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INTERSTATE COMMERCE COMMISSION

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# Denver and Rio Grande Western Railroad Equipment Trust

SERIES KK

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## Lease of Railroad Equipment

Dated as of February 1, 1972

THE FIRST NATIONAL BANK OF DENVER  
Trustee

TO

THE DENVER AND RIO GRANDE WESTERN  
RAILROAD COMPANY

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## Agreement

Dated as of February 1, 1972

JOHN R. LIGGITT AND ROBERT J. SULLIVAN  
Vendors

WITH

THE FIRST NATIONAL BANK OF DENVER  
Trustee

AND

THE DENVER AND RIO GRANDE WESTERN  
RAILROAD COMPANY

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**LEASE OF RAILROAD EQUIPMENT**, dated as of the first day of February, 1972, between THE FIRST NATIONAL BANK OF DENVER, a national banking association organized and existing under the laws of the United States, Trustee as hereinafter mentioned (hereinafter called the Trustee), party of the first part, and THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY, a corporation of the State of Delaware (hereinafter called the Company), party of the second part:

WHEREAS, by a certain Agreement dated February 1, 1972, between John R. Liggitt and Robert J. Sullivan, Vendors, the Trustee and the Company (hereinafter called the Agreement), a counterpart original whereof is hereto annexed and made a part hereof, there was constituted "Denver and Rio Grande Western Railroad Equipment Trust, Series KK," and it was agreed that the railroad equipment which said Vendors transfer or cause to be transferred to the Trustee thereunder is to be leased to the Company hereunder; and

WHEREAS, pursuant to the provisions of the Agreement, it is proposed that the railroad equipment hereinafter described or referred to shall be transferred to the Trustee thereunder, and the title to said railroad equipment vested in the Trustee:

NOW, THIS AGREEMENT WITNESSETH:

That the Trustee, acting in pursuance of the Agreement, for and in consideration as well of the sum of one dollar to it paid by the Company at or before the ensembling and delivery hereof, the receipt of which is hereby acknowledged, as of the rents and covenants hereinafter mentioned to be paid, kept and performed by the Company, has let and leased, and does hereby let and lease, to the Company new standard-gauge railroad rolling stock of Denver and Rio Grande Western Railroad Equipment Trust, Series KK to wit:

<u>No. of Units</u>	<u>Description</u>	<u>Road Numbers (both inclusive)</u>	<u>Estimated Cost</u>
125	70-ton, 51'6" insulated box cars, equipped with Equipco adjustable sidewall fillers and Evans dual air bag bulkheads (Pacific Car and Foundry Company, Builder) at \$23,614.62 each . . . . .	61500-61624	\$ 2,951,827.50
125	70-ton, 51'6" insulated box cars, equipped with Evans dual air bag bulkhead load dividers (Pacific Car and Foundry Company, Builder) at \$23,919.62 each . . . . .	61625-61749	2,989,952.50
50	61'1", 100-ton insulated box cars, equipped with Evans dual air bag bulkhead load dividers (Pacific Car and Foundry Company, Builder) at \$27,947.58 each . . . . .	50600-50649	1,397,379.00
100	100-ton, open top quadruple hopper cars, 3483 cu. ft. capacity (Bethlehem Steel Corporation, Builder) at \$15,855.00 each . . . . .	16275-16374	1,585,500.00
12	3000-HP (Model GP-40) general purpose diesel-electric locomotives (General Motors Corporation, Electro-Motive Division, Builder) at \$263,353.00 each . . . . .	3094-3105	3,160,236.00
	Total estimated cost . . . . .		<u>\$12,084,895.00</u>

or so much thereof as may be transferred and delivered to the Trustee pursuant to the Agreement, together with such other railroad equipment as shall be acquired for said trust in substitution for any of the equipment above specifically described, or in addition thereto, and subjected to this Lease as herein provided (all hereinafter sometimes collectively called the "Trust Equipment").

The estimated cost of the railroad equipment above specifically described has been certified to the Trustee to be not less than \$12,084,895.00. The cost of the Trust Equipment whenever referred to herein or in the Agreement (except as provided in Section 5 of Article I of the Agreement with respect to substituted equipment), shall mean the actual cost thereof, including only such items as may properly be included in such cost under the accounting rules of the Interstate Commerce Commission.

If the aggregate cost, as finally determined, of all the Trust Equipment acquired by the Trustee and subjected to this Lease pursuant to the foregoing provisions hereof should be less than 133 $\frac{1}{3}$ % of the aggregate principal amount of Trust Certificates, there shall be subjected to this Lease (subject, however, to the provisions of Section 4 of Article I of the Agreement) additional new standard-gauge railroad rolling stock (other than work or passenger equipment), approved as to character by the Company, in such amount and of such cost that the aggregate final cost of all the Trust Equipment will be at least said percentage of said aggregate principal amount of Trust Certificates. Any such additional new standard-gauge railroad rolling stock shall be part of the Trust Equipment, subject to all the terms and conditions hereof and of the Agreement in all respects as though it had been part of the original Trust Equipment above specifically described.

In the event that the Vendors shall, as provided in Section 5 of Article I of the Agreement, acquire other new standard-gauge railroad rolling stock (other than work or passenger equipment) in substitution for any portion or portions of the railroad equipment above specifically described, such other new standard-gauge rolling stock shall be included as part of the Trust Equipment and shall be subject to all the terms and conditions of this Lease and of the Agreement in all respects as though it had been a part of the original Trust Equipment hereinabove described.

If less than all of the \$9,000,000., aggregate principal amount of Trust Certificates which may be issued pursuant to the Agreement (as provided in Section 6 of Article I of the Agreement) are issued, there shall be subjected to this Lease only such units of the Trust Equipment above specifically described (including any units to be acquired in substitution therefor as provided in Section 5 of Article I of the Agreement) as shall have an aggregate final cost of at least 133 $\frac{1}{3}$ % of the aggregate principal amount of Trust Certificates issued by the Trustee.

Whenever such additional or substituted new standard-gauge railroad rolling stock shall be acquired and subjected to this Lease (as provided in Section 4 or Section 5, respectively, of Article I of the Agreement), or in the event that the Trustee shall acquire and lease to the Company less than all of the Trust Equipment spe-

cifically described in this Lease, or in any supplement hereto, as hereinbefore provided, the Trustee and the Company shall execute a supplemental lease describing all of the equipment to be subjected to the terms and provisions hereof and of the Agreement. Such supplemental lease shall be filed or recorded in the same manner as this Lease.

As and when the Trust Equipment shall from time to time be transferred and delivered to the Trustee or a qualified agent of the Trustee, as provided in Section 1 of Article I of the Agreement and marked in accordance with the provisions of Article Fourth hereof, the same shall be delivered to the Company and shall upon such delivery to the Company *ipso facto* and without further deed of lease or transfer pass under and become subject to all the terms and provisions of this Lease, and be deemed a portion of the Trust Equipment leased by the Trustee to the Company hereunder, in all respects as if same had been so delivered simultaneously with the execution and delivery hereof.

And the Company, in consideration of the premises, by these presents covenants and agrees with the Trustee as follows:

#### ARTICLE FIRST

The Company hereby accepts (subject to the conditions mentioned in the Agreement) this Lease of all the Trust Equipment, and hereby covenants and agrees to accept delivery and possession hereunder of the Trust Equipment as hereinbefore provided; and the Company covenants and agrees to pay to the Trustee or its assigns at such place as it may designate (or, in the case of taxes, to the proper taxing authority) rent hereunder which shall be sufficient to pay and discharge the following items, when and as the same shall become due and payable:

(a) From time to time, as and when Trust Certificates are issued and sold, such amounts of cash, if any, as may be necessary, when added to the net proceeds of the sale of such Trust Certificates (exclusive of any accrued dividends) paid to the Trustee by the subscribers for such Trust Certificates pursuant to the Agreement, to make the total sum then deposited with the Trustee equal to the aggregate principal amount of such Trust Certificates then issued.

(b) From time to time, as and when any of the Trust Equipment shall be delivered to the Company, amounts in cash equal to the difference between the cost of the Trust Equipment so delivered, as certified to the Trustee by the Comptroller or an Assistant Comptroller of the Company, and the amount of Deposited Cash (as defined in Section 3 of Article I of the Agreement) payable in respect thereof as provided in Section 3 of Article I of the Agree-

ment, provided that the aggregate of all amounts so paid to the Trustee shall never be less than twenty-five per cent. (25%) of the cost of all the Trust Equipment which shall then and theretofore have been delivered hereunder.

(c) The necessary and reasonable expenses of the trust, including (without limitation) all expenses connected with the Trust Equipment and this Lease thereof, and with the preparation, issuance and sale of the Trust Certificates, sums required to restore to Deposited Cash and to other cash held by the Trustee under the Agreement and invested in Government Securities (as defined in and as provided by Section 9 of Article V of the Agreement), an amount equal to any expenses incurred or sustained by the Trustee in connection with any such purchase or sale of Government Securities, and also an amount equal to any loss of principal incident to any such sale of Government Securities for a sum less than the amount paid thereof, including accrued interest.

(d) Any and all taxes, assessments and other governmental charges upon the income or property of the trust, or the Agreement and this Lease evidencing the same, which the Trustee under the Agreement may be required to pay, but excluding any and all taxes, assessments and governmental charges which the Company or the Trustee may be required to deduct or retain or withhold from the principal of the Trust Certificates or from the dividends thereon, under any present or future lawful requirement of the United States of America or of any state, county, municipality or other taxing authority therein.

(e) The amount of the dividend payable on the principal of the Trust Certificates (whether or not evidenced by dividend warrants), on the respective dates on which such dividends shall severally become payable; also, to the extent permitted by law, a sum equal to interest at the dividend rate, from the due date, upon the amount of any installments of rental payable under this paragraph (e) and the following paragraph (f) theretofore due and unpaid.

(f) The principal amount of the Trust Certificates when and as the same shall become payable, whether by declaration or upon the respective dates of maturity, or otherwise.

The Company shall not be required, however, to pay any tax, assessment or other governmental charge so long as the Company shall in good faith and by appropriate legal proceedings contest the validity thereof unless thereby, in the judgment of the Trustee, the rights or interests of the Trustee or of the Trust Certificate holders may be materially endangered.

All rentals payable hereunder shall be payable at such place or places as the Trustee shall designate, in such coin or currency of the United States of America as, at the time of payment, is legal tender for public and private debts.

## ARTICLE SECOND

This Lease shall continue in force until the rents so paid hereunder shall furnish moneys sufficient to meet, discharge and cancel all the interest in said Denver and Rio Grande Western Railroad Equipment Trust, Series KK, created in respect of the Trust Equipment. At the termination of this Lease and after all payments due or to become due from the Company hereunder and under said Agreement shall have been completed and fully made to the Trustee, title to all of the Trust Equipment shall vest in the Company, and thereupon the Trustee shall execute for filing and recording with the Interstate Commerce Commission pursuant to Section 20(c) of the Interstate Commerce Act and otherwise as may be required by law such instrument or instruments in writing as reasonably shall be requested by the Company in order to transfer to the Company all of the right, title and interest of the Trustee in and to all of the Trust Equipment; provided, however, and it is hereby agreed, that until then the title to none of the Trust Equipment shall pass to or vest in the Company, but title to and ownership of all the Trust Equipment shall be reserved to and remain in the Trustee, notwithstanding the delivery of the Trust Equipment to and the possession and use thereof by the Company.

The Trustee makes no representations or warranties as to its title to or ownership of the Trust Equipment nor as to the freedom of the Trust Equipment from prior encumbrances or liens, and nothing herein contained shall require the Trustee to execute any assignment or transfer of other than such interest as it may have and own at the time in the Trust Equipment.

## ARTICLE THIRD

Upon the written request of the Company, stating that the use of any of the Trust Equipment is no longer required by the Company, evidenced by a resolution of its Board of Directors, the Trustee may, while the Company is not in default hereunder, execute and deliver a bill of sale assigning and transferring to the purchaser named by the Company the absolute title to any of the Trust Equipment; provided, however, that none of the Trust Equipment shall be so assigned or transferred unless simultaneously the Trustee shall receive from said purchaser the agreed purchase price thereof and from the Company a sum in cash equal to the amount, if any, by which said purchase price is less than the then fair value of the Trust Equipment so sold. The sum so paid to the Trustee shall be held by it for the equal and proportionate benefit of the holders of the Trust Certificates until paid out by the Trustee upon the written request of the Company, for the purchase by the Trustee of new standard-gauge railroad rolling stock (other than work or passenger equipment), free from all liens and encumbrances, and upon the delivery of such new equipment to the Trustee, accompanied by a certificate or certificates of delivery of such Trust Equipment, a bill or bills of sale, an opinion of counsel and a certificate of cost in like manner as is

provided in Section 4 of Article I of the Agreement. The Company will pay as rental for the Trust Equipment any additional moneys necessary to be paid to the manufacturers of such new railroad rolling stock, if the cost thereof exceeds sums then in the hands of the Trustee to be applied on account thereof. Any equipment so acquired and substituted shall be marked in accordance with the provisions of Article Fourth hereof and immediately upon being so marked shall be part of the Trust Equipment, subject to all the terms and conditions hereof and of the Agreement in all respects as though it had been part of the original Trust Equipment herein described, and the Company and the Trustee shall execute, and the Company shall file or record, as required by law, a supplemental lease thereof, describing the same, upon and subject to all the terms and conditions hereof. The term "Trust Equipment," wherever used herein, unless otherwise indicated by the context, is intended to include any new equipment so acquired or otherwise subjected to this Lease or required or intended so to be.

No part, fixture, or device attached to any unit of the Trust Equipment, the cost of which is included in the cost of such unit to the Trustee, shall be removed by the Company without the prior approval of the Trustee nor unless such removal shall be without damage to such unit and such unit shall, notwithstanding such removal, be and remain available for service as standard-gauge railroad rolling stock. Such approval shall not be given unless the Company shall not be in default hereunder and shall file with the Trustee a certificate, executed by a Vice-President, Comptroller, Assistant Comptroller, or the Chief Mechanical Officer of the Company, showing that such part, fixture or device is no longer required by the Company and that its removal will not impair the efficiency and usefulness of such unit in the service of transportation, and unless the Company shall pay or cause to be paid to the Trustee a sum of money equal to the fair value of such part, fixture or device. The Trustee shall execute and deliver a bill of sale assigning and transferring to the purchaser named by the Company the absolute title to such part, fixture or device, and shall hold the sums of money so paid to it for the equal and proportionate benefit of the holders of the Trust Certificates until paid out by the Trustee upon the written request of the Company for the purchase by the Trustee of new standard-gauge railroad rolling stock (other than work or passenger equipment), or similar parts, fixtures or devices, free from all liens and encumbrances, in the manner and upon the terms, conditions and stipulations set forth in the foregoing paragraphs. The Trustee shall incur no liability or responsibility in consequence of its approval of the removal of any such part, fixture or device while the Company is not in default hereunder, upon receipt of the certificate and the payment hereinbefore required to be furnished to it by the Company.

The fair value of any unit of the Trust Equipment, or of any part, fixture or device thereof, as used in this Article Third or in paragraph (a) of Article Fifth hereof shall mean the greater of (i) the original cost thereof, less an amount repre-

senting depreciation thereon arising from reasonable wear and tear at the rate approved for such units of the Trust Equipment, or for any such part, fixture or device, by the Interstate Commerce Commission (but in no event exceeding one-fifteenth of such original cost per annum), or (ii) the reasonable market value thereof at the time, all as certified to the Trustee by a Vice-President, the Comptroller, an Assistant Comptroller, or the Chief Mechanical Officer of the Company, (hereinafter called Certificate of Cost).

#### ARTICLE FOURTH

At or before delivery to the Company of each unit of the Trust Equipment, there shall be plainly, distinctly, permanently and conspicuously placed and fastened upon each side of such unit a metal plate bearing the following words, or such words shall be otherwise plainly, distinctly, permanently and conspicuously marked on each side of such unit, in either case in letters not less than one inch in height:

“Denver and Rio Grande Western Railroad Equipment Trust, Series KK, The First National Bank of Denver, Trustee, Owner and Lessor.”

Such plate or marks shall be such as to be readily visible and as to indicate plainly the Trustee's ownership of the Trust Equipment. In case, during the continuance of this Lease, any of such plates or marks shall at any time be removed, defaced or destroyed, the Company will immediately cause the same to be restored or replaced. The Company will not change, or permit to be changed, the numbers upon any of the Trust Equipment (nor any numbers which may be substituted as herein provided), except in accordance with a statement of new numbers to be substituted therefor, which previously shall have been filed with the Trustee by the Company and consented to by the Trustee and filed or recorded in each public office where this instrument shall have been filed or recorded.

The Trust Equipment may be lettered “Denver and Rio Grande Western Railroad Company,” “Rio Grande,” “D. & R. G. W. R. R. Co.,” “D. & R. G. W.,” or in some other appropriate manner, for convenience of identification of the leasehold interest of the Company therein; but the Company, during the continuance of this Lease, will not allow the name of any person, association or corporation to be placed on any of the Trust Equipment as a designation which might be interpreted as a claim of ownership thereof by the Company or by any person, association or corporation other than the Trustee.

#### ARTICLE FIFTH

(a) The Company during the continuance of this Lease, will maintain and keep all the Trust Equipment in good order and repair, at its own proper cost and charge. The Company will promptly replace, at its own cost, any of the Trust Equipment that may be worn out, lost, destroyed or otherwise rendered permanently unfit for use by any cause whatsoever (hereinafter in this paragraph called Casualty Loss

Trust Equipment), by new standard-gauge railroad rolling stock (other than work or passenger equipment) of equal value; provided, however, the Company may defer such replacement of Casualty Loss Trust Equipment during any period during which the value of the unreplaced Casualty Loss Trust Equipment does not exceed the greater of: (i) \$50,000 or (ii) 1% of the aggregate principal amount of Trust Certificates outstanding at the time such determination is required to be made. For the purpose of this Article Fifth the value of such new rolling stock shall mean the lesser of (i) the cost thereof or (ii) the reasonable value thereof; and the value of such Casualty Loss Trust Equipment shall be the then fair value thereof, determined as provided in Article Third hereof. The title to all new rolling stock procured for such replacement shall be taken in the name of the Trustee, free from liens, and such new rolling stock shall be marked in accordance with the provisions of Article Fourth hereof. At the time of every such replacement the Company shall deliver to the Trustee a Certificate of Cost stating the fair value of the Casualty Loss Trust Equipment and the cost and reasonable value of the new rolling stock with which it is replaced, together with a bill or bills of sale, an opinion of counsel satisfactory to the Trustee (who may be counsel to the Company) and a certificate as to delivery, in like manner as is provided in Section 4 of Article I of the Agreement.

Thereupon, such new rolling stock shall be deemed part of the Trust Equipment, subject to all the terms and conditions hereof and of the Agreement in all respects as though it had been part of the original Trust Equipment; and the Trustee and the Company shall execute a supplemental lease thereof, describing the same, upon and subject to all the terms and conditions hereof, which shall be filed, or recorded by the Company in the same manner as this Lease.

The Company shall have the right, at its option, in lieu of replacing Casualty Loss Trust Equipment with new rolling stock, to satisfy all or any part of such obligation by the deposit of cash with the Trustee for the equal and proportionate benefit of the holders of the Trust Certificates until such Casualty Loss Trust Equipment shall be replaced as provided herein. Each such deposit of cash shall be accompanied by a Certificate of Cost describing the Casualty Loss Trust Equipment covered by the deposit; stating the fair value thereof; and stating that the Company is delivering such cash to the Trustee in total satisfaction (or if partial satisfaction, the portion thereof) of the Company's obligation to replace the Casualty Loss Trust Equipment described in such Certificate. At the time the Casualty Loss Trust Equipment covered by a cash deposit is replaced by the Company with new rolling stock, the amount of such deposit shall be paid to the Company.

(b) The Company covenants and agrees to furnish to the Trustee, whenever required by the Trustee, and at least once in every year during the continuance of this Lease, an accurate statement of the amount, description and numbers of the Trust Equipment then covered hereby; the amount, description, numbers and fair value of all Trust Equipment which became Casualty Loss Trust Equipment during the previous year; the number of units of Trust Equipment repaired during the pre-

and the Company simultaneously with the execution of this Agreement, shall execute and deliver the Lease.

SECTION 2. The Trustee shall at any time or from time to time, upon request of the Vendors, and without awaiting the filing or recording of this Agreement or of the Lease, execute and deliver to the subscribers to said Denver and Rio Grande Western Railroad Equipment Trust, Series KK, as designated in writing by the Vendors, all or any portion of the Trust Certificates issuable hereunder, subject to the provisions of Article II hereof, upon the deposit in cash with the Trustee or to its credit as Trustee hereunder, with such banks, bankers or trust companies as may be designated by the Vendors and approved by the President or a Vice-President or Treasurer of the Company, and also approved by the President, a Vice-President, or an Assistant Vice-President of the Trustee, of the proceeds of the Trust Certificates thereupon being issued hereunder and any installment of rental due under subdivision (a) of Article First of the Lease.

The Trustee may likewise cause to be deposited with such banks, bankers or trust companies the installments of rental payable to it on each delivery of Trust Equipment pursuant to subdivision (b) of Article First of the Lease, and any sums received by it pursuant to Article Third of the Lease.

Any interest allowed by the Trustee or by said banks, bankers or trust companies upon any moneys so deposited, shall belong to the Company and be paid to it by or upon the order of the Trustee, so long as the Company shall not be in default hereunder or under the Lease, in lieu of the use of the Trust Equipment for the period before the delivery or replacement thereof. The certificates of the banks, bankers or trust companies so designated, stating that they hold a stated amount subject to the order of the Trustee, shall be full protection to the Trustee for its action on the faith thereof. Said banks, bankers or trust companies shall be fully protected in paying said moneys so deposited with them, and any such interest, to or upon the order of the Trustee, and shall be under no obligation to see to the application thereof in accordance with the provisions of this Agreement.

SECTION 3. The cash proceeds of the Trust Certificates (excluding any premium or accrued dividends paid upon the original issuance of Trust Certificates), the rentals, if any, under subdivision (a) of Article First of the Lease, deposited with or to the credit of the Trustee as in Section 2 of this Article I provided, any sums restored to Deposited Cash from rentals under subdivision (c) of Article First of the Lease (the aggregate of said sums hereinabove in this Section 3 mentioned being hereinafter called Deposited Cash), and any installments of rental paid upon the delivery of Trust Equipment pursuant to subdivision (b) of Article First of the Lease shall, until paid out by the Trustee, be deposited in trust for the benefit of the holders of the Trust Certificates.

Whenever from time to time any unit or units of the Trust Equipment shall be transferred and delivered to the Trustee, the Trustee shall, if requested so to do, subject to the provisions of Section 4 of this Article I, pay to the Vendors, or upon their order, out of the Deposited Cash, an amount which, together with all payments

previously made out of Deposited Cash, shall equal either (a) seventy-five per cent. (75%) of the aggregate estimated cost, as set forth in the Lease, of the Trust Equipment then and theretofore so transferred and delivered to the Trustee, or (b) seventy-five per cent. (75%) of the aggregate certified cost of the Trust Equipment then and theretofore so transferred and delivered to the Trustee, whichever is less. The Trustee shall make payment of the remainder of the certified cost out of the installment of rental payable on such delivery pursuant to subdivision (b) of Article First of the Lease.

Upon the delivery of all of the Trust Equipment, as specified by the Lease or any supplemental lease, and upon the payment in full for the same in the manner provided in this Agreement, and if the Company shall not then be known by the Trustee to be in default under this Agreement or under the Lease, any Deposited Cash and (unless otherwise expressly provided in this Agreement or the Lease) all other moneys derived from this Agreement or the Lease, remaining in the hands of the Trustee, shall be applied by the Trustee toward payment of the next maturing principal of Trust Certificates then outstanding, as the same shall become payable, and to the extent that such payments are so made by the Trustee out of such funds so remaining in the hands of the Trustee the next maturing installment or installments of rental payable pursuant to subdivision (f) of Article First of the Lease shall be correspondingly reduced.

SECTION 4. The Trustee shall not pay out any Deposited Cash or sums received by it under subdivision (b) of Article First of the Lease against the delivery of any of the Trust Equipment, unless and until it shall have received

(a) a certificate of the agent or agents designated by the Trustee to receive delivery of the Trust Equipment stating that the Trust Equipment specified by number in such certificate has been delivered to such agent or agents and marked in accordance with the provisions of Article Fourth of the Lease;

(b) a bill or bills of sale of such Trust Equipment from the manufacturer or owner thereof or the Vendors to the Trustee, containing or accompanied by a warranty or guaranty to the Trustee that the title to the Trust Equipment described therein is free from all liens or encumbrances;

(c) an opinion of counsel satisfactory to the Trustee (who may be counsel to the Company) that such bill or bills of sale are valid and effective, either alone or in connection with any other instruments executed in connection therewith, to vest in the Trustee, free from all liens and encumbrances, the title so transferred to the Trustee; and

(d) a certificate as to the cost of such Trust Equipment signed by the Comptroller or Assistant Comptroller of the Company, which certificate shall state either that the cost of such Trust Equipment is an amount therein specified or that the cost of such Trust Equipment is not less than an amount therein specified, that such Trust Equipment is new standard-gauge railroad rolling stock (other than work or passenger equipment), that it is of the character called

for by this Agreement and by the Lease, and that it has been approved by the Company in accordance with this Agreement and the Lease.

Any certificate as to cost may state that the cost of the Trust Equipment therein referred to is tentatively determined, subject to final adjustment as evidenced by a final certificate of cost to be delivered to the Trustee. If the aggregate cost as finally determined of all the Units of Trust Equipment that are obtained and subjected thereto, should be less than 133 $\frac{1}{3}$ % of the sum of the aggregate principal amount of Trust Certificates issued hereunder, the Vendors will acquire and transfer, or cause to be acquired and transferred, to the Trustee, subject to all the terms of this Agreement, other new standard-gauge railroad rolling stock (other than work or passenger equipment), approved as to character by the Company, in such amount and of such cost that the aggregate final cost of all the Trust Equipment will be at least said percentage of said sum.

SECTION 5. In the event it may be deemed necessary or desirable to procure for the transportation services of the Company, and include in the Trust, other railroad equipment in lieu of any of the railroad equipment described in the Lease and which shall not have been transferred and delivered to the Trustee pursuant to the provisions of this Agreement, the Vendors may acquire or contract to acquire, and substitute as part of the Trust Equipment, other new standard-gauge railroad rolling stock (other than work or passenger equipment) of character approved by the Company; provided, however, that the aggregate estimated cost of the new railroad equipment so substituted shall be not less than the aggregate estimated cost of the railroad equipment for which such new railroad equipment will be substituted. Such other new standard-gauge railroad rolling stock shall, by supplemental instrument or instruments, be included as part of the Trust Equipment, in place of the railroad equipment for which it will be substituted at costs determined as hereinabove provided, and shall be subject to all the terms and conditions of this Agreement and of the Lease in all respects as though it had been part of the original Trust Equipment described in the Lease.

SECTION 6. Anything in this Article contained to the contrary notwithstanding, the aggregate principal amount of the Trust Certificates which shall be executed and delivered by the Trustee under this Agreement shall not exceed the sum of Nine Million Dollars (\$9,000,000.) at any time outstanding (subject, however, to the provisions of Section 6 of Article II of this Agreement).

## ARTICLE II.

SECTION 1. Each of the Bearer Trust Certificates shall represent an interest in the principal amount of One Thousand Dollars (\$1,000.) and each of the registered Trust Certificates without dividend warrants shall represent an interest in the principal amount therein stated in the trust hereby created; and each of the Trust Certificates shall bear dividends on its principal amount at the rate to be determined at the time of delivery thereof by the Trustee from its date of issue until paid, payable semi-annually on the first day of February and August in each year, commencing August 1, 1972, but only from and out of the rentals and moneys otherwise received by the

IN WITNESS WHEREOF the Vendors have hereunto set their hands and seals, and the Trustee and the Company have caused their names to be signed hereto by duly authorized officers, and sealed with their corporate seals duly attested, as of the day and year first above written.

Signed, sealed, acknowledged and delivered in the presence of:

*[Handwritten signature]* ..... [SEAL]  
*[Handwritten signature]* ..... [SEAL]  
*[Handwritten signature]* .....  
Vendors.

THE FIRST NATIONAL BANK  
OF DENVER, TRUSTEE,

Signed, sealed, acknowledged and delivered in the presence of:

By *[Handwritten signature]* .....  
Vice-President.  
Attest: *[Handwritten signature]* .....  
Assistant Cashier.

THE DENVER AND RIO GRANDE WESTERN  
RAILROAD COMPANY,

Signed, sealed, acknowledged and delivered in the presence of:

By *[Handwritten signature]* .....  
President.  
Attest: *[Handwritten signature]* .....  
Secretary.

STATE OF COLORADO  
CITY AND COUNTY OF DENVER } SS.

I, **K. C. GARDNER**, a Notary Public in and for said City and County in the State aforesaid, do hereby certify that JOHN R. LIGGITT and ROBERT J. SULLIVAN, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that they signed, sealed and delivered said instrument in writing as their free and voluntary act and deed for the uses and purposes therein contained.

Given under my hand and official seal this 20<sup>th</sup> day of January, 1972.

My commission expires My Commission Expires 12/31/1975

K. C. Gardner  
Notary Public.

STATE OF COLORADO }  
CITY AND COUNTY OF DENVER } ss.

I, W. C. SARDNER, a Notary Public in and for said City and County in the State aforesaid, do hereby certify that MILTON G. JANECEK, Vice-President, and JAMES R. COWGILL, Assistant Cashier of THE FIRST NATIONAL BANK OF DENVER, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument in writing as Vice-President and Assistant Cashier of said corporation, appeared before me this day in person and acknowledged that at the time of the execution of said instrument in writing they were respectively Vice-President and Assistant Cashier of said corporation; that the seal affixed thereto is the common and corporate seal of said corporation, and that they signed, sealed and delivered said instrument in writing as their free and voluntary act, and as the free and voluntary act of said THE FIRST NATIONAL BANK OF DENVER for the uses and purposes therein set forth.

Given under my hand and official seal this 20th day of January, 1972.

My commission expires..... My Commission expires April 19, 1975

*W. C. Sardner*  
Notary Public.

STATE OF COLORADO }  
CITY AND COUNTY OF DENVER } ss.

BE IT REMEMBERED and I do hereby certify that on this 24th day of January, 1972, before me a Notary Public duly commissioned, qualified and acting for said State, City and County, personally came and appeared before me in the City and County of Denver, G. B. Aydelott and M. E. Masterson as President and Secretary of The Denver and Rio Grande Western Railroad Company, to me personally known and known to me to be such officers respectively and the individuals described and named in and the identical persons who subscribed their names to and whose names are subscribed to and who executed the within and foregoing instrument of writing as such officers respectively in my presence; and the said G. B. Aydelott and M. E. Masterson, and each of them, duly acknowledged to me that the seal affixed to the foregoing instrument is the corporate seal of The Denver and Rio Grande Western Railroad Company and that the same was thereunto affixed by the authority of said corporation; that said instrument was by like authority subscribed with its corporate name; that the said G. B. Aydelott is the President of said corporation and the said M. E. Masterson is the Secretary thereof; that by authority of said corporation they respectively subscribed their names thereto as President and Secretary and that they signed, sealed and delivered the said instrument of writing as their free and voluntary act and deed, and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

Given under my hand and notarial seal the day and year first above written.

My commission expires Mar 20, 1973

*William D. Bergeson*  
Notary Public.

mental agreement, shall be entitled to receive any profit which may be realized from any sale by the Trustee of Government Securities, or any portion thereof.

Any interest allowed or received by the Trustee upon moneys received by it under the provisions of this Agreement and any interest received upon investments made by the Trustee on request of the Company as aforesaid (in excess of accrued interest paid from Cash at the time of purchase) shall, so long as there shall be no default on the part of the Company hereunder or under the Lease, be paid to the Company by the Trustee.

Any request made pursuant to the provisions of this Section shall be in writing and signed by the Treasurer or Comptroller of the Company.

SECTION 10. The Trustee shall, at least once in each year, if requested by the Company, render to the Company a statement of its said trust and of the accounts relating thereto, and covering such matters as the Company may properly require, and the Vendors and the Company or either of them, may from time to time examine the books and accounts of the Trustee relating to said Trust Certificates and the Lease, to this Agreement and to the acts of the Trustee hereunder.

The Trustee shall be entitled to reasonable compensation for all services rendered by it and the Company agrees to pay from time to time, on demand of the Trustee, such compensation, and to reimburse the Trustee for, and defend and save it harmless against, any and all loss, damage, liability, claims, demands, disbursements and expenses, including counsel fees, which it may incur hereunder or under the Lease, and to secure the payment thereof the Trustee shall have a lien on the Trust Equipment and the proceeds thereof prior to any interest therein of the Trust Certificates, except in respect of any such loss, damage, liability, claims, demands, disbursements and expenses, including counsel fees, arising from or as a result of the Trustee's willful default, misconduct or gross neglect.

SECTION 11. The Trustee may resign and be discharged from the trusts created by this Agreement by giving to the Company and to the holders of the Trust Certificates then outstanding notice in writing of such resignation, specifying a date when such resignation shall take effect. Such notice may be given to the holders of the Trust Certificates by publication of the notice at least once in each of three successive calendar weeks prior to the date specified in such notice in a daily newspaper published in the Borough of Manhattan in the City of New York, and in a daily newspaper published in the City and County of Denver, Colorado. Such resignation shall take effect on the date specified in such notice (which date shall not be less than thirty days after the giving or first publication of such notice), unless previously a successor trustee shall be appointed as hereinafter provided, in which event such resignation shall take effect immediately upon the appointment of such successor trustee.

Any trustee hereunder may be removed at any time by an instrument in writing filed with the Trustee and executed by the holders of a majority in principal amount of the Trust Certificates at the time outstanding.

and the Company simultaneously with the execution of this Agreement, shall execute and deliver the Lease.

SECTION 2. The Trustee shall at any time or from time to time, upon request of the Vendors, and without awaiting the filing or recording of this Agreement or of the Lease, execute and deliver to the subscribers to said Denver and Rio Grande Western Railroad Equipment Trust, Series KK, as designated in writing by the Vendors, all or any portion of the Trust Certificates issuable hereunder, subject to the provisions of Article II hereof, upon the deposit in cash with the Trustee or to its credit as Trustee hereunder, with such banks, bankers or trust companies as may be designated by the Vendors and approved by the President or a Vice-President or Treasurer of the Company, and also approved by the President, a Vice-President, or an Assistant Vice-President of the Trustee, of the proceeds of the Trust Certificates thereupon being issued hereunder and any installment of rental due under subdivision (a) of Article First of the Lease.

The Trustee may likewise cause to be deposited with such banks, bankers or trust companies the installments of rental payable to it on each delivery of Trust Equipment pursuant to subdivision (b) of Article First of the Lease, and any sums received by it pursuant to Article Third of the Lease.

Any interest allowed by the Trustee or by said banks, bankers or trust companies upon any moneys so deposited, shall belong to the Company and be paid to it by or upon the order of the Trustee, so long as the Company shall not be in default hereunder or under the Lease, in lieu of the use of the Trust Equipment for the period before the delivery or replacement thereof. The certificates of the banks, bankers or trust companies so designated, stating that they hold a stated amount subject to the order of the Trustee, shall be full protection to the Trustee for its action on the faith thereof. Said banks, bankers or trust companies shall be fully protected in paying said moneys so deposited with them, and any such interest, to or upon the order of the Trustee, and shall be under no obligation to see to the application thereof in accordance with the provisions of this Agreement.

SECTION 3. The cash proceeds of the Trust Certificates (excluding any premium or accrued dividends paid upon the original issuance of Trust Certificates), the rentals, if any, under subdivision (a) of Article First of the Lease, deposited with or to the credit of the Trustee as in Section 2 of this Article I provided, any sums restored to Deposited Cash from rentals under subdivision (c) of Article First of the Lease (the aggregate of said sums hereinabove in this Section 3 mentioned being hereinafter called Deposited Cash), and any installments of rental paid upon the delivery of Trust Equipment pursuant to subdivision (b) of Article First of the Lease shall, until paid out by the Trustee, be deposited in trust for the benefit of the holders of the Trust Certificates.

Whenever from time to time any unit or units of the Trust Equipment shall be transferred and delivered to the Trustee, the Trustee shall, if requested so to do, subject to the provisions of Section 4 of this Article I, pay to the Vendors, or upon their order, out of the Deposited Cash, an amount which, together with all payments

previously made out of Deposited Cash, shall equal either (a) seventy-five per cent. (75%) of the aggregate estimated cost, as set forth in the Lease, of the Trust Equipment then and theretofore so transferred and delivered to the Trustee, or (b) seventy-five per cent. (75%) of the aggregate certified cost of the Trust Equipment then and theretofore so transferred and delivered to the Trustee, whichever is less. The Trustee shall make payment of the remainder of the certified cost out of the installment of rental payable on such delivery pursuant to subdivision (b) of Article First of the Lease.

Upon the delivery of all of the Trust Equipment, as specified by the Lease or any supplemental lease, and upon the payment in full for the same in the manner provided in this Agreement, and if the Company shall not then be known by the Trustee to be in default under this Agreement or under the Lease, any Deposited Cash and (unless otherwise expressly provided in this Agreement or the Lease) all other moneys derived from this Agreement or the Lease, remaining in the hands of the Trustee, shall be applied by the Trustee toward payment of the next maturing principal of Trust Certificates then outstanding, as the same shall become payable, and to the extent that such payments are so made by the Trustee out of such funds so remaining in the hands of the Trustee the next maturing installment or installments of rental payable pursuant to subdivision (f) of Article First of the Lease shall be correspondingly reduced.

SECTION 4. The Trustee shall not pay out any Deposited Cash or sums received by it under subdivision (b) of Article First of the Lease against the delivery of any of the Trust Equipment, unless and until it shall have received

(a) a certificate of the agent or agents designated by the Trustee to receive delivery of the Trust Equipment stating that the Trust Equipment specified by number in such certificate has been delivered to such agent or agents and marked in accordance with the provisions of Article Fourth of the Lease;

(b) a bill or bills of sale of such Trust Equipment from the manufacturer or owner thereof or the Vendors to the Trustee, containing or accompanied by a warranty or guaranty to the Trustee that the title to the Trust Equipment described therein is free from all liens or encumbrances;

(c) an opinion of counsel satisfactory to the Trustee (who may be counsel to the Company) that such bill or bills of sale are valid and effective, either alone or in connection with any other instruments executed in connection therewith, to vest in the Trustee, free from all liens and encumbrances, the title so transferred to the Trustee; and

(d) a certificate as to the cost of such Trust Equipment signed by the Comptroller or Assistant Comptroller of the Company, which certificate shall state either that the cost of such Trust Equipment is an amount therein specified or that the cost of such Trust Equipment is not less than an amount therein specified, that such Trust Equipment is new standard-gauge railroad rolling stock (other than work or passenger equipment), that it is of the character called

for by this Agreement and by the Lease, and that it has been approved by the Company in accordance with this Agreement and the Lease.

Any certificate as to cost may state that the cost of the Trust Equipment therein referred to is tentatively determined, subject to final adjustment as evidenced by a final certificate of cost to be delivered to the Trustee. If the aggregate cost as finally determined of all the Units of Trust Equipment that are obtained and subjected thereto, should be less than 133 $\frac{1}{3}$ % of the sum of the aggregate principal amount of Trust Certificates issued hereunder, the Vendors will acquire and transfer, or cause to be acquired and transferred, to the Trustee, subject to all the terms of this Agreement, other new standard-gauge railroad rolling stock (other than work or passenger equipment), approved as to character by the Company, in such amount and of such cost that the aggregate final cost of all the Trust Equipment will be at least said percentage of said sum.

SECTION 5. In the event it may be deemed necessary or desirable to procure for the transportation services of the Company, and include in the Trust, other railroad equipment in lieu of any of the railroad equipment described in the Lease and which shall not have been transferred and delivered to the Trustee pursuant to the provisions of this Agreement, the Vendors may acquire or contract to acquire, and substitute as part of the Trust Equipment, other new standard-gauge railroad rolling stock (other than work or passenger equipment) of character approved by the Company; provided, however, that the aggregate estimated cost of the new railroad equipment so substituted shall be not less than the aggregate estimated cost of the railroad equipment for which such new railroad equipment will be substituted. Such other new standard-gauge railroad rolling stock shall, by supplemental instrument or instruments, be included as part of the Trust Equipment, in place of the railroad equipment for which it will be substituted at costs determined as hereinabove provided, and shall be subject to all the terms and conditions of this Agreement and of the Lease in all respects as though it had been part of the original Trust Equipment described in the Lease.

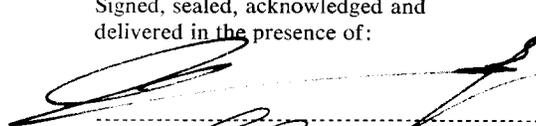
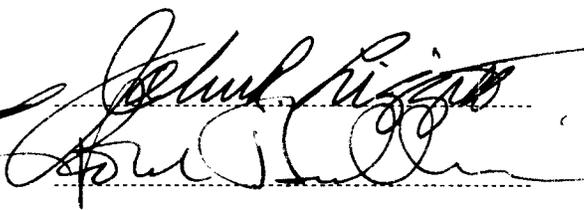
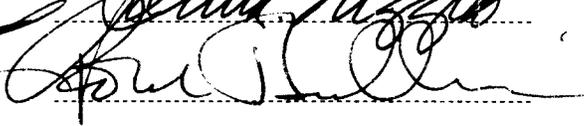
SECTION 6. Anything in this Article contained to the contrary notwithstanding, the aggregate principal amount of the Trust Certificates which shall be executed and delivered by the Trustee under this Agreement shall not exceed the sum of Nine Million Dollars (\$9,000,000.) at any time outstanding (subject, however, to the provisions of Section 6 of Article II of this Agreement).

## ARTICLE II.

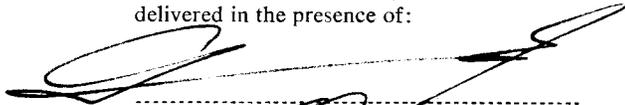
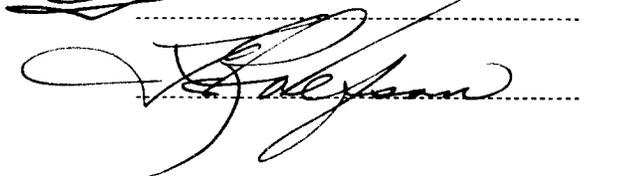
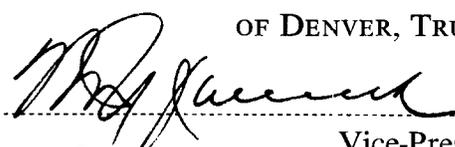
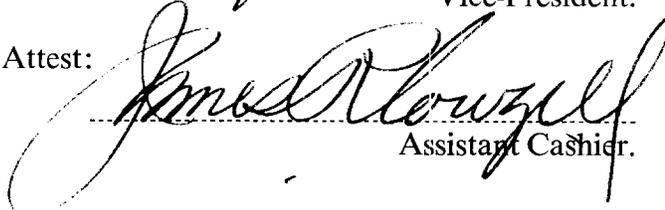
SECTION 1. Each of the Bearer Trust Certificates shall represent an interest in the principal amount of One Thousand Dollars (\$1,000.) and each of the registered Trust Certificates without dividend warrants shall represent an interest in the principal amount therein stated in the trust hereby created; and each of the Trust Certificates shall bear dividends on its principal amount at the rate to be determined at the time of delivery thereof by the Trustee from its date of issue until paid, payable semi-annually on the first day of February and August in each year, commencing August 1, 1972, but only from and out of the rentals and moneys otherwise received by the

IN WITNESS WHEREOF the Vendors have hereunto set their hands and seals, and the Trustee and the Company have caused their names to be signed hereto by duly authorized officers, and sealed with their corporate seals duly attested, as of the day and year first above written.

Signed, sealed, acknowledged and delivered in the presence of:

 .....  
 .....  
 ..... [SEAL]  
 ..... [SEAL]  
Vendors.

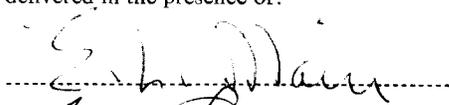
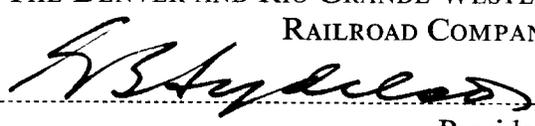
Signed, sealed, acknowledged and delivered in the presence of:

 .....  
 .....  
By  .....  
Vice-President.  
Attest:  .....  
Assistant Cashier.

THE FIRST NATIONAL BANK  
OF DENVER, TRUSTEE,

THE DENVER AND RIO GRANDE WESTERN  
RAILROAD COMPANY,

Signed, sealed, acknowledged and delivered in the presence of:

 .....  
 .....  
By  .....  
President.  
Attest:  .....  
Secretary.

STATE OF COLORADO  
CITY AND COUNTY OF DENVER } SS.

I, **K. C. GARDNER**, a Notary Public in and for said City and County in the State aforesaid, do hereby certify that JOHN R. LIGGITT and ROBERT J. SULLIVAN, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that they signed, sealed and delivered said instrument in writing as their free and voluntary act and deed for the uses and purposes therein contained.

Given under my hand and official seal this 20<sup>th</sup> day of January, 1972.

My commission expires by constitution exp. 12/31/1975

K. C. Gardner  
Notary Public.

STATE OF COLORADO  
CITY AND COUNTY OF DENVER } ss.

I, W. C. SARDNER, a Notary Public in and for said City and County in the State aforesaid, do hereby certify that MILTON G. JANECEK, Vice-President, and JAMES R. COWGILL, Assistant Cashier of THE FIRST NATIONAL BANK OF DENVER, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument in writing as Vice-President and Assistant Cashier of said corporation, appeared before me this day in person and acknowledged that at the time of the execution of said instrument in writing they were respectively Vice-President and Assistant Cashier of said corporation; that the seal affixed thereto is the common and corporate seal of said corporation, and that they signed, sealed and delivered said instrument in writing as their free and voluntary act, and as the free and voluntary act of said THE FIRST NATIONAL BANK OF DENVER for the uses and purposes therein set forth.

Given under my hand and official seal this 20th day of January, 1972.

My commission expires..... My Commission expires April 19, 1975

  
Notary Public.

STATE OF COLORADO  
CITY AND COUNTY OF DENVER } ss.

BE IT REMEMBERED and I do hereby certify that on this 2<sup>nd</sup> day of January, 1972, before me a Notary Public duly commissioned, qualified and acting for said State, City and County, personally came and appeared before me in the City and County of Denver, G. B. Aydelott and M. E. Masterson as President and Secretary of The Denver and Rio Grande Western Railroad Company, to me personally known and known to me to be such officers respectively and the individuals described and named in and the identical persons who subscribed their names to and whose names are subscribed to and who executed the within and foregoing instrument of writing as such officers respectively in my presence; and the said G. B. Aydelott and M. E. Masterson, and each of them, duly acknowledged to me that the seal affixed to the foregoing instrument is the corporate seal of The Denver and Rio Grande Western Railroad Company and that the same was thereunto affixed by the authority of said corporation; that said instrument was by like authority subscribed with its corporate name; that the said G. B. Aydelott is the President of said corporation and the said M. E. Masterson is the Secretary thereof; that by authority of said corporation they respectively subscribed their names thereto as President and Secretary and that they signed, sealed and delivered the said instrument of writing as their free and voluntary act and deed, and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

Given under my hand and notarial seal the day and year first above written.

My commission expires Mar 20, 1973

*William D. Ferguson*  
Notary Public.

mental agreement, shall be entitled to receive any profit which may be realized from any sale by the Trustee of Government Securities, or any portion thereof.

Any interest allowed or received by the Trustee upon moneys received by it under the provisions of this Agreement and any interest received upon investments made by the Trustee on request of the Company as aforesaid (in excess of accrued interest paid from Cash at the time of purchase) shall, so long as there shall be no default on the part of the Company hereunder or under the Lease, be paid to the Company by the Trustee.

Any request made pursuant to the provisions of this Section shall be in writing and signed by the Treasurer or Comptroller of the Company.

SECTION 10. The Trustee shall, at least once in each year, if requested by the Company, render to the Company a statement of its said trust and of the accounts relating thereto, and covering such matters as the Company may properly require, and the Vendors and the Company or either of them, may from time to time examine the books and accounts of the Trustee relating to said Trust Certificates and the Lease, to this Agreement and to the acts of the Trustee hereunder.

The Trustee shall be entitled to reasonable compensation for all services rendered by it and the Company agrees to pay from time to time, on demand of the Trustee, such compensation, and to reimburse the Trustee for, and defend and save it harmless against, any and all loss, damage, liability, claims, demands, disbursements and expenses, including counsel fees, which it may incur hereunder or under the Lease, and to secure the payment thereof the Trustee shall have a lien on the Trust Equipment and the proceeds thereof prior to any interest therein of the Trust Certificates, except in respect of any such loss, damage, liability, claims, demands, disbursements and expenses, including counsel fees, arising from or as a result of the Trustee's willful default, misconduct or gross neglect.

SECTION 11. The Trustee may resign and be discharged from the trusts created by this Agreement by giving to the Company and to the holders of the Trust Certificates then outstanding notice in writing of such resignation, specifying a date when such resignation shall take effect. Such notice may be given to the holders of the Trust Certificates by publication of the notice at least once in each of three successive calendar weeks prior to the date specified in such notice in a daily newspaper published in the Borough of Manhattan in the City of New York, and in a daily newspaper published in the City and County of Denver, Colorado. Such resignation shall take effect on the date specified in such notice (which date shall not be less than thirty days after the giving or first publication of such notice), unless previously a successor trustee shall be appointed as hereinafter provided, in which event such resignation shall take effect immediately upon the appointment of such successor trustee.

Any trustee hereunder may be removed at any time by an instrument in writing filed with the Trustee and executed by the holders of a majority in principal amount of the Trust Certificates at the time outstanding.

SECTION 12. In case at any time the Trustee shall resign or shall be removed or otherwise shall become incapable of acting, a successor may be appointed by the holders of a majority in principal amount of the Trust Certificates at the time outstanding, by an instrument or concurrent instruments signed by such Certificate holders or their attorneys in fact duly authorized, but until a new trustee shall be appointed by said Certificate holders as herein authorized, the Company, by an instrument executed under its corporate seal, may appoint a trustee to fill such vacancy. Every such successor trustee, whether appointed by the Certificate holders or by the Company, shall always be a trust company or bank having power so to act and organized under the laws of the United States of America, the State of Colorado, or the State of New York, and having a capital and surplus aggregating at least five million dollars. After any such appointment by the Company, it shall cause notice of such appointment to be published once a week in each of four successive weeks in a daily newspaper published and of general circulation in the Borough of Manhattan in the City of New York, and in one such newspaper published and of general circulation in the City and County of Denver, Colorado; but any new trustee so appointed by the Company shall immediately, and without further act, be superseded by a trustee appointed, in the manner above provided, by the holders of a majority in principal amount of the Trust Certificates at the time outstanding.

Any successor trustee appointed hereunder shall execute, acknowledge and deliver to the Company an instrument accepting such appointment hereunder, and thereupon such successor trustee, without any further act, deed or conveyance, shall become vested with title to the trust estate, and with all the rights, powers, trusts, duties and obligations of its predecessor in trust hereunder, with like effect as if originally named as trustee herein, and the trustee ceasing to act shall, on the written request of such successor trustee, assign and transfer the trust estate or cause the trust estate to be assigned and transferred to the successor trustee, and shall thereupon be entitled to the payment of its charges and expenses theretofore incurred. Upon request of such successor trustee, the Company shall execute and deliver such instruments of further assurance as may reasonably be required for more fully and certainly vesting in and confirming to such successor trustee all the right, title and interest of the predecessor trustee in and to the trust estate and such rights, powers, trusts, duties and obligations. All instruments herein provided for shall be at the cost of the Company.

Any appointment of a new or successor trustee, acceptance of such appointment by such new or successor trustee, assignment and transfer of the trust estate to such new or successor trustee, or instrument of further assurance, shall be incorporated in a supplemental agreement, which shall be filed and recorded as required by the provisions of Section 4 of Article III hereof.

Any corporation resulting from any merger or consolidation to which the Trustee, or any successor to it, shall be a party, provided such corporation shall be a corporation having power so to act and organized under the laws of the United States of America, the State of Colorado, or the State of New York, and have a capital and surplus aggregating at least five million dollars, shall be the successor trustee under

this Agreement without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

#### ARTICLE VI.

No recourse under any obligation, covenant or agreement of this Agreement, or of the Trust Certificates, or of the guaranty of the Company respecting any Trust Certificates or dividend warrant issued hereunder, shall be had against any stockholder, officer or director, as such, of the Company, or of the Trustee, by the enforcement, of any assessment or by any legal or equitable proceedings, by virtue of any statute or otherwise, it being expressly agreed and understood that this Agreement, the Lease and said guaranty are solely corporate obligations of the Company, and that this Agreement and the Lease and the Trust Certificates and dividend warrants issued hereunder are solely trust obligations of the Trustee, and that no personal liability whatever shall attach to or be incurred by the stockholders, officers or directors, as such, of the Company, or of the Trustee, or any of them, under or by reason of any of the obligations, covenants or agreements contained in this Agreement, the Trust Certificates, the Lease or the guaranty of the Company respecting any of the Trust Certificates or dividend warrants issued hereunder, or implied therefrom, and that any and all personal liability, either at common law or in equity, or by statute or constitution, of every such stockholder, officer or director, as such, is hereby expressly waived as a condition of and consideration for the execution of this Agreement and the issue of such Trust Certificates and dividend warrants.

#### ARTICLE VII.

Any request or other instrument required 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 Certificate 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 of this Agreement, 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 instrument in writing may be proved 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; or by the affidavit of a witness to such execution;

(b) the amount of unregistered Trust Certificates held by any person executing any such request or other instrument as a Certificate holder, and the serial number of the Trust Certificates held by such person and the date of his holding

the same, may be proved by a certificate executed by any trust company, bank, bankers or other depository wheresoever situated whose certificate shall be deemed by the Trustee to be satisfactory, showing that, at the date therein mentioned, such person had on deposit with such depository, or exhibited to such depository, the Trust Certificates numbered and described in such certificate. The Trustee may presume the continuance of any such deposit or holding unless and until it receives proof satisfactory to it to the contrary;

(c) the ownership of bearer Trust Certificates registered as to principal and of fully registered Trust Certificates shall be determined only by the registration books of the Trustee.

#### ARTICLE VIII.

At the termination of the Lease, any moneys remaining in the hands of the Trustee, after paying the principal of and dividends upon the Trust Certificates, and the expenses of the Trustee, including its reasonable compensation, and after the payment of all other sums payable by the Company hereunder, shall be paid to the Company.

#### ARTICLE IX.

Nothing in this Agreement or in the Lease, expressed or implied, is intended or shall be construed to confer upon, or to give to, any person, firm or corporation other than the parties hereto and their successors and the holders of the Trust Certificates and dividend warrants, any right, remedy or claim, under or by reason of this Agreement or the Lease, or of any term, covenant or condition hereof or thereof, and all the terms, covenants, conditions, promises and agreements in this Agreement or in the Lease contained shall be for the sole and exclusive benefit of the parties hereto and their successors and of the holders of the Trust Certificates and dividend warrants.

#### ARTICLE X.

The term "Trustee" as used herein and in the Lease shall be held and construed to mean The First National Bank of Denver, its successors and assigns; and the word "Company" herein, to mean and include The Denver and Rio Grande Western Railroad Company, its successors and assigns. The term "Trust Equipment" wherever used herein or in the Lease, unless otherwise indicated by the context, is intended to include all railroad equipment at any time covered by the Lease or any supplemental lease or this Agreement or required or intended so to be. The term "Trust Certificate" or "Trust Certificates," wherever used herein or in the Lease, includes, unless the context otherwise indicates, both temporary and definitive certificates; and the word "holder" shall include the plural as well as the singular number and, unless otherwise indicated by the context, shall mean and include the bearer of any unregistered Trust Certificate and of any dividend warrant and the registered holder of any registered Trust Certificate.

In case of the death, resignation or inability to act of either of the Vendors, the remaining Vendor shall appoint a successor Vendor, satisfactory to the Trustee, who

shall have all the powers and perform all the duties of a Vendor under this Agreement. In case of the death, resignation, or inability to act of both Vendors, the Trustee shall appoint successor Vendors, satisfactory to the Company, who shall have all the powers and perform all the duties of the Vendors under this Agreement. Any action taken under this Agreement by either of the Vendors herein named, or by any successor Vendor, shall have the same force and effect as if taken by both of the original Vendors. The Vendors shall incur no liability hereunder, or under any bill of sale, guaranty or warranty executed by them as herein provided, for anything other than their own willful default, misconduct or gross neglect. The Vendors shall be entitled to the advice of counsel (who may in appropriate cases be counsel to the Company or to the Trustee) and shall be protected by the advice of such counsel in anything done or omitted to be done by them in accordance with such advice.

Whenever, under the provisions hereof, it is necessary or proper for any notice or demand to be given to or made upon the Company, or if at any time it is desired to give any such notice or make any such demand, such notice or demand may be given or made to the Company by depositing a written statement thereof, securely enclosed in a postpaid wrapper, in the United States registered mail, directed to the Company at Denver, Colorado, and an affidavit by any person representing or acting on behalf of the Trustee as to such mailing, shall be conclusive evidence of the giving of such notice and the making of such demand.

This Agreement may be simultaneously executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument.

### ARTICLE III.

SECTION 1. The Company hereby accepts and becomes bound by all the terms of this Agreement, and hereby covenants and agrees to make payment of the "reasonable expenses" of the trust, which term, wherever used herein, shall be deemed to include the reasonable fees and expenses of the Trustee and of its counsel and agents, and of all taxes, assessments and other governmental charges herein mentioned for which the Trustee, as such, may be liable, but excluding any and all taxes, assessments and governmental charges which the Company or the Trustee may be required to pay or retain from the principal of the Trust Certificates or from the dividends thereon, under any present or future lawful requirement of the United States of America, or of any state, county, municipality or other taxing authority therein.

SECTION 2. The Company covenants, agrees and guarantees that the holder of each of the Trust Certificates, definitive or temporary, shall receive the principal 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 or of this Agreement (and, if not so paid, with interest thereon at the dividend rate to the extent legally enforceable), and shall receive dividends thereon in like money at the rate specified therein from the date specified therein to the date of maturity of such Trust Certificate, at the times and places and otherwise as expressed in the Trust Certificates and, in the case of bearer Trust Certificates, in the dividend warrants (and, if not so paid, with interest thereon at the dividend rate to the extent legally enforceable), less any and all taxes, assessments and governmental charges which the Company or the Trustee may be required to pay or retain from the principal of the Trust Certificates or from dividends thereon, under any present or future lawful requirement of the United States of America or any state, county, municipality or other taxing authority therein; and the Company further covenants and agrees to endorse upon each of the Trust Certificates, definitive or temporary, at or before the issuance and delivery thereof by the Trustee, its guaranty of the prompt payment of the principal thereof and of the dividends thereon, in substantially the forms hereinbefore set forth.

Said guaranty so endorsed shall be signed in the name and on behalf of the Company by the facsimile signature of its President or a Vice-President, without the corporate seal of the Company which is expressly waived. In case any officer of the Company whose signature shall appear on said guaranty shall cease to be such officer of the Company before the Trust Certificates shall have been issued and delivered by the Trustee, such guaranty shall nevertheless be as effective and binding upon the Company as though the person who signed such guaranty had not ceased to be such officer of the Company.

SECTION 3. The Company covenants and agrees that it will pay or cause to be paid or discharged, or make adequate provision for the satisfaction or discharge of, any debt, tax, 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, assessment, obligation or claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings, unless thereby in the judgment of the Trustee, the rights or interests of the holders of Trust Certificates may be materially endangered.

SECTION 4. The Company covenants and agrees to pay the expenses incident to the preparation and execution of the Trust Certificates and dividend warrants including any temporary Trust Certificates to be issued hereunder, or connected with the preparation, execution, recording, registration, reregistration, and filing and refiling hereof or of the Lease and of any instruments executed under the provisions hereof or of the Lease in respect of the Trust Equipment, or any equipment or parts used to replace any of the same.

The Company, with all convenient speed, will cause this Agreement and the Lease, and all supplemental leases and agreements which may be executed under the terms of this Agreement or of the Lease, to be duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act, and otherwise as may be required by law, so that this Agreement and the Lease and all said other instruments may at all times be duly filed and recorded.

SECTION 5. 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 Lease and the intent hereof and thereof.

SECTION 6. The Company covenants that it will make payment of the rentals on account of the Trust Equipment as provided in this Agreement and in the Lease notwithstanding that any of the Trust Certificates and dividend warrants shall have been acquired by the Company or shall not have been presented for payment.

#### ARTICLE IV.

SECTION 1. Neither the Trustee nor the Company will directly or indirectly extend or assent to the extension of the time for the payment of any Trust Certificate or dividend thereon or dividend warrant, but the same shall be paid as herein provided and cancelled, and no Trust Certificate or dividend warrant in substitution therefor shall be issued; and neither the Trustee nor the Company shall directly or indirectly be a party to or assent to any arrangement for purchasing or funding any of said Trust Certificates or dividends thereon or dividend warrants, or for any advance or loan upon the same, at or after maturity. In case the time for payment of any Trust Certificate or dividend thereon or dividend warrant shall be so extended, whether or not such extension be by or with the assent of the Trustee or the Company, or in case, at or after maturity, any Trust Certificates or dividends thereon or dividend warrants shall be purchased or funded, or an advance or loan upon the same be made, by or on behalf of the Trustee or the Company or pursuant to any arrangement requested

or assented to by either of them or to which either of them shall be a party or made with the privity of the Trustee or the Company, such Trust Certificates, dividends and dividend warrants shall not be entitled to the benefit of the Lease or of this Agreement, except subject to the prior payment in full of the principal of all other Trust Certificates, and of all dividends and dividend warrants, whether the same be then matured or unmatured.

SECTION 2. In case one or more of the events of default specified in Article Seventh of the Lease shall occur and shall continue for the time and after the notice therein prescribed, the Trustee in its discretion may, and upon the written request of the holders of not less than 25% of the aggregate principal amount of the Trust Certificates then outstanding shall, by notice in writing delivered to the Company, declare the principal of all the Trust Certificates then outstanding to be due and payable, and thereupon the same shall become and be immediately due and payable without further demand, together with interest, to the extent permitted by law, at the dividend rate on any portion thereof overdue. In any such case the Trustee may retake possession of the Trust Equipment and either may hold or may lease or, publicly or privately, and for cash or upon credit, may sell or dispose of said Trust Equipment, or any part thereof, as the Trustee in its discretion may deem most beneficial to the holders of the Trust Certificates and as may be authorized by law. In case one or more of such events of default shall occur and shall continue as aforesaid (whether or not the principal of the Trust Certificates shall have been declared due and payable), upon the written request of the holders of not less than 25% of the principal amount of the Trust Certificates then outstanding, it shall be the duty of the Trustee, upon being indemnified as hereinafter in Article V provided, to take all steps for the protection and enforcement of its rights and the rights of the holders of the Trust Certificates, and to exercise one or more of the powers in the lease conferred or to take other appropriate judicial proceedings, as the Trustee, being advised by counsel, shall deem in the best interests of the holders of the Trust Certificates. The proceeds of any such lease or sale or disposition, together with any other moneys collected by the Trustee from the Company or from any other proceeding for any enforcement of this Agreement or of the Lease, after deducting the expenses of the trust and the compensation, expenses and liabilities of the Trustee and its counsel, all advances made by the Trustee, and any sums paid for taxes, assessments and other governmental charges which the Trustee may be required by law to pay in respect of the property included in said trust or imposed upon the Trustee in respect of said property or the income of said trust or the Trust Certificates or the dividends thereon or this Agreement or the Lease, shall be applied by the Trustee to the payment:

(1) of the dividends and dividend warrants then due according to their terms, with interest thereon, to the extent permitted by law, at the dividend rate from their respective due dates; and

(2) of the principal of each of the Trust Certificates then outstanding, whether or not then matured according to its terms, with interest thereon at the dividend rate from the maturity thereof;

all said payments to be in full, if said proceeds shall be sufficient, and if not, then *pro rata*, without preference of principal over dividends, or of dividends over principal

or otherwise (subject, however, to Section 1 of this Article IV), and without regard to the dates of maturity thereof. All Certificates and dividend warrants shall be surrendered to the Trustee and cancelled if paid in full, and if paid in part only shall be presented to the Trustee and notice of such part payment stamped thereon.

The foregoing provisions, however, are subject to the condition that if at any time after the principal of the Trust Certificates shall have been declared and have become due and payable, as hereinbefore provided, but before February 1, 1987, all arrears of rental (with interest upon any overdue installment at the respective dividend rate borne by the Trust Certificates to the extent that such interest shall be legally enforceable), the expenses of the trust, the reasonable compensation of the Trustee, and all other sums which shall have become due and payable by the Company hereunder or under the Lease (other than the principal of Trust Certificates and rental installments which shall not at the time have matured according to their terms), shall be paid by the Company before any taking possession, withdrawal, 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 of this Agreement or the Lease 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 case the Trustee, if so requested by the holders of a majority in the principal amount of the Trust Certificates then outstanding, and which shall not have matured according to their terms, shall, by written notice to the Company, waive the default by reason of which the principal of the Trust Certificates shall have been declared and become due and the consequences of such default, but no such waiver shall extend to or affect any subsequent default or impair any right consequent thereon.

Neither such retaking possession nor any withdrawal or lease or sale of the Trust Equipment by the Trustee nor any action or failure or omission to act, against the Company or in respect to the Trust Equipment, on the part of the Trustee or on the part of any holder of any Trust Certificate or the holder of any dividend warrant, nor any delay or indulgence granted to the Company by the Trustee or any such holder, shall affect the obligations of the Company under this Agreement or under the Lease or under its guaranty.

The Company waives presentation and demand in respect of any of the Trust Certificates and dividend warrants and waives notice of presentation, of demand and of any default in the payment of the principal of, or dividends upon, the Trust Certificates.

## ARTICLE V.

SECTION 1. The Trustee hereby covenants and agrees, so far as reasonably possible, to enforce the performance of, all and singular, the terms, conditions and covenants of the Lease.

STATE OF COLORADO  
CITY AND COUNTY OF DENVER } SS.

I, **K. C. GARDNER**, a Notary Public in and for said City and County in the State aforesaid, do hereby certify that JOHN R. LIGGITT and ROBERT J. SULLIVAN, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that they signed, sealed and delivered said instrument in writing as their free and voluntary act and deed for the uses and purposes therein contained.

Given under my hand and official seal this 20<sup>th</sup> day of January, 1972.

My commission expires My Commission Expires 12/31/1975

K. C. Gardner  
Notary Public.

STATE OF COLORADO  
CITY AND COUNTY OF DENVER } ss.

I, W. C. SARDNER, a Notary Public in and for said City and County in the State aforesaid, do hereby certify that MILTON G. JANECEK, Vice-President, and JAMES R. COWGILL, Assistant Cashier of THE FIRST NATIONAL BANK OF DENVER, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument in writing as Vice-President and Assistant Cashier of said corporation, appeared before me this day in person and acknowledged that at the time of the execution of said instrument in writing they were respectively Vice-President and Assistant Cashier of said corporation; that the seal affixed thereto is the common and corporate seal of said corporation, and that they signed, sealed and delivered said instrument in writing as their free and voluntary act, and as the free and voluntary act of said THE FIRST NATIONAL BANK OF DENVER for the uses and purposes therein set forth.

Given under my hand and official seal this 20th day of January, 1972.

My commission expires..... My Commission expires April 19, 1975

  
.....  
Notary Public.

STATE OF COLORADO  
CITY AND COUNTY OF DENVER } ss.

BE IT REMEMBERED and I do hereby certify that on this 2<sup>nd</sup> day of January, 1972, before me a Notary Public duly commissioned, qualified and acting for said State, City and County, personally came and appeared before me in the City and County of Denver, G. B. Aydelott and M. E. Masterson as President and Secretary of The Denver and Rio Grande Western Railroad Company, to me personally known and known to me to be such officers respectively and the individuals described and named in and the identical persons who subscribed their names to and whose names are subscribed to and who executed the within and foregoing instrument of writing as such officers respectively in my presence; and the said G. B. Aydelott and M. E. Masterson, and each of them, duly acknowledged to me that the seal affixed to the foregoing instrument is the corporate seal of The Denver and Rio Grande Western Railroad Company and that the same was thereunto affixed by the authority of said corporation; that said instrument was by like authority subscribed with its corporate name; that the said G. B. Aydelott is the President of said corporation and the said M. E. Masterson is the Secretary thereof; that by authority of said corporation they respectively subscribed their names thereto as President and Secretary and that they signed, sealed and delivered the said instrument of writing as their free and voluntary act and deed, and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

Given under my hand and notarial seal the day and year first above written.

My commission expires Mar 20, 1973

*William D. Ferguson*  
Notary Public.

mental agreement, shall be entitled to receive any profit which may be realized from any sale by the Trustee of Government Securities, or any portion thereof.

Any interest allowed or received by the Trustee upon moneys received by it under the provisions of this Agreement and any interest received upon investments made by the Trustee on request of the Company as aforesaid (in excess of accrued interest paid from Cash at the time of purchase) shall, so long as there shall be no default on the part of the Company hereunder or under the Lease, be paid to the Company by the Trustee.

Any request made pursuant to the provisions of this Section shall be in writing and signed by the Treasurer or Comptroller of the Company.

SECTION 10. The Trustee shall, at least once in each year, if requested by the Company, render to the Company a statement of its said trust and of the accounts relating thereto, and covering such matters as the Company may properly require, and the Vendors and the Company or either of them, may from time to time examine the books and accounts of the Trustee relating to said Trust Certificates and the Lease, to this Agreement and to the acts of the Trustee hereunder.

The Trustee shall be entitled to reasonable compensation for all services rendered by it and the Company agrees to pay from time to time, on demand of the Trustee, such compensation, and to reimburse the Trustee for, and defend and save it harmless against, any and all loss, damage, liability, claims, demands, disbursements and expenses, including counsel fees, which it may incur hereunder or under the Lease, and to secure the payment thereof the Trustee shall have a lien on the Trust Equipment and the proceeds thereof prior to any interest therein of the Trust Certificates, except in respect of any such loss, damage, liability, claims, demands, disbursements and expenses, including counsel fees, arising from or as a result of the Trustee's willful default, misconduct or gross neglect.

SECTION 11. The Trustee may resign and be discharged from the trusts created by this Agreement by giving to the Company and to the holders of the Trust Certificates then outstanding notice in writing of such resignation, specifying a date when such resignation shall take effect. Such notice may be given to the holders of the Trust Certificates by publication of the notice at least once in each of three successive calendar weeks prior to the date specified in such notice in a daily newspaper published in the Borough of Manhattan in the City of New York, and in a daily newspaper published in the City and County of Denver, Colorado. Such resignation shall take effect on the date specified in such notice (which date shall not be less than thirty days after the giving or first publication of such notice), unless previously a successor trustee shall be appointed as hereinafter provided, in which event such resignation shall take effect immediately upon the appointment of such successor trustee.

Any trustee hereunder may be removed at any time by an instrument in writing filed with the Trustee and executed by the holders of a majority in principal amount of the Trust Certificates at the time outstanding.

SECTION 12. In case at any time the Trustee shall resign or shall be removed or otherwise shall become incapable of acting, a successor may be appointed by the holders of a majority in principal amount of the Trust Certificates at the time outstanding, by an instrument or concurrent instruments signed by such Certificate holders or their attorneys in fact duly authorized, but until a new trustee shall be appointed by said Certificate holders as herein authorized, the Company, by an instrument executed under its corporate seal, may appoint a trustee to fill such vacancy. Every such successor trustee, whether appointed by the Certificate holders or by the Company, shall always be a trust company or bank having power so to act and organized under the laws of the United States of America, the State of Colorado, or the State of New York, and having a capital and surplus aggregating at least five million dollars. After any such appointment by the Company, it shall cause notice of such appointment to be published once a week in each of four successive weeks in a daily newspaper published and of general circulation in the Borough of Manhattan in the City of New York, and in one such newspaper published and of general circulation in the City and County of Denver, Colorado; but any new trustee so appointed by the Company shall immediately, and without further act, be superseded by a trustee appointed, in the manner above provided, by the holders of a majority in principal amount of the Trust Certificates at the time outstanding.

Any successor trustee appointed hereunder shall execute, acknowledge and deliver to the Company an instrument accepting such appointment hereunder, and thereupon such successor trustee, without any further act, deed or conveyance, shall become vested with title to the trust estate, and with all the rights, powers, trusts, duties and obligations of its predecessor in trust hereunder, with like effect as if originally named as trustee herein, and the trustee ceasing to act shall, on the written request of such successor trustee, assign and transfer the trust estate or cause the trust estate to be assigned and transferred to the successor trustee, and shall thereupon be entitled to the payment of its charges and expenses theretofore incurred. Upon request of such successor trustee, the Company shall execute and deliver such instruments of further assurance as may reasonably be required for more fully and certainly vesting in and confirming to such successor trustee all the right, title and interest of the predecessor trustee in and to the trust estate and such rights, powers, trusts, duties and obligations. All instruments herein provided for shall be at the cost of the Company.

Any appointment of a new or successor trustee, acceptance of such appointment by such new or successor trustee, assignment and transfer of the trust estate to such new or successor trustee, or instrument of further assurance, shall be incorporated in a supplemental agreement, which shall be filed and recorded as required by the provisions of Section 4 of Article III hereof.

Any corporation resulting from any merger or consolidation to which the Trustee, or any successor to it, shall be a party, provided such corporation shall be a corporation having power so to act and organized under the laws of the United States of America, the State of Colorado, or the State of New York, and have a capital and surplus aggregating at least five million dollars, shall be the successor trustee under

this Agreement without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

#### ARTICLE VI.

No recourse under any obligation, covenant or agreement of this Agreement, or of the Trust Certificates, or of the guaranty of the Company respecting any Trust Certificates or dividend warrant issued hereunder, shall be had against any stockholder, officer or director, as such, of the Company, or of the Trustee, by the enforcement, of any assessment or by any legal or equitable proceedings, by virtue of any statute or otherwise, it being expressly agreed and understood that this Agreement, the Lease and said guaranty are solely corporate obligations of the Company, and that this Agreement and the Lease and the Trust Certificates and dividend warrants issued hereunder are solely trust obligations of the Trustee, and that no personal liability whatever shall attach to or be incurred by the stockholders, officers or directors, as such, of the Company, or of the Trustee, or any of them, under or by reason of any of the obligations, covenants or agreements contained in this Agreement, the Trust Certificates, the Lease or the guaranty of the Company respecting any of the Trust Certificates or dividend warrants issued hereunder, or implied therefrom, and that any and all personal liability, either at common law or in equity, or by statute or constitution, of every such stockholder, officer or director, as such, is hereby expressly waived as a condition of and consideration for the execution of this Agreement and the issue of such Trust Certificates and dividend warrants.

#### ARTICLE VII.

Any request or other instrument required 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 Certificate 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 of this Agreement, 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 instrument in writing may be proved 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; or by the affidavit of a witness to such execution;

(b) the amount of unregistered Trust Certificates held by any person executing any such request or other instrument as a Certificate holder, and the serial number of the Trust Certificates held by such person and the date of his holding

the same, may be proved by a certificate executed by any trust company, bank, bankers or other depository wheresoever situated whose certificate shall be deemed by the Trustee to be satisfactory, showing that, at the date therein mentioned, such person had on deposit with such depository, or exhibited to such depository, the Trust Certificates numbered and described in such certificate. The Trustee may presume the continuance of any such deposit or holding unless and until it receives proof satisfactory to it to the contrary;

(c) the ownership of bearer Trust Certificates registered as to principal and of fully registered Trust Certificates shall be determined only by the registration books of the Trustee.

#### ARTICLE VIII.

At the termination of the Lease, any moneys remaining in the hands of the Trustee, after paying the principal of and dividends upon the Trust Certificates, and the expenses of the Trustee, including its reasonable compensation, and after the payment of all other sums payable by the Company hereunder, shall be paid to the Company.

#### ARTICLE IX.

Nothing in this Agreement or in the Lease, expressed or implied, is intended or shall be construed to confer upon, or to give to, any person, firm or corporation other than the parties hereto and their successors and the holders of the Trust Certificates and dividend warrants, any right, remedy or claim, under or by reason of this Agreement or the Lease, or of any term, covenant or condition hereof or thereof, and all the terms, covenants, conditions, promises and agreements in this Agreement or in the Lease contained shall be for the sole and exclusive benefit of the parties hereto and their successors and of the holders of the Trust Certificates and dividend warrants.

#### ARTICLE X.

The term "Trustee" as used herein and in the Lease shall be held and construed to mean The First National Bank of Denver, its successors and assigns; and the word "Company" herein, to mean and include The Denver and Rio Grande Western Railroad Company, its successors and assigns. The term "Trust Equipment" wherever used herein or in the Lease, unless otherwise indicated by the context, is intended to include all railroad equipment at any time covered by the Lease or any supplemental lease or this Agreement or required or intended so to be. The term "Trust Certificate" or "Trust Certificates," wherever used herein or in the Lease, includes, unless the context otherwise indicates, both temporary and definitive certificates; and the word "holder" shall include the plural as well as the singular number and, unless otherwise indicated by the context, shall mean and include the bearer of any unregistered Trust Certificate and of any dividend warrant and the registered holder of any registered Trust Certificate.

In case of the death, resignation or inability to act of either of the Vendors, the remaining Vendor shall appoint a successor Vendor, satisfactory to the Trustee, who

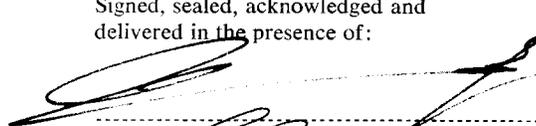
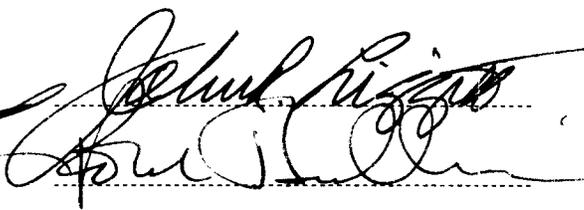
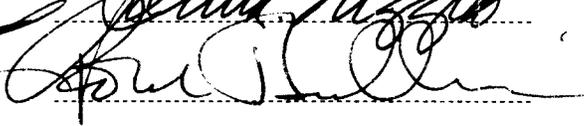
shall have all the powers and perform all the duties of a Vendor under this Agreement. In case of the death, resignation, or inability to act of both Vendors, the Trustee shall appoint successor Vendors, satisfactory to the Company, who shall have all the powers and perform all the duties of the Vendors under this Agreement. Any action taken under this Agreement by either of the Vendors herein named, or by any successor Vendor, shall have the same force and effect as if taken by both of the original Vendors. The Vendors shall incur no liability hereunder, or under any bill of sale, guaranty or warranty executed by them as herein provided, for anything other than their own willful default, misconduct or gross neglect. The Vendors shall be entitled to the advice of counsel (who may in appropriate cases be counsel to the Company or to the Trustee) and shall be protected by the advice of such counsel in anything done or omitted to be done by them in accordance with such advice.

Whenever, under the provisions hereof, it is necessary or proper for any notice or demand to be given to or made upon the Company, or if at any time it is desired to give any such notice or make any such demand, such notice or demand may be given or made to the Company by depositing a written statement thereof, securely enclosed in a postpaid wrapper, in the United States registered mail, directed to the Company at Denver, Colorado, and an affidavit by any person representing or acting on behalf of the Trustee as to such mailing, shall be conclusive evidence of the giving of such notice and the making of such demand.

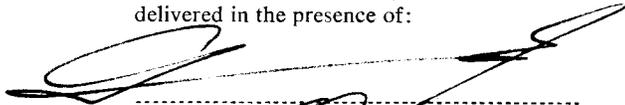
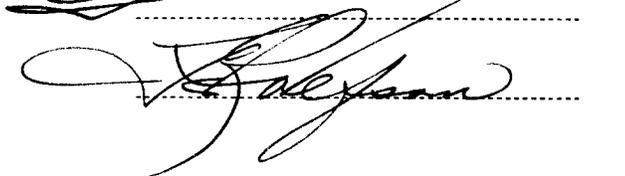
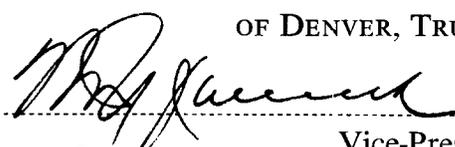
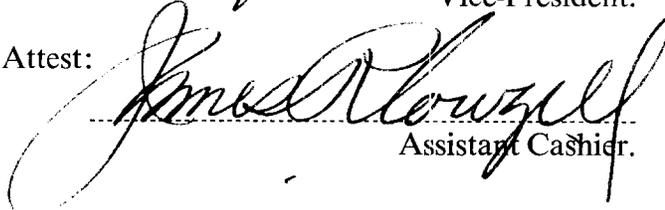
This Agreement may be simultaneously executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument.

IN WITNESS WHEREOF the Vendors have hereunto set their hands and seals, and the Trustee and the Company have caused their names to be signed hereto by duly authorized officers, and sealed with their corporate seals duly attested, as of the day and year first above written.

Signed, sealed, acknowledged and delivered in the presence of:

 .....  
 .....  
 ..... [SEAL]  
 ..... [SEAL]  
Vendors.

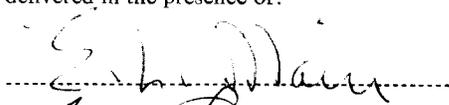
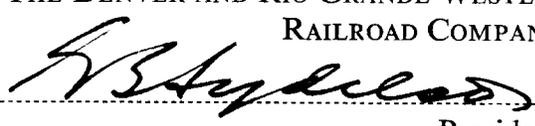
Signed, sealed, acknowledged and delivered in the presence of:

 .....  
 .....  
By  .....  
Vice-President.  
Attest:  .....  
Assistant Cashier.

THE FIRST NATIONAL BANK  
OF DENVER, TRUSTEE,

THE DENVER AND RIO GRANDE WESTERN  
RAILROAD COMPANY,

Signed, sealed, acknowledged and delivered in the presence of:

 .....  
 .....  
By  .....  
President.  
Attest:  .....  
Secretary.

STATE OF COLORADO  
CITY AND COUNTY OF DENVER } SS.

I, **K. C. GARDNER**, a Notary Public in and for said City and County in the State aforesaid, do hereby certify that JOHN R. LIGGITT and ROBERT J. SULLIVAN, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that they signed, sealed and delivered said instrument in writing as their free and voluntary act and deed for the uses and purposes therein contained.

Given under my hand and official seal this 20<sup>th</sup> day of January, 1972.

My commission expires My Commission Expires 12/31/1975

K. C. Gardner  
Notary Public.

STATE OF COLORADO  
CITY AND COUNTY OF DENVER } ss.

I, W. C. SARDNER, a Notary Public in and for said City and County in the State aforesaid, do hereby certify that MILTON G. JANECEK, Vice-President, and JAMES R. COWGILL, Assistant Cashier of THE FIRST NATIONAL BANK OF DENVER, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument in writing as Vice-President and Assistant Cashier of said corporation, appeared before me this day in person and acknowledged that at the time of the execution of said instrument in writing they were respectively Vice-President and Assistant Cashier of said corporation; that the seal affixed thereto is the common and corporate seal of said corporation, and that they signed, sealed and delivered said instrument in writing as their free and voluntary act, and as the free and voluntary act of said THE FIRST NATIONAL BANK OF DENVER for the uses and purposes therein set forth.

Given under my hand and official seal this 20th day of January, 1972.

My commission expires..... My Commission expires April 19, 1975

W. C. Sardner  
Notary Public.

STATE OF COLORADO }  
CITY AND COUNTY OF DENVER } ss.

BE IT REMEMBERED and I do hereby certify that on this 24th day of January, 1972, before me a Notary Public duly commissioned, qualified and acting for said State, City and County, personally came and appeared before me in the City and County of Denver, G. B. Aydelott and M. E. Masterson as President and Secretary of The Denver and Rio Grande Western Railroad Company, to me personally known and known to me to be such officers respectively and the individuals described and named in and the identical persons who subscribed their names to and whose names are subscribed to and who executed the within and foregoing instrument of writing as such officers respectively in my presence; and the said G. B. Aydelott and M. E. Masterson, and each of them, duly acknowledged to me that the seal affixed to the foregoing instrument is the corporate seal of The Denver and Rio Grande Western Railroad Company and that the same was thereunto affixed by the authority of said corporation; that said instrument was by like authority subscribed with its corporate name; that the said G. B. Aydelott is the President of said corporation and the said M. E. Masterson is the Secretary thereof; that by authority of said corporation they respectively subscribed their names thereto as President and Secretary and that they signed, sealed and delivered the said instrument of writing as their free and voluntary act and deed, and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

Given under my hand and notarial seal the day and year first above written.

My commission expires Mar 20, 1973

*William D. Bergeson*  
Notary Public.