NW

Norfolk and Western Railway Company
Law Department
Roanoke, Virginia 24042

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William C. Wooldridge
Assistant General Solicitors

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Attorneys

7-349A010

RECEIVED
DEC 15 10 42 AM '77
I. C. C.
FEE OPERATION

Date 15 1977
Fee $ 50
ICC Washington, D. C.

RECORDATION NO. 9120 Filed & Recorded
DEC 15 1977 - 10 45 AM
INTERSTATE COMMERCE COMMISSION

December 15, 1977

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

Re: Norfolk and Western Railway Equipment Trust, Series No. 6 - Finance Docket No. 28602

Dear Sir:

In accordance with Section 20c of the Interstate Commerce Act and the Commission's Rules, I submit herewith for recording with the Commission eight counterparts, properly executed and acknowledged, of an Equipment Trust Agreement dated as of December 1, 1977, between First Pennsylvania Bank N.A., Trustee, and Norfolk and Western Railway Company, relating to equipment intended for use in connection with interstate commerce.

The parties to the transaction evidenced by the Equipment Trust Agreement are as follows:

TRUSTEE-LESSOR: First Pennsylvania Bank N.A.
Fifteenth and Chestnut Streets
Philadelphia, Pennsylvania 19101

LESSEE: Norfolk and Western Railway Company
8 North Jefferson Street
Roanoke, Virginia 24042

The equipment covered by the Equipment Trust Agreement is generally described as follows:

Counterparts - Stephen W. Chiles

Number of Units	General Description	AAR Symbol	Railroad's Road Numbers (both inclusive)
313	86' high cube boxcars	XP	861604-861649 861287-861553
270	100-ton open top hopper cars	HT	142206-142475

The equipment will be lettered "Norfolk and Western," "N&W," "NW," or with some other appropriate designation. In addition, the following legend, in letters not less than one inch in height, will be marked on each side of each unit of the equipment:

OWNED BY A BANK OR TRUST COMPANY UNDER A SECURITY AGREEMENT FILED UNDER INTERSTATE COMMERCE ACT, SECTION 20c.

Norfolk and Western Railway Company's check for the required recordation fee of $50 is enclosed.

Following recordation, please return six of the original counterparts, stamped with the Commission's recordation data, to our representative who delivered these instruments to you.

Very truly yours,

William C. Wooldridge

w/WCW
Enclosures

cc: Mr. D. P. Dorrian
Assistant Vice President
First Pennsylvania Bank N.A., Trustee

Interstate Commerce Commission
Washington, D.C. 20423

12/15/77

OFFICE OF THE SECRETARY

William C. Wooldridge
Norfolk and Western RYW. Company
8 North Jefferson Street
Roanoke, Virginia 24042

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 12/15/77 at 10:45am, and assigned recordation number(s) 9120

Sincerely yours,

H.G. Homme, Jr.
Acting Secretary

Enclosure(s)

SE-30-T
(6/77)

RECORDATION NO. 9120 Filed & Recorded

DEC 15 1977 · 10 45 AM

INTERSTATE COMMERCE COMMISSION

NORFOLK AND WESTERN RAILWAY EQUIPMENT TRUST, SERIES NO. 6

EQUIPMENT TRUST AGREEMENT

DATED AS OF DECEMBER 1, 1977

between

NORFOLK AND WESTERN RAILWAY COMPANY

and

FIRST PENNSYLVANIA BANK N.A., as Trustee

STONE PRINTING—ROANOKE, VA.—703-344-6685

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EQUIPMENT TRUST AGREEMENT dated as of December 1, 1977, between NORFOLK AND WESTERN RAILWAY COMPANY, a Virginia corporation (the "Company") and FIRST PENNSYLVANIA BANK N.A., a corporation existing under the laws of the United States, as trustee (the "Trustee").

RECITALS

The Company has contracted or will contract for the construction and transfer to the Trustee of the Trust Equipment (as hereinafter defined).

Title to the Trust Equipment is to be vested in and is to be retained by the Trustee, and the Trust Equipment is to be leased to the Company hereunder until title is transferred to the Company under the provisions hereof.

Norfolk and Western Railway Equipment Trust Certificates, Series No. 6 (the "Trust Certificates"), are to be issued and sold in an aggregate principal amount not to exceed $19,575,000, in one or more installments, 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 NORFOLK AND WESTERN RAILWAY EQUIPMENT TRUST, SERIES NO. 6, to be applied by the Trustee from time to time in part payment of the cost of Trust Equipment, the remainder of the cost thereof to be paid out of advance rentals to be paid by the Company as provided herein.

The Company desires to secure to the holders of the Trust Certificates the payment of the principal thereof in 15 equal annual installments payable on December 1 in each year, beginning December 1, 1978, and ending December 1, 1992 as hereinafter more particularly provided, with dividends to said dates of maturity, respectively, as hereinafter provided, payable semiannually 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 hereinafter set forth;

NOW, THEREFORE, in consideration of the mutual covenants and promises hereinafter set forth, the Company and the Trustee agree as follows:

ARTICLE ONE

FORMS AND DEFINITIONS

SECTION 1.01. *Forms.*

The forms of the Trust Certificates, the dividend warrants and the guaranty to be endorsed on the Trust Certificates by the Company are to be substantially as follows:

[FORM OF FACE OF TRUST CERTIFICATE WITH DIVIDEND WARRANTS]

$1,000	No.	$1,000

NORFOLK AND WESTERN RAILWAY
EQUIPMENT TRUST
SERIES NO. 6

EQUIPMENT TRUST CERTIFICATE

TOTAL AUTHORIZED ISSUE $19,575,000

FIRST PENNSYLVANIA BANK N.A.,
TRUSTEE

DIVIDENDS AT THE RATE OF % 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, 1977 (the "Equipment Trust Agreement"), with **Norfolk and Western Railway Company** (the "Company"), hereby certifies that the bearer, or if this Certificate is registered as to principal, the registered holder hereof, is entitled to an interest in the principal amount of

ONE THOUSAND DOLLARS

in **Norfolk and Western Railway Equipment Trust, Series No. 6,** payable on the due date stated above, upon presentation and surrender of this Certificate to the undersigned at its principal office in the City of Philadelphia, Pennsylvania, and to payment, until said due

date, of dividends on said principal amount at the rate of % per annum from December 1, 1977, semiannually on June 1 and December 1 in each year, according to the tenor of the dividend warrants hereto annexed, upon presentation and surrender of such warrants, as they severally mature, to the undersigned at its said principal office (with interest at the dividend warrant rate on any unpaid principal and on any unpaid dividends to the extent that it shall be legally enforceable), all in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, but payable only out of rentals or other moneys received by the undersigned and applicable to such payment under the provisions of the Equipment Trust Agreement.

This Certificate is one of an issue of Certificates having an aggregate principal amount not to exceed $19,575,000 issuable in one or more installments, the Certificates of each installment being substantially identical except as to dates of maturity. Certificates of all installments are otherwise substantially identical except as to the dividend rate thereon, and all are or will be issued pursuant to the terms of the Equipment Trust Agreement, under which certain railroad equipment leased to the Company (or cash or obligations defined in the Equipment Trust Agreement as "Investments" in lieu thereof, as provided in the Equipment Trust Agreement) is held by the undersigned in trust for the benefit of the holders of the interests represented by said Certificates. Reference is made to the Equipment Trust Agreement (a copy of which is on file with the undersigned at its said principal office) for a full statement of the rights and obligations of the Company, the duties and immunities of the undersigned and the rights of the holder hereof thereunder.

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

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

Every holder of this Certificate and of the attached dividend warrants, by accepting the same, agrees with the undersigned, with the Company, and with every subsequent holder hereof and thereof that this Certificate (unless registered in the name of the holder) and such dividend warrants shall be transferable with the same effect as in the case of a negotiable instrument payable to bearer, by delivery by any person having possession of the same, respectively, howsoever such possession may have been

acquired; and the undersigned and the Company may treat the bearer of this Certificate, or the registered holder hereof if this Certificate be registered in his name as provided above, and the bearer of any dividend warrant attached hereto whether or not this Certificate be so registered, as the absolute owner of this Certificate or of said warrants, as the case may be, for all purposes, and shall not be affected by any notice to the contrary.

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

Neither this Certificate nor the attached dividend warrants shall be deemed in any wise a promise to pay of the Trustee.

IN WITNESS WHEREOF, the Trustee has caused this Certificate to be signed by the facsimile signature of one of its Vice Presidents and a facsimile of its corporate seal to be hereunto affixed and attested by its Secretary or one of its Assistant Secretaries, and has caused dividend warrants bearing the facsimile signature of its Treasurer or one of its Assistant Treasurers to be attached hereto, as of the first day of December, 1977.

First Pennsylvania Bank N.A., *Trustee*

By_____
Vice President

[FACSIMILE SEAL]

ATTEST:

_____
Assistant Secretary

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

Due to the bearer hereof on the first day of , 19 , on surrender hereof at the principal office of the undersigned Trustee in the City of Philadelphia, Pennsylvania,

Dollars ($),

being the semiannual dividend then due on Certificate No. of **Norfolk and Western Railway Equipment Trust, Series No. 6,** payable only out of rentals or other moneys received by the undersigned and applicable to such payment under the Equipment Trust Agreement referred to in said Certificate.

First Pennsylvania Bank N.A., *Trustee*

By _____
Treasurer

[FORM OF REVERSE OF TRUST CERTIFICATE WITH DIVIDEND WARRANTS]

GUARANTY

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

NORFOLK AND WESTERN RAILWAY COMPANY

By _____
Vice President

No.

NORFOLK AND WESTERN RAILWAY
EQUIPMENT TRUST
SERIES NO. 6
$1,000

DIVIDEND RATE
Per ( ) Cent

PRINCIPAL DUE
DECEMBER 1, 19

Dividends Payable
JUNE 1 AND DECEMBER 1

Principal and Dividends Payable
at the Principal Office of
FIRST PENNSYLVANIA BANK N.A.
in the City of Philadelphia, Pennsylvania

Registrable at the Principal Office of the Trustee, in the City of Philadelphia, Pennsylvania NOTICE: NO WRITING HEREUNDER EXCEPT BY THE REGISTRAR		
Date of Registration	Name of Registered Holder	Signature of Registrar

[FORM OF FACE OF FULLY REGISTERED TRUST CERTIFICATE]

No. R

$ $

NORFOLK AND WESTERN RAILWAY EQUIPMENT TRUST SERIES NO. 6

EQUIPMENT TRUST CERTIFICATE

TOTAL AUTHORIZED ISSUE $19,575,000

FIRST PENNSYLVANIA BANK N.A., TRUSTEE

DIVIDENDS AT THE RATE OF % 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, 1977 (the "Equipment Trust Agreement"), with **Norfolk and Western Railway Company** (the "Company"), hereby certifies that

or registered assigns, is entitled to an interest in the principal amount of

in **Norfolk and Western Railway Equipment Trust, Series No. 6**, payable on the due date stated above, upon presentation and surrender of this Certificate to the

undersigned at its principal office in the City of Philadelphia, Pennsylvania, and to payment, until said due date, of dividends on said principal amount semiannually on June 1 and December 1 in each year at the rate of % per annum from the date hereof at said principal office of the undersigned (with interest at said dividend rate on any unpaid principal and 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 the Equipment Trust Agreement.

This Certificate is one of an issue of Certificates having an aggregate principal amount not to exceed $19,575,000, issuable in one or more installments, the Certificates of each installment being substantially identical except as to dates of maturity. Certificates of all installments are otherwise substantially identical except as to the dividend rate thereon, and all are or will be issued pursuant to the terms of the Equipment Trust Agreement, under which certain railroad equipment leased to the Company (or cash or obligations defined in the Equipment Trust Agreement as "Investments" 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. Reference is made to the Equipment Trust Agreement (a copy of which is on file with the undersigned at its said principal office) 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 bearer Certificates with dividend warrants attached, registrable as to principal, in the denomination of $1,000, and as fully registered Certificates in the denominations of $1,000 and any integral multiple of $1,000. The Certificates with dividend warrants and the fully registered Certificates and the several denominations of fully registered Certificates are interchangeable upon presentation thereof at said principal office of the undersigned, but only in the manner, subject to the limitations and upon payment of the charges provided in the Equipment Trust 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 principal office in the City of Philadelphia, Pennsylvania, upon surrender hereof to the undersigned at its said principal office, 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 herefor. 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 set forth in the Equipment Trust Agreement, the principal amount represented by this Certificate may be declared due and payable, as provided in the Equipment Trust Agreement.

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

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

First Pennsylvania Bank N.A., *Trustee*

By_____
Vice President

[FACSIMILE SEAL]

Attest:

_____
Assistant Secretary

[FORM OF REVERSE OF FULLY REGISTERED
TRUST CERTIFICATE]

GUARANTY

NORFOLK AND WESTERN RAILWAY COMPANY, a Virginia corporation, 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 the dividends thereon at the dividend rate specified therein on the semiannual 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.

NORFOLK AND WESTERN RAILWAY COMPANY

By_____
Vice President

No. R

NORFOLK AND WESTERN RAILWAY
EQUIPMENT TRUST
SERIES NO. 6

DIVIDEND RATE
Per ( ) Cent

Principal Due
DECEMBER 1, 19

Dividends Payable
JUNE 1 and DECEMBER 1

Principal and Dividends Payable
at the Principal Office of
FIRST PENNSYLVANIA BANK N.A.
in the City of Philadelphia, Pennsylvania

FOR VALUE RECEIVED

_____

hereby sells, assigns and transfers unto

Insert Social Security or Other
Identifying Number of Assignee

_____

Print or Typewrite Name and Address of Assignee

_____

the within Equipment Trust Certificate of
NORFOLK AND WESTERN RAILWAY COMPANY
hereby irrevocably constituting and appointing

_____ Attorney
to transfer said Equipment Trust Certificate on the books of the within-mentioned Trustee at its agency, with full power of substitution in the premises.

Dated

In the presence of

_____

SECTION 1.02. *Definitions.*

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

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.

Agreement shall mean this Equipment Trust Agreement dated as of December 1, 1977, between the Company and Trustee.

Casualty Occurrence shall mean any occurrence specified in Section 4.07 hereof to be a Casualty Occurrence.

Company shall mean Norfolk and Western Railway Company, a Virginia corporation, or any successor thereto.

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

Default Rental shall mean the entire amount of the rental payable by the Company to the Trustee under Section 4.04 hereof and not paid before a declaration under Section 5.01 hereof that the rental is due, except that Default Rental shall not include, and the Trustee shall not be entitled to, any rental required for the payment of dividends accruing after the date of a declaration under said Section 5.01.

Deposited Cash shall mean the aggregate of (a) cash and any advance rental on deposit with the Trustee as provided in Section 2.01 hereof and any Investments purchased by the use of such cash or rentals pursuant to Section 7.08 hereof, and (b) any sums restored to Deposited Cash as rental, in connection with any purchase, sale, or redemption of Investments, pursuant to Section 4.04(B)(1) hereof and on deposit with the Trustee.

Dividend warrants shall mean the warrants attached to or appertaining to the Trust Certificates with dividend warrants.

Equipment shall mean standard-gauge railroad equipment, other than passenger or work equipment, that is new, or is sold by the manufacturer thereof with the same warranties as to workmanship and material as in the case of new equipment (except that Equipment constructed by the Company shall be so warranted by the Company rather than the owner or owners thereof), but Equipment shall not include any special devices, racks, or assemblies at any time attached or affixed to any Equipment, the cost or purchase price of which is not included in the original cost of such Equipment and the title to which is in any person, firm or corporation other than the Company or the Trustee.

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

Event of Default shall mean any event specified in Section 5.01 hereof to be an Event of Default.

The *fair value* of any unit of Trust Equipment shall be deemed to be the Cost thereof less ½ of 1% of the Cost for each full month during which such unit was subject to this Agreement prior to the date at which the fair value thereof is determined.

The words *hereby, herein, hereof, 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 subsection hereof.

The word *holder*, when used with respect to Trust Certificates, shall include the plural as well as the singular number and shall mean and include the bearer of a Trust Certificate with dividend warrants not registered as to principal, the bearer of a dividend warrant, the registered owner of a Trust Certificate with dividend warrants registered as to principal and the registered owner of a fully registered Trust Certificate.

Interest shall mean interest determined on the basis of a 360-day year of twelve 30-day months.

Investments 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 principal and interest.

Officer's Certificate shall mean a certificate signed by the President, a Vice President, the General Manager

Motive Power and Equipment or a Manager Motive Power and Equipment of the Company.

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

Replacement Funds shall mean any moneys paid to the Trustee pursuant to Section 4.07 or Section 4.09 hereof.

Request shall mean a written request for the action therein specified signed on behalf of the Company by the President, a Vice President, the General Manager Motive Power and Equipment or a Manager Motive Power and Equipment of the Company and delivered to the Trustee.

Trust shall mean the Norfolk and Western Railway Equipment Trust Series No. 6, created hereby.

Trust Certificates shall mean Norfolk and Western Railway Equipment Trust Certificates, Series No. 6, issued hereunder.

Trust Equipment shall mean all Equipment at the time subject to the terms of this Agreement, and shall include any addition to or replacement of parts of such Equipment.

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

ARTICLE TWO

ISSUANCE OF TRUST CERTIFICATES

SECTION 2.01. *Issuance of Trust Certificates.* The Trustee shall, without waiting for the recording, filing or deposit of this Agreement or of any other instrument respecting the Trust Equipment, 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. The net proceeds (excluding premium and accrued dividends, if any) of the sale of any of the Trust Certificates shall 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 pursuant to Section 4.04(A)(1) hereof.

SECTION 2.02. *Interests Represented by Trust Certificates; Aggregate Principal Amount; Dividends; Maturity.* Each Trust Certificate shall represent an interest in the Trust of a principal amount specified therein and shall bear dividends on said principal amount, at a rate to be determined for each installment at the time of delivery thereof by the Trustee, payable semiannually on the first days of June and December in each year. The dividend 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 aggregate principal amount of Trust Certificates which shall be executed and delivered by the Trustee hereunder shall not exceed $19,575,000, except as provided in Sections 2.05 and 2.06 hereof. Each Trust Certificate

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 December 1 in each year, beginning December 1, 1978, and ending December 1, 1992. Dividend warrants evidencing the rights of the bearers thereof to dividends on the Trust Certificates with dividend warrants shall be attached to such Trust Certificates.

SECTION 2.03. *Form of Trust Certificates and Guaranty.* The Trust Certificates, the dividend warrants and the guaranty to be endorsed thereon by the Company as provided in Section 6.02 hereof shall be in substantially the forms set forth in Section 1.01 hereof.

SECTION 2.04. *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 Vice Presidents and a facsimile of its corporate seal shall be affixed thereto and attested by its Secretary or one of its Assistant Secretaries. The dividend warrants shall be authenticated by the facsimile signature of the Treasurer or any Assistant Treasurer of the Trustee. In case any officer of the Trustee whose signature, whether facsimile or not, shall appear on any of the Trust Certificates or on the dividend warrants shall cease to be such officer of the Trustee before the Trust Certificates or dividend warrants shall have been issued and delivered by the Trustee, such Trust Certificates and dividend warrants shall be adopted by the Trustee and be issued and delivered as though such person had not ceased to be such officer of the Trustee.

Before executing or delivering any Trust Certificate, the Trustee shall detach and cancel all matured dividend warrants.

SECTION 2.05. *Transfer of Trust Certificates; Owners Thereof; Exchange of Trust Certificates.* The Trust Certificates with dividend warrants shall be in the denomination of $1,000 each, payable to bearer, negotiable and transferable by delivery, unless registered as to principal in the manner hereinafter provided, and dated December 1, 1977.

Fully registered Trust Certificates shall be in denominations of $1,000 and any integral multiple of $1,000, be registered as to both principal and dividends in the name of the holder, be transferable upon presentation and surrender thereof at the principal office of the Trustee in the City of Philadelphia, Pennsylvania (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 be dated and bear dividends from December 1, 1977, or the dividend payment date to which dividends shall have been paid next preceding or coinciding with the date of issue, whichever is later.

Fully registered Trust Certificates may be exchanged (i) for a like aggregate principal amount of Trust Certificates with dividend warrants of the same maturity having all unmatured dividend warrants attached or (ii) for a like aggregate principal amount of fully registered Trust Certificates of the same maturity of authorized denominations. Trust Certificates with dividend warrants may be exchanged for a like aggregate principal amount of

fully registered Trust Certificates of the same maturity of authorized denominations. Trust Certificates to be exchanged shall be surrendered at said principal office of the Trustee in the City of Philadelphia, Pennsylvania. Trust Certificates with dividend warrants surrendered for exchange shall have attached all unmatured dividend warrants. In case dividends on the Trust Certificates are in default at the time of any such exchange, all matured and unpaid as well as unmatured dividend warrants shall be attached to the surrendered Trust Certificates. Any Trust Certificate with dividend warrants may be registered as to the principal thereof in the name of the holder at said principal office of the Trustee, and such registration shall be noted on the Trust Certificate by or on behalf of the Trustee. Thereafter no transfer thereof shall be valid unless made at said principal office by the registered holder thereof in person, or by his duly authorized attorney, and similarly noted thereon; but the same may be discharged from registration and transferred to bearer as before. No registration, however, shall affect the dividend warrants; and every dividend warrant shall continue to be transferable with the same effect as in the case of a negotiable instrument payable to bearer by delivery thereof by any person in possession of the same regardless of how such possession may have been acquired.

Notwithstanding anything to the contrary herein, the parties hereto may deem and treat (i) the bearer of any Trust Certificate not registered as to principal and of any dividend warrant as the absolute owner of such Trust Certificate or dividend warrant for the purpose of receiving payment thereof and for all other purposes and shall not be affected by any notice to the contrary, and (ii) the registered holder of any fully registered Trust Certificate or of any

Trust Certificate with dividend warrants registered as to principal as the absolute owner of that Trust Certificate for all purposes (except payment of dividends in the case of Trust Certificates with dividend warrants registered as to principal) and shall not be affected by any notice to the contrary.

For any registration, transfer, exchange or discharge from registration, the Trustee shall require the payment of a sum sufficient to cover reimbursement for any governmental charge connected therewith, and, in addition, in case of any exchange of Trust Certificates as hereinabove provided, such sum, not exceeding $5 for each Trust Certificate issued on such exchange, as the Company may specify in a Request.

The Trustee shall not be required to issue, register, transfer or exchange Trust Certificates during the ten day period immediately preceding any dividend payment date.

Subject to the foregoing record date provisions, 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 of the rights to dividends accrued and unpaid, and to accrue, which were carried by the whole or part of any one or more of said Trust Certificates; and, notwithstanding anything to the contrary herein, each Trust Certificate so delivered shall be so dated or have attached thereto such dividend warrants that neither gain nor loss in dividends shall result from such exchange, substitution or transfer.

SECTION 2.06. *Replacement of Lost or Mutilated Trust Certificates.* In case any Trust Certificate or dividend warrant shall become mutilated or defaced or be lost, stolen or destroyed, then upon presentation of the evidence and security required hereby and upon the terms set forth herein and not otherwise, the Trustee, upon Request, shall (a) pay any matured and unpaid dividend warrants, upon the surrender of such dividend warrants if mutilated or defaced, and any matured and unpaid dividends on any mutilated or defaced fully registered Trust Certificates and (b) execute and deliver, in exchange and substitution for and upon cancellation of any mutilated or defaced Trust Certificate or dividend warrant, or in substitution for the same if lost, stolen or destroyed, a new fully registered Trust Certificate or a Trust Certificate with dividend warrants, as the case may be. In the case of a Trust Certificate with dividend warrants, all unmatured dividend warrants of like maturity, tenor and date shall be attached to such replacement Trust Certificate, and the replacement Trust Certificate shall bear such number, designation or other mark of identification as the Trustee may determine. The Company shall execute its guaranty on any replacement Trust Certificates so delivered. The applicant for a replacement Trust Certificate shall furnish to the Trustee and to the Company (i) evidence to their satisfaction of the mutilation, defacement, loss, theft or destruction of the Trust Certificate and dividend warrants alleged to have been lost, stolen or destroyed and of the ownership and authenticity of such mutilated, defaced, lost, stolen or destroyed Trust Certificate and dividend warrants and (ii) such security and indemnity as the Trustee and the Company may, in their discretion, require. Said applicant shall pay all expenses and charges of any substitution or exchange. All Trust Certificates shall be issued, held and

owned upon the express condition that the foregoing provisions are exclusive in respect of the replacement of mutilated, defaced, lost, stolen or destroyed Trust Certificates and dividend warrants and shall preclude any and all other rights and remedies.

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

Temporary Trust Certificates shall be exchangeable for the definitive Trust Certificates in lieu of which they are issued. Upon surrender and cancellation of any temporary Trust Certificates, the Trustee shall without charge to the holder 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 were definitive.

SECTION 2.08. *Cancellation of Trust Certificates.* The Company may at any time deliver to the Trustee for cancellation any Trust Certificates which the Company may have acquired in any manner whatsoever, and all Trust

Certificates so delivered shall be promptly canceled by the Trustee. All canceled Trust Certificates held by the Trustee shall be disposed of as directed in a Request.

ARTICLE THREE

ACQUISITION OF TRUST EQUIPMENT BY TRUSTEE

SECTION 3.01. *Acquisition of Trust Equipment by Trustee.* The Company shall promptly cause units of the Equipment described in Schedule A hereto to be constructed, sold, assigned and transferred to the Trustee, as trustee for the holders of the Trust Certificates and dividend warrants. To that end, the Company hereby assigns, or agrees to assign, to the Trustee promptly after entering into any contract or contracts for the construction of such Equipment (other than a contract providing for the construction of any of the Equipment by the Company), all of its rights, title and interest under said contract or contracts. Said Equipment, including any constructed by the Company, shall be delivered to the Company, which is hereby designated by the Trustee as its agent to receive delivery thereof. An Officer's Certificate as to delivery shall be conclusive evidence of that 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 fewer units of or other Equipment, of the same or different types, in lieu of or in addition to any of the Equipment specifically described in Schedule A hereto, the Company may cause such Equipment to be transferred to the Trustee, to be substituted or added under the Trust. To that end, the Company, upon entering into a contract for the

construction of said other Equipment (other than a contract providing for the construction of Equipment by the Company), shall assign to the Trustee all of its right, title and interest under said contract.

SECTION 3.02. *Payments Out of Deposited Cash.* From time to time, when and as any of the Trust Equipment shall have been delivered to the Trustee or to the Company as its agent pursuant to this Article Three, the Trustee shall (subject to the provisions of Section 3.03 hereof and upon Request) pay to the manufacturer or manufacturers or owner or owners 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 not more than 80% of the aggregate Cost of the Trust Equipment then and theretofore delivered to the Trustee.

SECTION 3.03. *Payments of and from Advance Rental.* The Company, contemporaneously with any payment by the Trustee pursuant to Section 3.02 hereof, shall pay to the Trustee the advance rental provided for in Section 4.04(A)(2) hereof. Thereupon the Trustee shall, upon Request, pay to the manufacturer or manufacturers or vendor or vendors of the delivered Trust Equipment from said advance rental that portion of the Cost of the delivered Trust Equipment not paid out of Deposited Cash pursuant to Section 3.02 hereof. The intent of the parties hereto is that the Company shall ultimately pay not less than 20% of the final Cost of all of the Trust Equipment; and the Trustee and the Company shall at any time if occasion arises adjust their accounts and payments so that the Trustee shall pay with Deposited Cash not more than 80% of said final Cost, and the Company shall pay as advance

rental the remainder which shall not be less than 20% of said final Cost.

SECTION 3.04. *Supporting Documents.* The Trustee shall not pay out any Deposited Cash against the delivery of any units of the Trust Equipment until it shall have received:

(a) An Officer's Certificate stating that (i) said units are Equipment as herein defined, (ii) the Cost of said units is an amount specified therein or is not less than an amount specified therein and (iii) said units have been delivered to the Company as agent for the Trustee and marked in accordance with Section 4.06 hereof;

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

(c) An invoice or invoices from the manufacturer or manufacturers or owner or owners thereof covering said units described in said bill or bills of sale, upon which invoice or invoices shall be noted the written approval of the Company; and

(d) An Opinion of Counsel to the effect that (i) said bill or bills of sale are valid and effective, either alone or in connection with any other instrument referred to in that opinion, to vest in the Trustee title to said units free from all liens and encumbrances and (ii) in the case of any Trust Equipment not specifically described herein, a proper supplement hereto in respect thereof has been

duly executed by the Trustee and the Company and filed, recorded and deposited in accordance with Section 6.04 hereof.

Any Officer's Certificate delivered pursuant to this Section 3.04 may state that the Cost of the Trust Equipment referred to therein 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 an amount and of the Cost that the aggregate final Cost of the Trust Equipment will be at least equal to 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 said additional Trust Equipment, will furnish to the Trustee in respect of said additional Trust Equipment the documents described in the first paragraph of this Section 3.04.

SECTION 3.05. *Interest on Deposited Cash.* 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 Investments purchased with Deposited Cash as permitted by Section 7.08 hereof shall belong to the Company and be paid to it by the Trustee unless, to the knowledge of the Trustee, the Company shall be in default hereunder.

ARTICLE FOUR

LEASE OF TRUST EQUIPMENT TO COMPANY

SECTION 4.01. *Lease of Trust Equipment.* The Trustee hereby leases all of the Trust Equipment to the Company for a term of 15 years commencing December 1, 1977.

SECTION 4.02. *Substituted or Additional Trust Equipment to be Covered by Supplement Hereto.* In the event 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 specifically described herein, said other Equipment shall be included as part of the Trust Equipment by supplement hereto and shall be subject to all of the terms and conditions hereof in all respects as though it had been part of the Trust Equipment specifically described herein.

SECTION 4.03. *Failure to Execute Supplement Hereto for Substituted or Additional Trust Equipment.* Notwithstanding the failure of either or both of the parties hereto to execute any supplement hereto as required by Section 4.02 hereof, any Equipment which shall from time to time be transferred or delivered to the Company as agent for the Trustee hereunder shall, at and from the time of such transfer or delivery and without further instrument of lease or transfer, become subject to all of the terms and conditions hereof.

SECTION 4.04. *Rental Payments.* 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 provided herein. The Company shall pay to the Trustee, in the 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 said items shall become due and payable prior to the delivery and lease to the Company of any of the Trust Equipment):

(A) 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 or 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 so 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, such advance rental to be paid 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; and

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

(B) In addition to said advance rental, and whether or not at the time any Trust Equipment shall have been delivered to the Company, the following:

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

(2) The amounts of the dividends payable on the Trust Certificates, when and as the same shall become payable, and interest (to the extent legally enforceable) at the dividend rate from the due date until the date of payment upon the amount of any installments of rental payable under this subparagraph (2) and the following subparagraph (3) which shall not be paid when due; and

(3) 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 (with interest on any overdue principal at the dividend rate to the extent legally enforceable) from the due date until the date of payment.

In addition to the foregoing rental payments, the Company shall pay to the proper taxing authority any taxes, assessments or government charges levied upon or on account of this Agreement or the income or property of the Trust; *provided, however,* that 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 or dividend warrants may be materially endangered thereby. If any such taxes, assessments, or governmental charges shall have been charged or levied against the Trustee directly and paid by the Trustee, the Company shall reimburse the Trustee on presentation of invoice therefor; *provided, however,* that the Company shall not be obligated to reimburse the Trustee for any taxes, assessments or governmental charges so paid unless the Trustee shall have been legally liable with respect thereto or the Company shall have approved the payment thereof.

SECTION 4.05. *Termination of Lease; Unclaimed Moneys.* At the termination of the lease provided for herein and after all payments due or to become due from the Company hereunder shall have been made to the Trustee, (1) those 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 dividend warrants 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, at the expense of the Company, execute an instrument in writing reasonably requested by the Company to be made of record in order to make clear upon the public records of all appropriate jurisdictions the Company's title to all the Trust Equipment; *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. *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 marked in stencil or otherwise on each side of such unit the following legend in letters not less than one inch in height:

OWNED BY A BANK OR TRUST COMPANY UNDER A SECURITY AGREEMENT FILED UNDER INTERSTATE COMMERCE ACT, SECTION 20C.

Said legend shall be readily visible and shall indicate plainly the Trustee's ownership of said unit of the Trust Equipment. In case, prior to the termination of the lease provided for herein, any of said 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 unit of the Trust Equipment at any time (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, recorded and deposited as provided in Section 6.04 hereof.

The Trust Equipment may be lettered with the name, initials or insignia of the Company, or any Affiliate, sublessee or transferee of the Company which is permitted to use the Trust Equipment as provided herein, or in some

other appropriate manner, for convenience of identification of the leasehold interest therein of the Company or any said Affiliate, sublessee or transferee. Except as aforesaid, during the continuance of the lease provided for herein, the Company will not permit the name of any person, association or corporation to be placed on any unit 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. The Trustee shall, however, upon Request, consent to the placing of the name of any person, association or corporation specified in such Request upon any unit of the Trust Equipment if the Company shall deliver to the Trustee at the time of such Request an Opinion of Counsel stating that the right, title and interest of the Trustee in and to said unit will not be impaired or invalidated by the placing of the specified name thereon.

SECTION 4.07. *Maintenance of Trust Equipment; Casualty Occurrences.* The Company shall maintain and keep each unit of 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 unit shall be worn out, lost or destroyed or become unsuitable for use from any cause whatsoever (such occurrences being herein called Casualty Occurrences), the Company shall (a) promptly upon being advised of that Casualty Occurrence deliver to the Trustee an Officer's Certificate describing said unit and stating the then fair value thereof, (b) either (i) deposit with the Trustee an amount in cash equal to said fair value or (ii) cause to be transferred to the Trustee an additional unit or units of Equipment, free from all liens and encumbrances, of a fair value at least equal to the then fair value of said unit, and

(c) deliver to the Trustee in respect of any one or more additional units of Equipment certificates, bills of sale and Opinions of Counsel (all in like manner as provided in Section 3.04 hereof), and an Officer's Certificate describing said additional unit or units of Equipment and stating the Cost and then fair value thereof. If at any time the fair value of all additional units of Equipment so transferred to the Trustee shall be in excess of the fair value of all units of the Trust Equipment having suffered Casualty Occurrences prior to that time, the excess shall constitute a credit toward any further replacement of any units of Trust Equipment which thereafter suffer a Casualty Occurrence. 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 4.07 shall be held and applied as provided in Section 4.09 hereof.

On or before April 30 in each year, commencing with the year 1979, and during the continuance of the lease provided for herein, the Company shall furnish to the Trustee an Officer's Certificate stating, as of the preceding December 31, (1) the description, number of units and road numbers of all units of the Trust Equipment then covered hereby, (2) the description, number of units and road numbers of all units of the Trust Equipment that have suffered a Casualty Occurrence during the preceding 12 months (or in the case of the first of said statements since the date of delivery hereunder of the Trust Equipment) and (3) that, in the case of any units of the Trust Equipment repainted or repaired during the period covered thereby, the legends required by Section 4.06 hereof have been preserved or replaced. The Trustee, by its agents, shall have the right, but shall be under no duty, to inspect the Trust

Equipment at the then existing locations thereof once in each calendar year.

SECTION 4.08. *Possession of Trust Equipment; Assignments or Transfers.* 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 railroads in the usual interchange of traffic or 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 may sell, assign, transfer or otherwise dispose of the right to possession and use of any unit of the Trust Equipment, but no sale, assignment, transfer or other disposition thereof shall affect or reduce any of the obligations of the Company hereunder, which obligations of the Company shall continue in full force and effect to the same extent as if no sale, assignment, transfer or other disposition thereof had been made, it being understood, however, that certain sales, assignments, transfers and other dispositions of Trust Equipment may constitute an Event of Default under Section 5.01 hereof.

SECTION 4.09. *Release and Replacement of Trust Equipment.* Any unit of the Trust Equipment which shall have suffered a Casualty Occurrence may be released. At any time hereafter until title thereto shall become vested in

the Company, the Trustee will release any unit upon the filing with it of a Request and an Officer's Certificate which shall (a) describe said unit, (b) state that it has suffered a Casualty Occurrence hereunder, (c) state the selling price thereof and (d) specify the Cost and the then fair value thereof. No such release shall be made, however, until (a) the Company shall have paid to the Trustee an amount equal to the selling price or fair value, whichever shall be greater, of said unit or (b) the fair value of all additional Equipment transferred to the Trustee under Section 4.07 hereof shall be in excess of the greater of (i) the fair value of all units which shall have suffered a Casualty Occurrence or (ii) the selling price of all of said units.

Any moneys paid to the Trustee pursuant to this Section 4.09 or to Section 4.07 hereof (hereinafter called Replacement Funds) shall be received and held by the Trustee in trust hereunder pending delivery of additional units of Equipment and may be invested and reinvested as provided in Section 7.08 hereof. Upon the filing 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, said 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 said units of Equipment. In the event that the Cost of said units shall exceed the amount of moneys held by the Trustee pending delivery of additional units of Equipment, the Company shall pay the excess, which amount shall constitute a credit toward the obligation of any further replacement of any units of Trust Equipment (pursuant to this Section 4.09 or to Section 4.07 hereof) which thereafter may suffer a Casualty Occurrence.

SECTION 4.10. *Company's Indemnities.* The Company shall indemnify the Trustee against any and all claims arising from or connected with the ownership or use of any unit of Trust Equipment and against any and all claims arising from the use of any patented inventions in and about the Trust Equipment. The Company shall comply in all respects with the laws of the United States of America and of any state thereof in which any unit of the Trust Equipment may be operated and with all lawful acts, rules, regulations and orders of the Interstate Commerce Commission and any other commission, board or other legislative, executive, administrative or judicial body or officer having the power to regulate or supervise the use or condition of any unit of the Trust Equipment; *provided, however,* that the Company may in good faith contest the validity of any of said acts, rules, regulations or orders, or the application thereof to any unit of the Trust Equipment or any part thereof, in any reasonable manner which will not in the judgment of the Trustee materially endanger the rights or interests of the Trustee or of the holders of the Trust Certificates or dividend warrants. The Company shall not be relieved of any of its obligations hereunder by reason of the assertion or enforcement of any said claim or the commencement or prosecution of any litigation in respect thereof.

ARTICLE FIVE

REMEDIES IN EVENT OF DEFAULT

SECTION 5.01. *Events of Default.* 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, for more than 90 days after the Trustee shall have demanded in writing performance thereof, fail or refuse to comply with any other term or covenant hereof or of any supplement hereto or to make provisions satisfactory to the Trustee for such compliance, or

(c) the Company, without the prior written consent of the Trustee, shall make or suffer any sale, assignment, transfer or other disposition of the right of possession and use of any unit of the Trust Equipment other than to an Affiliate or to a railroad company or other purchaser which shall acquire all or substantially all of the property of the Company and which, by execution of an appropriate instrument satisfactory to the Trustee, shall assume and agree to perform each and every obligation and covenant of the Company hereunder and under the guaranty endorsed on the Trust Certificates, or

(d) the lease provided for herein shall be terminated by operation of law, or

(e) a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may be hereafter amended, shall be filed by or against the Company and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall con-

tinue), all of the obligations of the Company under this Agreement and under its guaranty endorsed on the Trust Certificates shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees within 60 days after such appointment, if any, or 90 days after such petition shall have been filed, whichever shall be earlier, or

(f) any other proceedings shall be commenced by or against the Company for any relief under any bankruptcy or insolvency law, or law relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the indebtedness payable hereunder) and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all of the obligations of the Company under this Agreement and under its guaranty endorsed on the Trust Certificates shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Company or for the property of the Company in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers within 60 days after such appointment, if any, or 90 days after such proceedings shall have been commenced, whichever shall be earlier,

then, upon the happening of any one of these events (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 the Default Rental to be due and payable forthwith. Thereupon the Default Rental shall become and be due and payable immediately without further demand, and the Trustee shall be entitled to recover judgment for the total amount so becoming payable by the Company and to collect that judgment out of any property of the Company wherever situated.

In addition, in case one or more Events of Default shall have occurred and be continuing, 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 of the Trust Certificates then outstanding to be due and payable; and thereupon the same shall become and be due and payable immediately without further demand.

SECTION 5.02. *Remedies.* In case of the happening of any Event of Default, the Trustee may declare the lease provided for herein terminated and may by its agents enter upon the lines of railroad and premises of the Company or of any Affiliate and take possession of all or any unit of the Trust Equipment and withdraw the same from said lines of railroad and premises, retaining all payments which up to that time may have been made by the Company hereunder. The Trustee shall also be entitled to collect, receive and retain all unpaid *per diem*, mileage or other charges of any kind earned by any unit of the Trust Equipment. The Company hereby expressly waives any and all claims against the Trustee and its agent or agents for damages of whatever

nature in connection with any retaking of any unit of the Trust Equipment in any reasonable manner.

At any time after the Default Rental shall have been declared due and payable, the Trustee (after retaking possession of the Trust Equipment as hereinbefore provided) may at its election and upon such notice as is hereinafter prescribed retain the Trust Equipment in satisfaction of the Default Rental and make such disposition thereof as the Trustee shall deem fit. Written notice of the Trustee's election to retain the Trust Equipment shall be given to the Company by telegram or registered mail, addressed as provided in Section 8.04 hereof, and to any other persons to whom notice may be required by law, within 30 days after the Default Rental shall have been declared immediately due and payable. In the event the Trustee should elect to retain the Trust Equipment and no objection is made thereto within the 30-day period described in the second proviso below, all of the Company's rights in the Trust Equipment shall thereupon terminate and all payments made by the Company to the Trustee may be retained by the Trustee as compensation for use of the Trust Equipment; *provided, however,* that if the Company before the expiration of the 30-day period described in the proviso below should pay or cause to be paid to the Trustee the Default Rental, then in such event absolute right to the possession of, title to and property in the Trust Equipment shall pass to and vest in the Company; and *provided, further,* that, if the Company or any other person notified under the terms of this paragraph objects in writing to the Trustee within 30 days after receipt of notice of the Trustee's election to retain the Trust Equipment, the Trustee may not so retain the Trust Equipment but shall sell, lease or otherwise dispose of it or continue to

hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Trustee shall have given no notice to retain as hereinabove provided or notice of intention to dispose of the Trust Equipment in any other manner, it shall be deemed to have elected to sell the Trust Equipment in accordance with the provisions of this Section 5.02.

At any time after the Default Rental shall have been declared due and payable as hereinbefore provided, the Trustee, with or without retaking possession thereof, at its election and upon reasonable notice to the Company (and to any other person pursuant to law) of the time and place, may sell all or any unit of the Trust Equipment free from any and all claims of the Company or any other party claiming from, through or under the Company at law or in equity, at public or private sale and with or without advertisement as the Trustee may determine; *provided, however,* that if, prior to the sale and prior to the making of a contract for sale, the Company should tender full payment of the Default Rental as well as expenses of the Trustee in retaking possession of, removing, storing, holding and preparing the Trust Equipment for, and otherwise arranging for, said sale and the Trustee's reasonable attorneys' fees, then in that event absolute right to the possession of, title to and property in the Trust Equipment shall pass to and vest in the Company. The proceeds of any sale, less the attorneys' fees and any other expenses incurred by the Trustee in retaking possession of, removing, storing, holding, preparing for sale and selling the Trust Equipment, shall be credited on the amount due to the Trustee under the provisions of this Section 5.02.

Any sale hereunder may be held or conducted at such place or places and at such time or times as the Trustee may specify, in one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in the manner determined by the Trustee. The Company shall be given written notice of any sale not less than 10 days prior thereto by telegram or registered mail addressed to the Company as provided in Section 8.04 hereof. If any sale shall be a private sale, it shall be subject to the right of the Company to purchase or provide a purchaser, within 10 days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. The Trustee or the Company may bid for and become the purchaser of all or any unit of the Trust Equipment so offered for sale. In the event that the Trustee shall be the purchaser thereof, it shall not be accountable to the Company (except to the extent of surplus money received as hereinafter provided in Section 5.03 hereof), and in payment of the purchase price therefor the Trustee shall be entitled to have credited against said purchase price all sums due to the Trustee from the Company hereunder.

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. *Application of Proceeds.* If 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 said exercise of powers,

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

After all said 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 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 the 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, said surplus shall be paid to the Company.

SECTION 5.04. *Obligations of Company Not Affected by Remedies.* No retaking of possession of the Trust Equipment by the Trustee, nor 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 or dividend warrant, nor any delay or indulgence granted by the Trustee or by such holder shall affect the obligations of the Company hereunder or the obligations of the Company under its guaranty endorsed on the Trust Certificates. The Company hereby waives presentation and demand in respect of any of the Trust Certificates and dividend warrants and waives notice of presentation, of demand and of any default in the payment of the principal of and dividends on the Trust Certificates.

SECTION 5.05. *Company to Deliver Trust Equipment to Trustee.* In case the Trustee shall demand possession of the Trust Equipment pursuant to the foregoing provisions and shall reasonably designate a point or points upon the lines of 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 and shall there deliver or cause the same to be delivered 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 under the foregoing provisions; 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 reasonably convenient to the Company. The agreement to deliver the Trust Equipment and furnish facilities as hereinbefore provided is of the

essence of this Agreement and, 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 5.06. *Remedies Cumulative.* The remedies provided in this Agreement in favor of the Trustee and the holders of the Trust Certificates or dividend warrants, or any of them, shall not be deemed exclusive, but shall be cumulative and 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 6.01. *Payments to be Made by Company.* The Company shall make payment of (a) the reasonable expenses and compensation of the Trustee and of all taxes, assessments and governmental charges mentioned herein for which the Trustee may be liable and (b) the rentals and other amounts provided for herein.

SECTION 6.02. *Guaranty to Holders of Trust Certificates.* 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 and of this Agreement, and, if not so paid, with interest thereon at the dividend rate (to the extent legally enforceable) from the due date

until the date of payment and shall receive dividends thereon in like money at the rate specified therein at the times and place and otherwise as expressed in the Trust Certificates and in the dividend warrants and, if not so paid, with interest thereon at the dividend rate (to the extent legally enforceable) from the due date until the date of payment. 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 set forth in Section 1.01 hereof. Said guaranty shall be signed on behalf of the Company by the facsimile signature of its President or a Vice President. In case the President or Vice President of the Company whose signature shall appear on said guaranty shall cease to be an officer of the Company before the Trust Certificates shall have been issued and delivered by the Trustee, said guaranty shall nevertheless be as effective and binding upon the Company as though the person who signed said guaranty on behalf of the Company had at all times been an officer thereof and acted in that capacity.

SECTION 6.03. *Discharge of Liens.* The Company shall 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 unit 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. *Payment of Expenses; Recording.* The Company shall pay the expenses incident to the preparation and execution of the Trust Certificates and dividend warrants 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 shall cause this Agreement and all supplements hereto to be duly (a) filed and recorded with the Interstate Commerce Commission and (b) deposited with the Registrar General of Canada. The Company from time to time shall do and perform any other act and execute, acknowledge, deliver, file, record, deposit or register any and all further instruments required by law or reasonably requested by the Trustee for the purposes of properly protecting the title of the Trustee to the Trust Equipment and the rights of the holders of the Trust Certificates and of fully carrying out and effectuating this Agreement and the intent hereof. The Company shall promptly furnish to the Trustee certificates or other evidences of the filing, recording or deposit of this agreement and an Opinion of Counsel with respect thereto.

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

ARTICLE SEVEN

THE TRUSTEE

SECTION 7.01. *Acceptance of Trusts.* 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. *Application of rentals.* The Trustee shall 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. *Duties of Registration, Exchange, and Transfer of Trust Certificates.* The Trustee shall cause to be kept at its principal office in the City of Philadelphia, Pennsylvania, books for the registration, exchange and transfer of the Trust Certificates. Upon presentation for any such purpose, the Trustee shall register, exchange or transfer any of the Trust Certificates or cause any of the same to be registered, exchanged or transferred as hereinbefore provided and under such other reasonable regulations as it may prescribe.

SECTION 7.04. *Right to Indemnity from Company; 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 against all liability and expenses by the Company or by one or more of the holders of the Trust Certificates. The Trustee shall not be responsible for the filing,

recording or deposit of this Agreement or of any supplement hereto. The Trustee may issue and deliver Trust Certificates in advance of such filing, recording or deposit. 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 and 4.09 hereof, and shall not be required to make any further investigation of or inquiry concerning any matter covered thereby.

SECTION 7.05. *No Obligation to Enforce Trust Unless Requested and Indemnified.* The Trustee shall be under no obligation to take any action for the execution or enforcement of the Trust unless so requested 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 said 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. *Limitations on Actions by Holders of Trust Certificates.* No holder of any Trust Certificate or dividend warrant shall have any right to institute any suit, action or proceeding for the execution and enforcement of the Trust unless, after the aforesaid request in writing by the holders of not less than 25% in principal amount of the then outstanding Trust Certificates shall have been made to the Trustee, and after indemnity satisfactory to it shall have

been provided, and after 90 days shall have elapsed after receipt by the Trustee of such request, it shall decline, fail or neglect to institute any proceedings pursuant thereto. Neither the provisions of this Section 7.06 nor the provisions of Section 7.05 hereof shall affect or limit in any way the obligations of the Company under its guaranty hereinabove provided or the rights of the holders of Trust Certificates or dividend warrants to institute suit against the Company for the enforcement of payments due under said guaranty in respect of the Trust Certificates or dividend warrants.

SECTION 7.07. *Assumption of No Default; Reliance on Notices and Other Instruments.* 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, warrant or other paper or instrument believed by it to be genuine and authentic and to be signed by the proper party or parties.

SECTION 7.08. *Investment of Money Held by Trustee.* 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 banks and trust companies located in the City of Philadelphia, Pennsylvania, 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 Investments, either directly or under repurchase agreement, at such prices, including any premium and accrued interest, as are set forth in such Request, such Investments to be held by the Trustee in trust for the benefit of the holders of the Trust Certificates and dividend warrants.

The Trustee shall, on Request, or the Trustee may, in the event funds are required for payment against delivery of Equipment, sell such Investments, or any portion thereof, and restore to Deposited Cash or Replacement Funds, as the case may be, the proceeds of any sale thereof up to the amount paid for Investments, 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 expenses incurred in connection with any purchase or sale of Investments and also an amount equal to any loss of principal incident to the sale or redemption of any Investments 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 Investments.

SECTION 7.09. *No Liability for Trust Equipment; Agents and Attorneys; Compensation; Owning Trust Certificates; Unclaimed Moneys.* The Trustee shall not be liable to any one for any delay in the delivery of any of the Trust Equipment or for any defect in any unit 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 the title thereto.

The Trustee may perform its powers and duties hereunder by or through such attorneys, agents and employees as it shall appoint, and shall be entitled to rely upon the advice of counsel (who may be counsel for the Company), and shall be answerable only for its own acts, negligence and wilful defaults and not for the default or misconduct of any attorney, agent or employees appointed by it with reasonable care. The Trustee shall not be responsible in any way for the recitals contained herein or for the execution or validity of this Agreement or 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 Company shall pay all of the expenses and disbursements of the Trustee hereunder, including reasonable counsel fees and reasonable compensation for all services rendered by the Trustee in the execution of the Trust.

The Trustee in its individual capacity may own, hold and dispose of Trust Certificates and dividend warrants with the same rights which it would have if it were not Trustee and may act as trustee under other instruments under which obligations of the Company are outstanding.

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 five 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 said money shall thereupon cease and the holders of said Trust Certificates and dividend warrants shall thereafter be entitled to look only to the Company for payment thereof; *provided, however,* that the Trustee, before being required to make any repayment of moneys, may at the expense of the Company cause notice to be given by publication 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 said moneys then remaining on deposit with the Trustee will be repaid to the Company. Said notice shall be published once in a daily newspaper of general circulation published in the City of Philadelphia, Pennsylvania. In no event shall the holders of said Trust Certificates and dividend warrants be entitled to interest upon said money whether held by the Trustee or so repaid to the Company.

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

SECTION 7.10. *Annual Statement.* The Trustee shall, at least once in each year, render to the Company a statement relating to the Trust and covering other matters that the Company may properly require. The Company may from

time to time examine the books and accounts of the Trustee relating to the Trust, the Trust Certificates, this Agreement and the acts of the Trustee hereunder.

SECTION 7.11. *Resignation of Trustee; Appointment of Successor.* If at any time the Trustee shall desire to divest itself of title to the Trust Equipment and to terminate its duties and obligations hereunder and under the Trust Certificates, it shall so notify the Company in writing. 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 Trustee's entire right, title and interest and in which may be vested the Trustee's rights, powers, duties and obligations hereunder and under the Trust Certificates. Upon the transfer and delivery of all moneys, any Investments and all Trust Equipment held by the retiring trustee, the execution by the retiring trustee of such instruments of transfer as may be reasonably requested by the successor trustee and the 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 hereunder and under the Trust Certificates, and the same shall become vested in such successor trustee. Thereafter 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 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 15 days 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 the majority in principal amount of the then outstanding Trust Certificates to appoint any successor trustee if such appointment is made by an instrument in writing 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 the City of 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. *Merger or Consolidation of Trustee.* 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 the City of 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.

SECTION 7.13. *Trust Certificates Deemed Not Outstanding.* In determining whether the holders of the requisite aggregate principal amount of Trust Certificates have concurred in any direction, notice, request, consent or waiver under this Agreement, Trust Certificates which are owned by the Company or an Affiliate shall be disregarded and deemed not to be outstanding for the purpose of making any determination, except that, for the purposes of determining whether the Trustee shall be protected in relying on any such direction, notice, request, consent or waiver, only Trust Certificates which the Trustee knows are so owned shall be so disregarded.

ARTICLE EIGHT

MISCELLANEOUS

SECTION 8.01. *Proof of Execution of Instruments by Holders of 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 said request or other instrument, of a writing appointing any said agent or attorney or of the holding by any person of any Trust Certificate 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 said request or other instrument if made in the following manner:

(a) The fact and date of the execution by any person of any said request or of any other instrument in writing may be proved by the affidavit of a witness to that execution or by the certificate of any notary public or 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 said request or other instrument acknowledged to him the execution thereof. Where said execution is by an officer of a corporation or association or a member of a partnership on behalf of said corporation, association or partnership, said certificate or affidavit shall also constitute sufficient proof of the authority of that officer or member.

(b) The amount and numbers, designations or marks of identification of Trust Certificates with dividend warrants not registered as to principal held by any person executing any said request or other instrument as a holder of said Trust Certificates, and the date of his holding the same, may be proved by a certificate executed by any trust company, bank or other depositary, whose certificate shall be deemed by the Trustee to be satisfactory, showing that at the date set forth therein such person had on deposit with or exhibited to such depositary the Trust Certificates with dividend warrants described in said certificate. The Trustee may presume the continuance of any said holding until it shall receive proof satisfactory to it to the contrary.

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

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

SECTION 8.03. *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 respective successors and assigns.

SECTION 8.04. *Notices.* 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 to (a) in the case of the Company, 8 North Jefferson Street, Roanoke, Virginia 24042, attention of the Company's Finance Department, 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, attention of the Trustee's Corporate Trust Department, 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 said mailing shall be conclusive evidence of the giving of said demand, notice or communication.

SECTION 8.05. *Execution.* This Agreement, which is dated for convenience as of December 1, 1977, may be executed in any number of counterparts, each of which shall be deemed to be an original, and such counterparts together shall constitute a single instrument. The actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowlegements annexed hereto.

SECTION 8.06. *Law Governing.* The terms of this Agreement and all rights and obligations of the parties hereunder shall be governed by the laws of the Commonwealth of Virginia, *provided, however,* that the parties hereto shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording or deposit hereof and of any supplement hereto as shall be conferred by the laws of the several jurisdictions in which this Agreement and any supplement hereto may be filed, recorded, or deposited.

SECTION 8.07. *Effect of Headings.* The table of contents and all article and section headings herein are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

IN WITNESS WHEREOF, the Company and the Trustee have caused their names to be signed hereto by their respective vice presidents or assistant vice presidents under their respective corporate seals attested by their respective secretaries or assistant secretaries or authorized officers, as of the day and year first above written.

NORFOLK AND WESTERN RAILWAY COMPANY

By John R Turtyfeld

Vice President—Finance

ATTEST:

Joseph Pahnel

[redacted] Assistant Secretary

FIRST PENNSYLVANIA BANK N.A., Trustee

By D.P. Doman

Assistant Vice President

ATTEST:

P M Giuliante

Assistant Secretary

COMMONWEALTH OF VIRGINIA }
CITY OF ROANOKE } ss.:

On this 9th day of December, 1977 before me personally appeared John R. Turbyfill to me personally known, who, being by me duly sworn, says that he is Vice President—Finance of NORFOLK AND WESTERN 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 by him on this date was the free act and deed of said corporation.

My Commission Expires March 14, 1981 Judy A. DeLauney
Notary Public

COMMONWEALTH OF PENNSYLVANIA }
CITY OF PHILADELPHIA } ss.:

On this 12th day of December before me personally appeared A. P. Adriani to me personally known, who, being by me duly sworn, says that he is Assistant 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 by him on this date was the free act and deed of said corporation.

Elizabeth J. Sabedra
Notary Public

ELIZABETH J. SABEDRA
Notary Public, Philadelphia, Philadelphia, Co.
My Commission Expires April 14, 1980

Schedule A

Number of Units	Description and Builder	Estimated Cost Unit	Estimated Cost Total
46	86' High Cube Boxcars, numbered 861604 to 861649, inclusive, Greenville Steel Car Company, builder	$57,393	$ 2,640,078
267	86' High Cube Boxcars, numbered 861287 to 861553, inclusive, Greenville Steel Car Company, builder	58,209	15,541,803
72	100-ton Open-Top Hopper Cars, numbered 142206 to 142277, inclusive, Norfolk and Western Railway Company, builder	23,232	1,672,704
198	100-ton Open-Top Hopper Cars, numbered 142278 to 142475, inclusive, Norfolk and Western Railway Company, builder	$23,621	$ 4,676,958
	Total		$24,531,543