

RECORDATION NO. 13244-1425 - A  
SEP 25 1981 - 11 45 AM

RECORDATION NO. 13244-1425

SEP 25 1981 - 11 45 AM  
CRAVATH, SWAINE & MOORE  
INTERSTATE COMMERCE COMMISSION

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RECORDATION NO. 13244-1425

SEP 25 1981  
150.00

SEP 25 1981 - 11 45 AM  
INTERSTATE COMMERCE COMMISSION

RECORDATION NO. 13244-1425 - B

SEP 25 1981 - 11 45 AM  
INTERSTATE COMMERCE COMMISSION

September 24, 1981

Chicago and North Western Transportation Company  
Lease Financing Dated as of July 15, 1981  
15-1/2% Equipment Trust Certificates  
Due February 1, 1992  
[CS&M Ref.: 2044-128]

*Copy to President  
of Chicago and North Western  
Sept 25*

SEP 25 11 37 AM '81

*Manfred - D.E. Wilson*

Dear Madam:

Pursuant to 49 U.S.C. § 11303(a), I enclose here-  
with on behalf of Chicago and North Western Transportation  
Company for filing and recordation counterparts of the  
following documents:

*New Number*

1. Reconstruction Agreement dated as of July 15, 1981, between North Western Leasing Company, as Owner, and Chicago and North Western Transportation Company, as Builder.
2. Equipment Trust Agreement dated as of July 15, 1981, between The Connecticut Bank and Trust Company, as Trustee, and North Western Leasing Company, as Owner.
3. (a) Lease of Railroad Equipment dated as of July 15, 1981, between Chicago and North Western Transportation Company, as Lessee, and North Western Leasing Company, as Lessor; and

- A

- B

- C Next Page

C (b) Assignment of Lease and Agreement dated as of July 15, 1981, between The Connecticut Bank and Trust Company, as Trustee, and North Western Leasing Company, as Owner.

The names and addresses of the parties to the aforementioned Agreements are as follows:

(1) Trustee:

The Connecticut Bank and Trust Company  
One Constitution Plaza  
Hartford, Connecticut 06115

(2) Lessee-Builder:

Chicago and North Western  
Transportation Company  
One North Western Center  
165 North Canal Street  
Chicago, Illinois 60606

(3) Owner-Lessor:

North Western Leasing Company  
One North Western Center  
165 North Canal Street  
Chicago, Illinois 60606

Please file and record the documents referred to in this letter and index them under the names of the Trustee, the Owner-Lessor and the Lessee-Builder.

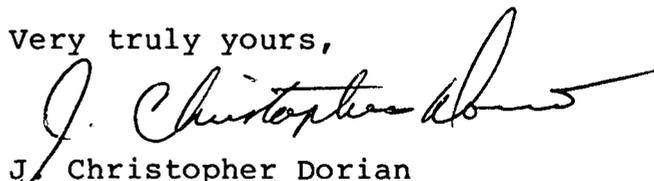
The equipment covered by the aforementioned documents consists of:

38 GP-40 3000 h.p. locomotives bearing identifying numbers CNW 5500-CNW 5537, both inclusive, and also bears the legend "Ownership Subject to a Security Agreement Filed With The Interstate Commerce Commission". ✓

There is also enclosed a check for \$150 payable to the Interstate Commerce Commission, representing the fee for recording the Reconstruction Agreement, the Equipment Trust Agreement and the Lease of Railroad Equipment and related Assignment of Lease and Agreement (together constituting one document).

Please stamp all counterparts of the enclosed documents with your official recording stamp. You will wish to retain one copy of the instruments for your files. It is requested that the remaining counterparts be delivered to the bearer of this letter.

Very truly yours,



J. Christopher Dorian  
As Agent for Chicago and  
North Western Transportation Company

Agatha L. Mergenovich,  
Secretary,  
Interstate Commerce Commission,  
Washington, D. C. 20423

Encls.

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RECORDATION NO. 13314 - A

SEP 25 1981 11 45 AM

INTERSTATE COMMERCE COMMISSION

[CS&M Ref. No.: 2044-128]

EQUIPMENT TRUST AGREEMENT

Dated as of July 15, 1981

Among

THE CONNECTICUT BANK AND TRUST COMPANY,

Not in its individual capacity but solely as Trustee

and

NORTH WESTERN LEASING COMPANY,  
Owner

15-1/2% Equipment Trust Certificates Due February 1, 1992

[Covering 38 Reconstructed Locomotives]

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EQUIPMENT TRUST AGREEMENT dated as of July 15, 1981, between THE CONNECTICUT BANK AND TRUST COMPANY, a Connecticut banking corporation, not in its individual capacity, but solely as Trustee hereunder (the "Trustee"), and NORTH WESTERN LEASING COMPANY, a Delaware corporation (the "Owner"):

WHEREAS Trust Certificates (as hereinafter defined) are to be issued and sold hereunder in an aggregate principal amount not exceeding \$13,167,000 at any time outstanding, at a price equal to 100% of the principal amount thereof, and the proceeds of the issuance thereof are to be deposited with the Trustee to constitute a fund equal to the aggregate principal amount of Trust Certificates so issued and sold to be applied by the Trustee in payment of the cost of the reconstructed railroad equipment described in Schedule A hereto;

WHEREAS Chicago and North Western Transportation Company (the "Builder" or the "Lessee") has agreed to reconstruct, at the direction of the Owner, the railroad equipment described in Schedule A hereto;

WHEREAS a security interest in such reconstructed railroad equipment is to be vested in and is to be retained by the Trustee as security for the obligations of the Owner hereunder, such security interest to be created by the lease herein set forth pursuant to which such railroad equipment is to be leased by the Trustee to the Owner until such obligations are performed;

WHEREAS the Owner is entering into the Lease (as hereinafter defined) with the Lessee pursuant to which the Owner will lease such railroad equipment to the Lessee;

WHEREAS the Lease is being assigned by the Owner to the Trustee as security for the obligations of the Owner hereunder pursuant to the Lease Assignment (as hereinafter defined) and the Lessee is consenting to such assignment pursuant to the Consent (as hereinafter defined); and

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

[FORM OF TRUST CERTIFICATE]

THE REGISTERED HOLDER HEREOF HAS REPRESENTED THAT IT HAS ACQUIRED THIS CERTIFICATE FOR INVESTMENT AND NOT

WITH A VIEW TO, OR FOR SALE IN CONNECTION WITH, ANY DISTRIBUTION THEREOF. ACCORDINGLY, THIS CERTIFICATE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AND MAY NOT BE SOLD, TRANSFERRED, PLEDGED OR HYPOTHECATED EXCEPT IN COMPLIANCE WITH SUCH ACT.

§

No.

EQUIPMENT TRUST DUE FEBRUARY 1, 1992

SECURED BY LEASE OBLIGATIONS OF  
CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY

EQUIPMENT TRUST CERTIFICATE

Total Authorized Issue  
\$13,167,000

The Connecticut Bank and Trust Company, TRUSTEE  
Interest at the Rate of 15-1/2% Per Annum Payable  
February 1 and August 1, Commencing February 1, 1982

The Connecticut Bank and Trust Company, not in its individual capacity but solely as trustee (the "Trustee") under an Equipment Trust Agreement dated as of July 15, 1981 (the "Agreement"), between the Trustee and NORTH WESTERN LEASING COMPANY (the "Owner"), hereby certifies that or registered assigns, is entitled to an interest in the principal amount of \$ in the EQUIPMENT TRUST DUE FEBRUARY 1, 1992, SECURED BY LEASE OBLIGATIONS OF CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY, payable in installments as hereinafter provided, and to interest on the unpaid principal amount represented by this Certificate from the date hereof until the principal amount (and premium, if any, on) hereof is due and payable, at the rate of 15-1/2% per annum, payable semiannually on February 1 and August 1 in each year, commencing February 1, 1982, with interest at the rate of 16-1/2% per annum on any overdue principal (and premium, if any) and interest to the extent that it shall be legally enforceable. Payments of installments of principal (and premium, if any) and interest shall be made by the Trustee to the registered holder hereof at the corporate trust office of the Trustee in the city of Hartford, Connecticut, in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, but payable only out of rentals or other moneys received by the Trustee and applicable to such payment under the provisions of the Agreement. Interest due hereunder shall be calculated on the basis of a 360-day

year of twelve 30-day months; provided, however, that interest due hereon on February 1, 1982, shall be calculated on the basis of the actual number of days elapsed over a year of 365 days.

The principal amount of this Certificate is due and payable in annual installments on February 1 in each year, commencing February 1, 1983, and continuing to and including February 1, 1992, calculated in accordance with the Agreement so that such installments of principal shall completely amortize the principal amount of this Certificate, subject to proportionate reduction in the event of prepayment out of moneys deposited with the Trustee on account of Casualty Occurrences (as defined in the Agreement). Any such prepayment of this Certificate shall be at 100% of the principal amount hereof to be prepaid, together with accrued interest to the date fixed for prepayment. This Certificate is also prepayable on February 1, 1982, out of any Deposited Cash (as defined in the Agreement) held by the Trustee and not applied to the cost of reconstructed railroad equipment to be subject to the trust created by the Agreement; any such prepayment of this Certificate shall be at 100% of the principal amount hereof to be prepaid, together with accrued interest thereon.

As provided in the Agreement, this Certificate may be redeemed, at the option of the Owner, as a whole or from time to time in part (provided that in the case of a redemption in part all Certificates outstanding under the Agreement shall be redeemed in proportion to their outstanding principal amount) at any time on or after December 1, 1988, upon the notice referred to below, at the following redemption prices (expressed in percentages of the principal amount) together with interest accrued to the date fixed for the redemption:

If redeemed during the 12-month period beginning December 1,

<u>Year</u>	<u>Percentage</u>
1988	104-1/2%
1989	102-1/4
1990	100
1991	100

Notice of redemption shall be given to the holder of this Certificate, if it is to be redeemed, as a whole or in part, by mailing a notice of such redemption not less than 30 nor more than 60 days prior to the date fixed for redemption to the holder's last address as it appears upon the Certificate register, all as provided in the Agreement. If this Certificate (or a portion hereof) is duly called for redemption and funds for payment duly provided, this Certificate (or such portion) shall cease to bear interest from and after the date fixed for redemption.

In the event of redemption of this Certificate in part only, a new Certificate or Certificates in authorized denominations and in principal amount equal to the unredeemed portion hereof shall be issued upon the cancelation hereof.

This Certificate is one of an authorized issue of Certificates in an aggregate principal amount outstanding not exceeding the Total Authorized Issue set forth above, issued or to be issued under and subject to the terms of the Agreement, under which a security interest in certain reconstructed railroad equipment leased by the Owner to Chicago and North Western Transportation Company and in certain moneys due under the lease of such equipment to such Company are to be held by the Trustee in trust for the equal and ratable benefit of the holders of Certificates, to which Agreement (a copy of which is on file with the Trustee at its said office) reference is made for a full statement of the rights and obligations of the Owner, the duties and immunities of the Trustee and the rights of the holder hereof thereunder.

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

Subject to the restrictions set forth above, the transfer of this Certificate in whole or in part may be registered on the books of the Trustee upon surrender to the

Trustee, in person or by duly authorized attorney, at its said office of this Certificate accompanied by a written instrument of transfer, duly executed by the registered holder in person or by such attorney, in form satisfactory to the Trustee, and thereupon a new Certificate or Certificates for the then aggregate unpaid principal amount hereof will be issued to the transferee in exchange herefor and, if less than the then entire unpaid principal amount hereof is transferred, a balance certificate therefor will be issued to the transferor. Prior to due presentment for registration of transfer, the Trustee may treat the person in whose name this Certificate is registered as the absolute owner hereof for the purpose of receiving payment of principal (and premium, if any) and interest and for all other purposes, and shall not be affected by any notice to the contrary.

In case of the occurrence of an Event of Default (as defined in the Agreement), the principal amount represented by this Certificate (and interest accrued thereon) may be declared due and payable, as provided in the Agreement.

IN WITNESS WHEREOF, the Trustee has caused this Certificate to be signed by the manual signature of one of its Authorized Officers and its corporate seal to be hereunto imprinted and to be attested by one of its Authorized Officers by his manual signature.

Dated as of:

The Connecticut Bank and Trust Company,  
not in its individual capacity,  
but solely as Trustee,

by

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

ATTEST:

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

WHEREAS it is desired to secure for the holders of the Trust Certificates the payment of the principal (and premium, if any) thereof with interest thereon, as hereinafter provided, and to evidence the rights of the holders of the Trust Certificates in substantially the forms 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:

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

Appraised Fair Market Value shall mean at any time the per unit fair market value (not exceeding \$500,000) of the Equipment at such time as determined by an independent appraisal satisfactory to the Trustee.

Builder shall mean Chicago and North Western Transportation Company.

The term Business Day shall mean any calendar day, excluding Saturday, Sunday and legal holidays or days on which banking institutions are authorized by law to be closed in Chicago, Illinois, or Hartford, Connecticut.

Casualty Occurrence shall mean any occurrence specified in Section 5.06 hereof to be a Casualty Occurrence.

The Closing Date, with respect to a unit of Trust Equipment, shall mean the date of settlement for such unit of Trust Equipment pursuant to Article Four hereof.

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

Corporate Trust Office shall mean the office of the Trustee in Hartford, Connecticut, at which the corporate trust business of the Trustee shall, at the time in question, be principally administered, which office is, at the date of execution of this Agreement, located at One Constitution Plaza, Hartford, Connecticut 06115, Attention of Corporate Trust Office.

Deposited Cash shall mean the aggregate of the proceeds from the sale of the Trust Certificates deposited with the Trustee pursuant to Section 2.01.

Equipment shall mean reconstructed standard gauge railroad GP-40 Diesel Electric Locomotives, owned by the Owner, which are described in Schedule A hereto and are reconstructed in accordance with the Specifications; provided, however, that Equipment acquired pursuant to Section 5.06 only shall mean any standard gauge railroad equipment, other than passenger or work equipment, first put in use on or after the date of this Agreement and which has not been put in use by the Owner or the Lessee prior to its delivery hereunder and certified in an Officer's Certificate to have a service life extending to or beyond February 1, 1997; provided further, however, that the Owner may cause Equipment to be acquired by the Trustee pursuant to Section 5.06 to replace up to four units of the Equipment described in Schedule A hereto without regard to the requirement that such additional Equipment shall not have been put in use by the Owner or Lessee prior to the delivery of such units hereunder.

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

Fair Value of any unit of Trust Equipment on any date shall be deemed to be an amount computed by multiplying the unpaid principal amount of the Trust Certificates outstanding on such date (after giving effect to any payment in respect thereof due on such date pursuant to Section 5.03

hereof) by a fraction of which the numerator shall be the Total Cost of such unit of Trust Equipment and the denominator shall be the aggregate Total Cost of all units of Trust Equipment (including such unit) subject to the trust on such date.

The term holder, when used with respect to Trust Certificates, shall mean the registered owner of a Trust Certificate.

Hulk Cost, when used with respect to each unit of Equipment, shall mean \$190,000.

Investments shall mean (i) certificates of deposit of commercial banks incorporated under the laws of the United States of America or any State thereof having a capital and surplus aggregating not less than \$50,000,000, (ii) open market commercial paper rated "Prime-1" by the NCO/Moody's Commercial Paper Division of Moody's Investors Services, Inc., or rated "A-1" by Standard & Poor's Corporation (or a comparable rating by any successor to either of their businesses) and (iii) bonds, notes or other direct obligations of the United States of America or obligations for which the full faith and credit of the United States are pledged to provide for the payment of the interest and principal; in each case maturing within one year after the date of investment therein.

Lease shall mean the Lease of Railroad Equipment dated as of the date hereof, between the Owner and the Lessee, substantially in the form of Annex I hereto, as the same may be further supplemented or amended as contemplated hereby or thereby.

Lease Assignment shall mean the Assignment of Lease and Agreement dated as of the date hereof, between the Owner and the Trustee, substantially in the form of Annex II hereto.

Lessee shall mean Chicago and North Western Transportation Company.

Officer's Certificate shall mean a certificate signed by the President, a Vice President, the Assistant Vice President-Motive Power, or the Superintendent-Motive Power of the Owner, the Lessee or the Builder, as the case may be.

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

Overdue Rate, in the case of any Trust Certificate, shall mean 16-1/2% per annum.

Owner shall mean North Western Leasing Company, a Delaware corporation.

Participation Agreement shall mean the Participation Agreement dated as of the date hereof among the Lessee, the Owner, the Trustee and the Purchasers named therein.

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

Purchase Price shall mean, as to any unit of Trust Equipment, the amount actually paid out by the Trustee pursuant to Section 4.02 hereof with respect to such unit of Trust Equipment.

Purchaser shall mean any Purchaser of the Trust Certificates under the Participation Agreement.

Reconstruction Agreement shall mean the Reconstruction Agreement dated as of July 15, 1981, between the Owner and the Builder, as the same may be supplemented or amended as contemplated hereby or thereby.

The Reconstruction Cost of a unit of Equipment shall mean the Reconstruction Cost thereof as defined in the Reconstruction Agreement.

Request shall mean a written request for the action therein specified signed on behalf of the Owner or the Lessee by the President, any Vice President, the Treasurer or an Assistant Treasurer of the Owner or the Lessee, as the case may be, and delivered to the Trustee.

Specifications shall have the meaning assigned to it in the Participation Agreement.

The Total Cost of a unit of Equipment shall mean the sum of such unit's Reconstruction Cost and Hulk Cost.

Trust Certificates shall mean the Equipment Trust Certificates 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, a Connecticut banking corporation, and any successor as trustee hereunder.

All references herein to Articles, Sections and other subdivisions refer to the corresponding Articles, Sections and other subdivisions of this Agreement; and the words herein, hereof, hereby, hereto, hereunder and words of similar import refer to this Agreement as a whole and not to any particular Article, Section or subdivision hereof.

## ARTICLE TWO

### Trust Certificates and Issuance Thereof

SECTION 2.01. Issuance of Trust Certificates.  
The proceeds of the sale of the Trust Certificates shall, forthwith upon the issuance thereof, be deposited with the Trustee as provided in the Participation Agreement. Simultaneously, the Trustee shall issue and deliver, in accordance with the Participation Agreement or in accordance with a Request of the Owner, Trust Certificates substantially in the form set forth herein in the aggregate principal amount so sold.

The aggregate principal amount of the Trust Certificates which shall be executed and delivered by the Trustee hereunder and shall be outstanding at any time shall not exceed \$13,167,000.

SECTION 2.02. Interests Represented by Trust Certificates; Interest on Trust Certificates; Maturity.  
Each of the Trust Certificates shall represent an interest in the principal amount therein specified in the trust created hereunder. Each Trust Certificate shall bear interest on the unpaid principal amount thereof at the rate per annum set forth in the form of Trust Certificate contained herein payable semiannually on February 1 and August 1 in each year, commencing February 1, 1982, with interest payable on any

overdue principal (and premium, if any) and interest at the Overdue Rate, to the extent that it shall be legally enforceable. Interest on the Trust Certificates shall be calculated on the basis of a 360-day year of twelve 30-day months; provided, however, that interest due hereunder on February 1, 1982, shall be calculated on the basis of the actual number of days elapsed over a year of 365 days.

Subject to the provisions of Article Three hereof respecting prepayment and redemption of Trust Certificates, the aggregate principal amount of the Trust Certificates shall be payable in ten annual installments on February 1 in each year, commencing February 1, 1983, to and including February 1, 1992, calculated so that such installments of principal shall completely amortize the principal amount of the Trust Certificates. The Trustee shall furnish to each holder of Trust Certificates and to the Owner an amortization schedule setting forth the respective amounts of principal and interest payable on each such date.

The principal of (and premium, if any, on) 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, but only from and out of rentals or other moneys received by the Trustee and applicable to such payment under the provisions hereof. Notwithstanding the provisions of the preceding sentence of this paragraph, in the case of payments of principal (and premium, if any) and interest to be made on a Trust Certificate not then to be paid in full, upon request and deposit of an agreement (or, if approved by the Trustee, a copy of an agreement) of the holder of such Trust Certificate (the responsibility 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 a new Trust Certificate for the unpaid principal amount represented thereby on the date of such surrender, the Trustee will, subject to timely receipt of the necessary funds, mail its check, or on ten days' prior request of the holder, wire by 11 a.m., Eastern time, funds immediately available to such holder on such date, 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 without requiring the surrender of such Trust Certificate; provided, however, that the deposit of an agreement pursuant to this paragraph shall not be required of

any Purchaser or any Affiliate of a Purchaser.

SECTION 2.03. Form, Execution and Characteristics of Trust Certificates.

(a) The Trust Certificates shall be in substantially the form hereinbefore set forth; provided, however, that in the case of the original Purchaser or an Affiliate of the original Purchaser of the Trust Certificates, the legend set forth therein need not be included.

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

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

(d) Anything contained herein to the contrary notwithstanding, prior to due presentment for registration of transfer, the parties hereto may deem and treat the holder of any Trust Certificate as the absolute owner of such Trust Certificate for all purposes and shall not be affected by

any notice to the contrary.

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

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

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

(h) The Trustee shall not be required (i) to register the transfer of or exchange any Trust Certificate for a period of ten Business Days next preceding any interest payment date, (ii) to issue, register the transfer of or exchange any Trust Certificate during a period beginning at the opening of business 15 days before any selection of Trust Certificates to be prepaid or redeemed and ending at the close of business on the day of the mailing of the relevant notice of prepayment or redemption, (iii) to register the transfer of or exchange any Trust Certificate so selected for prepayment or redemption in whole or in part until after the date fixed for prepayment or redemption or (iv) to register any transfer of Trust Certificates unless the Trustee is satisfied that, or has received an Opinion of Counsel to the effect that, such transfer is exempt from the

registration requirements of the Securities Act of 1933, as amended.

SECTION 2.04. Replacement of Mutilated, Defaced, Lost, Stolen or Destroyed Trust Certificates. In case any Trust Certificate shall become mutilated or defaced or be lost, stolen or destroyed, then on the terms herein set forth, and not otherwise, the Trustee shall execute and deliver a new Trust Certificate of like tenor and date as the mutilated, defaced, lost, stolen or destroyed Trust Certificate, in exchange and substitution for, and upon cancelation of, the mutilated or defaced Trust Certificate, or in lieu of and in substitution for the same if lost, stolen or destroyed. The applicant for a new Trust Certificate shall furnish to the Trustee evidence to its satisfaction of the loss, theft or destruction of such Trust Certificate alleged to have been lost, stolen or destroyed, and of the ownership and authenticity of such mutilated, defaced, lost, stolen or destroyed Trust Certificate, and shall furnish such security or indemnity as may be required by the Trustee (except in the case of the original holder of Trust Certificates), and shall pay all expenses and charges of such exchange or substitution. All Trust Certificates shall be issued, held and owned upon the express condition that the foregoing provisions are exclusive in respect of the replacement of mutilated, defaced, lost, stolen or destroyed Trust Certificates and shall preclude any and all other rights and remedies, any law or statute now existing or hereafter enacted to the contrary notwithstanding.

SECTION 2.05. Legal Holidays. If the date fixed for payment of principal of or interest on any Trust Certificates is not a Business Day, then (notwithstanding any other provision of this Agreement or the Trust Certificates) such payment need not be made on such date but may be made on the next succeeding Business Day with the same force and effect as if made on the nominal payment date and no interest shall be paid on such next succeeding Business Day for the period from and after such nominal payment date.

### ARTICLE THREE

#### Prepayment and Redemption of Trust Certificates

SECTION 3.01. Prepayment. The Trust Certificates are required to be prepaid in part (a) on February 1,

1983, and each February 1 thereafter to and including February 1, 1991, through the application of rentals paid to the Trustee pursuant to Section 5.03(f) hereof, at 100% of the principal amount thereof to be prepaid, together with accrued interest to the date fixed for prepayment, calculated so that such prepayments of principal shall amortize 90% of the principal amount thereof (b) on February 1, 1982, through the application of Deposited Cash to be applied thereto pursuant to the last paragraph of Section 4.01 hereof, at 100% of the principal amount thereof to be prepaid, together with accrued interest to the date fixed for prepayment, and (c) on any date fixed for prepayment pursuant to § 5.06 hereof, at 100% of the principal amount thereof to be prepaid, together with accrued interest to the date fixed for prepayment. Except as provided in this Article Three and in Article Seven hereof, Trust Certificates may not be prepaid prior to the maturity thereof.

SECTION 3.02. Redemption. The Owner may, at its option, at any time on or after December 1, 1988, redeem all, or from time to time any part of, the Trust Certificates, at the then applicable redemption price (together with interest accrued to the date fixed for redemption) specified in the form of Trust Certificate hereinbefore set forth.

SECTION 3.03. Selection of Trust Certificates for Prepayment or Redemption; Notice of Prepayment or Redemption.

(a) On or before the tenth day next preceding any date on which Trust Certificates are to be prepaid or redeemed pursuant to this Article Three, the Trustee shall select for prepayment or redemption, as the case may be, subject to the provisions of the next succeeding sentence, a principal amount of Trust Certificates so as to exhaust (i) any amount in cash to be paid to it pursuant to Section 5.04 hereof, (ii) any Deposited Cash to be applied thereto pursuant to the last paragraph of Section 4.01 hereof, (iii) any moneys received by the Trustee pursuant to § 5.06 hereof or (iv) any moneys received by the Trustee pursuant to Section 3.02 hereof, on the next succeeding February 1 or August 1, as the case may be; provided, however, that with respect to the payment to be made pursuant to Section 3.01(b) hereof such selection shall be made on or at any time prior to the date for such payment. The Trustee shall select for prepayment or redemption, as the case may be, on each prepayment or redemption date, as the case may

be, a principal amount of Trust Certificates registered in the name of each holder which bears the same ratio to the aggregate principal amount of Trust Certificates to be prepaid or redeemed, as the case may be, on such date as (y) the aggregate principal amount of Trust Certificates registered in the name of such holder on a date selected by the Trustee not more than 15 days prior to the selection by the Trustee of Trust Certificates for prepayment or redemption, as the case may be, on such date bears to (z) the aggregate principal amount of Trust Certificates outstanding on such date.

(b) The Trustee shall send a statement of prepayment or redemption, as the case may be, by registered mail, postage prepaid, on or prior to each prepayment or redemption date to the holders of Trust Certificates to be prepaid or redeemed, as the case may be, in whole or in part, at their last addresses as they shall appear upon the registry books. Failure to furnish such statement, or any defect therein, as to any Trust Certificate shall not affect the validity of the proceedings for the prepayment or redemption of any other Trust Certificate. Any statement which is mailed in the manner herein provided shall be conclusively presumed to have been duly given, whether or not the holder receives the statement.

(c) The statement of prepayment or redemption to each holder shall (i) specify the date for prepayment or redemption, as the case may be, (ii) state that prepayment or redemption, as the case may be, of the principal amount of (and premium, if any, on) the Trust Certificates or portions thereof to be prepaid or redeemed, as the case may be, will be made by the Trustee only from and out of Deposited Cash or moneys paid to the Trustee by the Owner or the Lessee and applicable thereto and, unless such prepayment or redemption is to be made pursuant to the second sentence of the third paragraph of Section 2.02 hereof, that such prepayment or redemption will be made at the Corporate Trust Office, upon presentation and surrender of Trust Certificates so to be prepaid or redeemed, (iii) state the aggregate principal amount of (and premium, if any, on) Trust Certificates to be prepaid or redeemed in whole or in part and the distinctive numbers of the Trust Certificates of such holder to be prepaid or redeemed and, in the case of any such Trust Certificates to be prepaid or redeemed in part, the principal amount (and premium, if any) thereof to be so prepaid or redeemed, and (iv) state that from and after such prepay-

ment or redemption date interest on such Trust Certificates or on the portions thereof to be prepaid or redeemed will cease to accrue. The holders of Trust Certificates prepaid or redeemed in part may, at their option and upon surrender thereof, receive new Trust Certificates for the principal amounts remaining unpaid or unredeemed without charge to such holders.

SECTION 3.04. Payment of Trust Certificates Selected for Prepayment or Redemption. The Trust Certificates or portions thereof to be prepaid or redeemed shall become due and payable on such prepayment or redemption date, as the case may be, and from and after such date interest on such Trust Certificates or portions thereof shall cease to accrue, and there having been deposited with the Trustee on or before the prepayment or redemption date specified in the statement of prepayment or redemption, as the case may be, an amount in cash equal to the aggregate principal amount of (and premium, if any, on) all the Trust Certificates or portions thereof then to be prepaid or redeemed and accrued interest thereon, such Trust Certificates or portions thereof shall no longer be deemed to be outstanding hereunder and shall cease to be entitled to the benefits of this Agreement except to receive payment from the moneys reserved therefor in the hands of the Trustee. The Trustee shall hold the prepayment or redemption moneys in trust for the holders of the Trust Certificates or portions thereof to be prepaid or redeemed and (subject to the provisions of the second sentence of the third paragraph of Section 2.02 hereof) shall pay the same to such holders respectively upon presentation and surrender of such Trust Certificates.

Except as provided in Sections 2.02 and 3.03 hereof, all Trust Certificates prepaid or redeemed under this Article Three shall be canceled 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. On or prior to January 15, 1982, the Owner shall cause to be transferred to the Trustee, as trustee for the holders of the Trust Certificates, and as security for the payment thereof,

such of the Equipment described and set forth in Schedule A hereto as is settled for pursuant to this Article Four. Such Equipment will be delivered to the Lessee, which is hereby designated by the Trustee as its agent to receive such delivery, and a Certificate of Inspection and Acceptance of the Lessee in the form of Schedule B to the Lease as to such delivery shall be conclusive evidence of such delivery.

The Trustee shall be authorized to amend Schedule A to exclude Equipment from this Agreement to the extent the funds deposited in the trust prove insufficient to finance the acquisition of the Equipment hereunder.

In the event of any such exclusion the Owner and the Trustee shall execute an agreement supplemental hereto limiting this Agreement to the Trust Equipment not excluded from this Agreement and the Owner and the Trustee shall execute for recordation in public offices such instrument or instruments in writing in order to make clear upon public records such exclusion.

In the event that on January 15, 1982, any Deposited Cash shall remain in the possession of the Trustee, the Trustee shall apply any such Deposited Cash to the prepayment of Trust Certificates on February 1, 1982, as provided in Article Three hereof.

SECTION 4.02. Payment of Deposited Cash. The Trustee agrees to pay, upon Request of the Owner, to the Owner (or as the Owner shall direct), out of Deposited Cash, an amount specified in such Request not exceeding the lesser of (a) 69.3% of the Appraised Fair Market Value of the Equipment then being settled for or (b) 100% of the aggregate Total Cost of such Equipment; provided, however, that the provisions of Paragraph 6 of the Participation Agreement have been satisfied.

The Trustee shall not pay out any Deposited Cash against the delivery of any of the Trust Equipment unless it shall have received:

(a) an Officer's Certificate of the Owner which shall state (i) that such Trust Equipment is Equipment as herein defined, (ii) that the representations and warranties of the Owner contained in the Participation Agreement are true and correct on and as if made on such date, (iii) that no Event of Default or event which with the lapse of time and/or the giving of notice would

constitute an Event of Default has occurred and is continuing and (iv) specifying (x) the Appraised Fair Market Value of the Equipment then being settled for, (y) the Total Cost of such Equipment and (z) the amount to be paid out of Deposited Cash on such date pursuant to this Section;

(b) a bill or bills of sale for such Trust Equipment from the Owner to the Trustee, which bill or bills of sale shall contain a warranty or guarantee 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 pursuant to the Lease) existing at the time of delivery thereof to the Trustee or arising from, through or under the Owner;

(c) an Opinion of Counsel, satisfactory to the Trustee, that such bill or bills of sale are valid and effective, either alone or in connection with any other instrument referred to in such opinion, to vest in the Trustee title to such Trust Equipment free from all liens and encumbrances;

(d) an Officer's Certificate of the Builder certifying (i) as to the amounts payable to the Builder pursuant to the Reconstruction Agreement with respect to such Trust Equipment (attaching invoices for such amounts) and releasing any claim, lien or encumbrance arising from, through or under it with respect to such Trust Equipment, (ii) that such Trust Equipment has been reconstructed in accordance with the Specifications and (iii) that the Reconstruction Cost to be paid pursuant to the Reconstruction Agreement does not exceed the price that would be charged by an independent locomotive builder for comparable reconstruction;

(e) a certificate from an independent appraiser satisfactory to the Trustee certifying (i) that each unit of such Trust Equipment has a service life extending to or beyond a date not less than 15 years from the date of the Certificate of Acceptance referred to in Section 4.02(i) below with respect to such unit, (ii) that the Appraised Fair Market Value when sold to the Trustee is at least \$500,000 and (iii) that, on the basis of inspections of the place or places where the Equipment is from time to time being reconstructed (such inspections to be conducted

not less frequently than monthly during the period from September 1, 1981, until each unit of the Equipment has been reconstructed), the Equipment to be delivered hereunder on such date was reconstructed in accordance with the Specifications.

(f) a favorable opinion of Messrs. Wilmer, Cutler & Pickering (or, in the case of the units of Equipment bearing identification numbers 5524 through 5537, both inclusive, the favorable opinion of Messrs. Glassie, Pewett, Dudley, Beebe & Shanks) addressed to the Trustee regarding their search, after the filing of this Agreement pursuant to 49 U.S.C. § 11303, of the Interstate Commerce Commission files with respect to the Equipment and confirming the release or discharge of any liens or encumbrances identified in such search;

(g) an opinion of special Canadian counsel, addressed to the Trustee, stating that the Reconstruction Agreement, this Agreement, the Lease and the Lease Assignment have been duly deposited in the Office of the Registrar General of Canada pursuant to Section 86 of the Railway Act of Canada and notice of such deposit has been duly published, or adequate provision has been made therefor, in The Canada Gazette in accordance with said Section 86, and no other filing, recording or deposit (or giving notice) with any other Federal, provincial or local government is necessary to protect the rights of the Trustee in and to the Equipment in Canada;

(h) an Officer's Certificate of the Lessee certifying that the representations and warranties of the Lessee in the Participation Agreement and the Lease are true and correct on and as if made on such date and that no event of default under the Participation Agreement or the Lease or event which with the lapse of time and/or the giving of notice would constitute an event of default thereunder has occurred and is continuing; and

(i) a Certificate of Inspection and Acceptance in the form of Schedule B to the Lease executed by the Lessee on its own behalf under the Lease, as agent for the Owner under the Reconstruction Agreement and as agent for the Trustee under this Agreement.

SECTION 4.03. Absence of Title Encumbrances. The Owner hereby represents and warrants to the Trustee that upon delivery of the Trust Equipment and payment therefor as provided in this Article Four such Trust Equipment shall then be free from all claims, liens, security interests and other

encumbrances of any nature arising from or through the Owner except as created by this Agreement and except for the rights of the Lessee under the Lease.

## ARTICLE FIVE

### Lease of Trust Equipment to the Owner

SECTION 5.01. Lease of Trust Equipment. The Trustee does hereby let and lease, as herein provided, all the units of Trust Equipment to the Owner, for a term ending on February 1, 1992.

SECTION 5.02. Equipment Automatically Subjected. As and when any Equipment shall from time to time be accepted under this Agreement, the same shall be deemed accepted hereunder immediately and shall at that time, ipso facto and without further instrument of lease, transfer or acceptance except as expressly provided herein, pass under and become subject to all the terms and provisions hereof.

SECTION 5.03. Rental Payments. The Owner hereby accepts the lease of the units of Trust Equipment and covenants and agrees to accept delivery and possession hereunder of such Trust Equipment as hereinbefore provided; and the Owner covenants and agrees to pay to the Trustee (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, amounts (herein called "rent" or "rentals") 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 Owner of any of the Trust Equipment):

(a) (i) subject to the provisions of Section 9.05 hereof, from time to time upon demand of the Trustee the necessary and reasonable expenses of the trust hereby created, including compensation and expenses described herein, and (ii) an amount equal to any expenses incurred or loss of principal (including interest accrued thereupon at the time of purchase) in connection with any purchase, sale or redemption by the Trustee of Investments;

(b) from time to time upon demand of the Trustee

any and all amounts due pursuant to Sections 5.08 and 5.10 hereof;

(c) on February 1, 1982, the amount of interest payable on the Trust Certificates on such date;

(d) (i) the amount of the interest payable on the Trust Certificates, when and as the same shall become payable (other than interest payable pursuant to Section 5.03(c) hereof), and (ii) interest at the Overdue Rate from the due date, upon the amount of any installments of rental payable under the preceding subparagraph (c), this subparagraph (d) and the following subparagraphs (e), (f) and (g) which shall not be paid when due, to the extent legally enforceable;

(e) the principal of (and premium, if any, on) the Trust Certificates called for redemption on any date fixed for redemption pursuant to Article Three hereof;

(f) the principal of the Trust Certificates required to be prepaid on any date fixed for prepayment pursuant to Article Three hereof; and

(g) the principal of the Trust Certificate (other than those called for redemption or prepaid pursuant to Article Three hereof) when and as the same shall become payable, whether upon the stated date of maturity thereof, by declaration or otherwise under the provisions thereof or of this Agreement.

SECTION 5.04. Termination. Notwithstanding any provision of Article Four, the transfer to the Trustee of the units of Trust Equipment by the Owner and the lease of such units to the Owner by the Trustee pursuant to this Agreement are intended solely to create a security interest in such units in order to secure the performance by the Owner of its obligations under this Agreement and the payment of all sums payable pursuant to this Agreement and ownership of such units of Trust Equipment shall be and remain in the Owner. Accordingly, after all payments due or to become due hereunder shall have been completed and fully made to or for the account of the Trustee and the Owner shall have performed all its other obligations hereunder, (a) such payments shall be deemed to represent the discharge in full of the Trustee's security interest in the Trust Equipment at such time, (b) any moneys remaining in the hands of the Trustee after

providing for all outstanding Trust Certificates and after paying the expenses of the Trustee, including its reasonable compensation subject to the provisions of Section 5.03(a) hereof, shall be paid to the Owner, and (c) the Trustee shall execute for record in public offices such instrument or instruments in writing as reasonably shall be requested by the Owner in order to discharge of record the security interest of the Trustee in, and to make clear upon public records the Owner's full title to, such units of the Trust Equipment under the laws of any jurisdiction; provided, however, that until that time a security interest in the Trust Equipment shall be and remain in the Trustee, notwithstanding the possession and use thereof by the Owner or the Lessee pursuant to the terms of this Agreement.

SECTION 5.05. Marking of Trust Equipment. The Owner will cause each unit of Trust Equipment to be kept numbered and marked as provided in Section 5 of the Lease. Except as therein provided, the Owner will not allow any name to be placed on any unit of Trust Equipment as a designation that might be interpreted as a claim of ownership.

SECTION 5.06. Maintenance; Casualty Occurrences; Insurance. The Owner agrees that, at its own cost and expense, it will maintain and keep each unit of the Trust Equipment in good operating order, repair and condition, ordinary wear and tear excepted. The Owner will at all times during the term of this Lease cause to be carried and maintained insurance with respect to the Trust Equipment as provided in Section 7 of the Lease.

In the event that any unit of the Trust Equipment shall suffer a Casualty Occurrence (as defined in Section 7 of the Lease), during the term of this lease the Owner shall, promptly after it shall have received notice from the Lessee or otherwise been informed that such unit has suffered a Casualty Occurrence, cause the Trustee to be fully informed in regard thereto. On the February 1 or August 1 next succeeding the event with respect to which such notice is given (or, if such notice shall have been received by the Trustee within 15 days of the February 1 or August 1 next succeeding the event with respect to which such notice is given or subsequent to such date, then on the February 1 or August 1 next succeeding such February 1 or August 1), the Owner shall either (a) pay to the Trustee an amount in cash equal to the Fair Value of such unit suffering a Casualty Occurrence as of the date of such payment, or (b) cause

to be transferred to the Trustee additional Equipment, free from all liens, security interests and other encumbrances, having an Appraised Fair Market Value equal to at least 150% of the Fair Value of such unit suffering a Casualty Occurrence, and deliver to the Trustee, with respect to such additional Equipment, the documents described in Sections 4.02(b), (c) (including a favorable Opinion or Opinions of Counsel with respect to (i) their search, after the the filing of a supplement to this Agreement under 49 U.S.C. § 11303, of the Interstate Commerce Commission files with respect to such additional Equipment and confirming the release or discharge of any liens or encumbrances identified in such search and (ii) all necessary filings and recordings have been made to protect the rights of the Trustee in and to such additional Equipment in Canada) and (h) of this Agreement, and, in addition, (A) an Officer's Certificate certifying that such additional Equipment is Equipment as defined in this Agreement and (B) a certificate from an independent appraiser satisfactory to the Trustee certifying as to the Appraised Fair Market Value of such additional Equipment. All references herein to February 1 or August 1 shall be deemed to refer to whichever such date shall occur soonest. On the date of any such payment, the Owner shall file, or cause to be filed, with the Trustee an Officer's Certificate setting forth the Fair Value of such unit suffering a Casualty Occurrence and the method of determination thereof. Any units of the Trust Equipment for which settlement has been made by the Owner pursuant to the next preceding paragraph shall, upon Request, be released by the Trustee, to or upon the order of the Owner.

So long as no Event of Default shall have occurred and be continuing, any money paid to the Trustee pursuant to this Section shall be used, as the Owner shall from time to time direct in a Request, in whole or in part, to prepay Trust Certificates as provided in Section 3.01(c) hereof or toward the cost of additional Equipment to replace units suffering a Casualty Occurrence; provided, however, that the acquisition of any such additional Equipment shall conform to the requirements of clause (b) of the second preceding paragraph of this Section.

In the event of the requisition for use by the United States Government of any unit of Trust Equipment, unless such requisition shall at the time of such requisition be scheduled to extend beyond the then necessary term of this lease, all of the Owner's obligations hereunder with respect

to such unit shall continue to the same extent as if such requisition had not occurred.

Upon payment by the Owner to the Trustee of the Fair Value of any unit of the Trust Equipment having suffered a Casualty Occurrence, the security interest of the Trustee in such unit shall terminate without further transfer or action on the part of the Trustee, except that the Trustee, if requested by the Owner, will execute and deliver, to the Owner, at the expense of the Owner, an appropriate instrument confirming such termination to the Owner, in recordable form, in order that the Owner may make clear upon the public records the full title of the Owner to such unit.

Any insurance proceeds or condemnation payments received and retained by the Trustee in respect of units suffering a Casualty Occurrence shall be deducted from the amounts payable by the Owner to the Trustee in respect of Casualty Occurrences pursuant to this Section. If the Trustee shall receive any insurance proceeds or condemnation payments in respect of such units suffering a Casualty Occurrence either after the Owner shall have made payments pursuant to this Section without deduction for such insurance proceeds or condemnation payments, or in excess of the Fair Value (after taking into account payments by the Owner under this Section) of such units, the Trustee shall promptly pay such insurance proceeds or condemnation payments to the Owner. All insurance proceeds or condemnation payments or such excess received by the Trustee in respect of any unit or units of Trust Equipment not suffering a Casualty Occurrence shall be paid to the Owner upon proof satisfactory to the Trustee that any damage to such unit in respect of which such proceeds were paid has been fully repaired.

The Owner covenants and agrees to furnish or cause to be furnished to the Trustee, on or before April 30 in each year, commencing with the calendar year 1982, an Officer's Certificate, as of the preceding December 31, to the effect set forth in Section 8 of the Lease. The Trustee, by its agents, shall have the right once in each calendar year, but shall be under no duty, to inspect the records of the Owner with respect to the Trust Equipment, and the Owner covenants in that event to furnish to the Trustee all reasonable facilities for the making of such inspection.

SECTION 5.07. Possession of Trust Equipment.  
Except as provided in this Section 5.07, the Owner will not assign or transfer its rights hereunder, or transfer or lease

the Trust Equipment or any part thereof, without the written consent of the Trustee first had and obtained; and the Owner shall not, without such written consent, except as herein provided, part with the possession of, or suffer or allow to pass out of its possession or control, any of the Trust Equipment. An assignment or transfer to a corporation which shall acquire all or substantially all the property of the Owner, pursuant to Section 7.03 hereof shall not be deemed a breach of this covenant.

So long as no Event of Default has occurred and is continuing hereunder, the Owner shall be entitled to the possession and use of the Trust Equipment in accordance with the terms of this Agreement, but the Owner shall not assign or transfer its leasehold interest under this Agreement in the Trust Equipment or any of it, except for the Lease which shall be assigned to the Trustee. The Owner hereby agrees that the Lease and the rights of the Owner to receive rentals and other payments due and to become due thereunder shall be subject and subordinate to this Agreement and to the rights of the Trustee and the holders of Trust Certificates.

The Owner will not amend or consent to any change in the Lease without the prior written consent of the Trustee.

SECTION 5.08. Indemnity. The Owner shall pay, and shall protect, indemnify and hold the Trustee (in both its individual and fiduciary capacities), any assignee thereof, the holders of the Trust Certificates, and their respective successors, assigns, agents and servants (the "Indemnified Persons"), harmless from and against any and all causes of action, suits, penalties, claims, demands or judgments, of any nature whatsoever which may be imposed on, incurred by or asserted against any Indemnified Person (including any or all liabilities, obligations, damages, costs, disbursements, expenses [including without limitation attorneys' fees and expenses of any Indemnified Person] relating thereto) in any way relating to or arising or alleged to arise out of this Agreement or the Trust Equipment, including without limitation those in any way relating to or arising or alleged to arise out of (i) the reconstruction, manufacture, construction, purchase, acceptance, rejection, ownership, delivery, nondelivery, lease, possession, use, operation, condition, sale, return or other disposition of any unit of Trust Equipment or portion thereof; (ii) any latent and other defects whether or not discoverable by the Owner or any Indemnified Person; (iii)

any claim for patent, trademark or copyright infringement; (iv) any claims based on strict liability in tort; (v) any injury to or the death of any person or any damage to or loss of property on or near the Trust Equipment or in any manner growing out of or concerned with, or alleged to grow out of or be connected with, the ownership, use, replacement, adaptation or maintenance of the Trust Equipment or of any other equipment in connection with the Trust Equipment (whether owned or under the control of the Owner, the Lessee or any other person) or resulting or alleged to result from the condition of any thereof; (vi) any violation, or alleged violation by the Owner, of any provision of this Agreement or of any agreement, law, rule, regulation, ordinance or restriction, affecting or applicable to the Trust Equipment or the leasing, ownership, use, replacement, adaptation or maintenance thereof; or (vii) any claim arising out of the Trustee's holding of a security interest under this Agreement or the Lease Assignment. The Owner shall be obligated under this Section 5.08, irrespective of whether any Indemnified Person shall also be indemnified with respect to the same matter under any other agreement by any other person, and the Indemnified Person seeking to enforce the indemnification may proceed directly against the Owner under this Section 5.08 without first resorting to any such other rights of indemnification. In case any action, suit or proceeding is brought against any Indemnified Person in connection with any claim indemnified against hereunder, the Owner may and, upon such Indemnified Person's request will, at the Owner's expense, resist and defend such action, suit or proceeding, or cause the same to be resisted or defended by counsel selected by the Owner and approved by such Indemnified Person and, in the event of any failure by the Owner to do so, the Owner shall pay all costs and expenses (including without limitation attorneys' fees and expenses) incurred by such Indemnified Person in connection with such action, suit or proceeding. In the event the Owner is required to make any payment under this Section 5.08, the Owner shall pay such Indemnified Person an amount which, after deduction of all taxes required to be paid by such Indemnified Person in respect of the receipt thereof under the laws of the United States or of any political subdivision thereof (after giving credit for any savings in respect of any such taxes by reason of deductions, credits or allowances in respect of the payment of the expense indemnified against, and of any other such taxes), shall be equal to the amount of such payment. The Trustee and the Owner each agree to give each other promptly upon obtaining knowledge thereof written notice of

any claim or liability hereby indemnified against. Upon the payment in full of any indemnities as contained in this Section by the Owner, and provided that no Event of Default set forth in Article Six hereof (or other event which with lapse of time or notice or both would constitute such an Event of Default) shall have occurred and be continuing, it shall be subrogated to any right of such Indemnified Person in respect of the matter against which indemnity has been given. Any payments received by such Indemnified Person from any person as a result of any matter with respect to which such Indemnified Person has been indemnified by the Lessee pursuant to the Lease shall be paid over to the Owner to the extent necessary to reimburse the Owner for indemnification payments previously made to such Indemnified Person in respect of such matter.

The indemnities contained in this Section 5.08 shall survive the expiration or termination of this Agreement with respect to all events, facts, conditions or other circumstances occurring or existing prior to such expiration or termination and are expressly made for the benefit of, and shall be enforceable by any Indemnified Person. None of the indemnities in this Section 5.08 shall be deemed to create any rights of subrogation in any insurer or third party against the Owner therefor, from or under any Indemnified Person, whether because of any claim paid or defense provided for the benefit thereof or otherwise.

The Owner will bear the responsibility for and 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 the Trust Equipment.

SECTION 5.09. Compliance with Laws and Rules. During the term of this Agreement, the Owner will comply, and will cause the Lessee to comply, in all respects (including, without limitation, with respect to the use, maintenance and operation of the Trust Equipment) with the provisions of Section 9 of the Lease.

SECTION 5.10. Taxes. Whether or not any of the transactions contemplated hereby are consummated, the Owner agrees to pay, and to indemnify and hold the Trustee (in both its individual and fiduciary capacities) harmless from, all Impositions (as defined in the Lease) whether levied or imposed upon the Owner, the Trustee, the holders of the Trust Certificates, the Lessee or otherwise, by any federal,

state or local government or governmental subdivision in the United States or by any foreign country or subdivision thereof; excluding, however: (i) any tax of the United States of America imposed on or measured by net income or excess profits (other than the net income or excess profits of the Lessee), or any value added or gross receipts tax imposed in lieu of such tax; (ii) any state franchise tax which is not based on or measured by net income; (iii) any taxes of a state or political subdivision thereof computed other than on net income and imposed in substitution for any tax referred to in clause (ii) above; and (iv) any foreign income tax to the extent that the recipient of any payments made hereunder shall receive credit therefor against its United States Federal income tax liability; but including such of the foregoing as are levied or imposed in substitution for, or relieve the Owner from the payment of, such taxes, fees, assessments, charges, fines or penalties which it would otherwise be obligated to pay or reimburse as provided in this Section. The Owner will also pay promptly all Impositions which may be imposed upon any Unit or for the use or operation thereof or upon the receipts or earnings arising therefrom, and will keep at all times all and every part of such unit free and clear of all Impositions which might in any way affect the title of the Trustee or the interest of the Trustee or result in a lien upon any such unit; provided, however, that the Owner shall not be required to pay any Impositions during the period it or the Lessee may be contesting the same in the manner provided in the next succeeding paragraph or the Lease, as the case may be.

If claim is made against the Trustee for any Impositions indemnified against under this Section 5.10, the Trustee or the holders of the Trust Certificates shall promptly notify the Owner. If reasonably requested by the Owner in writing, the Trustee or the holders of the Trust Certificates, as the case may be, shall, upon receipt of any indemnity satisfactory to it or them, as the case may be, for all costs, expenses, losses, legal and accountants' fees and disbursements, penalties, fines, additions to tax and interest, and at the expense of the Owner, contest in good faith the validity, applicability or amount of such Impositions by (a) resisting payment thereof if possible, (b) not paying the same except under protest, if protest is necessary and proper, and (c) if payment is made, using reasonable efforts to obtain a refund thereof in appropriate administrative or judicial proceedings, or both. The Owner may also contest,

at its own expense, the validity, applicability or amount of such Impositions in the name of the Trustee or the holders of the Trust Certificates, as the case may be; provided that no proceeding or actions relating to such contest shall be commenced (nor shall any pleading, motion, brief or other paper be submitted or filed in the name of the Trustee or the holders of the Trust Certificates, as the case may be, in any such proceeding or action) without the prior written consent of the Trustee. If the Trustee or the holders of the Trust Certificates, as the case may be, shall obtain a refund of all or any part of such Impositions previously reimbursed by the Owner in connection with any such contest or an amount representing interest thereon, the Trustee or the holders of the Trust Certificates, as the case may be, shall pay the Owner the amount of such refund or interest net of expenses; provided, however, that no Event of Default set forth in Article Six hereof, and no event which with notice or lapse of time or both would constitute such an event of default, shall have occurred and be continuing.

In case any report or return is required to be made with respect to any obligation of the Owner under this Section 5.10 or arising out of this Section 5.10, the Owner shall either make such report or return in such manner as will show the interest of the Trustee in the Trust Equipment or shall promptly notify the Trustee of such requirement and shall make such report or return in such manner as shall be satisfactory to the Trustee. All costs and expenses (including legal and accountants' fees) of preparing any such return or report shall be borne by the Owner.

All of the obligations of the Owner under this Section 5.10 shall survive and continue, notwithstanding payment in full of all amounts due under this Agreement, but only with respect to periods included in the term of this Agreement. Payments due from the Owner to the Trustee or the holders of Trust Certificates under this Section 5.10 shall be made directly to the indemnified party.

## ARTICLE SIX

### Remedies in Event of Default

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

- (a) the Owner shall default in the payment of any

part of the rental payable hereunder after the same have become due and payable, and such default shall continue for two Business Days, or

(b) the Owner shall fail or refuse to comply with any other of the terms and covenants of this Agreement or the Lease Assignment on its part to be kept and performed, or to make provision satisfactory to the Trustee for such compliance, for more than 30 days after the earlier of (i) receipt of demand in writing from the Trustee or (ii) any executive officer of the Owner or any other officer of the Owner having responsibility for financial, accounting or operating matters has actual knowledge of such failure or refusal, or

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

(d) the Owner shall make or suffer any unauthorized assignment or transfer of its rights hereunder or shall make any unauthorized transfer or sublease (including, for the purposes of this clause, contracts for the use thereof) of any of the Trust Equipment, or, except as herein authorized, shall part with the possession of any of the Trust Equipment and shall fail or refuse either to cause such assignment or transfer or sublease to be canceled by agreement of all parties having any interest therein and recover possession of such Trust Equipment within 30 days after the Trustee shall have demanded in writing such cancelation and recovery of possession, or within said 30 days to deposit with the Trustee a sum in cash equal to the Fair Value as of the date of conveyance of the Trust Equipment so assigned or transferred or subleased or the possession of which shall have been parted with otherwise than as herein authorized (any sum so deposited to be returned to the Owner upon the cancelation of such assignment, transfer or sublease and the recovery of possession by the Owner of such Trust Equipment), or

(e) any Event of Default (as defined in the Lease) shall have occurred and be continuing, or

(f) a petition for reorganization under Title 11 of the United States Code (as now or hereafter constituted) shall be filed by or against the Owner or the Lessee and, unless such petition shall have been

dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Owner under this Agreement or of the Lessee under the Lease and the Consent shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed in such proceedings (whether or not such appointment is subject to ratification) in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees, within 60 days after such petition shall have been filed or otherwise in accordance with the provisions of 11 U.S.C. § 1168, or any successor provision, as the same may hereafter be amended, or

(g) any proceedings other than are referred to in (f) above shall be commenced by or against the Owner or the Lessee for any relief which includes, or might result in, any modification of the obligations of the Owner under this Agreement or of the Lessee under the Lease or the Consent under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of such obligations) and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all of the obligations of the Owner under this Agreement or of the Lessee under the Lease or the Consent shall not have been and shall not continue to be duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Owner or the Lessee or for the property of the Owner or the Lessee in connection with any such proceedings (whether or not such appointment is subject to ratification) or otherwise, in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees or receiver or receivers within 60 days after such proceedings shall have been commenced,

then, in any such case (herein sometimes called an "Event of

Default"), the Trustee in its discretion may, and upon the written request of the holders of not less than 25% in principal amount of the then outstanding Trust Certificates shall, by notice in writing delivered to the Owner, declare to be due and payable forthwith the entire amount of the rentals (but not including rentals required for the payment of interest accruing after the date of such declaration) payable by the Owner as set forth in Section 5.03 hereof 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 Overdue Rate on the Trust Certificates, to the extent legally enforceable, on any portion thereof overdue; and the Trustee shall be entitled to recover judgment for the total amount so becoming payable by the Owner, together with interest thereon at the Overdue Rate on the Trust Certificates to the extent legally enforceable, and to collect such judgment out of any property of the Owner wherever situated.

In case one or more Events of Default shall happen, the Trustee in its discretion may, and upon the written request of the holders of not less than 25% in principal amount of the then outstanding Trust Certificates shall, by notice in writing delivered to the Owner, 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 Owner shall fail to pay any installment of rental payable pursuant to Section 5.03(c), (d) or (e) hereof when and as the same shall have become due and payable hereunder, and such default shall have continued for a period of two Business Days, the Trustee, in its own name and as trustee of an express trust, shall be entitled and empowered to institute any action or proceedings at law or in equity for the collection of the rentals so due and unpaid and the recovery of reasonable costs of collection, and may prosecute any such action or proceedings to judgment or final decree, and may enforce any such judgment or final decree against the Owner and collect in the manner provided by law out of the property of the Owner (including the Trust Equipment), wherever situated the moneys adjudged or decreed to be payable.

In case there shall be pending proceedings for the bankruptcy or for the reorganization of the Owner under title 11 of the United States Code or any other applicable law, or in case a receiver or trustee shall have been appointed for

the property of the Owner, or in the case of any other judicial proceedings relative to the Owner or to the creditors or property of the Owner, the Trustee, irrespective of whether the rental payments hereunder or the principal amount of the Trust Certificates shall then be due and payable as herein or therein expressed whether by declaration or otherwise and irrespective of whether the Trustee shall have made any demand or declaration pursuant to the provisions of this Section 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 (but not including rentals required for the payment of interest accruing after the date of payment of all amounts due), and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for reasonable compensation to the Trustee, its agents, attorneys and counsel, and for reimbursement of all expenses and liabilities incurred, and all advances made, by the Trustee) and of the holders of the Trust Certificates allowed in such proceedings and to collect and receive any moneys or other property payable or deliverable on any such claims, and to distribute all amounts received with respect to the claims of the holders of the Trust Certificates and of the Trustee on their behalf; and any receiver, assignee or trustee in bankruptcy or reorganization is hereby authorized by each of the holders of the Trust Certificates to make payments to the Trustee, and, in the event that the Trustee shall consent to the making of payments directly to the holders of the Trust Certificates, to pay to the Trustee such amount as shall be sufficient to cover reasonable compensation to the Trustee, its agents, attorneys and counsel, and all other expenses and liabilities incurred, and all advances made, by the Trustee.

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 proceeding instituted by the Trustee shall be brought in its own name and as trustee of an express trust, and any recovery of judgment shall be for the ratable benefit of the holders of the Trust Certificates (other than recoveries representing amounts payable to the Trustee in its individual capacity). In any proceedings brought by the Trustee (and also any proceedings involving the interpretation of any provision of this Agreement to which the Trustee shall be a party) the

Trustee shall be held to represent all the holders of the Trust Certificates, and it shall not be necessary to make any holders of the Trust Certificates parties to such proceedings.

SECTION 6.02. Remedies. In case of the happening of any Event of Default, the Trustee may by its agents enter upon the railroads and premises of the Owner, the Lessee and of any sublessee or user of the Trust Equipment and take possession of all or any part of the Trust Equipment and withdraw the same from said railroads and premises, retaining all payments which up to that time may have been made on account of rental for the Trust Equipment and otherwise, and shall be entitled to collect, receive and retain all unpaid per diem, mileage or other charges of any kind earned by the Trust Equipment or any part thereof, and may lease the Trust Equipment or any part thereof, or with or without retaking possession thereof (but only after declaring due and payable the entire amount of rentals payable by the Owner as provided in Section 6.01 hereof) may sell the same or any part thereof, free from any and all claims of the Owner 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, and 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 Owner 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 Owner and the Lessee shall cease to have any rights or remedies in respect of the Trust Equipment hereunder or under the Lease and Consent, but all such rights and remedies shall be deemed thenceforth to have been waived and surrendered by the Owner and the Lessee, and no payments theretofore made by the Owner or the Lessee 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 Owner or the Lessee 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 Owner or the Lessee of rentals then or thereafter due and payable, and the Owner and the Lessee 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 5.03 hereof (other than interest not then accrued), whether or not they shall have then matured. The holders of 25% in principal amount of the then outstanding Trust Certificates shall have the right from time to time to direct which of the proceedings above provided for shall be taken for the enforcement of the remedies contained herein.

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 hereof, all payments made by the Owner to the Trustee hereunder after such Event of Default, and the proceeds of any judgment collected from the Owner by the Trustee hereunder, and the proceeds of every sale or lease by the Trustee hereunder or any of the Trust Equipment, together with any other sums which may then be held by the Trustee under any of the provisions hereof (other than sums held in trust for the payment of specific Trust Certificates), shall be applied by the Trustee to the payment in the following order of priority: (a) of all proper charges, expenses, liabilities or advances made or incurred by the Trustee in accordance with the provisions of this Agreement, and (b) of the interest then due, with interest on overdue interest at the Overdue Rate on the Trust Certificates to the extent legally enforceable, and of the principal of all the outstanding Trust Certificates, with interest thereon at the Overdue Rate on the Trust Certificates 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 Owner 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 Owner 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 Owner.

SECTION 6.04. Waivers of Default. 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 hereof provided, but before February 1, 1992, all arrears of rent (with interest at the Overdue Rate upon any overdue installments to the extent legally enforceable), the expenses and reasonable compensation of the Trustee, together with all expenses of the trust occasioned by the Owner's default, and all other sums which shall have become due and payable by the Owner hereunder (other than the principal of Trust Certificates and any other rental installments which shall not at the time have matured according to their terms), shall be paid by the Owner 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 a majority in principal amount of the Trust Certificates then outstanding and which shall not have matured (other than by declaration) according to their terms, shall by written notice to the Owner waive the default by reason of which there shall have been such declaration or declarations and the consequences of such default, but no such waiver shall extend to or affect any subsequent default or impair any right consequent thereon.

SECTION 6.05. Obligations of Owner Not Affected by Remedies. No retaking of possession of the Trust Equipment by the Trustee, or any withdrawal, lease or sale thereof, nor any action or failure or omission to act against the Owner 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 Owner by the Trustee or by any such holder, shall affect the obligations of the Owner hereunder. The Owner 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. Delivery of Trust Equipment to Trustee. In case the Trustee shall demand possession of the Trust Equipment pursuant to the provisions hereof, the Owner shall at its own expense promptly cause the Trust Equipment to be transported to such point or points on the lines of the Lessee as shall reasonably be designated by the Trustee and shall there deliver or cause to be delivered the same to the Trustee, or the Trustee may at its option keep the Trust Equipment on any lines of railroad or premises of the Owner or any affiliate until the Trustee shall have leased, sold or otherwise disposed of the same (such period not to exceed 120 days), and for such purpose the Owner agrees to furnish without charge for rent or storage the necessary facilities at any convenient point or points selected by the Trustee. It is hereby expressly covenanted and agreed that the performance of this covenant is of the essence of this Agreement and that, upon application to any court having jurisdiction in the premises, the Trustee shall be entitled to a decree against the Owner requiring the specific performance thereof.

SECTION 6.07. Trustee to Give Notice of Default. The Trustee shall give to the holders of the Trust Certificates notice of each Event of Default hereunder known to the Trustee, within 30 days after it obtains knowledge of the same, unless remedied or cured before the giving of such notice.

SECTION 6.08. Control by Holders of Trust Certificates. The holders of a majority in aggregate unpaid principal amount of the then outstanding Trust Certificates, by an instrument or instruments in writing executed and delivered to the Trustee, shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred on the Trustee; provided, however, that the Trustee shall have the right to decline to follow any such direction if the Trustee shall be advised by counsel that the action so directed would be in conflict with any other provision of this Agreement or any rule of law.

SECTION 6.09. 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 therein would, under applicable law, result in the surrender, impairment, waiver or loss of the security title reserved under this Agreement upon any property subject hereto.

SECTION 6.10. Remedies To Be Cumulative. The remedies in this Agreement provided in favor of the Trustee and the holders of the Trust Certificates shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in their favor existing at law or in equity.

## ARTICLE SEVEN

### Additional Covenants and Agreements by the Owner

SECTION 7.01. Discharge of Liens. The Owner will pay or discharge any and all sums claimed by any party from, through or under the Owner or its successors or assigns which, if unpaid, might become a lien, charge or security interest on or with respect to the Trust Equipment, or any unit thereof, and will promptly discharge any such lien, charge or security interest which arises, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Trustee, adversely affect the interest of the Trustee in the Trust Equipment, or otherwise under this Agreement.

This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business

and, in each case, not delinquent.

SECTION 7.02. Recording. The Owner will, (a) promptly after the execution and delivery of this Agreement, the Lease, the Lease Assignment and each supplement hereto and thereto, respectively, cause this Agreement, the Lease, the Lease Assignment and each such supplement to be duly filed and recorded with the Interstate Commerce Commission in accordance with 49 U.S.C. § 11303 and deposited with the Registrar General of Canada (and notice of such deposit to be given forthwith in The Canada Gazette) pursuant to Section 86 of the Railway Act of Canada, (b) from time to time do and perform any other act and will execute, acknowledge, deliver and file, register and record any and all further instruments required by law or reasonably requested by the Trustee for the purposes of proper protection of the security interest of the Trustee and the rights of the holders of the Trust Certificates, and (c) furnish an Opinion or Opinions of Counsel of the Lessee in connection with such filing, registration, and recordation.

SECTION 7.03. Merger, Consolidation or Sale of Assets. The Owner agrees not to merge or consolidate with any other corporation or to sell, assign or transfer all or substantially all of the property of the Owner to any other corporation unless the survivor of such merger or consolidation or such transferee shall be a solvent corporation organized under the laws of the United States of America or a state thereof or the District of Columbia having a net worth equal to or greater than the Owner (unless the holders of a majority in aggregate unpaid principal amount of the then outstanding Trust Certificates shall otherwise agree) and such survivor or such transferee (if not the Owner) shall assume all the obligations and liabilities of the Owner hereunder, shall be a wholly owned subsidiary of the Lessee and shall not be in default hereunder.

SECTION 7.04. Further Assurances. The Owner covenants and agrees from time to time to execute all such instruments of further assurance as shall be reasonably requested by the Trustee for the purpose of fully carrying out and effectuating this Agreement and the intent hereof.

## ARTICLE EIGHT

### Concerning the Holders of Trust Certificates

SECTION 8.01. Evidence of Action Taken by Holders of Trust Certificates. Whenever in this Agreement it is provided that the holders of a specified percentage in aggregate principal amount of the outstanding 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), (i) each of the separate accounts of the original Purchaser of the Trust Certificates referred to in Schedule A to the Participation Agreement shall be deemed to be a separate holder of the Trust Certificates and (ii) the fact that at the time of taking any such action the holders of such specified percentage have joined therein may be evidenced by any instrument or any number of instruments of similar tenor executed by holders of Trust Certificates in person or by agent or proxy appointed in writing.

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

The fact and date of the execution by any such person of any instrument may be proved by the certificate of any notary public or other officer of any jurisdiction within the United States of America authorized to administer oaths or to take acknowledgments of deeds to be recorded in such jurisdiction that the person executing such instrument acknowledged to him the execution thereof, or by an affidavit of a witness to such execution sworn to before any such notary or other such officer.

The ownership of Trust Certificates may be proved by the register of such Trust Certificates to be kept as provided in Section 2.03(e) hereof.

SECTION 8.03. Trust Certificates Owned by the Owner or the Lessee. 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 Owner, by the Lessee or by an affiliate of the Owner or the Lessee

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, and except that this Section 8.03 shall not be applicable to the Owner or an affiliate of the Owner if all the Trust Certificates are owned by the Owner or by one or more affiliates of the Owner.

SECTION 8.04. Right of Revocation of Action Taken.

At any time prior to (but not after) the evidencing to the Trustee, as provided in Section 8.01 hereof, of the taking of any action by the holders of the required percentage in aggregate principal amount of the outstanding Trust Certificates specified in this Agreement, any holder of a Trust Certificate may, by filing written notice with the Trustee at the Corporate Trust Office and upon proof of holding as provided in Section 8.02 hereof, revoke such action in so far as such action concerns such Trust Certificate. Except as aforesaid, any such action taken by the holder of any Trust Certificate shall be conclusive and binding upon such holder and upon all future holders and owners of such Trust Certificate and of any Trust Certificate issued in exchange or substitution therefor, irrespective of whether or not any notation in regard thereto is made upon such Trust Certificate. Any action taken by the holders of the required percentage in aggregate principal amount of the outstanding Trust Certificates specified in this Agreement shall be conclusive and binding upon the Owner, the Trustee and the holders of all the Trust Certificates.

ARTICLE NINE

The Trustee

SECTION 9.01. 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 9.02. Duties and Responsibilities of the Trustee. Upon the occurrence of an Event of Default, 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.

As used in this Agreement, "knowledge" of the Trustee shall mean actual knowledge of an officer or employee in the Corporate Trust Office of the Trustee.

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 or that its action or inaction was contrary to the express provisions of this Agreement;

(c) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the holders of a majority in aggregate unpaid principal amount of the then outstanding Trust Certificates relating to the time, method and place of conducting any proceeding

for any remedy available to the Trustee, or exercising any trust power conferred upon the Trustee, under this Agreement;

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

(e) the Trustee may consult with counsel, and any Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder in good faith and in accordance with such Opinion of Counsel;

(f) the Trustee shall be under no obligation to exercise any of its rights or powers vested in it by this Agreement at the request, order or direction of any of the holders of the Trust Certificates, pursuant to the provisions of this Agreement, unless such holders shall have offered to the Trustee reasonable security or indemnity against the costs, expenses and liabilities which might be incurred therein or thereby to the extent such reasonable security or indemnity shall not be furnished by the Owner or the Lessee pursuant to the provisions hereof or of the Lease; and

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

SECTION 9.03. Application of Rentals; Responsibility of Trustee to Insure or Record. The Trustee covenants and agrees to apply and distribute the rentals received by it under Section 5.03 hereof 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 5.03.

The Trustee shall not be required to undertake any act or duty in the way of insuring, taking care of or taking possession of the Trust Equipment or to undertake any other act or duty under this Agreement (except pursuant to express

provisions hereof) until fully indemnified to its satisfaction by the Owner or by one or more of the holders of the Trust Certificates against all liability, costs and expenses; and the Trustee shall not be responsible for the filing or recording or refileing or rerecording of this Agreement, the Lease or the Lease Assignment or of any supplement hereto or thereto.

SECTION 9.04. Funds Held by Trustee; Investments.  
Any moneys at any time paid to or held by the Trustee hereunder until paid out by the Trustee as herein provided may be carried as a general deposit and need not be segregated from other funds except to the extent required by law, it being understood, however, that all moneys received by the Trustee shall be deemed received and held in trust by the Trustee. The Trustee shall not be under any liability for interest on any moneys received by it hereunder except such as it may agree with the Owner to pay thereon.

Any moneys at any time paid to or held by the Trustee hereunder until paid out by the Trustee as herein provided may be carried by the Trustee on noninterest bearing deposit with itself.

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 (hereinafter in this Section called Replacement Funds) in Investments, at such prices, including any premium and accrued interest, as are set forth in such Request, such Investments to be held by the Trustee in trust for the benefit of the holders of the Trust Certificates.

The Trustee shall, on Request, or the Trustee may, in the event funds are required for payment against acceptance of Trust Equipment or the payment, prepayment or redemption of Trust Certificates, sell such Investments, or any portion thereof, and restore to Deposited Cash or Replacement Funds, as the case may be, the proceeds of any such sale up to the amount paid for such Investments, including accrued interest.

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 5.03(a), an amount equal to any expenses incurred in connec-

tion with any purchase or sale of Investments and also an amount equal to any loss of principal incident to the sale or redemption of any Investments for a sum less than the amount paid therefor, including accrued interest.

If, to the knowledge of the Trustee, the Lessee shall not be in default under the Lease and no event which, with the lapse of time and/or giving of notice would constitute such a default shall have occurred and be continuing, the Lessee shall be entitled to receive 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 Investments.

SECTION 9.05. Trustee Not Liable for Delivery Delays or Defects in Equipment or Title. The Trustee shall not be liable to anyone for any delay in the delivery of any of the Trust Equipment, or for any default on the part of the Builder thereof or of the Owner, 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 in respect of the value thereof or in respect of the title thereto.

The Trustee may perform its powers and duties hereunder by or through such attorneys, agents and servants as it shall appoint, and shall be entitled to rely upon an Opinion of Counsel, and shall be answerable for only its own acts, negligence and wilful defaults and not for the acts, default or misconduct of any attorney, agent or servant appointed by it with reasonable care and in good faith. 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 any mistake of fact or law.

The Trustee shall be entitled to receive payment of all its expenses and disbursements hereunder, including reasonable counsel fees, and to receive reasonable compensation for all services rendered by it in the execution of the trust hereby created, all of which shall be paid by the Lessee, pursuant to the provisions of Paragraph 8 of the Participation Agreement.

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 hereunder shall, until paid out by the Trustee as herein provided, be held by it in trust as herein provided for the benefit of the holders of the Trust Certificates.

SECTION 9.06. Resignation and Removal; Appointment of Successor Trustee. (a) The Trustee may resign and be discharged of the trust created by this Agreement by giving 30 days' written notice to the Owner, the Lessee and the holders of the then outstanding Trust Certificates, but such resignation shall not take effect until receipt by the Trustee of an instrument of acceptance executed by a successor trustee as hereinafter provided in Section 9.07 hereof.

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

(c) If at any time the Trustee shall resign or be removed or otherwise become incapable of acting or if at any time a vacancy shall occur in the office of the Trustee for any other cause, a successor trustee may be appointed by the holders of a majority of the aggregate principal amount of the then outstanding Trust Certificates by an instrument in writing delivered to the Owner and the Trustee. Until a successor trustee shall be appointed by the holders of Trust Certificates as herein authorized, the Owner, by an instrument in writing, shall appoint a trustee to fill such vacancy. A successor trustee so appointed by the Owner 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 9.06 shall be a national bank, or a bank or trust company incorporated under the laws of a State of the United States of America, and having capital and surplus of not less than \$50,000,000, if there be such an institution willing, qualified and able to accept the trust upon reasonable or customary terms. In the event any successor trustee is appointed hereunder, the fees theretofore paid to the Trustee shall be prorated between the Trustee and the successor trustee for any unexpired portion of the period to which such fees relate.

(d) The Owner 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 Owner of a successor trustee pursuant to paragraph (c) of this Section 9.06 by mailing written notice of such event by first class mail, postage prepaid, to the holders of all outstanding Trust Certificates. The then Trustee shall supply the Owner with a register of the current holders of the Trust Certificates for the purpose of giving such notice.

SECTION 9.07. Acceptance of Appointment by Successor Trustee. Any successor trustee appointed as provided in Section 9.06 hereof shall execute, acknowledge and deliver to the Owner 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 Owner 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, powers, records and deposited cash, if any, of the trustee so ceasing to act. Upon request of any such successor trustee, the Owner 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, if any, pursuant to the provisions of Section 9.05 hereof.

SECTION 9.08. Merger or Consolidation of Trustee. Any corporation into which the Trustee may be merged or with which it may be consolidated or any corporation resulting from any merger or consolidation to which the Trustee shall be a party or any corporation succeeding to all or substantially all the corporate trust business of the Trustee shall be the successor of the Trustee hereunder, provided that such corporation shall be qualified under the provisions of Section 9.06 hereof, 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 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, other than the parties hereto, the holders of the Trust Certificates and the third party beneficiaries specified herein, any right, remedy or claim under or by reason of this Agreement or of any term, covenant or condition hereof, and all the terms, covenants, conditions, promises and agreements contained herein shall be for the sole and exclusive benefit of the parties hereto and their successors, the holders of the Trust Certificates and such third party beneficiaries.

SECTION 10.02. No Recourse. No recourse under or upon any obligation, covenant or agreement of this Agreement, or for any claim based thereon or otherwise in respect thereof shall be had against any stockholder, officer or director, as such, past, present or future, of the Trustee, by the enforcement of any assessment or by any legal or equitable proceeding, by virtue of any statute or constitution or otherwise; it being expressly agreed and understood that this Agreement is solely a corporate obligation, and that no personal liability whatever shall attach to or be incurred by the stockholders, officers or directors, as such, of the Trustee, under or by reason of any of the obligations, covenants and agreements contained in this Agreement, 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 stockholder, officer or director is hereby expressly waived as a condition of and consideration for the execution of this Agreement.

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 or mailed by registered mail (a) to the Owner at the address set forth for the Owner in the Lease or such other address as may hereafter be furnished to the Trustee in writing by

the Owner, and (b) to the Trustee at the Corporate Trust Office, or at such other address as may hereafter be furnished to the Owner in writing by the Trustee. An affidavit by any person representing or acting on behalf of the Owner or the Trustee, as the case may be, as to such mailing, having the registry receipt attached, shall be conclusive evidence of the giving of such demand, notice or communication.

SECTION 10.05. Amendment or Waiver. Any provision of this Agreement may be amended, by an instrument executed by the parties hereto, or waived, in either case with the written consent of the holders of not less than 66-2/3% of the aggregate unpaid principal amount of Trust Certificates then outstanding; provided, however, that no such amendment or waiver shall (a) reduce the amount of principal, change the amount or dates of payment of installments of principal or reduce the rate or extend the time of payment of interest with respect to the Trust Certificates without the consent of the holder of each Trust Certificate so affected, (b) 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, without the consent of the holders of 100% of the aggregate unpaid principal amount of Trust Certificates then outstanding, (c) reduce the amount of or extend the time of payment of any premium payable hereunder upon the redemption of any of the Trust Certificates, without the consent of the holders of 100% of the aggregate unpaid principal amount of Trust Certificates then outstanding, or (d) 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.

The Trustee may consent to any amendment or waiver in respect of the Lease, without the approval of the holders of the Trust Certificates, if such amendment or waiver does not adversely affect the interests of the holders of the Trust Certificates. Any other amendment or waiver in respect of the Lease may be consented to by the Trustee with the written approval of the holders of not less than 66-2/3% of the aggregate principal amount of the Trust Certificates then outstanding; provided, however, that, if such amendment or waiver would reduce the amount of or extend the time for payment of any rentals or other obligations under the Lease

in a manner so as to affect the due and punctual payment of the principal of and interest on the Trust Certificates and the other obligations of the Owner hereunder, the Trustee shall not consent thereto without the prior written approval of the holders of 100% of the aggregate unpaid principal amount of Trust Certificates then outstanding. The holders shall receive 30 days' prior written notice of any amendment pursuant to this Section 10.05.

SECTION 10.06. Effect of Headings; Counterparts; Date Executed; Governing Law. (a) The Article and Section headings herein are for convenience only and shall not affect the construction hereof.

(b) 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 that any counterpart be signed by all the parties so long as each party hereto shall sign at least one counterpart hereof which shall be effective upon delivery thereof to counsel for the Trustee.

(c) 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.

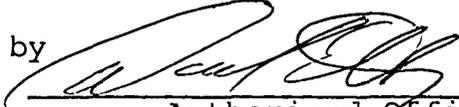
(d) The provisions of this Agreement, and all the rights and obligations of the parties hereunder, shall be governed by the laws of the State of Illinois.

(e) Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument

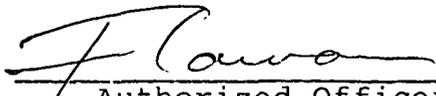
to be duly executed as of the date first above written.

THE CONNECTICUT BANK AND TRUST COMPANY,  
not in its individual capacity,  
but solely as Trustee,

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

[Seal]

Attest:

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

NORTH WESTERN LEASING COMPANY,

by

\_\_\_\_\_  
Title:

[Corporate Seal]

Attest:

\_\_\_\_\_  
Title:

STATE OF CONNECTICUT, )  
 ) ss.:  
COUNTY OF HARTFORD, )

On this 23rd day of September 1981, before me personally appeared DONALD E. SMITH, to me personally known, who, being by me duly sworn, says that he is an Authorized Officer of THE CONNECTICUT BANK AND TRUST COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its By-laws and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Carol Lee Shattuck  
Notary Public

[NOTARIAL SEAL]

My Commission Expires

**CAROL LEE SHATTUCK**  
**NOTARY PUBLIC**  
MY COMMISSION EXPIRES MARCH 31, 1985

STATE OF ILLINOIS, )  
 ) ss.:  
COUNTY OF COOK, )

On this \_\_\_\_\_ day of \_\_\_\_\_ 1981, before me personally appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, says that he is an \_\_\_\_\_ of NORTH WESTERN LEASING COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its By-laws and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

\_\_\_\_\_  
Notary Public

[NOTARIAL SEAL]

My Commission Expires

Schedule A to the Equipment  
Trust Agreement

Description of the Equipment

<u>Type</u>	<u>Quantity</u>	<u>Owner's Car Numbers (both inclusive)</u>	<u>Unit Hulk Cost</u>	<u>Unit Recon- struction Cost</u>	<u>Total Unit Cost</u>	<u>Estimated Time of Delivery</u>
GP-40 3000 h.p. Locomotives	38	CNW- 5500-5537	\$190,000	\$140,000	\$330,000	September- December 1981

Annex II  
to the  
EQUIPMENT  
TRUST AGREEMENT

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[CS&M Ref.: 2044-128]

ASSIGNMENT OF LEASE AND AGREEMENT

Dated as of July 15, 1981

Between

THE CONNECTICUT BANK AND TRUST COMPANY,  
not in its individual capacity but  
solely as Trustee,

and

NORTH WESTERN LEASING COMPANY,  
Owner.

---

ASSIGNMENT OF LEASE AND AGREEMENT dated as of July 15, 1981 (this "Assignment"), between NORTH WESTERN LEASING COMPANY (the "Owner") and THE CONNECTICUT BANK AND TRUST COMPANY, not in its individual capacity but solely as Trustee (the "Trustee").

WHEREAS the Owner and the Trustee have entered into an Equipment Trust Agreement dated as of the date hereof (the "Trust Agreement"); and

WHEREAS the Owner and Chicago and North Western Transportation Company (the "Lessee") have entered into a Lease of Railroad Equipment dated as of the date hereof (the "Lease") providing for the leasing by the Owner to the Lessee of certain units of reconstructed railroad equipment owned by the Owner (the "Units"); and

WHEREAS, in order to provide security for the obligations of the Owner under the Trust Agreement and as an inducement to the purchasers of Equipment Trust Certificates issued pursuant to the Trust Agreement (the "Equipment Trust Certificates") to invest in said Equipment Trust Certificates, the Owner agrees to assign for security purposes all its rights in, to and under the Lease to the Trustee;

NOW, THEREFORE, in consideration of the premises and of the payments to be made and the covenants hereinafter mentioned, the parties hereto agree as follows:

1. The Owner hereby assigns, transfers and sets over unto the Trustee, as collateral security for the payment and performance of the obligations of the Owner under the Trust Agreement, all the Owner's rights, titles and interests, powers, privileges, and other benefits under the Lease, including, without limitation, the immediate right to receive and collect all rentals, profits and other sums payable to or receivable by the Owner from the Lessee under or pursuant to the provisions of the Lease whether as rent, casualty payment, indemnity, liquidated damages, or otherwise (such moneys being hereinafter called the "Payments"), and the right to make all waivers and agreements, to give all notices, demands, consents and releases, to take all action upon the happening of an Event of Default specified in the Lease, and to do any and all other things whatsoever which the Owner is or may become entitled to do under the Lease.

In furtherance of the foregoing assignment, the Owner hereby irrevocably authorizes and empowers the Trustee in its own name, or in the name of its nominee, or in the name of the Owner, or as attorney for the Owner, to ask, demand, sue for, collect and receive any and all Payments to which the Owner is or may become entitled under the Lease, and to enforce compliance by the Lessee with all the terms and provisions thereof.

The Trustee agrees to accept any Payments made by the Lessee for the account of the Owner pursuant to the Lease. To the extent received, the Trustee will apply such Payments first, to satisfy such obligations of the Owner under the Trust Agreement and the Participation Agreement dated as of the date hereof among the Owner, the Lessee, the Trustee and the purchasers named therein (the "Participation Agreement") as are then due and payable, and second, so long as no event of default (or event which with the lapse of time and/or demand provided for in the Trust Agreement could constitute an event of default thereunder) shall have occurred and be continuing, any balance shall be paid to the Owner or to such other party as the Owner may direct in writing, on the first business day following receipt by the Trustee of such balance, at the Owner's address specified in § 16 of the Lease or at such other address as may be specified to the Trustee in writing. If the Trustee shall not receive any rental payment under § 3(c) of the Lease when due, the Trustee shall notify the Owner at the address specified in § 16 of the Lease; provided, however, that the failure of the Trustee to so notify the Owner shall not affect the obligations of the Owner hereunder or under the Trust Agreement.

2. The assignment made by the Owner hereunder is executed only as security and, therefore, the execution and delivery of this Assignment by the Owner shall not subject the Trustee to, or transfer, or pass, or in any way affect or modify, the liability of the Owner under the Lease, it being agreed that, notwithstanding this Assignment or any subsequent assignment, all obligations of the Owner to the Lessee shall be and remain enforceable by the Lessee, its successors and assigns, against, and only against, the Owner or persons other than the Trustee. Any action taken by the Owner in connection with its obligations or duties under the Lease shall be at its sole cost.

3. The Owner represents and warrants to the Trustee that the Owner has not entered into any assignment

of its interests in the Lease other than this Assignment, has not entered into any amendment or modification of the Lease and has not created or incurred or suffered to exist with respect to the Lease or with respect to any of its interests therein any claim, lien or charge arising by, through or under the Owner.

4. The Owner will faithfully abide by, perform and discharge each and every obligation and agreement which the Lease provides is to be performed by the Owner. Without the written consent of the Trustee, the Owner will not anticipate the rents under the Lease or waive, excuse, condone, forgive or in any manner release or discharge the Lessee of or from the obligations, covenants, conditions and agreements to be performed by the Lessee thereunder, including, without limitation, the obligation to pay the rents in the manner and at the time and place specified therein or enter into any agreement amending, modifying or terminating the Lease and the Owner agrees that any amendment, modification or termination thereof without such consent shall be void.

5. The Owner does hereby constitute the Trustee its true and lawful attorney, irrevocably, with full power (in the name of the Owner or otherwise) to ask, require, demand, receive, compound and give acquittance for any and all Payments due and to become due under or arising out of the Lease to which the Owner is or may become entitled, to enforce compliance by the Lessee with all the terms and provisions of the Lease to the extent hereby assigned to the Trustee, to endorse any checks or other instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings which to the Trustee may seem to be necessary or advisable in the premises.

6. Upon the full discharge and satisfaction of all the Owner's obligations under the Trust Agreement and the Participation Agreement (without giving effect to any limitation of liability therein), the Owner's assignment hereunder of its rights in, to and under the Lease shall terminate, and all estate, right, title and interest of the Trustee in and to the Lease shall automatically revert to the Owner. However, the Trustee, if so requested by the Owner at that time, will (a) execute an instrument releasing its entire estate, right, title and interest in the Lease and transferring such estate, right, title and interest to the Lessor and (b) execute, acknowledge and deliver any and all

further instruments required by law or reasonably requested by the Owner in order to confirm or further assure that all such estate, right, title and interest in the Lease shall have so reverted or shall have been so transferred to the Owner.

7. The Owner will pay and discharge any and all taxes, claims, liens, charges, security interests or other encumbrances (other than those created by the Trust Agreement) on the Lease or the rentals or other payments due or to become due thereunder claimed by any party from, through or under the Owner or its successors and assigns (other than the Trustee) which, if unpaid, might become a claim, lien, charge, security interest or other encumbrance on or with respect to the Lease or such rentals or other payments, unless the Owner shall be contesting the same in good faith by appropriate proceedings in any reasonable, diligent manner and the nonpayment thereof does not, in the opinion of the Trustee, adversely affect such interests of the Trustee.

8. If an event of default under the Trust Agreement shall occur and be continuing, the Trustee may declare all sums secured hereby immediately due and payable and may apply all such sums against the amounts due and payable under the Trust Agreement.

9. The Owner will, from time to time, do and perform any other act and will execute, acknowledge, deliver and file, register, deposit and record (and will refile, reregister, rerecord or redeposit) any and all further instruments required by law or reasonably requested by the Trustee in order to confirm or further assure the interests of the Trustee hereunder.

10. The Trustee may assign all or any of the rights assigned to it hereby or arising under the Lease, including, without limitation, the right to receive any Payments due or to become due. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Trustee hereunder; provided, however, the Owner and the Lessee shall not be bound to honor such assignment until they have received written notice thereof. Payment to the assignee of any Payments shall constitute

full compliance with the terms of this Assignment and the Lease. The Owner and the Lessee may rely on instruments and documents of assignment which they believe in good faith to be true and authentic.

11. This Assignment shall be governed by the laws of the State of Illinois, but the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303 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 Assignment shall be filed or deposited.

12. The Owner shall cause copies of all notices and other documents received by it in connection with the Lease and all Payments hereunder to be promptly delivered or made to the Trustee at its address set forth in the Trust Agreement, or at such other address as the Trustee shall designate. Any notice hereunder given by one party to the other shall be delivered by hand or mailed by registered or certified mail, postage prepaid, return receipt requested, to the addressee thereof at its address as first set forth above or to such other address or to such attention as shall have been specified in a written notice to the other party hereto.

13. The Owner shall not, without the prior written consent of the Trustee, terminate the Lease or otherwise exercise or enforce, or seek to exercise or enforce, any rights, powers, privileges or remedies arising out of § 10 of the Lease.

14. This Assignment may be executed in any number of counterparts, but the counterpart delivered to the Trustee shall be deemed to be the original counterpart. It shall not be necessary that any counterpart be signed by both the parties hereto so long as each party hereto shall have executed and delivered one counterpart hereof. Although for convenience this Assignment is dated as of the date first above written, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective corporate names by officers thereunto duly authorized, and

their respective corporate seals to be affixed and duly attested, all as of the date first above written.

THE CONNECTICUT BANK AND TRUST  
COMPANY,  
not in its individual capacity  
but solely as Trustee as aforesaid,

by

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

[Corporate Seal]

Attest:

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

NORTH WESTERN LEASING COMPANY,

by

[Corporate Seal]

Attest:

STATE OF CONNECTICUT,)
) ss.:
COUNTY OF , )

On this day of 1981, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is an Authorized Officer of THE CONNECTICUT BANK AND TRUST COMPANY, that the seal affixed to the foregoing instrument is the corporate seal of said Corporation that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

Notary Public

[Notarial Seal]

My Commission expires

STATE OF ILLINOIS,)
) ss.:
COUNTY OF COOK, ,)

On this day of 1981, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is an of NORTH WESTERN LEASING COMPANY, an Illinois corporation, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

Notary Public

[Notarial Seal]

My Commission expires

## LESSEE'S CONSENT AND AGREEMENT

The undersigned, CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY (the "Lessee"), the lessee named in the Lease (the "Lease") referred to in the foregoing Assignment of Lease and Agreement (the "Lease Assignment"), hereby (a) acknowledges receipt of a copy of the Lease Assignment and (b) consents to all the terms and conditions of the Lease Assignment and agrees that:

(1) it will pay all rentals, casualty payments, liquidated damages, indemnities and other moneys provided for in the Lease due and to become due under the Lease or otherwise in respect of the Units leased thereunder, directly to THE CONNECTICUT BANK AND TRUST COMPANY, as Trustee (the "Trustee"), the assignee named in the Lease Assignment, by 11 a.m. Eastern time, on the date such payment is due, by bank wire transfer of immediately available funds to Account No. 000-45-808 (for the account of certain separate accounts maintained by Aetna Life Insurance Company) in Morgan Guaranty Trust Company of New York, 23 Wall Street, New York, New York 10015, Attention of Money Transfer Department, with sufficient information to identify the source and application of such funds (or at such other address as may be furnished in writing to the Lessee by the Trustee);

(2) it shall not be entitled to any abatement of rent or additional rent, reduction thereof or setoff against or recoupment of rent or additional rent, including, but not limited to, abatements, reductions, setoffs or recoupments due or alleged to be due by reason of any past, present or future claims or counter-claims of the Lessee against the Owner (as defined in the Lease Assignment) under the Lease or under the Trust Agreement referred to in the Lease Assignment or the Trustee or otherwise;

(3) except as and to the extent otherwise specifically provided in the Lease Assignment, the Trustee shall be entitled to the benefits of, and to receive and enforce performance of, all the covenants to be performed by the Lessee under the Lease as though the Trustee were named therein as the Owner and the Lessee will not assert against the Trustee any claim or defense the Lessee may have against the Owner under the Lease;

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

(5) the Lease shall not, without the prior written consent of the Trustee, be terminated, amended or modified, nor shall any waiver or release be given or accepted with respect thereto nor shall any action be taken or omitted by the Lessee the taking or omission of which might result in an alteration or impairment of the Lease or the Lease Assignment or this Consent and Agreement or of any of the rights created by any thereof.

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

CHICAGO AND NORTH WESTERN  
TRANSPORTATION COMPANY,

by

\_\_\_\_\_

[Corporate Seal]

Attest:

\_\_\_\_\_

The foregoing Consent and Agreement is hereby accepted, as of the 15th day of July 1981.

THE CONNECTICUT BANK AND TRUST  
COMPANY, as Trustee,

by

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

[Corporate Seal]

Attest:

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

ANNEX I  
to the  
Equipment Trust Agreement

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[CS&M Ref. 2044-128]

LEASE OF RAILROAD EQUIPMENT

Dated as of July 15, 1981

between

CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY,  
Lessee,

and

NORTH WESTERN LEASING COMPANY,  
Lessor

[Covering 38 Reconstructed Locomotives]

The rights and interests of the Lessor under this Lease are subject to a security interest in favor of The Connecticut Bank and Trust Company, as Trustee for certain institutional investors. The original of this Lease has been stamped "Original" and is held by said Trustee.

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\* This Table of Contents has been included in this document for convenience only and does not form a part of or affect any construction or interpretation of this document.

LEASE OF RAILROAD EQUIPMENT dated as of July 15, 1981, between CHICAGO AND NORTHWESTERN TRANSPORTATION, a Delaware corporation (the "Lessee" or the "Builder") and NORTH WESTERN LEASING COMPANY, a Delaware corporation (the "Lessor" or the "Owner").

WHEREAS the Lessor is entering into a reconstruction agreement (the "Reconstruction Agreement") with the Builder, pursuant to which the Builder has agreed to reconstruct certain units of railroad equipment owned by the Owner and described in Schedule A annexed hereto (the "Equipment"); and

WHEREAS the Owner is entering into an equipment trust agreement dated as of the date hereof (the "Trust Agreement") with The Connecticut Bank and Trust Company (hereinafter, together with its successors and assigns as trustee under the Trust Agreement, called the "Trustee"), pursuant to which equipment trust certificates (the "Trust Certificates") will be sold to finance all or part of the cost of the Equipment, the Owner will be obligated to make payments equal to principal and interest thereon out of the rentals received hereunder and a security interest in the Units will be conveyed to the Trustee until the Owner fulfills all its obligations under the Trust Agreement; and

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

WHEREAS the Lessor, the Lessee, the Trustee and the Purchasers (as defined in the Trust Agreement) are parties to a Participation Agreement dated as of July 15, 1981 (the "Participation Agreement"); and

WHEREAS the Owner will assign this Lease to the Trustee, as security for performance by the Owner of its obligations under the Trust Agreement, pursuant to an Assignment of Lease and Agreement dated as of the date hereof (the "Lease Assignment") and the Lessee will consent to the Lease Assignment pursuant to a Lessee's Consent and Agreement (the "Consent");

NOW, THEREFORE, in consideration of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions.

§ 1. Net Lease. This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent or additional rent, or setoff against or recoupment or reduction of rent or additional rent, including, but not limited to, abatements, setoffs, reductions or recoupments due or alleged to be due by reason of any past, present or future claims or counterclaims of the Lessee against the Lessor under this Lease or the Participation Agreement or otherwise. The Lessee's obligations hereunder, including but not limited to its obligations to pay all rentals, additional rentals and other amounts hereunder, shall be absolute and unconditional under any and all circumstances, and, except as otherwise expressly provided herein, this Lease shall not terminate, nor shall the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of (i) any defect, whether latent or patent, in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, (ii) any liens, encumbrances or rights of others with respect to any of the Units, (iii) the prohibition of or other restriction against the Lessee's use of all or any of the Units, (iv) the interference with such use by any person, (v) the invalidity or unenforceability or lack of due authorization of this Lease, (vi) any insolvency of, or any bankruptcy, reorganization or similar proceeding against the Lessee, or (vii) any other cause whether similar or dissimilar to the foregoing, whether arising under this Lease, any other Document (as defined in the Participation Agreement) or otherwise, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall

not seek to recover all or any part of such payment from the Lessor for any reason whatsoever except as to the amount of any payment paid by the Lessee which is in excess of the amount required to be paid by the Lessee pursuant to the provisions of this Lease.

§ 2. Delivery and Acceptance of Units. Each delivery of a Unit to the Trustee under the Trust Agreement shall be deemed to be a delivery to the Lessee under this Lease at the point or points within the United States of America at which such Unit is delivered to the Trustee under the Trust Agreement. Upon such delivery, the Lessee will cause an employee of the Lessee to inspect the same and, if such Unit is found to be acceptable, to accept delivery of such Unit and execute and deliver to the Lessor a certificate of inspection and acceptance (the "Certificate of Inspection and Acceptance") substantially in the form annexed hereto as Schedule B, whereupon, except as provided in the next sentence hereof, such Unit shall be deemed to have been delivered to and accepted by the Lessee hereunder and shall be subject thereafter to all the terms and conditions of this Lease. The delivery, inspection and acceptance hereunder of any Unit of Equipment excluded from the Trust Agreement pursuant to Section 4.01 thereof shall be null and void and ineffective to subject such Unit to this Lease or to constitute acceptance thereof on behalf of the Lessor for any purpose whatsoever. Upon the acceptance of all Units to be subject to this Lease, Lessor and Lessee will enter into an amendment to this Lease setting forth the specific identifying numbers of the Units if this Lease shall not set forth the same.

§ 3. Rentals. (a) The Lessee agrees to pay to the Lessor, as rental for each Unit, one interim rental payment and 20 consecutive semiannual rental payments, in arrears. The interim rental payment is payable on February 1, 1982, and the 20 semiannual rental payments are payable on February 1 and August 1 in each year, commencing August 1, 1982, to and including February 1, 1992 (each of such 21 consecutive dates being hereinafter called a "Rental Payment Date"). Each semiannual rental payment shall be in an amount equal to the product of the Purchase Price (as defined in the Trust Agreement) of each Unit then subject to this Lease and the percentage set forth in Schedule C annexed hereto opposite each Rental Payment Date. The interim rental payment shall be in an amount equal to .0425% of the Purchase

Price of each Unit subject to this Lease on the date of such payment for each day elapsed from the Closing Date for each such Unit to and including February 1, 1982. The Lessee also agrees to pay to the Lessor, as rental for each Unit subject to this Lease, the amount, if any, required to enable the Lessor to make the payments required by Sections 5.03(a) and (c) of the Trust Agreement.

(b) If any of the Rental Payment Dates referred to above is not a business day, the rental payment otherwise payable on such date shall be payable on the next business day succeeding such date. The term "business day" as used herein means a calendar day, excluding Saturdays, Sundays and any other day on which banking institutions in Chicago, Illinois, or Hartford, Connecticut, are authorized or obligated to remain closed.

(c) The Lessor irrevocably instructs the Lessee to make all the payments provided for in this Lease, including, but not limited to, the payments provided for in this § 3 and in § 7 hereof at the principal office of the Trustee, for the account of the Lessor in care of the Trustee, with instructions to the Trustee first, to apply such payments to satisfy the obligations of the Lessor under the Trust Agreement, and second, so long as no event of default or event which with the lapse of time and/or demand provided for in the Trust Agreement could constitute an event of default under the Trust Agreement shall have occurred and be continuing, to pay any balance promptly to the Lessor at such place as the Lessor shall specify in writing. The Lessee agrees to make each payment provided for herein as contemplated by this paragraph in Federal or other funds immediately available to the Trustee by 11 a.m., Eastern time, on the date such payment is due.

§ 4. Term of Lease. The term of this Lease as to each Unit shall begin on the date of delivery and acceptance of such Unit hereunder and, subject to the provisions of §§ 7 and 10 hereof, shall terminate on the final Rental Payment Date. The obligations of the Lessee hereunder (including, but not limited to, the obligations under §§ 3, 6, 7, 9 and 13 hereof) shall survive the expiration or termination of the term of this Lease and the full payment of all amounts payable under this Lease.

Notwithstanding anything to the contrary contained herein, all rights and obligations of the Lessee under this Lease and in and to the Units are subject to the rights of the Trustee under the Trust Agreement. If an Event of Default should occur under the Trust Agreement, the Trustee may terminate this Lease (or rescind its termination), all as provided therein.

§ 5. Identification Marks. The Lessee will cause each Unit to be kept numbered with the identification number set forth in Schedule A hereto, and will keep and maintain plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the words "OWNERSHIP SUBJECT TO A SECURITY AGREEMENT FILED WITH THE INTERSTATE COMMERCE COMMISSION", with appropriate changes thereof as from time to time may be required by law, in the opinion of the Trustee and the Lessor, in order to protect the Lessor's and the Trustee's title to and interest in such Unit and the rights of the Lessor under this Lease and the rights of the Trustee under the Trust Agreement. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such words shall have been so marked and will replace promptly any such markings which may be removed, defaced, obliterated or destroyed. The Lessee will not change the identification number of any Unit unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with the Trustee and the Lessor and duly filed and deposited by the Lessee in all public offices where this Lease and the Trust Agreement shall have been filed and deposited, and all required publications, if any, made; and (ii) the Lessee shall have furnished the Trustee and the Lessor an opinion of counsel to the effect that such statement has been so filed, deposited and published, that such filing, deposit and publication will protect the Trustee's and the Lessor's rights in such Units and that no other filing, deposit, publication or giving of notice with or to any Federal, state or local government or agency thereof is necessary to protect the rights of the Trustee and the Lessor in such Units.

Except as provided in the immediately preceding paragraph, the Lessee will not allow the name of any person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership; provided, however, that the Units may be lettered with the names, initials or other insignia customarily used by the Lessee or its affiliates.

§ 6. Taxes. (a) All payments to be made by the Lessee hereunder will be free of expense to the Lessor and its assignees (including the Trustee) from collection or other charges and will be free of expense to the Lessor and its assignees (including the Trustee) with respect to the amount of any Impositions (as hereinafter defined), all of which charges and Impositions the Lessee assumes and agrees to pay on demand in addition to the other payments to be made by the Lessee hereunder. The term "Impositions" means all Federal, state, local or foreign taxes, license fees, assessments and documentary stamp taxes, and any charges, fines or penalties in connection therewith, now or hereafter levied or imposed upon or in connection with or measured by any Unit or this Lease or any rentals or other sums payable hereunder, or any sale, rental, possession, use, shipment, delivery, nondelivery, rejection, transfer of title, return or other disposition of the Equipment or any interest therein, under the terms of the Participation Agreement, the Lease Assignment, this Agreement or the Trust Agreement, except: (i) any tax of the United States of America imposed on or measured by net income or excess profits (other than the net income or excess profits of the Lessee), or any value added or gross receipts tax imposed in lieu of such tax; (ii) any state franchise tax which is not based on or measured by net income; (iii) any taxes of a state or political subdivision thereof computed other than on net income and imposed in substitution for any tax referred to in clause (ii) above; and (iv) any foreign income tax to the extent that the recipient of any payments made hereunder shall receive credit therefor against its United States Federal income tax liability; but including such of the foregoing as are levied or imposed in substitution for, or relieve Lessee from the payment of, such taxes, fees, assessments, charges, fines or penalties which it would otherwise be obligated to pay or reimburse as provided in this § 6. The Lessee will also pay promptly all Impositions which may be imposed upon any Unit or for the use or operation thereof or upon the receipts or earnings arising therefrom, and will keep at all times all and every part of such Unit free and clear of all Impositions which might in any way affect the title of the Lessor or the interest of the Lessor or result in a lien upon any such Unit; provided, however, that the Lessee shall be under no obligation to pay any Imposition of any kind so long as such Imposition remains unpaid and the Lessee shall be contesting in good faith such Imposition in its own name and by appropriate legal or administrative proceedings, or the Lessor shall be required

to contest such Impositions as provided in this § 6, and the nonpayment thereof, in the reasonable opinion of such party, shall not adversely affect the title, property or rights of the Lessor hereunder or the Lessor or the Trustee under the Trust Agreement. The Lessee shall give such party notice of such contest brought in the Lessee's name within 30 days after institution thereof, and such party will provide such information as may be reasonably requested by the Lessee in furtherance of such contest. If any Imposition shall have been charged or levied against such party directly and paid by such party, the Lessee shall pay such party on presentation of an invoice therefor, if such party shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for such party) or if the Lessee shall have approved the payment thereof, and such party agrees to give the Lessee written notice in a timely manner after it first obtains knowledge of the making of such charge or levy, and agrees to take such other action as may reasonably be requested by the Lessee for the purpose of contesting payment or obtaining refund of all or a portion of such Imposition, as hereinafter provided in this § 6.

In the event that the Lessor shall become obligated to make any payment to the Trustee or otherwise pursuant to any corresponding provision of the Trust Agreement not covered by the foregoing paragraph of this § 6, the Lessee shall pay such additional amounts (which shall also be deemed Impositions hereunder) to the Lessor to fulfill completely its obligations pursuant to said provision; provided, however, that the Lessor shall have contested (if required to do so under this § 6) such impositions in good faith and to the extent permitted under the Trust Agreement.

(b) In the event any returns, statements or reports with respect to Impositions are required to be made, the Lessee will make such returns, statements and reports in such manner as to show the interest of the Lessor and the Trustee in such Units, as shall be satisfactory to the Lessor and the Trustee or, where not so permitted, will notify the Lessor and the Trustee of such requirement and will prepare and deliver such reports to the Lessor and the Trustee within a reasonable period of time prior to the time such reports are to be filed in such manner as shall be satisfactory to the Lessor and the Trustee.

(c) In the event that, with respect to any period during the continuance of this Lease, the Lessee becomes liable for the payment or reimbursement of any Imposition pursuant to this § 6, such liability shall continue, notwithstanding the expiration or termination of this Lease, until all such Impositions are paid or reimbursed by the Lessee.

(d) If claim is made against any indemnified party for any Impositions indemnified against under this § 6, such party shall promptly notify the Lessee. If such claim is made against the Lessor and if reasonably requested by the Lessee in writing and so long as the Lessee is prohibited or impaired from doing so in its own name, the Lessor shall, upon receipt of indemnity satisfactory to it for all costs, expenses, losses, legal and accountants' fees and disbursements, penalties, fines, additions to tax and interest, and at the expense of the Lessee, contest in good faith the validity, applicability or amount of such Impositions by (a) resisting payment thereof if legally permissible, (b) not paying the same except under protest, if protest is necessary and proper, or (c) if payment is made, using reasonable efforts to obtain a refund thereof in appropriate administrative or judicial proceedings, or both. If the Lessor shall obtain a refund of all or any part of such Impositions previously reimbursed by the Lessee in connection with any such contest or an amount representing interest thereon applicable to the amount paid by the Lessee and the period of such payment, the Lessor shall pay to the Lessee the amount of such refund or interest net of expenses, but only if no Event of Default, or event which with notice or lapse of time or both would constitute an Event of Default, shall have occurred and be continuing.

(e) The Lessee shall, whenever reasonably requested by the Lessor, submit to the Lessor copies of returns, statements, reports, billings and remittances, or furnish other evidence satisfactory to such party of the Lessee's performance of its duties under this § 6. The Lessee shall also furnish promptly upon request such data as the Lessor reasonably may require to permit the Lessor's compliance with the requirements of taxing jurisdictions, including data available to the Lessee relating to use of any Unit outside the United States.

(f) The amount which the Lessee shall be required to pay with respect to any Imposition which is subject to

indemnification under this § 6 shall be an amount sufficient to restore the indemnified party to the same net after-tax rate of return, after considering the effect of such payment on its United States Federal income taxes and state and city income taxes or franchise taxes based on net income, that such indemnified party would have been in had such Imposition not been imposed.

(g) The foregoing indemnities by the Lessee shall not constitute a guarantee by the Lessee or any subsidiary or affiliated corporation of the Lessee of the payment of any installments of principal or interest payable under the Trust Agreement, or a guarantee of any residual value of the Units following the expiration of the term hereof as such term may or may not be renewed.

§ 7. Maintenance; Casualty Occurrences; Insurance. The Lessee at its own expense will maintain and service each Unit (including any parts installed or replacements made to any unit and considered an Addition [as defined in § 9 hereof] hereunder) so that each Unit will remain (a) in good operating order, repair and condition, reasonable wear and tear excepted, (b) in compliance with any and all applicable laws and regulations and (c) at a level of maintenance comparable to that of all other owned or leased equipment of the same character in its fleet.

In the event that any Unit shall be or become worn out, lost, stolen, destroyed or, in the good faith and reasonable opinion of the Lessee, irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise by the United States Government for a stated period which shall exceed the then remaining term of this Lease or for an indefinite period, but only when such period shall exceed the term hereof, or by any other government or governmental entity resulting in loss of possession by the Lessee for a period of 90 consecutive days (such occurrences being hereinafter called "Casualty Occurrences"), prior to the return of such Unit in the manner set forth in § 13 hereof, the Lessee shall promptly (but in any event within 30 days after the Lessee shall have notice of, or shall have made a determination of, such Casualty Occurrence) and fully notify the Lessor and the Trustee with respect thereto. On the Rental Payment Date next succeeding such notice (the "Casualty Payment Date"), the Lessee shall pay to the Lessor an amount equal to the rental payment or payments in respect of such Unit due and payable on the Casualty Payment Date plus a sum equal to the Casualty Value (as hereinafter defined) of such

Unit as of the Casualty Payment Date. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft, complete destruction or permanent return to the Builder of such Unit) the Lessor shall be entitled to recover possession of such Unit.

The "Casualty Value" of each Unit as of any Rental Payment Date shall be an amount equal to that percentage of the Purchase Price of such Unit as is set forth in Schedule C hereto opposite such date; provided, however, that the Casualty Value percentages with respect to any Unit will never be less than those percentages required to enable the Lessor to satisfy its obligations to pay or prepay with respect to such Unit the portion of the Trust Certificates allocable thereto and interest thereon.

Whenever any Unit shall suffer a Casualty Occurrence after the final payment of rent in respect thereof is due pursuant to § 3 hereof and before (a) such Unit shall have been returned in the manner provided in § 13 hereof, and (b) the storage period therein provided with respect to such Unit shall have expired, the Lessee shall promptly (as provided above) and fully notify the Lessor with respect thereto and pay to the Lessor an amount equal to the Casualty Value of such Unit, which shall be an amount equal to 20% of the Purchase Price of such Unit. Upon the making of any such payment by the Lessee in respect of any Unit (except in the case of the loss, theft or complete destruction of such Unit) the Lessor shall be entitled to recover possession of such Unit.

In the event of the requisition (other than a requisition which constitutes a Casualty Occurrence) for use by the United States Government or by any other government or governmental entity (hereinafter collectively called the "Government") of any Unit during the term of this Lease, all of the Lessee's obligations (including, without limitation, the obligation to pay rent and other sums hereunder) under this Lease with respect to such Unit shall continue to the same extent as if such requisition had not occurred, except that if such Unit is returned by the Government at any time after the end of the term of this Lease, the Lessee shall be obligated to return such Unit to the Lessor pursuant to § 11 or 13 hereof, as the case may be, promptly upon such return by the Government rather than at the end of the term of this Lease, but the Lessee shall in all other respects comply with the provisions of said § 11 or 13, as

the case may be, with respect to such Unit. All payments received by the Lessor or the Lessee from the Government for the use of such Unit during the term of this Lease shall be paid over to, or retained by, the Lessee, 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; and all payments received by the Lessor or the Lessee from the Government for the use of such Unit after the term of this Lease shall be paid over to, or retained by, the Lessor.

The Lessor hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence, or any component thereof, at the best price obtainable on an "as is, where is" basis and the Lessee shall notify the Lessor and the Owner prior to any such sale. Provided that the Lessee has previously paid the Casualty Value to the Lessor 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, the Lessee shall be entitled to the proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit plus the Lessee's out-of-pocket expenses in connection with such sale and shall pay any excess to the Lessor. The Lessee will pay all costs and expenses in connection with the sale of any Unit pursuant to a Casualty Occurrence.

Except as hereinabove in this § 7 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit from and after delivery and acceptance thereof by the Lessee hereunder.

The Lessee will, at all times after delivery and acceptance of each Unit and prior to the return of the Equipment to the Lessor, at its own expense, cause to be carried and maintained (and shall furnish to the Lessor and the Trustee a certificate or verification from the Lessee's insurance broker evidencing) property insurance and public liability insurance in respect of the Units at the time subject hereto, in amounts (subject to customary deductibles) and against risks customarily insured against by railroad companies in respect of similar equipment and, in any event, comparable in amounts and against risks customarily insured against by the Lessee from time to time in respect of similar equipment owned by it. Any policies of insurance carried in accordance with this paragraph shall name the

Lessor and the Trustee as additional insureds as their respective interests may appear and shall provide for 30 days prior written notice to the Lessor and the Trustee of any material change or cancelation. If the Lessor shall receive any property insurance proceeds or condemnation payments in respect of a Unit suffering a Casualty Occurrence, the Lessor shall, subject to the Lessee's having made payment of the Casualty Value in respect of such Unit 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 Lessee up to an amount equal to the Casualty Value with respect to a Unit paid by the Lessee and any balance of such proceeds or condemnation payments shall remain the property of the Lessor. 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, all insurance proceeds received by the Lessor from the Lessee's property insurance coverage in respect of any Unit not suffering a Casualty Occurrence shall be paid to the Lessee upon proof satisfactory to the Lessor that any damage to such Unit in respect of which such proceeds were paid has been fully repaired so as to comply with the first paragraph of this Section.

§ 8. Reports and Inspection. On or before April 30 in each year, commencing with the calendar year 1982, the Lessee will furnish to the Lessor and the Trustee (a) an accurate statement (i) setting forth as at the preceding December 31 the amount, description and identifying numbers of all Units then leased hereunder and covered by the Trust Agreement, the amount, description and identifying numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year or are then undergoing repairs (other than running repairs) or then withdrawn from use pending such repairs (other than running repairs) and such other information regarding the condition and state of repair of the Units as the Lessor or the Trustee may reasonably request and (ii) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and markings required by § 5 hereof and by the Trust Agreement have been preserved or replaced and (b) a certification or verification of insurance coverage from the Lessee's independent broker stating the amounts of insurance in effect with respect to the Equipment pursuant to § 7 hereof and the amount of deductible. The Lessor, at its sole cost and expense, shall have the right by its agents, to inspect the

Units and the Lessee's records with respect thereto at such reasonable times as the Lessor may request during the continuance of this Lease, but the Lessor shall have no obligation to do so.

The Lessee shall promptly notify the Lessor and the Trustee of (a) any occurrence of an Event of Default or other event which after notice or lapse of time or both would become an Event of Default, specifying such Event of Default and all such events and the nature and status thereof and (b) any material changes or any material proposed changes of which the Lessee has knowledge in its insurance coverage in effect with respect to the Equipment pursuant to § 7 hereof.

§ 9. Disclaimer of Warranties; Compliance with Laws and Rules; Indemnification. THE LESSOR NEITHER MAKES, HAS MADE NOR SHALL BE DEEMED TO MAKE, ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS OR ANY COMPONENT DELIVERED TO THE LESSEE HEREUNDER, AND THE LESSOR MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE OR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, OR AS TO THE LESSEE'S RIGHT TO QUIET ENJOYMENT THEREOF (EXCEPT AS TO ACTS OF THE LESSOR), OR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT OR ANY COMPONENT, EITHER UPON DELIVERY THEREOF TO THE LESSEE OR OTHERWISE, it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee. The Lessor shall have no responsibility or liability to the Lessee or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Units or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of any Units or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, subleasing, servicing, maintenance, repair, improvement or replacement of any Units. The Lessee's delivery of a Certificate of Inspection and Acceptance shall be conclusive evidence as between the Lessee and the Lessor that the Units described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

The Lessee agrees, for the benefit of the Lessor and the Trustee, at all times to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each Unit) with all applicable laws of the jurisdictions in which operations involving the Units may extend, with the interchange rules of the Association of American Railroads (which term shall include any successor organization thereof), if applicable, and with all lawful rules of the United States Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, maintenance, operation or use of the Units (all such laws and rules to such extent being hereinafter called the "Applicable Laws"), and in the event that, prior to the expiration of this Lease or any renewal thereof, the Applicable Laws require any alteration, replacement, addition or modification of or to any part on any Unit, the Lessee will conform therewith at its own expense; provided, however, that the Lessee may, at its own expense, in good faith, contest the validity or application of any Applicable Law in any reasonable manner which does not, in the reasonable opinion of the Lessee, adversely affect the property or rights of the Lessor or the Trustee under this Lease or under the Trust Agreement. The Lessee's obligations under this paragraph subsequent to the expiration of the lease term or the extended term shall be limited solely to maintenance of the Units in accordance with Applicable Laws prior to and as of the date of the expiration of the Lease. The Lessee, at its own cost and expense, may furnish other additions, modifications and improvements, whether or not removable (including, without limitation, any special devices, assemblies or racks at any time attached or affixed to any Unit, the cost of which is not included in the Purchase Price of such Unit and which are not required for the operation or use of such Unit by the Applicable Laws) (collectively "Additions"), to the Units as the Lessee may deem desirable in the proper conduct of its business so long as such Additions shall not be inconsistent with the continuing operation of the Units, shall not diminish the value, utility or condition of the Units below the value, utility and condition thereof immediately prior to the making of such Additions, assuming the Units were then in the condition required to be maintained by the terms of this Lease, and shall not render the Units ineligible for interchange service under the rules of the Association of American Railroads. Title to all Parts (as hereinbelow defined) incor-

porated in or installed as part of the Units shall without further act vest in the Lessor and be subject to a valid first lien under the Trust Agreement in the following cases: (i) such Part is in replacement of or in substitution for, and not in addition to, any Part originally incorporated in or installed as part of a Unit at the time of the acceptance thereof hereunder or any Part in replacement of, or in substitution for, any such original Part; (ii) such Part is required to be incorporated in or installed as part of the Units pursuant to the provisions of the first paragraph of § 7 hereof or the terms of the first sentence of this paragraph; or (iii) such Part cannot be readily removed from the Unit to which it relates without material damage thereto and without diminishing or impairing the value or utility which such Unit shall have had at such time had such alteration or addition not occurred. In all other cases, if no Event of Default, or event which with notice or lapse of time or both would constitute an Event of Default, shall have occurred and be continuing, title to Parts incorporated in or installed as parts of the Units as a result of such alterations, replacements, modifications or additions shall vest in the Lessee and may be removed by the Lessee at any time during the term of this Lease and prior to the renewal thereof and prior to the return of the Units to the Lessor pursuant to § 13 hereof. The term "Part" for the purposes of this paragraph shall be defined to include any appliance, part, instrument, accessory, furnishing or other equipment of any nature which may from time to time be incorporated in or installed as part of any Unit.

The Lessee agrees to pay, and to indemnify, protect and hold harmless the Lessor and the Trustee, in both its individual capacity and as Trustee, from and against, all claims, causes of action, losses, damages, liabilities, expenses (including fees and expenses of attorneys) and costs (including claims, causes of action, losses, damages, liabilities, expenses and costs, both for strict liability in tort, and for negligence, either active or passive, which shall not have occurred because of a wrongful act of such indemnified person) incurred in any manner by or for the account of any of them (i) relating to any Unit, including the construction, purchase, delivery, acceptance, rejection, ownership, sale, leasing, return or storage of any Unit or as a result of the use, maintenance, repair, replacement, operation or condition thereof (whether defects are latent or discoverable by the Lessee or any indemnified party), (ii) by reason or as the result of any act of omission (whether negligent or otherwise) of the Lessee, for itself or as agent or attorney-

in-fact for the Lessor hereunder, or any act or omission of the Lessor or (iii) as a result of claims for patent, trademark or copyright infringements (all of which matters indemnified against pursuant to this sentence are collectively called the "Indemnified Matters"), except for any matter described above caused by any act or omission of the Lessor not related to transactions contemplated by the Documents (as defined in the Participation Agreement) or caused by an act or omission of an indemnified person in violation of the provisions of its Documents. The amount the Lessee shall be required to pay with respect to any Indemnified Matter shall include a payment to the indemnified person sufficient to restore such person to the same position, after considering the effect of such payment on its United States Federal income taxes and state and local income taxes or franchise taxes based on net income, that such indemnified person would have been in had the Indemnified Matter not been incurred. The Lessee shall be obligated under this § 9, irrespective of whether any indemnified person shall also be indemnified with respect to the same matter under any other agreement by any other person, and the indemnified person seeking to enforce its indemnification hereunder may proceed directly against the Lessee under this § 9 without first resorting to any such other rights of indemnification.

The Lessee further agrees to indemnify, protect and hold harmless the Lessor (both individually and in its fiduciary capacity) and Trustee, as a third-party beneficiary hereof, from and against any and all liabilities, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Trustee or the Lessor because of the use in or about the construction or operation of any of the Units of any article or material specified by the Lessee or of any design, system, process, formula or combination specified by the Lessee.

The Lessee shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of any or all of the Units.

The Lessee shall prepare and deliver to the Lessor within a reasonable time prior to the required filing date (or, to the extent permissible, file on behalf of the Lessor or Trustee) any and all reports (other than tax returns, except as otherwise provided in § 6 hereof) to be filed by the Lessor or Trustee with any Federal, state or other regulatory authority by reason of the ownership by

the Lessor or the Trustee of the Units, or the leasing thereof to the Lessee.

None of the indemnities in this § 9 shall be deemed to create any rights of subrogation, from or under any indemnified person, in any insurer or third party against the Lessee or the Lessor therefor, whether because of any claim paid or defense provided for the benefit thereof or otherwise. The foregoing indemnities by the Lessee shall not constitute a guarantee by the Lessee of the payment of any installments of principal or interest payable under the Trust Agreement or a guarantee of the residual value of the Units. The indemnities contained in this § 9 shall survive the expiration or termination of this Lease and return of the Units as provided in § 13 hereof with respect to all events, facts, conditions or other circumstances occurring or existing prior to such expiration or termination and are expressly made for the benefit of, and shall be enforceable by, any indemnified person.

Upon the payment in full of any indemnities as contained in this § 9 by the Lessee, and provided that no Event of Default (or other event which with lapse of time or notice or both would constitute an Event of Default) shall have occurred and be continuing (i) the Lessee shall be subrogated to any right of such indemnified person (except against another indemnified person) in respect of the matter against which indemnity has been given and (ii) any payments received by such indemnified person from any person (except the Lessee) as a result of any matter with respect to which such indemnified person has been indemnified by the Lessee pursuant to this § 9 shall be paid over to the Lessee to the extent necessary to reimburse the Lessee for indemnification payments previously made in respect of such matter.

§ 10. Default. If, during the continuance of this Lease, one or more of the following events (each such event being herein sometimes called an "Event of Default") shall occur:

(A) default shall be made in payment of any amount provided for in § 3 or § 7 hereof, and such default shall continue for two Business Days;

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

interest herein, or of the right to possession of the Units, or any thereof, and the Lessee fails to secure a reassignment or retransfer to the Lessee of such Lease, interest or right for more than 30 days after the earlier of (a) receipt of demand in writing from the Lessor, or (b) any executive officer of the Lessee or any other officer of the Lessee having responsibility for financial, accounting or operating matters (a "Lessee Officer") has actual knowledge of such assignment or transfer;

(C) default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein or in the Consent or in the Participation Agreement, and such default shall continue for more than 30 days after the earlier of (a) notice from the Lessor or the Trustee to the Lessee specifying the default and demanding that the same be remedied or (b) a Lessee Officer has actual knowledge of such default;

(D) a petition for reorganization under Title 11 of the United States Code, as now constituted or as may hereafter be amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease and the Consent shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees, within 60 days after such petition shall have been filed and otherwise in accordance with the provisions of 11 U.S.C. § 1168, or any successor provision, as the same may hereafter be amended; or

(E) any other proceeding shall be commenced by or against the Lessee for any relief which includes, or might result in, any modification of the obligations of the Lessee hereunder, under any bankruptcy or

insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of the Lessee hereunder or under the Consent), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease and the Consent shall not have been and shall not continue to have been duly assumed in writing pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Lessee, or for the property of the Lessee, in connection with any such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees or receiver or receivers, within 60 days after such proceedings shall have been commenced;

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

(a) proceed by appropriate court action or actions either at law or in equity to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof including net after-tax losses of Federal and state income tax benefits to which the Lessor would otherwise be entitled under this Lease; or

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as herein provided; and thereupon the Lessor may by its agents, subject to compliance with all mandatory requirements of law, enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any such Units and thenceforth hold, possess, sell, operate, lease to others and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever and without any duty to account to

the Lessee for such action or inaction or for any proceeds arising therefrom; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period and also to recover forthwith from the Lessee as damages for loss of the bargain and not as a penalty whichever of the following amounts the Lessor, in its sole discretion, shall specify: (x) a sum, with respect to each Unit, equal to the excess of the present value, at the time of such termination, of the entire unpaid balance of all rental for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over, if such Unit shall have been sold, the net proceeds of sale, or, if such Unit shall not have been sold, the then present value of the rental which the Lessor reasonably estimates to be obtainable for the Unit during such period, such present value to be computed in each case on the basis of a 12% per annum discount, compounded semiannually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated; or (y) an amount equal to the excess, if any, of the Casualty Value as of the Rental Payment Date on or next preceding the date of termination over the amount the Lessor reasonably estimates to be the sale value of such Unit at such time; provided, however, that in the event the Lessor shall have sold any Unit, the Lessor, in lieu of collecting any amounts payable to the Lessor by the Lessee pursuant to the preceding clauses (x) or (y) of this part (b) with respect to such Unit, may, if it shall so elect, demand that the Lessee pay the Lessor, and the Lessee shall pay to the Lessor on the date of such sale (in addition to the amounts payable pursuant to §§ 6 and 9 hereof) as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty Value for such Unit, as of the Rental Payment Date on or next preceding the date of termination, over the net proceeds of such sale.

In addition, the Lessee shall be liable, except as otherwise provided above, for any and all unpaid amounts due hereunder before, during or after the exercise of any of the foregoing remedies, for all damages and expenses sustained by reason of Lessee's default or any covenant, representation or warranty hereunder other than for the payment of rent, and for all reasonable attorneys' fees and other costs and expenses incurred by reason of the occurrence of any Event of Default or the exercise of the Lessor's remedies with respect thereto, including all costs and expenses incurred in connection with the return of any Unit and in connection with any suit to enforce Lessor's rights hereunder.

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative and may be exercised concurrently or consecutively, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is not, at the time in question, prohibited by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make such payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf. The Lessee hereby waives any and all claims against the Lessor and the Trustee and their agent or agents for damages of whatever nature in connection with any retaking of any Unit in any reasonable manner. The Lessor and the Lessee agree that the Lessor shall be entitled to all rights (such rights being fundamental to the willingness of the Lessor to enter into this Lease) provided for in 11 U.S.C. § 1168 or any comparable provision of any amendment thereto, or of any other bankruptcy act, so that the Lessor shall have the right to take possession of the Equipment upon an Event of Default under this Lease regardless of whether the Lessee is in reorganization, subject to the provisions of 11 U.S.C. § 1168 or any such comparable provision.

No failure by the Lessor to exercise, and no delay by the Lessor in exercising, any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege by the Lessor preclude any other or further

exercise thereof, or the exercise of any other right, power or privilege.

If the Lessee fails to perform or comply with any agreement, covenant or condition contained in this Lease, and such nonperformance or noncompliance could, with the lapse of time and/or demand or failure to take action, result in an Event of Default under clause (A) or (C) of this § 10, the Lessor may (but shall not be required to), upon notice to the Lessee, itself perform or comply with such agreement, covenant or condition and the amount of the reasonable costs and expenses of the Lessor incurred in connection with such performance or compliance, together with interest on such amounts at the rate of 16-1/2% per annum, or if such rate is not legally enforceable then at the highest legally enforceable rate, shall be payable to the Lessor by the Lessee upon demand. No such performance or compliance by the Lessor shall be deemed a waiver of the rights and remedies of the Lessor against the Lessee hereunder or be deemed to cure a default by the Lessee hereunder.

§ 11. Return of Units upon Default. If this Lease shall terminate pursuant to § 10 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor. Except as hereinafter provided, each Unit so delivered shall be in the condition required by the first sentence of § 7 hereof. For the purpose of delivering possession, the Lessee shall:

(a) forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any Unit or Units have been interchanged or which may have possession thereof to return the Unit or Units) place such Units upon such storage tracks of the Lessee or any of its affiliates as the Lessor reasonably may designate;

(b) permit the Lessor to store such Units on such tracks at the risk of the Lessee without charge for insurance (which shall conform to the provisions of § 7 hereof), rent or storage until such Units have been sold, leased or otherwise disposed of by the Lessor but in no event later than the later of (i) 30 days after the payment in full of all indebtedness and other sums due under the Trust Agreement, and (ii) a

storage period of 120 days following notification by the Lessee to the Lessor that 75% of the Units have been delivered for storage (or with respect to any Unit not delivered at the time of such notification, 120 days following notification from the Lessee to the Lessor that such Unit has been delivered for storage); and

(c) transport the same to any reasonable place, without charge (i) on the lines of railroad operated by the Lessee or any of its affiliates, or (ii) for interchange to any connecting carrier for shipment, all as directed by the Lessor.

The assembling, delivery, storage, insurance and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and, upon application to any court of equity having jurisdiction, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will, at its own expense, maintain and keep the Equipment in the condition required by the first sentence of § 7 hereof and will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser, lessee or user of any such Unit, to inspect the same. Anything to the contrary contained in this § 11 notwithstanding, the Lessee shall have no obligation under clause (b) or clause (c) of the first sentence of § 7 hereof after the later of (i) the payment in full of all indebtedness and all other sums due under the Trust Agreement and (ii) the earlier of the Lessor's disposition of the Units and the scheduled date of expiration of any term of this Lease. At the request, expense and risk of the Lessor, the Lessee will continue to store any Unit beyond the storage period determined pursuant to clause (b) of this § 11, but such storage shall be at the risk and expense of the Lessor. All rent and per diem charges earned in respect of the Units after the date of termination of this Lease shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor.

Without in any way limiting the foregoing obligations of the Lessee under this § 11, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney-in-fact of the Lessee, with full power and authority, at

any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

§ 12. Assignment; Possession and Use; Liens.

This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. All the rights of the Lessor hereunder shall inure to the benefit of the Lessor's successors and assigns.

So long as no Event of Default exists hereunder or under the Trust Agreement, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease and, without the prior written consent of the Lessor and the Trustee, the Lessee may sublease (which sublease by its terms shall be subject to the rights and remedies of the Lessor and the Trustee hereunder) the Units to, or permit their use by, a user incorporated in the United States of America (or any State thereof or the District of Columbia), upon lines of railroad owned or operated by the Lessee or such user or by a railroad company or companies incorporated in the United States of America (or any State thereof or the District of Columbia), or over which the Lessee, such user, or such railroad company or companies have trackage rights or rights for operation of their trains or over which their equipment is regularly operated pursuant to contract, and upon the lines of railroad of connecting and other carriers in the usual interchange of traffic or in through or run-through service, but only upon and subject to all the terms and conditions of this Lease; provided, however, that the Trustee's and the Lessor's consent, not to be unreasonably withheld, must be obtained for any sublease that, taken together with all renewal terms provided for therein, would be longer than six months; provided further, however, that the Lessee shall not sublease or permit the sublease or use of any Unit to service involving operation or maintenance outside the United States of America except that occasional service in Canada shall be permitted so long as such service in Canada does not involve regular operation and maintenance outside the United States of America; provided further, however, that no such sublease shall be permitted without the prior written consent of the Lessor and the Trustee if, at the time of entering into or renewing such sublease, there has been a material adverse change in the properties,

business or condition (financial or otherwise) of the Lessee from December 31, 1980. No such assignment or sublease shall relieve the Lessee of its obligations hereunder which shall be and remain those of a principal and not a surety.

Nothing in this § 12 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any railroad corporation incorporated under the laws of the United States of America or any state thereof or the District of Columbia (which shall have duly assumed the obligations of the Lessee hereunder) into or with which the Lessee shall have become merged or consolidated or which shall have acquired or leased all or substantially all the lines of railroad of the Lessee; provided, however, that such assignee, lessee or transferee will not, upon the effectiveness of such merger, consolidation, lease or acquisition be in default under any provision of this Lease and that such acquisition or lease of railroad lines of the Lessee shall not alter in any way the Lessee's obligation to the Lessor and Trustee hereunder which shall be and remain those of a principal and not a surety; and provided further, however, that the net worth of such assignee, lessee or transferee immediately after such merger, consolidation, lease or acquisition, shall not be less than that of Lessee immediately before such merger, consolidation, lease or acquisition. The consent of Lessor and the Trustee must be obtained for any other assignment or transfer by Lessee, and any such assignment or transfer made without such consent shall be void. No such other assignment or transfer by Lessee shall relieve Lessee of its obligations hereunder, which shall be and remain those of a principal and not a surety. Any foreclosure by a secured party on the rights of the Lessee, as lessee, under the Lease in and to the Equipment shall be an unauthorized assignment or transfer of the Lease for purposes of § 10(B) hereof.

The Lessee, at its own expense, will pay, or satisfy and discharge: (i) any claim arising against, through or under the Lessee and its successors and assigns which, if unpaid, might constitute or become a lien, charge, security interest or other encumbrance upon or with respect to any Unit (unless otherwise expressly permitted by this Lease); (ii) any lien, charge or other encumbrance which may be levied against or imposed upon any Unit as a result of the failure of the Lessee to perform or observe any of its covenants under this Lease; and (iii) any other lien, charge or other encumbrance which arises by virtue of

claims against, through or under any party other than the Lessor (except any such claim caused by the negligence of the Lessor) or the Trustee. Such obligations shall survive the expiration or earlier termination of this Lease and the return of the Units as to all such claims, liens, charges, security interests, or other encumbrances arising prior to such expiration or termination and return. The foregoing covenant, however, will not be breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent. The Lessee, however, shall be under no obligation to discharge any such lien, charge, security interest or other encumbrance so long as it shall be contesting the same in good faith and by appropriate legal proceedings, and the failure to discharge the same shall not, in the opinion of the Lessor or the Trustee, as the case may be, adversely affect the title, property or rights of the Lessor hereunder or of the Trustee under the Trust Agreement and the Lease Assignment.

§ 13. Return of Units upon Expiration of Term.

As soon as practicable on or after the expiration of the original or the extended term of this Lease with respect to any Unit, the Lessee will, at its own cost, expense and risk, and at the request of the Lessor, deliver possession of such Unit, if not purchased by the Lessee, to the Lessor upon such storage tracks of the Lessee as the Lessee may reasonably designate in such city on the lines of the Lessee at any reasonable place east of the Missouri River, as the Lessor may reasonably designate, or, in the absence of such designation, as the Lessee may reasonably select, and permit the Lessor to store such Unit on such tracks for a period not exceeding 60 days following notification to the Lessor by the Lessee that 75% of the Units have been assembled and delivered for storage (or, with respect to any Unit not delivered at the time of such notification, 60 days following notification from the Lessee to the Lessor that such Unit has been delivered for storage) and transport the same, at any time within such 60-day period, to any reasonable place east of the Missouri River on the lines of railroad operated by the Lessee, or to any connecting carrier for shipment, all as mutually agreed upon by the Lessor and the Lessee (except that the Lessor may require that no more than 19 Units be transported as provided herein, during any 30-day period), the movement and storage of such Units to be at the expense and risk of the Lessee

(which shall during such period maintain the insurance required by § 7 hereof); and in the event that any Unit shall suffer a Casualty Occurrence during such storage period, the Lessee shall pay the Lessor the Casualty Value thereof as provided in § 7 hereof. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representatives of any prospective purchaser, lessee or user of such Unit, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence or strict liability of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, on behalf of either the Lessor or any prospective purchaser, lessee or user, such rights of inspection. Except as hereinafter provided in this § 13, each Unit returned to the Lessor pursuant to this § 13 shall (except for additions, modifications and improvements which the Lessee is entitled to remove and does remove pursuant to § 9 hereof) be in the condition required by the first sentence of § 7 hereof. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and, upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance thereof. During any storage period, the Lessee will, at its own expense, maintain and keep the Units (except for additions, modifications and improvements which the Lessee is entitled to remove and does remove pursuant to § 9 hereof) in the condition required by the first sentence of § 7 hereof. Notwithstanding anything to the contrary contained in this § 13, (i) the Lessee shall have no obligation under clause (b) of the first sentence of § 7 hereof to comply with any provision of any law or regulation which becomes effective after expiration of the term of this Lease and (ii) the Lessee shall have no obligation under clause (c) of the first sentence of § 7 hereof with respect to any Unit after the later of (x) expiration of the term of this Lease and (y) delivery of a Unit into storage as provided above. All rent and per diem charges earned in respect of the Units after the date of termination of this Lease shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor. In addition, for each day, after termination of this Lease and prior to delivery of a Unit into storage as provided above, that such Unit is located on lines of railroad operated by the Lessee, the Lessee shall pay to the Lessor the per diem rental for such Unit prescribed by the Interstate Commerce Commission; provided, however, that no payment shall

be required with respect to any Unit for the first 30 days on which such Unit is located on lines of railroad operated by the Lessee.

§ 14. Recording. The Lessee, at its own expense, will cause this Lease, the Trust Agreement and any assignment hereof or thereof to be filed in accordance with 49 U.S.C. § 11303 and deposited with the Registrar General of Canada (and notice of such deposit to be given forthwith in The Canada Gazette) pursuant to Section 86 of the Railway Act of Canada. The Lessee will undertake the filing, registering, deposit, and recording required of the Lessor under the Trust Agreement and will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, reregister, deposit and redeposit or rerecord whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Trustee for the purpose of proper protection, to their satisfaction, of the Trustee's and the Lessor's respective rights in the Units, or for the purpose of carrying out the intention of this Lease, the Trust Agreement and the assignments hereof and thereof to the Trustee; and the Lessee will promptly furnish to the Trustee and the Lessor evidence of all such filing, registering, depositing, recording and other acts which may be required under this § 14, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Trustee and the Lessor. This Lease and the Trust Agreement, and the assignments thereof, shall be filed with the Interstate Commerce Commission and deposited with the Registrar General of Canada pursuant to Section 86 of the Railway Act of Canada and provision shall be made for publication of notice of such deposit in The Canada Gazette prior to the delivery and acceptance hereunder of any Unit.

§ 15. Interest on Overdue Rentals. Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay, to the extent legally enforceable, an amount on the overdue rentals and other obligations for the period of time during which they are overdue at a rate of 16-1/2% per annum, or, if such rate is not legally enforceable, then at the highest legally enforceable rate. Except as otherwise expressly provided herein, interest hereunder shall be determined on the basis of a 360-day year of 12 30-day months.

§ 16. Notices. Any notice required or permitted to be given by either party hereto to the other shall be

deemed to have been given when mailed, by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

(a) if to the Lessor, at One North Western Center, 165 N. Canal Street, Chicago, Illinois 60606, Attention of Assistant Vice President-Finance; and

(b) if to the Lessee, at One North Western Center, 165 N. Canal Street, Chicago, Illinois 60606, Attention of Assistant Vice President-Finance;

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing. Copies of each such notice shall be given to the Trustee at One Constitution Plaza, Hartford, Connecticut 06115, Attention of Corporate Trust Department.

§ 17. Severability; Effect and Modification of Lease; Third-Party Beneficiaries. Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Except for the Participation Agreement and the exhibits thereto, this Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the leasing of the Units and supersedes all other agreements, oral or written, with respect thereto. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized signatories for the Lessor, the Trustee and the Lessee.

Nothing in this Lease shall be deemed to create any right in any person not a party hereto (other than the Purchasers), and this instrument shall not be construed in any respect to be a contract in whole or in part for the benefit of a third party except as aforesaid.

§ 18. Definitions. If and so long as this Lease is assigned to the Trustee (or any successor thereto) for collateral purposes, wherever the term "Lessor" is used in this Lease it shall include the Trustee and any successors

thereto unless the context shall otherwise require and except that the Trustee shall not be subject to any liabilities or obligations under this Lease; and the fact that the Trustee is specifically named in certain provisions shall not be construed to mean that the Trustee (or any successor thereto) is not entitled to the benefits of other provisions where only the Lessor is named.

§ 19. Execution. This Lease may be executed in several counterparts, such counterparts together constituting but one and the same instrument, but the counterpart delivered to the Trustee shall be deemed to be the original and all other counterparts shall be deemed duplicates thereof. It shall not be necessary that any counterpart be signed by both the parties hereto so long as each party hereto shall have executed and delivered one counterpart hereof. Although for convenience this Lease is dated as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

§ 20. Law Governing. The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of Illinois; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303 and such additional rights arising out of the filing or deposit hereof, if any, and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Lease or any assignment hereof shall be filed or deposited.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed as of the date first above written.

CHICAGO AND NORTH WESTERN  
TRANSPORTATION COMPANY,

by

[Corporate Seal]

Attest:

NORTH WESTERN LEASING COMPANY,

by

[Corporate Seal]

Attest:



SCHEDULE A

Description of the Equipment

<u>Type</u>	<u>Quantity</u>	<u>Lessee's Identification Numbers (Both Inclusive)</u>
GP-40 3000 h.p. Locomotives	38	CNW 5500-5537

SCHEDULE B

Certificate of Inspection and Acceptance

To: North Western Leasing Company, (the "Lessor")  
Chicago and North Western Leasing Company (the "Lessee")  
The Connecticut Bank and Trust Company, as Trustee (the  
"Trustee").

I, the duly authorized representative (i) for the Lessee under the Lease of Railroad Equipment dated as of July 15, 1981, between the Lessor and the Lessee (ii) for the Lessor under the Reconstruction Agreement dated as of July 15, 1981, between the Lessor, as owner, and the Lessee, as builder, and (iii) for the Trustee under the Equipment Trust Agreement dated as of July 15, 1981, between the Lessor, as owner, and the Trustee, DO HEREBY CERTIFY that the following Units of Equipment have been inspected and I have accepted delivery of such Units under the aforesaid Lease, Reconstruction Agreement and Equipment Trust Agreement:

TYPE OF EQUIPMENT: GP-40 3000 h.p. Locomotives  
DATE ACCEPTED:  
NUMBER OF UNITS:  
LESSEE'S ROAD NUMBERS:

I do further certify that the foregoing Units are in good order and condition, and appear to conform to the specifications, requirements and standards applicable thereto as provided in the aforesaid Lease, Reconstruction Agreement and Equipment Trust Agreement.

I do further certify that each of the foregoing Units has been marked by means of a stencil printed in contrasting colors upon each side of each such Unit in letters not less than one inch in height as follows:

"OWNERSHIP SUBJECT TO A SECURITY AGREEMENT FILED  
WITH THE INTERSTATE COMMERCE COMMISSION"

SCHEDULE C

Schedule of Rental Payments

<u>Rental Payment Date</u>	<u>Percentage</u>
August 1, 1982	7.750%
February 1, 1983	17.750
August 1, 1983	6.975
February 1, 1984	16.975
August 1, 1984	6.200
February 1, 1985	16.200
August 1, 1985	5.425
February 1, 1986	15.425
August 1, 1986	4.650
February 1, 1987	14.650
August 1, 1987	3.875
February 1, 1988	13.875
August 1, 1988	3.100
February 1, 1989	13.100
August 1, 1989	2.325
February 1, 1990	12.325
August 1, 1990	1.550
February 1, 1991	11.550
August 1, 1991	0.775
February 1, 1992	10.775

SCHEDULE D

Casualty Value Percentage Schedule

<u>Rental Payment Date</u>	<u>Percentage of Purchase Price*</u>
February 1, 1982	100%
August 1, 1982	100
February 1, 1983	90
August 1, 1983	90
February 1, 1984	80
August 1, 1984	80
February 1, 1985	70
August 1, 1985	70
February 1, 1986	60
August 1, 1986	60
February 1, 1987	50
August 1, 1987	50
February 1, 1988	40
August 1, 1988	40
February 1, 1989	30
August 1, 1989	30
February 1, 1990	20
August 1, 1990	20
February 1, 1991	10
August 1, 1991	10
February 1, 1992	0

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\* As defined in the Trust Agreement.

Annex II  
to the  
EQUIPMENT  
TRUST AGREEMENT

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[CS&M Ref.: 2044-128]

ASSIGNMENT OF LEASE AND AGREEMENT

Dated as of July 15, 1981

Between

THE CONNECTICUT BANK AND TRUST COMPANY,  
not in its individual capacity but  
solely as Trustee,

and

NORTH WESTERN LEASING COMPANY,  
Owner.

---

ASSIGNMENT OF LEASE AND AGREEMENT dated as of July 15, 1981 (this "Assignment"), between NORTH WESTERN LEASING COMPANY (the "Owner") and THE CONNECTICUT BANK AND TRUST COMPANY, not in its individual capacity but solely as Trustee (the "Trustee").

WHEREAS the Owner and the Trustee have entered into an Equipment Trust Agreement dated as of the date hereof (the "Trust Agreement"); and

WHEREAS the Owner and Chicago and North Western Transportation Company (the "Lessee") have entered into a Lease of Railroad Equipment dated as of the date hereof (the "Lease") providing for the leasing by the Owner to the Lessee of certain units of reconstructed railroad equipment owned by the Owner (the "Units"); and

WHEREAS, in order to provide security for the obligations of the Owner under the Trust Agreement and as an inducement to the purchasers of Equipment Trust Certificates issued pursuant to the Trust Agreement (the "Equipment Trust Certificates") to invest in said Equipment Trust Certificates, the Owner agrees to assign for security purposes all its rights in, to and under the Lease to the Trustee;

NOW, THEREFORE, in consideration of the premises and of the payments to be made and the covenants hereinafter mentioned, the parties hereto agree as follows:

1. The Owner hereby assigns, transfers and sets over unto the Trustee, as collateral security for the payment and performance of the obligations of the Owner under the Trust Agreement, all the Owner's rights, titles and interests, powers, privileges, and other benefits under the Lease, including, without limitation, the immediate right to receive and collect all rentals, profits and other sums payable to or receivable by the Owner from the Lessee under or pursuant to the provisions of the Lease whether as rent, casualty payment, indemnity, liquidated damages, or otherwise (such moneys being hereinafter called the "Payments"), and the right to make all waivers and agreements, to give all notices, demands, consents and releases, to take all action upon the happening of an Event of Default specified in the Lease, and to do any and all other things whatsoever which the Owner is or may become entitled to do under the Lease.

In furtherance of the foregoing assignment, the Owner hereby irrevocably authorizes and empowers the Trustee in its own name, or in the name of its nominee, or in the name of the Owner, or as attorney for the Owner, to ask, demand, sue for, collect and receive any and all Payments to which the Owner is or may become entitled under the Lease, and to enforce compliance by the Lessee with all the terms and provisions thereof.

The Trustee agrees to accept any Payments made by the Lessee for the account of the Owner pursuant to the Lease. To the extent received, the Trustee will apply such Payments first, to satisfy such obligations of the Owner under the Trust Agreement and the Participation Agreement dated as of the date hereof among the Owner, the Lessee, the Trustee and the purchasers named therein (the "Participation Agreement") as are then due and payable, and second, so long as no event of default (or event which with the lapse of time and/or demand provided for in the Trust Agreement could constitute an event of default thereunder) shall have occurred and be continuing, any balance shall be paid to the Owner or to such other party as the Owner may direct in writing, on the first business day following receipt by the Trustee of such balance, at the Owner's address specified in § 16 of the Lease or at such other address as may be specified to the Trustee in writing. If the Trustee shall not receive any rental payment under § 3(c) of the Lease when due, the Trustee shall notify the Owner at the address specified in § 16 of the Lease; provided, however, that the failure of the Trustee to so notify the Owner shall not affect the obligations of the Owner hereunder or under the Trust Agreement.

2. The assignment made by the Owner hereunder is executed only as security and, therefore, the execution and delivery of this Assignment by the Owner shall not subject the Trustee to, or transfer, or pass, or in any way affect or modify, the liability of the Owner under the Lease, it being agreed that, notwithstanding this Assignment or any subsequent assignment, all obligations of the Owner to the Lessee shall be and remain enforceable by the Lessee, its successors and assigns, against, and only against, the Owner or persons other than the Trustee. Any action taken by the Owner in connection with its obligations or duties under the Lease shall be at its sole cost.

3. The Owner represents and warrants to the Trustee that the Owner has not entered into any assignment

of its interests in the Lease other than this Assignment, has not entered into any amendment or modification of the Lease and has not created or incurred or suffered to exist with respect to the Lease or with respect to any of its interests therein any claim, lien or charge arising by, through or under the Owner.

4. The Owner will faithfully abide by, perform and discharge each and every obligation and agreement which the Lease provides is to be performed by the Owner. Without the written consent of the Trustee, the Owner will not anticipate the rents under the Lease or waive, excuse, condone, forgive or in any manner release or discharge the Lessee of or from the obligations, covenants, conditions and agreements to be performed by the Lessee thereunder, including, without limitation, the obligation to pay the rents in the manner and at the time and place specified therein or enter into any agreement amending, modifying or terminating the Lease and the Owner agrees that any amendment, modification or termination thereof without such consent shall be void.

5. The Owner does hereby constitute the Trustee its true and lawful attorney, irrevocably, with full power (in the name of the Owner or otherwise) to ask, require, demand, receive, compound and give acquittance for any and all Payments due and to become due under or arising out of the Lease to which the Owner is or may become entitled, to enforce compliance by the Lessee with all the terms and provisions of the Lease to the extent hereby assigned to the Trustee, to endorse any checks or other instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings which to the Trustee may seem to be necessary or advisable in the premises.

6. Upon the full discharge and satisfaction of all the Owner's obligations under the Trust Agreement and the Participation Agreement (without giving effect to any limitation of liability therein), the Owner's assignment hereunder of its rights in, to and under the Lease shall terminate, and all estate, right, title and interest of the Trustee in and to the Lease shall automatically revert to the Owner. However, the Trustee, if so requested by the Owner at that time, will (a) execute an instrument releasing its entire estate, right, title and interest in the Lease and transferring such estate, right, title and interest to the Lessor and (b) execute, acknowledge and deliver any and all

further instruments required by law or reasonably requested by the Owner in order to confirm or further assure that all such estate, right, title and interest in the Lease shall have so reverted or shall have been so transferred to the Owner.

7. The Owner will pay and discharge any and all taxes, claims, liens, charges, security interests or other encumbrances (other than those created by the Trust Agreement) on the Lease or the rentals or other payments due or to become due thereunder claimed by any party from, through or under the Owner or its successors and assigns (other than the Trustee) which, if unpaid, might become a claim, lien, charge, security interest or other encumbrance on or with respect to the Lease or such rentals or other payments, unless the Owner shall be contesting the same in good faith by appropriate proceedings in any reasonable, diligent manner and the nonpayment thereof does not, in the opinion of the Trustee, adversely affect such interests of the Trustee.

8. If an event of default under the Trust Agreement shall occur and be continuing, the Trustee may declare all sums secured hereby immediately due and payable and may apply all such sums against the amounts due and payable under the Trust Agreement.

9. The Owner will, from time to time, do and perform any other act and will execute, acknowledge, deliver and file, register, deposit and record (and will refile, reregister, rerecord or redeposit) any and all further instruments required by law or reasonably requested by the Trustee in order to confirm or further assure the interests of the Trustee hereunder.

10. The Trustee may assign all or any of the rights assigned to it hereby or arising under the Lease, including, without limitation, the right to receive any Payments due or to become due. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Trustee hereunder; provided, however, the Owner and the Lessee shall not be bound to honor such assignment until they have received written notice thereof. Payment to the assignee of any Payments shall constitute

full compliance with the terms of this Assignment and the Lease. The Owner and the Lessee may rely on instruments and documents of assignment which they believe in good faith to be true and authentic.

11. This Assignment shall be governed by the laws of the State of Illinois, but the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303 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 Assignment shall be filed or deposited.

12. The Owner shall cause copies of all notices and other documents received by it in connection with the Lease and all Payments hereunder to be promptly delivered or made to the Trustee at its address set forth in the Trust Agreement, or at such other address as the Trustee shall designate. Any notice hereunder given by one party to the other shall be delivered by hand or mailed by registered or certified mail, postage prepaid, return receipt requested, to the addressee thereof at its address as first set forth above or to such other address or to such attention as shall have been specified in a written notice to the other party hereto.

13. The Owner shall not, without the prior written consent of the Trustee, terminate the Lease or otherwise exercise or enforce, or seek to exercise or enforce, any rights, powers, privileges or remedies arising out of § 10 of the Lease.

14. This Assignment may be executed in any number of counterparts, but the counterpart delivered to the Trustee shall be deemed to be the original counterpart. It shall not be necessary that any counterpart be signed by both the parties hereto so long as each party hereto shall have executed and delivered one counterpart hereof. Although for convenience this Assignment is dated as of the date first above written, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective corporate names by officers thereunto duly authorized, and

their respective corporate seals to be affixed and duly attested, all as of the date first above written.

THE CONNECTICUT BANK AND TRUST  
COMPANY,  
not in its individual capacity  
but solely as Trustee as aforesaid,

by

[Corporate Seal]

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

Attest:

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

NORTH WESTERN LEASING COMPANY,

by

[Corporate Seal]

Attest:

STATE OF CONNECTICUT,)
) ss.:
COUNTY OF , )

On this day of 1981, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is an Authorized Officer of THE CONNECTICUT BANK AND TRUST COMPANY, that the seal affixed to the foregoing instrument is the corporate seal of said Corporation that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

Notary Public

[Notarial Seal]

My Commission expires

STATE OF ILLINOIS,)
) ss.:
COUNTY OF COOK, ,)

On this day of 1981, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is an of NORTH WESTERN LEASING COMPANY, an Illinois corporation, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

Notary Public

[Notarial Seal]

My Commission expires

## LESSEE'S CONSENT AND AGREEMENT

The undersigned, CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY (the "Lessee"), the lessee named in the Lease (the "Lease") referred to in the foregoing Assignment of Lease and Agreement (the "Lease Assignment"), hereby (a) acknowledges receipt of a copy of the Lease Assignment and (b) consents to all the terms and conditions of the Lease Assignment and agrees that:

(1) it will pay all rentals, casualty payments, liquidated damages, indemnities and other moneys provided for in the Lease due and to become due under the Lease or otherwise in respect of the Units leased thereunder, directly to THE CONNECTICUT BANK AND TRUST COMPANY, as Trustee (the "Trustee"), the assignee named in the Lease Assignment, by 11 a.m. Eastern time, on the date such payment is due, by bank wire transfer of immediately available funds to Account No. 000-45-808 (for the account of certain separate accounts maintained by Aetna Life Insurance Company) in Morgan Guaranty Trust Company of New York, 23 Wall Street, New York, New York 10015, Attention of Money Transfer Department, with sufficient information to identify the source and application of such funds (or at such other address as may be furnished in writing to the Lessee by the Trustee);

(2) it shall not be entitled to any abatement of rent or additional rent, reduction thereof or setoff against or recoupment of rent or additional rent, including, but not limited to, abatements, reductions, setoffs or recoupments due or alleged to be due by reason of any past, present or future claims or counter-claims of the Lessee against the Owner (as defined in the Lease Assignment) under the Lease or under the Trust Agreement referred to in the Lease Assignment or the Trustee or otherwise;

(3) except as and to the extent otherwise specifically provided in the Lease Assignment, the Trustee shall be entitled to the benefits of, and to receive and enforce performance of, all the covenants to be performed by the Lessee under the Lease as though the Trustee were named therein as the Owner and the Lessee will not assert against the Trustee any claim or defense the Lessee may have against the Owner under the Lease;

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

(5) the Lease shall not, without the prior written consent of the Trustee, be terminated, amended or modified, nor shall any waiver or release be given or accepted with respect thereto nor shall any action be taken or omitted by the Lessee the taking or omission of which might result in an alteration or impairment of the Lease or the Lease Assignment or this Consent and Agreement or of any of the rights created by any thereof.

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

CHICAGO AND NORTH WESTERN  
TRANSPORTATION COMPANY,

by

\_\_\_\_\_

[Corporate Seal]

Attest:

\_\_\_\_\_

The foregoing Consent and Agreement is hereby accepted, as of the 15th day of July 1981.

THE CONNECTICUT BANK AND TRUST  
COMPANY, as Trustee,

by

\_\_\_\_\_

Authorized Officer

[Corporate Seal]

Attest:

\_\_\_\_\_

Authorized Officer

---

[CS&M Ref. No.: 2044-128]

EQUIPMENT TRUST AGREEMENT

Dated as of July 15, 1981

Among

THE CONNECTICUT BANK AND TRUST COMPANY,

Not in its individual capacity but solely as Trustee

and

NORTH WESTERN LEASING COMPANY,  
Owner

---

15-1/2% Equipment Trust Certificates Due February 1, 1992

[Covering 38 Reconstructed Locomotives]

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EQUIPMENT TRUST AGREEMENT dated as of July 15, 1981, between THE CONNECTICUT BANK AND TRUST COMPANY, a Connecticut banking corporation, not in its individual capacity, but solely as Trustee hereunder (the "Trustee"), and NORTH WESTERN LEASING COMPANY, a Delaware corporation (the "Owner"):

WHEREAS Trust Certificates (as hereinafter defined) are to be issued and sold hereunder in an aggregate principal amount not exceeding \$13,167,000 at any time outstanding, at a price equal to 100% of the principal amount thereof, and the proceeds of the issuance thereof are to be deposited with the Trustee to constitute a fund equal to the aggregate principal amount of Trust Certificates so issued and sold to be applied by the Trustee in payment of the cost of the reconstructed railroad equipment described in Schedule A hereto;

WHEREAS Chicago and North Western Transportation Company (the "Builder" or the "Lessee") has agreed to reconstruct, at the direction of the Owner, the railroad equipment described in Schedule A hereto;

WHEREAS a security interest in such reconstructed railroad equipment is to be vested in and is to be retained by the Trustee as security for the obligations of the Owner hereunder, such security interest to be created by the lease herein set forth pursuant to which such railroad equipment is to be leased by the Trustee to the Owner until such obligations are performed;

WHEREAS the Owner is entering into the Lease (as hereinafter defined) with the Lessee pursuant to which the Owner will lease such railroad equipment to the Lessee;

WHEREAS the Lease is being assigned by the Owner to the Trustee as security for the obligations of the Owner hereunder pursuant to the Lease Assignment (as hereinafter defined) and the Lessee is consenting to such assignment pursuant to the Consent (as hereinafter defined); and

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

[FORM OF TRUST CERTIFICATE]

THE REGISTERED HOLDER HEREOF HAS REPRESENTED THAT IT HAS ACQUIRED THIS CERTIFICATE FOR INVESTMENT AND NOT

WITH A VIEW TO, OR FOR SALE IN CONNECTION WITH, ANY DISTRIBUTION THEREOF. ACCORDINGLY, THIS CERTIFICATE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AND MAY NOT BE SOLD, TRANSFERRED, PLEDGED OR HYPOTHECATED EXCEPT IN COMPLIANCE WITH SUCH ACT.

\$

No.

EQUIPMENT TRUST DUE FEBRUARY 1, 1992

SECURED BY LEASE OBLIGATIONS OF  
CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY

EQUIPMENT TRUST CERTIFICATE

Total Authorized Issue  
\$13,167,000

The Connecticut Bank and Trust Company, TRUSTEE  
Interest at the Rate of 15-1/2% Per Annum Payable  
February 1 and August 1, Commencing February 1, 1982

The Connecticut Bank and Trust Company, not in its individual capacity but solely as trustee (the "Trustee") under an Equipment Trust Agreement dated as of July 15, 1981 (the "Agreement"), between the Trustee and NORTH WESTERN LEASING COMPANY (the "Owner"), hereby certifies that or registered assigns, is entitled to an interest in the principal amount of \$ \_\_\_\_\_ in the EQUIPMENT TRUST DUE FEBRUARY 1, 1992, SECURED BY LEASE OBLIGATIONS OF CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY, payable in installments as hereinafter provided, and to interest on the unpaid principal amount represented by this Certificate from the date hereof until the principal amount (and premium, if any, on) hereof is due and payable, at the rate of 15-1/2% per annum, payable semiannually on February 1 and August 1 in each year, commencing February 1, 1982, with interest at the rate of 16-1/2% per annum on any overdue principal (and premium, if any) and interest to the extent that it shall be legally enforceable. Payments of installments of principal (and premium, if any) and interest shall be made by the Trustee to the registered holder hereof at the corporate trust office of the Trustee in the city of Hartford, Connecticut, in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, but payable only out of rentals or other moneys received by the Trustee and applicable to such payment under the provisions of the Agreement. Interest due hereunder shall be calculated on the basis of a 360-day

year of twelve 30-day months; provided, however, that interest due hereon on February 1, 1982, shall be calculated on the basis of the actual number of days elapsed over a year of 365 days.

The principal amount of this Certificate is due and payable in annual installments on February 1 in each year, commencing February 1, 1983, and continuing to and including February 1, 1992, calculated in accordance with the Agreement so that such installments of principal shall completely amortize the principal amount of this Certificate, subject to proportionate reduction in the event of prepayment out of moneys deposited with the Trustee on account of Casualty Occurrences (as defined in the Agreement). Any such prepayment of this Certificate shall be at 100% of the principal amount hereof to be prepaid, together with accrued interest to the date fixed for prepayment. This Certificate is also prepayable on February 1, 1982, out of any Deposited Cash (as defined in the Agreement) held by the Trustee and not applied to the cost of reconstructed railroad equipment to be subject to the trust created by the Agreement; any such prepayment of this Certificate shall be at 100% of the principal amount hereof to be prepaid, together with accrued interest thereon.

As provided in the Agreement, this Certificate may be redeemed, at the option of the Owner, as a whole or from time to time in part (provided that in the case of a redemption in part all Certificates outstanding under the Agreement shall be redeemed in proportion to their outstanding principal amount) at any time on or after December 1, 1988, upon the notice referred to below, at the following redemption prices (expressed in percentages of the principal amount) together with interest accrued to the date fixed for the redemption:

If redeemed during the 12-month period beginning December 1,

<u>Year</u>	<u>Percentage</u>
1988	104-1/2%
1989	102-1/4
1990	100
1991	100

Notice of redemption shall be given to the holder of this Certificate, if it is to be redeemed, as a whole or in part, by mailing a notice of such redemption not less than 30 nor more than 60 days prior to the date fixed for redemption to the holder's last address as it appears upon the Certificate register, all as provided in the Agreement. If this Certificate (or a portion hereof) is duly called for redemption and funds for payment duly provided, this Certificate (or such portion) shall cease to bear interest from and after the date fixed for redemption.

In the event of redemption of this Certificate in part only, a new Certificate or Certificates in authorized denominations and in principal amount equal to the unredeemed portion hereof shall be issued upon the cancelation hereof.

This Certificate is one of an authorized issue of Certificates in an aggregate principal amount outstanding not exceeding the Total Authorized Issue set forth above, issued or to be issued under and subject to the terms of the Agreement, under which a security interest in certain reconstructed railroad equipment leased by the Owner to Chicago and North Western Transportation Company and in certain moneys due under the lease of such equipment to such Company are to be held by the Trustee in trust for the equal and ratable benefit of the holders of Certificates, to which Agreement (a copy of which is on file with the Trustee at its said office) reference is made for a full statement of the rights and obligations of the Owner, the duties and immunities of the Trustee and the rights of the holder hereof thereunder.

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

Subject to the restrictions set forth above, the transfer of this Certificate in whole or in part may be registered on the books of the Trustee upon surrender to the

Trustee, in person or by duly authorized attorney, at its said office of this Certificate accompanied by a written instrument of transfer, duly executed by the registered holder in person or by such attorney, in form satisfactory to the Trustee, and thereupon a new Certificate or Certificates for the then aggregate unpaid principal amount hereof will be issued to the transferee in exchange herefor and, if less than the then entire unpaid principal amount hereof is transferred, a balance certificate therefor will be issued to the transferor. Prior to due presentment for registration of transfer, the Trustee may treat the person in whose name this Certificate is registered as the absolute owner hereof for the purpose of receiving payment of principal (and premium, if any) and interest and for all other purposes, and shall not be affected by any notice to the contrary.

In case of the occurrence of an Event of Default (as defined in the Agreement), the principal amount represented by this Certificate (and interest accrued thereon) may be declared due and payable, as provided in the Agreement.

IN WITNESS WHEREOF, the Trustee has caused this Certificate to be signed by the manual signature of one of its Authorized Officers and its corporate seal to be hereunto imprinted and to be attested by one of its Authorized Officers by his manual signature.

Dated as of:

The Connecticut Bank and Trust Company,  
not in its individual capacity,  
but solely as Trustee,

by

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

ATTEST:

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

WHEREAS it is desired to secure for the holders of the Trust Certificates the payment of the principal (and premium, if any) thereof with interest thereon, as hereinafter provided, and to evidence the rights of the holders of the Trust Certificates in substantially the forms 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:

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

Appraised Fair Market Value shall mean at any time the per unit fair market value (not exceeding \$500,000) of the Equipment at such time as determined by an independent appraisal satisfactory to the Trustee.

Builder shall mean Chicago and North Western Transportation Company.

The term Business Day shall mean any calendar day, excluding Saturday, Sunday and legal holidays or days on which banking institutions are authorized by law to be closed in Chicago, Illinois, or Hartford, Connecticut.

Casualty Occurrence shall mean any occurrence specified in Section 5.06 hereof to be a Casualty Occurrence.

The Closing Date, with respect to a unit of Trust Equipment, shall mean the date of settlement for such unit of Trust Equipment pursuant to Article Four hereof.

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

Corporate Trust Office shall mean the office of the Trustee in Hartford, Connecticut, at which the corporate trust business of the Trustee shall, at the time in question, be principally administered, which office is, at the date of execution of this Agreement, located at One Constitution Plaza, Hartford, Connecticut 06115, Attention of Corporate Trust Office.

Deposited Cash shall mean the aggregate of the proceeds from the sale of the Trust Certificates deposited with the Trustee pursuant to Section 2.01.

Equipment shall mean reconstructed standard gauge railroad GP-40 Diesel Electric Locomotives, owned by the Owner, which are described in Schedule A hereto and are reconstructed in accordance with the Specifications; provided, however, that Equipment acquired pursuant to Section 5.06 only shall mean any standard gauge railroad equipment, other than passenger or work equipment, first put in use on or after the date of this Agreement and which has not been put in use by the Owner or the Lessee prior to its delivery hereunder and certified in an Officer's Certificate to have a service life extending to or beyond February 1, 1997; provided further, however, that the Owner may cause Equipment to be acquired by the Trustee pursuant to Section 5.06 to replace up to four units of the Equipment described in Schedule A hereto without regard to the requirement that such additional Equipment shall not have been put in use by the Owner or Lessee prior to the delivery of such units hereunder.

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

Fair Value of any unit of Trust Equipment on any date shall be deemed to be an amount computed by multiplying the unpaid principal amount of the Trust Certificates outstanding on such date (after giving effect to any payment in respect thereof due on such date pursuant to Section 5.03

hereof) by a fraction of which the numerator shall be the Total Cost of such unit of Trust Equipment and the denominator shall be the aggregate Total Cost of all units of Trust Equipment (including such unit) subject to the trust on such date.

The term holder, when used with respect to Trust Certificates, shall mean the registered owner of a Trust Certificate.

Hulk Cost, when used with respect to each unit of Equipment, shall mean \$190,000.

Investments shall mean (i) certificates of deposit of commercial banks incorporated under the laws of the United States of America or any State thereof having a capital and surplus aggregating not less than \$50,000,000, (ii) open market commercial paper rated "Prime-1" by the NCO/Moody's Commercial Paper Division of Moody's Investors Services, Inc., or rated "A-1" by Standard & Poor's Corporation (or a comparable rating by any successor to either of their businesses) and (iii) bonds, notes or other direct obligations of the United States of America or obligations for which the full faith and credit of the United States are pledged to provide for the payment of the interest and principal; in each case maturing within one year after the date of investment therein.

Lease shall mean the Lease of Railroad Equipment dated as of the date hereof, between the Owner and the Lessee, substantially in the form of Annex I hereto, as the same may be further supplemented or amended as contemplated hereby or thereby.

Lease Assignment shall mean the Assignment of Lease and Agreement dated as of the date hereof, between the Owner and the Trustee, substantially in the form of Annex II hereto.

Lessee shall mean Chicago and North Western Transportation Company.

Officer's Certificate shall mean a certificate signed by the President, a Vice President, the Assistant Vice President-Motive Power, or the Superintendent-Motive Power of the Owner, the Lessee or the Builder, as the case may be.

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

Overdue Rate, in the case of any Trust Certificate, shall mean 16-1/2% per annum.

Owner shall mean North Western Leasing Company, a Delaware corporation.

Participation Agreement shall mean the Participation Agreement dated as of the date hereof among the Lessee, the Owner, the Trustee and the Purchasers named therein.

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

Purchase Price shall mean, as to any unit of Trust Equipment, the amount actually paid out by the Trustee pursuant to Section 4.02 hereof with respect to such unit of Trust Equipment.

Purchaser shall mean any Purchaser of the Trust Certificates under the Participation Agreement.

Reconstruction Agreement shall mean the Reconstruction Agreement dated as of July 15, 1981, between the Owner and the Builder, as the same may be supplemented or amended as contemplated hereby or thereby.

The Reconstruction Cost of a unit of Equipment shall mean the Reconstruction Cost thereof as defined in the Reconstruction Agreement.

Request shall mean a written request for the action therein specified signed on behalf of the Owner or the Lessee by the President, any Vice President, the Treasurer or an Assistant Treasurer of the Owner or the Lessee, as the case may be, and delivered to the Trustee.

Specifications shall have the meaning assigned to it in the Participation Agreement.

The Total Cost of a unit of Equipment shall mean the sum of such unit's Reconstruction Cost and Hulk Cost.

Trust Certificates shall mean the Equipment Trust Certificates 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, a Connecticut banking corporation, and any successor as trustee hereunder.

All references herein to Articles, Sections and other subdivisions refer to the corresponding Articles, Sections and other subdivisions of this Agreement; and the words herein, hereof, hereby, hereto, hereunder and words of similar import refer to this Agreement as a whole and not to any particular Article, Section or subdivision hereof.

## ARTICLE TWO

### Trust Certificates and Issuance Thereof

SECTION 2.01. Issuance of Trust Certificates.  
The proceeds of the sale of the Trust Certificates shall, forthwith upon the issuance thereof, be deposited with the Trustee as provided in the Participation Agreement. Simultaneously, the Trustee shall issue and deliver, in accordance with the Participation Agreement or in accordance with a Request of the Owner, Trust Certificates substantially in the form set forth herein in the aggregate principal amount so sold.

The aggregate principal amount of the Trust Certificates which shall be executed and delivered by the Trustee hereunder and shall be outstanding at any time shall not exceed \$13,167,000.

SECTION 2.02. Interests Represented by Trust Certificates; Interest on Trust Certificates; Maturity.  
Each of the Trust Certificates shall represent an interest in the principal amount therein specified in the trust created hereunder. Each Trust Certificate shall bear interest on the unpaid principal amount thereof at the rate per annum set forth in the form of Trust Certificate contained herein payable semiannually on February 1 and August 1 in each year, commencing February 1, 1982, with interest payable on any

overdue principal (and premium, if any) and interest at the Overdue Rate, to the extent that it shall be legally enforceable. Interest on the Trust Certificates shall be calculated on the basis of a 360-day year of twelve 30-day months; provided, however, that interest due hereunder on February 1, 1982, shall be calculated on the basis of the actual number of days elapsed over a year of 365 days.

Subject to the provisions of Article Three hereof respecting prepayment and redemption of Trust Certificates, the aggregate principal amount of the Trust Certificates shall be payable in ten annual installments on February 1 in each year, commencing February 1, 1983, to and including February 1, 1992, calculated so that such installments of principal shall completely amortize the principal amount of the Trust Certificates. The Trustee shall furnish to each holder of Trust Certificates and to the Owner an amortization schedule setting forth the respective amounts of principal and interest payable on each such date.

The principal of (and premium, if any, on) 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, but only from and out of rentals or other moneys received by the Trustee and applicable to such payment under the provisions hereof. Notwithstanding the provisions of the preceding sentence of this paragraph, in the case of payments of principal (and premium, if any) and interest to be made on a Trust Certificate not then to be paid in full, upon request and deposit of an agreement (or, if approved by the Trustee, a copy of an agreement) of the holder of such Trust Certificate (the responsibility 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 a new Trust Certificate for the unpaid principal amount represented thereby on the date of such surrender, the Trustee will, subject to timely receipt of the necessary funds, mail its check, or on ten days' prior request of the holder, wire by 11 a.m., Eastern time, funds immediately available to such holder on such date, 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 without requiring the surrender of such Trust Certificate; provided, however, that the deposit of an agreement pursuant to this paragraph shall not be required of

any Purchaser or any Affiliate of a Purchaser.

SECTION 2.03. Form, Execution and Characteristics of Trust Certificates.

(a) The Trust Certificates shall be in substantially the form hereinbefore set forth; provided, however, that in the case of the original Purchaser or an Affiliate of the original Purchaser of the Trust Certificates, the legend set forth therein need not be included.

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

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

(d) Anything contained herein to the contrary notwithstanding, prior to due presentment for registration of transfer, the parties hereto may deem and treat the holder of any Trust Certificate as the absolute owner of such Trust Certificate for all purposes and shall not be affected by

any notice to the contrary.

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

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

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

(h) The Trustee shall not be required (i) to register the transfer of or exchange any Trust Certificate for a period of ten Business Days next preceding any interest payment date, (ii) to issue, register the transfer of or exchange any Trust Certificate during a period beginning at the opening of business 15 days before any selection of Trust Certificates to be prepaid or redeemed and ending at the close of business on the day of the mailing of the relevant notice of prepayment or redemption, (iii) to register the transfer of or exchange any Trust Certificate so selected for prepayment or redemption in whole or in part until after the date fixed for prepayment or redemption or (iv) to register any transfer of Trust Certificates unless the Trustee is satisfied that, or has received an Opinion of Counsel to the effect that, such transfer is exempt from the

registration requirements of the Securities Act of 1933, as amended.

SECTION 2.04. Replacement of Mutilated, Defaced, Lost, Stolen or Destroyed Trust Certificates. In case any Trust Certificate shall become mutilated or defaced or be lost, stolen or destroyed, then on the terms herein set forth, and not otherwise, the Trustee shall execute and deliver a new Trust Certificate of like tenor and date as the mutilated, defaced, lost, stolen or destroyed Trust Certificate, in exchange and substitution for, and upon cancelation of, the mutilated or defaced Trust Certificate, or in lieu of and in substitution for the same if lost, stolen or destroyed. The applicant for a new Trust Certificate shall furnish to the Trustee evidence to its satisfaction of the loss, theft or destruction of such Trust Certificate alleged to have been lost, stolen or destroyed, and of the ownership and authenticity of such mutilated, defaced, lost, stolen or destroyed Trust Certificate, and shall furnish such security or indemnity as may be required by the Trustee (except in the case of the original holder of Trust Certificates), and shall pay all expenses and charges of such exchange or substitution. All Trust Certificates shall be issued, held and owned upon the express condition that the foregoing provisions are exclusive in respect of the replacement of mutilated, defaced, lost, stolen or destroyed Trust Certificates and shall preclude any and all other rights and remedies, any law or statute now existing or hereafter enacted to the contrary notwithstanding.

SECTION 2.05. Legal Holidays. If the date fixed for payment of principal of or interest on any Trust Certificates is not a Business Day, then (notwithstanding any other provision of this Agreement or the Trust Certificates) such payment need not be made on such date but may be made on the next succeeding Business Day with the same force and effect as if made on the nominal payment date and no interest shall be paid on such next succeeding Business Day for the period from and after such nominal payment date.

### ARTICLE THREE

#### Prepayment and Redemption of Trust Certificates

SECTION 3.01. Prepayment. The Trust Certificates are required to be prepaid in part (a) on February 1,

1983, and each February 1 thereafter to and including February 1, 1991, through the application of rentals paid to the Trustee pursuant to Section 5.03(f) hereof, at 100% of the principal amount thereof to be prepaid, together with accrued interest to the date fixed for prepayment, calculated so that such prepayments of principal shall amortize 90% of the principal amount thereof (b) on February 1, 1982, through the application of Deposited Cash to be applied thereto pursuant to the last paragraph of Section 4.01 hereof, at 100% of the principal amount thereof to be prepaid, together with accrued interest to the date fixed for prepayment, and (c) on any date fixed for prepayment pursuant to § 5.06 hereof, at 100% of the principal amount thereof to be prepaid, together with accrued interest to the date fixed for prepayment. Except as provided in this Article Three and in Article Seven hereof, Trust Certificates may not be prepaid prior to the maturity thereof.

SECTION 3.02. Redemption. The Owner may, at its option, at any time on or after December 1, 1988, redeem all, or from time to time any part of, the Trust Certificates, at the then applicable redemption price (together with interest accrued to the date fixed for redemption) specified in the form of Trust Certificate hereinbefore set forth.

SECTION 3.03. Selection of Trust Certificates for Prepayment or Redemption; Notice of Prepayment or Redemption.

(a) On or before the tenth day next preceding any date on which Trust Certificates are to be prepaid or redeemed pursuant to this Article Three, the Trustee shall select for prepayment or redemption, as the case may be, subject to the provisions of the next succeeding sentence, a principal amount of Trust Certificates so as to exhaust (i) any amount in cash to be paid to it pursuant to Section 5.04 hereof, (ii) any Deposited Cash to be applied thereto pursuant to the last paragraph of Section 4.01 hereof, (iii) any moneys received by the Trustee pursuant to § 5.06 hereof or (iv) any moneys received by the Trustee pursuant to Section 3.02 hereof, on the next succeeding February 1 or August 1, as the case may be; provided, however, that with respect to the payment to be made pursuant to Section 3.01(b) hereof such selection shall be made on or at any time prior to the date for such payment. The Trustee shall select for prepayment or redemption, as the case may be, on each prepayment or redemption date, as the case may

be, a principal amount of Trust Certificates registered in the name of each holder which bears the same ratio to the aggregate principal amount of Trust Certificates to be prepaid or redeemed, as the case may be, on such date as (y) the aggregate principal amount of Trust Certificates registered in the name of such holder on a date selected by the Trustee not more than 15 days prior to the selection by the Trustee of Trust Certificates for prepayment or redemption, as the case may be, on such date bears to (z) the aggregate principal amount of Trust Certificates outstanding on such date.

(b) The Trustee shall send a statement of prepayment or redemption, as the case may be, by registered mail, postage prepaid, on or prior to each prepayment or redemption date to the holders of Trust Certificates to be prepaid or redeemed, as the case may be, in whole or in part, at their last addresses as they shall appear upon the registry books. Failure to furnish such statement, or any defect therein, as to any Trust Certificate shall not affect the validity of the proceedings for the prepayment or redemption of any other Trust Certificate. Any statement which is mailed in the manner herein provided shall be conclusively presumed to have been duly given, whether or not the holder receives the statement.

(c) The statement of prepayment or redemption to each holder shall (i) specify the date for prepayment or redemption, as the case may be, (ii) state that prepayment or redemption, as the case may be, of the principal amount of (and premium, if any, on) the Trust Certificates or portions thereof to be prepaid or redeemed, as the case may be, will be made by the Trustee only from and out of Deposited Cash or moneys paid to the Trustee by the Owner or the Lessee and applicable thereto and, unless such prepayment or redemption is to be made pursuant to the second sentence of the third paragraph of Section 2.02 hereof, that such prepayment or redemption will be made at the Corporate Trust Office, upon presentation and surrender of Trust Certificates so to be prepaid or redeemed, (iii) state the aggregate principal amount of (and premium, if any, on) Trust Certificates to be prepaid or redeemed in whole or in part and the distinctive numbers of the Trust Certificates of such holder to be prepaid or redeemed and, in the case of any such Trust Certificates to be prepaid or redeemed in part, the principal amount (and premium, if any) thereof to be so prepaid or redeemed, and (iv) state that from and after such prepay-

ment or redemption date interest on such Trust Certificates or on the portions thereof to be prepaid or redeemed will cease to accrue. The holders of Trust Certificates prepaid or redeemed in part may, at their option and upon surrender thereof, receive new Trust Certificates for the principal amounts remaining unpaid or unredeemed without charge to such holders.

SECTION 3.04. Payment of Trust Certificates Selected for Prepayment or Redemption. The Trust Certificates or portions thereof to be prepaid or redeemed shall become due and payable on such prepayment or redemption date, as the case may be, and from and after such date interest on such Trust Certificates or portions thereof shall cease to accrue, and there having been deposited with the Trustee on or before the prepayment or redemption date specified in the statement of prepayment or redemption, as the case may be, an amount in cash equal to the aggregate principal amount of (and premium, if any, on) all the Trust Certificates or portions thereof then to be prepaid or redeemed and accrued interest thereon, such Trust Certificates or portions thereof shall no longer be deemed to be outstanding hereunder and shall cease to be entitled to the benefits of this Agreement except to receive payment from the moneys reserved therefor in the hands of the Trustee. The Trustee shall hold the prepayment or redemption moneys in trust for the holders of the Trust Certificates or portions thereof to be prepaid or redeemed and (subject to the provisions of the second sentence of the third paragraph of Section 2.02 hereof) shall pay the same to such holders respectively upon presentation and surrender of such Trust Certificates.

Except as provided in Sections 2.02 and 3.03 hereof, all Trust Certificates prepaid or redeemed under this Article Three shall be canceled 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. On or prior to January 15, 1982, the Owner shall cause to be transferred to the Trustee, as trustee for the holders of the Trust Certificates, and as security for the payment thereof,

such of the Equipment described and set forth in Schedule A hereto as is settled for pursuant to this Article Four. Such Equipment will be delivered to the Lessee, which is hereby designated by the Trustee as its agent to receive such delivery, and a Certificate of Inspection and Acceptance of the Lessee in the form of Schedule B to the Lease as to such delivery shall be conclusive evidence of such delivery.

The Trustee shall be authorized to amend Schedule A to exclude Equipment from this Agreement to the extent the funds deposited in the trust prove insufficient to finance the acquisition of the Equipment hereunder.

In the event of any such exclusion the Owner and the Trustee shall execute an agreement supplemental hereto limiting this Agreement to the Trust Equipment not excluded from this Agreement and the Owner and the Trustee shall execute for recordation in public offices such instrument or instruments in writing in order to make clear upon public records such exclusion.

In the event that on January 15, 1982, any Deposited Cash shall remain in the possession of the Trustee, the Trustee shall apply any such Deposited Cash to the prepayment of Trust Certificates on February 1, 1982, as provided in Article Three hereof.

SECTION 4.02. Payment of Deposited Cash. The Trustee agrees to pay, upon Request of the Owner, to the Owner (or as the Owner shall direct), out of Deposited Cash, an amount specified in such Request not exceeding the lesser of (a) 69.3% of the Appraised Fair Market Value of the Equipment then being settled for or (b) 100% of the aggregate Total Cost of such Equipment; provided, however, that the provisions of Paragraph 6 of the Participation Agreement have been satisfied.

The Trustee shall not pay out any Deposited Cash against the delivery of any of the Trust Equipment unless it shall have received:

(a) an Officer's Certificate of the Owner which shall state (i) that such Trust Equipment is Equipment as herein defined, (ii) that the representations and warranties of the Owner contained in the Participation Agreement are true and correct on and as if made on such date, (iii) that no Event of Default or event which with the lapse of time and/or the giving of notice would

constitute an Event of Default has occurred and is continuing and (iv) specifying (x) the Appraised Fair Market Value of the Equipment then being settled for, (y) the Total Cost of such Equipment and (z) the amount to be paid out of Deposited Cash on such date pursuant to this Section;

(b) a bill or bills of sale for such Trust Equipment from the Owner to the Trustee, which bill or bills of sale shall contain a warranty or guarantee 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 pursuant to the Lease) existing at the time of delivery thereof to the Trustee or arising from, through or under the Owner;

(c) an Opinion of Counsel, satisfactory to the Trustee, that such bill or bills of sale are valid and effective, either alone or in connection with any other instrument referred to in such opinion, to vest in the Trustee title to such Trust Equipment free from all liens and encumbrances;

(d) an Officer's Certificate of the Builder certifying (i) as to the amounts payable to the Builder pursuant to the Reconstruction Agreement with respect to such Trust Equipment (attaching invoices for such amounts) and releasing any claim, lien or encumbrance arising from, through or under it with respect to such Trust Equipment, (ii) that such Trust Equipment has been reconstructed in accordance with the Specifications and (iii) that the Reconstruction Cost to be paid pursuant to the Reconstruction Agreement does not exceed the price that would be charged by an independent locomotive builder for comparable reconstruction;

(e) a certificate from an independent appraiser satisfactory to the Trustee certifying (i) that each unit of such Trust Equipment has a service life extending to or beyond a date not less than 15 years from the date of the Certificate of Acceptance referred to in Section 4.02(i) below with respect to such unit, (ii) that the Appraised Fair Market Value when sold to the Trustee is at least \$500,000 and (iii) that, on the basis of inspections of the place or places where the Equipment is from time to time being reconstructed (such inspections to be conducted

not less frequently than monthly during the period from September 1, 1981, until each unit of the Equipment has been reconstructed), the Equipment to be delivered hereunder on such date was reconstructed in accordance with the Specifications.

(f) a favorable opinion of Messrs. Wilmer, Cutler & Pickering (or, in the case of the units of Equipment bearing identification numbers 5524 through 5537, both inclusive, the favorable opinion of Messrs. Glassie, Pewett, Dudley, Beebe & Shanks) addressed to the Trustee regarding their search, after the filing of this Agreement pursuant to 49 U.S.C. § 11303, of the Interstate Commerce Commission files with respect to the Equipment and confirming the release or discharge of any liens or encumbrances identified in such search;

(g) an opinion of special Canadian counsel, addressed to the Trustee, stating that the Reconstruction Agreement, this Agreement, the Lease and the Lease Assignment have been duly deposited in the Office of the Registrar General of Canada pursuant to Section 86 of the Railway Act of Canada and notice of such deposit has been duly published, or adequate provision has been made therefor, in The Canada Gazette in accordance with said Section 86, and no other filing, recording or deposit (or giving notice) with any other Federal, provincial or local government is necessary to protect the rights of the Trustee in and to the Equipment in Canada;

(h) an Officer's Certificate of the Lessee certifying that the representations and warranties of the Lessee in the Participation Agreement and the Lease are true and correct on and as if made on such date and that no event of default under the Participation Agreement or the Lease or event which with the lapse of time and/or the giving of notice would constitute an event of default thereunder has occurred and is continuing; and

(i) a Certificate of Inspection and Acceptance in the form of Schedule B to the Lease executed by the Lessee on its own behalf under the Lease, as agent for the Owner under the Reconstruction Agreement and as agent for the Trustee under this Agreement.

SECTION 4.03. Absence of Title Encumbrances. The Owner hereby represents and warrants to the Trustee that upon delivery of the Trust Equipment and payment therefor as provided in this Article Four such Trust Equipment shall then be free from all claims, liens, security interests and other

encumbrances of any nature arising from or through the Owner except as created by this Agreement and except for the rights of the Lessee under the Lease.

## ARTICLE FIVE

### Lease of Trust Equipment to the Owner

SECTION 5.01. Lease of Trust Equipment. The Trustee does hereby let and lease, as herein provided, all the units of Trust Equipment to the Owner, for a term ending on February 1, 1992.

SECTION 5.02. Equipment Automatically Subjected. As and when any Equipment shall from time to time be accepted under this Agreement, the same shall be deemed accepted hereunder immediately and shall at that time, ipso facto and without further instrument of lease, transfer or acceptance except as expressly provided herein, pass under and become subject to all the terms and provisions hereof.

SECTION 5.03. Rental Payments. The Owner hereby accepts the lease of the units of Trust Equipment and covenants and agrees to accept delivery and possession hereunder of such Trust Equipment as hereinbefore provided; and the Owner covenants and agrees to pay to the Trustee (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, amounts (herein called "rent" or "rentals") 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 Owner of any of the Trust Equipment):

(a) (i) subject to the provisions of Section 9.05 hereof, from time to time upon demand of the Trustee the necessary and reasonable expenses of the trust hereby created, including compensation and expenses described herein, and (ii) an amount equal to any expenses incurred or loss of principal (including interest accrued thereupon at the time of purchase) in connection with any purchase, sale or redemption by the Trustee of Investments;

(b) from time to time upon demand of the Trustee

any and all amounts due pursuant to Sections 5.08 and 5.10 hereof;

(c) on February 1, 1982, the amount of interest payable on the Trust Certificates on such date;

(d) (i) the amount of the interest payable on the Trust Certificates, when and as the same shall become payable (other than interest payable pursuant to Section 5.03(c) hereof), and (ii) interest at the Overdue Rate from the due date, upon the amount of any installments of rental payable under the preceding subparagraph (c), this subparagraph (d) and the following subparagraphs (e), (f) and (g) which shall not be paid when due, to the extent legally enforceable;

(e) the principal of (and premium, if any, on) the Trust Certificates called for redemption on any date fixed for redemption pursuant to Article Three hereof;

(f) the principal of the Trust Certificates required to be prepaid on any date fixed for prepayment pursuant to Article Three hereof; and

(g) the principal of the Trust Certificate (other than those called for redemption or prepaid pursuant to Article Three hereof) when and as the same shall become payable, whether upon the stated date of maturity thereof, by declaration or otherwise under the provisions thereof or of this Agreement.

SECTION 5.04. Termination. Notwithstanding any provision of Article Four, the transfer to the Trustee of the units of Trust Equipment by the Owner and the lease of such units to the Owner by the Trustee pursuant to this Agreement are intended solely to create a security interest in such units in order to secure the performance by the Owner of its obligations under this Agreement and the payment of all sums payable pursuant to this Agreement and ownership of such units of Trust Equipment shall be and remain in the Owner. Accordingly, after all payments due or to become due hereunder shall have been completed and fully made to or for the account of the Trustee and the Owner shall have performed all its other obligations hereunder, (a) such payments shall be deemed to represent the discharge in full of the Trustee's security interest in the Trust Equipment at such time, (b) any moneys remaining in the hands of the Trustee after

providing for all outstanding Trust Certificates and after paying the expenses of the Trustee, including its reasonable compensation subject to the provisions of Section 5.03(a) hereof, shall be paid to the Owner, and (c) the Trustee shall execute for record in public offices such instrument or instruments in writing as reasonably shall be requested by the Owner in order to discharge of record the security interest of the Trustee in, and to make clear upon public records the Owner's full title to, such units of the Trust Equipment under the laws of any jurisdiction; provided, however, that until that time a security interest in the Trust Equipment shall be and remain in the Trustee, notwithstanding the possession and use thereof by the Owner or the Lessee pursuant to the terms of this Agreement.

SECTION 5.05. Marking of Trust Equipment. The Owner will cause each unit of Trust Equipment to be kept numbered and marked as provided in Section 5 of the Lease. Except as therein provided, the Owner will not allow any name to be placed on any unit of Trust Equipment as a designation that might be interpreted as a claim of ownership.

SECTION 5.06. Maintenance; Casualty Occurrences; Insurance. The Owner agrees that, at its own cost and expense, it will maintain and keep each unit of the Trust Equipment in good operating order, repair and condition, ordinary wear and tear excepted. The Owner will at all times during the term of this Lease cause to be carried and maintained insurance with respect to the Trust Equipment as provided in Section 7 of the Lease.

In the event that any unit of the Trust Equipment shall suffer a Casualty Occurrence (as defined in Section 7 of the Lease), during the term of this lease the Owner shall, promptly after it shall have received notice from the Lessee or otherwise been informed that such unit has suffered a Casualty Occurrence, cause the Trustee to be fully informed in regard thereto. On the February 1 or August 1 next succeeding the event with respect to which such notice is given (or, if such notice shall have been received by the Trustee within 15 days of the February 1 or August 1 next succeeding the event with respect to which such notice is given or subsequent to such date, then on the February 1 or August 1 next succeeding such February 1 or August 1), the Owner shall either (a) pay to the Trustee an amount in cash equal to the Fair Value of such unit suffering a Casualty Occurrence as of the date of such payment, or (b) cause

to be transferred to the Trustee additional Equipment, free from all liens, security interests and other encumbrances, having an Appraised Fair Market Value equal to at least 150% of the Fair Value of such unit suffering a Casualty Occurrence, and deliver to the Trustee, with respect to such additional Equipment, the documents described in Sections 4.02(b), (c) (including a favorable Opinion or Opinions of Counsel with respect to (i) their search, after the the filing of a supplement to this Agreement under 49 U.S.C. § 11303, of the Interstate Commerce Commission files with respect to such additional Equipment and confirming the release or discharge of any liens or encumbrances identified in such search and (ii) all necessary filings and recordings have been made to protect the rights of the Trustee in and to such additional Equipment in Canada) and (h) of this Agreement, and, in addition, (A) an Officer's Certificate certifying that such additional Equipment is Equipment as defined in this Agreement and (B) a certificate from an independent appraiser satisfactory to the Trustee certifying as to the Appraised Fair Market Value of such additional Equipment. All references herein to February 1 or August 1 shall be deemed to refer to whichever such date shall occur soonest. On the date of any such payment, the Owner shall file, or cause to be filed, with the Trustee an Officer's Certificate setting forth the Fair Value of such unit suffering a Casualty Occurrence and the method of determination thereof. Any units of the Trust Equipment for which settlement has been made by the Owner pursuant to the next preceding paragraph shall, upon Request, be released by the Trustee, to or upon the order of the Owner.

So long as no Event of Default shall have occurred and be continuing, any money paid to the Trustee pursuant to this Section shall be used, as the Owner shall from time to time direct in a Request, in whole or in part, to prepay Trust Certificates as provided in Section 3.01(c) hereof or toward the cost of additional Equipment to replace units suffering a Casualty Occurrence; provided, however, that the acquisition of any such additional Equipment shall conform to the requirements of clause (b) of the second preceding paragraph of this Section.

In the event of the requisition for use by the United States Government of any unit of Trust Equipment, unless such requisition shall at the time of such requisition be scheduled to extend beyond the then necessary term of this lease, all of the Owner's obligations hereunder with respect

to such unit shall continue to the same extent as if such requisition had not occurred.

Upon payment by the Owner to the Trustee of the Fair Value of any unit of the Trust Equipment having suffered a Casualty Occurrence, the security interest of the Trustee in such unit shall terminate without further transfer or action on the part of the Trustee, except that the Trustee, if requested by the Owner, will execute and deliver, to the Owner, at the expense of the Owner, an appropriate instrument confirming such termination to the Owner, in recordable form, in order that the Owner may make clear upon the public records the full title of the Owner to such unit.

Any insurance proceeds or condemnation payments received and retained by the Trustee in respect of units suffering a Casualty Occurrence shall be deducted from the amounts payable by the Owner to the Trustee in respect of Casualty Occurrences pursuant to this Section. If the Trustee shall receive any insurance proceeds or condemnation payments in respect of such units suffering a Casualty Occurrence either after the Owner shall have made payments pursuant to this Section without deduction for such insurance proceeds or condemnation payments, or in excess of the Fair Value (after taking into account payments by the Owner under this Section) of such units, the Trustee shall promptly pay such insurance proceeds or condemnation payments to the Owner. All insurance proceeds or condemnation payments or such excess received by the Trustee in respect of any unit or units of Trust Equipment not suffering a Casualty Occurrence shall be paid to the Owner upon proof satisfactory to the Trustee that any damage to such unit in respect of which such proceeds were paid has been fully repaired.

The Owner covenants and agrees to furnish or cause to be furnished to the Trustee, on or before April 30 in each year, commencing with the calendar year 1982, an Officer's Certificate, as of the preceding December 31, to the effect set forth in Section 8 of the Lease. The Trustee, by its agents, shall have the right once in each calendar year, but shall be under no duty, to inspect the records of the Owner with respect to the Trust Equipment, and the Owner covenants in that event to furnish to the Trustee all reasonable facilities for the making of such inspection.

SECTION 5.07. Possession of Trust Equipment.  
Except as provided in this Section 5.07, the Owner will not assign or transfer its rights hereunder, or transfer or lease

the Trust Equipment or any part thereof, without the written consent of the Trustee first had and obtained; and the Owner shall not, without such written consent, except as herein provided, part with the possession of, or suffer or allow to pass out of its possession or control, any of the Trust Equipment. An assignment or transfer to a corporation which shall acquire all or substantially all the property of the Owner, pursuant to Section 7.03 hereof shall not be deemed a breach of this covenant.

So long as no Event of Default has occurred and is continuing hereunder, the Owner shall be entitled to the possession and use of the Trust Equipment in accordance with the terms of this Agreement, but the Owner shall not assign or transfer its leasehold interest under this Agreement in the Trust Equipment or any of it, except for the Lease which shall be assigned to the Trustee. The Owner hereby agrees that the Lease and the rights of the Owner to receive rentals and other payments due and to become due thereunder shall be subject and subordinate to this Agreement and to the rights of the Trustee and the holders of Trust Certificates.

The Owner will not amend or consent to any change in the Lease without the prior written consent of the Trustee.

SECTION 5.08. Indemnity. The Owner shall pay, and shall protect, indemnify and hold the Trustee (in both its individual and fiduciary capacities), any assignee thereof, the holders of the Trust Certificates, and their respective successors, assigns, agents and servants (the "Indemnified Persons"), harmless from and against any and all causes of action, suits, penalties, claims, demands or judgments, of any nature whatsoever which may be imposed on, incurred by or asserted against any Indemnified Person (including any or all liabilities, obligations, damages, costs, disbursements, expenses [including without limitation attorneys' fees and expenses of any Indemnified Person] relating thereto) in any way relating to or arising or alleged to arise out of this Agreement or the Trust Equipment, including without limitation those in any way relating to or arising or alleged to arise out of (i) the reconstruction, manufacture, construction, purchase, acceptance, rejection, ownership, delivery, nondelivery, lease, possession, use, operation, condition, sale, return or other disposition of any unit of Trust Equipment or portion thereof; (ii) any latent and other defects whether or not discoverable by the Owner or any Indemnified Person; (iii)

any claim for patent, trademark or copyright infringement; (iv) any claims based on strict liability in tort; (v) any injury to or the death of any person or any damage to or loss of property on or near the Trust Equipment or in any manner growing out of or concerned with, or alleged to grow out of or be connected with, the ownership, use, replacement, adaptation or maintenance of the Trust Equipment or of any other equipment in connection with the Trust Equipment (whether owned or under the control of the Owner, the Lessee or any other person) or resulting or alleged to result from the condition of any thereof; (vi) any violation, or alleged violation by the Owner, of any provision of this Agreement or of any agreement, law, rule, regulation, ordinance or restriction, affecting or applicable to the Trust Equipment or the leasing, ownership, use, replacement, adaptation or maintenance thereof; or (vii) any claim arising out of the Trustee's holding of a security interest under this Agreement or the Lease Assignment. The Owner shall be obligated under this Section 5.08, irrespective of whether any Indemnified Person shall also be indemnified with respect to the same matter under any other agreement by any other person, and the Indemnified Person seeking to enforce the indemnification may proceed directly against the Owner under this Section 5.08 without first resorting to any such other rights of indemnification. In case any action, suit or proceeding is brought against any Indemnified Person in connection with any claim indemnified against hereunder, the Owner may and, upon such Indemnified Person's request will, at the Owner's expense, resist and defend such action, suit or proceeding, or cause the same to be resisted or defended by counsel selected by the Owner and approved by such Indemnified Person and, in the event of any failure by the Owner to do so, the Owner shall pay all costs and expenses (including without limitation attorneys' fees and expenses) incurred by such Indemnified Person in connection with such action, suit or proceeding. In the event the Owner is required to make any payment under this Section 5.08, the Owner shall pay such Indemnified Person an amount which, after deduction of all taxes required to be paid by such Indemnified Person in respect of the receipt thereof under the laws of the United States or of any political subdivision thereof (after giving credit for any savings in respect of any such taxes by reason of deductions, credits or allowances in respect of the payment of the expense indemnified against, and of any other such taxes), shall be equal to the amount of such payment. The Trustee and the Owner each agree to give each other promptly upon obtaining knowledge thereof written notice of

any claim or liability hereby indemnified against. Upon the payment in full of any indemnities as contained in this Section by the Owner, and provided that no Event of Default set forth in Article Six hereof (or other event which with lapse of time or notice or both would constitute such an Event of Default) shall have occurred and be continuing, it shall be subrogated to any right of such Indemnified Person in respect of the matter against which indemnity has been given. Any payments received by such Indemnified Person from any person as a result of any matter with respect to which such Indemnified Person has been indemnified by the Lessee pursuant to the Lease shall be paid over to the Owner to the extent necessary to reimburse the Owner for indemnification payments previously made to such Indemnified Person in respect of such matter.

The indemnities contained in this Section 5.08 shall survive the expiration or termination of this Agreement with respect to all events, facts, conditions or other circumstances occurring or existing prior to such expiration or termination and are expressly made for the benefit of, and shall be enforceable by any Indemnified Person. None of the indemnities in this Section 5.08 shall be deemed to create any rights of subrogation in any insurer or third party against the Owner therefor, from or under any Indemnified Person, whether because of any claim paid or defense provided for the benefit thereof or otherwise.

The Owner will bear the responsibility for and 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 the Trust Equipment.

SECTION 5.09. Compliance with Laws and Rules. During the term of this Agreement, the Owner will comply, and will cause the Lessee to comply, in all respects (including, without limitation, with respect to the use, maintenance and operation of the Trust Equipment) with the provisions of Section 9 of the Lease.

SECTION 5.10. Taxes. Whether or not any of the transactions contemplated hereby are consummated, the Owner agrees to pay, and to indemnify and hold the Trustee (in both its individual and fiduciary capacities) harmless from, all Impositions (as defined in the Lease) whether levied or imposed upon the Owner, the Trustee, the holders of the Trust Certificates, the Lessee or otherwise, by any federal,

state or local government or governmental subdivision in the United States or by any foreign country or subdivision thereof; excluding, however: (i) any tax of the United States of America imposed on or measured by net income or excess profits (other than the net income or excess profits of the Lessee), or any value added or gross receipts tax imposed in lieu of such tax; (ii) any state franchise tax which is not based on or measured by net income; (iii) any taxes of a state or political subdivision thereof computed other than on net income and imposed in substitution for any tax referred to in clause (ii) above; and (iv) any foreign income tax to the extent that the recipient of any payments made hereunder shall receive credit therefor against its United States Federal income tax liability; but including such of the foregoing as are levied or imposed in substitution for, or relieve the Owner from the payment of, such taxes, fees, assessments, charges, fines or penalties which it would otherwise be obligated to pay or reimburse as provided in this Section. The Owner will also pay promptly all Impositions which may be imposed upon any Unit or for the use or operation thereof or upon the receipts or earnings arising therefrom, and will keep at all times all and every part of such unit free and clear of all Impositions which might in any way affect the title of the Trustee or the interest of the Trustee or result in a lien upon any such unit; provided, however, that the Owner shall not be required to pay any Impositions during the period it or the Lessee may be contesting the same in the manner provided in the next succeeding paragraph or the Lease, as the case may be.

If claim is made against the Trustee for any Impositions indemnified against under this Section 5.10, the Trustee or the holders of the Trust Certificates shall promptly notify the Owner. If reasonably requested by the Owner in writing, the Trustee or the holders of the Trust Certificates, as the case may be, shall, upon receipt of any indemnity satisfactory to it or them, as the case may be, for all costs, expenses, losses, legal and accountants' fees and disbursements, penalties, fines, additions to tax and interest, and at the expense of the Owner, contest in good faith the validity, applicability or amount of such Impositions by (a) resisting payment thereof if possible, (b) not paying the same except under protest, if protest is necessary and proper, and (c) if payment is made, using reasonable efforts to obtain a refund thereof in appropriate administrative or judicial proceedings, or both. The Owner may also contest,

at its own expense, the validity, applicability or amount of such Impositions in the name of the Trustee or the holders of the Trust Certificates, as the case may be; provided that no proceeding or actions relating to such contest shall be commenced (nor shall any pleading, motion, brief or other paper be submitted or filed in the name of the Trustee or the holders of the Trust Certificates, as the case may be, in any such proceeding or action) without the prior written consent of the Trustee. If the Trustee or the holders of the Trust Certificates, as the case may be, shall obtain a refund of all or any part of such Impositions previously reimbursed by the Owner in connection with any such contest or an amount representing interest thereon, the Trustee or the holders of the Trust Certificates, as the case may be, shall pay the Owner the amount of such refund or interest net of expenses; provided, however, that no Event of Default set forth in Article Six hereof, and no event which with notice or lapse of time or both would constitute such an event of default, shall have occurred and be continuing.

In case any report or return is required to be made with respect to any obligation of the Owner under this Section 5.10 or arising out of this Section 5.10, the Owner shall either make such report or return in such manner as will show the interest of the Trustee in the Trust Equipment or shall promptly notify the Trustee of such requirement and shall make such report or return in such manner as shall be satisfactory to the Trustee. All costs and expenses (including legal and accountants' fees) of preparing any such return or report shall be borne by the Owner.

All of the obligations of the Owner under this Section 5.10 shall survive and continue, notwithstanding payment in full of all amounts due under this Agreement, but only with respect to periods included in the term of this Agreement. Payments due from the Owner to the Trustee or the holders of Trust Certificates under this Section 5.10 shall be made directly to the indemnified party.

## ARTICLE SIX

### Remedies in Event of Default

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

(a) the Owner shall default in the payment of any

part of the rental payable hereunder after the same have become due and payable, and such default shall continue for two Business Days, or

(b) the Owner shall fail or refuse to comply with any other of the terms and covenants of this Agreement or the Lease Assignment on its part to be kept and performed, or to make provision satisfactory to the Trustee for such compliance, for more than 30 days after the earlier of (i) receipt of demand in writing from the Trustee or (ii) any executive officer of the Owner or any other officer of the Owner having responsibility for financial, accounting or operating matters has actual knowledge of such failure or refusal, or

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

(d) the Owner shall make or suffer any unauthorized assignment or transfer of its rights hereunder or shall make any unauthorized transfer or sublease (including, for the purposes of this clause, contracts for the use thereof) of any of the Trust Equipment, or, except as herein authorized, shall part with the possession of any of the Trust Equipment and shall fail or refuse either to cause such assignment or transfer or sublease to be canceled by agreement of all parties having any interest therein and recover possession of such Trust Equipment within 30 days after the Trustee shall have demanded in writing such cancelation and recovery of possession, or within said 30 days to deposit with the Trustee a sum in cash equal to the Fair Value as of the date of conveyance of the Trust Equipment so assigned or transferred or subleased or the possession of which shall have been parted with otherwise than as herein authorized (any sum so deposited to be returned to the Owner upon the cancelation of such assignment, transfer or sublease and the recovery of possession by the Owner of such Trust Equipment), or

(e) any Event of Default (as defined in the Lease) shall have occurred and be continuing, or

(f) a petition for reorganization under Title 11 of the United States Code (as now or hereafter constituted) shall be filed by or against the Owner or the Lessee and, unless such petition shall have been

dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Owner under this Agreement or of the Lessee under the Lease and the Consent shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed in such proceedings (whether or not such appointment is subject to ratification) in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees, within 60 days after such petition shall have been filed or otherwise in accordance with the provisions of 11 U.S.C. § 1168, or any successor provision, as the same may hereafter be amended, or

(g) any proceedings other than are referred to in (f) above shall be commenced by or against the Owner or the Lessee for any relief which includes, or might result in, any modification of the obligations of the Owner under this Agreement or of the Lessee under the Lease or the Consent under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of such obligations) and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all of the obligations of the Owner under this Agreement or of the Lessee under the Lease or the Consent shall not have been and shall not continue to be duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Owner or the Lessee or for the property of the Owner or the Lessee in connection with any such proceedings (whether or not such appointment is subject to ratification) or otherwise, in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees or receiver or receivers within 60 days after such proceedings shall have been commenced,

then, in any such case (herein sometimes called an "Event of

Default"), the Trustee in its discretion may, and upon the written request of the holders of not less than 25% in principal amount of the then outstanding Trust Certificates shall, by notice in writing delivered to the Owner, declare to be due and payable forthwith the entire amount of the rentals (but not including rentals required for the payment of interest accruing after the date of such declaration) payable by the Owner as set forth in Section 5.03 hereof 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 Overdue Rate on the Trust Certificates, to the extent legally enforceable, on any portion thereof overdue; and the Trustee shall be entitled to recover judgment for the total amount so becoming payable by the Owner, together with interest thereon at the Overdue Rate on the Trust Certificates to the extent legally enforceable, and to collect such judgment out of any property of the Owner wherever situated.

In case one or more Events of Default shall happen, the Trustee in its discretion may, and upon the written request of the holders of not less than 25% in principal amount of the then outstanding Trust Certificates shall, by notice in writing delivered to the Owner, 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 Owner shall fail to pay any installment of rental payable pursuant to Section 5.03(c), (d) or (e) hereof when and as the same shall have become due and payable hereunder, and such default shall have continued for a period of two Business Days, the Trustee, in its own name and as trustee of an express trust, shall be entitled and empowered to institute any action or proceedings at law or in equity for the collection of the rentals so due and unpaid and the recovery of reasonable costs of collection, and may prosecute any such action or proceedings to judgment or final decree, and may enforce any such judgment or final decree against the Owner and collect in the manner provided by law out of the property of the Owner (including the Trust Equipment), wherever situated the moneys adjudged or decreed to be payable.

In case there shall be pending proceedings for the bankruptcy or for the reorganization of the Owner under title 11 of the United States Code or any other applicable law, or in case a receiver or trustee shall have been appointed for

the property of the Owner, or in the case of any other judicial proceedings relative to the Owner or to the creditors or property of the Owner, the Trustee, irrespective of whether the rental payments hereunder or the principal amount of the Trust Certificates shall then be due and payable as herein or therein expressed whether by declaration or otherwise and irrespective of whether the Trustee shall have made any demand or declaration pursuant to the provisions of this Section 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 (but not including rentals required for the payment of interest accruing after the date of payment of all amounts due), and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for reasonable compensation to the Trustee, its agents, attorneys and counsel, and for reimbursement of all expenses and liabilities incurred, and all advances made, by the Trustee) and of the holders of the Trust Certificates allowed in such proceedings and to collect and receive any moneys or other property payable or deliverable on any such claims, and to distribute all amounts received with respect to the claims of the holders of the Trust Certificates and of the Trustee on their behalf; and any receiver, assignee or trustee in bankruptcy or reorganization is hereby authorized by each of the holders of the Trust Certificates to make payments to the Trustee, and, in the event that the Trustee shall consent to the making of payments directly to the holders of the Trust Certificates, to pay to the Trustee such amount as shall be sufficient to cover reasonable compensation to the Trustee, its agents, attorneys and counsel, and all other expenses and liabilities incurred, and all advances made, by the Trustee.

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 proceeding instituted by the Trustee shall be brought in its own name and as trustee of an express trust, and any recovery of judgment shall be for the ratable benefit of the holders of the Trust Certificates (other than recoveries representing amounts payable to the Trustee in its individual capacity). In any proceedings brought by the Trustee (and also any proceedings involving the interpretation of any provision of this Agreement to which the Trustee shall be a party) the

Trustee shall be held to represent all the holders of the Trust Certificates, and it shall not be necessary to make any holders of the Trust Certificates parties to such proceedings.

SECTION 6.02. Remedies. In case of the happening of any Event of Default, the Trustee may by its agents enter upon the railroads and premises of the Owner, the Lessee and of any sublessee or user of the Trust Equipment and take possession of all or any part of the Trust Equipment and withdraw the same from said railroads and premises, retaining all payments which up to that time may have been made on account of rental for the Trust Equipment and otherwise, and shall be entitled to collect, receive and retain all unpaid per diem, mileage or other charges of any kind earned by the Trust Equipment or any part thereof, and may lease the Trust Equipment or any part thereof, or with or without retaking possession thereof (but only after declaring due and payable the entire amount of rentals payable by the Owner as provided in Section 6.01 hereof) may sell the same or any part thereof, free from any and all claims of the Owner 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, and 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 Owner 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 Owner and the Lessee shall cease to have any rights or remedies in respect of the Trust Equipment hereunder or under the Lease and Consent, but all such rights and remedies shall be deemed thenceforth to have been waived and surrendered by the Owner and the Lessee, and no payments theretofore made by the Owner or the Lessee 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 Owner or the Lessee 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 Owner or the Lessee of rentals then or thereafter due and payable, and the Owner and the Lessee 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 5.03 hereof (other than interest not then accrued), whether or not they shall have then matured. The holders of 25% in principal amount of the then outstanding Trust Certificates shall have the right from time to time to direct which of the proceedings above provided for shall be taken for the enforcement of the remedies contained herein.

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 hereof, all payments made by the Owner to the Trustee hereunder after such Event of Default, and the proceeds of any judgment collected from the Owner by the Trustee hereunder, and the proceeds of every sale or lease by the Trustee hereunder or any of the Trust Equipment, together with any other sums which may then be held by the Trustee under any of the provisions hereof (other than sums held in trust for the payment of specific Trust Certificates), shall be applied by the Trustee to the payment in the following order of priority: (a) of all proper charges, expenses, liabilities or advances made or incurred by the Trustee in accordance with the provisions of this Agreement, and (b) of the interest then due, with interest on overdue interest at the Overdue Rate on the Trust Certificates to the extent legally enforceable, and of the principal of all the outstanding Trust Certificates, with interest thereon at the Overdue Rate on the Trust Certificates 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 Owner 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 Owner 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 Owner.

SECTION 6.04. Waivers of Default. 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 hereof provided, but before February 1, 1992, all arrears of rent (with interest at the Overdue Rate upon any overdue installments to the extent legally enforceable), the expenses and reasonable compensation of the Trustee, together with all expenses of the trust occasioned by the Owner's default, and all other sums which shall have become due and payable by the Owner hereunder (other than the principal of Trust Certificates and any other rental installments which shall not at the time have matured according to their terms), shall be paid by the Owner 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 a majority in principal amount of the Trust Certificates then outstanding and which shall not have matured (other than by declaration) according to their terms, shall by written notice to the Owner waive the default by reason of which there shall have been such declaration or declarations and the consequences of such default, but no such waiver shall extend to or affect any subsequent default or impair any right consequent thereon.

SECTION 6.05. Obligations of Owner Not Affected by Remedies. No retaking of possession of the Trust Equipment by the Trustee, or any withdrawal, lease or sale thereof, nor any action or failure or omission to act against the Owner 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 Owner by the Trustee or by any such holder, shall affect the obligations of the Owner hereunder. The Owner 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. Delivery of Trust Equipment to Trustee. In case the Trustee shall demand possession of the Trust Equipment pursuant to the provisions hereof, the Owner shall at its own expense promptly cause the Trust Equipment to be transported to such point or points on the lines of the Lessee as shall reasonably be designated by the Trustee and shall there deliver or cause to be delivered the same to the Trustee, or the Trustee may at its option keep the Trust Equipment on any lines of railroad or premises of the Owner or any affiliate until the Trustee shall have leased, sold or otherwise disposed of the same (such period not to exceed 120 days), and for such purpose the Owner agrees to furnish without charge for rent or storage the necessary facilities at any convenient point or points selected by the Trustee. It is hereby expressly covenanted and agreed that the performance of this covenant is of the essence of this Agreement and that, upon application to any court having jurisdiction in the premises, the Trustee shall be entitled to a decree against the Owner requiring the specific performance thereof.

SECTION 6.07. Trustee to Give Notice of Default. The Trustee shall give to the holders of the Trust Certificates notice of each Event of Default hereunder known to the Trustee, within 30 days after it obtains knowledge of the same, unless remedied or cured before the giving of such notice.

SECTION 6.08. Control by Holders of Trust Certificates. The holders of a majority in aggregate unpaid principal amount of the then outstanding Trust Certificates, by an instrument or instruments in writing executed and delivered to the Trustee, shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred on the Trustee; provided, however, that the Trustee shall have the right to decline to follow any such direction if the Trustee shall be advised by counsel that the action so directed would be in conflict with any other provision of this Agreement or any rule of law.

SECTION 6.09. 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 therein would, under applicable law, result in the surrender, impairment, waiver or loss of the security title reserved under this Agreement upon any property subject hereto.

SECTION 6.10. Remedies To Be Cumulative. The remedies in this Agreement provided in favor of the Trustee and the holders of the Trust Certificates shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in their favor existing at law or in equity.

## ARTICLE SEVEN

### Additional Covenants and Agreements by the Owner

SECTION 7.01. Discharge of Liens. The Owner will pay or discharge any and all sums claimed by any party from, through or under the Owner or its successors or assigns which, if unpaid, might become a lien, charge or security interest on or with respect to the Trust Equipment, or any unit thereof, and will promptly discharge any such lien, charge or security interest which arises, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Trustee, adversely affect the interest of the Trustee in the Trust Equipment, or otherwise under this Agreement.

This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business

and, in each case, not delinquent.

SECTION 7.02. Recording. The Owner will, (a) promptly after the execution and delivery of this Agreement, the Lease, the Lease Assignment and each supplement hereto and thereto, respectively, cause this Agreement, the Lease, the Lease Assignment and each such supplement to be duly filed and recorded with the Interstate Commerce Commission in accordance with 49 U.S.C. § 11303 and deposited with the Registrar General of Canada (and notice of such deposit to be given forthwith in The Canada Gazette) pursuant to Section 86 of the Railway Act of Canada, (b) from time to time do and perform any other act and will execute, acknowledge, deliver and file, register and record any and all further instruments required by law or reasonably requested by the Trustee for the purposes of proper protection of the security interest of the Trustee and the rights of the holders of the Trust Certificates, and (c) furnish an Opinion or Opinions of Counsel of the Lessee in connection with such filing, registration, and recordation.

SECTION 7.03. Merger, Consolidation or Sale of Assets. The Owner agrees not to merge or consolidate with any other corporation or to sell, assign or transfer all or substantially all of the property of the Owner to any other corporation unless the survivor of such merger or consolidation or such transferee shall be a solvent corporation organized under the laws of the United States of America or a state thereof or the District of Columbia having a net worth equal to or greater than the Owner (unless the holders of a majority in aggregate unpaid principal amount of the then outstanding Trust Certificates shall otherwise agree) and such survivor or such transferee (if not the Owner) shall assume all the obligations and liabilities of the Owner hereunder, shall be a wholly owned subsidiary of the Lessee and shall not be in default hereunder.

SECTION 7.04. Further Assurances. The Owner covenants and agrees from time to time to execute all such instruments of further assurance as shall be reasonably requested by the Trustee for the purpose of fully carrying out and effectuating this Agreement and the intent hereof.

## ARTICLE EIGHT

### Concerning the Holders of Trust Certificates

SECTION 8.01. Evidence of Action Taken by Holders of Trust Certificates. Whenever in this Agreement it is provided that the holders of a specified percentage in aggregate principal amount of the outstanding 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), (i) each of the separate accounts of the original Purchaser of the Trust Certificates referred to in Schedule A to the Participation Agreement shall be deemed to be a separate holder of the Trust Certificates and (ii) the fact that at the time of taking any such action the holders of such specified percentage have joined therein may be evidenced by any instrument or any number of instruments of similar tenor executed by holders of Trust Certificates in person or by agent or proxy appointed in writing.

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

The fact and date of the execution by any such person of any instrument may be proved by the certificate of any notary public or other officer of any jurisdiction within the United States of America authorized to administer oaths or to take acknowledgments of deeds to be recorded in such jurisdiction that the person executing such instrument acknowledged to him the execution thereof, or by an affidavit of a witness to such execution sworn to before any such notary or other such officer.

The ownership of Trust Certificates may be proved by the register of such Trust Certificates to be kept as provided in Section 2.03(e) hereof.

SECTION 8.03. Trust Certificates Owned by the Owner or the Lessee. 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 Owner, by the Lessee or by an affiliate of the Owner or the Lessee

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, and except that this Section 8.03 shall not be applicable to the Owner or an affiliate of the Owner if all the Trust Certificates are owned by the Owner or by one or more affiliates of the Owner.

SECTION 8.04. Right of Revocation of Action Taken.

At any time prior to (but not after) the evidencing to the Trustee, as provided in Section 8.01 hereof, of the taking of any action by the holders of the required percentage in aggregate principal amount of the outstanding Trust Certificates specified in this Agreement, any holder of a Trust Certificate may, by filing written notice with the Trustee at the Corporate Trust Office and upon proof of holding as provided in Section 8.02 hereof, revoke such action in so far as such action concerns such Trust Certificate. Except as aforesaid, any such action taken by the holder of any Trust Certificate shall be conclusive and binding upon such holder and upon all future holders and owners of such Trust Certificate and of any Trust Certificate issued in exchange or substitution therefor, irrespective of whether or not any notation in regard thereto is made upon such Trust Certificate. Any action taken by the holders of the required percentage in aggregate principal amount of the outstanding Trust Certificates specified in this Agreement shall be conclusive and binding upon the Owner, the Trustee and the holders of all the Trust Certificates.

ARTICLE NINE

The Trustee

SECTION 9.01. 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 9.02. Duties and Responsibilities of the Trustee. Upon the occurrence of an Event of Default, 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.

As used in this Agreement, "knowledge" of the Trustee shall mean actual knowledge of an officer or employee in the Corporate Trust Office of the Trustee.

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 or that its action or inaction was contrary to the express provisions of this Agreement;

(c) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the holders of a majority in aggregate unpaid principal amount of the then outstanding Trust Certificates relating to the time, method and place of conducting any proceeding

for any remedy available to the Trustee, or exercising any trust power conferred upon the Trustee, under this Agreement;

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

(e) the Trustee may consult with counsel, and any Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder in good faith and in accordance with such Opinion of Counsel;

(f) the Trustee shall be under no obligation to exercise any of its rights or powers vested in it by this Agreement at the request, order or direction of any of the holders of the Trust Certificates, pursuant to the provisions of this Agreement, unless such holders shall have offered to the Trustee reasonable security or indemnity against the costs, expenses and liabilities which might be incurred therein or thereby to the extent such reasonable security or indemnity shall not be furnished by the Owner or the Lessee pursuant to the provisions hereof or of the Lease; and

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

SECTION 9.03. Application of Rentals; Responsibility of Trustee to Insure or Record. The Trustee covenants and agrees to apply and distribute the rentals received by it under Section 5.03 hereof 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 5.03.

The Trustee shall not be required to undertake any act or duty in the way of insuring, taking care of or taking possession of the Trust Equipment or to undertake any other act or duty under this Agreement (except pursuant to express

provisions hereof) until fully indemnified to its satisfaction by the Owner or by one or more of the holders of the Trust Certificates against all liability, costs and expenses; and the Trustee shall not be responsible for the filing or recording or refiling or rerecording of this Agreement, the Lease or the Lease Assignment or of any supplement hereto or thereto.

SECTION 9.04. Funds Held by Trustee; Investments.

Any moneys at any time paid to or held by the Trustee hereunder until paid out by the Trustee as herein provided may be carried as a general deposit and need not be segregated from other funds except to the extent required by law, it being understood, however, that all moneys received by the Trustee shall be deemed received and held in trust by the Trustee. The Trustee shall not be under any liability for interest on any moneys received by it hereunder except such as it may agree with the Owner to pay thereon.

Any moneys at any time paid to or held by the Trustee hereunder until paid out by the Trustee as herein provided may be carried by the Trustee on noninterest bearing deposit with itself.

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 (hereinafter in this Section called Replacement Funds) in Investments, at such prices, including any premium and accrued interest, as are set forth in such Request, such Investments to be held by the Trustee in trust for the benefit of the holders of the Trust Certificates.

The Trustee shall, on Request, or the Trustee may, in the event funds are required for payment against acceptance of Trust Equipment or the payment, prepayment or redemption of Trust Certificates, sell such Investments, or any portion thereof, and restore to Deposited Cash or Replacement Funds, as the case may be, the proceeds of any such sale up to the amount paid for such Investments, including accrued interest.

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 5.03(a), an amount equal to any expenses incurred in connec-

tion with any purchase or sale of Investments and also an amount equal to any loss of principal incident to the sale or redemption of any Investments for a sum less than the amount paid therefor, including accrued interest.

If, to the knowledge of the Trustee, the Lessee shall not be in default under the Lease and no event which, with the lapse of time and/or giving of notice would constitute such a default shall have occurred and be continuing, the Lessee shall be entitled to receive 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 Investments.

SECTION 9.05. Trustee Not Liable for Delivery Delays or Defects in Equipment or Title. The Trustee shall not be liable to anyone for any delay in the delivery of any of the Trust Equipment, or for any default on the part of the Builder thereof or of the Owner, 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 in respect of the value thereof or in respect of the title thereto.

The Trustee may perform its powers and duties hereunder by or through such attorneys, agents and servants as it shall appoint, and shall be entitled to rely upon an Opinion of Counsel, and shall be answerable for only its own acts, negligence and wilful defaults and not for the acts, default or misconduct of any attorney, agent or servant appointed by it with reasonable care and in good faith. 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 any mistake of fact or law.

The Trustee shall be entitled to receive payment of all its expenses and disbursements hereunder, including reasonable counsel fees, and to receive reasonable compensation for all services rendered by it in the execution of the trust hereby created, all of which shall be paid by the Lessee, pursuant to the provisions of Paragraph 8 of the Participation Agreement.

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 hereunder shall, until paid out by the Trustee as herein provided, be held by it in trust as herein provided for the benefit of the holders of the Trust Certificates.

SECTION 9.06. Resignation and Removal; Appointment of Successor Trustee. (a) The Trustee may resign and be discharged of the trust created by this Agreement by giving 30 days' written notice to the Owner, the Lessee and the holders of the then outstanding Trust Certificates, but such resignation shall not take effect until receipt by the Trustee of an instrument of acceptance executed by a successor trustee as hereinafter provided in Section 9.07 hereof.

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

(c) If at any time the Trustee shall resign or be removed or otherwise become incapable of acting or if at any time a vacancy shall occur in the office of the Trustee for any other cause, a successor trustee may be appointed by the holders of a majority of the aggregate principal amount of the then outstanding Trust Certificates by an instrument in writing delivered to the Owner and the Trustee. Until a successor trustee shall be appointed by the holders of Trust Certificates as herein authorized, the Owner, by an instrument in writing, shall appoint a trustee to fill such vacancy. A successor trustee so appointed by the Owner 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 9.06 shall be a national bank, or a bank or trust company incorporated under the laws of a State of the United States of America, and having capital and surplus of not less than \$50,000,000, if there be such an institution willing, qualified and able to accept the trust upon reasonable or customary terms. In the event any successor trustee is appointed hereunder, the fees theretofore paid to the Trustee shall be prorated between the Trustee and the successor trustee for any unexpired portion of the period to which such fees relate.

(d) The Owner 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 Owner of a successor trustee pursuant to paragraph (c) of this Section 9.06 by mailing written notice of such event by first class mail, postage prepaid, to the holders of all outstanding Trust Certificates. The then Trustee shall supply the Owner with a register of the current holders of the Trust Certificates for the purpose of giving such notice.

SECTION 9.07. Acceptance of Appointment by Successor Trustee. Any successor trustee appointed as provided in Section 9.06 hereof shall execute, acknowledge and deliver to the Owner 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 Owner 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, powers, records and deposited cash, if any, of the trustee so ceasing to act. Upon request of any such successor trustee, the Owner 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, if any, pursuant to the provisions of Section 9.05 hereof.

SECTION 9.08. Merger or Consolidation of Trustee. Any corporation into which the Trustee may be merged or with which it may be consolidated or any corporation resulting from any merger or consolidation to which the Trustee shall be a party or any corporation succeeding to all or substantially all the corporate trust business of the Trustee shall be the successor of the Trustee hereunder, provided that such corporation shall be qualified under the provisions of Section 9.06 hereof, 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 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, other than the parties hereto, the holders of the Trust Certificates and the third party beneficiaries specified herein, any right, remedy or claim under or by reason of this Agreement or of any term, covenant or condition hereof, and all the terms, covenants, conditions, promises and agreements contained herein shall be for the sole and exclusive benefit of the parties hereto and their successors, the holders of the Trust Certificates and such third party beneficiaries.

SECTION 10.02. No Recourse. No recourse under or upon any obligation, covenant or agreement of this Agreement, or for any claim based thereon or otherwise in respect thereof shall be had against any stockholder, officer or director, as such, past, present or future, of the Trustee, by the enforcement of any assessment or by any legal or equitable proceeding, by virtue of any statute or constitution or otherwise; it being expressly agreed and understood that this Agreement is solely a corporate obligation, and that no personal liability whatever shall attach to or be incurred by the stockholders, officers or directors, as such, of the Trustee, under or by reason of any of the obligations, covenants and agreements contained in this Agreement, 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 stockholder, officer or director is hereby expressly waived as a condition of and consideration for the execution of this Agreement.

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 or mailed by registered mail (a) to the Owner at the address set forth for the Owner in the Lease or such other address as may hereafter be furnished to the Trustee in writing by

the Owner, and (b) to the Trustee at the Corporate Trust Office, or at such other address as may hereafter be furnished to the Owner in writing by the Trustee. An affidavit by any person representing or acting on behalf of the Owner or the Trustee, as the case may be, as to such mailing, having the registry receipt attached, shall be conclusive evidence of the giving of such demand, notice or communication.

SECTION 10.05. Amendment or Waiver. Any provision of this Agreement may be amended, by an instrument executed by the parties hereto, or waived, in either case with the written consent of the holders of not less than 66-2/3% of the aggregate unpaid principal amount of Trust Certificates then outstanding; provided, however, that no such amendment or waiver shall (a) reduce the amount of principal, change the amount or dates of payment of installments of principal or reduce the rate or extend the time of payment of interest with respect to the Trust Certificates without the consent of the holder of each Trust Certificate so affected, (b) 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, without the consent of the holders of 100% of the aggregate unpaid principal amount of Trust Certificates then outstanding, (c) reduce the amount of or extend the time of payment of any premium payable hereunder upon the redemption of any of the Trust Certificates, without the consent of the holders of 100% of the aggregate unpaid principal amount of Trust Certificates then outstanding, or (d) 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.

The Trustee may consent to any amendment or waiver in respect of the Lease, without the approval of the holders of the Trust Certificates, if such amendment or waiver does not adversely affect the interests of the holders of the Trust Certificates. Any other amendment or waiver in respect of the Lease may be consented to by the Trustee with the written approval of the holders of not less than 66-2/3% of the aggregate principal amount of the Trust Certificates then outstanding; provided, however, that, if such amendment or waiver would reduce the amount of or extend the time for payment of any rentals or other obligations under the Lease

in a manner so as to affect the due and punctual payment of the principal of and interest on the Trust Certificates and the other obligations of the Owner hereunder, the Trustee shall not consent thereto without the prior written approval of the holders of 100% of the aggregate unpaid principal amount of Trust Certificates then outstanding. The holders shall receive 30 days' prior written notice of any amendment pursuant to this Section 10.05.

SECTION 10.06. Effect of Headings; Counterparts; Date Executed; Governing Law. (a) The Article and Section headings herein are for convenience only and shall not affect the construction hereof.

(b) 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 that any counterpart be signed by all the parties so long as each party hereto shall sign at least one counterpart hereof which shall be effective upon delivery thereof to counsel for the Trustee.

(c) 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.

(d) The provisions of this Agreement, and all the rights and obligations of the parties hereunder, shall be governed by the laws of the State of Illinois.

(e) Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument

to be duly executed as of the date first above written.

THE CONNECTICUT BANK AND TRUST COMPANY,  
not in its individual capacity,  
but solely as Trustee,

by

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

[Seal]

Attest:

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

NORTH WESTERN LEASING COMPANY,

by

*Thomas A. T. [Signature]*  
\_\_\_\_\_  
Title: Vice President

[Corporate Seal]

Attest:

*[Signature]*  
\_\_\_\_\_  
Title:

**ASSISTANT SECRETARY**

STATE OF CONNECTICUT, )  
 ) ss.:  
COUNTY OF HARTFORD, )

On this \_\_\_\_\_ day of \_\_\_\_\_ 1981, before me personally appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, says that he is an Authorized Officer of THE CONNECTICUT BANK AND TRUST COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its By-laws and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

\_\_\_\_\_  
Notary Public

[NOTARIAL SEAL]

My Commission Expires

STATE OF ILLINOIS, )  
 ) ss.:  
COUNTY OF COOK, )

On this 23rd day of Sept. 1981, before me personally appeared Thomas A. Ingelf, to me personally known, who, being by me duly sworn, says that he is an Vice President of NORTH WESTERN LEASING COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its By-laws and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Arline Ann Schuetz  
Notary Public

[NOTARIAL SEAL]

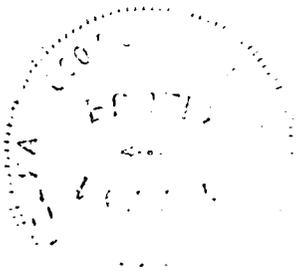
My Commission Expires 2/9/83

Schedule A to the Equipment  
Trust Agreement

Description of the Equipment

<u>Type</u>	<u>Quantity</u>	<u>Owner's Car Numbers (both inclusive)</u>	<u>Unit Hulk Cost</u>	<u>Unit Recon- struction Cost</u>	<u>Total Unit Cost</u>	<u>Estimated Time of Delivery</u>
GP-40 3000 h.p. Locomotives	38	CNW- 5500-5537	\$190,000	\$140,000	\$330,000	September- December 1981

ET-54



ANNEX I  
to the  
Equipment Trust Agreement

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[CS&M Ref. 2044-128]

LEASE OF RAILROAD EQUIPMENT

Dated as of July 15, 1981

between

CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY,  
Lessee,

and

NORTH WESTERN LEASING COMPANY,  
Lessor

[Covering 38 Reconstructed Locomotives]

The rights and interests of the Lessor under this Lease are subject to a security interest in favor of The Connecticut Bank and Trust Company, as Trustee for certain institutional investors. The original of this Lease has been stamped "Original" and is held by said Trustee.

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\* This Table of Contents has been included in this document for convenience only and does not form a part of or affect any construction or interpretation of this document.

LEASE OF RAILROAD EQUIPMENT dated as of July 15, 1981, between CHICAGO AND NORTHWESTERN TRANSPORTATION, a Delaware corporation (the "Lessee" or the "Builder") and NORTH WESTERN LEASING COMPANY, a Delaware corporation (the "Lessor" or the "Owner").

WHEREAS the Lessor is entering into a reconstruction agreement (the "Reconstruction Agreement") with the Builder, pursuant to which the Builder has agreed to reconstruct certain units of railroad equipment owned by the Owner and described in Schedule A annexed hereto (the "Equipment"); and

WHEREAS the Owner is entering into an equipment trust agreement dated as of the date hereof (the "Trust Agreement") with The Connecticut Bank and Trust Company (hereinafter, together with its successors and assigns as trustee under the Trust Agreement, called the "Trustee"), pursuant to which equipment trust certificates (the "Trust Certificates") will be sold to finance all or part of the cost of the Equipment, the Owner will be obligated to make payments equal to principal and interest thereon out of the rentals received hereunder and a security interest in the Units will be conveyed to the Trustee until the Owner fulfills all its obligations under the Trust Agreement; and

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

WHEREAS the Lessor, the Lessee, the Trustee and the Purchasers (as defined in the Trust Agreement) are parties to a Participation Agreement dated as of July 15, 1981 (the "Participation Agreement"); and

WHEREAS the Owner will assign this Lease to the Trustee, as security for performance by the Owner of its obligations under the Trust Agreement, pursuant to an Assignment of Lease and Agreement dated as of the date hereof (the "Lease Assignment") and the Lessee will consent to the Lease Assignment pursuant to a Lessee's Consent and Agreement (the "Consent");

NOW, THEREFORE, in consideration of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions.

§ 1. Net Lease. This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent or additional rent, or setoff against or recoupment or reduction of rent or additional rent, including, but not limited to, abatements, setoffs, reductions or recoupments due or alleged to be due by reason of any past, present or future claims or counterclaims of the Lessee against the Lessor under this Lease or the Participation Agreement or otherwise. The Lessee's obligations hereunder, including but not limited to its obligations to pay all rentals, additional rentals and other amounts hereunder, shall be absolute and unconditional under any and all circumstances, and, except as otherwise expressly provided herein, this Lease shall not terminate, nor shall the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of (i) any defect, whether latent or patent, in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, (ii) any liens, encumbrances or rights of others with respect to any of the Units, (iii) the prohibition of or other restriction against the Lessee's use of all or any of the Units, (iv) the interference with such use by any person, (v) the invalidity or unenforceability or lack of due authorization of this Lease, (vi) any insolvency of, or any bankruptcy, reorganization or similar proceeding against the Lessee, or (vii) any other cause whether similar or dissimilar to the foregoing, whether arising under this Lease, any other Document (as defined in the Participation Agreement) or otherwise, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall

not seek to recover all or any part of such payment from the Lessor for any reason whatsoever except as to the amount of any payment paid by the Lessee which is in excess of the amount required to be paid by the Lessee pursuant to the provisions of this Lease.

§ 2. Delivery and Acceptance of Units. Each delivery of a Unit to the Trustee under the Trust Agreement shall be deemed to be a delivery to the Lessee under this Lease at the point or points within the United States of America at which such Unit is delivered to the Trustee under the Trust Agreement. Upon such delivery, the Lessee will cause an employee of the Lessee to inspect the same and, if such Unit is found to be acceptable, to accept delivery of such Unit and execute and deliver to the Lessor a certificate of inspection and acceptance (the "Certificate of Inspection and Acceptance") substantially in the form annexed hereto as Schedule B, whereupon, except as provided in the next sentence hereof, such Unit shall be deemed to have been delivered to and accepted by the Lessee hereunder and shall be subject thereafter to all the terms and conditions of this Lease. The delivery, inspection and acceptance hereunder of any Unit of Equipment excluded from the Trust Agreement pursuant to Section 4.01 thereof shall be null and void and ineffective to subject such Unit to this Lease or to constitute acceptance thereof on behalf of the Lessor for any purpose whatsoever. Upon the acceptance of all Units to be subject to this Lease, Lessor and Lessee will enter into an amendment to this Lease setting forth the specific identifying numbers of the Units if this Lease shall not set forth the same.

§ 3. Rentals. (a) The Lessee agrees to pay to the Lessor, as rental for each Unit, one interim rental payment and 20 consecutive semiannual rental payments, in arrears. The interim rental payment is payable on February 1, 1982, and the 20 semiannual rental payments are payable on February 1 and August 1 in each year, commencing August 1, 1982, to and including February 1, 1992 (each of such 21 consecutive dates being hereinafter called a "Rental Payment Date"). Each semiannual rental payment shall be in an amount equal to the product of the Purchase Price (as defined in the Trust Agreement) of each Unit then subject to this Lease and the percentage set forth in Schedule C annexed hereto opposite each Rental Payment Date. The interim rental payment shall be in an amount equal to .0425% of the Purchase

Price of each Unit subject to this Lease on the date of such payment for each day elapsed from the Closing Date for each such Unit to and including February 1, 1982. The Lessee also agrees to pay to the Lessor, as rental for each Unit subject to this Lease, the amount, if any, required to enable the Lessor to make the payments required by Sections 5.03(a) and (c) of the Trust Agreement.

(b) If any of the Rental Payment Dates referred to above is not a business day, the rental payment otherwise payable on such date shall be payable on the next business day succeeding such date. The term "business day" as used herein means a calendar day, excluding Saturdays, Sundays and any other day on which banking institutions in Chicago, Illinois, or Hartford, Connecticut, are authorized or obligated to remain closed.

(c) The Lessor irrevocably instructs the Lessee to make all the payments provided for in this Lease, including, but not limited to, the payments provided for in this § 3 and in § 7 hereof at the principal office of the Trustee, for the account of the Lessor in care of the Trustee, with instructions to the Trustee first, to apply such payments to satisfy the obligations of the Lessor under the Trust Agreement, and second, so long as no event of default or event which with the lapse of time and/or demand provided for in the Trust Agreement could constitute an event of default under the Trust Agreement shall have occurred and be continuing, to pay any balance promptly to the Lessor at such place as the Lessor shall specify in writing. The Lessee agrees to make each payment provided for herein as contemplated by this paragraph in Federal or other funds immediately available to the Trustee by 11 a.m., Eastern time, on the date such payment is due.

§ 4. Term of Lease. The term of this Lease as to each Unit shall begin on the date of delivery and acceptance of such Unit hereunder and, subject to the provisions of §§ 7 and 10 hereof, shall terminate on the final Rental Payment Date. The obligations of the Lessee hereunder (including, but not limited to, the obligations under §§ 3, 6, 7, 9 and 13 hereof) shall survive the expiration or termination of the term of this Lease and the full payment of all amounts payable under this Lease.

Notwithstanding anything to the contrary contained herein, all rights and obligations of the Lessee under this Lease and in and to the Units are subject to the rights of the Trustee under the Trust Agreement. If an Event of Default should occur under the Trust Agreement, the Trustee may terminate this Lease (or rescind its termination), all as provided therein.

§ 5. Identification Marks. The Lessee will cause each Unit to be kept numbered with the identification number set forth in Schedule A hereto, and will keep and maintain plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the words "OWNERSHIP SUBJECT TO A SECURITY AGREEMENT FILED WITH THE INTERSTATE COMMERCE COMMISSION", with appropriate changes thereof as from time to time may be required by law, in the opinion of the Trustee and the Lessor, in order to protect the Lessor's and the Trustee's title to and interest in such Unit and the rights of the Lessor under this Lease and the rights of the Trustee under the Trust Agreement. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such words shall have been so marked and will replace promptly any such markings which may be removed, defaced, obliterated or destroyed. The Lessee will not change the identification number of any Unit unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with the Trustee and the Lessor and duly filed and deposited by the Lessee in all public offices where this Lease and the Trust Agreement shall have been filed and deposited, and all required publications, if any, made; and (ii) the Lessee shall have furnished the Trustee and the Lessor an opinion of counsel to the effect that such statement has been so filed, deposited and published, that such filing, deposit and publication will protect the Trustee's and the Lessor's rights in such Units and that no other filing, deposit, publication or giving of notice with or to any Federal, state or local government or agency thereof is necessary to protect the rights of the Trustee and the Lessor in such Units.

Except as provided in the immediately preceding paragraph, the Lessee will not allow the name of any person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership; provided, however, that the Units may be lettered with the names, initials or other insignia customarily used by the Lessee or its affiliates.

§ 6. Taxes. (a) All payments to be made by the Lessee hereunder will be free of expense to the Lessor and its assignees (including the Trustee) from collection or other charges and will be free of expense to the Lessor and its assignees (including the Trustee) with respect to the amount of any Impositions (as hereinafter defined), all of which charges and Impositions the Lessee assumes and agrees to pay on demand in addition to the other payments to be made by the Lessee hereunder. The term "Impositions" means all Federal, state, local or foreign taxes, license fees, assessments and documentary stamp taxes, and any charges, fines or penalties in connection therewith, now or hereafter levied or imposed upon or in connection with or measured by any Unit or this Lease or any rentals or other sums payable hereunder, or any sale, rental, possession, use, shipment, delivery, nondelivery, rejection, transfer of title, return or other disposition of the Equipment or any interest therein, under the terms of the Participation Agreement, the Lease Assignment, this Agreement or the Trust Agreement, except: (i) any tax of the United States of America imposed on or measured by net income or excess profits (other than the net income or excess profits of the Lessee), or any value added or gross receipts tax imposed in lieu of such tax; (ii) any state franchise tax which is not based on or measured by net income; (iii) any taxes of a state or political subdivision thereof computed other than on net income and imposed in substitution for any tax referred to in clause (ii) above; and (iv) any foreign income tax to the extent that the recipient of any payments made hereunder shall receive credit therefor against its United States Federal income tax liability; but including such of the foregoing as are levied or imposed in substitution for, or relieve Lessee from the payment of, such taxes, fees, assessments, charges, fines or penalties which it would otherwise be obligated to pay or reimburse as provided in this § 6. The Lessee will also pay promptly all Impositions which may be imposed upon any Unit or for the use or operation thereof or upon the receipts or earnings arising therefrom, and will keep at all times all and every part of such Unit free and clear of all Impositions which might in any way affect the title of the Lessor or the interest of the Lessor or result in a lien upon any such Unit; provided, however, that the Lessee shall be under no obligation to pay any Imposition of any kind so long as such Imposition remains unpaid and the Lessee shall be contesting in good faith such Imposition in its own name and by appropriate legal or administrative proceedings, or the Lessor shall be required

to contest such Impositions as provided in this § 6, and the nonpayment thereof, in the reasonable opinion of such party, shall not adversely affect the title, property or rights of the Lessor hereunder or the Lessor or the Trustee under the Trust Agreement. The Lessee shall give such party notice of such contest brought in the Lessee's name within 30 days after institution thereof, and such party will provide such information as may be reasonably requested by the Lessee in furtherance of such contest. If any Imposition shall have been charged or levied against such party directly and paid by such party, the Lessee shall pay such party on presentation of an invoice therefor, if such party shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for such party) or if the Lessee shall have approved the payment thereof, and such party agrees to give the Lessee written notice in a timely manner after it first obtains knowledge of the making of such charge or levy, and agrees to take such other action as may reasonably be requested by the Lessee for the purpose of contesting payment or obtaining refund of all or a portion of such Imposition, as hereinafter provided in this § 6.

In the event that the Lessor shall become obligated to make any payment to the Trustee or otherwise pursuant to any corresponding provision of the Trust Agreement not covered by the foregoing paragraph of this § 6, the Lessee shall pay such additional amounts (which shall also be deemed Impositions hereunder) to the Lessor to fulfill completely its obligations pursuant to said provision; provided, however, that the Lessor shall have contested (if required to do so under this § 6) such impositions in good faith and to the extent permitted under the Trust Agreement.

(b) In the event any returns, statements or reports with respect to Impositions are required to be made, the Lessee will make such returns, statements and reports in such manner as to show the interest of the Lessor and the Trustee in such Units, as shall be satisfactory to the Lessor and the Trustee or, where not so permitted, will notify the Lessor and the Trustee of such requirement and will prepare and deliver such reports to the Lessor and the Trustee within a reasonable period of time prior to the time such reports are to be filed in such manner as shall be satisfactory to the Lessor and the Trustee.

(c) In the event that, with respect to any period during the continuance of this Lease, the Lessee becomes liable for the payment or reimbursement of any Imposition pursuant to this § 6, such liability shall continue, notwithstanding the expiration or termination of this Lease, until all such Impositions are paid or reimbursed by the Lessee.

(d) If claim is made against any indemnified party for any Impositions indemnified against under this § 6, such party shall promptly notify the Lessee. If such claim is made against the Lessor and if reasonably requested by the Lessee in writing and so long as the Lessee is prohibited or impaired from doing so in its own name, the Lessor shall, upon receipt of indemnity satisfactory to it for all costs, expenses, losses, legal and accountants' fees and disbursements, penalties, fines, additions to tax and interest, and at the expense of the Lessee, contest in good faith the validity, applicability or amount of such Impositions by (a) resisting payment thereof if legally permissible, (b) not paying the same except under protest, if protest is necessary and proper, or (c) if payment is made, using reasonable efforts to obtain a refund thereof in appropriate administrative or judicial proceedings, or both. If the Lessor shall obtain a refund of all or any part of such Impositions previously reimbursed by the Lessee in connection with any such contest or an amount representing interest thereon applicable to the amount paid by the Lessee and the period of such payment, the Lessor shall pay to the Lessee the amount of such refund or interest net of expenses, but only if no Event of Default, or event which with notice or lapse of time or both would constitute an Event of Default, shall have occurred and be continuing.

(e) The Lessee shall, whenever reasonably requested by the Lessor, submit to the Lessor copies of returns, statements, reports, billings and remittances, or furnish other evidence satisfactory to such party of the Lessee's performance of its duties under this § 6. The Lessee shall also furnish promptly upon request such data as the Lessor reasonably may require to permit the Lessor's compliance with the requirements of taxing jurisdictions, including data available to the Lessee relating to use of any Unit outside the United States.

(f) The amount which the Lessee shall be required to pay with respect to any Imposition which is subject to

indemnification under this § 6 shall be an amount sufficient to restore the indemnified party to the same net after-tax rate of return, after considering the effect of such payment on its United States Federal income taxes and state and city income taxes or franchise taxes based on net income, that such indemnified party would have been in had such Imposition not been imposed.

(g) The foregoing indemnities by the Lessee shall not constitute a guarantee by the Lessee or any subsidiary or affiliated corporation of the Lessee of the payment of any installments of principal or interest payable under the Trust Agreement, or a guarantee of any residual value of the Units following the expiration of the term hereof as such term may or may not be renewed.

§ 7. Maintenance; Casualty Occurrences; Insurance. The Lessee at its own expense will maintain and service each Unit (including any parts installed or replacements made to any unit and considered an Addition [as defined in § 9 hereof] hereunder) so that each Unit will remain (a) in good operating order, repair and condition, reasonable wear and tear excepted, (b) in compliance with any and all applicable laws and regulations and (c) at a level of maintenance comparable to that of all other owned or leased equipment of the same character in its fleet.

In the event that any Unit shall be or become worn out, lost, stolen, destroyed or, in the good faith and reasonable opinion of the Lessee, irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise by the United States Government for a stated period which shall exceed the then remaining term of this Lease or for an indefinite period, but only when such period shall exceed the term hereof, or by any other government or governmental entity resulting in loss of possession by the Lessee for a period of 90 consecutive days (such occurrences being hereinafter called "Casualty Occurrences"), prior to the return of such Unit in the manner set forth in § 13 hereof, the Lessee shall promptly (but in any event within 30 days after the Lessee shall have notice of, or shall have made a determination of, such Casualty Occurrence) and fully notify the Lessor and the Trustee with respect thereto. On the Rental Payment Date next succeeding such notice (the "Casualty Payment Date"), the Lessee shall pay to the Lessor an amount equal to the rental payment or payments in respect of such Unit due and payable on the Casualty Payment Date plus a sum equal to the Casualty Value (as hereinafter defined) of such

Unit as of the Casualty Payment Date. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft, complete destruction or permanent return to the Builder of such Unit) the Lessor shall be entitled to recover possession of such Unit.

The "Casualty Value" of each Unit as of any Rental Payment Date shall be an amount equal to that percentage of the Purchase Price of such Unit as is set forth in Schedule C hereto opposite such date; provided, however, that the Casualty Value percentages with respect to any Unit will never be less than those percentages required to enable the Lessor to satisfy its obligations to pay or prepay with respect to such Unit the portion of the Trust Certificates allocable thereto and interest thereon.

Whenever any Unit shall suffer a Casualty Occurrence after the final payment of rent in respect thereof is due pursuant to § 3 hereof and before (a) such Unit shall have been returned in the manner provided in § 13 hereof, and (b) the storage period therein provided with respect to such Unit shall have expired, the Lessee shall promptly (as provided above) and fully notify the Lessor with respect thereto and pay to the Lessor an amount equal to the Casualty Value of such Unit, which shall be an amount equal to 20% of the Purchase Price of such Unit. Upon the making of any such payment by the Lessee in respect of any Unit (except in the case of the loss, theft or complete destruction of such Unit) the Lessor shall be entitled to recover possession of such Unit.

In the event of the requisition (other than a requisition which constitutes a Casualty Occurrence) for use by the United States Government or by any other government or governmental entity (hereinafter collectively called the "Government") of any Unit during the term of this Lease, all of the Lessee's obligations (including, without limitation, the obligation to pay rent and other sums hereunder) under this Lease with respect to such Unit shall continue to the same extent as if such requisition had not occurred, except that if such Unit is returned by the Government at any time after the end of the term of this Lease, the Lessee shall be obligated to return such Unit to the Lessor pursuant to § 11 or 13 hereof, as the case may be, promptly upon such return by the Government rather than at the end of the term of this Lease, but the Lessee shall in all other respects comply with the provisions of said § 11 or 13, as

the case may be, with respect to such Unit. All payments received by the Lessor or the Lessee from the Government for the use of such Unit during the term of this Lease shall be paid over to, or retained by, the Lessee, 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; and all payments received by the Lessor or the Lessee from the Government for the use of such Unit after the term of this Lease shall be paid over to, or retained by, the Lessor.

The Lessor hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence, or any component thereof, at the best price obtainable on an "as is, where is" basis and the Lessee shall notify the Lessor and the Owner prior to any such sale. Provided that the Lessee has previously paid the Casualty Value to the Lessor 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, the Lessee shall be entitled to the proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit plus the Lessee's out-of-pocket expenses in connection with such sale and shall pay any excess to the Lessor. The Lessee will pay all costs and expenses in connection with the sale of any Unit pursuant to a Casualty Occurrence.

Except as hereinabove in this § 7 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit from and after delivery and acceptance thereof by the Lessee hereunder.

The Lessee will, at all times after delivery and acceptance of each Unit and prior to the return of the Equipment to the Lessor, at its own expense, cause to be carried and maintained (and shall furnish to the Lessor and the Trustee a certificate or verification from the Lessee's insurance broker evidencing) property insurance and public liability insurance in respect of the Units at the time subject hereto, in amounts (subject to customary deductibles) and against risks customarily insured against by railroad companies in respect of similar equipment and, in any event, comparable in amounts and against risks customarily insured against by the Lessee from time to time in respect of similar equipment owned by it. Any policies of insurance carried in accordance with this paragraph shall name the

Lessor and the Trustee as additional insureds as their respective interests may appear and shall provide for 30 days prior written notice to the Lessor and the Trustee of any material change or cancelation. If the Lessor shall receive any property insurance proceeds or condemnation payments in respect of a Unit suffering a Casualty Occurrence, the Lessor shall, subject to the Lessee's having made payment of the Casualty Value in respect of such Unit 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 Lessee up to an amount equal to the Casualty Value with respect to a Unit paid by the Lessee and any balance of such proceeds or condemnation payments shall remain the property of the Lessor. 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, all insurance proceeds received by the Lessor from the Lessee's property insurance coverage in respect of any Unit not suffering a Casualty Occurrence shall be paid to the Lessee upon proof satisfactory to the Lessor that any damage to such Unit in respect of which such proceeds were paid has been fully repaired so as to comply with the first paragraph of this Section.

§ 8. Reports and Inspection. On or before April 30 in each year, commencing with the calendar year 1982, the Lessee will furnish to the Lessor and the Trustee (a) an accurate statement (i) setting forth as at the preceding December 31 the amount, description and identifying numbers of all Units then leased hereunder and covered by the Trust Agreement, the amount, description and identifying numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year or are then undergoing repairs (other than running repairs) or then withdrawn from use pending such repairs (other than running repairs) and such other information regarding the condition and state of repair of the Units as the Lessor or the Trustee may reasonably request and (ii) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and markings required by § 5 hereof and by the Trust Agreement have been preserved or replaced and (b) a certification or verification of insurance coverage from the Lessee's independent broker stating the amounts of insurance in effect with respect to the Equipment pursuant to § 7 hereof and the amount of deductible. The Lessor, at its sole cost and expense, shall have the right by its agents, to inspect the

Units and the Lessee's records with respect thereto at such reasonable times as the Lessor may request during the continuance of this Lease, but the Lessor shall have no obligation to do so.

The Lessee shall promptly notify the Lessor and the Trustee of (a) any occurrence of an Event of Default or other event which after notice or lapse of time or both would become an Event of Default, specifying such Event of Default and all such events and the nature and status thereof and (b) any material changes or any material proposed changes of which the Lessee has knowledge in its insurance coverage in effect with respect to the Equipment pursuant to § 7 hereof.

§ 9. Disclaimer of Warranties; Compliance with Laws and Rules; Indemnification. THE LESSOR NEITHER MAKES, HAS MADE NOR SHALL BE DEEMED TO MAKE, ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS OR ANY COMPONENT DELIVERED TO THE LESSEE HEREUNDER, AND THE LESSOR MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE OR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, OR AS TO THE LESSEE'S RIGHT TO QUIET ENJOYMENT THEREOF (EXCEPT AS TO ACTS OF THE LESSOR), OR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT OR ANY COMPONENT, EITHER UPON DELIVERY THEREOF TO THE LESSEE OR OTHERWISE, it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee. The Lessor shall have no responsibility or liability to the Lessee or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Units or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of any Units or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, subleasing, servicing, maintenance, repair, improvement or replacement of any Units. The Lessee's delivery of a Certificate of Inspection and Acceptance shall be conclusive evidence as between the Lessee and the Lessor that the Units described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

The Lessee agrees, for the benefit of the Lessor and the Trustee, at all times to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each Unit) with all applicable laws of the jurisdictions in which operations involving the Units may extend, with the interchange rules of the Association of American Railroads (which term shall include any successor organization thereof), if applicable, and with all lawful rules of the United States Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, maintenance, operation or use of the Units (all such laws and rules to such extent being hereinafter called the "Applicable Laws"), and in the event that, prior to the expiration of this Lease or any renewal thereof, the Applicable Laws require any alteration, replacement, addition or modification of or to any part on any Unit, the Lessee will conform therewith at its own expense; provided, however, that the Lessee may, at its own expense, in good faith, contest the validity or application of any Applicable Law in any reasonable manner which does not, in the reasonable opinion of the Lessee, adversely affect the property or rights of the Lessor or the Trustee under this Lease or under the Trust Agreement. The Lessee's obligations under this paragraph subsequent to the expiration of the lease term or the extended term shall be limited solely to maintenance of the Units in accordance with Applicable Laws prior to and as of the date of the expiration of the Lease. The Lessee, at its own cost and expense, may furnish other additions, modifications and improvements, whether or not removable (including, without limitation, any special devices, assemblies or racks at any time attached or affixed to any Unit, the cost of which is not included in the Purchase Price of such Unit and which are not required for the operation or use of such Unit by the Applicable Laws) (collectively "Additions"), to the Units as the Lessee may deem desirable in the proper conduct of its business so long as such Additions shall not be inconsistent with the continuing operation of the Units, shall not diminish the value, utility or condition of the Units below the value, utility and condition thereof immediately prior to the making of such Additions, assuming the Units were then in the condition required to be maintained by the terms of this Lease, and shall not render the Units ineligible for interchange service under the rules of the Association of American Railroads. Title to all Parts (as hereinbelow defined) incor-

porated in or installed as part of the Units shall without further act vest in the Lessor and be subject to a valid first lien under the Trust Agreement in the following cases: (i) such Part is in replacement of or in substitution for, and not in addition to, any Part originally incorporated in or installed as part of a Unit at the time of the acceptance thereof hereunder or any Part in replacement of, or in substitution for, any such original Part; (ii) such Part is required to be incorporated in or installed as part of the Units pursuant to the provisions of the first paragraph of § 7 hereof or the terms of the first sentence of this paragraph; or (iii) such Part cannot be readily removed from the Unit to which it relates without material damage thereto and without diminishing or impairing the value or utility which such Unit shall have had at such time had such alteration or addition not occurred. In all other cases, if no Event of Default, or event which with notice or lapse of time or both would constitute an Event of Default, shall have occurred and be continuing, title to Parts incorporated in or installed as parts of the Units as a result of such alterations, replacements, modifications or additions shall vest in the Lessee and may be removed by the Lessee at any time during the term of this Lease and prior to the renewal thereof and prior to the return of the Units to the Lessor pursuant to § 13 hereof. The term "Part" for the purposes of this paragraph shall be defined to include any appliance, part, instrument, accessory, furnishing or other equipment of any nature which may from time to time be incorporated in or installed as part of any Unit.

The Lessee agrees to pay, and to indemnify, protect and hold harmless the Lessor and the Trustee, in both its individual capacity and as Trustee, from and against, all claims, causes of action, losses, damages, liabilities, expenses (including fees and expenses of attorneys) and costs (including claims, causes of action, losses, damages, liabilities, expenses and costs, both for strict liability in tort, and for negligence, either active or passive, which shall not have occurred because of a wrongful act of such indemnified person) incurred in any manner by or for the account of any of them (i) relating to any Unit, including the construction, purchase, delivery, acceptance, rejection, ownership, sale, leasing, return or storage of any Unit or as a result of the use, maintenance, repair, replacement, operation or condition thereof (whether defects are latent or discoverable by the Lessee or any indemnified party), (ii) by reason or as the result of any act of omission (whether negligent or otherwise) of the Lessee, for itself or as agent or attorney-

in-fact for the Lessor hereunder, or any act or omission of the Lessor or (iii) as a result of claims for patent, trademark or copyright infringements (all of which matters indemnified against pursuant to this sentence are collectively called the "Indemnified Matters"), except for any matter described above caused by any act or omission of the Lessor not related to transactions contemplated by the Documents (as defined in the Participation Agreement) or caused by an act or omission of an indemnified person in violation of the provisions of its Documents. The amount the Lessee shall be required to pay with respect to any Indemnified Matter shall include a payment to the indemnified person sufficient to restore such person to the same position, after considering the effect of such payment on its United States Federal income taxes and state and local income taxes or franchise taxes based on net income, that such indemnified person would have been in had the Indemnified Matter not been incurred. The Lessee shall be obligated under this § 9, irrespective of whether any indemnified person shall also be indemnified with respect to the same matter under any other agreement by any other person, and the indemnified person seeking to enforce its indemnification hereunder may proceed directly against the Lessee under this § 9 without first resorting to any such other rights of indemnification.

The Lessee further agrees to indemnify, protect and hold harmless the Lessor (both individually and in its fiduciary capacity) and Trustee, as a third-party beneficiary hereof, from and against any and all liabilities, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Trustee or the Lessor because of the use in or about the construction or operation of any of the Units of any article or material specified by the Lessee or of any design, system, process, formula or combination specified by the Lessee.

The Lessee shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of any or all of the Units.

The Lessee shall prepare and deliver to the Lessor within a reasonable time prior to the required filing date (or, to the extent permissible, file on behalf of the Lessor or Trustee) any and all reports (other than tax returns, except as otherwise provided in § 6 hereof) to be filed by the Lessor or Trustee with any Federal, state or other regulatory authority by reason of the ownership by

the Lessor or the Trustee of the Units, or the leasing thereof to the Lessee.

None of the indemnities in this § 9 shall be deemed to create any rights of subrogation, from or under any indemnified person, in any insurer or third party against the Lessee or the Lessor therefor, whether because of any claim paid or defense provided for the benefit thereof or otherwise. The foregoing indemnities by the Lessee shall not constitute a guarantee by the Lessee of the payment of any installments of principal or interest payable under the Trust Agreement or a guarantee of the residual value of the Units. The indemnities contained in this § 9 shall survive the expiration or termination of this Lease and return of the Units as provided in § 13 hereof with respect to all events, facts, conditions or other circumstances occurring or existing prior to such expiration or termination and are expressly made for the benefit of, and shall be enforceable by, any indemnified person.

Upon the payment in full of any indemnities as contained in this § 9 by the Lessee, and provided that no Event of Default (or other event which with lapse of time or notice or both would constitute an Event of Default) shall have occurred and be continuing (i) the Lessee shall be subrogated to any right of such indemnified person (except against another indemnified person) in respect of the matter against which indemnity has been given and (ii) any payments received by such indemnified person from any person (except the Lessee) as a result of any matter with respect to which such indemnified person has been indemnified by the Lessee pursuant to this § 9 shall be paid over to the Lessee to the extent necessary to reimburse the Lessee for indemnification payments previously made in respect of such matter.

§ 10. Default. If, during the continuance of this Lease, one or more of the following events (each such event being herein sometimes called an "Event of Default") shall occur:

(A) default shall be made in payment of any amount provided for in § 3 or § 7 hereof, and such default shall continue for two Business Days;

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

interest herein, or of the right to possession of the Units, or any thereof, and the Lessee fails to secure a reassignment or retransfer to the Lessee of such Lease, interest or right for more than 30 days after the earlier of (a) receipt of demand in writing from the Lessor, or (b) any executive officer of the Lessee or any other officer of the Lessee having responsibility for financial, accounting or operating matters (a "Lessee Officer") has actual knowledge of such assignment or transfer;

(C) default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein or in the Consent or in the Participation Agreement, and such default shall continue for more than 30 days after the earlier of (a) notice from the Lessor or the Trustee to the Lessee specifying the default and demanding that the same be remedied or (b) a Lessee Officer has actual knowledge of such default;

(D) a petition for reorganization under Title 11 of the United States Code, as now constituted or as may hereafter be amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease and the Consent shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees, within 60 days after such petition shall have been filed and otherwise in accordance with the provisions of 11 U.S.C. § 1168, or any successor provision, as the same may hereafter be amended; or

(E) any other proceeding shall be commenced by or against the Lessee for any relief which includes, or might result in, any modification of the obligations of the Lessee hereunder, under any bankruptcy or

insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of the Lessee hereunder or under the Consent), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease and the Consent shall not have been and shall not continue to have been duly assumed in writing pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Lessee, or for the property of the Lessee, in connection with any such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees or receiver or receivers, within 60 days after such proceedings shall have been commenced;

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

(a) proceed by appropriate court action or actions either at law or in equity to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof including net after-tax losses of Federal and state income tax benefits to which the Lessor would otherwise be entitled under this Lease; or

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as herein provided; and thereupon the Lessor may by its agents, subject to compliance with all mandatory requirements of law, enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any such Units and thenceforth hold, possess, sell, operate, lease to others and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever and without any duty to account to

the Lessee for such action or inaction or for any proceeds arising therefrom; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period and also to recover forthwith from the Lessee as damages for loss of the bargain and not as a penalty whichever of the following amounts the Lessor, in its sole discretion, shall specify: (x) a sum, with respect to each Unit, equal to the excess of the present value, at the time of such termination, of the entire unpaid balance of all rental for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over, if such Unit shall have been sold, the net proceeds of sale, or, if such Unit shall not have been sold, the then present value of the rental which the Lessor reasonably estimates to be obtainable for the Unit during such period, such present value to be computed in each case on the basis of a 12% per annum discount, compounded semiannually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated; or (y) an amount equal to the excess, if any, of the Casualty Value as of the Rental Payment Date on or next preceding the date of termination over the amount the Lessor reasonably estimates to be the sale value of such Unit at such time; provided, however, that in the event the Lessor shall have sold any Unit, the Lessor, in lieu of collecting any amounts payable to the Lessor by the Lessee pursuant to the preceding clauses (x) or (y) of this part (b) with respect to such Unit, may, if it shall so elect, demand that the Lessee pay the Lessor, and the Lessee shall pay to the Lessor on the date of such sale (in addition to the amounts payable pursuant to §§ 6 and 9 hereof) as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty Value for such Unit, as of the Rental Payment Date on or next preceding the date of termination, over the net proceeds of such sale.

In addition, the Lessee shall be liable, except as otherwise provided above, for any and all unpaid amounts due hereunder before, during or after the exercise of any of the foregoing remedies, for all damages and expenses sustained by reason of Lessee's default or any covenant, representation or warranty hereunder other than for the payment of rent, and for all reasonable attorneys' fees and other costs and expenses incurred by reason of the occurrence of any Event of Default or the exercise of the Lessor's remedies with respect thereto, including all costs and expenses incurred in connection with the return of any Unit and in connection with any suit to enforce Lessor's rights hereunder.

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative and may be exercised concurrently or consecutively, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is not, at the time in question, prohibited by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make such payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf. The Lessee hereby waives any and all claims against the Lessor and the Trustee and their agent or agents for damages of whatever nature in connection with any retaking of any Unit in any reasonable manner. The Lessor and the Lessee agree that the Lessor shall be entitled to all rights (such rights being fundamental to the willingness of the Lessor to enter into this Lease) provided for in 11 U.S.C. § 1168 or any comparable provision of any amendment thereto, or of any other bankruptcy act, so that the Lessor shall have the right to take possession of the Equipment upon an Event of Default under this Lease regardless of whether the Lessee is in reorganization, subject to the provisions of 11 U.S.C. § 1168 or any such comparable provision.

No failure by the Lessor to exercise, and no delay by the Lessor in exercising, any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege by the Lessor preclude any other or further

exercise thereof, or the exercise of any other right, power or privilege.

If the Lessee fails to perform or comply with any agreement, covenant or condition contained in this Lease, and such nonperformance or noncompliance could, with the lapse of time and/or demand or failure to take action, result in an Event of Default under clause (A) or (C) of this § 10, the Lessor may (but shall not be required to), upon notice to the Lessee, itself perform or comply with such agreement, covenant or condition and the amount of the reasonable costs and expenses of the Lessor incurred in connection with such performance or compliance, together with interest on such amounts at the rate of 16-1/2% per annum, or if such rate is not legally enforceable then at the highest legally enforceable rate, shall be payable to the Lessor by the Lessee upon demand. No such performance or compliance by the Lessor shall be deemed a waiver of the rights and remedies of the Lessor against the Lessee hereunder or be deemed to cure a default by the Lessee hereunder.

§ 11. Return of Units upon Default. If this Lease shall terminate pursuant to § 10 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor. Except as hereinafter provided, each Unit so delivered shall be in the condition required by the first sentence of § 7 hereof. For the purpose of delivering possession, the Lessee shall:

(a) forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any Unit or Units have been interchanged or which may have possession thereof to return the Unit or Units) place such Units upon such storage tracks of the Lessee or any of its affiliates as the Lessor reasonably may designate;

(b) permit the Lessor to store such Units on such tracks at the risk of the Lessee without charge for insurance (which shall conform to the provisions of § 7 hereof), rent or storage until such Units have been sold, leased or otherwise disposed of by the Lessor but in no event later than the later of (i) 30 days after the payment in full of all indebtedness and other sums due under the Trust Agreement, and (ii) a

storage period of 120 days following notification by the Lessee to the Lessor that 75% of the Units have been delivered for storage (or with respect to any Unit not delivered at the time of such notification, 120 days following notification from the Lessee to the Lessor that such Unit has been delivered for storage); and

(c) transport the same to any reasonable place, without charge (i) on the lines of railroad operated by the Lessee or any of its affiliates, or (ii) for interchange to any connecting carrier for shipment, all as directed by the Lessor.

The assembling, delivery, storage, insurance and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and, upon application to any court of equity having jurisdiction, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will, at its own expense, maintain and keep the Equipment in the condition required by the first sentence of § 7 hereof and will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser, lessee or user of any such Unit, to inspect the same. Anything to the contrary contained in this § 11 notwithstanding, the Lessee shall have no obligation under clause (b) or clause (c) of the first sentence of § 7 hereof after the later of (i) the payment in full of all indebtedness and all other sums due under the Trust Agreement and (ii) the earlier of the Lessor's disposition of the Units and the scheduled date of expiration of any term of this Lease. At the request, expense and risk of the Lessor, the Lessee will continue to store any Unit beyond the storage period determined pursuant to clause (b) of this § 11, but such storage shall be at the risk and expense of the Lessor. All rent and per diem charges earned in respect of the Units after the date of termination of this Lease shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor.

Without in any way limiting the foregoing obligations of the Lessee under this § 11, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney-in-fact of the Lessee, with full power and authority, at

any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

§ 12. Assignment; Possession and Use; Liens.

This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. All the rights of the Lessor hereunder shall inure to the benefit of the Lessor's successors and assigns.

So long as no Event of Default exists hereunder or under the Trust Agreement, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease and, without the prior written consent of the Lessor and the Trustee, the Lessee may sublease (which sublease by its terms shall be subject to the rights and remedies of the Lessor and the Trustee hereunder) the Units to, or permit their use by, a user incorporated in the United States of America (or any State thereof or the District of Columbia), upon lines of railroad owned or operated by the Lessee or such user or by a railroad company or companies incorporated in the United States of America (or any State thereof or the District of Columbia), or over which the Lessee, such user, or such railroad company or companies have trackage rights or rights for operation of their trains or over which their equipment is regularly operated pursuant to contract, and upon the lines of railroad of connecting and other carriers in the usual interchange of traffic or in through or run-through service, but only upon and subject to all the terms and conditions of this Lease; provided, however, that the Trustee's and the Lessor's consent, not to be unreasonably withheld, must be obtained for any sublease that, taken together with all renewal terms provided for therein, would be longer than six months; provided further, however, that the Lessee shall not sublease or permit the sublease or use of any Unit to service involving operation or maintenance outside the United States of America except that occasional service in Canada shall be permitted so long as such service in Canada does not involve regular operation and maintenance outside the United States of America; provided further, however, that no such sublease shall be permitted without the prior written consent of the Lessor and the Trustee if, at the time of entering into or renewing such sublease, there has been a material adverse change in the properties,

business or condition (financial or otherwise) of the Lessee from December 31, 1980. No such assignment or sublease shall relieve the Lessee of its obligations hereunder which shall be and remain those of a principal and not a surety.

Nothing in this § 12 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any railroad corporation incorporated under the laws of the United States of America or any state thereof or the District of Columbia (which shall have duly assumed the obligations of the Lessee hereunder) into or with which the Lessee shall have become merged or consolidated or which shall have acquired or leased all or substantially all the lines of railroad of the Lessee; provided, however, that such assignee, lessee or transferee will not, upon the effectiveness of such merger, consolidation, lease or acquisition be in default under any provision of this Lease and that such acquisition or lease of railroad lines of the Lessee shall not alter in any way the Lessee's obligation to the Lessor and Trustee hereunder which shall be and remain those of a principal and not a surety; and provided further, however, that the net worth of such assignee, lessee or transferee immediately after such merger, consolidation, lease or acquisition, shall not be less than that of Lessee immediately before such merger, consolidation, lease or acquisition. The consent of Lessor and the Trustee must be obtained for any other assignment or transfer by Lessee, and any such assignment or transfer made without such consent shall be void. No such other assignment or transfer by Lessee shall relieve Lessee of its obligations hereunder, which shall be and remain those of a principal and not a surety. Any foreclosure by a secured party on the rights of the Lessee, as lessee, under the Lease in and to the Equipment shall be an unauthorized assignment or transfer of the Lease for purposes of § 10(B) hereof.

The Lessee, at its own expense, will pay, or satisfy and discharge: (i) any claim arising against, through or under the Lessee and its successors and assigns which, if unpaid, might constitute or become a lien, charge, security interest or other encumbrance upon or with respect to any Unit (unless otherwise expressly permitted by this Lease); (ii) any lien, charge or other encumbrance which may be levied against or imposed upon any Unit as a result of the failure of the Lessee to perform or observe any of its covenants under this Lease; and (iii) any other lien, charge or other encumbrance which arises by virtue of

claims against, through or under any party other than the Lessor (except any such claim caused by the negligence of the Lessor) or the Trustee. Such obligations shall survive the expiration or earlier termination of this Lease and the return of the Units as to all such claims, liens, charges, security interests, or other encumbrances arising prior to such expiration or termination and return. The foregoing covenant, however, will not be breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent. The Lessee, however, shall be under no obligation to discharge any such lien, charge, security interest or other encumbrance so long as it shall be contesting the same in good faith and by appropriate legal proceedings, and the failure to discharge the same shall not, in the opinion of the Lessor or the Trustee, as the case may be, adversely affect the title, property or rights of the Lessor hereunder or of the Trustee under the Trust Agreement and the Lease Assignment.

§ 13. Return of Units upon Expiration of Term.

As soon as practicable on or after the expiration of the original or the extended term of this Lease with respect to any Unit, the Lessee will, at its own cost, expense and risk, and at the request of the Lessor, deliver possession of such Unit, if not purchased by the Lessee, to the Lessor upon such storage tracks of the Lessee as the Lessee may reasonably designate in such city on the lines of the Lessee at any reasonable place east of the Missouri River, as the Lessor may reasonably designate, or, in the absence of such designation, as the Lessee may reasonably select, and permit the Lessor to store such Unit on such tracks for a period not exceeding 60 days following notification to the Lessor by the Lessee that 75% of the Units have been assembled and delivered for storage (or, with respect to any Unit not delivered at the time of such notification, 60 days following notification from the Lessee to the Lessor that such Unit has been delivered for storage) and transport the same, at any time within such 60-day period, to any reasonable place east of the Missouri River on the lines of railroad operated by the Lessee, or to any connecting carrier for shipment, all as mutually agreed upon by the Lessor and the Lessee (except that the Lessor may require that no more than 19 Units be transported as provided herein, during any 30-day period), the movement and storage of such Units to be at the expense and risk of the Lessee

(which shall during such period maintain the insurance required by § 7 hereof); and in the event that any Unit shall suffer a Casualty Occurrence during such storage period, the Lessee shall pay the Lessor the Casualty Value thereof as provided in § 7 hereof. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representatives of any prospective purchaser, lessee or user of such Unit, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence or strict liability of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, on behalf of either the Lessor or any prospective purchaser, lessee or user, such rights of inspection. Except as hereinafter provided in this § 13, each Unit returned to the Lessor pursuant to this § 13 shall (except for additions, modifications and improvements which the Lessee is entitled to remove and does remove pursuant to § 9 hereof) be in the condition required by the first sentence of § 7 hereof. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and, upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance thereof. During any storage period, the Lessee will, at its own expense, maintain and keep the Units (except for additions, modifications and improvements which the Lessee is entitled to remove and does remove pursuant to § 9 hereof) in the condition required by the first sentence of § 7 hereof. Notwithstanding anything to the contrary contained in this § 13, (i) the Lessee shall have no obligation under clause (b) of the first sentence of § 7 hereof to comply with any provision of any law or regulation which becomes effective after expiration of the term of this Lease and (ii) the Lessee shall have no obligation under clause (c) of the first sentence of § 7 hereof with respect to any Unit after the later of (x) expiration of the term of this Lease and (y) delivery of a Unit into storage as provided above. All rent and per diem charges earned in respect of the Units after the date of termination of this Lease shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor. In addition, for each day, after termination of this Lease and prior to delivery of a Unit into storage as provided above, that such Unit is located on lines of railroad operated by the Lessee, the Lessee shall pay to the Lessor the per diem rental for such Unit prescribed by the Interstate Commerce Commission; provided, however, that no payment shall

be required with respect to any Unit for the first 30 days on which such Unit is located on lines of railroad operated by the Lessee.

§ 14. Recording. The Lessee, at its own expense, will cause this Lease, the Trust Agreement and any assignment hereof or thereof to be filed in accordance with 49 U.S.C. § 11303 and deposited with the Registrar General of Canada (and notice of such deposit to be given forthwith in The Canada Gazette) pursuant to Section 86 of the Railway Act of Canada. The Lessee will undertake the filing, registering, deposit, and recording required of the Lessor under the Trust Agreement and will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, reregister, deposit and redeposit or rerecord whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Trustee for the purpose of proper protection, to their satisfaction, of the Trustee's and the Lessor's respective rights in the Units, or for the purpose of carrying out the intention of this Lease, the Trust Agreement and the assignments hereof and thereof to the Trustee; and the Lessee will promptly furnish to the Trustee and the Lessor evidence of all such filing, registering, depositing, recording and other acts which may be required under this § 14, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Trustee and the Lessor. This Lease and the Trust Agreement, and the assignments thereof, shall be filed with the Interstate Commerce Commission and deposited with the Registrar General of Canada pursuant to Section 86 of the Railway Act of Canada and provision shall be made for publication of notice of such deposit in The Canada Gazette prior to the delivery and acceptance hereunder of any Unit.

§ 15. Interest on Overdue Rentals. Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay, to the extent legally enforceable, an amount on the overdue rentals and other obligations for the period of time during which they are overdue at a rate of 16-1/2% per annum, or, if such rate is not legally enforceable, then at the highest legally enforceable rate. Except as otherwise expressly provided herein, interest hereunder shall be determined on the basis of a 360-day year of 12 30-day months.

§ 16. Notices. Any notice required or permitted to be given by either party hereto to the other shall be

deemed to have been given when mailed, by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

(a) if to the Lessor, at One North Western Center, 165 N. Canal Street, Chicago, Illinois 60606, Attention of Assistant Vice President-Finance; and

(b) if to the Lessee, at One North Western Center, 165 N. Canal Street, Chicago, Illinois 60606, Attention of Assistant Vice President-Finance;

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing. Copies of each such notice shall be given to the Trustee at One Constitution Plaza, Hartford, Connecticut 06115, Attention of Corporate Trust Department.

§ 17. Severability; Effect and Modification of Lease; Third-Party Beneficiaries. Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Except for the Participation Agreement and the exhibits thereto, this Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the leasing of the Units and supersedes all other agreements, oral or written, with respect thereto. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized signatories for the Lessor, the Trustee and the Lessee.

Nothing in this Lease shall be deemed to create any right in any person not a party hereto (other than the Purchasers), and this instrument shall not be construed in any respect to be a contract in whole or in part for the benefit of a third party except as aforesaid.

§ 18. Definitions. If and so long as this Lease is assigned to the Trustee (or any successor thereto) for collateral purposes, wherever the term "Lessor" is used in this Lease it shall include the Trustee and any successors

thereto unless the context shall otherwise require and except that the Trustee shall not be subject to any liabilities or obligations under this Lease; and the fact that the Trustee is specifically named in certain provisions shall not be construed to mean that the Trustee (or any successor thereto) is not entitled to the benefits of other provisions where only the Lessor is named.

§ 19. Execution. This Lease may be executed in several counterparts, such counterparts together constituting but one and the same instrument, but the counterpart delivered to the Trustee shall be deemed to be the original and all other counterparts shall be deemed duplicates thereof. It shall not be necessary that any counterpart be signed by both the parties hereto so long as each party hereto shall have executed and delivered one counterpart hereof. Although for convenience this Lease is dated as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

§ 20. Law Governing. The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of Illinois; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303 and such additional rights arising out of the filing or deposit hereof, if any, and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Lease or any assignment hereof shall be filed or deposited.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed as of the date first above written.

CHICAGO AND NORTH WESTERN  
TRANSPORTATION COMPANY,

by

[Corporate Seal]

Attest:

NORTH WESTERN LEASING COMPANY,

by

\_\_\_\_\_

[Corporate Seal]

Attest:

\_\_\_\_\_



SCHEDULE A

Description of the Equipment

<u>Type</u>	<u>Quantity</u>	<u>Lessee's Identification Numbers (Both Inclusive)</u>
GP-40 3000 h.p. Locomotives	38	CNW 5500-5537

SCHEDULE B

Certificate of Inspection and Acceptance

To: North Western Leasing Company, (the "Lessor")  
Chicago and North Western Leasing Company (the "Lessee")  
The Connecticut Bank and Trust Company, as Trustee (the  
"Trustee").

I, the duly authorized representative (i) for the Lessee under the Lease of Railroad Equipment dated as of July 15, 1981, between the Lessor and the Lessee (ii) for the Lessor under the Reconstruction Agreement dated as of July 15, 1981, between the Lessor, as owner, and the Lessee, as builder, and (iii) for the Trustee under the Equipment Trust Agreement dated as of July 15, 1981, between the Lessor, as owner, and the Trustee, DO HEREBY CERTIFY that the following Units of Equipment have been inspected and I have accepted delivery of such Units under the aforesaid Lease, Reconstruction Agreement and Equipment Trust Agreement:

TYPE OF EQUIPMENT: GP-40 3000 h.p. Locomotives  
DATE ACCEPTED:  
NUMBER OF UNITS:  
LESSEE'S ROAD NUMBERS:

I do further certify that the foregoing Units are in good order and condition, and appear to conform to the specifications, requirements and standards applicable thereto as provided in the aforesaid Lease, Reconstruction Agreement and Equipment Trust Agreement.

I do further certify that each of the foregoing Units has been marked by means of a stencil printed in contrasting colors upon each side of each such Unit in letters not less than one inch in height as follows:

"OWNERSHIP SUBJECT TO A SECURITY AGREEMENT FILED  
WITH THE INTERSTATE COMMERCE COMMISSION"

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SCHEDULE C

Schedule of Rental Payments

<u>Rental Payment Date</u>	<u>Percentage</u>
August 1, 1982	7.750%
February 1, 1983	17.750
August 1, 1983	6.975
February 1, 1984	16.975
August 1, 1984	6.200
February 1, 1985	16.200
August 1, 1985	5.425
February 1, 1986	15.425
August 1, 1986	4.650
February 1, 1987	14.650
August 1, 1987	3.875
February 1, 1988	13.875
August 1, 1988	3.100
February 1, 1989	13.100
August 1, 1989	2.325
February 1, 1990	12.325
August 1, 1990	1.550
February 1, 1991	11.550
August 1, 1991	0.775
February 1, 1992	10.775

SCHEDULE D

Casualty Value Percentage Schedule

<u>Rental Payment Date</u>	<u>Percentage of Purchase Price*</u>
February 1, 1982	100%
August 1, 1982	100
February 1, 1983	90
August 1, 1983	90
February 1, 1984	80
August 1, 1984	80
February 1, 1985	70
August 1, 1985	70
February 1, 1986	60
August 1, 1986	60
February 1, 1987	50
August 1, 1987	50
February 1, 1988	40
August 1, 1988	40
February 1, 1989	30
August 1, 1989	30
February 1, 1990	20
August 1, 1990	20
February 1, 1991	10
August 1, 1991	10
February 1, 1992	0

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\* As defined in the Trust Agreement.