



# St. Louis Southwestern Railway Company

Southern Pacific Building • One Market Plaza • San Francisco, California 94105

August 23, 1979

9-236A239

REC'D  
AUG 24 1979  
\$ 50.00

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

RECORDATION NO. 10764 Filed 1425

AUG 24 1979 - 3 25 PM

RE: I.C.C. Finance Docket No. 29095 ---  
St. Louis Southwestern Railway Company  
Equipment Trust, Series I --- Recording  
Pursuant to the Provisions of Section  
11303 of the Interstate Commerce Act

INTERSTATE COMMERCE COMMISSION

Dear Ms. Mergenovich:

There are enclosed, for recording in compliance with the provisions of Section 11303 of the Interstate Commerce Act, the original and three counterparts of Equipment Trust Agreement dated as of August 15, 1979, constituting St. Louis Southwestern Railway Company Equipment Trust, Series I, together with this Company's voucher in the sum of \$50.00 in payment of the required recording fee.

The following information is set forth in accordance with the provisions of Section 57.4 of the Commission's Order of July 28, 1952, as amended:

Name and Address of Trustee-Lessor:

First Pennsylvania Bank, N.A.  
Fifteenth and Chestnut Streets  
Philadelphia, Pennsylvania 19101

Name and Address of Lessee-Guarantor:

St. Louis Southwestern Railway Company  
Southern Pacific Building  
One Market Plaza  
San Francisco, California 94105

FEE OF \$ 50.00

AUG 21 8 15 AM '79

Pacific subsidiary

Ms. Agatha L. Mergenovich  
August 23, 1979  
Page Two

General Description of the Equipment  
Covered by Equipment Trust Agreement:

- |     |                                                                                                                                                                          |
|-----|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 107 | 100-ton, 4,650 cu. ft., covered hopper cars; ACF Industries, Incorporated, builder; lettered SSW and numbered 70393 to 70499, both inclusive;                            |
| 53  | 100-ton, 60 ft. flat cars with bulkheads and end-of-car cushioning; Thrall Car Manufacturing Company, builder; lettered SSW and numbered 88347 to 88399, both inclusive; |
| 100 | 100-ton, 65 ft., tight bottom gondola cars; Greenville Steel Car Co., builder; lettered SSW and numbered 75800 to 75899, both inclusive;                                 |
| 30  | 3000-h.p., four-axle, four-motor diesel freight locomotives; General Electric Company, builder; lettered SSW and numbered 7770 to 7799, both inclusive.                  |

When recording of the Equipment Trust Agreement has been completed, will you kindly return two counterparts of the instrument with the evidence of such recording endorsed thereon, to the undersigned.

Very truly yours,



Karen Ackerman  
Attorney

Enclosures

**Interstate Commerce Commission**  
Washington, D.C. 20423

8/24/79

OFFICE OF THE SECRETARY

Karen Ackerman, Atty.  
St. Louis Southwestern RYW. Co.  
Southern Pacific Building  
One Market Plaza  
San Francisco, Calif. 94105

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 8/24/79 at 3:25pm, and assigned re-  
recording number(s). 10764

Sincerely yours,

*Agatha L. Mergenovich*  
Agatha L. Mergenovich  
Secretary

Enclosure(s)

SE-30  
(7/79)

10764  
RECORDATION NO. .... Filed 1425

AUG 24 1979 -3 25 PM

INTERSTATE COMMERCE COMMISSION

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**ST. LOUIS SOUTHWESTERN RAILWAY COMPANY  
EQUIPMENT TRUST**

Series I

---

**EQUIPMENT TRUST AGREEMENT**

*Dated as of August 15, 1979*

**By and Between**

**FIRST PENNSYLVANIA BANK N.A.**

*Trustee*

**and**

**ST. LOUIS SOUTHWESTERN RAILWAY COMPANY**

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EQUIPMENT TRUST AGREEMENT, dated as of August 15, 1979, by and between FIRST PENNSYLVANIA BANK N.A., a corporation duly organized and existing under the laws of the Commonwealth of Pennsylvania, as Trustee (hereinafter called the Trustee), of the first part, and ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, a corporation duly organized and existing under the laws of the State of Missouri (hereinafter called the Company), of the second part.

WHEREAS, the Company has contracted or will contract for the construction and transfer to the Trustee of the railroad equipment described herein; and

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

WHEREAS, St. Louis Southwestern Railway Company Equipment Trust Certificates, Series I (hereinafter called Trust Certificates), are to be issued and sold in an aggregate principal amount not exceeding \$24,600,000, and the net proceeds (as hereinafter defined) of such sale together with such other cash, if any, as may be required to be deposited by the Company as hereinafter provided is to constitute a fund equal to the aggregate principal amount of Trust Certificates so issued and sold to be known as ST. LOUIS SOUTHWESTERN RAILWAY COMPANY EQUIPMENT TRUST, SERIES I, to be applied by the Trustee from time to time in part payment of the cost of the Trust Equipment, the remainder of the cost thereof to be paid out of advance rentals to be paid by the Company as provided herein; and

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

This Certificate is one of an issue of Certificates having an aggregate principal amount not exceeding \$24,600,000, all issued or to be issued under and subject to the terms of said Agreement, under which certain railroad equipment leased to the Company (or cash or obligations defined in said Agreement as "Government Securities" in lieu thereof, as provided in said Agreement) is held by the undersigned in trust for the benefit of the holders of the interests represented by said Certificates, to which Agreement (a copy of which is on file with the undersigned at its said agency) reference is made for a full statement of the rights and obligations of the Company, the duties and immunities of the undersigned and the rights of the registered holder hereof thereunder.

The Certificates are issuable as fully registered Certificates in denominations of \$1,000 and any multiple of \$1,000. The Certificates are interchangeable upon presentation thereof at said agency of the undersigned, but only in the manner, subject to the limitations and upon payment of the charges, provided in the Agreement.

This Certificate is transferable by the registered holder hereof in person or by duly authorized attorney on the books of the undersigned at its said agency in the Borough of Manhattan, City and State of New York, upon surrender hereof to the undersigned at its said agency, accompanied by appropriate instruments of assignment and transfer, duly executed by the registered holder hereof in person or by such attorney, in form satisfactory to the undersigned, and thereupon a new fully registered Certificate or Certificates in authorized denominations for the same aggregate principal amount and having the same date of maturity as this Certificate will be issued to the transferee in exchange therefor. The Trustee and the Company shall be entitled to treat the registered holder hereof as the absolute owner hereof for all purposes, and shall not be affected by any notice to the contrary.

In case of default in the performance or observance of any of the covenants of the Company in said Agreement contained, the principal amount represented by this Certificate may be declared due and payable, as provided in said Agreement.

WHEREAS, it is desired to secure to the holders of the Trust Certificates the payment of the principal thereof in 15 equal annual installments payable on the fifteenth day of August in each year beginning August 15, 1980, and ending August 15, 1994, as hereinafter more particularly provided, with dividends to said dates of maturity, respectively, as hereinafter provided, payable semi-annually on February 15, and August 15 in each year, and to evidence the rights of the holders of the Trust Certificates in substantially the forms hereinbefore set forth;

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

## ARTICLE I

### DEFINITIONS

For all purposes of this Agreement, unless the context otherwise requires:

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

*Company* shall mean St. Louis Southwestern Railway Company.

*Cost*, when used with respect to *Equipment*, shall mean the actual cost thereof, and shall include only such items as may properly be included in such cost under the Interstate Commerce Commission's Uniform System of Accounts for Railroad Companies, as in effect at the time in question, or the accounting rules of such other Federal governmental authority having jurisdiction over the accounts of the Company, or to the extent not determined thereby or in case there be no such accounting rules of the Interstate Commerce Commission or other Federal authority in effect at such time, sound accounting practice.

*Deposited Cash* shall mean the aggregate of (a) cash and any advance rentals on deposit with the Trustee as provided in the first para-

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

*Trustee* shall mean First Pennsylvania Bank N.A., a corporation duly organized and existing under the laws of the Commonwealth of Pennsylvania, and any successor as trustee hereunder.

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

## ARTICLE II

### TRUST CERTIFICATES AND ISSUANCE THEREOF

SECTION 2.01. The net proceeds (excluding premium and accrued dividends, if any) of the sale of any of the Trust Certificates shall forthwith upon issuance thereof, be deposited in cash with the Trustee. At the same time the Company shall, if necessary, deposit with the Trustee any advance rental payable by the Company to the Trustee under Section 4.04(A)(1) hereof.

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

SECTION 2.02. Each of the Trust Certificates shall represent an interest in the principal amount therein specified in the trust created hereunder and shall bear dividends on said amount at the rate of 9 $\frac{1}{4}$ % per annum, payable semi-annually on the fifteenth day of February and of August in each year.

The aggregate principal amount of Trust Certificates which shall be executed and delivered by the Trustee hereunder shall not exceed the sum of \$24,600,000, except as provided in Sections 2.05 and 2.06 hereof. Each of the Trust Certificates shall bear upon its face the due date thereof together with such numbers, descriptions or marks of identification as the Trustee may determine.

The principal amount of the Trust Certificates shall become due in 15 equal annual installments payable on the fifteenth day of August in each year beginning August 15, 1980, and ending August 15, 1994.

Anything to the contrary herein notwithstanding, the parties hereto may deem and treat the registered holder of any Trust Certificate as the absolute owner of such Trust Certificate for all purposes and shall not be affected by any notice to the contrary.

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

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

SECTION 2.06. In case any Trust Certificate shall become mutilated or defaced or be lost, stolen or destroyed, then on the terms herein set forth, and not otherwise, the Trustee, upon Request, shall execute and deliver a new Trust Certificate of like maturity, tenor and date, and bearing such number, designation or other mark of identification as the Trustee may determine, in exchange and substitution for, and upon cancellation of, the mutilated or defaced Trust Certificate or in lieu of or in substitution for the same if lost, stolen or destroyed. The Company shall execute its guaranty on any Trust Certificates so delivered. The applicant for a new Trust Certificate shall furnish to the Trustee and to the Company evidence to their satisfaction of the mutilation, defacement, loss, theft or destruction of such Trust Certificate alleged to have been lost, stolen or destroyed, and of the ownership and authenticity of such mutilated, defaced, lost, stolen or destroyed Trust Certificate, and also such security and indemnity as may be required by the Trustee and by the Company, in their discretion; and shall pay all expenses and charges of such substitution or exchange. All Trust Certificates shall be issued, held and owned upon the express condition that the foregoing provisions are exclusive in respect of the replacement of mutilated, defaced, lost, stolen or destroyed Trust Certificates, and shall preclude any and all other rights and remedies, any law or statute now existing or hereafter enacted to the contrary notwithstanding.

SECTION 2.07. At any time prior to the issue of definitive Trust Certificates the Trustee shall, upon Request of the Company, issue and

other Equipment, shall assign to the Trustee all its rights, title and interest under the said contract or contracts.

SECTION 3.02. From time to time, when and as any of the Trust Equipment shall have been delivered to the Trustee or its agent pursuant to this Article III, the Trustee shall (subject to the provisions of Section 3.03 hereof) pay, upon Request, to the manufacturer or manufacturers of the delivered Trust Equipment out of Deposited Cash an amount which, together with all payments previously made out of Deposited Cash upon deliveries of Trust Equipment, will equal 80% of the aggregate Cost of the Trust Equipment then and theretofore delivered to the Trustee.

SECTION 3.03. The Company covenants that, contemporaneously with any payment by the Trustee pursuant to Section 3.02 hereof, it will pay to the Trustee the advance rental provided in Section 4.04(A)(2) hereof, and thereupon the Trustee shall, upon request, pay to the manufacturer or manufacturers of the delivered Trust Equipment, by the use of such advance rental, the portion of the Cost of the delivered Trust Equipment not paid out of Deposited Cash as provided for in Section 3.02 hereof; the intention being that the Company shall ultimately pay not less than 20% of the final Cost of all the Trust Equipment, and the Trustee and the Company shall at any time if occasion arises adjust their accounts and payments to the end that the Trustee shall pay with Deposited Cash not more than 80% of such final Cost and the Company shall pay as advance rental the remainder, to be not less than 20% of such final Cost.

SECTION 3.04. The Trustee shall not pay out any Deposited Cash against the delivery of any of the Trust Equipment unless and until it shall have received:

(a) An invoice or invoices from the manufacturer or manufacturers and an Officer's Certificate which shall state (i) that such Trust Equipment is Equipment as herein defined, (ii) that the Cost of such Trust Equipment is an amount therein specified or is not less than an amount therein specified, and (iii) that such Trust Equipment has been delivered to the Company, as agent for the Trustee, and has been plated or marked in accordance with the provisions of Section 4.06 hereof;

(b) A bill or bills of sale of such Trust Equipment from the manufacturer or manufacturers thereof to the Trustee, which bill

ARTICLE IV

LEASE OF TRUST EQUIPMENT TO THE COMPANY

SECTION 4.01. The Trustee does hereby let and lease to the Company for the term of 15 years from and after August 15, 1979, all the Trust Equipment.

SECTION 4.02. In the event that the Company shall, as provided in Sections 3.01 and 3.04 hereof or in Sections 4.07 and 4.09 hereof, cause to be transferred to the Trustee other Equipment in addition to or in substitution for any of the Equipment herein specifically described, such other Equipment shall be included as part of the Trust Equipment by supplement hereto and shall be subject to all the terms and conditions hereof in all respects as though it had been part of the Trust Equipment herein specifically described.

SECTION 4.03. As and when any Equipment shall from time to time be transferred and delivered to the Company as agent for the Trustee, the same shall, *ipso facto* and without further instrument of lease or transfer, pass under and become subject to all the terms and provisions hereof.

SECTION 4.04. The Company hereby accepts the lease of all the Trust Equipment, and covenants and agrees to accept delivery and possession hereunder of the Trust Equipment as hereinbefore provided; and the Company covenants and agrees to pay to the Trustee (or, in the case of taxes, to the proper taxing authority), in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, rent hereunder which shall be sufficient to pay and discharge the following items, when and as the same shall become due and payable (whether or not any of such items shall become due and payable prior to the delivery and lease to the Company of any of the Trust Equipment) :

(A) The Company shall pay to the Trustee, as hereinafter provided, as advance rental hereunder, sums which shall be equal to the difference between the Cost of the Trust Equipment (other than Trust Equipment subjected hereto pursuant to Sections 4.07 and 4.09 and the last paragraph of Section 3.04 hereof) and the portion of such Cost to be provided out of the net proceeds (excluding premium and accrued dividends, if any) of the sale of the Trust Certificates, the intention being that, when all such Trust

Nothing herein or in the Trust Certificates contained shall be deemed to impose on the Trustee or on the Company any obligation to pay to the holder of any Trust Certificate any tax, assessment or governmental charge required by any present or future law of the United States of America or of any state, county, municipality or other taxing authority thereof to be paid in behalf of, or withheld from the amount payable to the holder of any Trust Certificate. The Company shall not be required to pay any tax, assessment or governmental charge so long as it shall in good faith and by appropriate legal proceedings contest the validity thereof, unless in the judgment of the Trustee the rights or interests of the Trustee or of the holders of the Trust Certificates may be materially endangered thereby.

SECTION 4.05. At the termination of the lease provided herein and after all payments due or to become due from the Company hereunder shall have been completed and fully made to the Trustee, (1) such payments shall be applied and treated as purchase money and as the full purchase price of the Trust Equipment, (2) any moneys remaining in the hands of the Trustee after providing for all outstanding Trust Certificates and after paying the expenses of the Trustee, including its reasonable compensation, shall be paid to the Company, (3) title to all the Trust Equipment shall vest in the Company, and (4) the Trustee shall execute for record in public offices, at the expense of the Company, such instrument or instruments in writing as reasonably shall be requested by the Company in order to make clear upon public records the Company's title to all the Trust Equipment under the laws of any jurisdiction; *provided, however*, that until that time title to the Trust Equipment shall not pass to or vest in the Company, but title to and ownership of all the Trust Equipment shall be and remain in the Trustee, notwithstanding the delivery of the Trust Equipment to and the possession and use thereof by the Company.

SECTION 4.06. The Company agrees that, at or before the delivery to the Company of each unit of the Trust Equipment, there shall be plainly, distinctly, permanently and conspicuously placed and fastened upon each side of such unit a metal plate bearing the following words, or such words shall be otherwise plainly, distinctly, permanently

cost and expense, unless and until worn out, unsuitable for use, lost or destroyed. Whenever any of the Trust Equipment shall be worn out, lost or destroyed or become unsuitable for use, the Company shall deliver to the Trustee an Officer's Certificate describing such Trust Equipment and stating the then fair value thereof and shall either (a) deposit with the Trustee an amount in cash equal to such fair value or (b) cause to be transferred to the Trustee additional Equipment, free from all liens and encumbrances, of a fair value at least equal to the then fair value of such Trust Equipment so worn out, unsuitable for use, lost or destroyed, and deliver to the Trustee, in respect of such additional Equipment, certificates, bills of sale and Opinions of Counsel, all in like manner as provided in Section 3.04 hereof, and, in addition, an Officer's Certificate describing such additional Equipment and stating the Cost and the then fair value thereof. The rights and remedies of the Trustee to enforce or to recover any of the rental payments shall not be affected by reason of such wearing out, unsuitableness for use, loss or destruction. Cash deposited with the Trustee pursuant to this Section 4.07 shall be held and applied as provided in Section 4.09 hereof.

The Company covenants and agrees to furnish to the Trustee, whenever required by the Trustee, and at least once in every calendar year following the calendar year in which occurs the first delivery of any of the Trust Equipment and during the continuance of the lease provided for herein, an Officer's Certificate stating (1) the amount, description and numbers of all the Trust Equipment that may have become worn out, or that may have become unsuitable for use or lost or destroyed by accident or otherwise since the date of the last preceding statement, (2) the amount, description and numbers of all the Trust Equipment then undergoing repairs, other than running repairs, or then withdrawn from use for such repairs, and stating that in the case of all the Trust Equipment repainted or repaired since the date of the last preceding statement the plates or marks required by Section 4.06 hereof have been preserved, or that the same when repainted or repaired have been again plated or marked as required thereby, and (3) such other information as to the condition and state of repair of the Trust Equipment as the Trustee may reasonably request. The

or receivers or trustee or trustees shall be discharged or such receiver or receivers or trustee or trustees shall, pursuant to court order or decree, in writing duly assume and agree to pay or perform each and all of the obligations and covenants of the Company hereunder and under the guaranty endorsed on the Trust Certificates, in such manner that such obligations shall have the same status as obligations incurred by such receiver or receivers or trustee or trustees. The Trustee shall have the right to declare the lease provided for herein terminated in case of any unauthorized assignment or transfer of its rights hereunder or in case of any unauthorized transfer or sublease of any of the Trust Equipment. The election of the Trustee to terminate the lease provided for herein shall have the same effect as the retaking of the Trust Equipment by the Trustee as hereinafter provided.

SECTION 4.09. Any units of the Trust Equipment which shall have become worn out or unsuitable in any respect for the use of the Company may be released, and it is hereby mutually agreed that at any time hereafter until title thereto shall become vested in the Company the Trustee will release any such units of the Trust Equipment upon the filing with it of a Request and an Officer's Certificate which shall describe such units, shall state that they have become worn out or unsuitable for the use of the Company, shall state the selling price thereof, and shall specify the Cost and the then fair value thereof. No such release shall be made unless and until the Company shall have paid to the Trustee an amount equal to such selling price or fair value, whichever shall be greater.

Any moneys paid to the Trustee pursuant to this Section 4.09 or Section 4.07 hereof, hereinafter called "Replacement Funds", shall be received and held by the Trustee in trust hereunder pending delivery of additional Equipment and may be invested and reinvested as provided in Section 7.08 hereof. Upon the filing with it of a Request and an Officer's Certificate which shall specify the kind and number of units of Equipment to be purchased and the then fair value thereof, such moneys, in an amount not exceeding such fair value, shall, upon receipt by the Trustee of certificates, bills of sale and Opinions of Counsel, all

such assignment or transfer or sublease to be cancelled by agreement of all parties having any interest therein and recover possession of such Trust Equipment within 30 days after the Trustee shall have demanded in writing such cancellation and recovery of possession, or within said 30 days to deposit with the Trustee a sum in cash equal to the fair value of the Trust Equipment so assigned or transferred or subleased or the possession of which shall have been parted with otherwise than as herein authorized (any sum so deposited to be returned to the Company upon the cancellation of such assignment, transfer or sublease and the recovery of possession by the Company of such Trust Equipment),  
or

(c) the Company shall, for more than 90 days after the Trustee shall have demanded in writing performance thereof, fail or refuse to comply with any other of the terms and covenants hereof on its part to be kept and performed, or to make provision satisfactory to the Trustee for such compliance,

then, in any such case (herein sometimes called an event of default), the Trustee in its discretion may, and upon the written request of the holders of not less than 25% in principal amount of the then outstanding Trust Certificates shall, by notice in writing delivered to the Company, declare to be due and payable forthwith the entire amount of the rentals (including any unpaid advance rental, but not including rentals required for the payment of dividends accruing after the date of such declaration) payable by the Company as set forth in Section 4.04 hereof and not theretofore paid. Thereupon the entire amount of such rentals shall forthwith become and shall be due and payable immediately without further demand, together with interest at the dividend rate, to the extent legally enforceable, on any portion thereof overdue; and the Trustee shall be entitled to recover judgment for the total amount so becoming payable by the Company, together with interest thereon at the dividend rate to the extent legally enforceable, and to collect such judgment out of any property of the Company wherever situated.

In addition, in case one or more events of default shall happen, the Trustee in its discretion may, and upon the written request of the holders of not less than 25% in principal amount of the then outstanding Trust Certificates shall, by notice in writing delivered to the

Trust Equipment or any of it or any cause or right of action at law or in equity in respect of the Trust Equipment against the Trustee or the holders of interests hereunder. No such taking possession, withdrawal, lease or sale of the Trust Equipment by the Trustee shall be a bar to the recovery by the Trustee from the Company of rentals then or thereafter due and payable, and the Company shall be and remain liable for the same until such sums shall have been realized as, with the proceeds of the lease or sale of the Trust Equipment, shall be sufficient for the discharge and payment in full of all the items mentioned in Section 4.04 hereof (other than dividends or interest not then accrued), whether or not they shall have then matured. The holders of a majority in principal amount of the then outstanding Trust Certificates shall have the right from time to time to direct which of the proceedings above provided for shall be taken for the enforcement of the remedies contained herein.

SECTION 5.03. If, in case of the happening of any event of default, the Trustee shall exercise any of the powers conferred upon it by Sections 5.01 and 5.02 hereof, all payments made by the Company to the Trustee hereunder after such event of default, and the proceeds of any judgment collected from the Company by the Trustee hereunder, and the proceeds of every sale or lease by the Trustee hereunder of any of the Trust Equipment, together with any other sums which may then be held by the Trustee under any of the provisions hereof (other than sums held in trust for the payment of specific Trust Certificates), shall be applied by the Trustee to the payment in the following order of priority: (a) of all proper charges, expenses or advances made or incurred by the Trustee in accordance with the provisions of this Agreement, and (b) of the dividends then due, with interest on overdue dividends at the dividend rate to the extent legally enforceable, and of the principal of all the outstanding Trust Certificates, with interest thereon at the dividend rate to the extent legally enforceable from the last preceding dividend date, whether such Trust Certificates shall have then matured by their terms or not, all such payments to be in full if such proceeds shall be sufficient, and, if not sufficient, then *pro rata* without preference between principal and dividends.

or failure or omission to act against the Company or in respect of the Trust Equipment, on the part of the Trustee or on the part of the holder of any Trust Certificate, nor any delay or indulgence granted to the Company by the Trustee or by any such holder, shall affect the obligations of the Company hereunder or the obligations of the Company under the guaranty endorsed on the Trust Certificates. The Company hereby waives presentation and demand in respect of any of the Trust Certificates and waives notice of presentation, of demand and of any default in the payment of the principal of and dividends on the Trust Certificates.

SECTION 5.06. In case the Trustee shall demand possession of the Trust Equipment pursuant to the provisions hereof and shall reasonably designate a point or points upon the railroad of the Company or of any Affiliate for the delivery of the Trust Equipment to it, the Company shall at its own expense forthwith and in the usual manner cause the Trust Equipment to be moved to such point or points on such railroad as shall be designated by the Trustee and shall there deliver or cause to be delivered the same to the Trustee, or the Trustee may at its option keep the Trust Equipment on any of the lines of railroad or premises of the Company or of any Affiliate until the Trustee shall have leased, sold or otherwise disposed of the same, and for such purpose the Company agrees to furnish without charge for rent or storage the necessary facilities at any convenient point or points selected by the Trustee. It is hereby expressly covenanted and agreed that the performance of this covenant is of the essence of this Agreement and that, upon application to any court having jurisdiction in the premises, the Trustee shall be entitled to a decree against the Company requiring the specific performance thereof.

SECTION 5.07. The remedies in this Agreement provided in favor of the Trustee and the holders of the Trust Certificates, or any of them, shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in their favor existing at law or in equity.

provision for the satisfaction or discharge of, any debt, tax, charge, assessment, obligation or claim which if unpaid might become a lien or charge upon or against any of the Trust Equipment, except upon the leasehold interest of the Company therein; but this provision shall not require the payment of any such debt, tax, charge, assessment, obligation or claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings, unless such contest will in the judgment of the Trustee materially endanger the rights or interests of the Trustee or of the holders of the Trust Certificates.

SECTION 6.04. The Company covenants and agrees to pay the expenses incident to the preparation and execution of the Trust Certificates to be issued hereunder, or connected with the preparation, execution, recording and filing hereof and of any instruments executed under the provisions hereof with respect to the Trust Equipment. The Company with all convenient speed will cause this Agreement and all supplements hereto to be duly filed and recorded with the Interstate Commerce Commission in accordance with Section 11303 of the Interstate Commerce Act. The Company will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register and record any and all further instruments required by law or reasonably requested by the Trustee for the purposes of proper protection of the title of the Trustee and the rights of the holders of the Trust Certificates and of fully carrying out and effectuating this Agreement and the intent hereof; and the Company will promptly furnish to the Trustee certificates or other evidences of filing and recording pursuant to the last preceding sentence, and of any other such filing, registration and recording, and an Opinion or Opinions of Counsel with respect thereto.

SECTION 6.05. The Company covenants and agrees from time to time to do all such acts and execute all such instruments of further assurance as it shall be reasonably requested by the Trustee to do or execute for the purpose of fully carrying out and effectuating this Agreement and the intent hereof.

SECTION 6.06. The Company covenants that it will make payment of the rentals on account of the Trust Equipment as provided in this Agreement notwithstanding that any of the Trust Certificates shall

**SECTION 7.05.** The Trustee shall be under no obligation to take any action for the execution or enforcement of the trust hereby created unless requested thereunto in writing by the holders of not less than 25% in principal amount of the then outstanding Trust Certificates and unless indemnified to its satisfaction against expense and liability with respect thereto, and unless also furnished with proof satisfactory to it as to the ownership of the Trust Certificates in respect of which any such request may be made; but this provision, in the absence of such request, shall not affect any discretion herein given to the Trustee to determine whether it shall take action in respect of any default hereunder or what action it shall take.

**SECTION 7.06.** No holder of any Trust Certificate shall have any right to institute any suit, action or proceeding for the execution and enforcement of the trust hereby created unless, after the aforesaid request in writing by the holders of not less than 25% in principal amount of the then outstanding Trust Certificates shall have been made to the Trustee, and after indemnity satisfactory to it shall have been provided, and after 90 days shall have elapsed after receipt by the Trustee of such request, it shall decline, fail or neglect to institute any proceedings pursuant thereto. Neither the provisions of this Section 7.06 nor the provisions of Section 7.05 hereof shall affect or limit in any way the obligations of the Company under its guaranty hereinabove provided or the rights of the holders of Trust Certificates to institute suit for the enforcement of payments due under said guaranty in respect of the Trust Certificates.

**SECTION 7.07.** The Trustee may for all purposes conclusively assume that the Company is not in default under the terms hereof until notified in writing to the contrary by the holders of at least 10% in principal amount of the then outstanding Trust Certificates, which notice shall distinctly specify the event of default desired to be brought to the attention of the Trustee. As to any fact or matter the manner of determining which is not specifically prescribed herein, the Trustee may for all purposes rely upon an Officer's Certificate as to such fact or matter. The Trustee shall not incur any liability to anyone in relying conclusively on, and in acting upon, any notice, consent, order,

in respect thereof or as a representation in respect of the value thereof or in respect of the title thereto.

The Trustee may perform its powers and duties hereunder by or through such attorneys, agents and servants as it shall appoint, and shall be entitled to rely upon the advice of counsel (who may be counsel to the Company), and shall be answerable for only its own acts, negligence and wilful defaults and not for the default or misconduct of any attorney, agent or servant appointed by it with reasonable care. The Trustee shall not be responsible in any way for the recitals herein contained or for the execution or validity of this Agreement or of the Trust Certificates (except for its own execution thereof), or for the guaranty by the Company, or for any mistake of fact or law.

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

The Trustee in its individual capacity may own, hold and dispose of Trust Certificates with the same rights which it would have if it were not Trustee.

Upon Request, any moneys held by the Trustee which shall have been deposited or are held for the payment of the principal amount of or dividends on any Trust Certificates remaining unclaimed for six years after the date of maturity of such Trust Certificates or the date such dividends were due and payable, as the case may be, shall be repaid by the Trustee to the Company, and all liability of the Trustee with respect to such money shall thereupon cease and the holders of such Trust Certificates shall thereafter be entitled to look only to the Company for payment thereof; *provided, however*, that the Trustee, before being required to make any such repayment may, at the expense of the Company, cause notice that said moneys have not been claimed and that after a date specified therein, which shall be not less than thirty days after the date of publication, any unclaimed balance of such moneys then remaining upon deposit with the Trustee will be repaid to the Company, to be published once in a daily newspaper printed in the English language and published in the Borough of Manhattan, the City

in writing delivered to the retiring trustee within two weeks from the time of receiving such notice in writing from the retiring trustee, the retiring trustee may thereupon designate such successor trustee. The foregoing provisions are, however, subject to the right of the holders of the majority in principal amount of the then outstanding Trust Certificates by an instrument in writing to appoint any successor trustee, if such appointment is made within one year from the date of the giving of such notice to the Company. The Company shall execute all writings recognizing the transfer of title as aforesaid and all instruments of further assurance or otherwise as reasonably may be requested by the successor trustee in the premises, and will do and perform any and all acts necessary to establish and maintain the title and rights of the successor trustee in and to the Trust Equipment. Every successor trustee shall be a bank or a trust company doing business in Philadelphia, Pennsylvania, or in the Borough of Manhattan, City and State of New York, having a capital and surplus aggregating at least \$5,000,000, if there be such bank or trust company willing and able to accept the trust upon reasonable and customary terms and duly qualified to act as such trustee.

SECTION 7.12. Any corporation resulting from any merger or consolidation to which the Trustee or any successor to it shall be a party, or any corporation in any manner succeeding to all or substantially all of the business of the Trustee or any successor trustee, provided such corporation shall be a bank or a trust company doing business in Philadelphia, Pennsylvania, or in the Borough of Manhattan, City and State of New York, and shall have a capital and surplus aggregating at least \$5,000,000, shall be the successor trustee hereunder without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

## ARTICLE VIII

### MISCELLANEOUS

SECTION 8.01. Any request or other instrument provided by this Agreement to be signed or executed by holders of Trust Certificates may be in any number of concurrent instruments of similar tenor, and

Pennsylvania 19101, or such other address as may hereafter be furnished to the Company in writing by the Trustee. An affidavit by any person representing or acting on behalf of the Company or the Trustee, as to such mailing, having the registry receipt attached, shall be conclusive evidence of the giving of such demand, notice or communication.

SECTION 8.05. This Agreement has been simultaneously executed in several counterparts each of which shall be deemed to be an original, and all such counterparts shall together constitute but one and the same instrument.

SECTION 8.06. This Agreement shall be deemed to have been executed on the date of the acknowledgment thereof by the officer of the Trustee who signed it on behalf of the Trustee.

SECTION 8.07. The provisions of this Agreement, and all the rights and obligations of the parties hereunder, shall be governed by the laws of the State of New York.

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

FIRST PENNSYLVANIA BANK N.A., Trustee,

By *D.P. Loran*  
ASSISTANT Vice President

ATTEST:

*Antuliant*  
Assistant Secretary

ST. LOUIS SOUTHWESTERN  
RAILWAY COMPANY

By *J. H. Smith*  
Assistant Treasurer

ATTEST:

*A. P. Donnell*  
Assistant Secretary

**Schedule A**

<u>Number of Units</u>	<u>Description</u>	
107	100-ton, 4,650 cu. ft., covered hopper cars; ACF Industries, Incorporated, builder; lettered SSW and numbered 70393 to 70499, both inclusive;	
53	100-ton, 60 ft., flat cars with bulkheads and end-of-car cushioning; Thrall Car Manufacturing Company, builder; lettered SSW and numbered 88347 to 88399, both inclusive;	
100	100-ton, 65 ft., tight bottom gondola cars; Greenville Steel Car Company, builder; lettered SSW and numbered 75800 to 75899, both inclusive;	
30	3000-h.p., four-axle, four-motor diesel freight locomotives; General Electric Company, builder; lettered SSW and numbered 7770 to 7799, both inclusive.	
	Total Estimated Cost.....	\$30,814,000