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INTERSTATE COMMERCE COMMISSION

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SOUTHERN PACIFIC TRANSPORTATION  
COMPANY EQUIPMENT TRUST

Series No. 55

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EQUIPMENT TRUST AGREEMENT

*Dated as of December 15, 1971*

By and Between

THE FIRST PENNSYLVANIA BANKING  
AND TRUST COMPANY,

*Trustee*

and

SOUTHERN PACIFIC TRANSPORTATION COMPANY

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EQUIPMENT TRUST AGREEMENT, dated as of December 15, 1971, by and between THE FIRST PENNSYLVANIA BANKING AND TRUST COMPANY, a corporation duly organized and existing under the laws of the Commonwealth of Pennsylvania, as Trustee (hereinafter called the Trustee), of the first part, and SOUTHERN PACIFIC TRANSPORTATION COMPANY, a corporation duly organized and existing under the laws of the State of Delaware (hereinafter called the Company), of the second part.

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

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

WHEREAS, Southern Pacific Transportation Company Equipment Trust Certificates, Series No. 55 (hereinafter called Trust Certificates), are to be issued and sold in an aggregate principal amount not exceeding \$10,950,000, and the net proceeds (as hereinafter defined) of such sale together with such other cash, if any, as may be required to be deposited by the Company as hereinafter provided is to constitute a fund equal to the aggregate principal amount of Trust Certificates so issued and sold to be known as SOUTHERN PACIFIC TRANSPORTATION COMPANY EQUIPMENT TRUST, SERIES No. 55, to be applied by the Trustee from time to time in part payment of the cost of the Trust Equipment, the remainder of the cost thereof to be paid out of advance rentals to be paid by the Company as provided herein; and

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

[FORM OF TRUST CERTIFICATE WITH DIVIDEND WARRANTS]

\$1,000

No.

\$1,000

SOUTHERN PACIFIC TRANSPORTATION COMPANY  
EQUIPMENT TRUST

SERIES No. 55

Equipment Trust Certificate

Total Authorized Issue \$10,950,000

THE FIRST PENNSYLVANIA BANKING AND TRUST COMPANY, Trustee

Dividends at the rate of 7% Per Annum

Payable June 15 and December 15,

Principal hereof payable December 15, 19

THE FIRST PENNSYLVANIA BANKING AND TRUST COMPANY, as Trustee under an Equipment Trust Agreement dated as of December 15, 1971, by and between THE FIRST PENNSYLVANIA BANKING AND TRUST COMPANY, Trustee, of the first part, and SOUTHERN PACIFIC TRANSPORTATION COMPANY (hereinafter called the Company), of the second part, hereby certifies that the bearer, or, if this Certificate is registered as to principal, the registered holder hereof, is entitled to an interest in the principal amount of \$1,000 in SOUTHERN PACIFIC TRANSPORTATION COMPANY EQUIPMENT TRUST, SERIES No. 55, payable on the due date, stated above, upon presentation and surrender of this Certificate to the undersigned at its agency in the Borough of Manhattan, City and State of New York (which agency may be the office of Southern Pacific Transportation Company in said Borough and City), and to payment, until said last mentioned date, of dividends on said principal amount at the rate of 7% per annum from December 15, 1971, semi-annually on June 15 and December 15 in each year, according to the tenor of the dividend warrants hereto annexed, upon presentation and surrender of such warrants, as they severally mature, to the undersigned at its said agency, with interest at the dividend warrant rate on any unpaid principal and on any unpaid dividends to the extent that it shall be legally enforceable, all in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, but payable only out of rentals or other

moneys received by the undersigned and applicable to such payment under the provisions of said Agreement.

This Certificate is one of an issue of Certificates having an aggregate principal amount not exceeding \$10,950,000, all issued or to be issued under and subject to the terms of said Agreement, under which certain railroad equipment leased to the Company (or cash or obligations defined in said Agreement as "Government Securities" in lieu thereof, as provided in said Agreement) is held by the undersigned in trust for the benefit of the holders of the interests represented by said Certificates, to which Agreement (a copy of which is on file with the undersigned at its said agency) reference is made for a full statement of the rights and obligations of the Company, the duties and immunities of the undersigned and the rights of the holder hereof thereunder.

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

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

Every holder of this Certificate and of the attached warrants, by accepting the same, agrees with the undersigned, with the Company, and with every subsequent holder hereof and thereof that this Cer-

tificate (unless registered in the name of the holder) and such warrants shall be transferable with the same effect as in the case of a negotiable instrument payable to bearer, by delivery by any person having possession of the same, respectively, howsoever such possession may have been acquired; and the undersigned and the Company may treat the bearer of this Certificate, or the registered holder hereof if this Certificate be registered in his name as above provided, and the bearer of any dividend warrant attached hereto whether or not this Certificate be so registered, as the absolute owner of this Certificate or of said warrants, as the case may be, for all purposes, and shall not be affected by any notice to the contrary.

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

IN WITNESS WHEREOF, the Trustee has caused this Certificate to be signed by the facsimile signature of its President or one of its Vice Presidents and its corporate seal, in facsimile, to be hereunto affixed and to be attested by its Secretary or one of its Assistant Secretaries, and has caused dividend warrants bearing the facsimile signature of its Treasurer or one of its Assistant Treasurers to be attached hereto, the fifteenth day of December, 1971.

THE FIRST PENNSYLVANIA BANKING  
AND TRUST COMPANY,

Trustee,

By .....

Vice President

ATTEST:

.....

Assistant Secretary

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

\$35.00

No.

Due to the bearer hereof on \_\_\_\_\_ 15, 19 \_\_, on surrender hereof at the agency of the undersigned Trustee in the Borough of Manhattan, City and State of New York, \_\_\_\_\_ Dollars, being the semi-annual dividend then due on Certificate No. \_\_\_\_\_ of SOUTHERN PACIFIC TRANSPORTATION COMPANY EQUIPMENT TRUST, SERIES No. 55, payable only out of rentals or other moneys received by the undersigned and applicable to such payment under the Equipment Trust Agreement referred to in said Certificate.

THE FIRST PENNSYLVANIA BANKING  
AND TRUST COMPANY,

Trustee,

By .....

Treasurer

[FORM OF GUARANTY FOR  
TRUST CERTIFICATE WITH DIVIDEND WARRANTS]

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

SOUTHERN PACIFIC TRANSPORTATION  
COMPANY,

By .....

President

under, and *dividend warrants* shall mean dividend warrants attached or appertaining to Trust Certificates.

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

*Trustee* shall mean The First Pennsylvania Banking and Trust Company, a corporation duly organized and existing under the laws of the Commonwealth of Pennsylvania, and any successor as trustee hereunder.

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

## ARTICLE II

### TRUST CERTIFICATES AND ISSUANCE THEREOF

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

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

SECTION 2.02. Each of the Trust Certificates shall represent an interest in the principal amount therein specified in the trust created hereunder and shall bear dividends on said amount at the rate of 7% per annum, payable semi-annually on the fifteenth day of June and of December in each year.

The aggregate principal amount of Trust Certificates which shall be executed and delivered by the Trustee hereunder shall not exceed the sum of \$10,950,000, except as provided in Sections 2.05 and 2.06 hereof. Each of the Trust Certificates shall bear upon its face the due date thereof together with such numbers, descriptions or marks of identification as the Trustee may determine.

The principal amount of the Trust Certificates shall become due in 15 equal annual installments payable on the fifteenth day of December in each year beginning December 15, 1972, and ending December 15, 1986. Dividend warrants evidencing the rights of the bearers thereof to the dividends on the Trust Certificates with dividend warrants shall be annexed to such Trust Certificates.

SECTION 2.03. The Trust Certificates, the dividend warrants and the guaranty to be endorsed on the Trust Certificates by the Company as hereinafter in Section 6.02 hereof provided shall be in substantially the forms hereinbefore set forth.

SECTION 2.04. The Trust Certificates shall be signed in the name and on behalf of the Trustee by the facsimile signature of the President or one of its Vice Presidents and its corporate seal in facsimile shall be attested by its Secretary or one of its Assistant Secretaries. The dividend warrants to be attached to the Trust Certificates with dividend warrants shall be authenticated by the facsimile signature of the Treasurer or any Assistant Treasurer of the Trustee. In case any officer of the Trustee whose signature, whether facsimile or not, shall appear on any of the Trust Certificates or on the dividend warrants shall cease to be such officer of the Trustee before the Trust Certificates or dividend warrants shall have been issued and delivered by the Trustee, such Trust Certificates and dividend warrants shall be adopted by the Trustee and be issued and delivered as though such person had not ceased to be such officer of the Trustee. Before executing or delivering any Trust Certificate the Trustee shall detach and cancel all matured dividend warrants thereto appertaining.

SECTION 2.05. The Trust Certificates with dividend warrants shall be in the denomination of \$1,000 each; shall be payable to bearer; shall be negotiable and transferable by delivery unless registered as to principal, in the manner hereinafter provided; and shall be dated December 15, 1971.

The fully registered Trust Certificates shall be in the denominations of \$1,000 or any multiple thereof; shall be registered as to both principal and dividends, in the name of the holder; shall be transferable upon presentation and surrender thereof for transfer at the agency of the Trustee in the Borough of Manhattan, City and State of New York (which agency may be the office of the Company in said

Borough and City), accompanied by appropriate instruments of assignment and transfer, duly executed by the registered holder of the surrendered Trust Certificate or Certificates or by duly authorized attorney, in form satisfactory to the Trustee; and shall be dated December 15, 1971, or the dividend payment date to which dividends shall have been paid, next preceding or coinciding with the date of issue, whichever is later, and shall bear dividends from the date thereof.

Fully registered Trust Certificates may be exchanged for a like aggregate principal amount of Trust Certificates with dividend warrants of the same maturity having all unmatured dividend warrants attached, or for a like aggregate principal amount of fully registered Trust Certificates of the same maturity of authorized denominations, and Trust Certificates with dividend warrants may be exchanged for a like aggregate principal amount of fully registered Trust Certificates of the same maturity of authorized denominations. The Trust Certificates to be exchanged shall be surrendered at said agency of the Trustee in the Borough of Manhattan, City and State of New York. All Trust Certificates with dividend warrants surrendered for exchange shall have attached all unmatured dividend warrants appertaining thereto, and, in case at the time of any such exchange dividends on the Trust Certificates are in default, they shall in addition have attached all matured dividend warrants in default appertaining thereto. Any of the Trust Certificates with dividend warrants may be registered as to the principal thereof in the name of the holder at said agency of the Trustee in the Borough of Manhattan, City and State of New York, and such registration shall be noted on the Trust Certificate by or on behalf of the Trustee. Thereafter no transfer thereof shall be valid unless made at said agency by the registered holder thereof in person, or by his duly authorized attorney, and similarly noted thereon; but the same may be discharged from registration and transferred to bearer as before. No registration, however, shall affect the dividend warrants, but every such dividend warrant shall continue to be transferable with the same effect as in the case of a negotiable instrument payable to bearer, by delivery thereof by any person in possession of the same, howsoever such possession may have been acquired.

Anything to the contrary herein notwithstanding, the parties hereto may deem and treat (i) the bearer of any Trust Certificate not regis-

tered as to principal and the bearer of any dividend warrant as the absolute owner of such Trust Certificate or dividend warrant, as the case may be, for the purpose of receiving payment thereof and for all other purposes, and shall not be affected by any notice to the contrary and (ii) the registered holder of any fully registered Trust Certificate or of any Trust Certificate with dividend warrants registered as to principal, as the case may be, as the absolute owner of such Trust Certificate for all purposes (except payment of dividends in the case of Trust Certificates with dividend warrants registered as to principal), and shall not be affected by any notice to the contrary.

For any registration, transfer, exchange or discharge from registration the Trustee shall require the payment of a sum sufficient to cover reimbursement for any stamp tax or other governmental charge connected therewith, and, in addition, in case of any exchange of Trust Certificates as hereinabove provided, such sum, not exceeding \$2.50 for each Trust Certificate issued on such exchange, as the Company may specify in a Request.

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

SECTION 2.06. In case any Trust Certificate, or the dividend warrants, if any, thereto appertaining, shall become mutilated or defaced or be lost, stolen or destroyed, then on the terms herein set forth, and not otherwise, the Trustee, upon Request, shall execute and deliver a new fully registered Trust Certificate or a Trust Certificate with dividend warrants, as the case may be, with, if a Trust Certificate with dividend warrants, all unmatured dividend warrants appertaining thereto, of like maturity, tenor and date, and bearing such number, designation or other mark of identification as the Trustee may determine, in exchange and substitution for, and upon cancellation of, the mutilated or defaced Trust Certificate and dividend warrants, or in lieu of or in substitution for the same if lost, stolen or destroyed, and shall make payment of any matured and unpaid dividend warrants appertaining to the same. The Company shall execute its guaranty on any Trust Certificates so delivered. The applicant for a new Trust Certificate shall furnish to the Trustee and to the Company evidence to their satisfaction of the mutilation, defacement, loss, theft or destruc-

tion of such Trust Certificate and dividend warrants alleged to have been lost, stolen or destroyed, and of the ownership and authenticity of such mutilated, defaced, lost, stolen or destroyed Trust Certificate and dividend warrants, and also such security and indemnity as may be required by the Trustee and by the Company, in their discretion; and shall pay all expenses and charges of such substitution or exchange. All Trust Certificates shall be issued, held and owned upon the express condition that the foregoing provisions are exclusive in respect of the replacement of mutilated, defaced, lost, stolen or destroyed Trust Certificates and dividend warrants, and shall preclude any and all other rights and remedies, any law or statute now existing or hereafter enacted to the contrary notwithstanding.

SECTION 2.07. At any time prior to the issue of definitive Trust Certificates the Trustee shall, upon Request of the Company, issue and deliver, in lieu of definitive Trust Certificates, temporary Trust Certificates in any denomination or denominations specified in such Request. Such temporary Trust Certificates shall be substantially of the tenor of the definitive Trust Certificates in lieu of which they are issued and may be issued with or without dividend warrants and with such insertions, omissions, substitutions and variations as may be appropriate.

Temporary Trust Certificates shall be exchangeable without charge to the holder for the definitive Trust Certificates in lieu of which they are issued, and upon surrender and cancellation of any of such temporary Trust Certificates the Trustee shall issue and deliver in exchange therefor definitive Trust Certificates of the same maturity and for the same aggregate principal amount. Until so exchanged, the holders of the temporary Trust Certificates shall be entitled to the same rights hereunder as if the temporary Trust Certificates had been so exchanged.

### ARTICLE III

#### ACQUISITION OF TRUST EQUIPMENT BY TRUSTEE ; DEPOSITED CASH

SECTION 3.01. The Company, as speedily as may be, shall cause to be constructed and shall cause to be sold, assigned, transferred and set over unto the Trustee, as trustee for the holders of the Trust Cer-

under, and *dividend warrants* shall mean dividend warrants attached or appertaining to Trust Certificates.

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

*Trustee* shall mean The First Pennsylvania Banking and Trust Company, a corporation duly organized and existing under the laws of the Commonwealth of Pennsylvania, and any successor as trustee hereunder.

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

## ARTICLE II

### TRUST CERTIFICATES AND ISSUANCE THEREOF

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

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

SECTION 2.02. Each of the Trust Certificates shall represent an interest in the principal amount therein specified in the trust created hereunder and shall bear dividends on said amount at the rate of 7% per annum, payable semi-annually on the fifteenth day of June and of December in each year.

The aggregate principal amount of Trust Certificates which shall be executed and delivered by the Trustee hereunder shall not exceed the sum of \$10,950,000, except as provided in Sections 2.05 and 2.06 hereof. Each of the Trust Certificates shall bear upon its face the due date thereof together with such numbers, descriptions or marks of identification as the Trustee may determine.

The principal amount of the Trust Certificates shall become due in 15 equal annual installments payable on the fifteenth day of December in each year beginning December 15, 1972, and ending December 15, 1986. Dividend warrants evidencing the rights of the bearers thereof to the dividends on the Trust Certificates with dividend warrants shall be annexed to such Trust Certificates.

SECTION 2.03. The Trust Certificates, the dividend warrants and the guaranty to be endorsed on the Trust Certificates by the Company as hereinafter in Section 6.02 hereof provided shall be in substantially the forms hereinbefore set forth.

SECTION 2.04. The Trust Certificates shall be signed in the name and on behalf of the Trustee by the facsimile signature of the President or one of its Vice Presidents and its corporate seal in facsimile shall be attested by its Secretary or one of its Assistant Secretaries. The dividend warrants to be attached to the Trust Certificates with dividend warrants shall be authenticated by the facsimile signature of the Treasurer or any Assistant Treasurer of the Trustee. In case any officer of the Trustee whose signature, whether facsimile or not, shall appear on any of the Trust Certificates or on the dividend warrants shall cease to be such officer of the Trustee before the Trust Certificates or dividend warrants shall have been issued and delivered by the Trustee, such Trust Certificates and dividend warrants shall be adopted by the Trustee and be issued and delivered as though such person had not ceased to be such officer of the Trustee. Before executing or delivering any Trust Certificate the Trustee shall detach and cancel all matured dividend warrants thereto appertaining.

SECTION 2.05. The Trust Certificates with dividend warrants shall be in the denomination of \$1,000 each; shall be payable to bearer; shall be negotiable and transferable by delivery unless registered as to principal, in the manner hereinafter provided; and shall be dated December 15, 1971.

The fully registered Trust Certificates shall be in the denominations of \$1,000 or any multiple thereof; shall be registered as to both principal and dividends, in the name of the holder; shall be transferable upon presentation and surrender thereof for transfer at the agency of the Trustee in the Borough of Manhattan, City and State of New York (which agency may be the office of the Company in said

Borough and City), accompanied by appropriate instruments of assignment and transfer, duly executed by the registered holder of the surrendered Trust Certificate or Certificates or by duly authorized attorney, in form satisfactory to the Trustee; and shall be dated December 15, 1971, or the dividend payment date to which dividends shall have been paid, next preceding or coinciding with the date of issue, whichever is later, and shall bear dividends from the date thereof.

Fully registered Trust Certificates may be exchanged for a like aggregate principal amount of Trust Certificates with dividend warrants of the same maturity having all unmatured dividend warrants attached, or for a like aggregate principal amount of fully registered Trust Certificates of the same maturity of authorized denominations, and Trust Certificates with dividend warrants may be exchanged for a like aggregate principal amount of fully registered Trust Certificates of the same maturity of authorized denominations. The Trust Certificates to be exchanged shall be surrendered at said agency of the Trustee in the Borough of Manhattan, City and State of New York. All Trust Certificates with dividend warrants surrendered for exchange shall have attached all unmatured dividend warrants appertaining thereto, and, in case at the time of any such exchange dividends on the Trust Certificates are in default, they shall in addition have attached all matured dividend warrants in default appertaining thereto. Any of the Trust Certificates with dividend warrants may be registered as to the principal thereof in the name of the holder at said agency of the Trustee in the Borough of Manhattan, City and State of New York, and such registration shall be noted on the Trust Certificate by or on behalf of the Trustee. Thereafter no transfer thereof shall be valid unless made at said agency by the registered holder thereof in person, or by his duly authorized attorney, and similarly noted thereon; but the same may be discharged from registration and transferred to bearer as before. No registration, however, shall affect the dividend warrants, but every such dividend warrant shall continue to be transferable with the same effect as in the case of a negotiable instrument payable to bearer, by delivery thereof by any person in possession of the same, howsoever such possession may have been acquired.

Anything to the contrary herein notwithstanding, the parties hereto may deem and treat (i) the bearer of any Trust Certificate not regis-

tered as to principal and the bearer of any dividend warrant as the absolute owner of such Trust Certificate or dividend warrant, as the case may be, for the purpose of receiving payment thereof and for all other purposes, and shall not be affected by any notice to the contrary and (ii) the registered holder of any fully registered Trust Certificate or of any Trust Certificate with dividend warrants registered as to principal, as the case may be, as the absolute owner of such Trust Certificate for all purposes (except payment of dividends in the case of Trust Certificates with dividend warrants registered as to principal), and shall not be affected by any notice to the contrary.

For any registration, transfer, exchange or discharge from registration the Trustee shall require the payment of a sum sufficient to cover reimbursement for any stamp tax or other governmental charge connected therewith, and, in addition, in case of any exchange of Trust Certificates as hereinabove provided, such sum, not exceeding \$2.50 for each Trust Certificate issued on such exchange, as the Company may specify in a Request.

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

SECTION 2.06. In case any Trust Certificate, or the dividend warrants, if any, thereto appertaining, shall become mutilated or defaced or be lost, stolen or destroyed, then on the terms herein set forth, and not otherwise, the Trustee, upon Request, shall execute and deliver a new fully registered Trust Certificate or a Trust Certificate with dividend warrants, as the case may be, with, if a Trust Certificate with dividend warrants, all unmatured dividend warrants appertaining thereto, of like maturity, tenor and date, and bearing such number, designation or other mark of identification as the Trustee may determine, in exchange and substitution for, and upon cancellation of, the mutilated or defaced Trust Certificate and dividend warrants, or in lieu of or in substitution for the same if lost, stolen or destroyed, and shall make payment of any matured and unpaid dividend warrants appertaining to the same. The Company shall execute its guaranty on any Trust Certificates so delivered. The applicant for a new Trust Certificate shall furnish to the Trustee and to the Company evidence to their satisfaction of the mutilation, defacement, loss, theft or destruc-

tion of such Trust Certificate and dividend warrants alleged to have been lost, stolen or destroyed, and of the ownership and authenticity of such mutilated, defaced, lost, stolen or destroyed Trust Certificate and dividend warrants, and also such security and indemnity as may be required by the Trustee and by the Company, in their discretion; and shall pay all expenses and charges of such substitution or exchange. All Trust Certificates shall be issued, held and owned upon the express condition that the foregoing provisions are exclusive in respect of the replacement of mutilated, defaced, lost, stolen or destroyed Trust Certificates and dividend warrants, and shall preclude any and all other rights and remedies, any law or statute now existing or hereafter enacted to the contrary notwithstanding.

SECTION 2.07. At any time prior to the issue of definitive Trust Certificates the Trustee shall, upon Request of the Company, issue and deliver, in lieu of definitive Trust Certificates, temporary Trust Certificates in any denomination or denominations specified in such Request. Such temporary Trust Certificates shall be substantially of the tenor of the definitive Trust Certificates in lieu of which they are issued and may be issued with or without dividend warrants and with such insertions, omissions, substitutions and variations as may be appropriate.

Temporary Trust Certificates shall be exchangeable without charge to the holder for the definitive Trust Certificates in lieu of which they are issued, and upon surrender and cancellation of any of such temporary Trust Certificates the Trustee shall issue and deliver in exchange therefor definitive Trust Certificates of the same maturity and for the same aggregate principal amount. Until so exchanged, the holders of the temporary Trust Certificates shall be entitled to the same rights hereunder as if the temporary Trust Certificates had been so exchanged.

### ARTICLE III

#### ACQUISITION OF TRUST EQUIPMENT BY TRUSTEE ; DEPOSITED CASH

SECTION 3.01. The Company, as speedily as may be, shall cause to be constructed and shall cause to be sold, assigned, transferred and set over unto the Trustee, as trustee for the holders of the Trust Cer-

duly authorized and their respective corporate seals, duly attested, to be hereunto affixed as of the day and year first written.

THE FIRST PENNSYLVANIA BANKING AND TRUST COMPANY, Trustee,

By *W. W. [Signature]*  
Vice President

ATTEST: *[Signature]*  
Assistant Secretary

SOUTHERN PACIFIC TRANSPORTATION COMPANY,

By *Robert J. McLean*  
Vice President and Treasurer

ATTEST: *[Signature]*  
Assistant Secretary

STATE OF NEW YORK, }  
COUNTY OF NEW YORK, } ss.

On this ..... day of January, 1972, before me personally appeared ....., to me personally known, who, being by me duly sworn, says that he is a Vice President of The First Pennsylvania Banking and Trust Company, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

THOMAS DOUGHERTY  
Notary Public, State of New York  
No. 41-1004750  
Qualified in Queens County  
Certificate filed in New York County  
Commission expires March 30, 1973

STATE OF CALIFORNIA,  
CITY AND COUNTY OF SAN FRANCISCO, } ss.

On this *27th* day of January, 1972, before me personally appeared ROBERT J. McLEAN, to me personally known, who, being by me duly sworn, says that he is Vice President and Treasurer of Southern Pacific Transportation Company, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

*Gene H. Ellinger*  
GENE H. ELLINGER

Notary Public  
in and for the State of California.  
Principal place of business in the  
City and County of San Francisco.  
My Commission expires July 11, 1975.



SECTION 7.09. The Trustee shall not be liable to anyone for any delay in the delivery of any of the Trust Equipment, or for any default on the part of the manufacturers thereof or of the Company, or for any defect in any of the Trust Equipment or in the title thereto, nor shall anything herein be construed as a warranty on the part of the Trustee in respect thereof or as a representation in respect of the value thereof or in respect of the title thereto.

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

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

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

Upon Request, any moneys held by the Trustee which shall have been deposited or are held for the payment of the principal amount of or dividends on any Trust Certificates remaining unclaimed for six years after the date of maturity of such Trust Certificates or the date such dividends were due and payable, as the case may be, shall be repaid by the Trustee to the Company, and all liability of the Trustee with respect to such money shall thereupon cease and the holders of such Trust Certificates and dividend warrants shall thereafter be entitled to look only to the Company for payment thereof; *provided, however*, that the Trustee, before being required to make any such repayment may, at the expense of the Company, cause notice that said moneys have

not been claimed and that after a date specified therein, which shall be not less than thirty days after the date of publication, any unclaimed balance of such moneys then remaining upon deposit with the Trustee will be repaid to the Company, to be published once in a daily newspaper printed in the English language and published in the Borough of Manhattan, the City of New York. In no event shall the holders of such Trust Certificates and dividend warrants be entitled to interest upon such money whether held by the Trustee or so repaid to the Company.

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

SECTION 7.10. The Trustee shall, at least once in each year, 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 Company may from time to time examine the books and accounts of the Trustee relating to the Trust Certificates, to this Agreement and to the acts of the Trustee hereunder.

SECTION 7.11. If at any time the Trustee or any successor to it in the trust hereby created shall desire to divest itself of title to the Trust Equipment, and to terminate its duties and obligations and rights hereunder and under the Trust Certificates, it shall so notify the Company in writing, and the Company shall thereupon designate in writing to the Trustee a bank or a trust company, qualified as below specified, to serve until a successor is appointed by the holders of Trust Certificates as hereinafter provided, to which may be assigned the entire right, title and interest of the Trustee or such successor in the Trust Equipment, and in which may be vested the rights, powers, duties and obligations of the Trustee hereunder and under the Trust Certificates. Upon the transfer and delivery of all moneys and Trust Equipment held by the retiring trustee, and the execution by the retiring trustee of such instruments of transfer as may be reasonably requested by the successor trustee, and upon acceptance by the successor trustee of the assignment and of the trust, the retiring trustee shall be relieved and discharged of all the title, rights, powers, duties and obligations of the trust hereunder and under the Trust Certificates, and

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

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

ARTICLE VIII

MISCELLANEOUS

SECTION 8.01. Any request or other instrument provided by this Agreement to be signed or executed by holders of Trust Certificates may be in any number of concurrent instruments of similar tenor, and may be executed by such holders in person or by an agent or attorney appointed by an instrument in writing. Proof of the execution of any such request or other instrument, or of a writing appointing any such agent or attorney, or of the holding by any person of Trust Certificates, shall be sufficient for any purpose hereof and shall be conclusive in favor of the Trustee with regard to any action taken by the Trustee under such request or other instrument if made in the following manner, viz.:

(a) The fact and date of the execution by any person of any such request or of any other instrument in writing may be proved by the affidavit of a witness to such execution, or by the certificate of any notary public or of any other officer authorized to take acknowledgments of deeds to be recorded in the state where the acknowledgment may be taken, certifying that the person signing such request or other instrument acknowledged to him the execution thereof.

(b) The amount and numbers, designations or marks of identification of Trust Certificates with dividend warrants not registered as to principal held by any person executing any such request or other instrument as a holder of such Trust Certificates, and the date of his holding the same, may be proved by a certificate executed by any trust company, bank 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 or exhibited to such depository the Trust Certificates with dividend warrants numbered, designated or identified and described in such certificate. The Trustee may presume the continuance of any such holding unless and until it shall receive proof satisfactory to it to the contrary.

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

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

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

SECTION 8.04. All demands, notices and communications hereunder shall be in writing and shall be deemed to have been duly given if personally delivered at or mailed by registered mail to (a) in the case of the Company, One Market Street, San Francisco, California 94105, or such other address as may hereafter be furnished to the Trustee in writing by the Company, and (b) in the case of the Trustee, Fifteenth and Chestnut Streets, Philadelphia, Pennsylvania 19101, or such other address as may hereafter be furnished to the Company in writing by the Trustee. An affidavit by any person representing or acting on behalf of the Company or the Trustee, as to such mailing, having the registry receipt attached, shall be conclusive evidence of the giving of such demand, notice or communication.

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

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

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

IN WITNESS WHEREOF, the Company and the Trustee have caused their names to be signed hereto by their respective officers thereunto

Agreement 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 VII

### THE TRUSTEE

SECTION 7.01. The Trustee hereby accepts the trusts imposed upon it by this Agreement, and covenants and agrees to perform the same as herein expressed.

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

SECTION 7.03. The Trustee shall cause to be kept at an agency in the Borough of Manhattan, City and State of New York (which agency may be the office of the Company in said Borough and City), books for the registration, exchange and transfer of the Trust Certificates; and upon presentation for any such purpose the Trustee will register or cause to be registered, exchange or cause to be exchanged, or transfer or cause to be transferred, as the case may be, as hereinbefore provided, under such reasonable regulations as it may prescribe, any of the Trust Certificates.

SECTION 7.04. The Trustee shall not be required to undertake any act or duty in the way of insuring, taking care of or taking possession of the Trust Equipment or to undertake any other act or duty under this Agreement until fully indemnified by the Company or by one or more of the holders of the Trust Certificates against all liability and expenses. The Trustee shall not be responsible for the filing or recording or refiling or re-recording of this Agreement or of any supplement hereto. The Trustee may issue and deliver Trust Certificates in advance of such filing or recording. In accepting delivery of and making payment for the Trust Equipment hereunder, or in accepting any cash payable hereunder in respect of Trust Equipment, the Trustee may rely upon and shall be fully protected by the certificates, bills of sale

and Opinions of Counsel to be furnished to it under Sections 3.04, 4.07 or 4.09 hereof, as the case may be, and shall not be required to make any further investigation of or inquiry concerning the matters covered thereby.

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

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

SECTION 7.07. The Trustee may for all purposes conclusively assume that the Company is not in default under the terms hereof until notified in writing to the contrary by the holders of at least 10% in principal amount of the then outstanding Trust Certificates, which notice shall distinctly specify the event of default desired to be brought to the attention of the Trustee. As to any fact or matter the manner

received and held by the Trustee in trust hereunder pending delivery of additional Equipment and may be invested and reinvested as provided in Section 7.08 hereof. Upon the filing with it of a Request and an Officer's Certificate which shall specify the kind and number of units of Equipment to be purchased and the then fair value thereof, such moneys, in an amount not exceeding such fair value, shall, upon receipt by the Trustee of certificates, bills of sale and Opinions of Counsel, all in like manner as is provided in Section 3.04 hereof, be applied to the purchase of such Equipment.

SECTION 4.10. The Company covenants and agrees to indemnify the Trustee against any and all claims arising out of or connected with the ownership or use of any of the Trust Equipment, and particularly against any and all claims arising out of the use of any patented inventions in and about the Trust Equipment, and to comply in all respects with the laws of the United States of America and of all the states in which the Trust Equipment, or any thereof, may be operated, and with all lawful acts, rules, regulations and orders of the Interstate Commerce Commission and of all other commissions, boards and other legislative, executive, administrative or judicial bodies or officers having power to regulate or supervise any of the Trust Equipment, including without limitation all lawful acts, rules, regulations and orders of any body having competent jurisdiction relating to automatic coupler devices or attachments, air brakes or other appliances; *provided, however*, that the Company may in good faith contest the validity of any such law, act, rule, regulation or order, or the application thereof to the Trust Equipment or any part thereof, in any reasonable manner which will not in the judgment of the Trustee materially endanger the rights or interests of the Trustee or of the holders of the Trust Certificates or dividend warrants. The Company shall not be relieved from any of its obligations hereunder by reason of the assertion or enforcement of any such claims or the commencement or prosecution of any litigation in respect thereof.

## ARTICLE V

### REMEDIES IN EVENT OF DEFAULT

SECTION 5.01. The Company covenants and agrees that in case

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

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

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

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

In addition, in case one or more events of default shall happen, the Trustee in its discretion may, and upon the written request of the

holders of not less than 25% in principal amount of the then outstanding Trust Certificates shall, by notice in writing delivered to the 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.

SECTION 5.02. In case of the happening of any event of default, the Trustee may by its agents enter upon the railroads and premises of the Company and of any Affiliate and take possession of all or any part of the Trust Equipment and withdraw the same from said railroads and premises, retaining all payments which up to that time may have been made on account of rental for the Trust Equipment and otherwise, and shall be entitled to collect, receive and retain all unpaid *per diem*, mileage or other charges of any kind earned by the Trust Equipment or any part thereof, and may lease the Trust Equipment or any part thereof, or with or without retaking possession thereof (but only after declaring due and payable the entire amount of rentals payable by the Company as provided in Section 5.01 hereof) may sell the same or any part thereof, free from any and all claims of the Company at law or in equity, in one lot and as an entirety or in separate lots, in so far as may be necessary to perform and fulfill the trust hereunder, at public or private sale, for cash or upon credit, in its discretion, and may proceed otherwise to enforce its rights and the rights of the holders of interests hereunder in the manner herein provided. Upon any such sale, the Trustee itself may bid for the property offered for sale or any part thereof. Any such sale may be held or conducted at such place and at such time as the Trustee may specify, or as may be required by law, and without gathering at the place of sale the Trust Equipment to be sold, and in general in such manner as the Trustee may determine, but so that the Company may and shall have a reasonable opportunity to bid at any such sale. Upon such taking possession or withdrawal or lease or sale of the Trust Equipment, the Company shall cease to have any rights or remedies in respect of the Trust Equipment hereunder, but all such rights and remedies shall be deemed thenceforth to have been waived and surrendered by the Company, and no payments therefore made by the Company for the rent or use of the Trust Equipment or any of it shall, in case of the happening of any event of default and such taking possession, withdrawal, lease or sale by the Trustee, give

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

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

not been claimed and that after a date specified therein, which shall be not less than thirty days after the date of publication, any unclaimed balance of such moneys then remaining upon deposit with the Trustee will be repaid to the Company, to be published once in a daily newspaper printed in the English language and published in the Borough of Manhattan, the City of New York. In no event shall the holders of such Trust Certificates and dividend warrants be entitled to interest upon such money whether held by the Trustee or so repaid to the Company.

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

SECTION 7.10. The Trustee shall, at least once in each year, 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 Company may from time to time examine the books and accounts of the Trustee relating to the Trust Certificates, to this Agreement and to the acts of the Trustee hereunder.

SECTION 7.11. If at any time the Trustee or any successor to it in the trust hereby created shall desire to divest itself of title to the Trust Equipment, and to terminate its duties and obligations and rights hereunder and under the Trust Certificates, it shall so notify the Company in writing, and the Company shall thereupon designate in writing to the Trustee a bank or a trust company, qualified as below specified, to serve until a successor is appointed by the holders of Trust Certificates as hereinafter provided, to which may be assigned the entire right, title and interest of the Trustee or such successor in the Trust Equipment, and in which may be vested the rights, powers, duties and obligations of the Trustee hereunder and under the Trust Certificates. Upon the transfer and delivery of all moneys and Trust Equipment held by the retiring trustee, and the execution by the retiring trustee of such instruments of transfer as may be reasonably requested by the successor trustee, and upon acceptance by the successor trustee of the assignment and of the trust, the retiring trustee shall be relieved and discharged of all the title, rights, powers, duties and obligations of the trust hereunder and under the Trust Certificates, and

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

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

ARTICLE VIII

MISCELLANEOUS

SECTION 8.01. Any request or other instrument provided by this Agreement to be signed or executed by holders of Trust Certificates may be in any number of concurrent instruments of similar tenor, and may be executed by such holders in person or by an agent or attorney appointed by an instrument in writing. Proof of the execution of any such request or other instrument, or of a writing appointing any such agent or attorney, or of the holding by any person of Trust Certificates, shall be sufficient for any purpose hereof and shall be conclusive in favor of the Trustee with regard to any action taken by the Trustee under such request or other instrument if made in the following manner, viz.:

(a) The fact and date of the execution by any person of any such request or of any other instrument in writing may be proved by the affidavit of a witness to such execution, or by the certificate of any notary public or of any other officer authorized to take acknowledgments of deeds to be recorded in the state where the acknowledgment may be taken, certifying that the person signing such request or other instrument acknowledged to him the execution thereof.

(b) The amount and numbers, designations or marks of identification of Trust Certificates with dividend warrants not registered as to principal held by any person executing any such request or other instrument as a holder of such Trust Certificates, and the date of his holding the same, may be proved by a certificate executed by any trust company, bank 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 or exhibited to such depository the Trust Certificates with dividend warrants numbered, designated or identified and described in such certificate. The Trustee may presume the continuance of any such holding unless and until it shall receive proof satisfactory to it to the contrary.

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

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

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

SECTION 8.04. All demands, notices and communications hereunder shall be in writing and shall be deemed to have been duly given if personally delivered at or mailed by registered mail to (a) in the case of the Company, One Market Street, San Francisco, California 94105, or such other address as may hereafter be furnished to the Trustee in writing by the Company, and (b) in the case of the Trustee, Fifteenth and Chestnut Streets, Philadelphia, Pennsylvania 19101, or such other address as may hereafter be furnished to the Company in writing by the Trustee. An affidavit by any person representing or acting on behalf of the Company or the Trustee, as to such mailing, having the registry receipt attached, shall be conclusive evidence of the giving of such demand, notice or communication.

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

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

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

IN WITNESS WHEREOF, the Company and the Trustee have caused their names to be signed hereto by their respective officers thereunto

Agreement 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 VII

### THE TRUSTEE

SECTION 7.01. The Trustee hereby accepts the trusts imposed upon it by this Agreement, and covenants and agrees to perform the same as herein expressed.

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

SECTION 7.03. The Trustee shall cause to be kept at an agency in the Borough of Manhattan, City and State of New York (which agency may be the office of the Company in said Borough and City), books for the registration, exchange and transfer of the Trust Certificates; and upon presentation for any such purpose the Trustee will register or cause to be registered, exchange or cause to be exchanged, or transfer or cause to be transferred, as the case may be, as hereinbefore provided, under such reasonable regulations as it may prescribe, any of the Trust Certificates.

SECTION 7.04. The Trustee shall not be required to undertake any act or duty in the way of insuring, taking care of or taking possession of the Trust Equipment or to undertake any other act or duty under this Agreement until fully indemnified by the Company or by one or more of the holders of the Trust Certificates against all liability and expenses. The Trustee shall not be responsible for the filing or recording or refiling or re-recording of this Agreement or of any supplement hereto. The Trustee may issue and deliver Trust Certificates in advance of such filing or recording. In accepting delivery of and making payment for the Trust Equipment hereunder, or in accepting any cash payable hereunder in respect of Trust Equipment, the Trustee may rely upon and shall be fully protected by the certificates, bills of sale

and Opinions of Counsel to be furnished to it under Sections 3.04, 4.07 or 4.09 hereof, as the case may be, and shall not be required to make any further investigation of or inquiry concerning the matters covered thereby.

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

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

SECTION 7.07. The Trustee may for all purposes conclusively assume that the Company is not in default under the terms hereof until notified in writing to the contrary by the holders of at least 10% in principal amount of the then outstanding Trust Certificates, which notice shall distinctly specify the event of default desired to be brought to the attention of the Trustee. As to any fact or matter the manner

STATE OF CALIFORNIA,  
CITY AND COUNTY OF SAN FRANCISCO, } ss.

On this *27th* day of January, 1972, before me personally appeared ROBERT J. McLEAN, to me personally known, who, being by me duly sworn, says that he is Vice President and Treasurer of Southern Pacific Transportation Company, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

*Gene H. Ellinger*  
GENE H. ELLINGER

Notary Public  
in and for the State of California.  
Principal place of business in the  
City and County of San Francisco.  
My Commission expires July 11, 1975.



SECTION 7.09. The Trustee shall not be liable to anyone for any delay in the delivery of any of the Trust Equipment, or for any default on the part of the manufacturers thereof or of the Company, or for any defect in any of the Trust Equipment or in the title thereto, nor shall anything herein be construed as a warranty on the part of the Trustee in respect thereof or as a representation in respect of the value thereof or in respect of the title thereto.

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

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

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

Upon Request, any moneys held by the Trustee which shall have been deposited or are held for the payment of the principal amount of or dividends on any Trust Certificates remaining unclaimed for six years after the date of maturity of such Trust Certificates or the date such dividends were due and payable, as the case may be, shall be repaid by the Trustee to the Company, and all liability of the Trustee with respect to such money shall thereupon cease and the holders of such Trust Certificates and dividend warrants shall thereafter be entitled to look only to the Company for payment thereof; *provided, however*, that the Trustee, before being required to make any such repayment may, at the expense of the Company, cause notice that said moneys have

not been claimed and that after a date specified therein, which shall be not less than thirty days after the date of publication, any unclaimed balance of such moneys then remaining upon deposit with the Trustee will be repaid to the Company, to be published once in a daily newspaper printed in the English language and published in the Borough of Manhattan, the City of New York. In no event shall the holders of such Trust Certificates and dividend warrants be entitled to interest upon such money whether held by the Trustee or so repaid to the Company.

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

SECTION 7.10. The Trustee shall, at least once in each year, 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 Company may from time to time examine the books and accounts of the Trustee relating to the Trust Certificates, to this Agreement and to the acts of the Trustee hereunder.

SECTION 7.11. If at any time the Trustee or any successor to it in the trust hereby created shall desire to divest itself of title to the Trust Equipment, and to terminate its duties and obligations and rights hereunder and under the Trust Certificates, it shall so notify the Company in writing, and the Company shall thereupon designate in writing to the Trustee a bank or a trust company, qualified as below specified, to serve until a successor is appointed by the holders of Trust Certificates as hereinafter provided, to which may be assigned the entire right, title and interest of the Trustee or such successor in the Trust Equipment, and in which may be vested the rights, powers, duties and obligations of the Trustee hereunder and under the Trust Certificates. Upon the transfer and delivery of all moneys and Trust Equipment held by the retiring trustee, and the execution by the retiring trustee of such instruments of transfer as may be reasonably requested by the successor trustee, and upon acceptance by the successor trustee of the assignment and of the trust, the retiring trustee shall be relieved and discharged of all the title, rights, powers, duties and obligations of the trust hereunder and under the Trust Certificates, and

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

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

ARTICLE VIII

MISCELLANEOUS

SECTION 8.01. Any request or other instrument provided by this Agreement to be signed or executed by holders of Trust Certificates may be in any number of concurrent instruments of similar tenor, and may be executed by such holders in person or by an agent or attorney appointed by an instrument in writing. Proof of the execution of any such request or other instrument, or of a writing appointing any such agent or attorney, or of the holding by any person of Trust Certificates, shall be sufficient for any purpose hereof and shall be conclusive in favor of the Trustee with regard to any action taken by the Trustee under such request or other instrument if made in the following manner, viz.:

(a) The fact and date of the execution by any person of any such request or of any other instrument in writing may be proved by the affidavit of a witness to such execution, or by the certificate of any notary public or of any other officer authorized to take acknowledgments of deeds to be recorded in the state where the acknowledgment may be taken, certifying that the person signing such request or other instrument acknowledged to him the execution thereof.

(b) The amount and numbers, designations or marks of identification of Trust Certificates with dividend warrants not registered as to principal held by any person executing any such request or other instrument as a holder of such Trust Certificates, and the date of his holding the same, may be proved by a certificate executed by any trust company, bank 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 or exhibited to such depository the Trust Certificates with dividend warrants numbered, designated or identified and described in such certificate. The Trustee may presume the continuance of any such holding unless and until it shall receive proof satisfactory to it to the contrary.

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

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

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

SECTION 8.04. All demands, notices and communications hereunder shall be in writing and shall be deemed to have been duly given if personally delivered at or mailed by registered mail to (a) in the case of the Company, One Market Street, San Francisco, California 94105, or such other address as may hereafter be furnished to the Trustee in writing by the Company, and (b) in the case of the Trustee, Fifteenth and Chestnut Streets, Philadelphia, Pennsylvania 19101, or such other address as may hereafter be furnished to the Company in writing by the Trustee. An affidavit by any person representing or acting on behalf of the Company or the Trustee, as to such mailing, having the registry receipt attached, shall be conclusive evidence of the giving of such demand, notice or communication.

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

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

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

IN WITNESS WHEREOF, the Company and the Trustee have caused their names to be signed hereto by their respective officers thereunto

duly authorized and their respective corporate seals, duly attested, to be hereunto affixed as of the day and year first written.

THE FIRST PENNSYLVANIA BANKING AND TRUST COMPANY, Trustee,

By *W. W. [Signature]*  
Vice President

ATTEST: *[Signature]*  
Assistant Secretary

SOUTHERN PACIFIC TRANSPORTATION COMPANY,

By *Robert J. McLean*  
Vice President and Treasurer

ATTEST: *[Signature]*  
Assistant Secretary

STATE OF NEW YORK, }  
COUNTY OF NEW YORK, } ss.

On this ..... day of January, 1972, before me personally appeared ....., to me personally known, who, being by me duly sworn, says that he is a Vice President of The First Pennsylvania Banking and Trust Company, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

THOMAS DOUGHERTY  
Notary Public, State of New York  
No. 41-1004750  
Qualified in Queens County  
Certificate filed in New York County  
Commission expires March 30, 1973

STATE OF CALIFORNIA,  
CITY AND COUNTY OF SAN FRANCISCO, } ss.

On this *27th* day of January, 1972, before me personally appeared ROBERT J. McLEAN, to me personally known, who, being by me duly sworn, says that he is Vice President and Treasurer of Southern Pacific Transportation Company, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

*Gene H. Ellinger*  
GENE H. ELLINGER

Notary Public  
in and for the State of California.  
Principal place of business in the  
City and County of San Francisco.  
My Commission expires July 11, 1975.



**Schedule A**

| Number of<br>Units | Description   | Estimated<br>Average Cost<br>Per Unit |
|--------------------|---|---------------------------------------|
| 7                  | 3300 H.P., six axle, six motor, diesel locomotive units, General Electric Company, builder; lettered SP and numbered 8728 to 8734, both inclusive; .....                            | \$ 344,741                            |
| 11                 | 3600 H.P., six axle, six motor, diesel locomotive units, General Motors Corporation (Electro-Motive Division) builder; lettered SP and numbered 9166 to 9176, both inclusive; ..... | 356,599                               |
| 65                 | 100-ton, 60 ft. 5 in., all steel tight bottom gondola cars; Gunderson, Inc., builder; lettered SP and numbered 355035 to 355099, both inclusive; .....                              | 17,330                                |
| 24                 | 70-ton, 62 ft., bulkhead flat cars; ACF Industries, Incorporated, builder; lettered SP and numbered 508667 to 508690, both inclusive; .....   | 16,234                                |
| 237                | 70-ton, 50 ft. 7 in., single sheath box cars with hydra-cushion underframes; Gunderson, Inc., builder; lettered SP and numbered 240000 to 240236, both inclusive; .....             | 17,245                                |
| 90                 | 70-ton, 50 ft. 6 in., insulated box cars with hydra-cushion underframes; Pacific Car and Foundry Company, builder; lettered EFCX and numbered 3901 to 3990, both inclusive. ....    | 20,456                                |
|                    | Estimated Total Cost .....  | \$13,779,947                          |