Southern Pacific Transportation Company

Southern Pacific Building • One Market Plaza
San Francisco, California 94105
(415) 362-1212

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CAROL A. HARRIS
ATTORNEYS

No. 8-354A017
Date DEC 20 1978
Fee $ 50.00

ICC Washington, D. C.

December 19, 1978

9828
RECORDATION NO. ..... Filed 1425 FD 28907

DEC 20 1978 -2 45 PM
INTERSTATE COMMERCE COMMISSION

Mr. H. G. Homme, Jr.
Secretary
Interstate Commerce Commission
Washington, D. C. 20423

Southern Pacific Transportation Company Equipment Trust, Series 73 --- Recording Pursuant to the Provisions of Section 11303

Dear Sir:

There are handed to you herewith for recording in compliance with the provisions of Section 11303 of the Interstate Commerce Act, the original and three counterparts of Equipment Trust Agreement dated as of December 1, 1978, constituting Southern Pacific Transportation Company Equipment Trust, Series 73, together with this Company's voucher in the sum of $50.00 in payment of the required recording fee.

The following information is set forth in accordance with the provisions of Section 57.4 of the Commission's Order of July 28, 1952, as amended:

Name and Address of Trustee-Lessor:

First Pennsylvania Bank N.A.
15th & Chestnut Streets
Philadelphia, Pennsylvania 19101

Paul Joyner

Counterpart

RECEIVED
DEC 20 2 38 PM '78
I.C.C.
FEE OPERATION BR.

Name and Address of Lessee-Guarantor:

Southern Pacific Transportation Company
Southern Pacific Building
One Market Plaza
San Francisco, California 94105

General Description of the Equipment Covered by Equipment Trust Agreement:

26	3000-h.p. four-axle, four-motor diesel freight locomotives; General Electric Company, builder; lettered SP and numbered 7858 to 7883, both inclusive;
270	70-ton, 52 ft. 8 in., box cars with double free rolling doors and cushion underframes; FMC Corporation (Marine and Rail Equipment Division), builder; lettered SP and numbered 245990 to 246259, both inclusive; and
50	50-ton, by window caboose cars; International Car Company, builder; lettered SP and numbered 4650 to 4699, both inclusive.

When recording of the Equipment Trust Agreement has been completed, will you kindly return two counterparts of the instrument with the evidence of recording endorsed thereon to our representative.

Very truly yours,

Karen Ackerman

Interstate Commerce Commission
Washington, D.C. 20423

12/20/78

OFFICE OF THE SECRETARY

Karan Ackerman
Southern Pacific Transportation Co.
Southern Pacific Building
One Market Plaza
San Francisco, Calif. 94105

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 12/20/78 at 2:45pm' and assigned recordation number(s) 9928

Sincerely Yours,

H.G. Homme, Jr.,
Secretary

Enclosure(s)

SE-30-T
(2/78)

RECORDATION NO. 8321 Filed 1425

DEC 20 1978 - 2 45 PM

INTERSTATE COMMERCE COMMISSION

SOUTHERN PACIFIC TRANSPORTATION COMPANY EQUIPMENT TRUST

Series 73

EQUIPMENT TRUST AGREEMENT

Dated as of December 1, 1978

By and Between

FIRST PENNSYLVANIA BANK N.A.,
Trustee,

and

SOUTHERN PACIFIC TRANSPORTATION COMPANY

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EQUIPMENT TRUST AGREEMENT, dated as of December 1, 1978 by and between FIRST PENNSYLVANIA BANK N.A., a corporation duly organized and existing under the laws of the Commonwealth of Pennsylvania, as Trustee (hereinafter called the Trustee), of the first part, and SOUTHERN PACIFIC TRANSPORTATION COMPANY, a corporation duly organized and existing under the laws of the State of Delaware (hereinafter called the Company), of the second part.

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

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

WHEREAS, Southern Pacific Transportation Company Equipment Trust Certificates, Series 73 (hereinafter called Trust Certificates), are to be issued and sold in an aggregate principal amount not exceeding $23,100,000, and the net proceeds (as hereinafter defined) of such sale together with such other cash, if any, as may be required to be deposited by the Company as hereinafter provided is to constitute a fund equal to the aggregate principal amount of Trust Certificates so issued and sold to be known as SOUTHERN PACIFIC TRANSPORTATION COMPANY EQUIPMENT TRUST, SERIES 73, to be applied by the Trustee from time to time in part payment of the cost of the Trust Equipment, the remainder of the cost thereof to be paid out of advance rentals to be paid by the Company as provided herein; and

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

[FORM OF TRUST CERTIFICATE]

REGISTERED

No. R $

SOUTHERN PACIFIC TRANSPORTATION COMPANY EQUIPMENT TRUST

Series 73

Equipment Trust Certificate
Total Authorized Issue $23,100,000
FIRST PENNSYLVANIA BANK N.A., Trustee
Dividends at the rate of 9⅛% Per Annum
Payable June 1 and December 1,
Principal hereof payable December 1, 19....

FIRST PENNSYLVANIA BANK N.A., as Trustee under an Equipment Trust Agreement dated as of December 1, 1978, by and between FIRST PENNSYLVANIA BANK N.A., Trustee, of the first part, and SOUTHERN PACIFIC TRANSPORTATION COMPANY (hereinafter called the Company), of the second part, hereby certifies that or registered assigns, is entitled to an interest in the principal amount of $ in SOUTHERN PACIFIC TRANSPORTATION COMPANY EQUIPMENT TRUST, SERIES 73, payable on the due date stated above, upon presentation and surrender of this Certificate to the undersigned at its agency in the Borough of Manhattan, City and State of New York (which agency may be the office of Southern Pacific Transportation Company in said Borough and City), and to payment, until said last mentioned date, of dividends on said principal amount, semi-annually on June 1 and December 1 in each year, at the rate of 9⅛% per annum from the date hereof, at said agency of the undersigned, 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 rentals or other moneys received by the undersigned and applicable to such payment under the provisions of said Agreement.

This Certificate is one of an issue of Certificates having an aggregate principal amount not exceeding $23,100,000, all issued or to be issued under and subject to the terms of said Agreement, under which certain railroad equipment leased to the Company (or cash or obligations defined in said Agreement as "Government Securities" in lieu thereof, as provided in said Agreement) is held by the undersigned in trust for the benefit of the holders of the interests represented by said Certificates, to which Agreement (a copy of which is on file with the undersigned at its said agency) reference is made for a full statement of the rights and obligations of the Company, the duties and immunities of the undersigned and the rights of the registered holder hereof thereunder.

The Certificates are issuable as fully registered Trust Certificates in denominations of $1,000 and any multiple of $1,000. The Certificates are interchangeable upon presentation thereof at said agency of the undersigned, but only in the manner, subject to the limitations and upon payment of the charges, provided in the Agreement.

This Certificate is transferable by the registered holder hereof in person or by duly authorized attorney on the books of the undersigned at its said agency in the Borough of Manhattan, City and State of New York, upon surrender hereof to the undersigned at its said agency, 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 undersigned, 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 contained, the principal amount represented by this Certificate may be declared due and payable, as provided in said Agreement.

IN WITNESS WHEREOF, the Trustee has caused this Certificate to be signed by the facsimile signature of its President or one of its Vice Presidents and its corporate seal, in facsimile, to be hereunto affixed and to be attested by its Secretary or one of its Assistant Secretaries, on .

FIRST PENNSYLVANIA BANK N.A.,

Trustee,

By .....
Vice President

ATTEST:

.....
Assistant Secretary

[FORM OF GUARANTY FOR TRUST CERTIFICATE]

SOUTHERN PACIFIC TRANSPORTATION 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 said 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 Equipment Trust Agreement referred to therein.

SOUTHERN PACIFIC TRANSPORTATION COMPANY,

By .....
Chairman

WHEREAS, it is desired to secure to the holders of the Trust Certificates the payment of the principal thereof in 15 equal annual installments payable on the first day of December in each year beginning December 1, 1979, and ending December 1, 1993, as hereinafter more particularly provided, with dividends to said dates of maturity, respectively, as hereinafter provided, payable semi-annually on June 1 and December 1 in each year, and to evidence the rights of the holders of the Trust Certificates in substantially the forms hereinbefore set forth;

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

ARTICLE I

DEFINITIONS

For all purposes of this Agreement, unless the context otherwise requires:

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

Company shall mean Southern Pacific Transportation Company.

Cost, when used with respect to Equipment, shall mean the actual cost thereof, and shall include only such items as may properly be included in such cost under the Interstate Commerce Commission's Uniform System of Accounts for Railroad Companies, as in effect at the time in question, or the accounting rules of such other Federal governmental authority having jurisdiction over the accounts of the Company, or to the extent not determined thereby or in case there be no such accounting rules of the Interstate Commerce Commission or other Federal authority in effect at such time, sound accounting practice.

Deposited Cash shall mean the aggregate of (a) cash and any advance rentals on deposit with the Trustee as provided in the first paragraph of Section 2.01 hereof and, when required or indicated by the context, any Government Securities purchased by the use of such

cash or rentals pursuant to the provisions of Section 7.08 hereof, and (b) any sums restored to Deposited Cash from rentals pursuant to Section 4.04(B)(1) hereof and on deposit with the Trustee.

Equipment shall mean standard-gauge railroad equipment (other than work equipment) which shall have been first put into operation after November 30, 1978.

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

The *fair value* of any unit of Trust Equipment shall be considered to be the Cost thereof less depreciation accrued on such Equipment computed by the straight-line method at the rate of six and two-thirds per cent (6⅔%) of the Cost for each full year (but not pro rata for any part of a year) from the date the same was first put into operation to the date as of which the fair value is to be determined.

Government Securities shall mean bonds, notes or other direct obligations of the United States of America or obligations for which the faith of the United States is pledged to provide for the payment of the interest and principal.

The word *holder,* when used with respect to Trust Certificates, shall mean the registered holder of such Trust Certificates and shall include the plural as well as the singular number.

Officer's Certificate shall mean a certificate signed by the Chairman, the President, a Vice President, the Treasurer or an Assistant Treasurer of the Company.

Opinion of Counsel shall mean an opinion of counsel (who may be of counsel to the Company) satisfactory to the Trustee.

Request shall mean a written request for the action therein specified signed on behalf of the Company by the Chairman, the President, a Vice President, the Treasurer, or an Assistant Treasurer of the Company and delivered to the Trustee.

Trust Certificates shall mean Southern Pacific Transportation Company Equipment Trust Certificates, Series 73, issued hereunder.

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

Trustee shall mean First Pennsylvania Bank N.A., a corporation duly organized and existing under the laws of the Commonwealth of Pennsylvania, and any successor as trustee hereunder.

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

ARTICLE II

Trust Certificates and Issuance Thereof

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

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

Section 2.02. Each of the Trust Certificates shall represent an interest in the principal amount therein specified in the trust created hereunder and shall bear dividends on said amount at the rate of 9⅛% per annum, payable semi-annually on the first day of June and of December in each year.

The aggregate principal amount of Trust Certificates which shall be executed and delivered by the Trustee hereunder shall not exceed the sum of $23,100,000, except as provided in Sections 2.05 and 2.06 hereof. Each of the Trust Certificates shall bear upon its face the due date thereof together with such numbers, descriptions or marks of identification as the Trustee may determine.

The principal amount of the Trust Certificates shall become due in 15 equal annual installments payable on first day of December in each year beginning December 1, 1979, and ending December 1, 1993.

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

Section 2.04. The Trust Certificates shall be signed in the name and on behalf of the Trustee by the facsimile signature of the President

or one of its Vice Presidents and its corporate seal in facsimile shall be attested by its Secretary or one of its Assistant Secretaries. 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, or shall not have been acting in such capacity on the date of the Trust Certificates, such Trust Certificates shall be adopted by the Trustee and be issued and delivered as though such person had not ceased to be or had been such officer of the Trustee.

SECTION 2.05. Trust Certificates shall be in the denominations of $1,000 or any multiple thereof; shall be registered as to both principal and dividends, in the name of the holder; shall be entitled to registration of transfer upon presentation and surrender thereof for registration of transfer at the agency of the Trustee in the Borough of Manhattan, City and State of New York (which agency may be the office of the Company in said Borough and City), accompanied by appropriate instruments of assignment and transfer, duly executed by the registered holder of the surrendered Trust Certificate or Certificates or by duly authorized attorney, in form satisfactory to the Trustee; and shall be dated December 1, 1978, or the dividend payment date to which dividends shall have been paid, next preceding or coinciding with the date of issue, whichever is later, and shall bear dividends from the date thereof.

The Trust Certificates may be exchanged for a like aggregate principal amount of Trust Certificates of the same maturity of authorized denominations. The Trust Certificates to be exchanged shall be surrendered at said agency of the Trustee in the Borough of Manhattan, City and State of New York.

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

For any registration of transfer, or any exchange the Trustee shall require the payment of a sum sufficient to reimburse it for any governmental charge connected therewith.

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

SECTION 2.06. 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 Certificates so delivered. The applicant for a new Trust Certificate shall furnish to the Trustee and to the Company evidence to their satisfaction of the mutilation, defacement, loss, theft or destruction of such Trust Certificate alleged to have been lost, stolen or destroyed, and of the ownership and authenticity of such mutilated, defaced, lost, stolen or destroyed Trust Certificate, and also such security and indemnity as may be required by the Trustee and by the Company, in their discretion; and shall pay all expenses and charges of such substitution or exchange. All Trust Certificates shall be issued, held and owned upon the express condition that the foregoing provisions are exclusive in respect of the replacement of mutilated, 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.

SECTION 2.07. At any time prior to the issue of definitive Trust Certificates the Trustee shall, upon Request of the Company, issue and deliver, in lieu of definitive Trust Certificates, temporary Trust Certificates in any denomination or denominations specified in such Request. Such temporary Trust Certificates shall be substantially of the tenor of the definitive Trust Certificates in lieu of which they are issued and may be issued with 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.

ARTICLE III

Acquisition of Trust Equipment by Trustee; Deposited Cash

Section 3.01. The Company, as speedily as may be, shall cause to be constructed and shall cause to be sold, assigned, transferred and set over unto the Trustee, as trustee for the holders of the Trust Certificates the Equipment described in Schedule A hereto.

To that end the Company hereby assigns, or as speedily as may be after entering into the contract or contracts for the construction of such Equipment agrees to assign, to the Trustee all its rights, title and interest under said contract or contracts. Such Equipment shall be delivered to the Company, which is hereby designated by the Trustee as its agent to receive such delivery, and an Officer's Certificate as to such delivery shall be conclusive evidence of such delivery.

In the event that it may be deemed necessary or desirable to procure for the transportation services of the Company, and to include in the trust hereby created, other Equipment in lieu of or in addition to any of the Equipment specifically described in Schedule A hereto, the Company may cause such other Equipment to be transferred to the Trustee, to be substituted under the trust, and to that end the Company, upon entering into a contract or contracts for the construction of such other Equipment, shall assign to the Trustee all its rights, title and interest under the said contract or contracts.

Section 3.02. From time to time, when and as any of the Trust Equipment shall have been delivered to the Trustee or its agent pursuant to this Article III, the Trustee shall (subject to the provisions of Section 3.03 hereof) pay, upon Request, to the manufacturer or manufacturers of the delivered Trust Equipment out of Deposited Cash an amount which, together with all payments previously made out of Deposited Cash upon deliveries of Trust Equipment, will equal

80% of the aggregate Cost of the Trust Equipment then and theretofore delivered to the Trustee.

SECTION 3.03. The Company covenants that, contemporaneously with any payment by the Trustee pursuant to Section 3.02 hereof, it will pay to the Trustee the advance rental provided in Section 4.04(A)(2) hereof, and thereupon the Trustee shall, upon request, pay to the manufacturer or manufacturers of the delivered Trust Equipment, by the use of such advance rental, the portion of the Cost of the delivered Trust Equipment not paid out of Deposited Cash as provided for in Section 3.02 hereof; the intention being that the Company shall ultimately pay not less than 20% of the final Cost of all the Trust Equipment, and the Trustee and the Company shall at any time if occasion arises adjust their accounts and payments to the end that the Trustee shall pay with Deposited Cash not more than 80% of such final Cost and the Company shall pay as advance rental the remainder, to be not less than 20% of such final Cost.

SECTION 3.04. The Trustee shall not pay out any Deposited Cash against the delivery of any of the Trust Equipment unless and until it shall have received:

(a) An invoice or invoices from the manufacturer or manufacturers and an Officer's Certificate which shall state (i) that such Trust Equipment is Equipment as herein defined, (ii) that the Cost of such Trust Equipment is an amount therein specified or is not less than an amount therein specified, and (iii) that such Trust Equipment has been delivered to the Company, as agent for the Trustee, and has been plated or marked in accordance with the provisions of Section 4.06 hereof;

(b) A bill or bills of sale of such Trust Equipment from the manufacturer or manufacturers thereof to the Trustee, which bill or bills of sale shall contain a warranty or guaranty to the Trustee that the title to the Trust Equipment described therein is free from all liens and encumbrances;

(c) An Opinion of Counsel that such bill or bills of sale are valid and effective, either alone or in connection with any other instrument referred to in such opinion, to vest in the Trustee title to such Trust Equipment free from all liens and encumbrances; and

(d) In case of any Trust Equipment not specifically described herein, an Opinion of Counsel that a proper supplement hereto

in respect of such Trust Equipment has been duly executed by the Trustee and the Company, and duly filed and recorded in accordance with Section 6.04 hereof.

Any Officer's Certificate pursuant to this Section 3.04 may state that the Cost of the Trust Equipment therein referred to is tentatively determined, subject to final adjustment to be evidenced in a final Officer's Certificate to be delivered to the Trustee.

If the aggregate final Cost of the Trust Equipment shall be less than 125% of the aggregate principal amount of Trust Certificates issued hereunder, the Company will cause to be transferred to the Trustee additional Trust Equipment in such amount and of such Cost that the aggregate final Cost of the Trust Equipment will be at least 125% of the aggregate principal amount of Trust Certificates issued hereunder and, whether or not Deposited Cash is to be paid out in respect of such additional Trust Equipment, will furnish to the Trustee in respect of such additional Trust Equipment the documents set forth in the first paragraph of this Section 3.04.

SECTION 3.05. Interest, if any, allowed by the Trustee upon any moneys received by it under the provisions hereof and any interest (in excess of accrued interest paid from Deposited Cash at the time of purchase) or other profit accruing upon any investment of Deposited Cash as permitted by Section 7.08 hereof shall belong to the Company and be paid to it by the Trustee, as long as the Company shall not be known to the Trustee to be in default hereunder.

ARTICLE IV

LEASE OF TRUST EQUIPMENT TO THE COMPANY

SECTION 4.01. The Trustee does hereby let and lease to the Company for the term of 15 years from and after December 1, 1978, all the Trust Equipment.

SECTION 4.02. In the event that the Company shall, as provided in Sections 3.01 and 3.04 hereof or in Sections 4.07 and 4.09 hereof, cause to be transferred to the Trustee other Equipment in addition to or in substitution for any of the Equipment herein specifically described, such other Equipment shall be included as part of the Trust

Equipment by supplement hereto and shall be subject to all the terms and conditions hereof in all respects as though it had been part of the Trust Equipment herein specifically described.

SECTION 4.03. As and when any Equipment shall from time to time be transferred and delivered to the Company as agent for the Trustee, the same shall, *ipso facto* and without further instrument of lease or transfer, pass under and become subject to all the terms and provisions hereof.

SECTION 4.04. The Company hereby accepts the lease of all the Trust Equipment, and covenants and agrees to accept delivery and possession hereunder of the Trust Equipment as hereinbefore provided; and the Company covenants and agrees to pay to the Trustee (or, in the case of taxes, to the proper taxing authority), 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, rent hereunder which shall be sufficient to pay and discharge the following items, when and as the same shall become due and payable (whether or not any of such items shall become due and payable prior to the delivery and lease to the Company of any of the Trust Equipment):

(A) The Company shall pay to the Trustee, as hereinafter provided, as advance rental hereunder, sums which shall be equal to the difference between the Cost of the Trust Equipment (other than Trust Equipment subjected hereto pursuant to Sections 4.07 and 4.09 and the last paragraph of Section 3.04 hereof) and the portion of such Cost to be provided out of the net proceeds (excluding premium and accrued dividends, if any) of the sale of the Trust Certificates, the intention being that, when all such Trust Equipment shall have been delivered to the Company as agent for the Trustee, the Company shall have paid or shall pay to the Trustee, as advance rental hereunder, a sum equal to the amount by which the aggregate Cost of such Trust Equipment exceeds such net proceeds of the sale of the Trust Certificates. The Company agrees to pay such advance rentals as follows:

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

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

(B) In addition to such advance rental the Company shall pay to the Trustee, as hereinafter provided, as rental for the Trust Equipment and whether or not at the time any thereof shall have been delivered to the Company, the following:

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

(2) Any and all taxes, assessments and governmental charges upon or on account of the income or property of the trust, or of this Agreement, which the Trustee as such may be required to pay;

(3) (a) The amounts of the dividends payable on the Trust Certificates, when and as the same shall become payable, and (b) interest at the dividend rate from the due date, upon the amount of any installments of rental payable under this subparagraph (3) and the following subparagraph (4) which shall not be paid when due, to the extent legally enforceable; and

(4) The principal of the Trust Certificates, when and as the same shall become payable, whether upon the respective stated dates of maturity thereof or otherwise under the provisions thereof or of this Agreement.

Nothing herein or in the Trust Certificates contained shall be deemed to impose on the Trustee or on the Company any obligation to pay to the holder of any Trust Certificate any tax, assessment or governmental charge required by any present or future law of the United States of America or of any state, county, municipality or other taxing authority thereof to be paid in behalf of, or withheld from the amount payable to the holder of any Trust Certificate. The Company shall not be required to pay any tax, assessment or governmental charge so long as it shall in good faith and by appropriate legal proceedings contest the validity thereof, unless in the judgment of the Trustee the rights or interests of

the Trustee or of the holders of the Trust Certificates may be materially endangered thereby.

SECTION 4.05. At the termination of the lease provided herein and after all payments due or to become due from the Company hereunder shall have been completed and fully made to the Trustee, (1) such payments shall be applied and treated as purchase money and as the full purchase price of the Trust Equipment, (2) any moneys remaining in the hands of the Trustee after providing for all outstanding Trust Certificates and after paying the expenses of the Trustee, including its reasonable compensation, shall be paid to the Company, (3) title to all the Trust Equipment shall vest in the Company, and (4) the Trustee shall execute for record in public offices, at the expense of the Company, such instrument or instruments in writing as reasonably shall be requested by the Company in order to make clear upon public records the Company's title to all the Trust Equipment under the laws of any jurisdiction; *provided, however,* that until that time title to the Trust Equipment shall not pass to or vest in the Company, but title to and ownership of all the Trust Equipment shall be and remain in the Trustee, notwithstanding the delivery of the Trust Equipment to and the possession and use thereof by the Company.

SECTION 4.06. The Company agrees that, at or before the delivery to the Company of each unit of the Trust Equipment, there shall be plainly, distinctly, permanently and conspicuously 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:

> SOUTHERN PACIFIC TRANSPORTATION COMPANY EQUIPMENT TRUST, SERIES 73, FIRST PENNSYLVANIA BANK N.A., TRUSTEE, OWNER AND LESSOR.

Such plates or marks shall be such as to be readily visible and as to indicate plainly the Trustee's ownership of each unit of the Trust Equipment. In case, prior to the termination of the lease provided for herein, any of such plates or marks shall at any time be removed, defaced or destroyed, the Company shall promptly cause the same to be

restored or replaced. The Company shall not change or permit to be changed, the numbers of any of the Trust Equipment at any time covered hereby (or any numbers which may have been substituted as herein provided) except in accordance with a statement of new numbers to be substituted therefor which previously shall have been filed with the Trustee by the Company and which shall be filed and recorded as provided in Section 6.04 hereof.

The Trust Equipment may be lettered "SOUTHERN PACIFIC COMPANY", "SOUTHERN PACIFIC TRANSPORTATION COMPANY", "SOUTHERN PACIFIC SYSTEM", "SOUTHERN PACIFIC LINES", "SOUTHERN PACIFIC", "S.P. Co.", "S.P.", "EVERGREEN FREIGHT CAR CORPORATION", "EFCX", "PACIFIC FRUIT EXPRESS COMPANY", "PACIFIC FRUIT EXPRESS", "P.F.E.", "P.F.F.", "S.P.F.E.", or with the name or initials of any other Affiliate which is permitted to use the Trust Equipment as herein provided, or in some other appropriate manner for convenience of identification of the leasehold interest of the Company therein. During the continuance of the lease provided for herein, the Company shall not allow the name of any person, association or corporation to be placed on any of the Trust Equipment as a designation which might be interpreted as a claim of ownership thereof by the Company or by any person, association or corporation other than the Trustee.

SECTION 4.07. The Company agrees that it will maintain and keep all the Trust Equipment in good order and proper repair at its own cost and expense, unless and until worn out, unsuitable for use, lost or destroyed. Whenever any of the Trust Equipment shall be worn out, lost or destroyed or become unsuitable for use, the Company shall deliver to the Trustee an Officer's Certificate describing such Trust Equipment and stating the then fair value thereof and shall either (a) deposit with the Trustee an amount in cash equal to such fair value or (b) cause to be transferred to the Trustee additional Equipment, free from all liens and encumbrances, of a fair value at least equal to the then fair value of such Trust Equipment so worn out, unsuitable for use, lost or destroyed, and deliver to the Trustee, in respect of such additional Equipment, certificates, bills of sale and Opinions of Counsel, all in like manner as provided in Section 3.04 hereof, and, in addition, an Officer's Certificate describing such additional Equipment and stating

the Cost and the then fair value thereof. The rights and remedies of the Trustee to enforce or to recover any of the rental payments shall not be affected by reason of such wearing out, unsuitableness for use, loss or destruction. Cash deposited with the Trustee pursuant to this Section 4.07 shall be held and applied as provided in Section 4.09 hereof.

The Company covenants and agrees to furnish to the Trustee, whenever required by the Trustee, and at least once in every calendar year following the calendar year in which occurs the first delivery of any of the Trust Equipment and during the continuance of the lease provided for herein, an Officer's Certificate stating (1) the amount, description and numbers of all the Trust Equipment that may have become worn out, or that may have become unsuitable for use or lost or destroyed by accident or otherwise since the date of the last preceding statement, (2) the amount, description and numbers of all the Trust Equipment then undergoing repairs, other than running repairs, or then withdrawn from use for such repairs, and stating that in the case of all the Trust Equipment repainted or repaired since the date of the last preceding statement the plates or marks required by Section 4.06 hereof have been preserved, or that the same when repainted or repaired have been again plated or marked as required thereby, and (3) such other information as to the condition and state of repair of the Trust Equipment as the Trustee may reasonably request. The Trustee, by its agents, shall have the right once in each calendar year, but shall be under no duty, to inspect the Trust Equipment, at the then existing locations thereof.

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

The Company shall not, without the written consent of the Trustee first had and obtained, assign or transfer its rights hereunder, or transfer or sublet the Trust Equipment or any part thereof except to Pacific Fruit Express Company, a corporation organized and existing under and by virtue of the laws of the State of Utah, with an office at 116 New Montgomery Street, San Francisco, California 94105, or to any other Affiliate, in which case such assignment, transfer or sublease shall be expressly made subject and subordinate to all the provisions of this Agreement and the rights and remedies of the Trustee hereunder; and the Company shall not, without such written consent, except as provided in this Section 4.08, part with the possession of, or suffer or allow to pass out of its possession or control, any of the Trust Equipment. An assignment or transfer to a railroad company or other purchaser which shall acquire all or substantially all the lines of railroad of the Company, and which, by execution of an appropriate instrument satisfactory to the Trustee, shall assume and agree to perform each and all of the obligations and covenants of the Company hereunder and under the guaranty endorsed on the Trust Certificates, shall not be deemed a breach of this covenant. The appointment of a receiver or receivers in equity or reorganization or a trustee or trustees in bankruptcy or reorganization for the Company or for its property shall not be deemed an unauthorized assignment if, prior to any action by the Trustee to exercise the remedies herein provided, such receiver or receivers or trustee or trustees shall be discharged or such receiver or receivers or trustee or trustees shall, pursuant to court order or decree, in writing duly assume and agree to pay or perform each and all of the obligations and covenants of the Company hereunder and under the guaranty endorsed on the Trust Certificates, in such manner that such obligations shall have the same status as obligations incurred by such receiver or receivers or trustee or trustees. The Trustee shall have the right to declare the lease provided for herein terminated in case of any unauthorized assignment or transfer of its rights hereunder or in case of any unauthorized transfer or sublease of any of the Trust Equipment. The election of the Trustee to terminate the lease provided for herein shall have the same effect as the retaking of the Trust Equipment by the Trustee as hereinafter provided.

SECTION 4.09. Any units of the Trust Equipment which shall have become worn out or unsuitable in any respect for the use of the Company may be released, and it is hereby mutually agreed that at any time hereafter until title thereto shall become vested in the Company the Trustee will release any such units of the Trust Equipment upon the filing with it of a Request and an Officer's Certificate which shall describe such units, shall state that they have become worn out or unsuitable for the use of the Company, shall state the selling price thereof, and shall specify the Cost and the then fair value thereof. No such release shall be made unless and until the Company shall have paid to the Trustee an amount equal to such selling price or fair value, whichever shall be greater.

Any moneys paid to the Trustee pursuant to this Section 4.09 or Section 4.07 hereof, hereinafter called "Replacement Funds", shall be received and held by the Trustee in trust hereunder pending delivery of additional Equipment and may be invested and reinvested as provided in Section 7.08 hereof. Upon the filing with it of a Request and an Officer's Certificate which shall specify the kind and number of units of Equipment to be purchased and the then fair value thereof, such moneys, in an amount not exceeding such fair value, shall, upon receipt by the Trustee of certificates, bills of sale and Opinions of Counsel, all in like manner as is provided in Section 3.04 hereof, be applied to the purchase of such Equipment.

SECTION 4.10. The Company covenants and agrees to indemnify the Trustee against any and all claims arising out of or connected with the ownership or use of any of the Trust Equipment, and particularly against any and all claims arising out of the use of any patented inventions in and about the Trust Equipment, and to comply in all respects with the laws of the United States of America and of all the states in which the Trust Equipment, or any thereof, may be operated, and with all lawful acts, rules, regulations and orders of the Interstate Commerce Commission and of all other commissions, boards and other legislative, executive, administrative or judicial bodies or officers having power to regulate or supervise any of the Trust Equipment, including without limitation all lawful acts, rules, regulations and orders of any body having competent jurisdiction relating to automatic coupler devices or

attachments, air brakes or other appliances; *provided, however,* that the Company may in good faith contest the validity of any such law, act, rule, regulation or order, or the application thereof to the Trust Equipment or any part thereof, in any reasonable manner which will not in the judgment of the Trustee materially endanger the rights or interests of the Trustee or of the holders of the Trust Certificates. The Company shall not be relieved from any of its obligations hereunder by reason of the assertion or enforcement of any such claims or the commencement or prosecution of any litigation in respect thereof.

ARTICLE V

Remedies in Event of Default

Section 5.01. The Company covenants and agrees that in case

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

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

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

then, in any such case (herein sometimes called an event of default), the Trustee in its discretion may, and upon the written request of the

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

In addition, in case one or more events of default shall happen, the Trustee in its discretion may, and upon the written request of the holders of not less than 25% in principal amount of the then outstanding Trust Certificates shall, by notice in writing delivered to the Company, declare the principal of all the Trust Certificates then outstanding to be due and payable, and thereupon the same shall become and be immediately due and payable.

SECTION 5.02. In case of the happening of any event of default, the Trustee may by its agents enter upon the railroads and premises of the Company and of any Affiliate and take possession of all or any part of the Trust Equipment and withdraw the same from said railroads and premises, retaining all payments which up to that time may have been made on account of rental for the Trust Equipment and otherwise, and shall be entitled to collect, receive and retain all unpaid *per diem,* mileage or other charges of any kind earned by the Trust Equipment or any part thereof, and may lease the Trust Equipment or any part thereof, or with or without retaking possession thereof (but only after declaring due and payable the entire amount of rentals payable by the Company as provided in Section 5.01 hereof) may sell the same or any part thereof, free from any and all claims of the Company at law or in equity, in one lot and as an entirety or in separate lots, in so far as may be necessary to perform and fulfill the trust hereunder, at public

or private sale, for cash or upon credit, in its discretion, and may proceed otherwise to enforce its rights and the rights of the holders of interests hereunder in the manner herein provided. Upon any such sale, the Trustee itself may bid for the property offered for sale or any part thereof. Any such sale may be held or conducted at such place and at such time as the Trustee may specify, or as may be required by law, and without gathering at the place of sale the Trust Equipment to be sold, and in general in such manner as the Trustee may determine, but so that the Company may and shall have a reasonable opportunity to bid at any such sale. Upon such taking possession or withdrawal or lease or sale of the Trust Equipment, the Company shall cease to have any rights or remedies in respect of the Trust Equipment hereunder, but all such rights and remedies shall be deemed thenceforth to have been waived and surrendered by the Company, and no payments theretofore made by the Company for the rent or use of the Trust Equipment or any of it shall, in case of the happening of any event of default and such taking possession, withdrawal, lease or sale by the Trustee, give to the Company any legal or equitable interest or title in or to the Trust Equipment or any of it or any cause or right of action at law or in equity in respect of the Trust Equipment against the Trustee or the holders of interests hereunder. No such taking possession, withdrawal, lease or sale of the Trust Equipment by the Trustee shall be a bar to the recovery by the Trustee from the Company of rentals then or thereafter due and payable, and the Company shall be and remain liable for the same until such sums shall have been realized as, with the proceeds of the lease or sale of the Trust Equipment, shall be sufficient for the discharge and payment in full of all the items mentioned in Section 4.04 hereof (other than dividends or interest not then accrued), whether or not they shall have then matured. The holders of a majority in principal amount of the then outstanding Trust Certificates shall have the right from time to time to direct which of the proceedings above provided for shall be taken for the enforcement of the remedies contained herein.

SECTION 5.03. If, in case of the happening of any event of default, the Trustee shall exercise any of the powers conferred upon it by Sections 5.01 and 5.02 hereof, all payments made by the Company to the

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

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

SECTION 5.04. If at any time after the principal of all the Trust Certificates shall have been declared and become due and payable or if at any time after the entire amount of rentals shall have been declared and become due and payable, all as in Section 5.01 hereof provided, but before December 1, 1993, all arrears of rent (with interest at the dividend rate upon any overdue installments to the extent legally enforceable), the expenses and reasonable compensation of the Trustee, together with all expenses of the trust occasioned by the Company's default, and all other sums which shall have become due and payable by

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

SECTION 5.05. No retaking of possession of the Trust Equipment by the Trustee, or any withdrawal, lease or sale thereof, nor any action or failure or omission to act against the Company or in respect of the Trust Equipment, on the part of the Trustee or on the part of the holder of any Trust Certificate, nor any delay or indulgence granted to the Company by the Trustee or by any such holder, shall affect the obligations of the Company hereunder or the obligations of the Company under the guaranty endorsed on the Trust Certificates. The Company hereby waives presentation and demand in respect of any of the Trust Certificates and waives notice of presentation, of demand and of any default in the payment of the principal of and dividends on the Trust Certificates.

SECTION 5.06. In case the Trustee shall demand possession of the Trust Equipment pursuant to the provisions hereof and shall reasonably designate a point or points upon the railroad of the Company or of any Affiliate for the delivery of the Trust Equipment to it, the Company shall at its own expense forthwith and in the usual manner cause the Trust Equipment to be moved to such point or points on such railroad as shall be designated by the Trustee and shall there deliver or cause to be delivered the same to the Trustee, or the Trustee may at

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

SECTION 5.07. The remedies in this Agreement provided in favor of the Trustee and the holders of the Trust Certificates, or any of them, shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in their favor existing at law or in equity.

ARTICLE VI

ADDITIONAL COVENANTS AND AGREEMENTS BY THE COMPANY

SECTION 6.01. The Company hereby covenants and agrees to make payment of the reasonable expenses and compensation of the Trustee, and of all taxes, assessments and governmental charges herein mentioned for which the Trustee, as such, may be liable and of the rentals and of the other amounts provided for herein.

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

the issuance and delivery thereof by the Trustee, its guaranty of the prompt payment of the principal thereof and of the dividends thereon, 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 manual or facsimile signature of its Chairman, President or a Vice President. In case any officer of the Company whose signature shall appear on said guaranty shall cease to be such officer before the Trust Certificates shall have been issued and delivered by the Trustee, or shall not have been acting in such capacity on the date of the Trust Certificates, such guaranty shall nevertheless be as effective and binding upon the Company as though the person who signed said guaranty had not ceased to be, or had then been acting as, such officer.

SECTION 6.03. The Company covenants and agrees that it will pay and discharge, or cause to be paid and discharged, or make adequate provision for the satisfaction or discharge of, any debt, tax, charge, assessment, obligation or claim which if unpaid might become a lien or charge upon or against any of the Trust Equipment, except upon the leasehold interest of the Company therein; but this provision shall not require the payment of any such debt, tax, charge, assessment, obligation or claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings, unless such contest will in the judgment of the Trustee materially endanger the rights or interests of the Trustee or of the holders of the Trust Certificates.

SECTION 6.04. The Company covenants and agrees to pay the expenses incident to the preparation and execution of the Trust Certificates to be issued hereunder, or connected with the preparation, execution, recording and filing hereof and of any instruments executed under the provisions hereof with respect to the Trust Equipment. The Company with all convenient speed will cause this Agreement and all supplements hereto to be duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act. The Company will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register and record any and all further instruments required by law or reasonably requested by the Trustee for the purposes of proper protection of the title of the Trustee and the rights of the holders of the Trust Certifi-

cates and of fully carrying out and effectuating this Agreement and the intent hereof; and the Company will promptly furnish to the Trustee certificates or other evidences of filing and recording pursuant to the last preceding sentence, and of any other such filing, registration and recording, and an Opinion or Opinions of Counsel with respect thereto.

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

SECTION 6.06. The Company covenants that it will make payment of the rentals on account of the Trust Equipment as provided in this Agreement notwithstanding that any of the Trust Certificates shall have been acquired by the Company or shall not have been presented for payment.

ARTICLE VII

THE TRUSTEE

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

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

SECTION 7.03. The Trustee shall cause to be kept at an agency in the Borough of Manhattan, City and State of New York (which agency may be the office of the Company in said Borough and City), books for the registration and registration of transfer of the Trust Certificates.

SECTION 7.04. The Trustee shall not be required to undertake any act or duty in the way of insuring, taking care of or taking possession of the Trust Equipment or to undertake any other act or duty under this Agreement until fully indemnified by the Company or by one or

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

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

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

institute suit for the enforcement of payments due under said guaranty in respect of the Trust Certificates.

SECTION 7.07. The Trustee may for all purposes conclusively assume that the Company is not in default under the terms hereof until notified in writing to the contrary by the holders of at least 10% in principal amount of the then outstanding Trust Certificates, which notice shall distinctly specify the event of default desired to be brought to the attention of the Trustee. As to any fact or matter the manner of determining which is not specifically prescribed herein, the Trustee may for all purposes rely upon an Officer's Certificate as to such fact or matter. The Trustee shall not incur any liability to anyone in relying conclusively on, and in acting upon, any notice, consent, order, certificate, or other paper or instrument believed by it to be genuine or authentic and to be signed by the proper party or parties.

SECTION 7.08. Any money at any time paid to or held by the Trustee hereunder until paid out by the Trustee as herein provided may be carried by the Trustee on deposit with itself, and the Trustee will allow interest upon any such moneys held by it in trust at the rate generally prevailing among Philadelphia banks and trust companies or allowed by it upon deposits of a similar character.

At any time, and from time to time, if at the time there shall be no default under the terms of this Agreement, the Trustee, on Request, shall invest and reinvest Deposited Cash and Replacement Funds held by it in Government Securities, at such prices, including any premium and accrued interest, as are set forth in such Request, 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, or the Trustee may, in the event funds are required for payment against delivery of Equipment, sell such Government Securities, or any portion thereof, and restore to Deposited Cash or Replacement Funds, as the case may be, the proceeds of any such sale up to the amount paid for such Government Securities, including accrued interest.

The Trustee shall restore to Deposited Cash or Replacement Funds, as the case may be, out of rent received by it for that purpose under the provisions of Section 4.04(B)(1) hereof, an amount equal to any ex-

penses incurred in connection with any purchase or sale of Government Securities and also an amount equal to any loss of principal incident to the sale or redemption of any Government Securities for a sum less than the amount paid therefor, including accrued interest. The Company, if not in default under the terms hereof, shall be entitled to receive any profit which may be realized from any sale or redemption of Government Securities.

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

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

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

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

Upon Request, any moneys held by the Trustee which shall have been deposited or are held for the payment of the principal amount of or dividends on any Trust Certificates remaining unclaimed for six years after the date of maturity of such Trust Certificates or the date

such dividends were due and payable, as the case may be, shall be repaid by the Trustee to the Company, and all liability of the Trustee with respect to such money shall thereupon cease and the holders of such Trust Certificates shall thereafter be entitled to look only to the Company for payment thereof; *provided, however,* that the Trustee, before being required to make any such repayment may, at the expense of the Company, cause notice that said moneys have not been claimed and that after a date specified therein, which shall be not less than thirty days after the date of publication, any unclaimed balance of such moneys then remaining upon deposit with the Trustee will be repaid to the Company, to be published once in a daily newspaper printed in the English language and published in the Borough of Manhattan, the City of New York. In no event shall the holders of such Trust Certificates be entitled to interest upon such money whether held by the Trustee or so repaid to the Company.

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

SECTION 7.10. The Trustee shall, at least once in each year, render to the Company a statement of its said trust and of the accounts relating thereto, and covering such matters as the Company may properly require, and the Company may from time to time examine the books and accounts of the Trustee relating to the Trust Certificates, to this Agreement and to the acts of the Trustee hereunder.

SECTION 7.11. If at any time the Trustee or any successor to it in the trust hereby created shall desire to divest itself of title to the Trust Equipment, and to terminate its duties and obligations and rights hereunder and under the Trust Certificates, it shall so notify the Company in writing, and the Company shall thereupon designate in writing to the Trustee a bank or a trust company, qualified as below specified, to serve until a successor is appointed by the holders of Trust Certificates as hereinafter provided, to which may be assigned the entire right, title and interest of the Trustee or such successor in the Trust Equipment, and in which may be vested the rights, powers, duties and obligations of the Trustee hereunder and under the Trust Cer-

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

SECTION 7.12. Any corporation resulting from any merger or consolidation to which the Trustee or any successor to it shall be a party, or any corporation in any manner succeeding to all or substantially all of the business of the Trustee or any successor trustee, provided such corporation shall be a bank or a trust company doing

business in Philadelphia, Pennsylvania, or in the Borough of Manhattan, City and State of New York, and shall have a capital and surplus aggregating at least $5,000,000, shall be the successor trustee hereunder without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

ARTICLE VIII

Miscellaneous

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

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

(b) The ownership of Trust Certificates shall be determined by the registry books to be kept as provided in Section 7.03 hereof.

Section 8.02. Nothing expressed or implied herein is intended or shall be construed to confer upon or to give to any person, firm or corporation, other than the parties hereto and the holders of the

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

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

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

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

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

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

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

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

FIRST PENNSYLVANIA BANK N.A., Trustee,

By _____
Vice President

ATTEST:

_____
Assistant Secretary

SOUTHERN PACIFIC
TRANSPORTATION COMPANY,

By _____
Assistant Vice President
and Treasurer

ATTEST:

_____
Senior Assistant Secretary

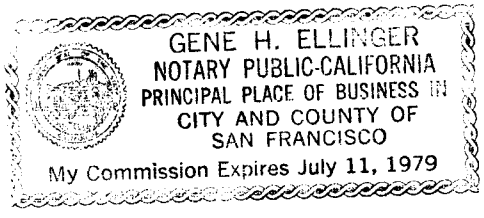
STATE OF NEW YORK,
COUNTY OF NEW YORK, } ss.

On this 19th day of December, 1978, before me personally appeared W. M. KRAYER, to me personally known, who, being by me duly sworn, says that he is a Vice President of First Pennsylvania Bank N.A., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

_____
THOMAS DOUGHERTY
Notary Public, State of New York
No. 41-1004750
Qualified in Queens County
Certificate Filed in New York County
Commission expires March 31, 1979

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

On this 1st day of December, 1978, before me personally appeared BRUCE G. MCPHEE, to me personally known, who, being by me duly sworn, says that he is Assistant Vice President and Treasurer of Southern Pacific Transportation Company, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



GENE H. ELLINGER
Notary Public
in and for the State of California.
Principal place of business in the
City and County of San Francisco.
My Commission expires July 11, 1979.

Schedule A

Number of Units	Description
26	3000-h.p., four-axle, four-motor diesel freight locomotives; General Electric Company, builder; lettered SP and numbered 7858 to 7883, both inclusive;
270	70-ton, 52 ft. 8 in., box cars with double free rolling doors and cushion underframes; FMC Corporation (Marine and Rail Equipment Division), builder; lettered SP and numbered 245990 to 246259, both inclusive;
50	50-ton, bay window caboose cars; International Car Company, builder; lettered SP and numbered 4650 to 4699, both inclusive.
	Total Estimated Cost $28,967,640