
AGREEMENT
and
INDENTURE
(Security Agreement)

between

UNITED STATES RAILWAY LEASING COMPANY,
Issuer

and

BANK OF AMERICA NATIONAL
TRUST AND SAVINGS ASSOCIATION,
Trustee

\$10,000,000
EQUIPMENT PROMISSORY NOTES,
ISSUE S

Dated as of July 15, 1974

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AGREEMENT AND INDENTURE (Security Agreement) dated as of July 15, 1974 between UNITED STATES RAILWAY LEASING COMPANY, an Illinois corporation (hereinafter called "Company"), and BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION, a national banking association, not in its individual capacity but solely in its trust capacity (hereinafter called "Trustee").

RECITALS

The Company is the owner of and has full power to grant a security interest in the railroad cars listed in Exhibit B hereto which cars are presently leased to the lessee described in said Exhibit B (which lessee and any subsequent lessee being hereinafter called "Lessees").

To provide funds to be used for its proper corporate purposes, the Company has obtained the commitment of Aetna Life Insurance Company and Bank of America National Trust and Savings Association (hereinafter called "Investors") to make a loan to the Company in an aggregate principal amount of not in excess of Ten Million Dollars (\$10,000,000) to be evidenced by the Company's Equipment Promissory Notes, Issue S (hereinafter called "Notes").

The Company has provided herein for the authentication by the Trustee of the Notes, the granting of a security interest to the Trustee in the cars and the assignment to the Trustee of the Leases covering the cars.

AGREEMENT

NOW, THEREFORE, THIS AGREEMENT AND INDENTURE WITNESSETH, that to secure the payment of the principal of and interest on all the Notes authenticated and delivered hereunder and outstanding, the payment of all other sums due hereunder and the performance of the covenants therein and herein contained, and in consideration of the premises and of the covenants herein contained and of the purchase of the Notes by the holders thereof, and the sum of \$1 paid to the Company by the Trustee at or before the delivery hereof, the receipt whereof is hereby acknowledged, the Company does hereby grant, bargain, sell, transfer, convey, mortgage, assign and pledge unto the Trustee, its successors and assigns, a security interest in, all and singular of the Company's right, title and interest in and to the following described property:

I.

The railroad cars listed in Exhibit B hereto.

II.

All substitutions, replacements, accessories, equipment, parts, appurtenances, additions and modifications of or to all or any part of the property described in I above whether the same are now owned by the Company or shall hereafter be acquired by the Company.

III.

All additional railroad cars and accessories, parts and items of equipment and other property which shall be subjected to the lien hereof by supplemental indenture or indentures or by writing of any kind.

IV.

All of the right, title and interest of the Company in the Leases and all of the rents, revenues and other income and proceeds of any nature of the property subjected or required to be subjected to the lien of this Indenture, including without limitation all of the Company's rights to rents and other payments under any lease covering the cars described in I, II and III above.

The property described in I, II and III is hereinafter sometimes referred to as "Equipment" or "Cars", and a part thereof as a "car" or certain "cars", and all of the property described in I through IV, inclusive, is together hereinafter referred to as the "Trust Estate".

SUBJECT, HOWEVER, to the rights of the Lessees under the Leases and provided that Company, until an Event of Default has occurred as hereinafter defined or until the Holders of 66 $\frac{2}{3}$ % in principal amount of the outstanding Notes exercise their rights under Section 4.1F hereof, shall be entitled to have, receive and retain all rents and other sums payable under the Leases and to possess and use the Equipment and to lease same subject to the rights of the Trustee hereunder.

IN TRUST NEVERTHELESS, upon the terms and trusts herein set forth for the equal and proportionate benefit and security of each and every Note issued and to be issued hereunder.

ARTICLE ONE

DEFINITIONS

SECTION 1.1. *Terminology.* For all purposes of this Indenture, unless the context otherwise requires:

A. "*Act of Noteholders*" shall have the meaning set forth in Section 2.2A of this Indenture.

B. "*Assignments of Lease*" or "*Assignments*" shall mean instruments in the form and text attached hereto as Exhibit C executed and delivered by the Company to the Trustee with respect to all or any part of the cars.

C. "*Board*" shall mean the Board of Directors of the Company. "*Board Resolution*" shall mean a copy of a resolution of the Board certified by the Secretary or an Assistant Secretary of the Company to have been duly adopted by the Board and to be in full force and effect on the date of such certification, and delivered to the Trustee.

D. "*Cars*" shall have the meaning set forth in the Granting Clauses hereof.

E. "*Company Order*", "*Company Request*" and "*Company Consent*" shall mean, respectively, an order, request or consent signed in the name of the Company by the President or a Vice President and the Treasurer, an Assistant Treasurer, the Secretary or an Assistant Secretary of the Company, and delivered to the Trustee.

F. "*Corporate Trust Office*" shall mean the principal office of the Trustee in the State of California, City and County of San Francisco, at which the corporate agency business of the Trustee shall, at the time in question, be administered, which office is, on the date of execution of this Indenture, located at its Corporate Agency Division, 555 California Street, San Francisco, California 94104.

G. "*Corporation*" shall include any voluntary association, joint stock company, business trust or similar organization.

H. "*Due*" and "*payable*", when used with reference to the principal of, or interest on, any Notes or any portion thereof, shall mean due and payable, whether at the date of maturity specified in the relevant Notes or by acceleration or by operation of the prepayment provisions of this Indenture.

I. "*Equipment*" shall have the meaning set forth in the Granting Clauses hereof.

J. "*Event of Default*" shall have the meaning set forth in Article Six hereof.

K. "*Guaranty*" shall mean the Guaranty dated as of July 15, 1974, under the terms of which U.S. Railway Mfg. Co. and United States

Railway Equipment Co., jointly and severally, guarantee the obligations of the Company hereunder.

L. "*Leases*" shall mean the lease more particularly described in Exhibit B and covering the Equipment therein indicated, photocopies of which have been delivered by the Company to the Trustee, and any amendments thereto and any new leases executed and delivered as permitted herein. All terms defined in a Lease shall have the same meanings wherever used in this Indenture unless the context otherwise requires.

M. "*Lien of this Indenture*" and "*lien hereof*" shall mean any lien created by this Indenture or by an Assignment of Lease or any other instrument executed in favor of the Trustee pursuant to any of the provisions hereof.

N. "*Loan Agreement*" shall mean that certain Loan Agreement dated as of July 15, 1974, between the Company and the Investors providing for the loan to be evidenced by the Notes.

O. "*Noteholder*" and "*Holder*" shall mean the registered owner of a Note. "*Registered owner*" shall mean not only the person in whose name any Note shall be registered, but also the executors, administrators and other legal representatives of such person.

P. "*Officers' Certificate*" shall mean a certificate signed by the President or a Vice President and the Treasurer, an Assistant Treasurer, the Secretary or an Assistant Secretary of the Company, and delivered to the Trustee.

Q. "*Opinion of Counsel*" shall mean a written opinion of independent counsel (who, unless the Trustee shall have received a written request from the holders of 51% in principal amount of the Notes, may be counsel for the Company), selected by the Company and acceptable to the Trustee.

R. "*Original holder*" shall mean the registered owner of a Note at the time of its original issuance.

S. "*Outstanding*", "*outstanding hereunder*" or "*outstanding under this Indenture*", when used with reference to Notes, shall mean, as of any particular time, all Notes theretofore authenticated and delivered by the Trustee, except:

- (1) Notes theretofore cancelled by the Trustee or surrendered to or deposited with the Trustee for cancellation; and

(2) Notes in lieu of which other Notes shall have been authenticated and delivered as provided in Section 3.8 hereof;

and except also that

(3) for the purpose of determining whether the holders of the requisite principal amount of Notes have concurred in any demand, request, direction, notice, consent, waiver, suit or other action under this Indenture, Notes which are owned by the Company or by any other obligor on the Notes or by either of the persons executing the Guaranty shall be disregarded and deemed not to be outstanding, except that, for the purpose of determining whether the Trustee shall be protected in relying on any such demand, request, direction, notice, consent, waiver, suit or other action, only Notes which the Trustee knows to be so owned shall be so disregarded.

T. "*Person*" shall mean an individual, corporation (including the Company where the context so requires), partnership, trust or unincorporated organization or a government or any agency or political subdivision thereof.

U. "*Responsible Officers*" of the Trustee shall mean the chairman of the board of directors, a vice chairman of the board of directors, the chairman of the executive committee, the president, the chairman of the trust committee, every vice president, every second or other vice president, the treasurer, every assistant treasurer, the cashier, every assistant cashier, the secretary, every assistant secretary, every trust officer, and every officer and assistant officer of such Trustee, other than those specifically abovementioned, to whom any corporate trust matter is referred because of his knowledge of, and familiarity with, a particular subject.

V. "*This Indenture*" and "*the Indenture*" shall mean this instrument as originally executed or as it may from time to time be supplemented or amended and also, wherever the context permits, Assignments of Lease and any other instrument executed in favor of the Trustee pursuant to any of the provisions hereof.

W. "*Trustee*" shall mean Bank of America National Trust and Savings Association, not in its individual capacity but solely in its trust capacity, San Francisco, California, and, subject to the provisions of Article Seven hereof, shall also include its successors in the trusts created by this Indenture.

X. "*Trust Estate*" shall have the meaning set forth in the Granting Clauses hereof.

ARTICLE TWO**PROVISIONS OF GENERAL APPLICATION****SECTION 2.1. *Form of Certification.***

A. In any case where several matters are required by this Indenture to be certified by, or covered by an opinion of, any specified person, it is not necessary that all such matters be certified by, or covered by the opinion of only one such person, or that they be so certified or covered by only one document, but one such person may certify or give an opinion with respect to some matters and one or more other such persons as to other matters, and any such person may certify or give an opinion as to such matters in one or several documents.

B. Where any person or persons are required to make, give or execute two or more applications, requests, consents, certificates, statements, opinions or other instruments under this Indenture, any such applications, requests, consents, certificates, statements, opinions or other instruments may, but need not, be consolidated and form one instrument.

SECTION 2.2. *Act of Noteholders.*

A. Any request, demand, direction, consent, notice, waiver or other action provided by this Indenture to be given or taken by Noteholders may be embodied in and evidenced by one or any number of concurrent written instruments of substantially similar tenor signed by such Noteholders in person or by agent duly appointed in writing; and, except as herein or in such instrument otherwise expressly provided, such action shall become effective when such instrument or instruments are received by the Trustee (at its Corporate Trust Office) and the Company. Such written instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the "Act" of the Noteholders signing such instrument or instruments.

B. The ownership of Notes shall be proved by the note register as described in Section 3.4.

C. Any request, demand, direction, consent, notice, waiver or other action by the holder of any Note shall bind every future holder of the same Note and the holder of every Note issued in exchange therefor or in lieu thereof, in respect of anything done or suffered or omitted to be done by the Trustee or the Company in pursuance of such request, demand, direction, consent, notice, waiver or other action.

SECTION 2.3. Notices in General. Any request, demand, direction, consent, notice, waiver, Act of Noteholders, or other document in respect of the Notes or this Indenture to be given or furnished to or filed with:

(i) the Trustee, shall be sufficient for every purpose hereunder if given, furnished or filed in writing to or with the Trustee at its Corporate Trust Office at 555 California Street, Box 37000, San Francisco, California 94137;

(ii) the Company, shall be sufficient for every purpose hereunder if given, furnished or filed in writing with the Company at its head office;

(iii) each Noteholder except as provided in Subsection (iv) of this Section, shall be sufficient for every purpose hereunder if given, furnished or filed in writing by registered or certified mail to the Registered Owners at their respective address shown upon the note register;

(iv) Aetna Life Insurance Company, shall be sufficient for every purpose hereunder if given, furnished or filed in writing by registered or certified mail to:

151 Farmington Avenue
Hartford, Connecticut 06115
Attention: Bond Investment Department
(notices with respect to payment, Attention:
Treasury Services Department-B)

or such other address as it shall designate.

Promptly upon receipt of any of the foregoing by the Trustee, the Trustee shall furnish a copy thereof to the Company and to every Noteholder, except that in the case of an Act of Noteholders, the Trustee may furnish a statement as to the substance thereof instead of copies and need furnish such statement in each case only to Noteholders not joining in such particular Act.

SECTION 2.4. Waiver of Notice. Where notice in any manner is provided for by this Indenture, such notice may be waived in writing by the person entitled to receive such notice, either before or after the event, and such waiver shall be deemed the equivalent of such notice. Waivers of notice by Noteholders shall be filed with the Trustee, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

SECTION 2.5. *Effect of Documents Filed.* Any request, certificate, report or other document or notice required or permitted by this Indenture to be delivered to the Trustee as a condition of the granting of any request or as evidence of compliance with stated requirements may be received by the Trustee as conclusive evidence of any statement therein contained and shall be full warrant, authority and protection to the Trustee acting on the faith thereof, unless the Trustee has actual knowledge contrary to such statement. The Trustee shall not be deemed to have actual knowledge prior to the time it shall have obtained such actual knowledge thereof at its Corporate Trust Office.

ARTICLE THREE

THE NOTES

SECTION 3.1. *Title and Terms—Required Prepayment.*

A. The aggregate principal amount of the Notes which may be issued and authenticated under this Indenture is limited to Ten Million Dollars (\$10,000,000) except for Notes issued and authenticated in exchange for or in lieu of other Notes as provided in Sections 3.4 and 3.8. The Notes shall be known and designated as the Company's "Equipment Promissory Notes, Issue S." The principal amount of the individual Note to be delivered to each Investor respectively, and the interest rate on the unpaid principal amount thereof shall be in the amount and at the rate set forth in Exhibit A hereto. The principal amount of and interest on the Note of each Investor respectively, shall be due and payable in installments and on the dates set forth in Exhibit A hereto. Interest shall be computed on the basis of a 360-day year of twelve 30-day months. The Company shall not have the option to prepay any installments on the Notes except as provided in Sections 3.1 and 4.2 hereof.

B. The Company agrees that it will pay over to the Trustee all moneys (hereinafter called "Settlement Moneys") paid to it pursuant to a Lease as settlement for the theft, loss, destruction or damage beyond repair of any Equipment as follows: commencing with the first settlement relating to any of the Equipment, the Company will retain, accumulate, segregate and hold in trust for the account of the Trustee the Settlement Moneys received from a settlement or succeeding settlements under any and all of the Leases until such time as the Company has accumulated an amount in excess of \$50,000.00, at which time all such Settlement Moneys then held by the Company shall be delivered to the

Trustee, together with an Officers' Certificate identifying such Settlement Moneys, within 30 days of written demand therefor for the purposes hereinafter provided, provided that the Company shall not be required to pay over to the Trustee such Settlement Moneys if the Company elects to and does replace such Equipment as provided in Section 4.2 hereof. The foregoing procedure for the retention, accumulation, segregation and holding in trust and the payment and delivery of Settlement Moneys in excess of \$50,000.00 shall be repeated from time to time until all indebtedness due under the Notes has been paid in full as herein provided. The Trustee shall, on the next succeeding principal installment date, apply each payment of Settlement Moneys pro-rata among the Holders on the basis of the principal amounts held, to the prepayment of principal of the Notes. Such prepayment of principal shall be applied in inverse order of principal installments becoming due on the Notes. Upon receipt of any Settlement Moneys as above provided, the Trustee shall give notice of the prepayment to the Noteholders and issue new Notes in exchange for the outstanding Notes when same are presented in order to receive such payment. The Company shall furnish to the Trustee and the Noteholders a schedule showing the amount of the annual principal installment and semi-annual interest payment to be paid on each Note after such prepayment. The Company shall promptly transmit to the Trustee an Officers' Certificate setting forth any information it has received concerning loss, theft, destruction or damage to Equipment requiring settlement payments under a Lease, together with the total amount of the Settlement Moneys held by the Company as of such date.

C. The Trustee of the Property of the Boston and Maine Corporation, Debtor ("B&M") has an option to purchase the cars ("B&M Cars") covered by the Lease ("B&M Lease") between it and the Company and assigned to the Trustee pursuant to the Indenture. Within 30 days after B&M shall have paid the Company for the B&M Cars purchased in accordance with the B&M Lease, the Company will prepay the Notes, at par, together with interest accrued thereon to the date of such prepayment.

D. Except as otherwise provided in this Article Three, a Note need not be presented in order to receive any payment due or prepayment required thereon, so long as a Note is registered in the name of Investor (or its nominee). Notwithstanding any provision to the contrary herein or in the Notes with respect to place of payment, pay-

ments and prepayments shall be made to each Investor at the address and in the manner specified in Exhibit A with respect to or in accordance with any unrevoked written direction from such Investor to the Company and the Trustee. The Trustee and the Company shall be fully protected against and shall have no liability under any claim by a holder of wrongful payment or prepayment or non-payment if such payments or prepayments have been directed to Investor (or its nominee) as above provided unless and until (i) such Note is transferred, (ii) the transferee thereof has a new Note issued in its name, and (iii) the Trustee and the Company are notified thereof in writing. Unless otherwise agreed to by the Company, all Notes registered in the name of a Person other than the Investors (or its nominee) shall be presented to the Trustee in order to receive any payments thereon and the Trustee shall at such time record the payments being made as well as all prior payments made but not recorded on the Notes.

SECTION 3.2. *Form of Notes-Denominations.* The Notes shall be in substantially the form and text attached hereto as Exhibit D with such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Indenture. The Notes shall be issued as Registered Notes without coupons. Each Investor (or its nominee) on the closing of the issue and sale of the Notes shall receive one Note in the principal amount of \$5,000,000. New Notes issued upon the transfer and surrender of outstanding Notes shall be in denominations of Twenty-Five Thousand Dollars (\$25,000) or any multiple thereof, except as may be necessary to reflect any principal amount not evenly divisible by Twenty-Five Thousand Dollars (\$25,000) or in any other smaller denomination approved by a Company Order. The Notes shall be numbered or otherwise distinguished in such manner as the officers executing such Notes may determine, such determination by said officers to be evidenced by their signing the Notes.

SECTION 3.3. *Interest Accrued.* The Notes shall be dated as of their respective dates of issue and shall bear interest from and including their date of issue to but excluding the dates upon which interest is due and payable; provided, however, that, in the case of issue of any Note upon transfer of or in exchange for an outstanding Note or Notes, such Note shall bear interest from, and shall be dated as of, the date to which interest has previously been paid or made available for payment on the outstanding Notes or, if no interest has previously been so paid

or made available on the outstanding Notes, such Note shall bear interest from, and shall be dated as of, the date of the Notes so transferred or exchanged.

SECTION 3.4. *Registration, Transfer and Exchange of Notes.*

A. The Company shall cause to be kept at the Corporate Trust Office of the Trustee a register for the registration and registration of the transfer of the Notes and, upon presentation at such office for such purpose, the Company will, under such reasonable regulations as it may prescribe, cause to be registered or transferred thereon Notes as herein provided. The Company hereby appoints the Trustee its Note Registrar to register Notes and to register the transfer of Notes as herein provided.

B. Whenever any Note shall be surrendered for transfer at the Corporate Trust Office, together with a written instrument of transfer, in form approved by the Trustee, duly executed by the registered owner, or by his attorney authorized in writing, the Company shall execute, and the Trustee shall authenticate and deliver in exchange therefor, a new Note or Notes of the same maturity for the same aggregate unpaid principal amount. All Notes so surrendered shall be promptly cancelled by the Trustee.

C. The holder of any Note outstanding hereunder may surrender the same to be exchanged for Notes of different denominations. Upon cancellation of the surrendered Note, the Company shall, upon the payment of proper charges, execute and the Trustee shall register, authenticate and deliver in exchange therefor a like aggregate principal amount of Notes of the same maturity date in the denomination of Twenty-Five Thousand Dollars (\$25,000) each or any multiple thereof except that any principal amount of such Note in excess of a multiple of Twenty-Five Thousand Dollars (\$25,000) shall be evidenced by a Note in principal amount equal to such excess, provided, however, any Notes so delivered in exchange may be in any denominations approved by a Company Order.

SECTION 3.5. *Persons Deemed Owners.* The Company and the Trustee may treat the person in whose name any Note shall be registered upon the books of the Company as the absolute owner of such Note for the purpose of receiving payment of or on account of the principal of and interest on such Note and for all other purposes,

whether or not such Note shall be overdue; and all such payments so made to any such Registered Owner or upon his order shall be valid and effectual to satisfy and discharge the liability upon such Note to the extent of the sum or sums so paid, and neither the Company nor the Trustee shall be affected by any notice to the contrary.

SECTION 3.6. *Charges on Exchanges.* Any exchange or transfer of Notes shall be made at the Company's own expense, provided however, that for any transfer of any Note the Company at its option may require the payment of a sum sufficient to reimburse it for any stamp tax or other governmental charge incident thereto.

SECTION 3.7. *Execution, Authentication and Delivery of Notes.*

A. Notes shall be executed on behalf of the Company by its President or a Vice President, under its corporate seal attested by its Secretary or an Assistant Secretary, or by such other form of execution as may be prescribed by a Board Resolution. The corporate seal of the Company may be affixed to any Note by impressing or imprinting or reproducing thereon, by any process, an impression, imprint or other reproduction of said corporate seal.

B. The Notes when executed shall be delivered to the Trustee for authentication; and the Trustee shall authenticate and deliver said Notes as in this Indenture provided and not otherwise. Only such Notes as shall bear thereon a certificate of authentication substantially in the form and text set forth in Exhibit D attached hereto, executed by the Trustee, shall be secured by this Indenture or be entitled to any lien, right or benefit hereunder; and such authentication by the Trustee upon any Note shall be conclusive evidence that such Note has been duly authenticated and delivered hereunder.

SECTION 3.8. *Mutilated, Lost, Stolen and Destroyed Notes.*

A. A mutilated Note may be surrendered to the Company or the Trustee and thereupon the Company shall execute and the Trustee shall register, authenticate and deliver in exchange therefor a new Note of like tenor and principal amount. The Trustee shall cancel the mutilated Note.

B. If there be delivered to the Company and to the Trustee such security or indemnity as may be required to save each of them harmless, then in the absence of notice to the Company or the Trustee (at its

(Corporate Trust Office) that such Note has been acquired by a bona fide purchaser, the Company shall execute and upon its request, the Trustee shall register, authenticate and deliver in lieu of any such destroyed, lost or stolen Note, a new Note of like tenor and principal amount. If the holder of any such lost, stolen or destroyed Note is an institutional investor having a net worth of \$15,000,000 or more, then such holder's own agreement of indemnity shall be deemed to be satisfactory.

C. If any such mutilated, lost, stolen or destroyed Note shall have matured or will mature not more than 10 days thereafter, instead of issuing a substitute Note, the Company, with the consent of the Trustee, may pay the same. Any new Note issued under this Section in lieu of any Note alleged to have been lost, stolen or destroyed shall constitute an additional original contractual obligation of the Company, whether or not the Note alleged to have been lost, stolen or destroyed shall be at any time enforceable by anyone; and such new Note shall be entitled to the lien, security and benefits of this Indenture equally and ratably with all other Notes hereby secured. The Company and the Trustee, in their discretion, may place upon any such new Note a legend, but such legend shall in nowise affect the validity of such new Note. The Company may at its option require the payment of a sum sufficient to reimburse it for any stamp tax or other governmental charge, and any expenses incurred by the Company or the Trustee, in connection with the issuance of any such new Note, and also a further sum not exceeding \$5 for each such new Note.

D. Any Note in lieu of which another Note has been authenticated and delivered as permitted in Section 3.3B shall not be treated as an indebtedness for any purpose hereunder and Company shall not be required to pay or provide for payment of same unless prior to satisfaction and discharge of this Indenture in the manner provided in Article Five, such Note has been presented to the Trustee with a claim of ownership and enforceability by the person possessing such Note and the enforceability of such Note, if contested by the Company, has been determined in favor of such person by a court of competent jurisdiction.

SECTION 3.9. Cancellation. All Notes when fully paid as to principal and interest shall be surrendered to the Trustee and promptly cancelled, and a certificate of such cancellation shall be delivered to the Company. The Trustee shall withhold all of the payments required

under Section 3.1 on any Note as in its sole discretion it deems necessary or proper to insure the surrender of the Note for cancellation upon final payment therefor. No Notes shall be authenticated in lieu of cancelled Notes or in exchange therefor except as permitted by this Indenture.

SECTION 3.10. *Abatement of Interest.* If funds for the payment of the annual installments of principal and for the semi-annual payments of interest have been deposited with the Trustee, or if funds for the prepayment of principal on account of theft, loss, destruction or damage beyond repair of cars or the purchase of the B&M Cars shall have been received by the Trustee, then:

(a) Interest on the annual installment payments of principal shall cease to accrue on the date such installments are payable, and

(b) Interest upon the portion of principal to be prepaid shall cease to accrue on the date provided in Sections 3.1B and 3.1C for such prepayment.

ARTICLE FOUR

PROVISIONS REGARDING SECURITY

SECTION 4.1. *Assignment.*

A. As further security for the performance by the Company of its obligations hereunder and under all the Notes at any time outstanding, the Company will contemporaneously with the execution of this Indenture by the Company and the Trustee (i) deliver to the Trustee a photocopy of each of the Leases and an executed copy of the Guaranty, (ii) deliver to the Trustee an executed copy of an Assignment of Lease for the Lease and Notice thereof and (iii) will promptly cause this Indenture, the Lease, and the Assignments to be filed with the Interstate Commerce Commission.

B. In the event the Leases requires the Lessees to insure the Cars and name the Company as an insured, the Company by separate instrument will assign to the Trustee its rights to the proceeds of any such insurance and direct the Lessees and their respective insurers to deliver to the Trustee the proceeds otherwise payable to the Company. Subject to section 33(a)(i) of the B&M Lease and a substantially similar section in any future Lease, the proceeds so delivered shall be treated by the Company and the Trustee as settlements from the theft, loss, destruction or damage beyond repair of any Equipment. If the proceeds so delivered to the Trustee when added to the Settlement

Moneys held by the Company pursuant to Section 3.1B hereof shall equal or exceed the sum of \$50,000, the Trustee shall retain the proceeds for the purposes set forth in Section 3.1B hereof. If such sum is an amount less than \$50,000, the Trustee shall forthwith pay the proceeds to the Company, who shall keep, maintain, use and apply them as provided in Section 3.1B hereof.

C. The Company will, at any time and from time to time, promptly upon the reasonable request of the Trustee execute in favor of the Trustee and deliver to the Trustee a supplemental indenture or mortgage or security agreement on any of the Equipment, and Assignment of Lease for any Lease in form and substance reasonably requested by the Trustee, and cause the same to be duly filed with the Interstate Commerce Commission.

D. Whenever, under applicable law it is necessary or desirable that any chattel mortgage or security agreement be otherwise filed recorded, or re-filed or re-recorded to create or to continue in effect the lien thereof, the Company will cause such chattel mortgage or security agreement to be filed, recorded, re-filed or re-recorded and will furnish to the Trustee evidence of each such filing, recording, re-filing, or re-recording and an Opinion of Counsel covering such filing, recording, re-filing or re-recording.

E. The Company shall cause the Equipment to be marked to indicate the Trustee's interest hereunder or in lieu thereof cause the Equipment to be marked substantially as follows:

"Title to this car subject to documents recorded under Section 20c of Interstate Commerce Act."

F. The Holders of 66 $\frac{2}{3}$ % in principal amount of the outstanding Notes, may, upon the occurrence of an event or condition which in the sole judgment of such Noteholders constitutes or would with the lapse of time or giving of notice, or both, become an Event of Default, by notice in writing to the Company and the Trustee, direct the Trustee to notify in writing the Lessees under the Leases that thereafter all rentals and other sums payable under the Leases shall be made directly to the Trustee until further notice, and upon receipt of such written direction the Trustee shall so notify the Lessees. The Holders of 66 $\frac{2}{3}$ % in principal amount of the outstanding Notes may, upon the occurrence of an event or condition which in the sole judgment of such Noteholders

constitutes or would with the lapse of time or giving of notice, or both, become an Event of Default, by notice in writing to the Lessees, direct the Lessees that thereafter all rentals and other sums payable under the Leases shall be made to the Trustee until further notice, a copy of which notice shall be furnished by such Holders to the Trustee and the Company.

SECTION 4.2. *Release, Substitution and Replacement.*

A. The Trustee at any time and from time to time in order to effectuate the terms and provisions of this Indenture shall execute and deliver a release from the lien for the purpose of effecting the sale, transfer, exchange, or other disposition of any of the Equipment free from the lien of this Indenture.

B. The Company shall have the right at any time and from time to time to substitute Cars for any Cars lost, destroyed, stolen or damaged beyond repair. Upon Company Request the Trustee shall execute and deliver a release covering the Cars for which a substitution is to be made; provided, however, that the Company (i) shall have executed and delivered a supplemental indenture imposing a lien upon the Cars being substituted which substituted Cars shall, at the date of such Request, be of a value not less than the value of the Cars for which they are being substituted and have an estimated useful life not less than the number of years remaining on the Notes, and (ii) shall deliver to the Trustee an Officer's Certificate stating the value of any destroyed Cars or Cars stolen or damaged beyond repair, and the value of any Cars being substituted therefor together with such documents, opinions of counsel and other matters and things as may be reasonably requested by the Trustee to impose and confirm the lien of this Indenture upon the substituted Cars. If the Company shall elect to substitute Cars for any Cars lost, destroyed, stolen or damaged beyond repair, as aforesaid, the amounts paid or payable as settlement for such Cars lost, destroyed, stolen or damaged shall be the property of the Company, except to the extent limited by the following paragraph.

If the value of any Car being substituted for a Car lost, destroyed, stolen or damaged beyond repair is not equal to the value of such destroyed Car or Car stolen or damaged beyond repair, the Company shall segregate and deposit the amount of such deficiency pursuant to Section 3.1B.

C. In case, prior to the termination of this Indenture with respect to any car, any of the marks referred to in Section 4.1E shall at any time be removed, defaced or destroyed, the Company shall cause within a reasonable time the same to be restored or replaced. The Company shall not change, or permit to be changed, the number of any of the Trust Equipment at any time covered hereby (or any numbers which may have been substituted as herein provided) except in accordance with a statement of new numbers to be substituted therefor which previously shall have been filed with the Trustee and which shall be filed and recorded by the Company in like manner as this Agreement.

ARTICLE FIVE

SATISFACTION AND DISCHARGE

SECTION 5.1. *Payment of Indebtedness—Satisfaction.* This Indenture and the rights and interests hereby or in any instrument executed and delivered pursuant hereto created and granted shall cease to be of further effect and become null and void when Company:

(i) has paid the entire indebtedness on all Notes outstanding hereunder, or has deposited or caused to be deposited with Trustee, in trust, at or before maturity, funds sufficient to pay the entire indebtedness on all Notes outstanding hereunder; and

(ii) has paid or caused to be paid all other sums payable hereunder by the Company; and

(iii) has delivered to Trustee an Officers' Certificate and an Opinion of Counsel each stating that all conditions precedent herein provided for relating to the satisfaction and discharge of this Indenture have been complied with.

The Trustee shall, upon 10 days' prior written notice to the Registered Owners, then execute and deliver such documents as may be necessary to acknowledge satisfaction and discharge of this Indenture and to release the lien hereof and the Assignments of Lease. Upon existence of the conditions set forth above for satisfaction and discharge of this Indenture, the estate, right, title and interest of the Trustee in and to the Trust Estate shall thereupon cease and determine and become null and void and the Trustee shall transfer, deliver and pay the remaining trust estate to the Company.

ARTICLE SIX

DEFAULT—REMEDIES

SECTION 6.1. *Events of Default.* The term "Event of Default" for the purpose hereof shall mean any one or more of the following:

A. Default for a period of five days in the payment of any installment of principal of any Note;

B. Default for a period of five days in the payment of interest on any Note;

C. Default for a period of five days in the payment of any other amounts required to be paid under Section 3.1;

D. Default in the due observance or performance, or breach by the Company of any warranty or other covenant, condition or agreement required to be observed or performed by the Company in the Notes or this Indenture (other than a covenant or warranty a default in whose performance or whose breach is elsewhere in this Section 6.1 specifically dealt with), and continuance of such default or breach for a period of 15 days after notice thereof has been given to the Company by the Trustee;

E. Any representation or warranty made by the Company, U.S. Railway Mfg. Co. or United States Railway Equipment Co. to the Trustee or to either of the Investors in writing herein or in any Assignment of Lease or in any statement or certificate furnished by the Company, U.S. Railway Mfg. Co. or United States Railway Equipment Co. to the Trustee or to either of the Investors pursuant to any terms of this Indenture, the Loan Agreement or in connection with the making of any loan or loans evidenced by the Notes, shall prove to be untrue in any material respect;

F. The entry of a decree or order by a court having jurisdiction in the premises adjudging the Company a bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Company under the Federal Bankruptcy Act or any other applicable Federal or State law, or appointing a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the Company or of any substantial part of its property, or ordering the winding up or liquidation of its affairs; and the continuance of any such decree or order unstayed and in effect for a period of 30 consecutive days;

G. The institution by the Company of proceedings to be adjudicated a bankrupt or insolvent, or the consent by it to the institution of bankruptcy or insolvency proceedings against it, or the filing

by it of a petition or answer or consent seeking reorganization or relief under the Federal Bankruptcy Act or any other applicable Federal or State law, or the consent by it to the filing of any such petition or to the appointment of a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the Company or of any substantial part of its property, or the making by the Company of an assignment for the benefit of creditors, or the admission in writing of its inability to pay its debts generally as they become due, or the taking of corporate action by the Company in furtherance of any such action:

II. A final judgment for the payment of money in excess of \$50,000 shall be rendered against the Company and the same shall remain undischarged for a period of 30 consecutive days during which execution shall not be effectively stayed;

I. Any writ or warrant of attachment or of any similar process in an amount in excess of \$50,000 shall be entered or filed against the Company or against any of its property or assets and remains unvacated, unbonded or unstayed for a period of 10 days.

SECTION 6.2. *Remedies.* When any Event of Default has happened and is continuing, the Trustee, upon notice to the Company that it is exercising its rights under this Section 6.2, may exercise any one or more or all, and in any order, of the remedies hereinafter set forth, it being expressly understood that no remedy herein conferred is intended to be exclusive of any other remedy or remedies; but each and every remedy shall be cumulative and shall be in addition to every other remedy given herein or now or hereafter existing at law or in equity or by statute:

A. The Trustee, or the Holders of 66 $\frac{2}{3}$ % in principal amount of the outstanding Notes, may, by notice in writing to the Company, declare the entire unpaid balance of the Notes to be immediately due and payable; and thereupon all such unpaid balance, together with all accrued interest thereon, shall be and become immediately due and payable, and upon demand of the Trustee, the Company shall pay to it the whole amount then due and payable on the Notes together with interest as aforesaid. If the Company fails to pay such amounts forthwith upon such demand, the Trustee, in its own name and as trustee of an express trust, may institute a judicial proceeding for the collection of the sum so due and unpaid and may prosecute such proceeding to judgment or final decree and may enforce the same against the Company or any other obligor upon the Notes and collect the moneys adjudged or decreed to be payable

in the manner provided by law out of the property of the Company or any other obligor upon the Notes wherever situated subject, however, to the provisions of Section 6.10B of this Indenture.

B. Subject always to then existing rights if any, of Lessees under the Leases, the Trustee, personally or by agents or attorneys, shall have the right (subject to compliance with any applicable mandatory legal requirements) to take immediate possession of the Trust Estate, or any portion thereof, and for that purpose may pursue the same wherever it may be found, and may enter any of the premises of the Company with or without notice, demand, process of law or legal procedure, and search for, take possession of, remove, keep and store the same, or use or operate the same until sold, it being understood, without limiting the foregoing, that the Trustee may, and is hereby given the right and authority to keep and store the Trust Estate, or any part thereof, on the premises of the Company without charge, and that the Trustee shall not thereby be deemed to have surrendered, or to have failed to take possession of the Trust Estate.

C. Subject always to the then existing rights, if any, of Lessees under the Leases, the Trustee may, if at any time such action may be lawful and always subject to compliance with any mandatory legal requirements, either with or without taking possession and either before or after taking possession, and without instituting any legal proceedings whatsoever, and having first given notice of such sale by registered or certified mail to the Company at least 10 days prior to the date of such sale, and any other notice which may be required by law, sell and dispose of the Trust Estate, or any part thereof, at public auction or private sale to the highest bidder, in one lot as an entirety or in separate lots, and either for cash or on credit and on such terms as the Trustee may determine, and at any place (whether or not it be the location of the Trust Estate or any part thereof) designated in the notice above referred to. Any such sale or sales may be adjourned from time to time by announcement at the time and place appointed for such sale or sales, or for any such adjourned sale or sales, without further published notice; and the Trustee or the holder or holders of the Notes may bid and become purchaser at any such sale.

D. The Trustee may proceed to protect and enforce this Indenture and the Notes by suit or suits or proceedings in equity, at law or in bankruptcy, and whether for the specific performance of any covenant or agreement herein contained or in execution or aid of any power herein granted, or for foreclosure hereunder, or for the appointment of a receiver or receivers for the Trust Estate or

any part thereof, or for the recovery of judgment for the indebtedness hereby secured, or for the enforcement of any other proper legal or equitable remedy available under applicable law.

F. The Trustee may proceed to exercise in respect of the Leases and the Equipment covered thereby and the duties, obligations and liabilities of a Lessee thereunder, all rights, privileges and remedies in the Leases, or by applicable law permitted or provided to be exercised by the Company, and may exercise all such rights and remedies either in the name of the Trustee or in the name of the Company for the use and benefit of the Trustee. Without limiting any of the other terms of this Indenture or of the Assignments of Lease, it is acknowledged and agreed by the Company that the Assignments of Lease shall be deemed to give and assign to and vest in the Trustee all the rights and powers in this Section 6 provided for.

F. The Trustee may sell the rentals reserved under any Lease, and all right, title and interest of the Trustee as assignee thereof, at public auction to the highest bidder, and either for cash or on credit, the Trustee to give the Company 10 days prior written notice of the time and place of holding any such sale, and provided always that the Trustee shall also comply with any applicable mandatory legal requirements in connection with such sale.

G. The Trustee may in its discretion proceed to protect and enforce its rights and the rights of the Noteholders by such appropriate judicial proceedings as the Trustee shall deem most effectual to protect and enforce any such rights whether for the specific enforcement of any covenant or agreement in this Indenture or in aid of the exercise of any power granted herein or to enforce any other proper remedy.

Anything to the contrary notwithstanding the rights and remedies provided in this Agreement shall be subject to any limitations applicable thereto under the Uniform Commercial Code of the State of Illinois.

SECTION 6.3. *Application of Funds on Default.* The purchase money proceeds and avails of any sale of the Trust Estate or any part thereof, and the proceeds and avails of any other remedy hereunder, or other realization of the security hereby given, including the proceeds of any sale pursuant to Paragraphs C and F of Section 6.2 hereof, shall be applied:

A. First, to the payment of the cost and expenses of the sale, proceeding or other realization, including all costs and expenses and charges for pursuing, searching for, taking, removing, keeping,

storing, advertising and selling such Trust Estate or any part thereof, the reasonable fees and expenses of the Trustee, attorneys and agents of the Trustee in connection therewith and to the payment of all taxes, assessments or similar liens on all or any part of the Trust Estate which may at that time be superior to the lien of this Indenture (unless such sale or other realization is subject to any such superior lien):

B. Second, to the payment of all advances made hereunder by the Trustee or through the Trustee by any Noteholder, which were used for the purpose of preserving the Trust Estate, together with interest thereon at the rate of 10% per annum;

C. Third, to the payment of the whole amount remaining unpaid on the Notes, both for principal and interest, and to the payment of any other indebtedness of the Company hereunder or secured hereby, so far as such proceeds may reach;

D. Fourth, to the payment of the surplus, if any, to the Company or to whomsoever may be lawfully entitled to receive the same, or as a court of competent jurisdiction may direct.

If there be a deficiency, the Company shall remain liable therefor and shall forthwith pay the amount of any such deficiency to the Trustee.

SECTION 6.4. *Effect of Sale, etc.* Any sale or sales pursuant to the provisions hereof, whether under the power of sale granted hereby or pursuant to any legal proceedings, shall operate to divest the Company of all right, title, interest, claim and demand whatsoever, either at law or in equity, of, in and to the Trust Estate so sold, and shall be free and clear of any and all rights of redemption by, through or under the Company. The Company covenants that it will not at any time insist upon or plead, or in any manner whatever claim or take any benefit or advantage of, any stay or extension law now or at any time hereafter in force, nor claim, take, nor insist upon any benefit or advantage of or from any law now or hereafter in force providing for the valuation or appraisal of the Trust Estate or any part thereof, prior to any sale or sales thereof to be made pursuant to any provision herein contained or to the decree, judgment or order of any court of competent jurisdiction; nor, after such sale or sales, claim or exercise any right under any statute now or hereafter made or enacted by any state or otherwise to redeem the property so sold or any part thereof, and hereby expressly waives for itself and on behalf of each and every person, except decree or judgment creditors of the Company acquiring any

interest in or title to the Trust Estate or any part thereof subsequent to the date of this Indenture, all benefit and advantage of any such law or laws, and covenants that it will not invoke or utilize any such law or laws or otherwise hinder, delay or impede the execution of any power herein granted and delegated to the Trustee, but will suffer and permit the execution of every such power as though no such power, law or laws had been made or enacted.

The receipt by the Trustee, or by any person authorized under any judicial proceeding to make any such sale, shall be a sufficient discharge to any purchaser of the Trust Estate, or of any part thereof, sold as aforesaid; and no such purchaser shall be bound to see the application of such purchase money, or be bound to inquire as to the authorization, necessity or propriety of any such sale. In the event at any such sale any holder or holders of Notes is or are the successful purchaser or purchasers, such holder or holders shall be entitled, for the purpose of making settlement or payment, to use and apply their Notes by crediting thereon the amount apportionable and applicable thereto out of the net proceeds of such sale.

SECTION 6.5. *Control by Noteholders.* The Holders of 51% in principal amount of the outstanding Notes shall have the right during the continuance of an Event of Default to direct in writing 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 that:

(i) such direction shall not be in conflict with any rule of law or with the provisions of this Indenture;

(ii) the Trustee shall not have determined that the action so directed would be unjustly prejudicial to Noteholders not taking part in such direction;

(iii) the Trustee shall not have determined that the action so directed might involve it in personal liability, unless indemnified against such liability to its satisfaction;

(iv) the Trustee may take any other action deemed proper by the Trustee which is not inconsistent with such direction.

SECTION 6.6. *Limitation on Suits.* No Holder of any Note shall have any right to institute any proceedings, judicial or otherwise, for

any remedy hereunder or for the exercise of any trust or power conferred on the Trustee unless:

- (i) an Event of Default has occurred and is continuing;
- (ii) the Holders of not less than 51% in principal amount of the outstanding Notes shall have made written request to the Trustee to institute proceedings in respect of such Event of Default in its own name as Trustee hereunder;
- (iii) such Holder or Holders have offered to the Trustee reasonable indemnity against the costs, expenses and liabilities to be incurred in compliance with such request; and
- (iv) the Trustee for 30 days after its receipt of such notice, request and offer of indemnity, has failed to institute any such proceeding;

it being understood and intended that no one or more of the Noteholders shall have any right in any manner whatever by virtue of or by availing of any provision of this Indenture to affect, disturb or prejudice the rights of any other Noteholders or to obtain or to seek to obtain priority or preference over any other Noteholder or to enforce any right under this Indenture except in the manner herein provided and for the equal and ratable benefits of all the Noteholders.

SECTION 6.7. *Unconditional Right of Noteholders to Principal and Interest.* Notwithstanding any other provision in this Indenture, the Holder of any Note shall have the right which is absolute and unconditional, to receive payment of the principal of and interest on such Note on the respective stated maturity expressed in such Note and to institute suit for the enforcement of any such payment and such right shall not be impaired without the consent of such Holder, provided, however, that no Noteholder shall be entitled to take any action or institute suit to enforce payment if the taking of same or the entry of a judgment in such suit would under applicable law result in a surrender, impairment, waiver or loss of the lien of this Indenture upon the Trust Estate or any part thereof as security for Notes held by any other Noteholder.

SECTION 6.8. *Enforcement of Claims Without Possession of Notes.* All rights of action and claims under this Indenture or the Notes may be prosecuted and enforced by the Trustee without possession of any of the Notes or the production thereof in any proceeding relating thereto

and any such proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust and any recovery of judgment shall, after provision for the payment of the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, be for the ratable benefit of the Notcholders in respect of which such judgment has been recovered.

SECTION 6.9. *Delay or Omission Not Waiver.* No delay or omission of the Trustee or of any Noteholder to exercise any right or remedy accruing upon any Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this Article or by law to the Trustee or to the Noteholders may be exercised from time to time as often as may be deemed expedient by the Trustee or the Noteholders as the case may be.

SECTION 6.10. *Waiver of Past Defaults—Rescission and Annulment of Acceleration.*

A. The Holders of not less than 51% in principal amount of the outstanding Notes may on behalf of the Holders of all of the Notes, waive any past default hereunder and its consequences excepting default:

- (i) in payment of the principal of or interest on any Note, or
- (ii) in respect of a covenant or provision hereof which, under Article Nine hereof, cannot be modified or amended without the consent of the Holder of each outstanding Note affected.

Upon any such waiver, such default shall cease to exist and any Event of Default arising therefrom shall be deemed to have been cured for every purpose of this Indenture; but no such waiver shall extend to any subsequent or other default or impair any right consequent thereon.

B. At any time after a declaration of acceleration has been made under Section 6.2A and before a judgment or decree for the payment of money due has been obtained by the Trustee, the Holders of 51% in principal amount of the Notes outstanding by written notice to the Company and the Trustee, may rescind and annul such declaration and its consequences if:

- (i) the Company has paid or deposited with the Trustee a sum sufficient to pay all overdue payments of interest on and in-

stallments of principal of any Notes which have become due otherwise than by such acceleration and all sums paid or advanced by the Trustee hereunder and the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel; and

(ii) all Events of Default and conditions which with notice or the lapse of time, or both, would become Events of Default, other than nonpayment of principal which may have become due solely by such acceleration, have been cured or waived as provided in this Section.

No such rescission shall affect any subsequent default or impair any right consequent thereon.

SECTION 6.11. *Restoration of Rights and Remedies.* If the Trustee or any Noteholder has instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or to such Noteholder, then and in every such case the Company, the Trustee and the Noteholders shall, subject to any determination in such proceeding, be restored severally and respectively to their former positions hereunder, and thereafter all rights and remedies of the Trustee and the Noteholders shall continue as though no such proceeding had been instituted.

ARTICLE SEVEN

THE TRUSTEE

SECTION 7.1. *Certain Duties and Responsibilities.*

A. Except during the continuance of an Event of Default,

(i) the Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(ii) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture; but in 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 Indenture.

B. In case an Event of Default has occurred and is continuing, the Trustee shall exercise such rights and powers vested in it by this Indenture, 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.

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

(i) this Subsection shall not be construed to limit the effect of Subsection A of this Section;

(ii) the Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer, unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts;

(iii) the Trustee shall not be liable with respect to any action suffered, taken or omitted to be taken by it in good faith in accordance with the direction of the Holders of 51% in principal amount of the Notes relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee under this Indenture; and

(iv) no provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

D. Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section.

SECTION 7.2. *Notice of Default.* Within 30 days after the Trustee has knowledge of the occurrence of any default hereunder, the Trustee shall send notice to all Registered Noteholders of such default unless same shall have been cured or waived. For the purpose of this Section

7.2, the term "default" means any event which is or, after notice or lapse of time, or both, would become, an Event of Default. The Trustee shall not be deemed to have knowledge of any default or Event of Default under this Indenture prior to the time it shall have obtained knowledge thereof at its Corporate Trust Office.

SECTION 7.3. *Certain Rights of Trustee.* Except as otherwise provided in Section 7.1:

A. the Trustee may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, coupon or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties;

B. any request or direction of the Company mentioned herein shall be sufficiently evidenced by a Company Request or Company Order and any resolution of the Board of Directors may be sufficiently evidenced by a Board Resolution;

C. whenever in the administration of this Indenture the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee (unless other evidence be herein specifically prescribed) may, in the absence of knowledge to the contrary or bad faith on its part, rely upon an Officers' Certificate;

D. the Trustee may consult with counsel and the written advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon;

E. the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Noteholders pursuant to this Indenture, unless such Noteholders shall have offered to the Trustee reasonable security or indemnity against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction;

F. the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, coupon or other paper or document but the Trustee, in its discre-

tion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Company, personally or by agent or attorney;

G. the Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys and the Trustee shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care by it hereunder:

H. the Trustee assumes no responsibility for the correctness of the recitals contained herein and in the Notes except the Trustee's Certificate of Authentication and such recitals shall be taken as the statements of the Company. Trustee makes no representation as to the validity, legality or sufficiency of this Indenture or the Notes or the Guaranty or as the value, condition or title of the Trust Estate or any part thereof or as to the security afforded thereby. The Trustee shall not be accountable for the use or application by the Company of the proceeds thereof;

I. the Trustee shall not be under any responsibility for the approval or acceptance of any expert for any of the purposes of this Indenture, other than to exercise reasonable care in the approval of experts who may furnish opinions or certificates to the Trustee under this Indenture;

J. the Trustee shall have no obligation or liability under any assignment or agreement or contract assigned to it by reason of or arising out of such assignment nor shall the Trustee be required or obligated in any manner to perform or fulfill any obligation of the assignor under or pursuant to any such assignment or agreement or contract; provided, however, that the Trustee, to the fullest extent permitted by law, is hereby expressly authorized and empowered, as if it were in fact the Company and the lessor under each Lease and the owner of the Equipment, to assert in the name of the Company any and all claims, and to bring in the name of the Company any and all suits and proceedings, which the Company may have or be entitled to assert or bring against any person whatsoever with respect to the Equipment or such Lease; provided, however, that the foregoing shall in no way limit the right of the Trustee, to the fullest extent permitted

by law, to assert any claim, or bring any suit or proceeding, in its own name, as Trustee or otherwise; and

K. the Trustee shall not be responsible for the recording, filing, re-recording or re-filing of this Indenture, or of any instrument of further assurance which it may hereafter receive as herein provided, or for any other action necessary to perfect or maintain the lien hereof or thereof, or for the renewing of the lien hereof or thereof, or for the affixing or cancellation of any revenue stamps.

SECTION 7.4. *Money Held or Paid by Trustee.* Money held by the Trustee in trust hereunder need not be segregated from other funds except to the extent required by law. The Trustee shall be under no liability for interest on any money received by it hereunder except as otherwise agreed with the Company. Whenever any funds are received by the Trustee from any source other than the Company, or whenever any funds are paid out by the Trustee, other than to the Noteholders, for any purpose under the provisions of this Indenture, the Trustee shall promptly send the Company a notice stating the nature and amount of such receipt or payment and the name of the party from whom received or to whom paid. From time to time at the request of the Company, Trustee shall inform the Company as to all amounts paid or held for payment on the Notes.

SECTION 7.5. *Compensation and Reimbursement.* The Company agrees:

A. to pay to the Trustee from time to time reasonable compensation for all services rendered by it hereunder (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust);

B. except as otherwise expressly provided herein, to reimburse the Trustee upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee in accordance with any provision of this Indenture (including the reasonable compensation and the expenses and disbursements of its agents and counsel), except any such expense, disbursement or advance as may be attributed to its negligence or bad faith; and

C. to indemnify the Trustee for, and to hold it harmless against, any loss, liability or expense incurred without negligence or bad faith on its part, arising out of or in connection with the acceptance or admin-

istration of this trust, including the costs and expenses of defending itself against any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder.

All such payments and reimbursements shall be made with interest at the rate of 10% per annum. As security for the performance of the obligations of the Company under this Section, the Trustee shall have a lien prior to the Notes upon all property and funds held or collected by the Trustee as such, except funds held in trust for the benefit of the Holders of particular Notes.

SECTION 7.6. *Corporate Trustee Required; Eligibility.* There shall at all times be a Trustee hereunder which shall be a corporation organized and doing business under the laws of the United States of America or of any State, authorized under such laws to exercise corporate trust powers, having a combined capital and surplus of at least \$25,000,000, subject to supervision or examination by Federal or State authority. If such corporation publishes reports of condition at least annually, pursuant to law or to the requirements of the aforesaid supervising or examining authority, then for the purpose of this Section, the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section, it shall resign immediately in the manner and with the effect hereinafter specified in this Article.

SECTION 7.7. *Resignation and Removal; Appointment of Successor.*

A. The Trustee may resign at any time by giving written notice thereof to the Company. Such resignation shall take effect upon the expiration of thirty (30) days after the delivery of such notice or upon receipt of the Trustee of an instrument of acceptance executed by a successor trustee, whichever shall first occur.

B. The Trustee may be removed at any time by Act of Noteholders of 66% in principal amount of the Notes outstanding.

C. If at any time:

(i) the Trustee shall cease to be eligible under Section 7.6 of this Indenture and shall fail to resign, or

(ii) the Trustee shall become incapable of acting or shall be adjudged a bankrupt or insolvent or a receiver of the Trustee or of its property shall be appointed or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation,

then, in any such case, the Company by a Board Resolution may remove the Trustee, or any Noteholder who has been a bona fide Holder of a Note for at least six (6) months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

D. If the Trustee shall resign, be removed or become incapable of acting, or if a vacancy shall occur in the office of Trustee for any cause, the Company, by a Board Resolution, shall promptly appoint a successor Trustee. If, within one year after such resignation, removal or incapability, or the occurrence of such vacancy, a successor Trustee shall be appointed by Act of Noteholders of 66 $\frac{2}{3}$ % in principal amount of the Notes outstanding, the successor Trustee so appointed shall, forthwith upon its acceptance of such appointment, become the successor Trustee and supersede the successor Trustee appointed by the Company. If no successor Trustee shall have been so appointed by the Company or the Noteholders and shall have accepted appointment in the manner hereinafter provided, any Noteholder who has been a bona fide Holder of a Note for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the appointment of a successor Trustee.

E. The Company shall give notice of each resignation and each removal of the Trustee and each appointment of a successor Trustee by written notice of such event to the registered holders of Notes at their addresses as shown in the Note Register. Each notice shall include the name and address of the principal corporate trust office of the successor Trustee.

SECTION 7.8. *Acceptance of Appointment by Successor.* Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to the Company and to the retiring Trustee an instrument accepting such appointment, and thereupon the resignation or removal of the retiring Trustee shall become effective and such successor Trustee

tee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Trustee; but, on Company Request or the request of the successor Trustee, such retiring Trustee shall, upon payment of its charges, execute and deliver an instrument transferring to such successor Trustee all the rights, powers and trusts of the retiring Trustee, and shall duly assign, transfer and deliver to such successor Trustee all of the Trust Estate held by such retiring Trustee hereunder, subject nevertheless to its lien, if any, provided for in Section 7.5 hereof. Upon request of any such successor Trustee, the Company shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor Trustee all such rights, powers and trusts.

SECTION 7.9. *Merger or Consolidation.* 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 of the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder, provided such corporation shall be otherwise qualified and eligible under this Article, to the extent operative, without the execution or filing of any paper or any further act on the part of any of the parties hereto. In case any Notes shall have been authenticated, but not delivered, by the Trustee then in office, any successor by merger or consolidation to such authenticating Trustee may adopt such authentication and deliver the Notes so authenticated with the same effect as if such successor Trustee had itself authenticated such Notes.

SECTION 7.10. *May Hold Notes.* The Trustee, in its individual capacity or any other capacity, may become the owner or pledgee of the Notes and may otherwise deal with the Company with the same rights it would have if it were not the Trustee.

ARTICLE EIGHT

CONSOLIDATION, MERGER, ETC.

SECTION 8.1. *Consolidation of Company.* The Company shall not consolidate with or merge into any other corporation or convey or transfer its properties and assets substantially as an entirety to any person, except with the consent of the Holders of not less than 51% in principal amount of the outstanding Notes by Acts of Noteholders delivered to

the Company and the Trustee (which consent shall not be unreasonably withheld) and unless:

A. the corporation formed by such consolidation or into which the Company is merged or the person which acquires by conveyance or transfer the properties and assets of the Company substantially as an entirety shall be a corporation organized and existing under the laws of the United States of America or any State or the District of Columbia, and shall expressly assume, by an indenture supplemental hereto, executed and delivered to the Trustee, in form satisfactory to the Trustee, the due and punctual payment of the principal of and interest on all the Notes and the performance of every covenant of this Indenture on the part of the Company to be performed or observed;

B. immediately after giving effect to such transaction, no Event of Default, and no event which, after notice or lapse of time, or both, would become an Event of Default, shall have happened and be continuing: and

C. The Company has delivered to the Trustee an Officer's Certificate and an Opinion of Counsel each stating that such consolidation, merger, conveyance or transfer and such supplemental indenture comply with this Article and that all conditions precedent herein provided for relating to such transaction have been complied with.

SECTION 8.2. *Successor Corporation Substituted.* Upon any consolidation or merger, or any conveyance or transfer of the properties and assets of the Company substantially as an entirety in accordance with Section 8.1, the successor corporation formed by such consolidation or into which the Company is merged or to which such conveyance or transfer is made shall succeed to, and be substituted for, and may exercise every right and power of, the Company under this Indenture with the same effect as if such successor corporation had been named as the Company herein; provided, however, that no such conveyance or transfer shall have the effect of releasing the person named at the "Company" in the first paragraph of this instrument or any successor corporation which shall theretofore have become such in the manner prescribed in this Article from its liability as obligor and maker on any of the Notes.

ARTICLE NINE

SUPPLEMENTAL INDENTURE

SECTION 9.1. *Without Consent of Noteholders.* Without the consent of any Noteholder, the Company, when authorized by a Board Resolution, and the Trustee, at any time and from time to time, may enter into one or more supplemental indentures, in form satisfactory to the Trustee, or Assignments of Lease for any of the following applicable purposes:

A. to evidence the succession of another corporation to the Company, and the assumption by any such successor of the covenants of the Company herein and in the Notes contained; or

B. to add to the covenants of the Company, for the benefit of the Holders of the Notes, or to surrender any right or power herein conferred upon the Company; or

C. to cure any ambiguity, to correct or supplement any provision herein which may be inconsistent with any other provision herein, or to make any other provisions with respect to matters or questions arising under this Indenture which shall not be inconsistent with the provisions of this Indenture, provided such action shall not adversely affect the interests of the Holders of the Notes; or

D. to correct or amplify the description of all or any portion of the Trust Estate at any time subject to the lien of this Indenture, to describe again all or any part of the Equipment or other parts of the Trust Estate in one or more supplemental indentures or to subject to the lien of this Indenture any additional property, or any substitutions or replacements thereto.

SECTION 9.2. *With Consent of Noteholders.* With the consent of the Holders of not less than 51% in principal amount of the outstanding Notes by the Act of Noteholders delivered to the Company and the Trustee, the Company, when authorized by a Board Resolution, and the Trustee, may enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or of modifying in any manner the rights of the Holders of the Notes, provided, however, that no such supplemental indenture shall, without the consent of the Holder of each outstanding Note affected thereby:

A. reduce or extend the time stated in the Notes for the payment of the principal of any Note or the interest thereon or for

the payment of any other amounts required to be paid under the provisions of Section 3.1 hereof; or

B. modify any of the provisions of this Section; or

C. permit the creation of any lien ranking prior to or on a parity with the lien of this Indenture on the Trust Estate or any part thereof, except as herein expressly permitted.

It shall not be necessary for any consent under this Section to specify the particular form of any proposed supplemental indenture, but it shall be sufficient if such consent shall indicate the substance thereof.

SECTION 9.3. *Execution of Supplemental Indentures.* In executing, or accepting the additional trusts created by, any supplemental indenture permitted by this Article or the modification thereby of the trusts created by this Indenture, the Trustee shall be entitled to receive, and (subject to Section 7.1) shall be fully protected in relying upon, an Opinion of Counsel stating that the execution of such supplemental indenture is authorized or permitted by this Indenture. The Trustee may, but shall not be obligated to, enter into any such supplemental indenture which affects the Trustee's own rights, duties or immunities under this Indenture or otherwise.

SECTION 9.4. *Effect of Supplemental Indenture.* Upon the execution of any supplemental indenture under this Article, this Indenture shall be modified in accordance therewith, and such supplemental indenture shall form a part of this Indenture for all purposes; and every Holder of Notes theretofore or thereafter authenticated and delivered hereunder shall be bound thereby.

SECTION 9.5. *References in Notes to Supplemental Indentures.*

A. Notes authenticated and delivered after the execution of any supplemental indenture under this Article may bear a notation in form approved by the Trustee as to any matter provided for in such supplemental indenture, or, if deemed desirable by the Trustee, express reference to such supplemental indenture shall be made in the text of such Notes or in a notation thereon, and any of the terms of such supplemental indenture shall be set forth therein in reasonable and customary manner.

B. If the Company or the Trustee shall so determine, new Notes so modified as is necessary in the opinion of the Trustee and the Board

to conform to any supplemental indenture, shall be prepared and executed and delivered by the Company to the Trustee, and thereafter, upon surrender by the holders thereof of outstanding Notes, the same shall be authenticated and delivered by the Trustee in exchange for the Notes surrendered. Such exchange shall be made at the expense of the Company and the surrendered Notes shall be promptly cancelled by the Trustee. The Company or the Trustee may require Notes outstanding to be presented for exchange as aforesaid, or for suitable notation as to any supplemental indenture.

ARTICLE TEN

COVENANTS OF COMPANY

SECTION 10.1. *To Pay Principal, Interest and Other Amounts.* The Company will duly and punctually pay the principal of and interest on all the outstanding Notes, according to the terms thereof, and will duly and punctually pay all other amounts required to be paid by it hereunder.

SECTION 10.2. *Issuance of Notes in Accordance with Indenture; to Permit No Default.* The Company will not issue, nor permit to be issued, any Notes hereunder in any manner other than in accordance with the provisions of this Indenture, and will not suffer or permit any default or Event of Default to occur under this Indenture.

SECTION 10.3. *Authorization of Company to Issue Notes.* The Company is duly authorized under the laws of the State of Illinois, and all other applicable provisions of law, to create and issue the Notes and to execute this Indenture, and all corporate action on its part required for the lawful creation and issue of the Notes and the execution of this Indenture has been duly and effectively taken; and the Notes, upon the issuance thereof, are and will be valid and enforceable obligations of the Company in accordance with their terms.

SECTION 10.4. *To Maintain Corporate Existence.* Subject to the matters permitted under Article Eight, the Company will at all times cause to be done all things necessary to maintain, preserve and renew its corporate existence and the corporate existence of United States Railway Equipment Co. and U.S. Railway Mfg. Co. (hereinafter called "Affiliates") and of all of the Company's subsidiaries and its rights and franchises and the rights and franchises of the Affiliates and of all of

the Company's subsidiaries, and comply with all material laws applicable to it and to the Affiliates and to all of the Company's subsidiaries in such manner as its counsel shall advise, provided, however, that nothing contained in this Section shall require the Company to comply with any law so long as the validity or applicability thereof shall be disputed or contested in good faith, or require it to maintain, preserve or renew any right or franchise deemed by it to be not necessary or desirable in the conduct of its business or for the protection of the Noteholders.

SECTION 10.5. *To Take All Action in Further Assurance.* The Company will at its own expense, at any and all times do, execute, acknowledge and deliver, or cause to be done, executed, acknowledged and delivered, all and every such reasonable further acts, deeds, conveyances, mortgages, transfers and assurances as the Trustee shall reasonably require for the better assuring, conveying, transferring, mortgaging, assigning and confirming unto the Trustee the Trust Estate, and/or as in the Opinion of Counsel may be required more effectively to subject the Trust Estate to the lien of this Indenture, as security for, and for the benefit and protection of, the Notes.

SECTION 10.6. *Possession of Cars, New Leases.*

A. So long as there shall not be an Event of Default under this Indenture the Company shall be entitled (i) to possession of the Equipment, (ii) to exercise all rights of the lessor under any Lease, (iii) to receive and collect all rentals and other sums due and payable under the Leases, subject to Section 4.1F hereof, (iv) to modify any Lease, provided such action shall not adversely affect the interests of the Noteholders and the Trustee shall consent thereto, and (v) to lease Cars to, or to permit their use under the terms of car contracts by a lessee or user incorporated in the United States of America (or any state thereof or the District of Columbia) or in the Dominion of Canada or any province or Territory thereof upon any terms and conditions not in conflict with or in derogation of the rights of the Trustee hereunder; *provided, however*, that any Lease whether existing on the date hereof or hereafter entered into shall forthwith be assigned to the Trustee as security for the obligations of the Company hereunder pursuant to an Assignment. The Company agrees to use all reasonable efforts to keep all of the Equipment continuously under lease and upon the expiration of any of the Leases in existence at the time of the execution of this

Indenture to re-let the cars covered by the expired Leases, to execute an Assignment as provided above and to cause an opinion of counsel to be delivered as required by paragraph 2 of Exhibit C hereto.

B. Subject to the limitations on the Company's rights contained in paragraph 1 of the Assignments and in Subsection C of this Section 10.6, the Company will take such action as it may deem necessary to enforce the obligations of Lessees under Leases and the Company will not, at any time after any default under a Lease, fail to take with reasonable promptness, or fail to continue to take with reasonable promptness, any action which the Trustee may request as being necessary or appropriate for the protection of the interests of the Holders of the Notes, which action may include enforcing the Company's rights against a lessee by legal proceedings or otherwise.

C. The Company will not without prior consent of the Trustee, who shall act only upon the direction of the Holders of not less than 51% in principal amount of the outstanding Notes:

(1) terminate, modify or accept a surrender of, or offer or agree to any termination, modification or surrender of, the Leases (except as otherwise expressly provided in this Indenture) or by affirmative act consent to the creation or existence of any security interest or other lien to secure the payment of indebtedness upon the leasehold estate created by the Leases or any part thereof, provided that the provisions of this Section 10.6C(1) shall not affect the Company's rights to enforce the obligations of Lessees under Leases or to exercise the remedies of Lessor under the Leases; provided further that the Company may declare a default under any of the Leases only with the prior consent of the Trustee, who shall give such consent only upon the prior consent of the (which consent of the Holders will not be unreasonably withheld or delayed); or

(2) receive or collect or permit the receipt or collection of any rental payment under the Leases prior to the date for payment thereof provided for by the Leases or assign, transfer or hypothecate (other than to the Trustee hereunder) any rent payment then due or to accrue in the future under the Leases in respect of the Equipment; or

(3) sell, mortgage, transfer, assign or hypothecate (other than to the Trustee hereunder) its interest in the Equipment or any part thereof or in any amount to be received by it from the use or disposition of the Equipment.

Anything to the contrary in Section 10.6C(1) notwithstanding, the Company shall have the right to terminate, modify or accept a surrender of any Lease or any part thereof made with Evans Products Company ("Evans") without the prior consent of the Trustee, provided that (i) the cars which were subject to such Lease (the "Evans Lease") prior to such termination, modification or surrender are relet under a new lease (the "New Lease") to a lessee with a net worth not less than \$100,000,000 and all of whose senior unsecured obligations are rated by Moody's Investor's Service as "A" or higher; (ii) the term of the New Lease is not less than the unexpired term of the Evans Lease; (iii) the monthly rentals payable under the New Lease are at least equal to the monthly rentals payable under the Evans Lease and commence within three months of the termination of the Evans Lease; (iv) the terms of the New Lease are substantially similar to the terms of the Evans Lease; (v) the New Lease has been assigned to the Trustee and such assignment recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act; and (vi) a notice of such assignment shall have been sent to the lessee under the New Lease, with a copy of such notice sent to the Trustee.

SECTION 10.7. *Warranty of Title.* The Company will, at the date of the subjection of the Trust Estate to the lien hereof, own and be possessed of the Trust Estate, subject to no mortgage, pledge, lien, charge or encumbrance other than the Leases described in Exhibit B hereto, the lien hereof and such liens or encumbrances as are specifically permitted by this Indenture; and will at such date have full power and lawful authority to assign, transfer, deliver and pledge or cause to be assigned, transferred, delivered and pledged, the entire Trust Estate in the manner and form aforesaid. As long as any Notes are outstanding hereunder, the Company will not subject the Cars to any mortgage, security interest, pledge, lien, charge or encumbrance other than the Leases, this Indenture and the Assignments. The Company hereby does and will forever warrant and defend the title to the Trust Estate against the claims and demands of all persons whomsoever.

SECTION 10.8. *To Pay Taxes.* The Company will duly pay or cause to be paid and discharge, as the same become due and payable, all taxes, assessments and governmental and other charges and claims levied or imposed, or which if unpaid might become a lien, upon the Trust Estate, provided, however, that nothing contained in this Section shall require the Company to pay such tax, assessment, charge or claim so long as the Company or the Lessee in good faith shall contest the

validity or amount thereof by appropriate legal or administrative proceedings, unless thereby in the judgment of Trustee, the rights or interests of Trustee or Noteholders will be materially endangered.

SECTION 10.9. *Indemnification.* The Company does hereby assume and agree to indemnify, protect, save and keep harmless the Trustee, each Noteholder, its agents and servants, from and against any and all losses, damages, injuries, claims, demands and expenses, including legal expenses of whatsoever kind or nature arising out of or on account of the use, condition (including without limitation, latent and other defects and whether or not discoverable) or operation of all or any part of the Equipment and by whomsoever used or operated. Such indemnities shall continue in full force and effect, notwithstanding the termination of this Indenture. It is understood and agreed, however, that the Noteholders shall give the Company and the Trustee prompt notice of any claim or liability hereby indemnified against.

SECTION 10.10. *Default under B&M Lease.* If an event of default occurs under the B&M Lease (as defined in such Lease), the Company shall promptly upon request of the Holders of 66 $\frac{2}{3}$ % in principal amount of the outstanding Notes, terminate such Lease and within six months of such termination substitute a new lease therefor with a lessee acceptable to such Holders. Such new Lease shall contain terms and provisions substantially similar to the printed terms and provisions of the leases assigned pursuant to that certain Agreement and Indenture (Security Agreement) dated as of May 1, 1974, between the Company and Chemical Bank, provided that nothing in the non-printed terms and provisions of such new Lease shall materially change or contravene the printed terms and provisions thereof. If no lessee is deemed to be acceptable by such Holders, the Company shall promptly prepay the Notes in accordance with Section 3.10' hereof.

ARTICLE ELEVEN

MISCELLANEOUS

SECTION 11.1. *Counterparts.* This Indenture may be executed in any number of counterparts, each of which if bearing the signature of all parties shall be deemed an original or any two or more of which containing in the aggregate the signatures of all parties shall together constitute but one and the same instrument which shall be deemed an original.

SECTION 11.2. *Governing Law.* This Indenture shall in all respects be construed in accordance with and governed by the laws of the State of Illinois, provided, however, that any provisions relating to the rights, obligations and immunities of the Trustee shall be governed by the laws of the State of California.

SECTION 11.3. *Titles and Section Headings.* The titles of the Articles and the Section headings herein are for convenience only and shall not affect the construction hereof.

SECTION 11.4. *Benefits of Indenture.* This Indenture shall be for the sole and exclusive benefit of the Company, the Trustee and the Holders of the Notes hereby secured, and all covenants, agreements and rights shall inure to the benefit of or bind, as the case may be, such parties, their respective successors and assigns.

SECTION 11.5. *Severability.* In case any one or more of the provisions contained in this Indenture or in the Notes shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and therein shall not in any way be affected or impaired thereby.

IN WITNESS WHEREOF, the parties hereto have each caused this Agreement and Indenture to be duly executed by their respective corporate officers thereunto duly authorized and their respective corporate seals to be hereunto affixed and attested all as at the day, month and year first above written.

UNITED STATES RAILWAY LEASING COMPANY

(Corporate Seal)

Attest: [Signature]
Assistant Secretary

by C. Richard Baum
Vice President

BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION, not in its individual capacity but solely in its trust capacity

(Corporate Seal)

Attest: [Signature]
Assistant Secretary

by [Signature]
Vice President

STATE OF CALIFORNIA }
CITY AND COUNTY OF SAN FRANCISCO } ss

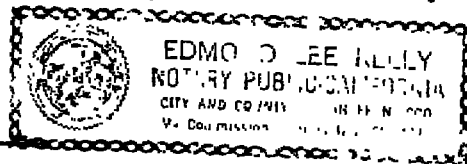
R. F. KELLY

On this 26th day of August 1974 personally appeared
..... and L. V. OSBORNE to me personally known, who being
by me sworn, did say that they are, respectively, a Vice President
and Assistant Secretary of Bank of America National Trust and
Savings Association, a national banking association, that the seal
affixed to the foregoing instrument is the corporate seal of said associ-
ation, that said instrument was signed and sealed on behalf of said
corporation by authority of its Board of Directors, and they acknowl-
edged that the execution of the foregoing instrument was the free act
and deed of said association.

[Signature]
Notary Public

My commission expires:

1/29/76



STATE OF ILLINOIS }
COUNTY OF COOK } ss

On this 21st day of Aug., 1974 before me personally appeared
... C.A. B... and ... P. A. ... to me personally known, who being by
me duly sworn, say that they are, respectively, a Vice President and
an Assistant Secretary of UNITED STATES RAILWAY LEASING COMPANY,
an Illinois corporation, 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 they acknowledged that the execution of the
foregoing instrument was the free act and deed of said corporation.

[Signature]
Notary Public

My commission expires:

NOTARY PUBLIC STATE OF ILLINOIS
MY COMMISSION EXPIRES NOV. 8, 1975
Issued thru Illinois Notary Assoc.

EXHIBIT A

Lender and Payment Address	Principal Amount of Note	Interest Rate	Number of Principal Installments and Principal Installment Dates	Interest Installment Payment Dates
Bank of America National Trust and Savings Association, 555 California 94137, Attention: National Division —Leasing	\$5,000,000.00	120% of Bank of America National Trust and Savings Association's commercial lending rate in effect from time to time for corporate borrowers of the highest responsibility and substance having a 90 day maturity	15 equal consecutive semi-annual installments of \$333,333.33 each on February 15 and August 15 in each year, commencing February 15, 1975 to and including February 15, 1982	Quarter-annually on November 15, February 15, May 15 and August 15 of each year, commencing November 15, 1974
Aetna Life Insurance Company — All payments are to be credited (in the form of Federal funds) to Actna's Account No. 000-45-764 at Morgan Guaranty Trust Company of New York, 23 Wall Street, New York, New York 10015 Attention: Money Transfer Department	\$5,000,000.00	8.9%	10 equal consecutive annual installments of \$500,000 each on August 15 in each year, commencing August 15, 1980 to and including August 15, 1989	Semi-annually on February 15 and August 15 of each year, commencing February 15, 1975

EXHIBIT B

DESCRIPTION OF EQUIPMENT AND LEASE

<u>No. of Cars</u>	<u>Description of Cars</u>	<u>Lessee</u>	<u>Date of Lease</u>	<u>Lease Term</u>	<u>ICC Rec. No.</u>
600	50' 70-ton box cars with rigid underframes, 10' sliding doors and nailable steel floors, bearing car reporting marks BM 78000 to BM 78599, both inclusive	Robert W. Meserve, Trustee of the Property of the Boston and Main Corporation, Debtor	6/5/73	15 years	7093
50	50' 70-ton box cars with rigid underframes, 10' sliding doors, nailable steel floors and 4 belt D. F. equipment, bearing car reporting marks BM 3000 to BM 3049, both inclusive				
50	50' 70-ton box cars with cushioned underframes, 10' sliding doors, nailable steel floors and 4 belt D. F. equipment, bearing car reporting marks BM 3100 to BM 3149, both inclusive				
<u>700</u>					

EXHIBIT C

ASSIGNMENT OF LEASE

WHEREAS, UNITED STATES RAILWAY LEASING COMPANY, a corporation of the State of Illinois (hereinafter referred to as "United"), and

 a corporation of the State of (hereinafter referred to as "Lessee"), have entered into a lease (herein called the "Lease") dated providing for the lease by United to the Lessee of ton capacity cars, therein described (hereinafter referred to as the "Cars"); and

WHEREAS, the Lease was recorded pursuant to the provisions of Section 20c of the Interstate Commerce Act, as amended, on
, and was assigned recordation number; and

WHEREAS, BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION (hereinafter referred to as "Trustee"), a national banking association, with its Corporate Trust Office at 555 California Street, San Francisco, California, has agreed to act as Trustee under a certain Agreement and Indenture (Security Agreement) dated as of July 15, 1974 (herein called the "Indenture") securing the loan of certain moneys to United evidenced by United's notes, and United has agreed to assign all of its right, title and interest in and to the Lease to the Trustee as additional security for the notes under the Indenture.

Now, THEREFORE, for value received and upon the terms and conditions hereinafter set forth:

1. United does hereby sell, assign, transfer and set over to the Trustee all of the right, title and interest of United in and to the Lease and rentals and all other amounts payable by the Lessee or any other person, firm or corporation with respect to the Cars or under the Lease, except that any amount so payable shall continue to be paid to and received by United until and unless Trustee or United or the Holders of 66 $\frac{2}{3}$ % in principal amount of United's outstanding notes (herein called "Holders", whose notice shall be limited to the exercise of their rights hereinafter referred to) shall notify the Lessee or any successor to its interest that an Event of Default has occurred under the terms and provisions of the Indenture or that the Holders are exercising their rights under Section 4.1F of the Indenture and that payments are thereafter to be made to the Trustee; and in further-

ance of this Assignment and transfer, United does hereby authorize and empower the Trustee, in the event of notice of a default or that the Holders are exercising their rights under Section 4.1F of the Indenture, in its own name to sue for, collect, receive and enforce all payments to be made by the Lessee under and in compliance on the part of the Lessee with the terms and provisions of the Lease, to exercise all of the rights of United under any of the provisions of the Lease, and in its discretion to take any action under the Lease or with respect to the Cars as United could have taken thereunder if it had not assigned and transferred its rights therein, provided that nothing herein shall obligate the Trustee to take any action under the Lease or in respect of the Cars.

In the event that pursuant to Section 4.1F of the Indenture the Lessee is directed to pay and the Trustee is directed to receive the rentals, proceeds and other sums payable to the Company under or pursuant to the provisions of the Lease (hereinafter called "Rentals"), Trustee will accept payment of the Rentals made to it by the Lessee pursuant to the Lease and this Assignment and will apply the Rentals as follows: *first*, to or toward the payment of all amounts due and payable under the Indenture at the time of the receipt of such Rentals, and the Trustee shall credit such Rentals so applied to the amounts then due and payable by the Company under the Indenture; and, *second*, so long as, to the actual knowledge of the Trustee, the Company is not in default under any provision of the Indenture, any balance of Rentals remaining shall be paid over to the Company by the Trustee; *provided*, however, that so long as, to the actual knowledge of the Trustee, the Company shall be in default under any provision of the Indenture, the Trustee shall not pay over any of the Rentals to the Company, but shall, during the continuance of such default, apply all Rentals received by the Trustee to the payment of all sums then and thereafter due and payable under the Indenture.

2. United warrants and covenants (a) that on the date hereof title to the Cars is vested in United; that it has good and lawful right to sell and assign the same as provided in the Indenture and herein and that its right and title thereto is free from all liens and encumbrances; subject, however, in each case to the rights of the Lessee under the Lease and to the rights of the assignee hereunder, (b) that United has not executed any other assignment of the Lease or of its right to receive all payments under the Lease, and the Lease will con-

tinue to be free and clear of any and all claims, liens, agreements, security interests or other encumbrances (except this Assignment and except to the extent United is contesting the validity of the same in good faith and by appropriate proceedings), and (c) that notwithstanding this Assignment, it will perform and comply with each and all of the covenants and conditions in the Lease set forth to be complied with by United. United will cause notice of this Assignment forthwith to be given to the Lessee (together with a copy of this Assignment).

Unless the Lease is a lease specifically described in Exhibit B of the Indenture the Company will, concurrently with the execution and delivery of this Assignment, deliver to the Trustee the favorable written opinion of the Lessee's counsel stating with respect to the Lease the matters set forth in Paragraph 20 or 22, as the case may be, of the leases specifically described in Exhibit B of the Indenture and the opinion of Messrs. Rosenthal and Schanfield, counsel for the Company, or the opinion of other counsel satisfactory to the Trustee, to the effect that this Assignment has been duly authorized, executed and delivered by the Company and constitutes a duly valid and binding obligation of the Company and enforceable in accordance with its terms except to the extent limited by laws affecting creditors' rights generally.

3. United represents and warrants that the Lease and this Assignment have each been duly authorized and executed by it and the Lease and this Assignment are and will remain the valid and binding obligations of United in accordance with their terms, and United covenants that it will, from time to time, at the request of the Trustee, make, execute and deliver all such further instruments of assignment, transfer and assurance and do such further acts and things as the Trustee may reasonably request to give effect to the provisions hereof and to confirm the right, title and interest hereby assigned and transferred to the Trustee or intended so to be.

4. Pursuant to the terms of the Indenture, United cannot without the prior consent of the Trustee:

(a) terminate, modify or accept a surrender of, or offer or agree to any termination, modification or surrender of, the Lease (except as otherwise expressly provided in the Indenture) or by affirmative act consent to the creation or existence of any security interest or other lien to secure the payment of indebtedness upon the leasehold estate created by the Lease; provided further that United may declare a default under the Lease only with the prior written consent of the Trustee, who shall give consent only upon the

consent of the Holders as provided in the Indenture (which consent shall not be unreasonably withheld or delayed); or

(b) receive or collect or permit the receipt or collection of any rental payment under the Lease prior to the date for payment thereof provided for by the Lease or assign, transfer or hypothecate (other than to the Trustee under the Indenture) any rent payment then due or to accrue in the future under the Lease in respect of the Cars; or

(c) sell, mortgage, transfer, assign or hypothecate (other than to the Trustee under the Indenture) its interest in the Cars or any part thereof or in any amount to be received by it from the use or disposition of the Cars.

IN WITNESS WHEREOF, United has caused this instrument to be executed by its proper officers thereunto duly authorized and its corporate seal to be hereunto affixed, as of the 15th day of July, 1974.

UNITED STATES RAILWAY LEASING COMPANY

by: _____
Vice President

[CORPORATE SEAL]

ATTEST:

Assistant Secretary

ACCEPTED:

BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION, as Trustee as aforesaid

by: _____
Vice President

[CORPORATE SEAL]

ATTEST:

Assistant Secretary

STATE OF ILLINOIS }
COUNTY OF COOK } ss.

On this day of, 1974, before me personally appeared, to me personally known, who being by me duly sworn, says that he is a Vice President of UNITED STATES RAILWAY LEASING 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.

[NOTARIAL SEAL]

Notary Public

My Commission expires:

STATE OF CALIFORNIA }
CITY AND COUNTY OF SAN FRANCISCO } ss.

On this day of, 1974, before me personally appeared, to me personally known, who, being by me duly sworn, says that he is a Vice President of BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION, 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 association 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 association.

[NOTARIAL SEAL]

Notary Public

My Commission expires:

EXHIBIT D

NOTE: This Note has not been registered under the Securities Act of 1933 and may be offered and sold only if registered under said Act or if exempted from such registration.

No. _____

**UNITED STATES RAILWAY LEASING COMPANY
EQUIPMENT PROMISSORY NOTE,
ISSUE S**

\$.....

Chicago, Illinois

....., 19..

FOR VALUE RECEIVED, UNITED STATES RAILWAY LEASING COMPANY, an Illinois Corporation (hereinafter called the "Company"), hereby promises to pay to (hereinafter called the "Payee") of its registered assigns, at the Corporate Agency Division of BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION, the principal amount of (\$.....) on or before 15, 198., in lawful money of the United States, together with interest, in like money, from the date hereof (computed on the basis of a 360-day year of twelve 30-day months) on the principal amount hereof from time to time outstanding at 120% of the "prime rate" per annum. The principal of this Note is due and payable in 15 equal consecutive semi-annual installments on February 15 and August 15 in each year from 1975 to 1982, commencing February 15, 1975, up to and including February 15, 1982. Interest on the unpaid principal amount hereof from time to time outstanding is due and payable quarter-annually on November 15, February 15, May 15 and August 15 of each year, commencing November 15, 1974. As used herein the term "prime rate" shall mean Bank of America National Trust and Savings Association's commercial lending rate in effect from time to time for corporate borrowers of the highest responsibility and substance having a 90-day maturity.

Alternative 1*

* Alternative 1 to be used for Note to be issued to Bank of America National Trust and Savings Association.

Alternative 2** { at the rate of 8.9% per annum. The principal of this Note is due and payable in 10 equal consecutive annual installments on August 15 in each year 1980 to 1989, both inclusive. Interest on the unpaid principal amount hereof from time to time outstanding is due and payable semi-annually on February 15 and August 15 of each year, commencing February 15, 1975.

This Note is one of several notes (herein called "Notes") in an aggregate principal amount not to exceed \$10,000,000 issued or to be issued by the Company pursuant to an Agreement and Indenture (Security Agreement) dated as of July 15, 1974 (hereinafter called the "Indenture"), between Bank of America National Trust and Savings Association, as Trustee (hereinafter called the "Trustee") and the Company. The Notes are, or upon issuance will be, secured by (among other things) an Assignment of Lease (hereinafter called "Assignment"), each dated as of July 15, 1974, made by the Company to the Trustee, acting pursuant to the Indenture. The Assignment and the Indenture relate to certain units of railroad equipment. Reference is hereby made to the Indenture for a description of the property assigned and mortgaged, the nature of the property assigned and mortgaged, the nature and extent of the security and the rights of the Trustee, of the holders of the Notes and of the Company in respect of such security, copies of which are available for inspection at the above office of the Trustee.

The Notes may be prepaid in part and the maturity thereof may be accelerated, all as provided in the Indenture. The Company agrees to make required prepayments in accordance with the provisions of the Indenture.

As provided in said Indenture and upon payment of charges as therein provided, this Note is transferable by the registered owner hereof in person or by his attorney authorized in writing, at the Corporate Agency Division of the Trustee, upon surrender of this Note, accompanied by a written instrument of transfer duly executed by the registered owner or such attorney in form satisfactory to the Trustee and the Company, and upon any such transfer a new Note or Notes, for the same aggregate unpaid principal amount and with the same ma-

** Alternative 2 to be used for Note to be issued to Aetna Life Insurance Company.

turity, will be issued to the transferee in exchange herefor. The Company and the Trustee may deem and treat the person in whose name this Note is registered as the absolute owner hereof for the purpose of payment and for all other purposes.

The Notes are issuable as registered Notes in denominations provided for in said Indenture, and upon payment of charges as therein provided, Notes are exchangeable for other Notes of the same maturity of a different authorized denomination or denominations.

This Note shall not be valid until the certificate of authentication hereon shall have been signed by the Trustee under said Indenture.

IN WITNESS WHEREOF, the Company has caused this Note to be duly executed under its corporate seal.

UNITED STATES RAILWAY LEASING COMPANY

by: _____

[CORPORATE SEAL]

Vice President

ATTEST:

Assistant Secretary

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

This is one of the Notes described in the within mentioned Indenture.

BANK OF AMERICA NATIONAL TRUST AND
SAVINGS ASSOCIATION,
as Trustee

by: _____

Authorized Officer