Southern Railway System

Law Department
P.O. Box 1808
Washington, D.C. 20013

JAMES A. TAPLEY
VICE PRESIDENT - LAW

920 15TH STREET, N.W.
TEL: (202) 628-4460

August 8, 1979

60713
RECORDATION NO. 10,029 Filed 1425

AUG 8 1979 -10 15 AM

INTERSTATE COMMERCE COMMISSION

AUG 8 1979

Date

Fee $ 50.00

ICC Washington, D. C

Mrs. Agatha L. Mergenovitch
Secretary
Interstate Commerce Commission
Washington, D. C. 20423

Dear Ms. Mergenovitch:

I enclose eight original counterparts of the instrument described in paragraph (1) hereof for recordation pursuant to Section 11303 of Title 49, U.S. Code (formerly Section 20c of the Interstate Commerce Act) and return, together with two original counterparts thereof which are for the Commission's files.

In accordance with 49 CFR Part 1116, covering the recordation of documents, I wish to advise you as follows:

(1) The enclosed document is an Equipment Trust Agreement covering the purchase and lease of certain railroad equipment, more fully described below, between Manufacturers Hanover Trust Company, 40 Wall Street, New York, N.Y. 10015, Trustee-Lessor, and Southern Railway Company, P.O. Box 1808, Washington, D.C. 20013, Lessee, dated as of August 1, 1979, constituting Southern Railway Equipment Trust No. 3 of 1979.

(2) The equipment covered this document is described as follows:

277 100-ton 60'9" EOC Box Cars, Pullman Incorporated, (Pullman Standard Division), 200 South Michigan Avenue, Chicago, Illinois 60604, Vendor, bearing Lessee's road numbers 565323 to 565599, inclusive, AAR designation XP.

80 100-ton 3600 cu. ft. capacity Automatic Bottom Dump Hopper Cars, Ortner Freight Car Company, 2652 Erie Avenue, Cincinnati, Ohio 45208, Vendor, bearing Lessee's road numbers 390300 to 390379, inclusive, AAR designation HTS.

134 70-ton 52'6" CUF Insulated Box Cars, Fruit Growers Express Company, 1101 Vermont Avenue, N.W., Washington, D.C. 20005, Vendor, bearing Lessee's road numbers 585667 to 585800, inclusive, AAR designation XPI.

8 GP38-2 Diesel-Electric Locomotives, General Motors Corporation (Electro-Motive Division), LaGrange, Illinois 60625, Vendor, bearing Lessee's road numbers 5232 to 5239, inclusive, AAR designation B-B.

Each unit of the equipment will be marked in letters no less than 1/2 inch in height, as follows:

"OWNED BY A BANK OR TRUST COMPANY UNDER A FINANCING AGREEMENT RECORDED WITH THE INTERSTATE COMMERCE COMMISSION UNDER SECTION 11303 OF TITLE 49, U.S. CODE."

(3) After recordation, the original documents should be returned to Manfred S. Block, Attorney, Law Department, Southern Railway Company, P.O. Box 1808, Washington, D.C. 20013.

(4) The recordation fee of $50 is enclosed.

Please acknowledge receipt on the enclosed copy of this letter.

Very truly yours,

James L. Tapley

James L. Tapley

Enclosures

Interstate Commerce Commission
Washington, D.C. 20423

8/8/79

OFFICE OF THE SECRETARY

James L. Tapley
Vice President-Law
Southern RYW. System
P.O.Box 1808
Washington,D.C. 20013

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act,49 U.S.C. 11303, on 8/8/79 at 10:15am, and assigned recordation number(s). 10703

Sincerely yours,

Agatha L. Mergenovich

Agatha L. Mergenovich
Secretary

Enclosure(s)

SE-30
(7/79)

10703
RECORDATION NO.....Filed 1425

AUG 8 1979 -10 15 AM

INTERSTATE COMMERCE COMMISSION

SOUTHERN RAILWAY
EQUIPMENT TRUST NO. 3 OF 1979

EQUIPMENT TRUST AGREEMENT

DATED AS OF AUGUST 1, 1979

BETWEEN

MANUFACTURERS HANOVER TRUST COMPANY,
Trustee

and

SOUTHERN RAILWAY COMPANY

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This **EQUIPMENT TRUST AGREEMENT**, dated as of August 1, 1979, between Manufacturers Hanover Trust Company, a New York Corporation, as Trustee (hereinafter called the Trustee), and SOUTHERN RAILWAY COMPANY, a Virginia corporation (hereinafter called the Company);

Witnesseth:

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, the Trust Certificates (as hereinafter defined) are to be issued and sold in an aggregate principal amount not exceeding $23,250,000 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 are to constitute a fund equal to the aggregate principal amount of Trust Certificates so issued and sold, such fund to be known as

Southern Railway Equipment Trust No. 3 of 1979, to be applied by the Trustee from time to time in part payment of the Cost (as hereinafter defined) of the Trust Equipment (as hereinafter defined), 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 is to be substantially in the following form:

(FORM OF TRUST CERTIFICATE)

No. R— $ . . . . . .

SOUTHERN RAILWAY EQUIPMENT TRUST
No. 3 of 1979

Equipment Trust Certificate

Total Authorized Issue $23,250,000

Manufacturers Hanover Trust Company,
Trustee

Interest at the Rate of % Per Annum Payable
February 1 and August 1

Principal hereof payable August 1,

Manufacturers Hanover Trust Company, as Trustee (hereinafter called the Trustee) under an Equipment Trust Agreement dated as of August 1, 1979 (hereinafter called the Agreement), between the Trustee and **Southern Railway Company**, a Virginia corporation (hereinafter called the Company), hereby certifies that

, or registered assigns, is entitled to an interest in the principal amount of Dollars in **Southern Railway Equipment Trust No. 3 of 1979**, payable on the due date specified above, upon presentation and surrender of this Certificate to the Trustee at its corporate trust office in the Borough of Manhattan, The City and State of New York, and to payment, until said due date, of interest on said principal amount at the rate of percent (%) per annum from August 1, 1979, or the date to which interest has been paid next preceding or coinciding with the date hereof, whichever is later, semiannually on February 1 and August 1 in each year, by check mailed by the Trustee to the order of or as directed by the registered holder hereof or registered assigns, with interest at one-quarter of one percent above such interest rate on any overdue principal and on any overdue interest 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 from and out of rentals or other moneys received by the Trustee and applicable to such payment under the provisions of the Agreement.

This Certificate is one of an authorized issue of Equipment Trust Certificates (hereinafter called the Certificates) in an aggregate principal amount not exceeding the Total Authorized Issue as set forth above, all of which are substantially similar except as to date of maturity, all issued under and subject to the terms of the Agreement, under which certain railroad equipment leased to the Company (or cash or obligations defined in the Agreement as "Government Securities" in lieu thereof, as provided in the Agreement) is held by the Trustee in trust for the equal and ratable benefit of the registered holders of the Certificates, to which Agreement (a copy of which is on file with the Trustee at its said office) reference is made for a full statement of the rights and obligations of the Company, the duties and immunities of the Trustee and the rights of the registered holder hereof thereunder, and to all of which the registered holder hereof, by accepting this Certificate, assents.

The Certificates are issuable as fully registered Certificates in denominations of $1,000 and any multiple of $1,000. The Certificates are exchangeable for a like aggregate principal amount of Certificates, in authorized denominations and of the same maturity, upon presentation thereof at said office of the Trustee, 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 Trustee upon surrender hereof to the Trustee at its said office, accompanied by appropriate instruments of assignment and transfer, duly executed by the registered holder in person or by such attorney, in form satisfactory to the Trustee, subject to the limitations and upon payment of the charges provided in the Agreement, and thereupon a new Certificate or Certificates in authorized denominations for the same aggregate principal amount and having the same date of maturity will be issued to the transferee in exchange herefor. Prior to due presentment for registration of transfer of this Certificate, the Trustee and the Company may deem and treat the person in whose name this Certificate is registered as the absolute owner hereof for the purpose of receiving payment of principal and interest and for all other purposes and shall not be affected by any notice to the contrary.

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

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

This Certificate shall not be valid unless manually signed by an Authorized Officer of the Trustee.

In Witness Whereof, the Trustee has caused this Certificate to be signed by the facsimile signature of one of its Assistant Vice Presidents and by the manual signature of one of its Authorized Officers, and its corporate seal, in facsimile, to be imprinted hereon, and to be attested by the facsimile signature of one of its Assistant Secretaries.

Dated

Manufacturers Hanover Trust Company,

Trustee,

By.....
Assistant Vice President

By.....
Authorized Officer

Attest:

.....
Assistant Secretary

(FORM OF GUARANTY FOR TRUST CERTIFICATE)

Southern Railway Company, for valuable consideration, hereby unconditionally guarantees to the registered holder of the within Certificate, the prompt payment of the principal of said Certificate, and of the interest thereon at the rate specified in said Certificate, with interest at one-quarter of one percent above such interest rate on any overdue principal and on any overdue interest to the extent that it shall be legally enforceable, all in accordance with the terms of said Certificate and the Equipment Trust Agreement referred to therein.

Southern Railway Company,

By.....
Senior Vice President

; and

Whereas, it is desired to secure the payment of the principal of and interest on the Trust Certificates, as hereinafter more particularly provided, and to evidence the rights of the Holders (as hereinafter defined);

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

ARTICLE ONE

Definitions

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

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

Casualty Occurrence shall mean any occurrence specified in Section 4.7 to be a Casualty Occurrence.

Company shall mean Southern Railway Company, a Virginia corporation, and any assignee who shall acquire all or substantially all of the lines of railroad of the Company under this Agreement pursuant to Section 4.8.

Cost when used with respect to Trust 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 on deposit with the Trustee as provided in the first sentence of Section 2.1, any advance rentals on deposit with the Trustee pursuant to Section 4.4(A)(1) and, when required or indicated by the context, any Government Securities purchased by the use of such cash pursuant to the provisions of Section 7.7, and (b) any sums restored to Deposited Cash from rentals pursuant to Section 4.4(b)(1) and on deposit with the Trustee.

Equipment shall mean standard gauge railroad equipment (other than passenger cars and work equipment) which shall have been first put into operation pursuant to this Agreement not earlier than two months prior to the date hereof.

Event of Default shall mean any event specified in Section 5.1 to be an Event of Default.

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

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

Holder shall mean the registered owner of a Trust Certificate and shall include the plural as well as the singular number.

Officer's Certificate shall mean a certificate signed by the President or any Executive Vice President or any Senior Vice President or any Vice President or any Assistant Vice President or the Treasurer or any Assistant Treasurer or the Chief Accounting Officer or the Secretary or any Assistant Secretary of the Company.

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

Penalty Interest Rate shall mean a rate which shall exceed by one-quarter of one percent the annual rate at which interest is payable hereunder, which annual rate shall appear on the face of each Trust Certificate.

Principal Office shall mean the principal office of the Trustee, in the Borough of Manhattan, The City and State of New York, at which the corporate trust business of the Trustee shall, at any particular time, be administered.

Replacement Funds shall mean any moneys specified in Section 4.9 to be Replacement Funds.

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

Trust Certificates shall mean the equipment trust certificates issued hereunder, and **Trust Certificate** shall mean one of said equipment trust certificates.

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

Trustee shall mean the trustee named herein, and any successor as trustee hereunder.

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

ARTICLE TWO

Trust Certificates and Issuance Thereof

Section 2.1. **Issuance of Trust Certificates.** The net proceeds (excluding premium and accrued interest, if any) of the sale of the Trust Certificates shall forthwith, upon issuance thereof, be deposited 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 4.4(A)(1). 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 Request, Trust Certificates substantially in the form set forth herein, and in the aggregate principal amount so sold, bearing interest at the rate specified in such Request.

The aggregate principal amount of Trust Certificates which shall be executed and delivered by the Trustee hereunder shall not exceed the sum of $23,250,000 except as provided in Sections 2.5, 2.6 and 2.7.

Section 2.2. **Interests Represented by Trust Certificates; Interest; Denominations; Dating; Maturities.** Each of the Trust Certificates shall represent an interest in the principal amount therein specified in the trust created hereunder and shall bear interest on said principal amount at the rate to be specified by the Company at the time of delivery thereof by the Trustee, payable semiannually on the first day of February and August in each year. The interest rate may be changed by an agreement in writing between the Company and the Holders of all the outstanding Trust Certificates. A counterpart of any such agreement shall be filed with the Trustee.

The Trust Certificates shall be in denominations of $1,000 and any multiple of $1,000 and shall be numbered from R—1 consecutively upward.

The due date of each Trust Certificate shall appear upon its face. The Trust Certificates shall be dated the date of issuance thereof and shall entitle the Holders to interest from the date of this Agreement or the interest payment date to which interest shall have been paid next preceding or coinciding with such date of issuance, whichever is later.

The principal amount of the Trust Certificates shall become due in 15 equal annual instalments payable serially on the first day of August in each year beginning August 1, 1980, and ending August 1 1994, both inclusive.

Section 2.3. **Form of Trust Certificate, and Guaranty.** The Trust Certificates and the guaranty to be endorsed on the Trust Certificates by the Company as hereinafter in Section 6.2 provided shall be in substantially the form hereinbefore set forth.

Section 2.4. **Execution by Trustee.** The Trust Certificates shall be signed in the name and on behalf of the Trustee by the facsimile signature of one of its Assistant Vice Presidents and by the manual signature of one of its Authorized Officers, and its corporate seal, in facsimile, shall be imprinted thereon and shall be attested by the facsimile signature of one of its Assistant Secretaries. In case any officer of the Trustee whose signature, whether facsimile or not, shall appear on any of the Trust Certificates shall cease to be such officer of the Trustee before such Trust Certificates shall have been issued and delivered by the Trustee, or shall not have been acting in such capacity on the date of such 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 then been acting as, such officer of the Trustee.

Section 2.5. **Transfer of Trust Certificates; Owners Thereof; Exchange of Trust Certificates.** The Trust Certificates shall be registered in the name of the Holder thereof and shall be transferable upon presentation and surrender thereof for transfer at the Principal Office, accompanied by appropriate instruments of assignment and transfer, duly executed by the Holder of the surrendered Trust Certificate or Certificates or by duly authorized attorney, in form satisfactory to the Trustee.

Prior to due presentment for registration of transfer of any Trust Certificate, the parties hereto may deem and treat the 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.

Trust Certificates shall be exchangeable for a like aggregate principal amount of Trust Certificates, in authorized denominations and of the same maturity. The Trust Certificates to be exchanged shall be surrendered at the Principal Office.

For any registration, transfer or exchange, 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 interest 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 Certificate shall be so dated that neither gain nor loss in interest 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 fifteen days next preceding any interest payment date.

Section 2.6. **Replacement of Mutilated or Lost Trust Certificates.** In case any Trust Certificate shall become mutilated or defaced or be lost, stolen or destroyed, then on the terms herein set forth, and not otherwise, the Trustee, upon Request, shall execute and deliver a new Trust Certificate of like maturity, tenor and date, and bearing a different serial number from the one mutilated, defaced, lost, stolen or destroyed, in exchange and substitution for, and upon cancellation of, the mutilated or defaced Trust Certificate, or in lieu of and in substitution for the same if lost, stolen or destroyed. The Company shall execute its guaranty on any Trust 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 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 all other rights and remedies, any law or statute now existing or hereafter enacted to the contrary notwithstanding.

Section 2.7. **Temporary Trust Certificates.** At any time prior to the issue of definitive Trust Certificates the Trustee shall, upon Request, issue and deliver at the Principal Office, 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 at the Principal Office, without charge to the Holder, for the definitive Trust Certificates in lieu of which they were issued, and upon surrender and cancellation of any of such temporary Trust Certificates, the Trustee shall issue and deliver in exchange therefor definitive Trust Certificates, of the same maturity and interest rate, 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 2.8. **Cancellation and Destruction of Trust Certificates.** All Trust Certificates surrendered to the Trustee for payment, transfer, exchange, replacement or cancellation shall be cancelled by it. The Trustee shall destroy all cancelled Trust Certificates and deliver a certificate of such destruction to the Company.

ARTICLE THREE

Acquisition of Trust Equipment by Trustee; Deposited Cash

Section 3.1. **Acquisition of Trust Equipment by Trustee.** The Company shall promptly cause to be constructed and shall promptly cause to be sold, assigned, transferred and set over unto the Trustee, as trustee for the Holders, the Equipment described in Schedule A hereto, or substitutions therefor or additions thereto as hereinafter provided.

To that end the Company hereby assigns, or promptly after entering into the contract or contracts for the construction and sale of such Equipment agrees to assign, to the Trustee all its right, 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 any of the Equipment specifically described in Schedule A hereto prior to the delivery of such Equipment to the Trustee or its agent, the Company may cause such other Equipment to be constructed and to be sold, assigned, transferred and set over unto the Trustee, to

be substituted under the trust hereby created, 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 right, title and interest under the said contract or contracts.

Section 3.2. **Payments out of Deposited Cash.** From time to time, after any of the Trust Equipment shall have been delivered to the Trustee or its agent pursuant to this Article Three, the Trustee shall (subject, however, to the provisions of Section 3.3) pay to the builder of the delivered Trust Equipment, upon Request, out of the Deposited Cash, an amount which, together with all payments previously made out of the Deposited Cash upon deliveries of Trust Equipment, will equal not more than 80% of the aggregate Cost of the Trust Equipment then and theretofore delivered to the Trustee or its agent.

Section 3.3. **Payments of and from Advance Rental.** The Company covenants that, contemporaneously with the delivery to the Trustee of the documents required by Section 3.4 in respect of any delivery of Trust Equipment, the Company will pay to the Trustee the advance rental provided in Section 4.4(A)(2), and thereupon the Trustee shall pay to the builder of the delivered Trust Equipment, upon Request, 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 in Section 3.2. It is the intention of the parties hereto that the Company shall ultimately pay as such advance rental not less than 20% of the final Cost of

all the Trust Equipment, and the Trustee and the Company shall from time to time adjust their accounts and payments accordingly, and the Trustee, upon Request, shall pay to the Company from Deposited Cash, if the Company shall not be in default under the terms hereof or of any supplement hereto, a sum (less the amount of any previous payment made to the Company by the Trustee under this Section) equal to the lesser of (a) the aggregate amount deposited in cash with the Trustee as provided in Section 2.1 or (b) the amount, if any, by which the aggregate advance rental theretofore paid by the Company under Section 4.4(A)(2) exceeds the difference between the aggregate Cost of the Trust Equipment for which settlement has theretofore been made pursuant to Section 3.2 and the first sentence of Section 3.3 and the lesser of (i) the aggregate principal amount of originally issued Trust Certificates or (ii) 80% of such aggregate Cost.

Section 3.4. **Supporting Documents.** The Trustee shall not pay out any Deposited Cash, or make any payments by the use of advance rental, against the delivery of any of the Trust Equipment until it shall have received:

(A) An Officer's Certificate which shall state (i) that the Trust Equipment described and specified therein by number or numbers has been delivered to the Company as agent for the Trustee, (ii) that such Trust Equipment is Equipment as herein defined, (iii) 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 and (iv) that

such Trust Equipment has been plated or marked in accordance with the provisions of Section 4.6;

(B) An invoice or invoices from the builder of such Trust Equipment;

(C) A bill or bills of sale of such Trust Equipment from the builder 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;

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

(E) In case of any Trust Equipment not specifically described herein, an Opinion of Counsel to the effect that a proper supplement hereto in respect of such Trust Equipment has been duly executed by the Company and duly filed and recorded in accordance with Section 6.4.

Any Officer's Certificate pursuant to this Section 3.4 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 the Trust Certificates, the Company will cause to be sold, assigned, transferred and set over unto the Trustee additional 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 the Trust Certificates 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 3.4.

ARTICLE FOUR

Lease of Trust Equipment to the Company

Section 4.1. **Lease of Trust Equipment.** The Trustee does hereby lease to the Company, for a term of fifteen years two months, commencing two months prior to the date hereof, the Trust Equipment.

Section 4.2. **Equipment Subjected Hereto by Delivery and Marking.** As and when any Equipment shall from time to time be transferred and delivered to the Company as agent for the Trustee and plated or marked in accordance with the provisions of Section 4.6, 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 4.3. **Substituted Equipment Subject Hereto; Additions to Trust Equipment.** In the event that the Company shall, as provided in Sections 3.1 and 3.4, or in Section 4.9, 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 Equipment herein specifically described. Any and all additions to, and replacements of parts of, the Trust Equipment shall constitute accessions to the Trust Equipment and shall be subject to all the terms and conditions hereof in all respects and included in the term Trust Equipment as used herein.

Section 4.4. **Rental Payments.** The Company hereby accepts the lease of the Trust Equipment, and covenants to accept delivery and possession thereof hereunder; and the Company covenants to pay the Trustee at the Principal Office (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 in the aggregate shall be equal to the difference between the aggregate Cost of the Trust Equipment (other than Trust Equipment subjected hereto pursuant to Section 4.9) and the portion of such Cost to be provided out of the net proceeds (excluding premium and accrued interest, if any) of the sale of the Trust Certificates, the intention being that, when all the 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 the Trust Equipment exceeds such net proceeds of the sale of the Trust Certificates. The Company agrees to pay such advance rental 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 the principal amount of the Trust Certificates; and

(2) Contemporaneously with the delivery to the Trustee of the documents required by Section 3.4 in respect of the delivery of any of the Trust Equipment, a sum equal to the portion of the Cost of such delivered Trust Equipment not to be paid out of Deposited Cash as provided in Section 3.2.

(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, and notwithstanding that any of the Trust Certificates shall have been acquired by the Company or shall not have been presented for payment, 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 and premium thereupon at time of purchase) in connection with any purchase, sale or redemption by the Trustee of Government Securities;

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

(3) (a) The amount of interest payable on the Trust Certificates, when and as the same shall become payable; and (b) interest at the Penalty Interest Rate from the due date upon the amount of any instalments 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 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 any Holder 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, such Holder. 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 may be materially endangered thereby.

Section 4.5. **Termination of Lease.** At the termination of the lease provided herein and after all payments due or to become due to the Trustee from the Company hereunder shall have been completed and fully made, (a) such payments shall be applied and treated as purchase money and as the full purchase price of the Trust Equipment, (b) 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, (c) title to the Trust Equipment shall vest in the Company, and (d) 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 4.6. **Marking of Trust Equipment.** 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 may be otherwise plainly, distinctly, permanently and conspicuously marked on each side of such unit, in either case in letters not less than one-half inch in height:

OWNED BY A BANK OR TRUST COMPANY UNDER A FINANCING AGREEMENT RECORDED WITH THE INTERSTATE COMMERCE COMMISSION UNDER SECTION 11303 OF TITLE 49, U. S. CODE.

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 (or any numbers which may have been substituted as herein provided) except in accordance with a statement of new numbers to be substituted therefor which shall previously have been filed with the Trustee by the Company, and which shall be filed and recorded as provided in Section 6.4.

The Trust Equipment may be lettered with the name, initials or insignia of the Company, or of any Affiliate which is permitted to use the Trust Equipment as herein provided, or may be lettered in some other appropriate manner for convenience of identification of the interest of the Company, or such Affiliate, therein. Except as aforesaid, during the continuance of the lease provided for herein, the Company shall not allow the name of any person, association or corporation to be placed on any of the Trust Equipment as a designation if the right, title and interest of the Trustee therein would thereby be impaired or invalidated. The Trustee shall, upon Request, consent to the placing of the name of any specified person, association or corporation upon any unit of Trust Equipment as a designation if there shall have been delivered to the Trustee an Opinion of Counsel to the effect that such designation will not impair or invalidate the right, title and interest of the Trustee in or to such unit.

Section 4.7. **Maintenance of Trust Equipment; Casualty Occurrences.** The Company agrees that it will maintain and keep the Trust Equipment in good order and

proper repair at its own cost and expense. Whenever any of the Trust Equipment shall be lost, stolen, destroyed, irreparably damaged or otherwise rendered permanently unfit for use from any cause whatsoever (any such occurrence being herein called a Casualty Occurrence), the Company shall promptly, after obtaining notice of such Casualty Occurrence, deliver to the Trustee an Officer's Certificate describing such Trust Equipment and stating the then Fair Value thereof and shall deposit with the Trustee an amount in cash equal to such Fair Value. The rights and remedies of the Trustee to enforce or to recover any of the rental payments shall not be affected by reason of any Casualty Occurrence. Cash deposited with the Trustee pursuant to this Section 4.7 shall be held and applied as provided in Section 4.9.

The Company covenants to furnish to the Trustee, whenever required by the Trustee, and on or before May 31 in every calendar year commencing with the year 1981, and during the continuance of the lease provided for herein, an Officer's Certificate stating, as of the preceding February 28, (a) the amount, description and numbers of the Trust Equipment that may have suffered a Casualty Occurrence since the date of the last preceding statement (or the date of this Agreement in the case of the first statement), (b) the amount, description and numbers of 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 the Trust Equipment repainted or repaired since the date of the last preceding statement (or the date of this Agreement in the case of the first

statement), the plates or marks required by Section 4.6 have been preserved, or that such Trust Equipment has been again plated or marked as required thereby and (c) such other information as to the condition and state of repair of the Trust Equipment as the Trustee may reasonably request. The Trustee, by its agents, shall have the right once in each calendar year, but shall be under no duty, to inspect, at the Company's expense, the Trust Equipment, and the Company covenants in that event to furnish to the Trustee all reasonable facilities for the making of such inspection.

Section 4.8. **Possession of Trust Equipment; Assignments.** The Company, so long as an Event of Default shall not have occurred and be continuing, shall be entitled to the possession of the Trust Equipment from and after delivery thereof to the Company as agent for the Trustee, and the use thereof upon the lines of railroad owned or operated by the Company (either alone or jointly with another) or by an Affiliate, or upon lines over which the Company or any Affiliate shall have trackage or other operating rights, and the Company shall also be entitled to permit the use of the Trust Equipment upon connecting and other railroads in the usual interchange of traffic and upon connecting railroads and other railroads over which through service may from time to time be afforded, but subject to all the terms and conditions of this Agreement.

The Company shall not, without the prior written consent of the Trustee, assign or transfer, or suffer or allow to be assigned or transferred, its rights hereunder or

transfer or sublet, or suffer or allow to be transferred or sublet, the Trust Equipment or any part thereof except, and then only so long as the Company shall not then be in default under this Agreement (and only subject to this Agreement and to the rights of the Trustee hereunder, and without releasing the Company from its obligations hereunder), to an Affiliate, or under a written sublease for a term not exceeding one year (including all renewal or extension options reserved to the sublessee or sublessor), to a railroad classified by the Interstate Commerce Commission as a Class I or Class II railroad or to a responsible company, as determined by the Company; and the Company shall not, without such written consent, except as provided in this Section 4.8, part with the possession of, or suffer or allow to pass out of its possession or control, any of the Trust Equipment. Every such sublease shall expressly subject the rights of the sublessee under such sublease to the rights of the Trustee in respect of the Trust Equipment covered by such sublease in the event of the happening of an Event of Default.

An assignment or transfer to a purchaser which shall acquire all or substantially all of 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 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 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 the rights of the Company 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 4.9. **Release and Replacement of Trust Equipment.** Any units of the Trust Equipment which shall have become worn out or unsuitable in any respect for the use of, or are no longer needed by, 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, or are no longer needed by, 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 until the Company shall have paid to the Trustee such selling price or Fair Value, whichever shall be greater.

Any moneys paid to the Trustee pursuant to this Section 4.9 or Section 4.7 (such moneys being herein 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 7.7. Upon the filing with it of a Request and an Officer's Certificate which shall specify the kind and number of units of such Equipment to be purchased and the Cost and the Fair Value thereof, such moneys in an amount not exceeding the lesser of such Cost or 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 3.4, be applied to the purchase of such Equipment.

Section 4.10. **Company's Indemnities.** The Company covenants to indemnify the Trustee against all claims arising out of or connected with the ownership or use of any of the Trust Equipment, and particularly against all claims arising out of the use of any patented inventions in and about the Trust Equipment, and to comply with the laws of the United States of America and of all the states and other jurisdictions in which the Trust Equipment, or any part thereof, may be operated, and with all lawful acts, rules, regulations and orders of the Department of Transportation, 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; **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. 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 FIVE

Remedies in Event of Default

Section 5.1. **Events of Default.** The Company covenants 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 or suffer any unauthorized transfer or sublease of any of the Trust Equipment, or,

except as herein authorized, shall part with or suffer the loss of 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 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, as of the date of such unauthorized action, 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 interest accruing after the date of such declaration) payable by the Company as set forth in Section 4.4 and not theretofore paid, whereupon the entire amount of such rentals shall be due and payable immediately without further demand, together with interest at the Penalty Interest Rate to the extent legally enforceable on any portion thereof overdue.

In addition, in case one or more of the 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 be immediately due and payable.

The Trustee shall be empowered to institute any action or proceedings at law or in equity to recover judgment for the total amount becoming payable by the Company as aforesaid, together with interest at the Penalty Interest Rate thereon to the extent legally enforceable, and may prosecute any such action or proceedings to judgment or final decree, and may enforce any such judgment or final decree against the Company or other obligor upon the Trust Certificates and collect in the manner provided by law out of the property of the Company or other obligor upon the Trust Certificates wherever situated the moneys adjudged or decreed to be payable.

Section 5.2. **Remedies.** 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 or sublessee where any of the Trust Equipment may be 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 the rentals payable by the Company as provided in Section 5.1) may sell the same or any part thereof, free from all claims of the Company at law or in equity, in one lot and as an entirety or in separate lots, insofar as may be necessary to perform and fulfill the trust created 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 in the manner herein provided. Upon any such sale, the Trustee 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 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, or any part thereof, the Company shall cease to have any rights or remedies in respect of the Trust Equipment, or such part, hereunder, but all such rights and remedies shall be deemed thenceforth to have been waived by the Company, and no payments theretofore made by the Company for the rent or use of the Trust Equipment or such part 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 such part thereof, or any cause or right of action at law or in equity in respect of the Trust Equipment against the Trustee or the Holders. 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 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 4.4 (other than 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 5.3. **Application of Proceeds.** If, in case of the happening of any Event of Default, the Trustee shall

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 5.4. **Waiver of Default.** If at any time after the principal of all the Trust Certificates shall have been declared, and have become due and payable, or if at any time after the entire amount of rentals shall have been declared and become due and payable, all as in Section 5.1 provided, but before the final payment of the principal amount of the Trust Certificates is due pursuant to the fourth paragraph of Section 2.2, all arrears of rent (with interest at the Penalty Interest Rate upon any overdue instalments 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 the Trust Certificates and any other rental instalments which shall not at the time have matured according to their terms) shall be paid by the Company before any sale or lease by the Trustee of any of the Trust Equipment, and every other default in the observance or performance of any covenant or condition hereof shall be made good or secured to the satisfaction of the Trustee, or provision deemed by the Trustee to be adequate shall be made therefor, then 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 5.5. **Obligations of Company Not Affected by Remedies.** 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 any Holder, nor any delay or indulgence granted to the Company by the Trustee or by any such Holder, shall affect the obligations of the Company hereunder or under the guaranty endorsed on the Trust Certificates. The Company hereby waives presentation and demand in respect of any of the Trust Certificates and waives notice of presentation, of demand and of any default in the payment of the principal of and interest on the Trust Certificates.

Section 5.6. **Company to Deliver Trust Equipment to Trustee.** In case the Trustee shall demand possession of the Trust Equipment pursuant to the provisions hereof, and shall reasonably designate a point or points upon the railroad of the Company or of any Affiliate for the delivery of the Trust Equipment to it, the Company shall, at its own expense forthwith and in the usual manner, cause the Trust Equipment to be moved to such point or points on such

railroads as shall be designated by the Trustee and shall there deliver or cause to be delivered the same to the Trustee, or the Trustee may at its option keep the Trust Equipment on any of the lines of railroad or premises of the Company or of any Affiliate 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 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 5.7. **Limitations on Actions By Holders.** No Holder shall have any right to institute any action or proceedings at law or in equity for the execution and enforcement of the trust hereby created unless, after the request in writing, under Setion 7.5, by the Holders of not less than 25% in principal amount of the then outstanding Trust Certificates shall have been made to the Trustee, and after indemnity satisfatory to it shall have been provided, and after 90 days shall have elapsed after receipt by the Trustee of such request and indemnity, the Trustee shall decline, fail or neglect to institute any proceedings pursuant thereto. Neither the provisions of this Section 5.7 nor the provisions of Section 7.5 shall affect or limit in any way the obligations of the Company under its guaranty hereinabove provided or the rights of the Holders to institute suit for the enforcement of payments due under said guaranty in respect of the Trust Certificates.

Section 5.8. **Remedies Cumulative.** The remedies in this Agreement provided in favor of the Trustee and the Holders 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 SIX

Additional Covenants and Agreements by the Company

Section 6.1. **Company to Make Payments Provided for.** The Company hereby covenants 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 6.2. **Guaranty to Holders.** The Company covenants 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 Penalty Interest Rate to the extent legally enforceable), and the Holder of each Trust Certificate shall receive interest thereon in like money at the rate specified therein from the date specified therein

from which interest accrues to the date of maturity thereof (and, if not so paid, with interest thereon at the Penalty Interest 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 interest thereon, in substantially the form 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 one of its Executive Vice Presidents, Senior Vice Presidents or Vice Presidents. In case any officer of the Company whose facsimile signature shall appear on said guaranty shall cease to be such officer of the Company before the Trust Certificates shall have been issued 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 6.3. **Discharge of Liens.** The Company covenants 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.

Section 6.4. **Payment of Expenses; Recording.** The Company covenants 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 11303 of Title 49, U. S. Code. 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 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 6.5. **Further Assurances.** The Company covenants from time to time to do all such acts and execute all such instruments of further assurance as it shall be reasonably requested by the Trustee to do or execute for the purpose of fully carrying out and effectuating this Agreement and the intent hereof.

ARTICLE SEVEN

The Trustee

Section 7.1. **Acceptance of Trusts.** The Trustee hereby accepts the trusts imposed upon it by this Agreement and covenants to perform the same as herein expressed.

Section 7.2. **Application of Rentals.** The Trustee covenants to apply and distribute the rentals received by it under Section 4.4(B)[other than sums restored to Deposited Cash or Replacement Funds from rentals pursuant to Section 4.4(B)(1)] when and as the same shall be received, and to the extent that such rentals shall be sufficient therefor, for the purposes specified in Section 4.4(B).

Section 7.3. **Duties Concerning Registration, Exchange and Transfer of Trust Certificates.** The Trustee shall keep at the Principal Office books for the registration, exchange and transfer of the Trust Certificates; and upon presentation for any such purpose the Trustee will register, exchange, or transfer, as the case may be, as hereinbefore provided, under such reasonable regulations as it may prescribe, any of the Trust Certificates.

Section 7.4. **Insuring or Possession of Trust Equipment Upon Indemnification; Recording; Reliance on Documents.** The Trustee shall not be required to undertake any act or duty in the way of insuring, taking care of or taking possession of the Trust Equipment or to undertake any other act or duty under this Agreement until fully indemnified by the Company or by one or more of the Holders against all liability and expenses. The Trustee shall not be responsible for the filing or recording or refiling or rerecording of this Agreement or of any supplement hereto or of any other instrument or document which may be required to perfect the right, title and interest of the Trustee in the contracts assigned to it pursuant to Section 3.1. 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 3.4, 4.7 or 4.9, as the case may be, and shall not be required to make any further investigation of or inquiry concerning the matters covered thereby.

Section 7.5. **No Obligation to Enforce Trust unless Requested and Indemnified; Enforcement by Trustee.** 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 expenses 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.

All rights of action and rights to assert claims under this Agreement, or under any of the Trust Certificates, may be enforced by the Trustee without the possession of any of the Trust Certificates or the production thereof at any trial or other proceedings relative thereto, and any such action or proceedings instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall be for the ratable benefit of the Holders. In any proceedings brought by the Trustee (and also any proceedings involving the interpretation of any provision of this Agreement to which the Trustee shall be a party) the Trustee shall be held to represent all the Holders, and it shall not be necessary to make any Holders parties to such proceedings.

Section 7.6. **Assumption of No Default; May Rely on Notices and Other Documents.** The Trustee may for all purposes conclusively assume that the Company is not in default under the terms hereof until notified in writing to the contrary by the Holders of at least 10% in principal amount of the then outstanding Trust Certificates, which notice shall distinctly specify the 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 request, notice, consent, opinion, order, certificate, warrant or other paper or instrument believed by it to be genuine or authentic and to be signed by the proper party or parties.

Section 7.7. **Money Held by Trustee; Investments in Government Securities.** Any money at any time paid to or held by the Trustee hereunder until paid out by the Trustee as herein provided may be carried by the Trustee on deposit with itself, without liability for interest thereon except as may be agreed upon between the Trustee and the Company.

Interest, if any, allowed by the Trustee upon any moneys received by it under the provisions hereof and any interest (in excess of accrued interest paid from Deposited Cash or Replacement Funds at the time of purchase) or other profit accruing upon any investment of Deposited Cash or Replacement Funds as permitted by this Section 7.7 shall belong to the Company and be paid to it by the Trustee, as long as the Company shall not be known to the Trustee to be in default hereunder.

At any time there shall be no default under the terms of this Agreement or of any supplement hereto, the Trustee, from time to time on Request, shall invest and reinvest Deposited Cash and Replacement Funds held by it in Government Securities (the cost thereof to include any premium and accrued interest thereon) to be held by the Trustee in trust for the benefit of the Holders.

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 and premium.

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 4.4(B)(1), an amount equal to any expenses 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 and premium. The Company, if not in default under the terms hereof or of any supplement hereto, shall be entitled to receive any profit which may be realized from any sale or redemption of Government Securities.

Section 7.8. **No Liability for Trust Equipment; May Act through Others; No Responsibility for Recitals, etc.; Compensation; Owning Trust Certificates; Moneys Unclaimed for Six Years; Moneys Held in Trust.** The Trustee shall not be liable to anyone for any delay in the delivery of any of the Trust Equipment, or for any default on the part of any builder thereof or of the Company, or for any defect in any of the Trust Equipment or in the title thereto, nor shall anything herein be construed as a

warranty on the part of the Trustee in respect thereof or as a representation in respect of the value thereof or in respect of the title thereto.

The Trustee may perform its powers and duties hereunder by or through such attorneys, agents and servants as it shall appoint, and shall be entitled to rely upon the advice of counsel (who may be counsel to the Company) and shall be answerable for only its own acts, negligence and wilful defaults and not for the default or misconduct of any attorney, agent or servant appointed by it with reasonable care. The Trustee shall not be responsible 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 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 interest on any Trust

Certificates remaining unclaimed for six years after the date when the last annual instalment of principal payable on the Trust Certificates becomes due and payable, 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 shall thereafter be entitled to look only to the Company for payment thereof; **provided, however,** that the Trustee may, before making any such repayment and at the expense of the Company, cause notice that said moneys have not been claimed as aforesaid 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, and that after a date specified in such notice, which shall be not less than thirty days after the date of such publication, any unclaimed balance of such moneys then remaining on deposit with the Trustee will be repaid to the Company. In no event shall the Holders be entitled to interest upon such moneys 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.

Section 7.9. **Resignation by Trustee; Appointment of Successor Trustee.** If at any time the Trustee 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 national bank, or a state bank or trust company, qualified as below specified, to serve until a successor is appointed by the Holders as hereinafter provided, to which may be assigned the entire right, title and interest of the Trustee in the Trust Equipment, and in which may be vested the rights, powers, duties and obligations of the Trustee hereunder and under the Trust Certificates. Upon the transfer and delivery of all moneys, any Government Securities in which any of said moneys may then be invested, and Trust Equipment held by the retiring trustee, and the execution by the retiring trustee of such instruments of transfer as may be reasonably requested by the successor trustee, and upon acceptance by the successor trustee of the assignment 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 of the Trustee. In the event that the Company shall fail to designate such a successor trustee by instrument in writing delivered to the retiring trustee within two weeks from the time of receiving such notice in writing from the retiring trustee, the retiring trustee may thereupon designate such successor trustee or apply to any court of competent jurisdiction for the appointment of a successor trustee. The foregoing provisions are, however, subject to the right of the Holders of a majority in principal amount of

the then outstanding Trust Certificates by an instrument in writing to appoint any successor trustee, if such appointment is made within one year from the date of the giving of such notice to the Company. The Company shall execute all writings recognizing the transfer of title as aforesaid and all instruments of further assurance or otherwise as reasonably may be requested by the successor trustee in the premises, and will do and perform any and all acts necessary to establish and maintain the title and rights of the successor trustee in and to the Trust Equipment. Every successor trustee shall be a national bank, or a state bank or trust company, having trust powers, doing business in the city in which the Trustee does business, having a capital and surplus aggregating at least $5,000,000, if there be such a bank or trust company willing and able to accept the trust upon reasonable and customary terms and duly qualified to act as such trustee.

Section 7.10. **Merger, Consolidation or Conversion of Trustee.** Any corporation resulting from any merger, consolidation, or conversion to which the Trustee shall be a party, or any corporation in any manner succeeding to the corporate trust business or all or substantially all of the business of the Trustee, provided such corporation shall be a national bank, or a state bank or trust company, having trust powers, qualified as above specified in the case of a successor trustee, 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 EIGHT

Miscellaneous

Section 8.1. **Execution of Instruments by Holders of Trust Certificates; Proof Thereof and of Holding Trust Certificates.** Any request or other instrument provided by this Agreement to be signed or executed by Holders of Trust Certificates may be in any number of concurrent instruments of similar tenor, and may be executed by such Holders in person or by an agent or attorney appointed by an instrument in writing. Proof of the execution of any such request or other instrument, or 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:

(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 (i) 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 in each case that the person signing such request or other instrument acknowledged to him the execution thereof, or (ii) in any other manner the Trustee shall deem sufficient. Where such execution is by a person acting in other than his individual capacity, such certificate or affidavit shall also constitute sufficient proof of his authority.

(B) The ownership of Trust Certificates shall be determined by the registry books to be kept as provided in Section 7.3.

Section 8.2. **Rights Limited to Parties and Holders.** 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, 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.

Section 8.3. **Binding Upon Successors and Assigns.** Except as otherwise provided herein, the provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their successors and assigns.

Section 8.4. **Notices.** All demands, notices and other communications hereunder shall be in writing and shall be deemed to have been duly given if personally delivered or mailed, in the case of demands and notices, by certified or registered mail, and in the case of other communications, by first class mail,

(a) to the Company, at
Post Office Box 1808
Washington, D. C. 20013 and

(b) to the Trustee, at
40 Wall Street
New York, New York 10015
Attn: Corporate Trust Department

Either party may specify another such address by furnishing to the other party such other address in writing. An affidavit by any person representing or acting on behalf of the Company or the Trustee as to such mailing shall be conclusive evidence of the giving of such demand, notice or other communication.

Section 8.5. **Counterparts.** This Agreement has been executed in several counterparts each of which shall be deemed to be an original, and all such counterparts shall together constitute but one and the same instrument.

Section 8.6. **Date Executed.** This Agreement shall be deemed to have been executed on the date of the acknowledgment thereof by the officer of the Company who signed it on behalf of the Company.

Section 8.7. **Effect of Headings.** The Article and Section headings herein are for convenience only and shall not affect the construction hereof.

Section 8.8. **New York Law to Govern.** The provisions of this Agreement, and all the rights and obligations of the parties hereunder, shall be governed by the laws of the State of New York; **provided, however,** that the parties shall be entitled to all rights conferred by Section 11303 of Title 49, U. S. Code.

In Witness Whereof, the Trustee and the Company have caused their names to be signed hereto by their officers thereunto duly authorized and their corporate seals, duly attested, to be hereunto affixed as of the day and year first above written.

MANUFACTURERS HANOVER TRUST COMPANY,
Trustee,

By .....
Assistant Vice President

[Seal]
Attest:
.....
Assistant Secretary

SOUTHERN RAILWAY COMPANY

By K. A. Stoecker
Senior Vice President

[Seal]
Attest:
.....
Assistant Secretary

State of New York }
County of New York } ss.:

On this 31st day of July, 1979, before me personally appeared D. A. URSITTI, JR. to me personally known, who, being by me duly sworn, says he is an Assistant Vice President of **Manufacturers Hanover Trust Company**, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Josette H. Haddad
JOSETTE H. HADDAD
Notary Public, State of New York
No. 24-4676544
Qualified in Kings County
Certificate filed in New York County
Commission Expires March 30, 1980

[Notarial Seal]

District of Columbia:

On this 6th day of August, 1979, before me personally appeared K. A. Stoecker to me personally known, who, being by me duly sworn, says he is a Senior Vice President of **Southern Railway 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.

C. O. Wagner
C. O. WAGNER
Notary Public
In and For the District of Columbia
My Commission Expires May 31, 1982

[Notarial Seal]

SCHEDULE A

Description of Trust Equipment

No. of Units	Description
277	100-ton 60' 9'' EOC Box Cars, Pullman Incorporated (Pullman Standard Division), builder, to be numbered 565323 to 565599, inclusive;
80	100-ton 3600 cu. ft. capacity Automatic Bottom Dump Hopper Cars, Ortner Freight Car Company, builder, to be numbered 390300 to 390379, inclusive;
134	70-ton 52' 6'' CUF Insulated Box Cars, Fruit Growers Express Company, builder, to be numbered 585667 to 585800, inclusive; and
8	GP38-2 Diesel-Electric Locomotives, General Motors Corporation (Electro-Motive Division), builder, to be numbered 5232 to 5239, inclusive.