UNION PACIFIC RAILROAD COMPANY

345 PARK AVENUE NEW YORK, N.Y. 10022

JAMES V. FAULKNER, JR.
ASSISTANT EASTERN GENERAL COUNSEL

October 6, 1980

RECORDATION NO. 12274 Filed 1425

0-280A010

Date 10-6-80

Fee $ 50.00

OCT 6 1980 -10 00 AM

INTERSTATE COMMERCE COMMISSION

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

UNION PACIFIC EQIPMENT TRUST NO. 3 OF 1981

Dear Mrs. Mergenovich:

I enclose herewith six executed counterparts of an Equipment Trust Agreement, dated as of October 1, 1980 (the "Agreement"), between Union Pacific Railroad Company (the "Company") and Citibank, N.A., Trustee (the "Trustee"), covering the purchase by the Trustee and lease to the Company of the railroad equipment described in Schedule A thereto.

The names and addresses of the parties to this transaction are:

TRUSTEE-LESSOR:	Citibank, N.A. 5 Hanover Square New York, New York 10005
LESSOR:	Union Pacific Railroad Company 345 Park Avenue New York, New York 10154

At the time of delivery and thereafter until the lessee has fully performed its obligations under the Agreement, each unit of railroad equipment will bear the marking:

"Union Pacific Equipment Trust No. 3 of 1981;
Citibank, N.A., Trustee, Owner, Lessor."

OCT 6 9 52 AM '80
I.C.C.
FEE OPERATION BR.

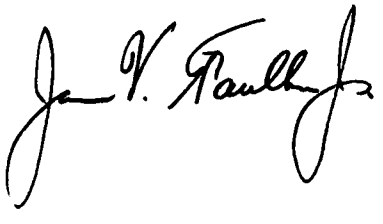
C. H. Kunsel

After filing and recordation, four of the enclosed counterparts (nos. 1-4 of the Agreement) should be returned to James V. Faulkner, Jr., Esq., Assistant Eastern General Counsel, Union Pacific Railroad Company, 345 Park Avenue, New York, New York 10022, or given to the bearer of this letter.

Also enclosed is a check to the order of the Interstate Commerce Commission in the amount of $50 to cover the fee associated with the filing and recordation of the enclosed Agreement.

The undersigned is an executive officer of the Company and has knowledge of the matters set forth above.

Very truly yours,



JVF,Jr./ts
Enclosures

cc: Mr. John J. Mattras

Interstate Commerce Commission

Washington, D.C. 20423

10/6/80

OFFICE OF THE SECRETARY

James V. Faulkner,Jr.Esq.
Assist.Eastern Gen. Counsel
Union Pacific RR. Co.
345 Park Avenue
New York, N.Y. 10022

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 10/6/80 at 10:00am, and assigned recordation number(s). 12274

Sincerely yours,

Agatha L. Mergenovich

Agatha L. Mergenovich
Secretary

Enclosure(s)

SE-30
(7/79)

This Agreement has been executed in 10 original counterparts of which this is counterpart 1 .

12274
RECORDATION NO. ..... Filed 1425
OCT 6 1980 -10 00 AM
INTERSTATE COMMERCE COMMISSION

UNION PACIFIC
EQUIPMENT TRUST NO. 3 OF 1981

Equipment Trust Agreement

DATED AS OF OCTOBER 1, 1980

BETWEEN

CITIBANK, N.A.
TRUSTEE

AND

UNION PACIFIC RAILROAD COMPANY

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This **EQUIPMENT TRUST AGREEMENT**, dated as of October 1, 1980, between CITIBANK, N.A., a national banking association incorporated and existing under the laws of the United States of America (hereinafter called the Trustee), and UNION PACIFIC RAILROAD COMPANY, a Utah corporation (hereinafter called the Company):

WITNESSETH:

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

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

WHEREAS, Union Pacific Equipment Trust No. 3 of 1981 Equipment Trust Certificates (hereinafter called the Trust Certificates) are to be issued and sold from time to time in an aggregate principal amount not exceeding $25,500,000 and the net proceeds (as hereinafter defined) of such sale, together with such other cash, if any, as may be required to be deposited by the Company as hereinafter provided, are to constitute a fund equal to the aggregate principal amount of the Trust Certificates so issued and sold, to be known as UNION PACIFIC EQUIPMENT TRUST NO. 3 OF 1981, to be applied by the Trustee from time to time in part payment of the Cost (as hereinafter defined) of the Trust Equipment, the remainder of the Cost thereof to be paid out of advance rentals to be paid by the Company as provided herein; and

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

[FORM OF TRUST CERTIFICATE]

$..... No. RS-

UNION PACIFIC EQUIPMENT TRUST NO. 3 OF 1981

Equipment Trust Certificate

Total Authorized Issue $25,500,000
CITIBANK, N.A.
Trustee

Dividends at the Rate of % Per Annum Payable
April 1 and October 1

Principal hereof payable October 1, 19

CITIBANK, N.A., as Trustee (hereinafter called the Trustee) under an Equipment Trust Agreement dated as of October 1, 1980 (hereinafter called the Agreement), between the Trustee and UNION PACIFIC RAILROAD COMPANY, a Utah corporation (hereinafter called the Company), hereby certifies that ,
or registered assigns, is entitled to an interest in the principal amount of Dollars in UNION PACIFIC EQUIPMENT TRUST NO. 3 OF 1981, payable on October 1, 19 , upon presentation and surrender of this Certificate to the Trustee at its Corporate Trust Office or agency in the Borough of Manhattan, City and State of New York (which agency may be the office of the Company in said Borough and City), and to payment, until said last mentioned date, of dividends on said principal amount at the rate of % per annum from the date hereof, semi-annually on April 1 and October 1 in each year, together with interest at a rate of 1/2 of 1% above the said dividend rate on any unpaid principal and on any unpaid dividends to the extent that it shall be legally enforceable.

Principal, dividends and interest will be payable to the registered holder hereof at said Corporate Trust Office or agency of the Trustee, in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, but payable only from and out of rentals or other moneys received by the Trustee and applicable to such payment under the provisions of the Agreement; provided, however, that payment of dividends may be made at the option of the Trustee by check mailed to the address of the person so entitled thereto as such address shall appear on the records of the Trustee.

This Certificate is one of an authorized issue of Equipment Trust Certificates (hereinafter called the Certificates) in an aggregate principal amount not exceeding $25,500,000, all of which are substantially similar except as to serial number, principal amount and date of maturity, all issued under and subject to the terms of the Agreement, under which certain railroad equipment leased to the Company (or cash or obligations defined in the Agreement as "Investment Securities" in lieu thereof, as provided in the Agreement) is held by the Trustee in trust for the equal and ratable benefit of the registered holders of the Certificates, to which Agreement (a copy of which is on file with the Trustee at its Corporate Trust Office or agency in the Borough of Manhattan, City and State of New York) reference is made for a full statement of the rights and obligations of the Company, the duties and immunities of the Trustee and the rights of the registered holder hereof thereunder, to all of which the registered holder hereof, by accepting this Certificate, assents.

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

This Certificate is a fully registered Certificate registrable as to transfer by the the registered holder hereof in person or by duly authorized attorney on the books of the Trustee upon surrender hereof to the Trustee at its said Corporate Trust Office or agency, accompanied by an appropriate instrument of assignment and transfer, duly executed by the registered

holder in person or by such attorney, in form satisfactory to the Trustee, and thereupon a new fully registered Certificate or Certificates in authorized denominations for the same aggregate principal amount and having the same dividend rate and date of maturity will be issued to the transferee in exchange herefor. Prior to due presentment for registration of transfer of this Certificate, the Trustee and the Company may deem and treat the person in whose name this Certificate is registered as the absolute owner hereof for the purpose of receiving payment of principal and dividends and interest, if any, and for all other purposes and shall not be affected by any notice to the contrary.

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

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

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

IN WITNESS WHEREOF, the Trustee has caused this Certificate to be signed by the facsimile signature of one of its Senior Trust Officers and by the manual signature of one of its Authorized Officers, and its corporate seal, in facsimile, to be hereunto affixed or hereon imprinted and to be attested by the facsimile signature of one of its Trust Officers.

Dated as of ....., ...

CITIBANK, N.A., as Trustee

By .....
Senior Trust Officer

.....
Authorized Officer

ATTEST:

.....
Trust Officer

[FORM OF GUARANTY FOR TRUST CERTIFICATE]

UNION PACIFIC RAILROAD COMPANY, for a valuable consideration, hereby unconditionally guarantees to the regis-

tered holder of the within Certificate the prompt payment of the principal of said Certificate, and of the dividends thereon specified in said Certificate, with interest at a rate of 1/2 of 1% above the dividend rate of the Certificates on any unpaid principal and on any unpaid dividends to the extent that it shall be legally enforceable, all in accordance with the terms of said Certificate and the Equipment Trust Agreement referred to therein.

UNION PACIFIC RAILROAD COMPANY

By .....
Vice President

; and

WHEREAS, it is desired to secure to the holders of the Trust Certificates the payment of the principal thereof in 15 equal annual instalments payable serially on the 1st day of October in each year beginning October 1, 1981, and ending October 1, 1995, both inclusive, as hereinafter more particularly provided, with dividends to said dates of maturity, respectively, at the rate determined as hereinafter provided, payable semi-annually on April 1 and October 1 in each year, and to evidence the rights of the holders of the Trust Certificates in substantially the form hereinbefore set forth;

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

ARTICLE ONE

Definitions

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

Affiliate shall mean any corporation which, directly or indirectly, controls or is controlled by, or is under common control with, the Company. For the purposes of this

definition, *control* (including *controlled by* and *under common control with*), as used with respect to any corporation, shall mean the possession of 50% or more of the voting power of such corporation or the power to direct or cause the direction of the management and policies of such corporation, whether through the ownership of voting securities or by contract or otherwise.

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

Company shall mean Union Pacific Railroad Company, a Utah corporation, its successors and any assignee or successive assignees of its rights under this Agreement pursuant to Section 4.8.

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

Cost, when used with respect to Trust Equipment, shall mean the actual cost thereof, and shall include only such items as may properly be included in such cost under the Interstate Commerce Commission's Uniform System of Accounts for Railroad Companies, as in effect at the time in question, or the accounting rules of such other Federal governmental authority having jurisdiction over the accounts of the Company, or, to the extent not determined thereby or in case there be no such accounting rules of the Interstate Commerce Commission or other Federal authority in effect at such time, sound accounting practice, and, with respect to Trust Equipment built by the Company, shall mean the so-called "car builder's cost" which shall include cost of labor and material and overhead, but shall exclude any manufacturing profit.

Deposited Cash shall mean the aggregate of (a) cash on deposit with the Trustee as provided in the first sentence of Section 2.1 hereof and, when required or indicated by the context, any Investment Securities purchased by the use of such cash pursuant to the provisions of Section 7.7 hereof, (b) any advance rentals on deposit with the Trustee pursuant to

Section 4.4(A)(1) hereof, and (c) any sums restored to Deposited Cash from rentals pursuant to Section 4.4(B)(1)(b) hereof and on deposit with the Trustee.

Equipment means standard-gauge railroad equipment (other than passenger cars and work equipment) which shall have been first put into operation after September 30, 1980.

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 5.1 to be an Event of Default.

Fair Value of any unit of Trust Equipment shall be deemed to be the Cost thereof less depreciation accrued thereon computed by the straight-line method at the rate of six and two-thirds per cent ($6^2/_3\%$) of said Cost for each full year (but not pro rata for any part of a year) from the date on which the unit was first put into operation to the date as of which the Fair Value is so to be determined.

The words *holder* and *registered holder* shall mean the registered owner of a Trust Certificate and shall include the plural as well as the singular number.

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

Officer's Certificate shall mean a certificate signed by either the Chairman of the Board, the Chief Executive Officer, the Vice Chairman of the Board, the President, any Vice President, the Treasurer, the Controller or the Secretary of the Company.

Opinion of Counsel shall mean an opinion in writing signed by legal counsel who may be (1) an employee of or counsel to the Company or (2) other counsel satisfactory to the Trustee.

Original Issuance Date with respect to the Trust Certificates shall mean the earliest date any such Trust Certificate is issued.

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

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

Trust Certificates shall mean Union Pacific Equipment Trust No. 3 of 1981 Equipment Trust Certificates, issued hereunder, and *Trust Certificate* shall mean one of said Equipment Trust Certificates.

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

Trustee shall mean CITIBANK, N.A. and, subject to the provisions of Article Seven hereof, any successor as Trustee hereunder.

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

ARTICLE TWO

Trust Certificates and Issuance Thereof

SECTION 2.1. *Issuance of Trust Certificates.* The net proceeds (excluding premium and accrued dividends, if any) of the sale of the Trust Certificates shall forthwith, upon issuance thereof, be deposited in cash with the Trustee. At the same time the Company shall, if necessary, deposit with the Trustee any advance rental payable by the Company to the Trustee under Section 4.4(A)(1) hereof. Thereupon, without waiting for the recording or filing of this Agreement or of any other instrument respecting the Trust Equipment, the Trustee shall issue and deliver, as the Company shall direct by Request, Trust Certificates substantially in the form set forth herein with the guaranty thereon executed by the Company and in the aggregate principal amount so sold, having maturities and bearing dividends at the rate specified in such Re-

quest. Any premium and accrued dividends received upon the sale of the Trust Certificates shall forthwith be deposited with the Trustee, and applied by it on account of the first and any subsequent instalments of rental under Section 4.4(B)(3) hereof.

The aggregate principal amount of Trust Certificates which shall be executed and delivered by the Trustee hereunder shall not exceed the sum of $25,500,000, except as otherwise herein provided.

SECTION 2.2. *Interests Represented by Trust Certificates; Dividends; Denominations; Dating; Maturities.* Each of the Trust Certificates shall represent an interest in the principal amount therein specified in the trust created hereunder and shall bear dividends on said principal amount at the rate to be specified by the Company at the time of delivery thereof by the Trustee, payable semi-annually on the 1st day of April and October in each year.

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

The due date of such Trust Certificate shall appear upon its face. Trust Certificates shall be dated the Original Issuance Date, or, if issued on or after April 1, 1981, as of the dividend payment date to which dividends shall have been paid, next preceding or coinciding with the date of issue, whichever is later, or if no dividends shall have been paid, the Original Issuance Date, and shall entitle the registered holder to dividends from the date thereof.

The principal amount of the Trust Certificates shall become due in 15 equal annual instalments payable serially on the 1st day of October in each year beginning October 1, 1981 and ending October 1, 1995, both inclusive.

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

SECTION 2.4. *Execution by Trustee.* The Trust Certificates shall be signed in the name and on behalf of the Trustee by the facsimile signature of one of its Senior Trust Officers and by the manual signature of one of its Authorized Officers, and its corporate seal or a facsimile thereof shall be affixed or inserted thereon and attested by the manual signature of one of its Trust Officers. In case any officer of the Trustee whose signature, whether facsimile or not, shall appear on any of the Trust Certificates shall cease to be such officer of the Trustee before the Trust Certificates shall have been issued and delivered by the Trustee, or shall not have been acting in such capacity on the date of the Trust Certificates, such Trust Certificates shall be adopted by the Trustee and be issued and delivered, and shall be as effective and binding, as though such person had not ceased to be, or had then been acting as, such officer of the Trustee.

SECTION 2.5. *Transfer of Trust Certificates; Owners Thereof; Exchange of Trust Certificates.* Trust Certificates shall be registered, as to both principal and dividends, in the name of the holder and shall be transferable upon presentation and surrender thereof for registration of transfer at the Corporate Trust Office or agency of the Trustee in the Borough of Manhattan, City and State of New York (which agency may be an office of the Company in said Borough and City), accompanied by an appropriate instrument 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.

Prior to due presentment for registration of transfer of any Trust Certificate, the parties hereto may deem and treat the registered holder of such Trust Certificate as the absolute owner of such Trust Certificate for all purposes and shall not be affected by any notice to the contrary.

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

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

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

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

SECTION 2.6. *Replacement of Mutilated or Lost Trust Certificates.* In case any Trust Certificate shall become mutilated or defaced or be lost, stolen or destroyed, then on the terms herein set forth, and not otherwise, the Trustee, upon the Request of the Company, shall execute and deliver a new Trust Certificate of like dividend rate, tenor, and maturity date, and bearing the same or a different serial number as the one mutilated, defaced, lost, stolen or destroyed, in exchange and substitution for, and upon cancellation of, the mutilated or defaced Trust Certificate, or in lieu of and in substitution for the same if lost, stolen, or destroyed. The Company shall execute its guaranty on any Trust Certificate so delivered. The applicant for a new Trust Certificate shall furnish to the Trustee and to the Company evidence to their satisfaction of the mutilation, loss, theft or destruction of such Trust Certificate alleged to have been mutilated, lost, stolen or destroyed, and of the ownership and authenticity of such mutilated, defaced, lost, stolen or destroyed Trust Certificate

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

SECTION 2.7. *Temporary Trust Certificates.* At any time prior to the issuance of definitive Trust Certificates the Trustee shall, upon Request of the Company, issue and deliver, in lieu of definitive Trust Certificates, temporary Trust Certificates in any denomination or denominations specified in such Request. Such temporary Trust Certificates shall be substantially of the tenor of the definitive Trust Certificates in lieu of which they are issued and with such insertions, omissions, substitutions and variations as may be appropriate.

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

SECTION 2.8. *Cancellation 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 cancelled by the Trustee. All cancelled Trust Certificates held by the Trustee may be destroyed by the Trustee and a certificate of such destruction shall be furnished to the Company.

ARTICLE THREE

Acquisition of Trust Equipment by Trustee; Deposited Cash

SECTION 3.1. *Acquisition of Trust Equipment by Trustee.* The Company, as promptly as possible hereafter, shall construct or cause to be constructed and shall sell, assign, transfer and set over or cause to be sold, assigned, transferred and set over unto the Trustee, as trustee for the holders of the Trust Certificates, the Equipment described in Schedule A hereto.

To that end, the Company hereby assigns, or in the case of contracts for Equipment to be executed hereafter, agrees to assign, to the Trustee all its right, title and interest under said contract or contracts. The Equipment shall be delivered to the Company, which is hereby designated by the Trustee as its agent to receive such delivery, and an Officer's Certificate as to such delivery shall be conclusive evidence of such delivery.

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

SECTION 3.2. *Payments out of Deposited Cash.* From time to time, when any of the Trust Equipment shall have been delivered to the Trustee or its agent pursuant to this Article Three, the Trustee shall (subject, however, to the provisions of Section 3.3 hereof) pay to the builder of the delivered Trust Equipment, upon Request by the Company, out of the Deposited Cash, an amount which, together with all

payments previously made out of the Deposited Cash upon deliveries of Trust Equipment, will equal not more than 80% of the aggregate Cost of the Trust Equipment then and theretofore delivered to the Trustee.

SECTION 3.3. *Payments of and from Advance Rental.* The Company covenants that, contemporaneously with the delivery to the Trustee of the documents required by Section 3.4 in respect of any delivery of Trust Equipment, the Company will pay to the Trustee the advance rental provided in Section 4.4(A)(2) hereof, and thereupon the Trustee shall pay to the builder of the delivered Trust Equipment, upon Request by the Company, by the use of such advance rental, the portion of the Cost of the delivered Trust Equipment not paid out of Deposited Cash as provided for in Section 3.2 hereof; the intention being that the Company shall ultimately pay as such advance rental not less than 20% of the final Cost of all the Trust Equipment and that the Trustee shall ultimately pay from Deposited Cash not more than 80% of such final Cost. The Trustee and the Company shall at any time, if the occasion arises, adjust their accounts accordingly, and the Trustee, upon Request, shall pay to the Company from Deposited Cash, if the Company shall not be in default under the terms hereof or of any supplement hereto, a sum equal to the amount, if any, by which the aggregate advance rental theretofore paid by the Company to the Trustee under Section 4.4(A)(2) hereof exceeds the difference between such final Cost and the lesser of (i) $25,500,000 or (ii) 80% of such final Cost.

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

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

Cost of such Trust Equipment is not less than an amount therein specified and (iv) that such Trust Equipment has been plated or marked in accordance with the provisions of Section 4.6 hereof;

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

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

(d) An Opinion of Counsel to the effect (i) that such bill or bills of sale are valid and effective, either alone or in connection with any other instrument referred to in and accompanying such opinion, to vest title to such Trust Equipment in the Trustee free of all prior claims, liens and encumbrances, and (ii) that in case of any Trust Equipment not specifically described herein, a proper supplement hereto in respect of such Trust Equipment has been duly executed and delivered by the Trustee and the Company and duly filed and recorded in accordance with Section 6.4 hereof.

Any Officer's Certificate pursuant to this Section 3.4 may state that the Cost of the Trust Equipment therein referred to is tentatively determined, subject to final adjustment to be evidenced in a final Officer's Certificate to be delivered to the Trustee.

If the aggregate final Cost of the Trust Equipment shall be less than 125% of the aggregate principal amount of Trust Certificates issued pursuant to Section 2.1 hereof, the Company will cause to be sold, assigned and transferred to the Trustee additional Equipment in such amount and of such Cost that the aggregate final Cost of the Trust Equipment will be at least 125% of the aggregate principal amount of Trust Certificates issued hereunder and, whether or not Deposited Cash is to be paid out in respect of such additional Trust Equipment, will furnish to the Trustee in respect of such

additional Trust Equipment the documents set forth in the first paragraph of this Section 3.4.

SECTION 3.5. *Application of Remaining Deposited Cash.* Subject to the provisions of Section 3.3 hereof regarding payment of Deposited Cash to the Company, any Deposited Cash remaining in the hands of the Trustee, after the delivery of all the Trust Equipment to be delivered pursuant to Section 3.1 and Section 3.4 hereof and payment therefor in the manner provided herein, shall be applied by the Trustee toward payment of rentals payable by the Company to the Trustee under Section 4.4(B)(4) hereof.

ARTICLE FOUR

Lease of Trust Equipment to the Company

SECTION 4.1. *Lease of Trust Equipment.* The Trustee does hereby let and lease to the Company all the Trust Equipment, for a term of 15 years commencing on October 1, 1980.

SECTION 4.2. *Equipment Subjected Hereto by Delivery and Marking.* As and when any Equipment shall from time to time be transferred and delivered to the Company as agent for the Trustee and plated or marked in accordance with the provisions of Section 4.6 hereof, the same shall, *ipso facto* and without further instrument of lease or transfer, pass under and become Trust Equipment subject to all the terms and provisions hereof.

SECTION 4.3. *Substituted Equipment Subject Hereto; Additions to Trust Equipment.* In the event that the Company shall, as provided in Sections 3.1 and 3.4 hereof or in Section 4.9 hereof, cause to be transferred to the Trustee other Equipment in addition to or in substitution for any of the Equipment described in Schedule A hereto, such other Equipment shall be included as part of the Trust Equipment by supplement hereto and shall be subject to all the terms and conditions hereof in all respects as though it had been part of the Trust Equipment herein specifically described. Any and all additions to, and replacements of parts of, the Trust Equipment shall constitute accessions to the Trust Equipment and shall be subject to all the terms and conditions hereof in

all respects and included in the term "Trust Equipment" as used herein.

SECTION 4.4. *Rental Payments.* The Company hereby accepts the lease of all the Trust Equipment and covenants and agrees to accept delivery and possession hereunder of the Trust Equipment; and the Company covenants and agrees to pay to the Trustee at its Corporate Trust Office (or, in the case of taxes, to the proper taxing authority), in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, rent hereunder which shall be sufficient to pay and discharge the following items, when and as the same shall become due and payable (whether or not any of such items shall become due and payable prior to the delivery and lease to the Company of any of the Trust Equipment):

(A) The Company shall pay to the Trustee, as hereinafter provided, as advance rental hereunder, sums which in the aggregate shall be equal to the difference between the aggregate Cost of the Trust Equipment (other than Trust Equipment subjected hereto pursuant to Section 4.9 or the last paragraph of Section 3.4 hereof) and the portion of such Cost to be provided out of the net proceeds (excluding premium and accrued dividends, if any) of the sale of the Trust Certificates, the intention being that, when all such Trust Equipment shall have been delivered to the Company as agent for the Trustee, the Company shall have paid or shall pay to the Trustee, as advance rental hereunder, a sum equal to the amount by which the aggregate Cost of such Trust Equipment exceeds such net proceeds of the sale of the Trust Certificates. The Company agrees to pay such advance rental as follows:

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

(2) Contemporaneously with the delivery to the Trustee of the documents required by Section 3.4

hereof in respect of any delivery of any of such Trust Equipment, a sum equal to the portion of the Cost of such delivered Trust Equipment not to be then paid out of Deposited Cash as provided for in Section 3.2 hereof.

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

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

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

(3) (a) The amounts of the dividends payable on the Trust Certificates, when and as the same shall become payable; and (b) interest at a rate equal to 1/2 of 1% above the dividend rate payable on the Trust Certificates from the due date, upon the amount of any instalments of rental payable under this subparagraph (3) and the following subparagraph (4) which shall not be paid when due, to the extent legally enforceable; and

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

Nothing herein or in the Trust Certificates contained shall be deemed to impose on the Trustee or on the Company any obligation to pay to the holder of any Trust Certificate, any tax, assessment or governmental charge required by any present or future law of the United States of America or of any state, county or municipality, or any taxing authority thereof, to be paid on behalf of, or withheld from the amount payable to, the holder of any Trust Certificate. The Company shall not be required to pay any tax, assessment or governmental charge so long as it shall in good faith and by appropriate legal proceedings contest the validity thereof, provided that the rights or interests of the Trustee or of the holders of the Trust Certificates will not be materially endangered thereby and the Company shall have provided the Trustee with an Opinion of Counsel to such effect.

SECTION 4.5. *Termination of Lease; Unclaimed Moneys.* At the termination of the lease provided herein or at termination of this Agreement and after all payments due or to become due from the Company hereunder shall have been completed and fully made to the Trustee, (1) such payments shall be applied and treated as purchase money and as the full purchase price of the Trust Equipment, (2) any moneys remaining in the hands of the Trustee after providing for the payment in full of all outstanding Trust Certificates and after paying the expenses of the Trustee, including its reasonable compensation, shall be paid to the Company, (3) title to all the Trust Equipment shall vest in the Company, and (4) the Trustee shall execute for record in public offices, at the expense of the Company, such instrument or instruments in writing as reasonably shall be requested by the Company in order to make clear upon public records the Company's title to all the Trust Equipment under the laws of any jurisdiction; *provided, however,* that until that time, title to the Trust Equipment shall not pass to or vest in the Company, but title to and ownership of all the Trust Equipment shall be and remain in the Trustee, notwithstanding the delivery of the Trust Equipment to, and the possession and use thereof by, the Company.

Upon Request, any moneys held by the Trustee after termination of the lease as provided in this Section 4.5 which

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

SECTION 4.6. *Marking of Trust Equipment.* The Company agrees that at or before the delivery to the Company of each unit of the Trust Equipment, there shall be plainly, distinctly, permanently and conspicuously placed and fastened upon each side of such unit a metal plate bearing the following words, or such words may be otherwise plainly, distinctly, permanently and conspicuously marked on each side of such unit, in either case in letters not less than one inch in height:

"UNION PACIFIC EQUIPMENT TRUST NO. 3 OF 1981; CITIBANK, N.A., TRUSTEE, OWNER, LESSOR."

Such plates or marks shall be such as to be readily visible and as to indicate plainly the Trustee's ownership of each unit of the Trust Equipment. In case, prior to the termination of the lease provided for herein, any of such plates or marks shall at any time be removed, defaced or destroyed, the Company shall promptly cause the same to be restored or replaced. The Company shall not change, or permit to be changed, the numbers of any of the Trust Equipment at any time covered hereby (or any numbers which may have been substituted as

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

The Trust Equipment may be lettered with the name, initials or insignia of the Company, or of any Affiliate or any sublessee of the Company which is permitted to use the Trust Equipment as herein provided, or may be lettered in some other appropriate manner, for convenience of identification of the interest of the Company, or such Affiliate or sublessee therein. Units of Trust Equipment subleased by the Company as permitted herein may also be marked in the manner described in the first sentence of the foregoing paragraph with the following words:

"UNION PACIFIC RAILROAD COMPANY, LESSEE AND SUBLESSOR."

Except as aforesaid, during the continuance of the lease provided for herein, the Company shall not allow the name of any person, association or corporation to be placed on any of the Trust Equipment as a designation if the right, title and interest of the Trustee therein would thereby be impaired or invalidated. The Trustee shall, upon the Request of the Company, consent to the placing of the name of any specified person, association or corporation upon any unit of Trust Equipment as a designation if there shall have been delivered to the Trustee an Opinion of Counsel to the effect that such designation will not impair or invalidate the right, title and interest of the Trustee in or to such unit.

SECTION 4.7. *Maintenance of Trust Equipment; Casualty Occurrences.* The Company agrees that it will maintain and keep all the Trust Equipment in good order and proper repair at its own cost and expense. Whenever any of the Trust Equipment shall be lost, stolen, destroyed, irreparably damaged, or otherwise rendered permanently unfit for use from any cause whatsoever (such occurrences being herein called Casualty Occurrences), the Company shall promptly, upon being advised of such Casualty Occurrence, deliver to the

Trustee an Officer's Certificate describing such Trust Equipment and stating the then Fair Value thereof and, when the aggregate Fair Value of Trust Equipment suffering Casualty Occurrences for which no deposit of cash equal to Fair Value has been made as hereinafter provided exceeds $100,000, shall deposit with the Trustee an amount in cash equal to such aggregate Fair Value. The rights and remedies of the Trustee to enforce or to recover any of the rental payments shall not be affected by reason of any Casualty Occurrence. Cash deposited with the Trustee pursuant to this Section 4.7 shall be held and applied as provided in Section 4.9 hereof.

The Company covenants and agrees to furnish to the Trustee, whenever required by the Trustee, and on or before April 30 in every calendar year commencing with the year 1981, and during the continuance of the lease provided for herein, an Officer's Certificate dated the preceding December 31, stating (1) the amount, description and numbers of all the Trust Equipment that may have suffered a Casualty Occurrence since the date of the last preceding statement (or the date of this Agreement in the case of the first statement), (2) the amount, description and numbers of all the Trust Equipment then undergoing repairs, other than running repairs, or then withdrawn from use for such repairs, and stating that, in the case of all the Trust Equipment repainted or repaired since the date of the last preceding statement (or the date of this Agreement in the case of the first statement), the plates or marks required by Section 4.6 hereof have been preserved, or that the same when repainted or repaired has been again plated or marked as required thereby, (3) the amount, description and numbers of all Trust Equipment then covered hereby and showing the Trust Equipment then in actual service and (4) such other information as to the condition and state of repair of the Trust Equipment as the Trustee may reasonably request. The Trustee, by its agents, shall have the right once in each calendar year, but shall be under no duty, to inspect, at the Company's expense, the Trust Equipment, and the Company covenants in that event to furnish to the Trustee all reasonable facilities for the making of such inspection.

SECTION 4.8. *Possession of Trust Equipment; Assignments.* The Company, so long as 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 and upon connecting railroads and other railroads over which through service may from time to time be afforded, but only upon and subject to all the terms and conditions of this Agreement.

The Company shall not, without the written consent of the Trustee first had and obtained, assign or transfer its rights hereunder or transfer the Trust Equipment or any part thereof except to an Affiliate (and then only subject to this Agreement and without releasing the Company from its obligations hereunder), and the Company shall not, without such written consent, except as provided in this Section 4.8, part with the possession of, or suffer or allow to pass out of its possession or control, any of the Trust Equipment; *provided, however,* that the Company, so long as it shall not be in default under the terms of this Agreement, shall be entitled to sublet the Trust Equipment or any part thereof under a sublease which expressly provides (i) that the rights of the sublessee in and to such Trust Equipment shall be subject to the rights of the Trustee in and to such equipment, including the rights of the Trustee upon the happening of an Event of Default hereunder and (ii) that such Trust Equipment may be lettered or marked for the convenience of identification of the leasehold interest of the sublessee therein only in accordance with the provisions of Section 4.6 hereof. The Company shall deliver to the Trustee a copy of any such sublease promptly after its execution.

An assignment or transfer to a railroad company or other purchaser which shall acquire, directly or indirectly, all or substantially all the lines of railroad of the Company, and

which, by execution of an appropriate instrument satisfactory to the Trustee, shall assume and agree to perform each and all of the obligations and covenants of the Company hereunder and under the guaranty endorsed on the Trust Certificates, shall not be deemed a breach of this covenant.

SECTION 4.9. *Release and Replacement of Trust Equipment.* Any units of the Trust Equipment which shall have become worn out or unsuitable in any respect for the use of the Company may be released, and it is hereby mutually agreed that at any time hereafter until title thereto shall become vested in the Company, the Trustee will release any such units of the Trust Equipment upon the filing with it of a Request and an Officer's Certificate which shall describe such units, shall state that they have become worn out or unsuitable for the use of the Company, shall state the selling price thereof, and shall specify the Cost and the then Fair Value thereof. No such release shall be made unless and until the Company shall have paid to the Trustee such selling price or Fair Value, whichever shall be greater.

Any moneys paid to the Trustee pursuant to this Section 4.9 or Section 4.7 hereof (such moneys being herein called Replacement Funds) shall be received and held by the Trustee in trust hereunder pending delivery of additional Equipment and may be invested and reinvested as provided in Section 7.7 hereof. Upon the filing with it of a Request and an Officer's Certificate which shall specify the kind and number of units of Equipment to be purchased and the Cost thereof, such moneys in an amount not exceeding such Cost shall, upon receipt by the Trustee of certificates, invoices, bills of sale and Opinions of Counsel, all in like manner as is provided in Section 3.4 hereof, be applied to the purchase of such Equipment.

SECTION 4.10. *Company's Indemnities.* The Company covenants and agrees to indemnify the Trustee against any and all claims arising out of or connected with the ownership or use of any of the Trust Equipment, and particularly against any and all claims arising out of the use of any patented inventions in and about the Trust Equipment, and to comply

in all respects with the laws of the United States of America and of all the states in which the Trust Equipment, or any thereof, may be operated, and with all acts, rules, regulations and orders of the Department of Transportation, of the Interstate Commerce Commission and of all other commissions, boards and other legislative, executive, administrative or judicial bodies or offices having power to regulate or supervise any of the Trust Equipment: *provided, however*, that the Company may in good faith contest the validity of any such law, act, rule, regulation or order, or the application thereof to the Trust Equipment or any part thereof, in any reasonable manner provided that the rights or interests of the Trustee or of the holders of the Trust Certificates will not be materially endangered thereby and the Company shall have provided the Trustee with an Opinion of Counsel to such effect. The Company shall not be relieved from any of its obligations hereunder by reason of the assertion or enforcement of any such claims or the commencement or prosecution of any litigation in respect thereof.

ARTICLE FIVE

Remedies in Event of Default

SECTION 5.1. *Events of Default.* The Company covenants and agrees that in case any of the following events shall occur and be continuing—

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

(b) the Company shall make or suffer any unauthorized assignment or transfer of its rights hereunder or shall make any unauthorized transfer or sublease of any of the Trust Equipment, or, except as herein authorized, shall part with the possession of any of the Trust Equipment, and shall fail or refuse either to cause such assignment or transfer or sublease to be cancelled by agreement of all parties having any interest therein and recover possession of such Trust Equipment within 30 days after the Trustee shall have demanded in writing such cancellation and recovery of

possession, or within said 30 days to deposit with the Trustee a sum in cash equal to the Fair Value, as of the date of such unauthorized action, of the Trust Equipment so assigned or transferred or subleased or the possession of which shall have been parted with otherwise than as herein authorized (any sum so deposited to be returned to the Company upon the cancellation of such assignment, transfer or sublease and the recovery of possession by the Company of such Trust Equipment), or

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

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

(e) a petition for reorganization under the Federal bankruptcy laws, as now constituted or as the same 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 within 30 days from the filing of such petition (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 appointed in such proceedings (whether or not such appointment is subject to ratification) or otherwise, in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier, or by the trustee in such proceedings in accordance with the provisions of 11 U.S.C. §1168, or any successor provision, as the same may hereafter be amended, 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 within 30 days from the commencement of such proceedings (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 (whether or not such appointment is subject to ratification) or otherwise, in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier,

then, in any such case (herein sometimes called an Event of Default), the Trustee in its discretion may, and upon the written request of the holders of not less than 25% in principal amount of the then outstanding Trust Certificates shall, by notice in writing delivered to the Company, declare to be due and payable forthwith the entire amount of the rentals (including any unpaid advance rental, but not including rentals required for the payment of dividends accruing after the date of such declaration) payable by the Company as set forth in Section 4.4 hereof and not theretofore paid, whereupon the entire amount of such rentals shall forthwith become and shall be due and payable immediately without further demand, together with interest at a rate equal to 1/2 of 1% above the dividend rate of the Trust Certificates, to the extent legally enforceable, on any portion thereof then or thereafter unpaid.

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

In case the Company shall fail to pay any instalment of rental payable pursuant to Section 4.4(B)(3) or (B)(4) hereof when and as the same shall have become due and payable hereunder and such default shall have continued for a period of 30 days, the Trustee, in its own name and as trustee of an express trust, shall be entitled and empowered to institute any action or proceedings at law or in equity for the collection of the rentals so due and unpaid and the recovery of reasonable costs of collection, and may prosecute any such action or proceedings to judgment or final decree, and may enforce any such judgment or final decree against the Company or other obligor upon the Trust Certificates and collect in the manner provided by law out of the property of the Company or other obligor upon the Trust Certificates wherever situated the moneys adjudged or decreed to be payable.

In case there shall be pending proceedings for the bankruptcy or for the reorganization of the Company under the Federal bankruptcy laws, as now constituted or as the same may be hereafter amended, or any other federal or state law relating to bankruptcy or insolvency, or in case a receiver or receivers in equity or reorganization or a trustee or trustees in bankruptcy or reorganization shall have been appointed for the Company or for its property, or in the case of any other judicial proceedings relative to the winding up or liquidation of the affairs of the Company, the Trustee, irrespective of whether the rental payments hereunder or the principal of the Trust Certificates shall then be due and payable as herein or therein expressed whether by declaration or otherwise and irrespective of whether the Trustee shall have made any demand or declaration pursuant to the provisions of this Section 5.1, shall be entitled and empowered, by intervention in such

proceedings or otherwise, to file and prove a claim or claims for the entire amount of the rentals (including any unpaid advance rental, but not including rentals required for the payment of dividends accruing after the date of such declaration, if any), and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for all proper charges, expenses or advances made or incurred by the Trustee in accordance with the provisions of this Agreement) and of the holders of the Trust Certificates allowed in such proceedings and to collect and receive any moneys or other property payable or deliverable on any such claims, and to distribute all amounts received with respect to the claims of the holders of the Trust Certificates and of the Trustee on their behalf; and any receiver, assignee or trustee in bankruptcy or reorganization is hereby authorized by each of the holders of the Trust Certificates to make payments to the Trustee, and, in the event that the Trustee shall consent to the making of payments directly to the holders of the Trust Certificates, to pay to the Trustee such amount as shall be sufficient to cover all proper charges, expenses or advances made or incurred by the Trustee in accordance with the provisions of this Agreement.

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

SECTION 5.2. *Remedies.* In case of the happening of any Event of Default, the Trustee may by its agents enter upon the railroads and premises of the Company and of any Affiliate or of any sublessee where any of the Equipment may be and take possession of all or any part of the Trust Equipment and withdraw the same from said railroads and premises, retaining all payments which up to that time may have been made on account of rental for the Trust Equipment and otherwise, and shall be entitled to collect, receive and retain all unpaid *per diem*, mileage or other charges of any kind earned by the Trust Equipment or any part thereof, and may lease the Trust Equipment or any part thereof, or, with or without retaking possession thereof (but only after declaring due and payable the entire amount of the rentals payable by the Company as provided for in Section 5.1 hereof), may sell the same or any part thereof, free from any and all claims of the Company at law or in equity, in one lot and as an entirety or in separate lots, insofar as may be necessary to perform and fulfill the trust hereunder, at public or private sale, for cash or upon credit, in its discretion, and may proceed otherwise to enforce its rights and the rights of the holders of the Trust Certificates in the manner herein provided. Upon any such sale, the Trustee itself may bid for the property offered for sale or any part thereof. Any such sale may be held or conducted at such place and at such time as the Trustee may specify, or as may be required by law, and without gathering at the place of sale the Trust Equipment to be sold, and in general in such manner as the Trustee may determine, but so that the Company may and shall have a reasonable opportunity to bid at any such sale. Upon such taking possession or withdrawal or lease or sale of the Trust Equipment, the Company shall cease to have any rights or remedies in respect of the Trust Equipment hereunder, but all such rights and remedies shall be deemed thenceforth to have been waived and surrendered by the Company, and no payments theretofore made by the Company for the rent or use of the Trust Equipment or any of it shall, in case of the happening of any such Event of Default and such taking possession, withdrawal, lease or sale by the Trustee, give to the Company any legal or equitable interest or title in or to the Trust Equipment or any

of it, or any cause or right of action at law or in equity in respect of the Trust Equipment against the Trustee or the holders of the Trust Certificates. No such taking possession, withdrawal, lease or sale of the Trust Equipment by the Trustee shall be a bar to the recovery by the Trustee from the Company of rentals then or thereafter due and payable, and the Company shall be and remain liable for the same until such sums shall have been realized as, with the proceeds of the lease or sale of the Trust Equipment, shall be sufficient for the discharge and payment in full of all the items mentioned in Section 4.4 hereof (other than dividends or interest not then accrued) whether or not they shall have then matured. The holders of a majority in principal amount of the then outstanding Trust Certificates shall have the right from time to time to direct which of the proceedings above provided for shall be taken or not taken for the enforcement of the remedies contained herein, and the Trustee shall not be liable with respect to any action taken, suffered or omitted in good faith in accordance with such direction; *provided, however,* that the Trustee shall have the right to decline to follow any such direction if the Trustee, being advised by counsel, determines that the proceedings so directed may not lawfully be taken or if the Trustee in good faith by a trust committee of its officers determines that the proceedings so directed would involve the Trustee in personal liability.

SECTION 5.3. *Application of Proceeds.* If, in case of the happening of any Event of Default, the Trustee shall exercise any of the powers conferred upon it by Sections 5.1 and 5.2 hereof, all payments made by the Company to the Trustee hereunder after such Event of Default, and the proceeds of any judgment collected from the Company by the Trustee hereunder, and the proceeds of every sale or lease by the Trustee hereunder of any of the Trust Equipment, together with any other sums which may then be held by the Trustee under any of the provisions hereof (other than sums held in trust for the payment of specific Trust Certificates), shall be applied by the Trustee to the payment in the following order of priority: (a) of all proper charges, expenses or advances made or incurred by the Trustee in accordance with

the provisions of this Agreement, and (b) of the dividends then due, with interest at a rate equal to 1/2 of 1% above the dividend rate of the Trust Certificates on unpaid dividends to the extent legally enforceable, and of the principal of all the outstanding Trust Certificates, with interest thereon at a rate equal to 1/2 of 1% above the dividend rate of the Trust Certificates, to the extent legally enforceable, from the last preceding dividend date, whether such Trust Certificates shall have then matured by their terms or not, all such payments to be in full if such proceeds shall be sufficient, and if not sufficient, then *pro rata* without preference among principal, dividends or interest.

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

SECTION 5.4. *Waiver of Default.* If at any time after the principal of all the Trust Certificates shall have been declared and have become due and payable, or if at any time after the entire amount of rentals shall have been declared and become due and payable, all as in Section 5.1 hereof provided, but before the end of the term of the lease contained herein, all arrears of rent (with interest at a rate equal to 1/2 of 1% above the dividend rate of the Trust Certificates to the extent legally enforceable), the expenses and reasonable compensation of the Trustee, together with all expenses of the trust occasioned by the Company's default, and all other sums which shall have become due and payable by the Company hereunder (other than the principal of Trust Certificates and any other rental instalments which shall not at the time have matured according to their terms) shall be paid by the Company before any sale or lease by the Trustee of any of the

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

SECTION 5.5. *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, nor any delay or indulgence granted to the Company by the Trustee or by any such holder, shall affect the obligations of the Company hereunder or under the guaranty endorsed on the Trust Certificates. The Company hereby waives presentation and demand in respect of any of the Trust Certificates and waives notice of presentation, of demand and of any default in the payment of the principal of and dividends on the Trust Certificates.

SECTION 5.6. *Company to Deliver Trust Equipment to Trustee.* In case the Trustee shall demand possession of the Trust Equipment pursuant to the provisions hereof, and shall reasonably designate a point or points upon the railroad of the Company or of any Affiliate or sublessee for the delivery of the Trust Equipment to it, the Company shall, at its own expense forthwith and in the usual manner, cause the Trust Equipment to be moved to such point or points on such railroads as shall be designated by the Trustee and shall there deliver or cause to be delivered the same to the Trustee, or the Trustee may at its option keep the Trust Equipment on any of

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

SECTION 5.7. *Limitations on Actions by Holders of Trust Certificates.* No holder of any Trust Certificate shall have any right to institute any action or proceedings at law or in equity for the execution and enforcement of the trust hereby created unless, after the request in writing, under Section 7.5 hereof, 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 and indemnity, the Trustee shall decline, fail or neglect to institute any proceedings pursuant thereto. Neither the provisions of this Section 5.7 nor the provisions of Section 7.5 hereof shall affect or limit in any way the obligations of the Company under its guaranty hereinabove provided or the rights of the holders of Trust Certificates to institute suit for the enforcement of payments due under said guaranty in respect of the Trust Certificates.

SECTION 5.8. *Remedies Cumulative.* The remedies in this Agreement provided in favor of the Trustee and the holders of the Trust Certificates shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in their favor existing at law or in equity.

ARTICLE SIX

Additional Covenants and Agreements by the Company

SECTION 6.1. *Company to Make Payments Provided for.* The Company hereby covenants and agrees to make payment of the reasonable expenses and compensation of the Trustee, and of all taxes, assessments and governmental charges herein mentioned for which the Trustee, as such, may be liable and of the rentals and of the other amounts provided for herein.

SECTION 6.2. *Guaranty to Holders of Trust Certificates.* The Company covenants, agrees and guarantees that the holder of each of the Trust Certificates shall be paid the principal amount thereof, in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, when and as the same shall become due and payable, in accordance with the provisions thereof or of this Agreement (and, if not so paid, with interest thereon at a rate equal to 1/2 of 1% above the dividend rate of the Trust Certificates to the extent legally enforceable), and shall be paid dividends thereon in like money at the rate specified therein from the date of such Trust Certificate to the date of maturity thereof, at the time and place and otherwise as expressed in the Trust Certificates (and, if not so paid, with interest thereon at a rate equal to 1/2 of 1% above the dividend rate of the Trust Certificates to the extent legally enforceable); and the Company further covenants and agrees to endorse upon each of the Trust Certificates, at or before the issuance and delivery thereof by the Trustee, its guaranty of the prompt payment of the principal thereof and of the dividends thereon, in substantially the form hereinbefore set forth. Said guaranty so endorsed shall be signed in the name and on behalf of the Company by the facsimile signature of the Chairman of the Board, the Chief Executive Officer, the President or any of its Vice Presidents. In case any officer of the Company whose facsimile signature shall appear on said guaranty shall cease to be such officer of the Company before the Trust Certificates shall have been issued or delivered by the Trustee, or shall not have been

acting in such capacity on the date of the Trust Certificates, such guaranty shall nevertheless be as effective and binding upon the Company as though the person who signed said guaranty had not ceased to be, or had then been, such officer.

SECTION 6.3. *Discharge of Liens.* The Company covenants and agrees that it will pay and discharge, or cause to be paid and discharged, or make adequate provision for the satisfaction or discharge of, any debt, tax, charge, assessment, obligation or claim, which if unpaid might become a lien or charge upon or against any of the Trust Equipment, except upon the leasehold interest of the Company therein; but this provision shall not require the payment of any such debt, tax, charge, assessment, obligation or claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings, provided that such contest will not materially endanger the rights or interests of the Trustee or of the holders of the Trust Certificates and the Company shall have furnished the Trustee with an Opinion of Counsel to such effect.

This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and not delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

SECTION 6.4. *Payment of Expenses; Recording.* The Company covenants and agrees to pay the expenses incident to the preparation and execution of the Trust Certificates to be issued hereunder, or connected with the preparation, execution, recording and filing hereof and of any instruments executed under the provisions hereof with respect to the Trust Equipment. The Company with all convenient speed will cause this Agreement and all supplements hereto to be duly filed and recorded with the Interstate Commerce Commission in accordance with 49 U.S.C. §11303. The Company will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register and record any and all further instruments required by law or reasonably

requested by the Trustee for the purposes of proper protection of the title of the Trustee and the rights of the holders of the Trust Certificates and of fully carrying out and effectuating this Agreement and the intent hereof; and the Company will promptly furnish to the Trustee certificates or other evidences of filing and recording pursuant to the last preceding sentence, and of any other such filing, registration and recording, and an Opinion or Opinions of Counsel with respect thereto.

SECTION 6.5. *Further Assurances.* The Company covenants and agrees from time to time to do all such acts and execute all such instruments of further assurance as it shall be reasonably requested by the Trustee to do or execute for the purpose of fully carrying out and effectuating this Agreement and the intent hereof.

ARTICLE SEVEN

The Trustee

SECTION 7.1. *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, but no implied covenants shall be read into this Agreement against the Trustee.

SECTION 7.2. *Application of Rentals.* The Trustee covenants and agrees to apply and distribute the rentals received by it under Section 4.4(B) hereof (other than sums restored to Deposited Cash from rentals pursuant to Section 4.4(B)(1)(b) hereof or paid to the Company pursuant to Section 3.3 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 4.4(B).

SECTION 7.3. *Duties Concerning Registration, Exchange and Transfer of Trust Certificates.* The Trustee shall cause to be kept at its Corporate Trust Office or agency in the Borough of Manhattan, City and State of New York (which agency may be an office of the Company in said Borough and City), books for the registration, exchange and registration of transfer of the Trust Certificates; and upon presentation for

any such purpose the Trustee will register or cause to be registered, exchange or cause to be exchanged, or register or cause to be registered the transfer of, as the case may be, as hereinbefore provided, under such reasonable regulations as it may prescribe, any of the Trust Certificates.

SECTION 7.4. *Insuring or Taking Possession of Trust Equipment Upon Indemnification; Recording; Reliance on Documents.* The Trustee shall not be required to undertake any act or duty in the way of insuring, taking care of or taking possession of the Trust Equipment or to undertake any other act or duty under this Agreement until fully indemnified by the Company or by one or more of the holders of the Trust Certificates against all liability and expenses. The Trustee shall not be responsible for the filing or recording or refiling or rerecording of this Agreement or of any supplement hereto or of any other instrument or document which may be required to perfect the security interest of the Trustee in the contracts assigned to it pursuant to Section 3.1 hereof. The Trustee may issue and deliver Trust Certificates in advance of such filing or recording. In accepting delivery of and making payment for the Trust Equipment hereunder, or in accepting any cash payable hereunder in respect of Trust Equipment, the Trustee may rely upon and shall be fully protected by the certificates, invoices, bills of sale and Opinions of Counsel to be furnished to it under Section 3.4 hereof, or, as the case may be, under Section 4.7 or 4.9 hereof, and shall not be required to make any further investigation of or inquiry concerning the matters covered thereby.

SECTION 7.5. *No Obligation to Enforce Trust Unless Requested and Indemnified.* The Trustee shall be under no obligation to take any action for the execution or enforcement of the trust hereby created unless requested thereunto in writing by the holders of not less than 25% in principal amount of the then outstanding Trust Certificates and unless indemnified to its satisfaction against expense and liability with respect thereto, and unless also furnished with proof satisfactory to it as to the ownership of the Trust Certificates in respect of which any such request may be made; but this

provision, in the absence of such request, shall not affect any discretion herein given to the Trustee to determine whether it shall take action in respect of any default hereunder or what action it shall take.

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

SECTION 7.7. *Money Held by Trustee; Investments in Investment Securities.* Any money at any time paid to or held by the Trustee hereunder until paid out by the Trustee as herein provided may be carried by the Trustee on deposit with itself (including demand and time deposits in a trust account), without liability for interest thereon save as may be agreed upon between the Trustee and the Company.

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

At any time, and from time to time, if there shall be no default under the terms of this Agreement or of any supple-

ment hereto, the Trustee, on Request, shall invest and reinvest Deposited Cash and Replacement Funds held by it in Investment Securities at such prices, including any premium and accrued interest, as are set forth in such Request, such Investment Securites to be held by the Trustee in trust for the benefit of the holders of the Trust Certificates.

The Trustee shall, on Request, or the Trustee may, in the event funds are required for payment against delivery of Trust Equipment, sell such Investment Securities, or any portion thereof, and restore to Deposited Cash or Replacement Funds, as the case may be, the proceeds of any such sale up to the amount paid for such Investment Securities, including any premium and 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 4.4(B)(1)(b) hereof, an amount equal to any expenses incurred in connection with any purchase, sale or redemption of Investment Securities and also an amount equal to any loss of principal incident to the sale or redemption of any Investment Securities for a sum less than the amount paid therefor, including accrued interest. The Company, if not in default under the terms hereof or of any supplement hereto, shall be entitled to receive any profit which may be realized from any sale or redemption of Investment Securities.

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

The Trustee may perform its powers and duties hereunder by or through such attorneys, agents and servants as it shall

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

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

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

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 itself and the holders of the Trust Certificates.

The Trustee may appoint a paying agent, which may be the Company, for the payment of principal, dividends and interest hereunder. Any paying agent so appointed shall execute and deliver to the Trustee an instrument in which such paying agent shall agree with the Trustee: (i) that it will hold all sums held by it as agent of the Trustee for the payment of the principal of and dividends and interest on the Trust Certificates, in trust for the benefit of the holders of the Trust Certificates; (ii) that it will pay such sums to the holders of the Trust Certificates at such times and in such manner as the Trustee shall direct; (iii) that it will give immediate written notice to the Trustee of any failure by it to comply with any such direction; and (iv) that it will immediately repay, upon demand by the Trustee, any sums held in trust by it pursuant to clause (i) of this paragraph.

SECTION 7.9. *Resignation by Trustee; Appointment of Successor Trustee.* If at any time the Trustee or any successor trustee shall resign or shall otherwise desire to divest itself of title to the Trust Equipment, and to terminate its duties and obligations and rights hereunder and under the Trust Certificates, it shall so notify the Company in writing, and the Company shall thereupon designate in writing to the Trustee a national bank or a state bank or a trust company, qualified as below specified, to serve until a successor is appointed by the holders of Trust Certificates as hereinafter provided, to which may be assigned the entire right, title and interest of the Trustee or such successor trustee in the Trust Equipment, and in which may be vested the rights, powers, duties and obligations of the Trustee hereunder and under the Trust Certificates. Upon the transfer and delivery of all moneys, any Investment Securities in which any of said moneys may then be invested, and Trust Equipment held by the retiring trustee, and the execution by the retiring trustee of such instruments of transfer as may be reasonably requested by the successor trustee, and upon acceptance by the successor trustee of the assignment of the trust, the retiring trustee shall be relieved and discharged of all the title, rights, powers, duties and obligations of the trust hereunder and under the Trust Certificates, and the same shall become vested in such successor trustee, and every provision hereof applicable to the retiring trustee shall apply to such successor trustee with like effect as if such successor trustee had been originally named herein in the place and stead of the Trustee. In the event that the Company shall fail to designate such a successor trustee by instrument in writing delivered to the retiring trustee within two weeks from the time of receiving such notice in writing from the retiring trustee, the retiring trustee may thereupon designate such successor trustee or apply to any court of competent jurisdiction for the appointment of a successor trustee. The foregoing provisions are, however, subject to the right of the holders of a majority in principal amount of the then outstanding Trust Certificates by an instrument in writing to appoint any successor trustee, if such appointment is made within one year from the date of the giving of such notice to the Company. The Company shall

execute all writings recognizing the transfer of title as aforesaid and all instruments of further assurance or otherwise as reasonably may be requested by the successor trustee in the premises and will do and perform any and all acts necessary to establish and maintain the title and rights of the successor trustee in and to the Trust Equipment. Every successor trustee shall be a national bank, or a state bank or trust company, having trust powers, doing business in The City of New York, having a capital and surplus aggregating at least $5,000,000, if there be such a bank or trust company willing and able to accept the trust upon reasonable and customary terms and duly qualified to act as such trustee.

SECTION 7.10. *Merger, Conversion or Consolidation of Trustee.* Any corporation resulting from any merger, conversion 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 corporate trust business of the Trustee or any successor trustee, provided such corporation shall be a corporation organized under the laws of the United States of America or of any state thereof and shall do business in The City of New York, and shall have a capital and surplus aggregating at least $5,000,000, shall be the successor trustee hereunder without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

SECTION 7.11. *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 (including, for purposes of this Section 7.11 only, any person or other legal entity which would fall within the definition of Affiliate in Section 1.1 hereof if such person or other legal entity were a corporation) shall be disregarded and deemed not to be outstanding for the purpose of any such 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. Upon request of the Trustee, the Company shall furnish to the Trustee promptly an Officer's Certificate listing and identifying all Trust Certificates, if any, known by the Company to be owned or held by or for the account of the Company or an Affiliate; and the Trustee shall be entitled to accept such Officer's Certificate as conclusive evidence of the facts therein set forth and of the fact that all Trust Certificates not listed therein are outstanding for the purpose of any such determination.

ARTICLE EIGHT

Miscellaneous

SECTION 8.1. *Execution of Instruments by Holders of Trust Certificates; Proof Thereof and of Holding Trust Certificates.* Any request or other instrument provided by this Agreement to be signed or executed by holders of Trust Certificates may be in any number of concurrent instruments of similar tenor, and may be executed by such holders in person or by an agent or attorney appointed by an instrument in writing. Proof of the execution of any such request or other instrument, or of a writing appointing any such agent or attorney, or of the holding by any person of Trust Certificates, shall be sufficient for any purpose hereof and shall be conclusive in favor of the Trustee with regard to any action taken by the Trustee under such request or other instrument if made in the following manner, *viz.:*

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

ual capacity, such certificate or affidavit shall also constitute sufficient proof of the authority of the executing individual.

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

SECTION 8.2. *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, any right, remedy or claim under or by reason of this Agreement or of any term, covenant or condition hereof, and all the terms, covenants, conditions, promises and agreements contained herein shall be for the sole and exclusive benefit of the parties hereto and their successors and of the holders of the Trust Certificates.

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

SECTION 8.4. *Supplemental Agreements; Termination.* The Company and the Trustee without the consent of the holders of Trust Certificates may from time to time and at any time enter into an agreement or agreements supplemental hereto for the purpose of making any provisions in regard to matters or questions arising under this Agreement as shall not adversely affect the interests of the holders of the Trust Certificates then outstanding or the rights, duties or immunities of the Trustee and may, in the event no Trust Certificates have been issued and are outstanding under this Agreement, amend, supplement or delete any of the provisions of this Agreement or terminate it in whole or in part. Except as the context otherwise requires, the term "Agreement" means this Agreement as supplemented pursuant to this Section 8.4.

SECTION 8.5. *Notices.* All demands, notices and other communications hereunder shall be in writing and shall be deemed to have been duly given if personally delivered or

mailed, in the case of demands and notices, by certified or registered mail, and in the case of other communications, by first class mail, (a) to the Company, at 345 Park Avenue, New York, New York 10154, or at such other address as may hereafter be furnished to the Trustee in writing by the Company, and (b) to the Trustee, at its Corporate Trust Office, 5 Hanover Square, New York, N. Y. 10043, or at such other address as may hereafter be furnished to the Company in writing by the Trustee. An affidavit by any person representing or acting on behalf of the Company or the Trustee as to such mailing shall be conclusive evidence of the giving of such demand, notice or other communications.

SECTION 8.6. *Counterparts.* This Agreement has been executed in several counterparts each of which shall be deemed to be an original, and all such counterparts shall together constitute but one and the same instrument.

SECTION 8.7. *Date Executed.* This Agreement shall be deemed to have been executed on the date of the acknowledgment thereof by the officer of the Trustee who signed it on behalf of the Trustee.

SECTION 8.8. *Effect of Headings.* The Article and Section headings herein are for convenience only and shall not affect the construction hereof.

SECTION 8.9. *New York Law to Govern.* The provisions of this Agreement, and all the rights and obligations of the parties hereunder, shall be governed by the laws of the State of New York; *provided, however,* that the parties shall be entitled to all rights conferred under 49 U.S.C. §11303.

SECTION 8.10. *Legal Holidays.* In any case where the date of any dividend payment on or principal of the Trust Certificates is, at the place where payment is to be made, a day on which banking institutions are authorized by law to close, then payment of the dividends or principal amount may be made on the next succeeding day which is not, at such place of payment, a day on which banking institutions are authorized by law to close, and no dividends shall accrue for the period after such nominal date.

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

[SEAL]

CITIBANK, N.A., Trustee

By .....
Senior Trust Officer

ATTEST:
.....
Trust Officer

[SEAL]

UNION PACIFIC RAILROAD COMPANY

By .....
Vice President

ATTEST:
.....
ASSISTANT *Secretary*

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

On the 3rd day of October, 1980, before me personally appeared P. DeFELICE, to me personally known, who, being by me duly sworn, says that he is a Senior Trust Officer of CITIBANK, N.A., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

H. Douglas Hunter
Notary Public

[SEAL]

H. DOUGLAS HUNTER
Notary Public, State of New York
No. 31—4707995
Qualified in New York County
Term Expires March 30, 1981

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

On the 3rd day of October, 1980, before me personally appeared H. B. SHUTTLEWORTH, to me personally known, who, being by me duly sworn, says that he is a Vice President of UNION PACIFIC RAILROAD COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of the said corporation, that said instrument was signed and sealed on behalf of the said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Frances F. Syracuse
Notary Public
FRANCES F. SYRACUSE
Notary Public, State of New York
No. 31-4717130
Qualified in New York County
Commission Expires March 30, 1982

[SEAL]

SCHEDULE A

Description of Trust Equipment

No. of Units	Description	Estimated Cost Per Unit	Estimated Cost Total
15	3000 HP SD 40-2 Diesel-Electric road freight locomotives, General Motors Corporation (Electro-Motive Division), builder, to be numbered UP3794 to UP3808, both inclusive	$783,500	$11,752,500
13	3000 HP C 30-7 Diesel-Electic road freight locomotives, General Electric Company, builder, to be numbered UP2527 to UP2539, both inclusive	811,500	10,549,500
25	100-ton, 3625 cu. ft. capacity open top hopper cars, Class H-100-23, Union Pacific Railroad Company, builder, to be numbered UP46275 to UP46299, both inclusive	42,500	1,062,500
200	100-ton, covered hopper cars, Class CH-100-40, Union Pacific Railroad Company, builder, to be numbered UP79150 to UP79349, both inclusive	43,200	8,640,000
	TOTAL		$32,004,500