Rio Grande

RECEIVED

THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY
P. O. BOX 5482
DENVER, COLORADO 80217

RECORDATION NO. 9513 Filed & Recorded JUL 11 1 27 PM '78
CERTIFICATION UNIT

H. W. BUSHACHER
VICE PRESIDENT - FINANCE

July 7, 1978

JUL 11 1978 - 1 20 PM
INTERSTATE COMMERCE COMMISSION

Re: Denver and Rio Grande Western Railroad
Equipment Trust, Series PP
Finance Docket No. 28780

8-192,185
No.
Date JUL 11 19
Fee $ 50
ICC Washington, D. C.

Interstate Commerce Commission
Washington, D. C. 20423

Gentlemen:

Pursuant to the provisions of Section 20c of the Interstate Commerce Act and the Rules and Regulations of the Commission relating thereto, The Denver and Rio Grande Western Railroad Company herewith transmits to the Commission for filing and recording three counterparts of the Lease of Railroad Equipment dated as of August 1, 1978, from The First National Bank of Denver to The Denver and Rio Grande Western Railroad Company, and the Agreement dated as of August 1, 1978, of Charles W. Smedly, Jr. and Richard C. Dice, Vendors, with The First National Bank of Denver and The Denver and Rio Grande Western Railroad Company.

The names and addresses of the parties to the transaction are as follows:

Lease:

Lessee: The Denver and Rio Grande Western Railroad Company, a Delaware corporation
Address: One Park Central Building
Denver, Colorado 80217

Lessor: The First National Bank of Denver
Address: 17th & Welton Streets
Denver, Colorado 80202

Equipment Trust Agreement:

Vendors: Charles W. Smedly, Jr. and Richard C. Dice
Address: 17th & Welton Streets
Denver, Colorado 80202

Trustee: The First National Bank of Denver
Address: 17th & Welton Streets
Denver, Colorado 80202

Original - Paul Snyder

Lessee and Guarantor: The Denver and Rio Grande Western Railroad Company, a Delaware corporation
Address: One Park Central Building
Denver, Colorado 80217

The equipment covered by said Lease and Agreement is described as follows:

12, 3000 HP (SD-40-2) general purpose diesel-electric locomotives (General Motors Corporation, Electro-Motive Division, Builder) to be numbered 5386-5397, both inclusive;

50, 100-ton, 52'6" flat bottom gondola cars (International Car Company, Builder) to be numbered 56425-56474, both inclusive;

300, 100-ton, 3483 cu. ft. capacity, open top quadruple hopper cars (Bethlehem Steel Corporation, Builder) to be numbered 19645-19944, both inclusive;

each unit of said equipment having identifying mark "Rio Grande" marked on each side thereof.

Enclosed herewith is voucher-check of The Denver and Rio Grande Western Railroad Company for $50.00, payable to the Interstate Commerce Commission, to cover the required recordation fee.

After recordation, kindly return one counterpart Lease and Agreement, showing assigned recordation number and date of recording, to Samuel R. Freeman, Vice President and General Counsel, P. O. Box 5482, Denver, Colorado 80217.

Respectfully,

Vice President-Finance

HWB rw
Encls.

Interstate Commerce Commission
Washington, D.C. 20423

OFFICE OF THE SECRETARY

7/11/78

H.W. Bushacher
Vice President-Finance
The Denver & Rio Grande Western RR.Co.
P.O.Box 5482
Denver,Colorado 80217

Dear

Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 20(c) of the Interstate Commerce Act, 49 U.S.C. 20(c), on 7/11/78 at 1:20pm, and assigned recordation number(s) 9513

Sincerely yours,

Nancy L. Wilson
Acting Secretary

Enclosure(s)

RECORDATION NO. 9513 Filed & Recorded
JUL 11 1978 -1 20 PM
INTERSTATE COMMERCE COMMISSION

Counterpart No. 6

Denver and Rio Grande Western Railroad Equipment Trust

SERIES PP

Lease of Railroad Equipment

Dated as of August 1, 1978

THE FIRST NATIONAL BANK OF DENVER
Trustee

TO

THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY

Agreement

Dated as of August 1, 1978

CHARLES W. SMEDLY, JR. AND RICHARD C. DICE
Vendors

WITH

THE FIRST NATIONAL BANK OF DENVER
Trustee

AND

THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY

LEASE OF RAILROAD EQUIPMENT, dated as of the first day of August, 1978, 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 August 1, 1978, between Charles W. Smedly, Jr. and Richard C. Dice, 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 PP," 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 ensealing 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 PP, to wit:

No. of Units	*Description*	*Road Numbers (both inclusive)*	*Estimated Cost*
12	3000 HP (SD-40-2) general purpose diesel-electric locomotives (General Motors Corporation, Electro-Motive Division, Builder), at $642,310.00 each	5386-5397	$ 7,707,720.00
50	100-ton, 52'6" flat bottom Gondola Cars (International Car Company, Builder) at $32,398.00 each	56425-56474	1,619,900.00
300	100-ton, 3483 cu. ft. capacity, open top quadruple Hopper Cars (Bethlehem Steel Corporation, Builder) at $31,275.00 each	19645-19944	9,382,500.00
	Total estimated cost		$18,710,120.00

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 $18,710,120.00. 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 133⅓% 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 $14,025,000., 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 133⅓% 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 amounts of the dividends payable on the principal of the Trust Certificates 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 PP, 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 PP, 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-

vious year; and the number of units of Trust Equipment then undergoing repairs and in the shops for repairs. Together with said statement the Company shall also furnish to the Trustee, a statement signed by its Chief Mechanical Officer, stating that in the case of all the Trust Equipment repainted or repaired during the preceding year, the marks required by Article Fourth hereof have been preserved, or that the same when repainted or repaired has been again marked as required by said Article. The Trustee shall have the right, by its agents to inspect the Trust Equipment and/or the Company's records with respect thereto once in every year during the continuance of this Lease, but shall not be required to make any such inspection unless requested to do so by the holders of 25% in principal amount of the Trust Certificates at the time outstanding. The Company shall pay the cost of such inspection.

(*c*) The Company covenants and agrees to indemnify and protect the Trustee and its assigns against all claims arising out of or connected with the ownership or use of any of the Trust Equipment including the use of any and all patented inventions employed in and about the Trust Equipment and to comply in all respects with the laws of the United States and of all the States in which the Trust Equipment or any part 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 or judicial bodies or officers having power to regulate or supervise any of the Trust Equipment, including, but 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 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.

ARTICLE SIXTH

The Company, so long as it shall not be in default under this Lease, shall be entitled to the possession of the Trust Equipment and the use thereof upon the lines of railroad owned or operated by it under lease or otherwise, or over which it has trackage rights, and also upon connecting and other railroads in the usual interchange of traffic, from and after the delivery of the Trust Equipment by the Trustee to the Company, but only upon and subject to all the terms and conditions of this Lease.

The Company covenants to file or record as required by law this Lease and the Agreement and any supplemental lease or supplemental agreement as provided in Section 4 of Article III of the Agreement.

The Company shall not assign or transfer this Lease, or transfer or sublet the Trust Equipment or any part thereof, without the written consent of the Trustee first

had and obtained; and the Company shall not, without such written consent, except as hereinbefore provided, part with the possession of, or suffer or allow to pass out of its possession or control, any of the Trust Equipment. A transfer to a railroad company or other purchaser which shall acquire all or substantially all the lines of railroad of the Company, and which shall assume and agree to perform each and all of the obligations and covenants of the Company, hereunder and under the Agreement, shall not be deemed a breach of this covenant. The Trustee shall have the right to declare this Lease terminated in case of any unauthorized assignment or transfer of this Lease or transfer or sub-lease of the Trust Equipment. The election of the Trustee to terminate this Lease under this clause shall have the same effect as the retaking of the Trust Equipment by the Trustee as hereinafter provided.

ARTICLE SEVENTH

In case:

(1) the Company shall make default in the payment of any part of said rent for more than thirty (30) days after the same shall become due and payable; or

(2) the Company shall make or suffer any unauthorized assignment or transfer of its rights or interest in, or any unauthorized sublease of, or, except as herein authorized, part with the possession of, the Trust Equipment, or any thereof, 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 thirty (30) days after the Trustee shall have demanded in writing such cancellation and recovery of possession, or within said thirty (30) days to deposit with the Trustee a sum in cash equal to the original cost to the Vendors of the Trust Equipment so assigned or transferred or subleased or not in possession of the Company as certified to the Trustee pursuant to Section 4 of Article I of the Agreement (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, in good condition, subject to ordinary usage); or

(3) the Company shall, for more than ninety (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 herein or in the Agreement on its part to be kept and performed, or to make provision satisfactory to the Trustee for such compliance; or

(4) a permanent receiver or receivers, or a permanent trustee or trustees in bankruptcy, for the Company or its property, shall be appointed and (a) the Trustee shall have demanded of the Company in writing that action be taken in respect thereof and (b) within thirty (30) days after such demand neither (i) such receiver or receivers or trustee or trustees shall be discharged nor (ii) such receiver or receivers or trustee or trustees shall adopt and assume and agree

to perform each and all of the obligations and agreements of the Company hereunder and under the Agreement and under the guaranty provided for in the Agreement pursuant to due order or authority of the Court which appointed such receiver or receivers or trustee or trustees;

then, in any such case (herein and in the Agreement sometimes called "events of default"), the Trustee at its option may, and on the request of the holders of 25% in principal amount of the then outstanding Trust Certificates shall, by its agents, enter upon the railroads and premises of the Company 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 sell the same or any part thereof, so far as it may deem necessary or desirable to perform and fulfill the trusts under the Agreement, at public or private sale, for cash or upon credit, in its discretion and otherwise proceed to enforce its rights and the rights of the owners of interests under the Agreement and under this Lease in the manner therein and herein provided; and 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 under this Lease, but all such rights and remedies shall be deemed thenceforth to have been waived and surrendered by the Company, and no payments theretofore made by the Company for the rents or use of the Trust Equipment, or any of it, shall in case of the happening of any such 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 part of it, or any cause or right of action, at law or in equity, in respect to the Trust Equipment against the Trustee or the owners of interests in Denver and Rio Grande Western Railroad Equipment Trust, Series PP; and such taking possession or withdrawal or lease or sale of the Trust Equipment by the Trustee shall not 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 sum 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 various items mentioned in sub-divisions (*a*), (*b*), (*c*), (*d*), (*e*) and (*f*) of Article First hereof, whether they shall have then matured or not; and, in the event that the Trustee shall have declared the principal of all the Trust Certificates then outstanding to be due and payable as provided in Section 2 of Article IV of the Agreement, the Trustee, at its option, may, and upon the written request of the holders of 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 (except rentals required for the payment of dividends accruing after the date of such declaration) payable by the Company as set forth in Article First of this Lease, and not theretofore paid; and thereupon the entire amount

of said rentals as aforesaid shall become and be due and payable immediately, without further demand, together with interest thereafter at the dividend rate on any portion thereof overdue; and for the total amount so becoming forthwith payable by the Company, including interest at the dividend rate, the Trustee shall be entitled to recover judgment, and to collect such judgment with interest thereon at the legal rate out of any property of the Company wherever situated.

In case the Trustee shall rightfully demand possession of the Trust Equipment in pursuance of this Lease, and shall reasonably designate a point or points upon the railroad of the Company, or upon the railroad of any other company operated by or a majority of whose capital stock is at the time directly or indirectly owned by the Company, for the delivery of the Trust Equipment to it, the Company will, at its own expense, forthwith and in the usual manner and at reasonable speed, cause the Trust Equipment to proceed or to be drawn to such point or points on said railroad as shall be designated by the Trustee and will there deliver or cause to be delivered the same to the Trustee; or the Trustee at its option may keep the Trust Equipment on any of the lines of railroad or premises of the Company, until the Trustee shall have leased, sold or otherwise disposed of the same, and for such purpose the Company agrees to furnish without charge for rent or storage the necessary tracks at any convenient point or points selected by the Trustee. It is hereby expressly covenanted and agreed that the performance of the foregoing covenants is of the essence of the contract and that upon application to any court of equity having jurisdiction in the premises the Trustee shall be entitled to a decree against the Company requiring the specific performance thereof.

Any such sale or sales may be held or conducted at such place or places and at such time or times 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 such sale.

No retaking of possession or withdrawal of the Trust Equipment by the Trustee, nor any lease or sale thereof nor any act or failure or omission to act, against the Company or in respect of the Trust Equipment on the part of the Trustee or on the part of the holder of any Trust Certificate, nor any delay or indulgence granted to the Company by the Trustee or any such holder, shall affect the obligations of the Company under this Lease or under the Agreement or under the Company's guarantee.

The remedies in this Lease and in the Agreement provided in favor of the Trustee and the holders of Trust Certificates, or any of them, shall not be deemed exclusive, but shall be cumulative and shall be in addition to all other remedies in their favor existing at law or in equity. The Company hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify any of the

remedies herein provided, to the extent that such waiver is permitted by law. Such remedies are, however, subject to any mandatory requirements of law which are not permitted to be waived.

If the Trustee shall exercise any of the powers or remedies conferred upon it hereunder, the Company shall have the right, after all rentals and other sums due hereunder to the Trustee shall have been received by the Trustee, to require title to such of the Trust Equipment as shall not previously have been sold, assigned, transferred or otherwise disposed of by the Trustee to others, to be transferred and assigned by the Trustee to the Company free from any further liabilities or obligations to the Trustee hereunder. If after applying all sums of money received by the Trustee in the exercise of such powers and remedies there shall remain any amount due to the Trustee under the provisions of this Lease, the Company hereby agrees to pay to the Trustee the amount of such deficiency. If after applying as aforesaid all sums so received by the Trustee there shall remain a surplus in the possession of the Trustee, such surplus shall be paid to the Company.

ARTICLE EIGHTH

This Lease 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 Trustee, acting in accordance with the terms and conditions of said Agreement, and the Company, pursuant to due corporate authority, have caused these presents to be duly executed, as of the day and year first above written.

THE FIRST NATIONAL BANK OF DENVER, TRUSTEE,

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

J. Claudette Gibeau

Mark Chaney

By ..... Vice-President.

Attest: ..... Assistant Cashier.

THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY,

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

S. A. Thornley

C. O. Penney

By W. J. Holtman ..... President.

Attest: ..... Secretary.

STATE OF COLORADO
CITY AND COUNTY OF DENVER } ss.

I, Marie A. Watters, a Notary Public in and for said City and County in the State aforesaid, do hereby certify that Milton G. Janecek, Vice-President, and Charles W. Smedly, Jr., 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 21st day of July, 1978.

My commission expires 9-21-79

Marie A. Watters
Notary Public.

STATE OF COLORADO,
CITY AND COUNTY OF DENVER. } SS.

BE IT REMEMBERED and I do hereby certify that on this 5th day of July, 1978, 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, W. J. Holtman and C. E. Schmeckpeper 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 W. J. Holtman and C. E. Schmeckpeper, 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 W. J. Holtman is the President of said corporation and the said C. E. Schmeckpeper 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 hereinabove written.

My commission expires 2-10-81

Rosemary W. Wiemeyer
Notary Public.

THIS AGREEMENT, dated as of the first day of August, 1978, by and between CHARLES W. SMEDLY, JR., and RICHARD C. DICE (hereinafter called the Vendors), of the first part, THE FIRST NATIONAL BANK OF DENVER, a national banking association organized and existing under the laws of the United States (hereinafter called the Trustee), of the second part, and THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY, a corporation of the State of Delaware (hereinafter called the Company), of the third part, WITNESSETH as follows:

WHEREAS, the Vendors have contracted to acquire or will contract to acquire the railroad equipment specifically described in the Lease of Railroad Equipment from the Trustee to the Company (hereinafter called the Lease) prefixed to this Agreement, to which Lease reference is hereby made, which equipment or so much thereof as may be transferred and delivered to the Trustee pursuant to the Agreement, and any substituted or additional equipment provided for in this Agreement or in the Lease, is herein and therein called the Trust Equipment; and

WHEREAS, subscriptions have been or will be secured for the principal amount of Fourteen Million Twenty-Five Thousand Dollars ($14,025,000.) of Denver and Rio Grande Western Railroad Equipment Trust Certificates, Series PP (hereinafter called the Trust Certificates), the proceeds to constitute a fund to be furnished to the Vendors to be applied by them in part payment of the purchase price of said Trust Equipment to be acquired by the Trustee; and

WHEREAS, the Vendors desire to secure to the parties subscribing to said fund, or their assigns, the payment of the principal amount of the Trust Certificates in fifteen annual maturities, payable respectively on August 1 in each year, from August 1, 1979, to August 1, 1993, both inclusive, as hereinafter more particularly provided, with dividends to said dates of maturity respectively at the rate per annum as hereinafter provided, payable semi-annually on February 1 and August 1 in each year; and to evidence the rights of the subscribers to said fund by Trust Certificates in substantially the form hereinafter set forth:

NOW, THEREFORE, IN CONSIDERATION OF THE PREMISES AND THE MUTUAL COVENANTS HEREIN CONTAINED, THE PARTIES HERETO AGREE AS FOLLOWS:

ARTICLE I.

SECTION 1. The Vendors hereby agree to sell, assign, transfer and set over unto the Trustee, as Trustee for the holders of the Trust Certificates hereinafter described, the Trust Equipment when and as the Trust Equipment or any unit or units thereof are constructed and completed, together with all Vendors' rights in respect of the Trust Equipment under contracts for the manufacture thereof. The Vendors will deliver, or cause to be delivered, the Trust Equipment to the person or persons designated by the Trustee as its agent or agents to receive such delivery, who may be any one or more of the officers or agents of the Company, and the certificate of any and every agent so designated shall be conclusive evidence of such delivery. The Trustee

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 PP, 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 133⅓% 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 Fourteen Million Twenty-Five Thousand Dollars ($14,025,000.) 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 Trust Certificates 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, payable semi-annually on the first day of February and August in each year, commencing February 1, 1979, but only from and out of the rentals and moneys otherwise received by the Trustee under this Agreement or the Lease, and shall have endorsed thereon the guaranty of the Company in the form hereinafter set forth.

The Trust Certificates shall mature in fifteen (15) equal annual installments of $935,000 principal amount each, payable on August 1, 1979 and on the first day of August of each year thereafter to and including August 1, 1993.

The due date and dividend rate shall appear upon the face of each Trust Certificate together with all such numbers, descriptions or marks of identification as the Trustee may determine.

SECTION 2. The texts of the Trust Certificates, and the guaranty to be endorsed on the Trust Certificates by the Company, as hereinafter in Article III provided, shall be in substantially the following forms:

[FORM OF TRUST CERTIFICATE]

$..... No. R.....

DENVER AND RIO GRANDE WESTERN RAILROAD
EQUIPMENT TRUST

Series PP

EQUIPMENT TRUST CERTIFICATE

TOTAL ISSUE $14,025,000.

Dividends at the rate of % per annum

Payable February 1 and August 1

The First National Bank of Denver, Trustee

PRINCIPAL HEREOF PAYABLE 1, 19 .

THE FIRST NATIONAL BANK OF DENVER, Trustee under an Agreement dated as of August 1, 1978, by and between Charles W. Smedley, Jr., and Richard C. Dice, Vendors, of the first part, The First National Bank of Denver, Trustee, of the second part, and The Denver and Rio Grande Western Railroad Company, of the third part, hereby certifies that

or registered assigns, is entitled to an interest in the principal amount of $ in DENVER AND RIO GRANDE WESTERN RAILROAD EQUIPMENT TRUST, SERIES PP, payable on the due date stated above, upon presentation and surrender of this Certificate to the Trustee in Denver, Colorado, or at the option of the registered holder at the Agency of the Trustee in the Borough of Manhattan, in the City and State of New York, and to payment, until said last mentioned date, of dividends on said principal amount, semi-annually on February 1 and August 1 of each year, at the rate of % per annum from the date hereof, at said office or agency of the Trustee, with interest at said dividend 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 the rentals or other moneys received by the Trustee and applicable to such payment under the provisions of said Agreement and Lease.

This Certificate is one of an issue of Certificates of serial maturities, and having an aggregate principal amount not exceeding $14,025,000., 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 Deposited Cash or direct obligations of the United States of America in lieu thereof, as provided in said Agreement) and said Lease thereof are held by the Trustee in trust for the benefit of the holders of the inter-

ests represented by said Certificates, to which Agreement and Lease (filed with the Trustee at its office in Denver, Colorado) reference is made for a full statement of the rights and obligations of the Company, the duties and immunities of the Trustee and the rights of the registered holder hereof thereunder.

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

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

In case of default in the performance or observance of any of the covenants of the Company in said Agreement or Lease 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 one of its Vice-Presidents or one of its Assistant Vice-Presidents and a facsimile of its corporate seal to be hereon imprinted and to be attested by the facsimile signature of its Cashier or one of its Assistant Cashiers, as of the day of , 19 .

THE FIRST NATIONAL BANK
OF DENVER, TRUSTEE,

Attest:

By.....

..... Assistant Cashier.

Vice-President.

[FORM OF GUARANTY FOR TRUST CERTIFICATE]

THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY, for a valuable consideration, hereby unconditionally guarantees to the registered holder of the within Certificate the prompt payment of the principal of said Certificate, and of dividends thereon at the dividend rate specified therein on the semi-annual dates specified in the Certificate, with interest at the dividend 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 Agreement and Lease referred to therein.

THE DENVER AND RIO GRANDE WESTERN
RAILROAD COMPANY,

By.....
President.

SECTION 3. The Trust Certificates shall be signed in the name and on behalf of the Trustee by one of its Vice-Presidents or one of its Assistant Vice-Presidents, and a facsimile of its corporate seal shall be thereon imprinted and attested by the facsimile signature of its Cashier or one of its Assistant Cashiers. In case any officer of the Trustee whose signature, whether facsimile or not, shall appear on any of the Trust Certificates shall cease to be such officer of the Trustee before the Trust Certificates shall have been issued and delivered by the Trustee, such Trust Certificates 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.

SECTION 4. 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 lithographed or engraved Trust Certificates, temporary Trust Certificates in any denomination or denominations specified in such request. Such temporary Trust Certificates shall be substantially of the tenure of the definitive Trust Certificates in lieu of which they are issued 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 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.

SECTION 5. The Trust Certificates shall be in 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 office of the Trustee in Denver, Colorado or at the Agency of the Trustee in the Borough of Manhattan, City and State of New York, 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 as of August 1, 1978, or the dividend payment date to which dividends shall have been paid next preceding or coincident with the date of issue, whichever is later, and shall bear dividends from the date thereof.

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

For any registration, 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.

Each Trust Certificate delivered pursuant to any provision of this Agreement in exchange or substitution for or upon the transfer of the whole or any part of one or more other Trust Certificates shall carry all the rights to dividends accrued and unpaid, and to accrue, which were carried by the whole or such part of such one or more other Trust Certificates and, notwithstanding anything contained in this Agreement, such Trust Certificates shall be so dated that neither gain nor loss in dividends shall result from such exchange, substitution or transfer.

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 6. In case any Trust Certificate shall become mutilated or defaced or be lost, stolen or destroyed, then on the terms herein set forth, and not otherwise, the Trustee, upon request, shall execute and deliver a new Trust Certificate of like maturity, tenor and date, and bearing such number, designation or other mark of identification as the Trustee may determine, in exchange and substitution for, and upon cancellation of, the mutilated or defaced Trust Certificate, or in lieu of or in substitution for the same if lost, stolen, or destroyed. The Company shall execute its guaranty on any Trust Certificate so delivered. The applicant for a new Trust Certificate shall furnish to the Trustee and to the Company evidence to their satisfaction of the multilation, defacement, loss, theft or destruction of such Trust Certificate alleged to have been lost, stolen or destroyed, and of the ownership and authenticity of such multilated, defaced, lost, stolen or destroyed Trust Certificates, 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 multilated, defaced,

lost, stolen or destroyed Trust Certificates, and shall preclude any and all other rights and remedies, any law or statute now existing or hereafter enacted to the contrary notwithstanding.

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, 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 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 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, but the same shall be paid as herein provided and cancelled, and no Trust Certificate 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 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 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 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 and dividends 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, 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 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 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 August 1, 1993, 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 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 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.

SECTION 2. The Trustee covenants and agrees to apply and distribute the rentals received by it under subdivisions (*c*), (*d*), (*e*) and (*f*) of Article First of the Lease, other than rentals paid to restore amounts to Deposited Cash and other cash held by the Trustee hereunder, when and as the same shall be received, for the following purposes, to-wit:

(*a*) to the payment of the Trustee's reasonable compensation and the necessary and reasonable expenses of the trust connected with the Trust Equipment and the Lease thereof;

(*b*) to the payment of any and all taxes, assessments and other governmental charges upon the income or property of the trust, or the agreements evidencing the same, which the Trustee may be required to pay;

(*c*) to the payment of the dividends payable on the Trust Certificates when and as the same shall become payable; and

(*d*) to the payment of the principal of the Trust Certificates when and as the same shall become payable according to the terms thereof or hereof.

Nothing contained herein or in the Lease or in the Trust Certificates shall be deemed to impose on the Trustee or on the Company any obligation to pay to the holder of any Trust Certificate, any amount which, under any lawful requirement of the United States of America or of any state, county, municipality or other taxing authority therein, must be deducted or retained or withheld by the Company or the Trustee from the amount payable to the holder of any Trust Certificate.

SECTION 3. The Trustee shall maintain an Agency in the Borough of Manhattan, in the City and State of New York, where Trust Certificates may be presented for payment and where books for the registration, exchange and transfer of Trust Certificates will be kept; and upon presentation for registration, exchange and transfer the Trustee will register, exchange or transfer, or cause to be registered, exchanged or transferred, as the case may be, as hereinbefore provided, and under such reasonable regulations as it may prescribe, any of the Trust Certificates.

SECTION 4. The Trustee assumes no liability for anything other than its own willful default, misconduct or gross neglect, or that of its officers. It shall be required to undertake no act or duty in the way of taking care of or taking possession of the Trust Equipment until fully secured against all liability and expenses. No duty of insurance or of repairs or of protection of any of the Trust Equipment is incumbent upon it, nor shall it be responsible for the filing, refiling, recording or re-recording of this Agreement or of the Lease; and the Trustee may issue and deliver Trust Certificates in advance of such filing or recording. The Trustee makes no representations or warranties as to its title to or ownership of the Trust Equipment or any part of it, nor as to the freedom of the Trust Equipment or any of it from prior encumbrances or liens, and nothing herein contained shall require the Trustee to execute any assign-

ment or transfer of other than such interest as it may have and own at the time in the Trust Equipment.

The Trustee shall not be liable to anyone for any delay in the delivery of any of the Trust Equipment, nor for any default on the part of the manufacturers thereof or of the Vendors, nor for any defect in any of the Trust Equipment or in the title thereto, nor shall anything herein or in the Lease 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 thereof.

The Trustee shall incur no liability or responsibility by reason of its application of the proceeds of the Trust Certificates and/or of rentals payable to it under subdivisions (*a*) and (*b*) of Article First of the Lease, or any part thereof, from time to time in varying amounts, prior to the completion and delivery of all the Trust Equipment, and/or prior to the final certification to it of the cost of the Trust Equipment, provided such application is made in accordance with the provisions of this Agreement.

In accepting delivery of and making payment for the Trust Equipment hereunder, the Trustee may rely upon and shall be fully protected by the certificates, bills of sale and opinions of counsel to be furnished to it under Section 4 of Article I of this Agreement.

The Trustee may exercise its powers and perform its duties by or through such attorneys, employes, agents and servants as it shall appoint, and it shall be entitled to the advice of counsel (who may in cases deemed by the Trustee, in its reasonable discretion, to be appropriate, be counsel to the Company), and shall be protected by the advice of such counsel in anything done or omitted to be done by it in accordance with such advice. The Trustee shall not be liable or responsible for the neglect, default or misconduct of any attorney, agent, employe or servant appointed and retained by it in the exercise of reasonable care, but nothing in this sentence contained shall limit any liability of the Trustee, pursuant to the first sentence of this Section 4.

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

SECTION 5. The Trustee shall be under no obligation to take any action for the execution or enforcement of any of the trusts 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 upon being satisfactorily indemnified against expense and liability with respect thereto, and also furnished with proof satisfactory to it as to the ownership of the Trust Certificates in respect of which any notice or request may be made; but neither any such request nor this provision therefor shall affect any discretion herein elsewhere specifically given to the Trustee to determine what action it shall take in respect of such default, or to take action without request.

SECTION 6. No holder of any Trust Certificate issued hereunder shall have any right to institute any suit, action or proceeding for the execution or enforcement of

the trusts 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 upon the Trustee, indemnity satisfactory to it provided, and a reasonable time elapsed for action by the Trustee upon such request, it shall decline to institute any proceedings pursuant thereto.

SECTION 7. 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 Trust Certificates then outstanding, which notice shall distinctly specify the default desired to be brought to the attention of the Trustee.

SECTION 8. The Trustee shall not incur any liability to anybody in acting upon any notice, consent, order, certificate, receipt, request, opinion, or other paper or instrument believed by it to be genuine or authentic, and to be signed by the proper party or parties.

SECTION 9. Any moneys at any time held by the Trustee, hereunder or under the Lease, shall, until paid out by the Trustee as herein or therein provided, be deposited to the credit of the Trustee in accordance with Section 2 of Article I hereof, or be held by it, in either case in trust for the benefit of the holders of the Trust Certificates. The Trustee will, upon written request of the Company, place any such moneys so held in trust in time deposits of specified duration and, to the extent permitted by law, allow interest on any such time deposits at such rate as may be agreed upon between the Trustee and the Company.

At any time, and from time to time, if at the time there shall be no default under the terms of the Lease or of this Agreement or of any supplemental lease or supplemental agreement, the Trustee, on request of the Company, shall invest Deposited Cash and any other cash held by the Trustee in trust pursuant to Article Third or Article Fifth of the Lease (hereinafter in this section collectively called Cash) in bonds, notes or other direct obligations of the United States of America (herein and in the Lease called Government Securities), of such maturity, and at such prices, including any premium and accrued interest, as shall be set forth in a request by the Company, such Government Securities to be held by the Trustee in trust for the benefit of the holders of the Trust Certificates.

The Trustee shall, on request of the Company, or the Trustee may, in the event Cash, or any part thereof, is requested to be paid or disbursed under the terms of the Lease or this Agreement, sell such Government Securities, or any portion thereof, and restore to Cash the proceeds of any such sale (including an amount equal to accrued interest paid from Cash at the time of purchase).

The Trustee shall restore to Cash, out of rent received by it for that purpose, under the provisions of subdivision (*c*) of Article First of the Lease, an amount equal to any expenses incurred or sustained in connection with any purchase or sale

of Government Securities, and also an amount equal to any loss of principal incident to any sale of Government Securities for a sum less than the amount paid therefor out of Cash, including any accrued interest. The Company, if not in default under the terms of the Lease or of this Agreement or of any supplemental lease or supplemental 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 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 in writing of such appointment to be given to holders of the Trust Certificates then outstanding; 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 succesor 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 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 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 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.

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 ownership of 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, 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.

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.

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:

J. Claudette Gibeau

Mark Chaney

[SEAL]

Richard C. Dix [SEAL]

Vendors.

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

J. Claudette Gibeau

Mark Chaney

THE FIRST NATIONAL BANK OF DENVER, TRUSTEE,

By

Vice-President.

Attest:

Assistant Cashier.

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

S. A. Thornley

C. O. Penney

THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY,

By W. J. Holtman

President.

Attest:

Secretary.

STATE OF COLORADO
CITY AND COUNTY OF DENVER } ss.

I, Marie A. Watters, a Notary Public in and for said City and County in the State aforesaid, do hereby certify that CHARLES W. SMEDLY, JR. and RICHARD C. DICE, 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 2nd day of July, 1978.

My commission expires 9-21-79

Marie A. Watters
Notary Public.

STATE OF COLORADO
CITY AND COUNTY OF DENVER } ss.

I, Marie A. Watters, a Notary Public in and for said City and County in the State aforesaid, do hereby certify that MILTON G. JANECEK, Vice-President, and CHARLES W. SMEDLY, JR., 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 3rd day of July, 1978.

My commission expires 9-21-79

Marie A. Watters
Notary Public.

STATE OF COLORADO
CITY AND COUNTY OF DENVER } SS.

BE IT REMEMBERED and I do hereby certify that on this 5th day of July, 1978, 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, W. J. Holtman and C. E. Schmeckpeper 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 W. J. Holtman and C. E. Schmeckpeper, 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 W. J. Holtman is the President of said corporation and the said C. E. Schmeckpeper 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 2-10-81

Rosemary W. Wiemeyer
Notary Public.