

RECORDATION NO. 7689 Filed & Recd

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INTERSTATE COMMERCE COMMISSION

10-3/4% EQUIPMENT TRUST CERTIFICATES

DUE NOVEMBER 30, 1989

(Secured by Lease Obligations of
Canadian Pacific Limited)

EQUIPMENT TRUST AGREEMENT

Dated as of November 15, 1974

between

MONTREAL TRUST COMPANY,
Trustee,

and

THE ROYAL TRUST COMPANY,
Owner Trustee

EQUIPMENT TRUST AGREEMENT dated as of November 15, 1974, between MONTREAL TRUST COMPANY, a corporation organized under the laws of the Province of Quebec, Canada, as Trustee hereunder (hereinafter with its successors and assigns called the Trustee), and THE ROYAL TRUST COMPANY, a corporation incorporated by special charter under the laws of the Province of Quebec, Canada (hereinafter with its successors and assigns called the Company), acting as Owner Trustee under a Trust Agreement dated as of October 23, 1974 (hereinafter called the Trust Agreement), with SCHULER INDUSTRIES, INC., an Alabama corporation (hereinafter with its successors and assigns called the Beneficiary).

WHEREAS the Company agrees to cause to be transferred to the Trustee the railroad equipment described in Schedule A hereto subject to the provisions hereof; and

WHEREAS security title to such railroad equipment is to be vested in and is to be retained by the Trustee as security for the obligations of the Company hereunder and of the Lessee under the Lease and the Consent (the Lessee, the Lease and the Consent being hereinafter defined), and such railroad equipment is to be leased to the Company hereunder until full title is transferred to the Company under the provisions hereof; and

WHEREAS the Company has entered into a Lease dated as of October 23, 1974, as amended by an Amendment Agreement dated as of the date hereof (said Lease, as so amended, being substantially in the form of Exhibit A hereto and hereinafter called the Lease), with Canadian Pacific Limited (hereinafter called the Lessee) pursuant to which the Company has leased such railroad equipment to the Lessee, and the Lease is being assigned by the Company to the Trustee as security for the obligations of the Company hereunder and of the Lessee under the Lease and the Consent pursuant to the Lease Assignment (as hereinafter defined); and

WHEREAS the 10-3/4% Equipment Trust Certificates Due November 30, 1989 (Secured by Lease Obligations of Canadian Pacific Limited), 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 the Equipment Trust Due November 30, 1989 (Secured by Lease Obligations of Canadian Pacific Limited), 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: The registered holder hereof has represented that it has acquired this Certificate for investment and not for resale. Accordingly, this Certificate has not been registered under the Securities Act of 1933 and may not be sold, transferred, pledged or hypothecated unless an exemption from registration is available.

\$

(U.S.)

No.

10-3/4% EQUIPMENT TRUST CERTIFICATE
DUE NOVEMBER 30, 1989

(Secured by Lease Obligations of Canadian Pacific Limited)

MONTREAL TRUST COMPANY, a corporation organized under the laws of the Province of Quebec, Canada, as Trustee (hereinafter called the Trustee) under an Equipment Trust Agreement dated as of November 15, 1974 (hereinafter called the Agreement), between the Trustee and THE ROYAL TRUST COMPANY, a corporation incorporated by special charter under the laws of the Province of Quebec, Canada, as trustee (hereinafter called the Company), hereby certifies that

or registered

assigns, is entitled to an interest of \$ (U.S.) in the Equipment Trust Due November 30, 1989 (Secured by Lease Obligations of Canadian Pacific Limited), due and payable on November 30, 1989, payable in instalments as hereinafter provided, and to interest on the unpaid principal amount represented by this Certificate from the date hereof until the principal amount hereof is due and payable, at the rate of 10-3/4% per annum, payable semiannually on May 31 and November 30 in each year, commencing November 30, 1974, with interest on any overdue principal and interest, to the extent that it shall be legally enforceable, at the rate of 11-3/4% per annum. Payments of principal and interest shall be made by the Trustee to the registered holder hereof at the office of the Trustee's agent, The Canadian Bank of Commerce Trust

Company, 20 Exchange Place, New York, New York 10015, or such other bank or trust company having an office in New York, New York, as the Trustee may from time to time appoint, in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, but payable only out of rentals or other moneys received by the Trustee and applicable to such payment under the provisions of the Agreement or under the provisions of an Assignment of Lease and Agreement dated as of November 15, 1974, between the Company and the Trustee. Interest due hereunder shall be calculated on the basis of a 360-day year of twelve 30-day months.

The principal amount of this Certificate is due and payable in semiannual instalments on May 31 and November 30 in each year, commencing May 31, 1975, and continuing to and including November 30, 1989, calculated so that the aggregate of the principal and interest payable on each such date shall be substantially equal and such instalments of principal shall completely amortize the principal amount of this Certificate, subject to proportionate reduction in the event of prepayment out of moneys deposited with the Trustee on account of Casualty Occurrences (as defined in the Agreement). This Certificate is also prepayable on November 30, 1974, out of any Deposited Cash (as defined in the Agreement) held by the Trustee and not applied to the cost of railroad equipment to be subject to the trust created by the Agreement. Any such prepayment of this Certificate shall be at 100% of the principal amount hereof to be prepaid, together with accrued interest to the date fixed for prepayment. Since partial payments of principal on this Certificate are not required to be noted on this Certificate, inquiries should be made at the principal corporate trust office of the Trustee in Montreal, Canada, 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 may not exceed, at any one time outstanding, \$2,062,722.96 (U.S.), issued or to be issued under and subject to the terms of the Agreement, under which certain railroad equipment leased to the Company and in turn leased to Canadian Pacific Limited and certain moneys are and are to be held by the Trustee in trust for the equal and ratable benefit of the holders of Trust Certificates, to which Agreement (a copy of which is on file with the Trustee at its said office) reference is made for a full statement of the rights and obligations of the

Company, the duties and immunities of the Trustee and the rights of the holder hereof thereunder.

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

The transfer of this Certificate in whole or in part may be registered on the books of the Trustee upon surrender to the Trustee, in person or by duly authorized attorney, at its said office of this Certificate accompanied by a written instrument of transfer, duly executed by the registered holder in person or by such attorney, in form satisfactory to the Trustee. 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, manually or by facsimile, by one of its Authorized Officers and its corporate seal or a facsimile thereof to be hereunto affixed or imprinted and to be attested by one of its Authorized Officers by his manual signature.

Dated as of:

MONTREAL TRUST COMPANY,
Trustee,

by

Authorized Officer

Attest:

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 10-3/4% Equipment Trust Certificate (Secured by Lease Obligations of Canadian Pacific Limited) 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 to 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 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 The Canadian Bank of Commerce Trust Company, with offices at 20 Exchange Place, New York, New York 10015, or such other bank or trust company having an office in New York, New York, as the Trustee may from time to time appoint.

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 any calendar day, excluding Saturday, Sunday and any other day on which banking institutions in New York, New York, or in Montreal or Toronto, Canada, are authorized or obligated to remain closed.

Casualty Occurrence shall mean any occurrence specified in Section 4.07 hereof to be a Casualty Occurrence.

Casualty Payment Date shall mean May 31 or November 30 for purposes of Section 4.07.

Consent shall mean the Lessee's Consent and Agreement, dated as of the date hereof, in the form annexed to the Lease Assignment.

Corporate Trust Office shall mean the office of the Trustee in Montreal, Canada, at which the corporate trust business of the Trustee shall, at the time in question, be principally administered, which office is, at the date of execution of this Agreement, located at 1 Place Ville Marie, Montreal H3B 4A8, Quebec, Canada.

Cost, when used with respect to Equipment, shall mean the Purchase Price as defined in the Manufacturing

Agreement as evidenced by a Manufacturer's invoice or invoices with respect to such Equipment.

Cut-Off Date shall mean the earliest of (i) November 30, 1974, (ii) the final settlement date of Equipment pursuant to Article Three 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, and (b) any sums restored to Deposited Cash from rentals received by the Trustee for that purpose pursuant to Section 4.04(1) and on deposit with the Trustee.

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

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

The term 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 full faith and credit of the United States of America are pledged to provide for the payment of principal and interest, in each case maturing within one year after the date of investment therein, (ii) direct obligations of Canada or any of the Provinces of British Columbia, Manitoba, Ontario, Quebec or Saskatchewan or obligations for which the full faith and credit of Canada or any of such Provinces are pledged to provide for the payment of principal and interest, in each case maturing within one year after the date of investment therein, (iii) open market commercial paper, maturing within one year after the date of investment therein, of any company incorporated and doing business under the laws of the United States of America or one of the States thereof given a rating "A-1" or "A-2" by Standard & Poor's Corporation or "prime-1" or better by Moody's Inves-

tors Service or an equivalent rating by a successor thereto or a similar rating service substituted therefor and (iv) certificates of deposit or time deposits, maturing within one year from the date of investment therein, of or in the Trustee or commercial banks or trust companies incorporated and doing business under the laws of the United States of America or one of the States thereof having a capital and surplus aggregating at least \$25,000,000.

Lease Assignment shall mean the Assignment of Lease and Agreement dated as of the date hereof, between the Company and the Trustee, substantially in the form of Exhibit B hereto.

Legend for Marking the Trust Equipment shall mean for purposes of Section 4.06 hereof "Owned by Montreal Trust Company, 1 Place Ville Marie, Montreal H3B 4A8, Quebec, Canada, as Trustee under an Equipment Trust Agreement".

Manufacturer shall mean Whittaker Corporation, Berwick Forge and Fabricating Division.

Manufacturing Agreement shall mean the Manufacturing Agreement dated as of October 23, 1974, between the Lessee and the Manufacturer, as the same may be supplemented or amended as contemplated hereby or thereby.

Manufacturing Assignment shall mean the Assignment of Manufacturing Agreement dated as of October 23, 1974, between the Lessee and the Company.

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

Opinion of Counsel shall mean an opinion of counsel (who may be counsel to the Company or the Lessee) satisfactory to the Trustee. 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.

Penalty Rate, in the case of any Trust Certificate, shall mean a rate of interest of 11-3/4% per annum.

The term person shall mean any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof.

Purchase Agreement shall mean the Purchase Agreement dated as of the date hereof between the Company and the Purchaser.

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

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.

Trust Certificates shall mean the 10-3/4% Equipment Trust Certificates Due November 30, 1989 (Secured by Lease Obligations of Canadian Pacific Limited), issued hereunder.

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

All references herein to Articles, Sections and other subdivisions refer to the corresponding Articles, Sections and other subdivisions of this Agreement; and 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 or subdivision hereof.

ARTICLE TWO

Trust Certificates and Issuance Thereof

SECTION 2.01. Issuance of Trust Certificates.
The proceeds of the sale of the Trust Certificates shall be deposited with the Trustee as provided in the Purchase Agreement. Simultaneously, the Trustee shall issue and deliver, in accordance with the Purchase Agreement or in accordance with a Request of the Company, Trust Certificates in the aggregate principal amount so sold.

The aggregate principal amount of Trust Certificates which shall be executed and delivered by the Trustee under this Section shall not exceed \$2,062,722.96 (U.S.) and the aggregate principal amount represented by all the Trust Certificates shall be payable as hereinafter set forth.

SECTION 2.02. Interests Represented by Trust Certificates; Interest; Maturity. Each of the Trust Certificates shall represent an interest in the principal amount therein specified in the trust created hereunder. Each Trust Certificate shall bear interest from the date thereof on the unpaid principal amount thereof at the rate of 10-3/4% per annum, payable semiannually on May 31 and November 30 in each year, commencing November 30, 1974, with interest payable on any overdue principal and interest at the Penalty Rate, to the extent that it shall be legally enforceable. Interest on the Trust Certificates shall be calculated on the basis of a 360-day year of twelve 30-day months.

Subject to the provisions of Sections 3.01 and 4.07 respecting prepayment of Trust Certificates, the aggregate principal amount of the Trust Certificates shall be payable in semiannual instalments on May 31 and November 30 in each of the years 1975 through 1989, calculated so that the aggregate of principal and interest payable on each such date shall be substantially equal and such instalments of principal shall completely amortize the principal amount of the Trust Certificates. The Company will cause to be furnished to the Trustee and the Trustee will forward to each holder of Trust Certificates a schedule setting forth the respective amounts of principal and interest payable on each such date.

The principal of and interest on the Trust Certificates shall be payable (a) at the office of the Agent in New York, New York, 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. Notwithstanding the provisions of clause (a) of the preceding sentence of this paragraph, in the case of payments of principal and interest to be made on a Trust Certificate not then to be paid in full, upon request and deposit with the Trustee of an agreement of the holder of such Trust Certificate (the responsibility of such holder to be satisfactory to the Company) obligating such holder, prior to any transfer or other disposition thereof, to sur-

render the same to the Trustee for notation thereon of the instalments of principal amount represented thereby theretofore paid in whole or in part, the Trustee will mail its check on the Business Day preceding the date each such payment is due to such registered holder at his address shown on the registry books maintained by the Trustee; provided, however, that this sentence shall not apply to any Purchaser so long as it is a holder of Trust Certificates, and the Trustee shall make payments of principal and interest to it in the manner specified in Section 7 of the Purchase Agreement (the Trustee hereby acknowledging receipt of a copy thereof).

SECTION 2.03. Form, Execution and Characteristics of Trust Certificates. (a) The Trust Certificates shall be in substantially the form hereinbefore set forth.

(b) The Trust Certificates shall be signed in the name and on behalf of the Trustee by the manual or facsimile signature of one of its Authorized Officers and its corporate seal or a facsimile thereof shall be affixed or imprinted thereon and attested by the manual signature of one of its Authorized Officers. In case any officer of the Trustee whose signature, whether facsimile or not, shall appear on any Trust Certificate shall cease to be such officer of the Trustee before such Trust Certificate shall have been issued and delivered by the Trustee or shall not have been acting in such capacity on the date of such Trust Certificate, such Trust Certificate shall be adopted by the Trustee and be issued and delivered as though such person had at all times been such officer of the Trustee.

(c) The Trust Certificates (i) shall be registered, as to both principal and interest, in the names of the holders or their nominees; (ii) shall be registrable as to transfer in whole or in part upon presentation and surrender thereof for registration of transfer at the Corporate Trust Office, accompanied by appropriate instruments of assignment and transfer, duly executed by the holder of the surrendered Trust Certificate or Certificates or by duly authorized attorney, in form satisfactory to the Trustee; (iii) shall be dated as of the date of issue, or if issued in exchange for or upon the transfer of another Trust Certificate or Certificates bearing unpaid interest from an earlier date, dated as of such earlier date; (iv) shall entitle the holders to interest from the date thereof; and (v) shall be exchangeable at the Corporate Trust Office for an equal aggregate

principal amount of Trust Certificates of like tenor. The Trustee shall, if any prepayment shall theretofore have been made pursuant to Section 3.01 or 4.07, attach to each Trust Certificate issued upon registration of transfer or exchange a revised schedule of payments of principal and interest thereon.

(d) 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.

(e) The Trustee shall cause to be kept at the Corporate Trust Office books for the registration of the Trust Certificates and the registration of transfers of the Trust Certificates and, upon presentation of any Trust Certificate for such purpose, the Trustee shall register any transfer as hereinabove provided, under such reasonable regulations as it may prescribe and subject to the provisions of subparagraph (h) of this Section 2.03.

(f) No service charge shall be made for any registration of transfer or exchange of Trust Certificates, but the Trustee shall require the payment by the person requesting the same of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any such transfer or exchange.

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

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

SECTION 2.04. Replacement of Mutilated, Defaced, Lost, Stolen or Destroyed Trust Certificates. In case any Trust Certificate shall become mutilated or defaced or be lost, stolen or destroyed, then on the terms herein set forth, and not otherwise, the Trustee shall execute and deliver a new Trust Certificate of like tenor and date as the mutilated, defaced, lost, stolen or destroyed Trust Certificate, bearing such identification number or designation as the Trustee may determine, in exchange and substitution for, and upon cancelation of, the mutilated or defaced Trust Certificate, or in lieu of and in substitution for the same if lost, stolen or destroyed. The applicant for a new Trust Certificate shall furnish to the Trustee and to the Company evidence to their satisfaction of the loss, theft or destruction of such Trust Certificate alleged to have been lost, stolen or destroyed, and of the ownership and authenticity of such mutilated, defaced, lost, stolen or destroyed Trust Certificate, and also shall furnish a letter of indemnity in the case of the Purchaser or, if other than the Purchaser, such security or indemnity as may be required by the Trustee and by the Company, and shall pay all expenses and charges of such exchange or substitution. All Trust Certificates shall be issued, held and owned upon the express condition that the foregoing provisions are exclusive in respect of the replacement of mutilated, defaced, lost, stolen or destroyed 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.

SECTION 2.05. Legal Holidays. If the date fixed for payment of principal of or interest on any Trust Certificates is not a Business Day, then (notwithstanding any other provision of this Agreement or the Trust Certificates) such payment shall be made on the next preceding Business Day with the same force and effect as if made on the nominal payment date.

ARTICLE THREE

Acquisition of Trust Equipment by Trustee; Deposited Cash

SECTION 3.01 Acquisition of Equipment by Trustee. The Company shall cause to be sold, assigned and transferred to the Trustee, as trustee for the holders of the Trust Certificates, and as security for the payment thereof, the

Equipment described and set forth in Schedule A hereto. Such Equipment has been or will be delivered to the Lessee, which is hereby designated by the Trustee as its agent to receive such delivery, and an Officer's Certificate as to such delivery shall be conclusive evidence of such delivery.

Any units of Equipment not delivered and accepted under the Manufacturing Agreement and settled for pursuant to this Article Three on or prior to November 30, 1974, 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 and, in the case of units of Equipment delivered but not so settled for, the Trustee shall execute a bill or bills of sale (without warranties) for such units to the original owner or owners thereof (or to such party as such owner or owners may designate) and 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 such party in order to make clear upon public records such party's full title to such units of the Trust Equipment under the laws of any jurisdiction.

In the event that it is anticipated that on the Cut-Off Date any Deposited Cash shall 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 payment, in New York Clearing House funds, of each instalment of principal remaining unpaid on the Trust Certificates (in proportion to the principal amount represented by each such instalment), each of the holders of the Trust Certificates to share proportionately in such prepayment. 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. On any Closing Date (as defined in the Manufacturing Agreement), the

Trustee shall, subject to the provisions of Section 3.04 and the Company's making payment as contemplated by the provisions of Section 3.03, pay upon Request of the Company, to the Manufacturer of the Equipment transferred to the Trustee by the Company 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 specified in such Request not exceeding 80% of the aggregate Cost of such Equipment; provided, however, that no Event of Default, or any event which, with notice or lapse of time or both, would constitute an Event of Default, has occurred hereunder or under the Lease.

SECTION 3.03. Payment of Deficiency. The Company covenants that, contemporaneously with any payment by the Trustee pursuant to Section 3.02 hereof with respect to any Equipment transferred to the Trustee by the Company, but subject to the provisions of Section 3.04 hereof, it will pay to the Manufacturer of such Equipment that portion of the Cost of such Equipment not paid out of Deposited Cash as provided for in Section 3.02 hereof. Unless the Company shall otherwise agree, the total Cost of such Equipment shall not exceed \$2,578,403.70 (U.S.).

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

(a) an Officer's Certificate of the Lessee stating that (i) the Equipment described and specified therein by number or numbers has been delivered on the date or dates set forth therein and has been marked in accordance with the provisions of Section 4.06 hereof or, as to the Legend for Marking the Trust Equipment, will be so marked by the Lessee within 12 months of the Cut-Off Date, (ii) such Equipment is Equipment as herein defined, (iii) such Equipment was first put into service no earlier than the date of delivery to and acceptance by the Lessee, as agent for the Company, (iv) the Cost of such Equipment is an amount therein specified as evidenced by an invoice or invoices of the Manufacturer thereof, which invoices shall specify all special devices, racks or assemblies the cost of which is included in the Cost and specify the Cost per unit and the aggregate Cost of all such Equipment in U.S. dollars, (v) such Equipment

is free and clear of all claims, liens, security interests and other encumbrances of any nature arising from, through or under the Lessee, except for the rights of the Lessee under the Lease; and (vi) no Event of Default or any event which, with notice or lapse of time or both, would constitute an Event of Default, has occurred hereunder or under the Lease;

(b) evidence of payment of the amount to be paid to the Manufacturer pursuant to Section 3.03 hereof unless such payment is made by the Trustee with funds furnished to it for that purpose by the Company;

(c) a bill or bills of sale from the Manufacturer transferring and assigning security title to such Equipment to the Trustee, warranting to the Trustee, the Company and the Lessee that at the time of delivery of such Equipment to the Lessee as agent for the Company, the Manufacturer had legal title to the Equipment described therein and good and lawful right to sell such Equipment and that title to such Equipment was, at the time of such delivery, free from all claims, liens, security interests and other encumbrances of any nature except as created by the Manufacturing Agreement and except for the rights of the Lessee under the Lease;

(d) an opinion of counsel for the Manufacturer of such Equipment to the effect that (i) the Manufacturer is a duly organized and existing corporation in good standing under the laws of the State of California and is duly qualified to do business as a foreign corporation and in good standing under the laws of the Commonwealth of Pennsylvania, (ii) the Manufacturing Agreement has been duly authorized, executed and delivered by the Manufacturer and, assuming the due authorization, execution and delivery by the Lessee, is a legal, valid and binding instrument, enforceable in accordance with its terms, (iii) the units of such Equipment, at the time of delivery thereof to the Lessee as agent for the Company, were free of all claims, liens, security interests and other encumbrances of any nature except as created by the Manufacturing Agreement and except for the rights of the Lessee under the Lease and (iv) such bill or bills of sale have been duly authorized, executed and delivered by the Manufacturer and are valid and effective to transfer security title, free of all claims, liens, security interests or other encumbrances of any nature

of or arising from, through or under the Manufacturer, to such Equipment to the Trustee;

(e) a bill or bills of sale from the Company consenting to such bill or bills of sale from the Manufacturer and confirming to the Trustee that security title to such Equipment is vested in the Trustee and warranting to the Trustee that such security title is free from all claims, liens, security interests and other encumbrances of any nature except as created by this Agreement and except for the rights of the Lessee under the Lease;

(f) an opinion of Messrs. McCarthy & McCarthy, special Canadian counsel, addressed to the Trustee to the effect that (i) the bill or bills of sale from the Company are valid and effective, either alone or in connection with any other instrument referred to in and accompanying such opinion, to vest in the Trustee security title to such Equipment free from all claims, liens, security interests and other encumbrances, resulting from any action by the Company, other than as provided in subparagraph (e) above and (ii) the Manufacturing Agreement has been duly authorized, executed and delivered by the Lessee and the Manufacturing Assignment has been duly authorized, executed and delivered by the Lessee and the Company and assuming due authorization, execution and delivery of the Manufacturing Agreement by the Manufacturer, the Manufacturing Agreement and the Manufacturing Assignment constitute legal, valid and binding instruments, enforceable against the Lessee and the Company in accordance with their respective terms;

(g) signed copies of the opinions of counsel required under subparagraphs (a) through (d) of Paragraph 5 of the Purchase Agreement; and

(h) such other documents as the Trustee may reasonably request.

Counsel may qualify any opinion specified above to the effect that any agreement is enforceable against the parties thereto in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally. It is understood that in giving the opinion

called for by subparagraph (f) of this Section 3.04, special Canadian counsel may rely on the opinion of counsel for the Manufacturer referred to in subparagraph (d) of this Section 3.04 to the extent that such opinion expresses conclusions with respect to the laws of the Commonwealth of Pennsylvania.

ARTICLE FOUR

Lease of Trust Equipment to the Company

SECTION 4.01. Lease of Trust Equipment. The Trustee does hereby let and lease to the Company, as herein provided, all the units of Trust Equipment transferred to the Trustee by the Company, for a term ending on November 30, 1989.

SECTION 4.02. Equipment Automatically Subjected. As and when any Equipment shall from time to time be accepted under the Manufacturing Agreement, the same shall be deemed accepted hereunder immediately upon execution and delivery hereof and shall at that time, ipso facto and without further instrument or lease, transfer or acceptance except as expressly provided herein, pass under and become subject to all the terms and provisions hereof.

SECTION 4.03. General Limitation of Liability. It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each of and all the representations, covenants, undertakings and agreements herein made on the part of the Company, are made and intended not as personal representations, covenants, undertakings and agreements by The Royal Trust Company or for the purpose or with the intention of binding such trust company personally but are made and intended for the purpose of binding only the Estate as such term is used in the Trust Agreement, and this Agreement is executed and delivered by such trust company not in its own right but solely in the exercise of the powers expressly conferred on it as trustee under the Trust Agreement.

SECTION 4.04. Rental Payments. The Company hereby accepts the lease of the units of Trust Equipment transferred by the Company to the Trustee hereunder and covenants and agrees to accept delivery and possession hereunder of such Trust Equipment as hereinbefore provided; and the Company

whether upon the stated date of maturity thereof or by declaration or otherwise under the provisions thereof or of this Agreement.

Nothing contained herein or in the Trust Certificates shall be deemed to impose on the Trustee or on the Company (except as provided in subparagraph (2) above and in Section 4.10) 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 of Canada or of any province, state, county, municipality or other taxing authority thereof to be paid by or in behalf of, or withheld from the amount payable to, the holder of any Trust Certificate. The Company shall not be required to pay any tax, assessment or governmental charge pursuant to subparagraph (2) above 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. The conveyance to the Trustee of security title to units of Trust Equipment by the Company pursuant to this Agreement is solely to secure the performance by the Company of its obligations under this Agreement and the payment of all sums payable pursuant to this Agreement and beneficial ownership in and to such units of Trust Equipment shall be and remain in the Company subject to compliance by the Company with all its obligations under this Agreement and the payment of all such sums. Accordingly, after all payments due or to become due hereunder shall have been completed and fully made to or for the account of the Trustee and the Company shall have performed all its other obligations hereunder, (a) such payments shall be deemed to represent the discharge in full of the Trustee's security interest in such units of Trust Equipment at such time, (b) any moneys remaining in the hands of the Trustee after providing for all outstanding Trust Certificates and after paying the expenses of the Trustee, including its reasonable compensation, shall be paid to the Company, (c) full title to such units of the Trust Equipment shall vest in the Company and (d) the Trustee shall execute for record in public offices 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 such units of

the Trust Equipment under the laws of any jurisdiction; provided, however, that until that time security title to such units of the Trust Equipment shall be and remain in the Trustee, notwithstanding the possession and use thereof by the Company pursuant to the terms of this Agreement.

SECTION 4.06. Marking of Trust Equipment. The Company agrees that it will cause each unit of the Trust Equipment to be kept numbered with the identifying number set forth in Schedule A hereto and that it will, within 12 months of the Cut-Off Date, cause to be, and will thereafter keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of such unit, in letters not less than one inch in height, the 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 or reasonably requested in order to protect the security title of the Trustee to such unit and the rights of the Trustee under this Agreement.

The Company will replace or cause to be replaced promptly any such words which may be removed, defaced or destroyed. The Company shall not change, or permit to be changed, the identifying number of any unit of the Trust Equipment 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 filed, recorded or deposited in all public offices where this Agreement shall have been filed, recorded or deposited.

Except as above provided, the Company will not allow the name of any person 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 permit the Trust Equipment 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 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 or cause to be kept each unit of the Trust Equipment in

good order and repair (reasonable wear and tear excepted) at no cost or expense to the Trustee, unless and until worn out, lost, stolen, destroyed or damaged beyond economic repair, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (any of such occurrences being hereinafter called a Casualty Occurrence).

Whenever any unit of the Trust Equipment shall suffer a Casualty Occurrence the Company shall, promptly after it is informed of a Casualty Occurrence under the Lease, notify (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 80% of the Cost thereof as theretofore certified to the Trustee, less an amount equal to the aggregate of payments of rental theretofore made pursuant to Section 4.04(4) applicable to such unit. Rentals paid pursuant to Section 4.04(4) shall be deemed to be applied pro rata to each unit on each rental payment date in the same proportion as the Cost of such unit bears to the aggregate Cost of all units of Trust Equipment hereunder on such date.

Cash deposited with the Trustee pursuant to this Section 4.07 shall be applied to the pro rata prepayment on such date of each instalment of principal remaining unpaid on the Trust Certificates (in proportion to the principal amount repre-

sented 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 April 30 in each year, commencing with the year 1975, 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. The Trustee, by its agents, shall have the right but shall be under no duty, to inspect the records of the Company with respect to the Trust Equipment at any reasonable time during the term of this Agreement, and the Company covenants in that event to furnish to the Trustee all reasonable facilities for the making of any such inspection.

SECTION 4.08. Possession of Trust Equipment. So long as no Event of Default has occurred and is continuing hereunder, the Company shall be entitled to the possession and use of the Trust Equipment and also to enter into the Lease, and to permit the use of the Trust Equipment as provided in the Lease; provided, however, that the Lease shall have been assigned to the Trustee as security for the obligations of the Company hereunder pursuant to the Lease Assignment. The Company hereby agrees that the lease and the rights of the Company to receive rentals and other payments due and to become due thereunder, shall be subject and subordinate to this Agreement and to the rights of the Trustee and the holders of Trust Certificates under the Consent.

Except as permitted by the Trust Agreement, the Company will not sell, assign or transfer its rights under this Agreement or, except as provided in this Section 4.08, transfer the right of possession of any unit of the Trust Equipment. The Company will not amend or consent to any change in the Trust Agreement without the prior written consent of the Trustee.

SECTION 4.09. Compliance with Laws and Rules; Additions; Indemnity. The Company agrees to comply in all respects with all laws of the jurisdictions in which operations involving any unit subject to this Agreement 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 Company agrees to indemnify and hold harmless, or cause to be indemnified and held harmless, the Trustee from and against any and all liability that may arise from any infringement or violation of any such laws or rules by the Company, or, its employees or any other person. In the event that such laws or rules required the alteration of any such unit 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 and rules, the Company agrees to make such alterations, changes, additions and replacements at its own expense and to use, maintain and operate such unit in full compliance with such laws and rules so long as such unit is subject to this Agreement; 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 the holders of the Trust Certificates.

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 additions or parts as are not included in the Cost of the Equipment and 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 indemnify and hold harmless, or 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 strict liability imposed by statute or rule of law, counsel fees and expenses, patent liabilities, penalties and interest, but excluding any expense, loss or liability referred to in Section 4.10 hereof, as to which said Section shall apply) which the Trustee may incur in any manner by reason of the issuance of the Trust Certificates or by reason of entering into or performing this Agreement, any of the instruments or agreements referred to herein or contemplated hereby or the ownership of, or which may arise in any manner out of or as the result of the ordering, acquisition, purchase, leasing, use, operation, condition, delivery, rejection, storage or return of, any unit of the Trust Equipment while subject to this Agreement, and to indemnify and hold harmless, or cause to be indemnified and held harmless, the Trustee against any charge, claim, expense, loss or liability on account of any accident in connection with the delivery, 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; provided, however, that the Company shall not be required to indemnify the Trustee under this paragraph in respect of any such charge, claim, expense, loss or liability which shall have been caused by the wilful act or neglect of the Trustee or of any agent of the Trustee; provided, further, however, that the Trustee will not be deemed negligent as a result of any act or omission of the designer or Manufacturer of any Unit or as a result of any act or omission of the Company. The indemnities contained in this paragraph shall survive payment of all other obligations under this Agreement and the Trust Certificates and 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 United States or Canadian taxes (other than any local, state, or federal United States income taxes in consequence of the receipt of payments provided herein and the aggregate of all franchise taxes measured by net income based on such receipt, except any such tax which is in substitution for or relieves the Company from the payment

of taxes which it would otherwise be obligated to pay or reimburse as herein provided, and other than any Canadian taxes imposed on the Trustee in consequence of the receipt of fees or compensation for services rendered by it 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 (other than any amounts required by law to be withheld from any payment of interest made to the Trustee for the benefit of, or directly to, any holder from time to time of a Trust Certificate), all of which impositions the Company assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. The Company will also pay or cause to be paid promptly all impositions which may be imposed upon any unit of the Trust Equipment or for the use or operation thereof or upon the earnings arising therefrom or upon the Trustee solely by reason of its interest therein, and any and all impositions upon or on account of the trust created by this Agreement or upon or on account of this Agreement or the transactions contemplated hereby (whether or not such transactions shall actually be consummated), or the instruments or agreements referred to herein or contemplated hereby, and will keep at all times all and every part of such unit free and clear of all impositions which might in any way affect the interest of the Trustee or result in a claim, lien, security interest or other 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 of the holders of the Trust Certificates. 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.

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.

Nothing in this Section 4.10 contained shall be deemed to alter or diminish in any manner whatsoever any indemnity provided in Section 5 or Section 13 of the Lease.

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 ten 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 enter into any amendment, modification or termination of the Lease without the prior written consent of the Trustee, or
- (c) the Company shall, for more than 30 days after the Trustee shall have demanded in writing performance thereof, fail or refuse to comply with any other of the terms and covenants hereof on its part to be kept and performed, or to make provision 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 under and as defined in Section 9 of the Lease shall occur, or

(g) any representation of the Company or the Lessee made in the Purchase Agreement or in any certificates or other instrument delivered under or pursuant to any provision thereof shall prove to have been false or incorrect in any material respect on the date as of which made,

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 33% 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 Rate, to the extent legally enforceable, on any portion thereof overdue.

In case one or more Events of Default shall happen, and if the same shall then be continuing, the Trustee in its discretion also may, and upon the written request of the

holders of not less than 33% 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 ten days, the Trustee, in its own name and as trustee of an express trust, shall be entitled and empowered to institute any action or proceedings at law or in equity for the collection of the rentals so due and unpaid, and may prosecute any such action or proceedings to judgment or final decree, and may enforce 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 5.01, shall be entitled and empowered, by intervention in such proceedings or otherwise, to file and prove a claim or claims for the entire amount of the rentals (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 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. 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 Penalty Rate to the extent legally enforceable, and of the principal of all the outstanding Trust Certificates, with interest thereon at the Penalty Rate to the extent legally enforceable from the date of default, whether such Trust Certificates shall have then matured by their terms or not, all such payments to be in full if such proceeds shall be sufficient, and if not sufficient, then pro rata without preference between principal and interest.

After all such payments shall have been made in full, the 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. If after applying as aforesaid the sums of money realized by the Trustee there shall remain a surplus in the possession of the Trustee, such surplus shall be paid to the Company.

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

If at any time after the principal of all the Trust Certificates shall have been declared and become due and payable or if at any time after the entire amount of rentals shall have been declared and become due and payable, all as provided in Section 5.01, but before November 30, 1989, all arrears of rent (with interest at the Penalty Rate 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 a majority in principal amount of the Trust Certificates then outstanding, shall by written notice to the Company waive the default by reason of which there shall have been such declaration or declarations and the consequences of such default, but no such waiver shall extend to or affect any subsequent default or impair any right consequent thereon.

SECTION 5.05. Obligations of Company Not Affected by Remedies. No retaking of possession of the Trust Equipment by the Trustee, or any withdrawal, lease or sale thereof, nor any action or failure or omission to act against the Company or in respect of the Trust Equipment, on the part of the Trustee or on the part of the holders 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, unless remedied or cured before the giving of such notice.

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

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

SECTION 5.10. Transfer of Trust Certificates to the Company. At any time after the occurrence and during the continuation of an Event of Default 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 a majority in aggregate principal amount of the Trust Certificates shall have waived such Event of Default, it will, upon receipt from the Company of an amount equal to the aggregate unpaid principal of and accrued interest on all Trust Certificates then held by such holder plus all other sums then due and payable to such holder hereunder or under such Trust Certificate, 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 Lease Assignment and the Consent. If the Company shall request, such holder will comply with all the provisions of Section 2.03 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 2.03 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 Lease or the Lease Assignment without the approval of the Company.

ARTICLE SIX

Additional Covenants and Agreements by the Company

SECTION 6.01. Discharge of Liens. The Company covenants and agrees that it will pay or discharge, or cause to be paid and discharged, or make adequate provision for the satisfaction or discharge of any debt, tax, charge, assessment, obligation or claim which if unpaid might become a lien, charge or 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 Lease 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. The Company will promptly furnish, or cause to be furnished, 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 Trustee.

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

SECTION 6.04. No Other Business. The Company covenants and agrees that, without the prior written consent of the Trustee and of the holders of not less than 66-2/3% in principal amount of the outstanding Trust Certificates, it will not, in its capacity as trustee under the Trust Agreement, engage in any business other than the ownership and leasing, as contemplated hereby and by the Lease, of the Equipment.

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 of America authorized to take acknowledgments of deeds to be recorded in such jurisdiction that the person executing such instrument acknowledged to him the execution thereof, or by an affidavit of a witness to such execution sworn to before any such notary or other such officer 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.

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. The Trustee acknowledges that arrangements satisfactory to it have been made for the payment of its fees and expenses prior to an Event of Default hereunder, and that it will not seek payment thereof from the Company or the holders of the Trust Certificates.

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 proceedings 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 (except pursuant to the express provisions hereof) 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 hereof, 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 hereof 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, 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 hereof 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 Lease 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 Section 8.07.

(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 8.06 shall be a trust company incorporated under the laws of Canada or any Province thereof and having a capital and surplus of not less than \$25,000,000, 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 8.06 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 ten 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 Canada or any Province thereof or of the United States of America or any State thereof and having a capital and surplus of not less than \$25,000,000, 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 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 laws of the Province of Ontario, Canada; 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. 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, Section 6.01 and Section 6.02 shall be deemed in all respects satisfied by the Lessee's undertakings contained in the Lease. The Company shall not have any responsibility for the Lessee's failure to perform such obligations, but if the same shall not be performed by the Lessee such nonperformance shall constitute the basis for an Event of Default hereunder pursuant to Section 5.01.

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

address set forth for it in the Lease or such other address as may hereafter be furnished to the Trustee in writing by the Company; (b) in the case of the Trustee, its Corporate Trust Office, attention of 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 registry receipt attached, shall be conclusive evidence of the giving of such demand, notice or communication.

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

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

SECTION 9.08. 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 parties hereto, each pursuant to due corporate authority, have caused this Agreement to be duly executed as of the date first above written.

MONTREAL TRUST COMPANY,
as Trustee,

by

Authorized Officer

[Corporate Seal]

Attest:

Authorized Officer

SCHEDULE A

<u>Type</u>	<u>AAR Mechanical Designation</u>	<u>Quantity</u>	<u>Lessee's Car Numbers (Both Inclusive)</u>
50' 70-ton capacity auto parts box cars	XL	92	CPAA 42350-42391 and CPAA 42450-42499

EXHIBIT A

LEASE

between

THE ROYAL TRUST COMPANY,
as Owner Trustee for
SCHULER INDUSTRIES, INC.

and

CANADIAN PACIFIC LIMITED

Dated as of October 23, 1974

LEASE dated as of October 23, 1974, between THE ROYAL TRUST COMPANY, a trust company incorporated by special charter granted under the laws of the Province of Quebec, Canada (hereinafter together with its successors and assigns, being called the Lessor), as Owner Trustee under a Trust Agreement (hereinafter called the Trust Agreement) dated as of the date hereof with SCHULER INDUSTRIES, INC., an Alabama corporation (hereinafter called the Beneficiary), and CANADIAN PACIFIC LIMITED, a corporation incorporated under the laws of Canada (hereinafter called the Lessee).

WHEREAS the Lessee has entered or will enter into a manufacturing agreement (hereinafter called the Manufacturing Agreement), with Whittaker Corporation, Berwick Forge and Fabricating Division (hereinafter called the Manufacturer), pursuant to which the Lessee has agreed to purchase and take delivery of certain railroad equipment; and

WHEREAS, under an Assignment of Manufacturing Agreement the Lessee is assigning to the Lessor its rights under the Manufacturing Agreement to purchase and take delivery of those units of railroad equipment described in Schedule I hereto (such railroad equipment being hereinafter sometimes called the Equipment); and

WHEREAS the Lessee agrees to lease from the Lessor all the units of the Equipment, or such lesser number of units as are delivered and accepted under the Manufacturing Agreement on or prior to November 30, 1974, at the rentals and for the terms and upon the conditions hereinafter provided (each such unit being hereinafter called a Unit); and

WHEREAS the Lessor will enter into an equipment trust agreement (hereinafter called the Equipment Trust Agreement), with Montreal Trust Company, a corporation organized under the laws of the Province of Quebec, Canada (hereinafter called the Trustee), pursuant to which equipment trust certificates (hereinafter called the Trust Certificates) will be sold to finance a portion of the purchase price of the Equipment, the Lessor will be obligated to make payments of principal and interest thereon out of the rentals received hereunder and security title to the Units and this Lease will be conveyed to the Trustee until the Lessor fulfills all its

its obligations under the Equipment Trust Agreement;

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

Section 1. Delivery and Acceptance of Units. The Lessor will cause each Unit accepted pursuant to the Manufacturing Agreement to be delivered to the Lessee at such point or points as may be mutually acceptable to the Lessor and the Lessee. Immediately upon such delivery, the Lessee will cause its authorized inspectors or representatives to inspect the same, and if it is found to be acceptable, to accept delivery thereof under this Lease and to execute and deliver to the Lessor a certificate of acceptance therefor in the form of Annex C to the Manufacturing Agreement (hereinafter called a Certificate of Acceptance), 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. Any Unit or Units excluded from the Equipment Trust Agreement pursuant to the Article therein concerning "Acquisition of Trust Equipment by Trustee" shall likewise be excluded from this Lease.

Section 2. Rentals. Subject to subdivision E of Section 13 of this Lease, 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 November 30, 1974, and 30 consecutive semiannual payments payable in arrears on May 31 and November 30 of each year, commencing May 31, 1975. The interim rental payment shall be an amount for each Unit subject to this Lease equal to \$8.37 for each day elapsed from and including the date such Unit is settled for under the Manufacturing Agreement to November 30, 1974. The 30 semiannual rental payments shall each be in an amount equal to \$1,521.91 for each 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.

If the date fixed for the payment of any rental shall be other than a Business Day such payment shall be due and payable on the next preceding Business Day. The term Business Days as used in this Lease shall mean calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in New York, New York, or in Montreal or Toronto, Canada, are authorized or obligated to remain closed.

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 or the Equipment Trust Agreement, or by reason of any failure by the Lessor to perform any of its obligations herein contained, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease.

Section 3. Term of Lease. The term of this Lease as to each Unit shall begin on the date of acceptance thereof by the Lessee pursuant to Section 1 hereof, and, subject to the provisions of Sections 6, 9, 16 and 18 hereof, shall terminate on the date on which the final semiannual payment of rent in respect thereof is due pursuant to Section 2

hereof.

Notwithstanding anything to the contrary contained herein, all rights of Lessee under this Lease and in and to the Units, 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 the identifying number as set forth in Schedule I hereto and will, within 12 months of the Cut-Off Date (as defined in the Equipment Trust Agreement), cause to be, and will thereafter keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of such Unit, in letters not less than one inch in height, the following words: "OWNED BY MONTREAL TRUST COMPANY, 1 PLACE VILLE MARIE, MONTREAL H3B 4A8, QUEBEC, CANADA, AS TRUSTEE UNDER AN EQUIPMENT TRUST AGREEMENT", or other appropriate words designated by the Lessor or the Trustee, with appropriate changes thereof and additions thereto as from time to time may be required by law or reasonably requested by the Lessor in order to protect the interest of the Lessor and 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 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. Subject to subdivision E of Section 13 hereof, 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 or Canadian taxes (other than any local, state, or federal United States income taxes in consequence of the receipt of payments provided herein and the aggregate of all franchise taxes measured by net income based on such receipt, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided, and other than any Canadian taxes in consequence of the receipt by the Trustee of fees or compensation for services rendered under the Equipment Trust Agreement), 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 (other than (i) any deemed disposition as provided in the Income Tax Act [Canada] and (ii) any amounts required by law to be withheld from any payment of interest made to the Trustee for the benefit of, or directly to, any holder from time to time of a Trust Certificate), 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 solely by reason of its interest therein or upon the Trustee solely by reason of its title thereto 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 result 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 Lessor and the Trustee with an opinion (in form and substance satisfactory to the Lessor and the Trustee) of counsel (approved by the Lessor and the Trustee) 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, 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. The Lessor shall use its best efforts to utilize Canadian depreciation and interest income tax deductions in such a manner as will minimize its Canadian income tax liability in each year and will furnish to the Lessee upon request copies of its Canadian income tax returns.

Notwithstanding anything in this Section 5 to the contrary, any sale of, or transfer of title to, the Units to the Lessee pursuant to the terms of this Lease will be free of expense to the Lessor and the Trustee with respect to the amount of any provincial or federal Canadian income taxes in consequence of such sale or transfer of title but only, as to the Lessor, to the extent the Beneficiary does not receive a credit for such Canadian taxes against its United States income tax liability.

Notwithstanding any provision herein to the contrary, the Lessee agrees to pay, and to indemnify and hold

harmless, the Lessor, the Trustee and each holder from time to time of a Trust Certificate or Trust Certificates from, any and all taxes (together with any penalties, fines or interest thereon and any other costs and expenses incurred in contesting any of the foregoing or otherwise in connection therewith, including, without limitation, legal fees and disbursements) imposed against the Lessor, the Trustee, or any holder from time to time of a Trust Certificate or Trust Certificates by the United States or Canada or any taxing authority thereof or therein in connection with the issuance, purchase, sale or acquisition of the Trust Certificates upon original issuance, the purchase, ownership, delivery, lease, assignment, pledge, possession, use, operation, return or other disposition of the Units, this Lease or the Equipment Trust Agreement or any transaction contemplated hereby or thereby (other than (i) any deemed disposition as provided in the Income Tax Act [Canada], (ii) any amounts required by law to be withheld from any payment of interest to the Trustee for the benefit of, or directly to, any holder from time to time of a Trust Certificate and (iii) the matters referred to in the next preceding paragraph of this Section 5).

All the obligations of the Lessee under this Section 5 and under Section 13 hereof shall survive the expiration or earlier termination of this Lease and are expressly made for the benefit of, and shall be enforceable against the Lessee and its successors by, the Lessor, the Trustee and each holder from time to time of a Trust Certificate or Trust Certificates.

Section 6. Payment for Casualty Occurrences; Insurance. 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 payment 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 accrued rental for such Unit to the date of such payment plus a sum equal to the Casualty Value (as hereinafter defined) of such Unit as of such rental payment date in accordance with the schedule in the next succeeding paragraph. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue as of the date of such payment and the term 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 the Casualty Value of any such 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 as of any rental payment date shall be the dollar amount set forth opposite the applicable rental payment number in the following schedule:

<u>Rental Payment</u>	<u>Casualty Value</u>
1	\$24,874
2	24,996
3	25,033
4	24,996
5	24,883
6	25,998
7	24,601
8	24,133
9	23,625
10	24,337
11	22,490
12	21,863
13	21,196
14	21,791
15	19,746
16	18,963
17	18,144
18	17,294
19	16,413
20	15,499
21	14,551

<u>Rental Payment</u>	<u>Casualty Value</u>
22	\$13,568
23	12,548
24	11,488
25	10,388
26	9,246
27	8,058
28	6,823
29	5,540
30 and thereafter	4,204

The foregoing dollar amounts have been computed without regard to recapture of Investment Tax Credit. Consequently the Casualty Value of any Unit suffering a Casualty Occurrence on or before the third, fifth and seventh anniversary of the date of delivery and acceptance of such Unit shall be increased by the applicable dollar amount set forth in the schedule below:

<u>Anniversary of Delivery and Acceptance</u>	<u>Dollar Amount per Unit</u>
Third	\$ 3,900
Fifth	2,600
Seventh	1,300

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.

The Lessee will, at all times while this Lease is in effect, at its own expense, cause to be carried and maintained insurance in respect of the Units at the time subject hereto, and public liability insurance, in amounts and against risks customarily insured against by railroad companies on similar equipment, and in any event in amounts and against risks comparable to those insured against by the Lessee on equipment owned by it and the benefits thereof shall be payable to the Lessor, the Trustee and the Lessee as their interest may appear and will furnish appropriate

evidence of such insurance coverage upon the reasonable request of the Lessor, provided that in lieu of all or a part of such insurance (excluding public liability insurance in excess of \$2,000,000) the Lessee may self insure to the same extent that it does with respect to other similar equipment owned by it. Any damages receivable from others, any salvage value recovered or paid by the Lessee, any condemnation payments and any net insurance proceeds received by the Lessor in respect of Units suffering a Casualty Occurrence (all hereinafter collectively referred to as Recoveries) shall be deducted from the amounts payable by the Lessee to the Lessor in respect of Casualty Occurrences pursuant to this Section 6 and the excess of such Recoveries, if any, shall belong to the Lessor. If the Lessor shall receive any such Recoveries after the Lessee shall have made payments pursuant to this Section 6 without deduction for such Recoveries, the Lessor shall pay such Recoveries to the Lessee up to an amount equal to the Casualty Value with respect to a Unit paid by the Lessee and any balance of such Recoveries shall remain the property of the Lessor.

All proceeds of insurance received by the Lessor in respect of insurance carried on any Unit or Units not suffering a Casualty Occurrence shall be paid to the Lessee upon proof satisfactory to the Lessor that any damage to such Unit in respect of which such proceeds were paid has been fully repaired.

Section 7. Annual Reports. On or before April 30 in each year, commencing with the year 1975, the Lessee will furnish to the Lessor, the Trustee and Firstmark Investors Leasing, Inc., 15 Messenger Drive, Warwick, Rhode Island 02888, 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 then leased hereunder and 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 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 continuance of this Lease.

The Lessee agrees that it will furnish to the Lessor, the Trustee and to each holder of a Trust Certificate or Trust Certificates, in duplicate, (i) as soon as available, and in any event within 60 days after the close of the first, second and third quarterly accounting periods in each fiscal year of the Lessee, the balance sheet of the Lessee as of the end of such accounting period and the related income statement and statement of retained income of the Lessee for the portion of its fiscal year ended with the last day of such accounting period, all in reasonable detail, (ii) as soon as available, and in any event within 120 days after the close of each fiscal year of the Lessee, the annual report of the Lessee, including a balance sheet, income statement and statement of retained income of the Lessee for the preceding fiscal year, all in reasonable detail and certified by an independent public accountant, (iii) as soon as available, and in any event within 120 days after the end of each fiscal year, a certificate signed by the President, any Vice President, the Treasurer or any Assistant Treasurer of the Lessee stating that a review of the activities of the Lessee during such year has been made under his supervision with a view to determining whether the Lessee has kept, observed, performed and fulfilled all of its covenants and obligations under this Lease and that to the best of his knowledge the Lessee during such year has kept, observed, performed and fulfilled each and every covenant and obligation contained herein, or, if an Event of Default under this Lease shall exist or if an event has occurred which, with the giving of notice or the passage of time or both, would constitute such an Event of Default, specifying such Event of Default or such event and the nature and status thereof, and (iv) such additional information as the Lessor, the Trustee or any such holder may reasonably request concerning the Lessee in order to enable said party to determine whether the covenants, terms and provisions of this Lease have been complied with by the Lessee.

Section 8. Disclaimer of Warranties; Compliance With Laws and Rules; Maintenance; Indemnification. The Lessee has selected the Manufacturer and determined the design and specifications of the Units. 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 OR 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 of 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 the manufacturers 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, warrants and covenants 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 the Manufacturer and, if the Equipment Trust Agreement has been executed and delivered, the Trustee, unimpaired by any act or omission of the Lessor or the Trustee 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 Manufacturing Agreement or, if it has been executed and delivered, the Equipment Trust Agreement, which may result from claims against the Lessor or the Trustee 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 cause to be done 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 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, the Equipment Trust Agreement and the Assignment of Lease and Agreement (hereinafter called the Lease Assignment), pursuant to which this Lease is assigned to the Trustee.

The Lessor covenants and agrees not to alter, amend or modify the Equipment Trust Agreement or the Lease Assignment, 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 jurisdictions in which operations involving any Unit subject to this Lease may extend, with the Interchange Rules of the Association of American Railroads, if applicable, and with all lawful rules of 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 additions or parts as are not included in the Purchase Price [as defined in the Manufacturing Agreement] of the Units and 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 in 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 imposed by statute or rule of law, counsel fees and expenses, patent liabilities, penalties and interest, but excluding any expense, loss or liability referred to in Sections 5 and 13 hereof, as to which said Sections shall apply) which the Lessor or the Trustee may incur in any manner by reason of the issuance of the Trust Certificates or by reason of entering into or performing the Equipment Trust Agreement, this Lease, any of the instruments or agreements referred to therein or herein or contemplated thereby or hereby or the ownership of, or which may arise in any manner out of or as the result of the ordering, acquisition, purchase, leasing, 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, or for any other cause whatsoever, and to indemnify and save harmless the Lessor and the Trustee against any charge, claim, expense, loss or liability (including but not limited to strict liability imposed by statute or rule of law and counsel fees and expenses) on account of any accident in connection with the delivery, operation, use, condition, possession or storage of any Unit resulting in damage to property or injury to or death of any person; provided, however, that the Lessee shall not be required to indemnify the Lessor or the Trustee under this paragraph in respect of any such charge, claim, expense, loss or liability which shall have been caused by the wilful act or neglect of the Lessor or the Trustee or of any agent 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 Manufacturer of any Unit or as a result of any act or omission of the Lessee.

The indemnities arising under this Section 8 shall survive payment of all other obligations under this Lease and the termination of this Lease.

The Lessee agrees to prepare and deliver to the Lessor and the Trustee within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor and the Trustee) any and all reports known by the Lessee to be required to be filed by the Lessor or the Trustee, or requested by the Lessor or the Trustee to be filed, with any federal, state, provincial 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 or the payments provided in subdivisions A and B of Section 13 or Section 17 hereof and such default shall continue for five days; or

(B) the Lessee shall make or permit any unauthorized assignment or transfer of this Lease, enter into

any amendment, modification or termination of the Lease without the prior written consent of the Trustee, or any unauthorized sublease or use of the Units or any thereof; 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 the Equipment Trust Agreement) and such default shall continue for 25 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), and 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 (whether or not subject to ratification) 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;

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 and of the Consent 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 that total number of days in such full rental period) and also to recover forthwith from the Lessee (i) as liquidated damages for loss of the bargain and not as a penalty, a sum with respect to each Unit 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 period, such present value to be computed in each case on a basis of 10% per annum discount compounded semiannually 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 attorney's 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; (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, shall be equal to any portion of the 7% investment credit (hereinafter called the "Investment Credit"), allowed by Section 38 and related sections of the Internal Revenue Code of 1954, as amended (hereinafter called the Code), which was lost, not claimed, not available for claim, disallowed or recaptured by or from the Lessor as a result of the breach of one or more of the representations, warranties and covenants made by the Lessee in

Section 13 hereof or any other provision of this Lease, the inaccuracy of any statement in any letter or document furnished to the Lessor by the Lessee, the termination of this Lease, the Lessor's loss of the right to use such Unit, any action or inaction by the Lessee or the sale or other disposition of the Lessor's interest in any such Unit after the occurrence of an Event of Default and (iv) 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, such sum as, in the reasonable opinion of the Lessor, will cause the Lessor's net return under this Lease to be equal to the net return 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 and related sections of the Code utilizing a twelve-year depreciable life taking into account an estimated Gross Salvage Value of 21.46% of the Purchase Price reduced by 10% as provided in Section 167(f) of the Code and employing the double declining balance method of depreciation switching to the sum of the years digits method on January 1, 1976 (such depreciation deduction being hereinafter called the Depreciation Deduction), and (y) the deduction in each taxable year of the Lessor for all interest paid during such year on the Trust Certificates compiled in accordance with Section 163 of the Code (hereinafter called the Interest Deduction), in each case which was lost, not claimed, not available for claim, disallowed or recaptured by or from the Lessor as a result of a breach of one or more of the representations, warranties and covenants made by the Lessee in Section 13 or any other provision of this Lease, the inaccuracy of any statement in any letter or document furnished to the Lessor by the Lessee, the termination of this Lease, the Lessor's loss of the right to use any Unit or any action or inaction by the Lessee or the sale or other disposition of the Lessor's interest in any 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 amount payable or paid pursuant to subclause (i) of this clause (b) equal to any net proceeds received by the Lessor upon the sale or the releasing of the Units to the extent that such net proceeds

as actually received exceed the amount payable or paid pursuant to the said subclause (i).

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 third paragraph of Section 13 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. Each Unit returned to the Lessor pursuant to this Section 10 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted, (ii) have attached or affixed thereto any addition to, parts installed on or replacement of such Units considered an accession thereto

under Section 8 hereof, and (iii) meet the standards then in effect under the Interchange Rules of the Association of American Railroads, if applicable. 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 and in the usual manner 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 all such Units have been sold, leased or otherwise disposed of by the Lessor; 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 as to cause the assembly, delivery, storage and transportation of 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 Lessor's assigns as if named herein as Lessor and to the holders of the Trust Certificates. Whenever the term Lessor is used in this Lease it shall apply and refer to the Lessor and, where the context so requires, the Beneficiary and each assignee of the Lessor.

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 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 notify the Lessor of, and 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 and that notice of such assignment, transfer or sublease is given to the Lessor.

The Lessee, at its own expense, will as soon as possible cause to be duly discharged any lien, charge, security interest or other encumbrance (other than the lien of the Equipment Trust Agreement or any encumbrance resulting from claims against the Lessor not related to the ownership or leasing of the Unit) which may at any time be imposed on or with respect to any Unit including any accession thereto or the interest of the Lessor, 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 this Section 11.

Section 12. Return of Units Upon Termination.
As soon as practicable on or after the expiration of the original or any extended term of this Lease 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 Units 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, (ii) have attached or affixed thereto any addition to, parts installed on or replacement of such Units considered an accession thereto under Section 8 hereof and (iii) 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. Indemnity in Respect of Tax Matters.

A. The Lessor shall be entitled to such deductions, credits and other benefits as are provided by the Code (as defined in Section 9 of this Lease) to an owner of property including (without limitation) an allowance for the Depreciation

Deduction, the Investment Credit and the Interest Deduction (all as defined in Section 9 of this Lease).

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

If the Lessor shall lose or shall not have or shall lose the right to claim, or if there shall be disallowed, or recaptured with respect to the lessor, all or any portion of the Investment Credit, Interest Deduction or Depreciation Deduction as are provided to an owner of property with respect to a Unit for any period prior to (i) the termination of this Lease and (ii) full compliance by the Lessee with all of its obligations hereunder as the direct or indirect result of the following events:

(i) a "Determination" as defined in Section 1313(a) of the Code (hereinafter referred to as a "Determination") of additional tax liability resulting from the conclusion of the Internal Revenue Service that (A) any representation, fact, estimate, opinion or other statement which is contained in a certificate furnished to the Lessor by the Lessee, or any affiliated company or any officer, employee, agent or attorney thereof, which is contained in the Request for Rulings (as hereinafter defined) is fraudulent, untrue, incorrect, inaccurate, misleading, unreasonable or insufficient in whole or in part (including any omission of a material fact which causes such representation, fact, estimate, opinion or other statement to be misleading or insufficient in whole or in part); (B) any representation, fact, estimate, opinion or other statement made or stated in writing by the Lessee, or any affiliated company or any officer, employee, agent or attorney thereof, in connection with the obtaining of the rulings requested in such Request for Rulings is fraudulent, untrue, incorrect, inaccurate, misleading, unreasonable or insufficient in whole or in part (including any omission of a material fact which causes such representation, fact, estimate, opinion or other statement to be misleading, or insufficient in whole or in part);

or (C) the Lessee, or any affiliated company or any officer, employee, agent or attorney thereof, has taken or failed to take any action whatsoever (including, without limitation, any action in respect of the Lessee's or such affiliate's income tax returns) which action or nonaction is inconsistent with or in contravention of any of the matters set forth in such Request for Rulings or set forth in the ruling issued pursuant thereto or in any closing agreement entered into in connection with such rulings; or

(ii) the representations contained in this Section 13 being untrue;

then, in such event, subject to the provisions of subdivision E of this Section 13, the Lessee shall pay to the Lessor as additional rent (x) an amount which, after deduction of any taxes required to be paid by the Lessor in respect of the receipt thereof under the laws of any Federal, state, or local government or taxing authority of the United States, shall be equal to the additional Federal, state or local income taxes payable by the Lessor in consequence of the event and (y) the amount of any interest (including any additions to tax as a result of the underpayment of estimated tax) and penalty which may be assessed by any Federal, state or local taxing authority against the Lessor in consequence of the event, which amounts shall be payable on written demand made by the Lessor (but nonpayment of such amount shall not constitute an Event of Default until 30 days after such written demand); provided, however, that in computing the amount of any such additional rent an allowance shall be made for the tax benefits attributable to the amounts by which the deduction for depreciation in later years will exceed the amounts which would have been allowable had there not been reductions in the amounts of depreciation allowed for earlier years; and an allowance shall be made for tax benefits attributable to the exclusion from the Lessor's income of revenue which would otherwise have been includible therein; but such allowances shall be applied only to the extent that such application does not result in the Lessor's net return under this Lease being less than the net return which would have been available to the Lessor if such event had not occurred. In computing such allowance a discount factor of 10% per annum shall be utilized; provided, further, however, that such additional rent shall not be so paid 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 Investment Credit, Interest Deduction or Depreciation Deduction with respect to such Unit as a direct result of the occurrence of any of the following events:

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

(2) a voluntary transfer by the Lessor of title to such Unit, the disposition by the Lessor of any interest in such Unit, the reduction by the Lessor of its interest in the rentals from such Unit under the Lease (other than as contemplated herein or in the other agreements referred to herein) or any deemed disposition of such Unit as provided in the Income Tax Act (Canada), unless, in each case, an Event of Default shall have occurred and be continuing;

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

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

(5) the failure of the Lessor to have sufficient liability for the tax against which to credit such Investment Credit or sufficient income to benefit from the Depreciation Deduction or 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 Investment Credit, Interest Deduction or the Depreciation Deduction on any Unit exists in respect of which the Lessee is required to pay increased or additional 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, the Interest Deduction and/or the Investment Credit disallowed, at the rate of 10% per annum, 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 13. 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.

B. Notwithstanding any provision herein to the contrary (other than subdivision E of this Section 13), (a) if any Canadian governmental authority, federal or provincial, shall cause any rental payment under Section 2 hereof or any additional rental payment under this Section 13 or any additional payment under Section 17 hereof (or any other payment under this Lease or any authorized assignment thereof) to become subject to Canadian federal or provincial income tax arising as a result of any change in Canadian federal or provincial law or regulations (hereinafter called "Canadian Taxation") or (b) if any Canadian governmental authority, federal or provincial, shall withhold or cause to be withheld from any rental payment made under Section 2 hereof or any additional rental payment made under this Section 13 or any additional payment made under Section 17 hereof (or any other payment made under this Lease or any authorized assignment thereof) or any distribution by the Lessor to the Beneficiary any amounts (other than any amounts required by law to be withheld from any payment of interest made to the Trustee for the benefit of, or directly to, any holder from time to time of a Trust Certificate) in respect of taxes (hereinafter called "withholding taxes") or (c) if any Canadian governmental authority, federal or provincial, shall impose a tax (other than a withholding tax) against the Beneficiary (hereinafter called Other Taxes), the following provisions will apply:

(1) The Lessee will, on the rental payment date when such rental payment is made, pay to the Lessor

as additional rental a sum sufficient to cause the Lessor or the Beneficiary, as the case may be, to receive an amount equivalent to the amount the Lessor or the Beneficiary, as the case may be, would have received had no withholding taxes been withheld or Canadian Taxation or Other Taxes imposed.

(2) The Lessee will pay such withholding taxes and Canadian Taxation and Other 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.

(3) Upon receipt by the Lessor or the Beneficiary 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 resulting from the crediting or deducting of such withholding taxes or Canadian Taxation or Other 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 or Canadian Taxation or Other Taxes had not been imposed. It is agreed that such determination may be revised and new demand made upon Lessee after any disallowance of such credit or deduction upon audit by the U.S. Internal Revenue Service. The obligation of the Lessor under this subparagraph (3) will survive the termination of this Lease.

C. The Lessee's agreement to pay any sums which may become payable pursuant to this Section 13 shall survive the expiration or other termination of this Lease.

D. The Lessee represents, warrants and covenants that (i) none of the Units constitutes property the construction, reconstruction or erection of which was begun before April 1, 1971; (ii) at the time the Lessor becomes the owner of the Units, such Units will constitute "new section 38 property" within the meaning of Section 48(b) of the Code and at the time the Lessor becomes the owner of all Units, the Units will not have been used by any person so as to preclude "the original use of such property" within the meaning of Section 48(b) and 167(c)(2) of the Code from

commencing with the Lessor, (iii) at all times during the term of this Lease, each Unit will constitute "section 38 property" within the meaning of Section 48(a) of the Code, will not be used predominantly outside the United States within the meaning of said Section 48(a) (or any exception thereto) and will be used by railroad companies; and (iv) the Lessee will maintain sufficient records to verify such use and upon the Lessor's reasonable request the Lessee shall provide at its own expense true copies of sufficient records to satisfy a request of the Internal Revenue Service with respect thereto.

E. If at any time during the original and any extended term of this Lease (a) any change in Canadian federal or provincial law or regulations operates to cause any rental payment under Section 2 hereof or any additional rental payment under this Section 13 or any additional payment under Section 17 (or any other payment under this Lease or any authorized assignment thereof) to become subject to Canadian federal or provincial income tax (herein called "Canadian Taxation") or (b) if any change in Canadian federal or provincial law or regulations requires the Lessee to withhold any amounts in respect of Canadian federal or provincial income tax arising as a result of any change in the basis of determining such tax or any increase above a 15% withholding tax rate (which amounts are hereinafter called "Withholding Taxes") or (c) if any Canadian governmental authority, federal or provincial, imposes upon the Lessor or the Beneficiary income or corporation taxes (including withholding taxes) in excess of \$1,000 in any year during the original term of this Lease or in excess of 15% of the aggregate rentals payable hereunder in any year of any extended term of this Lease, the following provisions shall apply:

(1) The Lessee shall notify the Lessor and the Trustee in writing that, in the opinion of counsel for the Lessee (signed copy of which opinion shall be attached to such notice), such change in law or regulations operates to impose Canadian Taxation upon such rental payments or to require the Lessee to remit Withholding Taxes or such income or corporation taxes (including withholding taxes) have been imposed, and

(2) The Lessee shall have an option, exercisable by notice in writing to the Lessor and the Trustee at least 90 days prior to any semiannual rental payment date occurring subsequent to the notice referred to

in clause (1) above, to purchase and accept all of the Lessor's right, title and interest in and to all the Units then subject to this Lease at a price equal to the higher of (A) the Fair Market Value (determined as provided in Section 18 hereof) of such Units on such semiannual rental payment date less an amount equal to that portion of such Fair Market Value which is attributable to the principal represented by the Trust Certificates and accrued interest, if any, on such principal or (B) the sum of (a) the aggregate Casualty Value of such Units on such semiannual rental payment date (determined in accordance with the schedules contained in Section 6 hereof) less an amount equal to that portion of such aggregate Casualty Value which is attributable to the principal represented by the Trust Certificates and accrued interest, if any, on such principal and (b) all fees, costs and expenses of any nature whatsoever (including without limitation all brokerage commissions, attorneys and accountants' fees and printers' charges) incurred by the Lessor in connection with such purchase by the Lessee pursuant to this clause (2) or otherwise in connection with the transactions contemplated by this Lease and the Equipment Trust Agreement, and to deliver to the Lessor an undertaking whereby the Lessee assumes and agrees to pay, perform and discharge all obligations of the Lessor in respect of the Equipment Trust Agreement and agrees to execute and deliver to the Trustee such further documentation in connection with such purchase and assumption as the Trustee may reasonably request. Forthwith upon receipt of the notice given under this clause (2), the Lessor will, in accordance with Section 1.48-4(f) of the Income Tax Regulations, file a statement with the Lessee of the Lessor's election to treat the Lessee as having purchased such Units for purposes of the credit allowed by Section 38 of the Code. Such purchase shall be closed on the semiannual rental payment date next succeeding the date of the notice given under this clause (2), and the payment of such purchase price shall be made in immediately available funds against delivery of a bill of sale from the Lessor transferring all of the Lessor's right, title and interest in and to such Units free and clear of all liens (other than the liens of the Equipment Trust Agreement and the Lease Assignment) arising from acts of the Lessor. Notwithstanding the exercise of the option to purchase provided in this clause (2) the Lessee shall, on the semiannual rental payment date on which such purchase is closed, pay to the Lessor

the rental payment due on such date pursuant to Section 2 or Section 18 hereof, as the case may be. The Lessor shall not be required to make any representation or warranty as to the condition of such Units, the timeliness of the Lessor's election under Section 1.48-4(f) of the Income Tax Regulations or as to any other matter. After any such purchase pursuant to this clause (2) this Lease shall remain in full force and effect and the Lessee shall continue to perform all of its obligations as the Lessee hereunder and shall also perform all of the obligations and, subject to the Equipment Trust Agreement and any assignment of this Lease by the Lessor, be entitled to all of the rights of the Lessor hereunder as if originally named as the Lessor herein. Simultaneously with such purchase pursuant to this clause (2) the Lessee shall assume all of the obligations of the Lessor under the Equipment Trust Agreement as if originally named as the Company thereunder and shall execute and deliver such instruments and documents (in form and substance satisfactory to the Trustee) as the Trustee may reasonably request to evidence further such assumption (which instrument shall include an assumption in such capacity under the Equipment Trust Agreement of the obligations of the Lessee set forth in Section 5 and this Section 13 hereof).

(3) In the event that the Lessee does not exercise the option contained in clause (2) hereof, then the Lessee shall continue to be subject to and held to all its obligations and rights hereunder, including but not limited to such obligations in Sections 2 and 5, this Section 13 and Section 17 hereof.

Section 14. Recording; Certain Expenses. Prior to the delivery and acceptance of any Unit, the Lessee will, at its own expense, cause this Lease, any assignments hereof, the Manufacturing Agreement and any assignment thereof by the Manufacturer to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and deposited in the office of 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, similarly file and record and deposit (and give the requisite notice of such deposit) the Equipment Trust Agreement and undertake the filing,

recording, depositing (and giving of notice) required under the Equipment Trust Agreement and will further, 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) any and all further instruments required by law or reasonably requested by the Lessor or the Trustee, for the purpose of proper protection, to the satisfaction of the Lessor and the Trustee, of the Lessor's and the Trustee's respective interests in the Units, or for the purpose of carrying out the intention of this Lease and the Equipment Trust Agreement. The Lessor will promptly furnish to the Lessor and the Trustee evidence of all such filing, registering, recording, depositing (giving of notice), refile, reregistering, rerecording and/or redepositing and an opinion or opinions of counsel with respect thereto satisfactory to the Lessor and the Trustee.

The Lessee will pay the reasonable fees and expenses of the Lessor in its capacity as Owner Trustee under the Trust Agreement, unless such fees and expenses are paid by some other person.

Section 15. 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 interest at the Penalty Rate (as defined in the Equipment Trust Agreement) on the overdue rentals and other obligations for the period of time during which they are overdue.

Section 16. 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 this Lease, the rights and obligations hereunder of the parties hereto shall cease and determine as if this Lease had never been made.

Section 17. Additional Payments by Lessee. In addition to the rentals specified in Section 2 hereof and subject to the provisions of subdivision E of Section 13 of this Lease:

(A) The Lessee agrees to pay to the Lessor on the Business Day 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 in respect of interest payable on the Equipment Trust Certificates issued under the Equipment Trust Agreement.

(B) The Lessee agrees to pay to the Lessor on the Business Day next preceding November 30, 1974, an amount equal to (x) the rental payment payable by the Lessor to the Trustee on November 30, 1974, under Section 4.04(3)(b) and (c) of the Equipment Trust Agreement in respect of interest payable on the Equipment Trust Certificates issued under the Equipment Trust Agreement, less (y) 80% of the amount of the interim rental payment payable by the Lessee to the Lessor under Section 2 hereof.

(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), which are made by the Trustee on the written or telegraphic request of the Lessee or otherwise required by the provisions of Section 8.04 of the Equipment Trust Agreement if such request is not made by the Lessee, 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 to the extent provided under the last paragraph of Section 8.04 of the Equipment Trust Agreement to pay to the Lessee 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 18. 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 original term of this Lease or any extended term hereof, as the case may be, elect (a) to purchase some of 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 the Units then covered by this Lease, for three additional five-year periods the first of which shall commence on the scheduled expiration of the original term of this Lease, the second of which shall commence on the scheduled expiration of the first such extended term of this Lease and the third of which shall commence on the scheduled expiration of the second such extended term of this Lease, provided, that no such extended term shall extend beyond fifteen years from the date of expiration of the original term of this Lease, at a rental, during the first and second such five-year periods, in an amount equal to \$370.57 and \$185.28, respectively, for each Unit subject to this Lease as so extended, and, during the third such five-year period, in an amount equal to the "Fair Rental Value" of such Units, in each case payable in arrears in 10 semiannual payments for each five-year period; such semiannual payments to be made on May 31 and November 30 in 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 original term of this Lease or any extended term hereof, as the case may be, 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 fees of the Appraiser shall be borne by 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 19. Purchase of the Lessor's Interest by Lessee if Favorable Tax Ruling is not Received. In the event that on or before June 30, 1975, the United States Internal Revenue Service shall not have issued to the Lessor, upon a request by it (herein called the Request for Rulings) a favorable tax ruling to the effect that, for United States Federal income tax purposes:

(i) the trust established pursuant to the Trust Agreement will be subject to Subpart E, Part 1 of Subchapter J of Chapter 1 of the Code;

(ii) payments of rent under this Lease will not be subject to United States withholding tax so long as the Beneficiary is a domestic corporation;

(iii) this Lease constitutes a true lease and the Lessor will be treated as owner of the Units;

(iv) the Lessor is entitled to the Interest Deduction in computing its taxable income;

(v) the Lessor is entitled to the Investment Credit in respect of 100% of the Purchase Price of the Units; and

(vi) the Lessor is entitled to the Depreciation Deduction in respect of 100% of the Purchase Price of the Units;

then not later than July 31, 1975, the Lessee, at its option, shall either (a) furnish indemnity to the Lessor and the Beneficiary, reasonably satisfactory to each of them, against any adverse tax consequences resulting from the failure to obtain such ruling or (b) purchase and accept all of the Lessor's right, title and interest in and to all the Units then subject to this Lease at a price equal to the aggregate of (A) the Lessor's original investment in the Purchase Price of such Units, (B) interest at the rate of 10-3/4% per annum on the amount referred to in clause (A) above from the date of such investment to and including the date of such purchase, and (C) all fees, costs and expenses of any nature whatsoever (including without limitation all brokerage commissions, attorneys' and accountants' fees, printers' charges and all fees, costs and expenses incurred in connection with the Request for Rulings) incurred by the Lessor in connection with such original investment, such purchase by the Lessee pursuant to this Section 19 or otherwise in connection with the transactions contemplated by this Lease and the Equipment Trust Agreement, and to deliver to the Lessor an undertaking whereby the Lessee assumes and agrees to pay, perform and discharge all obligations of the Lessor in respect of the Equipment Trust Agreement and agrees to execute and deliver to the Trustee such further documentation in connection with such purchase and assumption as the Trustee may reasonably request. Forthwith upon receipt of notice of exercise of such option to purchase, the Lessor will, in accordance with Section 1.48-4(f) of the Income Tax Regulations, file a statement with the Lessee of the Lessor's election to treat the Lessee as having purchased such Units for purposes of the credit allowed by Section 38 of the Code. The payment of such purchase price shall be made in immediately available funds against delivery of a bill of sale from the Lessor transferring all of the Lessor's right, title and interest in and to such Units free and clear of all liens (other than the liens of the Equipment Trust Agreement and the Lease Assignment) arising from acts of the Lessor. The Lessor shall not be required to make any representation or warranty as to the condition of such Units, the timeliness of the Lessor's election under Section 1.48-4(f) of the Income Tax Regulations or as to any other matter. After any such purchase pursuant to this Section 19 this Lease shall remain in full force and effect and the Lessee shall continue to perform all of its obligations as the Lessee hereunder and shall also perform all of the obligations and, subject to the Equipment Trust Agreement and any assignment of this Lease by the Lessor, be entitled

to all of the rights of the Lessor hereunder as if originally named as the Lessor herein. Simultaneously with such purchase pursuant to this Section 19 the Lessee shall assume all of the obligations of the Lessor under the Equipment Trust Agreement as if originally named as the Company thereunder and shall execute and deliver such instruments and documents (in form and substance satisfactory to the Trustee) as the Trustee may reasonably request to evidence further such assumption (which instrument shall include an assumption in such capacity under the Equipment Trust Agreement of the obligations of the Lessee set forth in Sections 5 and 13 hereof).

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 the date first above written, 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 Province of Ontario, Canada; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act, 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, Post Office Box 7500, Station "A" Toronto, Canada, Attention of Bond Department, with a copy to Schuler Industries, Inc., Post Office Box 5366, Birmingham, Alabama 35207, Attention of President;

If to the Lessee, Windsor Station, Room 245, Montreal 101, Quebec, Canada, Attention of Vice President-- Finance and Accounting;

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

Section 24. Definitions. 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 Section 13 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. For all purposes of Sections 5 and 8 of this Lease, the term "Trustee" shall include each holder from time to time of any Trust Certificate or Trust Certificates.

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, other than the Participation Agreement dated as of the date hereof between the Lessee and the Beneficiary, the Equipment Trust Agreement and the Manufacturing Agreement. 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. Lessor Acting as Trustee. The representations, undertakings and agreements herein made on the part of the Lessor are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement pursuant to which the Lessor is acting as trustee.

For purposes of subdivisions A and D of Section 13 hereof and for purposes of Section 19 hereof, references to the Lessor shall be deemed to mean the Beneficiary as to all matters related to the subject matter of the Request for Rulings.

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.

THE ROYAL TRUST COMPANY,
as Owner Trustee,

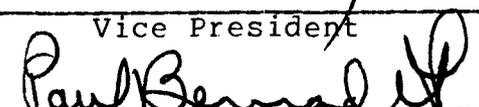
by

[CORPORATE SEAL]

CANADIAN PACIFIC LIMITED,

by



Vice President


Assistant Secretary

[CORPORATE SEAL]



PROVINCE OF ONTARIO,)
) ss.:
CITY OF TORONTO,)

On this day of October 1974, before me personally appeared and , to me personally known, who, being by me duly sworn, say that they are and respectively, of THE ROYAL TRUST 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 they acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[NOTARIAL SEAL]

My commission expires:

PROVINCE OF QUEBEC,)
) ss.:
CITY OF MONTREAL,)

On this ²² ~~October~~ ^{November} day of ~~October~~ 1974, before me personally appeared ^{PA Miquel} ~~Paul Bernadet~~ and ~~Paul Bernadet~~, to me personally known, who, being by me duly sworn, say that they are a Vice President and Assistant Secretary, respectively, of CANADIAN PACIFIC LIMITED, 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 they acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

André Gauthier

Notary Public

[NOTARIAL SEAL]

My commission expires: *for life.*

SCHEDULE I

Lease

Basic Equipment

<u>Quantity</u>	<u>Type and Specifications</u>	<u>Identifying Numbers (both inclusive)</u>
92	70-Ton, 50-foot Auto Parts Box Cars	CPAA 42350-42391 and CPAA 42450-42499

EXHIBIT B

ASSIGNMENT OF LEASE AND AGREEMENT dated as of November 15, 1974 (hereinafter called the Assignment), by and between THE ROYAL TRUST COMPANY, a corporation incorporated by special charter granted under the laws of the Province of Quebec, Canada (hereinafter called the Company), as Owner Trustee under a Trust Agreement dated as of October 23, 1974 (hereinafter called the Trust Agreement), with a certain equity investor, and MONTREAL TRUST COMPANY, a corporation organized under the laws of the Province of Quebec, Canada, as Trustee (hereinafter called the Trustee) under an Equipment Trust Agreement dated as of November 15, 1974 (hereinafter called the Equipment Trust Agreement), between the Trustee and the Company.

WHEREAS the Company, as Lessor, and Canadian Pacific Limited, as Lessee (hereinafter called the Lessee), have entered into a Lease dated as of October 23, 1974 (hereinafter, as amended by an Amendment Agreement dated as of November 15, 1974, called the Lease), 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 as follows:

1. As security for the payment and performance of its obligations under the Equipment Trust Agreement, the Company hereby assigns, transfers, and sets over unto the Trustee all the Company's right, title and interest as Lessor under the Lease, together with all rights, powers, privileges, and other benefits of the Company as Lessor under the Lease including without limitation, the immediate right to receive and collect all rentals, profits and other sums payable to or receivable by the Company from the Lessee under or pursuant

to the provisions of the Lease whether as rent, casualty payment, indemnity, liquidated damages or otherwise (such moneys being hereinafter called the Payments), and the right to make all waivers and agreements, to give all notices, consents and releases, to take all action upon the happening of an Event of Default specified in the Lease, and to do any and all other things whatsoever which the Company, as Lessor, is or may become entitled to do under the Lease.

The Company agrees to cause all the Payments to be made directly to the Trustee at 1 Place Ville Marie, Montreal H3B 4A8, Quebec, Canada, Attention: Corporate Trust Department. 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 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 of 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 Assignment to the contrary notwithstanding, no amounts shall be considered to be due and payable by the Company under the Equipment Trust Agreement in the event that such amounts shall have been 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 and will continue to be free and clear of any and all liens, agreements, security interests or other encumbrances, (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 by the Company or, to the knowledge of the Company, by the other parties thereto 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 or lapse of time or both, would 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 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 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 Province of Ontario, Canada, 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 1 Place Ville Marie, Montreal H3B 4A8, Quebec, Canada, Attention: Corporate Trust Department, or at such other address as the Trustee shall designate.

14. This Assignment 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, pursuant to due corporate authority, has caused this Assignment to be duly executed, as of the date first above written.

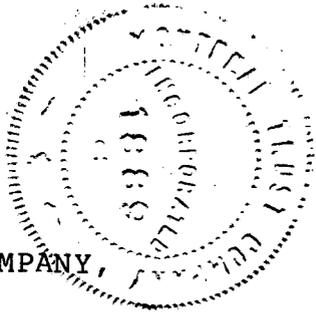
THE ROYAL TRUST COMPANY,
as Owner Trustee,

by

[CORPORATE SEAL]

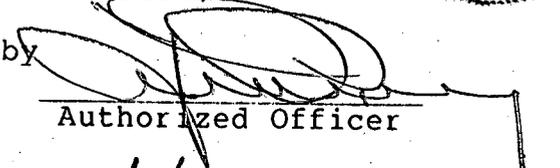
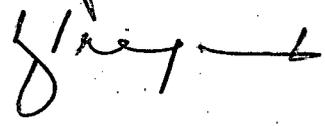
Authorized Officer

Authorized Officer



Accepted:

MONTREAL TRUST COMPANY,
as Trustee,

by 
Authorized Officer


LESSEE'S CONSENT AND AGREEMENT

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 (hereinafter called the Trust Certificates) to be issued pursuant to an Equipment Trust Agreement (hereinafter called the Equipment Trust Agreement) dated as of November 15, 1974, between MONTREAL TRUST COMPANY, as Trustee (hereinafter called the Trustee) and THE ROYAL TRUST COMPANY, as Owner Trustee (hereinafter called the Lessor), (a copy of which has been delivered to the undersigned) pursuant to which the Lessor is partially financing 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, at 1 Place Ville Marie, Montreal H3B 4A8, Quebec, Canada, Attention: Corporate Trust Department (or at such other address in Canada as may be furnished in writing to the undersigned by the Trustee); 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 Consent and 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 Province of Ontario, Canada, and, for all purposes, shall be construed in accordance with the laws of said Province.

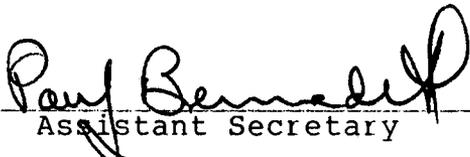
Dated as of November 15, 1974

CANADIAN PACIFIC LIMITED,

by


Vice President

[CORPORATE SEAL]


Assistant Secretary



Accepted:

MONTREAL TRUST COMPANY,
as Trustee,

BY


Authorized Officer

