ACF INDUSTRIES
INCORPORATED
750 THIRD AVENUE, NEW YORK, N. Y. 10017, (212) 986-8600, CABLE ADDRESS: ACFUSA

Nov 23 2 22 PM
I.C.C.
FEE OPERATION BR.

RECORDATION NO. 9100 Filed & Recorded
NOV 23 1977 -2 25 PM
INTERSTATE COMMERCE COMMISSION

November 22, 1977

Secretary
Interstate Commerce Commission
Washington, D.C. 20423

Dear Sir:

We enclose herewith for filing with the Commission, pursuant to Section 20c of the Interstate Commerce Act and the regulations thereunder seven (7) original counterparts of the Equipment Trust Agreement dated as of October 1, 1977 between the following parties:

(a) Trustee-Lessor: Bankers Trust Company
One Bankers Trust Plaza
New York, New York 10006

(b) Lessee: ACF Industries, Incorporated
750 Third Avenue
New York, New York 10017

The equipment covered by the above document is described as follows:

Counterparts James Crumpler

Mrs Lee -
Please include the copy marked "ACF Copy" among those returned to us -
Thanks -
Alan Hanson

7-327A091
Date NOV 23 1977
Fee $ 50
ICC Washington, D.C.

DESCRIPTION OF TRUST EQUIPMENT

| Quantity | A.A.R. Car Type Code | Initialled ACFX and Numbered |
|---|---|---|
| 55 | L151 | 775000-775054* |
| 13 | L751 | 44658-44670 |
| 46 | L353 | 49262-49307 |
| 21 | L753 | 49308-49328 |
| 4 | L554 | 57753-57756 |
| 16 | L254 | 57946-57961 |
| 6 | L554 | 57962-57967 |
| 12 | L254 | 57971-57982 |
| 20 | L454 | 57983-58002 |
| 47 | L254 | 58003-58049 |
| 5 | L654 | 58050-58054 |
| 87 | L254 | 58066-58152 |
| 96 | L254 | 58178-58273 |
| 20 | L154 | 58274-58293 |
| 4 | T105 | 77895-77898 |
| 6 | T105 | 78019-78024 |
| 10 | T104 | 78025-78034 |
| 5 | T105 | 78035-78039 |
| 25 | T104 | 78050-78074 |
| 5 | T103 | 78075-78079 |

*These 55 cars are initialled ICG rather than ACFX.

| Quantity | A.A.R. Car Type Code | Initialled ACFX and Numbered |
|---|---|---|
| 5 | T105 | 78085-78089 |
| 2 | T104 | 78105-78106 |
| 34 | T104 | 78117-78150 |
| 13 | T104 | 78152-78164 |
| 7 | T105 | 78165-78171 |
| 52 | T104 | 78172-78223 |
| 1 | T106 | 78224 |
| 25 | T105 | 78225-78249 |
| 35 | T104 | 78250-78284 |
| 12 | T103 | 78285-78296 |
| 16 | T105 | 78297-78312 |
| 17 | T106 | 78313-78329 |
| 7 | T104 | 78330-78336 |
| 30 | T107 | 78340-78369 |
| 10 | T105 | 78370-78379 |
| 39 | T564 | 86331-86369 |
| 10 | L254 | 96878-96887 |
| 35 | L254 | 97059-97093 |
| 50 | L254 | 97177-97226 |
| 115 | L254 | 97235-97349 |

| Quantity | A.A.R. Car Type Code | Initialled ACFX and Numbered |
|---|---|---|
| 1 | L654 | 97353 |
| 10 | L254 | 97354-97363 |
| 2 | L254 | 97366-97367 |
| 5 | L754 | 97368-97372 |
| 124 | L254 | 97373-97496 |
| 2 | L754 | 97506-97507 |
| 100 | L254 | 97508-97607 |
| 1 | L654 | 97608 |
| 27 | L254 | 97709-97735 |
| 10 | L654 | 97736-97745 |
| 40 | L254 | 97746-97785 |

RECAPITULATION

| | |
|---|---|
| Total Covered Hopper Cars | 980 |
| Total Tank Cars | 360 |
| Total Number of Cars | 1,340 |

Secretary
Interstate Commerce Commission

November 22, 1977

No prior recordation of the above document has been made.

We also enclose our check drawn to the order of the Commission in the sum of $50.00 in payment of the recordation fee in this connection.

Please be kind enough to see that the enclosure is cross-indexed under the names of both parties thereto. We request that five (5) counterparts, including the one marked "ACF Copy", bearing the Commission's recordation data be returned to the bearer. Your letter confirming recordation thereof should be sent directly to the undersigned.

Sincerely yours,

R. W. Montgomery
Assistant Secretary

rwm:cs
att.

cc: R. G. Pierce, Esq.
Hardy, Peal, Rawlings, Werner & Coogan
750 Third Avenue
New York, New York 10017

Costa Constantine, Esq.
Cravath Swaine & Moore
One Chase Manhattan Plaza
New York, New York 10005

# Interstate Commerce Commission
Washington, D.C. 20423

11/23/77

OFFICE OF THE SECRETARY

R.W. Montgomery
Assistant Secretary
ACF Industries, Inc.
750 Third Avenue
New York, N.Y. 10017

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 20(c) of the Interstate Commerce Act, 49 U.S.C. 20(c), on 11/23/77 at 2:25pm, and assigned recordation number(s) 9100

Sincerely yours,

H.G. Homme, Jr.
Acting Secretary

Enclosure(s)

SE-30-T
(6/77)

9100
RECORDATION NO. ..... Filed & Recorded
NOV 23 1977 -2 25 PM
INTERSTATE COMMERCE COMMISSION

Executed in 7 counterparts of which this is counterpart No. 1

ACF INDUSTRIES, INCORPORATED
EQUIPMENT TRUST, SERIES G

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EQUIPMENT TRUST AGREEMENT

Dated as of October 1, 1977

Between

BANKERS TRUST COMPANY,
Trustee,

and

ACF INDUSTRIES, INCORPORATED

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EQUIPMENT TRUST AGREEMENT dated as of October 1, 1977, between Bankers Trust Company, a corporation incorporated and existing under the laws of the State of New York (hereinafter called the Trustee), and ACF INDUSTRIES, INCORPORATED, a New Jersey corporation (hereinafter called the Company).

WHEREAS the Company has agreed to cause to be sold, transferred and delivered to the Trustee the railroad equipment referred to herein; and

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

WHEREAS ACF Industries, Incorporated Equipment Trust Certificates, Series G (hereinafter called the Trust Certificates) are to be issued and sold, at a price not less than their principal amount, in the aggregate principal amount not exceeding $40,000,000; and

WHEREAS the proceeds of the sale of the Trust Certificates together with such other cash, if any, as may be required to be deposited by the Company as hereinafter provided are to constitute a fund, to be known as ACF Industries, Incorporated Equipment Trust, Series G, to be applied by the Trustee from time to time in part payment of the Cost of the Trust Equipment (as hereinafter defined), the remainder of the Cost thereof to be paid out of advance rentals to be paid by the Company as provided herein; and

WHEREAS the texts of the Trust Certificates and the guaranty to be endorsed on the Trust Certificates by the Company are to be substantially in the following respective forms:

No. R-_____ $_____

ACF INDUSTRIES, INCORPORATED

8.30% Equipment Trust Certificate, Series G,
Due January 15, 1993
Total Authorized Issue $40,000,000

Bankers Trust Company
Trustee

Bankers Trust Company, as Trustee under an Equipment Trust Agreement (hereinafter called the Agreement) dated as of October 1, 1977, between Bankers Trust Company, as Trustee (hereinafter called the Trustee), and ACF INDUSTRIES, INCORPORATED, a New Jersey corporation (hereinafter called the Company), hereby certifies that

or registered assigns is entitled to an interest in the principal amount of

Dollars ($ ) in ACF Industries, Incorporated Equipment Trust, Series G, due and payable on January 15, 1993, and to dividends on the unpaid principal amount represented by this Trust Certificate, from the date hereof until the principal amount represented by this Trust Certificate shall have become due and payable, on January 15 and July 15 in each year beginning July 15, 1978, at the rate of 8.30% per annum, with interest on any overdue principal and on any overdue dividends, to the extent legally enforceable, at the rate of 9.30% per annum. Payments of principal, dividends and interest shall be made by the Trustee to the registered holder hereof at the corporate trust office of the Trustee in the Borough of Manhattan, in The City of New York, in such coin or currency of the United States of America as, at the time of payment, shall be legal tender for the payment of public and private debts. Each of such payments shall be made only from and out of rentals or other moneys received by the Trustee and applicable to such payment under the provisions of the Agreement. Dividends and interest shall be computed hereunder on the basis of a 360-day year of twelve 30-day months.

This Trust Certificate is one of an authorized issue of Trust Certificates in an aggregate principal

amount not exceeding the Total Authorized Issue set forth above, issued under the Agreement, pursuant to which certain railroad equipment leased to the Company (or cash or obligations defined in the Agreement as "Investments" in lieu thereof, as provided in the Agreement) is held by the Trustee in trust for the equal and ratable benefit of the registered holders of the Trust Certificates issued thereunder. Reference is made to the Agreement (a copy of which is on file with the Trustee at its office) for a more complete statement of the terms and provisions thereof, to all of which the registered holder hereof, by accepting this Certificate, assents.

The Trust Certificates will be redeemed in part, upon at least 30 days' prior notice given as provided in the Agreement, through the operation of a sinking fund for the Trust Certificates, providing for the payment by the Company to the Trustee, on or before January 15 in each year, commencing January 15, 1979, and continuing to and including January 15, 1992, of an amount sufficient to redeem on each such date an aggregate principal amount of Trust Certificates equal to 1/15th of the aggregate principal amount of Trust Certificates issued pursuant to Section 3.01 of the Agreement. All Trust Certificates redeemed as aforesaid shall be redeemed at 100% of the principal amount thereof, together with accrued and unpaid dividends to the date fixed for redemption.

This Trust Certificate is transferable in whole or in part by the registered holder hereof in person or by its duly authorized attorney upon presentment hereof for registration of transfer to the Trustee at its said office accompanied by an appropriate instrument of assignment and transfer, duly executed by the registered holder in person or by such attorney, in form satisfactory to the Trustee, and thereupon a new fully registered Trust Certificate or Certificates in authorized denominations for the then aggregate unpaid principal amount hereof will be issued in the name of such person or persons as may be designated by such holder. The Trustee and the Company may deem and treat the person in whose name this Trust Certificate is registered as the absolute owner hereof for the purpose of receiving payment of principal and dividends and for all other purposes and shall not be affected by any notice to the contrary.

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

This Trust Certificate shall not be deemed a promise to pay of the Trustee, otherwise than in its capacity as Trustee under the Agreement.

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

Dated as of , 19

BANKERS TRUST COMPANY,
as Trustee,

by

_____
Assistant Vice President

[Corporate Seal]

Attest:

_____
Assistant Secretary

[Form of Guaranty for Trust Certificates]

ACF INDUSTRIES, INCORPORATED, for a valuable consideration, hereby unconditionally guarantees to the registered holder of the within Trust Certificate the prompt payment when due of the principal of said Trust Certificate and of the dividends thereon specified in said Trust Certificate, with interest on any overdue principal and on any overdue dividends, to the extent legally enforceable, at the rate of 9.30% per annum, all in accordance with the terms of said Trust Certificate and the Equipment Trust Agreement referred to therein.

ACF INDUSTRIES, INCORPORATED,

by

_____
Treasurer

WHEREAS it is desired to secure to the holders of the Trust Certificates the payment of the principal and dividends thereon as hereinafter provided;

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

ARTICLE ONE

Model Provisions

SECTION 1.01. Incorporation of Model Provisions. Whenever this Agreement incorporates herein by reference, in whole or in part or as hereby amended, any provision of the document entitled "Model Non-Railroad Private Placement Equipment Trust Provisions" annexed to this Agreement as Annex A hereto (hereinafter called the Model Provisions), such provision of the Model Provisions shall be deemed to be a part of this Agreement as fully to all intents and purposes as though such provision had been set forth in full in this Agreement.

ARTICLE TWO

Definitions

SECTION 2.01. Definitions. Section 2.01 of the Model Provisions is hereby amended (a) by deleting the definition of "Investments" therein and substituting therefor the definition of "Investments" set forth below; (b) by amending the term "Officers' Certificate" so that it reads "Officer's Certificate" and by deleting the words "the General Manager" and the comma following such words from the third line of the definition of "Officer's Certificate" as amended therein; (c) by inserting the word "or" before the word "any" in the sixth line of the definition of "Request" therein, and by deleting the words "or the General Manager" in such line; and (d) by adding thereto the following other definitions:

> "Business Day shall mean a calendar day, excluding Saturdays, Sundays and any other day on which banking institutions in New York, New York, are authorized or obligated to remain closed.

"Company shall mean ACF Industries, Incorporated, a New Jersey corporation (whose chief place of business and chief executive office currently is located at 750 Third Avenue, New York, New York 10017), and any successor or successors to it complying with the provisions of Section 5.09 or 7.04.

"Corporate Trust Office shall mean the principal office of the Trustee, at which the corporate trust business of the Trustee shall, at the time in question, be administered, which office is, on the date of execution of this Agreement, located at One Bankers Trust Plaza, New York, New York 10006.

"Cost, when used in respect of Equipment not built by the Company or any Affiliate of the Company, shall mean the actual cost thereof and, in respect of Equipment built by the Company or any such Affiliate, shall mean an amount not in excess of 110.0% of "car builder's cost", including direct cost of labor, material and overhead but excluding the overhead of the Company's corporate headquarters and any manufacturing profit.

"Equipment shall mean standard-gauge railroad equipment (other than passenger, cabooses or work equipment of types other than locomotive), which railroad equipment is rolling stock used or intended for use in connection with interstate commerce; provided, however, that in the case of Equipment sold to the Trustee pursuant to Article Four or Five, it shall not include any railroad equipment first put into use prior to October 1, 1976.

"Investments shall mean bonds, notes or other direct obligations of the United States of America or obligations for which the full faith and credit of the United States are pledged to provide for the payment of the interest and principal, in each case maturing within one year after the date of investment therein.

"Trustee shall mean Bankers Trust Company, and, subject to the provisions of Article Nine, any successor as trustee hereunder.

"Value, as used herein, shall mean an amount determined as follows:

(1) the Value of any unit of Trust Equipment

assigned or transferred by the Trustee as provided in Section 5.07, and as used in Sections 5.08, 6.01 and 7.05 in respect of Trust Equipment, shall be deemed to be the greater of (a) the fair value thereof or (b) the Cost thereof (as theretofore certified to the Trustee) less 1/20th of such Cost for each full year elapsed between the date such unit was first put into use (as theretofore so certified) and the date as of which Value is to be determined;

(2) the Value of any unit of Equipment conveyed to the Trustee as provided in Section 5.07 shall be deemed to be the lesser of (a) the fair value thereof or (b) the Cost of such unit if new (i.e., not put into use more than twelve months prior to such conveyance) or, in the case of any unit of Equipment not new, the Cost thereof, less 1/20th of such Cost for each full year elapsed between the date such unit was first put into use and the date of the transfer thereof to the Trustee."

Section 2.01 of the Model Provisions, as so amended, is herein incorporated as Section 2.01 hereof.

## ARTICLE THREE

## Trust Certificates and Issuance; Redemption and Sinking Fund

SECTION 3.01. Issuance of Trust Certificates. Section 3.01 of the Model Provisions is herein incorporated as Section 3.01 hereof.

SECTION 3.02. (A) Interests Represented by Trust Certificates; Dividends; Maturity. Each of the Trust Certificates shall represent an interest in the principal amount therein specified in the trust created hereunder and shall bear dividends on the unpaid portion of said amount at the rate of 8.30% per annum, payable in each case, semiannually on January 15 and July 15 in each year, commencing July 15, 1978. Interest shall be payable on overdue payments of principal and interest at the Penalty Rate.

The Trust Certificates are subject to redemption at

100% of the principal amount thereof to be redeemed plus accrued dividends to the date fixed for redemption through the application of the rental payable to the Trustee for the operation of the sinking fund provided for in Section 5.04(B)(5) hereof, on January 15 of each year commencing January 15, 1979, in an annual aggregate principal amount equal to 1/15th of the aggregate principal amount of the Trust Certificates issued pursuant to Section 3.01 hereof. The unpaid principal amount of the Trust Certificates will mature on January 15, 1993.

Payment of the principal of, and dividends on, the Trust Certificates shall be made by the Trustee at the Corporate Trust Office in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, but only from and out of rentals or other moneys received by the Trustee and applicable to such payment under the provisions of this Agreement. Notwithstanding the provisions of the preceding sentence of this paragraph, in the case of payments of principal and dividends to be made on a Trust Certificate not then to be paid in full, upon deposit of an agreement of the registered holder of such Trust Certificate (the responsibility of such holder being satisfactory to the Trustee) obligating such holder, prior to any delivery upon any sale, transfer or other disposition thereof, to surrender the same to the Trustee for a new Trust Certificate for the unpaid or unredeemed principal amount represented thereby or for appropriate notation thereon of the portion of the principal amount represented thereby theretofore paid or redeemed, the Trustee shall (subject to timely receipt of the necessary funds from the Company), on the date each such payment is due, mail its check to the registered holder at his address shown on the registry books maintained by the Trustee or at such other address as such holder may from time to time furnish to the Trustee for such purpose, or on the timely request of the registered holder, the Trustee shall wire by 11:00 a.m. New York time funds immediately available on such date to the bank account (which bank account shall be maintained with a commercial bank in the United States which is a member of the Federal Reserve System) which such holder may from time to time furnish to the Trustee for such purpose (and the Company agrees to make its rental payments pursuant to Section 5.04 at such times and in such funds as shall enable the Trustee to comply herewith); provided, however, that the deposit of an agreement pursuant to this paragraph shall not be required of the original purchaser of the Trust

Certificates if, at the time payments of principal or dividends are to be made, it or its nominee is the registered holder of Trust Certificates, and the Trustee shall without the deposit of such agreement make payments of principal and dividends to such original purchaser of the Trust Certificates at the address or bank account supplied to the Trustee by the Company. Unless and until advised in writing to the contrary, the Trustee is entitled to rely on the provisions of Paragraph 8 of the Purchase Agreement dated as of October 1, 1977, between the Company and the original purchaser of the Trust Certificates, and is under no duty to inquire whether any change or amendment has been made in such Paragraph 8.

(B) Selection of Trust Certificates for Redemption; Notice of Redemption. Prior to December 15, 1978, and prior to December 15 in each year thereafter to and including December 15, 1992, the Trustee shall designate for redemption a principal amount of Trust Certificates, so as to exhaust as nearly as possible the amount of rental to be paid by the Company to the Trustee in cash pursuant to Section 5.04(B)(5) on the next succeeding January 15, as follows:

(a) The Trust Certificates (or portions thereof) to be redeemed shall be designated by the Trustee by allocating, as nearly as may be to the nearest $1,000, the principal amount of Trust Certificates to be redeemed among the various holders (if more than one) of Trust Certificates in proportion to the outstanding aggregate principal amount of Trust Certificates registered in their respective names.

(b) In any prorating pursuant to this subsection (B), the Trustee shall, according to such method as it may deem to be proper, make such adjustments, by increasing or decreasing by not more than $1,000 the amount which would be allocable on the basis of exact proportion to any one or more registered holders of Trust Certificates, as may be necessary to the end that the principal amount so prorated with respect to any one Trust Certificate shall be $1,000 or a multiple thereof. The Trustee shall have uncontrolled discretion to determine, in the case of a registered holder of more than one Trust Certificate, the particular Trust Certificate or Trust Certificates to be redeemed, in whole or in part, in accordance with the foregoing provisions of this subsection (B).

The Trustee shall promptly notify the Company in writing of the numbers of the Trust Certificates selected for redemption in whole or in part.

The Trustee shall send a notice of redemption of the Trust Certificates by first class mail, postage prepaid, at least 30 days prior to each sinking fund redemption date to the holders of Trust Certificates, at their last addresses as they shall appear upon the registry book, but failure to receive such notice by mail, or any defect therein, shall not affect the validity of any provisions for the redemption of Trust Certificates.

Each notice of redemption (a) shall specify (i) the date fixed for redemption, and (ii) the distinctive numbers of Trust Certificates to be redeemed as a whole, and the distinctive numbers of such Trust Certificates to be redeemed in part (indicating in each case the principal amount to be redeemed) and (b) shall state that (i) from and after said date dividends thereon or on the portion thereof to be redeemed will cease to accrue and (ii) payment of the redemption price shall be made by the Trustee only from and out of rentals or other moneys paid to the Trustee by the Company and applicable thereto at the Corporate Trust Office, upon surrender of the Trust Certificates so to be redeemed in full, or upon presentation of the Trust Certificates to be redeemed in part for notation thereon of such payment, except as otherwise provided in the third paragraph of subsection (A) of this Section. The registered holders of Trust Certificates redeemed in part may, at their option and upon surrender thereof, receive a new Trust Certificate for the principal amount remaining unredeemed without charge to such holder.

The numbers of any Trust Certificates to be redeemed, required to be included in any such notice, may be stated in either of the following ways: individually, or in groups from one number to another number, both inclusive.

(C) Payment of Trust Certificates Called for Redemption. Notice of redemption having been given as above provided, and the Company on or before the redemption date specified in the notice of redemption having deposited with the Trustee an amount in cash sufficient to redeem all the Trust Certificates or portions thereof called for redemption, including accrued dividends, the Trust Certificates or portions thereof called for redemption shall become due and payable on such redemption date, and from and after such redemption date dividends on such Trust Certificates or por-

tions thereof shall cease to accrue and such Trust Certificates or portions thereof shall no longer be deemed to be outstanding hereunder and shall cease to be entitled to the benefit of this Agreement except to receive payment from the moneys reserved therefor in the hands of the Trustee. Subject to the provisions of Section 9.09, the Trustee shall hold the redemption moneys for the registered holders of the Trust Certificates or portions thereof called for redemption and, subject to the last paragraph of subsection (A) of this Section 3.02, shall pay the same to such holders respectively upon presentation and surrender of such Trust Certificates. Any excess amount of rentals paid to the Trustee pursuant to Section 5.04(B)(5) shall be held and applied by the Trustee together with rentals due on the next succeeding January 15 as provided in this Article Three.

All Trust Certificates surrendered upon redemption under this Article Three shall be canceled by the Trustee and shall be disposed of as directed by a Request and no Trust Certificates shall be issued hereunder in place of the principal amount thereof redeemed and paid.

SECTION 3.03. Form, Execution and Characteristics of Trust Certificates. Section 3.03 of the Model Provisions is hereby amended by inserting before the period in the last line of subparagraph (h) the words "or the date for any selection of Trust Certificates to be redeemed". Section 3.03 of the Model Provisions, as so amended, is herein incorporated as Section 3.03 hereof.

SECTION 3.04. Replacement of Lost Trust Certificates. Section 3.04 of the Model Provisions is herein incorporated as Section 3.04 hereof.

## ARTICLE FOUR

## Acquisition of Trust Equipment by Trustee; Deposited Cash

SECTION 4.01. Acquisition of Equipment by Trustee. Section 4.01 of the Model Provisions is herein incorporated as Section 4.01 hereof.

SECTION 4.02. Payment of Deposited Cash. From time to time, when and as any Equipment shall have been accepted by the Trustee or its agent or agents pursuant to Section 4.01, the Trustee shall (subject to the provisions

of Sections 4.03 and 4.04) pay, upon Request, to the Owner of the accepted Equipment out of Deposited Cash an amount not exceeding 80% of the lesser of the aggregate Cost (adjusted as provided in the next succeeding sentence) of such Trust Equipment or its fair value, as specified in the Officers' Certificate furnished to the Trustee pursuant to Section 4.04(b). If any of such Trust Equipment was first put into use prior to January 1, 1977, there shall, for the purposes of determining the amount payable out of Deposited Cash pursuant to this Section, be deducted from the Cost of such Trust Equipment, an amount equal to 1/20th of the Cost of such Trust Equipment for each full year elapsed between the date such Trust Equipment was first put into use and the date such Trust Equipment was so delivered to the Trustee. Such date or dates shall be as specified in the Officers' Certificate furnished to the Trustee pursuant to Section 4.04(b).

SECTION 4.03. Payment of Deficiency. The Company covenants that, contemporaneously with any payment by the Trustee pursuant to Section 4.02, it will either (a) pay to the Trustee the advance rental provided in Section 5.04(A), and thereupon the Trustee shall, upon Request, pay to the Owner of the delivered Trust Equipment, by the use of such advance rental, the portion of the Cost of the delivered Trust Equipment not paid out of Deposited Cash as provided for in Section 4.02 or (b) deliver to the Trustee an executed counterpart of a receipt from such Owner evidencing the direct payment by the Company to such Owner of that portion of the Cost of such Trust Equipment equal to the amount of advance rental required to be paid to the Trustee pursuant to clause (a) of this sentence in respect of such Trust Equipment or, if the Company is the Owner of the delivered Trust Equipment, a statement to such effect; the intention being that the Company shall ultimately pay not less than 20% of the Cost of all the Trust Equipment delivered to the Trustee pursuant to this Article Four, and the Trustee and the Company shall at any time, if occasion arises, adjust their accounts and payments to the end that the Trustee shall pay with Deposited Cash not more than 80% of the lesser of such Cost (subject to adjustment as provided in Section 4.02) or fair value, and the Company shall pay as advance rental the remainder, to be not less than 20% of such Cost.

SECTION 4.04. Supporting Papers. The Trustee shall not pay out any Deposited Cash against the delivery of any of the Trust Equipment unless and until it shall have received:

(a) a certificate of the agent or agents designated by the Trustee to receive delivery of the Trust Equipment,

stating that the Trust Equipment described and specified therein by number or numbers has been delivered to such agent or agents (the date of such certificate to be presumed conclusively as the date of such delivery);

(b) an Officers' Certificate which shall state (i) that such Trust Equipment is Equipment as herein defined, (ii) that the Cost of such Trust Equipment is an amount therein specified or is not less than an amount therein specified, (iii) the date each unit of such Trust Equipment was first put into use or that such unit was first put into use not earlier than a specified date, and (iv) that the fair value of such Trust Equipment is an amount therein specified or, if such fair value of such Trust Equipment equals or exceeds the Cost thereof (after giving effect to the second sentence of Section 4.02), that such fair value thereof is not less than an amount therein specified;

(c) (i) an invoice or invoices from the Owner of such Trust Equipment, if other than the Company, and (ii) a bill or bills of sale of such Trust Equipment from the Owner thereof to the Trustee, which bill or bills of sale shall contain a warranty or guaranty to the Trustee that the title to the Trust Equipment described therein is free from all liens, security interests and other encumbrances (except as permitted herein) other than the rights of the Company hereunder; and

(d) an Opinion of Counsel to the effect (i) that such bill or bills of sale 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 title to such Trust Equipment free from all liens, security interests and other encumbrances (except as permitted herein) other than the rights of the Company hereunder and (ii) that in the case of any Trust Equipment not specifically described herein, a proper supplement hereto in respect of such Trust Equipment has been duly executed by the Trustee and the Company and filed and recorded in accordance with Section 7.05.

Any Officers' Certificate and invoice delivered pursuant to this Section may state that the Cost of the Trust Equipment therein referred to is tentatively determined, subject to final adjustment to be evidenced in a final Offi-

cers' Certificate to be delivered to the Trustee.

If the aggregate final Cost (less an amount equal to 1/20th of the final Cost of each unit for each full year elapsed between the date when first put into use and the date when delivered for any Trust Equipment first put into use prior to January 1, 1977) or fair value, whichever is less, as specified in the certificates theretofore delivered to the Trustee pursuant to this Section, of the Trust Equipment delivered to the Trustee or its agent or agents pursuant to this Article Four shall be less than 125% of the aggregate principal amount of Trust Certificates issued pursuant to Section 3.01, the Company will cause to be sold, assigned and transferred to the Trustee additional Equipment in such amount and of such Cost that the aggregate final Cost (less an amount equal to 1/20th of the final Cost of each unit for each full period of one year elapsed between the date when first put into use and the date when delivered for any Trust Equipment first put into use prior to January 1, 1977) or fair value, whichever is less, of the Trust Equipment will be at least 125% of the aggregate principal amount of said Trust Certificates.

## ARTICLE FIVE

## Lease of Trust Equipment to the Company

SECTION 5.01. Lease of Trust Equipment. Section 5.01 of the Model Provisions is herein incorporated as Section 5.01 hereof.

SECTION 5.02. Equipment Automatically Subjected. Section 5.02 of the Model Provisions is herein incorporated as Section 5.02 hereof.

SECTION 5.03. Additional and Substituted Equipment Subject Hereto. Section 5.03 of the Model Provisions is herein incorporated as Section 5.03 hereof.

SECTION 5.04. Rental Payments. Section 5.04 of the Model Provisions is hereby amended by adding after item (4) of subparagraph (B) of the first paragraph thereof the following:

"(5) on or before January 15 in each year commencing January 15, 1979, and terminating January 15, 1992,

as a sinking fund for the Trust Certificates, an annual amount equal to 1/15th of the aggregate principal amount of the Trust Certificates issued pursuant to Section 3.01 hereof.

Section 5.04 of the Model Provisions, as so amended, is herein incorporated as Section 5.04 hereof.

SECTION 5.05. Termination of Trust. Section 5.05 of the Model Provisions is herein incorporated as Section 5.05 hereof.

SECTION 5.06. Indemnity. Section 5.06 of the Model Provisions is herein incorporated as Section 5.06 hereof.

SECTION 5.07. Substitution and Replacement of Trust Equipment. Section 5.07 of the Model Provisions is hereby amended:

(a) by deleting "1,000,000" in the nineteenth line of the first paragraph thereof and by inserting in lieu thereof "$4,000,000"; and

(b) by inserting before the period in the last line of the first paragraph thereof a comma and the words "which consent shall not be unreasonably withheld if (i) in the judgment of such holders such substitution will not impair the security under this Agreement, and (ii) such documentation as may reasonably be requested by such holders is furnished to the Trustee".

Section 5.07 of the Model Provisions, as so amended, is herein incorporated as Section 5.07 hereof.

SECTION 5.08. Maintenance of Trust Equipment; Casualty Occurrences. The Company agrees that it will maintain and keep all the Trust Equipment in good order and proper repair at its own cost and expense, unless and until it becomes worn out, unsuitable for use or lost or destroyed (such occurrences being hereinafter called Casualty Occurrences). Whenever any of the Trust Equipment shall suffer a Casualty Occurrence, the Company shall, within 60 days after it shall have been informed of such Casualty Occurrence, deliver to the Trustee an Officers' Certificate describing such Trust Equipment and stating the Value thereof as of the date such Trust Equipment suffered such Casualty Occurrence. When the total Value of all units of the Trust

Equipment having suffered a Casualty Occurence (exclusive of units having suffered a Casualty Occurrence in respect of which a payment shall have been made to the Trustee pursuant to this Section) shall exceed $375,000, the Company, within 60 days after it shall have been informed of such event, shall deposit with the Trustee an amount in cash equal to the Value of such units as of the date of the Casualty Occurrence in respect of each thereof. The rights and remedies of the Trustee to enforce or to recover any of the rental payments shall not be affected by reason of any Casualty Occurrence. Cash deposited with the Trustee pursuant to this Section shall be held and applied as provided in the fourth paragraph of Section 5.07.

The Company agrees to furnish to the Trustee on or before August 1 in every calendar year commencing August 1, 1979, and during the continuance of the lease provided for herein, an Officers' Certificate, dated as of the preceding April 30, (1) stating the description and numbers of all units of Trust Equipment that may have suffered a Casualty Occurrence or which have been withdrawn from use pending repairs (other than running repairs) since the date of the last preceding statement (or the date of this Agreement in the case of the first such statement) and (2) covering such other matters as the Trustee may reasonably request, including a statement of the names and addresses of all parties (other than the Company) to subleases or contracts (other than subleases or contracts having a term of less than six months and which were not theretofore renewed) for the use of any units of the Trust Equipment and a statement of the numbers of the units covered thereby. The Trustee shall have no duty or obligation to request the inclusion of any additional matters pursuant to clause (2) of the next preceding sentence unless requested so to do in writing by the registered holders of 10% or more in aggregate principal amount of the Trust Certificates at the time outstanding.

The Trustee, by its agents, shall have the right at any reasonable time (which may be more frequent than once in each calendar year), but shall be under no duty, to inspect the Trust Equipment at the then existing locations thereof.

SECTION 5.09. Possession of Trust Equipment. Without first obtaining the written consent of the Trustee, the Company will not (a) assign or transfer its rights hereunder, (b) transfer the Trust Equipment or any part thereof, or (c) part with the possession of, or suffer or allow to

pass out of its possession and control, any of the Trust Equipment. An assignment or transfer to a corporation which shall acquire all or substantially all the property of the Company (by merger, consolidation or otherwise) and which, by execution of an appropriate instrument satisfactory to the Trustee, shall assume and agree to perform each and all the obligations and covenants of the Company hereunder, under the guaranty endorsed on the Trust Certificates and under any instruments made in connection with the purchase of the Trust Certificates by the initial holders thereof shall not be deemed a breach of this covenant but no such assignment, transfer or assumption shall have the effect of releasing the Company from its obligations hereunder or from its obligations as guarantor of the Trust Certificates.

Notwithstanding the foregoing, so long as the Company shall not be in Default, the Company and any of its Affiliates shall be entitled to the possession and use of the Trust Equipment in accordance with the terms hereof, and the Company may also (a) furnish the Trust Equipment or any part thereof to railroad companies for use upon the lines of railroad owned or operated by them or over which they have trackage rights and upon connecting and other railroads in the usual interchange of traffic, or to other than railroad companies for use in their business, and (b) sublet or contract to others all or any part of the Trust Equipment, but only, in either case, upon and subject to all the terms and conditions of this Agreement and to all rights and remedies of the Trustee hereunder.

Any such sublease or contract may provide that the party acquiring the use of units of the Trust Equipment, so long as it shall not be in default under such sublease or contract, shall be entitled (subject to the rights and remedies of the Trustee hereunder) to the possession of such units and the use thereof. Every such sublease or contract for a term in excess of six months (including in such term any prior renewals or extensions of such term and the term of any renewal or extension which may be made at the option of either party) shall contain provisions which have the effect of subjecting the rights of the party acquiring the use of units of the Trust Equipment under such sublease or contract to the rights and remedies of the Trustee in respect of such units.

SECTION 5.10. Marking of Trust Equipment. The Company agrees that if on or before February 1 in each calen-

dar year the Trustee shall fail to receive an Opinion of Counsel to the effect that marking of the Trust Equipment, in the manner hereinafter in this Section 5.10 otherwise provided, is not required by law in order properly to protect the title of the Trustee to the Trust Equipment, or the rights of the holders of the Trust Certificates, or if, in the opinion of the Company, marking of one or more units of Trust Equipment is required by law properly to protect the title of the Trustee to the Trust Equipment or the rights of the holders of Trust Certificates, the Company shall, as soon as practicable after determining that such marking is required or after the failure of the Company to deliver the aforementioned Opinion of Counsel, arrange for the marking of each such unit of Trust Equipment in the following manner. There shall be plainly, distinctly, permanently and conspicuously placed and fastened upon each side of each such unit a metal plate bearing the following words, or such words shall be otherwise plainly, distinctly, permanently and conspicuously marked on each side of such unit, in either case in letters not less than seven-sixteenths of one inch in height:

TITLE TO THIS CAR IS VESTED IN A TRUSTEE UNDER AN EQUIPMENT TRUST AGREEMENT FILED UNDER SECTION 20c OF THE INTERSTATE COMMERCE ACT.

Such plates or marks shall be such as to be readily visible and as to indicate plainly the Trustee's ownership of each unit of the Trust Equipment.

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

The Trust Equipment may be lettered, "ACF Industries, Incorporated", "Shippers Car Line", "ACFX", "SHPX", or in some other appropriate manner for convenience of identification of the leasehold interest of the Company therein, and may also be lettered, in case of a sublease of any equipment made pursuant to Section 5.09 hereof, in such manner

as may be appropriate for convenience of identification of the subleasehold interest therein; but the Company, during the continuance of the lease provided for herein, shall not allow the name of any person to be placed on any of the Trust Equipment as a designation which might be interpreted as a claim of ownership thereof by the Company or by any person other than the Trustee.

## ARTICLE SIX

## Events of Default and Remedies

SECTION 6.01. Events of Default. Section 6.01 of the Model Provisions is hereby amended:

(a) by inserting the word "or" after the comma at the end of subparagraph (e) of the first paragraph thereof; and

(b) by inserting after subparagraph (e) of the first paragraph thereof, the following:

"(f) there shall occur an event of default by the Company under any other lease, agreement, equipment trust agreement or indenture in respect of which the Trustee also serves as trustee,".

Section 6.01 of the Model Provisions, as so amended, is herein incorporated as Section 6.01 hereof.

Sections 6.02 through 6.06 of the Model Provisions are herein incorporated as Sections 6.02 through 6.06 hereof.

SECTION 6.07. Trustee To Give Notice of Default. Promptly after the occurrence thereof, the Trustee shall give to the registered holders of the Trust Certificates notice of each Default hereunder known to any officer of the Trustee assigned by it to perform corporate trust administration functions with respect to this Agreement or any other lease, agreement, equipment trust agreement or indenture to which the Company is a party and in respect of which the Trustee also serves as trustee.

Sections 6.08 through 6.11 of the Model Provisions are herein incorporated as Sections 6.08 through 6.11 hereof.

ARTICLE SEVEN

Additional Covenants and Agreements by the Company

SECTION 7.01. Guaranty of Company. Section 7.01 of the Model Provisions is herein incorporated as Section 7.01 hereof.

SECTION 7.02. Discharge of Liens. Section 7.02 of the Model Provisions is herein incorporated as Section 7.02 hereof.

SECTION 7.03. Further Assurances. Section 7.03 of the Model Provisions is herein incorporated as Section 7.03 hereof.

SECTION 7.04. Merger or Consolidation. Section 7.04 of the Model Provisions is herein incorporated as Section 7.04 hereof.

SECTION 7.05. Payment of Expenses; Recording. The Company covenants and agrees to pay the expenses incident to the preparation and execution of the Trust Certificates to be issued hereunder, or connected with the preparation, execution, recording and filing of this Agreement and of any instruments executed under the provisions hereof. The Company shall, promptly after the execution and delivery of this Agreement (and prior to the delivery of any of the Trust Equipment hereunder pursuant to Section 4.01 hereof) and each supplement hereto, respectively, cause this Agreement and such supplement, as the case may be, to be duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act. The Company will from time to time reregister, refile and rerecord this Agreement and each supplement hereto and do and perform any other act and will execute, acknowledge, deliver, file, register and record any and all further instruments required by the law of any jurisdiction in which use of the Equipment is permitted by Section 5.09 hereof or reasonably requested by the Trustee for the purpose of proper protection of the title of the Trustee and the rights of the holders of the Trust Certificates and of fully carrying out and effectuating this Agreement and the intent hereof; provided, however, that the Company shall not be required to take any such action if (1) such action is unduly burdensome and (2) after giving effect to the failure to take such action, the Company has taken all action required by law so as to protect the title of

the Trustee to units of Equipment having a Value of not less than 85% of the aggregate Value of all the Trust Equipment.

Promptly after the execution and delivery of this Agreement and each supplement hereto, the Company shall furnish to the Trustee an Opinion of Counsel stating that, in the opinion of such counsel, this Agreement or such supplement, as the case may be, has been properly recorded and filed in compliance with the preceding paragraph of this Section and reciting the details of such action and no other filing or recordation or refiling or rerecordation is necessary for the protection of the rights of the Trustee in any State of the United States of America or the District of Columbia. The Company shall furnish to the Trustee, not later than February 1 in each year, commencing with the year 1979, an Opinion of Counsel stating that, in the opinion of such counsel, either (i) such action has been taken with respect to the recording, filing and registering and rerecording, refiling and reregistering of this Agreement and each supplement hereto as is necessary to comply with the preceding paragraph of this Section and reciting the details of such action or (ii) no such action is necessary for such purpose. In rendering any such opinion, such counsel may conclusively rely upon an Officers' Certificate as to the location of the Trust Equipment.

## ARTICLE EIGHT

## Concerning the Holders of Trust Certificates

Article Eight of the Model Provisions is herein incorporated as Article Eight hereof.

## ARTICLE NINE

## The Trustee

Sections 9.01 through 9.03 of the Model Provisions are herein incorporated as Sections 9.01 through 9.03 hereof.

Section 9.04 of the Model Provisions is hereby amended:

(a) by adding the words "(or interest thereon)" after the word "dividends" in the fourth line and in the ninth line of the third paragraph thereof; and

(b) by adding the words "or in the event of the Company's Default" after the word "Certificate" in the fourth line of the third paragraph thereof.

Section 9.04 of the Model Provisions, as so amended, is herein incorporated as Section 9.04 hereof.

Sections 9.05 through 9.09 of the Model Provisions are herein incorporated as Sections 9.05 through 9.09 hereof.

## ARTICLE TEN

## Miscellaneous

Sections 10.01 through 10.03 of the Model Provisions are herein incorporated as Sections 10.01 through 10.03 hereof.

Section 10.04 of the Model Provisions is hereby amended by adding the words "Attention of Corporate Trust Division" after the word "Office" in the eighth line thereof. Section 10.04 of the Model Provisions, as so amended, is herein incorporated as Section 10.04 hereof.

Section 10.05 of the Model Provisions is hereby amended by deleting the words following the word "laws" in the second line of subparagraph (c) thereof and by inserting in lieu thereof the words "of the State of New York". Section 10.05 of the Model Provisions, as so amended, is herein incorporated as Section 10.05 hereof.

SECTION 10.06. Legal Holidays. In any case where any date for payment of dividends or interest, date for full or partial redemption, date for payment of rental or date of maturity of the Trust Certificates shall not be a Business Day, then, notwithstanding any other provision of this Agreement or the Trust Certificates, payment need not be made on such date, but may be made on the next succeeding Business Day with the same force and effect as if made on such date for payment of dividends or interest, date for full or partial redemption, date for payment of rental or date of maturity of the Trust Certificates, and if payment is made on such next succeeding Business Day no interest shall accrue for the period from and after such date for payment of dividends or interest, for full or partial redemption, or for payment of rental or date of maturity of the Trust Certificates, as the case may be, to and includ-

ing such next succeeding Business Day.

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

BANKERS TRUST COMPANY,

by _____
Vice President

[Corporate Seal]

Attest:

_____
Assistant Secretary

ACF INDUSTRIES, INCORPORATED,

by _____
Treasurer

[Corporate Seal]

Attest:

_____
Assistant Secretary

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

On this 22nd day of November, 1977, before me personally appeared JAMES F. CONLAN, to me personally known, who, being by me duly sworn, says that he is a Vice President of Bankers Trust Company, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Vincent E. Sandford
Notary Public

VINCENT E. SANDFORD
Notary Public, State of New York
No. 31-8759160
Qualified in New York County
Commission Expires March 30, 19[illegible]

[Notarial Seal]

My commission expires

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

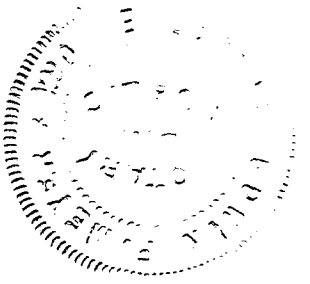
On this 22nd day of November, 1977, before me personally appeared W. C. ANDERSON to me personally known, who, being by me duly sworn, says that he is Treasurer of ACF INDUSTRIES, INCORPORATED, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Edwin F. Meyer
Notary Public

[Notarial Seal]

My commission expires

EDWIN F. MEYER
NOTARY PUBLIC, State of New York
No. 30-7917803
Qualified in Nassau County
Certificate filed in New York County
Commission Expires March 30, 1978



Form 1-1-73

ANNEX A

# MODEL NON-RAILROAD PRIVATE PLACEMENT EQUIPMENT TRUST PROVISIONS

# MODEL NON-RAILROAD PRIVATE PLACEMENT EQUIPMENT TRUST PROVISIONS

## ARTICLE TWO

### DEFINITIONS

SECTION 2.01. *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:

*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.

*Default* shall mean

(1) any Event of Default; and

(2) the occurrence and continuance of an event which, with the giving of notice or the passage of time or both, could constitute an Event of Default.

The Company shall "be in Default" if a Default shall have occurred and be continuing.

*Deposited Cash* shall mean the aggregate of (a) the proceeds from the sale of the Trust Certificates deposited

with the Trustee pursuant to Section 3.01 and, when required or indicated by the context, any Investments purchased by the use of such proceeds pursuant to the provisions of Section 9.04, and (b) any sums restored to Deposited Cash from rentals pursuant to Section 5.04(B)(1)(b) and on deposit with the Trustee.

*Event of Default* shall mean any event specified in Section 6.01 to be an Event of Default.

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

*Investments* shall mean (i) bonds, notes or other direct obligations of the United States of America or obligations for which the full faith and credit of the United States are pledged to provide for the payment of the interest and principal, in each case maturing within one year after the date of investment therein, (ii) open market commercial paper 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 Investors Service or an equivalent rating by a successor thereto or a similar rating service substituted therefor and (iii) certificates of deposit of or time deposits in banks or trust companies incorporated and doing business under the laws of the United States of America or one of the States thereof having a capital and surplus aggregating at least $50,000,000.

*Officers' Certificate* shall mean a certificate signed by the Chairman of the Board, the President, a Vice President, the General Manager, the Comptroller, the Secretary, an Assistant Secretary, the Treasurer or any Assistant Treasurer of the Company.

*Opinion of Counsel* shall mean an opinion in writing signed by legal counsel who shall be satisfactory to the Trustee and who may, unless in a particular instance the Trustee shall otherwise require, be an employee of or counsel to the Company. 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.

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

*Purchase Price,* when used with respect to Equipment, shall mean the purchase price to the Trustee, as evidenced by an invoice or invoices from the Owner or Owners of such Equipment.

*Request* shall mean a written request for the action therein specified, delivered to the Trustee, dated not more than ten days prior to the date of delivery to the Trustee and signed on behalf of the Company by the Chairman of the Board, the President, a Vice President, the Treasurer, any Assistant Treasurer or the General Manager of the Company.

*Penalty Rate* shall mean a rate per annum 1% in excess of the highest rate of dividends set forth in Section 3.02 hereof.

*Trust Certificates* shall mean the Trust Certificates issued hereunder.

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

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

## ARTICLE THREE

### TRUST CERTIFICATES AND ISSUANCE THEREOF

SECTION 3.01. *Issuance of Trust Certificates.* Upon the sale of any of the Trust Certificates, an amount equal to the principal amount of the Trust Certificates so sold shall, forthwith upon the issuance thereof, be deposited in cash with the Trustee.

Thereupon, without waiting for the recording or filing of this Agreement or of any other instrument respecting the Trust Equipment, the Trustee shall issue and deliver, as the Company shall direct by Request, Trust Certificates in the aggregate principal amount so sold.

The aggregate principal amount of Trust Certificates which shall be executed and delivered by the Trustee under this Section shall not exceed the Total Authorized Issue specified in the form of Trust Certificate, and the aggregate principal amount represented by all the Trust Certificates shall be payable as hereinafter set forth.

SECTION 3.03. *Form, Execution and Characteristics of Trust Certificates.*

(a) The Trust Certificates and the guaranty to be endorsed on the Trust Certificates by the Company as provided in Section 7.01 shall be in substantially the forms 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 its President, one of its Vice Presidents or one of its Assistant Vice Presidents and its corporate seal or a facsimile thereof shall be affixed or imprinted thereon and attested by the manual signature of its Secretary or one of its Assistant Secretaries or one of its Assistant Trust Officers. In case any officer of the Trustee whose signature,

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

(c) The Trust Certificates (i) shall be issuable in denominations of $1,000 or any multiple thereof; (ii) shall be registered, as to both principal and dividends, in the name of the holders; (iii) shall be transferable in whole or in part upon presentation and surrender thereof for transfer at the Corporate Trust Office, accompanied by appropriate instruments of assignment and transfer, duly executed by the registered holder of the surrendered Trust Certificate or Certificates or by duly authorized attorney, in form satisfactory to the Trustee; (iv) shall be dated as of the date of issue unless issued in exchange for another Trust Certificate or Certificates bearing unpaid dividends from an earlier date, in which case they shall be dated as of such earlier date; (v) shall entitle the registered holder to dividends from the date thereof; and (vi) shall be exchangeable for an equal aggregate principal amount of Trust Certificates of authorized denominations of like tenor and maturity.

(d) Anything contained herein to the contrary notwithstanding, the parties hereto may deem and treat the registered holder of any Trust Certificates as the absolute owner of such Trust Certificates 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 and transfer of the Trust Certificates and, upon presentation of the Trust Certificates for such purpose, the Trustee shall register any

transfer as hereinabove provided, and under such reasonable regulations as it may prescribe.

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

(g) Each Trust Certificate delivered pursuant to any provision of this Agreement in exchange or substitution for, or upon the transfer of the whole or any part, as the case may be, of one or more other Trust Certificates shall carry all the rights to principal and to dividends 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 dividends or principal shall result from such exchange, substitution or transfer.

(h) The Trustee shall not be required to issue, transfer or exchange Trust Certificates for a period of ten days next preceding any dividend payment date.

SECTION 3.04. *Replacement of Lost Trust Certificates.* In case any Trust Certificate shall become mutilated or defaced or be lost, destroyed or stolen, then on the terms herein set forth, and not otherwise, the Trustee shall execute and deliver a new Trust Certificate of like tenor, date and maturity, and bearing such identifying 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, destroyed or stolen. The Company shall execute its guaranty on any Trust Certificates to be so delivered. The applicant for a new Trust Certificate pursuant to this Section shall furnish to the Trustee and to the Company evidence to their satisfaction of the loss, destruction or theft of such Trust Certificate alleged to have been lost, destroyed

or stolen and of the ownership and authenticity of such mutilated, defaced, lost, destroyed or stolen Trust Certificate, and also shall furnish such security or indemnity as may be required by the Trustee and by the Company in their discretion, and shall pay all expenses and charges of such substitution or exchange. All Trust Certificates are held and owned upon the express condition that the foregoing provisions are exclusive in respect of the replacement of mutilated, defaced, lost, destroyed or stolen Trust Certificates and shall preclude any and all other rights and remedies, any law or statute now existing or hereafter enacted to the contrary notwithstanding.

## ARTICLE FOUR

### Acquisition of Trust Equipment by Trustee; Deposited Cash

Section 4.01. *Acquisition of Equipment by Trustee.* The Company, as speedily as may be, shall cause to be sold to the Trustee, as trustee for the holders of the Trust Certificates, all of the Equipment described in Schedule I hereto. Such Equipment shall be delivered to the person or persons designated by the Trustee as its agent or agents to accept such delivery (who may be one or more of the officers or agents of the Company) and the certificate of any such agent or agents as to such delivery and acceptance shall be conclusive evidence of such delivery.

In the event that the Company shall deem it necessary or desirable to procure for the use of the Company, and to include in the trust hereby created, other Equipment in lieu of any units of the Equipment specifically described in Schedule I hereto prior to the acceptance of such Equipment by the Trustee or its agent or agents, or in the event that any unit of the Equipment described in Schedule I hereto shall suffer a Casualty Occurrence as defined in

Section 5.08, prior to such acceptance, the Company may cause to be sold to the Trustee other Equipment, to be substituted under the trust.

## ARTICLE FIVE

### Lease Of Trust Equipment To The Company

Section 5.01. *Lease of Trust Equipment.* The Trustee does hereby let and lease to the Company all the Trust Equipment from and after the date such Trust Equipment is acquired by the Trustee to the date on which the final payment of principal and dividends on any Trust Certificate is due.

Section 5.02. *Equipment Automatically Subjected.* As and when any Equipment shall from time to time be settled for hereunder by the Trustee or its agent or agents, the same shall, *ipso facto* and without further instrument of lease or transfer, become subject to all the terms and provisions hereof.

Section 5.03. *Additional and Substituted Equipment Subject Hereto.* In the event that the Company shall, as provided in Section 4.01, 4.04 or 5.07, cause to be transferred to the Trustee other Equipment in addition to or in substitution for any of the Equipment herein specifically described or subjected hereto, such other Equipment shall be included as part of the Trust Equipment by supplement hereto to be executed by the Trustee and the Company and shall be subject to all the terms and conditions hereof in all respects as though it had been part of the Equipment herein specifically described.

Section 5.04. *Rental Payments.* The Company hereby accepts the lease of all the Trust Equipment, and agrees to accept delivery and possession hereunder of the Trust Equipment; and the Company agrees to pay to the Trustee

at the Corporate Trust Office (or, in the case of taxes, to the proper taxing authority), in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, rental hereunder which shall be sufficient to pay and discharge the following items, when and as the same shall become due and payable (whether or not any of such items shall become due and payable prior to the acceptance of delivery of any unit of the Trust Equipment):

(A) The Company shall, at the time of making a Request pursuant to Section 4.02, pay to the Trustee, as advance rental hereunder, an amount equal to the excess of the aggregate Purchase Price of the Trust Equipment over the portion of such Purchase Price to be paid out of Deposited Cash as provided in Section 4.02.

(B) In addition to such advance rental the Company shall pay to the Trustee, as rental for the Trust Equipment (notwithstanding that any of the Trust Certificates shall have been acquired by the Company or shall not have been presented for payment), the following:

(1) (a) the expenses of the trust hereby created, including, without limitation, reasonable compensation to the Trustee and all expenses provided for herein, and (b) an amount equal to any expenses incurred or loss of principal (including interest accrued thereupon at time of purchase) in connection with any purchase, sale or redemption by the Trustee of Investments.

(2) any and all taxes, assessments and governmental charges which the Trustee as such may be required to pay, including, without limitation, all taxes, assessments and governmental charges upon or on account of the income or property of the trust, or upon or on account of this Agreement.

(3) (a) the amounts of the dividends payable on the Trust Certificates, when and as the same shall become payable, and (b) interest at the Penalty Rate from the due date, upon the amount of any instalments of rental payable in respect of the principal of and dividends on the Trust Certificates which shall not be paid when due, to the extent legally enforceable.

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

Nothing contained herein or in the Trust Certificates shall be deemed to impose on the Trustee or on the Company any obligation to pay to the registered holder of any Trust Certificate any tax, assessment or governmental charge required by any present or future law of the United States of America, or of any state, county, municipality or other taxing authority thereof, to be paid in behalf of, or withheld from the amount payable to, the holder of any Trust Certificate.

The Company shall not be required to pay any tax, assessment or governmental charge so long as it shall in good faith and by appropriate legal proceedings contest the validity thereof; *provided, however,* that in the judgment of the Trustee and as set forth in an Opinion of Counsel which shall have been furnished to the Trustee by the Company, the rights or interests of the Trustee or of the holders of the Trust Certificates will not be materially endangered thereby.

SECTION 5.05. *Termination of Trust.* After all payments due or to become due from the Company hereunder shall have been completed and fully made to the Trustee (1) such payments shall be deemed to represent payment of the full purchase price for the Company's purchase at

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

SECTION 5.06. *Indemnity.* The Company covenants and agrees to indemnify the Trustee against any and all claims arising out of or connected with the ownership or use of any of the Trust Equipment, and particularly against any and all claims arising out of the use of any patented inventions in and about the Trust Equipment, and to comply in all respects with the laws of the United States of America and of all the states and other jurisdictions in which the Trust Equipment, or any unit thereof, may be operated, and with all lawful acts, rules, regulations and orders of any commissions, boards and other legislative, executive, administrative or judicial bodies or officers having power to regulate or supervise any of the Trust Equipment, including without limitation all lawful acts, rules, regulations and orders of any body having competent jurisdiction relating to automatic coupler devices or attachments, air brakes or other appliances; *provided, however,* that the Company may in

good faith contest the validity of any such law, act, rule, regulation or order, or the application thereof to the Trust Equipment or any part thereof, in any reasonable manner which will not in the judgment of the Trustee materially endanger the rights or interests of the Trustee or of the holders of the Trust Certificates. The Company shall not be relieved from any of its obligations hereunder by reason of the assertion or enforcement of any such claims or the commencement or prosecution of any litigation in respect thereof.

SECTION 5.07. *Substitution and Replacement of Trust Equipment.* Upon Request, the Trustee shall, at any time and from time to time, execute and deliver a bill of sale assigning and transferring to the transferee named by the Company all the right, title and interest of the Trustee in and to any of the units of Trust Equipment as provided herein; *provided, however,* that (a) there shall be paid to the Trustee cash in an amount not less than the Value, as of the date of such Request, of the units of Trust Equipment to be assigned or transferred by the Trustee or (b) there shall be conveyed to the Trustee, at the time of assignment or transfer of any units of Trust Equipment, other units of Equipment and of a Value not less than the Value, as of the date of such Request, of the units of Trust Equipment to be assigned or transferred; and *provided, further,* that no substitution contemplated under this Section shall be made if the Value of Equipment to be transferred by the Trustee, together with the Value of Equipment theretofore transferred by the Trustee pursuant to this Section, shall exceed $1,000,000, unless written consent to make such substitution is obtained from the holders of not less than 66⅔% in principal amount of Trust Certificates then outstanding.

At the time of delivery of any Request pursuant to the first paragraph of this Section, the Company shall, if other

Equipment is to be conveyed to the Trustee in substitution for the Trust Equipment to be assigned or transferred by the Trustee, deliver to the Trustee the following papers:

(1) an Officers' Certificate stating (i) the Value, as of the date of said Request, of the Trust Equipment so to be assigned or transferred by the Trustee and the date such Trust Equipment was first put into use (or that such Trust Equipment was first put into use not later than a specified date), (ii) that the requested assignment or transfer by the Trustee will not impair the security under this Agreement in contravention of the provisions hereof, (iii) the Value of such substituted Equipment as of such date and the date such substituted Equipment was first put into use (or that such substituted Equipment was first put into use not earlier than a specified date), (iv) that each unit of Equipment so to be substituted has been marked as provided in Section 5.10, (v) that each such unit so to be substituted is Equipment as herein defined and (vi) that the Company is not in Default;

(2) a certificate, an invoice or invoices and a bill or bills of sale in respect of such substituted Equipment as provided for in subparagraphs (a) and (c) of the first paragraph of Section 4.04; and

(3) an Opinion of Counsel to the effect that (i) such bill or bills of sale are valid and effective, either alone or together with any other instruments referred to in and accompanying such opinion, to vest in the Trustee title to such substituted Equipment free from all claims, liens, security interests and other encumbrances and (ii) that a proper supplement hereto in respect of each substituted unit of Equipment has been duly executed by the Trustee and the Company and has

been recorded with the Interstate Commerce Commission pursuant to the requirements of Section 20c of the Interstate Commerce Act and as otherwise required by Section 7.05.

At the time of delivery of any Request pursuant to the first paragraph of this Section, the Company shall, if cash is to be paid to the Trustee in respect of the Trust Equipment to be assigned or transferred by the Trustee, deliver to the Trustee papers corresponding to those set forth in the second paragraph of this Section, with such appropriate modifications as may be approved by the Trustee.

Cash deposited with the Trustee pursuant to this Section or Section 5.08 shall, from time to time, be paid over by the Trustee to the Company upon Request, against conveyance to the Trustee of units of Equipment having a Value, as of the date of said Request, not less than the amount of cash so paid, and upon delivery to the Trustee of papers corresponding to those set forth in the second paragraph of this Section, with such appropriate modifications as may be approved by the Trustee.

SECTION 5.08. *Maintenance of Trust Equipment; Casualty Occurrences.* The Company agrees that it will maintain and keep all the Trust Equipment in good order and proper repair at its own cost and expense, unless and until it becomes worn out, unsuitable for use, lost or destroyed (hereinafter called a Casualty Occurrence). Whenever any unit of the Trust Equipment shall suffer a Casualty Occurrence the Company shall, within 30 days after it shall have been informed of such Casualty Occurrence, deliver to the Trustee an Officers' Certificate describing such Trust Equipment and stating the Value thereof as of the date of such Casualty Occurrence. When the total Value of all units of the Trust Equipment having suffered a Casu-

alty Occurrence (exclusive of units having suffered a Casualty Occurrence in respect of which a payment shall have been made to the Trustee pursuant to this Section) shall exceed $200,000 (or such lesser amount as the Company may elect), the Company, within 30 days of such event, shall deposit with the Trustee an amount in cash equal to the Value of such units as of the date of the Casualty Occurrence in respect of each thereof. Thereafter, the rights and remedies of the Trustee to enforce or to recover any of the rental payments shall not be affected by reason of such Casualty Occurrence. Cash deposited with the Trustee pursuant to this Section shall be held and applied as provided in the fourth paragraph of Section 5.07.

The Company agrees to furnish to the Trustee, prior to May 15 in each year, an Officers' Certificate, dated as of the preceding December 31, stating (1) the description and numbers of all units of the Trust Equipment that have suffered a Casualty Occurrence since the date of the last preceding statement (or the date of this Agreement in the case of the first statement) and (2) that in the case of all the Trust Equipment repainted or repaired since the date of the last preceding statement (or the date of this Agreement in the case of the first statement) the marks required by Section 5.10 have been preserved, or that such Trust Equipment when repainted or repaired has been again marked as required thereby. The Trustee, by its agents, shall have the right once in each calendar year, but shall be under no duty, to inspect the Trust Equipment at the then existing locations thereof; *provided, however,* that the Company shall not be liable for any injury to, or the death of, any agent or employee of the Trustee incurred while exercising any such right to inspect the Trust Equipment under the preceding provision of this sentence, unless the Company's own negligence is the direct cause of such injury or death.

SECTION 5.09. *Possession of Trust Equipment.* Except as provided in this Section, the Company will not assign or transfer its rights hereunder, or transfer or sublet the Trust Equipment or any part thereof, without the written consent of the Trustee first had and obtained; and the Company shall not, without such written consent, except as herein provided, part with the possession of, or suffer or allow to pass out of its possession or control, any of the Trust Equipment. An assignment or transfer to a corporation which shall acquire all or substantially all of the property of the Company and which, by execution of an appropriate instrument satisfactory to the Trustee, shall assume and agree to perform each and all of the obligations and covenants of the Company hereunder and under the guaranty endorsed on the Trust Certificates shall not be deemed a breach of this covenant, but no such transfer or assumption shall have the effect of releasing the Company from its obligations hereunder or from its obligations as guarantor of the Trust Certificates. The appointment of a receiver or receivers in equity or reorganization or a trustee or trustees in bankruptcy or reorganization for the Company or for its property shall not be deemed an unauthorized assignment unless the same shall constitute an Event of Default.

So long as the Company shall not be in Default under this Agreement, the Company shall be entitled to the possession and use of the Trust Equipment in accordance with the terms hereof, and the Company may also (*a*) furnish the Trust Equipment or any part thereof to railroad companies for use upon the lines of railroad owned or operated by them or over which they have trackage rights and upon connecting and other carriers in the usual interchange of traffic, or to others than railroad companies for use in their business, or (*b*) sublet all or any part of the Trust Equipment, but only, in either case, upon and subject to all the

terms and conditions of this Agreement, and to all rights of the Trustee hereunder.

Any such sublease may provide that the sublessee, so long as it shall not be in default under such sublease, shall be entitled to the possession of the Trust Equipment included in such sublease and the use thereof subject to the rights and remedies of the Trustee in respect of the Trust Equipment covered by such sublease upon the occurrence of an Event of Default.

The Trustee shall have the right to declare the lease provided for herein terminated in case of any unauthorized assignment or transfer of the Company's rights hereunder or in case of any unauthorized transfer or sublease of any of the Trust Equipment. The election of the Trustee to terminate the lease provided for herein shall have the same effect as the retaking of the Trust Equipment by the Trustee as hereinafter provided.

SECTION 5.10. *Marking of Trust Equipment.* The Company agrees that, at the time of delivery to the Trustee pursuant to this Agreement of each unit of Equipment, there shall be plainly, distinctly, permanently and conspicuously marked on each side of such unit, in letters not less than seven-sixteenths of one inch in height:

"OWNED BY A BANK OR TRUST COMPANY UNDER A SECURITY AGREEMENT FILED UNDER THE INTERSTATE COMMERCE ACT, SECTION 20c."

or other similar words approved in an Opinion of Counsel delivered to the Trustee; *provided, however,* that if any unit of Equipment shall be in service at the time such unit is transferred to the Trustee hereunder, the Company agrees

to cause such unit to be so marked within a reasonable time, and in any case within one year. Within one year after the delivery to the Trustee pursuant to this Agreement of each unit of Trust Equipment, the Company agrees to furnish to the Trustee a certificate of an agent or agents designated by the Trustee to receive delivery of the Trust Equipment stating that such unit described and specified therein by number or numbers has been marked in accordance with the provisions of this Section.

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

The Trust Equipment may be lettered in any appropriate manner for convenience of identification of the leasehold interest of the Company therein, and may also be lettered, in case of a sublease of any Trust Equipment made pursuant to Section 5.09, in such manner as may be appropriate for convenience of identification of the subleasehold interest therein; but the Company, during the continuance of the lease provided for herein, will not allow the name of any person, firm, association or corporation to be placed on any of the Trust Equipment as a designation which might be interpreted as a claim of ownership thereof by the Company or by any person, firm, association or corporation other than the Trustee.

## ARTICLE SIX

### EVENTS OF DEFAULT AND REMEDIES

SECTION 6.01. *Events of Default.* The Company covenants and agrees that in case:

(a) the Company shall default in the payment of any part of the rental payable hereunder needed to pay the principal of any Trust Certificate as and when such principal may become due, or if the Company shall default in the payment of any other part of the rental payable hereunder (including advance rental) 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 shall make any unauthorized transfer or sublease (including, for the purpose of this clause, contracts for the use thereof) of any of the Trust Equipment, or, except as herein authorized, shall part with the possesion of any of the Trust Equipment, and shall fail or refuse either to cause such assignment or transfer or sublease to be canceled by agreement of all parties having any interest therein and recover possession of such Trust Equipment within 30 days after the Trustee shall have demanded in writing such cancelation and recovery of possession, or within said 30 days to deposit with the Trustee a sum in cash equal to the Value, as of the date of such unauthorized action, of such Trust Equipment (any sum so deposited to be returned to the Company upon the cancelation of such assignment, transfer or sublease and the recovery of possession by the Company of such Trust Equipment), or

(c) the Company shall, for more than 60 days after the Trustee shall have demanded in writing performance thereof, fail or refuse to comply with any other of the terms and covenants hereof on its part to be kept and performed, or to make provision satisfactory to the Trustee for such compliance, or

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

(e) any proceedings shall be commenced by or against the Company for any relief which includes, or might result in, any modification of the obligations of the Company hereunder, under the guaranty endorsed on the Trust Certificates and under any instrument made in connection with the purchase of the Trust Certificates by the initial holders thereof, or under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments or indebtedness, reorganizations, arrangements, compositions or extensions, and, unless such proceeding 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), all the obligations of the Company under this Agreement, under the guaranty endorsed on the Trust Certificates and under any instrument made in connection with the purchase of the Trust Certificates by the initial holders thereof, shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Company or for its property in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment, if

any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier,

then, in any such case (herein sometimes called an Event of Default), the Trustee in its discretion may, and upon the written request of the holders of a majority 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 thereafter (including any unpaid advance rental, but not including rentals required for the payment of dividends accruing after the date of such declaration) payable by the Company as set forth in Section 5.04 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, the Trustee in its discretion also may, and upon the written request of the holders of a majority 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 5.04 in respect of the principal of, or dividends or interest on, the Trust Certificates when and as the same shall have become due and payable hereunder, and such Default shall have continued for a period of ten days, the Trustee, in its own name and as trustee of an express trust, shall be entitled and empowered to institute any action or proceedings at law or in equity for

the collection of the rentals so due and unpaid, and may prosecute any such action or proceedings to judgment or final decree, and may enforce any such judgment or final decree against the Company or other obligor upon the Trust Certificates and collect in the manner provided by law out of the property of the Company or other obligor upon the Trust Certificates 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 any other obligor upon the Trust Certificates under the Bankruptcy Act or any other applicable law, or in case a receiver or trustee shall have been appointed for the property of the Company or such other obligor, or in case of any other judicial proceedings relative to the Company or such other obligor, or to the creditors or property of the Company or such other obligor, the Trustee, irrespective of whether the rental payments hereunder or the principal amount of the Trust Certificates shall then be due and payable as herein or therein expressed whether by declaration or otherwise and irrespective of whether the Trustee shall have made any demand or declaration pursuant to the provisions of this Section, 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 then or thereafter payable (including any unpaid advance rental, but not including rentals required for the payment of dividends accruing after the date of such declaration) and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for reasonable compensation to the Trustee, its agents, attorneys and counsel, and for reimbursement of all expenses and liabilities incurred, and all advances made, by the Trustee except as a result of its gross negligence or wilful misconduct) and of the holders

of the Trust Certificates allowed in such proceedings and to collect and receive any moneys or other property payable or deliverable on any such claims, and to distribute all amounts received with respect to the claims of the holders of the Trust Certificates and of the Trustee on their behalf; and any receiver, assignee or trustee in bankruptcy or reorganization is hereby authorized by each of the holders of the Trust Certificates to make payments to the Trustee, and, in the event that the Trustee shall consent to the making of payments directly to the holders of the Trust Certificates, to pay to the Trustee such amount as shall be sufficient to cover reasonable compensation to the Trustee, its agents, attorneys and counsel, and all other expenses and liabilities incurred, and all advances made, by the Trustee except as a result of its gross negligence or wilful misconduct.

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

SECTION 6.02. *Remedies.* In case of the happening and continuance of any Event of Default, the Trustee may by its agents enter upon the premises of the Company and any of

its Affiliates or sublessees (or other person having acquired the use of the Trust Equipment) where any of the Trust Equipment may be and take possession of all or any part of the Trust Equipment and withdraw the same from said premises, retaining all payments which up to that time may have been made on account of rental for the Trust Equipment and otherwise, and shall be entitled to collect, receive and retain all unpaid *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 with or without retaking possession thereof (but only after declaring due and payable the entire amount of rentals payable by the Company and the principal of all the then outstanding Trust Certificates, as provided in Section 6.01) may sell the same or any part thereof, free from any and all claims of the Company at law or in equity in one lot and as an entirety or in separate lots, at public or private sale, for cash or upon credit, in its discretion, and may proceed otherwise to enforce its rights and the rights of the holders of then outstanding Trust Certificates, all subject to any mandatory requirements of law applicable thereto. Upon any such sale, the Trustee itself may bid for the property offered for sale or any part thereof. Any such sale may be held or conducted at such place and at such time as the Trustee may specify, or as may be required by law, and without gathering at the place of sale the Trust Equipment to be sold, and in general in such manner as the Trustee may determine, but so that the Company may and shall have a reasonable opportunity to bid at any such sale. Upon such taking possession or withdrawal or lease or sale of the Trust Equipment, the Company shall cease to have any rights or remedies in respect of the Trust Equipment hereunder, but all such rights and remedies shall be deemed thenceforth to have

been waived and surrendered by the Company, and no payments theretofore made by the Company for the rent or use of the Trust Equipment or any of it shall give to the Company any legal or equitable interest or title in or to the Trust Equipment or any of it or any cause or right of action at law or in equity in respect of the Trust Equipment against the Trustee or the holders of interests hereunder. No such taking 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 dividends 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.

SECTION 6.03. *Application of Proceeds.* If the Trustee shall exercise any of the powers conferred upon it by Sections 6.01 and 6.02, 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 dividends 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 dividends then due, with interest on overdue dividends at the Penalty Rate, to the extent legally enforceable, and of

the principal of all the outstanding Trust Certificates, with interest thereon at the Penalty Rate, to the extent legally enforceable, from the last preceding dividend payment date, whether such Trust Certificates shall have then matured by their terms or not, all such payments to be in full if such proceeds shall be sufficient, and if not sufficient, then *pro rata* without preference between principal and dividends.

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

SECTION 6.04. *Waivers of Default.* 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 6.01, the holders of a majority in aggregate unpaid principal amount of the Trust Certificates at the time outstanding may on behalf of the holders of all the Trust Certificates waive any past Default and its consequences, except a Default in the payment of any instalment of rental then due and payable pursuant to Section 5.04 in respect of the principal of, or dividends or interest on, the Trust Certificates, 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 6.01, all arrears of rent (with interest at the Penalty Rate upon any overdue instalments, to the extent legally enforceable), the expenses and reasonable compensation of the Trustee, together with all expenses of the trust occasioned by the Company's Default, and all other sums which shall have become due and payable by the Company hereunder shall be paid by the Company before any sale or lease by the Trustee of any of the Trust Equipment, and every other Default shall be made good or secured to the satisfaction of the Trustee and the holders of the Trust Certificates, 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 aggregate unpaid principal amount of the Trust Certificates then outstanding according to their terms, shall by written notice to the Company waive the Default by reason of which there shall have been such declaration or declarations and the consequences of such Default, but no such waiver shall extend to or affect any subsequent Default or impair any right consequent thereon.

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

and waives notice of presentation, of demand and of any Default in the payment of the principal of and dividends on the Trust Certificates.

SECTION 6.06. *Company 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, forthwith and in the usual manner and at usual speed, cause such Trust Equipment to be drawn to such point or points 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 or premises approved by the Trustee until the Trustee shall have leased, sold or otherwise disposed of the same. 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 6.07. *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 the occurrence thereof, unless remedied or cured before the giving of such notice.

SECTION 6.08. *Control by Holders of Trust Certificates.* The holders of a majority in aggregate unpaid principal amount of the then outstanding Trust Certificates, by an instrument or instruments in writing executed and delivered to the Trustee, shall have the right to direct the time, method, and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred on the Trustee; *provided, however,* that

the Trustee shall have the right to decline to follow any such direction if the Trustee shall be advised by counsel that the action so directed may not lawfully be taken.

SECTION 6.09. *Limitations on Suits by Holders of Trust Certificates.* No holder of any Trust Certificate shall have any right by virtue or by availing of any provision of this Agreement to institute any action or proceeding at law or in equity or in bankruptcy or otherwise, upon or under or with respect to this Agreement, or for the appointment of a receiver or trustee, or for any other remedy hereunder, unless such holder previously shall have given to the Trustee written notice of a Default and of the continuance thereof, as herein provided, and unless also the holders of a majority in aggregate principal amount of the Trust Certificates then outstanding shall have made written request to the Trustee to institute such action or proceeding in its own name as trustee hereunder and shall have offered to the Trustee such reasonable indemnity as it may require against the costs, expenses and liabilities to be incurred therein or thereby, and the Trustee for 60 days after its receipt of such notice, request and offer of indemnity shall have failed to institute any such action or proceeding and no direction inconsistent with such written request shall have been given to the Trustee pursuant to Section 6.08; and no one or more holders of Trust Certificates shall have any right in any manner whatever to affect or prejudice the rights of any other holder of Trust Certificates, or to obtain or seek to obtain priority over any other such holder or to enforce any right under this Agreement, except in the manner herein provided and for the equal, ratable and common benefit of all holders of Trust Certificates. For the protection and enforcement of the provisions of this Section, each and every holder of a Trust Certificate and the Trustee shall be entitled to such relief as can be given either at law or in equity.

SECTION 6.10. *Unconditional Right of Holders of Trust Certificates to Sue for Principal and Dividends.* Notwithstanding any other provision in this Agreement, the right of any holder of any Trust Certificate to receive payment of the principal of and dividends on such Trust Certificate, on or after the respective due dates expressed in such Trust Certificate, or to institute suit for the enforcement of any such payment on or after such respective dates, shall not be impaired or affected without the consent of such holder, except no such suit shall be instituted if and to the extent that the institution or prosecution thereof or the entry of judgment therein would, under applicable law, result in the surrender, impairment, waiver or loss of the title reserved under this Agreement upon any property subject hereto.

SECTION 6.11. *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 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 shall be subject in all respects to any mandatory requirements of law at the time applicable thereto, to the extent such requirements may not be waived on the part of the Company.

## ARTICLE SEVEN

### ADDITIONAL COVENANTS AND AGREEMENTS BY THE COMPANY

SECTION 7.01. *Guaranty of Company.* The Company guarantees that the holder of each of the Trust Certificates shall receive the principal amount thereof, in such coin or

currency of the United States of America as, at the time of payment, shall be legal tender for the payment of public and private debts, when and as the same shall become due and payable, in accordance with the provisions thereof or of this Agreement (and, if not so paid, with interest thereon until paid at the Penalty Rate, to the extent legally enforceable), and shall receive dividends thereon in like money at the rate specified therein, at the times and place and otherwise as expressed in the Trust Certificates and this Agreement (and, if not so paid, with interest thereon until paid at the Penalty Rate, to the extent legally enforceable); and the Company agrees to endorse upon each of the Trust Certificates, at or before the issuance and delivery thereof by the Trustee, its guaranty of the prompt payment of the principal thereof and of the dividends thereon, in substantially the form herein set forth. Said guaranty so endorsed shall be signed in the name and on behalf of the Company by the manual or facsimile signature of its President, a Vice President or the Treasurer. In case any officer of the Company whose signature shall appear on said guaranty shall cease to be such officer before the Trust Certificates shall have been issued and delivered by the Trustee, or shall not have been acting in such capacity on the date of the Trust Certificates, such guaranty shall nevertheless be as effective and binding upon the Company as though the person who signed said guaranty had not ceased to be or had then been such officer.

SECTION 7.02. *Discharge of Liens.* The Company agrees that it will pay and discharge, or make adequate provision for the payment or discharge of, any debt, tax, charge, assessment, obligation or claim which if unpaid might become a lien or charge upon or against any of the Trust Equipment; but this provision shall not require the payment of any such debt, tax, charge, assessment, obliga-

tion or claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings; *provided, however,* that such contest will not materially endanger the rights or interests of the Trustee or of the holders of the Trust Certificates and the Company shall have furnished the Trustee with an Opinion of Counsel to such effect.

If the Company does not forthwith pay and discharge, or cause to be paid and discharged, or make adequate provision for the satisfaction or discharge of, any such debt, tax, charge, assessment, obligation or claim as required by this Section, the Trustee may, but shall not be obligated to, pay and discharge the same and any amounts so paid shall be secured by and under this Agreement until reimbursed by the Company.

SECTION 7.03. *Further Assurances.* The Company agrees 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 7.04. *Merger or Consolidation.* The Company agrees not to merge or consolidate with any other corporation unless the survivor of such merger or consolidation shall be a solvent corporation organized under the laws of the United States of America or a State thereof or the District of Columbia and such survivor (if not the Company) shall assume, by an instrument in form and substance satisfactory to the Trustee, all the obligations and liabilities of the Company hereunder and as guarantor of the Trust Certificates.

SECTION 7.05. *Recording.* The Company will, promptly after the execution and delivery of this Agreement (and prior to the delivery of any Trust Equipment to the Trustee

hereunder) and each supplement hereto, respectively, cause this Agreement and each such supplement to be duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act. The Company will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register and record any and all further instruments required by the law of any jurisdiction in which use of the Equipment is permitted by Section 5.09 hereof or reasonably requested by the Trustee for the purpose of proper protection of the title of the Trustee and the rights of the holders of the Trust Certificates and of fully carrying out and effectuating this Agreement and the intent hereof.

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

## ARTICLE EIGHT

### Concerning the Holders of Trust Certificates

Section 8.01. *Evidence of Action Taken by Holders of Trust Certificates.* Whenever in this Agreement it is provided that the holders of a specified percentage in aggregate unpaid principal amount of the Trust Certificates may take any action (including the making of any demand or request, the giving of any notice, consent or waiver or the taking of any other action), the fact that at the time

of taking any such action the holders of such specified percentage have joined therein may be evidenced by any instrument or any number of instruments of similar tenor executed by holders of Trust Certificates in person or by agent or proxy appointed in writing.

SECTION 8.02. *Proof of Execution of Instruments and of Holding of Trust Certificates.* The execution of any instrument by a holder of Trust Certificates or his agent or proxy may be proved by the certificate of any notary public or other officer of any jurisdiction within the United States of America authorized to take acknowledgments of deeds to be recorded in such jurisdiction that the person executing such instrument acknowledged to him the execution thereof, or by an affidavit of a witness to such execution sworn to before any such notary or other such officer.

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

SECTION 8.03. *Trust Certificates Owned by Company.* In determining whether the holders of the requisite principal amount of the Trust Certificates have concurred in any direction, request or consent under this Agreement, Trust Certificates which are owned by the Company or by any other obligor on the Trust Certificates or by an Affiliate of the Company or any such other obligor shall be disregarded, except that for the purpose of determining whether the Trustee shall be protected in relying on any such direction, request or consent, only Trust Certificates which the Trustee knows are so owned shall be disregarded.

SECTION 8.04. *Right of Revocation of Action Taken.* At any time prior to (but not after) the evidencing to the

Trustee, as provided in Section 8.01, of the taking of any action by the holders of the required percentage in aggregate unpaid principal amount of the Trust Certificates specified in this Agreement, any holder of a Trust Certificate may, by filing written notice with the Trustee at its Corporate Trust Office and upon proof of holding as provided in Section 8.02, 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 required percentage in aggregate unpaid principal amount of the Trust Certificates specified in this Agreement shall be conclusive and binding upon the Company, the Trustee and the holders of all the Trust Certificates.

SECTION 8.05. *Amendment or Waiver.* Any provision of this Agreement may be amended or waived with the written consent of the holders of not less than 66⅔% of the aggregate unpaid principal amount of the Trust Certificates then outstanding; *provided, however,* that without the consent of the holders of 100% of the aggregate unpaid principal amount of Trust Certificates then outstanding, no such amendment or waiver shall (1) reduce the amount of principal, change the amount or dates of payment of instalments of principal or reduce the rate or extend the time of payment of dividends with respect to the Trust Certificates without the consent of the holders of each Trust Certificate so affected, (2) reduce the amount of or extend the time of payment of any rentals payable under this Agreement or release or provide for the release of any of

the Trust Equipment or any other property or cash held by the Trustee in trust, otherwise than as expressly permitted by the present terms of this Agreement, or (3) reduce the percentage of the aggregate unpaid principal amount of Trust Certificates then outstanding, the holders of which are required to approve any amendment or to effect any waiver.

## ARTICLE NINE

### The Trustee

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

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

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

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

(1) the duties and obligations of the Trustee shall be determined solely by the express provisions of this 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 in good faith, unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts or that its action or inaction was contrary to the express provisions of this Agreement;

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

(d) the Trustee may rely and shall be protected in acting or refraining from acting upon any resolution,

certificate, statement, instrument, opinion, report, notice, request, consent, order, Trust Certificate, guaranty or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties;

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

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

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

SECTION 9.03. *Application of Rentals.* The Trustee agrees to apply the rentals received by it under Section 5.04(B) 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 5.04(B).

The Trustee shall not be required to undertake any act or duty in the way of insuring, taking care of or taking possession of the Trust Equipment or to undertake any other act or duty under this Agreement until fully indemnified by the Company or by one or more of the holders

of the Trust Certificates against all liability and expenses; and the Trustee shall not be responsible for the filing or recording or refiling or re-recording of this Agreement or of any supplement hereto or statement of new numbers.

SECTION 9.04. *Funds May be Held by Trustee; Investments.* Any funds at any time paid to or held by the Trustee hereunder until paid out by the Trustee as herein provided may be carried by the Trustee on deposit with itself, and the Trustee will allow interest upon any such moneys held by it in trust at the rate generally allowed by it upon deposits of a similar character.

At any time, and from time to time, if at the time no Event of Default shall have occurred and be continuing, the Trustee, on Request, shall invest and reinvest Deposited Cash held by it or cash deposited with it pursuant to Section 5.07 or Section 5.08 (hereinafter in this Section called Replacement Funds) in Investments, at such prices, not in excess of fair market value at the time of investment, including any premium and accrued interest, as are set forth in such Request, such Investments to be held by the Trustee in trust for the benefit of the holders of the Trust Certificates.

The Trustee shall, on Request, or the Trustee may, in the event funds are required for payment against delivery of Trust Equipment or for payment of the principal of or dividends on any Trust Certificate, sell such Investments, or any portion thereof, and restore to Deposited Cash or Replacement Funds, as the case may be, the proceeds of any such sale up to the amount paid for such Investments, including accrued interest, or apply such proceeds to the payment of said principal or dividends if and to the extent such proceeds are needed therefor.

The Trustee shall restore to Deposited Cash or Replacement Funds, as the case may be, out of rent received by it for

that purpose under the provisions of Section 5.04(B) (1), an amount equal to any expenses incurred in connection with any purchase or sale of Investments and also an amount equal to any loss of principal incident to the sale or redemption of any Investments for a sum less than the amount paid therefor, including accrued interest.

The Company, if not to the knowledge of the Trustee in Default, shall be entitled to receive any interest allowed as provided in the first paragraph of this Section and any interest (in excess of accrued interest paid from Deposited Cash at the time of purchase) or other profit which may be realized from any sale or redemption of Investments.

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

The Trustee may perform its powers and duties with respect to the delivery and acceptance of the Trust Equipment by or through such attorney, agents and servants as it shall appoint, and shall be answerable only for its own acts, negligence and wilful defaults and not for the default or misconduct of any attorney, agent or servant appointed by it in respect thereof with reasonable care.

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

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

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

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

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

(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 to the Company.

(c) If at any time the Trustee shall resign or be removed or otherwise become incapable of acting or, if at any time a vacancy shall occur in the office of the Trustee for any other cause, a successor trustee may be appointed by the holders of a majority 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 Trust Certificates in the manner provided above. Every successor trustee appointed pursuant to this Section shall be a national bank, or a bank or trust company incorporated under the laws of either the state of incorporation of the original Trustee or the State of New York, having its Corporate Trust Office in either the city and state wherein the original Trustee had such office or in the Borough of Manhattan in The City of New York, and having capital and surplus of not less than $50,000,000, if there be such an institution willing, qualified and able to accept the trust upon reasonable or customary terms.

(d) The Company shall give notice of each resignation, removal or incapacity of the then Trustee or of a vacancy occurring in the office of the Trustee for any other cause and of each appointment by the Company of a successor trustee pursuant to paragraph (c) of this Section by mailing written notice of such event by first-class mail, postage prepaid, to the holders of all outstanding Trust Certificates.

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

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

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

## ARTICLE TEN

### MISCELLANEOUS

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

SECTION 10.02. *No Recourse.* No recourse under this Agreement, or of the guaranty endorsed on any Trust Certificate, shall be had against any person, solely by reason of the fact that he is a stockholder, officer or director of the Company, by the enforcement of any assessment or by any legal or equitable proceeding, by virtue of any statute or otherwise; it being expressly agreed that this Agreement and said guaranty are solely corporate obligations, and that no personal liability whatever shall attach to or be incurred by any person, solely by reason of the fact that he is a stockholder, officer or director of the Company, under or by reason of any of the terms, agreements or conditions contained in this Agreement or in said guaranty, or implied therefrom, and that any and all such personal liability, either at common law or in equity, or by statute or constitution, is hereby expressly waived as a condition of and consideration for the execution of this Agreement and said guaranty.

SECTION 10.03. *Binding Upon Assigns.* Except as otherwise provided herein, the provisions of this Agreement

shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

SECTION 10.04. *Notices.* 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 the Company in Section 2.01 hereof, or such other address as may hereafter be furnished to the Trustee in writing by the Company and (b) in the case of the Trustee, the Corporate Trust Office, 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 10.05. *Effect of Headings; Date Executed; and Governing Law.*

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

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

(c) The provisions of this Agreement shall be governed by the laws of the state wherein the Company has its chief place of business and chief executive office as specified in the definition of "Company" in Section 2.01 hereof.

SCHEDULE I

DESCRIPTION OF TRUST EQUIPMENT*

| Quantity | A.A.R. Car Type Code | Initialled ACFX and Numbered |
|---|---|---|
| 55 | L151 | 775000-775054** |
| 13 | L751 | 44658-44670 |
| 46 | L353 | 49262-49307 |
| 21 | L753 | 49308-49328 |
| 4 | L554 | 57753-57756 |
| 16 | L254 | 57946-57961 |
| 6 | L554 | 57962-57967 |
| 12 | L254 | 57971-57982 |
| 20 | L454 | 57983-58002 |
| 47 | L254 | 58003-58049 |
| 5 | L654 | 58050-58054 |
| 87 | L254 | 58066-58152 |
| 96 | L254 | 58178-58273 |
| 20 | L154 | 58274-58293 |
| 4 | T105 | 77895-77898 |
| 6 | T105 | 78019-78024 |
| 10 | T104 | 78025-78034 |
| 5 | T105 | 78035-78039 |
| 25 | T104 | 78050-78074 |
| 5 | T103 | 78075-78079 |

*See footnote on page 3 of this Schedule I

**These 55 cars are initialled ICG rather than ACFX.

| Quantity | A.A.R. Car Type Code | Initialled ACFX and Numbered |
|---|---|---|
| 5 | T105 | 78085-78089 |
| 2 | T104 | 78105-78106 |
| 34 | T104 | 78117-78150 |
| 13 | T104 | 78152-78164 |
| 7 | T105 | 78165-78171 |
| 52 | T104 | 78172-78223 |
| 1 | T106 | 78224 |
| 25 | T105 | 78225-78249 |
| 35 | T104 | 78250-78284 |
| 12 | T103 | 78285-78296 |
| 16 | T105 | 78297-78312 |
| 17 | T106 | 78313-78329 |
| 7 | T104 | 78330-78336 |
| 30 | T107 | 78340-78369 |
| 10 | T105 | 78370-78379 |
| 39 | T564 | 86331-86369 |
| 10 | L254 | 96878-96887 |
| 35 | L254 | 97059-97093 |
| 50 | L254 | 97177-97226 |
| 115 | L254 | 97235-97349 |

| Quantity | A.A.R. Car Type Code | Initialled ACFX and Numbered |
|---|---|---|
| 1 | L654 | 97353 |
| 10 | L254 | 97354-97363 |
| 2 | L254 | 97366-97367 |
| 5 | L754 | 97368-97372 |
| 124 | L254 | 97373-97496 |
| 2 | L754 | 97506-97507 |
| 100 | L254 | 97508-97607 |
| 1 | L654 | 97608 |
| 27 | L254 | 97709-97735 |
| 10 | L654 | 97736-97745 |
| 40 | L254 | 97746-97785 |

RECAPITULATION

| | |
|---|---|
| Total Covered Hopper Cars | 980 |
| Total Tank Cars | 360 |
| Total Number of Cars | 1,340 |

* In the event that the principal amount of Trust Certificates sold under this Agreement is more or less than $37,500,000, the Company and the Trustee shall enter into a supplement to this Agreement adding to or deleting from Schedule I units of Equipment, but in no event shall the aggregate final Cost of Equipment described in Schedule I, or the fair value thereof, whichever is less, as provided in the last paragraph of Section 4.04, be less than 125% of the aggregate principal amount of Trust Certificates.