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UNION PACIFIC  
EQUIPMENT TRUST, SERIES C

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## Equipment Trust Agreement

DATED AS OF DECEMBER 1, 1971

BETWEEN

CHEMICAL BANK,  
TRUSTEE

AND

UNION PACIFIC RAILROAD COMPANY

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## TABLE OF CONTENTS\*

	PAGE
PARTIES .....	1
RECITALS .....	1
FORM OF TRUST CERTIFICATE.....	2
FORM OF GUARANTY FOR TRUST CERTIFICATE.....	6
CONSIDERATION FOR AGREEMENT.....	7

### ARTICLE ONE

#### DEFINITIONS

SECTION 1.1. Definitions .....	7
Affiliate .....	7
Casualty Occurrences .....	7
Company .....	7
Corporate Trust Office .....	7
Cost .....	8
Deposited Cash .....	8
Engineer's Certificate .....	8
Equipment .....	8
Estimated Cost .....	8
Event of Default.....	8
Fair Value .....	9
holder .....	9
Investment Securities .....	9
Officer's Certificate .....	9
Opinion of Counsel.....	9
Original Issuance Date .....	9
Replacement Funds .....	10
Request .....	10

\* This Table of Contents has been inserted for purposes of convenience and ready reference.

	PAGE
Trust Certificates .....	10
Trust Equipment .....	10
Trustee .....	10
hereby, herein, hereof, hereto, hereunder .....	10

ARTICLE TWO

TRUST CERTIFICATES AND ISSUANCE THEREOF

SECTION 2.1. Issuance of Trust Certificates .....	10
SECTION 2.2. Interests Represented by Trust Certificates; Dividends; Denominations; Dating; Maturity .....	11
SECTION 2.3. Form of Trust Certificates and Guaranty .....	13
SECTION 2.4. Execution by Trustee .....	13
SECTION 2.5. Transfer of Trust Certificates; Owners Thereof; Exchange of Trust Certificates .....	14
SECTION 2.6. Replacement of Mutilated or Lost Trust Certificates .....	15
SECTION 2.7. Temporary Trust Certificates .....	16
SECTION 2.8. Cancellation of Trust Certificates .....	16

ARTICLE THREE

REDEMPTION OF TRUST CERTIFICATES

SECTION 3.1. Right of Redemption .....	17
SECTION 3.2. Selection for Redemption; Notice of Redemption; Credits Against Sinking Fund Rental Payments.....	17
SECTION 3.3. Optional Sinking Fund; Redemption Provisions .....	20
SECTION 3.4. Payment Upon Redemption .....	21

ARTICLE FOUR

ACQUISITION OF TRUST EQUIPMENT BY TRUSTEE;  
DEPOSITED CASH

SECTION 4.1. Acquisition of Trust Equipment by Trustee .....	22
SECTION 4.2. Payments out of Deposited Cash .....	23

	PAGE
SECTION 4.3. Payment of and from Advance Rental .....	23
SECTION 4.4. Supporting Documents .....	24
Ratio of Cost of Trust Equipment to Trust Certificates....	25
SECTION 4.5. Application of Remaining Deposited Cash.....	25

## ARTICLE FIVE

### LEASE OF TRUST EQUIPMENT TO THE COMPANY

SECTION 5.1. Lease of Trust Equipment .....	26
SECTION 5.2. Equipment Subjected Hereto by Delivery and Marking...	26
SECTION 5.3. Substituted Equipment Subject Hereto; Additions to Trust Equipment .....	26
SECTION 5.4. Rental Payments .....	26
Limitation on Tax Liability.....	29
SECTION 5.5. Termination of Lease; Unclaimed Moneys .....	29
SECTION 5.6. Marking of Trust Equipment .....	30
Permissible Markings .....	31
SECTION 5.7. Maintenance of Trust Equipment; Casualty Occurrences ..	32
SECTION 5.8. Possession of Trust Equipment; Assignments .....	33
SECTION 5.9. Release and Replacement of Trust Equipment .....	35
Replacement Funds .....	35
SECTION 5.10. Company's Indemnities .....	35

## ARTICLE SIX

### REMEDIES IN EVENT OF DEFAULT

SECTION 6.1. Events of Default Defined .....	36
Acceleration of Certain Rentals and Principal of Trust Certificates .....	38
Right of Trustee to Institute Judicial Proceedings.....	39
SECTION 6.2. Remedies .....	41
SECTION 6.3. Application of Proceeds .....	42
SECTION 6.4. Waiver of Default .....	43
SECTION 6.5. Obligations of Company Not Affected by Remedies .....	44

	PAGE
SECTION 6.6. Company to Deliver Trust Equipment to Trustee .....	44
SECTION 6.7. Limitations on Actions by Holders of Trust Certificates ..	45
SECTION 6.8. Remedies Cumulative .....	45

## ARTICLE SEVEN

### ADDITIONAL COVENANTS AND AGREEMENTS BY THE COMPANY

SECTION 7.1. Company to Make Payments Provided for .....	46
SECTION 7.2. Guaranty to Holders of Trust Certificates .....	46
SECTION 7.3. Discharge of Liens .....	47
SECTION 7.4. Payment of Expenses; Recording .....	47
SECTION 7.5. Further Assurances .....	48

## ARTICLE EIGHT

### THE TRUSTEE

SECTION 8.1. Acceptance of Trusts .....	48
SECTION 8.2. Application of Rentals .....	48
SECTION 8.3. Duties Concerning Registration, Exchange and Transfer of Trust Certificates .....	49
SECTION 8.4. Insuring or Possession of Trust Equipment Upon Indem- nification; Recording; Reliance on Documents.....	49
SECTION 8.5. No Obligation to Enforce Trust Unless Requested and Indemnified .....	49
SECTION 8.6. Assumption of No Default; May Rely on Notices and Other Documents .....	50
SECTION 8.7. Money Held by Trustee; Investments in Investment Securities .....	50
SECTION 8.8. No Liability for Trust Equipment; May Act through Others; No Responsibility for Recitals, etc.; Compensa- tion; Owning Trust Certificates; Moneys Held in Trust..	52
SECTION 8.9. Resignation by Trustee; Appointment of Successor Trustee	53
SECTION 8.10. Merger, Conversion or Consolidation of Trustee .....	54
SECTION 8.11. Trust Certificates Deemed Not Outstanding .....	55

## ARTICLE NINE

## MISCELLANEOUS

	PAGE
SECTION 9.1. Execution of Instruments by Holders of Trust Certificates; Proof Thereof and of Holding Trust Certificates.....	55
SECTION 9.2. Rights Limited to Parties and Holders of Trust Certificates	56
SECTION 9.3. Binding Upon Successors and Assigns .....	56
SECTION 9.4. Effect on Prior Agreements .....	56
SECTION 9.5. Supplemental Agreements; Termination .....	56
SECTION 9.6. Notices .....	57
SECTION 9.7. Counterparts .....	57
SECTION 9.8. Date Executed .....	57
SECTION 9.9. Effect of Headings .....	57
SECTION 9.10. New York Law to Govern .....	58
SECTION 9.11. Legal Holidays .....	58
TESTIMONIUM .....	58
SIGNATURES AND SEALS.....	58
ACKNOWLEDGMENTS .....	59
SCHEDULE A. DESCRIPTION OF TRUST EQUIPMENT.....	60

This **EQUIPMENT TRUST AGREEMENT**, dated as of December 1, 1971 between **CHEMICAL BANK**, a New York corporation, as trustee (hereinafter called the Trustee), and **UNION PACIFIC RAILROAD COMPANY**, a Utah corporation (hereinafter called the Company);

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

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

WHEREAS, Union Pacific Equipment Trust, Series C, Equipment Trust Certificates (hereinafter called the Trust Certificates), are to be issued and sold from time to time in an aggregate principal amount not exceeding \$28,000,000, and the net proceeds (as hereinafter defined) of such sale, together with such other cash, if any, as may be required to be deposited by the Company as hereinafter provided, is to constitute a fund equal to the aggregate principal amount of the Trust Certificates so issued and sold, to be known as **UNION PACIFIC EQUIPMENT TRUST, SERIES C**, to be applied by the Trustee from time to time in part payment of the Cost (as hereinafter defined) of the Trust Equipment, the remainder of the Cost thereof to be paid out of advance rentals to be paid by the Company as provided herein; and

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



cate), or, if no dividends have been paid on the Certificates since the Original Issuance Date (as defined in the Agreement) of this Certificate, from such Original Issuance Date, together with interest at a rate equal to  $\frac{1}{2}$  of 1% above the said dividend rate on any overdue principal and, to the extent that it shall be legally enforceable, on any overdue dividends. Dividends so payable on a dividend payment date, and punctually paid or duly provided for, will, subject to certain exceptions provided for in the Agreement, be paid to the holder of record at the close of business on the regular record date for such dividends, which regular record date shall be the fifteenth day (whether or not a business day) of the month next preceding such dividend payment date. Principal, dividends and interest will be payable at the corporate trust office of the Trustee in the Borough of Manhattan, City and State of New York, 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 from and out of rentals or other moneys received by the Trustee and applicable to such payment under the provisions of the Agreement; provided, however, that payment of dividends may be made at the option of the Trustee by check mailed to the address of the person so entitled thereto as such address shall appear on the records of the Trustee. Any such dividends not so punctually paid or duly provided for shall forthwith cease to be payable to the registered holder on such regular record date and may be paid to the person in whose name this Certificate is registered at the close of business on a special record date for the payment of such defaulted dividends to be fixed by the Trustee, notice whereof shall be given not less than 10 days prior to such special record date, or may be paid, at any time in any other lawful manner, all as more fully provided in the Agreement.

This Certificate is one of an authorized issue of Equipment Trust Certificates (herein called the Certificates) in an aggregate principal amount not exceeding \$28,000,000,

all of which are substantially similar except as to serial number and principal amount, all issued under and subject to the terms of the Agreement, under which certain railroad equipment leased to the Company (or cash or obligations defined in the Agreement as "Investment Securities" in lieu thereof, as provided in the Agreement) is held by the Trustee in trust for the equal and ratable benefit of the registered holders of the Certificates, to which Agreement (a copy of which is on file with the Trustee at its corporate trust office in the Borough of Manhattan, City and State of New York) reference is made for a full statement of the rights and obligations of the Company, the duties and immunities of the Trustee and the rights of the registered holder hereof thereunder, and to all of which the registered holder hereof, by accepting this Certificate, assents.

The Certificates are subject to the sinking fund provisions in the Agreement which provide for the payment by the Company to the Trustee, on or before December 1 in each year, commencing December 1, 1977, and continuing to and including December 1, 1985, of rentals in an amount sufficient to redeem \$2,500,000 aggregate principal amount of Certificates on December 1, 1977 and on each December 1 thereafter to and including December 1, 1985 and further provide that the Company may, at its option, increase rentals by up to \$2,500,000 on or before December 1 in each of the years 1982 through 1985 inclusive to redeem Certificates in corresponding principal amounts on December 1, 1982 and on each December 1 thereafter to and including December 1, 1985. As more fully provided in the Agreement, Certificates in such aggregate principal amounts are subject to redemption through the application of such rentals on December 1, 1977 and on each December 1 thereafter to and including December 1, 1985, on not less than 30 days' prior notice given as provided in the Agreement, at 100% of the principal amount thereof, together with accrued dividends to the date fixed for redemption. The Agreement also provides that the Company may, at its option, credit against such rentals Certificates retired otherwise than through the operation of the sinking fund, such credit

to be in an amount equal to the aggregate principal amount of such Certificates. The right to make optional sinking fund payments as provided in the Agreement shall be non-cumulative so that the failure to exercise such right in any year, in whole or in part, shall not increase the maximum optional sinking fund payment which may be made to the Trustee in any subsequent year.

The Certificates are issuable only as fully registered certificates in the denominations of \$1,000 and any multiple of \$1,000.

This Certificate is a fully registered certificate registrable as to transfer by the registered holder hereof in person or by duly authorized attorney on the books of the Trustee upon surrender hereof to the Trustee at its said corporate trust office, accompanied by an appropriate instrument of assignment and transfer, duly executed by the registered holder in person or by such attorney, in form satisfactory to the Trustee, and thereupon a new fully registered Certificate or Certificates in authorized denominations for the same aggregate principal amount and bearing the same maturity and dividend rate will be issued to the transferee in exchange herefor. Prior to due presentment for registration of transfer of this Certificate, the Trustee and the Company may deem and treat the person in whose name this Certificate is registered as the absolute owner hereof for the purpose of receiving payment of principal and dividends and for all other purposes and shall not be affected by any notice to the contrary.

In case of the happening of an Event of Default (as defined in the Agreement) the principal amount represented by this Certificate may be declared due and payable, in the manner and with the effect and subject to the conditions provided in the Agreement.

This Certificate shall not be deemed in any wise a promise to pay of the Trustee.

This Certificate shall not be valid unless manually signed by an Assistant Secretary of the Trustee.

IN WITNESS WHEREOF, the Trustee has caused this Certificate to be signed by one of its Vice Presidents, and its corporate seal to be hereunto affixed or hereon imprinted and to be attested by one of its Assistant Secretaries.

Dated:

CHEMICAL BANK,  
Trustee,

By .....

ATTEST: *Vice President*

.....  
*Assistant Secretary*

[FORM OF GUARANTY FOR TRUST CERTIFICATE]

UNION PACIFIC RAILROAD COMPANY, for a valuable consideration, hereby unconditionally guarantees to the registered holder of the within Certificate, the prompt payment of the principal amount of said Certificate, and of the dividends thereon specified in said Certificate, with interest at a rate equal to 1/2 of 1% above the dividend rate of said dividends on any overdue principal amount and to the extent that it shall be legally enforceable on any overdue dividends, all in accordance with the terms of said Certificate and the Agreement referred to therein.

UNION PACIFIC RAILROAD COMPANY,

By .....  
*Vice President—Finance*

By .....  
*Treasurer*

; and

WHEREAS, it is desired to secure to the holders of the Trust Certificates, the payment of the principal amount

thereof at maturity as hereinafter more particularly provided, with dividends thereon until said principal is paid in full, as hereinafter provided, payable semi-annually on June 1 and December 1 in each year, and to evidence the rights of the holders of the Trust Certificates in substantially the form hereinbefore set forth;

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

## ARTICLE ONE

### Definitions

SECTION 1.1. The following terms (except as otherwise expressly provided or unless the context otherwise requires) for all purposes of this Agreement shall have the respective meanings hereinafter specified:

*Affiliate* shall mean any corporation which, directly or indirectly, controls or is controlled by, or is under common control with, the Company. For the purposes of this definition, *control* (including *controlled by* and *under common control with*), as used with respect to any corporation, shall mean the possession of 50% or more of the voting power of such corporation or the power to direct or cause the direction of the management and policies of such corporation, whether through the ownership of voting securities or by contract or otherwise.

*Casualty Occurrence* shall mean any occurrence specified in Section 5.7 to be a Casualty Occurrence.

*Company* shall mean Union Pacific Railroad Company, a Utah corporation, and any assignee of its rights under this Agreement pursuant to Section 5.8.

*Corporate Trust Office* shall mean the corporate trust office of the Trustee, in the Borough of Manhattan, the City and State of New York, at which the corporate trust business of the Trustee shall, at any particular time, be principally administered.

*Cost*, when used with respect to Trust Equipment not built by the Company, shall mean the actual cost thereof and shall include only such items as may properly be included in such cost under the Interstate Commerce Commission's Uniform System of Accounts for Railroad Companies, as in effect at the time in question, or the accounting rules of such other Federal governmental authority having jurisdiction over the accounts of the Company, or, to the extent not determined thereby or in case there be no such accounting rules of the Interstate Commerce Commission or other Federal authority in effect at such time, sound accounting practice and with respect to Trust Equipment built by the Company shall mean so-called "car builder's cost" which shall include direct cost of labor and material and overhead, but shall exclude any manufacturing profit.

*Deposited Cash* shall mean the aggregate of (a) cash on deposit with the Trustee as provided in the first sentence of Section 2.1 hereof and, when required or indicated by the context, any Investment Securities purchased by the use of such cash pursuant to the provisions of Section 8.7 hereof, (b) any advance rentals on deposit with the Trustee pursuant to Section 5.4(A)(1) hereof, and (c) any sums restored to Deposited Cash from rentals pursuant to Section 5.4(B)(1)(b) hereof and on deposit with the Trustee.

*Engineer's Certificate* shall mean a certificate signed by an engineer, appraiser or other expert (who may be an employee of the Company) satisfactory to the Trustee.

*Equipment* means standard-gauge railroad equipment (other than passenger cars and work equipment) which shall have been first put into operation after November 30, 1971.

*Estimated Cost* of any Trust Equipment shall mean the estimated cost thereof specifically set forth herein or in any supplement hereto.

*Event of Default* shall mean any event specified in Section 6.1 to be an Event of Default.

*Fair Value* of any unit of Trust Equipment shall be deemed to be the Cost thereof less depreciation accrued thereon computed by the straight-line method at the rate of six and two-thirds per cent ( $6\frac{2}{3}\%$ ) of said Cost for each full year (but not pro rata for any part of a year) from the date on which the unit was first put into operation to the date as of which the Fair Value is so to be determined.

The word *holder* shall mean the registered owner of a Trust Certificate.

*Investment Securities* shall mean (a) bonds, notes or other direct obligations of the United States of America or obligations for which the faith of the United States is pledged to provide for the payment of the interest and principal, (b) commercial paper given a rating of "prime" or better (or a comparable rating if such rating system is changed) by the National Credit Office or a successor thereto or a similar rating service substituted therefor by the Company and (c) certificates of deposit of or time deposits in banks or trust companies incorporated and doing business under the laws of the United States of America or one of the States thereof having a capital and surplus aggregating at least \$50,000,000.

*Officer's Certificate* shall mean a certificate signed by either the Chairman of the Board and Chief Executive Officer, the Vice Chairman of the Board, the President, any Vice President, the Treasurer, the Controller or the Secretary of the Company or in the case of any certificate delivered pursuant to Section 4.4(b) by any of the foregoing or by the General Superintendent of Motive Power and Machinery of the Company.

*Opinion of Counsel* shall mean an opinion in writing signed by legal counsel who may be (1) an employee of or counsel to the Company or (2) other counsel satisfactory to the Trustee.

*Original Issuance Date* means, with respect to any Trust Certificate, the earliest of (a) the date of such Trust Certif-

icate or (b) the date or dates of any other Trust Certificate or Trust Certificates (including Trust Certificates issued in lieu of mutilated, lost, destroyed or stolen Trust Certificates pursuant to Section 2.6 hereof) evidencing all or a portion of the same principal interest as that evidenced by such particular Trust Certificate.

*Replacement Funds* shall mean any moneys specified in Section 5.9 to be Replacement Funds.

*Request* shall mean a written request for the action therein specified, delivered to the Trustee and signed on behalf of the Company by either the Chairman of the Board and Chief Executive Officer, the Vice Chairman of the Board, the President, any Vice President, the Treasurer, the Controller or the Secretary of the Company.

*Trust Certificates* shall mean all Trust Certificates issued hereunder.

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

*Trustee* shall mean Chemical Bank, and, subject to the provisions of Article Eight hereof, any successor Trustee hereunder.

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

## **ARTICLE TWO**

### **Trust Certificates and Issuance Thereof**

SECTION 2.1. *Issuance of Trust Certificates.* The net proceeds (excluding premium and accrued dividends, if any, which shall be paid to the Company) of the sale of the Trust Certificates shall forthwith, upon issuance thereof, be deposited in cash with the Trustee. At the same time the Company shall, if necessary, deposit with the Trustee any

advance rental payable by the Company to the Trustee under Section 5.4(A)(1) hereof. Thereupon, without waiting for the recording or filing of this Agreement or of any other instrument respecting the Trust Equipment, the Trustee shall issue and deliver, as the Company shall direct by Request, Trust Certificates substantially in the form set forth herein with the guaranty thereon executed by the Company and in the aggregate principal amount so sold, having maturities and bearing dividends at the rate specified in such Request.

The aggregate principal amount of Trust Certificates which shall be executed and delivered by the Trustee hereunder shall not exceed the sum of \$28,000,000 except as otherwise herein provided.

SECTION 2.2. *Interests Represented by Trust Certificates; Dividends; Denominations; Dating; Maturity.* Each of the Trust Certificates shall represent an interest in the principal amount therein specified in the trust created hereunder and shall bear dividends on said principal amount at the rate per annum specified by the Company in the Request delivered under Section 2.1 hereof, payable at the Corporate Trust Office of the Trustee, as set forth in the Trust Certificates, from the dividend payment date next preceding the date of such Trust Certificate to which dividends on the Trust Certificates have been paid (unless the date thereof is a date to which dividends on the Trust Certificates have been paid, in which case from the date of such Trust Certificate), or, if no dividends have been paid on the Trust Certificates since the Original Issuance Date of such Trust Certificate, from such Original Issuance Date. Dividends so payable on a dividend payment date, and punctually paid or duly provided for, will, subject to certain exceptions provided for herein, be paid to the persons in whose names the Trust Certificates are registered at the close of business on the regular record date for such dividend

which shall be the fifteenth day (whether or not a business day) of the month next preceding such dividend payment date. The Trust Certificates shall be dated the date of issuance and shall be in denominations of \$1,000 and any multiple of \$1,000 and shall be numbered consecutively.

Any dividend on any Trust Certificate which is payable, but is not punctually paid or duly provided for, on any dividend payment date (herein called Defaulted Dividends) shall forthwith cease to be payable to the registered holder on the relevant regular record date by virtue of having been such holder. The Company may provide for the payment of Defaulted Dividends by giving notice to the Trustee in writing of the amount of Defaulted Dividends to be paid on each Trust Certificate and the date of the proposed payment and by the deposit with the Trustee (or by making arrangements satisfactory to the Trustee for deposit with the Trustee) prior to the date of the proposed payment of an amount of money equal to the aggregate amount proposed to be paid in respect of Defaulted Dividends, such money when deposited to be held in trust for the benefit of the persons entitled to such Defaulted Dividends. After receipt by the Trustee of such notice, the Trustee shall pay Defaulted Dividends, at its election in each case, as provided in either subparagraph (1) or (2) below, provided in either case that the Trustee receives from or on behalf of the Company prior to the date of the proposed payment, an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Dividends:

(1) The Trustee may elect to make payment of any Defaulted Dividends to the persons in whose names the Trust Certificates are registered at the close of business on a special record date for the payment of such Defaulted Dividends, which special record date shall be fixed by the Trustee and shall be not more than 15 nor less than 10 days prior to the date of the proposed payment and not less than 10 days after the receipt by the Trustee of the notice of the proposed

payment. The Trustee shall promptly notify the Company of such special record date and, in the name and at the expense of the Company, shall cause notice of the proposed payment of such Defaulted Dividends and the special record date therefor to be mailed, first class postage prepaid, to the persons in whose names the Trust Certificates are registered, not less than 10 days prior to such special record date. Notice of the proposed payment of such Defaulted Dividends and the special record date therefor having been mailed as aforesaid, such Defaulted Dividends shall be paid to the persons in whose names the Trust Certificates are registered on such special record date and shall no longer be payable pursuant to the next succeeding subparagraph; or

(2) The Trustee may make payment of any Defaulted Dividends in any other lawful manner which, after receipt of the notice of the proposed payment, the Trustee shall deem practicable.

The principal amount of the Trust Certificates shall become due on December 1, 1986, subject, however, to the provisions of Article Three hereof respecting redemption of Trust Certificates prior to such maturity date.

SECTION 2.3. *Form of Trust Certificates and Guaranty.* The Trust Certificates and the guaranty to be endorsed on the Trust Certificates by the Company as hereinafter in Section 7.2 hereof provided shall be in substantially the forms hereinbefore set forth.

SECTION 2.4. *Execution by Trustee.* The Trust Certificates shall be signed in the name and on behalf of the Trustee by the manual or facsimile signature of one of its Vice Presidents and its corporate seal or a facsimile thereof shall be attested by the manual signature of one of its Assistant Secretaries. In case any officer of the Trustee whose signature, whether facsimile or not, shall appear on

any of the Trust Certificates shall cease to be such officer of the Trustee before such Trust Certificate shall have been issued or delivered by the Trustee, or shall not have been acting in such capacity on the date of such Trust Certificate, such Trust Certificate shall be issued and delivered, and shall be as effective and binding, as though such person had not ceased to be, or had then been acting as, such officer of the Trustee.

SECTION 2.5. *Transfer of Trust Certificates; Owners Thereof; Exchange of Trust Certificates.* The Trust Certificates shall be registered, as to both principal and dividends, in the name of the holder and shall be registrable as to transfer upon presentation and surrender thereof for registration of transfer at the Corporate Trust Office of the Trustee, accompanied by an appropriate instrument of assignment and transfer, duly executed by the registered holder of the surrendered Trust Certificate or Certificates or by duly authorized attorney, in form satisfactory to the Trustee.

Prior to due presentment for registration of transfer of any Trust Certificate the parties hereto may deem and treat the registered holder of any Trust Certificate as the absolute owner of such Trust Certificate for all purposes and shall not be affected by any notice to the contrary.

The several denominations of Trust Certificates may be exchanged for a like aggregate principal amount of Trust Certificates of the same maturity and dividend rate and of authorized denominations. The Trust Certificates to be exchanged shall be surrendered at the Corporate Trust Office of the Trustee.

For any registration of transfer or exchange, the Trustee may, and at the Request of the Company shall, require the payment of a sum sufficient to cover reimbursement for any stamp tax or other governmental charge connected therewith.

Subject to the record date provisions set forth in Section 2.2 hereof, each Trust Certificate delivered, pursuant to

any provision of this Agreement, in exchange or substitution for, or upon the registration of transfer of, the whole or any part of one or more other Trust Certificates shall carry all the rights to dividends accrued and unpaid, if any, and to accrue, which were carried by the whole or such part of such one or more other Trust Certificates, and neither gain nor loss in dividends shall result from such exchange, substitution or registration of transfer.

The Trustee shall not be required to (i) issue, register the transfer of or exchange any Trust Certificates during the period of 15 days preceding the mailing of a notice of redemption pursuant to Section 3.2 hereof or (ii) register the transfer of or exchange any Trust Certificate so selected for redemption in whole or in part.

SECTION 2.6. *Replacement of Mutilated or Lost Trust Certificates.* In case any Trust Certificate shall become mutilated or defaced or be lost, stolen or destroyed, then on the terms herein set forth, and not otherwise, the Trustee, upon the Request of the Company, shall execute and deliver a new Trust Certificate, of like dividend rate, tenor, maturity and date, and bearing the same or a different serial number as the one mutilated, defaced, lost, stolen or destroyed, in exchange and substitution for, and upon cancellation of, the mutilated or defaced Trust Certificate, or in lieu of and in substitution for the same if lost, stolen or destroyed. The Company shall execute its guaranty on any Trust Certificate so delivered. The applicant for a new Trust Certificate shall furnish to the Trustee and to the Company evidence to their satisfaction of the loss, theft or destruction of such Trust Certificate, alleged to have been lost, stolen or destroyed, and of the ownership and authenticity of such mutilated, defaced, lost, stolen or destroyed Trust Certificate, and also such security and indemnity as may be required by the Trustee and by the Company in their discretion; and shall pay all expenses and charges of such substitution or exchange. All Trust Certificates shall be issued, held and owned upon the express condition

the following words, or such words may be otherwise plainly, distinctly, permanently and conspicuously marked on each side of such unit, in either case in letters not less than one inch in height:

“UNION PACIFIC EQUIPMENT TRUST, SERIES C; CHEMICAL BANK, TRUSTEE, OWNER, LESSOR”

OR

“OWNED BY A SECURED PARTY UNDER A SECURITY AGREEMENT FILED UNDER INTERSTATE COMMERCE ACT, SECTION 20C, UNION PACIFIC RAILROAD COMPANY, LESSEE/VENDEE”.

Such plates or marks shall be such as to be readily visible and as to indicate plainly the Trustee's ownership of each unit of the Trust Equipment. In case, prior to the termination of the lease provided for herein, any of such plates or 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 of the Trust Equipment at any time covered hereby (or any numbers which may have been substituted as herein provided) except in accordance with a statement of new numbers to be substituted therefor which shall previously have been filed with the Trustee by the Company, and which shall be filed and recorded as provided in Section 7.4 hereof.

The Trust Equipment may be lettered with the name, initials or insignia of the Company, or of any Affiliate or any sublessee of the Company which is permitted to use the Trust Equipment as herein provided, or may be lettered in some other appropriate manner, for convenience of identification of the interest of the Company, or such Affiliate or sublessee therein. Units of Trust Equipment subleased by the Company as permitted herein may also be marked in the manner described in the first sentence of the foregoing paragraph with the following words:

“UNION PACIFIC RAILROAD COMPANY, LESSEE AND SUBLESSOR”.

Except as aforesaid, during the continuance of the lease provided for herein, the Company shall not allow the name of any person, association or corporation to be placed on any of the Trust Equipment as a designation if the right, title and interest of the Trustee therein would thereby be impaired or invalidated. The Trustee shall, upon the Request of the Company, consent to the placing of the name of any specified person, association or corporation upon any unit of Trust Equipment as a designation if there shall have been delivered to the Trustee an Opinion of Counsel to the effect that such designation will not impair or invalidate the right, title and interest of the Trustee in or to such unit.

SECTION 5.7. *Maintenance of Trust Equipment; Casualty Occurrences.* The Company agrees that it will maintain and keep all the Trust Equipment in good order and proper repair at its own cost and expense. Whenever any of the Trust Equipment shall be lost, stolen, destroyed, irreparably damaged, or otherwise rendered permanently unfit for use from any cause whatsoever (such occurrences being herein called Casualty Occurrences), the Company shall promptly, upon being advised of such Casualty Occurrence, deliver to the Trustee an Officer's Certificate describing such Trust Equipment and stating the then Fair Value thereof and, when the aggregate such Fair Value of Trust Equipment suffering Casualty Occurrences for which no deposit of cash equal to Fair Value has been made as hereinafter provided, exceeds the lesser of \$100,000 or 1% of the aggregate principal amount of Trust Certificates then outstanding, shall deposit with the Trustee an amount in cash equal to such aggregate Fair Value. 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 5.7 shall be held and applied as provided in Section 5.9 hereof.

The Company covenants and agrees to furnish to the Trustee, whenever required by the Trustee, and on or

before April 30 in every calendar year commencing with the year 1973, and during the continuance of the lease provided for herein, an Officer's Certificate dated the preceding December 31, stating (1) the amount, description and numbers of all the Trust Equipment that may have suffered a Casualty Occurrence since the date of the last preceding statement (or the date of this Agreement in the case of the first statement), (2) the amount, description and numbers of all the Trust Equipment then undergoing repairs, other than running repairs, or then withdrawn from use for such repairs, and stating that, in the case of all the Trust Equipment repainted or repaired since the date of the last preceding statement (or the date of this Agreement in the case of the first statement), the plates or marks required by Section 5.6 hereof have been preserved, or that the same when repainted or repaired has been again plated or marked as required thereby, (3) the amount, description and numbers of all Trust Equipment then covered hereby and showing the Trust Equipment then in actual service and (4) such other information as to the condition and state of repair of the Trust Equipment as the Trustee may reasonably request. The Trustee, by its agents, shall have the right once in each calendar year, but shall be under no duty, to inspect, at the Company's expense, the Trust Equipment, and the Company covenants in that event to furnish to the Trustee all reasonable facilities for the making of such inspection.

**SECTION 5.8. *Possession of Trust Equipment; Assignments.*** 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 Trustee or its agent or agents, 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 and upon connecting railroads and other railroads 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 shall not, without the written consent of the Trustee first had and obtained, assign or transfer its rights hereunder or transfer the Trust Equipment or any part thereof except to an Affiliate (and then only subject to this Agreement and without releasing the Company from its obligations hereunder), and the Company shall not, without such written consent, except as provided in this Section 5.8, part with the possession of, or suffer or allow to pass out of its possession or control, any of the Trust Equipment; *provided, however*, that the Company, so long as it shall not be in default under the terms of this Agreement, shall be entitled to sublet the Trust Equipment or any part thereof under a sublease which expressly provides (i) that the rights of the sublessee in and to such Trust Equipment shall be subject to the rights of the Trustee in and to such equipment, including the rights of the Trustee upon the happening of an Event of Default hereunder and (ii) that such Trust Equipment may be lettered or marked for the convenience of identification of the leasehold interest of the sublessee therein only in accordance with the provisions of Section 5.6 hereof. The Company shall deliver to the Trustee a copy of any such sublease promptly after its execution.

An assignment or transfer to a railroad company or other purchaser which shall acquire, directly or indirectly, all or substantially all the lines of railroad of the Company, and which, by execution of an appropriate instrument satisfactory to the Trustee, shall assume and agree to perform each and all of the obligations and covenants of the Company hereunder and under the guaranty endorsed on the Trust Certificates, shall not be deemed a breach of this covenant.

The Trustee may appoint a paying agent, which may be the Company, for the payment of principal, dividends and interest hereunder. Any paying agent so appointed shall execute and deliver to the Trustee an instrument in which such paying agent shall agree with the Trustee: (i) that it will hold all sums, held by it as agent of the Trustee for the payment of the principal of and dividends and interest on the Trust Certificates, in trust for the benefit of the holders of the Trust Certificates; (ii) that it will pay such sums to the holders of the Trust Certificates at such times and in such manner as the Trustee shall direct; (iii) that it will give immediate written notice to the Trustee of any failure by it to comply with any such direction; and (iv) that it will immediately repay, upon demand by the Trustee, any sums held in trust by it pursuant to clause (i) of this paragraph.

*SECTION 8.9. Resignation by Trustee; Appointment of Successor Trustee.* If at any time the Trustee or any successor trustee shall resign or shall otherwise desire to divest itself of title to the Trust Equipment, and to terminate its duties and obligations and rights hereunder and under the Trust Certificates, it shall so notify the Company in writing, and 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 entire right, title and interest of the Trustee or such successor trustee in the Trust Equipment, and in which may be vested the rights, powers, duties and obligations of the Trustee hereunder and under the Trust Certificates. Upon the transfer and delivery of all moneys, any Investment Securities in which any of said moneys may then be invested, and Trust Equipment held by the retiring trustee, and the execution by the retiring trustee of such instruments of transfer as may be reasonably requested by the successor trustee, and upon acceptance by the successor trustee of the assignment of the trust, the retiring trustee shall be relieved and discharged of all the title, rights, powers, duties and obligations of the trust hereunder and

under the Trust Certificates, and the same shall become vested in such successor trustee, and 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 two weeks 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 a majority in principal amount of the then outstanding Trust Certificates by an instrument in writing to appoint any successor trustee, if such appointment is made within one year from the date of the giving of such notice to the Company. The Company shall execute all writings recognizing the transfer of title as aforesaid and all instruments of further assurance or otherwise as reasonably may be requested by the successor trustee in the premises and will do and perform any and all acts necessary to establish and maintain the title and rights of the successor trustee in and to the Trust Equipment. Every successor trustee shall be a national bank, or a state bank or trust company, having trust powers, doing business in the city in which the Trustee does business, having a capital and surplus aggregating at least \$5,000,000, if there be such a 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 8.10. *Merger, Conversion or Consolidation of Trustee.* Any corporation resulting from any merger, conversion 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 corporate trust business of the Trustee or any successor trustee, provided such corporation shall be a corporation organized under the laws of the United States of America or of any state thereof and shall do business in the city in which the Trustee does business, and shall have a capital and surplus

aggregating at least \$5,000,000, shall be the successor trustee hereunder without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

SECTION 8.11. *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 (including, for purposes of this Section 8.11 only, any person or other legal entity which would fall within the definition of Affiliate in Section 1.1 hereof if such person or other legal entity were a corporation) shall be disregarded and deemed not to be outstanding for the purpose of any such 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 NINE

### Miscellaneous

SECTION 9.1. *Execution of Instruments by Holders of Trust Certificates; Proof Thereof and of Holding 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 such request or other instrument, or of a writing appointing any such agent or attorney, or of the holding by any person of Trust Certificates, 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 such request or other instrument if made in the following manner, *viz.*:

- (a) The fact and date of the execution by any person of any such request or of any other instru-

ment in writing may be proved by the affidavit of a witness to such execution, or by the certificate of any notary public or of any 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 such request or other instrument acknowledged to him the execution thereof. Where such execution is in other than an individual capacity, such certificate or affidavit shall also constitute sufficient proof of the authority of the executing individual.

(b) The ownership of the Trust Certificates shall be determined by the registry books to be kept as provided in Section 8.3 hereof.

SECTION 9.2. *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, any right, remedy or claim under or by reason of this Agreement or of any term, covenant or condition hereof, and all the terms, covenants, conditions, promises and agreements contained herein shall be for the sole and exclusive benefit of the parties hereto and their successors and of the holders of the Trust Certificates.

SECTION 9.3. *Binding Upon 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 successors and assigns.

SECTION 9.4. *Effect on Prior Agreements.* The provisions of the lease of Trust Equipment contained herein amend and supersede the terms of any and all other leases between the parties or to which one or both of the parties have succeeded respecting the Trust Equipment.

SECTION 9.5. *Supplemental Agreements; Termination.* The Company and the Trustee without the consent of the holders of Trust Certificates may from time to time and

at any time enter into an agreement or agreements supplemental hereto for the purpose of making any provisions in regard to matters or questions arising under this Agreement as shall not adversely affect the interests of the holders of the Trust Certificates then outstanding or the rights, duties or immunities of the Trustee and may, in the event no Trust Certificates have been issued and are outstanding under this Agreement, amend, supplement or delete any of the provisions of this Agreement or terminate it in whole or in part. Except as the context otherwise requires the term "Agreement" means this Agreement as supplemented pursuant to this Section 9.5.

SECTION 9.6. *Notices.* All demands, notices and other communications hereunder shall be in writing and shall be deemed to have been duly given if personally delivered or mailed, in the case of demands and notices, by certified or registered mail, and in the case of other communications, by first class mail, (a) to the Company, at 345 Park Avenue, New York, New York 10022, or at such other address as may hereafter be furnished to the Trustee in writing by the Company and (b) to the Trustee, at its corporate trust department, 20 Pine Street, New York, New York 10015, or at such other address as may hereafter be furnished to the Company in writing by the Trustee. An affidavit by any person representing or acting on behalf of the Company or the Trustee as to such mailing shall be conclusive evidence of the giving of such demand, notice or other communication.

SECTION 9.7. *Counterparts.* This Agreement has been executed in several counterparts each of which shall be deemed to be an original, and all such counterparts shall together constitute but one and the same instrument.

SECTION 9.8. *Date Executed.* This Agreement shall be deemed to have been executed on the date of the acknowledgment thereof by the officer of the Trustee who signed it on behalf of the Trustee.

SECTION 9.9. *Effect of Headings.* The Article and Section headings herein are for convenience only and shall not affect the construction hereof.

SECTION 9.10. *New York Law to Govern.* The provisions of this Agreement, and all the rights and obligations of the parties hereunder, shall be governed by the laws of the State of New York; *provided, however,* that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

SECTION 9.11. *Legal Holidays.* In any case where the date of any dividend payment date or the maturity of or the Redemption Date of any Trust Certificates is, at the place where payment is to be made, a legal holiday or a day on which banking institutions are authorized by law to close, then payment of the dividends, or principal or Redemption Price may be made on the next succeeding day which is not, at such place of payment, a legal holiday or a day on which banking institutions are authorized by law to close, and no dividends shall accrue for the period after such nominal date.

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

CHEMICAL BANK,  
as Trustee,

By   
.....  
Vice President

ATTEST:

  
.....  
Assistant Secretary

UNION PACIFIC RAILROAD COMPANY,

By   
.....  
Vice President—Finance

ATTEST:

  
.....  
Secretary

STATE OF NEW YORK }  
 COUNTY OF NEW YORK } SS.:

On this 10<sup>th</sup> day of January, 1972, before me personally appeared M. F. BADAMI, to me personally known, who being by me duly sworn, says that he is a Vice President of CHEMICAL BANK, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

*John L. Bervar*  
 Notary Public

JOHN L. BERVAR  
 Notary Public, State of New York  
 No. 41-5303890  
 Qualified in Queens County  
 Cert. filed in New York County  
 Term Expires March 30, 1972

STATE OF NEW YORK }  
 COUNTY OF NEW YORK } SS.:

On this 11<sup>th</sup> day of January, 1972, before me personally appeared W. S. COOK, to me personally known, who, being by me duly sworn, says that he is a Vice President—Finance of UNION PACIFIC RAILROAD COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of the said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

*Elizabeth L. Galpine (V.L.G.)*  
 Notary Public

ELIZABETH L. GALPINE (V.L.G.)  
 Notary Public, State of New York  
 No. 30 6451000  
 Qualified in Nassau County  
 Certificate Filed in N.Y. Co. CLK's Office  
 Commission Expires March 30, 1972

**SCHEDULE A****Description of Trust Equipment**

<u>No. of Units</u>	<u>Description</u>	<u>Estimated Cost</u>	
		<u>Per Unit</u>	<u>Total</u>
375	50' 6" 70-ton box cars, Union Pacific Railroad Company, builder, to be numbered UP 169,900 to 170,274, both inclusive .....	\$ 18,650	\$ 6,993,750
400	100-ton 3600 cu. ft. capacity open top hopper cars, Greenville Steel Car Co., builder, to be numbered UP 36,500 to 36,899, both inclusive .....	16,172	6,468,800
50	3000 HP diesel electric locomotives, General Motors Corporation (Electromotive Division), builder, to be numbered UP 3123 to 3172, both inclusive .....	317,815	15,890,750
20	3000 HP diesel electric locomotives, General Electric Company, builder, to be numbered UP 2810 to 2829, both inclusive .....	332,000	6,640,000
	Total Estimated Cost ....		<u>\$35,993,300</u>

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 at a rate equal to  $\frac{1}{2}$  of 1% above the rate of such dividends on overdue dividends to the extent legally enforceable, and of the principal of all the outstanding Trust Certificates, with interest thereon at a rate equal to  $\frac{1}{2}$  of 1% above the rate of such dividends, to the extent legally enforceable, from the last preceding dividend date, whether such Trust Certificates shall have then matured by their terms or not, all such payments to be in full if such proceeds shall be sufficient, and if not sufficient, then *pro rata* without preference among principal, dividends or interest.

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

SECTION 6.4. *Waiver of Default.* If at any time after the principal of all the Trust Certificates shall have been declared and have become due and payable, or if at any time after the entire amount of rentals shall have been declared and become due and payable, all as in Section 6.1 hereof provided, but before the end of the term of the lease contained herein, all arrears of rent (with interest at a rate equal to  $\frac{1}{2}$  of 1% above the rate of dividends on such principal upon any overdue rentals), the expenses and reasonable compensation of the Trustee, together with all expenses of the trust occasioned by the Company's default, and all other sums which shall have become due and payable by the

Company hereunder (other than the principal of Trust Certificates and any other rental instalments which shall not at the time have matured according to their terms) shall be paid by the Company before any sale or lease by the Trustee of any of the Trust Equipment, and every other default in the observance or performance of any covenant or condition hereof shall be made good or secured to the satisfaction of the Trustee, or provision deemed by the Trustee to be adequate shall be made therefor, then, and in every such case, the Trustee, if so requested by the holders of a majority in principal amount of the Trust Certificates then outstanding and which shall not have matured (other than by declaration) according to their terms, shall, by written notice to the Company, waive the default by reason of which there shall have been such declaration or declarations and the consequences of such default, but no such waiver shall extend to or affect any subsequent default or impair any right consequent thereon.

SECTION 6.5. *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, nor any delay or indulgence granted to the Company by the Trustee or by any such holder, shall affect the obligations of the Company hereunder or under the guaranty endorsed on the Trust Certificates. The Company hereby waives presentation and demand in respect of any of the Trust Certificates and waives notice of presentation, of demand and of any default in the payment of the principal of and dividends on the Trust Certificates.

SECTION 6.6. *Company to Deliver Trust Equipment to Trustee.* In case the Trustee shall demand possession of the Trust Equipment pursuant to the provisions hereof, and shall reasonably designate a point or points upon the railroad of the Company or of any Affiliate or sublessee for

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

SECTION 6.7. *Limitations on Actions by Holders of Trust Certificates.* No holder of any Trust Certificate shall have any right to institute any action or proceedings at law or in equity for the execution and enforcement of the trust hereby created unless, after the request in writing, under Section 8.5, 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 and indemnity, the Trustee shall decline, fail or neglect to institute any proceedings pursuant thereto. Neither the provisions of this Section 6.7 nor the provisions of Section 8.5 hereof shall affect or limit in any way the obligations of the Company under its guaranty hereinabove provided or the rights of the holders of Trust Certificates to institute suit for the enforcement of payments due under said guaranty in respect of the Trust Certificates.

SECTION 6.8. *Remedies Cumulative.* The remedies in this Agreement provided in favor of the Trustee and the

the following words, or such words may be otherwise plainly, distinctly, permanently and conspicuously marked on each side of such unit, in either case in letters not less than one inch in height:

“UNION PACIFIC EQUIPMENT TRUST, SERIES C; CHEMICAL BANK, TRUSTEE, OWNER, LESSOR”

OR

“OWNED BY A SECURED PARTY UNDER A SECURITY AGREEMENT FILED UNDER INTERSTATE COMMERCE ACT, SECTION 20C, UNION PACIFIC RAILROAD COMPANY, LESSEE/VENDEE”.

Such plates or marks shall be such as to be readily visible and as to indicate plainly the Trustee's ownership of each unit of the Trust Equipment. In case, prior to the termination of the lease provided for herein, any of such plates or 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 of the Trust Equipment at any time covered hereby (or any numbers which may have been substituted as herein provided) except in accordance with a statement of new numbers to be substituted therefor which shall previously have been filed with the Trustee by the Company, and which shall be filed and recorded as provided in Section 7.4 hereof.

The Trust Equipment may be lettered with the name, initials or insignia of the Company, or of any Affiliate or any sublessee of the Company which is permitted to use the Trust Equipment as herein provided, or may be lettered in some other appropriate manner, for convenience of identification of the interest of the Company, or such Affiliate or sublessee therein. Units of Trust Equipment subleased by the Company as permitted herein may also be marked in the manner described in the first sentence of the foregoing paragraph with the following words:

“UNION PACIFIC RAILROAD COMPANY, LESSEE AND SUBLESSOR”.

Except as aforesaid, during the continuance of the lease provided for herein, the Company shall not allow the name of any person, association or corporation to be placed on any of the Trust Equipment as a designation if the right, title and interest of the Trustee therein would thereby be impaired or invalidated. The Trustee shall, upon the Request of the Company, consent to the placing of the name of any specified person, association or corporation upon any unit of Trust Equipment as a designation if there shall have been delivered to the Trustee an Opinion of Counsel to the effect that such designation will not impair or invalidate the right, title and interest of the Trustee in or to such unit.

SECTION 5.7. *Maintenance of Trust Equipment; Casualty Occurrences.* The Company agrees that it will maintain and keep all the Trust Equipment in good order and proper repair at its own cost and expense. Whenever any of the Trust Equipment shall be lost, stolen, destroyed, irreparably damaged, or otherwise rendered permanently unfit for use from any cause whatsoever (such occurrences being herein called Casualty Occurrences), the Company shall promptly, upon being advised of such Casualty Occurrence, deliver to the Trustee an Officer's Certificate describing such Trust Equipment and stating the then Fair Value thereof and, when the aggregate such Fair Value of Trust Equipment suffering Casualty Occurrences for which no deposit of cash equal to Fair Value has been made as hereinafter provided, exceeds the lesser of \$100,000 or 1% of the aggregate principal amount of Trust Certificates then outstanding, shall deposit with the Trustee an amount in cash equal to such aggregate Fair Value. 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 5.7 shall be held and applied as provided in Section 5.9 hereof.

The Company covenants and agrees to furnish to the Trustee, whenever required by the Trustee, and on or

before April 30 in every calendar year commencing with the year 1973, and during the continuance of the lease provided for herein, an Officer's Certificate dated the preceding December 31, stating (1) the amount, description and numbers of all the Trust Equipment that may have suffered a Casualty Occurrence since the date of the last preceding statement (or the date of this Agreement in the case of the first statement), (2) the amount, description and numbers of all the Trust Equipment then undergoing repairs, other than running repairs, or then withdrawn from use for such repairs, and stating that, in the case of all the Trust Equipment repainted or repaired since the date of the last preceding statement (or the date of this Agreement in the case of the first statement), the plates or marks required by Section 5.6 hereof have been preserved, or that the same when repainted or repaired has been again plated or marked as required thereby, (3) the amount, description and numbers of all Trust Equipment then covered hereby and showing the Trust Equipment then in actual service and (4) such other information as to the condition and state of repair of the Trust Equipment as the Trustee may reasonably request. The Trustee, by its agents, shall have the right once in each calendar year, but shall be under no duty, to inspect, at the Company's expense, the Trust Equipment, and the Company covenants in that event to furnish to the Trustee all reasonable facilities for the making of such inspection.

**SECTION 5.8. *Possession of Trust Equipment; Assignments.*** 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 Trustee or its agent or agents, 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 and upon connecting railroads and other railroads 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 shall not, without the written consent of the Trustee first had and obtained, assign or transfer its rights hereunder or transfer the Trust Equipment or any part thereof except to an Affiliate (and then only subject to this Agreement and without releasing the Company from its obligations hereunder), and the Company shall not, without such written consent, except as provided in this Section 5.8, part with the possession of, or suffer or allow to pass out of its possession or control, any of the Trust Equipment; *provided, however*, that the Company, so long as it shall not be in default under the terms of this Agreement, shall be entitled to sublet the Trust Equipment or any part thereof under a sublease which expressly provides (i) that the rights of the sublessee in and to such Trust Equipment shall be subject to the rights of the Trustee in and to such equipment, including the rights of the Trustee upon the happening of an Event of Default hereunder and (ii) that such Trust Equipment may be lettered or marked for the convenience of identification of the leasehold interest of the sublessee therein only in accordance with the provisions of Section 5.6 hereof. The Company shall deliver to the Trustee a copy of any such sublease promptly after its execution.

An assignment or transfer to a railroad company or other purchaser which shall acquire, directly or indirectly, all or substantially all the lines of railroad of the Company, and which, by execution of an appropriate instrument satisfactory to the Trustee, shall assume and agree to perform each and all of the obligations and covenants of the Company hereunder and under the guaranty endorsed on the Trust Certificates, shall not be deemed a breach of this covenant.

The Trustee may appoint a paying agent, which may be the Company, for the payment of principal, dividends and interest hereunder. Any paying agent so appointed shall execute and deliver to the Trustee an instrument in which such paying agent shall agree with the Trustee: (i) that it will hold all sums, held by it as agent of the Trustee for the payment of the principal of and dividends and interest on the Trust Certificates, in trust for the benefit of the holders of the Trust Certificates; (ii) that it will pay such sums to the holders of the Trust Certificates at such times and in such manner as the Trustee shall direct; (iii) that it will give immediate written notice to the Trustee of any failure by it to comply with any such direction; and (iv) that it will immediately repay, upon demand by the Trustee, any sums held in trust by it pursuant to clause (i) of this paragraph.

*SECTION 8.9. Resignation by Trustee; Appointment of Successor Trustee.* If at any time the Trustee or any successor trustee shall resign or shall otherwise desire to divest itself of title to the Trust Equipment, and to terminate its duties and obligations and rights hereunder and under the Trust Certificates, it shall so notify the Company in writing, and 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 entire right, title and interest of the Trustee or such successor trustee in the Trust Equipment, and in which may be vested the rights, powers, duties and obligations of the Trustee hereunder and under the Trust Certificates. Upon the transfer and delivery of all moneys, any Investment Securities in which any of said moneys may then be invested, and Trust Equipment held by the retiring trustee, and the execution by the retiring trustee of such instruments of transfer as may be reasonably requested by the successor trustee, and upon acceptance by the successor trustee of the assignment of the trust, the retiring trustee shall be relieved and discharged of all the title, rights, powers, duties and obligations of the trust hereunder and

under the Trust Certificates, and the same shall become vested in such successor trustee, and 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 two weeks 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 a majority in principal amount of the then outstanding Trust Certificates by an instrument in writing to appoint any successor trustee, if such appointment is made within one year from the date of the giving of such notice to the Company. The Company shall execute all writings recognizing the transfer of title as aforesaid and all instruments of further assurance or otherwise as reasonably may be requested by the successor trustee in the premises and will do and perform any and all acts necessary to establish and maintain the title and rights of the successor trustee in and to the Trust Equipment. Every successor trustee shall be a national bank, or a state bank or trust company, having trust powers, doing business in the city in which the Trustee does business, having a capital and surplus aggregating at least \$5,000,000, if there be such a 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 8.10. *Merger, Conversion or Consolidation of Trustee.* Any corporation resulting from any merger, conversion 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 corporate trust business of the Trustee or any successor trustee, provided such corporation shall be a corporation organized under the laws of the United States of America or of any state thereof and shall do business in the city in which the Trustee does business, and shall have a capital and surplus

aggregating at least \$5,000,000, shall be the successor trustee hereunder without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

SECTION 8.11. *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 (including, for purposes of this Section 8.11 only, any person or other legal entity which would fall within the definition of Affiliate in Section 1.1 hereof if such person or other legal entity were a corporation) shall be disregarded and deemed not to be outstanding for the purpose of any such 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 NINE

### Miscellaneous

SECTION 9.1. *Execution of Instruments by Holders of Trust Certificates; Proof Thereof and of Holding 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 such request or other instrument, or of a writing appointing any such agent or attorney, or of the holding by any person of Trust Certificates, 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 such request or other instrument if made in the following manner, *viz.*:

- (a) The fact and date of the execution by any person of any such request or of any other instru-

ment in writing may be proved by the affidavit of a witness to such execution, or by the certificate of any notary public or of any 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 such request or other instrument acknowledged to him the execution thereof. Where such execution is in other than an individual capacity, such certificate or affidavit shall also constitute sufficient proof of the authority of the executing individual.

(b) The ownership of the Trust Certificates shall be determined by the registry books to be kept as provided in Section 8.3 hereof.

SECTION 9.2. *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, any right, remedy or claim under or by reason of this Agreement or of any term, covenant or condition hereof, and all the terms, covenants, conditions, promises and agreements contained herein shall be for the sole and exclusive benefit of the parties hereto and their successors and of the holders of the Trust Certificates.

SECTION 9.3. *Binding Upon 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 successors and assigns.

SECTION 9.4. *Effect on Prior Agreements.* The provisions of the lease of Trust Equipment contained herein amend and supersede the terms of any and all other leases between the parties or to which one or both of the parties have succeeded respecting the Trust Equipment.

SECTION 9.5. *Supplemental Agreements; Termination.* The Company and the Trustee without the consent of the holders of Trust Certificates may from time to time and

at any time enter into an agreement or agreements supplemental hereto for the purpose of making any provisions in regard to matters or questions arising under this Agreement as shall not adversely affect the interests of the holders of the Trust Certificates then outstanding or the rights, duties or immunities of the Trustee and may, in the event no Trust Certificates have been issued and are outstanding under this Agreement, amend, supplement or delete any of the provisions of this Agreement or terminate it in whole or in part. Except as the context otherwise requires the term "Agreement" means this Agreement as supplemented pursuant to this Section 9.5.

SECTION 9.6. *Notices.* All demands, notices and other communications hereunder shall be in writing and shall be deemed to have been duly given if personally delivered or mailed, in the case of demands and notices, by certified or registered mail, and in the case of other communications, by first class mail, (a) to the Company, at 345 Park Avenue, New York, New York 10022, or at such other address as may hereafter be furnished to the Trustee in writing by the Company and (b) to the Trustee, at its corporate trust department, 20 Pine Street, New York, New York 10015, or at such other address as may hereafter be furnished to the Company in writing by the Trustee. An affidavit by any person representing or acting on behalf of the Company or the Trustee as to such mailing shall be conclusive evidence of the giving of such demand, notice or other communication.

SECTION 9.7. *Counterparts.* This Agreement has been executed in several counterparts each of which shall be deemed to be an original, and all such counterparts shall together constitute but one and the same instrument.

SECTION 9.8. *Date Executed.* This Agreement shall be deemed to have been executed on the date of the acknowledgment thereof by the officer of the Trustee who signed it on behalf of the Trustee.

SECTION 9.9. *Effect of Headings.* The Article and Section headings herein are for convenience only and shall not affect the construction hereof.

SECTION 9.10. *New York Law to Govern.* The provisions of this Agreement, and all the rights and obligations of the parties hereunder, shall be governed by the laws of the State of New York; *provided, however,* that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

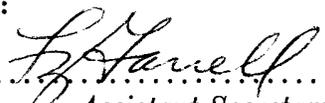
SECTION 9.11. *Legal Holidays.* In any case where the date of any dividend payment date or the maturity of or the Redemption Date of any Trust Certificates is, at the place where payment is to be made, a legal holiday or a day on which banking institutions are authorized by law to close, then payment of the dividends, or principal or Redemption Price may be made on the next succeeding day which is not, at such place of payment, a legal holiday or a day on which banking institutions are authorized by law to close, and no dividends shall accrue for the period after such nominal date.

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

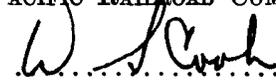
CHEMICAL BANK,  
as Trustee,

By  .....  
Vice President

ATTEST:

 .....  
Assistant Secretary

UNION PACIFIC RAILROAD COMPANY,

By  .....  
Vice President—Finance

ATTEST:

 .....  
Secretary

STATE OF NEW YORK }  
 COUNTY OF NEW YORK } SS.:

On this *10<sup>th</sup>* day of January, 1972, before me personally appeared M. F. BADAMI, to me personally known, who being by me duly sworn, says that he is a Vice President of CHEMICAL BANK, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

*John L. Bervar*  
 Notary Public

JOHN L. BERVAR  
 Notary Public, State of New York  
 No. 41-5303890  
 Qualified in Queens County  
 Cert. filed in New York County  
 Term Expires March 30, 1972

STATE OF NEW YORK }  
 COUNTY OF NEW YORK } SS.:

On this *11<sup>th</sup>* day of January, 1972, before me personally appeared W. S. COOK, to me personally known, who, being by me duly sworn, says that he is a Vice President—Finance of UNION PACIFIC RAILROAD COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of the said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

*Elizabeth L. Galpine (V.L.G.)*  
 Notary Public

ELIZABETH L. GALPINE (V.L.G.)  
 Notary Public, State of New York  
 No. 30 6451000  
 Qualified in Nassau County  
 Certificate Filed in N.Y. Co. CLK's Office  
 Commission Expires March 30, 1972

**SCHEDULE A****Description of Trust Equipment**

<u>No. of Units</u>	<u>Description</u>	<u>Estimated Cost</u>	
		<u>Per Unit</u>	<u>Total</u>
375	50' 6" 70-ton box cars, Union Pacific Railroad Company, builder, to be numbered UP 169,900 to 170,274, both inclusive .....	\$ 18,650	\$ 6,993,750
400	100-ton 3600 cu. ft. capacity open top hopper cars, Greenville Steel Car Co., builder, to be numbered UP 36,500 to 36,899, both inclusive .....	16,172	6,468,800
50	3000 HP diesel electric locomotives, General Motors Corporation (Electromotive Division), builder, to be numbered UP 3123 to 3172, both inclusive .....	317,815	15,890,750
20	3000 HP diesel electric locomotives, General Electric Company, builder, to be numbered UP 2810 to 2829, both inclusive .....	332,000	6,640,000
	Total Estimated Cost ....		<u>\$35,993,300</u>

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 at a rate equal to  $\frac{1}{2}$  of 1% above the rate of such dividends on overdue dividends to the extent legally enforceable, and of the principal of all the outstanding Trust Certificates, with interest thereon at a rate equal to  $\frac{1}{2}$  of 1% above the rate of such dividends, to the extent legally enforceable, from the last preceding dividend date, whether such Trust Certificates shall have then matured by their terms or not, all such payments to be in full if such proceeds shall be sufficient, and if not sufficient, then *pro rata* without preference among principal, dividends or interest.

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

SECTION 6.4. *Waiver of Default.* If at any time after the principal of all the Trust Certificates shall have been declared and have become due and payable, or if at any time after the entire amount of rentals shall have been declared and become due and payable, all as in Section 6.1 hereof provided, but before the end of the term of the lease contained herein, all arrears of rent (with interest at a rate equal to  $\frac{1}{2}$  of 1% above the rate of dividends on such principal upon any overdue rentals), the expenses and reasonable compensation of the Trustee, together with all expenses of the trust occasioned by the Company's default, and all other sums which shall have become due and payable by the

Company hereunder (other than the principal of Trust Certificates and any other rental instalments which shall not at the time have matured according to their terms) shall be paid by the Company before any sale or lease by the Trustee of any of the Trust Equipment, and every other default in the observance or performance of any covenant or condition hereof shall be made good or secured to the satisfaction of the Trustee, or provision deemed by the Trustee to be adequate shall be made therefor, then, and in every such case, the Trustee, if so requested by the holders of a majority in principal amount of the Trust Certificates then outstanding and which shall not have matured (other than by declaration) according to their terms, shall, by written notice to the Company, waive the default by reason of which there shall have been such declaration or declarations and the consequences of such default, but no such waiver shall extend to or affect any subsequent default or impair any right consequent thereon.

SECTION 6.5. *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, nor any delay or indulgence granted to the Company by the Trustee or by any such holder, shall affect the obligations of the Company hereunder or under the guaranty endorsed on the Trust Certificates. The Company hereby waives presentation and demand in respect of any of the Trust Certificates and waives notice of presentation, of demand and of any default in the payment of the principal of and dividends on the Trust Certificates.

SECTION 6.6. *Company to Deliver Trust Equipment to Trustee.* In case the Trustee shall demand possession of the Trust Equipment pursuant to the provisions hereof, and shall reasonably designate a point or points upon the railroad of the Company or of any Affiliate or sublessee for

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

SECTION 6.7. *Limitations on Actions by Holders of Trust Certificates.* No holder of any Trust Certificate shall have any right to institute any action or proceedings at law or in equity for the execution and enforcement of the trust hereby created unless, after the request in writing, under Section 8.5, 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 and indemnity, the Trustee shall decline, fail or neglect to institute any proceedings pursuant thereto. Neither the provisions of this Section 6.7 nor the provisions of Section 8.5 hereof shall affect or limit in any way the obligations of the Company under its guaranty hereinabove provided or the rights of the holders of Trust Certificates to institute suit for the enforcement of payments due under said guaranty in respect of the Trust Certificates.

SECTION 6.8. *Remedies Cumulative.* The remedies in this Agreement provided in favor of the Trustee and the

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

## ARTICLE SEVEN

### Additional Covenants and Agreements by the Company

SECTION 7.1. *Company to Make Payments Provided for.* The Company hereby covenants and agrees to make payment of the reasonable expenses and compensation of the Trustee, and of all taxes, assessments and governmental charges herein mentioned for which the Trustee, as such, may be liable and of the rentals and of the other amounts provided for herein.

SECTION 7.2. *Guaranty to Holders of Trust Certificates.* The Company covenants, agrees and guarantees that the holder of each of the Trust Certificates shall be paid 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 a rate equal to  $\frac{1}{2}$  of 1% above the rate of dividends on such principal to the extent legally enforceable), and shall be paid dividends thereon in like money at the rate specified therein from the date of such Trust Certificate to the date of payment thereof, at the times and place and otherwise as expressed in the Trust Certificates (and, if not so paid, with interest thereon at a rate equal to  $\frac{1}{2}$  of 1% above the rate of such dividends to the extent legally enforceable); and 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. Said guaranty so endorsed shall be signed in the name and on behalf of the Company by the facsimile sig-

nature of its Chairman of the Board and Chief Executive Officer, its Vice Chairman of the Board, or one of its Vice Presidents and may bear the facsimile signature of the Secretary or Treasurer of the Company. In case any officer of the Company whose facsimile signature shall appear on said guaranty shall cease to be such officer of the Company before the Trust Certificates shall have been issued or delivered by the Trustee, or shall not have been acting in such capacity on the date of the Trust Certificates, such guaranty shall nevertheless be as effective and binding upon the Company as though the person who signed said guaranty had not ceased to be, or had then been, such officer.

SECTION 7.3. *Discharge of Liens.* The Company covenants and agrees that it will 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 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, provided that such contest will not materially endanger the rights or interests of the Trustee or of the holders of the Trust Certificates, and the Company shall have furnished the Trustee with an Opinion of Counsel to such effect.

SECTION 7.4. *Payment of Expenses; Recording.* The Company covenants and agrees to pay the expenses incident to the preparation and execution of the Trust Certificates to be issued hereunder, or connected with the preparation, execution, recording and filing hereof and of any instruments executed under the provisions hereof with respect to the Trust Equipment. The Company with all convenient speed will cause this Agreement and all supplements hereto to be duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the

Interstate Commerce Act. The Company will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register and record any and all further instruments required by law or reasonably requested by the Trustee for the purposes of proper protection of the title of the Trustee and the rights of the holders of the Trust Certificates and of fully carrying out and effectuating this Agreement and the intent hereof; and the Company will promptly furnish to the Trustee certificates or other evidences of filing and recording pursuant to the last preceding sentence, and of any other such filing, registration and recording, and an Opinion or Opinions of Counsel with respect thereto.

SECTION 7.5. *Further Assurances.* The Company covenants and agrees from time to time to do all such acts and execute all such instruments of further assurance as it shall be reasonably requested by the Trustee to do or execute for the purpose of fully carrying out and effectuating this Agreement and the intent hereof.

## ARTICLE EIGHT

### The Trustee

SECTION 8.1. *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, but no implied covenants shall be read into this Agreement against the Trustee.

SECTION 8.2. *Application of Rentals.* The Trustee covenants and agrees to apply and distribute the rentals received by it under Section 5.4(B) hereof (other than sums restored to Deposited Cash from rentals pursuant to Section 5.4(B)(1) hereof or paid to the Company pursuant to Section 4.3 hereof) when and as the same shall be received, and to the extent that such rentals shall be sufficient therefor, for the purposes specified in said Section 5.4(B).

SECTION 8.3. *Duties Concerning Registration, Exchange and Transfer of Trust Certificates.* The Trustee shall cause to be kept at its Corporate Trust Office books for the registration, exchange and registration of transfer of the Trust Certificates; and upon presentation for any such purpose the Trustee will register or cause to be registered, exchange or cause to be exchanged, or register or cause to be registered the transfer of, as the case may be, as hereinbefore provided, under such reasonable regulations as it may prescribe, any of the Trust Certificates.

SECTION 8.4. *Insuring or Possession of Trust Equipment Upon Indemnification; Recording; 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 by the Company or by one or more of the holders of the Trust Certificates against all liability and expenses. The Trustee shall not be responsible for the filing or recording or refiling or rerecording of this Agreement or of any supplement hereto or of any other instrument or document which may be required to perfect the security interest of the Trustee in the contracts assigned to it pursuant to Section 4.1 hereof. The Trustee may issue and deliver Trust Certificates in advance of such filing or recording. 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 Section 4.4 hereof, or, as the case may be, under Sections 5.7 or 5.9 hereof, and shall not be required to make any further investigation of or inquiry concerning the matters covered thereby.

SECTION 8.5. *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 hereby created unless requested thereunto in writing by the holders of not less than 25% in principal amount of the then outstanding Trust Certificates and unless indemnified to its satisfaction against expense and liability with respect thereto, and unless also furnished with proof satisfactory to it as to the ownership of the Trust Certificates in respect of which any such request may be made; but this provision, in the absence of such request, shall not affect any discretion herein given to the Trustee to determine whether it shall take action in respect of any default hereunder or what action it shall take.

**SECTION 8.6.** *Assumption of No Default; May Rely on Notices and Other Documents.* 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 default or 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, opinion, order, certificate, warrant or other paper or instrument believed by it to be genuine or authentic and to be signed by the proper party or parties.

**SECTION 8.7.** *Money Held by Trustee; Investments in Investment Securities.* 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, without liability for interest thereon save as may be agreed upon between the Trustee and the Company.

Interest, if any, allowed by the Trustee upon any moneys received by it under the provisions hereof and

any interest (in excess of accrued interest paid from Deposited Cash at the time of purchase) or other profit accruing upon any investment of Deposited Cash as permitted by this Section 8.7 shall belong to the Company and be paid to it by the Trustee, as long as the Company shall not be known to the Trustee to be in default hereunder or under any supplement hereto.

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

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

The Trustee shall restore to Deposited Cash or Replacement Funds, as the case may be, out of rent received by it for that purpose under the provisions of Section 5.4(B)(1) hereof, an amount equal to any expenses incurred in connection with any purchase, sale or redemption of Investment Securities and also an amount equal to any loss of principal incident to the sale or redemption of any Investment Securities for a sum less than the amount paid therefor, including accrued interest. The Company, if not in default under the terms hereof or of any supplement hereto, shall be entitled to receive any profit which may be realized from any sale or redemption of Investment Securities.

SECTION 8.8. *No Liability for Trust Equipment; May Act through Others; No Responsibility for Recitals, etc.; Compensation; Owning Trust Certificates; Moneys Held in Trust.* The Trustee shall not be liable to anyone for any delay in the delivery of any of the Trust Equipment, or for any default on the part of any builder thereof or of the Company, or for any defect in any of the Trust Equipment or in the title thereto, nor shall anything herein be construed as a warranty on the part of the Trustee in respect thereof or as a representation in respect of the value thereof or in respect of the title thereto.

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

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

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

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 itself and the holders of the Trust Certificates.

The Trustee may appoint a paying agent, which may be the Company, for the payment of principal, dividends and interest hereunder. Any paying agent so appointed shall execute and deliver to the Trustee an instrument in which such paying agent shall agree with the Trustee: (i) that it will hold all sums, held by it as agent of the Trustee for the payment of the principal of and dividends and interest on the Trust Certificates, in trust for the benefit of the holders of the Trust Certificates; (ii) that it will pay such sums to the holders of the Trust Certificates at such times and in such manner as the Trustee shall direct; (iii) that it will give immediate written notice to the Trustee of any failure by it to comply with any such direction; and (iv) that it will immediately repay, upon demand by the Trustee, any sums held in trust by it pursuant to clause (i) of this paragraph.

*SECTION 8.9. Resignation by Trustee; Appointment of Successor Trustee.* If at any time the Trustee or any successor trustee shall resign or shall otherwise desire to divest itself of title to the Trust Equipment, and to terminate its duties and obligations and rights hereunder and under the Trust Certificates, it shall so notify the Company in writing, and 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 entire right, title and interest of the Trustee or such successor trustee in the Trust Equipment, and in which may be vested the rights, powers, duties and obligations of the Trustee hereunder and under the Trust Certificates. Upon the transfer and delivery of all moneys, any Investment Securities in which any of said moneys may then be invested, and Trust Equipment held by the retiring trustee, and the execution by the retiring trustee of such instruments of transfer as may be reasonably requested by the successor trustee, and upon acceptance by the successor trustee of the assignment of the trust, the retiring trustee shall be relieved and discharged of all the title, rights, powers, duties and obligations of the trust hereunder and

under the Trust Certificates, and the same shall become vested in such successor trustee, and 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 two weeks 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 a majority in principal amount of the then outstanding Trust Certificates by an instrument in writing to appoint any successor trustee, if such appointment is made within one year from the date of the giving of such notice to the Company. The Company shall execute all writings recognizing the transfer of title as aforesaid and all instruments of further assurance or otherwise as reasonably may be requested by the successor trustee in the premises and will do and perform any and all acts necessary to establish and maintain the title and rights of the successor trustee in and to the Trust Equipment. Every successor trustee shall be a national bank, or a state bank or trust company, having trust powers, doing business in the city in which the Trustee does business, having a capital and surplus aggregating at least \$5,000,000, if there be such a 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 8.10. *Merger, Conversion or Consolidation of Trustee.* Any corporation resulting from any merger, conversion 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 corporate trust business of the Trustee or any successor trustee, provided such corporation shall be a corporation organized under the laws of the United States of America or of any state thereof and shall do business in the city in which the Trustee does business, and shall have a capital and surplus

aggregating at least \$5,000,000, shall be the successor trustee hereunder without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

SECTION 8.11. *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 (including, for purposes of this Section 8.11 only, any person or other legal entity which would fall within the definition of Affiliate in Section 1.1 hereof if such person or other legal entity were a corporation) shall be disregarded and deemed not to be outstanding for the purpose of any such 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 NINE

### Miscellaneous

SECTION 9.1. *Execution of Instruments by Holders of Trust Certificates; Proof Thereof and of Holding 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 such request or other instrument, or of a writing appointing any such agent or attorney, or of the holding by any person of Trust Certificates, 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 such request or other instrument if made in the following manner, *viz.*:

- (a) The fact and date of the execution by any person of any such request or of any other instru-

ment in writing may be proved by the affidavit of a witness to such execution, or by the certificate of any notary public or of any 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 such request or other instrument acknowledged to him the execution thereof. Where such execution is in other than an individual capacity, such certificate or affidavit shall also constitute sufficient proof of the authority of the executing individual.

(b) The ownership of the Trust Certificates shall be determined by the registry books to be kept as provided in Section 8.3 hereof.

SECTION 9.2. *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, any right, remedy or claim under or by reason of this Agreement or of any term, covenant or condition hereof, and all the terms, covenants, conditions, promises and agreements contained herein shall be for the sole and exclusive benefit of the parties hereto and their successors and of the holders of the Trust Certificates.

SECTION 9.3. *Binding Upon 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 successors and assigns.

SECTION 9.4. *Effect on Prior Agreements.* The provisions of the lease of Trust Equipment contained herein amend and supersede the terms of any and all other leases between the parties or to which one or both of the parties have succeeded respecting the Trust Equipment.

SECTION 9.5. *Supplemental Agreements; Termination.* The Company and the Trustee without the consent of the holders of Trust Certificates may from time to time and

at any time enter into an agreement or agreements supplemental hereto for the purpose of making any provisions in regard to matters or questions arising under this Agreement as shall not adversely affect the interests of the holders of the Trust Certificates then outstanding or the rights, duties or immunities of the Trustee and may, in the event no Trust Certificates have been issued and are outstanding under this Agreement, amend, supplement or delete any of the provisions of this Agreement or terminate it in whole or in part. Except as the context otherwise requires the term "Agreement" means this Agreement as supplemented pursuant to this Section 9.5.

SECTION 9.6. *Notices.* All demands, notices and other communications hereunder shall be in writing and shall be deemed to have been duly given if personally delivered or mailed, in the case of demands and notices, by certified or registered mail, and in the case of other communications, by first class mail, (a) to the Company, at 345 Park Avenue, New York, New York 10022, or at such other address as may hereafter be furnished to the Trustee in writing by the Company and (b) to the Trustee, at its corporate trust department, 20 Pine Street, New York, New York 10015, or at such other address as may hereafter be furnished to the Company in writing by the Trustee. An affidavit by any person representing or acting on behalf of the Company or the Trustee as to such mailing shall be conclusive evidence of the giving of such demand, notice or other communication.

SECTION 9.7. *Counterparts.* This Agreement has been executed in several counterparts each of which shall be deemed to be an original, and all such counterparts shall together constitute but one and the same instrument.

SECTION 9.8. *Date Executed.* This Agreement shall be deemed to have been executed on the date of the acknowledgment thereof by the officer of the Trustee who signed it on behalf of the Trustee.

SECTION 9.9. *Effect of Headings.* The Article and Section headings herein are for convenience only and shall not affect the construction hereof.

SECTION 9.10. *New York Law to Govern.* The provisions of this Agreement, and all the rights and obligations of the parties hereunder, shall be governed by the laws of the State of New York; *provided, however,* that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

SECTION 9.11. *Legal Holidays.* In any case where the date of any dividend payment date or the maturity of or the Redemption Date of any Trust Certificates is, at the place where payment is to be made, a legal holiday or a day on which banking institutions are authorized by law to close, then payment of the dividends, or principal or Redemption Price may be made on the next succeeding day which is not, at such place of payment, a legal holiday or a day on which banking institutions are authorized by law to close, and no dividends shall accrue for the period after such nominal date.

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

CHEMICAL BANK,  
as Trustee,

By  .....  
Vice President

ATTEST:

 .....  
Assistant Secretary

UNION PACIFIC RAILROAD COMPANY,

By  .....  
Vice President—Finance

ATTEST:

 .....  
Secretary

STATE OF NEW YORK }  
 COUNTY OF NEW YORK } SS.:

On this *10<sup>th</sup>* day of January, 1972, before me personally appeared M. F. BADAMI, to me personally known, who being by me duly sworn, says that he is a Vice President of CHEMICAL BANK, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

*John L. Bervar*  
 Notary Public

JOHN L. BERVAR  
 Notary Public, State of New York  
 No. 41-5303890  
 Qualified in Queens County  
 Cert. filed in New York County  
 Term Expires March 30, 1972

STATE OF NEW YORK }  
 COUNTY OF NEW YORK } SS.:

On this *11<sup>th</sup>* day of January, 1972, before me personally appeared W. S. COOK, to me personally known, who, being by me duly sworn, says that he is a Vice President—Finance of UNION PACIFIC RAILROAD COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of the said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

*Elizabeth L. Galpine (V.L.G.)*  
 Notary Public

ELIZABETH L. GALPINE (V.L.G.)  
 Notary Public, State of New York  
 No. 30 6451000  
 Qualified in Nassau County  
 Certificate Filed in N.Y. Co. CLK's Office  
 Commission Expires March 30, 1972

**SCHEDULE A****Description of Trust Equipment**

<u>No. of Units</u>	<u>Description</u>	<u>Estimated Cost</u>	
		<u>Per Unit</u>	<u>Total</u>
375	50' 6" 70-ton box cars, Union Pacific Railroad Company, builder, to be numbered UP 169,900 to 170,274, both inclusive .....	\$ 18,650	\$ 6,993,750
400	100-ton 3600 cu. ft. capacity open top hopper cars, Greenville Steel Car Co., builder, to be numbered UP 36,500 to 36,899, both inclusive .....	16,172	6,468,800
50	3000 HP diesel electric locomotives, General Motors Corporation (Electromotive Division), builder, to be numbered UP 3123 to 3172, both inclusive .....	317,815	15,890,750
20	3000 HP diesel electric locomotives, General Electric Company, builder, to be numbered UP 2810 to 2829, both inclusive .....	332,000	6,640,000
	Total Estimated Cost ....		<u>\$35,993,300</u>