

7278

RECORDATION NO. _____ Filed & Recorded

DEC 26 1973 -4 00 PM

INTERSTATE COMMERCE COMMISSION

AGREEMENT TO ACQUIRE AND LEASE

Dated as of December 14, 1973

AMONG

TRUST COMPANY FOR USL, INC.,
as Trustee

UNITED STATES LEASING INTERNATIONAL, INC.,
as Agent

and

RAIL-U.S. LEASING, INCORPORATED
as Lessee

(RUSL Trust No. 1)

AGREEMENT TO ACQUIRE AND LEASE

RE: RAIL-U.S. LEASING, INCORPORATED
(RUSL Trust No. 1)

AGREEMENT TO ACQUIRE AND LEASE dated as of December 14, 1973 among TRUST COMPANY FOR USL, INC., an Illinois corporation, not in its individual capacity but solely as Trustee (the "Trustee"), under a Trust Agreement dated as of December 14, 1973 (the "Trust Agreement") entered into with COMMERCIAL CREDIT CAPITAL CORPORATION, a Delaware corporation, as Trustor (the "Trustor"), UNITED STATES LEASING INTERNATIONAL, INC., a California corporation, as Agent for the Trustee (the "Agent") and RAIL-U.S. LEASING, INCORPORATED, a California corporation (the "Lessee");

RECITALS:

A. The Lessee has agreed to purchase up to 40 100-ton roller bearing truck 23,500 gallon tank cars from ACF Industries, Incorporated (the "Manufacturer");

B. The Lessee desires to lease between 30 and 40 of the aforesaid tank cars rather than purchase them and intends to designate to the Trustee pursuant to Section 1 hereof the exact identity of the tank cars the Lessee desires to lease (collectively the "Equipment" and individually an "Item of Equipment"); and

C. The Trustee is willing to purchase the Equipment and lease it to the Lessee on the terms and conditions of Section 5 of this Agreement (the "Interim Lease").

THE LESSEE AND THE TRUSTEE HEREBY AGREE:

Section 1. Assignment. The Lessee assigns to the Trustee all of its rights against (but none of its duties or obligations to) the Manufacturer in connection with all 40 of the tank cars referred to in Recital A. hereof. On or before December 31, 1973 the Lessee will designate upon three (3) days' prior written notice to the Trustee (the "Notice") the exact identity of the tank cars which shall constitute the Equipment hereunder (which shall not be more than 40 nor less than 30 of such tank cars), the purchase price thereof (which shall not be more than \$950,000 nor less than \$650,000 as the aggregate cost of the Equipment) and the date upon which the Lessee requests the Trustee to purchase the Equipment (the "Delivery Date"). The Trustee agrees that it hereby re-assigns to the Lessee the interest assigned hereunder as to all tank cars not constituting the Equipment for purposes hereof. The Lessee shall at all times be and remain solely liable for the performance of all duties and obligations under all agreements of any nature between the Lessee and the Manufacturer.

Section 2. Purchase of Equipment. Subject to the conditions set forth in Section 4 hereof, the Trustee agrees to purchase the Equipment from the Manufacturer for the purchase price and on the Delivery Date as specified in the Notice and to pay for the Equipment in accordance with the invoices for the Equipment delivered to the Trustee with the Notice pursuant to Section 4 hereof.

Section 3. Acceptance of Equipment. The Lessee shall immediately inspect each Item of Equipment upon delivery thereof and will accept those Items of Equipment which conform to the obligations of the Manufacturer thereof. The Lessee agrees not to unreasonably withhold such acceptance. Such acceptance shall be for the account of the Trustee and thereupon title to each Item of Equipment so accepted shall vest in the Trustee, and the Trustee shall own each such Item of Equipment, subject, however, to a lease of each such Item of Equipment to the Lessee on the terms and conditions of the Interim Lease.

Section 4. Conditions of Purchase. The obligations of the Trustee to purchase the Equipment are subject to the following express conditions precedent: (a) the Guaranty Agreement referred to in Section 1 of the Trust Agreement shall have been executed and delivered; (b) the Lessee shall have given the Notice described in Section 1 hereof and included therewith invoices from the Manufacturer addressed to the Trustee for the number of cars and in the aggregate purchase price stated in the Notice, together with a Certificate of Acceptance covering the Equipment; (c) the terms and conditions of Section 5(c) of the Trust Agreement shall have been satisfied and (d) the Trustee shall have received such other evidence as it may reasonably require of its title to the Equipment, the purchase price thereof and as to such other matters as it or its counsel may reasonably require.

Section 5. Interim Lease. Upon payment for the Equipment by the Trustee, the Trustee shall thereupon lease the Equipment to the Lessee and the Lessee shall lease the Equipment from the Trustee upon the terms and conditions of this Section 5. The term of the Interim Lease shall expire on the earlier of (a) the purchase by the Lessee of the Equipment as provided in Section 6 hereof or (b) the execution and delivery of an Equipment Lease in the form of Exhibit A attached hereto pursuant to either Sections 6 or 7(iii) hereof. The Lessee shall

pay the Trustees a daily rental for the Equipment during the term of the Interim Lease equal to .036112% of the purchase price for the Equipment paid by the Trustee pursuant to Section 2 hereof ("Lessor's Cost") from and including the Delivery Date to and excluding the date of payment thereof (which rental is herein called "Interim Daily Rental") which rental shall be payable by the Lessee to the Trustee on (a) February 15, 1974, if no long term lease in the form of Exhibit A attached hereto has been executed and delivered on or before such date pursuant to either of Sections 6 or 7(iii) hereof to the Trustee at 633 Battery Street, San Francisco, California 94111 or otherwise (b) the date the first installment of Fixed Rent is due under the long term lease at the place or places payments are to be made thereunder. This Interim Lease shall expire on February 15, 1974 or such earlier date it is superseded by a long term lease in the form of Exhibit A hereto. The Lessee shall pay the Interim Daily Rental without abatement, set-off or counter claim. The Lessee assumes full risk for any loss or damage to the Equipment, and will repair, maintain and make replacements of said Equipment, and all parts and related equipment thereto, transferring to the Trustee, at the expense of the Lessee, title to any such replacements, at which time title to the corresponding parts and equipment replaced shall be transferred by the Trustee to the Lessee. The Trustee makes no warranty or representation, either expressed or implied, as to the fitness or merchantability of the Equipment, but the Trustee does hereby assign to the Lessee, and appoint the Lessee as its agent to enforce against the Manufacturer and any other person in the name of and for the account of the Trustee and the Lessee, as their interest may appear, whatsoever claims and rights the Trustee may have as the owner of the Equipment against the Manufacturer and such other persons. The Lessee shall comply with all applicable governmental laws, regulations, requirements and rules, and shall maintain the property insurance and public liability insurance protecting the Trustee, the Trustor, Agent and the Lessee as provided in Section 18 of the form of long term lease attached hereto as Exhibit A. The Lessee shall indemnify and hold harmless the Trustee, the Trustor and Agent as provided in Section 8 hereof during the term of this Interim Lease. If the Lessee shall breach any of the obligations provided in this Section 5, the Trustee may, at its election, by written notice to the Lessee, terminate this Interim Lease, whereupon the Lessee shall within five (5) days purchase the Equipment for a purchase price equal to Lessor's Cost plus Interim Daily Rental accrued to the date such purchase price is paid to the Trustee. This Interim Lease shall terminate upon such purchase. The Trustee may further take all such action at law or in equity to recover all damages suffered by it as a result of such breach, including its costs and reasonable attorneys' fees.

Section 6. Long Term Lease. The Trustee and the Lessee acknowledge and agree the Equipment has been or will be purchased by the Trustee on the basis that the Trustee will lease the Equipment to the Lessee and the Lessee will lease the Equipment from the Trustee on the terms and conditions (including any additional or modified terms and conditions required by the Lender referred to in Section 7 hereof) of the form of Equipment Lease attached hereto as Exhibit A (the "Lease") and that the parties will use their best efforts to cause the Lease to be executed and delivered on or before February 15, 1974. In the event that Lease is not executed and delivered on or before such date or the loan described in Section 7 hereof is not consummated and the Lessee does not execute the Lease incorporating the changes described in Section 7(iii) hereof, the Interim Lease shall terminate and the Lessee shall pay the Trustee an amount equal to the Lessor's Cost of the Equipment plus all Daily Interim Rental accrued to the date of such payment and the Trustee shall transfer to the Lessee all right, title and interest of the Trustee in the Equipment free of liens and encumbrances created by the Trustee. In the event the Lease is executed and delivered the Interim Lease shall thereupon terminate and the Interim Daily Rental accrued to the date of termination shall become due and payable on the first Fixed Rent payment date.

It is understood and agreed that if the Lease is executed, the Interim Daily Rental shall be adjusted as agreed between the parties hereto and in the case of a Lease executed pursuant to Section 7(iii) hereof the parties hereto will have to agree on a schedule of Casualty Values with respect thereto.

It is a condition to the obligations of the parties hereto to execute a Lease that they agree as to such matters.

Section 7. Loan Closing. In order to provide funds to permanently finance the acquisition of the Equipment, the Agent has obtained the informal commitment of an institutional investor (the "Lender") to enter into a Loan Agreement (the "Loan Agreement") which shall obligate the Lender to make a loan to the Trustee in an aggregate principal amount equal to approximately 56% of the Lessor's Cost of the Equipment at a 9% interest rate and subject to the terms and conditions of the Loan Agreement. In the event that for any reason the Lender does not enter into a Loan Agreement and/or shall have failed to make the loan provided for thereby on the Closing Date (as defined in the Loan Agreement) before February 15, 1974, then (i) this Agreement shall terminate without further action by either party and (ii) the Lessee shall remain solely liable to the Manufacturer under all agreements between the Lessee and the Manufacturer with respect to the Equipment or (iii) unless the failure to close the loan is due to the failure of the Trustor to approve the documentation therefor, the Lessee and the Trustee shall execute and deliver a long term lease in the form of Exhibit A hereto with the following exceptions: (a) such Lease shall be for a term of fifteen (15) years commencing as of the Delivery Date and (b) the Fixed Rent payable thereunder shall be thirty (30) semi-annual installments, in arrears, each equal to 5.57681% of

Lessor's Cost. On the Closing Date (as defined in the Loan Agreement) the Trustee shall pay and distribute to the Trustor an amount equal to 56% of the Lessor's Cost of the Equipment.

Section 8. Indemnity. The Lessee hereby agrees to indemnify and hold the Trustee and the Trustor under the Trust Agreement and their respective successors, assigns, directors, officers and agents, harmless from and against any and all losses, claims, liabilities and expenses which arise out of or relate to the manufacture, purchase, acceptance, rejection, ownership and delivery of the Equipment (including claims for patent, trademark or copyright infringement and including claims arising out of the doctrine of strict liability in tort).

Section 9. Consent and Agreement. It is a condition precedent to the obligation of the parties hereto that the Manufacturer shall execute a Consent and Agreement in substantially the form attached hereto, with the appropriate schedule attached thereto, as Exhibit B.

This Agreement to Acquire and Lease may be executed in any number of counterparts, each executed counterpart constituting an original, but all together only one Agreement to Acquire and Lease.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to Acquire and Lease as of the day and year first above written.

TRUST COMPANY FOR USL, INC.,
as Trustee under RUSL Trust No. 1

By David A. Hooley
not individually but solely as Trustee to bind the Trust Estate
Vice President

UNITED STATES LEASING INTERNATIONAL,
INC., as Agent for the Trustee

By BOMMILL
Its Vice President

RAIL-U.S. LEASING, INCORPORATED
Lessee

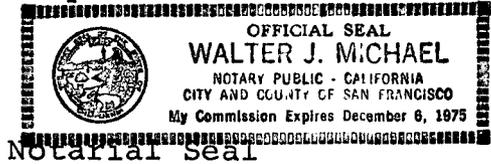
By Charles Scavella
Its Vice President

Attachments

- Exhibit A - Form of Equipment Lease
- Exhibit B - Consent and Agreement

STATE OF CALIFORNIA)
)
) SS
CITY AND COUNTY OF SAN FRANCISCO)

On this 21st day of December, 1973, before me personally appeared Charles J. Scarcello, to me personally known, who being by me duly sworn, says he is the Vice President of RAIL-U.S. LEASING, INCORPORATED, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors; and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

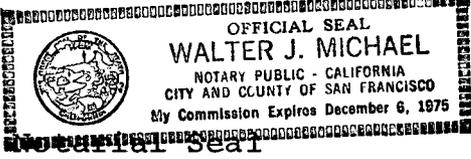


Walter J. Michael

My commission expires: My Commission Expires December 6, 1975

STATE OF CALIFORNIA)
)
) SS
CITY AND COUNTY OF SAN FRANCISCO)

On this 21st day of December, 1973, before me personally appeared David A. Woolsey, to me personally known, who being by me duly sworn, says he is the Vice President of TRUST COMPANY FOR USL, INC., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors; and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



Walter J. Michael

My commission expires: My Commission Expires December 6, 1975

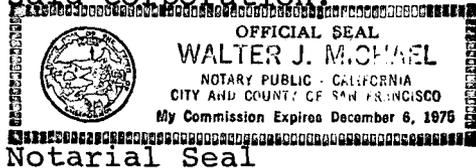
STATE OF CALIFORNIA)

)

SS

CITY AND COUNTY OF SAN FRANCISCO)

On this 21st day of December, 1973, before me personally appeared B. C. McMillen, to me personally known, who being by me duly sworn, says he is the Vice President of UNITED STATES LEASING INTERNATIONAL, INC., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors; and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



Walter J. Michael

Notarial Seal

My commission expires: My Commission Expires December 6, 1976

EQUIPMENT LEASE

Dated as of December 14, 1973

Between

TRUST COMPANY FOR USL, INC., as Lessor

UNITED STATES LEASING INTERNATIONAL, INC., as Agent

And

RAIL-U.S. LEASING, INCORPORATED, as Lessee

(RUSL Trust No. 1)

EXHIBIT A

(to Agreement to Acquire and Lease)

EQUIPMENT LEASE

RAIL-U.S. LEASING, INCORPORATED
(RUSL Trust No. 1)

THIS EQUIPMENT LEASE dated as of December 14, 1973 between TRUST COMPANY FOR USL, INC., an Illinois corporation, as Trustee under a Trust Agreement dated as of December 14, 1973 (the "Lessor"), UNITED STATES LEASING INTERNATIONAL, INC., a California corporation, as agent for Lessor (the "Agent") and RAIL-U.S. LEASING, INCORPORATED, a California corporation (the "Lessee").

W I T N E S S E T H:

That for and in consideration of the premises and of the rental to be paid and the covenants hereinafter mentioned, the parties hereby agree as follows:

SECTION 1. MANUFACTURE AND DELIVERY OF EQUIPMENT.

1.1. Intent to Lease and Hire. The Lessor is acquiring certain equipment (collectively the "Equipment" and individually "Item of Equipment") described in Schedule 1 attached hereto and made a part hereof and, upon delivery of each Item of Equipment by the Manufacturer thereof (hereinafter referred to as "Manufacturer"), the Lessor shall lease and let such Item of Equipment to the Lessee and the Lessee shall hire such Item of Equipment from the Lessor for the rental and on and subject to the terms and conditions herein set forth.

1.2. Inspection and Acceptance. Upon delivery of each Item of Equipment by the Manufacturer thereof the Lessee will inspect such Item of Equipment and if such Item of Equipment tendered for delivery appears to meet the specifications, the Lessee will accept delivery thereof and execute and deliver to the Lessor Certificates of Acceptance substantially in the form of EXHIBIT A attached hereto and made a part hereof.

1.3. Certificate of Acceptance. The Lessee's execution and delivery to the Lessor of Certificates of Acceptance with respect to each Item of Equipment shall conclusively establish

that, as between Lessor and Lessee, but without limiting or otherwise affecting Lessee's rights, if any, against the Manufacturers, each Item of Equipment is acceptable to and accepted by the Lessee under this Lease, notwithstanding any defect with respect to design, manufacture, condition or in any other respect, and that each Item of Equipment is in good order and condition and appears to conform to the specifications applicable thereto and all applicable United States Department of Transportation and the Interstate Commerce Commission requirements and specifications, if any. The Lessee represents that it has no knowledge of any such defect as of the date of such acceptance.

1.4. Acquisition Agreement. The Lessor, the Lessee and the Agent have entered into an Agreement to Acquire and Lease dated the date hereof (the "Acquisition Agreement") providing for the delivery of the Equipment to the Lessee and leasing of the Equipment from the date of such delivery (the "Delivery Date") to the effective date of this Lease on an interim lease basis as provided in the Acquisition Agreement. The Certificates of Acceptance required by this Section have previously been delivered.

SECTION 2. RENTALS AND PAYMENT DATES.

2.1. The Lessee agrees to pay the Lessor thirty-six (36) semiannual installments of fixed rental ("Fixed Rental") payable in arrears for each Item of Equipment in the amount of Fixed Rental provided for in Schedule 1 hereto.

2.2. The Lessee agrees to pay the Lessor Fixed Rental for all items of Equipment delivered to and accepted by the Lessee in accordance with the provisions of Section 1.2 and 1.4 of this Lease, commencing with the first payment due six (6) months after the Delivery Date. The second (2nd) through thirty-sixth (36th) installments of Fixed Rental shall be due and payable semiannually following the due date of the first installment of Fixed Rental.

2.3. All payments provided for in this Lease to be made to the Lessor shall be made to the Lessor at 1211 West 22nd Street, Oak Brook, Illinois 60521, or at such other place as the Lessor or its assigns shall specify in writing.

2.4. This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent or reduction thereof, including, but not limited to, abatements or reductions due to any present or future claims of the Lessee against the Lessor under this Lease or otherwise, 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 failure of title of the Lessor to the Equipment or any defect in or damage to or loss or destruction of all or any of the Equipment from whatsoever cause, the taking or requisitioning of the Equipment by condemnation or otherwise, the lawful prohibition of the Lessee's use of the Equipment, the interference with such use by any private

person or corporation, any strike or other labor dispute, the invalidity or unenforceability or lack of due authorization or other infirmity of this Lease, or lack of right, power or authority of the Lessor to enter into this Lease, 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 unless the obligation to pay the same shall be terminated pursuant to Section 11 hereof, or until, pursuant to Section 13 hereof, the Equipment is placed and ready for delivery to Lessor, or is stored for the Lessor, or is enroute to delivery to the Lessor.

SECTION 3. TERM OF THE LEASE; RENEWAL.

The term of this Lease as to each Item of Equipment shall begin on the Delivery Date and, subject to the provisions of Section 11 hereof, shall terminate with respect to such Item of Equipment eighteen (18) years after the Delivery Date.

SECTION 4. OWNERSHIP AND MARKING OF THE EQUIPMENT.

4.1. The Lessor, as between the Lessor and the Lessee, shall and hereby does retain full legal title to the Equipment notwithstanding the delivery thereof to and the possession and use thereof by the Lessee.

4.2. The Lessee shall cause each Item of Equipment to be kept numbered with its road number as set forth in the Schedule and will keep and maintain, plainly, distinctly, permanently and conspicuously marked by a plate or stencil printed in contrasting color upon each side of each Item of Equipment in letters not less than one inch in height as follows:

"Leased from Trust Company for USL, Inc., Lessor and as Trustee for Commercial Credit Capital Corporation, and subject to a Security Interest Recorded with the I.C.C."

with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the title of the Lessor to such Item of Equipment, its rights under this Lease and the rights of any assignee under Section 16 hereof. The Lessee will not place any such Item of Equipment in operation or exercise any control or dominion over the same until the required legend shall have been so marked on both sides thereof and will replace promptly any such names and word or words which may be removed, defaced or destroyed. The Lessee will not change the road number of any Item of Equipment except with the consent of the Lessor and in accordance with a statement of new road numbers to be substituted therefor, which consent and statement previously shall have been filed with the Lessor by the Lessee and filed, recorded or deposited in all public offices where this Lease shall have been filed, recorded or deposited.

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

4.4. The Lessee shall indemnify the Lessor, the Agent, the Trustor under the Trust Agreement, and any assignee under Section 16 hereof against any liability, loss or expense incurred by any of them as a result of the aforesaid marking of the Equipment with such name, initials or insignia.

SECTION 5. DISCLAIMER OF WARRANTIES.

AS BETWEEN LESSOR AND LESSEE, LESSOR LEASES THE EQUIPMENT AS-IS, WITHOUT WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO (A) THE FITNESS OR MERCHANTABILITY OF ANY ITEM OR ITEMS OF EQUIPMENT, (B) THE LESSOR'S TITLE THERETO, (C) THE LESSEE'S RIGHT TO THE QUIET ENJOYMENT THEREOF, OR (D) ANY OTHER MATTER WHATSOEVER, IT BEING AGREED THAT ALL SUCH RISKS, AS BETWEEN THE LESSOR AND THE LESSEE ARE TO BE BORNE BY THE LESSEE. The Lessor hereby appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce, from time to time, in the name and for the account of the Lessor and the Lessee, as their interests may appear, but in all cases at the sole cost and expense of the Lessee, whatever claims and rights the Lessor may have as owner of the Equipment against any manufacturers or contractors in respect thereof.

SECTION 6. LESSEE'S INDEMNITY.

6.1. The Lessee shall defend, indemnify and save harmless the Lessor, the Agent and the Trustor under the Trust Agreement and their successors and assigns from and against:

(a) any and all loss or damage of or to the Equipment, usual wear and tear excepted, and

(b) any claim, cause of action, damages or liability, cost or expense (including counsel fees and costs in connection therewith) which may be incurred in any manner or by or for the account of any of them (i) relating to the Equipment or any part thereof, including without limitation the purchase, delivery, installation, ownership, leasing or return of the Equipment or as a result of the use, maintenance, repair, replacement, operation or the condition thereof (whether defects are latent or discoverable by the Lessor or by the Lessee) (excepting, however, counsel fees or other costs or expenses incurred by the Agent, Trustor, Lessor or Assignee with respect to their initial participation in this lease transaction, and except counsel fees, costs and expenses incurred in the execution of all necessary documents), (ii) by reason or as the result of any act or omission of the Lessee for itself or as agent or attorney-in-fact for the Lessor hereunder, (iii) as a result of claims for patent infringements, or (iv) as a result of strict liability in tort.

6.2. If, with respect to any Item of Equipment, the Trustor under the Trust Agreement shall lose, or shall not have or shall lose the right to claim, or there shall be disallowed all or any portion of the investment tax credit referred to in the ruling request described in Section 5(c) of the Trust Agreement or the Trustor shall lose, or the Trustor shall not have or shall lose the right to claim, or there shall be disallowed, any depreciation deduction in reporting its taxable income for each year during which this Lease is in effect, which investment credit and/or depreciation benefits would have been allowable pursuant to such ruling request or ruling whether or not it is obtained, or the rate, manner or basis of taking such depreciation deduction which would have been so allowable shall be changed or affected in whole or in part or to any extent by reason of any of the following events:

(i) such Item is not new equipment or does not otherwise qualify under the requirements which entitle the Trustor to such investment tax credit and depreciation benefits including without limitation the requirements to qualify for the asset guideline class life referred to in said ruling request;

(ii) such Item has been used by Lessee or placed in service by Lessee or by any other person or any other event or circumstance occurring prior to or at the time of the acquisition of such Item by the Trust as defined in said Trust Agreement.

(iii) such Item not being placed in service by the Trust in 1973;

(iv) Lessee taking or failing to take any action in respect of its income tax returns or otherwise which is, or in the opinion of the Internal Revenue Service, inconsistent with or in contravention of any of the matters set forth in such ruling request or in any ruling subsequently obtained or set forth and agreed to in any closing agreement with respect to any such ruling;

(v) the use, operation or location of such Item by Lessee or any other party having possession or control of such Item whether or not authorized or contemplated under the terms of this Lease, or

(vi) the substitution for any Item or the replacement of any part or portion thereof whether or not such substitution or replacement is authorized under the terms of this Lease or by subsequent agreement among the parties hereto;

Lessee agrees to pay Lessor, (1) a sum which, after deduction of all taxes required to be paid by Lessor or the Trustor in respect of the receipt thereof under the laws of the United States or any state, city or other political subdivision thereof, or of any foreign country or political subdivision thereof, shall be equal to the amount of such investment credit or depreciation benefits so lost or disallowed (including, without limitation, loss result-

ing from any such change or effect) or which may not be claimed, (2) the reasonable costs (including, without limitation, court costs and reasonable attorneys' fees) and expenses of the Trustor in connection with the matters described in part (1) above, and (3) the amount of any interest or penalty which may be assessed by the United States Government, or any of the political entities described above, against Lessor or the Trustor in connection with such loss or disallowance or such change or effect or such loss of the right to claim, which amounts shall be payable on written demand made at any time after such investment credit or depreciation benefits could have been claimed if allowed or, if claimed and then disallowed, at any time after payment of the tax, interest and penalties attributable thereto, respectively.

6.3. The indemnities and assumptions of liability in this Section 6 contained shall continue in full force and effect notwithstanding the termination of this Lease, or the termination of the term hereof in respect of any one or more Items of Equipment, whether by expiration of time, by operation of law or otherwise; provided, however, that such indemnities and assumption of liability shall not apply in respect of any matters referred to in subsection (a) or clause (i) or (ii) of subsection (b) of Section 6.1 hereof, occurring after the termination of this Lease, except for any such matters occurring after the termination arising in connection with the Lessee's assembling, delivering, storing or transporting of the Equipment as provided in Sections 13 or as the case may be, 15, hereof. The foregoing does not guarantee a residual value. The Lessee shall be entitled to control, and shall assume full responsibility for, the defense of such claim or liability.

SECTION 7. RULES, LAWS AND REGULATIONS.

The Lessee agrees to comply with all governmental laws, regulations, requirements and rules (including the rules of the Department of Transportation and the Interstate Commerce Commission) with respect to the use, maintenance and operation of each Item of Equipment subject to this Lease. In case any equipment or appliance on any such Item of Equipment 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 Item of Equipment in order to comply with such laws, regulations, requirements and rules, the Lessee agrees to make such changes, additions and replacements at its own expense.

SECTION 8. USE AND MAINTENANCE OF EQUIPMENT.

The Lessee shall use the Equipment only in the manner for which it was designed and intended and so as to subject it only to ordinary wear and tear. The Lessee shall, at its own cost and expense, maintain and keep the Equipment in good order, condition and repair, ordinary wear and tear excepted. The Lessee shall not modify any Item of Equipment without written authority and approval of the Lessor which shall not be unreasonably withheld. Any parts installed or replacements made by the Lessee upon any Item of Equipment

(except such as are not required pursuant to Section 7 hereof and can be removed without damage to, or in any way affecting or impairing either the originally intended function or the use of, such Item of Equipment) shall be considered accessions to such Item of Equipment and title thereto shall be immediately vested in the Lessor, without cost or expense to the Lessor.

SECTION 9. LIENS ON THE EQUIPMENT.

The Lessee shall pay or satisfy and discharge any and all claims against, through or under the Lessee and its successors or assigns which, if unpaid, might constitute or become a lien or a charge upon the Equipment, and any liens or charges which may be levied against or imposed upon any Item of Equipment as a result of the failure of the Lessee to perform or observe any of its covenants or agreements under this Lease, but the Lessee shall not be required to pay or discharge any such claims so long as it shall, in good faith and by appropriate legal proceedings, contest the validity thereof in any reasonable manner which will not affect or endanger the title and interest of the Lessor to the Equipment. The Lessee's obligations under this Section 9 shall survive termination of the Lease.

SECTION 10. FILING, PAYMENT OF FEES AND TAXES.

10.1. Prior to the delivery and acceptance of the first Item of Equipment under this Lease, the Lessee will, at its sole expense, cause this Lease and the first Security Agreement and/or assignment, if any executed by the Lessor with respect to the Equipment or the Lease to be duly filed, registered or recorded in conformity with Section 20c of the Interstate Commerce Act and in such other places within or without the United States as the Lessor may reasonably request for the protection of its title or the security interest of the assignee under such Security Agreement and/or assignment and will furnish the Lessor proof thereof. The Lessee will, from time to time, do and perform any other act and will execute, acknowledge, deliver, file, register and record (and will re-file, re-register, or re-record wherever and whenever required) any and all further instruments required by law or reasonably requested by the Lessor, for the purpose of protecting the Lessor's title to, or such assignee's security interest in, the Equipment to the satisfaction of the Lessor's or such assignee's counsel or for the purpose of carrying out the intention of this Lease, and in connection with any such action, will deliver to the Lessor proof of such filings and an opinion of the Lessee's counsel that such action has been properly taken. The Lessee will pay all costs, charges and expenses incident to any such filing, re-filing, registering, re-registering, recording and re-recording of any such instruments or incident to the taking of such action.

10.2. The Lessee, or, upon the failure of the Lessee to do so, the Lessor at the Lessee's expense, shall report, pay and discharge when due all license and registration fees, assessments, sales, use and property taxes, gross receipts taxes arising out of receipts from use or operation of Equipment, and other taxes, fees and governmental charges similar or dissimilar to the foregoing (excluding any net income tax, provided that the Lessee agrees to pay that portion of any such net income tax which is in direct substitution for, or which relieves the Lessee from, a tax which the Lessee would otherwise be obligated to pay under the terms of this Section), together with any penalties or interest thereon, imposed by any state, federal or local government upon any Item of Equipment and whether or not the same shall be assessed against or in the name of the Lessor, the Agent, the Lessee, or the Trustor under the Trust Agreement referred to in the introductory paragraph; provided, however, that the Lessee shall not be required to pay or discharge any such tax or assessment (i) so long as it shall, in good faith and by appropriate legal proceedings, contest the validity thereof in any reasonable manner which will not affect or endanger the title and interest of the Lessor to the Equipment; provided, further, however, the Lessee shall reimburse the Lessor for any damages or expenses resulting from such failure to pay or discharge, or (ii) as to assessments against or in the name of anyone other than the Lessee, until twenty (20) days after written notice thereof shall have been given to the Lessee.

SECTION 11. PAYMENT FOR CASUALTY OCCURRENCE FOR EQUIPMENT UNSERVICE-
ABLE FOR USE.

11.1. In the event that any Item of Equipment shall be or become lost, stolen, destroyed, or, in the opinion of the Lessee, irreparably damaged, or in the opinion of the Lessee, obsolete for Lessee's needs, or otherwise obsolete or economically unserviceable for use from any cause whatsoever, or shall be requisitioned or taken over by an governmental authority under the power of eminent domain or otherwise during the term of this Lease (any such occurrence, except for any requisition which by its terms does not exceed the remaining term of this Lease, being hereinafter called a Casualty Occurrence), the Lessee shall promptly and fully (after it has knowledge of such Casualty Occurrence) inform the Lessor in regard thereto.

11.2. When the aggregate Casualty Value (as herein defined) of Items of Equipment having the same first Fixed Rental payment date which have suffered a Casualty Occurrence (exclusive of Items of Equipment described in such Schedule having suffered a Casualty Occurrence with respect to which a payment shall have been made to the Lessor pursuant to this Section 11) shall exceed \$50,000, the Lessee shall, on the next succeeding Fixed Rental payment date for such Items of Equipment, pay to the Lessor a sum equal to the Casualty Value of such Item or Items of Equipment as of the date of such payment; provided, that notwithstanding the foregoing, the Lessee shall pay to the Lessor a sum equal to the Casualty Value of any Item or Items of Equipment which have suffered a Casualty Occurrence during each calendar year or any prior year for which no payment

has previously been made to the Lessor pursuant to this Section 11, on the last Fixed Rental payment date of such calendar year for such Item or Items of Equipment.

11.3. Upon (and not until) payment of the Casualty Value in respect of any Item or Items of Equipment, the obligation to pay rental for such Item or Items of Equipment (including the Fixed Rental installment due on the Casualty Value payment date) shall terminate, but the Lessee shall continue to pay rental for all other Items of Equipment. The Lessee shall pay when due all rental payments as to an Item or Items due prior to the date on which the Casualty Value thereof is payable.

11.4. The Lessee shall, as agent for the Lessor, dispose of such Item or Items of Equipment as soon as it is able to do so for the best price obtainable. Any such disposition shall be on an "AS IS", "WHERE IS" basis without representation or warranty, express or implied. As to each separate Item of Equipment so disposed of, the Lessee may retain all amounts of such price plus any insurance proceeds and damages received by the Lessee by reason of such Casualty Occurrence up to the Casualty Value attributable thereto and shall remit the excess, if any, to the Lessor. In disposing of such Item or Items of Equipment, the Lessee shall take such action as the Lessor shall reasonably request to terminate any contingent liability which the Lessor might have arising after such disposition from or connected with such Item or Items of Equipment.

11.5. In the event the Lessee shall have notified the Lessor that an Item or Items of Equipment has suffered a Casualty Occurrence prior to the commencement of Fixed Rental hereunder with respect thereto, the date of such Casualty Occurrence for such Item or Items shall be deemed to be one day after the due date of the first installment of Fixed Rental.

11.6. The Casualty Value of each Item of Equipment shall be an amount determined as of the date the Casualty Value is paid as provided in this Section 11 (and not the date of the Casualty Occurrence) equal to that percentage of the Invoice Cost of such Item of Equipment as set forth in the Schedules of Casualty Values attached hereto as Schedule 2.

11.7. The Lessee shall bear the risk of and, except as hereinabove in this Section 11 provided, shall not be released from, its obligations hereunder in the event of any Casualty Occurrence to any Item of Equipment after the date hereof.

11.8. In the event that during the term of this Lease the use of any Item of Equipment is requisitioned or taken by any governmental authority under the power of eminent domain or otherwise for a period which does not exceed the remaining term of this Lease, the Lessee's duty to pay rent shall continue for the duration of such requisitioning or taking. The Lessee shall be entitled to receive and retain for its own account all sums payable for any such period by such governmental authority as compensation for requisition or taking of possession to an amount equal to the rent

paid or payable hereunder for such period, and the balance, if any, shall be payable to and retained by the Lessor as its sole property.

SECTION 12. ANNUAL REPORTS.

12.1. Upon written request of Commercial Credit Capital Corporation, the Trustor under a Trust Agreement dated as of December 14, 1973 (the "Trustor"), the Lessor or the Lessor's assigns, on or before April 1 in each year, commencing with the year 1974, the Lessee will furnish to the Lessor or its assigns an accurate statement, as of the end of the preceding calendar year (a) showing the amount, description and numbers of the Items of Equipment then leased hereunder, the amount, description and numbers of all Items of Equipment that may have suffered a Casualty Occurrence during such calendar year (or since the date of this Lease, in the case of the first such statement), and such other information regarding the condition or repair of the Equipment as Lessor may reasonably request, and (b) stating that, in the case of all Equipment repainted during the period covered by such statement, the markings required by Section 4 hereof shall have been preserved or replaced.

12.2. The Trustor, the Lessor or the Lessor's assigns shall have the rights, at its sole cost and expense, by its authorized representative, to inspect the Equipment and the Lessee's records with respect thereto, at such times as shall be reasonably necessary to confirm to the Lessor or its assigns the existence and proper maintenance thereof during the continuance of this Lease.

SECTION 13. RETURN OF EQUIPMENT UPON EXPIRATION OF TERM.

Upon the expiration of the term of this Lease, the Lessee will, at its own cost and expense, at the request of the Trustor or the Lessor, deliver possession of the Equipment to the Lessor upon such storage tracks as are available at the nearest major railroad center, or in the absence of such designation, as the Lessee may select, and the Lessee will pay for the storage of the Equipment on such tracks for a period not exceeding 30 days and transport the same at any time within such 30 day period to any connecting carrier for shipment, all as directed by the Lessor upon not less than thirty (30) days written notice to Lessee. All movement and storage of each Item of Equipment is to be at the risk and expense 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 Item of Equipment, to inspect the same. The assembling, delivery, storage and transporting of the Equipment 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 to so assemble, deliver, store and transport the Equipment.

SECTION 14. DEFAULT.

14.1. If, during the continuance of this Lease, one or more of the following events ("Events of Default") shall occur:

(a) Default shall be made in the payment of any part of the rental provided in Section 2 hereof and such default shall continue for ten (10) days;

(b) The Lessee shall make or permit any unauthorized assignment or transfer of this Lease or of possession of the Equipment, or any portion thereof, and shall fail or refuse to cause such assignment or transfer to be cancelled by agreement of all parties having any interest therein and to recover possession of such Equipment within thirty (30) days after written notice from the Lessor to the Lessee demanding such cancellation and recovery of possession;

(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 and such default shall continue for thirty (30) days after written notice from the Lessor to the Lessee, specifying the default and demanding the same to be remedied;

(d) A petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may be hereafter amended, shall be filed by or against the Lessee, and, if instituted against the Lessee, is consented to or is not dismissed within sixty (60) days after such petition shall have been filed. [unless all the obligations of the Lessee under this Lease shall have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed in such proceedings or otherwise given a status comparable to obligations incurred by such a trustee or trustees within thirty (30) days after such appointment, if any, or sixty (60) days after such petition shall have been filed, whichever shall be earlier]; or

(e) Any other 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, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the obligations of the Lessee hereunder), and, if instituted against the Lessee, are consented to or are not dismissed within sixty (60) days after such proceedings shall have been commenced, unless all the obligations of the Lessee under this Lease shall have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed in such proceedings or otherwise given a status comparable to obligations incurred by such a trustee or trustees within thirty (30) days after such appointment, if any, or sixty (60) days after such petition shall have been filed, whichever shall be earlier;

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

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

(2) by notice in writing to the Lessee, terminate this Lease, whereupon all right of the Lessee to the use of the Equipment shall absolutely cease and terminate 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 Equipment may be located, without judicial process if this can be done without breach of the peace, and take possession of all or any of such Equipment and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Equipment for any purpose whatsoever; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then 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 a fraction of which the numerator is such accrued number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee (1) as damages for loss of the bargain and not as a penalty, a sum, with respect to each Item of Equipment, which represents the excess of the present worth, at the time of such termination, of all rentals for such Item which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease over the then present worth of the then fair rental value of such Item for such period computed by discounting from the end of such term to the date of such termination rentals which the Lessor reasonably estimates to be obtainable for the use of the Item during such period, such

present worth to be computed in each case on a basis of a 4.0% per annum discount, compounded semiannually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, and (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.

14.2. 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 any of 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 of any right to assert any offset against the rental payments due hereunder, and agrees to make the rental payments regardless of any offset or claim which may be asserted by the Lessee on its behalf in connection with the Lease of the Equipment.

14.3. 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.

14.4. If and so long as this Lease shall be deemed to be a divisible and severable contract between Lessor and Lessee, as a result of separate assignments by the Lessor pursuant to Section 16 hereof, an Event of Default which occurs and is continuing beyond the applicable period of grace, if any, in any of the said assigned and separate portions of this Lease shall constitute an Event of Default in all other assigned and separate portions of this Lease, all as if such Event of Default occurred in such other assigned and separate portion.

14.5. So long as any Event of Default shall have occurred and be continuing hereunder, the Lessee assigns to the Lessor the Lessee's rights under all leases, rental agreements and other contracts for the use of the Equipment or any Item thereof, and all sums due or to become due thereunder.

SECTION 15. RETURN OF EQUIPMENT UPON DEFAULT.

15.1. If the Lessor shall terminate this Lease pursuant to Section 14 hereof, the Lessee shall forthwith deliver possession of the Equipment to the Lessor. For the purpose of delivering possession of any Item of Equipment to the Lessor as above required, the Lessee shall at its own cost, expense and risk (except as hereinafter stated):

(a) Forthwith place such Item of Equipment in such reasonable storage place as the Lessor may designate or, in the absence of such designation, as the Lessee may select; and

(b) Transport the Equipment, at any time within such thirty (30) day period, to any connecting carrier for shipment, all as the Lessor may reasonably direct upon not less than thirty (30) days written notice to the Lessee.

15.2. The assembling, delivery, storage and transporting of the Equipment 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 as to assemble, deliver, store and transport the Equipment.

15.3. Without in any way limiting the obligations of the Lessee under the foregoing provisions of this Section 15, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Item of Equipment to Lessor, to demand and take possession of such Item of Equipment in the name and on behalf of Lessee from whosoever shall be at the time in possession of such Item of Equipment.

SECTION 16. ASSIGNMENT BY LESSOR.

This Lease shall be assignable in whole or in part by Lessor without the consent of Lessee, but Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. In the event that separate assignments are executed by the Lessor in respect of this Lease and the rental and other sums due and to become due hereunder, the Lessor and the Lessee agree that so long as such separate assignments remain in force and effect this Lease shall be deemed to be and shall be construed as a divisible and severable contract between the Lessor and the Lessee for the leasing of Equipment covered by each such separate assignment, all to the same extent and with the same force and effect as though a separate lease had been entered into by the Lessor and the Lessee in respect of such Equipment; provided, however, Lessor and Lessee agree that an Event of Default as defined in Section 14.1 hereof as to any such assigned and separate portion of this Lease shall nevertheless constitute an Event of Default in all other assigned and separate portions of

this Lease, pursuant to the provisions of Section 14.4 hereof. Upon notice to the Lessee of any such assignment the Rental and other sums payable by the Lessee which are the subject matter of the assignment shall be paid to the assignee. Without limiting the foregoing, the Lessee further acknowledges and agrees that (i) the rights of any such assignee in and to the sums payable by the Lessee under any provisions of this Lease shall not be subject to any abatement whatsoever, and shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever whether by reason of defect in Lessor's title, or any interruption from whatsoever cause (other than from a wrongful act of the assignee) in the use, operation or possession of the Equipment or any part thereof, or any damage to or loss or destruction of the Equipment or any part thereof, or by reason of any other indebtedness or liability, howsoever and whensoever arising, of the Lessor to the Lessee or to any other person, firm or corporation or to any governmental authority or for any cause whatsoever, it being the intent hereof that, except in the event of a wrongful act on the part of the assignee, the Lessee shall be unconditionally and absolutely obligated to pay the assignee all of the rents and other sums which are the subject matter of the assignment, and (ii) the assignee shall have the sole right to exercise all rights, privileges and remedies (either in its own name or in the name of the Lessor for the use and benefit of the assignee) which by the terms of this Lease are permitted or provided to be exercised by the Lessor.

SECTION 17. ASSIGNMENTS BY LESSEE, USE AND POSSESSION.

17.1. 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 Equipment in accordance with the terms of this Lease, but, without the prior written consent of the Lessor, the Lessee shall not assign, transfer or encumber its leasehold interest under this Lease in any of the Equipment (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 such leasehold interest to the lien thereof). 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 Equipment, except to the extent permitted by the provisions of Section 17.2 hereof.

17.2. So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession of the Equipment, and be permitted to sublet or lease to other parties the Equipment in the normal course of its business, but only upon and subject to all the terms and conditions of this Lease. No assignment, sublease or agreement entered into by the Lessee hereunder shall relieve the Lessee of any liability or obligations hereunder which shall be and remain those of a principal and not a surety.

17.3. Nothing in this Section 17 shall be deemed to restrict the right of Lessee to assign or transfer its leasehold interest under this Lease in the Equipment or possession of the Equipment to any corporation (which shall have duly assumed the obligations hereunder of Lessee) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of Lessee as an entirety or substantially as an entirety.

SECTION 18. INSURANCE.

The Lessee agrees that it will at all times during the term of this Lease and at its own cost and expense keep the Equipment insured against loss by fire, windstorm and explosion and with extended coverage and against such other risks of physical loss as are customarily insured against by companies owning property of a similar character and engaged in a business similar to that engaged in by Lessee at not less than the Casualty Value, and will maintain general public liability insurance with respect to the Equipment against damage because of bodily injury, including death, or damage to property of others, with limits of not less than \$10,000,000 per each occurrence. Any such insurance may have applicable thereto deductible provisions to no greater extent than in effect for insurance coverage for equipment similar to the Equipment owned by Lessee.

The Lessee shall furnish the Lessor with certificates or other satisfactory evidence of maintenance of the insurance required hereunder and with respect to any renewal policy or policies shall furnish upon request certificates evidencing such renewal prior to the expiration date of the original policy or policies. All insurance provided for in this Section 18 shall be effected with insurance companies of recognized responsibility.

SECTION 19. OPINION OF COUNSEL.

Concurrently with the delivery and acceptance of the first Item of Equipment hereunder, the Lessee will deliver to the Lessor twelve counterparts of the written opinion of counsel for the Lessee addressed to the Lessor, the Trustor, the Agent and to any assignee under Section 16 of which the Lessee has notice, in scope and substance satisfactory to the Lessor, to the effect that:

(a) The Lessee is a corporation legally incorporated and validly existing, in good standing, under the laws of the State of California;

(b) The Lessee has the corporate or other power and authority to own its property and carry on its business as now being conducted and is duly qualified to do business as a foreign corporation in all states in which such qualification is necessary to carry out the terms of the Lease;

(c) This Lease and the Agreement to Acquire and Lease of even date herewith Lease have been duly authorized, executed and delivered by the Lessee and constitute the valid, legal and binding agreements of the Lessee enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganization, insolvency and moratorium laws from time to time in effect;

(d) This Lease has been filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act and no filing or recording in any other public office is necessary to protect the Lessor's title to the Equipment;

(e) No approval, consent or withholding of objection is required from any public regulatory body with respect to the entering into or performance of the Agreement to Acquire and Lease or this Lease;

(f) The execution and delivery by the Lessee of the Agreement to Acquire and Lease and this Lease do not violate any provision of any law, any order of any court or governmental agency, the Charter or By-laws of the Lessee, or any indenture, agreement, or other instrument to which Lessee is a party or by which it, or any of its property is bound, and will not be in conflict with, result in the breach of, or constitute (with due notice and/or lapse of time) a default under any such indenture, agreement, or other instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Lessee, except as contemplated and permitted hereby; and

(g) As to any other matters which the Lessor shall reasonably request.

SECTION 20. INTEREST ON OVERDUE RENTALS AND AMOUNTS PAID BY THE LESSOR.

Anything to the contrary herein contained notwithstanding, any nonpayment of the Fixed Rental due hereunder, or amounts expended by the Lessor on behalf of the Lessee, shall result in the obligation on the part of the Lessee to pay also an amount equal to 10% (or the maximum rate allowed by law, whichever is less) of the overdue rentals and amounts expended for the period of time during which they are overdue or expended and not repaid.

SECTION 21. 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 mails, first class postage prepaid, addressed as follows:

If to the Lessor
or the Agent:

Trust Company for USL, Inc.
Trustee under RUSL Trust No. 1
P. O. Box 66011, AMF O'Hare
Chicago, Illinois 60666

Copy To:

United States Leasing International,
Inc.
633 Battery Street
San Francisco, California 94111
and
Commercial Credit Capital Corporation
300 St. Paul Place
Baltimore, Maryland 21202
Attention: Mr. Duane Steelberg

If to the Lessee:

Rail-U.S. Leasing, Incorporated
633 Battery Street
San Francisco, California 94111
Attention: President

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

SECTION 22. EXECUTION IN COUNTERPARTS.

This Lease, and any lease supplemental hereto, may be executed in several counterparts, each of which so executed shall be deemed to be an original and in each case such counterparts shall constitute but one and the same instrument.

SECTION 23. LAW GOVERNING.

This Lease shall be construed in accordance with the laws of Illinois; provided, however, that the parties shall be entitled to all rights conferred by any applicable federal statute, rule or regulation.

SECTION 24. OPTION TO PURCHASE.

Provided that the Lessee is not in default, Lessee shall have the following option to purchase:

(a) The Lessee shall have the right at the expiration of the original term or renewal of this Lease to purchase all but not less than all of the Equipment at the expiration of the lease term in respect thereto at a price equal to the "fair market value" (as defined). The Lessee shall give to the Lessor written notice at least 180 days prior to the end of the term of its election to exercise the purchase option provided for in this Section. Payment of the option price shall be made at the place of payment specified in Section 2 hereof in funds there current against delivery of (i) a bill of sale transferring and assigning to the Lessee all right, title and interest of the Lessor in and to the Equipment and containing a warranty against liens or claims of persons claiming by, through or under the Lessor except liens and claims which the Lessee assumed or is obligated to discharge under the terms of this Lease; (ii) a satisfaction and discharge of this Lease duly executed in recordable form by the Trustee or its successors and assigns as to the Equipment; and (iii) a satisfaction of the Security Agreement duly executed in recordable form by the Secured Assignee. The Lessor shall not be required to make any representation or warranties as to the condition of the Equipment or any other matter.

(b) The "fair market value" shall be an amount mutually agreed upon by the Lessor and the Lessee; provided that if the Lessor and the Lessee are unable to agree upon the fair market value of the Equipment within thirty (30) days after receipt by the Lessor of the notice of the Lessee's election to exercise the purchase option, the fair market value shall be determined by an appraiser selected by mutual agreement of the Lessor and the Lessee. If the Lessor and the Lessee are not able to agree upon an appraiser, or if the fair market value is not so determined within ninety (90) days after receipt by the Lessor of the Lessee's election to purchase, the same shall be determined by American Appraisal Company. The fair market value, as finally determined, shall bear interest for the period, if any, from the date of expiration of this Lease to the date of payment at the rate of 10% per annum. In determining the fair market value of the Equipment, any accessory, equipment and device installed thereon which, under the terms of Section 8 hereof, the Lessee is entitled to remove without an accounting to the Lessor, shall be separately appraised and the fair market value thereof shall not be included in the price to be paid by the Lessee.

(c) Unless the Lessee has given the Lessor 180 days' notice as required in connection with exercise of the foregoing option, all the Equipment covered by such option shall be returned to the Lessor in accordance with Section 13 hereof.

Notwithstanding any election of the Lessee to purchase, the provision of Section 11 hereof shall continue in full force and effect until the date of purchase and the passage of ownership of the Equipment purchased by the Lessee upon the date of purchase unless the purchase price has been agreed upon by the parties pursuant to this Section 24, in which event such purchase price shall govern.

SECTION 25. CONCERNING THE LESSOR AND THE AGENT.

It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, covenants, undertakings and agreements herein made on the part of the Lessor, while in form purporting to be the representations, covenants, undertakings and agreements of Trust Company for USL, Inc., are nevertheless each and every one of them made and intended not as personal representations, covenants and undertakings and agreements of it in its individual corporate capacity or for the purpose or with the intention of binding it in its individual corporate capacity, but are made and intended for the purpose of binding only the Trust as that term is used in the Trust Agreement; such Trust is the Lessor hereunder, and this Lease is executed and delivered by Trust Company for USL, Inc., not in its own right but solely in the exercise of the powers conferred upon it as such Trustee; and no liability or responsibility in its individual corporate capacity is assumed by nor shall at any time be asserted or enforceable against such corporation or the Agent, or any incorporator or any past, present or future officer, director, shareholder or subscriber to the capital stock of, the Trustee or the Agent, on account of this Lease or on account of any representation, covenant, undertaking or agreement of such corporation or the Agent in this Lease contained, either expressed or implied, all such individual corporate liability, if any, being expressly waived and released by the Lessee; excepting, however, that the Lessee or any person claiming by, through or under it, making claim hereunder, may look to said Trust for satisfaction of the same.

SECTION 26. HEADINGS.

All Section headings are inserted for convenience only and shall not affect any construction or interpretation of this Equipment Lease.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed by their respective officers thereunder duly authorized and their corporate seals to be hereto affixed as of the day and year first above written.

(Corporate Seal)

ATTEST:

Secretary

TRUST COMPANY FOR USL, INC.,
as Trustee under a Trust Agreement
dated October 1, 1973

By _____
President LESSOR

(Corporate Seal)

ATTEST:

Assistant Secretary

UNITED STATES LEASING INTERNATIONAL,
INC.

By _____
Vice President
AGENT FOR LESSOR

(Corporate Seal)

ATTEST:

Secretary

RAIL-U.S. LEASING, INCORPORATED

By _____
President LESSEE

CERTIFICATE OF ACCEPTANCE

TO: TRUST COMPANY FOR USL, INC., as Trustee under Trust Agreement dated as of December 14, 1973

UNITED STATES LEASING INTERNATIONAL, INC., as Agent for the Trustee.

I, duly appointed and authorized representative of the Lessee under the Equipment Lease dated as of December 14, 1973 between the Trustee, the Lessee and Agent for the Trustee, all as named in such Equipment Lease, do hereby certify that I inspected, received, approved and accepted delivery under the Equipment Lease of the following Items of Equipment:

TYPE OF EQUIPMENT:

PLACE ACCEPTED:

DATE ACCEPTED:

NUMBER OF UNITS:

NUMBERED:

I do further certify that each Item of Equipment described above is in good order and condition, and appears to conform to the specifications applicable thereto and to all applicable United States Department of Transportation and Interstate Commerce Commission requirements and specifications, and that each Item has been marked in accordance with Section 4.2 of the Equipment Lease.

EXHIBIT A
(to Lease)

(RUSL Trust No. 1)

I do further certify that each Item of Equipment described above has been labeled by means of a plate or a stencil printed in contrasting colors upon each side of the Item in letters not less than one inch in height as follows:

"Leased from Trust Company for USL, Inc., Lessor and as Trustee for Commercial Credit Capital Corporation, and subject to a Security Interest Recorded with the I.C.C."

The execution of this Certificate will in no way relieve or decrease the responsibility of Rail-U.S. Leasing, Incorporated for any warranties it has made with respect to the Equipment.

DATED: _____, 197_

Inspector and Authorized Representa-
tive of Rail-U.S. Leasing,
Incorporated

SCHEDULE 1

MANUFACTURER: ACF INDUSTRIES, INC.

TANK CARS:

ROAD NUMBERS: Lettered RUSX and numbered _____
to _____ both inclusive.

ESTIMATED PRICE: \$_____ per unit, or

ESTIMATED TOTAL PRICE: \$_____ for all _____ units.

DELIVER TO:

RENT PERIOD: Eighteen (18) years, commencing
six months prior to the due date
of the first installment of Fixed
Rental.

PERIODIC RENTAL PAYMENTS: Thirty six (36) semiannual rental
payments, in arrears, payable as
follows:

\$_____ per unit, or

\$_____ for all _____ units.

(4.23844% of Invoice Cost)

In the event the price of any Item of Invoice Cost covered
by this Schedule is greater or less than the amount shown above, the
Fixed Rental for such Item shall be ratably increased or reduced
accordingly.

TRUSTOR: Commercial Credit Capital Corporation

LESSEE: Rail-U.S. Leasing, Incorporated

LENDER:

(RUSL Trust No.1)

SCHEDULE OF CASUALTY VALUE

CASUALTY VALUE: The following per cent of original cost to Lessor of an Item of Equipment, including all taxes and delivery charges, is to be paid on a Fixed Rental payment date pursuant to Section 11.2 of the Equipment Lease as the result of an Item becoming the subject of a Casualty Occurrence, depending upon when the Casualty Value is paid:

| <u>After Rental Payment No.</u> | <u>Payable on Date and in Lieu of Payment No.</u> | <u>Casualty Value Payable Per Item [in lieu of Fixed Rental payment for such item due on such date]</u> |
|-------------------------------------|-----------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------|
| 0 | 1 | 106.500% |
| 1 | 2 | 105.750 |
| 2 | 3 | 105.500 |
| 3 | 4 | 105.375 |
| 4 | 5 | 105.250 |
| 5 | 6 | 105.000 |
| 6 | 7 | 99.000 |
| 7 | 8 | 98.125 |
| 8 | 9 | 97.250 |
| 9 | 10 | 96.125 |
| 10 | 11 | 88.625 |
| 11 | 12 | 87.125 |
| 12 | 13 | 85.375 |
| 13 | 14 | 83.500 |
| 14 | 15 | 74.625 |
| 15 | 16 | 72.250 |
| 16 | 17 | 69.875 |
| 17 | 18 | 67.250 |
| 18 | 19 | 64.625 |
| 19 | 20 | 61.875 |
| 20 | 21 | 59.000 |
| 21 | 22 | 57.125 |
| 22 | 23 | 54.625 |
| 23 | 24 | 52.125 |
| 24 | 25 | 49.500 |
| 25 | 26 | 46.875 |
| 26 | 27 | 44.125 |
| 27 | 28 | 41.375 |
| 28 | 29 | 38.500 |
| 29 | 30 | 35.500 |
| 30 | 31 | 32.500 |
| 31 | 32 | 29.375 |
| 32 | 33 | 26.250 |
| 33 | 34 | 23.000 |
| 34 | 35 | 19.625 |
| 35 | 36 | 17.125 |
| 36 | Thereafter | 15.000 |

The terms defined in the Equipment Lease dated as of December 14, 1973 shall have the same meanings when used in this Schedule 2. The Lessor, the Trustor and the Lessee agree that the Schedule of Casualty Values contained herein may be revised upon mutual agreement of said parties pursuant to the Acquisition Agreement.

LEASE TERM: 36 semi-annual @ 4.23844%

SCHEDULE 2

RUSL Trust No.1

CONSENT AND AGREEMENT

The undersigned, ACF Industries, Incorporated, (the "Manufacturer") acknowledges receipt of an executed counterpart of an Agreement to Acquire and Lease dated as of December 14, 1973, among TRUST COMPANY FOR USL, INC., not in its individual capacity but solely as Trustee under a Trust Agreement dated as of December 14, 1973 (the "Trustee"), UNITED STATES LEASING INTERNATIONAL, INC., as Agent for the Trustee (the "Agent") and RAIL-U.S. LEASING INCORPORATED (the "Lessee") and as an inducement to and as a part of the consideration for the performance by the parties thereto of their obligations thereunder:

1. Consents to the assignment by the Lessee to the Trustee of all of its rights against the Manufacturer in connection with the Items of Equipment described in Schedule A hereto.

2. Agrees that none of the duties or obligations of the Lessee under any agreements of any nature between the Manufacturer and the Lessee have been assigned to or in any manner assumed by the Trustee.

3. Indemnifies and saves the Trustor, the Trustee and the Lessee harmless from any liability, loss, damage, claim and expense which may arise out of any claims for patent infringement relative to the Equipment, except in cases of designs specified by the Lessee and not developed or purported to be developed by the Manufacturer or any company controlled by the Manufacturer, and articles and materials specified by the Lessee and not manufactured by the Manufacturer or by any company controlled by the Manufacturer.

4. Agrees that upon delivery and acceptance of any Item of Equipment title thereto shall vest in the Trustee and upon request of the Trustee or the Lessee the Manufacturer will execute and deliver an invoice covering the same in the name of the Trustee, a Bill of Sale satisfactory in form and substance to the Trustee in favor of the Trustee warranting good title thereto free and clear of all liens and encumbrances excepting only the Equipment Lease, (the "Lease") referred to in the Agreement to Acquire and Lease, and an opinion of counsel for the Manufacturer that said Bill of Sale is valid and effective

to transfer good title free and clear of all liens and encumbrances excepting only the Lease. The original of such documents and other materials shall be furnished to the Trustee with copies to the Lessee.

DATED:

ACF INDUSTRIES, INCORPORATED

By _____

Its _____

Description of Equipment

40 - 100 Ton Roller Bearing Truck 23,500 Gallon
Exterior Coils & Insulated Class DOT 111-A-100-W-3
Tank Cars Lettered RUSX and Numbered 2515 to 2554,
both inclusive

DEC 26 1973 -4 00 PM

RE: RAIL-U. S. LEASING, INCORPORATED
(RUSL Trust No. 1)

INTERSTATE COMMERCE COMMISSION

TRUST COMPANY FOR USL, INC., not in its individual capacity but solely as Trustee (the "Trustee"), UNITED STATES LEASING INTERNATIONAL, INC., as Agent for the Trustee and RAIL-U.S. LEASING, INCORPORATED, as Lessee (the "Lessee") refer to the Agreement to Acquire and Lease (the "Acquisition Agreement") dated as of December 14, 1973 among the same parties and hereby agree:

1. The Equipment for all purposes of the Acquisition Agreement is:

35 100 Ton Roller Bearing Truck 23,500 Gallon Exterior Coils & Insulated Class DOT 111-A-100-W-3 Tank Cars Lettered RUSX and Numbered 2515 to 2549, both inclusive.

2. The above described Equipment is hereby leased by the Trustee to the Lessee on the terms and conditions of the Acquisition Agreement.

3. This Supplement may be bound to the Acquisition Agreement and be for all purposes a part thereof.

IN WITNESS WHEREOF the parties hereto have executed this Supplement to Agreement to Acquire and Lease as of this 21st day of December, 1973.

TRUST COMPANY FOR USL, INC.,
as Trustee under RUSL Trust No. 1

By *David C. Hobbs* Vice President
not individually but solely
as Trustee to bind the Trust Estate

UNITED STATES LEASING INTERNATIONAL,
INC., as Agent for the Trustee

By *Edmond*
Its Vice President

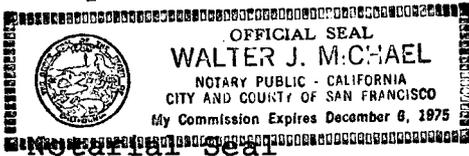
RAIL-U. S. LEASING, INCORPORATED,
Lessee

By *Charles J. Sauer*
Its Vice President



STATE OF CALIFORNIA)
) SS
CITY AND COUNTY OF SAN FRANCISCO)

On this 21st day of December, 1973, before me personally appeared Charles J. Scarcello, to me personally known, who being by me duly sworn, says he is the Vice President of RAIL-U.S. LEASING, INCORPORATED, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors; and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

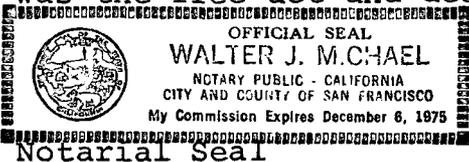


Walter J. Michael

My commission expires: My Commission Expires December 6, 1975

STATE OF CALIFORNIA)
) SS
CITY AND COUNTY OF SAN FRANCISCO)

On this 21st day of December, 1973, before me personally appeared David A. Woolsey, to me personally known, who being by me duly sworn, says he is the Vice President of TRUST COMPANY FOR USL, INC., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors; and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

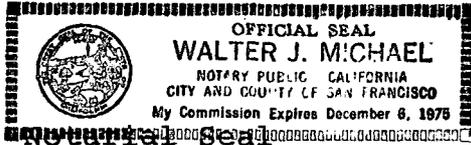


Walter J. Michael

My commission expires: My Commission Expires December 6, 1975

STATE OF CALIFORNIA)
) SS
CITY AND COUNTY OF SAN FRANCISCO)

On this 21st day of December, 1973, before me personally appeared B. C. McMillen, to me personally known, who being by me duly sworn, says he is the Vice President of UNITED STATES LEASING INTERNATIONAL, INC., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors; and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



Walter J. Michael

My commission expires: My Commission Expires December 6, '97