

F-140A021

No.  
Date MAY 20 1981  
Fee \$ 60.00

CC Washington, D. C.

RECORDATION NO. 12783-B  
MAY 20 1981 -9 25 AM  
INTERSTATE COMMERCE COMMISSION

# RAILEASE

Inc  
Business Center Building  
P.O. Box 1518  
Bellevue, Washington 98009  
Telephone (206)455-7400

RECORDATION NO. 12783-C  
MAY 20 1981 -9 25 AM  
INTERSTATE COMMERCE COMMISSION

May 20, 1981

RECORDATION NO. 12783-D  
MAY 20 1981 -9 25 AM  
INTERSTATE COMMERCE COMMISSION

Secretary  
Interstate Commerce Commission  
Washington, D.C. 20433

MAY 20 1981 -9 25 AM  
INTERSTATE COMMERCE COMMISSION

Re: RAILEASE Inc Equipment Trust  
1981 Series A

Madam:

In accordance with the provisions of 49 U.S.C. § 11303 and Rules and Regulations of the Interstate Commerce Commission ("ICC") thereunder, there are submitted herewith for filing and recordation an Equipment Trust Agreement, an Assignment and a Bill of Sale, each relating to railroad cars used or intended for use in connection with interstate commerce, as follows:

1. Four (4) executed counterparts of an Equipment Trust Agreement dated as of January 15, 1981, between The Connecticut Bank and Trust Company, as Trustee, and RAILEASE Inc, a Washington corporation;

2. Seven (7) executed counterparts of an Assignment dated as of January 15, 1981, between RAILEASE Inc (Assignor) and The Connecticut Bank and Trust Company, as Trustee (Assignee) which assigns Assignor's interest as lessor under an Equipment Lease dated as of October 31, 1980 between Assignor and Richard B. Ogilive, Trustee of the Property of Chicago Milwaukee, St. Paul and Pacific Railroad Company, Debtor, as Lessee (Lessee); and

3. Four (4) copies of a Bill of Sale dated as of May 20, 1981, from RAILEASE Inc to The Connecticut Bank and Trust Company, as Trustee.

The address of RAILEASE Inc is 777 106th Avenue, N.E., Bellevue, Washington 98004, the address of The Connecticut Bank and Trust Company is One Constitution Plaza, Hartford, Connecticut 06115 and the address of Lessee is 516 West Jackson Boulevard, 746 Union Station Building, Chicago, Illinois 60606, Attention: Vice President-Finance.

*Counterpart - Anne Sutton*

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The equipment covered by the Equipment Trust Agreement, the Assignment and Bill of Sale is described in Exhibit A hereto. The Equipment Lease assigned pursuant to the Assignment is described in Exhibit B hereto. The Assignment is being delivered in connection with the Equipment Trust Agreement and also in connection with the Equipment Lease which was filed with the ICC on January 19, 1981 at 1:35 P.M. and assigned recordation number 12783.

Enclosed is a check to cover the recordation fee.

You are hereby authorized to deliver three executed counterparts of the Equipment Trust Agreement, six executed counterparts of the Assignment and three copies of the Bill of Sale, each with filing data noted thereon, following recordation, to the representative of Messrs. Dewey, Ballantine, Bushby, Palmer & Wood, who is delivering this letter and said enclosures to you.

Very truly yours,

RAILEASE Inc.

By



Authorized Representative

EXHIBIT A

Description of Trust Equipment Subject  
to Equipment Trust Agreement

<u>Quantity</u>	<u>Specification</u>	<u>Description</u>	<u>AAR Mechinal Designation</u>	<u>Car Numbers (all inclusive)</u>
500	PACCAR Inc PC-723, as amended	52'6" 100 Ton general purpose gondola car	GB	MILW 81200 through 81699

Description of Trust Equipment Subject  
to Bill of Sale

<u>Quantity</u>	<u>Specification</u>	<u>Description</u>	<u>AAR Mechanical Designation</u>	<u>Car Numbers (all inclusive)</u>
411	PACCAR Inc PC-723, as amended	52'6" 100 Ton general purpose gondola car	GB	MILW 81200 through 81597, 81600-81605 and 81607-81613

EXHIBIT B

Description of Lease Subject  
to the Assignment

<u>Lease/Lessee</u>	<u>No. of Units</u>	<u>Road Numbers (incl.)</u>	<u>Unit Description</u>	<u>AAR Mechanical Designation</u>
Equipment Lease dated 10/31/80 between RAILEASE Inc, lessor, and Richard B. Ogilvie, trustee of the property of Chicago, Milwaukee, St. Paul, & Pacific RR Co., debtor, lessee (ICC recordation No. 12783 (1/19/91, 1:35 pm), as amended	500	MILW 81200- MILW 81699	52/6" general purpose gondola cars	GB

RECORDATION NO. 12783-10  
FILED 1425

MAY 20 1981 -9 35 AM

INTERSTATE COMMERCE COMMISSION

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RAILEASE INC  
EQUIPMENT TRUST  
1981 Series A

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EQUIPMENT TRUST AGREEMENT

Dated as of January 15, 1981

By and Between

THE CONNECTICUT BANK AND TRUST COMPANY,

Trustee

and

RAILEASE INC

---

Not exceeding \$15,540,000  
14.50% Equipment Trust Certificates  
Due May 1, 1997  
(1981 Series A)

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EQUIPMENT TRUST AGREEMENT

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EQUIPMENT TRUST AGREEMENT, dated as of January 15, 1981 (hereinafter called "this Agreement"), by and between The Connecticut Bank and Trust Company, a Connecticut banking corporation, as Trustee (hereinafter called the "Trustee"), and RAILEASE Inc, a Washington corporation (hereinafter called the "Company").

WHEREAS, the Company has agreed to cause to be sold, transferred and delivered to the Trustee the railroad equipment described 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 all subject to the Existing Lease (as defined in Section 1.01) between the Company and the lessee named therein, which Existing Lease is to be assigned to the Trustee pursuant to an Assignment (as defined in Section 1.01) until title is transferred under the provisions hereof; and

WHEREAS, RAILEASE Inc 14.50% Equipment Trust Certificates due May 1, 1997 (1981 Series A) (hereinafter called the "Trust Certificates") are to be issued and sold in an aggregate principal amount not exceeding \$15,540,000, in accordance with Section 2.01, and the aggregate proceeds (excluding premium and accrued interest, if any) of such sale which shall equal the aggregate principal amount of the Trust Certificates so issued and sold, together with such other cash, if any, as may be required to be deposited by the Company as hereinafter provided, shall constitute a fund, to be known as the RAILEASE Inc EQUIPMENT TRUST, 1981 Series A, such fund to be applied by the Trustee from time to time in payment of the Cost of the Trust Equipment (as defined in Section 1.01), the remainder of the Cost thereof, if any, to be paid out of advance rentals to be paid by the Company as provided herein; and

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

[FORM OF TRUST CERTIFICATE]

\$ \_\_\_\_\_

No. \_\_\_\_\_

RAILEASE Inc

14.50% Equipment Trust Certificate Due May 1, 1997  
(1981 Series A)

Total Authorized Issue Not Exceeding \$15,540,000

The Connecticut Bank and Trust Company, Trustee

The Connecticut Bank and Trust Company, Trustee (herein called the Trustee), under an Equipment Trust Agreement (hereinafter called the Agreement) dated as of January 15, 1981, by and between the Trustee and RAILEASE Inc, a Washington corporation (herein called the Company), hereby certifies that \_\_\_\_\_ or registered assigns is entitled to an interest of \_\_\_\_\_ Dollars in RAILEASE Inc Equipment Trust, 1981 Series A, payable May 1, 1997, except as otherwise stated in Section 2.02 of the Agreement, upon surrender of this Certificate to the Trustee at its Corporate Trust Office (as defined in the Agreement) in the City of Hartford, Connecticut, and to interest on the amount of unpaid principal, payable on February 1, May 1, August 1 and November 1 in each year (herein called Interest Payment Dates), at the rate of 14.50% per annum from the Original Issue Date (as defined in the Agreement) or such later date to which interest has been paid, until all of the unpaid principal amount represented by this Certificate shall have become due, with interest on any overdue principal and interest, to the extent legally enforceable, at the rate of 15.50% per annum. The interest so payable on any Interest Payment Date will, subject to certain exceptions provided in Section 2.02 of the Agreement, be paid to the person in whose name this Certificate or one or more Predecessor Certificates (as defined in the Agreement) is registered at the close of business on the January 15, April 15, July 15 or October 15, as the case may be, next preceding such Interest Payment Date. Payment of the principal of and interest on this Certificate will, subject to Section 2.02 of the Agreement, be made at said office of the Trustee 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. Interest shall be computed hereunder on the basis of a 360-day year of twelve consecutive 30-day months.

This Certificate is one of an authorized issue of Trust Certificates in an aggregate principal amount not exceeding \$15,540,000, all maturing on May 1, 1997, and issued or to be issued under the Agreement, pursuant to which certain railroad equipment leased to the Company (or cash or obligations defined in the Agreement as "Investment Securities" in lieu thereof, as provided in the Agreement) is held by the Trustee in trust for the equal and ratable benefit of the holders of the Trust Certificates issued thereunder. Reference is made to the Agreement and to the RAILEASE Agreement referred to therein (copies of which are on file with the Trustee at its said office) for a more complete statement of the terms and provisions thereof, to all of which the holder hereof, by accepting this Certificate, assents.

As a mandatory sinking fund for the Trust Certificates, the Agreement provides for the payment by the Company to the Trustee, on or before May 1 in each year, commencing May 1, 1985, and continuing to and including May 1, 1996, of additional rental in an amount equal to 7.6923% of the total aggregate principal amount of Trust Certificates outstanding on April 30, 1985, except as provided otherwise herein and in Section 3.03(3) of the Agreement. In addition, on May 1, 1985 and on each sinking fund payment date thereafter, the Company may, at its option, redeem Trust Certificates, without premium, in an amount not exceeding the sinking fund payment then required to be paid; such option being non-cumulative and the aggregate principal amount of the Trust Certificates redeemable in connection with the exercise of such option on all such dates being limited to an amount not exceeding 15% of the aggregate principal amount of the Trust Certificates outstanding on April 30, 1985.

As more fully provided in the Agreement, upon the economic obsolescence, loss, condemnation, theft, destruction, wearing out, or irreparable damage to any units of the Trust Equipment (as defined in the Agreement) the Company may, among other things, at its option, pay additional rental to redeem Trust Certificates in part, without premium.

As more fully provided in Section 3.01(f) of the Agreement, under the circumstances therein set forth, at the option of the Company timely exercised, and payment by the Company of additional rental for the purpose, the Trust Certificates are subject to redemption in whole or in part without premium.

The amount of any optional redemption described in the foregoing three paragraphs which is made subsequent to April 30, 1985 shall be applied proportionately to reduce each remaining mandatory sinking fund payment and payment at maturity.

As more fully provided in Sections 3.01(d) and (e) of the Agreement, in the event that the circumstances therein referred to shall have occurred, the Trustee, at the option of the Company, shall, on August 1, 1981, apply an amount not exceeding the Maximum Adjustment Amount (as defined in the Agreement) consisting of all or any part of proceeds of the sale of Trust Certificates then remaining or rentals paid to the Trustee by the Company pursuant to Section 5.04(B)(8), as the case may be, to the redemption of Trust Certificates without premium.

The Trust Certificates are issuable as fully registered Trust Certificates in denominations of at least \$250,000 and any multiple of \$1,000 greater than \$250,000. The several denominations of Trust Certificates are interchangeable upon presentation thereof for that purpose at the Corporate Trust Office of the Trustee, but only in the manner, subject to the limitations and upon payment of the charges provided in the Agreement.

As provided in Section 2.05 of the Agreement, this Certificate is transferable (i) by endorsement or assignment, in the case of any transfer from the Purchaser to any Affiliate of the Purchaser or from any such Affiliate to the Purchaser (hereinafter referred to as an "Affiliate Transfer"), upon delivery of this Certificate to or on behalf of the transferee, and it is not necessary to surrender this Certificate to the Trustee in connection with any such transfer hereof, or (ii) by the registered holder hereof in person or by duly authorized attorney on the books of the Trustee upon surrender to the Trustee at its Corporate Trust Office of this Certificate accompanied by a written instrument of transfer, duly executed by the registered holder in person or by such attorney, in form satisfactory to the Trustee, and thereupon a new Trust Certificate or Certificates in authorized denominations for the aggregate unpaid principal amount will be issued to the transferee in exchange herefor and, if less than the entire principal amount hereof is transferred, a Trust Certificate for the remaining principal amount will be issued to the transferor. Prior to due presentment of this Certificate for registration of transfer, the Trustee and the Company, subject to the requirement of Section 2.07 of the Agreement that any transfer of this Certificate be made only in accordance with the Securities Act of 1933, as amended, and the General Rules and Regulations promulgated thereunder, may deem and treat the person in whose name this

Certificate is registered as the absolute owner hereof for the purpose of receiving payment of principal and interest and for all other purposes and shall not be affected by any notice to the contrary.

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

This Certificate is entitled to the benefits of the RAILEASE Agreement and the Guaranty of the Company endorsed hereon.

This Certificate shall not be valid or become obligatory for any purpose until it has been executed by the Trustee in the manner provided in the Agreement.

This Certificate constitutes a promise to pay of the undersigned as Trustee (and not in its individual capacity).

IN WITNESS WHEREOF, the Trustee has caused this Certificate to be signed by one of its authorized officers, by his signature or a facsimile thereof, and the corporate seal of the Trustee or a facsimile thereof to be hereto affixed or hereon imprinted and to be attested by one of its authorized officers, by his signature or a facsimile thereof.

Dated:

THE CONNECTICUT BANK AND TRUST  
COMPANY, Trustee

By \_\_\_\_\_  
Authorized Officer

Attest:

\_\_\_\_\_  
Authorized Officer

[FORM OF GUARANTY FOR TRUST CERTIFICATES]

For value received, RAILEASE Inc (the Company) for itself and its successors and assigns hereby unconditionally and irrevocably guarantees to each holder of the within Certificate the due and punctual payment of the principal of said Certificate, and of the interest thereon specified in said Certificate, with interest on any overdue principal and interest, to the extent legally enforceable, at the rate of 15.5% per annum, whether at maturity, upon mandatory redemption, by declaration of acceleration or otherwise, all in accordance with the terms of said Certificate and the Equipment Trust Agreement referred to therein.

All payments to be made by or on behalf of the Company under this Guaranty shall be made 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, in the manner and as provided in this Certificate.

No compromise, alteration, amendment, modification, extension, renewal, release, waiver or other change of, or delay or omission or failure to act in respect of, any of the terms, covenants or conditions of this Certificate, the Agreement or any other document referred to therein shall in any way alter or affect any of the obligations of the Company under this Guaranty.

This Guaranty is (i) an absolute, present and continuing guaranty of payment and not of collectibility and is in no way conditioned or contingent upon any attempt to collect from the Trustee or to realize upon any security provided therefor, or upon any other condition or contingency and (ii) an independent obligation of the Company and is not in any way conditioned or contingent upon the validity or enforceability of the rental obligations pursuant to Section 5.04 of the Agreement.

The holder of this Certificate shall have the right to protect and enforce its rights under this Guaranty by suit in equity or action at law or by other appropriate proceedings, whether for the specific performance of any guaranties, covenants or agreements contained in this Guaranty or in aid of

the exercise of any power granted in this Guaranty or in the Agreement, or to take any action authorized or permitted under applicable law, and shall be entitled to require and enforce the performance of all acts and things required to be performed under this Guaranty or under the Agreement by the Company with respect to this Certificate. No remedy conferred on any such holder under this Guaranty or otherwise is intended to be exclusive of any other remedy of any such holder against the Company, and each and every such remedy shall be cumulative and shall be in addition to any other remedy given in this Guaranty or under the Agreement or now or hereafter existing at law or in equity or by statute or otherwise.

This Guaranty shall be deemed to be a contract made under the laws of the State of New York for all purposes, including all matters of construction, validity and performance.

IN WITNESS WHEREOF, the Company has caused this Guaranty on this Certificate to be duly executed by an officer thereunto duly authorized.

RAILEASE, Inc

By \_\_\_\_\_

WHEREAS, it is desired to secure to the holders of the Trust Certificates the payment of the principal thereof at maturity, whether by declaration or otherwise, as hereinafter more particularly provided, with interest to said date of maturity, as hereinafter provided, payable quarter-annually on February 1, May 1, August 1 and November 1 in each year, and to evidence the rights of the holders of the Trust Certificates in substantially the form hereinbefore set forth;

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

## ARTICLE ONE

### Definitions

Section 1.01. Definitions. The following terms (except as otherwise expressly provided or unless the context otherwise requires) for all purposes of this Agreement shall have the respective meanings hereinafter specified:

Actual Fair Value of any unit of Trust Equipment shall be the value which would obtain in an arm's length transaction between an informed and willing buyer-user (other than a lessee currently in possession or a used-equipment dealer) and an informed and willing seller under no compulsion to sell (and in such determination, costs of removal from the location of current use shall not be a deduction from such value).

Affiliate of any corporation shall mean any corporation which, directly or indirectly, controls or is controlled by, or is under direct or indirect 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.

Assignment shall mean the assignment by the Company to the Trustee of the Existing Lease and of other leases permitted by Section 5.10, substantially in the form annexed hereto as Exhibit A.

Business Day shall mean a day which in Hartford, Connecticut (or, if the Corporate Trust Office is not located in Hartford, Connecticut, then in the place where such Office is located) or New York, New York is not a day on which banking institutions are authorized or obligated by law or executive order to close.

Company shall mean RAILEASE Inc, a Washington corporation and any successor or successors to it complying with the provisions of Section 5.10 of this Agreement and Section 2.02 of the RAILEASE Agreement.

Corporate Trust Office shall mean the office of the Trustee at which the corporate trust business of the Trustee shall, at the time in question, be administered, which office is, at the date of execution of this Agreement, located at One Constitution Plaza, Hartford, Connecticut.

Cost, when used with respect to Equipment, shall mean the actual cost thereof to the Company (including direct cost of labor and material, reasonable overhead and reasonable manufacturing profit to the manufacturer if purchased from an Affiliate of the Company, and freight costs, delivery charges and taxes), but in no event shall such actual cost (exclusive of freight, delivery charges and taxes) exceed the cost of comparable Equipment which would obtain in an arm's-length transaction determined as provided in the definition in this Section 1.01 for "Actual Fair Value."

Deposited Cash shall mean the aggregate of (a) cash on deposit with or to the credit of the Trustee as provided in the first paragraph of Section 2.01 and, when required or indicated by the context, any Investment Securities purchased by the use of such cash pursuant to the provisions of Section 8.05, (b) any sums restored to Deposited Cash from rentals pursuant to Section 5.04(B)(1)(b) and on deposit with or to the credit of the Trustee and (c) sums deposited with the Trustee pursuant to Section 5.06, Section 5.08 and Section 5.09.

Engineer shall mean an individual who demonstrates his qualifications as an engineer, appraiser or other person knowledgeable as to the condition and value of railroad equipment to the satisfaction of the Trustee, or a co-partnership or a corporation engaged in an engineering or capital equipment appraisal business, who or which may be employed by the Company or any subsidiary or Affiliate of the Company or the Manager.

Engineer's Certificate shall mean a certificate signed by an Engineer.

Equipment shall mean standard-gauge railroad equipment of the type specified in Schedule A hereto, or other railroad equipment (other than locomotive, caboose, passenger or work equipment) the useful life and (in the case of equipment described in the second paragraph of Section 4.01) aggregate cost of which are comparable to those of equipment described in Schedule A hereto, in each case first put into use on or after January 1, 1981, but shall not include any special devices, racks or assemblies, at any time attached or affixed to any such equipment, the cost or purchase price of which is not included in the Cost

of such equipment and the title to which is in a person, firm or corporation other than the Company or the Trustee.

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

Existing Lease shall mean the lease referred to in Schedule B hereto.

The word holder, when used with respect to Trust Certificates, shall mean the person in whose name Trust Certificates are registered and shall include the plural as well as the singular number.

Interest Payment Dates shall mean February 1, May 1, August 1 and November 1 in each year.

Investment Securities shall mean (a) 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 is pledged to provide for the payment of interest and principal, (b) commercial paper of any company incorporated and doing business under the laws of the United States of America or one of the States thereof rated in the highest category by Standard & Poor's Corporation or Moody's Investors Service, Inc. or any similar or successor rating agency, (c) certificates of deposit of or time deposits in, or banker's acceptances of, banks or trust companies (including the Trustee) incorporated and doing business under the laws of the United States of America or one of the States thereof having capital, surplus and undivided profits aggregating at least \$200,000,000, provided that such capital, surplus and undivided profits requirement shall not apply to the Trustee, and (d) repurchase agreements with respect to the obligations set forth in clause (a), (b) or (c) hereof with a member firm of the New York Stock Exchange, Inc. which has total capital and subordinated liabilities of at least \$50,000,000 and a net capital of at least \$15,000,000 or with any bank or trust company organized under the laws of the United States or any state thereof and having capital, surplus and undivided profits aggregating at least \$200,000,000, provided that such capital, surplus and undivided profits requirement shall not apply to the Trustee.

Manager shall mean BRAE or any wholly owned subsidiary of BRAE or any other reputable and experienced railroad car manager designated by the Company and approved by the Trustee and the holders of not less than 66-2/3% in aggregate principal amount of the outstanding Trust Certificates (which approval of the Trustee and such holders shall not be unreasonably withheld).

Officer's Certificate shall mean a certificate signed by the Chairman of the Board of Directors or the President or any duly authorized delegate of either thereof, or any Vice President or any Assistant Vice President or the Treasurer or the Secretary of the Company.

Opinion of Counsel shall mean an opinion in writing signed by legal counsel who shall be satisfactory to the Trustee and to the holders of a majority in aggregate principal amount of Trust Certificates outstanding and who may be an employee of or of counsel to the Company or the Manager or any Affiliate of either thereof.

Original Issue Date of any particular Trust Certificate shall mean the earlier of (a) the date of such Trust Certificate or (b) the date of the first Predecessor Certificate issued to evidence all or a portion of the same interest in the trust created hereunder as that evidenced by such particular Trust Certificate; provided that, if Predecessor Certificates of such particular Trust Certificate have different original issue dates, the portion of such particular Trust Certificate attributable to such Predecessor Certificates shall be deemed to have such different original issue dates.

Outstanding when used with reference to Trust Certificates shall mean, as of any particular time, all Trust Certificates authenticated and delivered by the Trustee under this Agreement except

(a) Trust Certificates then or theretofore cancelled by the Trustee or delivered to the Trustee for cancellation;

(b) Trust Certificates for the payment or redemption of which monies in the necessary amount shall have been deposited in trust with the Trustee; provided that, if such Trust certificates are to be redeemed prior to the maturity thereof, notice of such redemption shall have been given as provided in Article Three or provision satisfactory to the Trustee shall have been made for giving such notice; and

(c) Trust Certificates in lieu of or in substitution for which other Trust Certificates shall have been executed and delivered pursuant to the terms of Section 2.06.

Predecessor Certificates of any particular Trust Certificate shall mean every previous Trust Certificate evidencing all or a portion of the same interest in the trust

created hereunder as that evidenced by such particular Trust Certificate; and, for the purposes of this definition, any Trust Certificate executed and delivered under Section 2.06 in lieu of a lost, destroyed or stolen Trust Certificate shall be deemed to evidence the same interest in the trust created hereunder as the lost, destroyed or stolen Trust Certificate.

Purchase Agreement shall mean the Agreement dated as of January 15, 1981 between the Company and the Purchaser (or its nominee).

Purchaser shall mean Teachers Insurance and Annuity Association of America, a New York corporation, or one of its wholly-owned subsidiaries to which its rights and obligations under the Purchase Agreement may be assigned.

Replacement Funds shall have the meaning specified in Section 8.05.

Request shall mean a written request for the action therein specified, delivered to the Trustee or the Purchaser, as the case may be, dated not more than five Business Days prior to the date of delivery to the Trustee or the Purchaser, as the case may be, and signed on behalf of the Company by any Responsible Officer.

Responsible Officer shall mean with respect to the Trustee, the chairman of the board of directors, the president, every vice president, the cashier, and every other officer or assistant officer of the Trustee other than those specifically mentioned above assigned to its corporate trust department or, to whom any corporate trust matter is referred because of his knowledge of, or familiarity with, the particular subject, or, with respect to the Company, the chairman of the board of directors or the president or a duly authorized delegate of either thereof, a senior vice president, a vice president or the treasurer.

Total Authorized Issue shall mean with respect to Trust Certificates an aggregate principal amount thereof, not exceeding \$15,540,000. The aggregate principal amount of Trust Certificates issued hereunder shall in no event exceed the Total Authorized Issue. In the event that the Cost of the Trust Equipment shall be less than \$19,425,000, the issue of Trust Certificates may be adjusted downward by the Company by an aggregate amount not exceeding \$1,480,000, it being understood that in no event shall the Total Authorized Issue or the aggregate principal amount of Trust Certificates in fact issued exceed a sum equal to 80% of the Cost of all Equipment which shall become Trust Equipment plus Deposited Cash held by the Trustee.

Trust Certificates shall mean RAILEASE Inc 14.50% Equipment Trust Certificates (1981 Series A) issued hereunder.

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

Trustee shall mean The Connecticut Bank and Trust Company and, subject to the provisions of Article Eight, any successor as trustee hereunder.

Unprotected Unit shall mean a unit of Trust Equipment located in any jurisdiction outside of the United States with respect to which the Trustee has not received an Opinion of Counsel to the effect either (i) that all recordings, registrations or filings necessary or desirable in such jurisdiction to protect the rights of the Trustee under this Agreement in and to each unit of the Trust Equipment located in such jurisdiction against any and all subsequent purchasers or mortgagees from or under the Company or from creditors of the Company have been made or (ii) that no such recording, registration or filing is necessary or desirable in such jurisdiction to protect such rights of the Trustee against such purchasers, mortgagees or creditors.

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

ARTICLE TWO

TRUST CERTIFICATES AND ISSUANCE THEREOF

SECTION 2.01. Issuance of Trust Certificates.

After the recording or filing of this Agreement, and 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, 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 hereunder shall not exceed the Total Authorized Issue thereof except as provided in Sections 2.05, 2.06 and 3.02.

SECTION 2.02. Interests Represented by Trust Certificates; Maturity; Interest; Denominations; Home Office Payment.

(a) Each of the Trust Certificates shall represent an interest in the amount therein specified in the trust created hereunder.

(b) Subject to Section 2.05(f), each of the Trust Certificates shall be dated the date of its issuance by the Trustee. The Trust Certificates shall be payable and bear interest as specified in the form thereof hereinbefore set forth and shall mature on the date therein specified.

(c) Trust Certificates shall be in denominations of at least \$250,000 and any multiple of \$1,000 greater than \$250,000 and shall be numbered consecutively with appropriate letter prefixes.

(d) The principal of and interest on the Trust Certificates shall be payable at the Corporate Trust Office in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. Notwithstanding the provisions of the preceding sentence of this paragraph, (i) in the case of payments of principal and interest to be made on a Trust Certificate not then to be paid in full, upon request and deposit of an agreement of the holder of such Trust Certificate (the

financial condition and creditworthiness of such holder to be satisfactory to the Trustee) obligating such holder, prior to any transfer or other disposition thereof, to surrender the same to the Trustee for notation thereon of the instalments of principal amount represented thereby theretofore paid in whole or in part, and (ii), in the case of payments of principal and interest on the Trust Certificates then to be paid in full, on the date each such payment is due, the Trustee will mail its check, or on request of the holder the Trustee will wire by 12:00 Noon New York time, funds immediately available on such date, to the account of such holder at such bank as it may designate by notice in writing to the Trustee, in the case of wire transfers, and in all other cases, to such holder at his address shown on the registry books maintained by the Trustee or at such other address as may be directed in writing by such holder (and the Company agrees to make its rental payments at such times and in such funds as will enable the Trustee to comply herewith); provided, however, that the deposit of an agreement pursuant to this paragraph shall not be required of (i) the Purchaser or an Affiliate thereof to which the Purchaser's rights and obligations under the Purchase Agreement shall have been assigned, whose rights as to method of payment shall be as set forth in the Purchase Agreement or (ii) any other holder who is a recognized institutional investor holding at least \$1,000,000 in unpaid principal amount of the Trust Certificates or 20% of the then aggregate unpaid principal amount of all Trust Certificates, whichever is greater, and the Trustee shall without the deposit of such an agreement make payments of principal and interest to the Purchaser or to any other such holder at the address or specified bank account of the Purchaser or such holder supplied to the Trustee by the Company or by the Purchaser or such holder.

SECTION 2.03. Forms of Trust Certificate and Guaranty. The Trust Certificates and the Guaranty to be endorsed thereon by the Company as hereinafter in Section 7.01 provided shall be in substantially the respective forms thereof hereinbefore set forth.

SECTION 2.04. Execution by Trustee. The Trust Certificates shall be signed in the name and on behalf of the Trustee by the manual or facsimile signature of one of its authorized officers. The Trustee's corporate seal or a facsimile thereof shall be affixed or imprinted thereon and attested by the manual or facsimile signature of one of its authorized officers. In case any officer or signer of the Trustee whose signature, whether facsimile or not, shall appear on any of the Trust Certificates shall cease

to be such officer or signer 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 or signer of the Trustee.

SECTION 2.05. Characteristics of Trust Certificates.

(a) The Trust Certificates shall be registered, as to both principal and interest, in the name of the holder and, subject to Section 2.07, shall be entitled to registration of transfer upon presentation and surrender thereof for registration of transfer at the Corporate Trust Office accompanied by appropriate instruments of assignment and transfer, duly executed by the registered holder of the surrendered Trust Certificate or Certificates or by a duly authorized attorney, in form satisfactory to the Trustee, and, subject to Section 2.07, shall be, in the case of an Affiliate Transfer, transferable by endorsement or assignment, upon delivery of such Trust Certificate to or on behalf of the transferee, and it is not necessary to surrender such Trust Certificate to the Trustee in connection with any such Affiliate Transfer thereof.

(b) The several denominations of Trust Certificates bearing the same maturity shall be interchangeable in authorized denominations at the Corporate Trust Office.

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

(d) The Trustee shall cause to be kept at the Corporate Trust Office books for the registration and registration of transfer of the Trust Certificates.

(e) No service charge shall be made to the transferor or transferee for any registration of transfer or exchange of Trust Certificates, but for any registration of transfer or exchange the Trustee shall require the payment of a sum sufficient to reimburse it for any governmental charge connected therewith.

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

(g) The Trustee shall not be required (1) to issue, register the transfer of or exchange any Trust Certificate during a period beginning at the opening of business fifteen days before any selection of Trust Certificates to be redeemed and ending at the close of business on the day of the mailing of relevant notice of redemption, or (2) to register the transfer of or exchange any Trust Certificate called or being called for redemption in whole or in part except as provided in Section 3.02.

SECTION 2.06. Replacement of Lost Trust Certificates. In case any Trust Certificate shall become mutilated or defaced or be lost, destroyed or stolen, then on the terms herein set forth, and not otherwise, the Trustee shall execute, issue and deliver a new Trust Certificate of like tenor and date, and bearing such identifying number or designation as the Trustee may determine, in exchange and substitution for, and upon cancellation of, the mutilated or defaced Trust Certificate, or in lieu of and in substitution for the same if lost, destroyed or stolen. The Company shall execute its Guaranty on any Trust Certificate so delivered. The applicant for a new Trust Certificate shall furnish to the Trustee and 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 (except if the applicant is the Purchaser or an Affiliate thereof or is a recognized institutional investor having net assets of at least \$50,000,000) also shall furnish such security or indemnity as may be required by the Trustee and the Company, and shall pay all expenses and charges of such substitution or exchange. If the holder of such Trust Certificate is the Purchaser or an Affiliate thereof or is a recognized institutional investor having net assets of at least \$50,000,000, the written undertaking

of such party delivered to the Trustee shall be sufficient security and indemnity unless, in the judgment of the Trustee, the financial position of such party has suffered a material adverse change. All Trust Certificates are held and owned upon the express condition that, to the extent permitted by law, 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.

SECTION 2.07. Restrictions on Transfer of Trust Certificates. Each purchaser of Trust Certificates shall represent at the time of purchase that such Trust Certificates are not being acquired with any view to the distribution thereof within the meaning of the Federal Securities Act of 1933, as amended (the "1933 Act"), or the General Rules and Regulations (the "Rules") promulgated thereunder, but subject, nevertheless, to any requirement of law that the disposition of its property shall at all times be within its control. Neither such purchaser nor any subsequent transferee of any Trust Certificates shall sell or otherwise dispose of any such Trust Certificates except in accordance with the 1933 Act, the Rules and this Agreement, and the Trustee shall not be obligated to effect a registration of transfer of any such Trust Certificates without having received an opinion of counsel satisfactory to it that the proposed disposition may be effected without violation of the 1933 Act, the Rules and this Agreement.

SECTION 2.08. Payments Due on Saturdays, Sundays, and Legal Holidays. Whenever the specified date for any payment under the Trust Certificates or this Agreement shall be a Saturday, a Sunday or a legal holiday or the equivalent for banking institutions generally (other than a moratorium) at the place where payment thereof is to be made, then such payment may be made on the next succeeding day which is not one of the foregoing days without additional interest and with the same force and effect as if made on the specified date for such payment.

## ARTICLE THREE

### REDEMPTION OF TRUST CERTIFICATES

SECTION 3.01. Right of Redemption and Redemption Price. (a) The Trust Certificates are subject to redemption in part through the application of the applicable portions of the rental payable to the Trustee as a sinking fund pursuant to the first sentence of Section 5.04(B)(4), on May 1, 1985, and on each May 1 thereafter, to and including May 1, 1996, at the redemption price of 100% of the principal amount thereof so to be redeemed, together with accrued and unpaid interest to the date of redemption.

(b) The Trust Certificates are also subject to redemption in part, at the option of the Company through the application of the applicable portions of the rental payable to the Trustee pursuant to the second sentence of Section 5.04(B)(4), on May 1, 1985 and on each May 1 thereafter, in an amount not exceeding the amount required to be redeemed on such date pursuant to Section 3.01(a), at the redemption price of 100% of the principal amount thereof so to be redeemed, together with accrued and unpaid interest to the date of redemption, such option to be non-cumulative and any such redemption to be effected in accordance with Section 3.03; provided, that the Company may not make any redemption pursuant to this Section 3.01(b) unless the aggregate principal amount of all redemptions theretofore and then being made pursuant to this Section 3.01(b), together with the aggregate principal amount of Trust Certificates theretofore and then being redeemed in connection with Unprotected Units as to which the holders have declared an Optional Casualty Occurrence pursuant to Section 5.09, shall not exceed an amount equal to 15% of the total aggregate principal amount of Trust Certificates outstanding on April 30, 1985.

(c) The Trust Certificates are also subject to redemption at the option of the Company through the application of the applicable portions of the rental payable to the Trustee pursuant to Section 5.04(B)(6) on any Interest Payment Date upon the happening of a Casualty Occurrence as set forth in Section 5.08 or in connection with Unprotected Units as to which the holders have declared an Optional Casualty Occurrence under Section 5.09, in each case at the redemption price of 100% of the principal amount thereof so to be redeemed, together with accrued and unpaid interest to the date of redemption, any such redemption to be effected in accordance with Section 3.03; provided, that such right of redemption will only be available to the Company for redemptions of an aggregate principal amount of Trust Certificates greater than or equal to (a), in the case of Casualty Occurrences in respect of Equipment then subject to

the Existing Lease, the amount paid or payable to the Company in respect thereof pursuant to Section 11.3 of the Existing Lease and (b), in the case of any other Casualty Occurrence, \$250,000; and provided further, that the Company may not make any redemption pursuant to this Section 3.01(c) in connection with any such Unprotected Units unless the aggregate principal amount of Trust Certificates theretofore and then being redeemed pursuant to this Section 3.01(c) in connection with any such Unprotected Units, together with the aggregate principal amount of Trust Certificates theretofore and then being redeemed pursuant to Section 3.01(b), shall not exceed an amount equal to 15% of the total aggregate principal amount of Trust Certificates outstanding on April 30, 1985.

(d) The Trust Certificates are also subject to redemption in part at the option of the Company, on August 1, 1981, through the application by the Trustee of remaining Deposited Cash available for such redemption as contemplated by clause (ii) of the next-to-last paragraph of Section 4.04, at a redemption price of 100% of the principal amount thereof so to be redeemed, together with accrued and unpaid interest to the date of redemption, any such redemption to be effected in accordance with Section 3.03; provided, however, that the aggregate principal amount of Trust Certificates redeemable pursuant to this Section 3.01(d) may not exceed an amount (the "Maximum Adjustment Amount") equal to the excess of the aggregate principal amount of Trust Certificates originally issued pursuant to Section 2.01 over \$14,060,000.

(e) The Trust Certificates are also subject to redemption in part at the option of the Company, on August 1, 1981, through the application of the rental payable to the Trustee pursuant to Section 5.04(B)(8) as contemplated by clause (i) of the last paragraph of Section 4.04, at a redemption price of 100% of the principal amount thereof so to be redeemed, together with accrued and unpaid interest to the date of redemption, any such redemption to be effected in accordance with Section 3.03; provided, however, that the aggregate principal amount of Trust Certificates redeemable pursuant to this Section 3.01(e) may not exceed the Maximum Adjustment Amount.

(f) The Trust Certificates are also subject to redemption in whole or (subject to the first proviso to Section 4.01 of the RAILEASE Agreement) in part at the option of the Company, through the application of the rental payable to the Trustee pursuant to Section 5.04(B)(9), under the circumstances, in the manner and at the redemption price specified in Section 4.01 of the RAILEASE Agreement, any such redemption to be effected in accordance with Section 3.03.

SECTION 3.02. Selection of Trust Certificates for Sinking Fund Redemption; Notice of Redemption. On or before April 1, 1985, and on or before April 1, in each year thereafter to and including April 1, 1996, the Trustee shall select for redemption a principal amount of Trust Certificates so as to exhaust the amount of rental to be paid by the Company to it in cash pursuant to the first sentence of Section 5.04(B)(4) on or before the next succeeding May 1. The Trust Certificates (or portions thereof) to be redeemed shall be determined 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 held by each such holder; provided, that Trust Certificates may be redeemed in part only in multiples of \$1,000; and provided further, that if such Trust Certificates are held by any holder in more than one account, each such account shall be deemed to be a separate holder for purposes of this Section 3.02.

The Trustee shall mail by certified mail, return receipt requested, postage prepaid, a notice of redemption at least 30 days prior to each sinking fund redemption date to the holders of the Trust Certificates so to be redeemed in whole or in part, at their last addresses as they shall appear upon the registry books. No redemption hereunder shall be effective with respect to any Trust Certificates unless the holder thereof shall have received notice as herein specified, but failure to give such notice with respect to any Trust Certificate, or any defect therein, shall not affect the validity of any proceedings for the redemption of any other Trust Certificates.

The notice of redemption shall also state the aggregate principal amount of Trust Certificates to be redeemed and the serial numbers thereof; and in case there shall have been selected as aforesaid less than the entire principal amount of any Trust Certificate, the notice shall specify the serial number of such Trust Certificate and the principal amount thereof called for redemption, and shall state that on and after the redemption date, upon surrender of such Trust Certificate (except as otherwise provided in the last paragraph of Section 2.02), the holder will receive the redemption price in respect of the principal amount thereof called for redemption and, without charge to the holder of such Trust Certificate, a new Trust Certificate for the principal amount thereof remaining unredeemed. The serial numbers of any Trust Certificates to be redeemed, required to be included in any such notice, may be stated in any one or more of the following ways: individually; in groups from one number to another number, both

inclusive, except such as shall previously have been called for redemption or otherwise retired; or in such other manner as the Trustee shall deem appropriate.

SECTION 3.03. Procedure for Redemption of Trust Certificates at Option of Company. The procedure for the redemption of Trust Certificates at the Company's option shall be as follows:

(1) In case the Company shall desire to redeem Trust Certificates pursuant to Section 3.01(b), (c), (d) (e) or (f), it shall deliver an Officer's Certificate to the Trustee giving notice of the exercise of such right of redemption and specifying the aggregate principal amount of Trust Certificates to be redeemed and the date fixed for redemption (which date shall (i), in the case of redemption pursuant to Section 3.01(b), (c) or (f), be at least 40 days but no more than 60 days after delivery of such Officer's Certificate, and (ii) in the case of redemptions pursuant to Section 3.01(d) or (e), be at least 10 days but not more than 60 days after delivery of such Officer's Certificate and, in any case governed by this clause (ii) be on or prior to August 1, 1981.

(2) Notice of redemption shall be given by the Trustee in the manner specified in Section 3.02 for the giving of sinking fund redemption notices (except that in the case of a redemption pursuant to Section 3.01(d) or (e), such notice shall be given at least 3 days rather than 30 days prior to the date fixed for redemption) and, if less than all the outstanding Trust Certificates are to be redeemed, selection of the particular Trust Certificates (or portions thereof, but only in multiples of \$1,000) to be redeemed shall be made, in like manner as specified in Section 3.02. Such notice shall, in the case of any redemption pursuant to Section 3.01 (b), be consolidated with the notice for the sinking fund redemption to occur on the same date.

(3) If less than all of the outstanding Trust Certificates are redeemed subsequent to April 30, 1985 pursuant to an optional redemption subject to the terms of this Section 3.03, the amounts of such redemptions shall be applied proportionately to reduce each remaining mandatory sinking fund payment and payment at maturity.

SECTION 3.04. Payment of Trust Certificates Called for Redemption. The Company on or before the redemption date specified in any notice of redemption shall deposit with the Trustee an amount in cash as rental pursuant to Section 5.04

sufficient to redeem all the Trust Certificates or portions thereof called for redemption, and the Trust Certificates or portions thereof called for redemption shall become due and payable on such redemption date at the Corporate Trust Office. From and after such deposit and such redemption date, interest on such Trust Certificates or portions 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. The Trustee shall hold the redemption moneys in trust for the holders of the Trust Certificates or portions thereof called for redemption and shall pay the same to such holders respectively upon presentation and surrender of such Trust Certificates, subject to the provisions of the last paragraph of Section 2.02.

SECTION 3.05. Transfer of Title Upon Optional Redemption. Upon any redemption in whole or in part of the Trust Certificates pursuant to Section 3.01(b) or (f), the Trustee shall, subject to Section 5.06, execute and deliver a bill of sale assigning and transferring to the transferee named by the Company in a Request, without recourse, representation or warranty, all the right, title and interest of the Trustee in and to units of Trust Equipment in accordance with the next sentence of this Section 3.05 and the lease provided in Section 5.01 shall terminate with respect to such units. The number of units to be so assigned and transferred by the Trustee shall have an aggregate fair value (determined as set forth below in this Section 3.05) which shall be in the same proportion to the aggregate fair value (determined as aforesaid) of the total number of units of Trust Equipment immediately prior to such redemption as the principal amount of Trust Certificates redeemed in such redemption bears to the aggregate principal amount of Trust Certificates outstanding immediately prior to such redemption. The specific units of Trust Equipment to be so assigned and transferred shall be selected in any reasonable manner specified in the Request and reasonably calculated to assure that the overall quality of the units of Trust Equipment remaining after such transfer is not materially different than such quality prior to such transfer. Any request for transfer submitted to the Trustee pursuant to this Section 3.05 shall be accompanied by an Engineer's Certificate (i) which shall state that nothing has come to the attention of the signer thereof, including the manner in which units of Trust Equipment to be assigned and transferred are to be selected, which would lead such signer to believe that the aggregate actual fair value of such units bears any greater proportion to the aggregate actual fair value of all units of Trust Equipment immediately prior to such assignment and

transfer, as the principal amount of Trust Certificates redeemed in such redemption bears to the aggregate principal amount of Trust Certificates outstanding immediately prior to such redemption, and (ii) which shall be to the effects set forth in clauses (i) and (ii) of Section 5.06(1) (except that, for purposes of such Engineer's Certificate, the term "fair value" shall have the meaning ascribed thereto below in this Section 3.05 and shall be determined as of the date of the Request delivered pursuant to this Section 3.05) and to the further effect that the units of Equipment to be assigned and transferred are such that and have been or are to be selected in such manner that the two immediately preceding sentences of this Section 3.05 have been complied with. 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 such Request in order to make clear upon public records the transferee's title to the units so assigned and transferred under the laws of any jurisdiction.

For all purposes of this Section 3.05, fair value shall be determined as follows: the fair value of any unit of Equipment shall be deemed to be (A), if new, i.e., no older than six months, its Cost and, (B) if not new, the lesser of the amounts determined in respect of such Unit under clauses (i) and (iii) of clause (B) of the final paragraph of Section 5.06.

SECTION 3.06. Cancellation of Trust Certificates Upon Redemption. All Trust Certificates redeemed and paid in full under this Article Three shall be surrendered to the Trustee and cancelled by the Trustee, and no Trust Certificates shall be issued hereunder in place thereof.

## ARTICLE FOUR

### ACQUISITION OF TRUST EQUIPMENT BY TRUSTEE; DEPOSITED CASH

SECTION 4.01. Acquisition of Equipment by Trustee. The Company shall, from time to time, cause to be sold, assigned and transferred to the Trustee, as trustee for the holders of the Trust Certificates, the Equipment described in Schedule A hereto. Such Equipment shall be delivered to and accepted by the person or persons designated by the Company to the Trustee as the Trustee's agent or agents to receive such delivery and acceptance (who may be one or more of the officers or agents of the Company or a Manager or an Affiliate of either thereof who has been so designated by the Company; in the absence of any designation by the Company, the Trustee shall be deemed to have designated the Manager) and the certificate of any such agent or agents as to such delivery and acceptance shall be conclusive evidence of such delivery and acceptance.

In the event that the Company shall deem it necessary or desirable (prior to completion of delivery to the Trustee hereunder of all of the Equipment described in Schedule A hereto) to procure for the use of the Company, and to include in the trust hereby created, other Equipment in lieu of or in addition to any of the Equipment specifically described in Schedule A hereto, the Company may cause to be sold, assigned and transferred to the Trustee such other Equipment, to be included under the trust, provided, however, that at least 20 Business Days prior to the delivery of any Equipment not specified in Schedule A hereto to the Trustee or its agent or agents, the Company shall notify the Trustee and the Purchaser or the holders of the Trust Certificates, as the case may be, of such proposed addition or substitution of Equipment and, if within 15 Business Days after receipt of such notice the holders of at least 66-2/3% in aggregate unpaid principal amount of Trust Certificates then outstanding object to such addition or substitution, the Company shall not have the right to subject such additional Equipment to the trust.

SECTION 4.02. Payment of Deposited Cash. From time to time, when and as any of the Trust Equipment shall have been delivered to 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 manufacturers or owners (or the Company if it shall be the owner and so direct in the Request) of the delivered Trust Equipment out of Deposited Cash an amount not in excess of 80% of the aggregate Cost of such Trust Equipment, as specified in the Officer's Certificate furnished to the Trustee pursuant to Section 4.04(b).

SECTION 4.03. Payment of Deficiency. The Company covenants that, with respect to any part of the Trust Equipment not owned by it, contemporaneously with any payment by the Trustee pursuant to Section 4.02, it will pay to the Trustee the advance rental provided in Section 5.04(A)(ii), and thereupon the Trustee shall, upon Request, pay to the manufacturers or owners of the delivered Trust Equipment, by the use of such advance rental, the portion (if any) of the Cost of the delivered Trust Equipment which has not been either (i) paid out of Deposited Cash as provided in Section 4.02 or (ii) paid by delivery to the manufacturer or other owner of the delivered Trust Equipment of unsecured notes or other unsecured evidences of indebtedness or stock of the Company or cash; the intention being that the Company shall have paid or 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 such Cost and the Company shall ultimately pay 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 and accepted by such agent or agents;

(b) an Officer's Certificate which shall state (i) that such Trust Equipment is Equipment as herein defined and has been marked in accordance with Section 5.07 hereof, (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, in the alternative, that such unit was not first put into use before January 1, 1981, (iv) whether such Trust Equipment is then subject to a lease and, if so, the name of each lessee, (v) that the representations and warranties of the Company contained in the Purchase Agreement are true and correct in all material respects on such date as if made on and as of the date of delivery of such certificate, (vi) that no Event of Default, and no event or condition which with the giving of notice or passage of time or both would constitute an Event of Default, under

this Agreement or the RAILEASE Agreement has occurred and is continuing on the date of delivery of such certificate, and (vii) that, in the opinion of the signer, all conditions precedent provided for in this Agreement, relating to the payment in question, have been complied with;

(c) an Engineer's Certificate (which shall be signed by an Engineer who or which is an employee of the Manager) delivered by the Manager which shall state that the Cost (exclusive of freight, delivery charges and taxes) of such Trust Equipment is not greater than the Actual Fair Value thereof in the opinion of the signer as of the date of the Request with respect thereto given pursuant to Section 4.02;

(d) a bill or bills of sale covering such units of Trust Equipment from the manufacturers or owners (including a bill or bills of sale of such Trust Equipment from the manufacturer to the Company if it shall be the owner) thereof to the Trustee, which bill or bills of sale to the Trustee shall contain a warranty or guaranty to the Trustee that the title to the Trust Equipment described therein is free from all liens and encumbrances (including any leasehold interest therein) other than the Existing Lease, other subleases permitted by Section 5.10 and any Assignment thereof, other than liens permitted by Section 7.03 and other than the rights of the Company hereunder;

(e) an Opinion of Counsel to the effect that (i) such bill or bills of sale have been duly authorized, executed and delivered and such bill or bills of sale from the manufacturer to the Company are valid and effective to vest in the Company title to the Trust Equipment free from all liens and encumbrances arising through or under the manufacturer, and such bill or bills of sale from the Company to the Trustee are valid and effective upon consummation of the filings referred to in (f) below, either alone or in connection with any other instrument referred to in and accompanying (or delivered simultaneously with) such opinion, to vest in the Trustee the right, title and interest in and to such Trust Equipment contemplated by this Agreement, free from all liens and encumbrances (including any leasehold interest therein) other than the Existing Lease, any sublease (which shall be specified) permitted by Section 5.10 and the Assignment thereof, liens permitted by Section 7.03 and other than the rights and interests of the Company hereunder, (ii) in the case of any Trust Equipment not specifically described herein or in Schedule A hereto, a proper supplement hereto in respect

of such Trust Equipment has been duly authorized, executed, acknowledged and delivered by the Company, (iii) the Assignment of the Existing Lease and any sublease of such Trust Equipment (which shall be specified) permitted by Section 5.10 (to the extent that such Existing Lease or sublease relates to the Trust Equipment) and any amendment or supplement thereto have been duly authorized, executed, acknowledged and delivered by the Company and constitute, insofar as the Company is concerned, legal, valid and binding obligations of the Company, and (iv) the Trustee is vested with all the right, title and interest of the Company in and to such Existing Lease (and any other sublease required to be assigned to the Trustee hereunder) purported to be assigned to the Trustee by the Assignment thereof, and (v) no filing or recordation or deposit is necessary (or will be necessary in the future), except as stated in such opinion for the protection of the rights of the Trustee in and to such Trust Equipment, such Existing Lease or sublease, such Assignment or this Agreement in any state of the United States of America or the District of Columbia; and

(f) an opinion of Messrs. Dewey, Ballantine, Bushby, Palmer & Wood, to the effect that in the case of any Trust Equipment not specifically described herein or on Schedule A hereto, the supplement hereto referred to in (e) above and (if appropriate) an Assignment with respect thereto have been recorded with the Interstate Commerce Commission pursuant to the requirements of Section 11303 of the Interstate Commerce Act (49 U.S.C. § 11303).

The Officer's Certificate delivered pursuant to Section 4.04(b) ("preliminary Officer's Certificate") may state that the Cost of the Trust Equipment therein referred to has been tentatively determined in good faith on the basis of information then available, subject to final adjustment to be evidenced in a final Officer's Certificate to be delivered to the Trustee not less than 15 Business Days following the date of such preliminary Officer's Certificate and in any event at least 10 days prior to August 1, 1981. The Trustee shall pay out of Deposited Cash against delivery of such preliminary Officer's Certificate 80% of such tentatively determined Cost.

Upon receipt by the Trustee of such final Officer's Certificate, to the extent that any amount constituting Deposited Cash shall remain in the Trustee's possession:

(i) if the amount equal to 80% of the aggregate Cost of Trust Equipment specified in such final Officer's Certificate shall exceed the aggregate amount theretofore paid by the Trustee out of Deposited Cash toward the Cost of Trust Equipment pursuant to Section 4.02 (the amount of such excess being herein called the "Excess Cost Amount"), then the Trustee shall promptly pay out of such remaining Deposited Cash, upon receipt of a Request, to the manufacturer or owner of the delivered Trust Equipment (or the Company if it shall be the owner thereof and shall so direct in such Request) an amount not in excess of the Excess Cost Amount; and

(ii) if after giving effect to the payments, if any, required by the immediately preceding clause (i), any amount constituting Deposited Cash shall still remain in the possession of the Trustee, the Trustee shall, upon receipt of an Officer's Certificate conforming with the requirements of Section 3.03(1), apply all or a portion of such amount to the redemption of Trust Certificates on August 1, 1981 pursuant to (and to the extent permitted by) Section 3.01(d).

If the amount equal to 80% of the aggregate Cost of Trust Equipment specified in such final Officer's Certificate shall be less than the aggregate amount theretofore paid by the Trustee out of Deposited Cash toward the Cost of Trust Equipment pursuant to Section 4.02 (the amount of such difference being herein called the "Deficit Cost Amount"), then:

(i) the Company may, upon delivery to the Trustee of an Officer's Certificate conforming with the requirements of Section 3.03(1), elect to redeem Trust Certificates on August 1, 1981 pursuant to (and to the extent permitted by) Section 3.01(e) up to an aggregate principal amount equal to the Deficit Cost Amount and pay to the Trustee the rental provided in Section 5.04(B)(8) for application to such redemption; and

(ii) the Company shall, promptly following the delivery of such final Officer's Certificate, (a) cause to be sold, assigned and transferred to the Trustee, in accordance with Section 4.01, a number of additional units of Equipment and/or (b) deliver to the Trustee an amount in cash to be held as Deposited Cash hereunder, such that the sum of 80% of the aggregate Cost of such number of additional units plus such amount of cash shall equal the Deficit Cost Amount less the aggregate principal amount, if any, of Trust Certificates redeemed or to be redeemed pursuant to the immediately preceding clause (i).

## 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, from the date or dates of delivery of the Trust Equipment to the scheduled maturity of the Trust Certificates, all of the Trust Equipment.

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

SECTION 5.03. Substituted Equipment Subject Hereto. In the event that the Company shall, as provided in Section 4.01, 4.04, 5.06 or 5.08, 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 (which supplement the Trustee shall execute and deliver upon Request) and upon delivery to the Trustee shall be subject to all the terms and conditions hereof in all respects as though it had been part of the Trust Equipment herein specifically described.

SECTION 5.04. Rental Payments. The Company hereby accepts the lease of all the Trust Equipment, and covenants and agrees to accept delivery and possession hereunder of the Trust Equipment; and the Company covenants and agrees to pay to the Trustee at the Corporate Trust Office (or, in the case of taxes, to the proper taxing authority), in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, rent 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 delivery and lease to the Company of any of the Trust Equipment):

(A) The Company shall pay to the Trustee, as hereinbefore provided, as advance rental hereunder at the time of any payment pursuant to Section 4.02, a sum equal to the portion (if any) of the Cost of the delivered Trust Equipment which has not been either (i) paid out of Deposited Cash as provided in Section 4.02 or (ii) paid by delivery to the manufacturer or other vendor of the delivered Trust Equipment of unsecured notes or other unsecured evidences of indebtedness or stock of the Company or cash.

(B) In addition to such advance rental the Company shall pay to the Trustee, as hereinafter provided, 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) from time to time upon demand of the Trustee (a) the necessary and reasonable expenses of the trust hereby created, including compensation and expenses provided for herein, and (b) an amount equal to any expenses incurred or loss of principal (including interest accrued thereon at the time of purchase) in connection with any purchase, sale, redemption or payment at maturity of Investment Securities;

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

(3) (a) on or before each Interest Payment Date the amounts of the interest payable on the Trust Certificates on such Interest Payment Date and (b) interest at the rate per annum set forth in the Trust Certificates from the due date, upon the amount of any instalments of rental payable under this subparagraph (3) and the following subparagraphs (4), (5), (6), (8) and (9) which shall not be paid when due, to the extent legally enforceable;

(4) as a mandatory sinking fund for the Trust Certificates, on or before May 1 in each year, commencing May 1, 1985 and continuing to and including May 1, 1996, an amount in cash equal to 7.6923% of the total aggregate principal amount of Trust Certificates outstanding at the opening of business on April 30, 1985, adjusted from time to time as provided in Section 3.03(3). In addition, on or before May 1, 1985 and any sinking fund payment date thereafter, the Company may (and, to the extent provided in Section 3.04, shall) pay additional rentals to redeem any Trust Certificates to be redeemed pursuant to Section 3.01(b);

(5) the principal of the Trust Certificates (other than those called for redemption pursuant to Section 3.01 and other than principal theretofore paid through the operation of the mandatory sinking fund pursuant to Section 5.04(b)(4)) upon the maturity thereof, whether by declaration or otherwise;

(6) on or before the redemption date specified in an Officer's Certificate delivered pursuant to Section 3.03(1) in connection with redemptions pursuant to Section 3.01(c), an amount in cash sufficient to redeem the aggregate principal amount of Trust Certificates then outstanding, if any, which the Company shall have elected to redeem pursuant to Section 5.08 in lieu of depositing cash in respect of a Casualty Occurrence or (to the extent permitted by Section 3.01(c)) of an Optional Casualty Occurrence;

(7) from time to time, upon demand of the Trustee at the request of any holder, any and all taxes, assessments and governmental charges which may be imposed upon any holder as a result of such holder being deemed to own, constructively or otherwise, any of the Trust Equipment;

(8) on or before August 1, 1981, as specified in an Officer's Certificate delivered pursuant to Section 3.03(1) in connection with a redemption elected by the Company pursuant to clause (i) of the last paragraph of Section 4.04, an amount in cash sufficient to redeem Trust Certificates so to be redeemed pursuant to Section 3.01(e); and

(9) on or before the redemption date specified in an Officer's Certificate delivered pursuant to Section 3.03(1) in connection with a redemption elected by the Company pursuant to Section 4.01 of the RAILEASE Agreement, an amount in cash sufficient to redeem Trust Certificates so to be redeemed pursuant to Section 3.01(f).

Nothing herein or in the Trust Certificates contained shall be deemed to impose on the Trustee or on the Company any obligation to pay to the holder of any Trust Certificate the amount of 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 on behalf of, or withheld from the amount payable to, the holder of any Trust Certificate.

The Company shall not be required to pay any tax, assessment or governmental charge so long as it shall in good faith and by appropriate legal proceedings contest the validity thereof, provided, that the rights or interests of the Trustee or the holders of the Trust Certificates will not be materially endangered thereby and the Company shall

have furnished the Trustee with an Opinion of Counsel to such effect, and provided, further, that adequate book reserves shall have been established with respect thereto to the extent required by generally accepted accounting principles.

The Trustee will pay or discharge any and all taxes, claims, liens or charges claimed by any party by, through or under the Trustee and not arising out of the transactions contemplated hereby or in the other documents mentioned herein which, if unpaid, might become a lien, charge or encumbrance on or with respect to the Trust Equipment and the payments to be made hereunder, but the Trustee shall not be required to pay or discharge any such tax, claim, lien, or charge so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner, provided that such contest will not materially endanger the rights or interests of the Company or of the holders of the Trust Certificates.

In making any rental payment pursuant to paragraph (B) of this Section 5.04 (other than pursuant to subparagraph (2) or (7) hereof), the Company may take into account any amounts then held by the Trustee and available for application by the Trustee for the purposes for which such rental payment is being made.

SECTION 5.05. Termination of Lease. At the termination of the lease provided herein and after all payments due or to become due from the Company hereunder shall have been completed and fully made to the Trustee, (a) such payments shall be applied and treated as purchase money and as the full purchase price of the Trust Equipment, (b) any moneys remaining in the hands of the Trustee after providing for payment in full of all outstanding Trust Certificates and after paying the expenses of the Trustee, including its reasonable compensation, shall be paid to the Company, (c) title to all the Trust Equipment shall vest in the Company or its nominee or another transferee designated by it in a Request, and (d) the Trustee shall execute for recordation 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 or such nominee's or transferee's title to all the Trust Equipment under the laws of any jurisdiction; provided, however, that, except as otherwise provided in Section 3.05 or 5.06 or 5.08, until that time title to the Trust Equipment shall not pass to or vest in the Company, but title to and ownership of all the Trust Equipment shall be and remain in the Trustee, notwithstanding the delivery of the Trust Equipment to and the possession and use thereof by the Company.

SECTION 5.06. Substitution and Replacement of 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 or all of the Trust Equipment and such instruments for recordation in public offices, at the expense of the Company, as shall then be required by law in order to make clear upon public records the transferee's title free from the lien of this Agreement and the transferee's right to collect rentals, free from the lien of any Assignment; provided, however, that none of the Trust Equipment shall be so assigned or transferred (except as provided in Sections 3.05, 5.05 and in the fourth sentence of the first paragraph of Section 5.08) unless simultaneously (a) there shall be conveyed to the Trustee other Equipment of a fair value not less than the fair value (in each such case as such fair value shall be determined in accordance with the last paragraph of this Section 5.06), as of the date of such Request, of the Trust Equipment so assigned or transferred by the Trustee or (b) there shall be paid to the Trustee cash in an amount not less than the fair value (as so determined), as of said date, of the Trust Equipment so assigned or transferred by the Trustee. Notwithstanding the foregoing provisions of this Section 5.06, prior to May 1, 1986, none of the Trust Equipment shall be so assigned or transferred pursuant to this Section 5.06 unless, immediately after giving effect to such assignment or transfer, there shall not have been so assigned or transferred in accordance with this Section 5.06 during the preceding portion of the calendar year in which such assignment or transfer is to occur, Trust Equipment having an aggregate fair value (as determined in accordance with the final paragraph of this Section 5.06 as of the respective dates of the assignment or transfer of such Trust Equipment) in excess of 10% of the aggregate fair value of the Trust Equipment (as determined in accordance with the final paragraph of this Section 5.06 as of the first day of such calendar year).

At the time of delivery of any Request pursuant to the first paragraph of this Section 5.06, 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 (and to the Purchaser if it shall then remain a holder of Trust Certificates and shall request copies thereof) the following papers:

- (1) an Engineer's Certificate stating (i) the fair value (as defined in this Section 5.06), as of the date of said Request, of the Trust Equipment so to be assigned or transferred by the Trustee, (ii) that such

assignment or transfer will not impair the security under this Agreement in contravention of the provisions hereof and (iii) the fair value (as so defined) of such substituted units of Equipment as of such date;

(2) an Officer's Certificate stating (i) the date each unit of Trust Equipment so to be assigned or transferred by the Trustee was first put into use (or that such unit was first put into use not earlier than a specified date), (ii) the original Cost of each unit of the Equipment so to be substituted and the date it was first put into use (or that such unit was first put into use not earlier than a specified date), and that such substituted units of Equipment have an expected useful life extending beyond the fixed date on which all Trust Certificates shall mature, (iii) that each unit of Equipment so to be substituted has been marked as provided in Section 5.07, (iv) that each such unit so to be substituted is Equipment as herein defined or has otherwise been approved by the holders of Trust Certificates in the manner provided in the first clause of Section 9.05, (v) whether such unit so to be substituted is then subject to a lease and, if so, the name of the lessee and such other information as the Trustee may request to verify the compliance of such lease with Section 5.10, (vi) that no Event of Default and no event or condition which, with the giving of notice or passage of time or both would constitute an Event of Default under this Agreement or in any other written undertaking of the Company to the Trustee has occurred and is continuing and (vii) that, in the opinion of the signer, all conditions precedent provided for in this Agreement relating to such substitution have been complied with;

(3) a certificate and a bill or bills of sale in respect of such substituted Equipment as provided for in subparagraphs (a) and (d) (except that a bill of sale from the manufacturer to the Company shall not be required in the case of substituted Equipment which is not new, i.e. which is older than six months) of the first paragraph of Section 4.04;

(4) an Opinion of Counsel to the effect that (i) such bill or bills of sale have been duly authorized, executed and delivered and such bill or bills of sale from the manufacturer to the Company (in the case of new Equipment) are valid and effective to vest in the Company title to the Trust Equipment free from all liens and encumbrances arising through or under the manufacturer, and such bill or bills of sale from the Company to the Trustee are valid and effective, either alone or together with any other instruments referred to in (or

delivered simultaneously with) such opinion, to vest in the Trustee the right, title and interest in and to such substituted Equipment contemplated by this Agreement, after giving effect to the filing referred to in (5) below, free from all liens and encumbrances (including any leasehold interest therein) other than the Existing Lease, any other sublease permitted by Section 5.10 hereof and the Assignment thereof, liens permitted by Section 7.03, and other than the rights and interests of the Company hereunder, (ii) any such Assignment and any amendments or supplements thereto or hereto have been duly authorized, executed, acknowledged and delivered by the Company and constitute, insofar as the Company is concerned, legal, valid and binding obligations, (iii) the Trustee is vested with all the right, title and interest of the Company in and to the Existing Lease, as amended or supplemented, or such sublease, as amended or supplemented (to the extent such Existing Lease or sublease relates to the substituted Equipment), purported to be assigned to the Trustee by each such Assignment, (iv) no filing or recordation or deposit is or will be necessary (except as stated in such opinion) for the protection of the rights of the Trustee in and to such substituted Equipment, such Existing Lease, such subleases or such Assignments in any state of the United States of America or the District of Columbia, and (v) all conditions precedent provided for in this Agreement to such substitution have been complied with; and

(5) an Opinion of Counsel for the Company to the effect (i) that a proper supplement hereto in respect of such substituted Equipment, any sublease thereof and any Assignment of such sublease have been duly executed by the Trustee and the Company and have been recorded with the Interstate Commerce Commission pursuant to the requirements of Section 11303 of the Interstate Commerce Act (49 U.S.C. § 11303) and (ii), if such substituted Equipment was not new when delivered by the Company (concurrently with delivery to the Company by the manufacturer thereof) to the Trustee, that a search of ICC filings has been made and that no prior unperfected security interest has attached to such substituted Equipment.

At the time of delivery of any Request pursuant to the first paragraph of this Section 5.06, 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 5.06 insofar as they relate to the action requested.

Cash deposited with the Trustee pursuant to this Section 5.06 or pursuant to Section 5.08 shall be paid over by the Trustee to the Company upon Request, against conveyance to the Trustee of Equipment having a fair value (as defined in this Section 5.06), as of the date of said Request, not less than the amount of cash so paid and upon compliance by the Company with all of the provisions of the second paragraph of this Section 5.06 insofar as they relate to the action requested.

For all purposes of this Section 5.06 and Section 5.08 fair value shall be determined as follows (and the manner of such determination shall be set forth in the Engineer's Certificate (unless at the time there is a Manager, in which case a certificate of an executive officer of the Manager) furnished in respect thereof, including a statement of actual fair value): the fair value of any unit of Equipment shall be deemed to be (A), if new, i.e., no older than six months, its Cost and (B), if not new, the lesser of (i) the depreciated book value thereof on the books of the owner thereof (depreciated at a rate not more rapid than a straight line rate over a period of twenty years to a 10% residual value), as of the date of the transfer thereof to or by the Trustee, as the case may be, or (ii) fair market value, as determined by such Engineer, with the concurrence of an executive officer of the Company in cases where more than \$148,000 in original Cost of units are being valued or (iii) the value thereof, as of the date of transfer to or by the Trustee, as the case may be, as determined in accordance with the Code of Rules Governing the Condition of and Repairs to Freight and Passenger Cars for the Interchange of Traffic, Adopted by the Association of American Railroads, Operations and Maintenance Department, Mechanical Division, as in effect at the time in question (or, if there is no such Code then in effect, sound accounting principles).

SECTION 5.07. Marking of Trust Equipment. The Company agrees that if the Opinion of Counsel specified in Section 5.08 hereof shall not be delivered to the Trustee as provided in said Section 5.08 or if, in the opinion of the Trustee or the holder of any Trust Certificate, marking of one or more units of Trust Equipment is required by law to protect properly the title of the Trustee to the Trust Equipment or the rights of the holders of Trust Certificates, the Company will, 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 each 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 RECORDED  
UNDER 49 U.S.C. § 11303.

Such plates or marks shall be such as to be readily visible and as to indicate plainly the Trustee's ownership of each such 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 upon learning thereof 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 supplement setting forth new numbers to be substituted therefor which previously shall have been filed with the Trustee by the Company and which shall be executed and acknowledged by the Company and (if necessary for recording and filing) by the Trustee (who shall execute and acknowledge on Request) and which shall be filed and recorded in like manner as this Agreement.

Any unit of Trust Equipment required to be marked pursuant to this Section 5.07 may be lettered, "RAILEASE Inc", and/or "Managed By [insert name of Manager]" 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 Trust Equipment permitted by Section 5.10, in such manner as may be appropriate for convenience of identification of the subleased interest therein; but the Company, from and after the date hereof and 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 unit of 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.

SECTION 5.08. Maintenance of Trust Equipment; Casualty Occurrence. The Company agrees that it will at all times maintain and keep or cause others to maintain and keep each unit of Trust Equipment in good order and proper repair and condition to be readily acceptable for regular

use on Class I line-haul United States railroads without cost or expense to the Trustee, unless and until it becomes (a) economically obsolete (as evidenced by a resolution of the Board of Directors of the Company), (b) irreparably damaged or destroyed, (c) worn out, (d) stolen, (e) lost, (f) significantly damaged and cannot in the Company's good faith judgment economically be repaired and restored to service within 90 days or (g) taken or requisitioned by condemnation, seizure, expropriation or otherwise by the United States Government or by any other foreign or domestic government or governmental entity (except requisition for use by the United States Government for a period ending not later than May 1, 1997) (any such occurrence listed in (a) through (g) being herein called a "Casualty Occurrence"). Whenever any unit of Trust Equipment shall suffer a Casualty Occurrence, the Company shall, within 30 days after learning of such Casualty Occurrence, deliver to the Trustee an Engineer's Certificate describing such Trust Equipment and stating the fair value thereof as of the date of (but prior to) such Casualty Occurrence. In the event of such requisition for use by the United States Government of any unit, all of the Company's obligations with respect to such unit shall continue to the same extent as if such requisition had not occurred. Within 30 days after learning of any Casualty Occurrence to units of Trust Equipment (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) the aggregate fair value of which, as of a time immediately prior to the dates of the respective Casualty Occurrences specified in the Officer's Certificates related thereto delivered pursuant to the foregoing sentence, shall exceed \$740,000 (or such lesser amount as the Company may elect), the Company shall deposit with the Trustee an amount in cash equal to such fair value, provided, however, that the Company shall have the option, in lieu of making all or any part of such cash payment, (i) to convey to the Trustee, in the manner and subject to the conditions set forth in Section 5.06 hereof, Equipment of a fair value equal to the amount of all or any part of the cash payment which would otherwise be required, or (ii), subject to the next succeeding sentence of this Section, to redeem Trust Certificates pursuant to Section 3.01(c) in a minimum aggregate principal amount not less than (a) the amount paid or payable to the Company in respect of such Casualty Occurrences pursuant to the Existing Lease described on Schedule B, in the event that such Casualty Occurrences shall have occurred with respect to any unit or units of Trust Equipment subject to such Existing Lease, or (b) \$250,000, in any case not specified in the preceding clause (a), and, in any case, up to a maximum aggregate principal amount equal to the amount of such cash payment. The principal amount of Trust Certificates which may at any time be redeemed hereunder in connection with Casualty Occur-

rences resulting from Optional Casualty Occurrences shall not in the aggregate exceed the limitation thereon set forth in the second proviso to Section 3.01(c). Upon such deposit, conveyance or redemption by the Company, the Trustee shall execute and deliver a bill of sale assigning and transferring to the transferee named by the Company in a Request, without recourse, representation or warranty all the right, title and interest of the Trustee in and to the units which have suffered a Casualty Occurrence, the lease provided in Section 5.01 shall terminate with respect to such units and the Trustee shall execute for record in public offices, at the expense of the Company, such instrument or instruments in writing as reasonably shall be requested by the Company in order to make clear upon public records the transferee's title to such units under the laws of any jurisdiction; provided, however, that if any Casualty Occurrence giving rise to a deposit of cash by the Company with the Trustee is the result of an Optional Casualty Occurrence, the Company may at its option direct the Trustee by Request to, and the Trustee shall, retain title to the units having suffered such Optional Casualty Occurrence and release to the Company the cash related to such units when and if they cease to be Unprotected Units. Except as provided in the proviso to the preceding sentence, cash deposited with the Trustee pursuant to this Section 5.08 shall be held and applied as provided in the fourth paragraph of Section 5.06. 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 such occurrence described in this Section 5.08. Except as provided in the last sentence of Section 5.09, for all purposes of this paragraph, fair value shall be determined in the manner provided in Section 5.06.

The Company covenants and agrees to furnish to the Trustee, and to the holders of the Trust Certificates at least once, on or before April 1 in every calendar year following the calendar year in which occurs the first delivery of any of the Trust Equipment to the Trustee or its agent or agents hereunder and during the continuance of the lease provided for herein, (a) an Officer's Certificate, stating as of the preceding December 31, (1) the number of units of the Trust Equipment then covered hereby and then under sublease, together with a list of such sublessees and the units of Trust Equipment leased by each of them, (2) the amount, description and numbers of all Trust Equipment as to which the Company has been advised that the same 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), (3) the number of units of the Trust Equipment which the Company has been notified are then undergoing repairs, other than running repairs, or then withdrawn from use for such repairs, (4) based on the most recent reports provided to the Company by the lessee (or sublessee) under any lease (or sublease) of the units of Trust Equipment, all scheduled maintenance and repair work on the Trust Equipment has been done and all such Trust Equipment

is, except as may be specified pursuant to clause (3), above, in good condition and repair and in proper running order for regular use on Class I line-haul United States railroads, (5) based on the most recent reports provided to the Company by the lessee (or sublessee) under any lease (or sublease) of the units of Trust Equipment, the location (by country) of all units of Trust Equipment which are known or assumed to be outside of the United States of America (or any State thereof or the District of Columbia) as of the most recent date reflected in such reports, and (6) that in the case of all the Trust Equipment repainted or repaired since the date of the last preceding statement (or the date of this Agreement in the case of the first statement) the plates or marks required by Section 5.07, if any, have been preserved, or that such Trust Equipment when repainted or repaired has been again plated or marked as required thereby (the reports required under this clause (6) may rely, so long as the Existing Lease is in effect, upon the reports of the lessee thereunder) and, if the Company does not intend to mark the units of Trust Equipment as provided in Section 5.07, (b) an Opinion of Counsel to the effect that the marking of one or more units of Trust Equipment as provided in Section 5.07 hereof is not required by law properly to protect the title of the Trustee to the Trust Equipment or the rights of the holders of Trust Certificates and as to such other matters as the Trustee or the holders of the Trust Certificates may reasonably request. 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. The Company shall have no liability to the Trustee for any injury suffered by its agent during such inspection not caused by the Company's negligence.

SECTION 5.09. Optional Casualty Occurrence. If at any time any units of Trust Equipment shall be Unprotected Units an Optional Casualty Occurrence shall be deemed to have occurred with respect to those number of Unprotected Units as are sufficient to reduce the aggregate fair value (determined in accordance with the last paragraph of Section 3.05 hereof) of Unprotected Units to 10% or less of the aggregate fair value (so determined) of all of the Trust Equipment. Within 30 days after the occurrence of such Optional Casualty Occurrence known to the Company and not previously remedied or cured, the Company shall give notice to the Trustee and the holders of the Trust Certificates, describing such Trust Equipment and specifying the fair value (so determined) thereof as of the date of such Optional Casualty Occurrence. Within 30 days after receipt of such notice, the holders of 66-2/3% of the aggregate principal amount of the then outstanding Trust Certificates, by written notice to the Trustee and the Company, may, at their option, declare such Optional Casualty Occurrence to constitute a Casualty Occurrence within the meaning of Section

5.08 hereof; provided, however, that for all purposes of said Section 5.08, the fair value of units of Trust Equipment in respect of which there shall have occurred an Optional Casualty Occurrence, so declared to constitute such a Casualty Occurrence, shall be deemed to be the fair value thereof determined in accordance with the last paragraph of Section 3.05. Following receipt of such written notice, the Company shall at its option, as and to the extent required by and subject to the limitations set forth in Section 5.08, (i) pay to the Trustee cash equal to the fair value of such units, (ii) convey to the Trustee Equipment of a fair value equal to all or any part of such cash payment, or (iii) to the extent permitted pursuant to Section 3.01(c), redeem Trust Certificates in an aggregate principal amount up to the amount of such cash payment.

SECTION 5.10. Possession of Trust Equipment.

Except as provided in this Section 5.10 and in the RAILEASE Agreement and as required by applicable mandatory provisions of law, the Company will not assign or transfer its rights hereunder, or transfer or sublet the Trust Equipment or any part thereof or assign, pledge, mortgage, transfer or otherwise dispose of any rights under any sublease of any of the Trust Equipment (insofar as such sublease relates to the Trust Equipment), without the written consent of the Trustee and the holders of at least 66-2/3% of the then outstanding Trust Certificates first had and obtained; and the Company shall not, without such written consent, except as herein provided, part with the possession of, or suffer or allow to pass out of its possession or control, any of the Trust Equipment. An assignment or transfer to a solvent corporation which shall acquire all or substantially all of the property of the Company in accordance with the RAILEASE Agreement 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. 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 all or substantially all of its property shall not be deemed an unauthorized assignment, if, prior to any action by the Trustee to exercise the remedies herein provided, such receiver or receivers or trustee or trustees shall be discharged or such receiver or receivers or trustee or trustees shall, pursuant to court order or decree, in writing duly assume and agree to pay or perform each and all of the obligations and covenants of the Company hereunder and under the Guaranty endorsed on the Trust Certificates, in such manner that such obligations shall have the same status as obligations incurred by such receiver or receivers or trustee or trustees.

So long as no Event of Default shall have occurred and be continuing and subject to the provisions hereof regarding Unprotected Units, 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 shall be entitled to maintain the Existing Lease in accordance with the Assignment thereof and the Company may also (a) furnish the Trust Equipment or any part thereof to railroad companies for use in the United States, Canada and Mexico upon the lines of railroad owned or operated by them or over which they have trackage rights and upon connecting and other lines of railroad in the usual interchange of traffic, or to persons other than railroad companies for use in the United States, Canada and Mexico in their business, or (b) sublet all or any part of the Trust Equipment to sublessees incorporated in the United States and having their principal places of business in the United States for use in the United States, Canada and Mexico, 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; and provided, however, that the Existing Lease, and any other sublease forthwith upon execution thereof, shall be assigned to the Trustee as security for the obligations of the Company hereunder pursuant to an Assignment.

The Company shall furnish the Trustee with a true, correct and complete counterpart of each sublease referred to in this Section 5.10 promptly following the execution and delivery thereof. Upon receipt thereof, the Trustee shall furnish a copy of such counterpart to each holder of Trust Certificates.

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 and use of the Trust Equipment covered thereby, and, subject to the provisions of Section 5.07, may provide for lettering and marking upon such Equipment for convenience of identification of the leasehold interest of such sublessee; provided, however, that anything in the foregoing provisions of this sentence to the contrary notwithstanding, any such sublease shall expressly provide that all or any part of the rights of the Company thereunder may be assigned, pledged, mortgaged, transferred or otherwise disposed of; and provided, further, that anything in the foregoing provisions of this sentence to the contrary not-

withstanding, every such sublease shall expressly subject the rights of the sublessee under such sublease to the rights and remedies of the Trustee in respect of the Trust Equipment covered by such sublease in the event of the happening 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 5.11. General Indemnity; Compliance With Laws. The Company covenants and agrees to indemnify, defend and hold harmless 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, but not by way of limitation, against any and all claims arising out of the use of any patented invention 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 or 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 unit thereof, in any reasonable manner which will not 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. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of principal and interest on the Trust Certificates and the conveyance of the Trust Equipment, as provided in Section 5.05 hereof, or the termination of this Agreement in any manner whatsoever.

The Company will bear the risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of any unit of or all of the Trust Equipment.

SECTION 5.12. Insurance. The Company will, at all times during the term of this Agreement, at its own expense, cause to be carried and maintained property damage insurance and public liability insurance in respect of the Trust Equipment with insurers who are in the Company's prudent judgment financially sound and reputable and of recognized responsibility, against such risks, in such amounts and on such terms and conditions as are prudent for keeping the Equipment in interchange service on Class 1 linehaul railroads, and the amounts of which are deemed prudent for the protection of the interests of the Company and the Trustee as title holder hereunder. The respective amounts of such insurance shall be as determined in good faith by the Company periodically (and not less frequently than annually), with the concurrence of an insurance broker approved by the Trustee, to be in conformity with the preceding sentence but shall in any event be not less than the amounts of such insurance which the Company would from time to time prudently maintain in respect of similar railroad equipment owned by it, assuming that the Company were engaged solely in the business of owning, operating and leasing (as lessor) such equipment. The policies with respect to such insurance shall include the Trustee as a loss payee or additional insured, as appropriate, shall provide for at least 30 days' prior written notice by the insurance carrier to the Trustee in the event of cancellation, expiration or amendment, shall either include waivers by the insurer of all claims for premiums against the Trustee and the holders or impose no such liability on the Trustee or the holders. Such property damage insurance shall either provide that losses are payable notwithstanding, among other things, any act of negligence of the Company, more hazardous use or occupation of the Trust Equipment than that permitted by such policies, any breach or violation by the Company of any warranty, declaration, condition or other provision contained in any such policy, or foreclosure, notice of sale or any other proceeding in respect of the Trust Equipment or not contain exclusions, limitations or warranties which could impair the coverage of the Trustee under such insurance. The Company shall furnish to the Trustee such evidence of compliance with this Section 5.12 as the Trustee shall reasonably request. In the event that the Company shall fail to maintain insurance as herein provided, the Trustee may at its option on five Business Days' prior written notice to the Company provide such insurance (giving the Company prompt written notice thereof) and, in such event,

the Company shall, upon demand from time to time, reimburse the Trustee for the cost thereof together with interest on the amount of such cost from the date of payment thereof at an annual rate of 15.50%. If the Trustee shall receive any insurance proceeds or condemnation payments in respect of any Trust Equipment suffering a Casualty Occurrence, the Trustee shall, subject to the Company's having made any required payment in respect of such Equipment (or having conveyed to the Trustee Equipment with equivalent fair value) in each case in accordance with Section 5.08 and provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing, pay such proceeds or condemnation payments to the Company up to an amount equal to the amount paid by the Company pursuant to Section 5.08 (or, if no payment is then required of the Company under Section 5.08 in respect of such Equipment suffering a Casualty Occurrence, then, if the Company shall so request, pay to the Company the full amount of such insurance proceeds or condemnation payment); any balance of such proceeds or condemnation payments not required to be paid to the Company in accordance with the foregoing shall remain the property of the Trustee subject to the applicable provisions hereof. All insurance proceeds received by the Trustee in respect of any Trust Equipment not suffering a Casualty Occurrence shall be paid to the Company (or to others entitled thereto as designated by the Company) upon proof satisfactory to the Trustee that any damage to such Trust Equipment in respect of which such proceeds were paid has been fully repaired, or adequate provision therefor has been made, provided that no such insurance proceeds shall be paid to the Company if an Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing.

## ARTICLE SIX

### REMEDIES IN EVENT OF DEFAULT

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

(a) The Company shall default in the payment of all or any part of the rental payable hereunder needed to pay the principal of or interest on any Trust Certificate, or if the Company shall default in the payment of any other part of the rental payable hereunder (including advance rental), for more than five days after the same shall have become due and payable, or

(b) the Company and/or PACCAR, as applicable, shall fail to comply with any of the terms and covenants of Sections 2 or 10 of the Cash Flow Support Agreement As Amended (as defined in the RAILEASE Agreement) or of Sections 2.02 or 3.01(a) of the RAILEASE Agreement, or

(c) the Company shall, for more than 5 days after a Responsible Officer thereof shall have obtained actual knowledge thereof, fail to comply with the terms and covenants of Section 3.01(b) or (c) of the RAILEASE Agreement or of Section 7.03 of this Agreement, or to make provision satisfactory to the Trustee for such compliance; provided, that a Responsible Officer shall be deemed to have obtained actual knowledge of any such failure to comply with said Section 3.01(b) or (c) in any event not later than 15 days after the end of any monthly accounting period of the Company, or

(d) the Company shall fail to comply with any of the terms and covenants of Sections 2.01 or 2.03 of the RAILEASE Agreement and such failure shall not have been cured, or provision for cure thereof satisfactory to the Trustee shall not have been made, within 20 days, or

(e) the Company and/or PACCAR, as applicable, shall, for more than 35 days after a Responsible Officer of the Company shall have obtained knowledge thereof from any source, fail to comply with any other of the terms and covenants of this Agreement, the Assignment, the Purchase Agreement, the Cash Flow Support Agreement As Amended or the RAILEASE Agreement on its part to be kept and performed, or to make provision satisfactory to the Trustee or the holders of not less than 51% in aggregate principal amount of the Trust Certificates then outstanding for such compliance, or

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

(g) 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 a court having jurisdiction in the premises shall enter a decree or order for relief in respect of the

Company in an involuntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of the Company or for any substantial part of its property, or ordering the winding-up or liquidation of its affairs and such proceedings, decree or order shall remain unstayed and in effect for a period of 60 consecutive days, or

(h) the Company shall commence a voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or shall consent to the entry of an order for relief in an involuntary case under any such law, or shall consent to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or other similar official) of the Company or for any substantial part of its property, or shall make any general assignment for the benefit of creditors, or shall fail generally to pay its debts as they become due, or shall take any corporate action in furtherance of any of the foregoing, or

(i) any representation, warranty or written statement of the Company, PACCAR or BRAE in the Purchase Agreement or in any document delivered hereunder, thereunder or under the RAILEASE Agreement shall prove to have been, when made, false or misleading in any material respect,

(j) default shall be made with respect to any Indebtedness (as defined in the RAILEASE Agreement) of the Company or any Restricted Subsidiary (other than the Trust Certificates) in excess of the lesser of \$1,000,000 or 5% of all Indebtedness of the Company and its Restricted Subsidiaries on a Consolidated basis beyond any applicable period of grace, or default shall be made with respect to the performance of any other obligation incurred in connection with any such Indebtedness, if the effect of any such default is to accelerate or permit the acceleration of the maturity of any such Indebtedness, or any such Indebtedness shall not be paid when due, unless, if there is an applicable grace period, within the applicable period of grace thereunder such default shall have been remedied or cured by the Company or such Restricted Subsidiary of such Indebtedness in accordance with the terms thereof, or

then, in any such case (herein sometimes called an Event of Default), as long as the same shall not have been waived pursuant to Section 6.04, the Trustee, by notice in writing to the Company, or the holders of not less than 25% in principal amount of the then outstanding Trust Certificates, by notice in writing to the Company and the Trustee, may declare to be due and payable forthwith the entire amount of the rentals (including any unpaid advance rental, but not including rentals required for the payment of interest accruing after the date of such declaration or rentals payable pursuant to Section 5.04(B)(4) 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 rate 15.15% per annum, to the extent legally enforceable, on any portion thereof overdue.

In addition, in case one or more Events of Default shall happen and shall not have been waived pursuant to Section 6.04, the Trustee, by notice in writing to the Company, or the holders of not less than 25% in principal amount of the then outstanding Trust Certificates, by notice in writing to the Company and the Trustee, may 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 installment of rental payable pursuant to Section 5.04(B)(3), (4) or (5) when and as the same shall have become due and payable hereunder, and an Event of Default exists by reason of such failure, 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, together with all amounts payable to the Trustee under Section 8.06, 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 monies 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 federal bankruptcy laws or any other applicable federal or state law, or in case a receiver, liquidator, assignee, custodian, sequestrator, trustee (or other similar official) shall have been appointed for the property of the Company or other such obligor, or in case of any other judicial proceedings relative to the Company or other such obligor, or to the creditors or

property of the Company or other such obligor, the Trustee, irrespective of whether the rental payments hereunder or the principal of the Trust Certificates shall then be due and payable as herein or therein expressed whether by declaration or otherwise and irrespective of whether the Trustee shall have made any demand or declaration pursuant to the provisions of this Section 6.01, shall be entitled and empowered, by intervention in such proceedings or otherwise, to file and prove a claim or claims for the entire amount of the rentals (including any unpaid rental then due but not including rentals required for the payment of interest accruing after the date of such declaration) and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Trustee, 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 negligence or willful misconduct) and of the holders of the Trust Certificates allowed in such proceedings and to collect and receive any monies 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, liquidator, assignee, custodian, sequestrator, or trustee (or other similar official) is hereby authorized by each of the holders of the Trust Certificates to make payment 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 amounts 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 negligence or willful 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. Subject to the rights of sublessees under subleases permitted by Section 5.10 which subleases shall not be in default and which sublessees shall have been permitted to retain possession of Trust Equipment

thereunder by the Trustee, if an Event of Default shall have occurred and shall not have been waived pursuant to Section 6.04, the Trustee (a) may by its agents enter upon the premises of the Company and of any Affiliate of the Company or of any sublessee where any of the Trust Equipment may be and may 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, (b) may lease the Trust Equipment or any part thereof, (c) with or without retaking possession thereof (but only after declaring due and payable the entire amount of rentals payable by the Company as provided in Section 6.01 hereof) 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, insofar as may be necessary to perform and fulfill the trust hereunder, at public or private sale, for cash or upon credit, in its discretion, or (d) may proceed otherwise to enforce its rights and the rights of the holders of interests hereunder in the manner herein provided. 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, in case of the happening of any Event of Default and such taking possession, withdrawal, lease or sale by the Trustee, 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, and the Company shall be and remain liable for the same until such sums shall 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 items mentioned in Section 5.04 (other than rentals required for the payment of interest accruing, or rentals payable pursuant to Section 5.04(B)(4)) due, after the date of the declaration referred to in Section 6.01, whether or not they shall have then matured.

SECTION 6.03. Application of Proceeds. If, in case of the happening of any Event of Default, 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 hereunder after such Event of Default, and the proceeds of any judgment collected from the Company by the Trustee hereunder, and the proceeds of every sale or lease by the Trustee hereunder 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 or of any Assignment (other than sums held in trust for the payment of specific Trust Certificates or a part thereof, or interest thereon), shall be applied by the Trustee to the payment, in the following order of priority, (a) of all proper charges, expenses or advances made or incurred by the Trustee in accordance with the provisions of this Agreement and (b) of the interest then due, with interest on overdue interest with respect to any Trust Certificate at the rate per annum set forth in such Trust Certificate to the extent legally enforceable, and of the principal of all the outstanding Trust Certificates, with interest on each such Trust Certificate at the rate per annum set forth in such Trust Certificate to the extent legally enforceable from the last preceding interest payment date, whether such Trust Certificates shall have then matured by their terms or not, all such payments to be in full if such proceeds shall be sufficient, and if not sufficient, then pro rata without preference between principal and interest.

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 66 2/3% in aggregate principal amount of the Trust Certificates at the time outstanding may on behalf of the holders of all the Trust Certificates waive any past Event of Default and its consequences, except an Event of Default arising from nonpayment of any instalment of rental payable pursuant to Section 5.04(B)(3), (B)(4), (B)(5), (B)(6) or (B)(7), 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 in Section 6.01 provided, but before May 1, 1997, all arrears of rent (with interest at the respective rates per annum set forth in the outstanding Trust Certificates upon any overdue instalments, to the extent legally enforceable), the expenses and reasonable compensation of the Trustee, together with all expenses of the trust occasioned by the Company's default, and all other sums which shall have become due and payable by the Company hereunder (other than the principal of Trust Certificates, and any other rental instalments, which shall not at the time have matured according to their terms) shall be paid by the Company before any sale or lease by the Trustee of any of the Trust Equipment, and every other default in the observance or performance of any covenant or condition hereof shall be made good or secured to the satisfaction of the Trustee, or provision deemed by the Trustee to be adequate shall be made therefor, then, and in every such case, the Trustee, if so requested by the holders of 66 2/3% in aggregate principal amount of the Trust Certificates then outstanding, shall by written notice to the Company waive the Event of 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, nor 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 interest 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, subject to the rights of sublessees under subleases permitted by Section 5.10 which subleases shall not be in default and which sublessees shall have been permitted to retain possession of Trust Equipment thereunder by the Trustee, 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 and the Company shall give to the holders of the Trust Certificates notice of each default hereunder known to the Trustee or the Company, as the case may be, within five days after the occurrence thereof, whether or not such default shall have been remedied or cured before the giving of such notice. The term "default" as used in this Section 6.07 shall mean the happening of any event defined as an Event of Default in Section 6.01, except that, for the purposes of this Section 6.07 only, there shall be eliminated from the definition of any such event as specified in Section 6.01 any reference to the making of a written demand or the continuance, or the continuance in force, for any period of days of a default or failure on the part of the Company referred to in such definition. As and to the extent required by any Assignment, the Trustee shall notify sublessees under sublease assigned thereby of any default or Event of Default hereunder concurrently with any notice it shall give to the Company thereof.

SECTION 6.08. Unconditional Right of Holders of Trust Certificates to Sue for Principal and Interest. Notwithstanding any other provision in this Agreement, the right of any holder of any Trust Certificate to receive payment of the principal of and interest on such Trust Certificate, on or after the respective due dates expressed in such Trust Certificate, or to institute suit for the enforcement of any such payment on or after such respective dates, shall not be impaired or affected without the consent of such holder, except that 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 6.09. Remedies Cumulative. The remedies in this Agreement provided in favor of the Trustee and the holders of the Trust Certificates, or any of them, shall not be deemed exclusive, but shall be cumulative, and shall be

in addition to all other remedies in their favor existing at law or in equity.

SECTION 6.10. Control by Holders of Trust Certificates. The holders of a majority in aggregate principal amount of the Trust Certificates at the time outstanding 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 such direction shall not be otherwise than in accordance with law and the provisions of this Agreement; and the Trustee, subject to the provisions of Section 8.02, shall have the right to decline to follow any such direction if the Trustee, acting on the advice of counsel, shall determine that the proceeding so directed may not lawfully be taken, or if the Trustee in good faith shall, by a Responsible Officer or Officers of the Trustee, determine that the proceeding so directed would involve it in a personal liability, or if the Trustee in good faith should determine that the action so directed would be unjustly prejudicial to the holders of the Trust Certificates not taking part in such direction; and provided further, that nothing in this Agreement contained shall impair the right of the Trustee in its discretion to take any action deemed proper by the Trustee and which is not inconsistent with such direction by the holders of the Trust Certificates.

## ARTICLE SEVEN

### Additional Covenants and Agreements by the Company

SECTION 7.01. Guaranty of Company. The Company covenants, agrees and guarantees that the holder of each of the Trust Certificates shall receive the principal amount thereof in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, when and as the same shall become due and payable, in accordance with the provisions thereof and of this Agreement (and, if not so paid, with interest thereon until paid at the respective rates per annum contained in the Guarantees set forth on the Trust Certificates to the extent legally enforceable), and shall receive interest thereon in like money at the rate specified therein, at the times and place and otherwise as expressed in the Trust Certificates (and, if not so paid, with interest thereon until paid at the respective rates per annum contained in the Guarantees set forth on the Trust Certificates to the extent legally enforceable); and the Company further covenants and agrees to endorse

upon each of the Trust Certificates, at or before the issuance and delivery thereof by the Trustee, its Guaranty of the prompt payment of the principal thereof and of the interest thereon, in substantially the form hereinbefore set forth. Said Guaranty so endorsed shall be signed in the name and on behalf of the Company by the manual or facsimile signature of its President or a Vice President or other duly authorized signatory. 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, authenticated 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 covenants and agrees that it will pay and discharge, or cause to be paid and discharged, or make adequate provision for the satisfaction or discharge of, any debt, tax, charge, assessment, obligation or claim which if unpaid might become a lien or charge upon or against any of the Trust Equipment, except upon the leasehold interest of the Company therein; but this provision shall not require the payment of any such debt, tax, charge, assessment, obligation or claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings, provided that such contest will not materially endanger the rights or interests of the Trustee or of the holders of the Trust Certificates and the Company shall have furnished the Trustee with an Opinion of Counsel to such effect. If the Company does not forthwith pay and discharge, or cause to be paid and discharged, or make adequate provision for the satisfaction or discharge of, any such debt, tax, charge, assessment, obligation or claim as required by this Section 7.02, the Trustee may, but shall not be obligated to, not earlier than 3 days after the Trustee shall have demanded in writing such payment and discharge, pay and discharge the same, and any amounts so paid shall be due on demand and shall be secured by and under this Agreement until reimbursed by the Company.

SECTION 7.03. Limitation on Liens on Equipment. The Company will not create, issue, incur or permit to continue in existence any mortgage, pledge, encumbrance, lien or other charge of any kind upon the Trust Equipment, the Existing Lease or any sublease permitted by Section 5.10, other than (i) the liens granted and permitted to be granted upon such

Trust Equipment upon the terms and conditions of this Agreement (including any Assignment), (ii) inchoate tax liens or liens for taxes not due or payable, and (iii) other liens arising in the ordinary course of business which were not incurred in connection with the borrowing of money or the issuance or assumption of notes, bonds, debentures or the like or specific grants of liens in contracts signed by the Company, and which do not, individually or in the aggregate, substantially detract from the value of the Trust Equipment or substantially impair the use thereof in the operation of the Company's business or significantly endanger the rights or interests of the Trustee or of the holders of the Trust Certificates.

SECTION 7.04. 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 hereof and of any instruments executed under the provisions hereof with respect to the Trust Equipment. 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, promptly following execution and delivery of each Assignment of the Existing Lease and of each other sublease permitted under Section 5.10, and of each supplement or amendment hereto or thereto, as the case may be, cause the same to be duly filed and recorded with the Interstate Commerce Commission in accordance with 49 U.S.C. § 11303. 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 and file, register and record this Agreement, each Assignment of the Existing Lease and of each other sublease permitted under Section 5.10, and each supplement and amendment hereto or thereto, as the case may be, in all other jurisdictions required by law or reasonably requested by the Trustee or the holders of not less than 66-2/3% in aggregate principal amount of Trust Certificates at the time outstanding for the purposes 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 in respect of any jurisdiction outside of the United States if (a) after giving effect to the failure to take such action, the Company has taken all action required by law to protect the title of the Trustee to units of Trust Equipment having an aggregate fair value (determined in the manner provided in Section 3.05) of not less than 90% of the aggregate fair value (as so determined) of all of the Trust Equipment, and (b) any unit of Trust Equipment at any time located in such jurisdiction shall have been marked with the marking specified in Section 5.07 hereof.

Promptly after the execution, delivery and recordation of this Agreement and of each Assignment and each supplement hereto or thereto, as the case may be, the Company will furnish to the Trustee an Opinion of Counsel stating that in the opinion of such counsel, such document or such supplement, as the case may be, has been properly recorded and filed so as effectively to protect in the case of this Agreement and any such supplements hereto 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 and in the case of any such Assignment, the rights of the Trustee and the rights of the holders of the Trust Certificates thereunder, (in each case, to the extent possible under applicable law of the United States and any jurisdiction therein and, in the event of recordation or filing in Canada or Mexico, under applicable law of Canada or Mexico, as the case may be, and any jurisdiction therein) and reciting the details of such action or stating that in the opinion of such counsel no such action is necessary for any of such purposes and, together with such Opinion of Counsel, certificates or other evidences of any such filing and recording.

SECTION 7.05. Further Assurances. The Company covenants and agrees from time to time to do all such acts and execute all such instruments of further assurance as it shall be reasonably requested by the Trustee to do or execute for the purpose of fully carrying out and effectuating this Agreement and the intent hereof.

## ARTICLE EIGHT

### THE TRUSTEE

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

SECTION 8.02. Duties and Responsibilities of the Trustee; During Default; Prior to Default. In case an Event of Default has occurred and is continuing, the Trustee shall exercise such of the rights and powers vested in it by this Agreement, and use the same degree of care and skill in their exercise, as a prudent man would exercise or use under the circumstances in the conduct of his own affairs. The Trustee shall not be deemed to have knowledge of any default or Event of Default under this Agreement prior to the time an officer or employee in its Corporate Trust Department shall have obtained actual knowledge thereof.

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 willful 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;

(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 the requisite percentage in aggregate unpaid principal amount of the Trust Certificates at the time outstanding as provided elsewhere herein, relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising or refraining from exercising any trust or power conferred upon the Trustee, under this Agreement; and

(d) the Trustee shall not be required to take any action under this Agreement which it has been advised by counsel is contrary to law.

None of the provisions contained in this Agreement, except the next-to-last paragraph of Section 5.04, shall require the Trustee to expend or risk its own funds or otherwise incur personal financial liability in the performance of any of its duties or in the exercise of any of its rights or powers, if there is reasonable ground for believing that the repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

SECTION 8.03. Certain Rights of the Trustee.

(a) 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;

(b) 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;

(c) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Agreement at the request, order or direction of any of the holders of the Trust Certificates, pursuant to the provisions of this Agreement, unless such holders shall have offered to the Trustee reasonable security or indemnity against the costs, expenses and liabilities which might be incurred therein or thereby, provided, that the agreement of the Purchaser shall for purposes of this Section 8.03(c) be deemed to constitute such reasonable security or indemnity; and

(d) 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.

Except as otherwise provided in the first paragraph of Section 8.02, 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, except

as aforesaid, the Trustee shall not be responsible for the filing or recording or refileing or rerecording of this Agreement or of any supplement hereto or statement of new numbers or any other instrument required to be filed in connection with the transactions contemplated hereby.

SECTION 8.04. Application of Rentals. The Trustee covenants and agrees to apply the rentals received by it under Section 5.04 when and as the same shall be received, and to the extent that such rentals shall be sufficient therefor, for the purposes specified in said Section 5.04.

SECTION 8.05. Funds May Be Held by Trustee; Investments in Investment Securities. Any money at any time paid to or held by the Trustee hereunder until paid out by the Trustee as herein provided may, subject to the last paragraph of Section 8.06, be carried by the Trustee on deposit with itself, and, if and to the extent permitted by applicable law or regulations of governmental authorities having jurisdiction over the Trustee, the Trustee may allow interest upon any such monies held by it in trust at the rate generally prevailing among banks and trust companies in the state where the Corporate Trust Office is located or 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 5.06 or Section 5.08 (hereinafter in this Section called Replacement Funds) in Investment Securities, at such prices, including any premium and accrued interest, as are set forth in such Request, such Investment Securities to be held by the Trustee in trust for the benefit of the holders of the Trust Certificates. The Trustee may make any and all such investments through its own Bond Department unless otherwise directed by the Company.

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 interest on any Trust Certificates, sell such Investment Securities, 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 Investment Securities, including accrued interest, or apply such proceeds for payment against delivery of Trust Equipment or for payment of said principal or interest if and to the extent such proceeds are needed therefore pursuant to the provisions of this Agreement.

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 Investment Securities and also an amount equal to any loss incident to the sale or redemption of any Investment Securities for a sum less than the amount paid therefor.

The Company, if not to the knowledge of the Trustee in default under the terms hereof 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 or Replacement Funds at the time of purchase) or other profit which may be realized from any sale or redemption of Investment Securities.

Any amounts remaining available to the Trustee from time to time as a consequence of any determination of Trust Certificates to be redeemed and after allocation of the principal amount thereof to be redeemed to even multiples thereof as provided in Section 3.02, in connection with any redemption of Trust Certificates in part, may be invested or reinvested in like manner as provided above for Deposited Cash.

SECTION 8.06. Trustee Not Liable for Delivery Delays or Defects in Equipment or Title; May Perform Duties by Agents; Reimbursement of Expenses; Holding of Trust Certificates; Moneys Held in Trust. 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 or owners 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.

Except as otherwise provided in Section 8.02, the Trustee may perform its powers and duties hereunder with respect to the delivery and acceptance of the Trust Equipment by or through such attorneys, agents and servants as it shall appoint, and shall be answerable for only its own acts, negligence and willful defaults and not for the default or misconduct of any attorney, agent or servant appointed by it with reasonable care. The Trustee shall not be responsible in any way for the recitals herein contained or for the execution or validity of this Agreement or of the Trust Certificates (except for its own execution thereof), or for the Guaranty by the Company.

The Trustee shall be entitled to receive payment for all of its expenses and disbursements hereunder, including reasonable counsel fees, and to receive reasonable compensa-

tion 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 with the same rights which it would have if it were not Trustee.

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

SECTION 8.07. Resignation and Removal; Appointment of Successor Trustee. (a) The Trustee may at any time resign by giving 30 days' written notice of resignation to the Company and the holders of the Trust Certificates and such resignation shall take effect 30 days after the delivery thereof to the Company and the holders or upon receipt by the Trustee of an instrument of acceptance executed by a successor trustee as hereinafter provided in Section 8.08.

(b) The holders of 66 2/3% in aggregate principal amount of the Trust Certificates at the time outstanding may at any time remove the Trustee and appoint a successor trustee by delivering to the Trustee to be removed, to the successor trustee so appointed and to the Company the evidence provided for in Section 9.01 of the action taken by the holders of the Trust Certificates.

(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 66 2/3% 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 state bank or trust company having capital and surplus of not less than \$100,000,000, 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 8.08. Acceptance of Appointment by Successor Trustee. Any successor trustee appointed as provided in Section 8.07 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 8.06.

SECTION 8.09. Merger or Consolidation of Trustee. Any corporation into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger or conversion or consolidation to which the Trustee shall be a party, or any corporation succeeding to the corporate trust business of the Trustee, 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.

## ARTICLE NINE

### CONCERNING THE HOLDERS OF TRUST CERTIFICATES

SECTION 9.01. Evidence of Action Taken by Holders of Trust Certificates. Whenever in this Agreement it is provided that the holders of a specified percentage in aggregate principal amount of the Trust Certificates may take any action

(including the making of any demand or request, the giving of any notice, consent or waiver or the taking of any other action), the fact that at the time of taking any such action the holders of such specified percentage have joined therein may be evidenced by any instrument or any number of instruments of similar tenor executed by holders of Trust Certificates in person or by agent or proxy appointed in writing.

SECTION 9.02. Proof of Execution of Instruments and Holding of Trust Certificates. Subject to the provisions of Section 8.02, proof of the execution of any instrument by a holder of Trust Certificate or his agent or proxy and proof of the holding by any person of any of the Trust Certificates shall be sufficient if made in the following manner:

(i) The fact and date of the execution by any such person of any instrument may be proved by the certificate of any notary public or other officer of any jurisdiction within the United States of America authorized to take acknowledgments of deeds to be recorded in such jurisdiction that the person executing such instrument acknowledged to him the execution thereof, or by an affidavit of a witness to such execution sworn to before any such notary or other such officer, or by a guarantee of the signature of such person by a trust company, bank or a member firm of the New York Stock Exchange, Inc.

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

(iii) The Trustee may require such additional proof of any matter referred to in this Section 9.02 as it shall deem necessary.

This Section 9.02 is not intended to limit or diminish the provisions of Section 2.05 hereof.

SECTION 9.03. Trust Certificates Owned by Company Deemed Not Outstanding. 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 any 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 9.04. Right of Revocation of Action Taken.

At any time prior to (but not after) the evidencing to the Trustee, as provided in Section 9.01, of the taking of any action by the holders of the percentage in aggregate principal amount of the Trust Certificates specified in this Agreement in connection with such action, any holder of a Trust Certificate the serial number of which is shown by the evidence to be included in the Trust Certificates the holders of which have consented to such action may, by filing written notice with the Trustee at its Corporate Trust Office and upon proof of holding as provided in Section 9.02, revoke such action so far as concerns such Trust Certificate. Except as aforesaid any such action taken by the holder of any Trust Certificate shall be conclusive and binding upon such holder and upon all future holders and owners of such Trust Certificate and of any Trust Certificate issued in exchange or substitution therefor, irrespective of whether or not any notation in regard thereto is made upon such Trust Certificate. Any action taken by the holders of the percentage in aggregate principal amount of the Trust Certificates specified in this Agreement in connection with such action shall be conclusive and binding upon the Company, the Trustee and the holders of all the Trust Certificates.

SECTION 9.05. Amendment or Waiver. Any provision of this Agreement may be amended or waived with the written consent of the holders of not less than 66-2/3% 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 and affected thereby, no such amendment or waiver shall (1) reduce the amount of principal, change the amount or dates of payment of instalments of principal or reduce the rate or extend the time of payment of interest with respect to the Trust Certificates, (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 TEN

MISCELLANEOUS

SECTION 10.01. Rights Confined to Parties and Holders. Nothing expressed or implied herein is intended or shall be construed to confer upon or to give to any person, firm or

corporation, other than the parties hereto and the holders of the Trust Certificates, any right, remedy or claim under or by reason of this Agreement or of any term, covenant or condition hereof, and all the terms, covenants, conditions, promises and agreements contained herein shall be for the sole and exclusive benefit of the parties hereto and their respective successors and of the holders of the Trust Certificates. Nothing expressed or implied herein is intended or shall be construed to preclude the Company from causing any of its obligations respecting the Trust Equipment to be performed by others on behalf of the Company, including without limitation, by the Manager or any Affiliate of the Company, provided that no taking of any action on behalf of the Company by others shall diminish or alter the Company's responsibilities hereunder.

SECTION 10.02. No Recourse. No recourse under any obligation, covenant or agreement of this Agreement, or of the Guaranty endorsed on any Trust Certificate, shall be had against any officer or director of the Company, as such, by the enforcement of any assessment or by any legal or equitable proceeding, by virtue of any statute or otherwise; it being expressly agreed and understood that this Agreement and said Guaranty are solely corporate obligations, and that no personal liability whatever shall attach to or be incurred by the officers or directors of the Company, as such, or any of them, under or by reason of any of the obligations, covenants or agreements contained in this Agreement or in said Guaranty, or implied therefrom, and that any and all personal liability, either at common law or in equity, or by statute or constitution, of every such officer or director 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 or certified mail, return receipt requested to (a) in the case of the Company, 777 106th Avenue, N.E., Bellevue, Washington 98004 (delivery) or P.O. Box 1518, Bellevue, Washington 98009 (mail), Attention: Vice President and Treasurer, 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 principal office of the Trustee at One Constitution Plaza, Hartford, Connecticut 06115, attention: Corporate Trust Department, or such other address as may hereafter be furnished to the Company in writing by the

Trustee, and (c) in the case of the holders of the Trust Certificates, to the respective addresses of such holders on the books of the Trustee maintained pursuant to Section 2.05(d). An affidavit by any person representing or acting on behalf of the Company or the Trustee, as to such mailing, having the registry or certified mail return receipt attached, shall be conclusive evidence of the giving of such demand, notice or communication. Any communication so addressed and mailed shall be deemed to be given on whichever of the following dates shall first occur: (i) the date of actual receipt thereof by the intended recipient, (ii) the fifth day next following the date mailed, or (iii) if the substance thereof is communicated to the intended recipient by hand delivery, telephone or telex on or prior to the date of such mailing, the date so mailed.

SECTION 10.05. Effect of Headings; Articles and Sections. The Article and Section headings herein are for convenience only and shall not affect the construction hereof. All references herein to Articles, Sections or other subdivisions, unless otherwise specified, refer to the corresponding Articles, Sections and other subdivisions of this Agreement.

SECTION 10.06. Counterparts. This Agreement may be executed in several counterparts each of which shall be deemed to be an original, and all such counterparts shall together constitute but one and the same instrument. It shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart.

SECTION 10.07. Date Executed. This Agreement shall be deemed to have been executed on the date of the acknowledgment thereof by the officer of the Trustee who signed it on behalf of the Trustee.

SECTION 10.08. Governing Law. The provisions of this Agreement, and all the rights and obligations of the parties hereunder, shall be construed and enforced in accordance with and shall in all respects be governed by the laws of the State of New York; provided, however, that the parties shall be entitled to all rights conferred by the Interstate Commerce Act and such additional rights arising out of the filing or deposit hereof, if any, as shall be conferred by the laws of the several jurisdictions in which this Agreement or any supplement hereto shall be filed or deposited.

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 written.

THE CONNECTICUT BANK AND  
TRUST COMPANY, Trustee

By   
Authorized Officer

[Corporate Seal]

Attest:

  
Authorized Officer

RAILEASE Inc

By   
President

[Corporate Seal]

Attest:

  
Assistant Secretary

STATE OF NEW YORK )  
 : SS:  
COUNTY OF NEW YORK )

On this *15th day of May, 1981*, before me personally came M. J. Rister, to me known, who, being by me duly sworn, says that he resides at 132 Stage Coach Lane, Newington, Connecticut, that he is an authorized officer of The Connecticut Bank and Trust Company, one of the corporations described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by authority of the Board of Directors of said corporation, and that he signed his name thereto by like authority.

*Byron K. Burnett*  
Notary Public

BYRON K. BURNETT  
NOTARY PUBLIC, State of New York  
No. 31-4638439  
Qualified in New York County  
Commission Expires March 30, 1982

[Notarial Seal]

STATE OF WASHINGTON )  
 : SS:  
COUNTY OF KING )

On this *11th day of June, 1981*, before me personally came J. J. Jolley, to me known, who, being by me duly sworn, says that he resides at Bellevue, Washington, that he is President of RAILEASE Inc, one of the corporations described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal: that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

*Terrence J. Sipton*  
Notary Public

[Notarial Seal]

SCHEDULE A  
TO EQUIPMENT TRUST AGREEMENT

Description of Trust Equipment

<u>Quantity*</u>	<u>Specification</u>	<u>Description</u>	<u>AAR Mechanical Designation</u>	<u>Car Numbers (all inclusive)</u>	<u>Date of Earliest Service</u>	<u>**Term of Lease</u>	<u>Quarterly Rental</u>
500	PACCAR Inc PC-723, as amended	52'6" 100 Ton general purpose gondola car	GB	MTW 81200 through 81699	January, 1981	18 years	\$1,074.24 per car

\* Subject to change according to aggregate Cost and available Deposited Cash.

\*\* Subject to early termination as provided in Section 3 thereof.

SCHEDULE B

TO EQUIPMENT TRUST AGREEMENT

Description of Existing Lease

<u>Lease/Lessee</u>	<u>No. of Units</u>	<u>Road Numbers (incl.)</u>	<u>Unit Description</u>	<u>AAR Mechanical Designation</u>
Equipment Lease 10/31/80 between RAILEASE Inc, lessor, and Richard B. Ogilvie, trustee of the property of Chicago, Milwaukee, St. Paul, & Pacific RR Co., debtor, lessee (ICC recordation #12783 (1/19/91, 1:35 pm)), as amended	500	MILW 81200- MILW 81699	52 6" general purpose gondola cars	GB