RECORDATION NO. 6284 Filed & Recorded

AUG 16 1971 -9 25 AM

INTERSTATE COMMERCE COMMISSION

NORFOLK AND WESTERN RAILWAY EQUIPMENT TRUST, SERIES S

EQUIPMENT TRUST AGREEMENT

DATED AS OF SEPTEMBER 1, 1971

between

NORFOLK AND WESTERN RAILWAY COMPANY

and

THE FIRST PENNSYLVANIA BANKING AND TRUST COMPANY, as Trustee

STONE PRINTING—ROANOKE, VA.—703-344-6685

TABLE OF CONTENTS

PAGE

PARTIES 1

RECITALS 1

CONSIDERATION FOR AGREEMENT 2

ARTICLE ONE

FORMS AND DEFINITIONS

SECTION 1.01 FORMS

FORM OF FACE OF TRUST CERTIFICATE WITH DIVIDEND WARRANTS 2

FORM OF DIVIDEND WARRANT FOR TRUST CERTIFICATE WITH DIVIDEND WARRANTS .. 7

FORM OF REVERSE OF TRUST CERTIFICATE WITH DIVIDEND WARRANTS 8

FORM OF FACE OF FULLY REGISTERED TRUST CERTIFICATE 11

FORM OF REVERSE OF FULLY REGISTERED TRUST CERTIFICATE 15

SECTION 1.02 DEFINITIONS

Affiliate 18

Agreement 18

Casualty Occurrence 18

Company 18

Cost 18

PAGE

Default Rental 19
Deposited Cash 19
Dividends warrants 19
Equipment 19
Estimated cost 19
Event of Default 20
Fair value 20
Hereby, herein, hereof, hereto, hereunder 20
Holder 20
Interest 20
Investments 20
Officer's Certificate 21
Opinion of Counsel 21
Replacement Funds 21
Request 21
Trust 21
Trust Certificates 21
Trust Equipment 21
Trustee 22

ARTICLE TWO

ISSUANCE OF TRUST CERTIFICATES

SECTION 2.01. Issuance of Trust Certificates 22

SECTION 2.02. Interests Represented by Trust Certificates; Aggregate Principal Amount; Dividends; Maturity 22

PAGE

SECTION 2.03. Form of Trust Certificates and Guaranty 23

SECTION 2.04. Execution by Trustee 23

SECTION 2.05. Transfer of Trust Certificates; Owners Thereof; Exchange of Trust Certificates 24

SECTION 2.06. Replacement of Lost or Mutilated Trust Certificates 27

SECTION 2.07. Temporary Trust Certificates 28

SECTION 2.08. Cancellation of Trust Certificates 28

ARTICLE THREE

ACQUISITION OF TRUST EQUIPMENT BY TRUSTEE

SECTION 3.01. Acquisition of Trust Equipment by Trustee 29

SECTION 3.02. Payments Out of Deposited Cash 30

SECTION 3.03. Payments of and from Advance Rental 30

SECTION 3.04. Supporting Documents 31

SECTION 3.05. Interest on Deposited Cash 32

ARTICLE FOUR

LEASE OF TRUST EQUIPMENT TO COMPANY

SECTION 4.01. Lease of Trust Equipment 33

PAGE

SECTION 4.02. Substituted or Additional Trust Equipment to be Covered by Supplement Hereto..... 33

SECTION 4.03. Failure to Execute Supplement Hereto for Substituted or Additional Trust Equipment..... 33

SECTION 4.04. Rental Payments..... 33

SECTION 4.05. Termination of Lease; Unclaimed Moneys..... 36

SECTION 4.06. Marking of Trust Equipment..... 37

SECTION 4.07. Maintenance of Trust Equipment; Casualty Occurrences..... 38

SECTION 4.08. Possession of Trust Equipment; Assignments or Transfers..... 40

SECTION 4.09. Release and Replacement of Trust Equipment..... 40

SECTION 4.10. Company's Indemnities..... 42

ARTICLE FIVE

REMEDIES IN EVENT OF DEFAULT

SECTION 5.01. Events of Default..... 43

SECTION 5.02. Remedies..... 45

SECTION 5.03. Application of Proceeds..... 48

SECTION 5.04. Obligations of Company Not Affected by Remedies..... 50

PAGE

SECTION 5.05. Company to Deliver Trust Equipment to Trustee 50

SECTION 5.06. Remedies Cumulative 51

ARTICLE SIX

ADDITIONAL COVENANTS AND AGREEMENTS BY THE COMPANY

SECTION 6.01. Payments to be Made by Company 51

SECTION 6.02. Guaranty to Holders of Trust Certificates 51

SECTION 6.03. Discharge of Liens 52

SECTION 6.04. Payment of Expenses; Recording 53

SECTION 6.05. Further Assurances 53

ARTICLE SEVEN

THE TRUSTEE

SECTION 7.01. Acceptance of Trusts 54

SECTION 7.02. Application of Rentals 54

SECTION 7.03. Duties of Registration, Exchange and Transfer of Trust Certificates .. 54

SECTION 7.04. Right to Indemnity from Company; Reliance on Documents 54

SECTION 7.05. No Obligation to Enforce Trust Unless Requested and Indemnified ... 55

PAGE

SECTION 7.06. Limitations on Actions by Holders of Trust Certificates..... 55

SECTION 7.07. Assumption of No Default; Reliance on Notices and Other Instruments. 56

SECTION 7.08. Investment of Money Held by Trustee..... 56

SECTION 7.09. No Liability for Trust Equipment; Agents and Attorneys; Compensation; Owning Trust Certificates; Unclaimed Moneys..... 58

SECTION 7.10. Annual Statement..... 59

SECTION 7.11. Resignation of Trustee; Appointment of Successor..... 60

SECTION 7.12. Merger or Consolidation of Trustee.. 61

SECTION 7.13. Trust Certificates Deemed Not Outstanding..... 62

ARTICLE EIGHT

MISCELLANEOUS

SECTION 8.01. Proof of Execution of Instruments by Holders of Trust Certificates... 62

SECTION 8.02. Rights Limited to Parties and Holders of Trust Certificates..... 64

SECTION 8.03. Successors and Assigns..... 64

SECTION 8.04. Notices..... 64

PAGE

SECTION 8.05. Execution 65

SECTION 8.06. Law Governing 65

SECTION 8.07. Effect of Headings 65

TESTIMONIUM 65

SIGNATURES AND SEALS 66

ACKNOWLEDGMENTS 67

SCHEDULE A 68

EQUIPMENT TRUST AGREEMENT dated as of September 1, 1971, between NORFOLK AND WESTERN RAILWAY COMPANY, a Virginia corporation (the "Company"), and THE FIRST PENNSYLVANIA BANKING AND TRUST COMPANY, a Pennsylvania corporation, as trustee (the "Trustee").

RECITALS

The Company has contracted or will contract for the construction and transfer to the Trustee of the Trust Equipment (as hereinafter defined).

Title to the Trust Equipment is to be vested in and is to be retained by the Trustee, and the Trust Equipment is to be leased to the Company hereunder until title is transferred to the Company under the provisions hereof.

Norfolk and Western Railway Equipment Trust Certificates, Series S (the "Trust Certificates"), are to be issued and sold in an aggregate principal amount not to exceed $21,090,000, in one or more installments, 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 NORFOLK AND WESTERN RAILWAY EQUIPMENT TRUST, SERIES S, to be applied by the Trustee from time to time in part payment of the cost of Trust Equipment, the remainder of the cost thereof to be paid out of advance rentals to be paid by the Company as provided herein.

The Company desires to secure to the holders of the Trust Certificates the payment of the principal thereof in 15 equal annual installments payable on September 1 in each year, beginning September 1, 1972, and ending September 1, 1986, as hereinafter more particularly provided, with dividends to said dates of maturity, respectively, as hereinafter provided, payable semi-annually on September 1 and March 1 in each year, and to evidence the rights of the holders of the Trust Certificates in substantially the forms hereinafter set forth;

NOW, THEREFORE, in consideration of the mutual covenants and promises hereinafter set forth, the Company and the Trustee agree as follows:

ARTICLE ONE

FORMS AND DEFINITIONS

SECTION 1.01. *Forms.*

The forms of the Trust Certificates, the dividend warrants and the guaranty to be endorsed on the Trust Certificates by the Company are to be substantially as follows:

[FORM OF FACE OF TRUST CERTIFICATE WITH DIVIDEND WARRANTS]

$1,000 No. $1,000

NORFOLK AND WESTERN RAILWAY
EQUIPMENT TRUST
SERIES S

EQUIPMENT TRUST CERTIFICATE

TOTAL AUTHORIZED ISSUE $21,090,000

THE FIRST PENNSYLVANIA BANKING
AND TRUST COMPANY, TRUSTEE

DIVIDENDS AT THE RATE OF 8⅛% PER ANNUM
PAYABLE MARCH 1 AND SEPTEMBER 1

PRINCIPAL HEREOF PAYABLE SEPTEMBER 1, 19

The First Pennsylvania Banking and Trust Company, as Trustee under an Equipment Trust Agreement dated as of September 1, 1971 (the "Equipment Trust Agreement"), with **Norfolk and Western Railway Company** (the "Company"), hereby certifies that the bearer, or if this Certificate is registered as to principal, the registered holder hereof, is entitled to an interest in the principal amount of

ONE THOUSAND DOLLARS

in **Norfolk and Western Railway Equipment Trust, Series S,** payable on the due date stated above, upon presentation and surrender of this Certificate to the undersigned at its principal office in the City of Philadelphia, Pennsylvania, and to payment, until said due date, of dividends on said principal amount at the rate of 8⅛% per annum from September 1, 1971, semiannually on March 1 and September 1 in each year, according to the tenor of

the dividend warrants hereto annexed, upon presentation and surrender of such warrants, as they severally mature, to the undersigned at its said principal office (with interest at the dividend warrant rate on any unpaid principal and on any unpaid dividends to the extent that it shall be legally enforceable), all in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, but payable only out of rentals or other moneys received by the undersigned and applicable to such payment under the provisions of the Equipment Trust Agreement.

This Certificate is one of an issue of Certificates having an aggregate principal amount not to exceed $21,090,000, issuable in one or more installments, the Certificates of each installment being substantially identical except as to dates of maturity. Certificates of all installments are otherwise substantially identical except as to the dividend rate thereon, and all are or will be issued pursuant to the terms of the Equipment Trust Agreement, under which certain railroad equipment leased to the Company (or cash or obligations defined in the Equipment Trust Agreement as "Investments" in lieu thereof, as provided in the Equipment Trust Agreement) is held by the undersigned in trust for the benefit of the holders of the interests represented by said Certificates. Reference is made to the Equipment Trust Agreement (a copy of which is on file with the undersigned at its said principal office) for a full statement of the rights and obligations of the Company, the duties and immunities of the undersigned and the rights of the holder hereof thereunder.

The Certificates are issuable as bearer Certificates with dividend warrants attached, registrable as to principal, in the denomination of $1,000, and as fully registered Certificates in the denominations of $1,000 and any integral multiple of $1,000. The Certificates with dividend warrants and the fully registered Certificates and the several denominations of fully registered Certificates are interchangeable upon presentation thereof at said principal office of the undersigned in the City of Philadelphia, Pennsylvania, but only in the manner, subject to the limitations and upon payment of the charges, provided in the Equipment Trust Agreement.

This Certificate may be registered as to principal at said principal office of the undersigned in the City of Philadelphia, Pennsylvania, in the name of the holder hereof, and such registration noted hereon by or on behalf of the undersigned. Thereafter title to the interest represented by this Certificate shall pass only by transfer registered at said principal office unless and until a transfer to bearer shall have been similarly registered and noted hereon. Such registration shall apply only to the principal of this Certificate and not to the attached dividend warrants, which shall continue to be payable to bearer and transferable by delivery.

Every holder of this Certificate and of the attached dividend warrants, by accepting the same, agrees with the undersigned, with the Company, and with every subsequent holder hereof and thereof that this Certificate (unless registered in the name of the holder) and such dividend warrants shall be transferable with the same

effect as in the case of a negotiable instrument payable to bearer, by delivery by any person having possession of the same, respectively, howsoever such possession may have been acquired; and the undersigned and the Company may treat the bearer of this Certificate, or the registered holder hereof if this Certificate be registered in his name as provided above, and the bearer of any dividend warrant attached hereto whether or not this Certificate be so registered, as the absolute owner of this Certificate or of said warrants, as the case may be, 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 set forth in the Equipment Trust Agreement, the principal amount represented by this Certificate may be declared due and payable, as provided in the Equipment Trust Agreement.

Neither this Certificate nor the attached dividend warrants shall be deemed in any wise a promise to pay of the Trustee.

IN WITNESS WHEREOF, the Trustee has caused this Certificate to be signed by the facsimile signature of one of its Vice Presidents and a facsimile of its corporate seal to be hereunto affixed and attested by its Secretary or one of its Assistant Secretaries, and has caused dividend warrants bearing the facsimile signature of its Treasurer

or one of its Assistant Treasurers to be attached hereto, the first day of September, 1971.

The First Pennsylvania Banking and Trust Company,
Trustee

By_____
Vice President

[FACSIMILE SEAL]

ATTEST:

_____
Assistant Secretary

[FORM OF DIVIDEND WARRANT FOR
TRUST CERTIFICATE WITH DIVIDEND WARRANTS]

Due to the bearer hereof on the first day of , 19 , on surrender hereof at the principal office of the undersigned Trustee in the City of Philadelphia, Pennsylvania,

Dollars ($),

being the semiannual dividend then due on Certificate No. of **Norfolk and Western Railway Equipment Trust, Series S,** payable only out of rentals or other moneys received by the undersigned and applicable to such payment under the Equipment Trust Agreement referred to in said Certificate.

The First Pennsylvania Banking and Trust Company,
Trustee

By_____
Treasurer

[FORM OF REVERSE OF TRUST CERTIFICATE WITH DIVIDEND WARRANTS]

GUARANTY

NORFOLK AND WESTERN RAILWAY COMPANY, a Virginia corporation, for a valuable consideration, hereby unconditionally guarantees to the bearer or registered holder of the within Certificate, and to the bearer or bearers of the dividend warrants appertaining thereto, respectively, the prompt payment of the principal of said Certificate and the dividends thereon specified in the dividend warrants thereto attached (with interest at the dividend warrant rate on any unpaid principal and on any unpaid dividends to the extent that it shall be legally enforceable), in accordance with the terms of said Certificate and the Equipment Trust Agreement referred to therein.

NORFOLK AND WESTERN RAILWAY COMPANY

By_____
Vice President

No.

NORFOLK AND WESTERN RAILWAY
EQUIPMENT TRUST
SERIES S
$1,000

DIVIDEND RATE
Per (8⅛) Cent

PRINCIPAL DUE
SEPTEMBER 1, 19

Dividends Payable
MARCH 1 AND SEPTEMBER 1

Principal and Dividends Payable
at the Principal Office of
THE FIRST PENNSYLVANIA
BANKING AND TRUST COMPANY
in the City of Philadelphia, Pennsylvania

Registerable at the Principal Office of the Trustee, in the City of Philadelphia, Pennsylvania NO WRITING ON THIS CERTIFICATE EXCEPT BY THE REGISTRAR		
Date of Registry	In Whose Name Registered	Authorized Signature

[FORM OF FACE OF FULLY REGISTERED TRUST CERTIFICATE]

No. R

$ $

NORFOLK AND WESTERN RAILWAY EQUIPMENT TRUST SERIES S

EQUIPMENT TRUST CERTIFICATE

TOTAL AUTHORIZED ISSUE $21,090,000

THE FIRST PENNSYLVANIA BANKING AND TRUST COMPANY, TRUSTEE

DIVIDENDS AT THE RATE OF 8⅛% PER ANNUM PAYABLE MARCH 1 AND SEPTEMBER 1

PRINCIPAL HEREOF PAYABLE SEPTEMBER 1, 19

The First Pennsylvania Banking and Trust Company, as Trustee under an Equipment Trust Agreement dated as of September 1, 1971 (the "Equipment Trust Agreement"), with **Norfolk and Western Railway Company** (the "Company"), hereby certifies that

,

or registered assigns, is entitled to an interest in the principal amount of

in **Norfolk and Western Railway Equipment Trust, Series S,** payable on the due date stated above, upon presentation and surrender of this Certificate to the

ARTICLE FOUR

Lease of Trust Equipment to Company

Section 4.01. *Lease of Trust Equipment.* The Trustee hereby leases all of the Trust Equipment to the Company for a term of 15 years commencing September 1, 1971.

Section 4.02. *Substituted or Additional Trust Equipment to be Covered by Supplement Hereto.* In the event 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 specifically described herein, said other Equipment shall be included as part of the Trust Equipment by supplement hereto and shall be subject to all of the terms and conditions hereof in all respects as though it had been part of the Trust Equipment specifically described herein.

Section 4.03. *Failure to Execute Supplement Hereto for Substituted or Additional Trust Equipment.* Not withstanding the failure of either or both of the parties hereto to execute any supplement hereto as required by Section 4.02 hereof, any Equipment which shall from time to time be transferred or delivered to the Company as agent for the Trustee hereunder shall, at and from the time of such transfer or delivery and without further instrument of lease or transfer, become subject to all of the terms and conditions hereof.

Section 4.04. *Rental Payments.* The Company hereby accepts the lease of all the Trust Equipment and covenants and agrees to accept delivery and possession hereunder of the Trust Equipment as provided herein. The Company shall pay to the Trustee, in the 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 said items shall become due and payable prior to the delivery and lease to the Company of any of the Trust Equipment):

(A) 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 or 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 so that when all such Trust Equipment shall have been delivered to the Company as agent for the Trustee the Company shall have paid or shall pay to the Trustee, as advance rental hereunder, a sum equal to the amount by which the aggregate Cost of such Trust Equipment exceeds such net proceeds of the sale of the Trust Certificates, such advance rental to be paid as follows:

(1) At the time of issue of the Trust Certificates a sum which, when added to such net proceeds of the sale of the Trust Certificates deposited with the Trustee, will make the total sum deposited equal to the principal amount of the Trust Certificates issued; and

(2) Upon delivery of any of the Trust Equipment a sum equal to the portion of the Cost of the delivered Trust Equipment not paid out of Deposited Cash pursuant to Section 3.02 hereof, but not less than 20% of the Cost thereof.

(B) In addition to said advance rental, and whether or not at the time any Trust Equipment shall have been delivered to the Company, the following:

(1) The necessary and reasonable expenses of the Trust, including compensation and expenses provided for herein and an amount equal to any expenses incurred and any loss of principal (including interest accrued thereupon at time of purchase) in connection with any purchase, sale or redemption of Investments by the Trustee;

(2) The amounts of the dividends payable on the Trust Certificates, when and as the same shall become payable, and interest (to the extent legally enforceable) at the dividend rate from the due date until the date of payment upon the amount of any installments of rental payable under this subparagraph (2) and the following subparagraph (3) which shall not be paid when due; and

(3) The principal of the Trust Certificates, when and as the same shall become payable, whether upon the respective stated dates of maturity thereof or otherwise under the provisions thereof or of this Agreement (with interest on any overdue principal at the dividend rate to the extent legally enforceable) from the due date until the date of payment.

In addition to the foregoing rental payments, the Company shall pay to the proper taxing authority any taxes, assessments or government charges levied upon or on account of this Agreement or the income or property of the Trust; *provided, however*, that 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 or dividend warrants may be materially endangered thereby. If any such taxes, assessments, or governmental charges shall have been charged or levied against the Trustee directly and paid by the Trustee, the Company shall reimburse the Trustee on presentation of invoice therefor; *provided, however,* that the Company shall not be obligated to reimburse the Trustee for any taxes, assessments or governmental charges so paid unless the Trustee shall have been legally liable with respect thereto or the Company shall have approved the payment thereof.

SECTION 4.05. *Termination of Lease; Unclaimed Moneys.* At the termination of the lease provided for herein and after all payments due or to become due from the Company hereunder shall have been made to the Trustee, (1) those 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 dividend warrants 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, at the expense of the Company, execute an instrument in writing reasonably requested by the Company to be made of record in order to make clear upon the public records of all appropriate jurisdictions the Company's title to all the Trust Equipment; *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 Equip-

ment 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. *Marking of Trust Equipment.* 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 marked in stencil or otherwise on each side of such unit the following legend in letters not less than one inch in height:

OWNED BY A BANK OR TRUST COMPANY UNDER A SECURITY AGREEMENT FILED UNDER INTERSTATE COMMERCE ACT, SECTION 20c.

Said legend shall be readily visible and shall indicate plainly the Trustee's ownership of said unit of the Trust Equipment. In case, prior to the termination of the lease provided for herein, any of said marks shall at any time be removed, defaced or destroyed, the Company shall promptly cause the same to be restored or replaced. The Company shall not change or permit to be changed the numbers of any unit of the Trust Equipment at any time (or any numbers which may have been substituted as herein provided) except in accordance with a statement of new numbers to be substituted therefor which previously shall have been filed with the Trustee by the Company and which shall be filed, recorded and deposited as provided in Section 6.04 hereof.

The Trust Equipment may be lettered with the name, initials or insignia of the Company, or any Affiliate, sublessee or transferee of the Company which is permitted to use the Trust Equipment as provided herein,

or in some other appropriate manner, for convenience of identification of the leasehold interest therein of the Company or any said Affiliate, sublessee or transferee. Except as aforesaid, during the continuance of the lease provided for herein, the Company will not permit the name of any person, association or corporation to be placed on any unit of the Trust Equipment as a designation which might be interpreted as a claim of ownership thereof by the Company or by any person, association or corporation other than the Trustee. The Trustee shall, however, upon Request, consent to the placing of the name of any person, association or corporation specified in such Request upon any unit of the Trust Equipment if the Company shall deliver to the Trustee at the time of such Request an Opinion of Counsel stating that the right, title and interest of the Trustee in and to said unit will not be impaired or invalidated by the placing of the specified name thereon.

SECTION 4.07. *Maintenance of Trust Equipment; Casualty Occurrences.* The Company shall maintain and keep each unit of the Trust Equipment in good order and proper repair at its own cost and expense, unless and until worn out, unsuitable for use, lost or destroyed. Whenever any unit shall be worn out, lost or destroyed or become unsuitable for use from any cause whatsoever (such occurrences being herein called Casualty Occurrences), the Company shall (a) promptly upon being advised of that Casualty Occurrence deliver to the Trustee an Officer's Certificate describing said unit and stating the then fair value thereof, (b) either (i) deposit with the Trustee an amount in cash equal to said fair value or (ii) cause to be transferred to the Trustee an additional unit or units of Equipment, free from all

liens and encumbrances, of a fair value at least equal to the then fair value of said unit, and (c) deliver to the Trustee in respect of any one or more additional units of Equipment certificates, bills of sale and Opinions of Counsel (all in like manner as provided in Section 3.04 hereof), and an Officer's Certificate describing said additional unit or units of Equipment and stating the Cost and then fair value thereof. If at any time the fair value of all additional units of Equipment so transferred to the Trustee shall be in excess of the fair value of all units of the Trust Equipment having suffered Casualty Occurrences prior to that time, the excess shall constitute a credit toward any further replacement of any units of Trust Equipment which thereafter suffer a Casualty Occurrence. The rights and remedies of the Trustee to enforce or to recover any of the rental payments shall not be affected by reason of any Casualty Occurrence. Cash deposited with the Trustee pursuant to this Section 4.07 shall be held and applied as provided in Section 4.09 hereof.

On or before April 30 in each year, commencing with the year 1972, and during the continuance of the lease provided for herein, the Company shall furnish to the Trustee an Officer's Certificate stating, as of the preceding December 31, (1) the description, number of units and road numbers of all units of the Trust Equipment then covered hereby, (2) the description, number of units and road numbers of all units of the Trust Equipment that have suffered a Casualty Occurrence during the preceding 12 months (or in the case of the first of said statements since the date of delivery hereunder of the Trust Equipment) and (3) that, in the case of any units of the Trust Equipment repainted or repaired during the period covered thereby, the legends required by Section

4.06 hereof have been preserved or replaced. The Trustee, by its agents, shall have the right, but shall be under no duty, to inspect the Trust Equipment at the then existing locations thereof once in each calendar year.

SECTION 4.08. *Possession of Trust Equipment; Assignments or Transfers.* The Company, so long as it is not in default hereunder, shall be entitled to the possession of the Trust Equipment from and after delivery thereof to the Company and the use thereof upon the lines of railroad owned or operated by the Company (either alone or jointly with another) or by any Affiliate, or upon lines over which the Company or any Affiliate shall have trackage or other operating rights, and the Company shall also be entitled to permit the use of the Trust Equipment upon connecting and other railroads in the usual interchange of traffic or over which through service may from time to time be afforded, but only upon and subject to all the terms and conditions of this Agreement.

The Company may sell, assign, transfer or otherwise dispose of the right to possession and use of any unit of the Trust Equipment, but no sale, assignment, transfer or other disposition thereof shall affect or reduce any of the obligations of the Company hereunder, which obligations of the Company shall continue in full force and effect to the same extent as if no sale, assignment, transfer or other disposition thereof had been made, it being understood, however, that certain sales, assignments, transfers and other dispositions of Trust Equipment may constitute an Event of Default under Section 5.01 hereof.

SECTION 4.09. *Release and Replacement of Trust Equipment.* Any unit of the Trust Equipment which

shall have suffered a Casualty Occurrence may be released. At any time hereafter until title thereto shall become vested in the Company, the Trustee will release any unit upon the filing with it of a Request and an Officer's Certificate which shall (a) describe said unit, (b) state that it has suffered a Casualty Occurrence hereunder, (c) state the selling price thereof and (d) specify the Cost and the then fair value thereof. No such release shall be made, however, until (a) the Company shall have paid to the Trustee an amount equal to the selling price or fair value, whichever shall be greater, of said unit or (b) the fair value of all additional Equipment transferred to the Trustee under Section 4.07 hereof shall be in excess of the greater of (i) the fair value of all units which shall have suffered a Casualty Occurrence or (ii) the selling price of all of said units.

Any moneys paid to the Trustee pursuant to this Section 4.09 or to Section 4.07 hereof (hereinafter called Replacement Funds) shall be received and held by the Trustee in trust hereunder pending delivery of additional units of Equipment and may be invested and reinvested as provided in Section 7.08 hereof. Upon the filing 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, said 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 in like manner as is provided in Section 3.04 hereof), be applied to the purchase of said units of Equipment. In the event that the Cost of said units shall exceed the amount of moneys held by the Trustee pending delivery of additional units of Equipment, the Company shall pay the excess, which amount shall constitute a credit toward the obligation of any further replacement

of any units of Trust Equipment (pursuant to this Section 4.09 or to Section 4.07 hereof) which thereafter may suffer a Casualty Occurrence.

SECTION 4.10. *Company's Indemnities.* The Company shall indemnify the Trustee against any and all claims arising from or connected with the ownership or use of any unit of Trust Equipment and against any and all claims arising from the use of any patented inventions in and about the Trust Equipment. The Company shall comply in all respects with the laws of the United States of America and of any state thereof in which any unit of the Trust Equipment may be operated and with all lawful acts, rules, regulations and orders of the Interstate Commerce Commission and any other commission, board or other legislative, executive, administrative or judicial body or officer having the power to regulate or supervise the use or condition of any unit of the Trust Equipment; *provided, however,* that the Company may in good faith contest the validity of any of said acts, rules, regulations or orders, or the application thereof to any unit of the Trust Equipment or any part thereof, in any reasonable manner which will not in the judgment of the Trustee materially endanger the rights or interests of the Trustee or of the holders of the Trust Certificates or dividend warrants. The Company shall not be relieved of any of its obligations hereunder by reason of the assertion or enforcement of any said claim or the commencement or prosecution of any litigation in respect thereof.

ARTICLE FIVE

Remedies in Event of Default

Section 5.01. *Events of Default.* The Company covenants and agrees that in case:

(a) the Company shall default in the payment of any part of the rental payable hereunder (including advance rental) for more than 30 days after the same shall have become due and payable, or

(b) 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 term or covenant hereof or of any supplement hereto or to make provisions satisfactory to the Trustee for such compliance, or

(c) the Company, without the prior written consent of the Trustee, shall make or suffer any sale, assignment, transfer or other disposition of the right of possession and use of any unit of the Trust Equipment other than to an Affiliate or to a railroad company or other purchaser which shall acquire all or substantially all of the property of the Company and which, by execution of an appropriate instrument satisfactory to the Trustee, shall assume and agree to perform each and every obligation and covenant of the Company hereunder and under the guaranty endorsed on the Trust Certificates, or

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

(e) a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may be hereafter amended, shall be filed by or against the Company and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as

such stay shall continue in force or such ineffectiveness shall continue), all of the obligations of the Company under this Agreement and under its guaranty endorsed on the Trust Certificates shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees within 60 days after such appointment, if any, or 90 days after such petition shall have been filed, whichever shall be earlier, or

(f) any other proceedings shall be commenced by or against the Company for any relief under any bankruptcy or insolvency law, or law relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the indebtedness payable hereunder) and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all of the obligations of the Company under this Agreement and under its guaranty endorsed on the Trust Certificates shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Company or for the property of the Company in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers within 60 days after such appointment, if any, or 90 days after such proceedings shall have been commenced, whichever shall be earlier,

then, upon the happening of any one of these events (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 the Default Rental to be due and payable forthwith. Thereupon the Default Rental shall become and be due and payable immediately without further demand, and the Trustee shall be entitled to recover judgment for the total amount so becoming payable by the Company and to collect that judgment out of any property of the Company wherever situated.

In addition, in case one or more Events of Default shall have occurred and be continuing, 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 the principal of all of the Trust Certificates then outstanding to be due and payable; and thereupon the same shall become and be due and payable immediately without further demand.

SECTION 5.02. *Remedies.* In case of the happening of any Event of Default, the Trustee may declare the lease provided for herein terminated and may by its agents enter upon the lines of railroad and premises of the Company or of any Affiliate and take possession of all or any unit of the Trust Equipment and withdraw the same from said lines of railroad and premises, retaining all payments which up to that time may have been made by the Company hereunder. The Trustee shall also be entitled to collect, receive and retain all unpaid *per diem*, mileage or other charges of any kind earned by any unit of the Trust Equipment. The Company hereby expressly waives any and all claims against the Trustee and its agent or agents for damages of whatever nature

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 said items shall become due and payable prior to the delivery and lease to the Company of any of the Trust Equipment):

(A) 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 or 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 so that when all such Trust Equipment shall have been delivered to the Company as agent for the Trustee the Company shall have paid or shall pay to the Trustee, as advance rental hereunder, a sum equal to the amount by which the aggregate Cost of such Trust Equipment exceeds such net proceeds of the sale of the Trust Certificates, such advance rental to be paid as follows:

(1) At the time of issue of the Trust Certificates a sum which, when added to such net proceeds of the sale of the Trust Certificates deposited with the Trustee, will make the total sum deposited equal to the principal amount of the Trust Certificates issued; and

(2) Upon delivery of any of the Trust Equipment a sum equal to the portion of the Cost of the delivered Trust Equipment not paid out of Deposited Cash pursuant to Section 3.02 hereof, but not less than 20% of the Cost thereof.

(B) In addition to said advance rental, and whether or not at the time any Trust Equipment shall have been delivered to the Company, the following:

(1) The necessary and reasonable expenses of the Trust, including compensation and expenses provided for herein and an amount equal to any expenses incurred and any loss of principal (including interest accrued thereupon at time of purchase) in connection with any purchase, sale or redemption of Investments by the Trustee;

(2) The amounts of the dividends payable on the Trust Certificates, when and as the same shall become payable, and interest (to the extent legally enforceable) at the dividend rate from the due date until the date of payment upon the amount of any installments of rental payable under this subparagraph (2) and the following subparagraph (3) which shall not be paid when due; and

(3) The principal of the Trust Certificates, when and as the same shall become payable, whether upon the respective stated dates of maturity thereof or otherwise under the provisions thereof or of this Agreement (with interest on any overdue principal at the dividend rate to the extent legally enforceable) from the due date until the date of payment.

In addition to the foregoing rental payments, the Company shall pay to the proper taxing authority any taxes, assessments or government charges levied upon or on account of this Agreement or the income or property of the Trust; *provided, however*, that 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 or dividend warrants may be materially endangered thereby. If any such taxes, assessments, or governmental charges shall have been charged or levied against the Trustee directly and paid by the Trustee, the Company shall reimburse the Trustee on presentation of invoice therefor; *provided, however,* that the Company shall not be obligated to reimburse the Trustee for any taxes, assessments or governmental charges so paid unless the Trustee shall have been legally liable with respect thereto or the Company shall have approved the payment thereof.

SECTION 4.05. *Termination of Lease; Unclaimed Moneys.* At the termination of the lease provided for herein and after all payments due or to become due from the Company hereunder shall have been made to the Trustee, (1) those 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 dividend warrants 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, at the expense of the Company, execute an instrument in writing reasonably requested by the Company to be made of record in order to make clear upon the public records of all appropriate jurisdictions the Company's title to all the Trust Equipment; *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 Equip-

ment 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. *Marking of Trust Equipment.* 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 marked in stencil or otherwise on each side of such unit the following legend in letters not less than one inch in height:

OWNED BY A BANK OR TRUST COMPANY UNDER A SECURITY AGREEMENT FILED UNDER INTERSTATE COMMERCE ACT, SECTION 20c.

Said legend shall be readily visible and shall indicate plainly the Trustee's ownership of said unit of the Trust Equipment. In case, prior to the termination of the lease provided for herein, any of said marks shall at any time be removed, defaced or destroyed, the Company shall promptly cause the same to be restored or replaced. The Company shall not change or permit to be changed the numbers of any unit of the Trust Equipment at any time (or any numbers which may have been substituted as herein provided) except in accordance with a statement of new numbers to be substituted therefor which previously shall have been filed with the Trustee by the Company and which shall be filed, recorded and deposited as provided in Section 6.04 hereof.

The Trust Equipment may be lettered with the name, initials or insignia of the Company, or any Affiliate, sublessee or transferee of the Company which is permitted to use the Trust Equipment as provided herein,

or in some other appropriate manner, for convenience of identification of the leasehold interest therein of the Company or any said Affiliate, sublessee or transferee. Except as aforesaid, during the continuance of the lease provided for herein, the Company will not permit the name of any person, association or corporation to be placed on any unit of the Trust Equipment as a designation which might be interpreted as a claim of ownership thereof by the Company or by any person, association or corporation other than the Trustee. The Trustee shall, however, upon Request, consent to the placing of the name of any person, association or corporation specified in such Request upon any unit of the Trust Equipment if the Company shall deliver to the Trustee at the time of such Request an Opinion of Counsel stating that the right, title and interest of the Trustee in and to said unit will not be impaired or invalidated by the placing of the specified name thereon.

SECTION 4.07. *Maintenance of Trust Equipment; Casualty Occurrences.* The Company shall maintain and keep each unit of the Trust Equipment in good order and proper repair at its own cost and expense, unless and until worn out, unsuitable for use, lost or destroyed. Whenever any unit shall be worn out, lost or destroyed or become unsuitable for use from any cause whatsoever (such occurrences being herein called Casualty Occurrences), the Company shall (a) promptly upon being advised of that Casualty Occurrence deliver to the Trustee an Officer's Certificate describing said unit and stating the then fair value thereof, (b) either (i) deposit with the Trustee an amount in cash equal to said fair value or (ii) cause to be transferred to the Trustee an additional unit or units of Equipment, free from all

liens and encumbrances, of a fair value at least equal to the then fair value of said unit, and (c) deliver to the Trustee in respect of any one or more additional units of Equipment certificates, bills of sale and Opinions of Counsel (all in like manner as provided in Section 3.04 hereof), and an Officer's Certificate describing said additional unit or units of Equipment and stating the Cost and then fair value thereof. If at any time the fair value of all additional units of Equipment so transferred to the Trustee shall be in excess of the fair value of all units of the Trust Equipment having suffered Casualty Occurrences prior to that time, the excess shall constitute a credit toward any further replacement of any units of Trust Equipment which thereafter suffer a Casualty Occurrence. The rights and remedies of the Trustee to enforce or to recover any of the rental payments shall not be affected by reason of any Casualty Occurrence. Cash deposited with the Trustee pursuant to this Section 4.07 shall be held and applied as provided in Section 4.09 hereof.

On or before April 30 in each year, commencing with the year 1972, and during the continuance of the lease provided for herein, the Company shall furnish to the Trustee an Officer's Certificate stating, as of the preceding December 31, (1) the description, number of units and road numbers of all units of the Trust Equipment then covered hereby, (2) the description, number of units and road numbers of all units of the Trust Equipment that have suffered a Casualty Occurrence during the preceding 12 months (or in the case of the first of said statements since the date of delivery hereunder of the Trust Equipment) and (3) that, in the case of any units of the Trust Equipment repainted or repaired during the period covered thereby, the legends required by Section

4.06 hereof have been preserved or replaced. The Trustee, by its agents, shall have the right, but shall be under no duty, to inspect the Trust Equipment at the then existing locations thereof once in each calendar year.

SECTION 4.08. *Possession of Trust Equipment; Assignments or Transfers.* The Company, so long as it is not in default hereunder, shall be entitled to the possession of the Trust Equipment from and after delivery thereof to the Company and the use thereof upon the lines of railroad owned or operated by the Company (either alone or jointly with another) or by any Affiliate, or upon lines over which the Company or any Affiliate shall have trackage or other operating rights, and the Company shall also be entitled to permit the use of the Trust Equipment upon connecting and other railroads in the usual interchange of traffic or over which through service may from time to time be afforded, but only upon and subject to all the terms and conditions of this Agreement.

The Company may sell, assign, transfer or otherwise dispose of the right to possession and use of any unit of the Trust Equipment, but no sale, assignment, transfer or other disposition thereof shall affect or reduce any of the obligations of the Company hereunder, which obligations of the Company shall continue in full force and effect to the same extent as if no sale, assignment, transfer or other disposition thereof had been made, it being understood, however, that certain sales, assignments, transfers and other dispositions of Trust Equipment may constitute an Event of Default under Section 5.01 hereof.

SECTION 4.09. *Release and Replacement of Trust Equipment.* Any unit of the Trust Equipment which

shall have suffered a Casualty Occurrence may be released. At any time hereafter until title thereto shall become vested in the Company, the Trustee will release any unit upon the filing with it of a Request and an Officer's Certificate which shall (a) describe said unit, (b) state that it has suffered a Casualty Occurrence hereunder, (c) state the selling price thereof and (d) specify the Cost and the then fair value thereof. No such release shall be made, however, until (a) the Company shall have paid to the Trustee an amount equal to the selling price or fair value, whichever shall be greater, of said unit or (b) the fair value of all additional Equipment transferred to the Trustee under Section 4.07 hereof shall be in excess of the greater of (i) the fair value of all units which shall have suffered a Casualty Occurrence or (ii) the selling price of all of said units.

Any moneys paid to the Trustee pursuant to this Section 4.09 or to Section 4.07 hereof (hereinafter called Replacement Funds) shall be received and held by the Trustee in trust hereunder pending delivery of additional units of Equipment and may be invested and reinvested as provided in Section 7.08 hereof. Upon the filing 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, said 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 in like manner as is provided in Section 3.04 hereof), be applied to the purchase of said units of Equipment. In the event that the Cost of said units shall exceed the amount of moneys held by the Trustee pending delivery of additional units of Equipment, the Company shall pay the excess, which amount shall constitute a credit toward the obligation of any further replacement

ARTICLE FOUR

Lease of Trust Equipment to Company

Section 4.01. *Lease of Trust Equipment.* The Trustee hereby leases all of the Trust Equipment to the Company for a term of 15 years commencing September 1, 1971.

Section 4.02. *Substituted or Additional Trust Equipment to be Covered by Supplement Hereto.* In the event 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 specifically described herein, said other Equipment shall be included as part of the Trust Equipment by supplement hereto and shall be subject to all of the terms and conditions hereof in all respects as though it had been part of the Trust Equipment specifically described herein.

Section 4.03. *Failure to Execute Supplement Hereto for Substituted or Additional Trust Equipment.* Not withstanding the failure of either or both of the parties hereto to execute any supplement hereto as required by Section 4.02 hereof, any Equipment which shall from time to time be transferred or delivered to the Company as agent for the Trustee hereunder shall, at and from the time of such transfer or delivery and without further instrument of lease or transfer, become subject to all of the terms and conditions hereof.

Section 4.04. *Rental Payments.* The Company hereby accepts the lease of all the Trust Equipment and covenants and agrees to accept delivery and possession hereunder of the Trust Equipment as provided herein. The Company shall pay to the Trustee, in the 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 said items shall become due and payable prior to the delivery and lease to the Company of any of the Trust Equipment):

(A) 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 or 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 so that when all such Trust Equipment shall have been delivered to the Company as agent for the Trustee the Company shall have paid or shall pay to the Trustee, as advance rental hereunder, a sum equal to the amount by which the aggregate Cost of such Trust Equipment exceeds such net proceeds of the sale of the Trust Certificates, such advance rental to be paid as follows:

(1) At the time of issue of the Trust Certificates a sum which, when added to such net proceeds of the sale of the Trust Certificates deposited with the Trustee, will make the total sum deposited equal to the principal amount of the Trust Certificates issued; and

(2) Upon delivery of any of the Trust Equipment a sum equal to the portion of the Cost of the delivered Trust Equipment not paid out of Deposited Cash pursuant to Section 3.02 hereof, but not less than 20% of the Cost thereof.

(B) In addition to said advance rental, and whether or not at the time any Trust Equipment shall have been delivered to the Company, the following:

(1) The necessary and reasonable expenses of the Trust, including compensation and expenses provided for herein and an amount equal to any expenses incurred and any loss of principal (including interest accrued thereupon at time of purchase) in connection with any purchase, sale or redemption of Investments by the Trustee;

(2) The amounts of the dividends payable on the Trust Certificates, when and as the same shall become payable, and interest (to the extent legally enforceable) at the dividend rate from the due date until the date of payment upon the amount of any installments of rental payable under this subparagraph (2) and the following subparagraph (3) which shall not be paid when due; and

(3) The principal of the Trust Certificates, when and as the same shall become payable, whether upon the respective stated dates of maturity thereof or otherwise under the provisions thereof or of this Agreement (with interest on any overdue principal at the dividend rate to the extent legally enforceable) from the due date until the date of payment.

In addition to the foregoing rental payments, the Company shall pay to the proper taxing authority any taxes, assessments or government charges levied upon or on account of this Agreement or the income or property of the Trust; *provided, however*, that 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 or dividend warrants may be materially endangered thereby. If any such taxes, assessments, or governmental charges shall have been charged or levied against the Trustee directly and paid by the Trustee, the Company shall reimburse the Trustee on presentation of invoice therefor; *provided, however,* that the Company shall not be obligated to reimburse the Trustee for any taxes, assessments or governmental charges so paid unless the Trustee shall have been legally liable with respect thereto or the Company shall have approved the payment thereof.

SECTION 4.05. *Termination of Lease; Unclaimed Moneys.* At the termination of the lease provided for herein and after all payments due or to become due from the Company hereunder shall have been made to the Trustee, (1) those 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 dividend warrants 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, at the expense of the Company, execute an instrument in writing reasonably requested by the Company to be made of record in order to make clear upon the public records of all appropriate jurisdictions the Company's title to all the Trust Equipment; *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 Equip-

ment 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. *Marking of Trust Equipment.* 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 marked in stencil or otherwise on each side of such unit the following legend in letters not less than one inch in height:

OWNED BY A BANK OR TRUST COMPANY UNDER A SECURITY AGREEMENT FILED UNDER INTERSTATE COMMERCE ACT, SECTION 20c.

Said legend shall be readily visible and shall indicate plainly the Trustee's ownership of said unit of the Trust Equipment. In case, prior to the termination of the lease provided for herein, any of said marks shall at any time be removed, defaced or destroyed, the Company shall promptly cause the same to be restored or replaced. The Company shall not change or permit to be changed the numbers of any unit of the Trust Equipment at any time (or any numbers which may have been substituted as herein provided) except in accordance with a statement of new numbers to be substituted therefor which previously shall have been filed with the Trustee by the Company and which shall be filed, recorded and deposited as provided in Section 6.04 hereof.

The Trust Equipment may be lettered with the name, initials or insignia of the Company, or any Affiliate, sublessee or transferee of the Company which is permitted to use the Trust Equipment as provided herein,

or in some other appropriate manner, for convenience of identification of the leasehold interest therein of the Company or any said Affiliate, sublessee or transferee. Except as aforesaid, during the continuance of the lease provided for herein, the Company will not permit the name of any person, association or corporation to be placed on any unit of the Trust Equipment as a designation which might be interpreted as a claim of ownership thereof by the Company or by any person, association or corporation other than the Trustee. The Trustee shall, however, upon Request, consent to the placing of the name of any person, association or corporation specified in such Request upon any unit of the Trust Equipment if the Company shall deliver to the Trustee at the time of such Request an Opinion of Counsel stating that the right, title and interest of the Trustee in and to said unit will not be impaired or invalidated by the placing of the specified name thereon.

SECTION 4.07. *Maintenance of Trust Equipment; Casualty Occurrences.* The Company shall maintain and keep each unit of the Trust Equipment in good order and proper repair at its own cost and expense, unless and until worn out, unsuitable for use, lost or destroyed. Whenever any unit shall be worn out, lost or destroyed or become unsuitable for use from any cause whatsoever (such occurrences being herein called Casualty Occurrences), the Company shall (a) promptly upon being advised of that Casualty Occurrence deliver to the Trustee an Officer's Certificate describing said unit and stating the then fair value thereof, (b) either (i) deposit with the Trustee an amount in cash equal to said fair value or (ii) cause to be transferred to the Trustee an additional unit or units of Equipment, free from all

liens and encumbrances, of a fair value at least equal to the then fair value of said unit, and (c) deliver to the Trustee in respect of any one or more additional units of Equipment certificates, bills of sale and Opinions of Counsel (all in like manner as provided in Section 3.04 hereof), and an Officer's Certificate describing said additional unit or units of Equipment and stating the Cost and then fair value thereof. If at any time the fair value of all additional units of Equipment so transferred to the Trustee shall be in excess of the fair value of all units of the Trust Equipment having suffered Casualty Occurrences prior to that time, the excess shall constitute a credit toward any further replacement of any units of Trust Equipment which thereafter suffer a Casualty Occurrence. The rights and remedies of the Trustee to enforce or to recover any of the rental payments shall not be affected by reason of any Casualty Occurrence. Cash deposited with the Trustee pursuant to this Section 4.07 shall be held and applied as provided in Section 4.09 hereof.

On or before April 30 in each year, commencing with the year 1972, and during the continuance of the lease provided for herein, the Company shall furnish to the Trustee an Officer's Certificate stating, as of the preceding December 31, (1) the description, number of units and road numbers of all units of the Trust Equipment then covered hereby, (2) the description, number of units and road numbers of all units of the Trust Equipment that have suffered a Casualty Occurrence during the preceding 12 months (or in the case of the first of said statements since the date of delivery hereunder of the Trust Equipment) and (3) that, in the case of any units of the Trust Equipment repainted or repaired during the period covered thereby, the legends required by Section

4.06 hereof have been preserved or replaced. The Trustee, by its agents, shall have the right, but shall be under no duty, to inspect the Trust Equipment at the then existing locations thereof once in each calendar year.

SECTION 4.08. *Possession of Trust Equipment; Assignments or Transfers.* The Company, so long as it is not in default hereunder, shall be entitled to the possession of the Trust Equipment from and after delivery thereof to the Company and the use thereof upon the lines of railroad owned or operated by the Company (either alone or jointly with another) or by any Affiliate, or upon lines over which the Company or any Affiliate shall have trackage or other operating rights, and the Company shall also be entitled to permit the use of the Trust Equipment upon connecting and other railroads in the usual interchange of traffic or over which through service may from time to time be afforded, but only upon and subject to all the terms and conditions of this Agreement.

The Company may sell, assign, transfer or otherwise dispose of the right to possession and use of any unit of the Trust Equipment, but no sale, assignment, transfer or other disposition thereof shall affect or reduce any of the obligations of the Company hereunder, which obligations of the Company shall continue in full force and effect to the same extent as if no sale, assignment, transfer or other disposition thereof had been made, it being understood, however, that certain sales, assignments, transfers and other dispositions of Trust Equipment may constitute an Event of Default under Section 5.01 hereof.

SECTION 4.09. *Release and Replacement of Trust Equipment.* Any unit of the Trust Equipment which

shall have suffered a Casualty Occurrence may be released. At any time hereafter until title thereto shall become vested in the Company, the Trustee will release any unit upon the filing with it of a Request and an Officer's Certificate which shall (a) describe said unit, (b) state that it has suffered a Casualty Occurrence hereunder, (c) state the selling price thereof and (d) specify the Cost and the then fair value thereof. No such release shall be made, however, until (a) the Company shall have paid to the Trustee an amount equal to the selling price or fair value, whichever shall be greater, of said unit or (b) the fair value of all additional Equipment transferred to the Trustee under Section 4.07 hereof shall be in excess of the greater of (i) the fair value of all units which shall have suffered a Casualty Occurrence or (ii) the selling price of all of said units.

Any moneys paid to the Trustee pursuant to this Section 4.09 or to Section 4.07 hereof (hereinafter called Replacement Funds) shall be received and held by the Trustee in trust hereunder pending delivery of additional units of Equipment and may be invested and reinvested as provided in Section 7.08 hereof. Upon the filing 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, said 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 in like manner as is provided in Section 3.04 hereof), be applied to the purchase of said units of Equipment. In the event that the Cost of said units shall exceed the amount of moneys held by the Trustee pending delivery of additional units of Equipment, the Company shall pay the excess, which amount shall constitute a credit toward the obligation of any further replacement

of any units of Trust Equipment (pursuant to this Section 4.09 or to Section 4.07 hereof) which thereafter may suffer a Casualty Occurrence.

SECTION 4.10. *Company's Indemnities.* The Company shall indemnify the Trustee against any and all claims arising from or connected with the ownership or use of any unit of Trust Equipment and against any and all claims arising from the use of any patented inventions in and about the Trust Equipment. The Company shall comply in all respects with the laws of the United States of America and of any state thereof in which any unit of the Trust Equipment may be operated and with all lawful acts, rules, regulations and orders of the Interstate Commerce Commission and any other commission, board or other legislative, executive, administrative or judicial body or officer having the power to regulate or supervise the use or condition of any unit of the Trust Equipment; *provided, however,* that the Company may in good faith contest the validity of any of said acts, rules, regulations or orders, or the application thereof to any unit of the Trust Equipment or any part thereof, in any reasonable manner which will not in the judgment of the Trustee materially endanger the rights or interests of the Trustee or of the holders of the Trust Certificates or dividend warrants. The Company shall not be relieved of any of its obligations hereunder by reason of the assertion or enforcement of any said claim or the commencement or prosecution of any litigation in respect thereof.

ARTICLE FIVE

Remedies in Event of Default

Section 5.01. *Events of Default.* The Company covenants and agrees that in case:

(a) the Company shall default in the payment of any part of the rental payable hereunder (including advance rental) for more than 30 days after the same shall have become due and payable, or

(b) 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 term or covenant hereof or of any supplement hereto or to make provisions satisfactory to the Trustee for such compliance, or

(c) the Company, without the prior written consent of the Trustee, shall make or suffer any sale, assignment, transfer or other disposition of the right of possession and use of any unit of the Trust Equipment other than to an Affiliate or to a railroad company or other purchaser which shall acquire all or substantially all of the property of the Company and which, by execution of an appropriate instrument satisfactory to the Trustee, shall assume and agree to perform each and every obligation and covenant of the Company hereunder and under the guaranty endorsed on the Trust Certificates, or

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

(e) a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may be hereafter amended, shall be filed by or against the Company and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as

such stay shall continue in force or such ineffectiveness shall continue), all of the obligations of the Company under this Agreement and under its guaranty endorsed on the Trust Certificates shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees within 60 days after such appointment, if any, or 90 days after such petition shall have been filed, whichever shall be earlier, or

(f) any other proceedings shall be commenced by or against the Company for any relief under any bankruptcy or insolvency law, or law relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the indebtedness payable hereunder) and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all of the obligations of the Company under this Agreement and under its guaranty endorsed on the Trust Certificates shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Company or for the property of the Company in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers within 60 days after such appointment, if any, or 90 days after such proceedings shall have been commenced, whichever shall be earlier,

then, upon the happening of any one of these events (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 the Default Rental to be due and payable forthwith. Thereupon the Default Rental shall become and be due and payable immediately without further demand, and the Trustee shall be entitled to recover judgment for the total amount so becoming payable by the Company and to collect that judgment out of any property of the Company wherever situated.

In addition, in case one or more Events of Default shall have occurred and be continuing, 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 the principal of all of the Trust Certificates then outstanding to be due and payable; and thereupon the same shall become and be due and payable immediately without further demand.

SECTION 5.02. *Remedies.* In case of the happening of any Event of Default, the Trustee may declare the lease provided for herein terminated and may by its agents enter upon the lines of railroad and premises of the Company or of any Affiliate and take possession of all or any unit of the Trust Equipment and withdraw the same from said lines of railroad and premises, retaining all payments which up to that time may have been made by the Company hereunder. The Trustee shall also be entitled to collect, receive and retain all unpaid *per diem*, mileage or other charges of any kind earned by any unit of the Trust Equipment. The Company hereby expressly waives any and all claims against the Trustee and its agent or agents for damages of whatever nature

in connection with any retaking of any unit of the Trust Equipment in any reasonable manner.

At any time after the Default Rental shall have been declared due and payable, the Trustee (after retaking possession of the Trust Equipment as hereinbefore provided) may at its election and upon such notice as is hereinafter prescribed retain the Trust Equipment in satisfaction of the Default Rental and make such disposition thereof as the Trustee shall deem fit. Written notice of the Trustee's election to retain the Trust Equipment shall be given to the Company by telegram or registered mail, addressed as provided in Section 8.04 hereof, and to any other persons to whom notice may be required by law, within 30 days after the Default Rental shall have been declared immediately due and payable. In the event the Trustee should elect to retain the Trust Equipment and no objection is made thereto within the 30-day period described in the second proviso below, all of the Company's rights in the Trust Equipment shall thereupon terminate and all payments made by the Company to the Trustee may be retained by the Trustee as compensation for use of the Trust Equipment; *provided, however*, that if the Company before the expiration of the 30-day period described in the proviso below should pay or cause to be paid to the Trustee the Default Rental, then in such event absolute right to the possession of, title to and property in the Trust Equipment shall pass to and vest in the Company; and *provided, further*, that, if the Company or any other person notified under the terms of this paragraph objects in writing to the Trustee within 30 days after receipt of notice of the Trustee's election to retain the Trust Equipment, the Trustee may not so retain the Trust Equipment but shall sell, lease or otherwise dispose of it or continue to hold it

pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Trustee shall have given no notice to retain as hereinabove provided or notice of intention to dispose of the Trust Equipment in any other manner, it shall be deemed to have elected to sell the Trust Equipment in accordance with the provisions of this Section 5.02.

At any time after the Default Rental shall have been declared due and payable as hereinbefore provided, the Trustee, with or without retaking possession thereof, at its election and upon reasonable notice to the Company (and to any other person pursuant to law) of the time and place, may sell all or any unit of the Trust Equipment free from any and all claims of the Company or any other party claiming from, through or under the Company at law or in equity, at public or private sale and with or without advertisement as the Trustee may determine; *provided, however*, that if, prior to the sale and prior to the making of a contract for sale, the Company should tender full payment of the Default Rental as well as expenses of the Trustee in retaking possession of, removing, storing, holding and preparing the Trust Equipment for, and otherwise arranging for, said sale and the Trustee's reasonable attorneys' fees, then in that event absolute right to the possession of, title to and property in the Trust Equipment shall pass to and vest in the Company. The proceeds of any sale, less the attorneys' fees and any other expenses incurred by the Trustee in retaking possession of, removing, storing, holding, preparing for sale and selling the Trust Equipment, shall be credited on the amount due to the Trustee under the provisions of this Section 5.02.

Any sale hereunder may be held or conducted at such place or places and at such time or times as the Trustee may specify, in one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in the manner determined by the Trustee. The Company shall be given written notice of any sale not less than 10 days prior thereto by telegram or registered mail addressed to the Company as provided in Section 8.04 hereof. If any sale shall be a private sale, it shall be subject to the right of the Company to purchase or provide a purchaser, within 10 days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. The Trustee or the Company may bid for and become the purchaser of all or any unit of the Trust Equipment so offered for sale. In the event that the Trustee shall be the purchaser thereof, it shall not be accountable to the Company (except to the extent of surplus money received as hereinafter provided in Section 5.03 hereof), and in payment of the purchase price therefor the Trustee shall be entitled to have credited against said purchase price all sums due to the Trustee from the Company hereunder.

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. *Application of Proceeds.* If 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 said exercise

of powers, the proceeds of any judgment collected by the Trustee hereunder and the proceeds of every sale or lease by the Trustee hereunder of any unit 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 and/or dividend warrants), 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 of the outstanding Trust Certificates (with interest thereon at the dividend rate to the extent legally enforceable from the last preceding dividend date to the date of payment, whether such Trust Certificates shall have then matured by their terms or not), all said payments to be in full if said proceeds shall be sufficient, and, if not sufficient, then *pro rata* without preference between principal and dividends.

After all said payments shall have been made in full, the title to any of the Trust Equipment remaining unsold shall be conveyed by the Trustee to the Company free from any further liabilities or obligations to the Trustee hereunder. If after applying all sums of money realized by the Trustee as aforesaid there shall remain any amount due to the Trustee under the provisions hereof, the Company agrees to pay the amount of the deficit to the Trustee. If after applying as aforesaid the sums of money realized by the Trustee there shall remain a surplus in the possession of the Trustee, said surplus shall be paid to the Company.

SECTION 5.04. *Obligations of Company Not Affected by Remedies.* No retaking of possession of the Trust Equipment by the Trustee, nor any withdrawal, lease or sale thereof, nor any action or failure or omission to act against the Company or in respect of the Trust Equipment, on the part of the Trustee or on the part of the holder of any Trust Certificate or dividend warrant, nor any delay or indulgence granted by the Trustee or by such holder shall affect the obligations of the Company hereunder or the obligations of the Company under its guaranty endorsed on the Trust Certificates. The Company hereby waives presentation and demand in respect of any of the Trust Certificates and dividend warrants 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 5.05. *Company to Deliver Trust Equipment to Trustee.* In case the Trustee shall demand possession of the Trust Equipment pursuant to the foregoing provisions and shall reasonably designate a point or points upon the lines of 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 and shall there deliver or cause the same to be delivered 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 under the foregoing provisions; 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 reasonably convenient to the Company. The

agreement to deliver the Trust Equipment and furnish facilities as hereinbefore provided is of the essence of this Agreement and, upon application to any court having jurisdiction in the premises, the Trustee shall be entitled to a decree against the Company requiring the specific performance thereof.

SECTION 5.06. *Remedies Cumulative.* The remedies provided in this Agreement in favor of the Trustee and the holders of the Trust Certificates or dividend warrants, or any of them, shall not be deemed exclusive, but shall be cumulative and in addition to all other remedies in their favor existing at law or in equity.

ARTICLE SIX

ADDITIONAL COVENANTS AND AGREEMENTS BY THE COMPANY

SECTION 6.01. *Payments to be Made by Company.* The Company shall make payment of (a) the reasonable expenses and compensation of the Trustee and of all taxes, assessments and governmental charges mentioned herein for which the Trustee may be liable and (b) the rentals and other amounts provided for herein.

SECTION 6.02. *Guaranty to Holders of Trust Certificates.* The Company covenants, agrees and guarantees that the holder of each of the Trust Certificates shall receive the principal amount thereof in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, when and as the same shall become due and payable, in accordance with the provisions thereof and of this Agreement, and, if not so paid, with interest thereon at the dividend rate (to the extent legally

enforceable) from the due date until the date of payment and shall receive dividends thereon in like money at the rate specified therein at the times and place and otherwise as expressed in the Trust Certificates and in the dividend warrants and, if not so paid, with interest thereon at the dividend rate (to the extent legally enforceable) from the due date until the date of payment. The Company further covenants and agrees to endorse upon each of the Trust Certificates, at or before the issuance and delivery thereof by the Trustee, its guaranty of the prompt payment of the principal thereof and of the dividends thereon, in substantially the forms set forth in Section 1.01 hereof. Said guaranty shall be signed on behalf of the Company by the facsimile signature of its President or a Vice President. In case the President or Vice President of the Company whose signature shall appear on said guaranty shall cease to be an officer of the Company before the Trust Certificates shall have been issued and delivered by the Trustee, said guaranty shall nevertheless be as effective and binding upon the Company as though the person who signed said guaranty on behalf of the Company had at all times been an officer thereof and acted in that capacity.

SECTION 6.03. *Discharge of Liens.* The Company shall pay and discharge, or cause to be paid and discharged, or make adequate provision for the satisfaction or discharge of, any debt, tax, charge, assessment, obligation or claim which if unpaid might become a lien or charge upon or against any unit 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. *Payment of Expenses; Recording.* The Company shall pay the expenses incident to the preparation and execution of the Trust Certificates and dividend warrants 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 shall cause this Agreement and all supplements hereto to be duly (a) filed and recorded with the Interstate Commerce Commission, (b) deposited with the Registrar General of Canada and (c) filed with the Department of Financial and Commercial Affairs, Companies Branch, of Ontario, Canada. The Company from time to time shall do and perform any other act and execute, acknowledge, deliver, file, record, deposit or register any and all further instruments required by law or reasonably requested by the Trustee for the purposes of properly protecting the title of the Trustee to the Trust Equipment and the rights of the holders of the Trust Certificates and of fully carrying out and effectuating this Agreement and the intent hereof. The Company shall promptly furnish to the Trustee certificates or other evidences of the filing, recording or deposit of this Agreement and an Opinion of Counsel with respect thereto.

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

ARTICLE SEVEN

The Trustee

Section 7.01. *Acceptance of Trusts.* The Trustee hereby accepts the trusts imposed upon it by this Agreement and covenants and agrees to perform the same as herein expressed.

Section 7.02. *Application of Rentals.* The Trustee shall apply and distribute the rentals received by it under Section 4.04(B) hereof (other than sums restored to Deposited Cash from rentals pursuant to Section 4.04(B)(1) hereof) when and as the same shall be received and, to the extent that such rentals shall be sufficient therefor, for the purposes specified in said Section 4.04(B).

Section 7.03. *Duties of Registration, Exchange, and Transfer of Trust Certificates.* The Trustee shall cause to be kept at its principal office in the City of Philadelphia, Pennsylvania, books for the registration, exchange and transfer of the Trust Certificates. Upon presentation for any such purpose, the Trustee shall register, exchange or transfer any of the Trust Certificates or cause any of the same to be registered, exchanged or transferred as hereinbefore provided and under such other reasonable regulations as it may prescribe.

Section 7.04. *Right to Indemnity from Company; Reliance on Documents.* The Trustee shall not be required to undertake any act or duty in the way of insuring, taking care of or taking possession of the Trust Equipment or to undertake any other act or duty under this Agreement until fully indemnified against all liability and expenses by the Company or by one or more of the holders of the Trust Certificates. The Trustee shall not be responsible

for the filing, recording or deposit of this Agreement or of any supplement hereto. The Trustee may issue and deliver Trust Certificates in advance of such filing, recording or deposit. In accepting delivery of and making payment for the Trust Equipment hereunder, or in accepting any cash payable hereunder in respect of Trust Equipment, the Trustee may rely upon and shall be fully protected by the certificates, bills of sale and Opinions of Counsel to be furnished to it under Sections 3.04, 4.07 and 4.09 hereof, and shall not be required to make any further investigation of or inquiry concerning any matter covered thereby.

SECTION 7.05. *No Obligation to Enforce Trust Unless Requested and Indemnified.* The Trustee shall be under no obligation to take any action for the execution or enforcement of the Trust unless so requested 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 said 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. *Limitations on Actions by Holders of Trust Certificates.* No holder of any Trust Certificate or dividend warrant shall have any right to institute any suit, action or proceeding for the execution and enforcement of the Trust 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 or dividend warrants to institute suit against the Company for the enforcement of payments due under said guaranty in respect of the Trust Certificates or dividend warrants.

SECTION 7.07. *Assumption of No Default; Reliance on Notices and Other Instruments.* 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, certificate, warrant or other paper or instrument believed by it to be genuine and authentic and to be signed by the proper party or parties.

SECTION 7.08. *Investment of Money Held by Trustee.* Any money at any time paid to or held by the Trustee hereunder until paid out by the Trustee as herein provided may be carried by the Trustee on deposit with itself, and the Trustee will allow interest upon any such

moneys held by it in trust at the rate generally prevailing among banks and trust companies located in the City of Philadelphia, Pennsylvania, or allowed by it upon deposits of a similar character.

At any time, and from time to time, if at the time there shall be no default under the terms of this Agreement, the Trustee, on Request, shall invest and reinvest Deposited Cash and Replacement Funds held by it in Investments, either directly or under repurchase agreement, at such prices, including any premium and accrued interest, as are set forth in such Request, such Investments to be held by the Trustee in trust for the benefit of the holders of the Trust Certificates and dividend warrants.

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

The Trustee shall restore to Deposited Cash or Replacement Funds, as the case may be, out of rent received by it for that purpose under the provisions of Section 4.04(B)(1) hereof, an amount equal to any expenses incurred in connection with any purchase or sale of Investments and also an amount equal to any loss of principal incident to the sale or redemption of any Investments for a sum less than the amount paid therefor, including accrued interest. The Company, if not in default under the terms hereof, shall be entitled to receive any profit which may be realized from any sale or redemption of Investments.

SECTION 7.09. *No Liability for Trust Equipment; Agents and Attorneys; Compensation; Owning Trust Certificates; Unclaimed Moneys.* The Trustee shall not be liable to any one for any delay in the delivery of any of the Trust Equipment or for any defect in any unit of the Trust Equipment or in the title thereto, nor shall anything herein be construed as a warranty on the part of the Trustee in respect thereof or as a representation in respect of the value thereof or the title thereto.

The Trustee may perform its powers and duties hereunder by or through such attorneys, agents and employees as it shall appoint, and shall be entitled to rely upon the advice of counsel (who may be counsel for the Company), and shall be answerable only for its own acts, negligence and wilful defaults and not for the default or misconduct of any attorney, agent or employees appointed by it with reasonable care. The Trustee shall not be responsible in any way for the recitals contained herein or for the execution or validity of this Agreement or 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 Company shall pay all of the expenses and disbursements of the Trustee hereunder, including reasonable counsel fees and reasonable compensation for all services rendered by the Trustee in the execution of the Trust.

The Trustee in its individual capacity may own, hold and dispose of Trust Certificates and dividend warrants with the same rights which it would have if it were not Trustee and may act as trustee under other instruments under which obligations of the Company are outstanding.

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 five 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 said money shall thereupon cease and the holders of said Trust Certificates and dividend warrants shall thereafter be entitled to look only to the Company for payment thereof; *provided, however,* that the Trustee, before being required to make any repayment of moneys, may at the expense of the Company cause notice to be given by publication 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 said moneys then remaining on deposit with the Trustee will be repaid to the Company. Said notice shall be published once in a daily newspaper of general circulation published in the City of Philadelphia, Pennsylvania. In no event shall the holders of said Trust Certificates and dividend warrants be entitled to interest upon said money whether held by the Trustee or so repaid to the Company.

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

SECTION 7.10. *Annual Statement.* The Trustee shall, at least once in each year, render to the Company a statement relating to the Trust and covering other matters that the Company may properly require. The

Company may from time to time examine the books and accounts of the Trustee relating to the Trust, the Trust Certificates, this Agreement and the acts of the Trustee hereunder.

SECTION 7.11. *Resignation of Trustee; Appointment of Successor.* If at any time the Trustee shall desire to divest itself of title to the Trust Equipment and to terminate its duties and obligations hereunder and under the Trust Certificates, it shall so notify the Company in writing. The Company shall thereupon designate in writing to the Trustee a bank or a trust company, qualified as below specified, to serve until a successor is appointed by the holders of Trust Certificates as hereinafter provided, to which may be assigned the Trustee's entire right, title and interest and in which may be vested the Trustee's rights, powers, duties and obligations hereunder and under the Trust Certificates. Upon the transfer and delivery of all moneys, any Investments and all Trust Equipment held by the retiring trustee, the execution by the retiring trustee of such instruments of transfer as may be reasonably requested by the successor trustee and the acceptance by the successor trustee of the assignment and of the Trust, the retiring trustee shall be relieved and discharged of all the title, rights, powers, duties and obligations hereunder and under the Trust Certificates, and the same shall become vested in such successor trustee. Thereafter every provision hereof applicable to the retiring trustee shall apply to such successor trustee with like effect as if such successor trustee had been originally named herein in the place and stead of the Trustee. In the event that the Company shall fail to designate such a successor trustee by instrument in writing delivered to the retiring trustee within 15 days from the time of

receiving such notice in writing from the retiring trustee, the retiring trustee may thereupon designate such successor trustee or apply to any court of competent jurisdiction for the appointment of a 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 to appoint any successor trustee if such appointment is made by an instrument in writing 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 the City of 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. *Merger or Consolidation of Trustee.* 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 the City of 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.

SECTION 7.13. *Trust Certificates Deemed Not Outstanding.* In determining whether the holders of the requisite aggregate principal amount of Trust Certificates have concurred in any direction, notice, request, consent or waiver under this Agreement, Trust Certificates which are owned by the Company or an Affiliate shall be disregarded and deemed not to be outstanding for the purpose of making any determination, except that, for the purposes of determining whether the Trustee shall be protected in relying on any such direction, notice, request, consent or waiver, only Trust Certificates which the Trustee knows are so owned shall be so disregarded.

ARTICLE EIGHT

MISCELLANEOUS

SECTION 8.01. *Proof of Execution of Instruments by Holders of Trust Certificates.* 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 may be executed by such holders in person or by an agent or attorney appointed by an instrument in writing. Proof of the execution of any said request or other instrument, of a writing appointing any said agent or attorney or of the holding by any person of Trust Certificate shall be sufficient for any purpose hereof and shall be conclusive in favor of the Trustee with regard to any action taken by

the Trustee under said request or other instrument if made in the following manner:

(a) The fact and date of the execution by any person of any said request or of any other instrument in writing may be proved by the affidavit of a witness to that execution or by the certificate of any notary public or other officer authorized to take acknowledgments of deeds to be recorded in the state where the acknowledgment may be taken, certifying that the person signing said request or other instrument acknowledged to him the execution thereof. Where said execution is by an officer of a corporation or association or a member of a partnership on behalf of said corporation, association or partnership, said certificate or affidavit shall also constitute sufficient proof of the authority of that officer or member.

(b) The amount and numbers, designations or marks of identification of Trust Certificates with dividend warrants not registered as to principal held by any person executing any said request or other instrument as a holder of said Trust Certificates, and the date of his holding the same, may be proved by a certificate executed by any trust company, bank or other depositary, whose certificate shall be deemed by the Trustee to be satisfactory, showing that at the date set forth therein such person had on deposit with or exhibited to such depositary the Trust Certificates with dividend warrants described in said certificate. The Trustee may presume the continuance of any said holding until it shall receive proof satisfactory to it to the contrary.

(c) The ownership of Trust Certificates with dividend warrants registered as to principal and of fully registered Trust Certificates shall be determined by the registry books to be kept as provided in Section 7.03 hereof.

SECTION 8.02. *Rights Limited to Parties and Holders of Trust Certificates.* Nothing expressed or implied herein is intended or shall be construed to confer upon or to give to any person, firm or corporation, other than the parties hereto and the holders of the Trust Certificates and dividend warrants, any right, remedy or claim under or by reason of any promise, covenant, term or condition of this Agreement, and all of said promises, covenants, terms and conditions shall be for the sole and exclusive benefit of the parties hereto and their successors and of the holders of the Trust Certificates and dividend warrants.

SECTION 8.03. *Successors and Assigns.* Except as otherwise provided herein, the provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

SECTION 8.04. *Notices.* All demands, notices and communications hereunder shall be in writing and shall be deemed to have been duly given if personally delivered at or mailed to (a) in the case of the Company, 8 North Jefferson Street, Roanoke, Virginia 24011, attention of the Company's Finance Department, or such other address as may hereafter be furnished to the Trustee in writing by the Company, and (b) in the case of the Trustee, Fifteenth and Chestnut Streets, Philadelphia, Pennsylvania 19101, attention of the Trustee's Corporate Trust Department, 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 said mailing shall be conclusive evidence of the giving of said demand, notice or communication.

SECTION 8.05. *Execution.* This Agreement, which is dated for convenience as of September 1, 1971, may be executed in any number of counterparts, each of which shall be deemed to be an original, and such counterparts together shall constitute a single instrument. The actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments annexed hereto.

SECTION 8.06. *Law Governing.* The terms of this Agreement and all rights and obligations of the parties hereunder shall be governed by the laws of the Commonwealth of Virginia, *provided, however*, that the parties hereto shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording or deposit hereof and of any supplement hereto as shall be conferred by the laws of the several jurisdictions in which this Agreement and any supplement hereto may be filed, recorded, or deposited.

SECTION 8.07. *Effect of Headings.* The table of contents and all article and section headings herein are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

IN WITNESS WHEREOF, the Company and the Trustee have caused their names to be signed hereto by their respective vice presidents or assistant vice presidents under their respective corporate seals attested by their respective secretaries or assistant secretaries, as of the day and year first above written.

NORFOLK AND WESTERN RAILWAY COMPANY

By _____
Assistant Vice President—Finance

ATTEST:

_____
Secretary

THE FIRST PENNSYLVANIA BANKING
AND TRUST COMPANY, Trustee

By _____
Vice President

ATTEST:

_____
Assistant Secretary

COMMONWEALTH OF VIRGINIA }
CITY OF ROANOKE } ss.:

On this 10th day of August, 1971, before me personally appeared C. B. Deibel, to me personally known, who, being by me duly sworn, says that he is Assistant Vice President—Finance of NORFOLK AND WESTERN RAILWAY COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument by him on this date was the free act and deed of said corporation.

Betty S Whitley
Notary Public
My Commission expires 5/29/71.

COMMONWEALTH OF PENNSYLVANIA }
COUNTY OF PHILADELPHIA } ss.:

On this 11th day of August, 1971, before me personally appeared JOHN A THORN, to me personally known, who, being by me duly sworn, says that he is a Vice President of THE FIRST PENNSYLVANIA BANKING AND TRUST COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument by him on this date was the free act and deed of said corporation.

Judith Z. Pote
Notary Public

JUDITH Z. POTE
Notary Public, Philadelphia, Philadelphia Co.
My Commission Expires January 28, 1974

Schedule A

Number of Units	Description and Builder	Estimated Cost	
		Unit	Total
15	Diesel locomotives, type U-30-B, numbered 8525 to 8539, inclusive, General Electric Company, builder.	$253,220	$3,798,300
20	Diesel locomotives, model GP-38, numbered 4140 to 4159, inclusive, General Motors Corporation (Electro-Motive Division), builder.	243,529	4,870,580
15	Diesel locomotives, model GP-38, numbered 4110 to 4124, inclusive, General Motors Corporation (Electro-Motive Division), builder.	238,529	3,577,935
923	100-ton hopper cars, numbered 120096 to 121018, inclusive, Norfolk and Western Railway Company, builder.	12,700	11,722,100
180	100-ton hopper cars, numbered 134000 to 134179, inclusive, Norfolk and Western Railway Company, builder.	13,400	2,412,000
	Total		$26,380,915