and the Lessee may mutually agree upon, or failing such agreement, a panel of three independent appraisers, one of whom shall be selected by the Lessor, the second by the Lessee and the third designated by the first two so selected. The Appraiser shall be instructed to make such determination within a period of 30 days following appointment, and shall promptly communicate such determination in writing to the Lessor and the Lessee. The determination so made shall be conclusively binding upon both Lessor and Lessee. The expenses and fee of the Appraiser shall be borne equally by the Lessor and the Lessee. Upon payment of the purchase price, the Lessor shall upon request of the Lessee execute and deliver to the Lessee, or to the Lessee's assignee or nominee, a bill of sale (without warranties) for such Unit such as will transfer to the Lessee such title to such Unit as the Lessor and the Trustee derived from the Manufacturer free and clear of all liens, security interests and other encumbrances arising through the Lessor or the Trustee.

Section 20. *Mileage Allowance; Subrogation; Further Assurance.* Provided the Lessee is not in default hereunder, the Lessee shall be entitled to (i) all mileage allowances and other moneys payable by reason of the use of the Units, and any such mileage allowances or other moneys received by the Lessor shall be forthwith remitted to the Lessee, and (ii) the proceeds of any claim or right of the Lessor or the Lessee against third persons for injury, damage or loss with respect to any Unit or the use or operation thereof, including settlements pursuant to the rules of the Association of American Railroads, and the Lessee shall be subrogated to the extent of the Lessee's interest to all the Lessor's rights of recovery therefor against any other

person, firm or corporation. The Lessor hereby authorizes the Lessee to make settlement of, receive payment and receipt for any and all such claims on behalf of the Lessor, and the Lessor agrees to execute and deliver from time to time such instruments and do such other acts and things as may be necessary or appropriate more fully to evidence the Lessee's authority and/or to vest in the Lessee such proceeds to the extent of the Lessee's interest therein or to effect such subrogation; and in the event of any loss, damage or destruction in respect of which the Lessee is entitled to proceeds or subrogation as aforesaid, the Lessor shall refrain from doing any act or executing any instrument which would prejudice the right of the Lessee to such proceeds or to such subrogation.

The Lessee covenants and agrees from time to time at its expense to do all acts and execute all such instruments of further assurance as it shall be reasonably requested by the Lessor to do or execute for the purpose of fully carrying out and effectuating this Lease and the intent hereof.

Section 21. *Execution.* Although this Lease is dated as of January 1, 1974 for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

Section 22. *Law Governing.* The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of Utah, *provided, however,* that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act of the United States, the applicable recording laws of Canada and of the Provinces or Territories thereof and such additional rights arising out of the filing, recording or depositing hereof and of any assignment hereof or out of the marking on the Units as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited or in which any Unit may be located.

Section 23. *Notices.* Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when deposited in the United States or Canadian registered mails, first-class postage prepaid, addressed as follows:

If to the Lessor, 79 South Main Street, Salt Lake City, Utah 84111, Attention Corporate Trust Department with a copy to Itel Leasing Corporation, One Embarcadero Center, San Francisco, California 94111, Attention: Contracts Administration Department;

If to the Lessee, P.O. Box 8100, Montreal, Quebec, Canada, H3C 3N4 attention of the Treasurer;

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

Section 24. *Definitions.* Whenever the term Lessor is used in this Lease it shall include the Beneficiary (or, if more than one, the Beneficiaries) and any assignee and, where the context so requires (including but not limited to certain of the provisions of Section 9 and all of the provisions of Section 14 hereof), shall refer only to the Beneficiary (or Beneficiaries) or such assignee. If and so long as this Lease is assigned to the Trustee (or any successor thereto) for collateral purposes, wherever the term "Lessor" is used in this Lease it shall also apply and refer to the Trustee and any successors thereto (with the exception of certain tax provisions of Section 9 and Section 14 hereof) unless the context shall otherwise require and except that the Trustee shall not be subject to any liabilities or obligations under this Lease; and the fact that the Trustee is specifically named in certain provisions shall not be construed to mean that the Trustee (and any successors thereto) is not entitled to the benefits of other provisions where only the Lessor is named or where only the Trustee, as the case may be, is named.

Section 25. *Severability.* Any provision of this Lease 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.

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

Section 26. *No Recourse.* No recourse shall be had in respect of any obligation due under this Lease, or referred to herein, against any incorporator, stockholder, director or officer, as such, past, present or future, of the Lessor or the Lessee, or assignee or assignees or transferee or transferees, as such, of the Lessor, or against any beneficiary, as such, in respect of which the Lessor may be acting as trustee, whether by virtue of any constitutional provision, statute or rule of law or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of incorporators, stock-

holders, directors, officers, assignees, transferees or beneficiaries as such, being forever released as a condition of and as consideration for the execution of this Lease.

Section 27. *Counterpart Execution.* This Lease may be executed in several counterparts, but the counterpart delivered to the Trustee shall be deemed to be the original counterpart.

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

FIRST SECURITY BANK OF UTAH, N.A.,
as Owner-Trustee under Owner Trust Agreement No. 2,

by .....
Authorized Officer

[CORPORATE SEAL]

Attest:

.....
Authorized Officer

CANADIAN NATIONAL RAILWAY COMPANY,

by .....
Vice President

[CORPORATE SEAL]

Attest:

.....
Secretary

STATE OF UTAH }
COUNTY OF SALT LAKE } ss.:

On this day of , 1974, before me personally appeared , to me personally known, whom, being by me duly sworn, says that he is an Authorized Officer of FIRST SECURITY BANK OF UTAH, N.A., that one of the seals affixed to the foregoing instrument is the corporate seal of the said national banking association, that said instrument was signed and sealed on behalf of said national banking association by authority of its By-Laws and each acknowledged that the execution of the foregoing instrument was the free act and deed of said national banking association.

My commission expires

.....
Notary Public

[NOTARIAL SEAL]

PROVINCE OF QUEBEC }
CITY OF MONTREAL } ss.:

On this day of , 1974, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President of CANADIAN NATIONAL RAILWAY COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of the 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.

.....
Commissioner for Oaths

SCHEDULE I—Lease No. 3*

Quantity	*Type*	Identifying Numbers (*both inclusive*)
91	G.P. 40-2 3000 H.P. 4-axle, 4-motor Diesel Electric Locomotives	CN9400-9490

* The Units of equipment set forth herein include Units which will be covered by this Lease and one or more of the Other Leases (as defined in the Equipment Trust Agreement). Upon delivery of all of the Units, an appropriate supplement will be entered into setting forth the specific Units and identifying numbers to be covered by this Lease.

SCHEDULE II—Lease No. 3

	Percentage of Cost* of Units
Daily Lease Rate	.0053125%
Interim Lease Rate	3.29375%
Basic Lease Rate	
Payments 1-9	3.29375%
Payments 10-19	5.82954%
Payments 20-30	8.53000%

* As defined in the Equipment Trust Agreement.

SCHEDULE III—Lease No. 3

CASUALTY VALUES

Payment Date	Percentage of Cost*
Interim	105.3900%
1	107.6068
2	109.6225
3	111.4801
4	113.1316
5	114.6199
6	115.9044
7	117.0245
8	117.9431
9	118.6963
10	116.7145
11	114.5011
12	112.1218
13	109.5907
14	106.9135
15	104.1007
16	101.1650
17	98.1130
18	94.9649
19	91.7237
20	85.7171
21	79.4071
22	72.9200
23	66.2349
24	59.3929
25	52.3650
26	45.1980
27	37.8586
28	30.4263
29	22.8531
30	15.0000
and thereafter the lesser of 15% of Cost or the Fair Market Value (as defined in Section 19 of the Lease) thereof immediately preceding the Casualty Occurrence	

* As defined in the Equipment Trust Agreement.

ANNEX B

ASSIGNMENT OF LEASE AND AGREEMENT NO. 3 dated as of January 1, 1974 (hereinafter called the Assignment), by and between FIRST SECURITY BANK OF UTAH, N.A. as Owner-Trustee under Owner-Trust Agreement No. 2 dated as of January 1, 1974, with certain equity investors (hereinafter called the Company) and INTER NATIONAL BANK OF MIAMI as Trustee (hereinafter called the Trustee) under an Equipment Trust Agreement No. 3 dated as of January 1, 1974 (hereinafter called the Equipment Trust Agreement), between the Trustee and the Company.

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

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

NOW, THEREFORE, in consideration of the premises and of the payments to be made and the covenants hereinafter mentioned to be kept and performed the parties hereto agree, subject to Section 4.03 of the Equipment Trust Agreement, as follows:

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

things whatsoever which the Company, as Lessor, is or may become entitled to do under the Lease.

The Company agrees to cause all the Payments to be made directly to the Trustee for its account at First National City Bank, 111 Wall Street, New York, N. Y., or at such other bank as the Trustee may from time to time designate in writing. The Trustee will accept all Payments and all other payments pursuant hereto and will apply the same as follows: *first,* to or toward the payment of all amounts due and payable under the Equipment Trust Agreement by the Company on the date (or the next succeeding Business Day as defined in the Equipment Trust Agreement) such Payments or other payments are required to be paid pursuant to the Lease and the Trustee shall credit such Payments and such payments so applied to the amounts so due and payable or so to become due and payable; and *second,* so long as, to the actual knowledge of the Trustee, no Event of Default (as defined in the Equipment Trust Agreement) or event known to the Trustee which, with notice or lapse of time or both, would constitute an Event of Default shall have occurred and then be continuing, any balance of such Payments and such payments remaining shall be paid over to the Company by the Trustee. So long as, to the actual knowledge of the Trustee, an Event of Default or event which with notice or lapse of time or both, would constitute an Event of Default shall then be continuing, the Trustee shall not pay over any of the Payments or such payments pursuant hereto, but, during such continuance, shall apply all Payments and all such payments in a manner consistent with the provisions of the Equipment Trust Agreement. Anything in this Agreement to the contrary notwithstanding, no amounts shall be considered to be due and payable by the Company under the Equipment Trust Agreement in the event that such amounts shall have been indefeasibly paid by the Lessee to the Trustee pursuant to the Lease, the Equipment Trust Agreement, this Assignment and/or the Lessee's Consent and Agreement annexed hereto.

2. The assignment made hereby is executed only as security and, therefore, the execution and delivery of this Assignment shall not subject the Trustee to, or transfer, or pass, or in any way affect or modify any liability of the Company under the Lease, it being understood and agreed that notwithstanding such assignment or any subsequent assignment all obligations of the Company to the Lessee under the Lease shall be and remain enforceable by the Lessee, its successors and assigns, against, and only against, the Company or persons other than the Trustee.

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

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

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

4. The Company does hereby constitute the Trustee the Company's true and lawful attorney, irrevocably, with full power (in the name of the Company, or otherwise), to ask, require, demand, receive, compound and

give acquittance for any and all Payments due and to become due under or arising out of the Lease to which the Company is or may become entitled, to enforce compliance by the Lessee with all the terms and provisions of the Lease, to endorse any checks or other instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings which the Trustee may deem to be necessary or advisable in the premises.

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

6. The Company represents and warrants that (a) the execution and delivery by the Company of the Lease, this Assignment and the Equipment Trust Agreement have each been duly authorized, and the Lease, this Assignment and the Equipment Trust Agreement are and will remain the valid and binding obligations of the Company in accordance with their terms: (b) the Company has not executed any other assignment of the Lease and the Trustee's right to receive all payments under the Lease is free and clear of any and all liens, agreements, security interests or other encumbrances, imposed by the Company, prior to or *pari passu* with the interests of the Trustee, (c) notwithstanding this Assignment, the Company will conform and comply with each and all of the covenants and conditions in the Lease and the Equipment Trust Agreement set forth to be complied with by it, (d) to the knowledge of the Company, it has performed all obligations on its part to be performed under the Lease and the Equipment Trust Agreement on or prior to the date hereof and (e) the Lease and the Equipment Trust Agreement are in full force and effect and have not been canceled and to the knowledge of the Company there has not occurred on or prior to the date hereof any Event of Default (as that term is defined in the Equipment Trust Agreement) or any event which with notice and or lapse of time constitute such an Event of Default.

If an Event of Default (as defined in the Equipment Trust Agreement) shall occur and be continuing, the Trustee shall be entitled (i) to exercise all the rights, privileges and remedies available to the Lessor under the Lease and to the Trustee under the Equipment Trust Agreement and (ii) to do any

acts which the Trustee deems proper to protect the security hereof, either with or without taking possession of the Units. The taking possession of the Units and the taking of any action permitted as aforesaid shall not cure or waive any default or waive, modify or affect any default hereunder or under the Lease or the Equipment Trust Agreement, or invalidate any act done hereunder.

7. The Company covenants and agrees with the Trustee that in any suit, proceeding or action brought by the Trustee under the Lease for any instalment of, or interest on, any rental or other sum owing thereunder, or to enforce any provisions of the Lease, the Company will save, indemnify and keep the Trustee harmless from and against all expense, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever of the Lessee or its successors, arising out of a breach by the Company of any obligation under the Lease or arising out of any other indebtedness or liability at any time owing to the Lessee or its successors from the Company. Any and all such obligations of the Company shall be and remain enforceable against and only against the Company and shall not be enforceable against the Trustee or any party or parties in whom any of the rights of the Company under the Lease shall vest by reason of the successive assignments or transfers.

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

9. The Trustee may assign to any successor trustee appointed pursuant to Section 8.06 of the Equipment Trust Agreement or any co-trustee or separate trustee appointed pursuant to Section 8.09 thereof any of its rights under the Lease, including the right to receive any payments due or to become due to it from the Lessee thereunder. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all obligations of the Trustee hereunder.

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

11. The obligations and liabilities of the Company hereunder shall be construed and limited in accordance with Section 4.03 of the Equipment Trust Agreement.

12. This Assignment shall be governed by the laws of the State of Utah, *provided, however,* that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act of the United States, the applicable recording laws of Canada and such additional rights arising out of the filing, recording or depositing hereof and of any assignment hereof or out of the markings on the Units as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited or in which any Unit may be located.

13. The Company shall cause copies of all notices received in connection with the Lease to be promptly delivered to the Trustee at 627 Southwest 27th Avenue, Miami, Florida 33135, attention: Corporate Trust Department or at such other address as the Trustee shall designate.

14. This Agreement may be executed in several counterparts, each of which when so executed shall be deemed to be an original, and such counterparts together shall constitute one and the same instrument.

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

FIRST SECURITY BANK OF UTAH, N.A.,
as Owner-Trustee under Owner
Trust Agreement No. 2,

by .....
Authorized Officer

[CORPORATE SEAL]

Attest:

.....
Authorized Officer

Accepted:

INTER NATIONAL BANK OF MIAMI,
as Trustee

by .....
Authorized Officer

STATE OF UTAH }
COUNTY OF SALT LAKE } ss.:

On this day of 1974, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is an Authorized Officer of FIRST SECURITY BANK OF UTAH, that the seal 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 By-Laws and each acknowledged that the execution of the foregoing instrument was the free act and deed of said national banking association.

My commission expires

.....
Notary Public

[NOTARIAL SEAL]

LESSEE'S CONSENT AND AGREEMENT NO. 3

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

As an inducement to the purchasers and holders of the equipment trust certificates to be issued pursuant to an Equipment Trust Agreement No. 3 (hereinafter called the Equipment Trust Agreement) dated as of January 1, 1974, between INTER NATIONAL BANK OF MIAMI, as Trussee (hereinafter called the Trustee) and FIRST SECURITY BANK OF UTAH, N. A. as Owner-Trustee (hereinafter called the Lessor), (a copy of which has been delivered to the undersigned) pursuant to which the Lessor is partially financing the purchase of the units of railroad equipment (hereinafter called the Units) being leased by the Lessor to the undersigned pursuant to the Lease, and in consideration of other good and valuable consideration, the undersigned agrees that:

(1) it will pay all rentals, casualty payments, liquidated damages, indemnities and other moneys provided for in the Lease (which moneys are hereinafter called the Payments) due and to become due under the Lease in respect of the Units leased thereunder, directly to the Trustee, for its account at First National City Bank, 111 Wall Street, New York, N. Y. and shall cause the bank through which it makes such payment to so advise the Trustee thereof at 627 Southwest 27th Avenue, Miami, Florida 33135, Attention: Corporate Trust Department (or at such other address or account as may be furnished in writing to the undersigned by the Trustee for purposes of payment or credit advice); and, if the undersigned fails for any reason whatsoever to pay to the Trustee any Payments, it will pay to the Trustee, on the respective dates and times set forth in the Lease on which the Payments are specified to be due thereunder, sums equivalent to the Payments which the undersigned shall not theretofore have paid to the Trustee; it being hereby agreed that the undersigned's obligation to pay all the aforesaid Payments or sums equivalent to the Payments is absolute and unconditional;

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

(3) the Payments or sums equivalent to the payments due hereunder shall not be subject to any right of setoff or counterclaim or other defense which the undersigned might have against the Lessor or otherwise, and the payment thereof to the Trustee shall be final and shall not be subject to, and the undersigned hereby agrees to indemnify the Trustee against, any liens, charges or claims of any nature whatsoever (other than liens, charges or claims created or incurred by the Trustee not arising out of the transactions contemplated by the Equipment Trust Agreement, the Lease or the Assignment) resulting from a breach by the undersigned of its obligations under the Lease, prior to or *pari passu* with the right of the Trustee to apply such Payments or sums equivalent thereto, as provided in the Assignment;

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

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

(6) it will (i) execute, deliver and/or furnish all notices, certificates, communications, instruments, agreements, legal opinions and other documents and papers required to be executed, delivered and/or furnished by it (or its counsel) pursuant to the provisions of the Purchase Agreement (as defined in the Equipment Trust Agreement), the Assignment and/or the Equipment Trust Agreement and (ii) do all such acts and execute and deliver all such further assurances required to be done and/or executed and delivered by it pursuant to the provisions of any thereof; and

(7) to the extent permitted by applicable law, it hereby waives, and agrees not to assert, by way of motion, as a defense, or otherwise, in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of the courts of the United States or any state thereof, that its property is exempt or immune from execution, that the suit, action or proceeding is brought in an inconvenient forum, that the

venue of the suit, action or proceeding is improper, or that the Lease, the Assignment, or this Consent and Agreement or the subject matter of any thereof may not be enforced in or by such court.

In consideration of the premises, the Lessee's covenants aforementioned and other good and valuable consideration, the Trustee agrees to pay to the Lessee in accordance with Section 8.04 of the Equipment Trust Agreement such amounts, if any, as are therein specified to be paid to the Lessee, provided that the Lessor is not in default under the Equipment Trust Agreement and the Lessee is not in default under the Lease.

This Agreement may be executed in several counterparts, each of which when so executed shall be deemed an original, and such counterparts together shall constitute one and the same instrument.

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

Dated as of January 1, 1974.

CANADIAN NATIONAL RAILWAY
COMPANY,
by .....
Vice President

[CORPORATE SEAL]

Attest:

Accepted:

INTER NATIONAL BANK OF MIAMI,
as Trustee

by .....
Authorized Officer

PROVINCE OF QUEBEC
CITY OF MONTREAL } ss.:

On this day of , 1974, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President of CANADIAN NATIONAL RAILWAY COMPANY, that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

.....
Commissioner for Oaths