

## Section 1: 10-Q (10-Q)

### UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

### Form 10-Q

(Mark One)

**QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

FOR THE QUARTERLY PERIOD ENDED JUNE 30, 2017

OR

**TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from \_\_\_\_\_ to \_\_\_\_\_ .

Commission File Number 1-6903



### TRINITY INDUSTRIES, INC.

(Exact name of registrant as specified in its charter)

Delaware

(State or Other Jurisdiction of Incorporation or Organization)

75-0225040

(I.R.S. Employer Identification No.)

2525 N. Stemmons Freeway, Dallas, Texas

(Address of principal executive offices)

75207-2401

(Zip Code)

(214) 631-4420

(Registrant's telephone number, including area code)

Indicate by check mark whether the Registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the Registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes  No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes  No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer  Accelerated filer  Non-accelerated filer  (Do not check if a smaller reporting company)

Smaller reporting company  Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Indicate by check mark whether the Registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes  No

At July 14, 2017 the number of shares of common stock outstanding was 151,335,584.

TRINITY INDUSTRIES, INC.

FORM 10-Q

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PART I

**Item 1. Financial Statements**  
**Trinity Industries, Inc. and Subsidiaries**  
**Consolidated Statements of Operations**  
**(unaudited)**

	Three Months Ended June 30,		Six Months Ended June 30,	
	2017	2016	2017	2016
(in millions, except per share amounts)				
<b>Revenues:</b>				
Manufacturing	\$ 713.6	\$ 888.8	\$ 1,412.3	\$ 1,898.9
Leasing	191.9	296.1	370.5	473.9
	<b>905.5</b>	1,184.9	<b>1,782.8</b>	2,372.8
<b>Operating costs:</b>				
Cost of revenues:				
Manufacturing	589.7	719.1	1,165.8	1,513.0
Leasing	92.2	178.6	175.8	274.6
	<b>681.9</b>	897.7	<b>1,341.6</b>	1,787.6
Selling, engineering, and administrative expenses:				
Manufacturing	61.4	60.3	117.9	121.7
Leasing	13.1	11.7	23.9	22.1
Other	38.3	34.7	73.3	59.4
	<b>112.8</b>	106.7	<b>215.1</b>	203.2
Gains (losses) on dispositions of property:				
Net gains on railcar lease fleet sales owned more than one year at the time of sale	23.7	11.4	23.7	13.5
Other	0.7	(0.3)	2.0	(0.5)
	<b>24.4</b>	11.1	<b>25.7</b>	13.0
Total operating profit	<b>135.2</b>	191.6	<b>251.8</b>	395.0
Other (income) expense:				
Interest income	(2.3)	(1.3)	(4.0)	(2.5)
Interest expense	45.7	45.6	90.7	91.4
Other, net	0.5	(4.9)	1.3	(5.6)
	<b>43.9</b>	39.4	<b>88.0</b>	83.3
Income before income taxes	<b>91.3</b>	152.2	<b>163.8</b>	311.7
Provision for income taxes	37.3	53.4	58.1	110.8
Net income	<b>54.0</b>	98.8	<b>105.7</b>	200.9
Net income attributable to noncontrolling interest	2.9	4.2	8.6	9.1
Net income attributable to Trinity Industries, Inc.	<b>\$ 51.1</b>	\$ 94.6	<b>\$ 97.1</b>	\$ 191.8
Net income attributable to Trinity Industries, Inc. per common share:				
Basic	\$ 0.34	\$ 0.62	\$ 0.64	\$ 1.25
Diluted	\$ 0.33	\$ 0.62	\$ 0.63	\$ 1.25
Weighted average number of shares outstanding:				
Basic	149.1	147.8	148.9	148.7
Diluted	151.0	147.8	151.0	148.7
Dividends declared per common share	\$ 0.13	\$ 0.11	\$ 0.24	\$ 0.22

See accompanying notes to consolidated financial statements.

**Trinity Industries, Inc. and Subsidiaries**  
**Consolidated Statements of Comprehensive Income**  
(unaudited)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2017	2016	2017	2016
	(in millions)			
Net income	\$ 54.0	\$ 98.8	\$ 105.7	\$ 200.9
Other comprehensive income (loss):				
Derivative financial instruments:				
Unrealized losses arising during the period, net of tax benefit of \$-, \$-, \$-, and \$0.2	(0.2)	(0.3)	(0.2)	(0.7)
Reclassification adjustments for losses included in net income, net of tax benefit of \$-, \$0.1, \$0.3, and \$0.5	1.2	1.2	2.2	2.2
Currency translation adjustment	0.5	0.3	0.8	1.8
Defined benefit plans:				
Amortization of net actuarial losses, net of tax benefit of \$0.5, \$0.5, \$0.9, and \$1.0	0.7	0.8	1.5	1.6
	2.2	2.0	4.3	4.9
Comprehensive income	56.2	100.8	110.0	205.8
Less: comprehensive income attributable to noncontrolling interest	3.6	4.9	10.1	10.3
Comprehensive income attributable to Trinity Industries, Inc.	\$ 52.6	\$ 95.9	\$ 99.9	\$ 195.5

See accompanying notes to consolidated financial statements.

**Trinity Industries, Inc. and Subsidiaries**  
**Consolidated Balance Sheets**

	<b>June 30, 2017</b>	<b>December 31, 2016</b>
	<b>(unaudited)</b>	
	<b>(in millions)</b>	
<b>ASSETS</b>		
Cash and cash equivalents	\$ 808.7	\$ 563.4
Short-term marketable securities	179.6	234.7
Receivables, net of allowance	351.4	378.7
Income tax receivable	182.7	102.1
Inventories:		
Raw materials and supplies	294.7	302.5
Work in process	172.6	189.5
Finished goods	160.0	173.8
	<b>627.3</b>	<b>665.8</b>
Restricted cash, including partially-owned subsidiaries of \$77.0 and \$78.4	194.8	178.2
Property, plant, and equipment, at cost, including partially-owned subsidiaries of \$1,981.7 and \$1,979.8	8,213.6	7,981.0
Less accumulated depreciation, including partially-owned subsidiaries of \$391.4 and \$364.9	<b>(2,140.4)</b>	<b>(2,014.2)</b>
	<b>6,073.2</b>	<b>5,966.8</b>
Goodwill	754.7	754.1
Other assets	279.7	281.5
	<b>\$ 9,452.1</b>	<b>\$ 9,125.3</b>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
Accounts payable	\$ 167.1	\$ 156.1
Accrued liabilities	412.4	426.1
Debt:		
Recourse, net of unamortized discount of \$17.9 and \$27.1	859.0	850.6
Non-recourse:		
Wholly-owned subsidiaries	1,069.0	840.0
Partially-owned subsidiaries	1,342.0	1,366.0
	<b>3,270.0</b>	<b>3,056.6</b>
Deferred income	22.0	23.5
Deferred income taxes	1,210.7	1,072.9
Other liabilities	54.4	79.0
	<b>5,136.6</b>	<b>4,814.2</b>
Stockholders' equity:		
Preferred stock – 1.5 shares authorized and unissued	—	—
Common stock – 400.0 shares authorized	1.6	1.6
Capital in excess of par value	483.0	534.6
Retained earnings	3,557.4	3,497.3
Accumulated other comprehensive loss	(110.7)	(113.5)
Treasury stock	(1.6)	(1.5)
	<b>3,929.7</b>	<b>3,918.5</b>
Noncontrolling interest	385.8	392.6
	<b>4,315.5</b>	<b>4,311.1</b>
	<b>\$ 9,452.1</b>	<b>\$ 9,125.3</b>

See accompanying notes to consolidated financial statements.

**Trinity Industries, Inc. and Subsidiaries**  
**Consolidated Statements of Cash Flows**  
(unaudited)

	Six Months Ended June 30,	
	2017	2016
	(in millions)	
<b>Operating activities:</b>		
Net income	\$ 105.7	\$ 200.9
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation and amortization	146.5	139.9
Stock-based compensation expense	13.8	22.8
Excess tax benefits from stock-based compensation	—	(0.6)
Provision for deferred income taxes	116.4	126.9
Net gains on railcar lease fleet sales owned more than one year at the time of sale	(23.7)	(13.5)
(Gains) losses on dispositions of property and other assets	(2.0)	0.5
Non-cash interest expense	14.7	14.2
Other	(0.6)	(2.6)
Changes in assets and liabilities:		
(Increase) decrease in receivables	(52.8)	(43.4)
(Increase) decrease in inventories	39.6	60.5
(Increase) decrease in other assets	(0.9)	19.7
Increase (decrease) in accounts payable	11.0	4.4
Increase (decrease) in accrued liabilities	(4.9)	(47.8)
Increase (decrease) in other liabilities	(26.7)	4.5
Net cash provided by operating activities	<u>336.1</u>	<u>486.4</u>
<b>Investing activities:</b>		
(Increase) decrease in short-term marketable securities	55.1	(115.1)
Proceeds from dispositions of property and other assets	6.0	4.1
Proceeds from railcar lease fleet sales owned more than one year at the time of sale	92.4	37.7
Capital expenditures – leasing, net of sold lease fleet railcars owned one year or less with a net cost of \$5.6 and \$92.0	(271.6)	(346.0)
Capital expenditures – manufacturing and other	(43.4)	(79.8)
Acquisitions, net of cash acquired	(5.3)	—
Other	(2.1)	2.3
Net cash required by investing activities	<u>(168.9)</u>	<u>(496.8)</u>
<b>Financing activities:</b>		
Excess tax benefits from stock-based compensation	—	0.6
Payments to retire debt	(98.3)	(77.6)
Proceeds from issuance of debt	299.4	—
(Increase) decrease in restricted cash	(16.6)	12.5
Shares repurchased	(41.9)	(34.7)
Dividends paid to common shareholders	(33.5)	(33.4)
Purchase of shares to satisfy employee tax on vested stock	(14.0)	(16.1)
Distributions to noncontrolling interest	(16.9)	(10.9)
Other	(0.1)	(2.0)
Net cash provided (required) by financing activities	<u>78.1</u>	<u>(161.6)</u>
Net increase (decrease) in cash and cash equivalents	245.3	(172.0)
Cash and cash equivalents at beginning of period	563.4	786.0
Cash and cash equivalents at end of period	<u>\$ 808.7</u>	<u>\$ 614.0</u>

See accompanying notes to consolidated financial statements.

**Trinity Industries, Inc. and Subsidiaries**  
**Consolidated Statement of Stockholders' Equity**  
**(unaudited)**

	Common Stock		Capital in Excess of Par Value	Retained Earnings	Accumulated Other Comprehensive Loss	Treasury Stock		Trinity Stockholders' Equity	Noncontrolling Interest	Total Stockholders' Equity
	Shares	\$0.01 Par Value				Shares	Amount			
(in millions, except par value)										
Balances at December 31, 2016	152.2	\$ 1.6	\$ 534.6	\$ 3,497.3	\$ (113.5)	(0.1)	\$ (1.5)	\$ 3,918.5	\$ 392.6	\$ 4,311.1
Net income	—	—	—	97.1	—	—	—	97.1	8.6	105.7
Other comprehensive income	—	—	—	—	2.8	—	—	2.8	1.5	4.3
Cash dividends on common stock	—	—	—	(36.4)	—	—	—	(36.4)	—	(36.4)
Restricted shares, net	1.6	—	15.6	—	—	(0.6)	(16.0)	(0.4)	—	(0.4)
Shares repurchased	—	—	—	—	—	(1.9)	(52.4)	(52.4)	—	(52.4)
Stock options exercised	—	—	0.2	—	—	—	—	0.2	—	0.2
Disbursements to non-controlling interest	—	—	—	—	—	—	—	—	(16.9)	(16.9)
Retirement of treasury stock	(2.5)	—	(68.3)	—	—	2.5	68.3	—	—	—
Other	—	—	0.9	(0.6)	—	—	—	0.3	—	0.3
Balances at June 30, 2017	151.3	\$ 1.6	\$ 483.0	\$ 3,557.4	\$ (110.7)	(0.1)	\$ (1.6)	\$ 3,929.7	\$ 385.8	\$ 4,315.5

See accompanying notes to consolidated financial statements.

**Trinity Industries, Inc. and Subsidiaries**  
**Notes to Consolidated Financial Statements**  
**(Unaudited)**

**Note 1. Summary of Significant Accounting Policies**

**Basis of Presentation**

The foregoing consolidated financial statements are unaudited and have been prepared from the books and records of Trinity Industries, Inc. and its consolidated subsidiaries ("Trinity," "Company," "we," or "our") including the accounts of its wholly-owned subsidiaries and its partially-owned subsidiaries, TRIP Rail Holdings LLC ("TRIP Holdings") and RIV 2013 Rail Holdings LLC ("RIV 2013"), in which the Company has a controlling interest. In our opinion, all normal and recurring adjustments necessary for a fair presentation of the financial position of the Company as of June 30, 2017, and the results of operations for the three and six months ended June 30, 2017 and 2016, and cash flows for the six months ended June 30, 2017 and 2016, have been made in conformity with generally accepted accounting principles. All significant intercompany accounts and transactions have been eliminated. Because of seasonal and other factors, the results of operations for the six months ended June 30, 2017 may not be indicative of expected results of operations for the year ending December 31, 2017. These interim financial statements and notes are condensed as permitted by the instructions to Form 10-Q and should be read in conjunction with the audited consolidated financial statements of the Company included in its Form 10-K for the year ended December 31, 2016.

**Stockholders' Equity**

In December 2015, the Company's Board of Directors renewed its \$250 million share repurchase program effective January 1, 2016 through December 31, 2017. Under the program, 1,942,200 shares were repurchased during the three and six months ended June 30, 2017, at a cost of approximately \$52.4 million. Certain shares of stock repurchased during June 2017, totaling \$10.5 million, were cash settled in July 2017 in accordance with normal settlement practices. During the six months ended June 30, 2016, the Company repurchased 2,070,600 shares at a cost of approximately \$34.7 million. There were no shares repurchased during the three months ended June 30, 2016. As of June 30, 2017, the remaining authorization under the program totaled \$163.0 million.

**Revenue Recognition**

Revenues for contracts providing for a large number of units and few deliveries are recorded as the individual units are produced, inspected, and accepted by the customer as the risk of loss passes to the customer upon delivery acceptance on these contracts. Revenues for certain customer-requested "bill and hold" arrangements, primarily in the Energy Equipment Group, are recognized when all of the following conditions have been met: the risks of ownership have passed to the customer, the customer has made a fixed commitment to purchase the goods, there is a fixed delivery schedule consistent with the customer's business purpose, the customer's goods have been segregated from our inventory and are not available to fill other orders, the goods are complete and ready for shipment, and no additional performance obligations exist for the Company. Revenue from rentals and operating leases, including contracts that contain non-level fixed rental payments, is recognized monthly on a straight-line basis. Revenue is recognized from the sales of railcars from the lease fleet on a gross basis in leasing revenues and cost of revenues if the railcar has been owned for one year or less at the time of sale. Sales of railcars from the lease fleet owned for more than one year are recognized as a net gain or loss from the disposal of a long-term asset. Fees for shipping and handling are recorded as revenue. For all other products, we recognize revenue when products are shipped or services are provided.

**Financial Instruments**

The Company considers all highly liquid debt instruments to be either cash and cash equivalents if purchased with a maturity of three months or less, or short-term marketable securities if purchased with a maturity of more than three months and less than one year. The Company intends to hold its short-term marketable securities until they are redeemed at their maturity date and believes that under the "more likely than not" criteria, the Company will not be required to sell the securities before recovery of their amortized cost bases, which may be maturity.

Financial instruments that potentially subject the Company to a concentration of credit risk are primarily cash investments including restricted cash, short-term marketable securities, and receivables. The Company places its cash investments and short-term marketable securities in bank deposits and investment grade, short-term debt instruments and limits the amount of credit exposure to any one commercial issuer. Concentrations of credit risk with respect to receivables are limited due to control procedures that monitor the credit worthiness of customers, the large number of customers in the Company's customer base, and their dispersion across different industries and geographic areas. As receivables are generally unsecured, the Company maintains an allowance for doubtful accounts based upon the expected collectibility of all receivables. Receivable balances determined to be uncollectible are charged against the allowance. The carrying values of cash, short-term marketable securities (using level two inputs), receivables, and accounts payable are considered to be representative of their respective fair values. At June 30, 2017, one Rail Group customer's net receivable balance, all current, accounted for 13% of the consolidated net receivables balance outstanding.



## Recent Accounting Pronouncements

On January 1, 2017, the Company adopted Accounting Standards Update 2016-09, "Compensation - Stock Compensation: Improvements to Employee Share-Based Payment Accounting", ("ASU 2016-09") which changed how companies account for certain aspects of share-based payments to employees. ASU 2016-09 requires, among other things, that excess tax benefits or deficiencies related to vested awards, previously recognized in stockholders' equity, be included in income tax expense when the awards vest. The adoption of ASU 2016-09 resulted in an adjustment to retained earnings of \$0.6 million, net of tax, as of January 1, 2017 related to the cumulative effect of the standard. For the three and six months ended June 30, 2017, the effect on the provision for income taxes included in the consolidated statement of operations was an additional provision of \$2.7 million and \$2.4 million, respectively.

In May 2014, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update No. 2014-09, "Revenue from Contracts with Customers," ("ASU 2014-09") providing common revenue recognition guidance for U.S. GAAP. Under ASU 2014-09, an entity recognizes revenue when it transfers promised goods or services to customers in an amount that reflects what it expects in exchange for the goods or services. It also requires additional detailed disclosures to enable users of financial statements to understand the nature, amount, timing, and uncertainty of revenue and cash flows arising from contracts with customers. ASU 2014-09 will become effective for public companies during interim and annual reporting periods beginning after December 15, 2017.

The Company plans to adopt ASU 2014-09 effective January 1, 2018 using the modified retrospective method of adoption. Under this method, the guidance will be applied only to the most current period presented in the financial statements and the cumulative effect of initially applying the standard will result in an adjustment to the opening balance of retained earnings as of the date of adoption. Using both internal and external resources, the Company continues to evaluate the requirements of the standard and their application to our various business units. While our technical analysis is on-going, we anticipate a change in the timing of revenue recognition for our wind towers and utility structures product lines within our Energy Equipment Group, no longer recognizing revenue when products are delivered, but under the new guidance, recognizing revenue over time as products are manufactured. The impact of this change cannot be reasonably estimated at this time. We expect revenue recognition policies related to our other business segments to remain substantially unchanged as a result of adopting ASU 2014-09, although this could change based on our on-going analysis. Additionally, we do not anticipate significant changes in business processes or systems.

In February 2016, the FASB issued Accounting Standards Update No. 2016-02, "Leases", ("ASU 2016-02") which amends the existing accounting standards for lease accounting, including requiring lessees to recognize most leases on their balance sheets and making targeted changes to lessor accounting. ASU 2016-02 will become effective for public companies during interim and annual reporting periods beginning after December 15, 2018, with early adoption permitted. The Company plans to adopt ASU 2016-02 effective January 1, 2019. We are continuing to assess the potential effects of the new standard, including its effects on our consolidated financial statements and the accounting for revenue from full service leases.

In December 2016, the FASB issued Accounting Standards Update No. 2016-18, "Restricted Cash", ("ASU 2016-18") which clarifies how entities should present restricted cash and restricted cash equivalents in the statement of cash flows. The new guidance requires a reconciliation of totals in the statement of cash flows to the related cash and cash equivalents and restricted cash captions in the balance sheet. ASU 2016-18 will become effective for public companies during interim and annual reporting periods beginning after December 15, 2017 with early adoption permitted. The Company plans to adopt ASU 2016-18 effective January 1, 2018. The effect of adopting this standard is not expected to be significant.

In March 2017, the FASB issued Accounting Standards Update No. 2017-07, "Compensation - Retirement Benefits: Improving the Presentation of Net Periodic Pension Cost and Net Periodic Postretirement Benefit Cost" ("ASU 2017-07") which changes how companies that sponsor defined benefit pension plans present the related net periodic benefit cost in the income statement. The service cost component of the net periodic benefit cost will continue to be presented in the same income statement line items, however other components of the net periodic benefit cost will be presented as a component of other income and excluded from operating profit. ASU 2017-07 will become effective for public companies during interim and annual reporting periods beginning after December 15, 2017 with early adoption permitted. The Company plans to adopt ASU 2016-18 effective January 1, 2018. The effect of adopting this standard is not expected to be significant.

**Note 2. Acquisitions and Divestitures**

In May 2017, we completed the acquisition of the assets of a lightweight aggregates business in our Construction Products Group. The purchase price of the acquisition was not significant. There was no divestiture activity for the three and six months ended June 30, 2017. There was no acquisition or divestiture activity for the three and six months ended June 30, 2016.

In July 2017, we completed the acquisition of the assets of a trench shoring products business in our Construction Products Group for a total purchase price of approximately \$42 million.

**Note 3. Fair Value Accounting**

Assets and liabilities measured at fair value on a recurring basis are summarized below:

<b>Fair Value Measurement as of June 30, 2017</b>				
(in millions)				
	<b>Level 1</b>	<b>Level 2</b>	<b>Level 3</b>	<b>Total</b>
<b>Assets:</b>				
Cash equivalents	\$ 103.7	\$ —	\$ —	\$ 103.7
Restricted cash	194.8	—	—	194.8
Equity instruments <sup>(1)</sup>	—	1.9	—	1.9
Interest rate hedge <sup>(1)</sup>	—	2.1	—	2.1
<b>Total assets</b>	<b>\$ 298.5</b>	<b>\$ 4.0</b>	<b>\$ —</b>	<b>\$ 302.5</b>
<b>Liabilities:</b>				
Interest rate hedge: <sup>(2)</sup>				
Partially-owned subsidiaries	\$ —	\$ 0.7	\$ —	\$ 0.7
<b>Total liabilities</b>	<b>\$ —</b>	<b>\$ 0.7</b>	<b>\$ —</b>	<b>\$ 0.7</b>
<b>Fair Value Measurement as of December 31, 2016</b>				
(in millions)				
	<b>Level 1</b>	<b>Level 2</b>	<b>Level 3</b>	<b>Total</b>
<b>Assets:</b>				
Cash equivalents	\$ 188.7	\$ —	\$ —	\$ 188.7
Restricted cash	178.2	—	—	178.2
Equity instruments <sup>(1)</sup>	—	3.1	—	3.1
Fuel derivative instruments <sup>(1)</sup>	—	0.3	—	0.3
<b>Total assets</b>	<b>\$ 366.9</b>	<b>\$ 3.4</b>	<b>\$ —</b>	<b>\$ 370.3</b>
<b>Liabilities:</b>				
Interest rate hedge: <sup>(2)</sup>				
Partially-owned subsidiaries	\$ —	\$ 0.9	\$ —	\$ 0.9
<b>Total liabilities</b>	<b>\$ —</b>	<b>\$ 0.9</b>	<b>\$ —</b>	<b>\$ 0.9</b>

<sup>(1)</sup> Included in other assets on the consolidated balance sheet.

<sup>(2)</sup> Included in accrued liabilities on the consolidated balance sheet.

Fair value is defined as the exchange price that would be received for an asset or paid to transfer a liability (an exit price) in the principal or most advantageous market for that asset or liability in an orderly transaction between market participants on the measurement date. An entity is required to establish a fair value hierarchy that maximizes the use of observable inputs and minimizes the use of unobservable inputs when measuring fair value. The three levels of inputs that may be used to measure fair value are listed below:

Level 1 – This level is defined as quoted prices in active markets for identical assets or liabilities. The Company's cash equivalents and restricted cash are instruments of the U.S. Treasury or highly-rated money market mutual funds.

Level 2 – This level is defined as observable inputs other than Level 1 prices such as quoted prices for similar assets or liabilities; quoted prices in markets that are not active; or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the assets or liabilities. The Company's fuel derivative instruments, which are commodity swaps, are valued using energy and commodity market data. Interest rate hedges are valued at exit prices obtained from each counterparty. See Note 7 Derivative Instruments and Note 11 Debt. The equity instruments consist of warrants for the purchase of certain publicly-traded equity securities and are valued using the Black-Scholes-Merton option pricing model and certain assumptions regarding the exercisability of the options under the related agreement.

Level 3 – This level is defined as unobservable inputs that are supported by little or no market activity and that are significant to the fair value of the assets or liabilities.

The carrying amounts and estimated fair values of our long-term debt are as follows:

	June 30, 2017		December 31, 2016	
	Carrying Value	Estimated Fair Value	Carrying Value	Estimated Fair Value
(in millions)				
<b>Recourse:</b>				
Senior notes	\$ 399.7	\$ 404.9	\$ 399.6	\$ 386.3
Convertible subordinated notes	449.4	565.4	449.4	575.5
Less: unamortized discount	(17.6)		(26.7)	
	431.8		422.7	
Capital lease obligations	30.3	30.3	32.1	32.1
Other	0.6	0.6	—	—
	862.4	1,001.2	854.4	993.9
Less: unamortized debt issuance costs	(3.4)		(3.8)	
	859.0		850.6	
<b>Non-recourse:</b>				
2006 secured railcar equipment notes	170.5	173.9	194.2	201.5
2009 secured railcar equipment notes	169.4	180.0	172.5	189.9
2010 secured railcar equipment notes	273.5	267.5	280.6	284.3
2017 promissory notes	301.1	301.1	—	—
TILC warehouse facility	167.6	167.6	204.1	204.1
TRL 2012 secured railcar equipment notes	413.8	378.5	425.5	395.6
TRIP Master Funding secured railcar equipment notes	942.3	926.4	955.5	960.6
	2,438.2	2,395.0	2,232.4	2,236.0
Less: unamortized debt issuance costs	(27.2)		(26.4)	
	2,411.0		2,206.0	
<b>Total</b>	<b>\$ 3,270.0</b>	<b>\$ 3,396.2</b>	<b>\$ 3,056.6</b>	<b>\$ 3,229.9</b>

The estimated fair values of our senior notes and convertible subordinated notes were based on a quoted market price in a market with little activity as of June 30, 2017 and December 31, 2016 (Level 2 input). The estimated fair values of our 2006, 2009, 2010, and 2012 secured railcar equipment notes and TRIP Rail Master Funding LLC (“TRIP Master Funding”) secured railcar equipment notes are based on our estimate of their fair value as of June 30, 2017 and December 31, 2016. These values were determined by discounting their future cash flows at the current market interest rate (Level 3 inputs). The carrying value of our Trinity Industries Leasing Company (“TILC”) warehouse facility and 2017 promissory notes approximate fair value because the interest rate adjusts to the market interest rate (Level 3 input). The fair values of all other financial instruments are estimated to approximate carrying value. See Note 11 Debt for a description of the Company’s long-term debt.

#### Note 4. Segment Information

The Company reports operating results in five principal business segments: (1) the Rail Group, which manufactures and sells railcars and related parts, components, and maintenance services; (2) the Construction Products Group, which manufactures and sells highway products and other primarily-steel products and services for infrastructure-related projects, and produces and sells construction aggregates; (3) the Inland Barge Group, which manufactures and sells barges and related products for inland waterway services; (4) the Energy Equipment Group, which manufactures and sells products for energy-related businesses, including structural wind towers, steel utility structures for electricity transmission and distribution, storage and distribution containers, and tank heads for pressure and non-pressure vessels; and (5) the Railcar Leasing and Management Services Group (“Leasing Group”), which owns and operates a fleet of railcars as well as provides third-party fleet leasing, management, maintenance, and administrative services. The segment All Other includes our captive insurance and transportation companies; legal, environmental, and maintenance costs associated with non-operating facilities; and other peripheral businesses. Gains and losses from the sale of property, plant, and equipment related to manufacturing and dedicated to the specific manufacturing operations of a particular segment are included in the operating profit of that respective segment. Gains and losses from the sale of property, plant, and equipment that can be utilized by multiple segments are included in operating profit of the All Other segment.

Sales and related net profits ("deferred profit") from the Rail Group to the Leasing Group are recorded in the Rail Group and eliminated in consolidation and reflected in the "Eliminations - Lease subsidiary" line in the table below. Sales between these groups are recorded at prices comparable to those charged to external customers, taking into consideration quantity, features, and production demand. Amortization of deferred profit on railcars sold to the Leasing Group is included in the operating profit of the Leasing Group, resulting in the recognition of depreciation expense based on the Company's original manufacturing cost of the railcars. Sales of railcars from the lease fleet are included in the Leasing Group, with related gains and losses computed based on the net book value of the original manufacturing cost of the railcars.

The financial information for these segments is shown in the tables below. We operate principally in North America.

**Three Months Ended June 30, 2017**

	Revenues			Operating Profit (Loss)
	External	Intersegment	Total	
	(in millions)			
Rail Group	\$ 335.4	\$ 130.5	\$ 465.9	\$ 37.0
Construction Products Group	130.7	0.6	131.3	22.3
Inland Barge Group	33.5	—	33.5	0.5
Energy Equipment Group	212.2	26.3	238.5	24.3
Railcar Leasing and Management Services Group	191.9	0.2	192.1	110.8
All Other	1.8	20.9	22.7	(5.7)
Segment Totals before Eliminations and Corporate	905.5	178.5	1,084.0	189.2
Corporate	—	—	—	(38.3)
Eliminations – Lease subsidiary	—	(115.9)	(115.9)	(13.6)
Eliminations – Other	—	(62.6)	(62.6)	(2.1)
Consolidated Total	\$ 905.5	\$ —	\$ 905.5	\$ 135.2

**Three Months Ended June 30, 2016**

	Revenues			Operating Profit (Loss)
	External	Intersegment	Total	
	(in millions)			
Rail Group	\$ 427.7	\$ 265.5	\$ 693.2	\$ 88.8
Construction Products Group	141.7	4.1	145.8	21.5
Inland Barge Group	118.3	—	118.3	14.3
Energy Equipment Group	199.1	41.5	240.6	34.9
Railcar Leasing and Management Services Group	296.1	0.5	296.6	117.7
All Other	2.0	17.7	19.7	(5.2)
Segment Totals before Eliminations and Corporate	1,184.9	329.3	1,514.2	272.0
Corporate	—	—	—	(34.7)
Eliminations – Lease subsidiary	—	(252.1)	(252.1)	(45.9)
Eliminations – Other	—	(77.2)	(77.2)	0.2
Consolidated Total	\$ 1,184.9	\$ —	\$ 1,184.9	\$ 191.6

**Six Months Ended June 30, 2017**

	Revenues			Operating Profit (Loss)
	External	Intersegment	Total	
	(in millions)			
Rail Group	\$ 621.4	\$ 322.8	\$ 944.2	\$ 87.7
Construction Products Group	251.6	2.8	254.4	37.9
Inland Barge Group	96.2	—	96.2	6.9
Energy Equipment Group	440.0	53.9	493.9	54.1
Railcar Leasing and Management Services Group	370.5	0.5	371.0	195.8
All Other	3.1	42.4	45.5	(10.3)
Segment Totals before Eliminations and Corporate	1,782.8	422.4	2,205.2	372.1
Corporate	—	—	—	(73.3)
Eliminations – Lease subsidiary	—	(296.9)	(296.9)	(42.5)
Eliminations – Other	—	(125.5)	(125.5)	(4.5)
Consolidated Total	\$ 1,782.8	\$ —	\$ 1,782.8	\$ 251.8

Six Months Ended June 30, 2016

	Revenues			Operating Profit (Loss)
	External	Intersegment	Total	
	(in millions)			
Rail Group	\$ 970.9	\$ 569.2	\$ 1,540.1	\$ 246.0
Construction Products Group	263.3	7.4	270.7	37.4
Inland Barge Group	229.1	—	229.1	26.9
Energy Equipment Group	431.6	82.4	514.0	72.3
Railcar Leasing and Management Services Group	473.9	1.2	475.1	191.9
All Other	4.0	37.6	41.6	(10.3)
Segment Totals before Eliminations and Corporate	2,372.8	697.8	3,070.6	564.2
Corporate	—	—	—	(59.4)
Eliminations – Lease subsidiary	—	(535.4)	(535.4)	(111.4)
Eliminations – Other	—	(162.4)	(162.4)	1.6
Consolidated Total	\$ 2,372.8	\$ —	\$ 2,372.8	\$ 395.0

**Note 5. Partially-Owned Leasing Subsidiaries**

The Company, through its wholly-owned subsidiary, TILC, formed two subsidiaries, TRIP Holdings and RIV 2013, for the purpose of providing railcar leasing in North America. Each of TRIP Holdings and RIV 2013 are direct, partially-owned subsidiaries of TILC in which the Company has a controlling interest. Each is governed by a seven-member board of representatives, two of whom are designated by TILC. TILC is the agent of each of TRIP Holdings and RIV 2013 and as such, has been delegated the authority, power, and discretion to take certain actions on behalf of the respective companies.

At June 30, 2017, the Company's carrying value of its investment in TRIP Holdings and RIV 2013 totaled \$217.3 million. The Company's weighted average ownership interest in TRIP Holdings and RIV 2013 is 39% while the remaining 61% weighted average interest is owned by third-party investor-owned funds. The Company's investments in its partially-owned leasing subsidiaries are eliminated in consolidation.

Each of TRIP Holdings and RIV 2013 has wholly-owned subsidiaries that are the owners of railcars acquired from the Company's Rail and Leasing Groups. These wholly-owned subsidiaries are TRIP Master Funding (wholly-owned by TRIP Holdings) and Trinity Rail Leasing 2012 LLC ("TRL 2012," wholly-owned by RIV 2013). Railcar purchases by these subsidiaries were funded by secured borrowings and capital contributions from TILC and third-party equity investors. TILC is the contractual servicer for TRIP Master Funding and TRL 2012, with the authority to manage and service each entity's owned railcars. The Company's controlling interest in each of TRIP Holdings and RIV 2013 results from its combined role as both equity member and agent/servicer. The noncontrolling interest included in the accompanying consolidated balance sheets represents the non-Trinity equity interest in these partially-owned subsidiaries.

Trinity has no obligation to guarantee performance under any of the partially-owned subsidiaries' (or their respective subsidiaries') debt agreements, guarantee any railcar residual values, shield any parties from losses, or guarantee minimum yields.

The assets of each of TRIP Master Funding and TRL 2012 may only be used to satisfy the particular subsidiary's liabilities, and the creditors of each of TRIP Master Funding and TRL 2012 have recourse only to the particular subsidiary's assets. Each of TILC and the third-party equity investors receive distributions from TRIP Holdings and RIV 2013, when available, in proportion to its respective equity interests, and has an interest in the net assets of the partially-owned subsidiaries upon a liquidation event in the same proportion. TILC is paid fees for the services it provides to TRIP Master Funding and TRL 2012 and has the potential to earn certain incentive fees. TILC and the third-party equity investors have commitments to provide additional equity funding to TRIP Holdings that expire in May 2019 contingent upon certain returns on investment in TRIP Holdings and other conditions being met. There are no remaining equity commitments with respect to RIV 2013.

See Note 11 Debt regarding the debt of TRIP Holdings and RIV 2013 and their respective subsidiaries.

**Note 6. Railcar Leasing and Management Services Group**

The Railcar Leasing and Management Services Group owns and operates a fleet of railcars as well as provides third-party fleet leasing, management, maintenance, and administrative services. Selected consolidating financial information for the Leasing Group is as follows:

	June 30, 2017			
	Leasing Group			Total
	Wholly- Owned Subsidiaries	Partially-Owned Subsidiaries	Manufacturing/ Corporate	
	(in millions)			
Cash, cash equivalents, and short-term marketable securities	\$ 8.0	\$ —	\$ 980.3	\$ 988.3
Property, plant, and equipment, net	\$ 4,077.1	\$ 1,850.1	\$ 953.1	\$ 6,880.3
Net deferred profit on railcars sold to the Leasing Group				(807.1)
Consolidated property, plant and equipment, net				\$ 6,073.2
Restricted cash	\$ 117.7	\$ 77.0	\$ 0.1	\$ 194.8
Debt:				
Recourse	\$ 30.2	\$ —	\$ 850.0	\$ 880.2
Less: unamortized discount	—	—	(17.9)	(17.9)
Less: unamortized debt issuance costs	—	—	(3.3)	(3.3)
	30.2	—	828.8	859.0
Non-recourse	1,082.1	1,356.1	—	2,438.2
Less: unamortized debt issuance costs	(13.1)	(14.1)	—	(27.2)
	1,069.0	1,342.0	—	2,411.0
Total debt	\$ 1,099.2	\$ 1,342.0	\$ 828.8	\$ 3,270.0
Net deferred tax liabilities	\$ 1,035.5	\$ 2.0	\$ 157.1	\$ 1,194.6

	December 31, 2016			
	Leasing Group			Total
	Wholly- Owned Subsidiaries	Partially-Owned Subsidiaries	Manufacturing/ Corporate	
	(in millions)			
Cash, cash equivalents, and short-term marketable securities	\$ 7.2	\$ —	\$ 790.9	\$ 798.1
Property, plant, and equipment, net	\$ 3,923.6	\$ 1,879.6	\$ 961.7	\$ 6,764.9
Net deferred profit on railcars sold to the Leasing Group				(798.1)
Consolidated property, plant and equipment, net				\$ 5,966.8
Restricted cash	\$ 99.7	\$ 78.4	\$ 0.1	\$ 178.2
Debt:				
Recourse	\$ 32.1	\$ —	\$ 849.4	\$ 881.5
Less: unamortized discount	—	—	(27.1)	(27.1)
Less: unamortized debt issuance costs	(0.1)	—	(3.7)	(3.8)
	32.0	—	818.6	850.6
Non-recourse	851.4	1,381.0	—	2,232.4
Less: unamortized debt issuance costs	(11.4)	(15.0)	—	(26.4)
	840.0	1,366.0	—	2,206.0
Total debt	\$ 872.0	\$ 1,366.0	\$ 818.6	\$ 3,056.6
Net deferred tax liabilities	\$ 956.6	\$ 2.0	\$ 98.4	\$ 1,057.0

Net deferred profit on railcars sold to the Leasing Group consists of intersegment profit that is eliminated in consolidation and is, therefore, not allocated to an operating segment. See Note 5 Partially-Owned Leasing Subsidiaries and Note 11 Debt for a further discussion regarding the Company's investment in its partially-owned leasing subsidiaries and the related indebtedness.

	Three Months Ended June 30,			Six Months Ended June 30,		
	2017	2016	Percent	2017	2016	Percent
	(\$ in millions)			(\$ in millions)		
			Change			Change
<b>Revenues:</b>						
Leasing and management	\$ 185.0	\$ 178.5	3.6 %	\$ 363.9	\$ 349.0	4.3 %
Sales of railcars owned one year or less at the time of sale	7.1	118.1	*	7.1	126.1	*
<b>Total revenues</b>	<b>\$ 192.1</b>	<b>\$ 296.6</b>	<b>(35.2)</b>	<b>\$ 371.0</b>	<b>\$ 475.1</b>	<b>(21.9)</b>
<b>Operating profit:</b>						
Leasing and management	\$ 85.6	\$ 74.5	14.9	\$ 170.6	\$ 144.3	18.2
<b>Railcar sales:</b>						
Railcars owned one year or less at the time of sale	1.5	31.8	*	1.5	34.1	*
Railcars owned more than one year at the time of sale	23.7	11.4	*	23.7	13.5	*
<b>Total operating profit</b>	<b>\$ 110.8</b>	<b>\$ 117.7</b>	<b>(5.9)</b>	<b>\$ 195.8</b>	<b>\$ 191.9</b>	<b>2.0</b>
<b>Operating profit margin:</b>						
Leasing and management	46.3%	41.7%		46.9%	41.3%	
Railcar sales	*	*		*	*	
<b>Total operating profit margin</b>	<b>57.7%</b>	<b>39.7%</b>		<b>52.8%</b>	<b>40.4%</b>	
<b>Selected expense information<sup>(1)</sup>:</b>						
Depreciation	\$ 43.1	\$ 38.7	11.4	\$ 85.2	\$ 76.1	12.0
Maintenance and compliance	\$ 23.9	\$ 31.8	(24.8)	\$ 44.4	\$ 63.4	(30.0)
Rent	\$ 9.9	\$ 9.9	—	\$ 20.0	\$ 19.4	3.1
Interest	\$ 31.3	\$ 31.4	(0.3)	\$ 61.9	\$ 63.2	(2.1)

\* Not meaningful

<sup>(1)</sup> Depreciation, maintenance and compliance, and rent expense are components of operating profit. Amortization of deferred profit on railcars sold from the Rail Group to the Leasing Group is included in the operating profit of the Leasing Group resulting in the recognition of depreciation expense based on the Company's original manufacturing cost of the railcars. Interest expense is not a component of operating profit and includes the effect of hedges.

During the six months ended June 30, 2017 and 2016, the Company received proceeds from the sales of leased railcars as follows:

	Six Months Ended June 30,	
	2017	2016
	(in millions)	
<b>Leasing Group:</b>		
Railcars owned one year or less at the time of sale	\$ 7.1	\$ 126.1
Railcars owned more than one year at the time of sale	92.4	37.7
<b>Rail Group</b>	<b>—</b>	<b>8.1</b>
	<b>\$ 99.5</b>	<b>\$ 171.9</b>

Equipment consists primarily of railcars leased by third parties. The Leasing Group purchases equipment manufactured predominantly by the Rail Group and enters into lease contracts with third parties with terms generally ranging from one to twenty years. The Leasing Group primarily enters into operating leases. Future contractual minimum rental revenues on leases are as follows:

	Remaining six months of 2017	2018	2019	2020	2021	Thereafter	Total
	(in millions)						
Future contractual minimum rental revenue	\$ 271.9	\$ 478.2	\$ 392.6	\$ 313.0	\$ 215.3	\$ 478.2	\$ 2,149.2

**Debt.** The Leasing Group's debt at June 30, 2017 consisted primarily of non-recourse debt. As of June 30, 2017, Trinity's wholly-owned subsidiaries included in the Leasing Group held equipment with a net book value of \$1,729.8 million which is pledged as collateral for Leasing Group debt held by those subsidiaries, including equipment with a net book value of \$41.4 million securing



capital lease obligations. The net book value of unpledged equipment at June 30, 2017 was \$2,281.5 million. See Note 11 Debt for the form, maturities, and descriptions of Leasing Group debt.

*Partially-owned subsidiaries.* Debt owed by TRIP Holdings and RIV 2013 and their respective subsidiaries is nonrecourse to Trinity and TILC. Creditors of each of TRIP Holdings and RIV 2013 and their respective subsidiaries have recourse only to the particular subsidiary's assets. TRIP Master Funding equipment with a net book value of \$1,290.1 million is pledged as collateral for the TRIP Master Funding debt. TRL 2012 equipment with a net book value of \$560.0 million is pledged solely as collateral for the TRL 2012 secured railcar equipment notes. See Note 5 Partially-Owned Leasing Subsidiaries for a description of TRIP Holdings and RIV 2013.

*Off Balance Sheet Arrangements.* In prior years, the Leasing Group completed a series of financing transactions whereby railcars were sold to one or more separate independent owner trusts ("Trusts"). Each of the Trusts financed the purchase of the railcars with a combination of debt and equity. In each transaction, the equity participant in each of the respective Trusts is considered to be the primary beneficiary of the Trust and therefore, the accounts of the Trusts, including the debt related to each of the Trusts, are not included as part of the consolidated financial statements. The Leasing Group, through wholly-owned, qualified subsidiaries, leased railcars from the Trusts under operating leases with terms of 22 years, and subleased the railcars to independent third-party customers under shorter term operating rental agreements.

These Leasing Group subsidiaries had total assets as of June 30, 2017 of \$145.6 million, including cash of \$54.1 million and railcars of \$63.7 million. The subsidiaries' cash, railcars, and an interest in each sublease are pledged to collateralize the lease obligations to the Trusts and are included in the consolidated financial statements of the Company. Trinity does not guarantee the performance of the subsidiaries' lease obligations. Certain ratios and cash deposits must be maintained by the Leasing Group's subsidiaries in order for excess cash flow, as defined in the agreements, from the lease to third parties to be available to Trinity. Future operating lease obligations of the Leasing Group's subsidiaries as well as future contractual minimum rental revenues related to these leases due to the Leasing Group are as follows:

	<u>Remaining six months of 2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>Thereafter</u>	<u>Total</u>
	(in millions)						
Future operating lease obligations of Trusts' railcars	\$ 14.6	\$ 29.2	\$ 28.8	\$ 26.1	\$ 26.1	\$ 117.9	\$ 242.7
Future contractual minimum rental revenues of Trusts' railcars	\$ 21.6	\$ 34.2	\$ 23.5	\$ 14.3	\$ 9.5	\$ 13.7	\$ 116.8

*Operating Lease Obligations.* Future amounts due as well as future contractual minimum rental revenues related to operating leases other than leases discussed above are as follows:

	<u>Remaining six months of 2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>Thereafter</u>	<u>Total</u>
	(in millions)						
Future operating lease obligations	\$ 5.9	\$ 12.0	\$ 9.5	\$ 7.7	\$ 7.6	\$ 13.5	\$ 56.2
Future contractual minimum rental revenues	\$ 6.7	\$ 9.2	\$ 6.8	\$ 4.5	\$ 3.3	\$ 4.1	\$ 34.6

Operating lease obligations totaling \$7.4 million are guaranteed by Trinity Industries, Inc. and certain subsidiaries. See Note 6 of the December 31, 2016 Consolidated Financial Statements filed on Form 10-K for a detailed explanation of these financing transactions.

**Note 7. Derivative Instruments**

We may use derivative instruments to mitigate the impact of changes in interest rates, both in anticipation of future debt issuances and to offset interest rate variability of certain floating rate debt issuances outstanding. We also may use derivative instruments to mitigate the impact of changes in natural gas and diesel fuel prices and changes in foreign currency exchange rates. Derivative instruments that are designated and qualify as cash flow hedges are accounted for in accordance with applicable accounting standards. See Note 3 Fair Value Accounting for discussion of how the Company valued its commodity hedges and interest rate swap at June 30, 2017. See Note 11 Debt for a description of the Company's debt instruments.

**Interest rate hedges**

	Notional Amount	Interest Rate <sup>(1)</sup>	Included in accompanying balance sheet at June 30, 2017		
			Asset / (liability)	AOCL – loss/ (income)	Noncontrolling Interest
(in millions, except %)					
<b>Expired hedges:</b>					
2006 secured railcar equipment notes	\$ 200.0	4.87%	\$ —	\$ (0.5)	\$ —
TRIP Holdings warehouse loan	\$ 788.5	3.60%	\$ —	\$ 4.9	\$ 6.6
<b>Open hedge:</b>					
TRIP Master Funding secured railcar equipment notes	\$ 35.4	2.62%	\$ (0.7)	\$ 0.3	\$ 0.4
2017 promissory notes	\$ 180.7	3.00%	\$ 2.1	\$ 0.2	\$ —

<sup>(1)</sup> Weighted average fixed interest rate, except for 2017 promissory notes. Interest rate cap for 2017 promissory notes.

	Effect on interest expense - increase/(decrease)					
	Three Months Ended June 30,		Six Months Ended June 30,		Expected effect during next twelve months <sup>(1)</sup>	
	2017	2016	2017	2016		
(in millions)						
<b>Expired hedges:</b>						
2006 secured railcar equipment notes	\$ —	\$ (0.1)	\$ (0.1)	\$ (0.2)	\$ (0.2)	
TRIP Holdings warehouse loan	\$ 1.1	\$ 1.2	\$ 2.3	\$ 2.4	\$ 3.5	
<b>Open hedge:</b>						
TRIP Master Funding secured railcar equipment notes	\$ 0.1	\$ 0.2	\$ 0.3	\$ 0.5	\$ 0.4	

<sup>(1)</sup> Based on the fair value of open hedge as of June 30, 2017

During 2005 and 2006, we entered into interest rate swap derivatives in anticipation of issuing our 2006 Secured Railcar Equipment Notes. These derivative instruments, with a notional amount of \$200.0 million, were settled in 2006 and fixed the interest rate on a portion of the related debt issuance. These derivative instrument transactions are being accounted for as cash flow hedges with changes in the fair value of the instruments of \$4.5 million in income recorded in Accumulated Other Comprehensive Loss ("AOCL") through the date the related debt issuance closed in 2006. The balance is being amortized over the term of the related debt. The effect on interest expense is due to amortization of the AOCL balance.

Between 2007 and 2009, TRIP Holdings, as required by the TRIP Warehouse Loan, entered into interest rate swap derivatives, all of which qualified as cash flow hedges, to reduce the effect of changes in variable interest rates in the TRIP Warehouse Loan. In July 2011, these interest rate hedges were terminated in connection with the refinancing of the TRIP Warehouse Loan. Balances included in AOCL at the date the hedges were terminated are being amortized over the expected life of the new debt with \$3.5 million of additional interest expense expected to be recognized during the twelve months following June 30, 2017. Also in July 2011, TRIP Holdings' wholly-owned subsidiary, TRIP Master Funding, entered into an interest rate swap derivative instrument, expiring in 2021, with an initial notional amount of \$94.1 million to reduce the effect of changes in variable interest rates associated with the Class A-1b notes of the TRIP Master Funding secured railcar equipment notes. The effect on interest expense is primarily a result of monthly interest settlements.

In May 2017, TRL 2017 purchased an interest rate cap derivative, which qualified as a cash flow hedge, to limit the Libor component of the interest rate on the 2017 promissory notes to a maximum rate of 3%. The effect on interest expense is primarily the result of amortization of the cost of the derivative and is not expected to be significant during the next twelve months.

See Note 11 Debt regarding the related debt instruments.

**Other Derivatives**

*Natural gas and diesel fuel*

We maintain a program to mitigate the impact of fluctuations in the price of natural gas and diesel fuel. The intent of the program is to protect our operating profit from adverse price changes by entering into derivative instruments. For those instruments that do not qualify for hedge accounting treatment, any changes in their valuation are recorded directly to the consolidated statement of operations. The effect on operating income for these instruments was not significant. The amount recorded in the consolidated balance sheet as of June 30, 2017 for these instruments was not significant. The amount recorded in the consolidated balance sheet as of December 31, 2016 for these instruments was an asset of \$0.3 million.

**Note 8. Property, Plant, and Equipment**

The following table summarizes the components of property, plant, and equipment as of June 30, 2017 and December 31, 2016.

	June 30, 2017	December 31, 2016
(in millions)		
<b>Manufacturing/Corporate:</b>		
Land	\$ 105.8	\$ 103.3
Buildings and improvements	654.4	642.6
Machinery and other	1,176.1	1,151.1
Construction in progress	40.1	39.1
	<u>1,976.4</u>	<u>1,936.1</u>
Less accumulated depreciation	<u>(1,023.3)</u>	<u>(974.4)</u>
	<u>953.1</u>	<u>961.7</u>
<b>Leasing:</b>		
<b>Wholly-owned subsidiaries:</b>		
Machinery and other	10.7	10.7
Equipment on lease	4,885.4	4,673.0
	<u>4,896.1</u>	<u>4,683.7</u>
Less accumulated depreciation	<u>(819.0)</u>	<u>(760.1)</u>
	<u>4,077.1</u>	<u>3,923.6</u>
<b>Partially-owned subsidiaries:</b>		
Equipment on lease	2,311.4	2,309.4
Less accumulated depreciation	<u>(461.3)</u>	<u>(429.8)</u>
	<u>1,850.1</u>	<u>1,879.6</u>
Deferred profit on railcars sold to the Leasing Group	(970.4)	(948.2)
Less accumulated amortization	<u>163.3</u>	<u>150.1</u>
	<u>(807.1)</u>	<u>(798.1)</u>
	<u>\$ 6,073.2</u>	<u>\$ 5,966.8</u>

**Note 9. Goodwill**

Goodwill by segment is as follows:

	June 30, 2017	December 31, 2016
(as reported)		
(in millions)		
Rail Group	\$ 134.6	\$ 134.6
Construction Products Group	111.0	111.0
Energy Equipment Group	507.3	506.7
Railcar Leasing and Management Services Group	1.8	1.8
	<u>\$ 754.7</u>	<u>\$ 754.1</u>

Changes in goodwill during the six months ended June 30, 2017 resulted from fluctuations in foreign currency exchange rates.

**Note 10. Warranties**

The changes in the accruals for warranties for the three and six months ended June 30, 2017 and 2016 are as follows:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2017	2016	2017	2016
	(in millions)			
Beginning balance	\$ 14.0	\$ 18.7	\$ 15.7	\$ 21.5
Warranty costs incurred	(2.4)	(2.0)	(4.1)	(4.8)
Warranty originations and revisions	4.0	2.8	4.8	4.4
Warranty expirations	(0.8)	(1.3)	(1.6)	(2.9)
Ending balance	\$ 14.8	\$ 18.2	\$ 14.8	\$ 18.2

**Note 11. Debt**

The following table summarizes the components of debt as of June 30, 2017 and December 31, 2016:

	June 30, 2017	December 31, 2016
	(in millions)	
<b>Corporate – Recourse:</b>		
Revolving credit facility	\$ —	\$ —
Senior notes, net of unamortized discount of \$0.3 and \$0.4	399.7	399.6
Convertible subordinated notes, net of unamortized discount of \$17.6 and \$26.7	431.8	422.7
Other	0.6	—
	<u>832.1</u>	<u>822.3</u>
Less: unamortized debt issuance costs	(3.3)	(3.7)
	<u>828.8</u>	<u>818.6</u>
<b>Leasing – Recourse:</b>		
Capital lease obligations, net of unamortized debt issuances costs of \$0.1 and \$0.1	30.2	32.0
Total recourse debt	<u>859.0</u>	<u>850.6</u>
<b>Leasing – Non-recourse:</b>		
<b>Wholly-owned subsidiaries:</b>		
2006 secured railcar equipment notes	170.5	194.2
2009 secured railcar equipment notes	169.4	172.5
2010 secured railcar equipment notes	273.5	280.6
2017 promissory notes	301.1	—
TILC warehouse facility	167.6	204.1
	<u>1,082.1</u>	<u>851.4</u>
Less: unamortized debt issuance costs	(13.1)	(11.4)
	<u>1,069.0</u>	<u>840.0</u>
<b>Partially-owned subsidiaries:</b>		
TRL 2012 secured railcar equipment notes	413.8	425.5
TRIP Master Funding secured railcar equipment notes	942.3	955.5
	<u>1,356.1</u>	<u>1,381.0</u>
Less: unamortized debt issuance costs	(14.1)	(15.0)
	<u>1,342.0</u>	<u>1,366.0</u>
Total non-recourse debt	<u>2,411.0</u>	<u>2,206.0</u>
Total debt	<u>\$ 3,270.0</u>	<u>\$ 3,056.6</u>

We have a \$600.0 million unsecured corporate revolving credit facility that matures in May 2020. As of June 30, 2017, we had letters of credit issued under our revolving credit facility in an aggregate principal amount of \$92.6 million, leaving \$507.4 million available for borrowing. Other than these letters of credit, there were no borrowings under our revolving credit facility as of June 30, 2017, or during the six month period then ended. Of the outstanding letters of credit as of June 30, 2017, approximately \$3.8 million is expected to expire in 2017 and the remainder primarily in 2018. The majority of our letters of credit obligations support the Company's various insurance programs and generally renew by their terms each year. Trinity's revolving credit facility requires the maintenance of ratios related to minimum interest coverage for the leasing and manufacturing operations and maximum leverage. As of June 30, 2017, we were in compliance with all such financial covenants. Borrowings under the credit facility bear interest at a defined index rate plus a margin and are guaranteed by certain 100%-owned subsidiaries of the Company.

The Company's Convertible Subordinated Notes due 2036 ("Convertible Subordinated Notes") bear an interest rate of 3 7/8% per annum on the principal amount payable semi-annually in arrears on June 1 and December 1 of each year. In addition, commencing with the six-month period beginning June 1, 2018 and for each six-month period thereafter, we will pay contingent interest to the holders of the Convertible Subordinated Notes under certain circumstances. The Convertible Subordinated Notes mature on June 1, 2036, unless redeemed, repurchased, or converted earlier. We may not redeem the Convertible Subordinated Notes before June 1, 2018. On or after that date, we may redeem all or part of the Convertible Subordinated Notes for cash at 100% of the principal amount of the notes to be redeemed, plus accrued and unpaid interest (including any contingent interest) up to, but excluding, the redemption date. Holders of the Convertible Subordinated Notes may require us to purchase all or a portion of their notes on June 1, 2018 or upon a fundamental change, in each case for cash at a price equal to 100% of the principal amount of the notes to be purchased plus any accrued and unpaid interest (including any contingent interest) up to, but excluding, the purchase date.

The Convertible Subordinated Notes are recorded net of unamortized discount to reflect their underlying economics by capturing the value of the conversion option as borrowing costs. As of June 30, 2017 and December 31, 2016, capital in excess of par value included \$92.5 million related to the estimated value of the Convertible Subordinated Notes' conversion options, in accordance with ASC 470-20. Debt discount recorded in the consolidated balance sheet is being amortized through June 1, 2018 to yield an effective annual interest rate of 8.42% based upon the estimated market interest rate for comparable non-convertible debt as of the issuance date of the Convertible Subordinated Notes. Total interest expense recognized on the Convertible Subordinated Notes for the three and six months ended June 30, 2017 and 2016 is as follows:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2017	2016	2017	2016
	(in millions)			
Coupon rate interest	\$ 4.3	\$ 4.3	\$ 8.7	\$ 8.7
Amortized debt discount	4.6	4.2	9.1	8.4
	<u>\$ 8.9</u>	<u>\$ 8.5</u>	<u>\$ 17.8</u>	<u>\$ 17.1</u>

Holders of the Convertible Subordinated Notes may convert their notes under the following circumstances: 1) if the daily closing price of our common stock is greater than or equal to 130% of the conversion price during 20 of the last 30 trading days of the preceding calendar quarter; 2) upon notice of redemption; or 3) upon the occurrence of specified corporate transactions pursuant to the terms of the applicable indenture. Upon conversion, the Company is required to pay cash up to the aggregate principal amount of the Convertible Subordinated Notes to be converted. Any conversion obligation in excess of the aggregate principal amount of the Convertible Subordinated Notes to be converted may be settled in cash, shares of the Company's common stock, or a combination of cash and shares of the Company's common stock, at the Company's election. The conversion price, which is subject to adjustment upon the occurrence of certain events, was \$24.43 per share as of June 30, 2017. The Convertible Subordinated Notes were not subject to conversion as of July 1, 2017. See Note 17 Earnings Per Common Share for an explanation of the effects of the Convertible Subordinated Notes on earnings per share. The Company has not entered into any derivatives transactions associated with these notes.

The \$1.0 billion TILC warehouse loan facility, established to finance railcars owned by TILC, had \$167.6 million in outstanding borrowings as of June 30, 2017. Under the facility, \$832.4 million was unused and available as of June 30, 2017 based on the amount of warehouse-eligible, unpledged equipment. The warehouse loan facility is a non-recourse obligation which expires in April 2018 and is secured by a portfolio of railcars and operating leases, certain cash reserves, and other assets acquired and owned by the warehouse loan facility trust. The principal and interest of this indebtedness are paid from the cash flows of the underlying leases. Advances under the facility bear interest at a defined index rate plus a margin, for an all-in interest rate of 2.95% at June 30, 2017. Amounts outstanding at maturity, absent renewal, are payable under the facility in April 2019.

On May 15, 2017, Trinity Rail Leasing 2017, LLC, a Delaware limited liability company ("TRL 2017") and a limited purpose, indirect wholly-owned subsidiary of the Company owned through TILC, issued \$302.4 million of promissory notes (the "2017 Promissory Notes") due May 15, 2024, of which \$301.1 million was outstanding as of June 30, 2017. The 2017 Promissory Notes are obligations of TRL 2017 and are non-recourse to Trinity. The 2017 Promissory Notes bear interest at Libor plus a margin for an all-in interest rate of 2.91% as of June 30, 2017, payable monthly. The 2017 Promissory Notes are secured by a portfolio of railcars and operating leases thereon, certain cash reserves, and other assets acquired and owned by TRL 2017.

Terms and conditions of other debt, including recourse and non-recourse provisions, are described in Note 11 of the December 31, 2016 Consolidated Financial Statements filed on Form 10-K.

The remaining principal payments under existing debt agreements as of June 30, 2017 are as follows:

	Remaining six months of 2017	2018	2019	2020	2021	Thereafter
(in millions)						
<b>Recourse:</b>						
Corporate <sup>(1)</sup>	\$ 0.1	\$ 0.1	\$ 0.1	\$ 0.2	\$ 0.1	\$ 849.4
Leasing – capital lease obligations (Note 6)	2.0	28.3	—	—	—	—
<b>Non-recourse – leasing (Note 6):</b>						
2006 secured railcar equipment notes	12.1	25.3	28.0	29.8	29.2	46.1
2009 secured railcar equipment notes	3.2	6.4	11.2	6.6	13.4	128.6
2010 secured railcar equipment notes	6.6	10.0	7.6	14.2	20.1	215.0
2017 promissory notes	7.6	15.1	15.1	15.1	15.1	233.1
TILC warehouse facility	3.4	6.9	1.7	—	—	—
Facility termination payments - TILC warehouse facility	—	—	155.6	—	—	—
TRL 2012 secured railcar equipment notes	11.0	22.9	21.9	19.3	19.9	318.8
TRIP Master Funding secured railcar equipment notes	15.6	41.5	49.5	48.8	49.8	737.1
<b>Total principal payments</b>	<b>\$ 61.6</b>	<b>\$ 156.5</b>	<b>\$ 290.7</b>	<b>\$ 134.0</b>	<b>\$ 147.6</b>	<b>\$ 2,528.1</b>

<sup>(1)</sup> Holders of the Convertible Subordinated Notes may require us to purchase all or a portion of their notes on June 1, 2018. On or after that date, we may redeem all or part of the Convertible Subordinated Notes.

**Note 12. Other, Net**

Other, net (income) expense consists of the following items:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2017	2016	2017	2016
(in millions)				
Foreign currency exchange transactions	\$ (0.3)	\$ (2.6)	\$ 1.3	\$ (2.9)
Other	0.8	(2.3)	—	(2.7)
<b>Other, net</b>	<b>\$ 0.5</b>	<b>\$ (4.9)</b>	<b>\$ 1.3</b>	<b>\$ (5.6)</b>

Other for the three and six months ended June 30, 2017 includes \$1.5 million and \$1.1 million, respectively, in expense related to the change in fair value of certain equity instruments. Other for the three and six months ended June 30, 2016 includes \$2.1 million in income related to the change in fair value of certain equity instruments.

**Note 13. Income Taxes**

The provision for income taxes results in effective tax rates that differ from the statutory rates. The following is a reconciliation between the statutory U.S. federal income tax rate and the Company's effective income tax rate on income before income taxes:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2017	2016	2017	2016
Statutory rate	35.0 %	35.0 %	35.0 %	35.0 %
State taxes	1.5	1.2	1.5	1.1
Noncontrolling interest in partially-owned subsidiaries	(0.7)	(1.0)	(0.6)	(1.1)
Settlements with tax authorities	—	—	(3.5)	—
Equity compensation	3.0	—	1.5	—
Other, net	2.1	(0.1)	1.6	0.5
<b>Effective rate</b>	<b>40.9 %</b>	<b>35.1 %</b>	<b>35.5 %</b>	<b>35.5 %</b>

Our effective tax rate reflects the Company's estimate for 2017 of its state income tax expense, income attributable to the noncontrolling interests in partially-owned leasing subsidiaries for which no income tax expense is provided, excess tax deficiencies related to equity compensation in accordance with ASU 2016-09, and the impact of the completion of income tax audits that resulted in a net tax benefit. See Note 5 Partially-Owned Leasing Subsidiaries for a further explanation of activities with respect to our partially-owned leasing subsidiaries.

*Taxing authority examinations*

During the six months ended June 30, 2017, the Internal Revenue Service ("IRS") formally closed its audit of the 2006-2009 tax years and accordingly, we have adjusted unrecognized tax benefits and deferred tax amounts related to these tax years resulting in a \$5.8 million tax benefit. The 2013 audit has concluded and all issues have been agreed upon by us and the IRS and the revenue agent report has been sent to The Joint Committee of Taxation for final review. The statute of limitations for this tax year has been extended to June 30, 2018. The 2013-2016 tax years remain open.

We have various subsidiaries in Mexico that file separate tax returns and are subject to examination by taxing authorities at different times. The 2007 tax year of one of our Mexican subsidiaries is still under review for transfer pricing purposes only, and its statute of limitations remains open through October 2017. The remaining entities are generally open for their 2010 tax years and forward.

*Unrecognized tax benefits*

The change in unrecognized tax benefits for the six months ended June 30, 2017 and 2016 was as follows:

	Six Months Ended June 30,	
	2017	2016
	(in millions)	
Beginning balance	\$ 28.2	\$ 65.2
Additions for tax positions related to the current year	—	3.0
Additions for tax positions of prior years	0.1	1.0
Reductions for tax positions of prior years	—	(0.1)
Settlements	(23.3)	—
Ending balance	<u>\$ 5.0</u>	<u>\$ 69.1</u>

Additions for tax positions related to the current year in the amount of \$3.0 million recorded in the six months ended June 30, 2016 were amounts provided for tax positions that will be taken for federal and state income tax purposes when we file those tax returns. Additions for tax positions related to prior years of \$0.1 million and \$1.0 million recorded in the six months ended June 30, 2017 and 2016, respectively, are due to a state filing position. The reductions for tax positions of prior years of \$0.1 million for the six months ended June 30, 2016 were primarily related to changes in state taxes. Settlements during the six months ended June 30, 2017 were due to the resolution of our 2006-2009 income tax years.

The total amount of unrecognized tax benefits including interest and penalties at June 30, 2017 and 2016, that would affect the Company's overall effective tax rate if recognized was \$5.3 million and \$15.2 million, respectively. There is a reasonable possibility that unrecognized federal and state tax benefits will decrease by \$1.3 million by June 30, 2018, due to settlements and lapses in statutes of limitations for assessing tax for tax years in which an extension was not requested by the taxing authority.

Trinity accounts for interest expense and penalties related to income tax issues as income tax expense. Accordingly, interest expense and penalties associated with an uncertain tax position are included in the income tax provision. The total amount of accrued interest and penalties as of June 30, 2017 and December 31, 2016 was \$3.6 million and \$8.9 million, respectively. Income tax expense included an increase of \$0.1 million and a decrease of \$5.3 million in interest expense and penalties related to uncertain tax positions for the three and six months ended June 30, 2017, respectively. Income tax expense included an increase of \$0.4 million and \$0.9 million in interest expense and penalties related to uncertain tax positions for the three and six months ended June 30, 2016, respectively.

**Note 14. Employee Retirement Plans**

The following table summarizes the components of net retirement cost for the Company:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2017	2016	2017	2016
	(in millions)			
<b>Expense Components</b>				
Service cost	\$ 0.1	\$ 0.1	\$ 0.2	\$ 0.2
Interest	4.9	5.2	9.8	10.4
Expected return on plan assets	(6.8)	(6.8)	(13.6)	(13.6)
Amortization of actuarial loss	1.2	1.3	2.4	2.6
Defined benefit expense	(0.6)	(0.2)	(1.2)	(0.4)
Profit sharing	3.8	3.9	7.8	8.5
Multiemployer plan	0.4	0.6	1.0	1.2
Net expense	\$ 3.6	\$ 4.3	\$ 7.6	\$ 9.3

Trinity contributed \$0.9 million and \$0.9 million to the Company's defined benefit pension plans for the three and six months ended June 30, 2017, respectively. Trinity contributed \$2.4 million and \$3.1 million to the Company's defined benefit pension plans for the three and six months ended June 30, 2016, respectively. Total contributions to the Company's defined benefit pension plans in 2017 are expected to be approximately \$2.5 million. The Company participates in a multiemployer defined benefit plan under the terms of a collective-bargaining agreement that covers certain union-represented employees. The Company contributed \$0.3 million and \$0.9 million to the multiemployer plan for the three and six months ended June 30, 2017, respectively. The Company contributed \$0.6 million and \$1.1 million to the multiemployer plan for the three and six months ended June 30, 2016, respectively. Total contributions to the multiemployer plan for 2017 are expected to be approximately \$2.1 million.

**Note 15. Accumulated Other Comprehensive Loss**

Changes in accumulated other comprehensive loss for the six months ended June 30, 2017 are as follows:

	Currency translation adjustments	Unrealized gain/ (loss) on derivative financial instruments	Net actuarial gains/ (losses) of defined benefit plans	Accumulated Other Comprehensive Loss
	(in millions)			
Balances at December 31, 2016	\$ (23.7)	\$ (0.1)	\$ (89.7)	\$ (113.5)
Other comprehensive income (loss), net of tax, before reclassifications	0.8	(0.2)	—	0.6
Amounts reclassified from accumulated other comprehensive loss, net of tax benefit of \$-, \$0.3, \$0.9, and \$1.2	—	2.2	1.5	3.7
Less: noncontrolling interest	—	(1.5)	—	(1.5)
Other comprehensive income	0.8	0.5	1.5	2.8
Balances at June 30, 2017	\$ (22.9)	\$ 0.4	\$ (88.2)	\$ (110.7)

See Note 7 Derivative Instruments for information on the reclassification of amounts in accumulated other comprehensive loss into earnings. Reclassifications of unrealized before-tax losses on derivative financial instruments are included in interest expense in the consolidated statements of operations. Approximately \$1.9 million of the before-tax reclassification of net actuarial gains/(losses) of defined benefit plans are included in cost of revenues with the remainder included in selling, engineering, and administrative expenses in the consolidated statement of operations for the six months ended June 30, 2017.

**Note 16. Stock-Based Compensation**

Stock-based compensation totaled approximately \$8.6 million and \$16.2 million for the three and six months ended June 30, 2017, respectively. Stock-based compensation totaled approximately \$12.5 million and \$22.8 million for the three and six months ended June 30, 2016, respectively.



**Note 17. Earnings Per Common Share**

Basic net income attributable to Trinity Industries, Inc. per common share is computed by dividing net income attributable to Trinity remaining after allocation to unvested restricted shares by the weighted average number of basic common shares outstanding for the period. Except when the effect would be antidilutive, the calculation of diluted net income attributable to Trinity per common share includes 1) the net impact of unvested restricted shares and shares that could be issued under outstanding stock options and 2) the incremental shares calculated by dividing the value of the conversion obligation in excess of the Convertible Subordinated Notes' aggregate principal amount by the average price of the Company's common stock during the period. See Note 11 Debt for further explanation of the Company's Convertible Subordinated Notes. Total weighted average restricted shares and antidilutive stock options were 6.6 million shares and 6.5 million shares for the three and six months ended June 30, 2017, respectively. Total weighted average restricted shares and antidilutive stock options were 7.0 million shares for the three and six months ended June 30, 2016, respectively.

The computation of basic and diluted net income attributable to Trinity Industries, Inc. follows.

	Three Months Ended June 30, 2017			Three Months Ended June 30, 2016		
	Income (Loss)	Average Shares	EPS	Income (Loss)	Average Shares	EPS
(in millions, except per share amounts)						
Net income attributable to Trinity Industries, Inc.	\$ 51.1			\$ 94.6		
Unvested restricted share participation	(1.1)			(2.9)		
Net income attributable to Trinity Industries, Inc. – basic	50.0	149.1	\$ 0.34	91.7	147.8	\$ 0.62
Effect of dilutive securities:						
Nonparticipating unvested restricted shares and stock options	—	0.3		—	—	
Convertible subordinated notes	—	1.6		—	—	
Net income attributable to Trinity Industries, Inc. – diluted	\$ 50.0	151.0	\$ 0.33	\$ 91.7	147.8	\$ 0.62
(in millions, except per share amounts)						
	Six Months Ended June 30, 2017			Six Months Ended June 30, 2016		
	Income (Loss)	Average Shares	EPS	Income (Loss)	Average Shares	EPS
(in millions, except per share amounts)						
Net income attributable to Trinity Industries, Inc.	\$ 97.1			\$ 191.8		
Unvested restricted share participation	(2.3)			(5.7)		
Net income attributable to Trinity Industries, Inc. – basic	94.8	148.9	\$ 0.64	186.1	148.7	\$ 1.25
Effect of dilutive securities:						
Nonparticipating unvested restricted shares and stock options	—	0.4		—	—	
Convertible subordinated notes	—	1.7		—	—	
Net income attributable to Trinity Industries, Inc. – diluted	\$ 94.8	151.0	\$ 0.63	\$ 186.1	148.7	\$ 1.25

## Note 18. Contingencies

### *Highway products litigation*

We previously reported the filing of a False Claims Act (“FCA”) complaint in the United States District Court for the Eastern District of Texas, Marshall Division (“District Court”) styled Joshua Harman, on behalf of the United States of America, Plaintiff/Relator v. Trinity Industries, Inc., Defendant, Case No. 2:12-cv-00089-JRG (E.D. Tex.). In this case, in which the U.S. Government declined to intervene, the relator, Mr. Joshua Harman, alleged the Company violated the FCA pertaining to sales of the Company’s ET-Plus® System, a highway guardrail end-terminal system (“ET Plus”). On October 20, 2014, a trial in this case concluded with a jury verdict stating that the Company and its subsidiary, Trinity Highway Products, LLC (“Trinity Highway Products”), “knowingly made, used or caused to be made or used, a false record or statement material to a false or fraudulent claim” and awarding \$175.0 million in damages. Following unsuccessful settlement negotiations to resolve this dispute and the District Court’s denial of the Company’s post-verdict motion for judgment as a matter of law, on June 9, 2015 the District Court entered judgment on the verdict in the total amount of \$682.4 million, comprised of \$175.0 million in damages, which amount is automatically trebled under the FCA to \$525.0 million plus \$138.4 million in civil penalties and \$19.0 million in costs and attorneys’ fees.

On June 23, 2015, the District Court approved the Company’s posting of a supersedeas bond in the amount of \$686.0 million (the “Bond”) and ordered a stay of the execution of the District Court’s June 9, 2015 entry of judgment of \$682.4 million against the Company pending resolution of all appeals. The Company obtained the Bond on an unsecured basis and the annual premium is currently \$3.7 million.

On July 7, 2015, the Company filed a Motion for New Trial with the District Court and on August 3, 2015, the Motion was denied. On August 28, 2015, the Company filed a Notice of Appeal to the United States Court of Appeals for the Fifth Circuit (“Fifth Circuit”). On March 21, 2016, the Company filed its opening appellate brief. On March 28, 2016, six separate *amicus curiae* briefs were filed in the Fifth Circuit by the following organizations and individuals in support of Trinity’s appeal seeking a reversal of the judgment: (i) Eleven states - Texas, Alabama, Arkansas, Colorado, Indiana, Louisiana, Nevada, Oklahoma, South Carolina, Utah and Wisconsin; (ii) the National Association of Manufacturers, United States Chamber of Commerce, and the American Tort Reform Association; (iii) five former United States Department of Justice Officials; (iv) Mothers Against Drunk Driving; (v) the Cato Institute; and (vi) the Washington Legal Foundation. On June 9, 2016, Mr. Joshua Harman filed his responsive appeal brief in the Fifth Circuit. On June 16, 2016, six *amicus curiae* briefs were filed in the Fifth Circuit by several organizations and individuals in support of Mr. Harman’s opposition to the Company’s appeal. On July 21, 2016, the Company filed its reply brief in this matter and on December 7, 2016, the Fifth Circuit heard the parties’ oral arguments. The Fifth Circuit’s ruling on the Company’s appeal is pending.

Texas A&M Transportation Institute (“TTI”), a member of The Texas A&M University System, designed the technology employed in the ET Plus. The Texas A&M University System is the owner of patents issued by the U.S. Patent Office that cover the ET Plus. Trinity Highway Products manufactures and markets the ET Plus pursuant to an exclusive license granted by The Texas A&M University System. In 2005, Trinity Highway Products contracted with TTI to conduct crash testing of the ET Plus to demonstrate compliance with the governing crash test criteria set out in National Cooperative Highway Research Program Report 350 (“Report 350”). Following the 2005 crash testing, TTI prepared and provided to Trinity Highway Products the test report on the crash test performance of the ET Plus. This report was reviewed by the Federal Highway Administration (the “FHWA”) in their 2005 acceptance of the product for use on the national highway system and determination of the product’s eligibility for federal-aid reimbursement. In a memorandum dated June 17, 2014, the FHWA confirmed that “The Trinity ET Plus with 4-inch guide channels became eligible for federal-aid reimbursement under FHWA letter CC-94 on September 2, 2005. In addition, the device is eligible for reimbursement under FHWA letters CC-94A and CC-120.” In this memorandum the FHWA confirmed that the reimbursement eligibility applies at guardrail heights from 27 ¾” to 31”. The memorandum goes on to state that an “unbroken chain of eligibility for federal-aid reimbursement has existed since September 2, 2005 and the ET Plus continues to be eligible today.”

Preceding the October 2014 trial in this matter, the Company filed a Petition for Writ of Mandamus with the Fifth Circuit based, in part, on the District Court’s failure to apply precedential case law. The Fifth Circuit denied this petition, but expressed concern regarding the District Court’s failure to issue a reasoned ruling rejecting the Company’s prior motions for judgment as a matter of law. The Fifth Circuit also stated that the FHWA’s authoritative memorandum of June 17, 2014 appears to compel the conclusion that the FHWA, after due consideration of all the facts, found the ET Plus sufficiently compliant with federal safety standards and therefore fully eligible, in the past, present and future, for federal-aid reimbursement claims. Additionally, the Fifth Circuit noted that a strong argument could be made that the Company’s actions were neither material nor were any false claims based on false certifications presented to the government. We believe this reinforces our prospects for a successful outcome on appeal.

#### *Crash testing and FHWA assessments*

Following the October 20, 2014 jury verdict, the FHWA requested that the Company conduct eight separate crash tests pursuant to crash test criteria set out in Report 350. Due to the FHWA’s request for additional ET Plus crash tests, on October 24, 2014 the Company announced that it would suspend shipment of the ET Plus to customers. The FHWA-requested tests were conducted in December 2014 and January 2015 at Southwest Research Institute, an FHWA-approved and independent research facility. Following

completion of the first four tests at a 27 ¾" guardrail installation height, and again after completion of the second four tests at a 31" guardrail installation height, the FHWA reported that the ET Plus passed all tests. Performance results from eight successful crash tests validate Trinity Highway Products' long standing position that the ET Plus performs as tested for both guardrail installation heights when properly installed and maintained. On March 11, 2015, the FHWA and the American Association of State Highway and Transportation Officials ("AASHTO") released the findings of a joint task force ("Task Force I"), comprised of representatives from the FHWA, AASHTO, the state Departments of Transportation of South Dakota, New Hampshire, Missouri, Ohio, Delaware, and Wyoming, and the Ministry of Transportation of Ontario, Canada, that evaluated field measurement data collected by FHWA engineers from more than 1,000 4-inch ET Plus devices installed on roadways throughout the country. Task Force I concluded there is no evidence to suggest that there are multiple versions of the 4-inch ET Plus on the nation's roadways. Task Force I also concluded that the ET Plus end terminals crash tested at Southwest Research Institute in December 2014 and January 2015 were representative of the devices installed across the country.

The FHWA and AASHTO formed a second joint task force ("Task Force II") comprised of representatives from the FHWA, AASHTO, the state Departments of Transportation of Iowa, Georgia, New Hampshire, North Carolina, New York, Michigan, Missouri, Delaware, and Utah, and independent experts to further evaluate the in-service performance of the ET Plus and other guardrail end terminals through the collection and analysis of a broad array of data. In a report dated September 11, 2015, the FHWA and AASHTO released the findings, conclusions, and recommendations of Task Force II, including but not limited to, the following: there are no performance limitations unique to the ET Plus; there will be real-world accident conditions that exceed the performance expectations of all manufacturers' guardrail end terminal systems; and additional crash testing of all existing Report 350 compliant guardrail end terminals, including the ET Plus, "would not be informative" and "would be irrelevant".

The Company is vigorously pursuing a reversal of the \$682.4 million judgment before the Fifth Circuit. Appellate review will continue to result in legal expenses that are expensed as incurred. We remain confident in the performance of the product at issue in this matter, and we maintain that the allegations in the case are baseless and without merit. We believe our filing in the Fifth Circuit articulates in a clear and convincing way why the judgment should not stand.

Based on information currently available to the Company, including, but not limited to the significance of the successful completion of eight post-verdict crash tests of the ET Plus and the favorable findings and conclusions published by both Task Force I and II regarding ET Plus end terminal systems installed on the nation's roadways, we do not believe that a loss is probable in this matter, therefore no accrual has been included in the accompanying consolidated financial statements.

Revenues from sales of the ET Plus, included in the Construction Products Group, totaled approximately \$0.9 million and \$2.3 million for the three and six months ended June 30, 2017, respectively. Revenues from sales of the ET Plus, included in the Construction Products Group, totaled approximately \$1.1 million and \$1.9 million for the three and six months ended June 30, 2016, respectively.

*State, county, and municipal actions*

Trinity is aware of 29 states and the District of Columbia that have removed the ET Plus from their respective qualified products list.

Mr. Harman has also filed nine separate state qui tam actions pursuant to: the Virginia Fraud Against Taxpayers Act (Commonwealth of Virginia ex rel. Joshua M. Harman v. Trinity Industries, Inc. and Trinity Highway Products, LLC, Case No. CL13-698, in the Circuit Court, Richmond, Virginia); the Indiana False Claims and Whistleblower Protection Act (State of Indiana ex rel. Joshua M. Harman Qui Tam v. Trinity Industries, Inc., and Trinity Highway Products, LLC, Case No. 49D06-1407-PL-024117, in the Sixth Court of Marion County, Indiana); the Delaware False Claims and Reporting Act (State of Delaware ex rel. Joshua M. Harman v. Trinity Industries, Inc., and Trinity Highway Products, LLC, Civ. No. N14C-06-227 MMJ CCLD, in the Superior Court of the State of Delaware In and For New Castle County); the Iowa False Claims Act (State of Iowa ex rel. Joshua M. Harman v. Trinity Industries, Inc., and Trinity Highway Products, LLC, Case No. CVCV048309, in the Iowa District Court for Polk County); the Rhode Island False Claims Act (State of Rhode Island ex rel. Joshua M. Harman v. Trinity Industries, Inc., and Trinity Highway Products, LLC, Case No. 14-3498, in the Superior Court for the State of Rhode Island and Providence Plantations); the Tennessee False Claims Act (State of Tennessee ex rel. Joshua M. Harman v. Trinity Industries, Inc., and Trinity Highway Products, LLC, Case No. 14C2652, in the Circuit Court for Davidson County, Tennessee); the Minnesota False Claims Act (State of Minnesota ex rel. Joshua M. Harman Qui Tam v. Trinity Industries, Inc., and Trinity Highway Products, LLC, Case No. 62-CV-14-3457, in the Second Judicial District Court, Ramsey County, Minnesota); the Montana False Claims Act (State of Montana ex rel. Joshua M. Harman v. Trinity Industries, Inc., and Trinity Highway Products, LLC, Case No. DV 14-0692, in the Montana Thirteenth Judicial District Court for Yellowstone County); and the Georgia Taxpayer Protection False Claims Act (State of Georgia ex rel. Joshua M. Harman v. Trinity Industries, Inc., and Trinity Highway Products, LLC, Case No. 1:15-CV-1260, in the U.S. District Court for the Northern District of Georgia). In each of these nine cases Mr. Harman is alleging the Company violated the respective states' false claims act pertaining to sales of the ET Plus, and he is seeking damages, civil penalties, attorneys' fees, costs and interest. Also, the respective states' Attorneys General filed Notices of Election to Decline Intervention in all of these matters, with the exception of the Commonwealth of Virginia Attorney General who intervened in the Virginia matter. At this time all of the above-referenced state qui tam cases are stayed.

The Company believes these state qui tam lawsuits are without merit and intends to vigorously defend all allegations. Other states could take similar or different actions, and could be considering similar state false claims or other litigation against the Company.

The Company is aware of three class action lawsuits involving claims pertaining to the ET Plus. The Company has been served in a lawsuit filed November 26, 2014, titled Hamilton County, Illinois and Macon County, Illinois, Individually and on behalf of all Other Counties in the State of Illinois vs. Trinity Industries, Inc. and Trinity Highway Products, LLC, Case No. 3:14-cv-1320 (Southern District of Illinois). This complaint was later amended to substitute St. Clair County, Illinois for Hamilton County as a lead plaintiff and to expand the proposed class. The case is being brought by plaintiffs for and on behalf of themselves and the other 101 counties of the State of Illinois and on behalf of cities, villages, incorporated towns, and township governments of the State of Illinois. The plaintiffs allege that the Company and Trinity Highway Products made a series of un-tested modifications to the ET Plus and falsely certified that the modified ET Plus was acceptable for use on the nation's highways based on federal testing standards and approval for federal-aid reimbursement. The plaintiffs also allege breach of implied warranties, violation of the Illinois Uniform Deceptive Trade Practices Act and unjust enrichment, for which plaintiffs seek actual damages related to purchases of the ET Plus, compensatory damages for establishing a common fund for class members, punitive damages, attorneys' fees and costs, and injunctive relief.

The Company has also been served in a lawsuit filed February 11, 2015, titled The Corporation of the City of Stratford and Trinity Industries, Inc., Trinity Highway Products, LLC, and Trinity Industries Canada, Inc., Case No. 15-2622 CP, pending in Ontario Superior Court of Justice. The alleged class in this matter has been identified as persons in Canada who purchased and/or used an ET Plus guardrail end terminal. The plaintiff alleges that Trinity Industries, Inc., Trinity Highway Products, LLC, and Trinity Industries Canada, Inc., failed to warn of dangers associated with undisclosed modifications to the ET Plus guardrail end terminals, breached an implied warranty, breached a duty of care, and were negligent. The plaintiff is seeking \$400 million in compensatory damages and \$100 million in punitive damages. Alternatively, the plaintiff claims the right to an accounting or other restitution remedy for disgorgement of the revenues generated by the sale of the modified ET Plus in Canada.

The Company has been served in a lawsuit filed November 5, 2015, titled Jackson County, Missouri, individually and on behalf of a class of others similarly situated vs. Trinity Industries, Inc. and Trinity Highway Products, LLC, Case No. 1516-CV23684 (Circuit Court of Jackson County, Missouri). The case is being brought by plaintiff for and on behalf of itself and all Missouri counties with a population of 10,000 or more persons, including the City of St. Louis, and the State of Missouri's transportation authority. The plaintiff alleges that the Company and Trinity Highway Products did not disclose design changes to the ET Plus and these allegedly undisclosed design changes made the ET Plus allegedly defective, unsafe, and unreasonably dangerous. The plaintiff alleges product liability negligence, product liability strict liability, and negligently supplying dangerous instrumentality for supplier's business purposes. The plaintiff seeks compensatory damages, interest, attorneys' fees and costs, and in the alternative plaintiff seeks a declaratory judgment that the ET Plus is defective, the Company's conduct was unlawful, and class-wide costs and expenses associated with removing and replacing the ET Plus throughout Missouri.

The Company believes each of these county and municipal class action lawsuits is without merit and intends to vigorously defend all allegations. While the financial impacts of these three county and municipal class action lawsuits are currently unknown, they could be material.

Based on the information currently available to the Company, we currently do not believe that a loss is probable in any one or more of the actions described under "State, county, and municipal actions," therefore no accrual has been included in the accompanying consolidated financial statements. Because of the complexity of these actions as well as the current status of certain of these actions, we are not able to estimate a range of possible losses with respect to any one or more of these actions.

#### *Product liability cases*

The Company is currently defending a number of product liability lawsuits in several different states that are alleged to involve the ET Plus as well as other products manufactured by Trinity Highway Products. These cases are diverse in light of the randomness of collisions in general and the fact that each accident involving a roadside device such as an end terminal, or any other fixed object along the highway has its own unique facts and circumstances. Report 350 recognizes that performance of even the most carefully researched and tested roadside device is subject to physical laws and the crash worthiness of vehicles. The Company expects the judgment in the FCA case, coupled with the media attention such judgment has generated, will prompt the plaintiff's bar to seek out individuals involved in collisions with a Trinity Highway Products manufactured product as potential clients, which may result in additional product liability lawsuits being filed against the Company. The Company carries general liability insurance to mitigate the impact of adverse judgment exposures in these product liability cases. To the extent that the Company believes that a loss is probable with respect to these product liability cases, the accrual for such losses is included in the amounts described below under "Other matters".

*Shareholder class actions*

On January 11, 2016, the previously reported cases styled Thomas Nemky, Individually and On Behalf of All Other Similarly Situated v. Trinity Industries, Inc., Timothy R. Wallace, and James E. Perry, Case No. (2:15-CV-00732) (“Nemky”) and Richard J. Isolde, Individually and On Behalf of All Other Similarly Situated v. Trinity Industries, Inc., Timothy R. Wallace, and James E. Perry, Case No. (3:15-CV-2093) (“Isolde”), were consolidated in the District Court for the Northern District of Texas, with all future filings to be filed in the Isolde case. On March 9, 2016, the Court appointed the Department of the Treasury of the State of New Jersey and its Division of Investment and the Plumbers and Pipefitters National Pension Fund and United Association Local Union Officers & Employees’ Pension Fund as co-lead plaintiffs (“Lead Plaintiffs”). On May 11, 2016, the Lead Plaintiffs filed their Consolidated Complaint alleging defendants Trinity Industries, Inc., Timothy R. Wallace, James E. Perry, and Gregory B. Mitchell violated Section 10(b) of the Securities Exchange Act of 1934, Rule 10b-5 promulgated thereunder, and defendants Mr. Wallace and Mr. Perry violated Section 20(a) of the Securities Exchange Act of 1934 by making materially false and misleading statements and/or by failing to disclose material facts about Trinity’s ET Plus and the FCA case styled Joshua Harman, on behalf of the United States of America, Plaintiff/Relator v. Trinity Industries, Inc., Defendant, Case No. 2:12-cv-00089-JRG (E.D. Tex.). On August 18, 2016, Trinity, Mr. Wallace, Mr. Perry, and Mr. Mitchell filed motions to dismiss Lead Plaintiffs Consolidated Complaint, which remain pending. On March 13, 2017, the Court granted defendant’s motion to stay and administratively close proceedings pending Fifth Circuit appeal. The Isolde matter is stayed and remains administratively closed pending the conclusion of the Company’s Fifth Circuit appeal of the Joshua Harman FCA judgment.

Trinity, Mr. Wallace, Mr. Perry, and Mr. Mitchell deny and intend to vigorously defend against the allegations in the Isolde case. Based on the information available to the Company, we currently do not believe that a loss is probable with respect to this shareholder class action; therefore no accrual has been included in the accompanying consolidated financial statements. Because of the complexity of these actions as well as the current status of certain of these actions, we are not able to estimate a range of possible losses with respect to these matters.

*Stockholder books and records requests*

The Company has received multiple requests from stockholders pursuant to the Delaware General Corporation Law to review certain of the Company’s books and records related to the ET Plus and the FCA case styled Joshua Harman, on behalf of the United States of America, Plaintiff/Relator v. Trinity Industries, Inc., Defendant, Case No. 2:12-cv-00089-JRG (E.D. Tex.). The stockholders’ stated purpose for seeking access to the Company’s books and records is to investigate the possibility of whether the directors or officers of the Company committed breaches of fiduciary duty or other wrongdoing. In accordance with the Company’s obligations under the Delaware law when such requests are properly filed, the Company has provided books and records to some of those stockholders.

*Stockholder derivative complaints*

The Company is named as a nominal defendant in two lawsuits captioned Bessent v. Wallace, et. al., Case No. 2017-0223, and Campi v. Wallace, et. al. Case No. 2017-0474, both in the Court of Chancery of the State of Delaware. These cases are brought by purported stockholders of the Company derivatively on behalf of nominal defendants Trinity Industries, Inc. and Trinity Highway Products, LLC, against the Company’s directors and certain officers. Plaintiffs allege the individual defendants breached their fiduciary duties in connection with Trinity’s ET Plus and the FCA case styled Joshua Harman, on behalf of the United States of America, Plaintiff/Relator v. Trinity Industries, Inc., Defendant, Case No. 2:12-cv-00089-JRG (E.D. Tex.) and that certain defendants made improper sales of Company stock. Plaintiffs seek a declaration that they may maintain this derivative action on behalf of the Company and that they are the adequate representatives of the Company, a declaration that the individual defendants breached their fiduciary duties, awarding the Company damages as a result of the alleged breaches of fiduciary duties, awarding restitution, disgorgement of individual defendants’ profits, benefits, and other compensation, certain injunctive relief, costs and fees, and interest.

The defendants deny and intend to vigorously defend against the allegations in the Bessent and Campi cases. Based on the information available to the Company, we currently do not believe that a loss is probable with respect to these derivative cases; therefore no accrual has been included in the accompanying consolidated financial statements. Because of the complexity of these actions as well as the current status of certain of these actions, we are not able to estimate a range of possible losses with respect to these matters.

*Other matters*

The Company is involved in claims and lawsuits incidental to our business arising from various matters including product warranty, personal injury, environmental issues, workplace laws, and various governmental regulations. The Company evaluates its exposure to such claims and suits periodically and establishes accruals for these contingencies when a range of loss can be reasonably estimated. The range of reasonably possible losses for such matters, taking into consideration our rights in indemnity and recourse to third parties is \$4.4 million to \$21.6 million. This range includes any amount related to the Highway Products litigation matters described above in the section titled “Product liability cases.” At June 30, 2017, total accruals of \$26.0 million, including environmental and workplace matters described below, are included in accrued liabilities in the accompanying

consolidated balance sheet. The Company believes any additional liability would not be material to its financial position or results of operations.

Trinity is subject to remedial orders and federal, state, local, and foreign laws and regulations relating to the environment and the workplace. The Company has reserved \$3.7 million to cover our probable and estimable liabilities with respect to the investigations, assessments, and remedial responses to such matters, taking into account currently available information and our contractual rights to indemnification and recourse to third parties. However, estimates of liability arising from future proceedings, assessments, or remediation are inherently imprecise. Accordingly, there can be no assurance that we will not become involved in future litigation or other proceedings involving the environment and the workplace or, if we are found to be responsible or liable in any such litigation or proceeding, that such costs would not be material to the Company. We believe that we are currently in substantial compliance with environmental and workplace laws and regulations.

**Note 19. Financial Statements for Guarantors of the Senior Notes**

The Company's Senior Notes are fully and unconditionally and jointly and severally guaranteed by certain of Trinity's 100%-owned subsidiaries: Trinity Industries Leasing Company; Trinity Marine Products, Inc.; Trinity North American Freight Car, Inc.; Trinity Rail Group, LLC; Trinity Tank Car, Inc.; Trinity Meyer Utility Structures LLC. and, effective April 20, 2017, Trinity Structural Towers, Inc. (collectively, the "Combined Guarantor Subsidiaries"). Amounts previously reported have been restated to include Trinity Structural Towers, Inc. as a Guarantor Subsidiary. The Senior Notes indenture agreement includes customary provisions for the release of the guarantees by the Combined Guarantor Subsidiaries upon the occurrence of certain allowed events including the release of one or more of the Combined Guarantor Subsidiaries as guarantor under the Company's revolving credit facility. See Note 11 Debt. The Senior Notes are not guaranteed by any remaining 100%-owned subsidiaries of the Company or partially-owned subsidiaries ("Combined Non-Guarantor Subsidiaries").

As of June 30, 2017, assets held by the Combined Non-Guarantor Subsidiaries included \$165.6 million of restricted cash that was not available for distribution to Trinity Industries, Inc. ("Parent"), \$3,599.9 million of equipment securing certain non-recourse debt, \$67.5 million of equipment securing certain lease obligations held by the Combined Non-Guarantor Subsidiaries, and \$332.8 million of assets located in foreign locations. As of December 31, 2016, assets held by the Combined Non-Guarantor Subsidiaries included \$147.1 million of restricted cash that was not available for distribution to the Parent, \$3,300.9 million of equipment securing certain non-recourse debt, \$68.0 million of equipment securing certain lease obligations held by the Combined Non-Guarantor Subsidiaries, and \$349.4 million of assets located in foreign locations.

Statement of Operations and Comprehensive Income  
Three Months Ended June 30, 2017

	Parent	Combined Guarantor Subsidiaries	Combined Non-Guarantor Subsidiaries	Eliminations	Consolidated
	(in millions)				
Revenues	\$ —	\$ 564.7	\$ 473.4	\$ (132.6)	\$ 905.5
Cost of revenues	1.4	455.6	364.4	(139.5)	681.9
Selling, engineering, and administrative expenses	35.9	33.9	43.0	—	112.8
Gains/(losses) on dispositions of property	0.1	20.9	3.4	—	24.4
	37.2	468.6	404.0	(139.5)	770.3
Operating profit (loss)	(37.2)	96.1	69.4	6.9	135.2
Other (income) expense	5.1	8.8	30.0	—	43.9
Equity in earnings of subsidiaries, net of taxes	103.1	26.1	—	(129.2)	—
Income before income taxes	60.8	113.4	39.4	(122.3)	91.3
Provision (benefit) for income taxes	9.7	31.5	9.8	(13.7)	37.3
Net income	51.1	81.9	29.6	(108.6)	54.0
Net income attributable to noncontrolling interest	—	—	—	2.9	2.9
Net income attributable to controlling interest	\$ 51.1	\$ 81.9	\$ 29.6	\$ (111.5)	\$ 51.1
Net income	\$ 51.1	\$ 81.9	\$ 29.6	\$ (108.6)	\$ 54.0
Other comprehensive income (loss)	1.2	—	1.0	—	2.2
Comprehensive income	52.3	81.9	30.6	(108.6)	56.2
Comprehensive income attributable to noncontrolling interest	—	—	—	3.6	3.6
Comprehensive income attributable to controlling interest	\$ 52.3	\$ 81.9	\$ 30.6	\$ (112.2)	\$ 52.6

Statement of Operations and Comprehensive Income  
Six Months Ended June 30, 2017

	Parent	Combined Guarantor Subsidiaries	Combined Non-Guarantor Subsidiaries	Eliminations	Consolidated
	(in millions)				
Revenues	\$ —	\$ 1,116.2	\$ 937.2	\$ (270.6)	\$ 1,782.8
Cost of revenues	3.8	899.0	721.0	(282.2)	1,341.6
Selling, engineering, and administrative expenses	68.7	64.7	81.7	—	215.1
Gains/(losses) on dispositions of property	0.6	21.0	4.1	—	25.7
	71.9	942.7	798.6	(282.2)	1,531.0
Operating profit (loss)	(71.9)	173.5	138.6	11.6	251.8
Other (income) expense	11.4	15.7	60.9	—	88.0
Equity in earnings of subsidiaries, net of taxes	162.3	43.2	—	(205.5)	—
Income before income taxes	79.0	201.0	77.7	(193.9)	163.8
Provision (benefit) for income taxes	(18.1)	70.5	19.5	(13.8)	58.1
Net income	97.1	130.5	58.2	(180.1)	105.7
Net income attributable to noncontrolling interest	—	—	—	8.6	8.6
Net income attributable to controlling interest	\$ 97.1	\$ 130.5	\$ 58.2	\$ (188.7)	\$ 97.1
Net income	\$ 97.1	\$ 130.5	\$ 58.2	\$ (180.1)	\$ 105.7
Other comprehensive income (loss)	2.2	—	2.1	—	4.3
Comprehensive income	99.3	130.5	60.3	(180.1)	110.0
Comprehensive income attributable to noncontrolling interest	—	—	—	10.1	10.1
Comprehensive income attributable to controlling interest	\$ 99.3	\$ 130.5	\$ 60.3	\$ (190.2)	\$ 99.9



**Statement of Operations and Comprehensive Income**  
**Three Months Ended June 30, 2016**

	Parent	Combined Guarantor Subsidiaries	Combined Non-Guarantor Subsidiaries	Eliminations	Consolidated
	(in millions)				
Revenues	\$ —	\$ 838.0	\$ 539.6	\$ (192.7)	\$ 1,184.9
Cost of revenues	(1.3)	668.9	427.5	(197.4)	897.7
Selling, engineering, and administrative expenses	33.2	35.6	37.9	—	106.7
Gains/(losses) on dispositions of property	(0.7)	10.5	1.3	—	11.1
	32.6	694.0	464.1	(197.4)	993.3
Operating profit (loss)	(32.6)	144.0	75.5	4.7	191.6
Other (income) expense	(1.2)	9.3	31.3	—	39.4
Equity in earnings of subsidiaries, net of taxes	105.9	16.0	—	(121.9)	—
Income before income taxes	74.5	150.7	44.2	(117.2)	152.2
Provision (benefit) for income taxes	(20.1)	60.1	11.7	1.7	53.4
Net income	94.6	90.6	32.5	(118.9)	98.8
Net income attributable to noncontrolling interest	—	—	—	4.2	4.2
Net income attributable to controlling interest	\$ 94.6	\$ 90.6	\$ 32.5	\$ (123.1)	\$ 94.6
Net income	\$ 94.6	\$ 90.6	\$ 32.5	\$ (118.9)	\$ 98.8
Other comprehensive income (loss)	0.9	—	1.1	—	2.0
Comprehensive income	95.5	90.6	33.6	(118.9)	100.8
Comprehensive income attributable to noncontrolling interest	—	—	—	4.9	4.9
Comprehensive income attributable to controlling interest	\$ 95.5	\$ 90.6	\$ 33.6	\$ (123.8)	\$ 95.9

**Statement of Operations and Comprehensive Income**  
**Six Months Ended June 30, 2016**

	Parent	Combined Guarantor Subsidiaries	Combined Non-Guarantor Subsidiaries	Eliminations	Consolidated
	(in millions)				
Revenues	\$ —	\$ 1,714.0	\$ 1,067.4	\$ (408.6)	\$ 2,372.8
Cost of revenues	(3.6)	1,375.3	834.1	(418.2)	1,787.6
Selling, engineering, and administrative expenses	56.8	69.9	76.5	—	203.2
Gains/(losses) on dispositions of property	(0.9)	10.3	3.6	—	13.0
	54.1	1,434.9	907.0	(418.2)	1,977.8
Operating profit (loss)	(54.1)	279.1	160.4	9.6	395.0
Other (income) expense	(0.1)	18.3	65.1	—	83.3
Equity in earnings of subsidiaries, net of taxes	227.8	42.6	—	(270.4)	—
Income before income taxes	173.8	303.4	95.3	(260.8)	311.7
Provision (benefit) for income taxes	(18.0)	105.0	20.4	3.4	110.8
Net income	191.8	198.4	74.9	(264.2)	200.9
Net income attributable to noncontrolling interest	—	—	—	9.1	9.1
Net income attributable to controlling interest	\$ 191.8	\$ 198.4	\$ 74.9	\$ (273.3)	\$ 191.8
Net income	\$ 191.8	\$ 198.4	\$ 74.9	\$ (264.2)	\$ 200.9
Other comprehensive income (loss)	3.0	—	1.9	—	4.9
Comprehensive income	194.8	198.4	76.8	(264.2)	205.8
Comprehensive income attributable to noncontrolling interest	—	—	—	10.3	10.3
Comprehensive income attributable to controlling interest	\$ 194.8	\$ 198.4	\$ 76.8	\$ (274.5)	\$ 195.5

**Balance Sheet**

**June 30, 2017**

	Parent	Combined Guarantor Subsidiaries	Combined Non-Guarantor Subsidiaries	Eliminations	Consolidated
(in millions)					
<b>Assets:</b>					
Cash and cash equivalents	\$ 784.0	\$ 6.1	\$ 47.3	\$ (28.7)	\$ 808.7
Short-term marketable securities	179.6	—	—	—	179.6
Receivables, net of allowance	0.4	176.3	174.7	—	351.4
Income tax receivable	180.5	—	2.2	—	182.7
Inventory	—	405.1	232.8	(10.6)	627.3
Property, plant, and equipment, net	49.4	2,212.5	4,333.3	(522.0)	6,073.2
Investments in and advances to subsidiaries	5,032.6	2,963.7	363.2	(8,359.5)	—
Restricted cash	—	0.5	165.6	28.7	194.8
Goodwill and other assets	145.6	587.1	307.4	(5.7)	1,034.4
	<u>\$ 6,372.1</u>	<u>\$ 6,351.3</u>	<u>\$ 5,626.5</u>	<u>\$ (8,897.8)</u>	<u>\$ 9,452.1</u>
<b>Liabilities:</b>					
Accounts payable	\$ 7.4	\$ 57.2	\$ 102.9	\$ (0.4)	\$ 167.1
Accrued liabilities	219.7	61.9	136.5	(5.7)	412.4
Debt	828.2	30.2	2,411.6	—	3,270.0
Deferred income	—	20.5	1.5	—	22.0
Deferred income taxes	117.0	1,078.6	14.8	0.3	1,210.7
Advances from subsidiaries	833.9	—	—	(833.9)	—
Other liabilities	50.4	1.9	2.1	—	54.4
Total stockholders' equity	4,315.5	5,101.0	2,957.1	(8,058.1)	4,315.5
	<u>\$ 6,372.1</u>	<u>\$ 6,351.3</u>	<u>\$ 5,626.5</u>	<u>\$ (8,897.8)</u>	<u>\$ 9,452.1</u>

**Balance Sheet**

**December 31, 2016**

	Parent	Combined Guarantor Subsidiaries	Combined Non-Guarantor Subsidiaries	Eliminations	Consolidated
(in millions)					
<b>Assets:</b>					
Cash and cash equivalents	\$ 537.9	\$ 5.2	\$ 51.3	\$ (31.0)	\$ 563.4
Short-term marketable securities	234.7	—	—	—	234.7
Receivables, net of allowance	1.1	219.2	158.4	—	378.7
Income tax receivable	99.9	—	2.2	—	102.1
Inventory	—	444.2	231.5	(9.9)	665.8
Property, plant, and equipment, net	48.8	2,347.4	4,029.8	(459.2)	5,966.8
Investments in and advances to subsidiaries	4,862.4	2,565.0	334.6	(7,762.0)	—
Restricted cash	—	—	147.1	31.1	178.2
Goodwill and other assets	150.8	585.1	301.0	(1.3)	1,035.6
	<u>\$ 5,935.6</u>	<u>\$ 6,166.1</u>	<u>\$ 5,255.9</u>	<u>\$ (8,232.3)</u>	<u>\$ 9,125.3</u>
<b>Liabilities:</b>					
Accounts payable	\$ 5.7	\$ 54.8	\$ 96.1	\$ (0.5)	\$ 156.1
Accrued liabilities	200.0	87.7	139.7	(1.3)	426.1
Debt	818.7	32.0	2,205.9	—	3,056.6
Deferred income	—	21.9	1.6	—	23.5
Deferred income taxes	78.6	984.7	9.3	0.3	1,072.9
Advances from subsidiaries	458.2	—	—	(458.2)	—
Other liabilities	63.3	13.5	2.2	—	79.0
Total stockholders' equity	4,311.1	4,971.5	2,801.1	(7,772.6)	4,311.1
	<u>\$ 5,935.6</u>	<u>\$ 6,166.1</u>	<u>\$ 5,255.9</u>	<u>\$ (8,232.3)</u>	<u>\$ 9,125.3</u>

Statement of Cash Flows  
Six Months Ended June 30, 2017

	Parent	Combined Guarantor Subsidiaries	Combined Non-Guarantor Subsidiaries	Eliminations	Consolidated
	(in millions)				
<b>Operating activities:</b>					
Net income	\$ 97.1	\$ 130.5	\$ 58.2	\$ (180.1)	\$ 105.7
Equity in earnings of subsidiaries, net of taxes	(162.3)	(43.2)	—	205.5	—
Other	(11.4)	161.9	88.5	(8.6)	230.4
Net cash provided (required) by operating activities	(76.6)	249.2	146.7	16.8	336.1
<b>Investing activities:</b>					
(Increase) decrease in short-term marketable securities	55.1	—	—	—	55.1
Proceeds from railcar lease fleet sales owned more than one year	—	446.2	9.6	(363.4)	92.4
Proceeds from dispositions of property and other assets	—	1.0	5.0	—	6.0
Capital expenditures – leasing	—	(268.2)	(366.8)	363.4	(271.6)
Capital expenditures – manufacturing and other	(5.0)	(7.9)	(30.5)	—	(43.4)
Acquisitions, net of cash acquired	—	—	(5.3)	—	(5.3)
(Increase) decrease in investment in partially-owned subsidiaries	—	11.2	—	(11.2)	—
Other	—	—	(2.1)	—	(2.1)
Net cash provided (required) by investing activities	50.1	182.3	(390.1)	(11.2)	(168.9)
<b>Financing activities:</b>					
Excess tax benefits from stock-based compensation	—	—	—	—	—
Payments to retire debt	—	(1.8)	(96.5)	—	(98.3)
Proceeds from issuance of debt	—	—	299.4	—	299.4
(Increase) decrease in restricted cash	—	(0.5)	(18.5)	2.4	(16.6)
Shares repurchased	(41.9)	—	—	—	(41.9)
Dividends paid to common shareholders	(33.5)	—	—	—	(33.5)
Purchase of shares to satisfy employee tax on vested stock	(14.0)	—	—	—	(14.0)
Distributions to noncontrolling interest	—	—	(16.9)	—	(16.9)
Distributions to controlling interest in partially-owned subsidiaries	—	—	(11.2)	11.2	—
Change in intercompany financing between entities	362.0	(428.3)	83.2	(16.9)	—
Other	—	—	(0.1)	—	(0.1)
Net cash provided (required) by financing activities	272.6	(430.6)	239.4	(3.3)	78.1
Net increase (decrease) in cash and cash equivalents	246.1	0.9	(4.0)	2.3	245.3
Cash and cash equivalents at beginning of period	537.9	5.2	51.3	(31.0)	563.4
Cash and cash equivalents at end of period	\$ 784.0	\$ 6.1	\$ 47.3	\$ (28.7)	\$ 808.7

**Statement of Cash Flows**  
**Six Months Ended June 30, 2016**

	<u>Parent</u>	<u>Combined Guarantor Subsidiaries</u>	<u>Combined Non-Guarantor Subsidiaries</u>	<u>Eliminations</u>	<u>Consolidated</u>
	(in millions)				
<b>Operating activities:</b>					
Net income	\$ 191.8	\$ 198.4	\$ 74.9	\$ (264.2)	\$ 200.9
Equity in earnings of subsidiaries, net of taxes	(227.8)	(42.6)	—	270.4	—
Other	48.8	203.7	45.8	(12.8)	285.5
Net cash provided (required) by operating activities	<u>12.8</u>	<u>359.5</u>	<u>120.7</u>	<u>(6.6)</u>	<u>486.4</u>
<b>Investing activities:</b>					
(Increase) decrease in short-term marketable securities	(115.1)	—	—	—	(115.1)
Proceeds from railcar lease fleet sales owned more than one year	—	27.3	10.4	—	37.7
Proceeds from dispositions of property and other assets	—	0.2	3.9	—	4.1
Capital expenditures – leasing	—	(343.7)	(2.3)	—	(346.0)
Capital expenditures – manufacturing and other	(8.5)	(8.1)	(63.2)	—	(79.8)
Acquisitions, net of cash acquired	—	—	—	—	—
(Increase) decrease in investment in partially-owned subsidiaries	—	6.7	—	(6.7)	—
Other	—	1.5	0.8	—	2.3
Net cash provided (required) by investing activities	<u>(123.6)</u>	<u>(316.1)</u>	<u>(50.4)</u>	<u>(6.7)</u>	<u>(496.8)</u>
<b>Financing activities:</b>					
Excess tax benefits from stock-based compensation	0.6	—	—	—	0.6
Payments to retire debt	—	(1.6)	(76.0)	—	(77.6)
Proceeds from issuance of debt	—	—	—	—	—
(Increase) decrease in restricted cash	—	(3.0)	6.3	9.2	12.5
Shares repurchased	(34.7)	—	—	—	(34.7)
Dividends paid to common shareholders	(33.4)	—	—	—	(33.4)
Purchase of shares to satisfy employee tax on vested stock	(16.1)	—	—	—	(16.1)
Distributions to noncontrolling interest	—	—	(10.9)	—	(10.9)
Distributions to controlling interest in partially-owned subsidiaries	—	—	(6.7)	6.7	—
Change in intercompany financing between entities	18.7	(39.2)	13.9	6.6	—
Other	—	—	(2.0)	—	(2.0)
Net cash provided (required) by financing activities	<u>(64.9)</u>	<u>(43.8)</u>	<u>(75.4)</u>	<u>22.5</u>	<u>(161.6)</u>
Net increase (decrease) in cash and cash equivalents	(175.7)	(0.4)	(5.1)	9.2	(172.0)
Cash and cash equivalents at beginning of period	768.3	1.7	51.1	(35.1)	786.0
Cash and cash equivalents at end of period	<u>\$ 592.6</u>	<u>\$ 1.3</u>	<u>\$ 46.0</u>	<u>\$ (25.9)</u>	<u>\$ 614.0</u>

## **Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations**

Management's Discussion and Analysis of Financial Condition and Results of Operations ("MD&A") is intended to provide management's perspective on our financial condition, results of operations, liquidity, and certain other factors that may affect our future results. Our MD&A is presented in the following sections:

- Executive Summary
- Results of Operations
- Liquidity and Capital Resources
- Contractual Obligations and Commercial Commitments
- Recent Accounting Pronouncements
- Forward-Looking Statements

Our MD&A should be read in conjunction with the unaudited consolidated financial statements of Trinity Industries, Inc. and subsidiaries ("Trinity," "Company," "we," and "our") and related Notes in Part I, Item 1 of the Quarterly Report on Form 10-Q and Item 8, Financial Statements and Supplementary Data, of the Annual Report on Form 10-K for the year-ended December 31, 2016.

### **Executive Summary**

The Company's revenues for the three and six months ended June 30, 2017 were \$905.5 million and \$1,782.8 million, respectively, representing a decrease of \$279.4 million and \$590.0 million, respectively, or 23.6% and 24.9%, respectively, compared to the same periods in 2016. Operating profit for the three and six months ended June 30, 2017 totaled \$135.2 million and \$251.8 million, respectively, compared to \$191.6 million and \$395.0 million, respectively, for the same periods in 2016. The decrease in both revenues and operating profit for the three and six months ended June 30, 2017, when compared to the prior year periods, resulted primarily from lower volumes in our Rail and Inland Barge Groups. Revenues and operating profit generated by our Energy Equipment Group decreased for the three and six months ended June 30, 2017 as higher delivery volumes in our wind towers and utility structures businesses were offset by lower delivery volumes in the Group's other product lines. When compared to the same periods in 2016, revenues produced by our Construction Products Group decreased for the three and six months ended June 30, 2017 primarily due to lower volumes in the Group's highway products business while operating profit was substantially unchanged. Revenues from the Leasing Group decreased for the three and six months ended June 30, 2017, when compared to the prior year periods, due to lower sales of leased railcars while operating profit decreased for the three months ended June 30, 2017 and increased for the six months ended June 30, 2017 as lower profit from leased railcar sales was offset by higher profit from net additions to the lease fleet and lower fleet maintenance and compliance expenses.

Selling, engineering, and administrative expenses increased by 5.7% and 5.9% for the three and six months ended June 30, 2017, respectively, when compared to the prior year periods, primarily due to higher litigation-related costs, increased insurance costs, and additional bad debt expense, partially offset by lower compensation costs. The Company's headcount, including both production and non-production personnel, decreased approximately 26% since June 30, 2016 and approximately 18% since the end of 2016 primarily due to actions taken to realign our costs with current market conditions.

Net income for the three and six months ended June 30, 2017 was \$54.0 million and \$105.7 million, respectively, compared with \$98.8 million and \$200.9 million, respectively, for the same periods in 2016. Net income attributable to Trinity Industries, Inc. common stockholders for the three and six months ended June 30, 2017 was \$51.1 million and \$97.1 million, respectively, compared with \$94.6 million and \$191.8 million, respectively, for the prior year periods.

Our Rail, Inland Barge, and Leasing Groups and our structural wind towers, utility structures, and storage and distribution containers businesses operate in cyclical industries. Additionally, results in our Construction Products Group are affected by seasonal fluctuations with the second and third quarters historically being the quarters with the highest revenues. Due to their transactional nature, railcar sales from the lease fleet are the primary driver of fluctuations in results in the Railcar Leasing and Management Services Group.

We continue to experience weak demand levels for many of the Company's products and services. The ongoing level of uncertainty in the industrial economy has continued to impact our customers' long-term capital planning processes. The oversupply of railcars and barges in the North American market has limited new order levels for these businesses. We continue to assess demand for our products and services and take steps to align our manufacturing capacity appropriately.

As of June 30, 2017 and 2016 our backlog of firm orders was as follows:

	June 30, 2017	June 30, 2016
	(in millions)	
<b>Rail Group</b>		
External Customers	\$ 1,722.0	\$ 3,125.2
Leasing Group	992.8	1,166.2
	\$ 2,714.8	\$ 4,291.4
<b>Inland Barge Group</b>	\$ 90.7	\$ 251.0
Wind towers	\$ 945.4	\$ 1,112.6

For the six months ended June 30, 2017, our rail manufacturing businesses received orders for 6,675 railcars. The change in backlog as of June 30, 2017 compared with our backlog as of June 30, 2016 reflects the value of orders taken, net of cancellations, executory contract change orders and price modifications, and orders delivered during the period. The orders in our backlog from the Leasing Group are fully supported by lease commitments with external customers. The final amount dedicated to the Leasing Group may vary by the time of delivery as customers may alternatively choose to purchase railcars as external sales from the Rail Group. The Company does not report backlog from its utility structures business because certain contracts contain partial order cancellation provisions.

During the six months ended June 30, 2017 and 2016, the Company received proceeds from the sales of leased railcars as follows:

	Six Months Ended June 30,	
	2017	2016
	(in millions)	
<b>Leasing Group:</b>		
Railcars owned one year or less at the time of sale	\$ 7.1	\$ 126.1
Railcars owned more than one year at the time of sale	92.4	37.7
<b>Rail Group</b>	—	8.1
	\$ 99.5	\$ 171.9

On May 15, 2017, Trinity Rail Leasing 2017, LLC, a Delaware limited liability company ("TRL 2017") and a limited purpose, indirect wholly-owned subsidiary of the Company owned through TILC, issued \$302.4 million of promissory notes (the "2017 Promissory Notes") due May 15, 2024, of which \$301.1 million was outstanding as of June 30, 2017. The 2017 Promissory Notes are obligations of TRL 2017 and are non-recourse to Trinity. The 2017 Promissory Notes bear interest at Libor plus a margin for an all-in interest rate of 2.91% as of June 30, 2017, payable monthly. The 2017 Promissory Notes are secured by a portfolio of railcars and operating leases thereon, certain cash reserves, and other assets acquired and owned by TRL 2017.

In May 2017, the Company declared an increase in its quarterly dividend from \$0.11 to \$0.13 per share, reflecting an 18% increase.

In December 2015, the Company's Board of Directors renewed its \$250 million share repurchase program effective January 1, 2016 through December 31, 2017. Under the program, 1,942,200 shares were repurchased during the three and six months ended June 30, 2017, at a cost of approximately \$52.4 million. Certain shares of stock repurchased during June 2017, totaling \$10.5 million, were cash settled in July 2017 in accordance with normal settlement practices. As of June 30, 2017, the remaining authorization under the program totaled \$163.0 million.

A current summary of the Company's Highway Products litigation is provided in Note 18 of the Consolidated Financial Statements.

**Results of Operations**
*Overall Summary*
Revenues

	Three Months Ended June 30, 2017			Three Months Ended June 30, 2016			Percent Change
	Revenues			Revenues			
	External	Intersegment	Total	External	Intersegment	Total	
	(\$ in millions)						
Rail Group	\$ 335.4	\$ 130.5	\$ 465.9	\$ 427.7	\$ 265.5	\$ 693.2	(32.8)%
Construction Products Group	130.7	0.6	131.3	141.7	4.1	145.8	(9.9)
Inland Barge Group	33.5	—	33.5	118.3	—	118.3	(71.7)
Energy Equipment Group	212.2	26.3	238.5	199.1	41.5	240.6	(0.9)
Railcar Leasing and Management Services Group	191.9	0.2	192.1	296.1	0.5	296.6	(35.2)
All Other	1.8	20.9	22.7	2.0	17.7	19.7	15.2
Segment Totals before Eliminations	905.5	178.5	1,084.0	1,184.9	329.3	1,514.2	(28.4)
Eliminations – Lease subsidiary	—	(115.9)	(115.9)	—	(252.1)	(252.1)	
Eliminations – Other	—	(62.6)	(62.6)	—	(77.2)	(77.2)	
Consolidated Total	\$ 905.5	\$ —	\$ 905.5	\$ 1,184.9	\$ —	\$ 1,184.9	(23.6)

	Six Months Ended June 30, 2017			Six Months Ended June 30, 2016			Percent Change
	Revenues			Revenues			
	External	Intersegment	Total	External	Intersegment	Total	
	(\$ in millions)						
Rail Group	\$ 621.4	\$ 322.8	\$ 944.2	\$ 970.9	\$ 569.2	\$ 1,540.1	(38.7)%
Construction Products Group	251.6	2.8	254.4	263.3	7.4	270.7	(6.0)
Inland Barge Group	96.2	—	96.2	229.1	—	229.1	(58.0)
Energy Equipment Group	440.0	53.9	493.9	431.6	82.4	514.0	(3.9)
Railcar Leasing and Management Services Group	370.5	0.5	371.0	473.9	1.2	475.1	(21.9)
All Other	3.1	42.4	45.5	4.0	37.6	41.6	9.4
Segment Totals before Eliminations	1,782.8	422.4	2,205.2	2,372.8	697.8	3,070.6	(28.2)
Eliminations – Lease subsidiary	—	(296.9)	(296.9)	—	(535.4)	(535.4)	
Eliminations – Other	—	(125.5)	(125.5)	—	(162.4)	(162.4)	
Consolidated Total	\$ 1,782.8	\$ —	\$ 1,782.8	\$ 2,372.8	\$ —	\$ 2,372.8	(24.9)

Our revenues for the three and six months ended June 30, 2017 decreased by 24% and 25%, respectively, from the prior year periods primarily as a result of reduced volumes in our Rail and Inland Barge Groups. Revenues from our Construction Products Group decreased for the three and six months ended June 30, 2017 primarily due to lower volumes in the Group's highway products business. In our Energy Equipment Group, higher volumes in our wind towers and utility structures product lines were offset by lower volumes in the Group's other product lines resulting in lower revenues for the three and six months ended June 30, 2017 when compared to the prior year periods. Revenues from our Leasing Group decreased as a reduced volume of leased railcar sales was partially offset by higher leasing and management revenues for the three and six months ended June 30, 2017 when compared to the prior year periods.

Operating Costs

	Three Months Ended June 30,		Six Months Ended June 30,	
	2017	2016	2017	2016
	(in millions)			
Rail Group	\$ 428.9	\$ 604.4	\$ 856.5	\$ 1,294.1
Construction Products Group	109.0	124.3	216.5	233.3
Inland Barge Group	33.0	104.0	89.3	202.2
Energy Equipment Group	214.2	205.7	439.8	441.7
Railcar Leasing and Management Services Group	81.3	178.9	175.2	283.2
All Other	28.4	24.9	55.8	51.9
Segment Totals before Eliminations and Corporate Expenses	894.8	1,242.2	1,833.1	2,506.4
Corporate	38.3	34.7	73.3	59.4
Eliminations – Lease subsidiary	(102.3)	(206.2)	(254.4)	(424.0)
Eliminations – Other	(60.5)	(77.4)	(121.0)	(164.0)
Consolidated Total	\$ 770.3	\$ 993.3	\$ 1,531.0	\$ 1,977.8

Operating costs for the three and six months ended June 30, 2017 decreased by 22.5% and 22.6%, respectively, over the same periods in 2016 primarily due to lower shipment levels in our Rail and Inland Barge Groups. Operating costs in our Energy Equipment Group increased for the three months ended June 30, 2017 primarily due to higher volumes in our wind towers product line and decreased for the six months ended June 30, 2017 primarily due to improved manufacturing efficiencies in our wind towers product line. The reduction in operating costs was offset by additional costs associated with aligning our production footprint with demand in several of our business groups. Selling, engineering, and administrative expenses, including Corporate expenses, increased for the three and six months ended June 30, 2017, by 5.7% and 5.9%, respectively. As a percentage of revenue, selling, engineering, and administrative expenses were 12.5% and 12.1%, respectively, for the three and six months ended June 30, 2017 as compared to 9.0% and 8.6%, respectively, for the same periods in 2016 primarily due to higher litigation-related costs, increased insurance costs, and additional bad debt expense, partially offset by lower compensation costs.

Operating Profit (Loss)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2017	2016	2017	2016
	(in millions)			
Rail Group	\$ 37.0	\$ 88.8	\$ 87.7	\$ 246.0
Construction Products Group	22.3	21.5	37.9	37.4
Inland Barge Group	0.5	14.3	6.9	26.9
Energy Equipment Group	24.3	34.9	54.1	72.3
Railcar Leasing and Management Services Group	110.8	117.7	195.8	191.9
All Other	(5.7)	(5.2)	(10.3)	(10.3)
Segment Totals before Eliminations and Corporate Expenses	189.2	272.0	372.1	564.2
Corporate	(38.3)	(34.7)	(73.3)	(59.4)
Eliminations – Lease subsidiary	(13.6)	(45.9)	(42.5)	(111.4)
Eliminations – Other	(2.1)	0.2	(4.5)	1.6
Consolidated Total	\$ 135.2	\$ 191.6	\$ 251.8	\$ 395.0

Our operating profit for the three and six months ended June 30, 2017 decreased by 29.4% and 36.3%, respectively, when compared to the same periods in 2016 primarily as a result of lower shipment volumes in our Rail and Inland Barge Groups. Operating profit was affected by additional costs associated with aligning our production footprint with demand in several of our business groups. Operating profit in the Construction Products Group was substantially unchanged for the three and six months ended June 30, 2017 when compared to the prior year periods. Operating profit in our Energy Equipment Group decreased for the three and six months ended June 30, 2017 when compared to the same periods in the prior year as a result of lower volumes from the Group's other businesses. Operating profit in our Leasing Group decreased for the three months ended June 30, 2017 and increased for the six months ended June 30, 2017 over the same periods during the prior year primarily as a result of net additions to the lease fleet and lower maintenance and compliance costs which were offset by a reduced volume of leased railcar sales.

For a further discussion of revenues, costs, and the operating results of individual segments, see *Segment Discussion* below.



*Other Income and Expense.* Other income and expense is summarized in the following table:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2017	2016	2017	2016
	(in millions)			
Interest income	\$ (2.3)	\$ (1.3)	\$ (4.0)	\$ (2.5)
Interest expense	45.7	45.6	90.7	91.4
Other, net	0.5	(4.9)	1.3	(5.6)
Consolidated Total	<u>\$ 43.9</u>	<u>\$ 39.4</u>	<u>\$ 88.0</u>	<u>\$ 83.3</u>

*Income Taxes.* The provision for income taxes results in effective tax rates that differ from the statutory rates. The following is a reconciliation between the statutory U.S. federal income tax rate and the Company's effective income tax rate on income before income taxes:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2017	2016	2017	2016
Statutory rate	35.0 %	35.0 %	35.0 %	35.0 %
State taxes	1.5	1.2	1.5	1.1
Noncontrolling interest in partially-owned subsidiaries	(0.7)	(1.0)	(0.6)	(1.1)
Settlements with tax authorities	—	—	(3.5)	—
Equity compensation	3.0	—	1.5	—
Other, net	2.1	(0.1)	1.6	0.5
Effective rate	<u>40.9 %</u>	<u>35.1 %</u>	<u>35.5 %</u>	<u>35.5 %</u>

Our effective tax rate reflects the Company's estimate for 2017 of its state income tax expense, income attributable to the noncontrolling interests in partially-owned leasing subsidiaries for which no income tax expense is provided, excess tax deficiencies related to equity compensation in accordance with ASU 2016-09, and the impact of the completion of income tax audits that resulted in a net tax benefit. See Note 5 of the Consolidated Financial Statements for a further explanation of activities with respect to our partially-owned leasing subsidiaries. Income tax payments, net of refunds received, during the six months ended June 30, 2017 totaled \$8.1 million. The total net income tax receivable position at June 30, 2017 amounted to \$182.1 million. During the six months ended June 30, 2017, the Internal Revenue Service ("IRS") formally closed its audit of the 2006-2009 tax years and, accordingly, we have adjusted unrecognized tax benefits and deferred tax amounts related to these tax years resulting in a \$5.8 million tax benefit. The 2013-2016 tax years remain open.

See Note 13 of the Consolidated Financial Statements for a further discussion of income taxes.

Segment Discussion

**Rail Group**

	Three Months Ended June 30,			Six Months Ended June 30,		
	2017	2016	Percent Change	2017	2016	Percent Change
	(\$ in millions)			(\$ in millions)		
<b>Revenues:</b>						
Railcars	\$ 407.3	\$ 644.0	(36.8)%	\$ 832.4	\$ 1,446.4	(42.5)%
Components and maintenance services	58.6	49.2	19.1	111.8	93.7	19.3
Total revenues	465.9	693.2	(32.8)	944.2	1,540.1	(38.7)
<b>Operating costs:</b>						
Cost of revenues	413.8	586.9	(29.5)	827.2	1,259.3	(34.3)
Selling, engineering, and administrative costs	15.1	17.5	(13.7)	29.3	34.8	(15.8)
Operating profit	\$ 37.0	\$ 88.8	(58.3)	\$ 87.7	\$ 246.0	(64.3)
Operating profit margin	7.9%	12.8%		9.3%	16.0%	

As of June 30, 2017 and 2016 our Rail Group backlog of railcars was as follows:

	As of June 30,	
	2017	2016
	(in millions)	
External Customers	\$ 1,722.0	\$ 3,125.2
Leasing Group	992.8	1,166.2
Total	\$ 2,714.8	\$ 4,291.4

The changes in the number of railcars in the Rail Group backlog are as follows:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2017	2016	2017	2016
Beginning balance	26,420	43,360	29,220	48,885
Orders received	5,705	2,910	6,675	4,530
Shipments	(4,055)	(6,065)	(7,825)	(13,210)
Ending balance <sup>(1)</sup>	27,580	40,205	27,580	40,205

<sup>(1)</sup> The ending backlog figures for the three and six months ended June 30, 2017 reflect the removal of 490 railcars that have not been netted against orders.

Revenues and cost of revenues decreased for the three months ended June 30, 2017 by 32.8% and 29.5%, respectively, when compared to the prior year periods. Revenues and cost of revenues decreased for the six months ended June 30, 2017 by 38.7% and 34.3%, respectively, when compared to the prior year periods. The decreases in revenues and cost of revenues primarily resulted from a decrease in railcar unit deliveries.

Unit decreases and lower prices decreased total backlog dollars by 36.7% when comparing June 30, 2017 to the prior year period. The average selling price in the backlog at June 30, 2017 was 7.8% lower as compared to June 30, 2016 primarily due to pricing and product mix changes. The backlog dedicated to the Leasing Group is supported by lease commitments with external customers. The final amount dedicated to the Leasing Group may vary by the time of delivery as customers may alternately choose to purchase railcars as external sales from the Rail Group.

During the three months ended June 30, 2017, railcar shipments included sales to the Leasing Group of \$115.9 million with a deferred profit of \$13.6 million, representing 1,145 railcars, compared to \$252.1 million with a deferred profit of \$45.9 million representing 2,470 railcars in the comparable period in 2016. During the six months ended June 30, 2017, railcar shipments included sales to the Leasing Group of \$296.9 million with a deferred profit of \$42.5 million, representing 2,876 railcars, compared to \$535.4 million with a deferred profit of \$111.4 million, representing 4,880 railcars, in the comparable period in 2016. There were no railcar shipments of leased railcars to third parties during the three and six months ended June 30, 2017. During the three and six months ended June 30, 2016, railcar shipments included sales of leased railcars to third parties of \$8.1 million.

**Construction Products Group**

	Three Months Ended June 30,			Six Months Ended June 30,		
	2017	2016	Percent	2017	2016	Percent
	(\$ in millions)			(\$ in millions)		
			Change			Change
<b>Revenues:</b>						
Highway products	\$ 65.6	\$ 81.1	(19.1)%	\$ 129.1	\$ 143.8	(10.2)%
Construction aggregates	52.2	52.6	(0.8)	101.8	106.3	(4.2)
Other	13.5	12.1	11.6	23.5	20.6	14.1
<b>Total revenues</b>	<b>131.3</b>	<b>145.8</b>	<b>(9.9)</b>	<b>254.4</b>	<b>270.7</b>	<b>(6.0)</b>
<b>Operating costs:</b>						
Cost of revenues	89.4	106.2	(15.8)	178.3	195.8	(8.9)
Selling, engineering, and administrative costs	19.8	18.4	7.6	38.8	38.0	2.1
Property disposition gains	(0.2)	(0.3)	(33.3)	(0.6)	(0.5)	20.0
<b>Operating profit</b>	<b>\$ 22.3</b>	<b>\$ 21.5</b>	<b>3.7</b>	<b>\$ 37.9</b>	<b>\$ 37.4</b>	<b>1.3</b>
<b>Operating profit margin</b>	<b>17.0%</b>	<b>14.7%</b>		<b>14.9%</b>	<b>13.8%</b>	

Revenues and cost of revenues decreased by 9.9% and 15.8%, respectively, for the three months ended June 30, 2017, when compared to the same period in 2016. The decrease in revenues and cost of revenues resulted primarily from lower volumes in our highway products business.

Revenues and cost of revenues decreased by 6.0% and 8.9%, respectively, for the six months ended June 30, 2017, when compared to the same period in 2016. The decrease in revenues resulted primarily from lower volumes in our construction aggregates and highway products businesses, partially offset by higher volumes in our other businesses. The decrease in cost of revenues resulted from lower volumes in our construction aggregates and highway products businesses and lower costs in our highway products business from improved manufacturing efficiencies, partially offset by higher volumes in our other businesses. Selling, engineering, and administrative costs increased by 7.6% and 2.1% for the three and six months ended June 30, 2017, respectively, compared to the same periods in 2016, primarily due to increased litigation-related expenses.

**Inland Barge Group**

	Three Months Ended June 30,			Six Months Ended June 30,		
	2017	2016	Percent	2017	2016	Percent
	(\$ in millions)			(\$ in millions)		
			Change			Change
<b>Revenues</b>	<b>\$ 33.5</b>	<b>\$ 118.3</b>	<b>(71.7)%</b>	<b>\$ 96.2</b>	<b>\$ 229.1</b>	<b>(58.0)%</b>
<b>Operating costs:</b>						
Cost of revenues	30.1	100.5	(70.0)	83.4	194.9	(57.2)
Selling, engineering, and administrative costs	2.9	3.5	(17.1)	5.9	7.3	(19.2)
<b>Operating profit</b>	<b>\$ 0.5</b>	<b>\$ 14.3</b>	<b>(96.5)</b>	<b>\$ 6.9</b>	<b>\$ 26.9</b>	<b>(74.3)</b>
<b>Operating profit margin</b>	<b>1.5%</b>	<b>12.1%</b>		<b>7.2%</b>	<b>11.7%</b>	

Revenues and cost of revenues decreased for the three months ended June 30, 2017 by 71.7% and 70.0%, respectively, compared to the same period in 2016 primarily from lower barge deliveries and product mix changes. Revenues and cost of revenues decreased for the six months ended June 30, 2017 by 58.0% and 57.2%, respectively, compared to the same period in 2016 primarily from lower barge deliveries and product mix changes. Selling, engineering, and administrative costs decreased for the three and six months ended June 30, 2017 compared to the same periods in 2016 primarily due to lower compensation costs.

As of June 30, 2017, the backlog for the Inland Barge Group was \$90.7 million compared to \$251.0 million as of June 30, 2016.

Energy Equipment Group

	Three Months Ended June 30,			Six Months Ended June 30,		
	2017	2016	Percent	2017	2016	Percent
	(\$ in millions)			(\$ in millions)		
			Change			Change
<b>Revenues:</b>						
Wind towers and utility structures	\$ 166.5	\$ 149.5	11.4 %	\$ 347.3	\$ 336.1	3.3 %
Other	72.0	91.1	(21.0)	146.6	177.9	(17.6)
Total revenues	238.5	240.6	(0.9)	493.9	514.0	(3.9)
<b>Operating costs:</b>						
Cost of revenues	192.7	186.9	3.1	399.9	404.1	(1.0)
Selling, engineering, and administrative costs	21.5	18.8	14.4	39.9	37.6	6.1
Operating profit	\$ 24.3	\$ 34.9	(30.4)	\$ 54.1	\$ 72.3	(25.2)
Operating profit margin	10.2%	14.5%		11.0%	14.1%	

Revenues for the three months ended June 30, 2017 decreased by 0.9% when compared to the same period in 2016. Revenues from our wind towers and utility structures product lines increased by 11.4%, primarily as a result of higher wind towers shipping volumes. Revenues from other product lines for the three months ended June 30, 2017 decreased by 21.0% when compared to the same period in 2016 primarily as a result of decreases in shipping volumes. Other revenues include results primarily from our storage and distribution containers and tank heads product lines. Cost of revenues increased by 3.1% for the three months ended June 30, 2017 compared to the same period in 2016, primarily as a result of higher volumes in our wind towers product line. Selling, engineering, and administrative costs increased by 14.4% for the three months ended June 30, 2017 compared to the same period in 2016, primarily due to increased bad debt expense related to a single customer.

Revenues for the six months ended June 30, 2017 decreased by 3.9% when compared to the same period in 2016. Revenue from our wind towers and utility structures product lines increased by 3.3%, driven primarily by higher utility structure shipping volumes. Revenues from other product lines decreased by 17.6% as a result of decreases in shipping volumes. Cost of revenues decreased by 1.0% for the six months ended June 30, 2017 compared to 2016, due to improved manufacturing efficiencies in our wind towers product line. Selling, engineering, and administrative costs increased by 6.1% for the six months ended June 30, 2017 compared to the same period in 2016, primarily due to increased bad debt expense related to a single customer.

The backlog for wind towers was \$0.9 billion and \$1.1 billion at June 30, 2017 and 2016, respectively. The Company does not report backlog from its utility structures business because certain contracts contain partial order cancellation provisions.

**Railcar Leasing and Management Services Group**

	Three Months Ended June 30,			Six Months Ended June 30,		
	2017	2016	Percent	2017	2016	Percent
	(\$ in millions)		Change	(\$ in millions)		Change
<b>Revenues:</b>						
Leasing and management	\$ 185.0	\$ 178.5	3.6 %	\$ 363.9	\$ 349.0	4.3 %
Sales of railcars owned one year or less at the time of sale	7.1	118.1	*	7.1	126.1	*
<b>Total revenues</b>	<b>\$ 192.1</b>	<b>\$ 296.6</b>	<b>(35.2)</b>	<b>\$ 371.0</b>	<b>\$ 475.1</b>	<b>(21.9)</b>
<b>Operating profit:</b>						
Leasing and management	\$ 85.6	\$ 74.5	14.9	\$ 170.6	\$ 144.3	18.2
<b>Railcar sales:</b>						
Railcars owned one year or less at the time of sale	1.5	31.8	*	1.5	34.1	*
Railcars owned more than one year at the time of sale	23.7	11.4	*	23.7	13.5	*
<b>Total operating profit</b>	<b>\$ 110.8</b>	<b>\$ 117.7</b>	<b>(5.9)</b>	<b>\$ 195.8</b>	<b>\$ 191.9</b>	<b>2.0</b>
<b>Operating profit margin:</b>						
Leasing and management	46.3%	41.7%		46.9%	41.3%	
Railcar sales	*	*		*	*	
<b>Total operating profit margin</b>	<b>57.7%</b>	<b>39.7%</b>		<b>52.8%</b>	<b>40.4%</b>	
<b>Selected expense information<sup>(1)</sup>:</b>						
Depreciation	\$ 43.1	\$ 38.7	11.4	\$ 85.2	\$ 76.1	12.0
Maintenance and compliance	\$ 23.9	\$ 31.8	(24.8)	\$ 44.4	\$ 63.4	(30.0)
Rent	\$ 9.9	\$ 9.9	—	\$ 20.0	\$ 19.4	3.1
Interest	\$ 31.3	\$ 31.4	(0.3)	\$ 61.9	\$ 63.2	(2.1)

\* Not meaningful

<sup>(1)</sup> Depreciation, maintenance and compliance, and rent expense are components of operating profit. Amortization of deferred profit on railcars sold from the Rail Group to the Leasing Group is included in the operating profit of the Leasing Group resulting in the recognition of depreciation expense based on the Company's original manufacturing cost of the railcars. Interest expense is not a component of operating profit and includes the effect of hedges.

Total revenues decreased by 35.2% and 21.9% for the three and six months ended June 30, 2017, respectively, compared to 2016 due to lower volume of railcar sales owned one year or less. Leasing and management revenues for the three and six months ended June 30, 2017 increased 3.6% and 4.3%, respectively, compared to 2016 due to net fleet additions partially offset by the effect of lower average rental rates.

During the six months ended June 30, 2017 and 2016, the Company received proceeds from the sales of leased railcars as follows:

	Six Months Ended June 30,	
	2017	2016
	(in millions)	
<b>Leasing Group:</b>		
Railcars owned one year or less at the time of sale	\$ 7.1	\$ 126.1
Railcars owned more than one year at the time of sale	92.4	37.7
<b>Rail Group</b>	<b>—</b>	<b>8.1</b>
	<b>\$ 99.5</b>	<b>\$ 171.9</b>

Operating profit decreased by 5.9% for the three months ended June 30, 2017 compared to 2016 primarily due to a lower volume of railcar sales. Operating profit increased by 2.0% for the six months ended June 30, 2017 compared to 2016 primarily due to lower fleet maintenance and compliance expenses, partially offset by a lower volume of railcar sales.

The Leasing Group generally uses cash or its non-recourse warehouse loan facility to provide initial funding for a portion of the purchase price of the railcars. After initial funding, the Leasing Group may obtain long-term financing for the railcars in the lease fleet through non-recourse asset-backed securities; long-term non-recourse operating leases pursuant to sales/leaseback transactions; long-term recourse debt such as equipment trust certificates; or third-party equity. See *Other Investing and Financing Activities*.

Information regarding the Leasing Group's lease fleet, owned through its wholly-owned and partially-owned subsidiaries, follows:

	June 30, 2017	June 30, 2016
Number of railcars:		
Wholly-owned	62,570	55,635
Partially-owned	24,660	24,725
	<u>87,230</u>	<u>80,360</u>
Average age in years	8.5	8.2
Average remaining lease term in years	3.5	3.2
Fleet utilization	97.5%	96.4%

**All Other**

	Three Months Ended June 30,			Six Months Ended June 30,		
	2017	2016	Percent Change	2017	2016	Percent Change
	(\$ in millions)			(\$ in millions)		
Revenues	\$ 22.7	\$ 19.7	15.2 %	\$ 45.5	\$ 41.6	9.4 %
Operating costs:						
Cost of revenues	26.6	22.2	19.8	52.7	46.9	12.4
Selling, engineering, and administrative costs	1.9	2.0	(5.0)	3.7	4.0	(7.5)
Property disposition (gains) losses	(0.1)	0.7		(0.6)	1.0	
Operating loss	\$ (5.7)	\$ (5.2)	*	\$ (10.3)	\$ (10.3)	*

\* not meaningful

Revenues and cost of revenues increased for the three and six months ended June 30, 2017 compared to 2016 primarily due to an increase in services provided by our facilities maintenance operations.

**Corporate**

	Three Months Ended June 30,			Six Months Ended June 30,		
	2017	2016	Percent Change	2017	2016	Percent Change
	(\$ in millions)			(\$ in millions)		
Operating costs	\$ 38.3	\$ 34.7	10.4%	\$ 73.3	\$ 59.4	23.4%

The increase in operating costs for the three and six months ended June 30, 2017 compared to the same periods in 2016 is primarily due to higher corporate level infrastructure costs as well as higher litigation-related costs and increased insurance costs.

**Liquidity and Capital Resources**

**Cash Flows**

The following table summarizes our cash flows from operating, investing, and financing activities for the six months ended June 30, 2017 and June 30, 2016:

	Six Months Ended June 30,	
	2017	2016
(in millions)		
Total cash provided by (required by):		
Operating activities	\$ 336.1	\$ 486.4
Investing activities	(168.9)	(496.8)
Financing activities	78.1	(161.6)
Net increase (decrease) in cash and cash equivalents	<u>\$ 245.3</u>	<u>\$ (172.0)</u>

**Operating Activities.** Net cash provided by operating activities for the six months ended June 30, 2017 was \$336.1 million compared to net cash provided by operating activities of \$486.4 million for the six months ended June 30, 2016. Cash flow provided by operating activities decreased primarily due to lower net income.

Receivables at June 30, 2017 increased by \$52.8 million or 11.0% since December 31, 2016 primarily due to a higher income tax receivable partially offset by lower trade receivables in our Rail Group. Raw materials inventory at June 30, 2017 decreased by \$7.8 million or 2.6% since December 31, 2016 primarily attributable to lower levels in our Construction Products and Inland Barge Groups from lower production volumes. At June 30, 2017, work in process inventory decreased by \$16.9 million or 8.9% primarily in our Rail Group while finished goods inventory decreased by \$13.8 million or 7.9% since December 31, 2016 due to higher inventory balances carried at the previous year end for scheduled shipments in early 2017 in our Energy Equipment Group. Accounts payable increased slightly by \$11.0 million, while accrued liabilities decreased by \$4.9 million from December 31, 2016 primarily due to lower compensation-related accruals. We continually review reserves related to bad debt as well as the adequacy of lower of cost or market valuations related to accounts receivable and inventory.

**Investing Activities.** Net cash required by investing activities for the six months ended June 30, 2017 was \$168.9 million compared to \$496.8 million for the six months ended June 30, 2016. Capital expenditures for the six months ended June 30, 2017 were \$315.0 million, which included \$277.2 million for additions to the lease fleet less \$5.6 million for the cost of sold lease fleet railcars owned one year or less. This compares to \$425.8 million of capital expenditures for the same period last year, which included \$438.0 million for additions to the lease fleet less \$92.0 million for the cost of sold lease fleet railcars owned one year or less. Proceeds from the sale of property, plant, and equipment and other assets totaled \$98.4 million for the six months ended June 30, 2017, including railcar sales from the lease fleet owned more than one year at the time of sale totaling \$92.4 million. This compares to \$41.8 million for the same period in 2016, including railcar sales from the lease fleet owned more than one year at the time of sale totaling \$37.7 million. Full-year manufacturing/corporate capital expenditures for 2017 are projected to range between \$90.0 million and \$110.0 million. For 2017, we anticipate a net investment in our wholly-owned lease fleet of between \$315.0 million and \$365.0 million, after taking into account the proceeds from sales of leased railcars. Short-term marketable securities decreased by \$55.1 million and increased by \$115.1 million for the six months ended June 30, 2017 and 2016, respectively. Net cash required related to acquisitions amounted to \$5.3 million for the six months ended June 30, 2017. There was no divestiture activity for the six months ended June 30, 2017. There was no acquisition or divestiture activity for the six months ended June 30, 2016.

**Financing Activities.** Net cash provided by financing activities during the six months ended June 30, 2017 was \$78.1 million compared to \$161.6 million of cash required by financing activities for the same period in 2016. During the six months ended June 30, 2017, we retired \$98.3 million in debt as scheduled and borrowed \$299.4 million, net of debt issuance costs, primarily from the issuance by TRL 2017 of promissory notes. During the six months ended June 30, 2016, we retired \$77.6 million in debt as scheduled. We intend to use our cash and committed credit facilities to fund the operations, expansions, and growth initiatives of the Company. Additionally, we may use our cash and committed credit facilities to retire or repurchase the Company's outstanding debt prior to its stated maturity or repurchase shares of its common stock.

**Other Investing and Financing Activities**

The \$1.0 billion TILC warehouse loan facility, established to finance railcars owned by TILC, had \$167.6 million in outstanding borrowings as of June 30, 2017. Under the facility, \$832.4 million was unused and available as of June 30, 2017 based on the amount of warehouse-eligible, unpledged equipment. The warehouse loan facility is a non-recourse obligation which expires in April 2018 and is secured by a portfolio of railcars and operating leases, certain cash reserves, and other assets acquired and owned by the warehouse loan facility trust. The principal and interest of this indebtedness are paid from the cash flows of the underlying leases. Advances under the facility bear interest at a defined index rate plus a margin, for an all-in interest rate of 2.95% at June 30, 2017. Amounts outstanding at maturity, absent renewal, are payable under the facility in April 2019.

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On May 15, 2017, Trinity Rail Leasing 2017, LLC, a Delaware limited liability company ("TRL 2017") and a limited purpose, indirect wholly-owned subsidiary of the Company owned through TILC, issued \$302.4 million of promissory notes (the "2017 Promissory Notes") due May 15, 2024, of which \$301.1 million was outstanding as of June 30, 2017. The 2017 Promissory Notes are obligations of TRL 2017 and are non-recourse to Trinity. The 2017 Promissory Notes bear interest at Libor plus a margin for an all-in interest rate of 2.91% as of June 30, 2017, payable monthly. The 2017 Promissory Notes are secured by a portfolio of railcars and operating leases thereon, certain cash reserves, and other assets acquired and owned by TRL 2017.

In May 2017, the Company declared an increase in its quarterly dividend from \$0.11 to \$0.13 per share, reflecting an 18% increase.

As of June 30, 2017, we had letters of credit issued under our \$600 million revolving credit facility in an aggregate principal amount of \$92.6 million, leaving \$507.4 million available for borrowing. Other than these letters of credit, there were no borrowings under our revolving credit facility as of June 30, 2017, or for the six month period then ended. Borrowings under the credit facility bear interest at a defined index rate plus a margin and are guaranteed by certain 100%-owned subsidiaries of the Company.

In December 2015, the Company's Board of Directors renewed its \$250 million share repurchase program effective January 1, 2016 through December 31, 2017. Under the program, 1,942,200 shares were repurchased during the three and six months ended June 30, 2017, at a cost of approximately \$52.4 million. Certain shares of stock repurchased during June 2017, totaling \$10.5 million, were cash settled in July 2017 in accordance with normal settlement practices. As of June 30, 2017, the remaining authorization under the program totaled \$163.0 million.

During the six months ended June 30, 2017 and 2016, the Company received proceeds from the sales of leased railcars as follows:

	Six Months Ended June 30,	
	2017	2016
	(in millions)	
Leasing Group:		
Railcars owned one year or less at the time of sale	\$ 7.1	\$ 126.1
Railcars owned more than one year at the time of sale	92.4	37.7
Rail Group	—	8.1
	<u>\$ 99.5</u>	<u>\$ 171.9</u>

We continue to experience weak demand levels for many of the Company's products and services. The ongoing level of uncertainty in the industrial economy has continued to impact our customers' long-term capital planning processes. The oversupply of railcars and barges in the North American market has limited new order levels for these businesses. We continue to assess demand for our products and services and take steps to align our manufacturing capacity appropriately.

**Equity Investment**

See Note 5 of the Notes to Consolidated Financial Statements for information about the Company's investment in partially-owned leasing subsidiaries.

**Future Operating Requirements**

We expect to finance future operating requirements with cash, cash equivalents, and short-term marketable securities; cash flows from operations; and, depending on market conditions, short-term debt, long-term debt, and equity. Debt instruments that the Company has utilized include its revolving credit facility, the TILC warehouse facility, senior notes, convertible subordinated notes, asset-backed securities, and sale-leaseback transactions. As of June 30, 2017, the Company had unrestricted cash, cash equivalents, and short-term marketable securities balances of \$988.3 million, and \$507.4 million available under its revolving credit facility. Under the TILC warehouse facility, \$832.4 million was unused and available as of June 30, 2017 based on the amount of warehouse-eligible, unpledged equipment. The Company believes it has access to adequate capital resources to fund operating requirements and is an active participant in the capital markets.

**Off Balance Sheet Arrangements**

See Note 6 and Note 11 of the Notes to Consolidated Financial Statements for information about off balance sheet arrangements.



**Derivative Instruments**

We may use derivative instruments to mitigate the impact of changes in interest rates, both in anticipation of future debt issuances and to offset interest rate variability of certain floating rate debt issuances outstanding. We also may use derivative instruments to mitigate the impact of changes in natural gas and diesel fuel prices and changes in foreign currency exchange rates. Derivative instruments that are designated and qualify as cash flow hedges are accounted for in accordance with applicable accounting standards. See Note 3 Fair Value Accounting of the Notes to Consolidated Financial Statements for discussion of how the Company valued its commodity hedges and interest rate swap at June 30, 2017. See Note 11 Debt of the Notes to Consolidated Financial Statements for a description of the Company's debt instruments.

**Interest rate hedges**

	Notional Amount	Interest Rate <sup>(1)</sup>	Included in accompanying balance sheet at June 30, 2017		
			Asset / (liability)	AOCL – loss/ (income)	Noncontrolling Interest
(in millions, except %)					
Expired hedges:					
2006 secured railcar equipment notes	\$ 200.0	4.87%	\$ —	\$ (0.5)	\$ —
TRIP Holdings warehouse loan	\$ 788.5	3.60%	\$ —	\$ 4.9	\$ 6.6
Open hedge:					
TRIP Master Funding secured railcar equipment notes	\$ 35.4	2.62%	\$ (0.7)	\$ 0.3	\$ 0.4
2017 promissory notes	\$ 180.7	3.00%	\$ 2.1	\$ 0.2	\$ —

<sup>(1)</sup> Weighted average fixed interest rate, except for 2017 promissory notes. Interest rate cap for 2017 promissory notes.

	Effect on interest expense - increase/(decrease)				
	Three Months Ended June 30,		Six Months Ended June 30,		Expected effect during next twelve months <sup>(1)</sup>
	2017	2016	2017	2016	
(in millions)					
Expired hedges:					
2006 secured railcar equipment notes	\$ —	\$ (0.1)	\$ (0.1)	\$ (0.2)	\$ (0.2)
TRIP Holdings warehouse loan	\$ 1.1	\$ 1.2	\$ 2.3	\$ 2.4	\$ 3.5
Open hedge:					
TRIP Master Funding secured railcar equipment notes	\$ 0.1	\$ 0.2	\$ 0.3	\$ 0.5	\$ 0.4

<sup>(1)</sup> Based on the fair value of open hedge as of June 30, 2017

During 2005 and 2006, we entered into interest rate swap derivatives in anticipation of issuing our 2006 Secured Railcar Equipment Notes. These derivative instruments, with a notional amount of \$200.0 million, were settled in 2006 and fixed the interest rate on a portion of the related debt issuance. These derivative instrument transactions are being accounted for as cash flow hedges with changes in the fair value of the instruments of \$4.5 million in income recorded in Accumulated Other Comprehensive Loss ("AOCL") through the date the related debt issuance closed in 2006. The balance is being amortized over the term of the related debt. The effect on interest expense is due to amortization of the AOCL balance.

Between 2007 and 2009, TRIP Holdings, as required by the TRIP Warehouse Loan, entered into interest rate swap derivatives, all of which qualified as cash flow hedges, to reduce the effect of changes in variable interest rates in the TRIP Warehouse Loan. In July 2011, these interest rate hedges were terminated in connection with the refinancing of the TRIP Warehouse Loan. Balances included in AOCL at the date the hedges were terminated are being amortized over the expected life of the new debt with \$3.5 million of additional interest expense expected to be recognized during the twelve months following June 30, 2017. Also in July 2011, TRIP Holdings' wholly-owned subsidiary, TRIP Master Funding, entered into an interest rate swap derivative instrument, expiring in 2021, with an initial notional amount of \$94.1 million to reduce the effect of changes in variable interest rates associated with the Class A-1b notes of the TRIP Master Funding secured railcar equipment notes. The effect on interest expense is primarily a result of monthly interest settlements.

In May 2017, TRL 2017 purchased an interest rate cap derivative, which qualified as a cash flow hedge, to limit the Libor component of the interest rate on the 2017 promissory notes to a maximum rate of 3%. The effect on interest expense is primarily the result of amortization of the cost of the derivative and is not expected to be significant during the next twelve months.

See Note 11 Debt of the Notes to Consolidated Financial Statements regarding the related debt instruments.

**Other Derivatives**

*Natural gas and diesel fuel*

We maintain a program to mitigate the impact of fluctuations in the price of natural gas and diesel fuel. The intent of the program is to protect our operating profit from adverse price changes by entering into derivative instruments. For those instruments that do not qualify for hedge accounting treatment, any changes in their valuation are recorded directly to the consolidated statement of operations. The effect on operating income for these instruments was not significant. The amount recorded in the consolidated balance sheet as of June 30, 2017 for these instruments was not significant. The amount recorded in the consolidated balance sheet as of December 31, 2016 for these instruments was an asset of \$0.3 million.

**Contractual Obligation and Commercial Commitments**

As of June 30, 2017, contractual obligations related to letters of credit increased to \$92.7 million from \$92.3 million at December 31, 2016. Refer to Note 11 of the Consolidated Financial Statements for changes to our outstanding debt and maturities. Contractual obligations that relate to operating leases including sale/leaseback transactions were substantially unchanged as of June 30, 2017. See Note 6 of the Consolidated Financial Statements regarding operating lease obligations.

**Recent Accounting Pronouncements**

See Note 1 of the Consolidated Financial Statements for information about recent accounting pronouncements.

## Forward-Looking Statements

This quarterly report on Form 10-Q (or statements otherwise made by the Company or on the Company's behalf from time to time in other reports, filings with the Securities and Exchange Commission ("SEC"), news releases, conferences, World Wide Web postings or otherwise) contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. Any statements contained herein that are not historical facts are forward-looking statements and involve risks and uncertainties. These forward-looking statements include expectations, beliefs, plans, objectives, future financial performances, estimates, projections, goals, and forecasts. Trinity uses the words "anticipates," "believes," "estimates," "expects," "intends," "forecasts," "may," "will," "should," and similar expressions to identify these forward-looking statements. Potential factors, which could cause our actual results of operations to differ materially from those in the forward-looking statements include, among others:

- market conditions and demand for our business products and services;
- the cyclical nature of industries in which we compete;
- variations in weather in areas where our construction products are sold, used, or installed;
- naturally-occurring events and disasters causing disruption to our manufacturing, product deliveries, and production capacity, thereby giving rise to an increase in expenses, loss of revenue, and property losses;
- the timing of introduction of new products;
- the timing and delivery of customer orders, sales of leased railcars, or a breach of customer contracts;
- the credit worthiness of customers and their access to capital;
- product price changes;
- changes in mix of products sold;
- the costs incurred to align manufacturing capacity with demand and the extent of its utilization;
- the operating leverage and efficiencies that can be achieved by our manufacturing businesses;
- availability and costs of steel, component parts, supplies, and other raw materials;
- competition and other competitive factors;
- changing technologies;
- surcharges and other fees added to fixed pricing agreements for steel, component parts, supplies and other raw materials;
- interest rates and capital costs;
- counter-party risks for financial instruments;
- long-term funding of our operations;
- changes in our stock price resulting in a dilutive impact on earnings per share related to conversion features in our financing instruments;
- taxes;
- the stability of the governments and political and business conditions in certain foreign countries, particularly Mexico;
- changes in import and export quotas and regulations;
- business conditions in emerging economies;
- costs and results of litigation, including trial and appellate costs and supersedeas bonding costs;
- changes in accounting standards or inaccurate estimates or assumptions in the application of accounting policies;
- legal, regulatory, and environmental issues, including compliance of our products with mandated specifications, standards, or testing criteria and obligations to remove and replace our products following installation or to recall our products and install different products manufactured by us or our competitors;
- actions by the executive and legislative branches of the U.S. government relative to federal government budgeting, taxation policies, government expenditures, U.S. borrowing/debt ceiling limits, and trade policies;
- the use of social or digital media to disseminate false, misleading and/or unreliable or inaccurate information; and
- the inability to sufficiently protect our intellectual property rights.

Any forward-looking statement speaks only as of the date on which such statement is made. Trinity undertakes no obligation to update any forward-looking statement to reflect events or circumstances after the date on which such statement is made. For a discussion of risks and uncertainties which could cause actual results to differ from those contained in the forward-looking statements, see "Risk Factors" in the Company's Annual Report on Form 10-K for the most recent fiscal year.

**Item 3. *Quantitative and Qualitative Disclosures about Market Risk***

There has been no material change in our market risks since December 31, 2016 as set forth in Item 7A of our 2016 Form 10-K. Refer to Item 2, Management's Discussion and Analysis of Financial Condition and Results of Operations, for a discussion of debt-related activity and the impact of hedging activity for the three and six months ended June 30, 2017.

**Item 4. *Controls and Procedures.***

**Disclosure Controls and Procedures**

The Company maintains disclosure controls and procedures designed to ensure that it is able to collect and record the information it is required to disclose in the reports it files with the SEC, and to process, summarize, and disclose this information within the time periods specified in the rules of the SEC. The Company's Chief Executive and Chief Financial Officers are responsible for establishing and maintaining these procedures and, as required by the rules of the SEC, evaluating their effectiveness. Based on their evaluation of the Company's disclosure controls and procedures that took place as of the end of the period covered by this report, the Chief Executive and Chief Financial Officers believe that these procedures are effective to 1) ensure that the Company is able to collect, process, and disclose the information it is required to disclose in the reports it files with the SEC within the required time periods and 2) accumulate and communicate this information to the Company's management, including its Chief Executive and Chief Financial Officers, to allow timely decisions regarding this disclosure.

**Internal Controls over Financial Reporting**

The Company maintains a system of internal controls designed to provide reasonable assurance that: transactions are executed in accordance with management's general or specific authorization; transactions are recorded as necessary 1) to permit preparation of financial statements in conformity with generally accepted accounting principles, and 2) to maintain accountability for assets; access to assets is permitted only in accordance with management's general or specific authorization; and the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

During the period covered by this report, there have been no changes in the Company's internal controls over financial reporting that have materially affected or are reasonably likely to materially affect the Company's internal controls over financial reporting.

**PART II**

**Item 1. Legal Proceedings**

The information provided in Note 18 of the Consolidated Financial Statements is hereby incorporated into this Part II, Item 1 by reference.

**Item 1A. Risk Factors**

There have been no material changes from the risk factors previously disclosed in Item 1A of our 2016 Form 10-K.

**Item 2. Unregistered Sales of Equity Securities and Use of Proceeds**

This table provides information with respect to purchases by the Company of shares of its Common Stock during the quarter ended June 30, 2017:

Period	Number of Shares Purchased <sup>(1)</sup>	Average Price Paid per Share <sup>(1)</sup>	Total Number of Shares (or Units) Purchased as Part of Publicly Announced Plans or Programs <sup>(2)</sup>	Maximum Number (or Approximate Dollar Value) of Shares (or Units) that May Yet Be Purchased Under the Plans or Programs <sup>(2)</sup>
April 1, 2017 through April 30, 2017	2,551	\$ 26.18	—	\$ 215,375,299
May 1, 2017 through May 31, 2017	515,011	\$ 27.17	—	\$ 215,375,299
June 1, 2017 through June 30, 2017	1,942,380	\$ 26.95	1,942,200	\$ 163,034,477
Total	2,459,942	\$ 26.99	1,942,200	\$ 163,034,477

<sup>(1)</sup> These columns include the following transactions during the three months ended June 30, 2017: (i) the surrender to the Company of 516,006 shares of common stock to satisfy tax withholding obligations in connection with the vesting of restricted stock issued to employees, (ii) the purchase of 1,736 shares of common stock by the Trustee for assets held in a non-qualified employee profit sharing plan trust, and (iii) the purchase of 1,942,200 shares of common stock on the open market as part of the stock repurchase program.

<sup>(2)</sup> In December 2015, the Company's Board of Directors renewed its \$250 million share repurchase program effective January 1, 2016 through December 31, 2017. Under the program, 1,942,200 shares were repurchased during the three months ended June 30, 2017 at a cost of approximately \$52.4 million. Certain shares of stock repurchased during June 2017, totaling \$10.5 million, were cash settled in July 2017 in accordance with normal settlement practices. The approximate dollar value of shares that were eligible to be repurchased under such share repurchase program is shown as of the end of such month or quarter.

**Item 3. Defaults Upon Senior Securities**

None.

**Item 4. Mine Safety Disclosures**

The information concerning mine safety violations or other regulatory matters required by Section 1503(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act and Item 104 of Regulation S-K is included in Exhibit 95 to this Form 10-Q.

**Item 5. Other Information**

None.

**Item 6. Exhibits**

<b>NO.</b>	<b>DESCRIPTION</b>
4.1	Third Supplemental Indenture dated April 20, 2017, by and among Trinity Industries, Inc., certain of its subsidiaries, as guarantors, and Wells Fargo Bank, National Association, as trustee (incorporated by reference to Exhibit 4.1 to our Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2017).
10.1	Supplement to Subsidiary Guaranty, dated April 20, 2017, in favor of JPMorgan Chase Bank, N.A. as Administrative Agent (incorporated by reference to Exhibit 10.1 to our Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2017).
10.2	Fourth Amended and Restated Trinity Industries, Inc. 2004 Stock Option and Incentive Plan (incorporated by reference to Exhibit 10.1 to our Form 8-K filed on May 3, 2017).
10.3	Form of Restricted Stock Unit Agreement for grants issued commencing 2017 (incorporated by reference to Exhibit 10.2 to our Form 8-K filed on May 3, 2017).
10.4	Form of Performance-Based Restricted Stock Unit Grant Agreement for grants issued commencing 2017 (incorporated by reference to Exhibit 10.3 to our Form 8-K filed on May 3, 2017).
10.5	Form of Non-Employee Director Restricted Stock Grant Agreement for grants issued commencing 2017 (filed herewith).
10.6	Form of Non-Employee Director Restricted Stock Unit Agreement for grants issued commencing 2017 (filed herewith).
10.7	Term Loan Agreement dated as of May 15, 2017 among Trinity Rail Leasing 2017 LLC, the Lenders From Time to Time Party Hereto, Credit Agricole Corporate and Investment Bank, as Agent, and U.S. Bank National Association, as Collateral and Depository (filed herewith).
10.7.1	Purchase and Contribution Agreement dated as of May 15, 2017 among Trinity Rail Leasing Warehouse Trust and Trinity Industries Leasing Company, as Sellers, and Trinity Rail Leasing 2017 LLC as Purchaser (filed herewith).
31.1	Rule 13a-15(e) and 15d-15(e) Certification of the Chief Executive Officer (filed herewith).
31.2	Rule 13a-15(e) and 15d-15(e) Certification of the Chief Financial Officer (filed herewith).
32.1	Certification pursuant to 18U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (filed herewith).
32.2	Certification pursuant to 18U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (filed herewith).
95	Mine Safety Disclosure Exhibit (filed herewith).
101.INS	XBRL Instance Document (filed electronically herewith).
101.SCH	XBRL Taxonomy Extension Schema Document (filed electronically herewith).
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document (filed electronically herewith).
101.LAB	XBRL Taxonomy Extension Label Linkbase Document (filed electronically herewith).
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document (filed electronically herewith).
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document (filed electronically herewith).

**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

TRINITY INDUSTRIES, INC.  
Registrant

By /s/ James E. Perry

---

James E. Perry  
Senior Vice President and  
Chief Financial Officer  
July 26, 2017

## INDEX TO EXHIBITS

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**Section 2: EX-10.5 (EXHIBIT 10.5)**

Exhibit 10.5

**TRINITY INDUSTRIES, INC.**  
**NON-EMPLOYEE DIRECTOR**  
**RESTRICTED STOCK GRANT AGREEMENT**

THIS NON-EMPLOYEE DIRECTOR RESTRICTED STOCK GRANT AGREEMENT (the "Agreement"), by and between TRINITY INDUSTRIES, INC. (hereinafter called, the "Company") and [FIRST NAME] [LAST NAME] (hereinafter called, the "Director"), is made as of [DATE] (the "Date of Grant");

WITNESSETH:

WHEREAS, the Company has established the Fourth Amended and Restated Trinity Industries, Inc. 2004 Stock Option and Incentive Plan ("Plan"), and which Plan is made a part hereof; and

WHEREAS, the Board of Directors of the Company (the "Board") has determined that the Director be granted an award of Restricted Stock subject to the term of the Plan and the terms stated below, as hereinafter set forth;

NOW, THEREFORE, in consideration of the premises and the covenants and agreements herein contained, the parties hereto agree as follows:

1. Grant of Restricted Shares.

Subject to the terms and conditions of the Plan, this Agreement and the restrictions set forth below, the Company hereby grants to the Director (this "Restricted Stock Grant") [TOTAL SHARES GRANTED] Shares of the Company (the "Restricted Shares"). The Restricted Shares may be issued in certificated or book-entry form as the Company may determine.

2. Restrictions; Vesting Schedule; Forfeiture.

The Restricted Shares may not be sold, assigned, transferred, pledged or otherwise disposed of or encumbered (the "Restrictions on Transferability") until the Restrictions on Transferability shall lapse. The Restrictions on Transferability shall lapse upon the first to occur of the following: the Restrictions on Transferability shall



lapse on the first anniversary of the Date of Grant, or if earlier (i) upon death of the Director, (ii) upon the termination of the Director's service for Disability (as defined in the Plan), or (iii) with the consent of the Board, in its sole discretion. Subject to Section 18 of the Plan, upon a Change in Control (as defined in the Plan), the Restrictions on Transferability with respect to the Restricted Shares shall not lapse, but rather shall continue until they lapse in accordance with the schedule set forth above.

Any unvested Restricted Shares shall be forfeited by the Director to the Company if prior to the lapse of the Restrictions on Transferability, the Director ceases to be a director of the

Company (or otherwise terminates service) with the Company for any reason, which termination shall be evidenced by written notice from the Company or from the Director. Upon forfeiture, the Company shall have all right, title and interest in the Restricted Shares and the Director shall have no further right, title or interest therein. Until the Restrictions on Transferability shall lapse, any certificates representing the Restricted Shares shall bear a legend giving notice of such restrictions as follows:

**THE SHARES REPRESENTED BY THIS CERTIFICATE ARE RESTRICTED PURSUANT TO A NON-EMPLOYEE DIRECTOR RESTRICTED STOCK GRANT AGREEMENT DATED AS OF [ DATE] AND MAY NOT BE SOLD, ASSIGNED, TRANSFERRED, PLEDGED OR OTHERWISE DISPOSED OF OR ENCUMBERED AT ANYTIME WITHOUT THE PRIOR WRITTEN APPROVAL OF THE COMPANY.**

Upon the lapse of the Restrictions on Transferability with respect to any of the Restricted Shares, such shares without the restrictive legend noted above shall be delivered to the Director or the Director's personal representative.

3. Stockholder Status.

Effective upon satisfaction of the conditions set forth in Section 12, the Director will become the holder of record of the Restricted Shares and have all rights of a stockholder with respect to the Restricted Shares, including the right to vote the Restricted Shares and the right to receive all dividends earned with respect to the Restricted Shares, subject to the terms and conditions set forth in this Agreement. With respect to any dividends declared with respect to the Restricted Shares, such dividends shall be accrued by the Company for the Director's account, and shall be distributed to the Director in cash or, in the sole discretion of the Board, in Shares having a Fair Market Value equal to the amount of such dividends, if applicable, upon the lapse of the Restrictions on Transferability (as defined below) with respect to the applicable Restricted Shares to which such dividends are attributable. No dividends shall be accrued or paid with respect to Restricted Shares that are forfeited in accordance with Section 2 above, and any right to such dividends shall be forfeited at the time the underlying Restricted Shares are forfeited.

4. Subject to Plan.

The Restricted Shares are granted subject to the terms and provisions of the Plan of the Company, which Plan is incorporated herein by reference. In case of any conflict between this Agreement and the Plan, the terms and provisions of the Plan shall be controlling. Capitalized terms used herein, if not defined herein, shall be as defined in the Plan.

5. Tax Requirements; Tax Election.

The Director shall be liable for any and all taxes, arising out of this Restricted Stock Grant, the vesting of the Restricted Shares or otherwise hereunder. The Director is hereby advised to consult immediately with his own tax advisor regarding the tax consequences of this

Agreement, the method and timing for filing an election to include this Agreement in income under Section 83(b) of the Code, and the tax consequences of such election. By execution of this Agreement, the Director agrees that if the Director makes such an election, the Director shall provide the Company with written notice of such election in accordance with the regulations promulgated under Section 83(b) of the Code.

6. No Rights of Continued Service.

Neither the Plan nor this Agreement nor any provisions under either shall be construed to confer upon the Director any right to remain a director of the Company, and nothing herein shall be construed in any manner to interfere in any way with the right of the Company to terminate the Director's service at any time.

7. Adjustment of Number of Restricted Shares.

The number of Restricted Shares awarded pursuant to this Agreement shall be subject to adjustment in accordance with Section 20 of the Plan.

8. Entire Agreement.

This Agreement together with the Plan supersede any and all other prior understandings, negotiations and agreements, either oral or in writing, between the parties with respect to the subject matter hereof and constitute the sole and only agreements between the parties with respect to the said subject matter. The Director acknowledges that the Director is relying solely on the Director's own judgment in entering into this Agreement, and not on any communications, promises, or representations of the Company or its agent, except as expressly contained in this Agreement. The Committee may amend this Agreement without the Director's consent provided that it concludes that such amendment is not materially adverse to the Director, or is permitted under Section 20 of the Plan. Except as provided by the immediately preceding sentence, no change or modification of this Agreement shall be valid or binding upon the parties unless the change or modification is in writing and signed by the parties.

9. Interpretation of this Agreement.

The administration of the Plan has been vested in the Human Resources Committee (the "Committee"), and all questions of interpretation and application of this Restricted Stock Grant shall be subject to determination by a majority of the members of the Committee, which determination shall be final and binding on the Director.

10. Law Governing.

This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Texas (excluding any conflict of laws rule or principle of Texas law that might refer the governance, construction, or interpretation of this Agreement to the laws of another state).

11. Notice.

Any notice required or permitted to be delivered hereunder shall be in writing and shall be deemed to be delivered only when actually received by the Company or the Director, as the case may be, at the addresses set forth below (or at such other addresses as they have theretofore specified by written notice delivered in accordance herewith):

- (i) Notice to the Company shall be sent electronically to compensation@trin.net or in hard copy addressed and delivered as follows: Trinity Industries, Inc., 2525 Stemmons Freeway, Dallas, Texas 75207, Attention: Corporate Benefits Department.
- (ii) Notice to the Director shall be sent electronically to the Director's Company e-mail address or, in hard copy addressed and delivered to the Director's address then on file with the Company.

12. Acceptance.

This Restricted Stock Grant is subject to and conditioned upon the Director's acceptance of the terms hereof.

\* \* \* \* \*

IN WITNESS WHEREOF, the Company has caused this Agreement to be executed by its duly authorized officer, and the Director, to evidence his or her consent and approval of all the terms hereof, has duly executed this Agreement, as of the Date of Grant.

**Trinity Industries, Inc.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**DIRECTOR**

\_\_\_\_\_  
Name: [FIRST NAME] [LAST NAME]

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### **Section 3: EX-10.6 (EXHIBIT 10.6)**

Exhibit 10.6

**TRINITY INDUSTRIES, INC.**  
**NON-EMPLOYEE DIRECTOR**  
**RESTRICTED STOCK UNIT AGREEMENT**

THIS NON-EMPLOYEE DIRECTOR RESTRICTED STOCK UNIT AGREEMENT (the "Agreement"), by and between TRINITY INDUSTRIES, INC. (hereinafter called the "Company") and [FIRST NAME] [LAST NAME] (hereinafter called, the "Director"), is made as of [ DATE] (the "Date of Grant");

WHEREAS, the Company has established the Fourth Amended and Restated Trinity Industries, Inc. 2004 Stock Option and Incentive Plan (the "Plan"), and which Plan is made a part hereof;

WHEREAS, the Board of Directors of the Company has determined that the Director be granted Restricted Stock Units subject to the terms of the Plan and the terms stated below, as hereinafter set forth;

NOW, THEREFORE, in consideration of the premises and the covenants and agreements herein contained, the parties hereto agree as follows:

1. Grant of Restricted Stock Units.

Subject to the terms and conditions of the Plan, this Agreement and the restrictions set forth below, the Company hereby grants to the Director [TOTAL SHARES GRANTED,] Restricted Stock Units (the "Units"), and hereby credits such Units to a separate account maintained on the books of the Company. Each Unit shall be subject to conversion into one Share, as herein provided.

2. Vesting; Forfeiture.

The Units will become vested as follows: 100% of the Units on the first anniversary of the Date of Grant, or if earlier (i) upon death of the Director, (ii) upon the termination of the Director's service for Disability (as defined in the Plan), or (iii) with the consent of the Board, in its sole discretion (such vested Units being referred to herein as, the "Vested Units"). Subject to Section 18 of the Plan, upon a Change in Control (as defined in the Plan), the vesting of the unvested Units shall not be accelerated, but rather the Units shall continue to vest in accordance with the schedule set forth above. All of the unvested Units shall be forfeited by the Director to the Company if, prior to vesting in accordance with this Section 3, the Director ceases to be a director of the Company (or otherwise terminates service with the Company) for any reason, which termination shall be evidenced by written notice from the Company or from the Director. Upon forfeiture, all of the Director's rights with respect to the forfeited Units shall cease and terminate, without any further obligations on the part of the Company.

3. Stockholder Status.

The Director will have no rights as a stockholder (including, without limitation, the right to vote and to receive dividends) with respect to the Units covered by this Agreement until the issuance of Shares to the Director (in certificated or book-entry form) upon the conversion of the Units into Shares. The Director, by his or her execution of this Agreement, agrees to execute any documents requested by the Company in connection with the conversion of the Units. Except as otherwise provided in Sections 4 and 7 hereof, no adjustment shall be made for dividends or other rights for which the record date is prior to the issuance of such Shares.

4. Divided Equivalents.

The Company also grants to the Director a Dividend Equivalent Right with respect to the Units, whereby if on any date the Company shall pay any dividend or other distribution on Shares (other than a dividend in Shares), then with respect to each Unit, an amount equal to the amount of the dividend or distribution per Share shall be credited to the account of the Director maintained on the books of the Company (the "Dividend Equivalents"), and shall be paid to the Director (in cash or Shares, in the discretion of the Human Resources Committee (the "Committee")) at the time Vested Units are converted in accordance with Section 5 below. If the underlying Units are forfeited, the Director shall have no right to the Dividend Equivalents related to such forfeited Units and shall forfeit such Dividend Equivalents as well.

5. Form and Timing of Payment.

Subject to the conditions hereinafter set forth, on or within sixty (60) days of the date of the Director's "separation from service" (within the meaning of Section 409A of the Code), the Company shall convert the Vested Units into the number of whole Shares equal to the number of Vested Units, and shall deliver such Shares (plus any Dividend Equivalents credited to the Director) to the Director or the Director's personal representative.

6. No Rights of Continued Service.

Neither the Plan nor this Agreement nor any provisions under either shall be construed to confer upon the Director any right to remain a director of the Company, and nothing herein shall be construed in any manner to interfere in any way with the right of the Company to terminate the Director's service at any time.

7. Adjustment of Number of Restricted Shares.

The number of Units awarded pursuant to this Agreement and the Shares to be delivered with respect to the Units shall be subject to adjustment in accordance with Section 20 of the Plan.

8. Interpretation of this Agreement.

The administration of the Plan has been vested in the Committee, and all questions of interpretation and application of this Agreement shall be subject to determination by a majority

of the members of the Committee, which determination shall be final and binding on the Director.

9. Entire Agreement.

This Agreement together with the Plan supersede any and all other prior understandings, negotiations and agreements, either oral or in writing, between the parties with respect to the subject matter hereof and constitute the sole and only agreements between the parties with respect to the said subject matter. The Director acknowledges that the Director is relying solely on the Director's own judgment in entering into this Agreement, and not on any communications, promises, or representations of the Company or its agent, except as expressly contained in this Agreement. The Committee may amend this Agreement without the Director's consent provided that it concludes that such amendment is not materially adverse to the Director, or is permitted under Section 20 of the Plan. Except as provided by the immediately preceding sentence, no change or modification of this Agreement shall be valid or binding upon the parties unless the change or modification is in writing and signed by the parties.

10. Law Governing.

This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Texas (excluding any conflict of laws rule or principle of Texas law that might refer the governance, construction, or interpretation of this Agreement to the laws of another state).

11. Notice.

Any notice required or permitted to be delivered hereunder shall be in writing and shall be deemed to be delivered only when actually received by the Company or the Director, as the case may be, at the addresses set forth below (or at such other addresses as they have theretofore specified by written notice delivered in accordance herewith):

- (a) Notice to the Company shall be sent electronically to compensation@trin.net or in hard copy addressed and delivered as follows: Trinity Industries, Inc., 2525 Stemmons Freeway, Dallas, Texas 75207, Attention: Corporate Benefits Department.
- (b) Notice to the Director shall be sent electronically to the Director's Company e-mail address or, in hard copy addressed and delivered to the Director's address then on file with the Company.

12. Code Section 409A.

The parties intend this Agreement to be exempt from or compliant with the requirements of Section 409A of the Code and agree to interpret this Agreement at all times in accordance with such intent. Notwithstanding the foregoing, the Company makes no representations, warranties, or guarantees regarding the tax treatment of this Agreement under Section 409A of

the Code or otherwise, and has advised the Director to obtain his or her own tax advisor regarding this Agreement.

13. Tax Requirements.

The Director shall be liable for any and all taxes arising out of this Agreement, the conversion of the Units or otherwise hereunder.

14. Acceptance.

The grant of the Units (and Dividend Equivalent Right) under this Agreement is subject to and conditioned upon the Director's acceptance of the terms hereof.

\* \* \* \* \*



IN WITNESS WHEREOF, the Company has caused this Agreement to be executed by its duly authorized officer, and the Director, to evidence his or her consent and approval of all the terms hereof, has duly executed this Agreement, as of the Date of Grant.

**Trinity Industries, Inc.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**DIRECTOR**

\_\_\_\_\_  
Name: [FIRST NAME] [LAST NAME]

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## **Section 4: EX-10.7 (EXHIBIT 10.7)**

Exhibit 10.7

### TERM LOAN AGREEMENT

dated as of May 15, 2017

among

TRINITY RAIL LEASING 2017 LLC

THE LENDERS

FROM TIME TO TIME PARTY HERETO

CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK,

as Administrative Agent and Sole Structurer,

U.S. BANK NATIONAL ASSOCIATION,

as Collateral Agent and Depositary

CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK,

as Joint Lead Arranger

ING BANK, A BRANCH OF ING-DIBA AG.

as Joint Lead Arranger and Syndication Agent

and

PNC EQUIPMENT FINANCE, LLC  
as Joint Lead Arranger and Documentation Agent

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## TERM LOAN AGREEMENT

This Term Loan Agreement is dated as of May 15, 2017 and is among TRINITY RAIL LEASING 2017 LLC, a Delaware limited liability company (the "Borrower"), the lenders from time to time party hereto (each a "Lender" and collectively, the "Lenders", as such terms are defined below), CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK, as Administrative Agent for the Lenders referred to herein (in such capacity, the "Administrative Agent"), Lead Arranger and Sole Structurer, and U.S. BANK NATIONAL ASSOCIATION, in its capacity as Collateral Agent, Custodian and Depository for the Protected Parties referred to herein (in each such capacity, respectively, the "Collateral Agent", the "Custodian" and the "Depository").

The parties hereto agree as follows:

### ARTICLE I

#### DEFINITIONS

SECTION 1.01 Defined Terms. The following terms, as used herein, have the following meanings:

"A.A.R." means the Association of American Railroads, and its successors.

"Accounts" means, collectively, the Collection Account, the Modifications and Improvements Account, the Operating Expenses Account and the Substitution Account.

"Additional Collateral Certificate" means a certificate substantially in the form of Exhibit A-3 hereto, with appropriate insertions and deletions or with such other changes as may be reasonably agreed to by the Collateral Agent and the Administrative Agent, and which certificate contains a description of the Railcars and related Leases which are to become Portfolio Railcars and Portfolio Leases, as the case may be.

"Administrative Agent" means Crédit Agricole Corporate and Investment Bank, in its capacity as agent for the Lenders hereunder and under the other Loan Documents, and its successor or successors in such capacity.

"Administrative Agent's Office" means the Administrative Agent's address and, as appropriate, account as set forth and identified as such in Schedule 11.01, or such other address and account as the Administrative Agent may from time to time notify to the Borrower and the Lenders.

"Administrative Services Agreement" means the Administrative Services Agreement, substantially in the form of Exhibit K hereto, dated as of the Closing Date between the Borrower and the Servicer, as administrator.

"Advance Rate" means 75.0% of the Aggregate Original Value of the Initial Portfolio Railcars.



“Affiliate” means, with respect to any Person, (i) any Person that directly, or indirectly through one or more intermediaries, Controls such Person (including all directors and officers of such Person) (a “Controlling Person”) or (ii) any other Person which is Controlled by or is under common Control with a Controlling Person.

“Aggregate Original Value” means, as of any date of determination with respect to any specified group of Railcars, the aggregate of the Original Values of all such Railcars.

“Aggregated Default Interest” has the meaning set forth in Section 2.05(a).

“Agreement” means this Term Loan Agreement, as amended, supplemented, amended and restated or otherwise modified from time to time.

“Allocable Debt” means, with respect to any Railcar as of any date of determination, the sum of: (i) 105 % of the product of (x) the Allocable Percentage related to such Railcar immediately prior to such date, multiplied by (y) the aggregate outstanding principal amount of the Loans as of such date, plus (ii) any Derivatives Termination Value payable in connection with or resulting from such Railcar ceasing to be a Portfolio Railcar.

“Allocable Percentage” means, with respect to any Railcar as of any date of determination, a fraction, expressed as a decimal carried to five (5) decimal places, equal to the quotient of (x) the Original Value for such Railcar divided by (y) the Aggregate Original Value of all Portfolio Railcars.

“Anti-Corruption Laws” has the meaning set forth in Section 5.26(b).

“Anti-Terrorism Laws” has the meaning set forth in Section 5.26(b).

“Applicable Facility Margin” means, with respect to the Loans at any time, 175 basis points (1.75%) per annum.

“Applicable Law” means, with reference to any Person, all laws (foreign or domestic), statutes, rulings, codes, ordinances and treaties, including the FRA and the Interchange Rules, and all judgments, decrees, injunctions, writs and orders of any court, arbitrator or other Governmental Authority, and all rules, regulations, orders, interpretations, directives, licenses and permits of any governmental body, instrumentality, agency or other regulatory authority applicable to such Person or its property or in respect of its operations.

“Applicable Rate” means, with respect to the Loans for any day during any Interest Period, the sum of (i) LIBOR for such Interest Period, plus (ii) the Applicable Facility Margin.

“Appraised Fair Market Value”, with respect to any Railcar, means the fair market value of such Railcar, expressed in terms of Dollars, determined by the Independent Appraiser to be the amount, using an income approach “desk-top appraisal”, that may reasonably be expected for property exchanged between a willing buyer and a willing seller with equity to both, neither under any compulsion to buy or sell and both fully aware of all relevant, reasonably ascertainable facts.

“Approved Fund” means (i) with respect to any Lender, an entity (whether a corporation, partnership, limited liability company, trust or otherwise) that is engaged in making, purchasing, holding or otherwise investing in bank loans and similar extensions of credit in the ordinary course of its business and is managed by such Lender or an Affiliate of such Lender, and (ii) with respect to any Lender that is a fund that invests in bank loans and similar extensions of credit, any other fund that invests in bank loans and similar extensions of credit and is managed by the same investment advisor as such Lender or by an Affiliate of such investment advisor.

“Asset Disposition” means any sale, lease or other disposition by the Borrower (other than the lease of a Railcar pursuant to an Eligible Lease) of any Portfolio Railcar, Portfolio Lease or other item of Collateral, whether by sale (including a Permitted Discretionary Sale), lease, transfer, Event of Loss, Condemnation or otherwise (for the avoidance of doubt, not including a Casualty but including any subsequent sale of a Railcar subject to a Casualty).

“Assignment and Acceptance” means an Assignment and Acceptance, substantially in the form of Exhibit C hereto, under which an interest of a Lender hereunder is transferred to an Eligible Assignee pursuant to Section 11.06(b).

“Autorack” means a Railcar or unit of railroad rolling stock (other than a locomotive) used to transport unladen automobiles or unladen light trucks.

“Available Collections” during any Measuring Period shall be equal to the sum of (i) the aggregate amount of Monthly Rent actually collected and paid into the Collection Account (including amounts used from any Security Deposits to cover Monthly Rent), plus (ii) payments of Railroad Mileage Credits received by the Borrower, plus (iii) insurance proceeds, A.A.R. 107 payments or other third party payments in respect of any Event of Loss (or otherwise applied as “Available Collections” in accordance with Section 6.06(b)), plus (iv) all Net Cash Proceeds pursuant to any Asset Disposition (other than an Event of Loss), plus (v) interest earned on deposits in the Collection Account, in each case during such Measuring Period; provided that “Available Collections” shall not include Excepted Payments.

“Bail-In Action” means the exercise of any Write-down and Conversion Powers.

“Bail-In Legislation” means (i) in relation to any EEA Member Country which has implemented, or which at any time implements, ARTICLE 55 of Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms, the relevant implementing law or regulation as described in the EU Bail-In Legislation Schedule from time to time, and (ii) in relation to any other state, any analogous law or regulation from time to time which requires contractual recognition of any Write-down and Conversion Powers contained in that law or regulation, where regulation includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organization.

“Bankruptcy Code” means the United States Bankruptcy Reform Act of 1978, as amended, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization or similar debtor

relief laws of the United States or other applicable jurisdiction from time to time affecting the rights of creditors generally.

“basis point” means one-hundredth of a percent (0.01%).

“Bill of Sale” means a bill of sale delivered to the Borrower from the Seller with respect to a Railcar and, if applicable, any related Lease, in connection with the Borrower’s purchase of such Railcar and related Lease from such Seller.

“Books and Records” has the meaning set forth in Section 6.11.

“Books and Records Inspection” has the meaning set forth in Section 6.11.

“Borrower” means Trinity Rail Leasing 2017 LLC, a Delaware limited liability company.

“Borrowing” means the borrowing of Loans pursuant to Section 2.01 hereof.

“Business Day” means (i) any day excluding (a) Saturday, (b) Sunday and (c) any day which is a legal holiday under the laws of the States of New York, Ohio, Minnesota or Texas or is a day on which banking institutions located in such state are authorized or required by law or other governmental action to close and (ii) with respect to all notices, determinations, fundings and payments in connection with LIBOR, the Loans, the New Term Loans or any Derivatives Obligations, the term “Business Day” means any day which is a Business Day described in clause (i) and which is also a day for trading by and between banks in Dollar deposits in the London interbank market.

“Calculation Date” means with respect to any Settlement Date, the last day of the calendar month immediately preceding such Settlement Date.

“Canadian Lease Security Agreement” means the Canadian Lease Security Agreement, dated as of the date hereof, between TrinityRail Canada, Inc. as Lessor, the Collateral Agent and the Administrative Agent.

“Capital Lease” of any Person means any lease of property (whether real, personal or mixed) by such Person as lessee which would, in accordance with GAAP, be required to be accounted for as a capital lease on the balance sheet of such Person.

“Cash Equivalents” means (i) marketable direct obligations issued by, or fully and unconditionally guaranteed by, the United States Government or issued by any agency or instrumentality thereof and backed by the full faith and credit of the United States, in each case maturing within one year from the date of acquisition, (ii) certificates of deposit, time deposits, eurocurrency time deposits or overnight bank deposits having maturities of one year or less from the date of acquisition issued by any United States commercial bank having a long-term unsecured debt rating of at least “A” by S&P or “A2” by Moody’s (or equivalent ratings by another nationally recognized credit rating agency if both such corporations are not in the business of rating long-term senior unsecured debt of commercial banks), (iii) commercial paper of an issuer rated at the time of acquisition at least “A-1”+ by S&P or “P1” by Moody’s or carrying an equivalent rating by an internationally recognized rating agency, if both of the two

named rating agencies cease publishing ratings of commercial paper issuers generally, and maturing within one year from the date of acquisition, (iv) repurchase obligations of any commercial bank satisfying the requirements of clause (b) of this definition, having a term of not more than 30 days, with respect to securities issued or fully guaranteed or insured by the United States Government, (v) securities with maturities of one year or less from the date of acquisition issued or fully guaranteed by any state, commonwealth or territory of the United States, by any political subdivision or taxing authority of any such state, commonwealth or territory or by any foreign government, the securities of which state, commonwealth, territory, political subdivision, taxing authority or foreign government (as the case may be) are rated at the time of acquisition at least "A-1" by S&P or "P1" by Moody's or carrying an equivalent rating by an internationally recognized rating agency, (vi) securities with maturities of one year or less from the date of acquisition backed by standby letters of credit issued by a commercial bank satisfying the requirements of clause (b) of this definition or (vii) shares of money market mutual or similar funds that are registered with the Securities and Exchange Commission under the Investment Company Act of 1940, as amended, and operated in accordance with Rule 2a-7 thereunder and that, at the time of such investment, are rated "Aaa" by Moody's and/or "AAA" by S&P or invest exclusively in assets satisfying the requirements of clauses (a) through (f) of this definition.

"Casualty" means any casualty, loss, damage, destruction or other similar loss with respect to any Portfolio Railcar or other item of Collateral constituting a partial loss.

"Casualty Insurance Policy" means any insurance policy maintained by or on behalf of the Borrower covering losses with respect to Casualties involving one or more Portfolio Railcars or other items of Collateral.

"Casualty Proceeds" means all proceeds under any Casualty Insurance Policy, and all other insurance proceeds, damages, awards, claims and rights of action of the Borrower with respect to any Casualty.

"Change in Law" means the occurrence, after the Closing Date, of any of the following: (a) the adoption of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation or application thereof by any Governmental Authority or (c) the making or issuance of any request, guideline or directive (whether or not having the force of law) by any Governmental Authority. Notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and (y) any implementation of recommendations of the Bank for International Settlements or the Basel Committee on Banking Regulations and Supervisory Practices (or any successor or similar authority) (including, but not limited to the implementation of the Basel III and Basel IV Accords, but excluding the Basel II Accords), and all requests, rules, guidelines and directives promulgated under each of clause (x) and (y), are deemed to have been introduced, adopted, implemented or recommended after the date hereof, regardless of the date enacted, adopted, implemented or recommended.

"Change of Control" means TILC shall cease to own directly 100% of the Equity Interests of the Borrower on a fully diluted basis assuming the conversion and exercise of all

outstanding Equity Equivalents (whether or not such securities are then currently convertible or exercisable).

“Closing Date” means the date this Agreement becomes effective in accordance with Section 11.21.

“Code” means the Internal Revenue Code of 1986, as amended, and any successor statute thereto, as interpreted by the rules and Treasury Regulations issued thereunder, in each case as in effect from time to time. Reference to particular sections of the Code shall be construed also to refer to any successor sections.

“Collateral” means all of the property which is subject or is purported to be subject to the Liens granted by the Collateral Documents.

“Collateral Agent” means U.S. Bank National Association in its capacity as collateral agent and representative for the Protected Parties under the Parent Security Agreement and the Security Agreement and the Depository Agreement.

“Collateral Documents” means, collectively, the Security Agreement, the Parent Security Agreement, the Canadian Lease Security Agreement, each Perfection Certificate, the Depository Agreement, the Customer Collections Account Administration Agreement, any additional pledges, security agreements, patent, trademark or copyright filings or mortgages required to be delivered pursuant to the Loan Documents and any instruments of assignment, control agreements, lockbox letters or other instruments or agreements executed pursuant to the foregoing.

“Collection Account” means the Collection Account established by the Depository pursuant to the Depository Agreement.

“Commitment” means, with respect to any Lender, the commitment amount of such Lender, in an aggregate principal amount equal to the amount identified as its Commitment on Schedule 1.01 hereto or in the applicable Assignment and Acceptance.

“Competitor of the Borrower” means (a) General Electric Railcar Services Corporation, Wells Fargo Rail Corporation, CIT Group/Equipment Financing, Inc., ACF Industries, Inc., The Greenbrier Companies, GATX Corporation, SMBC Rail Services, LLC, American Railcar Industries, Inc., American Railcar Leasing, LLC, Mitsui Rail Capital, LLC and ECN Capital Corp.; (b) any affiliate or successor of each Person described in clause (a) above; provided, however, that any affiliate of Wells Fargo Rail Corporation may be deemed not to be a Competitor of the Borrower with the prior written consent of the Borrower or the Servicer (which may be given by email), or (c) for so long as no Event of Default has occurred and is then continuing, any other Person identified by the Borrower or the Servicer by written notification to the Administrative Agent who is, in either such party’s reasonable discretion, a competitor of the Borrower.

“Concentration Limits” means the concentration limits set forth in Schedule A.

“Condemnation” means any taking of property or assets, or any part thereof or interest therein, for public or quasi-public use under the power of eminent domain, by reason of any public improvement or condemnation or in any other manner.

“Condemnation Award” means all proceeds of any Condemnation or transfer in lieu thereof with respect to any Portfolio Railcar or other item of Collateral.

“Consolidated Tangible Net Worth” means as of any date of determination with respect to a Person, the excess of: (a) the tangible assets of such Person and its Subsidiaries calculated in accordance with GAAP, as reduced by adequate reserves in each case where reserves are proper, over (b) all Debt and other liabilities of such Person and its Subsidiaries; provided, however, that (i) in no event shall there be included in the above calculation any intangible assets such as patents, trademarks, trade names, copyrights, licenses, goodwill, organizational costs, amounts relating to covenants not to compete, or any securities unless the same are marketable in the United States or entitled to be used as a credit against federal income tax liabilities, (ii) securities included as such intangible assets shall be taken into account at their current market price or cost, whichever is lower, and (iii) any adjustments, both positive and negative, to either or both of tangible assets and indebtedness arising from the implementation of Statement of Financial Accounting Standards No. 133 issued by the Financial Accounting Standards Board shall be disregarded for purposes of this calculation.

“Contractual Obligation” means, as to any Person, any provision of any security issued by such Person or of any indenture, loan agreement, mortgage, deed of trust, contract or other agreement, instrument or undertaking to which such Person is a party or by which it or any of its property or assets is bound.

“Control” of a Person means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting Equity Interests, by contract or otherwise. “Controlled” and “Controlling” have meanings correlative to the foregoing.

“Corporate Base Rate” shall mean for any day, the higher of (i) the prime rate per annum announced from time to time by Crédit Agricole Corporate and Investment Bank in effect on such day or (ii) the Federal Funds Rate plus 100 basis points. (The Corporate Base Rate is not intended to represent the lowest rate charged by any Lender for extensions of credit.)

“Credit Exposure” means, for any Lender, the aggregate principal balance of the outstanding Loans held by such Lender on the applicable date of determination.

“Credit Obligations” means, without duplication:

(i) all principal of and interest (including, without limitation, any interest which accrues after the commencement of any bankruptcy or insolvency proceeding with respect to the Borrower, whether or not allowed or allowable as a claim under the Bankruptcy Code) on any Loan under, or any Note issued pursuant to, this Agreement or any other Loan Document;

(ii) all fees, expenses, indemnification obligations and other amounts of whatever nature now or hereafter payable by the Borrower (including, without limitation, any amounts which accrue after the commencement of any bankruptcy or insolvency proceeding with respect to the Borrower, whether or not allowed or allowable as a claim under the Bankruptcy Code) pursuant to this Agreement or any other Loan Document;

(iii) all expenses of the Administrative Agent and the Collateral Agent as to which the Administrative Agent or the Collateral Agent has a right to reimbursement under Section 11.04 of this Agreement or under any other similar provision of any other Loan Document, including, without limitation, any and all sums advanced by the Collateral Agent to preserve the Collateral or preserve its security interests in the Collateral; and

(iv) all amounts paid by any Indemnitee as to which such Indemnitee has the right to reimbursement under Section 11.05 of this Agreement or under any other similar provision of any other Loan Document;

together in each case with all renewals, modifications, consolidations or extensions thereof.

“Creditor” means, without duplication of any Person in a particular capacity, each Lender, each Derivatives Creditor, the Administrative Agent, the Collateral Agent, each Protected Party and each Indemnitee and their respective successors and assigns, and “Creditors” means any two or more of such Creditors.

“Custodian” means U.S. Bank National Association in its capacity as custodian under, inter alia, the Security Agreement.

“Customer Collections Account Administration Agreement” means the Customer Collections Account Administration Agreement, dated as of November 12, 2003, among, inter alios, Trinity Industries Leasing Company, Trinity Rail Leasing Warehouse Trust, Trinity Rail Leasing III, L.P., TRIP Rail Leasing LLC, the TRL-III Transaction Investors identified on the signature pages thereto, Credit Suisse AG, New York Branch, Wilmington Trust Company, and the Borrower, as amended and/or supplemented from time to time.

“Customer Payments Account” means the Customer Payments Account referred to and defined in the Customer Collections Account Administration Agreement.

“Debt” of any Person means at any date, without duplication, (i) all obligations of such Person for borrowed money, (ii) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments, (iii) all obligations of such Person under conditional sale or other title retention agreements relating to property purchased by such Person to the extent of the value of such property (other than customary reservations or retentions of title under agreements with suppliers entered into in the ordinary course of business), (iv) all obligations of such Person to pay the deferred purchase price of property or services (other than current accounts payable arising in the ordinary course of business), (v) the capitalized amount of all Capital Leases of such Person that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP, (vi) all obligations (other than obligations in respect of like kind exchanges) of such Person in respect of securities repurchase agreements or otherwise to

purchase securities or other property which arise out of or in connection with the sale of the same or substantially similar securities or property, (vii) all non-contingent obligations (and, for purposes of Section 7.01 and Section 9.01(f), all contingent obligations) of such Person to reimburse any bank or other Person in respect of amounts paid under a letter of credit, bankers' acceptance or similar instrument, (viii) all obligations of others secured by (or for which the holder of such obligations has an existing right, contingent or otherwise, to be secured by) a Lien on, or payable out of the proceeds of production from, any property or asset of such Person, whether or not such obligation is assumed by such Person; provided that the amount of any Debt of others that constitutes Debt of such Person solely by reason of this clause (viii) shall not for purposes of this Agreement exceed the greater of the book value or the fair market value of the properties or assets subject to such Lien, (ix) all Guaranty Obligations of such Person, (x) all Disqualified Stock of such Person, (xi) all Derivatives Obligations of such Person and (xii) the Debt of any other Person (including any partnership in which such Person is a general partner and any unincorporated joint venture in which such Person is a joint venturer) to the extent such Person would be liable therefor under Applicable Law or any agreement or instrument by virtue of such Person's ownership interest in or other relationship with such entity, except to the extent the terms of such Debt provide that such person shall not be liable therefor.

"Default" means any condition or event which constitutes an Event of Default or which with the giving of notice or lapse of time or both would, unless cured or waived, become an Event of Default.

"Default Margin" means 200 basis points (2.00%) per annum.

"Depository" means U.S. Bank National Association, or a successor thereto appointed pursuant to the Depository Agreement.

"Depository Agreement" means a Depository Agreement, substantially in the form of Exhibit F hereto, with such changes thereto as may be reasonably acceptable to the Administrative Agent, among the Borrower, the Administrative Agent, the Collateral Agent and the Depository.

"Derivatives Agreement" means an ISDA interest rate "swap", "cap" or "collar" agreement or other hedging instrument between the Borrower and the Derivatives Creditor named therein, each arranged by the Derivatives Arranger (or by the Borrower with respect to a "cap" or "collar" agreement) and either (x) in form and substance reasonably acceptable to the Administrative Agent and the Derivatives Arranger or (y) containing provisions of general application which are substantially the same as and not inconsistent with those contained in the Schedules and Confirmations entered into as part of the Derivatives Agreement in effect on the Closing Date, to which (i) the Borrower will receive payments from, or make payments to, the Derivatives Creditor based on LIBOR and (ii) recourse by the Derivatives Creditor to the Borrower is limited to distributions made in accordance with the priority of payments set forth in Section 2.07(c)(i) or Section 2.07(c)(ii), as applicable; provided, that any such Derivatives Creditor shall be an Eligible Derivatives Creditor at the time (and only at the time) such Derivatives Agreement becomes effective as between the Derivatives Creditor and the Borrower.



“Derivatives Arranger” means Crédit Agricole Corporate and Investment Bank in such capacity, and its successors and assigns.

“Derivatives Creditor” means, with respect to (i) any hedging instrument constituting a “swap” agreement, a Lender in such capacity, or (ii) any hedging instrument constituting a “cap” or “collar” agreement, any Person selected by the Borrower and reasonably acceptable to the Administrative Agent, in each case from time to time party to one or more Derivatives Agreements with the Borrower and, in each case, such Lender’s or such Person’s successors and assigns.

“Derivatives Obligations” of any Person means all obligations (including, without limitation, any amounts which accrue after the commencement of any bankruptcy or insolvency proceeding with respect to such Person, whether or not allowed or allowable as a claim under the Bankruptcy Code) of such Person in respect of any Derivatives Agreement, excluding any amounts which such Person is entitled to set-off against its obligations under Applicable Law.

“Derivatives Termination Value” means, at any date after the termination of any Derivatives Agreement, after taking into account the effect of any legally enforceable netting agreements relating to such Derivatives Agreement, the amount payable by (in which case the amount shall be positive) or payable to (in which case the amount shall be negative), the Borrower as a result of the termination of such Derivatives Agreement.

“Derivatives Trigger Event” means failure by the Borrower to comply with its obligations set forth in Section 2.13(a).

“Disqualified Stock” of any Person means any Equity Interest of such Person which by its terms (or by the terms of any security for which it is convertible or for which it is exchangeable or exercisable), or upon the happening of any event or otherwise (including an event which would constitute a Change of Control), (A) matures or is mandatorily redeemable or subject to any mandatory repurchase requirement, pursuant to a sinking fund or otherwise, (B) is convertible into or exchangeable for Debt or Disqualified Stock or (C) is redeemable or subject to any repurchase requirement arising at the option of the holder thereof, in whole or in part.

“Dollars” and the sign “\$” means lawful money of the United States.

“DSCR” or “Debt Service Coverage Ratio” means on each DSCR Test Date, the ratio of (i) the aggregate amount of (A) Monthly Rent under the Leases received into the Collection Account during the applicable DSCR Calculation Period, plus (B) any Servicer Advances made during such DSCR Calculation Period, less (C) the aggregate amount of (1) Operating Expenses, (2) any Servicer’s Fees, and (3) reimbursement of Servicer Advances pursuant to Section 2.07(c)(i) or Section 2.07(c)(ii), as applicable, over (ii) the aggregate amount of scheduled interest accrued on the Loans during such DSCR Calculation Period and any Derivative Obligations accrued during such DSCR Calculation Period (in each case, whether or not actually paid during such period), plus the aggregate amount of principal of the Loans scheduled to be paid on each Settlement Date occurring during such DSCR Calculation Period.

“DSCR Calculation Period” means, with respect to any DSCR Test Date, the trailing 6 month period ending on such DSCR Test Date.

“DSCR Cure” has the meaning set forth in Section 7.12(b)(ii).

“DSCR Failure” has the meaning set forth in Section 7.12(b)(i).

“DSCR Failure Period” means each period, if any, from the date on which a DSCR Failure occurs until the earlier of: (i) the date on which a DSCR Cure has been effected in respect of such DSCR Failure, and (ii) the occurrence of a DSCR Trigger Event in respect of such DSCR Failure.

“DSCR Minimum” means one point one five to one (1.15:1.00).

“DSCR Test Date” means (a) the six-month anniversary of the last day of the month in which the Closing Date occurs and (b) the last day of each third month thereafter.

“DSCR Trigger Event” means the occurrence of the event described in Section 7.12(b)(i).

“EEA Member Country” shall mean any member state of the European Union, Iceland, Liechtenstein and Norway.

“Eligible Assignee” means:

- (i) any Lender or any Affiliate of a Lender;
- (ii) any Approved Fund;
- (iii) a commercial bank, insurance company, specialized lending fund (other than a hedge or distressed debt fund) or other financial institution, in each case, that is regularly engaged in making, purchasing, holding or otherwise investing in commercial loans approved by the Administrative Agent and having (together with its Affiliates) total assets in excess of \$500,000,000; provided that so long as no Event of Default has occurred and is continuing, such Person must be approved by the Borrower (which approval shall not be unreasonably withheld or delayed); or
- (iv) any other transferee that is not a Competitor of the Borrower in a transaction undertaken as part of a sale of all or substantially all of the business unit of the transferring Lender or pursuant to the directive of an entity having regulatory authority over the transferring Lender.

“Eligible Derivatives Creditor” means any of the following: (1) any bank which has both (x) a long-term unsecured debt rating of at least A- or better from S&P and (y) a short-term unsecured debt rating of A3 or better from S&P; or (2) any bank or other financial institution which is otherwise acceptable to the Administrative Agent.

“Eligible Lease” means, as of any date of determination, a Lease:

- (i) which constitutes an operating lease in accordance with GAAP;

(ii) under which the Lessee is a Person (other than a natural Person) organized under the laws of the United States (or any state thereof or the District of Columbia), Canada (or any province thereof) or Mexico (or any state thereof) or otherwise approved in writing by the Administrative Agent as evidenced by the approval of the related Funding Package;

(iii) which provides for payment in Dollars;

(iv) which complies with all Applicable Laws of the jurisdiction in which it was originated;

(v) which represents the legal, valid and binding obligation of the Lessee thereunder, is enforceable against such Lessee in accordance with its terms (subject to bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting creditors' rights generally and to general equitable principles) and was duly executed by parties having legal capacity to do so;

(vi) which is not the subject of, and with respect to which there does not exist and are not overtly threatened, any actions, suits, investigations or legal, equitable or arbitral or administrative proceedings against or adversely affecting the Borrower or the Servicer;

(vii) which has not been satisfied, subordinated or rescinded and remains in full force and effect;

(viii) in respect of which the Security Agreement is effective to create a valid and perfected first priority Lien in favor of the Collateral Agent, subject only to Permitted Liens; and

(ix) which, upon becoming a Portfolio Lease, shall not violate the Concentration Limits.

“Eligible Railcar” means, as of any date of determination any Railcar:

(i) that is leased to a third party pursuant to a Lease which is an Eligible Lease and is ready and available to operate as of such date in commercial service and otherwise perform the functions for which it was designed; and

(ii) which, upon becoming a Portfolio Railcar, shall not cause the violation of the Concentration Limits; and

(iii) in respect of which the Security Agreement is effective to create a valid and perfected first priority Lien in favor of the Collateral Agent, subject only to Permitted Liens.

“Environmental Laws” means any current or future legal requirement of any Governmental Authority pertaining to (i) the protection of health, safety, and the environment, (ii) the conservation, management, damage to or use of natural resources and wildlife, (iii) the

protection or use of surface water and groundwater or (iv) the management, manufacture, possession, presence, use, generation, transportation, treatment, storage, disposal, release, threatened release, abatement, removal, remediation or handling of, or exposure to, any hazardous or toxic substance or material and includes, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 USC 9601 et seq., Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 and Hazardous and Solid Waste Amendment of 1984, 42 USC 6901 et seq., Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977, 33 USC 1251 et seq., Clean Air Act of 1966, as amended, 42 USC 7401 et seq., Toxic Substances Control Act of 1976, 15 USC 2601 et seq., Hazardous Materials Transportation Act, 49 USC App. 1801 et seq., Occupational Safety and Health Act of 1970, as amended, 29 USC 651 et seq., Oil Pollution Act of 1990, 33 USC 2701 et seq., Emergency Planning and Community Right-to-Know Act of 1986, 42 USC 11001 et seq., National Environmental Policy Act of 1969, 42 USC 4321 et seq., Safe Drinking Water Act of 1974, as amended, 42 USC 300f et seq., any analogous implementing or successor law, any comparable state, local and regional laws, and any amendment, rule, regulation, order or directive issued thereunder.

“Equity Equivalents” means with respect to any Person any rights, warrants, options, convertible securities, exchangeable securities, indebtedness or other rights, in each case exercisable for or convertible or exchangeable into, directly or indirectly, Equity Interests of such Person or securities exercisable for or convertible or exchangeable into Equity Interests of such Person, whether at the time of issuance or upon the passage of time or the occurrence of some future event.

“Equity Interests” means all shares of capital stock, partnership interests (whether general or limited), limited liability company membership interests, beneficial interests in a trust and any other interest or participation that confers on a Person the right to receive a share of profits or losses, or distributions of assets, of an issuing Person, but excluding any debt securities convertible into such Equity Interests.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended, or any successor statute, as interpreted by the rules and regulations thereunder, all as the same may be in effect from time to time. References to sections of ERISA shall be construed also to refer to any successor sections.

“ERISA Affiliate” means any trade or business (whether or not incorporated) under common control with the Borrower within the meaning of Section 414(b) or (c) of the Code (and Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 of the Code).

“EU Bail-In Legislation Schedule” means the document described as such and published by the Loan Market Association (or any successor person) from time to time.

“Event of Default” has the meaning set forth in Section 9.01.

“Event of Loss”, with respect to any Portfolio Railcar, means any of the following events:

- (i) during the term of any Lease with respect to such Railcar, such events with respect to such Railcar as are included in the definition of “Destroyed,” “Event of Loss,” “Total Loss,” or any equivalent term, as the case may be, in such Lease; and
- (ii) when no Lease of such Railcar is in effect, any of the following events with respect to such Railcar:
  - (A) loss of such Railcar or the use of such Railcar for a period in excess of 180 days due to destruction of or damage to such property or any other casualty which renders repair uneconomic or which renders such property permanently unfit for normal use;
  - (B) any damage to such Railcar which results in the receipt of Casualty Proceeds by the Administrative Agent or the Collateral Agent with respect to such Railcar on the basis of an actual, constructive or compromised total loss;
  - (C) the theft or disappearance of such Railcar for a period in excess of 180 consecutive days;
  - (D) the confiscation, seizure of or requisition or taking of title to or other Condemnation of such Railcar by any Governmental Authority other than an instrumentality or agency of the United States whose obligations bear the full faith and credit of the United States, for a period of more than 365 consecutive days; or
  - (E) as a result of any law, rule, regulation, order or other action by the STB or other Governmental Authority having jurisdiction, use of such Railcar in the normal course of business of rail transportation is prohibited for a period of longer than 365 consecutive days.

provided that upon the earliest of (i) the date the Borrower or Servicer reasonably determines that no corresponding Lessee, insurance or other third party payment will be received in respect of such “Event of Loss”, (ii) the date that such payment is actually received (or, if directed by the Servicer to be deposited into the Substitution Account, the date that such payment, to the extent not used in a reinvestment, is released to the Collection Account) or (iii) the one-year anniversary of the date that the Borrower or Servicer has Knowledge that such “Event of Loss” has occurred, such Railcar shall be deemed to have suffered an “Event of Loss” and the Borrower or Servicer will identify and designate such Railcar as an “Event of Loss Unit” on the Monthly Report relating to the monthly period in which any of the foregoing occurs.

“Excepted Payments” means “excepted payments” or “excluded payments” (as such terms or similar terms are defined and used in any Portfolio Lease) payable to or for the benefit of the Borrower, the Servicer, the Administrative Agent, the Collateral Agent, any Derivatives Creditor or any Lender (or any similar party as defined and used in such Lease), including, without limitation, (i) proceeds of public liability insurance (or other insurance maintained by or on behalf of the Borrower for its own account) payable to or for the benefit of the Borrower or the Lessee (or governmental indemnities in lieu thereof), (ii) any indemnity payments or similar obligations to the extent such amounts are payable to or for the benefit any Person other than the

Borrower and (iii) any rights to enforce and collect the same, but in all cases excluding, without limitation, any indemnity payments or similar obligations not otherwise excluded from the “Collateral” under the Security Agreement.

“Exchange Act” means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

“Facility Party” means each of the Servicer and the Borrower, and “Facility Parties” means all of the foregoing.

“FATCA” means Sections 1471 through 1474 of the Code, any current and future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code, and any intergovernmental agreements (including enabling legislation) relating to the foregoing.

“Federal Funds Rate” means for any day the rate per annum (rounded upward, if necessary, to the nearest 1/100th of 1%) equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided that (i) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (ii) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate quoted to the Administrative Agent, on such day on such transactions as determined by the Administrative Agent.

“Follow-On Lease” has the meaning set forth in Section 6.13.

“FRA” means the Federal Railroad Administration Rules and Regulations, as such regulations are amended from time to time, or corresponding provisions of future regulations.

“Funding Losses” has the meaning set forth in Section 3.04.

“Funding Package” means with respect to each Railcar:

- (i) a copy of all related Leases;
- (ii) for each Railcar to be purchased by the Borrower a current (within 45 days) Independent Appraisal evidencing the Original Value of such Railcar;
- (iii) the following information:
  - (A) the Manufacturer, type, model and car number;
  - (B) the Mark that is, or after acquisition by the Borrower will be, applicable to such Railcar and the identity of the registered holder of such Mark;
  - (C) the Lessee or proposed Lessee, if applicable;

(D) the Seller of the Railcar;

(E) the terms of the Lease or proposed Lease, if any, with respect to such Railcar, including, without limitation, the terms, Monthly Rent and Security Deposits (if any), return conditions and non-confidential information showing the basis for TILC's decision to enter into the applicable Lease;

(F) search reports (or oral confirmation thereof) as of a recent date from all public offices (including, without limitation, the STB and the Office of the Registrar General of Canada) in which a filing or recording is required or would be effective to perfect a Lien on the interests of the Borrower or the applicable Seller in such Railcar and any related Lease; and

(G) if such Railcar is then subject to a Lien of record of any Person, information regarding all such Liens including, but not limited to, (A) the name of such lienholder, (B) a description of the collateral granted to such lienholder to secure each such Lien and (C) the payoff amount required to satisfy each such Lien; and

(iv) a memorandum addressed to the Administrative Agent and each Lender describing all material differences, if any, between such Lease and the applicable form of Lease attached hereto as Exhibit I-1 or I-2.

provided that to the extent one or more Lease Documents relating to a Railcar that is or is intended to be subject to a Lease that will become a Portfolio Lease on the Closing Date has not been executed at the time such Funding Package is delivered to the Administrative Agent, drafts of such documents may be included in such Funding Package, and provided, further, that if drafts of the foregoing are submitted, final versions of such documents must be received by the Administrative Agent at least three days prior to the Closing Date.

"GAAP" means at any time generally accepted accounting principles as then in effect in the United States, applied on a basis consistent (except for changes with which TILC's independent public accountants have concurred) with the financial statements of TILC delivered to the Lenders on the Closing Date pursuant to Section 5.05(a).

"Governmental Authority" means any federal, state, local, provincial or foreign government, authority, agency, central bank, quasi-governmental or regulatory authority, court or other body or entity, and any arbitrator with authority to bind a party at law.

"Guaranty Obligation" means, with respect to any Person, without duplication, any obligation (other than endorsements in the ordinary course of business of negotiable instruments for deposit or collection) guarantying, intended to guaranty, or having the economic effect of guarantying, any Debt of any other Person in any manner, whether direct or indirect, and including without limitation any obligation, whether or not contingent, (i) to purchase any such Debt or other obligation or any property constituting security therefor, (ii) to advance or provide funds or other support for the payment or purchase of such indebtedness or obligation or to maintain working capital, solvency or other balance sheet condition of such other Person (including, without limitation, maintenance agreements, comfort letters, take or pay

arrangements, put agreements or similar agreements or arrangements) for the benefit of the holder of Debt of such other Person, (iii) to lease or purchase property, securities or services primarily for the purpose of assuring the owner of such Debt or (iv) to otherwise assure or hold harmless the owner of such Debt or obligation against loss in respect thereof. The amount of any Guaranty Obligation hereunder shall (subject to any limitations set forth therein) be deemed to be an amount equal to the outstanding principal amount (or maximum principal amount, if larger) of the Debt in respect of which such Guaranty Obligation is made.

“Illegality Event” has the meaning set forth in Section 3.02.

“Increased Amount Date” has the meaning set forth in Section 2.14(a).

“Increased Cost” has the meaning set forth in Section 3.03(a).

“Indemnified Liabilities” has the meaning set forth in Section 11.05.

“Indemnified Taxes” has the meaning set forth in Section 3.01(a).

“Indemnitee” has the meaning set forth in Section 11.05.

“Independent Appraisal” means a document addressed to the Administrative Agent at the address for appraisals set forth in Schedule 11.01 executed by an Independent Appraiser setting forth the Appraised Fair Market Value of the Railcar or other item of equipment being appraised and the data and explanation, all in reasonable detail, supporting such Appraised Fair Market Value.

“Independent Appraiser” means Rail Solutions, Inc., or, in substitution of any of the foregoing appraiser, any independent railcar appraisal expert of recognized standing selected by the Administrative Agent in consultation with, and satisfactory to, the Borrower; provided that no such consultations with, or satisfaction of, the Borrower shall be required so long as a Default, a Servicer Replacement Event or an Event of Default shall have occurred and be continuing.

“Initial Portfolio Railcar” means an Eligible Railcar to be added to the Portfolio on the Closing Date (collectively, the “Initial Portfolio Railcars”).

“Initial Principal Amount” means \$302,400,000.

“Insolvency Event” means any condition or event set forth in Section 9.01(g).

“Insurance Management Agreement” means the Insurance Management Agreement, substantially in the form of Exhibit H hereto, dated as of the date hereof between the Borrower and the Servicer.

“Interchange Rules” means the interchange rules and supplements thereto promulgated by the A.A.R., as in effect from time to time.



“Interest Period” means, with respect to each Loan made pursuant to this Agreement (i) initially, the period commencing on (and including) the Closing Date and ending on (but excluding) the first Settlement Date thereafter, and (ii) thereafter, the period from (and including) the last day of the immediately preceding Interest Period to (but excluding) the next succeeding Settlement Date; provided that the final Interest Period shall end on (and include) the Termination Date.

“Interpolated LIBOR” means, in relation to any Interest Period, the rate (rounded to the same number of decimal places as the two relevant Screen Rates) which results from interpolating on a linear basis between:

(i) the applicable Screen Rate for the longest period (for which that Screen Rate is available) which is less than the relevant Interest Period; and

(ii) the applicable Screen Rate for the shortest period (for which that Screen Rate is available) which exceeds the relevant Interest Period,

each as of 11:00 a.m. (London time) on the Quotation Day.

“Investment” in any Person means (i) the acquisition (whether for cash, property, services, assumption of Debt, securities or otherwise) of assets, Equity Interests, bonds, notes, debentures, time deposits or other securities of such other Person, (ii) any deposit with, or advance, loan or other extension of credit to or for the benefit of such Person (other than deposits made in connection with the purchase of equipment or inventory in the ordinary course of business) or (iii) any other capital contribution to or investment in such Person, including by way of Guaranty Obligations of any obligation of such Person, any support for a letter of credit issued on behalf of such Person incurred for the benefit of such Person or any release, cancellation, compromise or forgiveness in whole or in part of any Debt owing by such Person.

“Joinder Agreement” means each joinder agreement entered into to effect the New Term Loan Commitments in form and substance reasonably acceptable to the Borrower, the New Term Loan Lenders and the Administrative Agent.

“Knowledge” means (i) an individual will be considered to have “Knowledge” of a fact or matter if the individual is actually aware of the fact or matter; and (ii) an entity will be considered to have “Knowledge” of a fact or matter if any individual who is serving as a director, manager or senior executive officer (or, in the case of the Custodian, the Collateral Agent or the Depositary, a Responsible Officer) of that entity is, or was at any time while serving in such official capacity, actually aware of the fact or matter.

“Lead Arranger” means Crédit Agricole Corporate and Investment Bank in such capacity, and its successors and assigns.

“Lease” means, with respect to any Railcar, (i) any lease entered into by the Borrower, as lessor, and any and all supplements and amendments related thereto or (ii) any such lease transferred to the Borrower pursuant to a Sale Agreement. Any specified schedule to a master lease agreement identifying Railcar(s) thereto shall be considered to be a separate “Lease.”

“Lease Default” means the occurrence of any default (other than a default which has been waived in compliance with Section 7.14, excluding the proviso therein) under a Lease which is not or has not become, through the giving of notice and/or passage of time or otherwise, a Lease Event of Default.

“Lease Documents” means (i) each of the Leases and Sale Agreements and (ii) each other document, certificate or opinion delivered or caused to be delivered to or for the benefit of the Borrower pursuant thereto.

“Lease Event of Default” means any default (other than a default which has been waived with the specific written consent of the Administrative Agent under Section 7.14, excluding the proviso thereof) under a Lease which, through the giving of notice, the passage of time or otherwise, has become an “event of default” or similar term (as defined and used in such Lease) thereunder, it being the intention that a Lease Event of Default shall mean a default under a Lease as to which the cure period, if any, has expired or which has no cure period.

“Lease Notice Requirements” has the meaning set forth in Section 6.14(d).

“Lease Required Modification” has the meaning set forth in Section 6.08(b).

“Lender” means any Person listed on Schedule 1.01 and shown as having a Commitment and any Person that has advanced a Loan or an Eligible Assignee which thereafter acquires a Loan and Note (if any) hereunder in accordance with Section 11.06(b) and their respective successors.

“Lessee” means any lessee under any Lease.

“Lessee Consent” has the meaning set forth in Section 6.14(e).

“Lessee Consent Requirements” has the meaning set forth in Section 6.14(e).

“Lessee Consent Trigger Event” means the occurrence of the event described in Section 6.14(e).

“Lessee Notice” has the meaning set forth in Section 6.14(d).

“LIBOR” means:

(i) (A) in the case of the Interest Period commencing on the Closing Date (but only in the event such date does not fall on a Settlement Date), a rate equal to Interpolated LIBOR for such Interest Period, and (B) in the case of any other Interest Period or other relevant period, a rate per annum (calculated on the basis of a 360-day year and actual number of days elapsed) equal to the one-month rate determined by the Administrative Agent by reference to Screen Rate (or on any successor or substitute page thereof, or any successor service, providing quotations of interest rates applicable to Dollar deposits in the London interbank market comparable to those currently provided on such page) as of 11:00 a.m. (London time) (rounded upwards to the nearest 1/16

of 1%), on the day two London banking days prior to the first day of such relevant period; or

(ii) if the rate referenced in the preceding clause (i) above does not appear or is not available, the rate per annum determined by the Administrative Agent as the rate of interest (rounded upwards to the next 1/16th of 1%) at which one-month deposits in Dollars for delivery on the first day of such Interest Period in same day funds in the approximate amount of the Loans held by the Administrative Agent, as would be offered by the principal London offices of the Administrative Agent to major banks in the offshore Dollar market at their request at approximately 11:00 a.m. (London time) two Business Days prior to the first day of such Interest Period; or

(iii) the rates referenced in the preceding clauses (i) and (ii) are not available or are not established for any reason for any Interest Period, the rate per annum determined by the Administrative Agent as the rate of interest (rounded upwards to the next 1/16th of 1%) at which one-month deposits in Dollars for delivery on the first day of such Interest Period in same day funds in the approximate amount of the Loans held by the Administrative Agent, as would be offered by the principal London offices of JPMorgan Chase Bank N.A., Credit Suisse AG, New York Branch and Deutsche Bank A.G., or such other banks as the Administrative Agent may specify, in the offshore Dollar market at their request at approximately 11:00 a.m. (London time) two Business Days prior to the first day of such Interest Period,

provided that, if any such rate is below zero, LIBOR will be deemed to be zero.

“Lien” means, with respect to any asset, any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, and the filing of any financing statement or memorandum of lien under the Uniform Commercial Code or comparable laws of any jurisdiction), including the interest of a purchaser of accounts receivable, chattel paper, payment intangibles or promissory notes.

“Loan” has the meaning set forth in Section 2.01.

“Loan Documents” means this Agreement, the Notice of Borrowing, each Additional Collateral Certificate, each Qualifying Railcar Replacement Certificate, each Assignment and Acceptance, each Joinder Agreement, the Notes and the Collateral Documents, each Derivatives Agreement, collectively, and all other related agreements and documents issued or delivered hereunder or thereunder or pursuant hereto or thereto, in each case as the same may be amended, modified or supplemented from time to time.

“Loan-to-Value Ratio” means, as of any LTV Test Date, the ratio of (i) the aggregate outstanding principal amount of the Loans as of such LTV Test Date to (ii) the aggregate Appraised Fair Market Value of all Portfolio Railcars (based on the most recent Independent Appraisal conducted by the Independent Appraiser as of such LTV Test Date).

“LTV Cure” has the meaning set forth in Section 7.12(a)(ii).

“LTV Failure” has the meaning set forth in Section 7.12(a)(i).

“LTV Maximum Ratio” means (a) 82.5% from the Closing Date to and including the first anniversary of the Closing Date, (b) 81.5% after the first anniversary of the Closing Date to and including the second anniversary of the Closing Date, (c) 80.5% after the second anniversary of the Closing Date to and including the third anniversary of the Closing Date, (d) 79.5% after the third anniversary of the Closing Date to and including the fourth anniversary of the Closing Date, (e) 78.5% after the fourth anniversary of the Closing Date to and including the fifth anniversary of the Closing Date and (f) 77.5% thereafter.

“LTV Test Date” means each anniversary of the last day of the month in which the Closing Date occurs.

“LTV Trigger Event” means the occurrence of the event described in Section 7.12(a)(i).

“Mandatory Prepayment Amount” means, as of the relevant Mandatory Prepayment Date, with respect to:

(i) an Event of Loss, the sum of: (i) the product of (x) the Allocable Percentage related to the relevant Railcar(s) immediately prior to such date, multiplied by (y) the aggregate outstanding principal amount of the Loans as of such date, plus (ii) any Derivatives Termination Value payable in connection with or resulting from such Railcar(s) ceasing to be a Portfolio Railcar;

(ii) a Railcar Sale Trigger Event, the Allocable Debt attributable to the relevant Railcar(s) as of such date;

(iii) a Lessee Consent Trigger Event, the Allocable Debt attributable to the relevant Railcar(s) as of such date;

(iv) a Utilization Trigger Event, an LTV Trigger Event or a DSCR Trigger Event, the aggregate outstanding principal amount of the Loans as of such date; and

(v) a Derivatives Trigger Event, either (A) an amount such that, if a partial prepayment of the Loans had been made immediately prior to the occurrence of the Derivatives Trigger Event, such Derivatives Trigger Event would not have occurred, or (B) if such Derivatives Trigger Event would have occurred notwithstanding any such prepayment, the aggregate outstanding principal amount of the Loans as of such date,

provided that, in the case of clauses (i) to (v)(A) above, if the payment of such amount would result in a Default or Mandatory Prepayment Event, such Mandatory Prepayment Amount shall be increased to the extent required to prevent such Default or Mandatory Prepayment Event from occurring.

“Mandatory Prepayment Date” means, with respect to:

- (i) an Event of Loss, the first Settlement Date falling after the date on which any loss proceeds are first received under the insurances from A.A.R. or otherwise in respect of such Event of Loss;
- (ii) a Railcar Sale Trigger Event, the date such event occurred as set forth in Section 7.05(b)(ii);
- (iii) an LTV Trigger Event, the date such event occurred as set forth in Section 7.12(a)(i);
- (iv) a DSCR Trigger Event, the date such event occurred as set forth in Section 7.12(b)(i); and
- (v) a Utilization Trigger Event, the date such event occurred as set forth in Section 7.12(c);
- (vi) a Derivatives Trigger Event, the date falling 30 days after the date on which the Borrower notifies the Administrative Agent pursuant to Section 6.01(g), or the Administrative Agent notifies the Borrower, as applicable, of the occurrence of such event;
- (vii) a Lessee Consent Trigger Event, the date such event occurred as set forth in Section 6.14(e).

“Mandatory Prepayment Event” means the occurrence of any of the following: (i) an Event of Loss, (ii) a Railcar Sale Trigger Event, (iii) a Utilization Trigger Event, (iv) an LTV Trigger Event, (v) a DSCR Trigger Event, (vi) Derivatives Trigger Event, or (vii) a Lessee Consent Trigger Event.

“Manufacturer” means the relevant manufacturer of each Railcar.

“Margin Stock” means “margin stock” as such term is defined in Regulation U.

“Marks” means identification marks of Railcars.

“Marks Company” means Trinity Marks Company, a Delaware statutory trust, and its successors.

“Marks Company Delaware Trustee” means Wilmington Trust Company, in its capacity as Delaware trustee for the Marks Company, and its successor or successors in such capacity.

“Marks Company Interests” means all beneficial interests, including, without limitation all special units of beneficial interests, now or hereafter issued to or for the benefit of the Borrower representing the right of the Borrower to receive payments of all Railroad Mileage Credits received by the Marks Company in respect of Portfolio Railcars.

“Marks Company Servicing Agreement” means the Management and Servicing Agreement dated as of May 17, 2001 between TILC and the Marks Company, as amended by the

First Amendment to the Management and Servicing Agreement, dated as of December 28, 2001, between TILC and the Marks Company.

“Marks Company Trust Agreement” means the Second Amended and Restated Marks Company Trust Agreement dated as of May 17, 2001 between TILC, as Settlor, UTI Trustee and Initial Beneficiary, and Wilmington Trust Company, as Delaware Trustee.

“Material Adverse Effect” means (i) any material adverse effect upon the operations, business, properties or condition (financial or otherwise) of the Borrower (after taking into account any applicable insurance and any applicable indemnification (to the extent the provider of such insurance or indemnification has the financial ability to support its obligations with respect thereto and is not disputing or refusing to acknowledge the same)), (ii) a material adverse effect on the ability of the Borrower to consummate the transactions contemplated hereby to occur on the Closing Date, (iii) a material impairment of the ability of the Borrower to perform any of its obligations under any Transaction Document or (iv) a material impairment of the rights and benefits of the Lenders under any Loan Document.

“Maturity Date” means the seventh (7th) anniversary of the Closing Date.

“Maximum New Term Loan Commitment Amount” means \$600,000,000 less the Initial Principal Amount.

“Measuring Period”, as determined with respect to any Settlement Date, means the period from the second preceding Calculation Date to the then most recent Calculation Date; provided that the Measuring Period relating to the first Settlement Date shall be from May 15, 2017 to the Calculation Date immediately preceding such Settlement Date .

“Minimum Loan Amount” means \$100,000,000.

“Modifications and Improvements Accounts” means the Modifications and Improvements Account established by the Depository pursuant to the Depository Agreement.

“Monthly Rent” means the aggregate amount of scheduled monthly (or quarterly) rent payments actually paid by each Lessee under the applicable Lease plus the aggregate amount (if any) applied from Security Deposits to cover such rent payments; provided that if any Lease requires scheduled payments of rent other than on a monthly basis, an amount of such rent shall be allocated to each month on a pro rata basis for the purpose of determining the aggregate amount of “Monthly Rent.”

“Monthly Report” means a report by the Servicer in substantially the form of Exhibit A-5 hereto or such other form as may hereafter be agreed by the Servicer and the Administrative Agent (acting at the direction of the Supermajority Lenders), with appropriate insertions, or with such other changes as may be reasonably agreed to by the Administrative Agent (acting at the direction of the Supermajority Lenders).

“Moody’s” means Moody’s Investors Service, Inc., a Delaware corporation, and its successors or, absent any such successor, such nationally recognized statistical rating organization as the Borrower and the Administrative Agent may select.

“Net Cash Proceeds” means:

(i) with respect to any Asset Disposition (other than pursuant to a Securitization), (A) the gross amount of cash proceeds (including the proceeds of any Condemnation Awards and Event of Loss but not including Casualty Proceeds (but including proceeds from a sale of a Railcar subject to a Casualty)) actually paid to or actually received by the Borrower in respect of such Asset Disposition (including any cash proceeds received as income or other proceeds of any noncash proceeds of any Asset Disposition as and when received), less (B) the sum of (x) the amount, if any, of all taxes (other than income taxes) (to the extent that the amount of such taxes shall have been set aside for the purpose of paying such taxes when due), and customary fees, brokerage fees, commissions, costs and other expenses (excluding all such fees, brokerage fees, commissions, costs and other expenses payable to any Affiliates of the Borrower other than as reimbursement for such amounts incurred for the benefit of the Borrower and paid by such Affiliates to unrelated third parties on behalf of the Borrower) that are incurred in connection with such Asset Disposition and are payable by the Borrower, but only to the extent not already deducted in arriving at the amount referred to in clause (i)(A) above, plus (y) appropriate amounts that must be set aside as a reserve in accordance with GAAP against any liabilities associated with such Asset Disposition; and

(ii) with respect to any Securitization, the gross amount of cash proceeds paid to or received by the Borrower in respect of the closing of such Securitization, net of underwriting discounts and commissions or placement fees, investment banking fees, legal fees, consulting fees, accounting fees and other customary fees and expenses directly incurred by the Borrower in connection therewith (other than those payable to any Affiliate of the Borrower).

“New Term Loan Advance Rate” means the lesser of: (i) the aggregate outstanding principal amount of the Loans divided by the aggregate of the most recent Independent Appraisal of each Portfolio Railcar (excluding, for the avoidance of doubt, the New Term Loan Railcars), expressed as a percentage, and (ii) 75.0% of the Aggregate Original Value of the New Term Loan Railcars.

“New Term Loan Commitment” has the meaning set forth in Section 2.14(a).

“New Term Loan Lender” has the meaning set forth in Section 2.14(a).

“New Term Loan Railcars” has the meaning set forth in Section 2.14(b).

“New Term Loans” has the meaning set forth in Section 2.14(c).

“Non-Railcar Partial Prepayment” has the meaning set forth in Section 2.07(a)(i).

“Non-U.S. Lender” has the meaning set forth in Section 3.01(d)(ii).

“Note” and “Notes” means, a promissory note, substantially in the form of Exhibit B hereto, evidencing the obligation of the Borrower to repay outstanding Loans, as such note may be amended, modified, supplemented, extended, renewed or replaced from time to time.

“Notice of Borrowing” means a request by the Borrower for a Borrowing, substantially in the form of Exhibit A-2 hereto.

“Obligations” means, at any date, (i) all Credit Obligations and (ii) all Derivatives Obligations of the Borrower owed or owing to any Derivatives Creditor.

“OFAC” means the United States Department of Treasury, Office of Foreign Assets Control.

“Operating Expenses” means with respect to any period: (a) with respect to the Portfolio, (i) storage, maintenance, test runs, repossession (whether or not successful), reconfiguration, refurbishment, repair expenses, shipping fuel, upgrade and integration expenses related to the Railcars, incurred by the Borrower or the Servicer (in its capacity as Servicer under the Servicing Documents), including all expenses relating to compliance with Interchange Rules and including the fees and expenses of independent technicians and other experts retained for any of the foregoing purposes other than with respect to expenditures specifically agreed to be borne by the Servicer; (ii) insurance expenses related to the Portfolio Railcars, including all fees and expenses of insurance advisors and brokers; (iii) fees and expenses of independent advisors; (iv) outside legal counsel fees and expenses and other professional fees and expenses (A) related to litigation concerning any Railcar, (B) related to negotiations, documentation, legal opinions and other legal assistance normally requested by a lessor in connection with leasing a Railcar, (C) related to any actual or proposed amendment, workout, forbearance, repossession, foreclosure or other remedial action relating to any Railcar or (D) related to out of the ordinary course of business situations; (v) all amounts (including indemnities) payable by the Borrower pursuant to any Lease or termination thereof, or amounts payable by the Borrower pursuant to the sale of a Railcar; (vi) sales, use, property and other taxes (including any of those which may have been paid by Servicer on behalf of any of the Borrower) payable in connection with the sale or lease of any Portfolio Railcar by or on behalf of the Borrower or otherwise payable by the Borrower, but excluding any sales, use, property or other taxes payable by the Seller under the Purchase and Contribution Agreement; (vii) remarketing expenses and broker fees in connection with the actual or potential sale or lease of any Railcar, (viii) additional delivery expenses for any Railcar, to the extent that the actual delivery expenses for such Railcar exceed the estimated delivery expense amount included in the purchase price paid for any Railcar under the relevant Sale Agreement (to the extent that the estimated delivery expense amount included in such purchase price for any Railcar exceeds the actual delivery expense amount for such Railcar, such excess amount shall be deducted from the total “Operating Expenses”), (ix) Required Modifications and the amount of modifications and improvements permitted to be funded under Section 6.08 (but excluding Optional Modifications) and (x) any Servicer Reimbursable Expenses, and (b) all other fees, costs and operating expenses of the Borrower including all day-to-day expenses and all capital costs, in each case to the extent actually incurred by the Borrower or the Servicer during such period.



“Operating Expenses Account” means the “Operating Expenses Account” established by the Depository pursuant to the Depository Agreement.

“Optional Modification” has the meaning set forth in Section 6.08(d).

“Original Value” means,

(i) with respect to any Railcar that is an Initial Portfolio Railcar, the Appraised Fair Market Value of such Railcar as set forth in the Independent Appraisal provided as contemplated by Section 4.02(l); and

(ii) with respect to any Replacement Railcar or additional Eligible Railcar as contemplated by Section 7.12(a) or Section 7.12(b), the Appraised Fair Market Value of such Railcar as set forth in the Independent Appraisal provided in accordance with Section 7.05, Section 7.12(a) or Section 7.12(b), as applicable.

provided, however, (a) on and after an Event of Loss with respect to a Railcar, its Original Value will be deemed to be zero and (b) on and after the 60<sup>th</sup> day after the date in which the Servicer or the Borrower first has Knowledge of a Casualty with respect to a Railcar, its Original Value will either be deemed to be zero unless prior to such 60<sup>th</sup> day the Borrower has restored the Railcar either (i) to its previous utility and economic useful life or (ii) to qualify for use in interchange in accordance with the Interchange Rules (provided, for purposes of this clause (ii), that the Lessee under the applicable Lease for such Railcar has no right to abate monthly rent at such time).

“Organization Documents” means: (i) with respect to any corporation, the certificate of incorporation and the bylaws; (ii) with respect to any limited liability company, the certificate of formation (or ARTICLES of organization, as the case may be) and operating agreement; and (iii) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation with the secretary of state or other department in the state or other jurisdiction of its formation, in each case as amended from time to time.

“Other Taxes” has the meaning set forth in Section 3.01(b).

“Parent Security Agreement” means the Parent Security Agreement, dated as of the date hereof, between TILC, the Collateral Agent and the Administrative Agent, including the joinder relating thereto given by the Borrower.

“Part” or “Parts” means all appliances, parts, instruments, appurtenances, accessories, furnishings and other equipment of whatever nature, which may from time to time be installed on, incorporated in or attached to, a Railcar and, so long as such items remain subject to this Agreement, all such items which are subsequently removed therefrom and which are owned by the Borrower.

“Participant Register” has the meaning set forth in Section 11.06(e).

“Patriot Act” means the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)), as amended and supplemented from time to time.

“Pension Plan” means an “employee pension benefit plan” (as such term is defined in Section 3(2) of ERISA), other than a Multiemployer Plan, that is subject to Title IV of ERISA and is sponsored or maintained by the Borrower or any ERISA Affiliate or to which the Borrower or any ERISA Affiliate contributes or has an obligation to contribute.

“Per Diem Lease” means the Lease of a Railcar, rental payments under which are hourly, based on distance, or per trip.

“Perfection Certificate” means a certificate, substantially in the form of Exhibit E to this Agreement, completed and supplemented with the schedules and attachments contemplated thereby to the satisfaction of the Administrative Agent and duly executed by a Responsible Officer of each of the Servicer and the Borrower.

“Permit” means any license, permit, franchise, right or privilege, certificate of authority or order, or any waiver of the foregoing, issued or issuable by any Governmental Authority.

“Permitted Discretionary Exchange” has the meaning set forth in Section 7.05(a).

“Permitted Discretionary Sale” means a sale or exchange of one or more Railcars (including a sale to a Lessee pursuant to a Lessee purchase option in the applicable Lease) in which:

(i) at the time of such sale or exchange, no Event of Default has occurred and is continuing (unless this clause (i) is waived by the Required Lenders); provided, however, the Borrower may continue to undertake sales of Railcars to Lessees pursuant to a Lessee purchase option in the applicable Lease;

(ii) each Replacement Railcar (if any) is a Qualifying Replacement Railcar;

(iii) the Net Cash Proceeds with respect to any such sale (other than a sale to a Lessee pursuant to a Lessee purchase option in the applicable Lease) (A) is paid by the purchaser of such Railcar(s) directly into the Collection Account, and (B) are equal to or greater than the aggregate of (x) the Mandatory Prepayment Amount and the Prepayment Premium (if any) applicable to a Railcar Sale Trigger Event relating to such sale or exchange, and (y) all other amounts that would be required to partially prepay the Loans pursuant to Section 2.08(b) in the event such Railcar Sale Trigger Event occurs;

(iv) after giving effect to such sale or exchange, there is no (A) violation of the Concentration Limits, (B) LTV Failure, (C) DSCR Failure, (D) Utilization Failure or (E) Derivatives Trigger Event;

(v) (a) the Borrower delivers to the Administrative Agent, with respect to each Replacement Railcar (if any), the Funding Package and (b) the Supplemental Conditions shall have been satisfied or waived with respect thereto;

(vi) the consideration therefor is either cash or, in the case of an exchange of the Relinquished Railcar(s), Qualifying Replacement Railcar(s);

(vii) in respect of any Permitted Discretionary Sale not constituting a Permitted Discretionary Exchange, the Borrower shall have provided a prepayment notice in accordance with, and in compliance with the requirements of, Section 2.06(a); and

(viii) in respect of any Permitted Discretionary Sale not constituting a Permitted Discretionary Exchange, the aggregate outstanding principal amount of the Loans is not less than amount which, if a Mandatory Prepayment Event that would result from a Railcar Sale Trigger Event were to occur, and after giving effect to such prepayment, would reduce the aggregate outstanding principal amount of the Loans to less than the Minimum Loan Amount.

“Permitted Liens” means with respect to any Portfolio Railcar: (i) the Liens granted by the Borrower to the Collateral Agent under the Loan Documents; (ii) the respective rights of a Lessee under the Lease with respect to such Railcar; (iii) Liens for Taxes payable by the Borrower either not yet due or being contested in good faith by appropriate proceedings diligently conducted so long as such proceedings do not involve any imminent danger of the sale, forfeiture or loss of such Railcar or any interest therein; (iv) materialmen’s, suppliers’, mechanics’, workmen’s, repairmen’s, employees’ or other like Liens arising in the ordinary course of business for amounts the payment of which is either not yet delinquent or is being contested in good faith by appropriate proceedings diligently conducted so long as such proceedings do not involve any imminent danger of the sale, forfeiture or loss of such Railcar or any interest therein; (v) Liens arising out of judgments or awards against the Borrower that do not give rise to any Default or Event of Default and with respect to which there shall have been secured a stay of execution pending appeal or review; and (vi) customary salvage and similar rights of insurers under policies of insurance maintained with respect to the Collateral.

“Person” means an individual, a corporation, a partnership, an association, a limited liability company, a trust or an unincorporated association or any other entity or organization, including a government or political subdivision or an agency or instrumentality thereof.

“Physical Inspection Report” means with respect to each Railcar, a physical inspection report of the Independent Appraiser or such other independent inspector mutually acceptable to the Borrower and the Administrative Agent, which report shall set forth, among other things, the total number of hours and miles with respect to such Railcar.

“Portfolio” means, collectively, all of the Portfolio Railcars and the Portfolio Leases.

“Portfolio Lease” means a Lease with respect to a Portfolio Railcar (collectively, the “Portfolio Leases”).

“Portfolio Railcar” means, from time to time, each Railcar which is owned by the Borrower and which has been funded or refinanced in whole or in part by Loans hereunder or included as an Initial Portfolio Railcar, a Replacement Railcar or otherwise added to the Portfolio in accordance with Section 7.05 or Section 7.12, but excluding, at such time, any

Railcar that is no longer subject to the Lien of the Collateral Documents (collectively, the “Portfolio Railcars”).

“Prepayment Premium” means, with respect to Loans to be prepaid:

- (i) an amount equal to 1.00% of the aggregate amount of Loans prepaid or to be prepaid during the period from the Closing Date to but excluding the first anniversary thereof; and
- (ii) zero at any time on or after the first anniversary of the Closing Date.

“Protected Party” means, without duplication of any Person in a particular capacity, the Administrative Agent, the Collateral Agent, the Custodian, the Depository, the Servicer, the Lead Arranger, each Creditor and any participant, successor or permitted assign of any thereof.

“Purchase and Contribution Agreement” means the Purchase and Contribution Agreement, substantially in the form of Exhibit J hereto, among TILC, TRLWT and the Borrower.

“Qualifying Replacement Railcar” means a Railcar or Railcars (in the aggregate) (i) the Aggregate Original Value of which must at least equal the aggregate of the Appraised Fair Market Value set forth in the most recent Independent Appraisal of the Relinquished Railcars at its or their time of exchange or sale, respectively, (ii) that must be under Lease (A) with a remaining lease term of equal to or greater than of the remaining lease term of the Lease with respect to the Relinquished Railcar being sold and (B) which provides for monthly lease rate factor of equal to or greater than the monthly lease rate factor of the Lease with respect to the Relinquished Railcar being sold and (iii) purchased from any of Trinity, TILC, TRLWT or any other Affiliate of Trinity; provided that, for the purposes of clause (ii) above, with respect to an exchange of more than one Railcar, the remaining lease term and monthly lease rate factor criteria shall be calculated using average values, based on the weighted Aggregate Original Value thereof (in the case of the Replacement Railcars) or on the aggregate of the Appraised Fair Market Value set forth in each most recent Independent Appraisal (in the case of the Relinquished Railcars).

“Qualifying Replacement Railcar Certificate” means a certificate substantially in the form of Exhibit A-6 hereto, with appropriate insertions and deletions or with such other changes as may be reasonably agreed to by the Administrative Agent, and which certificate contains a description of the Railcars and related Leases which are to become Portfolio Railcars and Portfolio Leases in connection with a Permitted Discretionary Sale.

“Quarterly Compliance Certificate” has the meaning set forth in Section 6.01(i).

“Quotation Day” means, in relation to any period for which LIBOR is to be determined, two Business Days before the first day of that period.

“Railcar” means a covered hopper car, tank car, boxcar, flat car or other railcar or unit of railroad rolling stock (other than a locomotive), including (i) any and all Parts relating thereto and (ii) any Replacement Railcars and any and all Parts relating thereto, together with any and all

accessions, additions, improvements and replacements from time to time incorporated or installed in any item thereof and together with all options, warranties, service contracts, program services, test rights, maintenance rights, support rights, improvement rights and indemnifications relating to any of the foregoing.

“Railcar Documentation” means with respect to each Railcar, (i) the documents (including microfilm), data, manuals, diagrams and other written information originally furnished by the Manufacturer and/or the Seller thereof on or about the Closing Date, (ii) the documents, records, logs and other data maintained (or required to be maintained) in respect of the Railcars pursuant to the terms of Leases related to such Railcars during the term of such Leases, (iii) the documents, records, logs and other data maintained (or required to be maintained) in respect of the Railcars pursuant to any Applicable Law and (iv) the documents, records, logs and other data maintained (or recommended to be maintained) in respect of the Railcars pursuant to the applicable Manufacturer’s recommendations.

“Railcar Partial Prepayment” has the meaning set forth in Section 2.07(a)(ii).

“Railcar Portfolio Data Set” means the data set (whether in .xlsx format, .pdf, or other format) describing each Railcar and Lease to be added to the Portfolio on the Closing Date.

“Railcar Sale Trigger Event” means the occurrence of the event described in Section 7.05(b)(ii).

“Railroad Mileage Credits” means the mileage credit payments made by the railroads under their applicable tariffs to the owner of the Marks on the Railcar.

“Register” has the meaning set forth in Section 11.06(d).

“Regulation O, T, U or X” means Regulation O, T, U or X, respectively, of the Board of Governors of the Federal Reserve System as amended, or any successor regulation.

“Related Document Inspection” has the meaning set forth in Section 6.11(a).

“Related Documents” has the meaning set forth in Section 6.11(a).

“Relinquished Railcar” means any Railcar in the Portfolio (i) which is sold in a Permitted Discretionary Sale or (ii) the Lien of the Collateral Documents in respect of which has been released.

“Replacement Railcar” means any Railcar which has replaced a Railcar in the Portfolio in accordance with the terms of the Loan Documents.

“Required Lenders” means, collectively, the Lenders whose aggregate Credit Exposure (as hereinafter defined) constitutes more than fifty percent (50%) of the Credit Exposure of all Lenders at such time.

“Required Modification” has the meaning set forth in Section 6.08(c).

“Required Principal Payment Amount” means, with respect to each Settlement Date, an amount equal to one-twelfth of 5.00% per annum of the aggregate principal amount of the Loans advanced on the Closing Date.

“Resolution Authority” shall mean anybody which has the authority to exercise any Write-down and Conversion Powers.

“Responsible Officer” means, (i) with respect to any Person other than the Borrower, the Custodian, the Collateral Agent or the Depositary, the chief financial officer or chief accounting officer, the president, any vice president, treasurer or assistant treasurer of such Person (or, in the case of a Person which is a partnership, limited liability company or trust, any such officer of the general partner, manager, managing member, trustee or Person performing similar management functions in respect thereof), (ii) with respect to the Borrower, the chief financial officer, chief accounting officer, the president, any vice president, treasurer or assistant treasurer of TILC, in its capacity as the managing member of the Borrower, and (iii) with respect to the Custodian, the Collateral Agent or the Depositary, any officer within the Corporate Trust Services department having direct responsibility for the administration of this Agreement, and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of that officer’s knowledge of and familiarity with the particular subject. Any document delivered hereunder that is signed by a Responsible Officer of a Person shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Person and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Person.

“Restricted Payment” means (i) any dividend or other distribution, direct or indirect, on account of any class of Equity Interests or Equity Equivalents of the Borrower, now or hereafter outstanding, (ii) any redemption, retirement, sinking fund or similar payment, purchase or other acquisition for value, direct or indirect, of any class of Equity Interests or Equity Equivalents of the Borrower, now or hereafter outstanding, (iii) any payment made to retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire any class of Equity Interests or Equity Equivalents of the Borrower, now or hereafter outstanding, and (iv) any loan, advance, tax sharing payment or indemnification payment to, or investment in, any Affiliate of the Borrower.

“S&P” means Standard & Poor’s Ratings Group, a division of Standard & Poor’s Financial Services LLC, a New York corporation, and its successor or, absent any such successor, such nationally recognized statistical rating organization as the Borrower and the Administrative Agent may select.

“Sale Agreements” means, with respect to any Railcar and related Lease, if applicable, the applicable Purchase and Contribution Agreement, or such other agreement or agreements, in each case in form and substance acceptable to the Administrative Agent in its reasonable discretion, between the applicable Seller thereof and the Borrower as shall provide for the purchase of such Railcar and the assignment of the related Lease, if applicable, by the Borrower.

“Sanctions” has the meaning set forth in Section 5.26(a).

“Sanctions Laws” has the meaning set forth in Section 5.26(a).

“Screen Rate” means the London interbank offered rate administered by ICE Benchmark Administration Limited (or any other person which takes over the administration of that rate) for dollars and the period displayed (before any correction, recalculation or republication by the administrator) on pages LIBOR01 or LIBOR02 of the Thomson Reuters screen (or any replacement Thomson Reuters page which displays that rate), or on the appropriate page of such other information service which publishes that rate from time to time in place of Thomson Reuters. If such page or service ceases to be available, the Administrative Agent may specify another page or service displaying the relevant rate after consultation with the Lenders and (subject to no Event of Default continuing) with the agreement of the Borrower (such agreement not to be unreasonably withheld or delayed).

“Securities Act” means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

“Securitization” means any asset-backed offering sponsored by the Borrower, Trinity and/or their Affiliates, and involving all or any of the Portfolio Railcars and Portfolio Leases.

“Security Agreement” means the Security Agreement, dated as of the date hereof, between the Borrower, the Collateral Agent, the Custodian and the Administrative Agent, including each supplement relating thereto.

“Security Deposit” means any cash held by or for the benefit of the Borrower as a “security deposit” (or other similar term) pursuant to any Lease.

“Seller” means the “seller” under any Sale Agreement.

“Servicer” means Trinity Industries Leasing Company, a Delaware corporation.

“Servicer Advances” means any advance (other than any advance giving rise to Servicer Reimbursable Expenses) made by the Servicer (from time to time in the Servicer’s sole discretion) to the Borrower in respect of one or more delinquent Lease payments which the Servicer determines will ultimately be recoverable, such advance to be deposited in the Collection Account on any Settlement Date or otherwise immediately after any distribution pursuant to Section 2.07(c)(i) on such Settlement Date. Outstanding Servicer Advances shall bear interest at a rate per annum equal to the Applicable Rate and shall be repaid on each Settlement Date in the order of priority of payments set forth in the applicable provisions of Section 2.07(c).

“Servicer Reimbursable Expenses” means any Operating Expenses properly incurred by the Servicer on behalf of the Borrower in accordance with the terms hereof and of the Servicing Agreement.

“Servicer Replacement Event” means a “Servicer Replacement Event” as defined in the Servicing Agreement.

“Servicer’s Fee” shall have the definition set forth in Section 5.02 of the Servicing Agreement.

“Servicing Agreement” means the Operation, Maintenance, Servicing and Remarketing Agreement, substantially in the form of Exhibit G hereto, dated as of the date hereof, between the Borrower and the Servicer.

“Servicing Documents” means the Servicing Agreement, the Insurance Management Agreement, the Administrative Services Agreement and the Marks Company Servicing Agreement, collectively.

“Settlement Date” means the 15th calendar day of each calendar month occurring after the last day of the calendar month in which the Closing Date falls; provided that if such day is not a Business Day, the applicable “Settlement Date” shall be the next succeeding Business Day.

“Solvent” means, with respect to any Person as of a particular date, that on such date (i) such Person is able to pay its debts and other liabilities, contingent obligations and other commitments as they mature in the normal course of business, (ii) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person’s ability to pay as such debts and liabilities mature in their ordinary course, (iii) such Person is not engaged in a business or a transaction, and is not about to engage in a business or a transaction, for which such Person’s assets would constitute unreasonably small capital after giving due consideration to the prevailing practice in the industry in which such Person is engaged or is to engage, (iv) the fair value of the assets of such Person is greater than the total amount of liabilities, including, without limitation, contingent liabilities, of such Person and (v) the aggregate fair saleable value (i.e., the amount that may be realized within a reasonable time, considered to be six months to one year, either through collection or sale at the regular market value, conceiving the latter as the amount that could be obtained for the assets in question within such period by a capable and diligent businessman from an interested buyer who is willing to purchase under ordinary selling conditions) of the assets of such Person will exceed its debts and other liabilities (including contingent, subordinated, unmatured and unliquidated debts and liabilities). For purposes of this definition, “debt” means any liability on a claim, and “claim” means (i) a right to payment, whether or not such a right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured, or (ii) a right to an equitable remedy for breach of performance if such breach gives rise to a payment, whether or not such right is an equitable remedy, is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured.

“STB” means the United States Surface Transportation Board and its successors.

“Subsidiary” means with respect to any Person, any corporation, partnership, limited liability company, association or other business entity of which (i) if a corporation, more than 50% of the total voting power of stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof, or (ii) if a partnership, limited liability company, association or business entity other than a corporation, more than 50% of the partnership or other similar ownership



interests thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more Subsidiaries of that Person or a combination thereof. For purposes hereof, a Person or Persons shall be deemed to have more than 50% ownership interest in a partnership, limited liability company, association or other business entity if such Person or Persons shall be allocated more than 50% of partnership, association or other business entity gains or losses or shall be or control the managing director, manager or a general partner of such partnership, association or other business entity.

“Substitution Account” means the Substitution Account established by the Depository pursuant to the Depository Agreement.

“Supermajority Lenders” means the Lenders whose aggregate Credit Exposure (as hereinafter defined) constitutes at least sixty-six and two thirds percent (66<sup>2</sup>/<sub>3</sub>%) of the Credit Exposure of all Lenders at such time.

“Supplemental Agreement” means the Supplemental Agreement (CCAAA), dated on or about the Closing Date, among the Borrower, the Collateral Agent, TILC and Wilmington Trust Company, as Account Collateral Agent.

“Supplemental Conditions” means: (i) in respect of any Follow-On Leases pursuant to Section 6.13, paragraphs (i), (m)(ii), (n), (w)(vi) and (z) of Section 4.02 or (ii) in respect of any Replacement Railcar pursuant to any Permitted Discretionary Sale or additional Railcar to be added to the Portfolio pursuant to Section 7.12, paragraphs (c) (with the reference therein to “the making of a Loan” being deemed to be a reference to “the applicable Permitted Discretionary Sale or additional Railcar”), (f), (h), (i), (l), (m)(i), (m)(ii), (n), (o), (t), (v), (w), (x), (y), (z), (aa), (bb), (ff) and (gg) of Section 4.02, in each case, as if references therein to the “Initial Railcar Portfolio”, “Lease” and the “Closing Date” were instead references to each such Replacement Railcar or additional Railcars, each Lease relating thereto or the applicable Follow-On Lease and the effective date relating thereto, provided that, the condition set forth in paragraph (v) in respect of the provision of one or more legal opinions need only be satisfied on reasonable request of the Administrative Agent.

“Taxes” has the meaning set forth in Section 3.01.

“Termination Date” means the date on which all outstanding Debt of the Borrower has been paid in full.

“Test Date” means an LTV Test Date or a DSCR Test Date, as the context requires.

“TILC” means Trinity Industries Leasing Company, a Delaware corporation.

“Transaction Documents” means the Loan Documents and the Servicing Documents, collectively.

“Treasury Regulations” means the regulations, including temporary and proposed regulations, promulgated by the United States Department of Treasury with respect to the Code, as such regulations are amended from time to time, or corresponding provisions of future regulations.

“Trigger Event” means a Utilization Trigger Event, an LTV Trigger Event, a DSCR Trigger Event or a Derivatives Trigger Event.

“Trinity” means Trinity Industries, Inc., a Delaware corporation.

“TRLWT” means Trinity Rail Leasing Warehouse Trust (formerly known as Trinity Rail Leasing Trust II), a Delaware statutory trust.

“United States” means the United States of America, including the States and the District of Columbia but excluding its territories and possessions.

“U.S. Lender” has the meaning set forth in Section 3.01(d)(i).

“Utilization Failure” has the meaning set forth in Section 7.12(c).

“Utilization Ratio” means, as of any time, the ratio of (i) the number of Portfolio Railcars subject to an Eligible Lease to (ii) the total number of Portfolio Railcars.

“Utilization Trigger Event” means the occurrence of the event described in Section 7.12(c).

“Write-down and Conversion Powers” means: (a) in relation to any Bail-In Legislation described in the EU Bail-In Legislation Schedule from time to time, the powers described as such in relation to that Bail-In Legislation in the EU Bail-In Legislation Schedule; and (b) in relation to any other applicable Bail-In Legislation, any powers under that Bail-In Legislation to cancel, transfer or dilute shares issued by a person that is a bank or investment firm or other financial institution or affiliate of a bank, investment firm or other financial institution, to cancel, reduce, modify or change the form of a liability of such a person or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

SECTION 1.02 Computation of Time Periods and Other Definitional Provisions. For purposes of computation of periods of time hereunder, the word “from” means “from and including” and the words “to” and “until” each mean “to but excluding”. All references to time herein shall be references to Eastern Standard time or Eastern Daylight time, as the case may be, unless specified otherwise. References in this Agreement to ARTICLES, Sections, Schedules, Appendices or Exhibits shall be to ARTICLES, Sections, Schedules, Appendices or Exhibits of or to this Agreement unless otherwise specifically provided. The definitions in Section 1.01 shall apply equally to both the singular and plural forms of the terms defined.

ARTICLE II

THE CREDIT FACILITY

**SECTION 2.01** Commitment to Lend. Each Lender severally agrees, subject to the Administrative Agent's determination that the terms and conditions of Sections 2.02 and 4.02 applicable to the Closing Date have been (a) satisfied or, (b) in all other cases, waived by the Administrative Agent and the Lenders, and on the other terms and conditions set forth in this Agreement, to make a loan (relative to a Lender, its "Loan") to the Borrower equal to such Lender's Commitment of the aggregate amount of the Borrowing of Loans to be made on the Closing Date pursuant to this Section 2.01 in a single Borrowing in order to fund the acquisition of Initial Portfolio Railcars and related Leases by the Borrower on the Closing Date. The Loans advanced on the Closing Date with respect to any Railcars and related Leases shall not:

- (a) exceed the lesser of (A) the Initial Principal Amount and (B) the Advance Rate; and
- (b) in the case of any Lender, exceed its Commitment.

Within the foregoing limits, the Borrower may borrow under this Section 2.01, repay, or, to the extent permitted or required by Section 2.07, prepay, Loans, but may not reborrow under this Section 2.01.

**SECTION 2.02** Procedures for Borrowing. (a) [Intentionally Omitted].

(b) Notice of Borrowing. The Borrower may, subject to the terms and conditions of this Agreement, borrow Loans on the Closing Date in respect of each such Initial Portfolio Railcar and related Lease which is an Eligible Lease. In such event, the Borrower shall have given the Administrative Agent a Notice of Borrowing, signed by a Responsible Officer of each of the Borrower and the Servicer, not later than 11:00 a.m. on the third Business Day prior to the date of the proposed Closing Date, specifying:

- (i) the proposed Closing Date of the Borrowing, which shall be a Business Day no earlier than ten Business Days (or such shorter period as the Administrative Agent will permit) following receipt by the Administrative Agent of a complete Funding Package with respect to such Railcar, unless otherwise approved by the Administrative Agent;
- (ii) the aggregate amount of the Borrowing; and
- (iii) a description of each Initial Portfolio Railcar and the Eligible Lease(s) relating thereto to be pledged on the Closing Date.

The Borrower shall have also set forth in such Notice of Borrowing for each Lease in effect prior to the Closing Date a statement that, to the Knowledge of each of the Borrower and the Servicer, (i) the Lessee has made rent payments on time (giving effect to any applicable grace periods) under such Lease or, if not, a description of any late payments of which any Facility Party is aware during the one-year period (or shorter period, as applicable) prior to the

date of such Notice of Borrowing and a summary description of any earlier such defaults, if any, of which the Borrower or Servicer is aware and (ii) no Lease Default or Lease Event of Default under such Lease has occurred during the one-year period (or shorter period, as applicable), prior to the date of such Notice of Borrowing or, if that is not the case, a description of any such Lease Default or Lease Event of Default of which the Borrower or Servicer is aware.

SECTION 2.03 Notice to Lenders; Funding of Loans. (a) Notice to Lenders. Upon receipt of a Notice of Borrowing, the Administrative Agent shall notify each Lender of the Closing Date and of such Lender's ratable share of the Loans referred to therein and the relevant details. On the Closing Date each Lender shall transfer an amount equal to its ratable share of the Loan to the Administrative Agent no later than 12:00 p.m. (New York time).

(b) Funding of Loans.

(i) The Administrative Agent shall, unless the Administrative Agent determines that any applicable condition specified in ARTICLE IV has not been, or will not be satisfied or waived on the Closing Date, by 2:00 p.m. (New York time) on the Closing Date, make the amount of such Borrowing available to the Borrower at the general deposit account(s) in the United States designated by the Borrower in immediately available funds in a wire transfer.

(ii) A Notice of Borrowing, once delivered to the Administrative Agent, shall be irrevocable and binding on the Borrower. Following such Notice of Borrowing, the Borrower shall indemnify each Lender against any loss, cost or expense incurred by such Lender as a result of any failure to fulfill, on or before the proposed Closing Date specified in the Notice of Borrowing, the conditions set forth in Section 4.02, including any loss, cost or expense incurred by reason of the liquidation or re-employment of deposits or such funds acquired by the Lenders to fund the Loans to be made pursuant to this Section 2.03(b). Any such loss, cost or expense shall be paid in accordance with Section 2.07(c) after any Lender shall have furnished to the Borrower and the Administrative Agent, with reasonable supporting calculations, a notice specifying the amounts thereof.

(c) [Intentionally Omitted].

(d) Obligations of Lenders Several. The failure of any Lender to make a Loan required to be made by it as part of the Borrowing hereunder shall not relieve any other Lender of its obligation, if any, hereunder to make any Loan on the Closing Date of such Borrowing, but no Lender shall be responsible for the failure of any other Lender to make the Loan to be made by such other Lender on the Closing Date.

SECTION 2.04 Evidence of Loans. (a) Lender Accounts. Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of the Borrower resulting from the Loan made by such Lender, including the amounts of principal and interest payable and paid to such Lender from time to time under this Agreement.

(b) Administrative Agent Records. The Administrative Agent shall maintain accounts in which it will record (i) the amount of each Loan made hereunder, (ii) the amount of

any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder and (iii) the amount of any sum received by the Administrative Agent hereunder from the Borrower and each Lender's share thereof.

(c) Evidence of Debt. The entries made in the accounts maintained pursuant to subsections (a) and (b) of this Section 2.04 shall be conclusive evidence (absent manifest error) of the existence and amounts of the obligations therein recorded; provided, however, that the failure of any Lender or the Administrative Agent to maintain such accounts or any error therein shall not in any manner affect the obligations of the Borrower to repay the Loans in accordance with their terms.

(d) Notes. Notwithstanding any other provision of this Agreement, if any Lender shall request and receive a Note or Notes as provided in Section 11.06 or otherwise, then the Loans of such Lender shall be evidenced by a single Note substantially in the form of Exhibit B, and payable to the order of such Lender in an amount equal to the aggregate unpaid principal amount of such Lender's Loans.

(e) Note Endorsements. Each Lender having a Note shall record the date and amount of each Loan made by it and the date and amount of each payment of principal made by the Borrower with respect thereto, and may, if such Lender so elects in connection with any transfer or enforcement of its Note, endorse on the reverse side or on the schedule, if any, forming a part thereof appropriate notations to evidence the foregoing information with respect to each outstanding Loan evidenced thereby; provided that the failure of any Lender to make any such recordation or endorsement shall not affect the obligations of the Borrower hereunder or under any such Note. Each Lender is hereby irrevocably authorized by the Borrower so to endorse its Note and to attach to and make a part of its Note a continuation of any such schedule as and when required. When the Borrower has paid a Note in full, such Lender will promptly return such Note to the Administrative Agent, who will return such Note to the Borrower, against receipt therefor, marked "PAID IN FULL".

(f) Lost, Mutilated and Destroyed Notes, etc. If any Note issued to a Lender pursuant to this Agreement shall become mutilated, destroyed, lost or stolen, the Borrower shall, upon the written request of the holder of such Note, execute and deliver to the Administrative Agent, who shall endorse and deliver to the applicable Lender in replacement thereof a new Note, payable to the same holder in the same principal amount and dated the same date as the Note so mutilated, destroyed, lost or stolen. If the Note being replaced has become mutilated, such Note shall be surrendered to the Borrower for cancellation and if the Note being replaced has been destroyed, lost or stolen, the holder of such Note shall furnish to the Borrower such indemnification as may be required by the Borrower to hold the Borrower harmless and evidence reasonably satisfactory to the Borrower of the destruction, loss or theft of such Note and of the ownership thereof; provided, however, that if the holder of such Note is a Lender, the written undertaking of such Lender shall be sufficient indemnity for purposes of this Section 2.04(f).

SECTION 2.05 Interest. (a) Rate of Interest. (i) Each Loan shall bear interest on the outstanding principal amount thereof, for each day during each Interest Period applicable thereto, at a rate per annum equal to the Applicable Rate for such day; provided that any change to the

interest rate shall not take effect until the next succeeding Interest Period after such designation. Such interest shall be payable in arrears on each Settlement Date and on the Termination Date.

(ii) At any time during which an Event of Default has occurred and is continuing, each Loan shall bear additional interest (in addition to the interest payable pursuant to Section 2.05(a)(i)) on the outstanding principal amount thereof, for each day during each Interest Period applicable thereto, at a rate per annum equal to the Default Margin and such accrued additional interest shall be aggregated on the last day of such Interest Period (all such aggregated additional interest, the "Aggregated Default Interest").

(b) Determination and Notice of Interest Rates. The Administrative Agent shall determine each interest rate applicable to the Loans as provided in this Agreement. The Administrative Agent shall give prompt notice to the Borrower and the participating Lenders of each rate of interest so determined, and its determination thereof shall be conclusive in the absence of manifest error.

#### SECTION 2.06 Repayment and Maturity of Loans.

(a) Maturity Date. On the Maturity Date, the remaining principal balance of the Loans and all other Obligations under the Loan Documents shall become immediately due and payable.

(b) Repayment. On each Settlement Date, the Borrower shall pay to the Administrative Agent, for the account of each Lender, the Required Principal Payment Amount.

#### SECTION 2.07 Prepayments and Distribution of Payments.

(a) Voluntary Prepayments.

(i) Non-Railcar Prepayments. The Borrower shall have the right on any Settlement Date to voluntarily prepay the Loans, either in whole or in part (each, a "Non-Railcar Partial Prepayment"); provided, however, that (A) no Event of Default shall have occurred and then be continuing, (B) each such partial prepayment shall be in a minimum principal amount equal to \$5,000,000, (C) no Asset Disposition or release of the Lien of the Collateral Documents shall have occurred in connection with such Non-Railcar Partial Prepayment, and (D) immediately after any such partial prepayment (1) the aggregate outstanding principal amount of the Loans shall not be less than the Minimum Loan Amount, and (2) there shall be no Utilization Failure or no Derivatives Trigger Event, and no violation of the Concentration Limits.

(ii) Railcar Partial Prepayments. The Borrower shall have the right on any Settlement Date to voluntarily prepay the Loans either in whole or, on per Railcar basis, in part (each, a "Railcar Partial Prepayment"); provided, however, that (A) no Event of Default shall have occurred and then be continuing, (B) each Railcar Partial Prepayment shall be in a minimum principal amount equal to the Allocable Debt in respect of the Railcar relating to such Railcar Partial Prepayment, (C) the Borrower shall not be permitted to make any Railcar Partial Prepayment unless, prior to the release of the Lien

of the Collateral Documents relating to the relevant Railcar(s) subject to and in accordance therewith, the Asset Disposition of such Railcar(s) (if any) complies in all respects with (and is not in violation of) the requirements for a Permitted Discretionary Sale and remaining requirements of Section 7.05, and (D) immediately after any Railcar Partial Prepayment (1) the aggregate outstanding principal amount of the Loans shall not be less than the Minimum Loan Amount, and (2) there shall be no Utilization Failure or no Derivatives Trigger Event, and no violation of the Concentration Limits.

(iii) In connection with all prepayments under this Section 2.07(a), the Borrower shall have given prior written or telecopy notice (or telephone notice promptly confirmed by written or telecopy notice) to the Administrative Agent by 10:00 a.m., at least five Business Days prior to the date of prepayment which is in no case fewer than three Business Days prior to the Settlement Date. Each notice of prepayment shall specify the prepayment date and the principal amount to be prepaid. Each notice of prepayment shall be irrevocable and shall commit the Borrower to prepay such Loans by the amount stated therein on the date stated therein. All prepayments under this Section 2.07(a) shall be accompanied by Prepayment Premium (if any), accrued interest on the principal amount being prepaid to the date of payment together with any (positive) Derivative Termination Value and other Derivative Obligations, Funding Losses and all other amounts, if any, then owing to each Creditor at such time.

(b) Mandatory Prepayments. Following the occurrence of a Mandatory Prepayment Event, the Borrower shall be required to prepay Loans in an amount equal to the applicable Mandatory Prepayment Amount on the applicable Mandatory Prepayment Date. All payments under this Section 2.07(b) shall be accompanied by, in the case of a Railcar Sale Trigger Event only, the Prepayment Premium (if any), and in all cases, accrued interest on the principal amount being prepaid to the date of payment together with any (positive) Derivative Termination Value and other Derivative Obligations, Funding Losses and all other amounts, if any, then owing to each Creditor at such time.

(c) Application of Payments and Prepayments. (i) Application on Each Settlement Date. Subject to Section 2.07(c)(ii), so long as no Event of Default has occurred and is continuing, on each Settlement Date, all amounts on deposit in the Collection Account as of the Calculation Date immediately preceding such Settlement Date shall be applied by the Depository on such Settlement Date (or on any other date on which all outstanding Obligations are repaid and satisfied in full) in the following order of priority in accordance with the applicable Monthly Report (and, to the extent not contained in such Monthly Report, as directed in writing by the Administrative Agent):

first, to the Servicer, for distribution to the Lessees, if any, whose payments in respect of the applicable Leases are not made net of any Railroad Mileage Credits due and owing to such Lessee, an amount equal to the Railroad Mileage Credits due to such Lessee for which an allocation has not previously been made pursuant to this clause (or any corresponding clause of any other subsection in this Section 2.07(c)) as certified to the Administrative Agent by the Servicer not later than the Calculation Date immediately preceding such Settlement Date;

second, ratably (x) to reimburse or pay the Administrative Agent, the Collateral Agent, the Custodian and the Depository for any tax, fees, expense, charge, indemnity or other loss incurred by any such Person (including, without limitation, reasonable attorneys fees and expenses and the fees and expenses of any person appointed by the Administrative Agent to replace the Servicer pursuant to the Servicing Agreement) in connection with the performance by the Administrative Agent, the Collateral Agent, the Custodian, the Depository or any Lender of any of its obligations hereunder or under the other Loan Documents, and (y) to the reimbursement of the Lenders for any amounts paid by the Lenders to the Administrative Agent in compensation for fees and expenses incurred by the Administrative Agent as described in this clause second;

third, to the payment of the Servicer's Fees payable on such Settlement Date, together with the aggregate amount of any Servicer's Fees which were due and payable on any previous Settlement Date and remain unpaid;

fourth, an amount equal to the Operating Expenses (including any Servicer Reimbursable Expenses) actually incurred by the Borrower and/or the Servicer in the Measuring Period relating to such Settlement Date, to be paid to the Borrower or to be reimbursed to the Servicer;

fifth, to reimburse the Servicer for outstanding Servicer Advances, together with accrued interest thereon;

sixth, ratably (x) to the payment of accrued and unpaid interest (except for Aggregated Default Interest) on the Loans and (y) to the payment of Derivatives Obligations (other than for the payment of Derivatives Termination Value), if any, then due and payable, and (z) to the payment of all indemnities in respect of Indemnified Taxes, Other Taxes, stamp taxes, Funding Losses, increased costs referred to in Section 3.03, losses, costs and expenses referred to in Section 2.03(b), in each case with respect to the Protected Parties and other amounts, other than principal or interest on the Loans, payable to any Protected Party (other than the Servicer) in accordance with the Loan Documents;

seventh, ratably (x) to the Lenders, for the payment of the Required Principal Payment Amount and any Mandatory Prepayment Amount, and (y) to the Derivatives Creditors for the payment of Derivatives Termination Value;

eighth, to the Lenders, for the payment of any Prepayment Premium;

ninth, to the payment of the unpaid Aggregated Default Interest on the Loans;

tenth, ratably (x) to the Operating Expenses Account an amount determined by the Servicer to be prudent to establish a reserve for expected future Operating Expenses and future maintenance, improvements and modifications of Portfolio Railcars, and (y) to the payment of Optional Modifications and Lease Required Modifications; and



eleventh, unless such Settlement Date falls during any DSCR Failure Period (in which case any balance shall remain on deposit in the Collection Account until the succeeding Settlement Date), at the direction of the Borrower.

(ii) Application of Proceeds if an Event of Default has Occurred and is Continuing. Notwithstanding anything to the contrary set forth in this Agreement or any other Loan Document, if any Event of Default has occurred and for so long as it is continuing, all amounts on deposit in the Collection Account as of the Calculation Date immediately preceding such Settlement Date and all other payments or amounts received, held or realized by or for the benefit of the Administrative Agent, the Collateral Agent, the Custodian or the Depository (including any amount realized by any such Person after the exercise of any remedy as set forth herein or in any other Loan Document and all proceeds of the Collateral), and all payments or amounts thereafter received by or for the benefit of the Administrative Agent, the Collateral Agent, the Custodian or the Depository hereunder or under the Loan Documents shall be promptly applied by the Depository in the following order of priority as directed in writing by the Administrative Agent:

first, to the Servicer, for distribution to the Lessees, if any, whose payments in respect of the applicable Leases are not made net of any Railroad Mileage Credits due and owing to such Lessee, an amount equal to the Railroad Mileage Credits due to such Lessee for which an allocation has not previously been made pursuant to this clause (or any corresponding clause of any other subsection in this Section 2.07(c)) as certified to the Administrative Agent by the Servicer not later than the Calculation Date immediately preceding such Settlement Date;

second, ratably (x) to reimburse or pay the Administrative Agent, the Collateral Agent, the Custodian and the Depository for any indemnities, fees and expenses incurred by any such Person in connection with any Servicer Replacement Event or Event of Default and the exercise by the Administrative Agent, the Collateral Agent, the Custodian and the Depository of any right or remedy hereunder (including, without limitation, the expenses of any sale, taking or other proceeding, reasonable attorneys' fees and expenses, court costs, and any other expenditures incurred or expenditures or advances made by any such Person in the protection, exercise or enforcement of any right, power or remedy or any damages sustained by any such Person, liquidated or otherwise, upon such Servicer Replacement Event or such Event of Default, and the fees and expenses of any person appointed by the Administrative Agent to replace the Servicer pursuant to the Servicing Agreement) and not previously reimbursed or paid by the Lenders and (y) to the reimbursement of the Lenders for any amounts paid by the Lenders to the Administrative Agent, the Collateral Agent, the Custodian and the Depository in compensation for the fees and expenses incurred by each such Person as described in this clause second;

third, to the payment of the Servicer's Fees payable on such Settlement Date, together with the aggregate amount of any Servicer's Fees which were due and payable on any previous Settlement Date and remain unpaid;

fourth, an amount equal to the Operating Expenses (including any Servicer Reimbursable Expenses) actually incurred by the Borrower and/or the Servicer in the Measuring Period in which the date of distribution pursuant to this Section 2.07(c)(ii) falls, to be paid to the Borrower or to be reimbursed to the Servicer;

fifth, to reimburse the Servicer for outstanding Servicer Advances, together with accrued interest thereon;

sixth, ratably (x) to the payment of accrued and unpaid interest (except for Aggregated Default Interest) on the Loans and (y) to the payment of Derivatives Obligations (other than for the payment of Derivatives Termination Value), if any, then due and payable, and (z) to the payment of all indemnities in respect of Indemnified Taxes, Other Taxes, stamp taxes, Funding Losses, increased costs referred to in Section 3.03, losses, costs and expenses referred to in Section 2.03(b), in each case with respect to the Protected Parties and other amounts, other than principal or interest on the Loans, payable to any Protected Party (other than the Servicer) in accordance with the Loan Documents;

seventh, ratably (x) to the Lenders, for the payment of all the outstanding principal amounts of the Loans (including, without limitation, any Prepayment Premium), and (y) to the Derivatives Creditors for the payment of Derivatives Termination Value;

eighth, to the payment of the unpaid Aggregated Default Interest on the Loans;

ninth, ratably (x) to the Operating Expenses Account an amount determined by the Servicer to be prudent to establish a reserve for expected future Operating Expenses and future maintenance, improvements and modifications of Portfolio Railcars, and (y) to the payment of Optional Modifications and Lease Required Modifications; and

tenth, at the direction of the Borrower.

(iii) Earnings on Cash Equivalents. Any earnings on Cash Equivalents shall constitute part of the Collateral and shall be applied in accordance with Section 2.07(c). Any losses resulting from any Cash Equivalents shall be for the Borrower's account, and under no circumstances shall the Collateral Agent, the Depository, the Administrative Agent or any Lender have any liability or responsibility therefor.

(iv)

SECTION 2.08 Optional Replacement of Lenders (Non-Pro-Rata). If (a) any Lender or other Protected Party has demanded compensation or indemnification pursuant to Section 3.01, 3.03 or 3.05, or (b) the obligation of any Lender to fund its Loans at LIBOR has been suspended pursuant to Section 3.02, or (c) any Lender has failed to consent to a proposed amendment,

waiver, discharge or termination which pursuant to the terms of Section 11.03 or any other provision of any other Loan Document requires the consent of all of the Lenders, the Borrower shall have the right, with the prior written consent of the Administrative Agent, to (i) remove such Lender and all related Protected Parties or (ii) replace such Lender and all related Protected Parties by causing the related Lender to assign its outstanding Loans and Notes (if any) to one or more existing Lenders or Eligible Assignees pursuant to Section 11.06. The replacement of a Lender pursuant to this Section 2.08 shall be effective on the tenth Business Day (the "Replacement Date") following the date of notice of such replacement to the Lenders through the Administrative Agent, subject to the satisfaction of the following conditions:

(A) each replacement Lender and/or Eligible Assignee, and each Protected Party subject to replacement, shall have satisfied the conditions to an Assignment and Acceptance set forth in Section 11.06(b) and, in connection therewith, the replacement Lender(s) and/or Eligible Assignee(s) shall pay to each Protected Party subject to replacement an amount equal in the aggregate to the sum of (x) the principal of, and all accrued but unpaid interest on, its outstanding Loans and (y) all accrued but unpaid fees, if any, owing to it pursuant to any Loan Document; and

(B) the Borrower shall have paid to the Administrative Agent for the account of each replaced Protected Party an amount equal to all obligations owing to such replaced Protected Party by the Borrower pursuant to this Agreement and the other Loan Documents (other than those obligations of the Borrower referred to in clause (A) above).

In the case of the removal of a Protected Party pursuant to this Section 2.08, upon payment by the Borrower to the Administrative Agent for the account of the Protected Party subject to such removal of an amount equal to the sum of (i) the aggregate principal amount of all Loans held by such Protected Party and (ii) all accrued interest, fees and other amounts owing to such Protected Party hereunder, including, without limitation, all amounts payable by the Borrower to such Protected Party under ARTICLE III or Sections 11.05 and 11.06, such Protected Party shall cease to constitute a Protected Party hereunder; provided that the provisions of this Agreement (including, without limitation, the provisions of ARTICLE III and Sections 11.05 and 11.06) shall continue to govern the rights and obligations of a removed Protected Party with respect to any Loans made or any other actions taken by such removed Protected Party while it was a Protected Party.

SECTION 2.09

[Intentionally Omitted].

SECTION 2.10 Pro-rata Treatment. Except to the extent otherwise provided herein, the Borrowing, each payment or prepayment of principal of or interest on any Loan, each payment of fees and each conversion or continuation of any Loan, shall be allocated pro-rata among the relevant Lenders in accordance with the respective principal amounts of the outstanding Loans of such Lenders; provided that, in the event any amount paid to any Lender pursuant to this Section 2.10 is rescinded or must otherwise be returned by the Administrative Agent, each Lender shall, upon the request of the Administrative Agent, repay to the Administrative Agent the amount so paid to such Lender, with interest for the period commencing on the date such payment is

returned by the Administrative Agent until the date the Administrative Agent receives such repayment at a rate per annum equal to, during the period to but excluding the date two Business Days after such request, the Federal Funds Rate, and thereafter, the Corporate Base Rate plus two percent per annum.

**SECTION 2.11** Sharing of Payments. The Lenders agree among themselves that, except to the extent otherwise provided herein, if any Lender shall obtain payment in respect of any Loans or any other obligation owing to such Lender under this Agreement through the exercise of a right of setoff, banker's lien or counterclaim, or pursuant to a secured claim under Section 506 of the Bankruptcy Code or other security or interest arising from, or in lieu of, such secured claim, received by such Lender under any applicable bankruptcy, insolvency or other similar law or otherwise, or by any other means, in excess of its pro-rata share of such payment as provided for in this Agreement, such Lender shall promptly pay in cash or purchase first, from the Lenders a participation in the Loans in such amounts received by any such Lender, and make such other adjustments from time to time, as shall be equitable to the end that all the Lenders share such payment in accordance with their respective ratable shares as provided for in this Agreement. The Lenders further agree among themselves that if payment to a Lender obtained by such Lender through the exercise of a right of setoff, banker's lien, counterclaim or other event as aforesaid shall be rescinded or must otherwise be restored, each Lender which shall have shared the benefit of such payment shall, by payment in cash or a repurchase of a participation theretofore sold, return its share of that benefit (together with its share of any accrued interest payable with respect thereto) to each Lender whose payment shall have been rescinded or otherwise restored. The Borrower agrees that any Lender so purchasing such a participation may, to the fullest extent permitted by law, exercise all rights of payment, including setoff, banker's lien or counterclaim, with respect to such participation as fully as if such Lender were a holder of such Loans or other obligation in the amount of such participation. If under any applicable bankruptcy, insolvency or other similar law, any Lender receives a secured claim in lieu of a setoff to which this Section 2.11 applies, such Lender shall, to the extent practicable, exercise its rights in respect of such secured claim in a manner consistent with the rights of the Lenders under this Section 2.11 to share in the benefits of any recovery on such secured claim.

**SECTION 2.12** Payments, Computations, Proceeds of Collateral, Etc. (a) Unless otherwise expressly provided in a Loan Document, all payments by the Borrower to the Protected Parties pursuant to each Loan Document shall be made by the Borrower (or by its designee) to the Depository for the pro rata account of the Protected Parties entitled to receive such payment or, at the direction of the Administrative Agent, directly to such Protected Parties. All payments shall be made without setoff, deduction (except for Taxes which are expressly addressed in Section 3.01) or counterclaim not later than 11:00 a.m. New York City time on the date due in Dollars in same day or immediately available funds to such account or accounts (if payment is to be made directly to the Protected Parties) as the Depository shall specify from time to time by notice to the Borrower. Funds received after that time shall be deemed to have been received by the Depository for the pro rata account of the Protected Parties entitled to such payment on the next succeeding Business Day. In the event that a payment is made to Depository for the pro rata account of the Protected Parties entitled to such payment, the Depository shall promptly notify the Administrative Agent of its receipt of the same and remit in same day funds to each Protected Party its share, if any, of such payments received by the Depository for the account of such Protected Party as specified in a written direction from the

Administrative Agent. Whenever any payment is to be made hereunder or under any Loan, or whenever the last day of any Interest Period would otherwise occur on a day other than a Business Day, such payment shall be made, and the last day of such Interest Period shall occur, on the next succeeding Business Day and interest at the Applicable Rate shall accrue on such amount from the original due date to such next Business Day; provided, that if such extension would cause the last day of such Interest Period to occur in a new calendar month, the last day of such Interest Period shall occur on the next preceding Business Day.

(b) Distributions by the Depositary. Each distribution by the Depositary to the Protected Parties shall be made in accordance with Section 2.07. If and to the extent the Borrower shall not have so made a payment in full to any such Protected Party pursuant to clause (a) above but, notwithstanding the foregoing, such Protected Party receives full payment with respect to the amount then due to such Protected Party, such Protected Party shall, on demand by the Administrative Agent, repay such excess amount to the Depositary forthwith together with interest thereon, for each day from the date such amount is distributed to such Protected Party until the date such Protected Party repays such amount to the Depositary, at the Federal Funds Rate for the first three Business Days of such period and at the Applicable Rate thereafter until the date such Protected Party repays such amount to the Depositary, for distribution by the Depositary as directed in writing by the Administrative Agent.

(c) Computations. All computations of interest and fees hereunder shall be made on the basis of the actual number of days elapsed over a year of 360 days. Interest shall accrue and include the date of borrowing but exclude the date of payment.

SECTION 2.13 Interest Rate Risk Management.

(a) No later than 30 days following the Closing Date (in the case of each Derivatives Agreement constituting a swap) or ten Business Days following the Closing Date (in the case of each other Derivatives Agreement), the Borrower will enter into, and maintain in effect at all times until the earlier of (i) the Maturity Date or (ii) the Termination Date, one or more Derivatives Agreements with an aggregate notional balance equal to or exceeding 60% (but not, in respect of each Derivatives Agreement constituting a swap, more than 110%) of the then outstanding principal amount of the Loans, such requirement to be confirmed in writing in the Quarterly Compliance Certificate. Such Derivative Agreements shall provide that notional balances may be adjusted downward from time to time to reflect any prepayments of the Loans.

(b) All payments received from all such Derivatives Agreements shall be deposited directly into the Collection Account.

SECTION 2.14 Incremental Facilities.

(a) The Borrower may by, written notice to the Administrative Agent (with a copy to the Lead Arranger), elect to request prior to the second anniversary of the Closing Date, the establishment of a new term loan commitment (the "New Term Loan Commitment"), by an amount not in excess of Maximum New Term Loan Commitment Amount in the aggregate and not less than the Minimum Loan Amount in the case of each such increase. Any such notice shall specify (i) the date (the "Increased Amount Date") on which Borrower proposes that the

New Term Loan Commitment shall be effective, which shall be a date not less than ten Business Days after the date on which such notice is delivered to the Administrative Agent or such shorter period of time as consented to by the Administrative Agent and (ii) the identity of each Lender or other Person that is an Eligible Assignee (each, a “New Term Loan Lender”, as applicable) to whom the Borrower proposes any portion of such New Term Loan Commitment be allocated and the amounts of such allocations (or requests that the Administrative Agent identify and propose New Term Loan Lenders); provided that any Lender approached to provide all or a portion of the New Term Loan Commitment may elect or decline, in its sole discretion, to provide a New Term Loan Commitment; provided, further, that each Lender and other Person that the Borrower proposes to become a New Term Loan Lender must be reasonably acceptable to Administrative Agent.

(b) Such New Term Loan Commitments shall become effective as of such Increased Amount Date; provided that: (i) no Trigger Event, violation of any Concentration Limit, Default, Event of Default or Servicer Replacement Event shall exist on such Increased Amount Date before or after giving effect to such New Term Loan Commitment or the making of any New Term Loans (as defined below); (ii) the Borrower shall be required to use the proceeds of such New Term Loans to acquire additional Eligible Railcars (such additional Railcars, collectively, the “New Term Loan Railcars”) together with related Leases, each of which must be an Eligible Lease and in the aggregate have an average monthly lease rate factor of equal to or greater than the aggregate average monthly lease rate factor of the existing Portfolio Leases, and each such Railcar and each such Lease, as a condition to the making of any New Term Loan, shall be added to the Portfolio and become subject to the Lien of the Collateral Documents; (iii) the Borrower shall provide to the Lenders and the New Term Loan Lenders, prior to the Increased Amount Date, (A) a complete Funding Package for each New Term Loan Railcar, including Bills of Sale and the Independent Appraisal included within such Funding Package shall be issued and dated within 45 days prior to the Increased Amount Date, and (B) in respect of the Portfolio Railcars, an Independent Appraisal issued and dated within 45 days prior to the Increased Amount Date, (iv) the amount borrowed pursuant to the New Term Loans shall not, at the Increased Amount Date, exceed the New Term Loan Advance Rate, (v) both before and after giving effect to the making of any New Term Loans, each of the conditions set forth in Section 4.02 shall be satisfied, mutatis mutandis, with respect to the New Term Loans and the New Term Loan Railcar; (vi) the New Term Loan Commitments, as applicable, shall be effected pursuant to one or more Joinder Agreements executed and delivered by the Borrower, the New Term Loan Lender, as applicable, and Administrative Agent, and each of which shall be recorded in the Register and each New Term Loan Lender shall be subject to the requirements set forth in Section 3.01(d); (vii) Borrower shall make any payments required pursuant to Section 3.04 in connection with the New Term Loan Commitments; (viii) the Borrower shall deliver or cause to be paid any fees in favor of the Administrative Agent or any Lender, New Term Loan Lender or other Creditor in connection with the New Term Loan Commitment, and (ix) the Borrower shall deliver or cause to be delivered all legal opinions or other documents reasonably requested by the Administrative Agent in connection with any such transaction (such legal opinions and other documents to be substantially similar to the corresponding items described in Section 4.02).

(c) On any Increased Amount Date on which any New Term Loan Commitments are effective, subject to the satisfaction of the foregoing terms and conditions, (i) each New Term Loan Lender shall make a Loan to Borrower (the “New Term Loans”) in an amount equal to its

New Term Loan Commitment, and (ii) each New Term Loan Lender shall become a Lender hereunder with respect to the New Term Loan Commitment and the New Term Loans made pursuant thereto.

(d) The Administrative Agent shall notify the Lenders promptly upon receipt of Borrower's notice of each Increased Amount Date and in respect thereof the New Term Loan Commitments and the New Term Loan Lenders, subject to the terms and conditions contemplated by this Section 2.14.

(e) The terms and provisions of the New Term Loan and New Term Loan Commitments shall be as set forth herein or in the Joinder Agreement. In any event (i) the maturity date of the New Term Loans shall be Maturity Date, (ii) the New Term Loans shall bear interest on the outstanding principal amount thereof at a rate per annum equal to the Applicable Rate; and (iii) all other terms of the New Term Loans and New Term Loan Commitments, if not consistent with the terms of the Loans must be reasonably acceptable to the Administrative Agent. Each Joinder Agreement may, without the consent of any other Lenders, effect such amendments to this Agreement and the other Credit Documents as may be necessary or appropriate, in the opinion of Administrative Agent to effect the provision of this Section 2.14.

### ARTICLE III

#### TAXES, YIELD PROTECTION AND ILLEGALITY

**SECTION 4.01** Taxes. (a) Payments Net of Certain Taxes. Any and all payments by the Borrower to or for the account of any Protected Party hereunder or under any other Loan Document shall be made free and clear of and without deduction for any and all present or future taxes, duties, levies, imposts, deductions, charges or withholdings, and all liabilities with respect thereto (collectively "Taxes"), excluding, in the case of each Protected Party (i) Taxes imposed on its net income, profits and franchise, branch profits, capital, doing business or net worth Taxes imposed on it, in each case by the jurisdiction under the laws of which such Protected Party is organized, is a resident for Tax purposes, has its applicable lending office or does business (unless such imposition is made by a jurisdiction other than one where such Protected Party is organized, Tax resident, or has its applicable lending office and is solely on account of such Protected Party being a party to, receiving a payment under, or enforcing, this Agreement or any other Loan Document), or any political subdivision thereof, and (ii) any U.S. federal withholding Taxes imposed under FATCA (all such non-excluded Taxes being hereinafter referred to as "Indemnified Taxes"), except as required by law. If the Borrower shall be required by law to deduct or withhold any Taxes from or in respect of any sum payable under this Agreement or any other Loan Document to any Protected Party, (i) subject to clauses (e), (f) and (g) of this Section 3.01, if such Tax is an Indemnified Tax, the sum payable shall be increased as necessary so that after making all required deductions and withholdings of Indemnified Taxes (including deductions and withholdings applicable to additional sums payable under this Section 3.01) such Protected Party receives an amount equal to the sum it would have received had no such deductions been made, (ii) the Borrower shall make such deductions and withholdings, and (iii) the Borrower shall pay the full amount deducted or withheld to the relevant taxation authority or other authority in accordance with Applicable Law.

(b) Other Taxes. In addition, the Borrower agrees to pay any and all present or future stamp, documentary or excise Taxes or similar levies which arise from any payment made under this Agreement or any other Loan Document or from the execution or delivery of, or otherwise with respect to, this Agreement or any other Loan Document (hereinafter referred to as "Other Taxes").

(c) Additional Taxes. The Borrower agrees to indemnify each Protected Party for the full amount of Indemnified Taxes imposed on any payment hereunder or under any other Loan Document and for Other Taxes (including any Indemnified Taxes or Other Taxes imposed or asserted by any jurisdiction on amounts payable under this Section 3.01), in each case paid by such Protected Party and any liability (including penalties, interest and expenses) arising therefrom or with respect thereto within 30 days after receipt of documentation reasonably evidencing the amount and nature of such payment.

(d) Tax Forms and Certificates.

(i) Each Lender that is a "United States person" as defined in Section 7701(a)(30) of the Code (each, a "U.S. Lender") shall, on or prior to the date of its execution and delivery of this Agreement in the case of each Lender listed on the signature pages thereof and on or prior to the date on which it becomes a Lender in the case of each other Lender, and from time to time thereafter as reasonably requested by the Borrower, the Administrative Agent or the Depository, or as required by law on or prior to the expiration of the form or certificate most recently provided, provide the Borrower, the Administrative Agent and the Depository with true, complete and correct copies of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax.

(ii) Each Lender that is not a U.S. Lender (each, a "Non-U.S. Lender") shall, on or prior to the date of its execution and delivery of this Agreement in the case of each Lender listed on the signature pages thereof and on or prior to the date on which it becomes a Lender in the case of each other Lender, and from time to time thereafter as requested by the Borrower, the Administrative Agent or the Depository, or as required by law on or prior to the expiration of the form or certificate most recently provided, provide the Borrower, the Administrative Agent and the Depository with true, complete and correct copies of (a) Internal Revenue Service Form W-8BEN-E or W-8ECI, as appropriate, or any successor form prescribed by the Internal Revenue Service, certifying that such Lender is entitled to benefits under an income tax treaty to which the United States is a party which reduces to zero the rate of withholding tax on payments of interest or certifying that the income receivable pursuant to this Agreement is effectively connected with the conduct of a trade or business in the United States, (b) any other form or certificate required by any United States taxing authority (including any certificate required by Sections 871(h) and 881(c) of the Code), certifying that such Lender is entitled to a complete exemption from tax on payments pursuant to this Agreement or any of the other Loan Documents or (c) or to the extent such Non-U.S. Lender is not the beneficial owner, duly completed copies of IRS Form W-8IMY accompanied by applicable documents from each beneficial owner certifying that such Non-U.S. Lender



and each beneficial owner is entitled to a complete exemption from tax on payments pursuant to this Agreement or any of the other Loan Documents.

(iii) The Administrative Agent, on its own behalf, shall, on or prior to the date of its execution and delivery of this Agreement in the case of the initial Administrative Agent, and on or prior to the date on which a replacement Administrative Agent may become Administrative Agent hereunder, and from time to time thereafter as requested by the Borrower or the Depository, or as required by law on or prior to the expiration of the form or certificate most recently provided, provide the Borrower and the Depository the applicable forms described in clause (i) or (ii) above certifying that such Administrative Agent is entitled to a complete exemption from tax on payments pursuant to this Agreement or any of the other Loan Documents as to which it is the beneficial owner.

(iv) Additionally, if a Lender or Protected Party sells, assigns or transfers any participation in a Loan to another Person, such Lender or Protected Party (including any transferee or successor Lender or Protected Party) shall provide any new forms required above as a result of such sale or transfer.

(e) Failure to Provide Tax Forms and Certificates. For any period with respect to which a Lender or the Administrative Agent has failed to provide the Borrower and, as applicable, the Administrative Agent or the Depository, with the appropriate form or certificate in the manner and as prescribed by Section 3.01(d) (unless such failure is due to a change in treaty, law or regulation occurring subsequent to the date on which a form originally was required to be provided), neither such Lender, the Administrative Agent, nor any other Protected Party shall be entitled to additional amounts under Section 3.01(a) or indemnification under Section 3.01(b) with respect to Taxes imposed by the United States or any political subdivision therein as a result of such failure (and such Taxes shall not be "Indemnified Taxes").

(f) Obligations in Respect of Non-U.S. Lenders. The Borrower shall not be required to indemnify any Non-U.S. Lender or related Protected Party or to pay any additional amounts to any Non-U.S. Lender or related Protected Party, in respect of United States Federal withholding Tax pursuant to subsections (a) or (b) to the extent that the obligation to withhold amounts with respect to United States Federal withholding Tax existed on the date such Non-U.S. Lender became a party to this Agreement (or, in the case of a participant, on the date such participant acquired its participation interest) or to the extent such obligation to withhold amounts with respect to United States federal withholding tax arises after such date as a result of a change in residence, place of incorporation, principal place of business, or office or location in which Loans governed by this Agreement are booked or recorded by such Lender or Protected Party; provided, however, that this subsection (f) shall not apply (i) to any participant that becomes a participant as a result of an assignment, participation, transfer or designation made at the request of the Borrower or where a change of office or location in which Loans governed by this Agreement are booked or recorded is made at the request of the Borrower and (ii) to the extent the indemnity payment or additional amounts any participant would be entitled to receive (without regard to this subsection (f)) do not exceed the indemnity payment or additional amounts that the Person making the assignment, participation or transfer to such participant

would have been entitled to receive in the absence of such assignment, participation, transfer or designation.

(g) FATCA.

(i) Each Lender shall deliver to the Borrower, the Depository and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower, the Depository or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower, the Depository or the Administrative Agent as may be necessary for the Borrower, the Depository and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment (and any such Taxes deducted or withheld shall not be an "Indemnified Tax").

(ii) The Administrative Agent shall deliver to the Borrower and the Depository at the time or times prescribed by law and at such time or times reasonably requested by the Borrower such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Depository as may be necessary for it to comply with its obligations under FATCA and to determine that such Administrative Agent has complied with its obligations under FATCA or to determine the amount to deduct and withhold from such payment (and any such Taxes deducted or withheld shall not be an "Indemnified Tax").

(h) Mitigation. If the Borrower is required to pay additional amounts to or for the account of any Protected Party pursuant to this Section 3.01, then such Protected Party will agree to use reasonable efforts, at the expense of the Borrower, to eliminate or reduce any such additional payment which may thereafter accrue if such change, in the judgment of such Protected Party, is not otherwise disadvantageous to such Lender.

(i) Tax Receipts. Within 30 days after the date of any payment of Indemnified Taxes, the Borrower shall, if requested by the Administrative Agent, furnish to the Administrative Agent the original or a certified copy of a receipt evidencing such payment (to the extent one is so provided).

(j) Refunds. If a Protected Party determines that it has received a refund, or cash benefit of any credit or offset of any Indemnified Taxes or Other Taxes in either case from the jurisdiction to which such Indemnified Taxes or Other Taxes were paid and which in the Protected Party's sole discretion exercised in good faith is allocable to amounts with respect to which it has been indemnified by the Borrower hereunder or with respect to which the Borrower has paid additional amounts pursuant to this Section 3.01, it shall pay over within the next 30 days the amount of such refund, credit or offset to the Borrower (but only to the extent of indemnity payments made, or additional payments paid, by the Borrower with respect to the Indemnified Taxes or Other Taxes giving rise to such refund).

(k) Survival. Without prejudice to the survival of any other agreement of the Borrower hereunder, the agreements and obligations of the parties contained in subsections (a) through (j) above shall survive the payment in full of principal and interest hereunder and under any instrument delivered hereunder.

SECTION 4.02 Illegality. If, on or after the date of this Agreement, the adoption of any Applicable Law, or any change in any Applicable Law, or any change in the interpretation or administration thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by any Lender with any request or directive (whether or not having the force of law) of any such authority, central bank or comparable agency shall make it unlawful or impossible for any Lender to make, maintain or fund any of its Loans at a rate based upon LIBOR (such event being hereinafter referred to as an “Illegality Event”) and such Lender shall so notify the Administrative Agent, the Administrative Agent shall forthwith give notice thereof to the other Lenders and the Borrower, whereupon until such Lender notifies the Borrower and the Administrative Agent that the circumstances giving rise to such suspension no longer exist, interest on the Loans of such Lender shall accrue and be payable at the Corporate Base Rate. If an Illegality Event does not affect all Lenders, the Administrative Agent shall make a good faith effort to cause the Lenders that are not affected by such Illegality Event to purchase the Loans held by the affected Lenders; provided that any such purchase shall be in each Lender’s sole discretion. The foregoing shall not delay or otherwise affect the Borrower’s obligation to pay interest at the Corporate Base Rate as provided in this paragraph.

SECTION 4.03 Increased Costs and Reduced Return. (a) If, on or after the Closing Date, a Change in Law:

- (i) shall impose, modify or hold applicable any reserve, special deposit, compulsory loan or similar requirement against assets held by, deposits or other liabilities in or for the account of, advances, loans or other extensions of credit by, or any other acquisition of funds by, any office of such Protected Party which is not otherwise included in the determination of LIBOR hereunder; or
- (ii) shall impose on such Protected Party any other condition;

and the result of any of the foregoing is to increase the cost to such Protected Party of making, converting into, continuing or maintaining any Loans or to reduce any amount receivable hereunder in respect thereof (any such increased cost or reduction hereinafter referred to as an “Increased Cost”), then, in any such case, upon notice to the Borrower from such Protected Party, through the Administrative Agent, in accordance herewith, the Borrower shall be obligated to pay such Protected Party, in accordance with Section 2.07(c), any additional amounts necessary to compensate such Protected Party on an after-tax basis (after taking into account applicable deductions and credits in respect of the amount indemnified) for such increased cost or reduced amount receivable.

(b) If any Protected Party shall have determined that a Change in Law regarding capital adequacy, or compliance by such Protected Party, or its parent corporation, with any request or directive regarding capital adequacy (whether or not having the force of law) of any

such authority, central bank or comparable agency, has or would have the effect of reducing the rate of return on such Protected Party's (or parent corporation's) capital or assets as a consequence of its commitments or obligations hereunder to a level below that which such Protected Party, or its parent corporation, could have achieved but for such adoption, effectiveness, change or compliance (taking into consideration such Protected Party's (or parent corporation's) policies with respect to capital adequacy), then, upon notice from such Protected Party to the Borrower, the Borrower shall be obligated to pay to such Protected Party in accordance with Section 2.07(c), such additional amount or amounts as will compensate such Protected Party on an after-tax basis (after taking into account applicable deductions and credits in respect of the amount indemnified) for such reduction. Each determination by any such Protected Party of amounts owing under this Section shall, absent manifest error, be conclusive and binding on the parties hereto.

(c) A certificate of each Protected Party setting forth such amount or amounts as shall be necessary to compensate such Protected Party or its holding company as specified in subsection (a) or (b) above, as the case may be, shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay each Protected Party the amount shown as due on any such certificate delivered by it on the next succeeding Settlement Date in accordance with Section 2.07(c).

(d) Promptly after any Protected Party becomes aware of any circumstance that will, in its sole judgment, result in a request for increased compensation pursuant to this Section, such Protected Party shall notify the Borrower thereof. Failure on the part of any Protected Party so to notify the Borrower or to demand compensation for any increased costs or reduction in amounts received or receivable or reduction in return on capital with respect to any period shall not constitute a waiver of such Protected Party's right to demand compensation with respect to such period or any other period. The protection of this Section shall be available to each Protected Party regardless of any possible contention of the invalidity or inapplicability of the law, rule, regulation, guideline or other change or condition which shall have occurred or been imposed.

**SECTION 4.04** Funding Losses. The Borrower shall indemnify each Protected Party against any loss or reasonable expense (but excluding in any event loss of anticipated profit) which such Protected Party may sustain or incur as a consequence of (i) any failure by the Borrower to fulfill on the date of the Borrowing hereunder the applicable conditions set forth in ARTICLE IV, so long as any such failure is not solely due to the failure of the Administrative Agent or any Lender to comply with its obligations hereunder in all material respects, (ii) any failure by the Borrower to borrow or to prepay any Loan hereunder after irrevocable notice of such Borrowing or prepayment has been given pursuant to Section 2.02 or 2.07, as applicable, so long as any such failure is not solely due to the failure of the Administrative Agent or any Lender to comply with its obligations hereunder in all material respects or (iii) any payment or prepayment of a Loan (including, without limitation, payment or prepayment pursuant to Section 2.08), whether voluntary or involuntary, pursuant to any other provision of this Agreement or otherwise made on a date other than the last day of the then applicable Interest Period, so long as any such payment, prepayment or conversion is not solely due to the failure of the Administrative Agent or any Lender to comply with its obligations hereunder in all material respects (each such loss or expense, a "Funding Loss"). Such Funding Losses shall be determined by each Protected Party in its sole discretion and shall include an amount equal to the excess, if any, as reasonably

determined by such Protected Party, of (i) its cost of obtaining the funds for the Loan being paid, prepaid or not borrowed (based on LIBOR), for the period from the date of such payment, prepayment or failure to borrow to the last day of the then applicable Interest Period (or, in the case of a failure to borrow, the Interest Period for such Loan which would have been applicable to such Loan on the date of such failure to borrow) over (ii) the amount of interest (as reasonably determined by such Protected Party) that would be realized by such Protected Party in reemploying the funds so paid, prepaid or not borrowed or continued for such period or Interest Period, as the case may be. A certificate of any Protected Party setting forth any amount or amounts which such Protected Party is entitled to receive pursuant to this Section shall be delivered to the Borrower and shall be conclusive absent manifest error.

SECTION 4.05

Market Disruption.

(a) If a Market Disruption Event (as defined in subsection (b) of this Section 3.05) exists with respect to any Loan, then the portion of such Loan held by each affected Lender for such Interest Period shall bear interest on the outstanding principal amount thereof, for each day during each Interest Period applicable thereto, at a rate per annum (in lieu of the Applicable Rate with respect to such Loan prior to giving effect to such Market Disruption Event) equal to the sum of:

- i. the Applicable Facility Margin; plus
- ii. the cost of funds of such Lender(s) for such Interest Period (the "Market Disruption Cost of Funds").

(b) For purposes of this Section 3.05, "Market Disruption Event" means, with respect to any Interest Period, one or more Lenders, whose aggregate Credit Exposure (as hereinafter defined) constitutes more than sixty-six and two thirds percent ( $66\frac{2}{3}\%$ ) of the Credit Exposure of all Lenders at such time, advises the Administrative Agent and the Borrower no later than three Business Days prior to the first affected Interest Period in respect of such Market Disruption Event that the cost of obtaining matching deposits in the relevant interbank market for such period would exceed the LIBOR rate for such Interest Period other than reasons relating to the creditworthiness or financial condition of such Lenders.

(c) Each affected Lender shall set forth in a certification provided to the Administrative Agent and Borrower its Market Disruption Cost of Funds for each Interest Period with respect to which interest is computed in accordance with Section 3.05(a) (including the increase to such costs, in reasonable detail), provided that no Lender shall be required to disclose any confidential information relating to its capital structure or funding procedures.

(d) Each Market Disruption Event shall be deemed to be in existence only for the Interest Period in respect of which the notice to the Borrower provided for above was given, and shall be deemed to cease to occur for any subsequent Interest Period unless the Administrative Agent or affected Lenders (as applicable) make the determination that a Market Disruption Event exists for such subsequent Interest Period, in which case the applicable procedures described above shall be followed again for such subsequent Interest Period, including the notice by the

Administrative Agent to the Borrower and delivery of the officer's certificate described above. There cannot be more than one Market Disruption Event applicable for any Interest Period.

#### ARTICLE IV

##### CONDITIONS

SECTION 5.01 Conditions to Effectiveness of this Agreement. The obligations of each Lender to make a Loan on the Closing Date is subject to the satisfaction of the following conditions:

- (a) Executed Loan Documents. Receipt by the Administrative Agent of duly executed copies of: (i) this Agreement; (ii) the Notes (if requested under Section 2.04); (iii) the Collateral Documents; and (iv) all other Loan Documents, each in form and substance satisfactory to the Administrative Agent or its counsel in their sole discretion.
- (b) Servicing Documents. Receipt by the Administrative Agent of a duly executed copy of each Servicing Document, in each case in form and substance satisfactory to the Administrative Agent or its counsel in their sole discretion.
- (c) Due Diligence. Each Lender shall have completed, and be satisfied with the results of (in compliance with all Applicable Laws where relevant), its "know your client", business and legal due diligence review with respect to the Servicer and the Borrower and the transactions contemplated hereby, including, without limitation, a due diligence review of the financial statements, if any, of the Servicer and the Borrower, the tax status of the Servicer and the Borrower and an environmental, employee benefits and insurance due diligence review.
- (d) Customer Collections Account Documents. The Administrative Agent shall have received (i) a supplement to the Customer Collections Account Administration Agreement, duly executed by TILC, the Collateral Agent, and the Marks Company Delaware Trustee of the Customer Collections Account Administration Agreement, and certified by a Responsible Officer of the Marks Company Delaware Trustee as a true and correct copy thereof and (ii) evidence satisfactory to the Administrative Agent or its counsel that TILC shall have been instructed, and shall have agreed, to remit all payments made by Lessees to the Customer Collections Account in respect of the Portfolio in accordance with the terms of the Customer Collections Account Administration Agreement.

SECTION 5.02 Conditions to the Closing Date. The obligation of any Lender to make a Loan on the occasion of the Borrowing on the Closing Date is subject to the prior approval by the Administrative Agent at the Borrower's request to include the Initial Portfolio Railcars and related Leases in accordance with Section 2.02, and to the satisfaction of the following conditions:

- (a) Notice. The Borrower shall have delivered to the Administrative Agent an appropriate Notice of Borrowing, duly executed and completed, by the time specified in Section 2.02.

(b) Representations and Warranties. The representations and warranties made by TILC and each Facility Party in any Transaction Document to which it is a party are true and correct in all material respects at and as if made as of such date except to the extent they expressly relate to an earlier date.

(c) No Default. No Trigger Event, violation of any Concentration Limit, Default, Event of Default or Servicer Replacement Event shall exist or be continuing either prior to or immediately after giving effect thereto to the making of a Loan (and the application of the proceeds thereof).

(d) [Intentionally Omitted].

(e) [Intentionally Omitted].

(f) Leases; Additional Collateral Certificate. Receipt by the Administrative Agent of (i) an originally executed Additional Collateral Certificate with respect to each Initial Portfolio Railcar and related Lease and (ii) any other Lease Documents to which the Borrower is a party (such other Lease Documents may be delivered on a CD-ROM).

(g) Recordations and Filings. The Administrative Agent shall have received evidence satisfactory to it in its reasonable discretion from the official records of the STB and the Registrar General of Canada (and a legal opinion in form and substance reasonably acceptable to the Administrative Agent or its counsel) that the Security Agreement (or a memorandum thereof) and each applicable Bill of Sale and Security Agreement Supplement (as defined in the Security Agreement) have been registered, recorded or filed for recordation in accordance with Applicable Law. No filings will be made in Mexico.

(h) Title to the Collateral. The Borrower shall have good and marketable legal and beneficial title to each Initial Portfolio Railcar and good title to all other items of applicable Collateral, free and clear of all Liens created or incurred by it or permitted to exist by it other than Permitted Liens.

(i) Assignment of Leases and Permits. A duly executed counterpart of any agreement required to establish a perfected first priority Lien in favor of the Collateral Agent, for its benefit and the benefit of the Lenders and each other Protected Party, relating to the Lease of each Initial Portfolio Railcar, dated as of the Closing Date, satisfactory in form and substance to the Administrative Agent or its counsel, and evidence from the official records of the STB and the Registrar General of Canada (or a legal opinion in form and substance reasonably acceptable to the Administrative Agent or its counsel) that such agreement (or a memorandum thereof) has been registered, recorded or filed for recordation in accordance with Applicable Law. In addition, the Administrative Agent shall have received satisfactory evidence that any Permits needed to make all required payments under each such Lease to the Borrower in Dollars have been obtained and are in full force and effect.

(j) Acceptance. The Administrative Agent shall have received a copy of the certificate of acceptance of each Initial Portfolio Railcar signed by a Responsible Officer of the Borrower.

- (k) Marks Company Matters. The Administrative Agent shall have received evidence satisfactory to it or its counsel in their reasonable discretion that the Marks relating to the Initial Portfolio Railcars have been added to the separate portfolio of trust assets of the Marks Company referred to in Section 4.02(x).
- (l) Funding Package. Receipt of the complete Funding Package for each such Railcar, including Bills of Sale. The Independent Appraisal included within such Funding Package shall be issued and dated within 45 days prior to the proposed Closing Date.
- (m) Eligibility. A Responsible Officer of each of the Servicer and Borrower shall have certified to the Administrative Agent and each Lender that (i) each Initial Portfolio Railcar is an Eligible Railcar and (ii) each Lease related to the Initial Portfolio Railcars is an Eligible Lease;
- (n) Lessee Notice; Lessee Consents. To the extent required pursuant to Section 6.14, each Lessee Notice and each Lessee Consent.
- (o) Fees. The Borrower shall have paid, or shall concurrently pay with such funding, the fees, costs and expenses then payable by the Borrower under Section 11.04 of this Agreement to the extent then invoiced or otherwise notified to the Borrower in writing.
- (p) Payoff Letter. A payoff letter from all Persons (if any) holding Liens of record (other than Permitted Liens) on or prior to the Closing Date with respect to any Initial Portfolio Railcar shall have been delivered to the Administrative Agent.
- (q) [Intentionally Omitted].
- (r) Other Documents and Action. The Borrower shall deliver to the Administrative Agent such other instruments, agreements and documents and take such other action as the Administrative Agent may reasonably request in connection with the Loans to be made on the Closing Date.
- (s) [Intentionally Omitted].
- (t) Purchase and Contribution Agreement. Receipt by the Administrative Agent of a duly executed copy of each applicable: (i) Purchase and Contribution Agreement, (ii) Bill of Sale and (iii) Assignment and Assumption (as defined in the applicable Purchase and Contribution Agreement), in form and substance satisfactory to the Administrative Agent or its counsel in their sole discretion.
- (u) Organization Documents. After giving effect to the transactions contemplated by the Transaction Documents, the ownership, capital, corporate, organizational and legal structure of each Facility Party shall be reasonably satisfactory to the Lenders, and the Administrative Agent shall have received: (i) a copy of the Organizational Documents of each Seller, each Facility Party, the Collateral Agent, the Depositary, the Custodian, and the Marks Company, certified as of a recent date by the Secretary of State of its respective state of organization (or, in the case of the Collateral Agent, the Depositary or the Custodian, the Office of the Comptroller of the Currency), and a certificate as to the good standing of each Seller, each Facility Party, the



Collateral Agent, the Depositary, the Custodian and the Marks Company, from such Secretary of State (or the Office of the Comptroller of the Currency, as applicable), as of a recent date; (ii) a certificate of the Secretary or Assistant Secretary of each Seller, each Facility Party, the Collateral Agent, the Depositary, the Custodian, and the Marks Company dated the Closing Date and certifying (A) that the certificate of formation or ARTICLES of incorporation or other Organizational Documents, as applicable, of each Seller, such Facility Party, the Collateral Agent, the Depositary, the Custodian, or the Marks Company, as applicable, have not been amended since the date of the last amendment thereto shown on the related certificate furnished pursuant to clause (i) above; (B) that attached thereto is a true and complete copy of the operating agreement or by-laws (or their equivalent) of each Seller, such Facility Party, the Collateral Agent, the Depositary, the Custodian, or the Marks Company, as applicable, as in effect on the Closing Date and at all times since a date prior to the date of the resolutions described in clause (C) below, (C) that attached thereto is a true and complete copy of resolutions (which may, for the Collateral Agent, the Depositary and the Custodian, be general resolutions) duly adopted by the board of directors or other governing body of each Seller, such Facility Party, the Collateral Agent, the Depositary, the Custodian, or the Marks Company, as applicable, authorizing the execution, delivery and performance of the Transaction Documents to which it is to be a party and, in the case of the Borrower, the borrowings hereunder, and that such resolutions have not been modified, rescinded or amended and are in full force and effect; and (D) as to the incumbency and specimen signature of each officer executing any Transaction Document or any other document delivered in connection herewith or therewith on behalf of each Seller, such Facility Party, the Collateral Agent, the Depositary, the Custodian, or the Marks Company; and (iii) a certificate of another officer as to the incumbency and specimen signature of the Secretary or Assistant Secretary executing the certificate pursuant to clause (ii) above.

(v) Opinions of Counsel. On the Closing Date, the Administrative Agent shall have received:

(i) favorable written opinions (including, without limitation, as to true sale, non-rejection and nonconsolidation matters) of Vedder Price P.C. counsel to the Borrower, the Servicer and each Seller, addressed to the Administrative Agent and each Lender, dated the Closing Date, substantially in the form of each of Exhibits D-1 and D-4 hereto and covering such additional matters incident to the transactions contemplated hereby as the Administrative Agent or its counsel may reasonably request;

(ii) a favorable written opinion of in-house counsel to each of the Servicer and each Seller, addressed to the Administrative Agent and each Lender, dated the Closing Date substantially in the form of Exhibit D-2 hereto, covering such additional matters incident to the transactions contemplated hereby as the Administrative Agent or its counsel may reasonably request

(iii) from Morris James LLP, special Delaware counsel to the Borrower, opinions addressed to the Administrative Agent and each Lender, dated the Closing Date, substantially in the form of Exhibit D-3 hereto and covering such additional matters incident to the transactions contemplated hereby as the Administrative Agent or its counsel may reasonably request;

(iv) from Chapman and Cutler LLP, special counsel to U.S. Bank National Association, an opinion addressed to the Administrative Agent and each Lender, dated the Closing Date, substantially in the form of Exhibit D-8 hereto and covering such additional matters incident to the transactions contemplated hereby as the Administrative Agent or its counsel may reasonably request;

(v) from special STB counsel to the Borrower, oral or email confirmation that no liens exist on the Initial Portfolio Railcars and related Leases which would have a priority over the liens granted to the Collateral Agent on the Closing Date (within three Business Days of the Closing Date, the Borrower shall procure an opinion addressed to the Administrative Agent and each Lender, dated the Closing Date, substantially in the form of Exhibit D-5 hereto and covering such additional matters incident to the transactions contemplated hereby as the Administrative Agent or its counsel may reasonably request);

(vi) from special Canadian counsel to the Administrative Agent, oral or email confirmation that no liens exist on the Initial Portfolio Railcars and related Leases which would have a priority over the liens granted to the Collateral Agent on the Closing Date (within three Business Days of the Closing Date, the Borrower shall procure an opinion addressed to the Administrative Agent and each Lender, dated the Closing Date, substantially in the form of Exhibit D-6 hereto and covering such additional matters incident to the transactions contemplated hereby as the Administrative Agent or its counsel may reasonably request);

(vii) from special counsel to the Marks Company, an opinion addressed to the Administrative Agent and each Lender, dated the Closing Date, substantially in the form of Exhibit D-7 hereto and covering such additional matters incident to the transactions contemplated hereby as the Administrative Agent or its counsel may reasonably request.

(w) Perfection of Security Interests; Search Reports. On or prior to the Closing Date, the Administrative Agent shall have received:

(i) a Perfection Certificate from each Facility Party, such Perfection Certificate and all information set forth therein to be correct and complete in all respects;

(ii) appropriate financing statements (Form UCC-1 or such other financing statements or similar notices as shall be required by local law) fully executed for filing under the Uniform Commercial Code or other applicable local law of each jurisdiction in which the filing of a financing statement or giving of notice may be required, or reasonably requested by the Administrative Agent or its counsel, to perfect the security interests intended to be created by the Collateral Documents;

(iii) all of the Marks Company Interests issued or to be issued to the Borrower on or prior to the Closing Date, which Marks Company Interests shall be in suitable form for transfer by delivery or shall be accompanied by duly executed instruments of transfer or assignment in blank, with signatures appropriately guaranteed, accompanied in each

case by any required transfer tax stamps, all in form and substance satisfactory to the Administrative Agent or its counsel;

(iv) all of the membership interests of the Borrower issued or to be issued to TILC on or prior to the Closing Date, which membership interests shall be in suitable form for transfer by delivery or shall be accompanied by duly executed instruments of transfer or assignment in blank, with signatures appropriately guaranteed, accompanied in each case by any required transfer tax stamps, all in form and substance satisfactory to the Administrative Agent or its counsel;

(v) copies of reports from CT Corporation Service System or other independent search service reasonably satisfactory to the Administrative Agent or its counsel listing all effective financing statements that name the Borrower or any other Facility Party, as such (under its present name and any previous name and, if requested by the Collateral Agent, under any trade names), as debtor or seller that are filed in the jurisdictions wherein such filing would be effective to perfect a Lien in the Collateral or any portion thereof, together with copies of such financing statements (none of which shall cover the Collateral except to the extent evidencing Permitted Liens or for which the Administrative Agent shall have received termination statements (Form UCC-3 or such other termination statements as shall be required by local law) fully executed for filing); and

(vi) evidence of the completion of all other filings and recordings of or with respect to the Collateral Documents, including, without limitation, all filings and recordings specified in Schedule 3.02 to the Security Agreement, and of all other actions as may be necessary to perfect the security interests intended to be created by the Collateral Documents.

(x) Marks Company Documents. The Administrative Agent shall have received (i) evidence satisfactory to the Administrative Agent or its counsel that the UTI Trustee under the Marks Company Trust Agreement shall have identified and allocated or caused to be identified and allocated on the books and records of the Marks Company a separate portfolio of trust assets consisting of all of the Marks relating to Portfolio Railcars and all rights of the Marks Company with respect thereto, including, without limitation, the right to payment of Railroad Mileage Credits, and that the Marks Company Delaware Trustee shall have executed and delivered to the Borrower on behalf of the Marks Company a certificate evidencing such special unit of beneficial interests, (ii) a supplement to the Marks Company Trust Agreement, duly executed by TILC and the Marks Company Delaware Trustee, and certified by a Responsible Officer of the Marks Company Delaware Trustee as a true and correct copy thereof, creating the special unit of beneficial interests referred to in clause (ii) above and containing such other provisions as the Administrative Agent or its counsel reasonably may request and (iii) evidence satisfactory to the Administrative Agent or its counsel that TILC, as servicer of the Marks Company, shall have been instructed, and shall have agreed, to remit all receipts in respect of the trust assets allocated to the special unit of beneficial interests referred to in clauses (i) and (ii) above in accordance with the Marks Company Servicing Agreement.

(y) Evidence of Insurance. Receipt by the Administrative Agent of copies of insurance policies or certificates of insurance of the Borrower evidencing liability and casualty insurance meeting the requirements set forth in the Loan Documents, including, but not limited to, naming the Collateral Agent as additional insured and sole loss payee on behalf of the Lenders.

(z) Consents and Approvals. On the Closing Date, all necessary governmental (domestic or foreign), regulatory and third party approvals in connection with the transactions contemplated by the Transaction Documents and otherwise referred to herein or therein shall have been obtained and remain in full force and effect.

(aa) Material Adverse Effect. There shall not have occurred since December 31, 2016 any development or event relating to or affecting TILC or a Facility Party which has had or could be reasonably expected to have a Material Adverse Effect.

(bb) Litigation: Judgments. On the Closing Date, there shall be no actions, suits, proceedings or investigations pending or threatened (i) with respect to this Agreement or any other Transaction Document or the transactions contemplated hereby or thereby, (ii) against the Borrower or (iii) against the Servicer or the Marks Company and which the Administrative Agent shall determine could reasonably be expected to have a Material Adverse Effect. Additionally, there shall not exist any judgment, order, injunction or other restraint issued or filed or a hearing seeking injunctive relief or other restraint pending or notified prohibiting or imposing materially adverse conditions upon the consummation of the transactions contemplated by the Transaction Documents and otherwise referred to herein or therein.

(cc) Solvency Certificate. On or prior to the Closing Date, the Borrower shall have delivered or caused to be delivered to the Administrative Agent a solvency certificate duly executed by a Responsible Officer of the Borrower, in form and substance satisfactory to the Administrative Agent or its counsel, setting forth the conclusions that, after giving effect to the consummation of all financings contemplated herein, the Borrower will be Solvent.

(dd) Financial Information. The Administrative Agent shall be reasonably satisfied that the financial statements referred to in Section 5.05 are not materially inconsistent with the financial information most recently delivered to the Administrative Agent prior to the Closing Date.

(ee) Counsel Fees. The Administrative Agent shall have received full payment of the fees and expenses of its counsel described in Section 11.04 which are billed through the Closing Date.

(ff) Railcar Portfolio Data Set. On or prior to the Closing Date, the Borrower shall have delivered or caused to be delivered to the Administrative Agent the Railcar Portfolio Data Set.

(gg) Officer's Certificate. The Administrative Agent shall have received a certificate, dated the Closing Date and duly executed by a Responsible Officer of each of the Servicer and the Borrower, confirming compliance with the conditions precedent set forth in paragraphs (b), (c), (h) and (m) of this Section 4.02, and confirming that the Original Value of each Initial



Facility Party or any of their respective Affiliates) is required to be obtained or made by or on behalf of the Borrower in connection with the Borrowing or other extensions of credit hereunder, the execution, delivery, performance, validity or enforceability by or against it of the Transaction Documents or the exercise of the rights and remedies of the Administrative Agent, the Collateral Agent or any other Protected Party pursuant to this Agreement or any other Loan Document, except for (i) consents, authorizations, notices and filings disclosed in Schedule 5.02, all of which have been obtained or made, (ii) filings to perfect and maintain the perfection of the Liens created by the Collateral Documents and (iii) consents, authorizations, notices and filings in connection with the disposal of Collateral required by laws affecting the offering and sale of securities. This Agreement has been, and each other Transaction Document to which the Borrower Party is a party will be, duly executed and delivered on behalf of the Borrower. This Agreement constitutes, and each other Transaction Document to which the Borrower is a party when executed and delivered will constitute, a legal, valid and binding obligation of the Borrower, enforceable against the Borrower in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by equitable principles of general applicability (regardless of whether enforcement is sought by proceedings in equity or at law).

**SECTION 5.03** No Conflicts. Neither the execution and delivery by the Borrower of the Transaction Documents to which it is a party, nor the consummation of the transactions contemplated therein, nor performance of and compliance with the terms and provisions thereof by the Borrower, nor the exercise of remedies by the Administrative Agent or the Collateral Agent under the Loan Documents, will (i) violate or conflict with any provision of the Borrower's Organization Documents, (ii) violate, contravene or conflict with any Applicable Law (including Regulation U or Regulation X), (iii) violate, contravene or conflict with any Contractual Obligation to which the Borrower is a party or by which the Borrower may be bound, or (iv) result in or require the creation of any Lien (other than the Lien of the Collateral Documents) upon or with respect to the properties of the Borrower.

**SECTION 5.04** No Default. The Borrower is not, and to the Knowledge of the Borrower, no other Facility Party is in default in any respect under any Contractual Obligation to which it is a party or by which any of its properties is bound, in each case which default has had or could reasonably be expected to have a Material Adverse Effect. No Default, Servicer Replacement Event or Event of Default has occurred and is continuing.

**SECTION 5.05** Financial Condition. (a) Audited Financial Statements. The audited consolidated balance sheet of TILC and its consolidated Subsidiaries as of December 31, 2016 and the related consolidated statements of income and cash flow for the fiscal year then ended, reported on by TILC's independent auditors, copies of which have been delivered to each of the Lenders, fairly present, in conformity with GAAP, the consolidated financial position of TILC and its consolidated Subsidiaries as of such date and their consolidated results of operations and cash flow for such fiscal year.

(b) Material Changes. During the period from December 31, 2016 to and including the Closing Date, there has been no sale, transfer or other disposition by either the Borrower, TILC or any of their respective consolidated Subsidiaries of any material part of the business or

property of any such Person, in each case taken as a whole, and no purchase or other acquisition by them of any business or property (including any Equity Interests of any other Person) material in relation to the consolidated financial condition of the Borrower, TILC or any of their respective consolidated Subsidiaries, as applicable, taken as a whole, which is not reflected in the foregoing financial statements or in the notes thereto. The balance sheets and the notes thereto included in the financial statements referred to in subsection (a) above disclose all liabilities, actual or contingent, of the Borrower, TILC or any of their respective consolidated Subsidiaries as of the date thereof required to be disclosed therein in accordance with GAAP.

(c) Post-Closing Financial Statements. The financial statements to be delivered to the Lenders pursuant to Section 6.01(a) and (b) if any, (i) will have been prepared in accordance with GAAP (except as may otherwise be permitted under Section 6.01(a) and (b)) and (ii) will present fairly (on the basis disclosed in the footnotes to such financial statements, if any) the consolidated financial condition, results of operations and cash flow of the Borrower, TILC or any of their respective consolidated Subsidiaries as of the respective dates thereof and for the respective periods covered thereby.

(d) No Undisclosed Liabilities. Except as set forth in the financial statements described in subsection (a) and (b) above, and the Debt incurred under this Agreement, (i) there were as of the Closing Date (and after giving effect to any Loans made on such date) no material liabilities or obligations (excluding current obligations incurred in the ordinary course of business) with respect to the Borrower, or, to the Knowledge of the Borrower, the other Facility Parties of any nature whatsoever (whether absolute, accrued, contingent or otherwise and whether or not due and including obligations or liabilities for taxes, long-term leases and unusual forward or other long-term commitments), and (ii) there is no basis for the assertion against the Borrower, or, to the Knowledge of the Borrower, the other Facility Parties, of any such liability or obligation which, either individually or in the aggregate, are or could reasonably be expected to have, a Material Adverse Effect.

SECTION 5.06 No Material Change. Since December 31, 2016 there has been no Material Adverse Effect, and no event or development has occurred which could reasonably be expected to result in a Material Adverse Effect.

SECTION 5.07 Title to Properties.

(a) On the Closing Date and during the term of this Agreement, the Borrower shall be the sole legal and beneficial owner of and shall have good and marketable title to each Portfolio Railcar and Portfolio Lease and all of its other material properties and assets, except, in the case of assets other than Portfolio Railcars and Portfolio Leases, for minor defects in title that do not interfere with its ability to conduct its business as currently conducted. All such Portfolio Railcars and Portfolio Leases and other material properties and assets are and will be free and clear of Liens other than Permitted Liens.

(b) Unless otherwise disclosed to the Administrative Agent in writing in the Funding Package, Trinity or its Affiliates continuously owned each Portfolio Railcar and related Portfolio Lease at all times since such Railcar's manufacture and prior to the purchase of such Railcar by the Borrower.





Loans) will violate or result in a violation of the Securities Act, as amended, the Exchange Act or regulations issued pursuant thereto, or Regulation T, U or X.

(b) The Borrower is not subject to regulation under the Federal Power Act or the Investment Company Act of 1940, each as amended. In addition, the Borrower is not (i) an "investment company" registered or required to be registered under the Investment Company Act of 1940, as amended, or (ii) controlled by such a company.

SECTION 5.23 Purpose of Loans. The proceeds of the Loans made on the Closing Date will be used solely to fund the acquisition of the Initial Portfolio Railcars and related Eligible Leases and to pay fees and expenses incurred in connection therewith.

SECTION 5.24 Environmental Matters. The Borrower has complied with all applicable Environmental Laws, and to the Knowledge of the Borrower, each other Facility Party has complied in all respects with all applicable Environmental Laws, except where the failure to comply could not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect. The Borrower has not, and to the Knowledge of the Borrower no other Facility Party has, incurred any liability under any Environmental Laws, received written notice of any actual or claimed or asserted failure to comply with Environmental Laws which alone, or together with any other such liability or notices which have been previously or concurrently received, could reasonably be expected to result in a Material Adverse Effect, other than in connection with failures which have been corrected. No hazardous wastes, hazardous substances, hazardous materials, toxic substances or toxic pollutants, as those terms are used in any Environmental Laws, are managed on any property of the Borrower, or to the Knowledge of the Borrower of any other Facility Party, in violation of any regulations promulgated pursuant thereto or any other Applicable Law, except as could not reasonably be expected to result in a Material Adverse Effect.

SECTION 5.25 Intellectual Property. The Borrower owns, or possesses the right to use, all of the Marks, trademarks, service marks, trade names, copyrights, patents, patent rights, franchises, licenses and other rights that are reasonably necessary for the operation of its business, without conflict with the rights of any other Person. To the Knowledge of the Borrower, no slogan or other advertising devise, product, process, method, substance, part or other material now employed, or now contemplated to be employed, by the Borrower infringes upon any rights held by any other Person. No claim or litigation regarding any of the foregoing is pending or overtly threatened, and no patent, invention, device, application, principle or any statute, law, rule, regulation, standard or code is pending or, to the Knowledge of the Borrower, proposed, which, in either case, could reasonably be expected to have a Material Adverse Effect.

SECTION 5.26 Solvency. The Borrower is and, after consummation of the transactions contemplated hereby and by the other Transaction Documents and Lease Documents, will be Solvent.

SECTION 5.27 Disclosure. No statement, information, report, representation, or warranty made by the Borrower in any Transaction Document or furnished to the Administrative Agent or any Lender by or on behalf of the Borrower in connection with any Transaction Document (considered together with all other such information so furnished) contains any untrue statement

of a material fact or omits any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

SECTION 5.28 Collateral Documents. (a) The Security Agreement is effective to create in favor of the Collateral Agent, for the ratable benefit of the Protected Parties, a legal, valid and enforceable “first” priority security interest in the Collateral and, when the filings, recordings or other actions described in Section 3.02 of the Security Agreement and Section 3.06 of the Parent Security Agreement shall have been completed, the Security Agreement shall constitute a fully perfected Lien on, and security interest in, all right, title and interest of the grantors thereunder in the Collateral, in each case to the extent provided in such Section 3.02 of the Security Agreement and Section 3.06 of the Parent Security Agreement.

(b) The Collateral Agent, for the ratable benefit of the Protected Parties, will at all times have the Liens provided for in the Collateral Documents and, subject to the filing by the Administrative Agent of continuation statements to the extent required by the Uniform Commercial Code, the Collateral Documents will at all times constitute valid and continuing liens of record and a “first” priority perfected security interest in all the Collateral referred to therein, except as priority may be affected by Permitted Liens.

SECTION 5.29 Ownership. TILC owns good, valid and marketable title to all outstanding Equity Interests of the Borrower, free and clear of all Liens of every kind, whether absolute, matured, contingent or otherwise (other than the Lien of the Collateral Documents), and TILC owns good, valid and marketable title to all outstanding beneficial interests of the Marks Company, free and clear of all Liens of every kind (other than Liens encumbering SUBI Certificates issued by the Marks Company which do not relate to Marks applicable to any Portfolio Railcar), whether absolute, matured, contingent or otherwise.

SECTION 5.20. Lease Documents. The Borrower has delivered or caused to be delivered to the Lenders true and complete copies of the Leases and any amendments or supplements thereto to which the Borrower is a party, and, except for amendments so disclosed to the Administrative Agent and the Lenders, such documents have not been amended or modified.

SECTION 5.21. Sole Business of the Borrower. The sole business of the Borrower is the ownership, leasing and financing of Railcars. The Borrower has not engaged in any activities since its organization (other than those incidental to its organization and other appropriate steps and arrangement for the payment of fees to, and director’s and officer’s insurance for, the officers and directors of the Borrower, the acquisition and leasing of the Portfolio Railcars and the funding thereof, the authorization and issuance of the Notes, the execution of this Agreement, and the other Transaction Documents and the Lease Documents to which it is a party and the activities referred to in or contemplated by such agreements), and the Borrower has not paid any dividends or other distributions since its organization, except as permitted pursuant to Section 7.07 hereof.

SECTION 5.22. Separate Corporate Structure; No Employees.

- (i) The Borrower is operated as a separate legal entity from TILC and its Affiliates (other than the Borrower) and will observe all corporate formalities necessary to remain a legal entity separate and distinct from, and independent of, TILC and its Affiliates (other than the Borrower).
- (ii) The Borrower has satisfied the minimum capitalization requirements, if any, under the laws of the State of Delaware for purposes of conducting its business.
- (iii) The Borrower has complied in all respects with the requirements set forth in its Organization Documents.
- (iv) The Borrower currently corresponds with all third parties with regard to its business on stationery with letterhead identifying it and containing no reference to TILC or its Affiliates (other than the Borrower).
- (v) The Borrower keeps complete and accurate entity records, books, accounts and minutes separate from those of TILC and any of its Affiliates (other than the Borrower) or any other Person.
- (vi) The Borrower has held itself out to the public (including to creditors of the Borrower, TILC and their Affiliates) under its own name as a separate and distinct entity.
- (vii) The Borrower has not directly or indirectly entered into any transaction with TILC or any of its Affiliates except as expressly permitted by the Loan Documents and then in an arm's-length bargain.
- (viii) The Borrower has not loaned funds to, guaranteed or become obligated with respect to claims against, TILC or any of its Affiliates (other than the Borrower) or any other Person or entity except as expressly permitted by the Loan Documents or as provided by operation of consolidated group principles of U.S. federal income tax and ERISA laws.
- (ix) The Borrower has kept its assets and liabilities as reflected in its books and records separate from those of TILC and its Affiliates (other than the Borrower) and has not and at all times will not commingle such assets and liabilities (except as expressly permitted pursuant to this Agreement).
- (x) The Borrower has kept adequate records to permit the segregation of its assets and liabilities from those of TILC and its Affiliates (other than the Borrower).
- (xi) The Borrower has not held itself out to the public as a division of TILC, or TILC as a division of the Borrower.
- (xii) The Borrower has not induced third parties to rely on the creditworthiness of TILC in order to have third parties enter into contracts with the Borrower.

(xiii) The Borrower has and will pay its obligations in the ordinary course of business as a legal entity separate and distinct from TILC and its Affiliates (other than the Borrower).

(xiv) The Borrower has and will keep its funds separate and distinct from any funds of TILC and its Affiliates (other than the Borrower) (except as permitted by the Customer Collections Account Administration Agreement and except for misdirected Lease payments), and will receive, deposit, withdraw and disburse such funds separate from any funds of TILC and its Affiliates (other than the Borrower).

(xv) The Borrower does not have any employees.

(xvi) The Borrower will maintain separate financial statements from any other Person; provided, however, that if the Borrower's financial statements are included in a consolidated statement of TILC or any Affiliates, such consolidated financial statement discloses the nature of the Borrower's sole purpose, that it is a separate legal entity and that the assets of the Borrower are not available to pay the creditors of TILC or any Affiliates.

SECTION 5.23. Leases. (i) Each Portfolio Lease was an Eligible Lease as of the date of such Portfolio Lease was added to the Portfolio, (ii) as of the date of the Monthly Report most recently delivered to the Administrative Agent and the Lenders in accordance with Section 6.01(f), except as otherwise disclosed in writing by the Borrower to the Administrative Agent, no Lease Event of Default to the Knowledge of the Borrower after due inquiry is in existence under any Portfolio Lease and each Portfolio Lease is in full force and effect and (iii) the description of each Lease Event of Default occurring under a Lease, if any, included in the Notice of Borrowing accurately describes in all material respects each Lease Event of Default during the periods described of which the Borrower is aware after due inquiry as of the Closing Date.

SECTION 5.24. Railcars. Each Portfolio Railcar was an Eligible Railcar as of the date of such Portfolio Railcar was added to the Portfolio.

SECTION 5.25. Derivatives Agreement. As of the Closing Date, (a) the Derivatives Creditor under the Derivatives Agreement to which the Borrower is a party has been paid in full for the purchase price of such Derivatives Agreement, and (b) such Derivatives Agreement is not subject to any Lien other than pursuant to the Collateral Documents.

SECTION 5.26. PATRIOT Act; OFAC.

(a) None of the Borrower or any of its directors, officers or, to the Knowledge of Borrower, employees, agents, advisors or Affiliates is subject to any sanctions or economic embargoes administered or enforced by the U.S. Department of State or the U.S. Department of Treasury (including the Office of Foreign Assets Control) or any other applicable sanctions authority (collectively, "Sanctions", and the associated laws, rules, regulations and orders, collectively, "Sanctions Laws").

(b) Each of the Borrower and its directors, officers and, to the Knowledge of Borrower, employees, agents, advisors and Affiliates is in compliance with: (i) all Sanctions

Laws, (ii) the United States Foreign Corrupt Practices Act of 1977, as amended, and any other applicable anti-bribery or anti-corruption laws, rules, regulations and orders (collectively, "Anti-Corruption Laws"), in each case, in all material respects, and (iii) the PATRIOT Act and any other applicable terrorism and money laundering laws, rules, regulations and orders (collectively, "Anti-Terrorism Laws"), in each case, in all material respects; provided, that, for the purposes of clauses (ii) and (iii) of this Section 5.26(b) only and in respect of any such Person, the term "in all material respects" means compliance in every respect except for any violation of Anti-Corruption Laws or Anti-Terrorism Laws which does not result and could not reasonably be expected to result: (x) in any criminal liability being imposed on such Person, (y) subject to clause (z), in any civil liability being imposed on such Person in excess of \$500,000 (whether through private action or enforcement), and (z) in any liability (civil, criminal or otherwise) being imposed on such Person which in turn results, or could reasonably be expected to result, in liability being imposed on any Protected Party under Anti-Corruption Laws or Anti-Terrorism Laws.

(c) No part of the proceeds of the Loans or New Term Loans will be used, directly or indirectly, (A) for the purpose of financing any activities or business of or with any Person or in any country or territory that at such time is the subject of any Sanctions or (B) for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of any Anti-Corruption Law.

## ARTICLE VI

### ARTICLE AFFIRMATIVE COVENANTS

The Borrower agrees that so long as any Lender has any Commitment hereunder or any Obligation or other amount payable hereunder or under any Note or other Loan Document remains unpaid:

**SECTION 6.01** Information. The Borrower will furnish, or cause to be furnished, to the Administrative Agent (which the Administrative Agent shall be authorized to redistribute to any Lender and any Derivatives Creditor):

(a) Annual Financial Statements. As soon as available, and in any event within 120 days after the end of each fiscal year of each of the Borrower and TILC, a consolidated balance sheet and income statement of each of the Borrower and TILC and their respective consolidated Subsidiaries, as of the end of such fiscal year, and the related consolidated statements of operations and retained earnings and cash flow for such fiscal year, setting forth in comparative form figures for the preceding fiscal year, all such financial statements to be in reasonable form and detail and audited by TILC's independent public accountants and accompanied by an opinion of such accountants (which shall not be qualified or limited in any material respect) to the effect that such financial statements have been prepared in accordance with GAAP and present fairly the consolidated financial position and results of operations and cash flow of each of the Borrower and TILC and their respective consolidated Subsidiaries in accordance with GAAP consistently applied (except for changes with which such accountants concur).

(b) Quarterly Financial Statements. As soon as available, and in any event within 90 days after the end of each of the first three fiscal quarters in each fiscal year of the Borrower, a consolidated balance sheet of the Borrower and its consolidated Subsidiaries as of the end of such fiscal quarter, together with related consolidated statements of operations and retained earnings and cash flow for such fiscal quarter and the then elapsed portion of such fiscal year, setting forth in comparative form figures for the corresponding periods of the preceding fiscal year, all such financial statements to be in form and detail and reasonably acceptable to the Administrative Agent, prepared in accordance with GAAP and present fairly in all material respects the consolidated financial position and results of operations and cash flow of the Borrower in accordance with GAAP consistently applied, subject to changes resulting from normal year-end audit adjustments and the absence of footnotes required by GAAP.

(c) Officer's Certificate. At the time of each delivery of the financial statements provided for in Sections 6.01(a) and 6.01(b) above, a certificate duly executed by a Responsible Officer of the Servicer (on behalf of the Borrower) in substantially the form of Exhibit A-7 (a "Financial Statement Certificate"):  
(i) attaching and certifying that such financial statements have been prepared in accordance with GAAP, (ii) certifying that TILC has a Consolidated Tangible Net Worth of at least \$300,000,000 and (iii) stating that, to the Knowledge of each of the Borrower and the Servicer, no Trigger Event, Default, Servicer Replacement Event or Event of Default exists, or if any Trigger Event, Default, Servicer Replacement Event or Event of Default does exist, specifying the nature and extent thereof and what action the Borrower and/or the Servicer proposes to take with respect thereto.

(d) [Intentionally Omitted].

(e) Notices Regarding Collateral. Promptly upon receipt from any Manufacturer, the Servicer, any Lessee or any Lessee's insurance carrier or broker, copies of any material notice, communication, document or agreement related to any Portfolio Railcar or other Collateral. Promptly upon a Responsible Officer of the Borrower or the Servicer obtaining Knowledge thereof, notice of Liens with respect to any Portfolio Railcar other than Permitted Liens.

(f) Monthly Report. Not later than the third Business Day prior to each Settlement Date a Monthly Report setting forth the information contained in such Monthly Report for the Measuring Period ending most recently prior to such date (provided that if and to the extent such information is available only from a Lessee or the Administrative Agent, the Borrower's obligation to provide such information shall be limited to providing such information as the Borrower or Servicer is able to obtain from the Administrative Agent and such Lessee through commercially reasonable efforts to enforce applicable provisions of the applicable Lease), including a complete list showing the make, manufacturer, model, car number and Mark of each Portfolio Railcar and each Lease with respect thereto, together with an executed and fully completed officer's certificate substantially in the form of Exhibit L-2 hereto (if expenses are to be reimbursed to the Servicer as described in such certificate). The Administrative Agent shall review the Monthly Report and, in its sole discretion, provide the Borrower with any corrections or supplemental information regarding the Loans or amounts paid into or held in the Collection Account, which corrections and/or information the Borrower shall include in a revised Monthly Report. The Administrative Agent shall provide the Lenders and the Derivatives Creditors with a copy of the Monthly Report, as revised pursuant to the preceding sentence.

(g) Notices. Prompt notice of: (i) the occurrence of any Trigger Event, Default, Servicer Replacement Event or Event of Default; (ii) the occurrence of any Lessee Consent Trigger Event or Lease Event of Default; and (iii) any matter that has resulted or could reasonably be expected to result in a Material Adverse Effect, including: (A) breach or non-performance of, or any default under, a Contractual Obligation of any Facility Party; (B) any dispute, litigation, investigation or proceeding between any Facility Party and any Governmental Authority; (C) any litigation, investigation or proceeding affecting any Facility Party in which the amount involved exceeds \$1,000,000 (in the case of the Borrower) or \$10,000,000 (in the case of TILC), or in which injunctive relief or similar relief is sought, which relief, if granted, could be reasonably expected to have a Material Adverse Effect; and (D) any material change in accounting policies or financial reporting practice by the Borrower. Each notice pursuant to this Section 6.01(g) shall (x) be accompanied by a statement of a Responsible Officer of each of the Borrower and the Servicer setting forth details of the occurrence referred to therein and stating what action each Facility Party has taken and proposes to take with respect thereto and (y) if applicable, describe with particularity any and all provisions of this Agreement or the other Loan Documents that have been breached.

(h) Domestication in Other Jurisdiction. Without prejudice to the Borrower's covenants set forth in ARTICLE VII and any rights or remedies exercisable in relation to any non-compliance thereof, not less than 30 days prior to any change in (i) the form or jurisdiction of organization of the Borrower, (ii) the "location" (as such term is used in Section 9-307 of the UCC) of the Borrower or (iii) the name of the Borrower, a copy of all documents and certificates intended to be filed or otherwise executed to effect any such changes.

(i) Test Date Reporting. On or prior to each Test Date, an Officer's Certificate of the Borrower in substantially the form of Exhibit A-8 (a "Quarterly Compliance Certificate") setting forth in detail reasonably satisfactory to the Administrative Agent: (i) (A) computations of the Debt Service Coverage Ratio as of such Test Date, (B) if applicable, the DSCR Cure that was or will be, as applicable, undertaken by the Borrower pursuant to Section 7.12(b) (including, if applicable, the Eligible Railcars that the Borrower has added or will add to the Portfolio to effectuate such DSCR Cure), (C) the Utilization Ratio is not less than 80% pursuant to Section 7.12(c), (D) a complete list of all Railcars comprising the Portfolio as of such DSCR Test Date (E) that any Derivative Agreement is in compliance with the requirements set forth in Section 2.13(b), and (F) compliance with the Concentration Limits, and (ii) if such Test Date is also an LTV Test Date (which, for the avoidance of doubt, occurs annually) (A) computations of the Loan-to-Value Ratio as of such Test Date, (B) if applicable, the LTV Cure that was or will be, as applicable, undertaken by the Borrower pursuant to Section 7.12(a) (including, if applicable, the Eligible Railcars that the Borrower has added or will add to the Portfolio to effectuate such LTV Cure) and (C) a complete list of all Railcars comprising the Portfolio as of such LTV Test Date, together with the Independent Appraisal for each such Railcar as required pursuant to Section 6.01(j).

(j) Independent Appraisals. With respect to each LTV Test Date, the Borrower shall at its own expense provide an Independent Appraisal with respect to all of the Portfolio Railcars. Each such Independent Appraisal shall have an effective date no earlier than, and provided to the Administrative Agent no earlier than, 45 days prior to such LTV Test Date. The Administrative Agent also may at any time and from time to time obtain an Independent Appraisal of any

Portfolio Railcar (in addition to the Independent Appraisal required by the preceding sentence) at its own expense, copies of which shall be provided to the Borrower. Each Independent Appraisal delivered pursuant to this Section 6.01(j) shall be in form and substance reasonably satisfactory to the Administrative Agent.

**SECTION 6.02** Preservation of Existence and Franchises; Authorizations, Approvals and Recordations. The Borrower will do all things necessary to preserve the legality, validity, binding effect or enforceability of this Agreement, the Notes or any other Lease Document or Transaction Document, or permit the making of any payment or the transfer or remittance of any funds by the Borrower under this Agreement, the Notes or any other Lease Document or Transaction Document. The Borrower will be qualified to do business in every jurisdiction where its assets are located and wherever necessary to carry out its business and operations, except in jurisdictions where the failure to be so qualified or in good standing has not had, and could not be reasonably expected to have, a Material Adverse Effect.

**SECTION 6.03** Books and Records. The Borrower will keep complete and accurate books and records of its transactions in accordance with good accounting practices on the basis of GAAP (including the establishment and maintenance of appropriate reserves) and shall keep full and accurate books relating to the Collateral, including, but not limited to, the originals of all documentation with respect thereto (other than original executed copies of the Portfolio Leases delivered to the Administrative Agent or its nominee under the Loan Documents), all credits granted thereon, all merchandise returned and all other dealings therewith, and the Borrower will make the same available to the Administrative Agent for inspection, at the Borrower's own cost and expense, as provided in Section 6.11(a). The Borrower will keep, or, with respect to the Portfolio Railcars and the Portfolio Leases, cause the Servicer to keep, at all times books of record and account adequate to identify the Portfolio Railcars and Portfolio Leases and to locate the Portfolio Railcars and Portfolio Leases and, to the extent that the Lessee is required to provide such information pursuant to the applicable Portfolio Lease, to disclose its use, maintenance, condition and the income generated to the Borrower through the use thereof, in which full, true and correct entries will be made.

**SECTION 6.04** ERISA. The Borrower will not maintain or otherwise be or become liable or contingently liable in respect of any Pension Plan or Multiemployer Plan (as defined under Section 3(37)(A) of ERISA).

**SECTION 6.05** Payment of Taxes and Other Debt. The Borrower will pay and discharge (i) all material Taxes, assessments and other governmental charges or levies imposed upon it, or upon its income or profits, or upon any of its properties, before they shall become delinquent, (ii) all lawful claims (including claims for labor, materials and supplies) which, if unpaid, might give rise to a Lien upon any of the Collateral and (iii) all of its other Debt as it shall become due; provided, however, that the Borrower shall not be required to pay any such Tax, assessment, charge, levy, claim or Debt which is being contested or negotiated in good faith by appropriate proceedings diligently pursued and as to which adequate reserves have been established in accordance with GAAP, unless the failure to make any such payment could reasonably be expected to have a Material Adverse Effect.



SECTION 6.06 Insurance; Certain Proceeds; Casualty Proceeds. (a) (i) The Borrower will at all times maintain in full force and effect insurance in such amounts, covering such risk and liabilities and with such deductibles or self-insurance retentions as are in accordance with normal industry practice (or as are otherwise required by the Collateral Documents), and in any event in compliance with the requirements of Schedule 6.06 hereof. The Collateral Agent shall be named as loss payee with respect to all such property policies described in this clause (i) and additional insured with respect to all such other policies (other than workers' compensation and employee health policies, if any) described in this clause (i), and each provider of property damage insurance described in this clause (i), by endorsement upon the policy or policies issued by it or by independent instruments furnished to the Collateral Agent, (A) that the insurance carrier shall pay all proceeds otherwise payable to the Borrower under such policies to the Collateral Agent (which agreement shall be evidenced by a "standard" or "New York" lender's loss payable endorsement in the name of the Collateral Agent), (B) to waive all claims for insurance premiums against the Collateral Agent and the other Protected Parties, (C) to provide coverage to the Collateral Agent for the benefit of the Protected Parties regardless of the breach by the Borrower of any warranty or representation made therein, (D) that no such policy is subject to co-insurance and (E) that it will give the Collateral Agent 30 days' prior written notice before any such policy or policies shall be materially altered, terminated or canceled, and that no act or default of any Facility Party or any other Person (other than non payment of premiums) shall affect the rights of the Collateral Agent or the other Protected Parties under such policy or policies.

(ii) Notwithstanding the generality of the foregoing, (A) with respect to any Portfolio Railcar subject to a Lease, the Borrower agrees that it (or the Servicer acting on its behalf) shall enforce the provisions of the Lease against the applicable Lessee as to all required insurance pursuant to the terms thereof, and (B) with respect to any Portfolio Railcar not subject to a Lease, in addition to its covenants with respect to the Collateral described herein, the Borrower shall comply with the provisions of the Servicing Documents regarding insurance for the Railcar. The Borrower assumes all liability and responsibility in connection with the Portfolio and other property and assets acquired by it and the liability of the Borrower to pay the Obligations shall in no way be affected or diminished by reason of the fact that any such property may be lost, destroyed, stolen, damaged or for any reason whatsoever unavailable to the Borrower.

(b) Any cash receipts from a Casualty (whether by way of Casualty Proceeds or Lessee indemnity payments or otherwise) received by either the Borrower or the Collateral Agent shall be deposited (in the Borrower's sole discretion) into either (i) the Modifications and Improvements Account to fund all or a portion of the cost of one or more Required Modifications or Optional Modifications in respect of existing Railcars of the Borrower, (ii) the Substitution Account to fund the acquisition of Qualified Replacement Railcars or (iii) the Collection Account for application as Available Collections and applied pursuant to Section 2.07(c) (except for Excepted Payments, which shall be payable to the Persons for whose benefit any such payment is made). At any time in its discretion within 60 days of deposit into the Modifications and Improvements Account or Substitution Account, as the case may be, the Borrower may also elect to transfer amounts so deposited in the Modifications and Improvements Account (and not otherwise applied) or Substitution Account (and not otherwise applied) into the Collection Account for application as Available Collections for the Measuring

Period in which such transfer is made. In any other case, any such amounts in the Modifications and Improvements Account (and not otherwise applied) or Substitution Account (and not otherwise applied) shall be transferred to the Collection Account for application as Available Collections on the next Settlement Date following the 61st day following their deposit. Any insurance proceeds of a Casualty with respect to a Portfolio Railcar or Lessee indemnity payments in connection with a Casualty with respect to a Portfolio Railcar received by TILC or an Affiliate of TILC shall be promptly paid by TILC or such Affiliate of TILC to the Borrower for application in accordance with the foregoing provisions of this paragraph (b).

(c) The Borrower shall not operate any Portfolio Railcar and will prohibit each Lessee of any Portfolio Railcar to operate such Portfolio Railcar in violation of any provision of any insurance policy in effect with respect to such Railcar or in any jurisdiction where all of the insurance required hereunder shall not remain in full force and effect or in violation of any law, treaty, statute, rule, directive, regulation or order of any Governmental Authority having jurisdiction over such Portfolio Railcar or in violation of any applicable certificate, license or registration relating to such Portfolio Railcar issued by any such Governmental Authority.

(d) In connection with the covenants set forth in this Section 6.06, it is understood and agreed that:

(i) none of the Collateral Agent, the Depositary, the Custodian, the Administrative Agent, the Lenders or their respective agents or employees shall be liable for any loss or damage insured by the insurance policies required to be maintained under this Section 6.06, it being understood that (A) the Borrower shall look solely to its insurance companies or any other parties other than the aforesaid parties for the recovery of such loss or damage and (B) such insurance companies shall have no rights of subrogation against the Collateral Agent, the Depositary, the Custodian, the Administrative Agent, the Lenders or their agents or employees; provided, however, that if the insurance policies do not provide waiver of subrogation rights against such parties, as required above, then the Borrower hereby agrees to waive its right of recovery, if any, against the Collateral Agent, the Depositary, the Custodian, the Administrative Agent, the Lenders and their agents and employees, to the extent permitted by law;

(ii) the Borrower will permit an insurance consultant retained by the Administrative Agent, at the expense of the Borrower, to review from time to time the insurance policies maintained by or on behalf of the Borrower annually or upon the occurrence of an Event of Default; and

(iii) in the event that the Borrower shall fail to maintain insurance as herein provided, the Administrative Agent may at its option, upon prior written notice to the Borrower (provided that the Borrower has not procured the necessary insurance in the interim and notified the Administrative Agent in reasonable detail of the procurement, coverage and term thereof), provide such insurance and, in such event, the Borrower shall, upon demand from time to time, reimburse the Administrative Agent for the cost thereof together with interest from the date of payment thereof, on the amount of the cost to the Administrative Agent of such insurance which the Borrower shall have failed to maintain. If after the Administrative Agent has provided such insurance, the Borrower

(iv) then obtains such coverage which was replaced by the insurance provided by the Administrative Agent, and the Borrower provides the Administrative Agent with evidence of such coverage reasonably satisfactory to the Administrative Agent, the Administrative Agent shall cancel the insurance it has provided pursuant to the first sentence of this paragraph. In such event, the Borrower shall reimburse the Administrative Agent for all costs to the Administrative Agent of cancellation, including without limitation any short rate penalty, together with interest from the date of the Administrative Agent's payment thereof. In addition, at any time the Administrative Agent (either directly or in the name of any Lenders) or any Lenders may at its own expense carry insurance with respect to its interest in the Portfolio Railcars, provided that such insurance does not interfere with the Borrower's ability to insure the Portfolio Railcars as required under the Loan Documents or adversely affect the Borrower's insurance or the cost thereof. Any insurance payments received from policies maintained by the Agent or any Lender pursuant to the previous sentence shall be retained by the Administrative Agent or such Lender, as the case may be, without reducing or otherwise affecting the Borrower's obligations hereunder.

SECTION 6.07 Operation, Use and Maintenance. (a) Operation and Use. The Borrower will and will require each Lessee to use the Portfolio Railcars only for lawful purposes and shall use and operate and require each Lessee to use and operate the Portfolio Railcars in compliance in all material respects with Applicable Law, except for so long as the Borrower or a Lessee is contesting in good faith by appropriate proceedings diligently conducted the validity or application of such Applicable Law in any reasonable manner. The Portfolio Railcars may not be located or used in any country other than the United States, Canada or Mexico.

(b) Maintenance. The Borrower will or will require each Lessee to keep, repair and maintain the Portfolio Railcars (i) in good order and operating condition according to industry practice for Railcars of similar age and vintage, ordinary wear and tear excepted, (ii) in compliance in all material respects with Applicable Law, except for so long as the Borrower or a Lessee is contesting in good faith by appropriate proceedings diligently conducted the validity or application of such Applicable Law in any reasonable manner, (iii) suitable for use in interchange in accordance with the Interchange Rules and (iv) with respect to Portfolio Railcars not subject to a Lease, at least as well in all material respects as it would for other similar equipment owned, operated or serviced by the Servicer. In addition to (but without limitation of) the foregoing obligation of the Borrower, with respect to any Portfolio Railcar subject to a Lease, the Borrower will use reasonable commercial efforts to cause the Lessee of such Railcar to comply with the maintenance requirements set forth in such Leases.

(c) Identification Numbers. (i) The Borrower shall cause each Portfolio Railcar to be numbered with its reporting mark as shown on the Bill of Sale under which such Portfolio Railcar was delivered to the Borrower, and from and after such date keep and maintain, plainly, distinctly, permanently and conspicuously marked by a plate or stencil printed in contrasting colors upon each side of each such Portfolio Railcar, in letters not less than one inch in height, a legend substantially as follows:

“OWNERSHIP SUBJECT TO A SECURITY AGREEMENT  
FILED WITH THE SURFACE TRANSPORTATION BOARD”

with appropriate changes thereof and additions thereto as may be required by law in order to protect the Collateral Agent's right, title and interest in and to such Portfolio Railcars, its rights under the Security Agreement and the rights of the Administrative Agent and the other Protected Parties.

(ii) The Borrower may change or permit to be changed the identifying number of any Portfolio Railcar in accordance with its or the Servicer's normal business practices at the time applied in a nondiscriminatory manner. Concurrently with the delivery of each Monthly Report or promptly upon request of the Collateral Agent or the Administrative Agent if there exists an Event of Default, the Borrower shall deliver to the Collateral Agent and the Administrative Agent a list of the identifying numbers of all Portfolio Railcars that have been changed within the period covered by such Monthly Report and prior thereto to the extent not previously disclosed by the Borrower and evidence of the filing, recording or depositing in such public offices where the Security Agreement (or memoranda or notices thereof) have been filed, recorded or deposited reflecting any changes in identifying numbers which have occurred within such period and prior thereto to the extent not previously disclosed by the Borrower as may be necessary to preserve and perfect the interest of the Collateral Agent and the Lenders in the Portfolio Railcars whose identifying numbers have changed.

(d) Insignia. Except as provided in Section 6.07(c), the Borrower will not allow the name of any Person to be placed on any Railcar as a designation that might be interpreted as a claim of ownership; provided, however, that the Borrower may permit any of the Portfolio Railcars to be lettered with the names, trademarks, initials or other insignia customarily used by the Borrower or its Affiliates (including the Marks Company), or any Lessee or its Affiliates, on railroad equipment used or leased by such Person of the same or a similar type for convenience of identification of its right to use such Portfolio Railcar under any applicable Lease, and any of the Portfolio Railcars may be lettered in an appropriate manner for convenience of identification of the interest of the Borrower or any Lessee therein.

**SECTION 6.08** Replacement of Parts; Modifications and Improvements. (a) Replacement of Parts. The Borrower, at its sole cost and expense (whether from the Operating Expense Account or otherwise), will as promptly as practicable replace all Parts with respect to Portfolio Railcars that are not then subject to a Lease or are required to be maintained by the Borrower pursuant to a Lease that may from time to time become worn out, obsolete, lost, stolen, destroyed, seized, confiscated, damaged beyond repair or permanently rendered unfit for use for any reason whatsoever. In addition, in the course of maintenance, service, repair, overhaul or testing, the Borrower, at its sole cost and expense, may remove any Part, whether or not worn out, obsolete, lost, stolen, destroyed, seized, confiscated, damaged beyond repair or permanently rendered unfit for use. All replacement Parts shall be selected and installed in accordance with the Borrower's or the Servicer's normal business practices at that time applied in a nondiscriminatory manner, and shall be free and clear of all Liens except Permitted Liens and shall be in good operating condition.

(b) Lease Required Modifications and Improvements. Subject to clause (e) of this Section 6.08, the Borrower shall make or cause to be made such material modifications and

improvements to each Portfolio Railcar to the extent required of the Borrower by the terms of the applicable Lease (each occurrence, a "Lease Required Modification").

(c) Required Modifications and Improvements. Subject to clause (e) of this Section 6.08, the Borrower shall in the event (i) any Governmental Authority or any Applicable Law requires as a condition of continued use or operation of any Portfolio Railcar in any commodity service as reasonably determined by the Servicer that such Portfolio Railcar be altered or modified or (ii) any Governmental Authority determines that any Portfolio Railcar may be in an unsafe operating condition and as a result the Borrower determines that such Portfolio Railcar must be altered or modified (each occurrence under (i) and (ii), a "Required Modification"), the Borrower agrees to make or have made such Required Modification in a timely manner; provided that, the Borrower may, in good faith and by appropriate proceedings diligently conducted, contest the validity or application of any such law, regulation, requirement or rule in any reasonable manner which does not materially interfere with the use, possession, operation or return of any Portfolio Railcar or materially adversely affect the rights or interests of the Administrative Agent, Collateral Agent or the other Protected Parties in the Portfolio Railcars or under any Loan Document or otherwise expose the Borrower to criminal or material financial sanctions. Promptly after the Borrower becomes aware of the requirement to make a Required Modification, the Borrower shall notify the Administrative Agent thereof, which notice shall also set forth the time period for the making of such Required Modification and the Borrower's reasonable estimate of the cost thereof. If the Borrower (after consultation with the Servicer) believes that any Required Modification to either an individual Portfolio Railcar or an aggregate of Portfolio Railcars would be economically impractical, the Borrower shall provide written notice to the Administrative Agent that such Required Modification is economically impractical, and shall treat such Portfolio Railcar as if an Event of Loss had occurred as of the date of such written notice with respect to such Portfolio Railcar. In such event the provisions of the Loan Documents and the Servicing Agreement with respect to Events of Loss shall apply with respect to such Portfolio Railcar. In reaching any decision as to whether a Required Modification is economically impractical, the Borrower shall assess the cost and timing of the Required Modification, the anticipated revenues and other sources of funds which would be available to the Borrower to fund such costs, the requirements of the Loan Documents and such other factors as the Borrower considers necessary or appropriate and shall provide a report to the Administrative Agent, regarding such assessment.

(d) Optional Modifications and Improvements. The Borrower may, upon consent of the Administrative Agent, modify, alter or improve any Portfolio Railcar in a manner which is not a Required Modification, including any Portfolio Railcar not then under a Lease ("Optional Modification"), if the Borrower concludes in good faith that the proposed Optional Modification is likely to enhance the marketability of the Portfolio Railcar (or such Optional Modification is requested by a Lessee); provided that Optional Modifications may be funded only from (i) capital contributions made by TILC to the Borrower (for the avoidance of doubt, such capital contributions are permitted but not required under this Agreement), (ii) distributions which would otherwise be made to or at the direction of the Borrower pursuant to Section 2.07(c)(i) or Section 2.07(c)(ii), or (iii) proceeds of a Permitted Discretionary Sale, Event of Loss or Casualty to the extent owing to the Borrower in accordance with the terms of this Agreement; provided that no Optional Modification shall diminish the fair market value, utility, residual value or remaining economic useful life of such Portfolio Railcar below the fair market value, utility,

residual value or remaining economic useful life thereof immediately prior to such Optional Modification, in more than a de minimis respect.

(e) Modification Costs. The cost of any Lease Required Modification or Required Modification to a Railcar, to the extent not borne by the applicable Lessee, shall be borne by the Borrower.

#### SECTION 6.09

#### Replacement of Railcars; Substitution Account.

(a) Disposition Proceeds. All Net Cash Proceeds from an Asset Disposition on deposit in the Collection Account shall be applied in the manner and order of priority set forth in Section 2.07(c)(i) or Section 2.07(c)(ii), as applicable, or alternatively, (i) in the case of an Asset Disposition constituting an Event of Loss or Condemnation, unless the Borrower intends to use the proceeds of such Asset Disposition to acquire Qualifying Replacement Railcars or to prepay the Loans, deposit such Net Cash Proceeds into the Modifications and Improvements Account to fund Optional Modifications in accordance with Section 6.09(b) below or (ii) in the case of an Asset Disposition constituting a Permitted Discretionary Sale, deposit such Net Cash Proceeds into the Substitution Account to fund the acquisition cost of the Qualifying Replacement Railcars previously identified by the Borrower or the Servicer on the applicable Qualifying Replacement Railcar Certificate (provided such Railcars remain commercially available for acquisition) in accordance with Section 6.09(c) below.

(b) Reinvestment of Proceeds from an Event of Loss or Condemnation. The Borrower may reinvest proceeds from an Event of Loss or Condemnation that have been deposited into the Modifications and Improvements Account as described above to fund all or a portion of the cost of one or more Required Modifications or Optional Modifications in respect of existing Railcars of the Borrower. At any time in its discretion within 60 days of deposit into the Modifications and Improvements Account, the Borrower may also elect to transfer amounts so deposited in the Modifications and Improvements Account (and not otherwise applied) into the Collection Account for application as Net Cash Proceeds for the Measuring Period in which such transfer is made. In any other case, any such amounts in the Modifications and Improvements Account (and not otherwise applied) shall be transferred to the Collection Account for application as Net Cash Proceeds on the next Settlement Date following the 61st day following their deposit.

(c) Reinvestment of Sale/Disposition Proceeds in Replacement Railcars. In the event the Borrower intends to use the proceeds of a Permitted Discretionary Sale to acquire Qualifying Replacement Railcars, the Borrower prior to such contemplated Permitted Discretionary Sale shall identify Qualifying Replacement Railcars to replace the Portfolio Railcars subject to the contemplated Permitted Discretionary Sale (such replacement to occur prior to the Settlement Date immediately preceding the date falling 60 days after the effective date of such Permitted Discretionary Sale) and shall deliver to the Administrative Agent a Qualifying Replacement Railcar Certificate prior to such Permitted Discretionary Sale. All Railcars that replace Portfolio Railcars subject to a Permitted Discretionary Sale shall be Qualifying Replacement Railcars in order to be Portfolio Railcars. Upon acquisition, such Replacement Railcars (and any related Leases) will become subject to the lien of the Security Agreement (and related Transaction Documents). To the extent such proceeds are not so used to acquire Qualifying Replacement

Railcars prior to the Settlement Date immediately preceding the date falling 60 days after the effective date of such Permitted Discretionary Sale, at the written direction of the Administrative Agent such amounts shall be transferred to the Collection Account prior to such Settlement Date for application as Net Cash Proceeds for the Measuring Period in which such transfer is made.

SECTION 7.00

Use of Proceeds. The Borrower will use the proceeds of the Loans solely for the purposes set forth in Section 5.13.

SECTION 7.01

Audits and Inspections. At the request of any Lender, the Administrative Agent shall have the right to (i) inspect all documents of the Borrower and the Servicer (the "Related Documents"), including without limitation all leases, insurance policies, warranties or other agreements relating to the Portfolio Railcars and the other Collateral (during such period of time when such Portfolio Railcar or other Collateral, as the case may be, was part of the Portfolio) (each such inspection, a "Related Document Inspection"); (ii) inspect and audit each of the Borrower's and the Servicer's books, records and databases (which shall include reasonable access electronic copies of the Borrower's and the Servicer's records to the extent necessary to determine compliance with the Transaction Documents) (collectively, the "Books and Records") with respect to the Portfolio Railcars and the other Collateral and Related Documents (including without limitation data supporting all reporting requirements under the Transaction Documents) (each such inspection, a "Books and Records Inspection"); (iii) discuss (A) the affairs, finances and accounts of the Borrower and the Servicer and (B) the Portfolio Railcars and the other Collateral, the Related Documents and the Books and Records, in each case with the principal executive officer and the principal financial officer of each of the Borrower and the Servicer, as applicable; (iv) conduct evaluations and appraisals of the assets included in the Collateral; and (v) subject to restrictions and procedures on inspection of the Portfolio Railcars in any applicable Lease, conduct a physical inspection of any Portfolio Railcar or otherwise obtain a Physical Inspection Report with respect thereto (each such inspection, a "Physical Inspection", and together with each other inspection described in (i), (ii), (iii) and (iv) above, collectively, the "Inspections"); provided, however, Related Documents and Books and Records shall not include the Servicer's customer list or any other information that the Servicer reasonably determines is of a proprietary nature, unless failure to provide such information would cause either the Servicer or the Borrower to breach its respective obligations under any of the Transaction Documents. All Inspections shall be conducted, at the requesting Person's expense and no more frequently than once in any annual period (unless such Inspection is conducted after the occurrence of an Event of Default which is continuing or reveals non-compliance with any covenant of the Borrower under the Loan Documents that constitutes a Default, in which case such Inspection shall be at the expense of the Borrower and there shall be no limit on the frequency of such Inspections), with at least five Business Days' notice from the Administrative Agent to the Borrower (with respect to Inspections of the Borrower) and the Servicer (with respect to inspections of the Borrower or the Servicer) and shall be conducted during normal business hours, be subject to the Borrower's and the Servicer's customary security procedures, if any, and not unreasonably disrupt the Borrower's or the Servicer's business; provided that, without prejudice to any designation of a Lender as a representative of the Administrative Agent, no Lender shall be entitled to conduct its own Inspection but may attend any Inspection conducted by the Administrative Agent. Without prejudice to the right to conduct Inspections, all parties granted inspection rights hereunder shall confer with a view toward coordinating their conduct with respect to Inspections in order to minimize the costs thereof and





(d) If in respect of any Lease, at any time such Lease prohibits the lessor of such Lease to assign in favor of the Borrower or the Collateral Agent or grant a Lien in respect of its rights thereunder, pursuant to the terms of the applicable Sale Agreement and the Collateral Documents, unless notice of such assignment or Lien is provided to the relevant Lessee in accordance with the terms thereof ("Lease Notice Requirements"), the Borrower shall promptly after the Closing Date or, in the case of a Follow-On Lease, within 60 days after the date of execution thereof or, if later, promptly after the date on which such Lessee Notice Requirements became effective, provide a notice (each, a "Lessee Notice") to such Lessee in writing that such Lease has been assigned to the Collateral Agent under the Loan Documents for the benefit of the Protected Parties. Each Lessee Notice shall be in form and substance sufficient to satisfy the Lease Notice Requirements of such Lease.

(e) If in respect of any Lease, at any time such Lease prohibits the lessor of such Lease to assign in favor of the Borrower or the Collateral Agent or grant a Lien in respect of its rights thereunder, pursuant to the terms of the applicable Sale Agreement and the Collateral Documents, without the consent of the relevant Lessee given in accordance with the terms thereof ("Lessee Consent Requirements"), the Borrower shall within 60 days after the Closing Date or date of execution of the applicable Follow-On Lease (as applicable) or, if later, 60 days after the date on which such Lessee Consent Requirements became effective, cause such Lessee to provide such consent (each, a "Lessee Consent") in writing that such Lease has been assigned to the Collateral Agent under the Loan Documents for the benefit of the Protected Parties. Each Lessee Consent shall be in form and substance sufficient to satisfy the Lessee Consent Requirements of such Lease. If, in accordance with the terms set forth above, a Lessee Consent complying with this Section 6.14(e) is not obtained from the applicable Lessee within 60 days of the date on which such Lessee Consent Requirement arose, a "Lessee Consent Trigger Event" shall have occurred.

**SECTION 7.05** Servicer. The Borrower and the Administrative Agent further agree that, upon the occurrence and continuance of a Servicer Replacement Event or as otherwise provided in the Servicing Documents, the Administrative Agent (acting at the direction of the Required Lenders), without the consent or action of or by any Facility Party, may elect to succeed to all of the Borrower's rights and powers under the Servicing Documents, and thereby shall succeed to any of the Borrower's rights and powers to remove the Servicer, terminate any Servicing Document(s), appoint a new Servicer that is reasonably satisfactory to both the Administrative Agent and the Required Lenders, in accordance with Section 8.04 of the Servicing Agreement, and enter into new Servicing Document(s) with such new Servicer.

**SECTION 7.06** Action after an Event of Default. Following the occurrence and during the continuance of an Event of Default, the Borrower shall, in connection with taking any action or exercising any rights or remedies under any Lease Document or Servicing Document, comply in good faith with all requests from the Administrative Agent and Collateral Agent.

**SECTION 7.07** Required Disclosures. Promptly, following a request by the Administrative Agent or any Lender, the Borrower shall provide all documentation and other information the Administrative Agent or any Lender reasonably requests about any Facility Party or any Affiliate thereof in order to comply with its ongoing obligations under applicable "know your customer" and anti-money laundering rules and regulations, including the Patriot Act.

## ARTICLE VII

### NEGATIVE COVENANTS

The Borrower agrees that so long as any Lender has any Commitment hereunder or any Obligations or other amount payable hereunder or under any Note or other Loan Document remains unpaid:

**SECTION 7.01** Limitation on Debt. The Borrower will not incur, create, assume or permit to exist any Debt, including, without limitation, Derivatives Obligations except:

(i) Debt of the Borrower under or permitted by this Agreement and the other Loan Documents; and

(ii) Derivatives Obligations of the Borrower under Derivatives Agreements to the extent entered into after the Closing Date with the express written consent of the Administrative Agent to manage interest rate risks and not for speculative purposes.

**SECTION 7.02** Restriction on Liens. The Borrower will not create, incur, assume or permit to exist any Lien on any property or assets now owned or hereafter acquired by it or on any income or rights in respect of any thereof, except Permitted Liens.

**SECTION 7.03** Nature of Business. The Borrower will not alter the character or conduct of the business conducted by it as of the Closing Date and activities directly related thereto.

**SECTION 7.04** Consolidation, Merger and Dissolution. The Borrower will not enter into any transaction of merger or consolidation or liquidate, wind up or dissolve itself or its affairs (or suffer any liquidations or dissolutions), or convert into any other Person.

**SECTION 7.05** Railcar Partial Prepayments; Asset Dispositions and Exchanges.

(a) The Borrower will not make or permit or consent to any Railcar Partial Prepayment or Asset Disposition, except that:

(i) following an Event of Loss with respect to a Railcar, the Borrower may make or permit or consent to any Asset Disposition for salvage or other obtainable value, "free and clear" of the Collateral Agent's security interests, so long as the insurance proceeds of such Asset Disposition shall have been directly paid or upon receipt shall be paid to the Collateral Agent as sole loss payee in accordance with Section 6.06;

(ii) the Borrower may make or permit or consent to any Permitted Discretionary Sale (including in connection with a Securitization) being either a sale or exchange (each such exchange, a "Permitted Discretionary Exchange") of the Relinquished Railcar if the Net Cash Proceeds of such Asset Disposition have or simultaneously therewith will be deposited into the Substitution Account; and

(iii) the Borrower may make or permit or consent to any Asset Disposition not otherwise described in clauses (i) or (ii) of this paragraph at the direction of the Administrative Agent (as directed by the Required Lenders), subject to any conditions imposed by the Administrative Agent relating thereto;

provided that, notwithstanding the foregoing, the Borrower will not make or permit or consent to any Railcar Partial Prepayment or Asset Disposition if, after giving effect thereto, the Aggregate Original Value of all Relinquished Railcars which have been subject to: (A) an Asset Disposition (including, for the avoidance of doubt, sales, but excluding all Permitted Discretionary Exchanges) from the Closing Date until (and including) the Maturity Date shall exceed 30% of the Aggregate Original Value of all the Initial Portfolio Railcars, or (B) an Asset Disposition (including, for the avoidance of doubt, sales and all Permitted Discretionary Exchanges) from the Closing Date until (and including) the Maturity Date shall exceed 50% of the Aggregate Original Value of all the Initial Portfolio Railcars (except that this proviso shall not apply to any Asset Dispositions described in clause (i) above).

(b) In respect of each Permitted Discretionary Exchange:

(i) the Borrower prior to such contemplated Permitted Discretionary Exchange shall identify Qualifying Replacement Railcars to replace the Portfolio Railcars subject to the contemplated Permitted Discretionary Sale and shall deliver to the Administrative Agent, as a condition precedent to such contemplated Permitted Discretionary Sale, (A) a Qualifying Replacement Railcar Certificate, and (B) an Additional Collateral Certificate, in each case on or prior to the effective time of such Permitted Discretionary Sale; and

(ii) if, after the Borrower has delivered to the Administrative Agent a Qualifying Replacement Railcar Certificate and an Additional Collateral Certificate as contemplated by clause (i) above, the effective date of the purchase of such Replacement Railcars does not occur within the period from the effective date of such sale of the Portfolio Railcars subject to the Permitted Discretionary Sale until the Settlement Date immediately preceding the date falling 60 days after the effective date of such sale, a "Railcar Sale Trigger Event" shall have occurred.

For the avoidance of doubt, all Railcars that replace Portfolio Railcars subject to a Permitted Discretionary Sale shall be Qualifying Replacement Railcars in order to be Portfolio Railcars, and upon acquisition, such Replacement Railcars (and any related Leases) will become subject to the Lien of the Security Agreement (and related Transaction Documents).

(c) Upon consummation of an Asset Disposition permitted under this Section 7.05, the Collateral Agent shall (to the extent applicable) deliver to the Borrower, upon the Borrower's reasonable request and at the Borrower's expense, such documentation as is reasonably necessary to evidence the release of the Collateral Agent's security interests, if any, in the assets being disposed of, including amendments or terminations of Uniform Commercial Code Financing Statements, if any.

(d) Upon the request of the Collateral Agent from time to time, the Borrower will promptly and duly execute and deliver any and all such further instruments and documents as may be specified in such request which are reasonably necessary to perfect, preserve or protect the security interests created or intended to be created for the Replacement Railcars under the Collateral Documents, or to establish that the Borrower has title to such Railcars; provided that any such request shall be commercially reasonable and otherwise consistent with the security interests and Liens granted pursuant to the Collateral Documents.

SECTION 7.06 Investments. The Borrower will not hold, make or acquire, any Investment in any Person, except that:

- (i) the Borrower may invest in cash and Cash Equivalents pursuant to this Agreement and the Depository Agreement;
- (ii) the Borrower may acquire and hold receivables owing to it, if created or acquired in the ordinary course of business and payable or dischargeable in accordance with customary trade terms;
- (iii) the Borrower may acquire and own Investments (including Debt obligations) received in connection with the bankruptcy or reorganization of suppliers and customers and in settlement of delinquent obligations of, and other disputes with, customers and suppliers arising in the ordinary course of business; and
- (iv) to the extent permitted hereunder, the Borrower may purchase Eligible Railcars, Eligible Leases and other related inventory, machinery and equipment in the ordinary course of business.

SECTION 7.07 Restricted Payments, etc. The Borrower will not declare or pay any Restricted Payments (other than Restricted Payments payable solely in Equity Interests (exclusive of Disqualified Stock)), of the Borrower, except that, so long as no Insolvency Event, Default or Event of Default has occurred and is continuing or would result therefrom, the Borrower may make Restricted Payments from time to time to the extent cash is made available to the Borrower pursuant to Section 2.07(c).

SECTION 7.08 Transactions with Affiliates. The Borrower will not engage in any transaction or series of transactions with (i) any officer, director, holder of any Equity Interest in or other Affiliate of the Borrower or (ii) any Affiliate of any such officer, director, holder or Affiliate, other than (A) the payment of the Servicer's Fees as provided in Section 2.07(c), (B) reimbursement of Servicer Advances pursuant to the Servicing Agreement and Section 2.07(c), (C) transfers of assets permitted by Section 7.05, (D) as otherwise expressly provided for or contemplated in any Loan Document and (E) so long as no Default or Event of Default has occurred and is continuing, other transactions (including the purchase of Railcars) which are engaged in by the Borrower in the ordinary course of its business on terms and conditions as favorable to it as would be obtainable by it in a comparable arm's-length transaction with an independent, unrelated third party.

SECTION 7.09 Fiscal Year; Organization and Other Documents. The Borrower will not (i) change its fiscal year, (ii) enter into any amendment, modification or waiver to its

Organization Documents, (iii) except with the consent of the Administrative Agent (at the direction of the Required Lenders) and subject to Section 7.13, amend, modify, extend, renew, cancel or terminate the Purchase and Contribution Agreement, any Bill of Sale, any other Sale Agreement, any Servicing Document, any Lease Document or any other Assigned Agreement (as defined in the Security Agreement), waive any material default under or breach of any such agreement, compromise or settle any material dispute, claim, suit or legal proceeding relating to any such agreement, sell or assign any such agreement or interest therein, consent to or permit or accept any prepayment of amounts to become due under or in connection with any such agreement, except as expressly provided therein, or take any other action in connection with any such agreement which would materially impair the value of the interests or rights of the Borrower thereunder or which would impair the interests or rights of the Administrative Agent under this Agreement, except that, unless the Administrative Agent shall have notified the Borrower upon the occurrence of an Event of Default that this exception is no longer available or if the same would otherwise be adverse in any material respect to the interests of the Administrative Agent and the Lenders, the Borrower may (or may permit the Servicer to) modify, make adjustments with respect to, extend or renew any Assigned Agreements in the ordinary course of business, and except that Section 7.13 and 7.14 shall govern the right of the Borrower to waive or permit the waiver of a Lease Default or Lease Event of Default or (iv) enter into any amendment, modification or waiver which is in any manner adverse to the interests of the Collateral Agent, the Administrative Agent and the Lenders to any Servicing Document or the Purchase and Contribution Agreement, in each case as in effect on the Closing Date. The Borrower will promptly provide the Lenders with copies of all amendments to the foregoing documents and instruments as in effect as of the Closing Date.

**SECTION 7.10** Additional Negative Pledges. The Borrower will not enter into, assume or become subject to any agreement prohibiting or otherwise restricting the creation or assumption of any Lien upon its properties or assets, whether now owned or hereafter acquired, or requiring the grant of any security for an obligation if security is given for some other obligation, except pursuant to this Agreement and the other Loan Documents.

**SECTION 7.11** Impairment of Security Interests. The Borrower will not take or omit to take any action which action or omission might or would materially impair the security interests in favor of the Collateral Agent with respect to the Collateral.

**SECTION 7.12** Financial Ratios and Tests.

(a) Loan-to-Value Ratio.

i. If the Loan-to-Value Ratio on any LTV Test Date exceeds the LTV Maximum Ratio (an "LTV Failure"), and the Borrower has not effected an LTV Cure within the period from such LTV Test Date until 30 days thereafter, an "LTV Trigger Event" shall have occurred.

ii. Upon the occurrence of any LTV Failure, the Borrower shall be entitled, at any time prior to the occurrence of the LTV Trigger Event resulting from such LTV Failure, in any combination, to (A) prepay all or a portion of the principal amount of the Loans, and/or (B) add Eligible Railcars to the Portfolio, in each case in an amount

sufficient to cause the Loan-to-Value Ratio to not exceed the LTV Maximum Ratio after giving pro forma effect to such addition or other action; provided that, in the case of clause (B) above, any such additional Eligible Railcars may not be added unless the applicable criteria set forth in the Permitted Discretionary Sale are satisfied as if such Eligible Railcars were being added to the Portfolio as Replacement Railcars pursuant to an Asset Disposition (each of (A) and (B), an "LTV Cure").

(b) Debt Service Coverage Ratio.

i. If the DSCR on any DSCR Test Date is less than the DSCR Minimum (a "DSCR Failure") , and the Borrower has not effected a DSCR Cure within the period from such DSCR Test Date until 60 days thereafter, a "DSCR Trigger Event" shall have occurred.

ii. Upon the occurrence of any DSCR Failure, the Borrower shall be entitled, at any time prior to the occurrence of the DSCR Trigger Event resulting from such DSCR Failure, in any combination, to (A) prepay all or a portion of the principal amount of the Loans, and/or (B) add Eligible Railcars to the Railcar Portfolio, in each case in an amount such that, if the DSCR were recalculated during the same DSCR Calculation Period and (x) such prepayment or addition of Eligible Railcars was deemed to have occurred at the commencement of such DSCR Calculation Period as described in clause (iii) below and (y) as a result, no DSCR Failure would have occurred; provided that, in the case of clause (B) above, any such additional Eligible Railcars may not be added unless the applicable criteria set forth in the Permitted Discretionary Sale are satisfied as if such Eligible Railcars were being added to the Portfolio as Replacement Railcars pursuant to an Asset Disposition (each of (A) and (B), a "DSCR Cure").

iii. For the purposes of recalculating the DSCR as set forth above in connection with any DSCR Cure: (x) any prepayment of the Loans shall be deemed to have occurred at the commencement of the relevant DSCR Calculation Period, and (y) if one or more Eligible Railcars are added to the Railcar Portfolio then the Monthly Rent under the Leases attributable to each such Eligible Railcar shall be deemed to have been paid during the entire such DSCR Calculation Period.

(c) Utilization. If at any time the Utilization Ratio is less than 80% (a "Utilization Failure"), and the Borrower has not, within a period of 30 days from the date on which such Utilization Failure occurred, cured such Utilization Failure in accordance with Section 6.13 or otherwise, a "Utilization Trigger Event" shall have occurred.

SECTION 7.13 No Amendments to the Lease Documents. Without prior written consent of the Administrative Agent (at the direction of the Required Lenders) or as expressly provided by the terms of this Agreement, and only then to the extent consistent with the Servicing Standard and Conflicts Standard (each as defined in the Servicing Agreement), the Borrower will not amend, modify, consent to or permit any change in the terms or otherwise alter or grant any consent or approval under any Lease Document in a manner which would materially and adversely affect the Collateral Agent, the Administrative Agent or Lenders.

SECTION 7.14 Lease Default. Without the prior written consent of the Administrative Agent, which consent may be granted or withheld at the Administrative Agent's sole discretion, the Borrower will not waive (or permit the waiver of) a Lease Default or Lease Event of Default under a Lease; provided, however, that unless a Default arising from the failure to make a payment when due hereunder or an Event of Default has occurred and is continuing, the Borrower may elect, in its reasonable discretion, to the extent consistent with the Servicing Standard and Conflicts Standard (each as defined in the Servicing Agreement) and upon written notice to the Administrative Agent, to give such waiver (or permit such waiver), so long as such waiver is limited to the particular facts giving rise to such Lease Default or Lease Event of Default and does not prejudice the Borrower's (or Collateral Agent's, by assignment) rights under the relevant Lease to exercise remedies with respect to any other or future Lease Defaults or Lease Events of Default; provided, further, that any such waiver without the prior written consent of the Administrative Agent shall not cause a Lease which otherwise would fail to be an Eligible Lease to be an Eligible Lease.

SECTION 7.15 [Intentionally Omitted].

SECTION 7.16 Special Purpose. The Borrower will not:

- (a) employ or maintain any employees other than as required by Applicable Law; provided that officers and directors shall not be deemed to be employees for purposes of this Section 7.16;
- (b) hold or own any Subsidiaries;
- (c) engage in any activity other than the purchase, ownership, leasing, exploitation and sale of the Portfolio Railcars or own any assets other than the Portfolio Railcars and other assets expressly contemplated under this Agreement and the other Loan Documents or Lease Documents;
- (d) incur any obligation to any third party except as permitted by this Section 7.16, as provided in a Lease or any other Lease Document, any Loan Document or any related documents; or
- (e) own, or otherwise have title to, any deposit account or securities account other than the Collection Account or other accounts required by the Loan Documents or by the Lease Documents or otherwise consented to by the Administrative Agent.

SECTION 7.17 Independence of Covenants. All covenants contained herein shall be given independent effect so that if a particular action or condition is not permitted by any of such covenants, the fact that such action or condition would be permitted by an exception to, or otherwise be within the limitations of, another covenant shall not avoid the occurrence of a Default if such action is taken or condition exists.

SECTION 7.18 Concentration Limits. The Borrower shall not acquire, dispose of, substitute, lease or re-lease any Railcar if such transaction would cause the Portfolio to exceed any of the Concentration Limits.

(a) The Borrower shall ensure that at all times that neither it nor any of its directors, officers nor, to the Knowledge of Borrower, employees, agents, advisors or Affiliates is subject to any Sanctions.

(b) The Borrower shall ensure that at all times each of the Borrower and its directors, officers and, to the Knowledge of Borrower, employees, agents, advisors and Affiliates is in compliance with: (i) all Sanctions Laws, (ii) all Anti-Corruption Laws in all material respects and (iii) all Anti-Terrorism Laws in all material respects; provided, that, for the purposes of clauses (ii) and (iii) of this Section 7.19(b) only and in respect of any such Person, the term "in all material respects" means compliance in every respect except for any violation of Anti-Corruption Laws or Anti-Terrorism Laws which does not result and could not reasonably be expected to result: (x) in any criminal liability being imposed on such Person, (y) subject to clause (z), in any civil liability being imposed on such Person in excess of \$500,000 (whether through private action or enforcement), and (z) in any liability (civil, criminal or otherwise) being imposed on such Person which in turn results, or could reasonably be expected to result, in liability being imposed on any Protected Party under Anti-Corruption Laws or Anti-Terrorism Laws.

(c) No part of the proceeds of the Loans or New Term Loans will be used, directly or indirectly, (A) for the purpose of financing any activities or business of or with any Person or in any country or territory that at such time is the subject of any Sanctions or (B) for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of any Anti-Corruption Law.

## ARTICLE VIII

### OTHER REPRESENTATIONS, WARRANTIES AND COVENANTS

**SECTION 8.01.** Lender's Representation and Warranty. Each Lender represents and warrants as to itself on the Closing Date, and as to itself at all times until the Termination Date that no part of the assets to be used by such Lender to purchase the Loans or Notes constitutes assets of an "employee benefit plan" as defined in Section 3(3) of ERISA, which is subject to Title I of ERISA, a "plan" as defined in Section 4975 of the Code which is subject to Section 4975 of the Code, an entity whose underlying assets include "plan assets" by reason of any such employee benefit plan or plan's investment in such entity, or a governmental, church or non-U.S. plan which is subject to any federal, state, local or non-U.S. law that is similar to the prohibited transaction provisions of Section 406 of ERISA or Section 4975 of the Code.

**SECTION 8.02.** Quiet Enjoyment. The Administrative Agent, the Collateral Agent and each Lender hereby covenant and agree that so long as no Lease Event of Default has occurred and is continuing, neither it nor any Person claiming by, through or under it shall take or cause to be taken any action contrary to any Lessee's or any permitted sublessee's right to quiet enjoyment of, and the continuing possession, use and operation of, the relevant Portfolio Railcar during the term of such Lease and in accordance with the terms of such Lease. To the extent



reasonably requested by a Lessee in connection with the Closing Date, the Administrative Agent, the Collateral Agent and each Lender shall confirm this Section 8.02.

## ARTICLE IX

### DEFAULTS

**SECTION 9.01** Events of Default. An Event of Default shall exist upon the occurrence of any of the following specified events or conditions (each an "Event of Default"):

(a) Payment. (i) Any default shall occur in the payment when due (whether by scheduled maturity, prepayment, acceleration or otherwise) of any principal of or any interest on the Loans, and such payment is not received (A) in the case of any such payment constituting a Mandatory Prepayment Amount, within five Business Days of the due date therefor, or (B) in the case of all other such payments, within one Business Day of the due date therefor, or (ii) any default shall occur in the payment when due of any fees or other amounts owing to any Protected Party under any Loan Document or in connection herewith or therewith (in any case, other than with respect to interest calculated by reference to the Default Margin), which default shall continue for 15 days after notice thereof has been given to the Borrower and the Servicer by the Administrative Agent.

(b) [Intentionally Omitted].

(c) Representations. Any representation, warranty or statement made or deemed to be made by the Borrower or the Servicer in any Transaction Document, or in any statement or certificate delivered or required to be delivered pursuant hereto or thereto shall prove untrue or incorrect on the date as of which it was made or deemed to have been made and if capable of being cured shall not have been cured within 15 days after the earlier of an executive officer of the Borrower and/or Servicer, as the case may be, becoming aware of such untruth or notice thereof given by the Administrative Agent to the Borrower and/or Servicer, as the case may be; provided, that the representations and warranties made by the Borrower in Sections 5.10 and 5.26 shall be deemed to be incapable of cure.

(d) Covenants. The Borrower shall:

(i) default in the due performance or observance by it of any term, covenant or agreement contained in Sections 6.06, 6.14(c), 7.01, 7.02, 7.03, 7.04, 7.05, 7.06, 7.09, 7.10, 7.11, 7.13, 7.16 and 7.19 of this Agreement;

(ii) default in the due performance or observance by it of any term, covenant or agreement contained in Section 6.01(f), 6.01(i) or 6.10 and such default shall continue unremedied for a period of two Business Days;

(iii) [Intentionally Omitted];

(iv) default in the due performance or observance by it of any term, covenant or agreement contained in ARTICLE VI (other than those referred to in subsections (a), (b), (c), (d)(i) or (d)(ii) of this Section 9.01) and such default shall continue unremedied for a

period of 15 days after the earlier of an executive officer of the Borrower or the Servicer becoming aware of such default or notice thereof given by the Administrative Agent to the Borrower and/or the Servicer, as the case may be; or

(v) default in the due performance or observance by it of any term, covenant or agreement (other than those referred to in subsections (a), (b), (c), (d)(i), (d)(ii), (d)(iii) or (d)(iv) of this Section 9.01) contained in this Agreement and such default shall continue unremedied for a period of 30 days after the earlier of an executive officer of the Borrower or Servicer becoming aware of such default or notice thereof given by the Administrative Agent to the Borrower and/or the Servicer, as the case may be.

(e) Loan Documents. Except pursuant to the terms thereof, any Loan Document shall (i) fail to be in full force and effect or any Facility Party shall so assert or (ii) fail to give (or the Borrower or TILC should assert the failure to give) the Collateral Agent and/or the Lenders the perfected first priority security interests (subject to Permitted Liens), liens, rights, powers and privileges purported to be created thereby.

(f) Cross-Default. (i) There occurs under any Derivatives Agreement an Early Termination Date (as defined in such Derivatives Agreement) resulting from any event of default under such Derivatives Agreement as to which the Borrower is the Defaulting Party (as defined in such Derivatives Agreement), and the Derivatives Termination Value owed by the Borrower as a result thereof is greater than \$1,000,000. (ii) The Borrower shall fail to pay any principal or interest, regardless of amount, due in respect of any Debt (other than Debt under the Loan Documents) with a principal balance in excess of \$1,000,000, when and as the same shall become due and payable (except to the extent such payment is being contested by the Borrower in good faith by appropriate proceedings diligently conducted).

(g) Insolvency Events. (i) The Borrower shall commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, or shall consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or shall make a general assignment for the benefit of creditors, or shall fail generally to pay its debts as they become due, or shall take any corporate action to authorize any of the foregoing or (ii) an involuntary case or other proceeding shall be commenced against the Borrower seeking liquidation, reorganization or other relief with respect to it or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, and such involuntary case or other proceeding shall remain undismissed and unstayed for a period of 60 days, or any order for relief shall be entered against the Borrower under the federal bankruptcy laws as now or hereafter in effect.

(h) Judgments. One or more judgments, orders, decrees or arbitration awards is entered against the Borrower involving in the aggregate a liability (to the extent not covered by independent third-party insurance as to which the insurer does not dispute coverage), as to any single or related series of transactions, incidents or conditions, of \$1,000,000 or more, and the

same shall remain undischarged, unvacated and unstayed pending appeal or otherwise unpaid or unsatisfied for a period of 30 days during which execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to attach or levy upon any assets of the Borrower to enforce any such judgment or the Borrower shall enter into any agreement to settle or compromise any pending or threatened litigation, as to any single or related series of claims, involving payment of \$1,000,000 or more by the Borrower, or any non-monetary judgment, order or decree is entered against the Borrower which has or would reasonably be expected to have a Material Adverse Effect, and there shall be any period of 30 consecutive days during which a stay of enforcement of such judgment or order, by reason of a pending appeal or otherwise, shall not be in effect.

- (i) Ownership. There shall occur a Change of Control.
- (j) TILC as Servicer. TILC shall cease to be the “Servicer” under the Servicing Agreement.

**SECTION 9.02** Acceleration; Remedies. Upon the occurrence of an Event of Default, and at any time thereafter unless and until such Event of Default has been waived in writing by the Required Lenders (or all of the Lenders as may be required pursuant to Section 11.03), the Collateral Agent upon the request and written direction of the Administrative Agent (at the direction of the Required Lenders), shall by written notice to the Borrower, take any of the following actions without prejudice to the rights of the Collateral Agent, the Administrative Agent or any Lender to enforce its claims against the Borrower except as otherwise specifically provided for herein:

- (a) Acceleration of Loans. Declare the unpaid principal of and any accrued interest in respect of all Loans and any and all other indebtedness or obligations of any and every kind owing by the Borrower to any of the Lenders hereunder to be due whereupon the same shall be immediately due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower.
- (b) Enforcement of Rights. Enforce any and all rights and interests created and existing under the Loan Documents, including, without limitation, directing the Collateral Agent to enforce any and all rights and remedies existing under the Collateral Documents and all rights of set-off.
- (c) Lessee Notices. Deliver the Lessee Notices to the applicable Lessees with respect to any or all of the Portfolio Leases.

Notwithstanding the foregoing, if an Event of Default specified in Section 9.01(g) shall occur, then all Loans, all accrued interest in respect thereof and all accrued and unpaid fees and other indebtedness or obligations owing to the Lenders hereunder and under the other Loan Documents shall immediately become due and payable without the giving of any notice or other action by the Collateral Agent, the Administrative Agent or the Lenders, which notice or other action is expressly waived by the Borrower.

Notwithstanding the fact that enforcement powers reside primarily with the Collateral Agent and the Administrative Agent, each Lender has, to the extent permitted by law, a separate

right of payment and shall be considered a separate “creditor” holding a separate “claim” within the meaning of Section 101(5) of the Bankruptcy Code or any other insolvency statute.

In case any one or more of the covenants and/or agreements set forth in this Agreement or any other Loan Document shall have been breached by the Borrower, then the Administrative Agent and the Collateral Agent may, at the written direction of the Administrative Agent, proceed to protect and enforce the Lenders’ rights by suit in equity and by action at law, including an action for damages as a result of any such breach or an action for specific performance of any such covenant or agreement contained in this Agreement or such other Loan Document. Without limitation of the foregoing, the Borrower agrees that failure to comply with any of the covenants contained herein may cause irreparable harm and that specific performance shall be available as a remedy in the event of any breach thereof. The Administrative Agent and Collateral Agent, as the case may be, acting pursuant to this paragraph shall be indemnified by the Borrower against all liability, loss or damage, together with all reasonable costs and expenses related thereto (including reasonable legal and accounting fees and expenses) in accordance with Section 11.05.

**SECTION 9.03** Priority of Security Interests. Notwithstanding anything contrary contained in this Agreement or any other Loan Document, the Borrower, the Collateral Agent, the Administrative Agent and each other Protected Party (for purposes of this Section 9.03, the term “Protected Parties” shall not include the Servicer) acknowledge and agree that any Liens on the Collateral regardless of how or when acquired, whether by grant, statute, operation of law, subrogation, purchase money obligations or otherwise that are granted to or held by, the Lenders, other Protected Parties or the Collateral Agent for the benefit of the Lenders and such Protected Parties, shall be a “first” priority security interest and shall be senior to all other security interests. Notwithstanding any other provision of this Agreement (including the Lien priorities set forth herein), all proceeds from Collateral shall be applied against all or any part of the Obligations as set forth in Section 2.07(c)(i) or Section 2.07(c)(ii), as applicable.

## ARTICLE X

### AGENCY PROVISIONS

**SECTION 10.01.** Appointment; Authorization. (a) Appointment. Each Lender hereby designates and appoints the Administrative Agent as agent of such Lender to act as specified herein and in the other Loan Documents, and each such Lender hereby authorizes the Administrative Agent, as the agent for such Lender, to take such action on its behalf under the provisions of this Agreement and the other Loan Documents and to exercise such powers and perform such duties as are expressly delegated by the terms hereof and of the other Loan Documents, together with such other powers as are reasonably incidental thereto, including but not limited to the appointing of the Collateral Agent and the Custodian under the Security Agreement. Notwithstanding any provision to the contrary elsewhere herein and in the other Loan Documents, the Administrative Agent shall not have any duties or responsibilities, except those expressly set forth herein and therein, or any fiduciary relationship with any Lender, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any of the other Loan Documents, or shall otherwise exist against the Administrative Agent. In performing its functions and duties under this Agreement and the other Loan Documents, the Administrative Agent shall act solely as an agent of the Lenders and does

not assume and shall not be deemed to have assumed any obligation or relationship of agency or trust with or for the Borrower. Without limiting the generality of the foregoing two sentences, the use of the term “agent” herein and in the other Loan Documents with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any Applicable Law. Instead, such term is used merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties. The provisions of this ARTICLE X (other than Section 10.09) are solely for the benefit of the Administrative Agent and the Lenders, and neither the Borrower nor the Collateral Agent shall have any rights as a third party beneficiary of the provisions hereof (other than Section 10.09).

(b) Collateral Documents. Without limiting the generality of clause (a) of this Section 10.01, each Lender hereby further authorizes the Administrative Agent to appoint U.S. Bank National Association as Collateral Agent, the Custodian and Depositary to enter into any Collateral Document as secured party on behalf of and for the benefit of such Lender or otherwise and to require the delivery of any Collateral Document which the Administrative Agent determines is necessary or advisable to protect or perfect the interests of the Protected Parties in any Collateral and agrees to be bound by the terms of each of the Collateral Documents. Anything contained in any of the Loan Documents to the contrary notwithstanding, but subject to Section 11.08, each Lender agrees that no Lender shall have any right individually to realize upon any of the Collateral under any Collateral Document or Loan Document, it being understood and agreed that all powers, rights and remedies under the Collateral Documents may be exercised solely by the Administrative Agent (or its designee, including the Collateral Agent, the Custodian and the Depositary) for the benefit of Protected Parties in accordance with the terms thereof. Each Lender hereby authorizes the Administrative Agent (or its designee, including the Collateral Agent, the Custodian and the Depositary) (a) to release or subordinate Collateral as permitted or required under this Agreement or the Collateral Documents, and agrees that a certificate or other instrument executed by the Administrative Agent or Collateral Agent evidencing such release of Collateral shall be conclusive evidence of such release as to any third party and (b) except as otherwise expressly provided in Section 11.03 hereof, to enter into any amendments or waivers of the Collateral Documents which the Administrative Agent determines are necessary or advisable including, without limitation, Collateral Documents the form of which are exhibits to this Agreement.

SECTION 10.02. Delegation of Duties. The Administrative Agent, the Custodian, the Depositary and Collateral Agent may execute any of their respective duties hereunder or under the other Loan Documents by or through agents, employees or attorneys-in-fact and shall be entitled to advice of counsel and other consultants or experts concerning all matters pertaining to such duties. None of the Administrative Agent, the Custodian, the Depositary nor the Collateral Agent shall be responsible for the negligence or misconduct of any agents or attorneys-in-fact selected by it in the absence of gross negligence or willful misconduct.

SECTION 10.03. Exculpatory Provisions. None of the Administrative Agent, the Custodian, the Depositary, the Collateral Agent, nor any of their respective directors, officers, employees or agents, shall be (i) liable for any action lawfully taken or omitted to be taken by any of them under or in connection herewith or in connection with any of the other Loan Documents or the transactions contemplated hereby or thereby (except for its own gross

negligence or willful misconduct in connection with its duties expressly set forth herein) or (ii) responsible in any manner to any of the Lenders or participants for any recitals, statements, representations or warranties made by any of the Facility Parties contained herein or in any of the other Loan Documents or in any certificate, report, document, financial statement or other written or oral statement referred to or provided for in, or received by the Administrative Agent, the Custodian, the Depository or the Collateral Agent under or in connection herewith or in connection with the other Loan Documents, or enforceability or sufficiency thereof of any of the other Loan Documents, or for any failure of any Facility Party to perform its obligations hereunder or thereunder or be required to ascertain or inquire as to the performance or observance of any of the terms, conditions, provisions, covenants or agreements contained herein or therein or as to the use of the proceeds of the Loans or of the existence or possible existence of any Default or Event of Default or to inspect the properties, books or records of the Facility Parties.

**SECTION 10.04.** Reliance on Communications. Each of the Administrative Agent, the Custodian, the Depository and the Collateral Agent shall be entitled to rely, and shall be fully protected in relying, upon any note, writing, resolution, notice, consent, certificate, affidavit, letter, cablegram, telegram, telecopy, telex, teletype or e-mail message, statement, order or other document or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons and upon advice and statements of legal counsel (including, without limitation, counsel to any of the Facility Parties, independent accountants and other experts selected by the Administrative Agent in the absence of gross negligence or willful misconduct). The Administrative Agent may deem and treat each Lender as the owner of its interests hereunder for all purposes unless a written notice of assignment, negotiation or transfer thereof shall have been filed with the Administrative Agent in accordance with Section 11.06(b). Each of the Administrative Agent, the Custodian, the Depository and the Collateral Agent shall be fully justified in failing or refusing to take any action under this Agreement or under any of the other Loan Documents unless it shall first receive such advice or concurrence of all the Lenders (to the extent specifically provided in Section 11.03) or the Required Lenders as it deems appropriate or it shall first be indemnified to its satisfaction by the Lenders against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. Each of the Administrative Agent, the Custodian, the Depository and the Collateral Agent shall in all cases be fully protected in acting, or in refraining from acting, hereunder or under any of the other Loan Documents in accordance with a request of all the Lenders (to the extent specifically provided in Section 11.03) or the Required Lenders and such request and any action taken or failure to act pursuant thereto shall be binding upon all the Lenders (including their successors and assigns). Where this Agreement expressly permits or prohibits an action unless all the Lenders (to the extent specifically provided in Section 11.03) or the Required Lenders otherwise determine, each of the Administrative Agent, the Custodian, the Depository and the Collateral Agent shall, and in all other instances each of the Administrative Agent, the Custodian, the Depository and the Collateral Agent may, but shall not be required to, initiate any solicitation for the consent or vote of the Lenders.

**SECTION 10.05.** Notice of Default. The Administrative Agent shall not be deemed to have Knowledge or notice of the occurrence of any Trigger Event, Default, Servicer Replacement Event or Event of Default, except with respect to defaults in the payment of principal, interest and fees required to be paid to the Administrative Agent for the accounts of the

Lenders, unless the Administrative Agent has received notice from a Lender, the Servicer or the Borrower referring to this Agreement or the Servicing Agreement, as applicable, describing such Trigger Event, Default, Servicer Replacement Event or Event of Default and stating that such notice is a “notice of trigger event”, “notice of default”, “notice of servicer replacement event” or a “notice of event of default” as the case may be. If the Administrative Agent receives such a notice, the Administrative Agent shall give prompt notice thereof to the Lenders. Each of the Administrative Agent and the Collateral Agent shall take such action with respect to such Trigger Event, Default, Servicer Replacement Event or Event of Default as shall be reasonably directed by, in the case of the Collateral Agent, the Administrative Agent and, in the case the Administrative Agent, the Required Lenders; provided, however, that unless and until the Administrative Agent or Collateral Agent, as the case may be, has received any such direction, the Administrative Agent or the Collateral Agent, as the case may be, may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Trigger Event, Default, Servicer Replacement Event or Event of Default or it shall deem advisable or in the best interest of the Lenders.

**SECTION 10.06.** Credit Decision; Disclosure of Information by Administrative Agent or Collateral Agent. Each Lender expressly acknowledges that neither the Administrative Agent nor the Collateral Agent has made any representations or warranties to it and that no act by the Administrative Agent or Collateral Agent hereinafter taken, including any consent to and acceptance of any assignment or review of the affairs of any Facility Party or any Affiliate thereof, shall be deemed to constitute any representation or warranty by the Administrative Agent or Collateral Agent to any Lender as to any matter, including whether the Administrative Agent or Collateral Agent has disclosed material information in its possession. Each Lender represents to the Administrative Agent and Collateral Agent that it has, independently and without reliance upon the Administrative Agent, the Collateral Agent or any other Lender, and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, assets, operations, property, financial and other condition, prospects and creditworthiness of the Facility Parties, and all requirements of Applicable Law, and made its own decision to make its Loans hereunder and enter into this Agreement. Each Lender also represents that it will, independently and without reliance upon the Administrative Agent, the Collateral Agent or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Loan Documents, and to make such investigation as it deems necessary to inform itself as to the business, assets, operations, property, financial and other conditions, prospects and creditworthiness of the Borrower and the other Facility Parties. Except for notices, reports and other documents expressly required to be furnished to the Lenders by the Administrative Agent or Collateral Agent hereunder, neither the Administrative Agent nor the Collateral Agent shall have any duty or responsibility to provide any Lender with any credit or other information concerning the business, operations, assets, property, financial or other conditions, prospects or creditworthiness of any Facility Party or their respective Affiliates which may come into the possession of the Administrative Agent or Collateral Agent, as the case may be.

**SECTION 10.07.** Indemnification. Whether or not the transactions contemplated hereby are consummated, the Lenders agree, severally but not jointly, to indemnify the Administrative Agent, the Custodian, the Depositary and the Collateral Agent (to the extent not reimbursed by

the Borrower and without limiting the obligation of the Borrower to do so), ratably according to their respective Commitments (or if the Commitments have expired or been terminated, in accordance with the respective principal amounts of outstanding Loans of the Lenders), from and against any and all Indemnified Liabilities which may at any time (including without limitation at any time following payment in full of the Obligations and including the costs and expenses of enforcing such Obligations) be imposed on, incurred by or asserted against the Administrative Agent, the Custodian, the Depository or the Collateral Agent in each of their respective capacities as such in any way relating to or arising out of this Agreement or the other Loan Documents or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby or any action taken or omitted by the Administrative Agent, the Custodian, the Depository or Collateral Agent under or in connection with any of the foregoing; provided that no Lender shall be liable for the payment to the Administrative Agent, the Custodian, the Depository or Collateral Agent of any portion of such Indemnified Liabilities resulting from such Person's gross negligence or willful misconduct; provided, however, that no action taken in accordance with the directions of the Required Lenders shall be deemed to constitute gross negligence or willful misconduct for purposes of this Section. If any indemnity furnished to the Administrative Agent, the Custodian, the Depository or Collateral Agent for any purpose shall, in the opinion of the Administrative Agent, the Custodian, the Depository or Collateral Agent, as the case may be, be insufficient or become impaired, each of the Administrative Agent, the Custodian, the Depository or Collateral Agent may call for additional indemnity and cease, or not commence, to do the acts indemnified against until such additional indemnity is furnished. Without limitation of the foregoing, each Lender shall reimburse each of the Administrative Agent, the Custodian, the Depository and Collateral Agent upon demand for its ratable share of any costs or out-of-pocket expenses (including fees and disbursements of counsel) incurred by each of the Administrative Agent, the Custodian, the Depository and Collateral Agent in connection with the preparation, execution, delivery, administration, modification, amendment or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement, any other Loan Document, or any document contemplated by or referred to herein, to the extent that the Administrative Agent, the Custodian, the Depository or Collateral Agent is not reimbursed for such expenses by or on behalf of the Borrower. The agreements in this Section shall survive the payment of the Obligations and all other obligations and amounts payable hereunder and under the other Loan Documents.

SECTION 10.08. Administrative Agent, the Custodian, the Depository and Collateral Agent in Their Individual Capacities. The Administrative Agent, the Collateral Agent, the Custodian, the Depository and their respective Affiliates may make loans to, issue letters of credit for the account of, accept deposits from, acquire Equity Interests in, and generally engage in any kind of banking, trust, financial advisory, underwriting and other business with the Borrower or any other Facility Party as though the Administrative Agent, the Custodian, the Depository or Collateral Agent were not the Administrative Agent, the Custodian, the Depository or Collateral Agent hereunder or under another Loan Document. The Lenders acknowledge that, pursuant to any such activities, the Administrative Agent, the Custodian, the Depository or its Affiliates may receive information regarding any Facility Party or its Affiliates (including information that may be subject to confidentiality obligations in favor of such Facility Party or such Affiliate) and acknowledge that none of the Administrative Agent, the Custodian, the Depository nor the Collateral Agent shall be under any obligation to provide such information to



them. With respect to the Loans made by and all obligations owing to it, each of the Administrative Agent, the Custodian, the Depository and the Collateral Agent shall have the same rights and powers under this Agreement as any Lender and may exercise the same as though it was not the Administrative Agent, the Custodian, the Depository or the Collateral Agent, and the terms "Lender" and "Lenders" shall include the Administrative Agent, the Custodian, the Depository or Collateral Agent, as the case may be, in their respective individual capacities.

**SECTION 10.09.** Term; Successor Administrative Agents. The Administrative Agent may (i) resign upon 30 days' written notice to the Lenders, the Borrower and the Servicer, and (ii) be removed as Administrative Agent upon the request of the Required Lenders. If the Administrative Agent resigns under a Loan Document, the Required Lenders shall appoint from among the Lenders a successor Administrative Agent, which successor Administrative Agent, if other than a Lender, shall be consented to by the Borrower at all times other than during the existence of an Event of Default (which consent of the Borrower shall not be unreasonably withheld or delayed). If no successor Administrative Agent shall have been so appointed by the Required Lenders, and shall have accepted such appointment prior to the effective date of the resignation of the resigning Administrative Agent, then the resigning Administrative Agent, after consulting with the Lenders and the Borrower shall appoint a successor Administrative Agent; provided, however, such successor Administrative Agent is a Lender hereunder or a commercial bank organized under the laws of the United States and has a combined capital and surplus of at least \$500,000,000. If no successor Administrative Agent is appointed prior to the effective date of the resignation of the resigning Administrative Agent, the resigning Administrative Agent may appoint, after consulting with the Lenders and the Borrower, a successor Administrative Agent, from among the Lenders. Upon the acceptance of any appointment as an Administrative Agent hereunder by a successor, such successor Administrative Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent, and the retiring Administrative Agent, shall be discharged from its duties and obligations as an Administrative Agent, as appropriate, under this Agreement and the other Loan Documents and the provisions of this Section 10.09 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was an Administrative Agent under this Agreement. If no successor Administrative Agent has accepted appointment as Administrative Agent within 60 days after the retiring Administrative Agent's giving notice of resignation, the retiring Administrative Agent's resignation shall nevertheless become effective and the Lenders shall perform all duties of the Administrative Agent hereunder until such time, if any, as the Required Lenders appoint a successor Administrative Agent as provided for above.

**SECTION 11.00** Request for Documents. Each of the Administrative Agent and the Collateral Agent shall from time to time upon reasonable request therefor furnish each Lender with copies of the Funding Package, Railcar Documentation, Lease Documents and/or Loan Documents (to the extent such Funding Package, Railcar Documentation, Lease Documents and/or Loan Documents are provided by the Borrower or other third parties, in the form and to the extent provided to the Administrative Agent or the Collateral Agent by the Borrower or such third parties).



SECTION 11.02 No Waiver; Cumulative Remedies. No failure or delay on the part of the Administrative Agent, Collateral Agent, the Custodian, the Depository or any Lender in exercising any right, power or privilege hereunder or under any other Loan Document and no course of dealing between the Administrative Agent, Collateral Agent, the Custodian, the Depository or any Lender and any of the Facility Parties shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder or under any other Loan Document preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder or thereunder. The rights and remedies provided herein are cumulative and not exclusive of any rights or remedies which the Administrative Agent, Collateral Agent, the Custodian, the Depository or any Lender would otherwise have. No notice to or demand on any Facility Party in any case shall entitle the Facility Parties to any other or further notice or demand in similar or other circumstances or constitute a waiver of the rights of the Administrative Agent, Collateral Agent, the Custodian, the Depository or the Lenders to any other or further action in any circumstances without notice or demand.

SECTION 11.03 Amendments, Waivers and Consents. Neither this Agreement nor any other Loan Document nor any of the terms hereof or thereof may be amended, changed, waived, discharged or terminated except, in the case of this Agreement or any other Loan Document, pursuant to an agreement or agreements or a consent or consents in writing entered into by the Borrower, each other Facility Party which is party thereto, and the Administrative Agent (acting at the direction of the Required Lenders); provided that the foregoing shall not restrict the ability of the Administrative Agent (at the direction of the Required Lenders) to (x) waive any Event of Default prior to the time the Administrative Agent (at the direction of the Required Lenders) shall have declared the Loans immediately due and payable pursuant to ARTICLE IX, or (y) effect any amendments to the Loan Documents as a result of the making of any New Term Loans in accordance with Section 2.14; provided, however, that:

(i) no such amendment, change, waiver, discharge or termination shall, without the consent of each Lender affected thereby:

(A) extend the Maturity Date or any payment of the Loans due thereon; provided that this clause (A) shall not restrict the ability of the Required Lenders to waive any Event of Default (other than an Event of Default the waiver of which would effectively result in any such extension or waiver), prior to the time the Administrative Agent shall have declared, or the Required Lenders shall have requested the Administrative Agent to declare, the Loans immediately due and payable pursuant to ARTICLE IX;

(B) reduce the rate, or extend the time of payment, of interest (other than as a result of waiving the applicability of any post-default increase in interest rates) thereon or fees hereunder or amend or modify or, if applicable, waive the effects of the definition of "Applicable Facility Margin";

(C) reduce or waive the principal amount of any Loan or amend or modify or, if applicable, waive the effects of the definition of "Required Principal Payment Amount";

(D) except as set forth in clause (y) above, increase the Commitment of a Lender over the amount thereof in effect (it being understood and agreed that a waiver of any Default, Servicer Replacement Event or Event of Default or a mandatory reduction in the Commitments shall not constitute a change in the terms of any Commitment of any Lender);

(E) release all or substantially all or less than all of the Collateral securing the Credit Obligations hereunder (provided that the Collateral Agent may, without consent from any other Lender, release any Collateral that is sold or transferred by the Borrower in compliance with Section 7.05, or released in compliance with Section 9.12 of the Security Agreement);

(F) amend, modify or waive any provision of Section 7.12;

(G) release any Facility Party from its respective obligations under the Loan Documents and/or the Servicing Documents;

(H) amend, modify or waive any provision of this Section 11.03, amend or modify any reference to or, if applicable, waive the effects of the definition of "Required Lenders", "Supermajority Lenders" or to any other provisions requiring a particular number or percentage of Lenders (whether based on number, Credit Exposure or otherwise), or reduce any percentage specified in, or otherwise modify, the definition of "Required Lenders" or "Supermajority Lenders";

(I) amend or modify or, if applicable, waive the effects of the definition of "Advance Rate";

(J) consent to the assignment or transfer by the Borrower or the Servicer of any of its rights and obligations under (or in respect of) the Loan Documents and the Servicing Agreement, except as permitted thereby;

(K) amend or modify or, if applicable, waive the effects of the definition of "Maturity Date" or "Events of Default";

(L) amend, modify or waive any provision of Section 2.07(c); or

(M) amend, modify or waive any provision of Sections 2.10 or 2.11;

(ii) no such amendment, change, waiver, discharge or termination shall, without the consent of the Supermajority Lenders affected thereby:

(A) amend or modify or, if applicable, waive the effects of the definition of "Monthly Report" or amend, modify or waive any of Exhibit A-5; or

(B) amend or modify or, if applicable, waive the effects of the definition of "Loan-to-Value Ratio", "LTV Maximum", "DSCR" or "DSCR Minimum";

(C) amend or modify or, if applicable, waive the effects of the definition of “Concentration Limits” or amend, modify or waive any of Schedule A; and

(iii) no provision of ARTICLE X may be amended without the consent of the Administrative Agent.

Notwithstanding the fact that the consent of all the Lenders is required in certain circumstances as set forth above, (i) each Lender is entitled to vote as such Lender sees fit on any bankruptcy reorganization plan that affects the Loans, and each Lender acknowledges that the provisions of Section 1126(c) of the Bankruptcy Code supersede the unanimous consent provisions set forth herein and (ii) the Required Lenders may consent to allow the Borrower to use cash collateral in the context of a bankruptcy or insolvency proceeding.

No amendment to (i) the definitions of “Creditor,” “Derivatives Agreement,” “Derivatives Creditor,” “Derivatives Obligations,” “Derivatives Termination Value,” “Obligations” or “Protected Party” contained in Section 1.01 and in the definition of “Secured Obligations” in Section 1.01 of the Security Agreement, (ii) Section 2.07(c), (iii) Section 9.01, (iv) Section 9.03, (v) this paragraph of Section 11.03, (vi) Section 11.17, (vii) Section 9.06 of the Security Agreement and (viii) Section 9.06 of the Parent Security Agreement only, in each of clauses (i) through (viii), in a manner that materially adversely affects a Derivatives Creditor, shall be effective without the written concurrence of such Derivatives Creditor and no addition of any new provision to this Agreement in a manner that impacts any of the sections described in clauses (i) through (viii) of this paragraph only and that materially adversely affect a Derivatives Creditor shall be effective without the written concurrence of such Derivatives Creditor. Prior to any amendment of the sections described in clauses (i) through (vii) of this paragraph, the Administrative Agent shall provide ten Business Days written notice to the Derivatives Creditors.

The various requirements of this Section 11.03 are cumulative. Each Lender and each holder of a Note shall be bound by any waiver, amendment or modification authorized by this Section 11.03 regardless of whether its Note shall have been marked to make reference therein, and any consent by any Lender or holder of a Note pursuant to this Section 11.03 shall bind any Person subsequently acquiring a Note from it, whether or not such Note shall have been so marked.

SECTION 11.04 Expenses. The Borrower shall pay promptly on demand, but in any event by the next Settlement Date following demand, all out-of-pocket expenses (including, without limitation, all reasonable attorneys’ fees and expenses) incurred by the Administrative Agent (and its Affiliates), the Collateral Agent, the Depositary, the Custodian and, in respect of such expenses set forth in clause (iii) below, the Lenders: (i) subject to any agreements on fee caps, in connection with the preparation, execution, delivery, administration, modification and amendment of the Loan Documents and in connection with the Borrowing including, without limitation, (A) due diligence, collateral review, syndication, transportation, computer, information transmission systems, duplication, audit, insurance, consultant, search, filing and recording fees and expenses and (B) the reasonable fees and expenses of counsel for each of the Administrative Agent, the Depositary, the Custodian and the Collateral Agent with respect

thereto, with respect to advising the Administrative Agent, the Depository, the Custodian or the Collateral Agent as to its rights and responsibilities, or the perfection, protection or preservation of rights and interests, under the Loan Documents and Lease Documents, (ii) in connection with wire transfers to be made by the Administrative Agent, the Depository or Collateral Agent in connection with the distribution of proceeds under this Agreement and (iii) in connection with any amendment, refinancing, modification, supplement (or, if related to a request by any Facility Party or any Lessee, interpretation), or waiver under any of the Notes or other Loan Documents and Lease Documents (which shall be limited to a single law firm for the Administrative Agent and all Lenders together) whether or not such amendment, refinancing, modification, supplement, interpretation or waiver is obtained or becomes effective, and in connection with the consideration of any potential, actual or proposed restructuring or workout of the transactions contemplated hereby or by the other Loan Documents.

The Borrower shall pay promptly on demand, but in any event by the next Settlement Date following demand, (i) all reasonable filing fees and attorneys' fees and expenses incurred by the Collateral Agent, the Custodian, the Depository and the Administrative Agent and all reasonable fees and expenses of special STB or other collateral or regulatory counsel (and other local counsel reasonably engaged by the Collateral Agent, the Custodian, the Depository or the Administrative Agent), as the case may be, in connection with the preparation and review of the Collateral Documents and the other Loan Documents and Lease Documents from time to time entered into or reviewed pursuant to this Agreement and all documents related thereto, the search of railcar conveyance and Lien records, the recordation of documents with the STB or other applicable Governmental Authority, inspection and appraisal fees and the making of the Loans hereunder, whether or not the Closing Date or other transaction contemplated hereby closes and (ii) all Taxes which the Collateral Agent or any Protected Party may be required to pay solely by reason of the security interests granted in the Collateral (including any applicable transfer Taxes) or to free any of the Collateral from the lien thereof.

In addition, the Borrower shall pay promptly on demand, but in any event by the next Settlement Date following demand, all reasonable out of pocket expenses (including, without limitation, reasonable attorneys' fees and expenses and fees and expenses of any expert witnesses) incurred by the Administrative Agent, the Collateral Agent and the Lenders in connection with the enforcement and protection of the rights of the Administrative Agent, the Collateral Agent and the Lenders under any of the Loan Documents and any amendments thereto and waivers thereof and any Servicer Replacement Event, Default or Event of Default, including without limitation, the performance by the Administrative Agent, the Collateral Agent or the Lenders of any act any Facility Party has covenanted to do under the Loan Documents and/or the Servicing Documents to the extent such Facility Party fails to comply with any such covenant.

The Borrower shall pay all fees and expenses in connection with the Depository Agreement including, without limitation, all fees (including any annual fee payable to the Depository pursuant to the Depository Agreement), expenses and any indemnity payments to the Depository and all fees and expenses in creating, maintaining and administering the Collection Account.

Except in respect of the Taxes specifically referred to above, this Section 11.04 shall not apply with respect to Taxes, which are governed solely by Section 3.01.

SECTION 11.05

Indemnification. Whether or not the transactions contemplated hereby are consummated, the Borrower agrees to indemnify, save and hold harmless the Administrative Agent, the Collateral Agent, the Custodian, the Depositary, each Lender, each Derivatives Creditor and their respective Affiliates, directors, officers, employees, counsel, agents and attorneys-in-fact (collectively the “Indemnitees”) from and against (and without duplication of amounts payable or the provisions which relate to such payment under the other provisions of the Loan Documents): (i) any and all claims, demands, actions or causes of action that are asserted against any Indemnitee by any Person (other than the Administrative Agent, the Collateral Agent, the Custodian, the Depositary, any Lender or any Derivatives Creditor) relating directly or indirectly to a claim, demand, action or cause of action that such Person asserts or may assert against TILC or any Facility Party, any Affiliate of TILC or any Facility Party or any of their respective officers, managers or directors; (ii) any and all claims, demands, actions or causes of action that may at any time (including at any time following repayment of the Obligations and the resignation or removal of the Administrative Agent, the Collateral Agent or the replacement of any Lender) be asserted or imposed against any Indemnitee, arising out of or relating to, the Loan Documents, any predecessor Loan Documents, the Commitments, the use of or contemplated use of the proceeds of any Loan, or the relationship of TILC, any Facility Party, the Administrative Agent and the Lenders under this Agreement or any other Loan Document; (iii) any administrative or investigative proceeding by any Governmental Authority arising out of or related to a claim, demand, action or cause of action described in clause (i) or (ii) above; (iv) any Loan Document, Lease Document, other Transaction Document or any document contemplated hereby or thereby and payments made pursuant hereto or thereto or any transaction contemplated hereby or thereby or the exercise of rights and remedies hereunder or thereunder, any breach by TILC or any Facility Party of any Transaction Document or Lease Document or a Lessee of any Lease Document, (v) any Railcar, any Part or the Borrower’s acquisition or ownership of, or the selection, design, financing, lease, control, operation, condition, location, storage, modification, repair, sale, use, maintenance, possession, registration, delivery, nondelivery, transportation, transfer or disposition of, any Railcar or Part; (vi) any and all liabilities, obligations, losses, damages, penalties, claims, demands, actions, suits, judgments, costs and expenses of any kind, including, without limitation, the reasonable fees and disbursements of counsel and the fees and expenses of enforcing the Borrower’s contractual and indemnification obligations under the Loan Documents, which may be incurred by, imposed on or asserted against such Indemnitee in connection with any investigation or administrative or judicial proceeding (whether or not such Indemnitee shall be designated a party thereto) brought or threatened relating to or arising out of any Collateral Document or in any other way connected with the enforcement of any of the terms of, or the presentation of any rights under, or in any way relating to or arising out of the manufacture, ownership, ordering, purchasing, delivery, control, acceptance, lease, financing, possession, operation, condition, sale, return or other disposition or use of the Collateral (including, without limitation, intent or other defects, whether or not discoverable) the violation of any laws of any country, state or other governmental body or unit, or any tort (including, without limitation, any claims, arising or imposed under the doctrine of strict liability, or for or on account of injury to or the death of any Person (including any Indemnitees), or property damage or contract claim; and (vii) any and all liabilities (including liabilities under indemnities), losses, costs or expenses (including fees and disbursements of one legal counsel, collectively, of the Indemnitees other than the Administrative Agent and the Collateral Agent, and one legal counsel of each of the

Administrative Agent and the Collateral Agent) that any Indemnitee suffers or incurs as a result of the assertion of any foregoing claim, demand, action, cause of action or proceeding, or as a result of the preparation of any defense in connection with any foregoing claim, demand, action, cause of action or proceeding, in all cases, and whether or not an Indemnitee is a party to such claim, demand, action, cause of action, or Proceeding (all the foregoing, collectively; the "Indemnified Liabilities"). **THE FOREGOING INDEMNIFICATION SHALL APPLY WHETHER OR NOT SUCH LIABILITIES AND COSTS ARE IN ANY WAY OR TO ANY EXTENT OWED, IN WHOLE OR IN PART, UNDER ANY CLAIM OR THEORY OF STRICT LIABILITY OR CAUSED, IN WHOLE OR IN PART, BY ANY NEGLIGENT ACT OR OMISSION OF ANY KIND BY ANY INDEMNITEE;** provided that no Indemnitee shall be entitled to indemnification for any claim caused by its own breach, gross negligence or willful misconduct and provided further, that no Indemnitee shall be entitled to indemnification for any claim arising solely out of (i) the bankruptcy, insolvency or other financial inability of one or more Lessees to make payments under a related Lease or (ii) the decline in market value of a Portfolio Railcar, to the extent not attributable to the failure of a Facility Party to perform an obligation with respect to such Portfolio Railcar under a Transaction Document; provided, further, that no Indemnitee shall be entitled to indemnification under this Section 11.05 in respect of (a) Taxes (which shall be governed solely by Section 3.01(a)), other than Taxes imposed with respect to indemnity payments arising from a non-tax claim or (b) losses which result from or arise out of or are attributable to a non-exempt prohibited transaction under ERISA or Section 4975 of the Code cause by the incorrectness of a Lender's representation in Section 8.01. In the case of an investigation, litigation or other proceeding to which the indemnity in this Section 11.05 applies, such indemnity shall be effective whether or not such investigation, litigation or proceeding is brought by TILC, any Facility Party, their respective directors, shareholders or creditors or an Indemnitee or any other Person or any Indemnitee is otherwise a party thereto and whether or not the transactions contemplated hereby are consummated. Without prejudice to the survival of any other agreement of the Borrower or any Indemnitee hereunder and under the other Loan Documents, the agreements and obligations of the Borrower and each Indemnitee contained in this Section 11.05 shall survive the repayment of the Loans and other obligations under the Loan Documents and the termination of the Commitments hereunder.

The Borrower shall, no later than 20 days following demand, reimburse any Indemnitee for any Indemnified Liability referred to above or, upon request from any Indemnitee, shall pay such amounts directly. Any payment made to or on behalf of any Indemnitee pursuant to this Section 11.05 shall be adjusted to such amount as will, after taking into account all Taxes imposed with respect to the accrual or receipt of such payment (as the same may be increased pursuant to this sentence), equal the amount of the payment. To the extent that the Borrower in fact indemnifies any Indemnitee pursuant to the provisions of this Section 11.05 (other than in respect of Taxes), the Borrower shall be subrogated to such Indemnitee's rights in the affected transaction and shall have a right to determine the settlement of claims therein.

If a claim of the type described above is made against an Indemnitee and such Indemnitee has notice thereof, such Indemnitee shall promptly, upon receiving such notice, give notice of such claim to the Borrower; provided that the failure to provide such notice shall not release the Borrower from any of its obligations hereunder except if and to the extent that such failure results in an increase in the Borrower's indemnification obligations hereunder. The Borrower



shall be entitled, in each case at its sole cost and expense, acting through counsel reasonably acceptable to the relevant Indemnitee: (i) in any judicial or administrative proceeding that involves solely a claim of the type described above, to assume responsibility for and control thereof, (ii) in any judicial or administrative proceeding involving a claim of the type described above and other claims related or unrelated to the transactions contemplated by this Agreement or any other Loan Document (other than with respect to Taxes), to assume responsibility for and control of such claim, to the extent that the same may be and is severed from such other claims (and such Indemnitee shall use its best efforts to obtain such severance), and (iii) in any other case, to be consulted by such Indemnitee with respect to judicial proceedings subject to the control of such Indemnitee. Notwithstanding anything in the foregoing to the contrary, the Borrower shall not be entitled to assume responsibility for and control of any such judicial or administrative proceedings: (A) while an Event of Default shall have occurred and be continuing; (B) if such proceedings will involve any risk of criminal liability or a material risk of the sale, forfeiture or loss of any part of the Collateral; or (C) to the extent that the Indemnitee has defenses available to it which are not available to the Borrower and allowing the Borrower to assert such defenses will be prejudicial to the interests of such Indemnitee; provided that the limitation on the Borrower's ability to control such judicial or administrative proceeding shall apply only to those aspects of such proceeding which address issues with respect to which such defenses are available.

The relevant Indemnitee shall supply the Borrower with such information reasonably requested by the Borrower as is necessary or advisable for the Borrower to control or participate in any proceeding to the extent permitted by this Section 11.05. Such Indemnitee shall not enter into a settlement or other compromise with respect to any covered claim without the prior written consent of the Borrower, which consent shall not be unreasonably withheld or delayed, unless such Indemnitee waives its right to be protected with respect to such covered claim.

SECTION 11.06 Successors, Assigns, and Participants. (a) Generally. This Agreement shall be binding upon and inure to the benefit of and be enforceable by the respective successors and assigns of the parties hereto; provided that the Borrower may not assign or transfer any of its interests and obligations.

(b) Assignments. Any Lender may assign all or a portion of its rights and obligations under this Agreement (including, without limitation, all or a portion of its Loans and its Commitments); provided, however, that:

- (i) each such assignment shall be to an Eligible Assignee who, unless otherwise consented to by the Borrower, is not a Competitor of the Borrower;
- (ii) no Lender may at any time assign such rights and obligations without prior written notice to the Borrower;
- (iii) in the case of an assignment to an Eligible Assignee who falls within clause (iii) of the definition of such term, such assignee shall acquire (and such assignor shall retain) in the aggregate upon any such assignment by one or more Lenders a minimum amount of Loans with a then aggregate current principal balance of at least \$10,000,000;

(iv) the parties to such assignment shall execute and deliver to the Administrative Agent for its acceptance an Assignment and Acceptance in the form of Exhibit C, together with any Note subject to such assignment and a processing fee of \$3,500, payable by the assigning Lender to the Administrative Agent; and

(v) the Borrower shall not be required to reimburse any such assignee pursuant to Sections 3.01, 3.03 or 3.04 in an amount which, at any time after the effective date of such assignment, exceeds the amount that would have been payable thereunder to the assigning Lender had such Lender not entered into such assignment; provided, that any such assignment shall otherwise be without prejudice to the assignee's rights under Sections 3.01, 3.03 or 3.04.

(c) Assignment and Acceptance. By executing and delivering an Assignment and Acceptance in accordance with this Section 11.06, the assigning Lender thereunder and the assignee thereunder shall be deemed to confirm to and agree with each other and the other parties hereto as follows: (i) such assigning Lender warrants that it is the legal and beneficial owner of the interest being assigned thereby free and clear of any adverse claim and the assignee warrants that it is an Eligible Assignee; (ii) except as set forth in clause (i) above, such assigning Lender makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with this Agreement, any of the other Loan Documents or any other instrument or document furnished pursuant hereto or thereto, or the execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement, any of the other Loan Documents or any other instrument or document furnished pursuant hereto or thereto or the financial condition of the Facility Parties or the performance or observance by any Facility Party of any of its obligations under this Agreement, any of the other Loan Documents or any other instrument or document furnished pursuant hereto or thereto; (iii) such assignee represents and warrants that it is legally authorized to enter into such assignment agreement; (iv) such assignee confirms that it has received a copy of this Agreement, the other Loan Documents, together with copies of the most recent financial statements delivered pursuant to Section 6.01 and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into such Assignment and Acceptance; (v) such assignee will independently and without reliance upon the Administrative Agent, the Collateral Agent, such assigning Lender or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement and the other Loan Documents; (vi) such assignee appoints and authorizes each of the Administrative Agent and the Collateral Agent to take such action on its behalf and to exercise such powers under this Agreement or any other Loan Document as are delegated to each of the Administrative Agent and the Collateral Agent by the terms hereof or thereof, together with such powers as are reasonably incidental thereto; and (vii) such assignee agrees that it will perform in accordance with their terms all the obligations which by the terms of this Agreement and the other Loan Documents are required to be performed by it as a Lender. Upon execution, delivery, and acceptance of such Assignment and Acceptance, the assignee thereunder shall be a party hereto and, to the extent of such assignment, have the obligations, rights, and benefits of a Lender hereunder and the assigning Lender shall, to the extent of such assignment, relinquish its rights and be released from its obligations under this Agreement. Upon the consummation of any assignment pursuant to this Section 11.06(c), the assignor, the Administrative Agent and the Borrower shall make

appropriate arrangements so that, if required, new Notes are issued to the assignor and the assignee. The assignee shall deliver to the Borrower and the Administrative Agent certification as to exemption from deduction or withholding of Taxes in accordance with Section 3.01.

(d) Register. The Borrower hereby designates the Administrative Agent to serve as the Borrower's agent, solely for purposes of this Section 11.06(d), to (i) maintain a register (the "Register") on which the Administrative Agent will record the Commitments from time to time of each Lender, the Loans made by each Lender and each repayment in respect of the principal amount (and stated interest) of the Loans of each Lender and to (ii) retain a copy of each Assignment and Acceptance delivered to the Administrative Agent pursuant to this Section. Failure to make any such recordation, or any error in such recordation, shall not affect the Borrower's obligation in respect of such Loans. The entries in the Register shall be conclusive, in the absence of manifest error, and the Borrower, the Administrative Agent and the Lenders shall treat each Person in whose name a Loan and the Note evidencing the same is registered as the owner thereof for all purposes of this Agreement, notwithstanding notice or any provision herein to the contrary. With respect to any Lender, the assignment or other transfer the rights to the principal of, and interest on, any Loan made and any Note issued pursuant to this Agreement shall not be effective until such assignment or other transfer is recorded on the Register and, except to the extent provided in this Section 11.06(d), otherwise complies with Section 11.06, and prior to such recordation all amounts owing to the transferring Lender with respect to such Loans and Notes shall remain owing to the transferring Lender. The registration of assignment or other transfer of all or part of any Loans and Notes for a Lender shall be recorded by the Administrative Agent on the Register only upon the acceptance by the Administrative Agent of a properly executed and delivered Assignment and Acceptance and payment of the administrative fee referred to in Section 11.06(b)(iv). The Register shall be available at the offices where kept by the Administrative Agent for inspection by the Borrower and any Lender at any reasonable time upon reasonable prior notice to the Administrative Agent.

(e) Participations. Each Lender may, without the consent of the Borrower or the Administrative Agent, sell participations to one or more Eligible Assignees in all or a portion of its rights, obligations or rights and obligations under this Agreement (including all or a portion of the Loans owing to it and any Notes held by it); provided, however, that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, (iii) the participant shall be entitled to the benefit of right of setoff contained in Section 11.08 and the yield protection provisions contained in Sections 3.01, 3.03 and 3.04 to the same extent that the Lender from which such participant acquired its participation would be entitled to the benefits of such yield protections; provided that the Borrower shall not be required to reimburse any participant pursuant to Sections 3.01, 3.03 or 3.04 in an amount which exceeds the amount that would have been payable thereunder to such Lender had such Lender not sold such participation; provided further, that no participant shall be entitled to the benefits of Section 3.01 unless it shall have complied with Section 3.01 as if it were a Lender and (iv) the Borrower, the Administrative Agent and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement, and such Lender shall retain the sole right to enforce the obligations of the Borrower relating to the Obligations owing to such Lender and to approve any amendment, modification or waiver of any provision of this Agreement (other than amendments, modifications or waivers decreasing the amount of

principal of or the rate at which interest is payable on such Loans or Notes, extending any scheduled principal payment date or date fixed for the payment of interest on such Loans or Notes or extending its Commitment). Each Lender that sells a participating interest in any Loan, Commitment or other interest to a participant shall, as agent for the Borrower solely for the purpose of this Section 11.06, maintain a register on which it enters the name and address of each participant and the principal amounts (and stated interest) of each Participant's interest in the Loans, Commitments or other interest (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any participant or any information relating to a participant's interest in any commitments, loans, or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, or other interest is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(f) Other Assignments. Any Lender may at any time (i) assign all or any portion of its rights under this Agreement and any Loans and Notes to a Federal Reserve Bank or other similar central bank and (ii) pledge or assign a security interest in all or any portion of its interest and rights under this Agreement (including all or any portion of its Loans and Notes, if any) to secure obligations of such Lender; provided that no such assignment, option, pledge or security interest shall release a Lender from any of its obligations hereunder or substitute any such Federal Reserve Bank or other similar central bank or other person to which such option, pledge or assignment has been made for such Lender as a party hereto.

SECTION 11.07 Confidentiality. Each of the Administrative Agent, the Collateral Agent and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (i) to its and its Affiliates' directors, officers, employees and agents, including accountants, legal counsel and other advisors (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential); (ii) to the extent requested by any regulatory authority with jurisdiction over the Administrative Agent, the Collateral Agent or Lender, as applicable; (iii) to the extent required by Applicable Laws or regulations or by any subpoena or similar legal process; (iv) to any other party to this Agreement; (v) in connection with the exercise of any remedies hereunder or any suit, action or proceeding relating to this Agreement or any other Loan Documents or the enforcement of rights hereunder or thereunder; (vi) subject to an agreement containing provisions substantially the same as those of this Section, to (A) any Eligible Assignee of or participant in, or any prospective Eligible Assignee of or participant in, any of its rights or obligations under this Agreement, or (B) any direct or indirect contractual counterparty or prospective counterparty (or such contractual counterparty's or prospective counterparty's professional advisor) to any credit derivative transaction relating to obligations of the Borrower; (vii) with the written consent of the Borrower; (viii) to the extent such information (A) becomes publicly available other than as a result of a breach of this Section or (B) becomes available to the Administrative Agent, the Collateral Agent or any Lender on a nonconfidential basis from a source other than the



or collect excessive unearned interest or finance charges in the event the maturity of any Credit Obligation is accelerated. If (i) the maturity of any Credit Obligation is accelerated for any reason, (ii) any Credit Obligation is prepaid and as a result any amounts held to constitute interest are determined to be in excess of the legal maximum, or (iii) any Lender or any other holder of any or all of the Credit Obligations shall otherwise collect moneys which are determined to constitute interest which would otherwise increase the interest on any or all of the Credit Obligations to an amount in excess of that permitted to be charged by Applicable Law then in effect, then all sums determined to constitute interest in excess of such legal limit shall, without penalty, be promptly applied to reduce the then outstanding principal of the related Credit Obligations or, at such Lender's or holder's option, promptly returned to the Borrower or the other payor thereof upon such determination. In determining whether or not the interest paid or payable, under any specific circumstance, exceeds the maximum amount permitted under Applicable Law, the Administrative Agent, the Lenders and the Borrower (and any other payors thereof) shall to the greatest extent permitted under Applicable Law, (i) characterize any non-principal payment as an expense, fee or premium rather than as interest, (ii) exclude voluntary prepayments and the effects thereof, and (iii) amortize, prorate, allocate, and spread the total amount of interest throughout the entire contemplated term of the instruments evidencing the Credit Obligations in accordance with the amounts outstanding from time to time thereunder and the maximum legal rate of interest from time to time in effect under Applicable Law in order to lawfully charge the maximum amount of interest permitted under Applicable Law. In the event Applicable Law provides for an interest ceiling under Chapter 303 of the Texas Finance Code (the "Texas Finance Code") as amended, for that day, the ceiling shall be the "weekly ceiling" as defined in the Texas Finance Code; provided that if any Applicable Law permits greater interest, the Law permitting the greatest interest shall apply. As used in this Section 11.09 the term "Applicable Law" includes, without limitation the laws of the State of Texas, the laws of the State of New York or the laws of the United States of America, whichever laws allow the greatest interest, as such laws now exist or may be changed or amended or come into effect in the future.

**SECTION 11.10** Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, but all of which shall constitute one and the same instrument. It shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart.

**SECTION 11.11** Integration. THIS WRITTEN AGREEMENT, TOGETHER WITH THE OTHER LOAN DOCUMENTS AND ANY OTHER CONFIDENTIALITY OR NON-DISCLOSURE AGREEMENTS ENTERED INTO BETWEEN THE BORROWER AND ANY PROTECTED PARTY ON OR PRIOR TO THE DATE HEREOF, REPRESENTS THE FINAL AGREEMENT OF THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES. In the event of any conflict between the provisions of this Agreement and those of any other Loan Document, the provisions of this Agreement shall control; provided that the inclusion of supplemental rights or remedies in favor of the Collateral Agent, the Administrative Agent or the Lenders in any other Loan Document shall not be deemed a conflict with this Agreement. Each Loan Document was drafted with the joint participation of the respective



SECTION 11.17 Third Party Beneficiaries. Each Protected Party and Indemnitee is an express third party beneficiary hereof; provided that this Agreement may be amended without the consent of any such Protected Party or Indemnitee, except to the extent required pursuant to Section 11.03.

SECTION 11.18 Consequential Damages. None of the Borrower nor any Indemnitee shall assert any claim against any other party hereto on any theory of liability, for special, indirect, consequential or punitive damages arising out of or otherwise relating to the Loan Documents or any of the transactions contemplated herein or therein; provided that the foregoing shall not prohibit any Indemnitee from seeking indemnification under Section 10.07 for any such damages claimed by a third party.

SECTION 11.19 Governing Law; Submission to Jurisdiction. **THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS AND ANY RIGHT, OBLIGATION, CLAIM, CONTROVERSY OR DISPUTE OF THE PARTIES HEREUNDER AND THEREUNDER SHALL BE GOVERNED BY AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF NEW YORK (INCLUDING WITHOUT LIMITATION SECTION 5-1401 AND SECTION 5-1402 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK), WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES.** Any legal action or proceeding with respect to this Agreement or any other Loan Document may be brought in the courts of the State of New York in Borough of Manhattan, or of the United States for the Southern District of New York and, by execution and delivery of this Agreement, the Borrower hereby irrevocably accepts for itself and in respect of its property, generally and unconditional, the nonexclusive jurisdiction of such courts. The Borrower irrevocably waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of the venue of any such proceeding brought in such court and any claim that any such proceeding brought in any such court has been brought in an inconvenient forum.

SECTION 11.20 Waiver of Jury Trial. **EACH PARTY TO THIS AGREEMENT HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING UNDER ANY LOAN DOCUMENT OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO ANY LOAN DOCUMENT, OR THE TRANSACTIONS RELATED THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER FOUNDED IN CONTRACT OR TORT OR OTHERWISE; AND EACH PARTY HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY, AND THAT ANY PARTY TO THIS AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE SIGNATORIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.**

SECTION 11.21 Binding Effect. This Agreement shall become effective at such time when: (a) it shall have been executed by the Borrower, the Collateral Agent, the Depositary, the Custodian and the Administrative Agent, and the Administrative Agent shall have received



copies hereof (telexed or otherwise) which, when taken together, bear the signatures of each Lender, and (b) each of the conditions set forth in ARTICLE IV shall have been satisfied or waived, and thereafter this Agreement shall be binding upon and inure to the benefit of the Borrower, the Administrative Agent, the Collateral Agent and each Lender and their respective successors and assigns.

SECTION 11.22 Federal Income Tax Treatment. The Borrower, each Lender, the Administrative Agent, and each assignee and successor thereto hereby agrees to treat the Loans as indebtedness for federal income tax purposes, and shall maintain such position in all returns and proceedings relating to such federal income taxes, unless required otherwise pursuant to a final "determination" within the meaning of Section 1313 of the Code.

SECTION 11.23 Contractual Recognition of Bail-In. Notwithstanding any other term of any Loan Document or any other agreement, arrangement or understanding between the parties hereto, each party hereto acknowledges and accepts that any liability of any party hereto to any other party hereto under or in connection with the Loan Documents may be subject to Bail-In Action by the relevant Resolution Authority and acknowledges and accepts to be bound by the effect of:

- (a) any Bail-In Action in relation to any such liability, including (without limitation):
  - (i) a reduction, in full or in part, in the principal amount, or outstanding amount due (including any accrued but unpaid interest) in respect of any such liability;
  - (ii) a conversion of all, or part of, any such liability into shares or other instruments of ownership that may be issued to, or conferred on, it; and
  - (iii) a cancellation of any such liability; and
- (b) a variation of any term of any Loan Document to the extent necessary to give effect to any Bail-In Action in relation to any such liability.

SECTION 11.24 Limited Recourse and Non-Petition.

(a) In the absence of fraud, willful misconduct or gross negligence on the part of the Borrower or the Borrower's officers, directors or direct or indirect shareholders or owners, the Borrower's liability under the Loan Documents and the Protected Parties' recourse to the Borrower and their assets under the Loan Documents shall be limited solely to amounts payable under Collateral pledged under, or recovered by the Protected Parties in enforcing, the Collateral Documents.

(b) Each of the Protected Parties (other than the Collateral Agent) agrees that it shall not instigate any bankruptcy, insolvency, winding-up, liquidation, reorganization, amalgamation or dissolution or other similar process with respect to the Borrower, although it may make or file a claim or proof, or take any other action, in any existing bankruptcy, insolvency, winding-up, liquidation, reorganization, amalgamation or dissolution of the Borrower.

(c) For the avoidance of doubt, nothing in this Section 11.24 shall:

- (i) limit the Protected Parties' recourse to the Servicer under or pursuant to the Servicing Agreements, any Sale Agreement or any Collateral Document to which such Person is a party;
- (ii) release or discharge the Borrower or any other Person from their obligations under any of the Loan Documents;
- (iii) prevent any sum from falling due in accordance with the terms of the Loan Documents,
- (iv) limit or restrict in any way the accrual of interest on any unpaid sum in accordance with the terms of the Loan Documents,
- (v) limit the exercise and enforcement of the rights and remedies of the Protected Parties under the Collateral Documents;
- (vi) restrict the Protected Parties from obtaining (but not enforcing) a declaratory judgment or similar order as to the obligations of the Facility Parties expressed to be assumed hereunder or under any other Loan Document, but only to the extent that such declaratory judgment or similar order is a necessary procedural step to enable the realization of the full benefit of the Collateral and the rights granted pursuant to the Collateral Documents; or
- (vii) limit the Collateral Agent from instigating any bankruptcy, insolvency, winding-up, liquidation, reorganization, amalgamation or dissolution or other similar process with respect to the Borrower.

[Signature Pages Follow]

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

TRINITY RAIL LEASING 2017 LLC,  
as Borrower

By: Trinity Industries Leasing Company, its  
sole Member

By: /s/ C. Lance Davis  
Name: C. Lance Davis  
Title: Vice President

CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK,  
as Lender

By: /s/ Elisa Lajonchere  
Name: Elisa Lajonchere  
Title: Managing Director

By: /s/ Thomas Jean  
Name: Thomas Jean  
Title: Director

ABN AMRO CAPITAL USA LLC,  
as Lender

By: /s/ Justin K. Martin  
Name: Justin K. Martin  
Title: Vice President

By: /s/ K. Bisscheuour  
Name: K. Bisscheuour  
Title: Executive Director

BOKF, NA dba BANK OF TEXAS,  
as Lender

By: /s/ Matthew Renna  
Name: Matthew Renna  
Title: Vice President

CREDIT INDUSTRIEL ET  
COMMERCIAL, NEW YORK BRANCH,  
as Lender

By: /s/ Adrienne Molloy  
Name: Adrienne Molloy  
Title: Managing Director

By: /s/ Andrew McKuin  
Name: Andrew McKuin  
Title: Managing Director

FIFTH THIRD BANK,  
as Lender

By: /s/ Andrew D. Jones  
Name: Andrew D. Jones  
Title: Director

By: /s/ Patrick Berning  
Name: Patrick Berning  
Title: Officer



ING BANK, A BRANCH OF ING-DIBA AG.,  
as Lender

By: /s/ Ulrike Ziegler  
Name: Ulrike Ziegler  
Title: Managing Director

By: /s/ Brett Clark  
Name: Brett Clark  
Title: Director

PNC EQUIPMENT FINANCE, LLC,  
as Lender

By: /s/ Cheree F. Kurela  
Name: Cheree F. Kurela  
Title: Vice President

SIEMENS FINANCIAL SERVICES, INC.,  
as Lender

By: /s/ Kevin S. Keaton  
Name: Kevin S. Keaton  
Title: Director, Operations

By: /s/ Edward F. Kubilis  
Name: Edward F. Kubilis  
Title: Vice President

CRÉDIT AGRICOLE CORPORATE AND  
INVESTMENT BANK,  
as Administrative Agent

By: /s/ Theodore M. Vandermel  
Name: Theodore M. Vandermel  
Title: Managing Director

By: /s/ Justine Ventrelli  
Name: Justine Ventrelli  
Title: Vice President

U.S. BANK NATIONAL ASSOCIATION,  
as Collateral Agent and Depositary

By: /s/ Chris McKim  
Name: Chris McKim  
Title: Vice President

U.S. BANK NATIONAL ASSOCIATION,  
as Custodian

By: /s/ Michelle Hoff  
Name: Michelle Hoff  
Title: Vice President

CRÉDIT AGRICOLE CORPORATE AND  
INVESTMENT BANK,  
as Lead Arranger

By: /s/ Elisa Lajonchere  
Name: Elisa Lajonchere  
Title: Managing Director

By: /s/ Thomas Jean  
Name: Thomas Jean  
Title: Director

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## **Section 5: EX-10.7.1 (EXHIBIT 10.7.1)**

Exhibit 10.7.1

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# **PURCHASE AND CONTRIBUTION AGREEMENT**

by and among

**TRINITY RAIL LEASING WAREHOUSE TRUST,**

**TRINITY INDUSTRIES LEASING COMPANY**

and

**TRINITY RAIL LEASING 2017 LLC**

Dated as of May 15, 2017

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## PURCHASE AND CONTRIBUTION AGREEMENT

THIS PURCHASE AND CONTRIBUTION AGREEMENT is made as of May 15, 2017 (this “**Agreement**”) by and among **TRINITY RAIL LEASING WAREHOUSE TRUST**, a Delaware statutory trust (“**TRLWT**” or the “**TRLWT Seller**”), **TRINITY INDUSTRIES LEASING COMPANY**, a Delaware corporation (“**TILC**” or the “**TILC Seller**”; TRLWT and TILC are sometimes hereinafter collectively referred to as the “**Sellers**” or individually as a “**Seller**”) and **TRINITY RAIL LEASING 2017 LLC**, a Delaware limited liability company (the “**Purchaser**”).

### WITNESSETH:

**WHEREAS**, the Purchaser has agreed to purchase from the Sellers from time to time, and the Sellers have agreed to Sell (as hereinafter defined) to the Purchaser from time to time, certain of its Railcars, related Leases and Related Assets (each as hereinafter defined) related thereto on the terms set forth herein.

**WHEREAS**, during the period prior to their sale hereunder, TILC has acted as manager and servicing agent for TRLWT, pursuant to the TRLWT Management Agreement (as hereinafter defined), with respect to the Railcars, related Leases and Related Assets that TRLWT may Sell from time to time hereunder (TILC in such capacity, the “**TRLWT Manager**”).

**WHEREAS**, TILC may also wish from time to time, in its individual capacity, to conduct a Sale/Contribution (as hereinafter defined) of certain of its Railcars, related Leases and Related Assets and the Purchaser may wish to purchase from and accept such contribution to the capital of the Purchaser on the terms set forth herein.

**NOW, THEREFORE**, in consideration of the premises and the mutual agreements hereinafter contained, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Purchaser and each Seller, intending to be legally bound, hereby agree as follows:

### ARTICLE I

#### DEFINITIONS

**Section 1.1 General.** The specific terms defined in this Article include the plural as well as the singular. Words herein importing a gender include the other gender. References herein to “writing” include printing, typing, lithography, and other means of reproducing words in visible form. References to agreements and other contractual instruments include all subsequent amendments thereto or changes therein entered into in accordance with their respective terms. References herein to Persons include their successors and assigns permitted hereunder. The terms “include” or “including” mean “include without limitation” or “including without limitation”. The words “herein”, “hereof” and “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision, and Article, Section, Schedule and Exhibit references, unless otherwise specified, refer to Articles and Sections of and Schedules and Exhibits to this Agreement. Capitalized

terms used herein, including in the Recitals, but not defined herein shall have the respective meanings assigned to such terms in the Loan Agreement (as defined herein).

**Section 1.2 Specific Terms.** Whenever used in this Agreement, the following words and phrases, unless the context otherwise requires, shall have the following meanings:

“**Administrative Agent**” means Crédit Agricole Corporate and Investment Bank in its capacity as administrative agent under the Loan Agreement.

“**Appraised Value**” means the appraised value of a Railcar as set forth in the Appraisal thereof.

“**Assignment and Assumption**” means an Assignment and Assumption executed by the applicable Seller, with countersignature block set forth thereon for execution by the Purchaser, substantially in the form of Exhibit B attached hereto.

“**Bill of Sale**” means a Bill of Sale executed by the applicable Seller substantially in the form of Exhibit A attached hereto.

“**Chattel Paper**” means all “chattel paper” as defined in the UCC.

“**Closing Date**” means May 15, 2017.

“**Collateral Agent**” means U.S. Bank National Association in its capacity as collateral agent under the Loan Agreement.

“**Contribution**” has the meaning set forth in Section 2.1(a)(ii).

“**Convey**” means to Sell and/or conduct a Sale/Contribution of Railcars, related Leases and Related Assets hereunder.

“**Conveyance**” means, collectively, a Sale and/or Sale/Contribution of Railcars, related Leases and Related Assets by a Seller to the Purchaser.

“**Conveyance Documents**” means this Agreement, each Delivery Schedule, each Assignment and Assumption and each Bill of Sale.

“**Delivery Date**” means each date on which any Railcar, together with any Lease related thereto and all Related Assets, is transferred to the Purchaser by the applicable Seller thereof and includes, without limitation, the Closing Date and each other date on which any such transfer occurs.

“**Delivery Schedule**” means a schedule, substantially in the form of the initial schedule delivered on the Closing Date and attached as Exhibit C hereto, in each case duly executed and delivered by a Seller to the Purchaser on a Delivery Date, which shall identify the Railcars to be Conveyed on such Delivery Date and identify each Lease relating to any such Railcar.

“**Encumbrance**” means any mortgage, pledge, lien, encumbrance, charge or security interest, including, without limitation, any conditional sale, any sale without recourse against the sellers, or any agreement to give any security interest over or with respect to any assets of any applicable Person.

“**Excluded Amounts**” has the meaning set forth in Section 4.5(a).

“**General Intangibles**” means all “general intangibles” as defined in Article 9 of the UCC.

“**Indemnified Person**” has the meaning set forth in Section 4.5(a).

“**Lease**” means, with respect to a Railcar, a lease, car contract or other agreement granting permission for the use of such Railcar, constituting an operating lease thereon.

“**Lessee**” means each Person who is the lessee under a Lease of a Railcar.

“**Loan Agreement**” means that certain Term Loan Agreement, dated on or about the date hereof, among the Purchaser, as borrower, the banks and other lending institutions from time to time party thereto, the Administrative Agent, as agent, and the Collateral Agent, as collateral agent and depositary.

“**Marks**” means identification marks of Railcars.

“**Miscellaneous Items**” means receivables, prepaid expenses, current assets, deferred origination costs, receivables, deferred tax assets, non-current assets, accounts payable and accrued liabilities, deferred tax liabilities, unearned contract revenue, accrued interest, accrued professional fees, and accrued property and casualty insurance.

“**Part**” means any and all parts, attachments, accessions, appurtenances, furnishings, components, appliances, accessories, instruments and other equipment installed in, or attached to (or constituting a spare for any such item installed in or attached to) any Railcar.

“**Payment Intangible**” means all “payment intangibles” as defined in Article 9 of the UCC.

“**Permitted Encumbrance**” means: (i) the ownership interests of the Purchaser; (ii) the interest of the Lessee as provided in any Lease; (iii) any Encumbrance for taxes, assessments, levies, fees and other governmental and similar charges not yet due and payable or the amount or validity of which is being contested in good faith by appropriate proceedings so long as there exists no material risk of sale, forfeiture, loss, or loss of or interference with use or possession of the affected asset, and such contest would not result in the imposition of any criminal liability on the Issuer or any assignee thereof; (iv) in respect of any Railcar, any Encumbrance of a repairer, mechanic, supplier, materialman, laborer and the like arising in the ordinary course of business by operation of law or similar Encumbrance, provided that the proceedings relating to such Encumbrance or the continued existence of such Encumbrance does not give rise to any reasonable likelihood of the sale, forfeiture or other loss of the affected asset, and such contest would not result in the imposition of any criminal liability on the Purchaser or any assignee

thereof; (v) Encumbrances granted to the Collateral Agent under and pursuant to the Loan Agreement; (vi) any Encumbrances created by or through or arising from debt or liabilities or any act or omission of any Lessee in each case either in contravention of the relevant Lease (whether or not such Lease has been terminated) or without the consent of the relevant lessor; (vii) salvage rights of insurers under insurance policies covering the affected asset; (viii) any sublease permitted under any Lease; and (ix) Encumbrances which are released or extinguished upon the transfer of the related asset to the Purchaser by the applicable transferee thereof.

“**Person**” means any natural person, firm, corporation, limited liability company, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, government or any political subdivision thereof or any other legal entity, including public bodies.

“**Protected Party**” has the meaning set forth in the Loan Agreement.

“**Purchase Price**” means, with respect to any Railcars, related Leases and Related Assets conveyed to the Purchaser from time to time pursuant hereto, an amount equal to the aggregate Appraised Value of the Railcars so Conveyed.

“**Purchaser**” has the meaning specified in the Preamble.

“**Railcar**” means an item of railroad rolling stock, together with (i) any and all replacements or substitutions thereof, (ii) any and all tangible components thereof and (iii) any and all related appliances, Parts, accessories, appurtenances, accessions, additions, improvements to and replacements from time to time incorporated or installed in any item thereof.

“**Railroad Mileage Credits**” means the mileage credit payments made by railroads under their applicable tariffs to the registered owner of identifying marks on the railcars.

“**Related Assets**” means, with respect to any Railcar or Lease that is Conveyed hereunder on any Delivery Date, all of the applicable Seller’s right, title and interest in and to the following (as applicable):

(a) with respect to such Railcar, (i) all licenses, manufacturer’s warranties and other warranties, Supporting Obligations, Payment Intangibles, Chattel Paper, General Intangibles and all other rights and obligations related to such Railcar, (ii) all Railroad Mileage Credits allocable to such Railcar and any payments in respect of such credits accruing on or after the applicable Delivery Date, (iii) all tort claims or any other claims of any kind or nature related to such Railcar and any payments in respect of such claims, (iv) all Marks attaching to such Railcar (including as evidenced by any SUBI Certificate issued by the Marks Company), it being understood that the Marks are owned by the Marks Company and are not being conveyed hereby, (v) all other payments owing by any Person (including any railroads or similar entities) in respect of or attributable to such Railcar or the use, loss, damage, casualty, condemnation of such Railcar or the Marks associated therewith, in each case whether arising by contract, operation of law, course of dealing, industry practice or otherwise, and (vi) without duplication, any Miscellaneous Items relating to such Railcar; and

(b) with respect to such Lease, all Supporting Obligations, Payment Intangibles, Chattel Paper, General Intangibles and all other rights and obligations related to any

such Lease, including, without limitation, (i) all rights, powers, privileges, options and other benefits of the applicable Seller to receive moneys and other property due and to become due under or pursuant to such Lease, including, without limitation, all rights, powers, privileges, options and other benefits to receive and collect rental payments, income, revenues, profits and other amounts, payments, tenders or security (including any cash collateral) from any other party thereto, (ii) all rights, powers, privileges, options and other benefits of the applicable Seller to receive proceeds of any casualty insurance, condemnation award, indemnity, warranty or guaranty with respect to such Lease, (iii) all claims for damages arising out of or for breach of or default under such Lease, (iv) the rights, powers, privileges, options and other benefits of the applicable Seller to perform under such Lease, to compel performance and otherwise exercise all remedies thereunder and to terminate any such Lease, and (v) without duplication, any Miscellaneous Items relating to such Lease.

“**Sale**” means, with respect to any Person, the sale, transfer, assignment or other conveyance, of the assets or property in question by such Person, and “**Sell**” means that such Person sells, transfers, assigns or otherwise conveys the assets or property in question.

“**Sale/Contribution**” has the meaning specified in Section 2.1(a)(ii).

“**Supporting Obligation**” means all “supporting obligations” as defined in Article 9 of the UCC.

“**TILC Fleet**” means the other railcars owned, leased or managed by TILC.

“**TRLWT Management Agreement**” means the Second Amendment and Restatement, dated as of May 29, 2009, of the Operation, Maintenance, Servicing and Remarketing Agreement dated as of June 27, 2002 between TRLWT and TILC, as manager thereunder.

“**TRLWT Manager**” has the meaning specified in the Recitals.

“**UCC**” means the Uniform Commercial Code as enacted in the State of New York, or when the context implies, the Uniform Commercial Code as in effect from time to time in any other applicable jurisdiction.

“**U.S. GAAP**” means generally accepted accounting principles in the United States, as in effect from time to time.

## ARTICLE II

### CONVEYANCE OF THE RAILCARS AND LEASES

#### Section 2.1 Conveyance of the Railcars and Leases.

- (a) Subject to the terms and conditions of this Agreement, on and after the date of this Agreement,
  - (i) TRLWT Seller hereby agrees to Sell to the Purchaser, without recourse (except to the extent specifically provided herein or in the applicable Bill of Sale

and Assignment and Assumption), all right, title and interest of TRLWT Seller in and to (A) certain Railcars and related Leases as identified from time to time on a Delivery Schedule delivered by TRLWT Seller in accordance with this Agreement and (B) all Related Assets with respect thereto, and

(ii) TILC Seller hereby agrees to Sell to the Purchaser, without recourse (except to the extent specifically provided herein or in the applicable Bill of Sale and Assignment and Assumption), all right, title and interest of TILC Seller in and to (A) certain Railcars and related Leases as identified from time to time on a Delivery Schedule delivered by TILC Seller in accordance with this Agreement and (B) all Related Assets with respect thereto, *provided*, that if TILC Seller is the sole equity Member of the Purchaser at the time of such sale, and to the extent that the portion of the Purchase Price for such sale paid by the Purchaser to TILC Seller in cash is less than the total dollar amount of the Purchase Price, the balance shall be deemed to have been contributed (a "**Contribution**") by TILC Seller as capital to the Purchaser (such transaction in the aggregate, a "**Sale/Contribution**"),

(b) The Purchaser in each case hereby agrees to purchase, acquire, accept and assume (including by an assumption of the obligations of the "lessor" under such Leases), all right, title and interest of each such Seller in and to such Railcars, related Leases and Related Assets. Each Seller hereby acknowledges that each Conveyance by it to the Purchaser hereunder is absolute and irrevocable, without reservation or retention of any interest whatsoever by such Seller.

(c) The Sales of Railcars, related Leases and Related Assets by TRLWT Seller to the Purchaser and the Sales or Sales/Contributions (as the case may be) of Railcars, related Leases and Related Assets by TILC Seller to the Purchaser pursuant to this Agreement are, and are intended to be, absolute and unconditional assignments and conveyances of ownership (free and clear of any Encumbrances) of all of the applicable Seller's right, title and interest in, to and under such Railcars, related Leases and Related Assets for all purposes and, except to the extent specifically provided herein or in the applicable Bill of Sale and Assignment and Assumption, without recourse.

(d) It is the intention of each Seller and the Purchaser (i) that all Conveyances of Railcars, related Leases and Related Assets be true sales and/or contributions, as applicable, constituting absolute assignments and "true sales" for bankruptcy law purposes by the applicable Seller to the Purchaser, that are absolute and irrevocable and that provide the Purchaser with the full benefits of ownership of the assets so Conveyed and (ii) that the Railcars, related Leases and Related Assets that are Conveyed to the Purchaser pursuant to this Agreement shall not be part of the applicable Seller's estate in the event of the filing of a bankruptcy petition by or against such Seller under any bankruptcy or similar law. Neither any Seller nor the Purchaser intends that (x) the transactions contemplated hereunder be, or for any purpose be characterized as, loans from the Purchaser to the applicable Seller or (y) any Conveyance of Railcars, related Leases and/or Related Assets by any Seller to the Purchaser be deemed a grant of a security interest in the assets so Conveyed by such Seller to the Purchaser to secure a debt or other obligation of such Seller (except in the limited circumstance contemplated in subsection (e) immediately below).

(e) In the event that any Conveyances pursuant to this Agreement are deemed to be a secured financing (or are otherwise determined not to be absolute assignments of all of the applicable Seller's right, title and interest in, to and under the Railcars, related Leases and Related Assets so Conveyed, or purportedly so Conveyed hereunder), then (i) the applicable Seller shall be deemed hereunder to have granted to the Purchaser, and such Seller does hereby grant to the Purchaser, a security interest in all of such Seller's right, title and interest in, to and under such Railcars, related Leases and Related Assets so Conveyed or purported to be Conveyed, securing the purported repayment obligation presumably deemed to exist in respect of such deemed secured financing, and (ii) this Agreement shall constitute a security agreement under applicable law.

(f) The Sellers shall on the Closing Date, and either or both the TRLWT Seller and/or the TILC Seller shall, as the case may be, on any other Delivery Date, deliver to the Purchaser a Delivery Schedule identifying the Railcars and Leases to be Conveyed by such Seller to the Purchaser on such date.

(g) The price paid for Railcars, related Leases and Related Assets which are Conveyed hereunder shall be the Purchase Price with respect thereto. Such Purchase Price shall be paid

(i) in the case of TRLWT Seller, by means of the Purchaser's immediate cash payment in the full amount of the Purchase Price to TRLWT Seller by wire transfer on the Closing Date (or other Delivery Date) in respect of which TRLWT Seller has delivered a Delivery Schedule, and

(ii) in the case of TILC Seller, by means of the Purchaser's immediate cash payment of the portion of the Purchase Price that the Purchaser has available to it for such purpose to TILC Seller by wire transfer on the Closing Date (or other applicable Delivery Date) in respect of which TILC Seller has delivered a Delivery Schedule, with the Contributed remainder of such Purchase Price to be reflected by means of proper accounting entries being entered upon the accounts and records of TILC Seller and Purchaser,

with such wire transfers in each case to be made to an account designated by the applicable Seller to the Purchaser on or before the applicable Delivery Date.

(h) On and after each Delivery Date and related Purchase Price payment as aforesaid, the Purchaser shall own the Railcars, related Leases and Related Assets Conveyed to the Purchaser on such date, and the applicable Seller shall not take any action inconsistent with such ownership and shall not claim any ownership interest in such assets.

(i) Until the replacement of TILC as Servicer pursuant to the terms of the Servicing Agreement, TILC, as Servicer, shall conduct the administration, management and collection of the Railcars, related Leases and Related Assets Conveyed to Purchaser pursuant hereto and shall take, or cause to be taken, all such actions as may be necessary or advisable to administer, manage and collect such Conveyed Railcars, related Leases and Related Assets, from time to time, all in accordance with the terms of the Servicing Agreement.

## ARTICLE III

### CONDITIONS OF CONVEYANCE

**Section 3.1** Conditions Precedent to Conveyance. Each Conveyance hereunder is subject to the condition precedent that the Purchaser shall have received all of the following on or before the applicable Delivery Date, in form and substance satisfactory to the Purchaser:

- (i) a Delivery Schedule executed by the applicable Seller and setting forth the Railcars and Leases to be Conveyed on the applicable Delivery Date pursuant to this Agreement;
- (ii) a related Bill of Sale;
- (iii) a related Assignment and Assumption;
- (iv) an Appraisal of the Railcars to be conveyed, with such Appraisal dated no earlier than forty-five (45) days prior to the applicable Delivery Date;
- (v) copies of proper UCC financing statements, accurately describing the Conveyed Railcars and Leases and naming the applicable Seller as the "Debtor," the Purchaser as "Assignor Secured Party" and the Collateral Agent as "Secured Party", or applicable filings with the STB or with the Registrar General of Canada, or other similar instruments or documents, all in such manner and in such places as may be required by law or as may be necessary or, in the opinion of the Purchaser, desirable to perfect the Purchaser's interest in all Conveyed Railcars, related Leases and Related Assets (provided that no such filings shall be required to be made in Mexico or under any Provincial Personal Property Security Act or other non-federal legislation in Canada); and
- (vi) copies of proper UCC financing statement terminations or partial terminations, STB or Registrar General of Canada filings, accurately describing the Conveyed Railcars and Leases, or other similar instruments or documents, in form and substance sufficient for filing under applicable law of any and all jurisdictions as may be necessary to effect or evidence a release or termination of any pre-existing Encumbrance evidenced by an existing filing of record in the applicable UCC, STB or Registrar General of Canada filing office against the Conveyed Railcars, related Leases and Related Assets.

**Section 3.2** Conditions Precedent to All Conveyances. The Conveyances to take place on any Delivery Date hereunder shall be subject to the further conditions precedent that:

(a) The following statements shall be true:

- (i) the representations and warranties of each applicable Seller contained in Article IV shall be true and correct on and as of such Delivery Date, both before and after giving effect to the Conveyance to take place on such Delivery Date and to the application of proceeds therefrom, as though made on and as of such date; and



(ii) each such Seller shall be in compliance with all of its covenants and other agreements set forth in this Agreement and the other Conveyance Documents to which it is a party.

(b) The Purchaser shall have received a Delivery Schedule, dated the date of the applicable Delivery Date, executed by the applicable Seller, listing the Railcars and Leases being Conveyed on such date.

(c) The applicable Seller shall have taken such other action, including delivery of approvals, consents, opinions, documents and instruments to the Purchaser, as the Purchaser may reasonably request.

(d) The applicable Seller shall have taken all steps necessary under all applicable law in order to Convey to the Purchaser the Railcars described on the applicable Delivery Schedules, all Leases related to such Railcars and all Related Assets related to such Railcars and/or Leases, and upon the Conveyance of such Railcars, related Leases and Related Assets from the applicable Seller to the Purchaser pursuant to the terms hereof, the Purchaser will have acquired on such date good and marketable title to and a valid and perfected ownership interest in the Conveyed Railcars, related Leases and Related Assets, free and clear of any Encumbrance (other than Permitted Encumbrances).

## ARTICLE IV

### REPRESENTATIONS AND WARRANTIES

**Section 4.1** Representations and Warranties of TRLWT Seller-General. TRLWT Seller makes the following representations and warranties for the benefit of the Purchaser, the Administrative Agent, the Collateral Agent and the Lenders, on which the Purchaser relies in acquiring the Railcars, related Leases and Related Assets Conveyed by TRLWT Seller hereunder. Such representations are made as of each Delivery Date and at such other times specified below.

(a) TRLWT is a statutory trust duly organized, validly existing, and in good standing under the laws of the State of Delaware, is duly licensed or qualified and in good standing in each jurisdiction in which the failure to so qualify would have a material adverse effect on its ability to carry on its business as now conducted or to execute, deliver and perform its obligations under the applicable Conveyance Documents, has the power and authority to carry on its business as now conducted, and has the requisite power and authority to execute, deliver and perform its obligations under the applicable Conveyance Documents.

(b) The applicable Conveyance Documents have been duly authorized by all necessary entity action by TRLWT, and duly executed and delivered by TRLWT, and (assuming the due authorization, execution and delivery by each other party thereto) constitute the legal, valid and binding obligations of TRLWT, enforceable against TRLWT in accordance with their respective terms except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally and by general principles of equity.

(c) The execution, delivery and performance by TRLWT of the applicable Conveyance Documents and compliance by TRLWT with all of the provisions thereof do not and will not contravene or, in the case of clause (iii), constitute (alone or with notice, or lapse of time or both) a default under or result in any breach of, or result in the creation or imposition of any Encumbrance (other than pursuant to this Agreement) upon any property of TRLWT pursuant to, (i) any law or regulation, or any order of any court or governmental authority or agency applicable to or binding on TRLWT or any of its properties, or (ii) the provisions of, or constitute a default by TRLWT under, its certificate of trust or trust agreement or (iii) any indenture, mortgage, contract or other agreement or instrument to which TRLWT is a party or by which TRLWT or any of its properties may be bound or affected except, with respect to clause (iii), where such contravention, default or breach would not reasonably be expected to materially adversely affect TRLWT's ability to perform its obligations under the applicable Conveyance Documents or materially adversely affect its financial condition or business.

(d) There are no proceedings pending or, to the knowledge of TRLWT, threatened against TRLWT in any court or before any governmental authority or arbitration board or tribunal that, if adversely determined, would reasonably be expected to materially adversely affect TRLWT's ability to perform its obligations under the applicable Conveyance Documents or materially adversely affect its financial condition or business.

(e) TRLWT is not (x) in violation of any term of any charter instrument or operating agreement or (y) in violation or breach of or in default under any other agreement or instrument to which it is a party or by which it may be bound except, in the case of clause (y), where such violation would not reasonably be expected to materially adversely affect TRLWT's ability to perform its obligations under the applicable Conveyance Documents or materially adversely affect its financial condition or business. TRLWT is in compliance with all laws, ordinances, governmental rules and regulations to which it is subject, the failure to comply with which would have a material and adverse effect on its operations or condition, financial or otherwise, or would impair the ability of TRLWT to perform its obligations under the applicable Conveyance Documents, and has obtained all licenses, permits, franchises and other governmental authorizations material to the conduct of its business.

(f) No consent, approval or authorization of, or filing, registration or qualification with, or the giving of notice to, any trustee or any holder of indebtedness of TRLWT or any governmental authority on the part of TRLWT is required in the United States in connection with the execution and delivery by TRLWT of the applicable Conveyance Documents (other than as contemplated thereby), or is required to be obtained in order for TRLWT to perform its obligations thereunder in accordance with the terms thereof, other than (i) as may be required under applicable laws, ordinances, governmental rules and regulations to be obtained, given, accomplished or renewed at any time after the applicable Delivery Date in connection with the performance of its obligations under the applicable Conveyance Documents and which are routine in nature and are not normally applied for prior to the time they are required, and which TRLWT has no reason to believe will not be timely obtained, and (ii) as may have been previously obtained in accordance with clause (i) immediately above.

(g) The location of TRLWT (within the meaning of Article 9 of the UCC) is in the State of Delaware. TRLWT has not been known by any name other than Trinity Rail

Leasing Warehouse Trust and Trinity Rail Leasing Trust II, and is not known by any trade names.

(h) TRLWT is solvent and will not become insolvent after giving effect to any Conveyance contemplated by this Agreement; after giving effect to each Conveyance contemplated by this Agreement, TRLWT will have an adequate amount of capital to conduct its business in the foreseeable future; and TRLWT does not intend to incur, nor believe that it has incurred, debts beyond its ability to pay as they mature.

(i) TRLWT will treat the transactions effected by this Agreement as sales of assets to the Purchaser in accordance with U.S. GAAP. TRLWT's financial records shall reflect that the Railcars and Leases Conveyed hereunder have been Conveyed to the Purchaser, are no longer owned by TRLWT and are not intended to be available to the creditors of TRLWT.

**Section 4.2 Representations and Warranties of TILC Seller-General.** TILC Seller makes the following representations and warranties for the benefit of the Purchaser, the Administrative Agent, the Collateral Agent and the Lenders, on which the Purchaser relies in acquiring the Railcars, related Leases and Related Assets Conveyed by TILC Seller hereunder. Such representations are made as of each Delivery Date and at such other times specified below.

(a) TILC is a corporation duly organized, validly existing, and in good standing under the laws of the State of Delaware, is duly licensed or qualified and in good standing in each jurisdiction in which the failure to so qualify would reasonably be expected to have a material adverse effect on its ability to carry on its business as now conducted or as contemplated to be conducted or to execute, deliver and perform its obligations under the applicable Conveyance Documents, has the power and authority to carry on its business as now conducted and as contemplated to be conducted, and has the requisite power and authority to execute, deliver and perform its obligations under the applicable Conveyance Documents.

(b) The applicable Conveyance Documents have been duly authorized by all necessary corporate action by TILC, and duly executed and delivered by TILC, and (assuming the due authorization, execution and delivery by each other party thereto) constitute the legal, valid and binding obligations of TILC, enforceable against TILC in accordance with their respective terms except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally and by general principles of equity.

(c) The execution, delivery and performance by TILC of the applicable Conveyance Documents and compliance by TILC with all of the provisions thereof do not and will not contravene or, in the case of clause (iii), constitute (alone or with notice, or lapse of time or both) a default under or result in any breach of, or result in the creation or imposition of any Encumbrance (other than pursuant to this Agreement) upon any property of TILC pursuant to, (i) any law or regulation, or any order, judgment, decree, determination or award of any court or governmental authority or agency applicable to or binding on TILC or any of its properties, or (ii) the provisions of its certificate of incorporation or bylaws or (iii) any indenture, mortgage, contract or other agreement or instrument to which TILC is a party or by which TILC or any of its properties may be bound or affected except, with respect to clause (iii), where such

contravention, default or breach would not reasonably be expected to materially adversely affect TILC's ability to perform its obligations under the applicable Conveyance Documents or materially adversely affect its financial condition or business;

(d) There are no proceedings pending or, to the knowledge of TILC, threatened against TILC in any court or before any governmental authority or arbitration board or tribunal that, if adversely determined, would reasonably be expected to materially adversely affect TILC's ability to perform its obligations under the applicable Conveyance Documents or materially adversely affect its financial condition or business.

(e) TILC is not (x) in violation of any term of any charter instrument or bylaw or (y) in violation or breach of or in default under any other agreement or instrument to which it is a party or by which it or any of its property may be bound except in the case of clause (y) where such violation, breach or default would not reasonably be expected to materially adversely affect TILC's ability to perform its obligations under the applicable Conveyance Documents or materially adversely affect its financial condition or business. TILC is in compliance with all laws, ordinances, governmental rules, regulations, orders, judgments, decrees, determinations and awards to which it is subject, the failure to comply with which would reasonably be expected to have a material and adverse effect on its operations or condition, financial or otherwise, or would impair the ability of TILC to perform its obligations under the applicable Conveyance Documents, and has obtained all required licenses, permits, franchises and other governmental authorizations material to the conduct of its business.

(f) No consent, approval or authorization of, or filing, registration or qualification with, or the giving of notice to, any trustee or any holder of indebtedness of TILC or any governmental authority on the part of TILC is required in the United States in connection with the execution and delivery by TILC of the applicable Conveyance Documents (other than as contemplated thereby), or is required to be obtained in order for TILC to perform its obligations thereunder in accordance with the terms thereof, other than (i) as may be required under applicable laws, ordinances, governmental rules and regulations to be obtained, given, accomplished or renewed at any time after the applicable Delivery Date in connection with the performance of its obligations under the applicable Conveyance Documents and which are routine in nature and are not normally applied for prior to the time they are required, and which TILC has no reason to believe will not be timely obtained, and (ii) as may have been previously obtained in accordance with clause (i) immediately above.

(g) The location of TILC (within the meaning of Article 9 of the UCC) is in the State of Delaware. TILC has not been known by any name other than Trinity Industries Leasing Company within the past five (5) years.

(h) TILC is solvent and will not become insolvent after giving effect to any Conveyance contemplated by this Agreement, and after giving effect to any Conveyances contemplated by this Agreement, TILC will have an adequate amount of capital to conduct its business in the foreseeable future, and TILC does not intend to incur, nor believe that it has incurred, debts beyond its ability to pay as they mature.

(i) TILC will treat the transactions effected by this Agreement as sales of assets to, and/or contributions of assets to the capital of, the Purchaser in accordance with U.S. GAAP. TILC's financial records shall reflect that the Railcars and Leases Conveyed hereunder have been Conveyed to the Purchaser, are no longer owned by TILC and are not intended to be available to the creditors of TILC.

**Section 4.3**                    Representations and Warranties of Seller-Assets. The following representations and warranties are made (i) with respect to each Delivery Date on which TRLWT is to Convey assets to the Purchaser, by TILC, in its capacity as TRLWT Manager, with respect to each representation expressed as a representation of TRLWT as "Seller", and (ii) with respect to each Delivery Date on which TILC is to Convey assets to the Purchaser, by TILC for its own account, and in each case are made for the benefit of the Purchaser, the Administrative Agent, the Collateral Agent and the Lenders as of the date of any Delivery Schedule delivered by the applicable Seller to the Purchaser and solely with respect to the Railcars and Leases that are referred to in such Delivery Schedule and the Related Assets in respect of such Railcars and Leases.

(a) To the best knowledge of the applicable Seller, no casualty event or other event that may constitute a Total Loss or makes repair of the applicable Railcar uneconomic or renders such Railcar unfit for commercial use or constitutes theft or disappearance of the applicable Railcar has occurred with respect to a Railcar being Conveyed.

(b) (i) The applicable Seller has, and the Bill of Sale to be delivered on the Delivery Date shall convey to the Purchaser, all legal and beneficial title to the Railcars (and Related Assets in respect of such Railcars) that are being Conveyed, free and clear of all Encumbrances (other than Permitted Encumbrances of the type described in clauses (ii), (iii), (iv), (v) and (viii) of the definition thereof), and such conveyance constitutes a valid and absolute transfer (each such contribution or sale, as the case may be, constituting a "true sale" for bankruptcy law purposes) of all right, title and interest of such Seller in, to and under the Railcars (and Related Assets in respect of such Railcars) being Conveyed and will not be void or voidable under any applicable law; (ii) such Seller has, and the Assignment and Assumption to be delivered on the Delivery Date shall assign to the Purchaser, all legal and beneficial title to the Leases (and Related Assets in respect of such Leases) that are being Conveyed, free and clear of all Encumbrances (other than Permitted Encumbrances of the type described in clauses (ii), (iii), (iv), (v) and (viii) of the definition thereof), and such assignment constitutes a valid and absolute transfer (each such contribution or sale, as the case may be, constituting a "true sale" for bankruptcy law purposes) of all right, title and interest of such Seller in, to and under the Leases (and Related Assets in respect of such Leases) being Conveyed and will not be void or voidable under any applicable law; (iii) the Railcars being Conveyed on a Delivery Date are subject to Leases to the extent required under the Loan Agreement in respect of such Conveyance, and (iv) all Leases relating to such Railcars are on rental and other terms that are no different, taken as a whole, from those for similar Railcars in the rest of the TILC Fleet.

(c) All sales, use or transfer taxes, if any, due and payable upon the Conveyance of the Railcars, related Leases and Related Assets being Conveyed on the applicable Delivery Date will have been paid or such transactions will then be exempt from any such taxes and the Seller (or TRLWT Manager, in the case of TRLWT Seller) will cause any required forms

or reports in connection with such taxes to be filed in accordance with applicable laws and regulations.

(d) The applicable Seller is not in default of its obligations as “lessor” (or other comparable capacity) under any Lease, and, to the best of such Seller’s knowledge, there are (i) no defaults existing as of the date of Conveyance by any Lessee under any Lease, except such defaults that are not payment defaults (except to a de minimis extent (but giving effect to any applicable grace periods)) and are not material defaults under the applicable Lease, and (ii) no claims or liabilities arising as a result of the operation or use of any Railcar prior to the date hereof, as to which the Purchaser would be or become liable, except for ongoing maintenance and other obligations of the “lessor” provided for under full-service Leases, which obligations are required to be performed by the Servicer pursuant to the Servicing Agreement.

(e) None of the Railcars being Conveyed are subject to a purchase option under the terms of the related Lease except as described in the related Delivery Schedule, and each such purchase option is a Permitted Purchase Option.

(f) None of the Leases contain any renewal or extension options except for such options that are described in the Delivery Schedule.

(g) All information provided in the applicable Delivery Schedule, including each schedule thereto, is true and correct on and as of the related Delivery Date, including without limitation, all information provided therein with respect to each Railcar purported to be covered thereby and all information provided therein with respect to each Lease relating to any such Railcar. All other information concerning the Railcars, related Leases and Related Assets covered by the applicable Delivery Schedule that was provided to the Purchaser prior to the related Delivery Date was true and correct in all material respects as of the date it was so provided.

**Section 4.4**                    Representations and Warranties of the Purchaser. The Purchaser makes the following representations and warranties for the benefit of each Seller, on which such Seller relies in Conveying Railcars, related Leases and Related Assets to the Purchaser hereunder. Such representations are made as of each applicable Delivery Date.

(a)            Organization and Good Standing. The Purchaser has been duly organized and is validly existing and in good standing as a limited liability company under the laws of the State of Delaware, with the power and authority to own its properties and to conduct its business as such properties are currently owned and such business is currently conducted, and had at all relevant times, and has, full power, authority and legal right to acquire and own the Railcars and Leases Conveyed hereunder.

(b)            Due Qualification. The Purchaser is duly qualified (except where the failure to be so qualified would not have a material adverse effect on its ability to carry on its business as now conducted or as contemplated to be conducted) to do business as a foreign limited liability company in good standing, and has obtained all necessary licenses (except to the extent that such failure to obtain such licenses is inconsequential) and approvals in all

jurisdictions in which the ownership or lease of its property or the conduct of its business requires such qualification, licenses and/or approvals.

(c) Power and Authority. The Purchaser has the power, authority and legal right to execute and deliver this Agreement and to carry out the terms hereof and to acquire the Railcars and Leases Conveyed hereunder; and the execution, delivery and performance of this Agreement and all of the documents required pursuant hereto have been duly authorized by the Purchaser by all necessary action.

(d) No Consent Required. The Purchaser is not required to obtain the consent of any other Person, or any consent, license (except to the extent that such failure to obtain such licenses is inconsequential), approval or authorization or registration or declaration with, any governmental authority, bureau or agency in connection with the execution, delivery or performance of this Agreement and the other Conveyance Documents to which it is a party, except for such as have been obtained, effected or made.

(e) Binding Obligation. This Agreement constitutes a legal, valid and binding obligation of the Purchaser, enforceable against the Purchaser in accordance with its terms, subject, as to enforceability, to applicable bankruptcy, insolvency, reorganization, conservatorship, receivership, liquidation or other similar laws affecting the enforcement of creditors' rights generally and general principles of equity.

(f) No Violation. The execution, delivery and performance by the Purchaser of this Agreement, the consummation of the transactions contemplated by this Agreement and the other Conveyance Documents to which it is a party and the fulfillment of the terms of this Agreement and the other Conveyance Documents to which it is a party do not and will not conflict with, result in any breach of any of the terms and provisions of, or constitute (with or without notice or lapse of time) a default under, the organizational documents of the Purchaser, or conflict with or breach any of the terms or provisions of, or constitute (with or without notice or lapse of time) a default under, any indenture, agreement, mortgage, deed of trust or other instrument to which the Purchaser is a party or by which the Purchaser is bound or to which any of its properties are subject, or result in the creation or imposition of any lien upon any of its properties pursuant to the terms of any such indenture, agreement, mortgage, deed of trust or other instrument (other than liens created hereunder or under the Loan Agreement), or violate any law or any order, rule or regulation, applicable to the Purchaser or its properties, of any federal or state regulatory body, any court, administrative agency or other governmental instrumentality having jurisdiction over the Purchaser or any of its properties.

(g) No Proceedings. There are no proceedings or investigations pending, or, to the Purchaser's knowledge, threatened against the Purchaser before any court, regulatory body, administrative agency, or other tribunal or governmental instrumentality having jurisdiction over the Purchaser or its properties: (i) asserting the invalidity of this Agreement or any of the other Conveyance Documents, (ii) seeking to prevent the consummation of any of the transactions contemplated by this Agreement or any of the other Conveyance Documents, (iii) seeking any determination or ruling that could have an adverse effect on the performance by the Purchaser of its obligations under, or the validity or enforceability of, this Agreement or any of the other Conveyance Documents, (iv) that may have an adverse effect on the federal or state

income tax attributes of, or seek to impose any excise, franchise, transfer or similar tax upon, the transfer and acquisition of the Railcars and Leases Conveyed hereunder or (v) that could have an adverse effect on the Railcars and Leases Conveyed to the Purchaser hereunder.

(h) Consideration. The Purchaser has given fair consideration and reasonably equivalent value in exchange for the Conveyance of the Railcars, related Leases and Related Assets being Conveyed hereunder.

In the event of any breach of a representation and warranty made by the Purchaser hereunder, each Seller covenants and agrees that such Seller will not take any action to pursue any remedy that it may have hereunder, in law, in equity or otherwise, until a year and a day have passed since all Obligations under the Loan Agreement have been paid in full. Each Seller and the Purchaser agree that damages will not be an adequate remedy for a breach of this covenant and that this covenant may be specifically enforced by the Purchaser or any third party beneficiary described in Section 6.8.

**Section 4.5**                      Indemnification.

(a) TILC Seller, or TRLWT Manager on behalf of TRLWT Seller, shall defend, indemnify and hold harmless the Purchaser, the Administrative Agent, the Collateral Agent and the Lenders, each of their respective Affiliates and each of the respective directors, officers, employees, successors and permitted assigns, agents and servants of the foregoing (each an “**Indemnified Person**”) from and against any and all costs, expenses, losses, obligations, penalties, liabilities, damages, actions, or suits or claims of whatsoever kind or nature (whether or not on the basis of negligence, strict or absolute liability or liability in tort), that may be imposed upon, incurred by, suffered by or asserted against any Indemnified Person arising out of or resulting from any breach of such Seller’s representations and warranties and covenants contained herein, except (A) those resulting solely from any gross negligence, bad faith or willful misconduct of the particular Indemnified Person claiming indemnification hereunder, (B) those in respect of taxes that are otherwise addressed by the provisions of (and subject to the limitations of) subsection (c) of this Section 4.5 below, or (C) to the extent that providing such indemnity would constitute recourse for losses due to the uncollectibility of sale proceeds (or any particular amount of sale proceeds) in respect of a Railcar due to a diminution in market value of such Railcar, or of Lease or other third party payments due to the insolvency, bankruptcy or financial inability to pay of the related Lessee or other third party (the matters contemplated by clauses (A), (B) and (C) may be referred to collectively as the “**Excluded Amounts**”).

(b) TILC Seller, or TRLWT Manager on behalf of TRLWT Seller, will defend and indemnify and hold harmless each Indemnified Person against any and all costs, expenses, losses, obligations, penalties, liabilities, damages, actions, or suits or claims of whatsoever kind or nature (whether or not on the basis of negligence, strict or absolute liability or liability in tort), that may be imposed upon, incurred by, suffered by or asserted against such Indemnified Person, other than Excluded Amounts, arising out of or resulting from any action taken by such Seller, other than in accordance with this Agreement or the Loan Agreement or other applicable Transaction Documents, in respect of any portion of the Railcars, related Leases and Related Assets that are Conveyed hereunder.



(c) TILC Seller, or TRLWT Manager on behalf of TRLWT Seller, agrees to pay, and shall defend, indemnify and hold harmless each Indemnified Person from and against, any taxes (other than taxes based upon the income of an Indemnified Person and taxes that would constitute Excluded Amounts) that may at any time be asserted against any Indemnified Person with respect to the transactions contemplated in this Agreement, including, without limitation, any sales, gross receipts, general corporation, tangible or intangible personal property, privilege, or license taxes and costs and expenses in defending against the same, arising by reason of the acts to be performed by such Seller under this Agreement and imposed against such Person. Without limiting the foregoing, in the event that the Purchaser, the Administrative Agent, the Collateral Agent or the Lenders receives actual notice of any transfer taxes arising out of the Conveyance of any Railcar or Lease from such Seller to the Purchaser under this Agreement, on written demand by such party, or upon such Seller otherwise being given notice thereof, TILC Seller, or TRLWT Manager on behalf of TRLWT Seller, as applicable, shall pay, and otherwise indemnify and hold harmless the applicable Indemnified Person harmless, on an After-Tax Basis, from and against any and all such transfer taxes (it being understood that none of the Purchaser, the Administrative Agent, the Collateral Agent or the Lenders or any other Indemnified Person shall have any contractual obligation to pay such transfer taxes).

(d) TILC Seller, or TRLWT Manager on behalf of TRLWT Seller, shall defend, indemnify, and hold harmless each Indemnified Person from and against any and all costs, expenses, losses, obligations, penalties, liabilities, damages, actions, or suits or claims of whatsoever kind or nature (whether or not on the basis of negligence, strict or absolute liability or liability in tort), to the extent that any of the foregoing may be imposed upon, incurred by, suffered by or asserted against such Indemnified Person (other than Excluded Amounts) due to the negligence, willful misfeasance, or bad faith of the applicable Seller in the performance of its duties under this Agreement or by reason of reckless disregard of such Seller's obligations and duties under this Agreement.

(e) TILC Seller, or TRLWT Manager on behalf of TRLWT Seller, shall indemnify, defend and hold harmless each Indemnified Person from and against any costs, expenses, losses, obligations, penalties, liabilities, damages, actions, or suits or claims of whatsoever kind or nature (whether or not on the basis of negligence, strict or absolute liability or liability in tort), that may be imposed upon, incurred by, suffered by or asserted against such Indemnified Person, other than Excluded Amounts, as a result of the failure of any Railcar or Lease Conveyed hereunder to comply with all requirements of applicable law as of the applicable Delivery Date.

Indemnification under this Section 4.5 shall include reasonable fees and expenses of counsel and expenses of litigation. The indemnity obligations hereunder shall be in addition to any obligation that any Seller may otherwise have under applicable law or any other Transaction Document.

## ARTICLE V

### COVENANTS OF SELLER

#### **Section 5.1.**                    Protection of Title of the Purchaser.

(a) On or prior to the date hereof, each Seller, or TRLWT Manager on behalf of TRLWT Seller, shall have filed or caused to be filed UCC-1 financing statements, STB or Registrar General of Canada filings (each in form proper for filing in the applicable jurisdiction) naming the Purchaser as purchaser or secured party, naming the Collateral Agent as assignee and describing the Railcars, related Leases and Related Assets Conveyed by it to the Purchaser as collateral, with the office of the Secretary of State of the State of Delaware and in such other locations as the Purchaser or the Collateral Agent shall have required. Without limiting the foregoing, each Seller, or TRLWT Manager on behalf of TRLWT Seller, hereby authorizes the Purchaser and/or any assignee thereof to prepare and file any such UCC-1 financing statements. From time to time thereafter, each Seller, or TRLWT Manager on behalf of TRLWT Seller, shall authorize and file such financing statements or cause to be authorized and filed such continuation statements, all in such manner and in such places as may be required by law (or deemed desirable by the Purchaser or any assignee thereof) to fully perfect, preserve, maintain and protect the interest of the Purchaser under this Agreement, and the security interest of the Collateral Agent, in the Railcars, related Leases and Related Assets that are Conveyed hereunder and in the proceeds thereof. Each Seller, or TRLWT Manager on behalf of TRLWT Seller, shall deliver (or cause to be delivered) to the Purchaser and the Collateral Agent file-stamped copies of, or filing receipts for, any document filed as provided above, following such filing in accordance herewith. In the event that a Seller, or TRLWT Manager on behalf of TRLWT Seller, fails to perform its obligations under this subsection, the Purchaser or the Collateral Agent may perform such obligations, at the expense of such Seller, or TRLWT Manager on behalf of TRLWT Seller, and each Seller, or TRLWT Manager on behalf of TRLWT Seller, hereby authorizes the Purchaser and grants to the Purchaser and the Collateral Agent an irrevocable power of attorney to take any and all steps in order to perform such obligations in such Seller's or in its own name, as applicable, and on behalf of such Seller, or TRLWT Manager on behalf of TRLWT Seller, as are necessary or desirable, in the determination of the Purchaser or Collateral Agent or any assignee thereof, with respect to performing such obligations.

(b) On or prior to the Closing Date and any other applicable Delivery Date hereunder, each Seller, or TRLWT Manager on behalf of TRLWT Seller, shall take all steps necessary under all applicable law in order to transfer and assign to the Purchaser the Railcars and Leases being Conveyed on such date to the Purchaser so that, upon the Conveyance of such Railcar or Lease from such Seller to the Purchaser pursuant to the terms hereof on the applicable Delivery Date, the Purchaser will have acquired good and marketable title to and a valid and perfected ownership interest in such Railcars and Leases, free and clear of any Encumbrance (other than Permitted Encumbrances). On or prior to the applicable Delivery Date hereunder, each Seller, or TRLWT Manager on behalf of TRLWT Seller, shall cooperate with the Purchaser in order to take all steps required under applicable law in order for the Purchaser to grant to the Collateral Agent a first priority perfected security interest in the Railcars and Leases being Conveyed to the Purchaser on such Delivery Date and, from time to time thereafter, each Seller, or TRLWT Manager on behalf of TRLWT Seller, shall cooperate with the Purchaser in order to

take all such actions as may be required by applicable law (or deemed desirable by the Purchaser) to fully preserve, maintain and protect the Purchaser's ownership interest in, and the Collateral Agent's first priority perfected security interest in the Railcars and Leases which have been Conveyed to the Purchaser hereunder. Notwithstanding anything to the contrary in this Agreement, neither the TILC Seller nor the TRLWT Manager on behalf of TRLWT Seller, shall be required pursuant to this Agreement to make any filings, registrations or recordations in Mexico or under any Provincial Personal Property Security Act or other non-federal legislation in Canada.

(c) A Seller, or TRLWT Manager on behalf of TRLWT Seller, shall not change its name, identity, jurisdiction of organization or corporate structure in any manner that would or could make any financing statement or continuation statement filed by Purchaser in accordance with this Agreement seriously misleading within the meaning of § 9-506 of the UCC (or any similar provision of the UCC), unless such Seller shall have given the Purchaser, the Administrative Agent and the Collateral Agent at least 30 days' prior written notice thereof, and shall promptly file and hereby authorizes the Purchaser or the Collateral Agent to file appropriate new financing statements or amendments to all previously filed financing statements and continuation statements.

(d) Each Seller, or TRLWT Manager on behalf of TRLWT Seller, shall give the Purchaser, the Administrative Agent and the Collateral Agent at least 30 days' prior written notice of any relocation of its jurisdiction of organization if, as a result of such relocation, the applicable provisions of the UCC would require the filing of any amendment of any previously filed financing or continuation statement or of any new financing statement. Each Seller, or TRLWT Manager on behalf of TRLWT Seller, shall at all times maintain its jurisdiction of organization, each office from which it manages or purchases Railcars and Leases and its principal executive office within the United States of America.

**Section 5.2.** Other Liens or Interests. Except for the Conveyances hereunder, a Seller will not sell, pledge, assign, transfer or otherwise convey to any other Person, or grant, create, incur, assume or suffer to exist any Encumbrance on the Railcars and Leases Conveyed hereunder or any interest therein (other than Permitted Encumbrances), and TILC Seller, or TRLWT Manager on behalf of TRLWT Seller, shall defend the right, title and interest of the Purchaser and the Collateral Agent in and to such Railcars and Leases against all Encumbrances or claims of Encumbrances of third parties claiming through or under such Seller. To the extent that any Railcar or Lease shall at any time secure any debt of the related Lessee to a Seller or any of its affiliates, such Seller agrees that any security interest in its favor arising from such a provision shall be subordinate to the interest of the Purchaser (and its further assignees) in such Railcars and Leases.

## ARTICLE VI

### MISCELLANEOUS

**Section 6.1** Amendment. This Agreement may be amended by the Sellers and the Purchaser only with the prior written consent of the Administrative Agent (acting at the direction of the Required Lenders).

**Section 6.2** Notices. All demands, notices and communications to a Seller or the Purchaser hereunder shall be in writing, personally delivered, or sent by telecopier (subsequently confirmed in writing), reputable overnight courier or mailed by certified mail, return receipt requested, and shall be deemed to have been given upon receipt (a) in the case of TRLWT Seller at the following address: c/o Wilmington Trust Company, 1100 North Market Street, Wilmington, Delaware 19890-0001, Attention: Corporate Trust Administration Re: Trinity Rail Leasing 2017 LLC, Facsimile No.: (302) 636-4140, with a copy to Trinity Industries Leasing Company, 2525 N. Stemmons Freeway, Dallas, Texas 75207, Attention: Michael Cottrell, Director, Capital Markets, Facsimile No.: (214) 589-8271 or such other address as shall be designated by TRLWT Seller in a written notice delivered to the Purchaser, (b) in the case of TILC Seller at the following address: Trinity Industries Leasing Company, 2525 N. Stemmons Freeway, Dallas, Texas 75207, Attention: Michael Cottrell, Director, Capital Markets, Facsimile No.: (214) 589-8271, or such other address as shall be designated by TILC Seller in a written notice delivered to the Purchaser, and (c) in the case of the Purchaser at the following address: Trinity Rail Leasing 2017 LLC., c/o Trinity Industries Leasing Company, as Manager, 2525 N. Stemmons Freeway, Dallas, Texas 75207, Attention: Michael Cottrell, Director, Capital Markets, Facsimile No.: (214) 589-8271, Confirmation No.: (214) 589-8027, with a copy to Trinity Industries Leasing Company, 2525 N. Stemmons Freeway, Dallas, Texas 75207, Attention: Legal Department, Facsimile No.: (214) 589-8824, Confirmation No.: (214) 631-4420, and with a copy to the Collateral Agent at the notice address provided for same in the Loan Agreement, or such other address as shall be designated by a party in a written notice delivered to the other party.

**Section 6.3** Merger and Integration. Except as specifically stated otherwise herein, this Agreement and the other Conveyance Documents set forth the entire understanding of the parties relating to the subject matter hereof, and all prior understandings, written or oral, are superseded by this Agreement and the other Conveyance Documents. This Agreement may not be modified, amended, waived or supplemented except as provided herein.

**Section 6.4** Severability of Provisions. If any one or more of the covenants, provisions or terms of this Agreement shall be for any reason whatsoever held invalid, then such covenants, provisions or terms shall be deemed severable from the remaining covenants, provisions or terms of this Agreement and shall in no way affect the validity or enforceability of the other provisions of this Agreement.

**Section 6.5** Governing Law.

(a) THIS AGREEMENT SHALL, IN ACCORDANCE WITH SECTION 5-1401 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK, BE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO ANY CONFLICTS OF LAW PRINCIPLES THEREOF THAT WOULD CALL FOR THE APPLICATION OF THE LAWS OF ANY OTHER JURISDICTION.

(b) Any legal action or proceeding with respect to this Agreement may be brought in the courts of the State of New York in Manhattan, or of the United States for the Southern District of New York and, by execution and delivery of this Agreement, each party hereto hereby irrevocably accepts for itself and in respect of its property, generally and

(c) unconditionally, the nonexclusive jurisdiction of such courts for the purposes of such legal action or proceeding. Each party hereto irrevocably waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of the venue of any such proceeding arising out of or relating to this Agreement or the transactions related hereto brought in such court and any claim that any such proceeding brought in any such court has been brought in an inconvenient forum.

(d) Each of the parties hereto hereby consents generally in respect of any legal action or proceeding arising out of or in connection with this Agreement to the giving of any relief or the issue of any process in connection with such action or proceeding, including the making, enforcement or execution against any property whatsoever (irrespective of its use or intended use) of any order or judgment which may be made or given in such action or proceeding.

(e) EACH PARTY TO THIS AGREEMENT HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING HEREUNDER OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO THIS AGREEMENT OR THE TRANSACTIONS RELATED HERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER FOUNDED IN CONTRACT OR TORT OR OTHERWISE; AND EACH PARTY HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY, AND THAT ANY PARTY TO THIS AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE SIGNATORIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

**Section 6.6** Counterparts. For the purpose of facilitating the execution of this Agreement and for other purposes, this Agreement may be executed simultaneously in any number of counterparts, each of which counterparts shall be deemed to be an original, and all of which counterparts shall constitute but one and the same instrument. Delivery of an executed counterpart of a signature page to this Agreement by facsimile or other electronic transmission shall be effective as delivery of a manually executed counterpart of this Agreement.

**Section 6.7** Binding Effect; Assignability.

(a) This Agreement shall be binding upon and inure to the benefit of each Seller, the Purchaser and their respective successors and assigns; *provided*, however, that a Seller may not assign its rights or obligations hereunder or any interest herein without the prior written consent of the Purchaser and the Administrative Agent (acting at the direction of the Required Lenders). The Purchaser may assign as collateral security all of its rights hereunder to the Collateral Agent, and such assignee shall have all rights of the Purchaser under this Agreement (as if such assignee were the Purchaser hereunder).

(b) This Agreement shall create and constitute the continuing obligation of the parties hereto in accordance with its terms, and shall remain in full force and effect until such

time when all Obligations under the Loan Agreement are paid in full; *provided*, however, that rights and remedies with respect to any breach of any representation and warranty made by or on behalf of a Seller pursuant to Article IV hereof shall be continuing and shall survive any termination of this Agreement.

**Section 6.8** Third Party Beneficiaries. Each of the parties hereto hereby acknowledges that the Purchaser intends to assign as collateral security all of its rights under this Agreement to the Collateral Agent for the benefit of the Protected Parties under the Loan Agreement, and each Seller hereby consents to such assignment and agrees that upon such assignment, the Collateral Agent (for the benefit of the Protected Parties) and the Administrative Agent shall be a third party beneficiary of this Agreement and the Administrative Agent may exercise the rights of the Purchaser hereunder and shall be entitled to all of the rights and benefits of the Purchaser hereunder to the same extent as if it were party hereto.

In addition, whether or not otherwise expressly stated herein, all representations, warranties, covenants and agreements of the Purchaser, TRLWT and TILC (whether as a Seller or as TRLWT Manager) in this Agreement or in any document delivered by any of them in connection with this Agreement (including without limitation, in any Delivery Schedule), shall be for the express benefit of the Administrative Agent, the Collateral Agent, the Lenders and each other Protected Party as express third party beneficiaries, and shall be enforceable by the Collateral Agent (acting at the direction of the Required Lenders) as if such Person were a party hereto. Each of the Purchaser, TRLWT and TILC hereby acknowledges and agrees that such representations, warranties, covenants and agreements are relied upon by each Lender in extending the Loans under the Loan Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the day and year first above written.

**TRINITY RAIL LEASING WAREHOUSE TRUST**

By: /s/ C. Lance Davis  
Name: C. Lance Davis  
Title: Vice President

**TRINITY INDUSTRIES LEASING COMPANY**

By: /s/ C. Lance Davis  
Name: C. Lane Davis  
Title: Vice President

**TRINITY RAIL LEASING 2017 LLC**

By: **Trinity Industries Leasing Company,**  
as sole member and manager

By: /s/ C. Lance Davis  
Name: C. Lance Davis  
Title: Vice President

## EXHIBIT A

### FORM OF BILL OF SALE

[Insert name of Seller], a [Insert business entity type] (the “**Seller**”), in consideration of the sum of ten dollars (\$10.00) and other good and valuable consideration paid at or before the execution and delivery of these presents, and receipt of which is hereby acknowledged, does hereby (i) grant, bargain, sell, transfer, assign and set over unto TRINITY RAIL LEASING 2017 LLC, a Delaware limited liability company (the “**Buyer**”) and its successors and assigns all right, title and interest of the Seller, in and to the items of railroad rolling stock forth on Schedule I hereto (together with (a) any and all replacements or substitutions thereof, (b) any and all tangible components thereof, and (c) any and all related appliances, parts, accessories, appurtenances, accessions, additions, improvements to and replacements from time to time incorporated or installed in any item thereof) (the “**Railcars**”), together with (A) all licenses, manufacturer’s warranties and other warranties, Supporting Obligations, Payment Intangibles, Chattel Paper, General Intangibles and all other rights and obligations related to the Railcars, (B) all Railroad Mileage Credits allocable to such Railcars, and any payments in respect of such credits accruing on or after the applicable Delivery Date, (C) all tort claims or any other claims of any kind or nature related to such Railcars and any payments in respect of such claims, (D) all Marks attaching to such Railcars (including as evidenced by any SUBI Certificate issued by the Marks Company), it being understood that the Marks are owned by the Marks Company and are not being conveyed hereby, (E) all other payments owing by any Person (including any railroads or similar entities) in respect of or attributable to such Railcars or the use, loss, damage, casualty, condemnation of such Railcars or the Marks associated therewith, in each case whether arising by contract, operation of law, course of dealing, industry practice or otherwise, and (F) without duplication, any Miscellaneous Items relating to such Railcars; and (ii) assign all of its right, title and interest in and to all warranties or representations made or given to the Seller with respect to the Railcars by the manufacturer thereof (collectively, the “**Purchased Railcars**”). The Buyer hereby accepts delivery of the Purchased Railcars, including the Railcars set forth on Schedule I hereto.

To have and to hold all and singular the rights to the Purchased Railcars to the Buyer and its successors and assigns for its and their own use and behalf forever.

And the Seller hereby warrants to the Buyer and its successors and assigns that at the time of delivery of the Purchased Railcars, the Seller has good and marketable legal and beneficial title to and good and lawful right to sell, the Purchased Railcars, and the Purchased Railcars are free and clear of all Encumbrances (other than Permitted Encumbrances), and the Seller covenants that it will defend forever such title to the Purchased Railcars against the demands or claims of all Persons whomsoever (including, without limitation, the holders of such Permitted Encumbrances) based on claims arising as a result of, or related or attributable to, acts, events or circumstances occurring prior to the delivery of the Purchased Railcars by the Seller hereunder. Notwithstanding the provisions above and its and the Buyer’s intent that the Seller grant, bargain, sell, transfer, assign and set over to the Buyer all right, title and interest of the Seller in the Purchased Railcars, as a precaution only, in the event of any challenge to this Bill of Sale as being in the nature of an absolute sale or assignment rather than a financing, the Seller hereby also grants the Buyer a security interest in the Purchased Railcars. Such grant of a



security interest does not constitute an admission or acknowledgment that the transactions contemplated by the Asset Transfer Agreement provide that this Bill of Sale is other than a grant, bargain, sale, transfer, assignment and set over to the Buyer of all right, title and interest of the Seller in the Purchased Railcars.

Terms used herein with initial capital letters and not otherwise defined shall have the respective meanings given thereto in the Purchase and Contribution Agreement, dated as of May 15, 2017 (as amended, restated or otherwise modified from time to time), (the “**Asset Transfer Agreement**”), by and among the Buyer, the Seller and [Trinity Rail Leasing Warehouse Trust / Trinity Industries Leasing Company].

This Bill of Sale shall be governed by and construed in accordance with the laws of the State of New York, including, without limitation, Section 5-1401 and Section 5-1402 of the New York General Obligations Law but otherwise without regard to conflict of laws principles.

The grant, bargain, sale, transfer, assignment and setting over of the Purchased Railcars pursuant to this Bill of Sale shall be deemed to occur within the State of Texas.

This Bill of Sale shall be binding upon and shall inure to the benefit of, and shall be enforceable by, the parties hereto and their respective successors and assigns as permitted by and in accordance with the terms hereof. Except as expressly provided herein or in the other Conveyance Documents, no party hereto may assign their interests herein without the consent of the other party hereto.

The Seller will duly execute and deliver to the Buyer such further documents and assurances and take such further action as the Buyer may from time to time reasonably request or as may be required by applicable law or regulation in order to effectively carry out the intent and purpose of this Bill of Sale and to establish and protect the rights and remedies created or intended to be created in favor of the Buyer hereunder, including, without limitation, the execution and delivery of supplements or amendments hereto, in recordable form.

\* \* \*



**SCHEDULE I**

## EXHIBIT B

### FORM OF ASSIGNMENT AND ASSUMPTION

[Insert name of Seller], a [Insert business entity type] (the “**Assignor**”), in consideration of the sum of ten dollars (\$10.00) and other good and valuable consideration, hereby transfers, assigns and otherwise conveys and grants to TRINITY RAIL LEASING 2017 LLC, a Delaware limited liability company (the “**LLC**”), and the LLC hereby acquires and assumes from the Assignor, all of the Assignor’s right, title and interest in and to the Leases set forth on Schedule I hereto and all Related Assets with respect thereto (collectively, the “**Leases**”), any and all income and proceeds thereof and any and all obligations of the Assignor thereunder arising on and after the date hereof. This assignment and assumption is made under the Purchase and Contribution Agreement, dated as of May 15, 2017 (as amended, restated or otherwise modified from time to time, the “**Agreement**”), by and among the Assignor, [Trinity Rail Leasing Warehouse Trust / Trinity Industries Leasing Company] and the LLC.

The Assignor hereby warrants to the LLC and its successors and assigns that at the time of assignment of the Leases, the Assignor has legal and beneficial title thereto and good and lawful right to assign such Leases free and clear of all Encumbrances (other than subleases of the Leases as expressly permitted by the Agreement and other than Permitted Encumbrances), and the Assignor covenants that it will defend forever such title to the Leases against the demands or claims of all Persons whomsoever (including, without limitation, the holders of such Permitted Encumbrances) based on claims arising as a result of, or related or attributable to, acts, events or circumstances occurring prior to the assignment of the Leases by the Assignor hereunder. Notwithstanding the provisions above and its and the LLC’s intent that the Assignor transfer, assign and otherwise convey and grant to the LLC all right, title and interest of the Assignor in the Leases, as a precaution only, in the event of any challenge to this Assignment as being in the nature of an absolute assignment rather than a financing, the Assignor hereby also grants the LLC a security interest in the Leases. Such grant of a security interest does not constitute an admission or acknowledgment that the transactions contemplated by the Agreement provide that this Assignment is other than a transfer, assignment and otherwise conveyance and grant to the LLC of all right, title and interest of the Assignor in the Leases.

The LLC hereby assumes, and agrees it is unconditionally bound in respect of, as of the applicable Delivery Date, all duties and obligations of the Assignor under the Leases.

Terms used herein with initial capital letters and not otherwise defined shall have the respective meanings given thereto in the Agreement.

This Assignment and Assumption shall be governed by and construed in accordance with the laws of the State of New York, including, without limitation, Section 5-1401 and Section 5-1402 of the New York General Obligations Law but otherwise without regard to conflict of laws principles.

This Assignment and Assumption shall be binding upon and shall inure to the benefit of, and shall be enforceable by, the parties hereto and their respective successors and assigns as permitted by and in accordance with the terms hereof. Except as expressly provided herein or in

the other Conveyance Documents, no party hereto may assign their interests herein without the consent of the other party hereto.

The Assignor will duly execute and deliver to the LLC such further documents and assurances and take such further action as the LLC may from time to time reasonably request or as may be required by applicable law or regulation in order to effectively carry out the intent and purpose of this Assignment and Assumption and to establish and protect the rights and remedies created or intended to be created in favor of the LLC hereunder, including, without limitation, the execution and delivery of supplements or amendments hereto, in recordable form.

\* \* \*



**SCHEDULE I**

**EXHIBIT C**

**FORM OF DELIVERY SCHEDULE ON THE CLOSING DATE**

THIS SCHEDULE dated as of \_\_\_\_\_, 20\_\_ constitutes a "Delivery Schedule" for such date, which is a Delivery Date, in respect of a Conveyance to be made on such date by the Seller signatory hereto below. Capitalized terms used in this Schedule have the meaning given such terms in the Purchase and Contribution Agreement, dated as of May 15, 2017 as amended, restated or otherwise modified from time to time, among [Trinity Rail Leasing Warehouse Trust / Trinity Industries Leasing Company] as a Seller, the undersigned as a Seller, and Trinity Rail Leasing 2017 LLC as Purchaser. The Railcars and Leases that are the subject of such Conveyance are listed on Schedule 1 attached hereto. [Such Schedule also indicates by footnote designation, those Leases that are subject to a purchase option or a renewal or extension option, and also those Leases that are subject to an early termination option of the Lessee.]



IN WITNESS WHEREOF, this Delivery Schedule is executed as of the date first written above.

**[Insert name of Seller]**

By: \_\_\_\_\_  
Name:  
Title:

**SCHEDULE 1  
TO  
DELIVERY SCHEDULE**

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**Section 6: EX-31.1 (EXHIBIT 31.1)**

**Exhibit 31.1**

**CERTIFICATION**

I, Timothy R. Wallace, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Trinity Industries, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: July 26, 2017

/s/ Timothy R. Wallace

Timothy R. Wallace  
Chairman, Chief Executive Officer, and President

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**Section 7: EX-31.2 (EXHIBIT 31.2)**

**Exhibit 31.2**

**CERTIFICATION**

I, James E. Perry, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Trinity Industries, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

- a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
- a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: July 26, 2017

/s/ James E. Perry

James E. Perry  
Senior Vice President and Chief Financial Officer

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## Section 8: EX-32.1 (EXHIBIT 32.1)

Exhibit 32.1

**CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report of Trinity Industries, Inc. (the "Company") on Form 10-Q for the period ended June 30, 2017 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Timothy R. Wallace, Chairman, Chief Executive Officer, and President of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and result of operations of the Company, as of, and for, the periods presented in the Report.

/s/ Timothy R. Wallace

Timothy R. Wallace  
Chairman, Chief Executive Officer, and President  
July 26, 2017

A signed original of this written statement required by Section 906 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

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## Section 9: EX-32.2 (EXHIBIT 32.2)

Exhibit 32.2

**CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report of Trinity Industries, Inc. (the "Company") on Form 10-Q for the period ended June 30, 2017 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, James E. Perry, Senior Vice President and Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and result of operations of the Company, as of, and for, the periods presented

James E. Perry  
Senior Vice President and Chief Financial Officer  
July 26, 2017

A signed original of this written statement required by Section 906 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

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## Section 10: EX-95 (EXHIBIT 95)

Exhibit 95

### Mine Safety Disclosures

The Company owned or operated sand, gravel, shale, clay, and aggregate quarries during the three months ended June 30, 2017. The Financial Reform Act ("Dodd-Frank") requires us to disclose in our periodic reports filed with the SEC, specific information about each of our quarries comprised of notices, violations, and orders<sup>1</sup> made by the Federal Mine Safety and Health Administration pursuant to the Federal Mine Safety and Health Act of 1977.

The following table is a summary of the reportable information required for our quarries that operated during the three months ended June 30, 2017:

Mine or Operating Name/MSHA Identification Number	Section 104 S&S Citations (#)	Section 104(b) Orders (#)	Section 104(d) Citations and Orders (#)	Section 110(b)(2) Violations (#)	Section 107(a) Orders (#)	Total Dollar Value of MSHA Assessments Proposed (\$)	Total Number of Mining Related Fatalities (#)	Received Notice of Violation Under Section 104(e) (yes/no)	Received Notice of Potential to Have Pattern under Section 104(e) (yes/no)	Legal Actions Pending as of Last Day of Period (#)	Legal Actions Initiated During Period (#)	Legal Actions Resolved During Period (#)
Rye (4102547)	—	—	—	—	—	\$ —	—	No	No	—	—	—
Belton (4101043)	—	—	—	—	—	\$ —	—	No	No	—	—	—
Malloy Bridge (4102946)	—	—	—	—	—	\$ —	—	No	No	—	—	—
Cottonwood (4104553)	—	—	—	—	—	\$ —	—	No	No	—	—	—
Wills Point (4104113)	—	—	—	—	—	\$ —	—	No	No	—	—	—
Indian Village (1600348)	—	—	—	—	—	\$ 116	—	No	No	—	—	—
Kopperl (4104450)	—	—	—	—	—	\$ — <sup>2</sup>	—	No	No	—	—	—
Wills Point II (4104071)	—	—	—	—	—	\$ —	—	No	No	—	—	—
Asa (4104399)	—	—	—	—	—	\$ —	—	No	No	—	—	—
Paradise (4103253)	—	—	—	—	—	\$ 116	—	No	No	—	—	—
Anacoco (1600543)	—	—	—	—	—	\$ —	—	No	No	—	—	—
Streetman (4101628)	—	—	—	—	—	\$ 232	—	No	No	—	—	—
Boulder (0504415)	4	—	—	—	—	\$ — <sup>3</sup>	—	No	No	—	—	—
Frazier Park (0400555)	—	—	—	—	—	\$ — <sup>4</sup>	—	No	No	—	—	—
Livingston (0100034)	—	—	—	—	—	\$ — <sup>5</sup>	—	No	No	—	—	—
Erwinville (1600033)	1	—	—	—	—	\$ 1,032	—	No	No	—	—	—
Brooks (1500187)	—	—	—	—	—	\$ — <sup>6</sup>	—	No	No	—	—	—

<sup>1</sup> Significant and Substantial (S&S) citations are reported on this form. Non-S&S citations are not reported on this form but any assessments resulting from non-S&S citations are reported.

<sup>2</sup> One non-S&S citation was issued. Proposed penalty amount still pending.

<sup>3</sup> Four S&S citations and four non-S&S citations were issued. Proposed penalty amounts still pending.

<sup>4</sup> Two non-S&S citations were issued. Proposed penalty amounts still pending.

<sup>5</sup> One non-S&S citation was issued. Proposed penalty amounts still pending.

<sup>6</sup> One non-S&S citation was issued. Proposed penalty amounts still pending.

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