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NEW NUM B312

LAW OFFICES

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200 WORLD CENTER BUILDING

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WASHINGTON, D.C.

20006-2973

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TELEX  
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RECORDATION NO. 1 5724 FILED 1988

JUL 14 1988 12 15 PM

INTERSTATE COMMERCE COMMISSION JUL 14, 1988

8--196A07D

No.  
JUL 14 1987  
Date.....  
Fee \$ 13.00

ICE Washington, D.C.

MOTOR OPERATING UNIT  
JUL 14 12 03 PM '88  
SECRETARY OF

Ms. Noreta R. McGee  
Secretary  
Interstate Commerce Commission  
Washington, D.C. 20423

Dear Ms. McGee:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11303(a) are five fully executed counterparts of an Amended and Restated Equipment Trust Agreement dated as of April 15, 1988, a primary document as defined in the Commission's Rules for the Recordation of Documents.

The names and addresses of the parties to the enclosed document are:

Trustee: Harris Trust and Savings Bank  
311 West Monroe Street  
Chicago, Illinois 60611

Debtor: The Atchison, Topeka and Santa Fe  
Railway Company  
80 East Jackson Boulevard  
Chicago, Illinois 60604

A description of the railroad equipment covered by the enclosed document is set forth in Schedule A attached hereto and made a part hereof.

Also enclosed is a check in the amount of \$13 payable to the order of the Interstate Commerce Commission covering the required recordation fee.

Kindly return the stamped copies of the enclosed document not needed for your files to Charles T. Kappler, Esq., Alvord and Alvord, 918 Sixteenth Street, N.W., Washington, D.C. 20006.

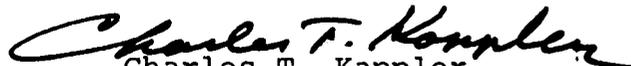
*Charles T. Kappler*

Ms. Noreta R. McGee  
Secretary  
Interstate Commerce Commission  
July 14, 1988  
Page Two

A short summary of the enclosed primary document to appear in the Commission's Index is:

Amended and Restated Equipment Trust Agreement dated as of April 15, 1988 between Harris Trust and Savings Bank, Trustee, and The Atchison, Topeka and Santa Fe Railway Company covering 20 GP60 locomotives marked ATSF 4000 - ATSF 4019 and 20 Dash 8-40B locomotives marked ATSF 7410 - ATSF 7429.

Very truly yours,

  
Charles T. Kappler

Enclosures

EQUIPMENT TRUST, SERIES T  
Dated April 15, 1988

SCHEDULE A

<u>No. of Units</u>	<u>Description</u>	<u>Estimated Costs</u>	
		<u>Per Unit</u>	<u>Total</u>
10	GP60, 3800 H.P., four axle, diesel-electric locomotives (including event recorders); General Motors Corporation (Electro-Motive Division), builder. Nos. 4000, 4002, 4004, 4006, 4008, 4010, 4012, 4014, 4016, and 4018	\$1,178,390	\$11,783,900
10	GP60, 3800 H.P., four axle, diesel-electric locomotives; General Motors Corporation (Electro-Motive Division), builder. Nos. 4001, 4003, 4005, 4007, 4009, 4011, 4013, 4015, 4017, and 4019	1,175,390	11,753,900
10	Dash 8-40B, 4000 H.P., four axle, diesel-electric locomotives (including event recorders and modifications for flange lubricators); General Electric Company, builder. Nos. 7410, 7412, 7414, 7416, 7418, 7420, 7422, 7424, 7426, and 7428	1,151,015	11,510,150
10	Dash 8-40B, 4000 H.P., four axle, diesel-electric locomotives (including event recorders and modifications for flange lubricators); General Electric Company, builder. Nos. 7411, 7413, 7415, 7417, 7419, 7421, 7423, 7425, 7427, and 7429	<u>1,134,215</u>	<u>11,342,150</u>
<b>TOTAL 40</b>			<b><u>\$46,390,100</u></b>

**Interstate Commerce Commission**  
Washington, D.C. 20423

7/14/88

OFFICE OF THE SECRETARY

Charles T. Kappler  
Alvord & Alvord  
918 16th St. N.W.  
Washington, D.C. 20006

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 7/14/88 at 12:15pm, and assigned recordation number(s). 15724

Sincerely yours,

*Nesta R. McGee*  
Secretary

Enclosure(s)

RECORDATION NO. 1 5724  
Filing Date

JUL 14 1988 - 12 15 PM

INTERSTATE COMMERCE COMMISSION

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THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY  
EQUIPMENT TRUST, SERIES T

---

AMENDED AND RESTATED  
EQUIPMENT TRUST AGREEMENT  
Dated as of April 15, 1988

Between

HARRIS TRUST AND SAVINGS BANK,  
as Trustee,

and

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

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SCHEDULE A. DESCRIPTION OF TRUST EQUIPMENT

This Amended and Restated Equipment Trust Agreement, dated as of April 15, 1988, by and between HARRIS TRUST AND SAVINGS BANK, an Illinois corporation, as Trustee, (hereinafter called the Trustee) and THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, a Delaware corporation, (hereinafter called the Company),

WITNESSETH:

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

WHEREAS, the Company and the Trustee have executed and entered into The Atchison, Topeka and Santa Fe Railway Company Equipment Trust Agreement, Series T, dated as of April 15, 1988 between Harris Trust and Savings Bank, as Trustee, and The Atchison, Topeka and Santa Fe Railway Company and hereby wish to amend and restate said agreement in its entirety; and

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

WHEREAS, The Atchison, Topeka and Santa Fe Railway Company Equipment Trust Certificates, Series T, (hereinafter called Trust Certificates) are to be issued and sold in one installment having an aggregate principal amount not exceeding \$47,900,000 (the "Total Authorized Issue") and the net proceeds of such sale together with such other cash, if any, as may be required to be deposited by the Company as hereinafter provided will constitute a fund to be equal to the aggregate principal amount of Trust Certificates so issued and sold, to be known as The Atchison, Topeka and Santa Fe Railway Company Equipment Trust, Series T, and to be applied by the Trustee from time to time to the payment in full of the Cost of the Trust Equipment or a portion thereof or to repay the principal amount of short-term indebtedness, if any, theretofore incurred to finance acquisition of not more than 100% of the Cost of certain Trust Equipment;

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 forms hereinafter set forth; and

WHEREAS, it is desired to secure to the Holders of the Trust Certificates the payment of the principal thereof and dividends and interest thereon as hereinafter provided.

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

ARTICLE ONE

FORMS OF TRUST CERTIFICATES AND GUARANTY

SECTION 1.1. Forms of Trust Certificates and Guaranty.  
The Trust Certificates and the guaranty to be endorsed on the Trust Certificates by the Company are to be substantially in the following forms:

[Form of Trust Certificate]

PURSUANT TO THE EQUIPMENT TRUST AGREEMENT,  
THE EQUIPMENT TRUST CERTIFICATES ARE BEING  
ISSUED TO FINANCE NOT EXCEEDING 100%  
OF THE COST OF THE TRUST EQUIPMENT

No. T \_\_\_\_\_

\$ \_\_\_\_\_

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

Equipment Trust Certificates, Series T

Total Authorized Issue: \$47,900,000

10.19% Trust Certificate  
due April 15, 2003

HARRIS TRUST AND SAVINGS BANK, as Trustee

Dividends Payable Semiannually

THE HARRIS TRUST AND SAVINGS BANK, as Trustee (hereinafter called the Trustee) under an Equipment Trust Agreement, dated as of April 15, 1988, ("Agreement"), by and between the Trustee and THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY (hereinafter called the Company), hereby certifies that \_\_\_\_\_ or registered assigns, is entitled to an interest in the principal amount of \_\_\_\_\_ Dollars in THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY EQUIPMENT TRUST, SERIES T, payable at its principal office in the City of Chicago, State of Illinois in fifteen (15) equal annual installments of principal on each April 15 from April 15, 1989 to and including the final due date stated above without the need for presentation and surrender of this Trust Certificate to the undersigned, and to payment of dividends on the principal amount outstanding from time to time payable semiannually on April 15 and October 15 of each year, beginning as of October 15, 1988, at the rate per annum specified in the heading hereof from and including the date hereof, to but excluding said due date, at said office of the undersigned, with interest at said dividend rate plus 1% on any unpaid principal, unpaid Make-Whole Premium Amount, if any, and any unpaid dividends to the extent that it shall be legally enforceable from and including the due date thereof until such principal, Make-Whole Premium Amount, if any, and dividends shall be paid in full, 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 undersigned and applicable to such payment under the provisions of the Agreement. Interest at said dividend rate shall be computed hereunder on the basis of a 360-day year of twelve 30-day months. Notwithstanding the provisions of the preceding sentence, in the case of payments of dividends, Make-Whole Premium Amount, if any, interest on overdue payments and annual installments of principal on this Trust Certificate, the undersigned, upon request of the registered Holder hereof, will, subject to timely receipt of Rental payments under the Agreement, mail its check to such registered Holder at his address shown on the registry books maintained by the undersigned, or, upon the request of the Holder for wire transfer, will wire immediately available funds to the account of such registered Holder at such bank as it may designate by notice in writing to the Trustee prior to the date that payment is due.

This Certificate is one of an authorized issue of Trust Certificates in an aggregate principal amount not exceeding the Total Authorized Issue set forth above, and issued or to be issued under the Agreement, under which certain railroad equipment leased to the Company (or, in lieu thereof, as provided in the Agreement, cash or obligations defined in the Agreement as "Investments") is held by the Trustee in trust for the equal and ratable benefit of the Holders of the Trust Certificates issued thereunder. Reference is made to the Agreement (a copy of which is on file with the undersigned at its principal office in the City of Chicago, State of Illinois) for a more complete statement of the terms and provisions thereof, to all of which the registered Holder hereof, by accepting this Certificate, assents. The terms defined in the Agreement and not otherwise defined herein are used herein with the same meaning.

The Trust Certificates are originally issuable in denominations of \$100,000, and any larger integral multiple of \$1,000, as fully registered Trust Certificates, and the several denominations of Trust Certificates are interchangeable upon presentation thereof at the principal office of the undersigned, but only in the manner, subject to the limitations and upon payment of the charges provided in the Agreement. Provided, however, after the Closing Date the Trust Certificates are issuable in denominations of \$100,000, and any larger integral multiple of \$1,000, or if less than \$100,000, the outstanding principal amount then remaining due.

Subject to the provisions of Section 3.5 of the Agreement, this Trust Certificate is transferable by the registered Holder hereof, in person or by duly authorized attorney, on the books of the undersigned upon surrender hereof to the undersigned at its said office accompanied by appropriate instruments of

assignment and transfer, duly executed by the registered Holder hereof in person or by such attorney, in form satisfactory to the undersigned, and thereupon a new Trust Certificate or Certificates for the then unpaid aggregate principal amount hereof of the same maturity and rate and in authorized form and denominations will be issued to the transferee in exchange herefor and, if less than the entire unpaid principal amount hereof is transferred, a Trust Certificate for the balance thereof will be issued to the transferor. Prior to due presentment for registration of transfer, the undersigned and the Company shall be entitled to deem and treat the registered Holder hereof as the absolute owner for the purpose of receiving payment of principal and dividends and for all other purposes and shall not be affected by any notice to the contrary.

The Trust Certificates may not be redeemed or prepaid except to the extent and in the manner expressly provided in the Agreement. The Trust Certificates may be redeemed upon at least thirty days, but not more than sixty days', notice at the option of the Company, as a whole or in part, at any time or times on or after April 15, 1996 at par together with the applicable Make-Whole Premium Amount and accrued interest at the applicable dividend rate to the date fixed for redemption.

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

This Trust Certificate shall not be deemed a promise to pay of the Trustee in its individual capacity and shall not be valid unless its corporate seal hereon shall be manually attested by an Assistant Secretary of the Trustee.

IN WITNESS WHEREOF, the Trustee has caused this Trust Certificate to be signed by the manual signature of one of its Vice Presidents and its corporate seal to be hereunto affixed and to be attested by an Assistant Secretary.

Dated:

HARRIS TRUST AND SAVINGS BANK,  
as Trustee

By \_\_\_\_\_  
Vice President

ATTEST:

\_\_\_\_\_  
Assistant Secretary

[Form of Guaranty]

GUARANTY

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, for a valuable consideration, hereby absolutely and unconditionally guarantees to the registered Holder of the within Trust Certificate the prompt payments of the principal of said Certificate, Make-Whole Premium Amount, if any, and of dividends thereon at the rate specified in said Certificate, with interest at said dividend rate plus 1% on any unpaid principal, unpaid Make-Whole Premium Amount, if any, and (to the extent that it shall be legally enforceable) interest on any unpaid dividends from and after the due date thereof until such principal, Make-Whole Premium Amount, if any, and dividends shall be paid, in accordance with the terms of said Certificate and the Equipment Trust Agreement referred to therein.

THE ATCHISON, TOPEKA AND SANTA FE  
RAILWAY COMPANY

By \_\_\_\_\_  
Senior Vice President-Finance  
and Chief Financial Officer

ARTICLE TWO

DEFINITIONS

SECTION 2.1. Definitions. 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:

Advance Rentals shall mean the amounts payable by the Company to the Trustee as Advance Rentals under Sections 5.2 and 6.4(A).

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

Casualty Occurrence shall have the meaning specified in Section 6.7.

The Casualty Value of any unit of Trust Equipment shall be considered to be the Cost thereof less depreciation accrued on such Trust Equipment on each April 15, commencing April 15, 1989, at 1/15th of the Cost thereof per annum.

Company shall mean The Atchison, Topeka and Santa Fe Railway Company and any successor or successors thereto.

Cost, when used with respect to Equipment, shall mean the actual cost thereof invoiced to the Trustee hereunder, which shall be the cost invoiced by the manufacturer of the Equipment to the Trustee, 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, to the extent not determined thereby or in case there be no such accounting rules of the Interstate Commerce Commission in effect at such time, sound accounting practice.

Date of Original Issue with respect to each Trust Certificate shall mean the date such Certificate is executed and issued to the initial purchasers thereof pursuant to Section 3.1 of this Agreement.

Deposited Cash shall mean the aggregate of (a) the proceeds from the sale of the Trust Certificates deposited with the Trustee pursuant to Section 3.1, including any Advance Rentals due therewith, and, when required or indicated by the context, any Investments purchased by the use of such proceeds pursuant to the provisions of Section 10.8, and (b) any sums restored to Deposited Cash from Rentals pursuant to Section 6.4(B)(1)(b) and on deposit with the Trustee.

Equipment shall mean initially the forty new locomotives more fully described in Schedule A hereto on the Date of Original Issue and any other locomotives from time to time substituted therefor or supplemented in addition thereto, in either such case, pursuant to Section 5.1, 6.7 and 6.10.

Event of Default shall mean any event specified in Section 7.1 to be an Event of Default.

Generally Accepted Accounting Principles shall mean generally accepted accounting principles in effect at the time of any computation hereunder where the character or amount of any asset or liability or item of income or

expense is required to be determined or any consolidation or other accounting computation is required to be made; provided, however, that such principles shall not include any change to such generally accepted accounting principles made after the date of this Agreement that is the sole cause of an Event of Default hereunder.

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

Holder, when used with respect to Trust Certificates, shall include the plural as well as the singular number and, unless otherwise indicated by the context, shall mean and include the registered owner of a Trust Certificate on and as of the fifth business day preceding the date of redemption.

Initial Holders shall mean the institutional investors named in Schedule 1 to the Purchase Agreement.

Investments shall mean: (a) Government Securities; (b) commercial paper rated in the highest grade by a nationally recognized credit rating agency; and (c) bankers' acceptances and certificates of deposit (including Eurodollar certificates of deposit) issued by (i) any bank or trust company or a foreign branch thereof which is organized under the laws of the United States or any state thereof and has total deposits in excess of One Billion Dollars; or (ii) any full United States branch of a foreign bank if such foreign bank has total deposits (United States Dollar Equivalent) in excess of Ten Billion Dollars.

Lien shall mean any mortgage, pledge, security interest, encumbrance, lien or charge of any kind (including any agreement to give any of the foregoing, any conditional sale, deed of trust, any lien under the Interstate Commerce Commission or the Registrar General of Canada or other title retention agreement, any lease in the nature thereof, and the filing of, or agreement to give any financing statement under, the Uniform Commercial Code of any jurisdiction).

Make-Whole Premium Amount at anytime with respect to the Trust Certificates means the excess, if any, of (i) the present value, as of the date of redemption, of the respective installments of principal of and dividends (in the case of any redemption to be made on other than a regular dividend installment date, after deducting from the next succeeding regular dividend payment the amount of

dividends accrued to the redemption date and required to be paid in connection with the redemption) on the Trust Certificates that, but for such redemption, would have been payable on installment dates or dividend payment dates, as the case may be, after such redemption-over (ii) the principal amount of the Trust Certificates then being redeemed. Such present value shall be determined on and as of the sixth business day next preceding the date of redemption by discounting the amounts of such installments from their respective installment dates or dividend payment dates, as the case may be, to the date of such redemption at a rate equal to 50 basis points over the applicable Treasury Yield, provided that in no event will the Make-Whole Premium Amount be less than zero. The Company shall, not later than the fifth business day prior to the date fixed for such redemption, give written notice to the Holders of the Trust Certificates of the amount of such Make-Whole Premium Amount, which notice shall specify in reasonable detail the basis for its determination. Said Make-Whole Premium Amount shall be payable only pursuant to an optional redemption of Trust Certificates by the Company pursuant to Section 4.1 of this Agreement.

Officer's Certificate shall mean a certificate signed by the Chairman of the Board, the President, the Executive Vice President, a Senior Vice President or any other Vice President of the Company who is in a position to know the truth and accuracy of the matters therein covered.

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

Outside Delivery Date shall mean, with respect to the equipment initially described on Schedule A hereto, December 15, 1988.

Principal Office shall mean the office of the Trustee in the City of Chicago, State of Illinois at which its corporate trust business shall from time to time be conducted.

Purchase Agreement shall mean the certain Purchase Agreements dated as of April 15, 1988 and entered into by the Company with the institutional investors named in Schedule 1 attached thereto, as from time to time supplemented or amended.

Released Equipment Funds shall have the meaning specified in Section 6.10.

Remaining Dollar-years in respect of the Trust Certificates means the product obtained by (1) multiplying (A) the amount of each then remaining required principal

repayment (including repayment at final maturity), by (B) the number of years (calculated to the nearest one-twelfth) which will elapse between the time of determination and the date such required repayment is due, and (2) totaling all the products obtained in (1).

Rental shall mean the rental payments required by Section 6.4(B).

Request shall mean a written request for the action therein specified signed on behalf of the Company by the Chairman of the Board, the President, the Executive Vice President, a Senior Vice President or any other Vice President of the Company and delivered to the Trustee.

Subsidiary shall mean any corporation organized under the laws of any state of the United States of America, the Dominion of Canada, or any Province of Canada, which conducts the major portion of its business in the United States of America or the Dominion of Canada, or both, more than 50% of the stock of every class of which, except directors' qualifying shares, shall be owned by the Company either directly or through Subsidiaries.

Total Authorized Issue shall mean an aggregate principal amount not exceeding \$47,900,000 of Trust Certificates executed and issued under Section 3.1.

Treasury Yield with respect to the Trust Certificates to be redeemed as specified above means (a) in the case where the Weighted Average Life to Maturity of such Trust Certificates being redeemed is within one year after the date on which such Trust Certificates are to be redeemed, the average yield to maturity on a government bond equivalent basis of the applicable United States Treasury Bill corresponding in average life to maturity to such Trust Certificates, and (b) in the case where the Weighted Average Life to Maturity of such Trust Certificates being redeemed is one year or more after such date, the average yield of the most actively traded United States Treasury Note (as reported by Cantor Fitzgerald Securities Corp. on page 5 of Telerate Systems, Inc., a financial news service or, if such service is no longer in the business of reporting such information, any other financial news reporting service reasonably acceptable to the Company and 51% of the Holders of the Trust Certificates), corresponding in average life to maturity to such Holder of the Trust Certificates (or if there is no corresponding maturity, an interpolation of maturities).

Trust Certificates or Certificates shall mean the trust certificates issued under Section 3.1 hereof and any other trust certificates issued hereunder in a transfer, exchange or replacement therefor.

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

Trustee shall mean HARRIS TRUST AND SAVINGS BANK, an Illinois corporation, and, subject to the provisions of Article Ten, any successor as trustee hereunder

Trustee's Lien shall mean any Lien resulting from the acts of the Trustee unrelated to the transactions contemplated by this Agreement or resulting from the nonpayment of any taxes based on or measured by the income of the Trustee or the institution acting as Trustee, except any Lien resulting from the nonpayment of any such tax which the Company has agreed in this Agreement to pay or reimburse.

Weighted Average Life to Maturity in respect of the Trust Certificates means, as at the time of determination, the number of years obtained by dividing the then Remaining Dollar-years of such Trust Certificates by the outstanding principal amount of such Trust Certificates.

Written Direction shall mean a direction or statement in writing contained in one or more substantially identical written instruments executed by the Holders of not less than 51% in aggregate principal amount of the outstanding Trust Certificates.

All references herein to Articles, Sections and other subdivisions refer to corresponding Articles, Sections and other subdivisions of this Agreement; and the words herein, hereof, hereby, hereto, hereunder and words of similar import refer to this Agreement as a whole and not to any particular Article, Section, paragraph or subdivision hereof.

### ARTICLE THREE

#### TRUST CERTIFICATES AND ISSUANCE THEREOF

**SECTION 3.1. Original Issuance of Trust Certificates.**  
Upon the sale of the Trust Certificates hereunder, the amount equal to the net proceeds of the Trust Certificates so sold shall forthwith, upon issuance thereof, be deposited in cash with the Trustee. The Company shall forthwith, if necessary, deposit with the Trustee any Advance Rental payable by the Company to the Trustee under Section 6.4(A)(1) hereof. Upon satisfaction of the conditions contained in Section 7 of the Purchase Agreement, the Trustee shall, as the Company shall direct by Request, execute and issue Trust Certificates in the aggregate principal amount thereof so sold.

The aggregate principal amount of all Trust Certificates which shall be executed and issued by the Trustee under this

Section shall not exceed the Total Authorized Issue, and the aggregate principal amount represented by all the Trust Certificates shall be payable as hereinafter set forth.

SECTION 3.2. Interests Represented by Trust Certificates: Dividends; Maturities. Each of the Trust Certificates shall represent an interest in the principal amount therein specified in the trust created hereunder. The principal amount of each Trust Certificate will be due and payable in fifteen (15) equal annual installments of principal on each April 15, from and including April 15, 1989 to and including April 15, 2003. Each Trust Certificate shall be dated as of the Date of Original Issue and will bear dividends on the principal amount thereof outstanding from time to time at the dividend rate stated thereon (computed on the basis of a 360-day year of twelve 30-day months), payable semiannually on April 15 and October 15, beginning October 15, 1988; provided, however, that for any Trust Certificate whose Date of Original Issue is less than thirty days prior to a dividend payment date the dividends thereon shall be payable beginning as of the first dividend payment date next following that dividend payment date. Trust Certificates which shall be executed and delivered by the Trustee in accordance with the provisions of Section 3.5 and 3.6 hereof shall be dated, and shall bear dividends from, the Date of Original Issue or the dividend payment date to which dividends shall have been paid next preceding or coinciding with the date of such execution and delivery, whichever is later to occur.

All payments of principal, dividends and Make-Whole Premium Amount, if any, not paid when due shall bear interest to the extent legally enforceable at the dividend rate plus 1% for the period from and including the date such payment was due to but excluding the date of payment thereof. All payments of principal, dividends, Make-Whole Premium Amount, if any, and interest at the dividend rate plus 1% (on payments not paid when due) on the Trust Certificates shall be payable at the Principal 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 hereof. All moneys received by the Trustee shall be applied first to dividends and interest, second, to the Make-Whole Premium Amount, if any, and third, to principal. Notwithstanding the provisions of the preceding sentence, the Trustee, upon request of the registered Holder of a Trust Certificate, will, subject to timely receipt of Rental payments under Section 6.4(B), initiate a wire by 11:00 a.m., Chicago, Illinois, time, of Federal or other current and immediately available funds to the account of such registered Holder at such bank as it may designate by notice in writing to the Trustee prior to that date (it being understood and agreed that Schedule I to the Purchase Agreement shall constitute such

written notice and request in the case of the Initial Holders). The Company agrees to make its Rental payments pursuant to Section 6.4(B) at such times and in such funds as will enable the Trustee to comply with this Section 3.2.

SECTION 3.3. Forms of Trust Certificates and Guaranty. The Trust Certificates and the guaranty to be endorsed on the Trust Certificates by the Company as provided in Section 8.2 shall be in substantially the respective forms set forth in Article One hereof.

SECTION 3.4. Execution by Trustee. The Trust Certificates shall be signed in the name and on behalf of the Trustee by the manual signature of its President, or one of its Vice Presidents and its corporate seal shall be affixed thereon and attested by the manual signature of one of its Assistant Secretaries. In case any officer of the Trustee whose signature, shall appear on any of the Trust Certificates shall cease to be such officer of the Trustee before the Trust Certificates shall have been executed and issued by the Trustee or shall not have been acting in such capacity on the date of the Trust Certificates, such Trust Certificates shall be adopted by the Trustee and be issued and delivered as though such person had not ceased to be, or had then been, such officer of the Trustee 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 3.5. Trust Certificates; Denominations; Registration; Owners Thereof; Transfer or Exchange of Trust Certificates. The Trust Certificates: shall be issuable in denominations of \$100,000, or any larger integral multiple of \$1,000, or if less than \$100,000, the outstanding principal amount then remaining due and shall be numbered from T-1 consecutively upward; shall be registered, as to both principal and dividends, in the respective names of the Holders or their nominees as set forth in Schedule I to the Purchase Agreement; shall be transferable in whole or in part upon presentation and surrender thereof for registration of transfer at the Principal Office of the Trustee in the City of Chicago, State of Illinois, accompanied by appropriate instruments of assignment and transfer, duly executed by the registered Holder of the surrendered Trust Certificate or Trust Certificates or by his duly authorized attorney, in form satisfactory to the Trustee; shall be dated as of the date of issue unless issued in exchange or substitution for another Trust Certificate or Trust Certificates bearing unpaid dividends or installments of principal from an earlier date, in which case they shall be dated as of such earlier date; shall have the Guaranty on such transferred Trust Certificate executed by the Company; and shall entitle the registered Holder to dividends, Make-Whole Premium Amount, if any, and installments of principal from the date thereof, together with interest on overdue payments at the dividend rate plus 1%. The Trust Certificates to be exchanged

shall be surrendered at the Principal Office of the Trustee in the City of Chicago, State of Illinois. If the Holder of a Trust Certificate transfers less than the entire principal amount of the Trust Certificate held by said Holder, a Trust Certificate in the denomination not transferred shall be issued to said Holder.

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

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

The Trustee shall cause to be kept at its Principal Office in the City of Chicago, State of Illinois, books for the registration and transfer of the Trust Certificates and, upon presentation of the Trust Certificates for such purpose, the Trustee shall register any transfer as hereinabove provided, and under such reasonable regulations as it may prescribe.

For any registration of transfer, exchange or discharge from registration, 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 levied directly on the transaction, unless such tax or other charge results from a redemption or prepayment by the Company and an exchange or surrender of a Trust Certificates in connection therewith.

Each Trust Certificate delivered, pursuant to any provision of this Agreement, in exchange or substitution for, or upon the transfer of, the whole or any part of one or more other Trust Certificates shall carry all the rights to dividends, Make-Whole Premium Amount, if any, and installments of principal accrued and unpaid, and to accrue, which were carried by the whole or such part of such one or more other Trust Certificates, together with interest on overdue payments at the dividend rate plus 1%, and, notwithstanding anything contained in this Agreement, such Trust Certificates shall be so dated that neither gain nor loss in dividends, Make-Whole Premium Amount, if any, interest or principal shall result from such exchange, substitution or transfer.

The Trustee shall not be required to transfer or exchange any Trust Certificate for a period of five business days next preceding any dividend payment date.

**SECTION 3.6. Replacement of Mutilated or Lost Trust Certificates.** In case any Trust Certificate shall become mutilated or defaced or be lost, stolen or destroyed, then on the terms herein set forth, and not otherwise, the Trustee, upon Request, shall execute and deliver a new Trust Certificate of like dividend rate, tenor, maturity and date, and bearing the same or a different 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. 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 loss, theft or destruction of such Trust Certificate alleged to have been lost, stolen or destroyed, and of the ownership and authenticity of such mutilated, defaced, lost, stolen or destroyed Trust Certificate, and also such security and indemnity as may be required by the Trustee and by the Company in their discretion, and shall pay all expenses and charges of such substitution or exchange; provided, however, that if the Holder of such Trust Certificate is one of the Initial Holders (or an Affiliate thereof), or is a bank, insurance company, pension fund, fraternal benefit society, endowment or other organization or financial institution that regularly acquires debt securities for investment having a minimum capital and surplus of at least \$50,000,000, the written undertaking of such Holder delivered to the Trustee and the Company shall be sufficient security and indemnity under this Section 3.6. 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, destroyed or stolen 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.

#### ARTICLE FOUR

##### OPTIONAL REDEMPTION AND PREPAYMENT OF TRUST CERTIFICATES

No prepayment or redemption of the Trust Certificates may be made except to the extent and in the manner expressly provided in this Agreement.

**SECTION 4.1. Optional Redemption of Trust Certificates.** The Company may, at its option, at any time or times on or after April 15, 1996 and prior to maturity, redeem all, or, from time to time, any part in a minimum principal amount of \$500,000 or larger multiples of \$100,000, of the Trust Certificates at par together with the applicable Make-Whole Premium Amount and accrued dividends to the date fixed for redemption.

SECTION 4.2. Pro Rata Redemptions. All redemptions hereunder of less than the entire outstanding aggregate principal amount of all Trust Certificates are to be made pro rata among all outstanding Trust Certificates as provided in Section 4.4.

SECTION 4.3. Notice of Redemption. In case the Company shall desire to exercise any right to redeem all, or, as the case may be, any part of the Trust Certificates in accordance with the rights reserved so to do, it, or, at its Request, the Trustee, in the name of and at the expense of the Company, shall give notice of such redemption to each Holder of the Trust Certificates.

Each such notice of redemption shall specify the date fixed for the redemption and the principal amount of the Trust Certificates to be redeemed on such date and the applicable Make-Whole Premium Amount; shall state that the payment for redemption of the portions thereof to be redeemed will be made at the Principal Office of the Trustee concurrent with presentation and surrender of such Trust Certificates, that dividends accrued to the date fixed for the redemption will be paid as specified in said notice, and that on and after said date, if such redemption shall then be made, dividends thereon or the portion thereof to be redeemed will cease to accrue. In case the Trust Certificates are to be redeemed in part only, the notice shall state the portion of the principal amount of each Trust Certificate to be redeemed and shall state that on and after the redemption date, concurrent with presentation and surrender of the Trust Certificate, a new Trust Certificate or Trust Certificates in principal amount equal to the unredeemed portion thereof will be issued at the cost of the Company.

Notice of redemption shall be given to the Holders of Trust Certificates by mailing such notice of redemption by registered mail, postage prepaid, to each Holder of such Trust Certificates at the last address of such Holder as it appears in the register of Trust Certificates not less than 30 nor more than 60 days prior to the date fixed for redemption. Without limiting the foregoing, the Company shall give notice to each Holder of Trust Certificates no later than the fifth business day prior to the date fixed for redemption pursuant to Section 4.1 of its calculation of the Make-Whole Premium Amount calculated on and as of the sixth business day next preceding such redemption date, which notice shall specify in reasonable detail the basis for its determination or calculation.

SECTION 4.4. When Trust Certificates Called for Redemption Become Due and Payable. Notice of redemption having been mailed in the manner provided in Section 4.3, the Trust Certificates or portions of Trust Certificates specified in such notice shall become due and payable on the date and at the place stated in such notice at par, together with the applicable Make-Whole Premium Amount together with interest on

overdue payments at the dividend rate plus 1% and dividends accrued to the date fixed for redemption and on and after such date fixed for redemption (unless the Company shall default in the payment of the Trust Certificates so called for redemption) dividends on such Trust Certificates or portions of Trust Certificates shall cease to accrue. On presentation and surrender of such Trust Certificates at said place of payment in said notice specified, the said Trust Certificate, or the specified portions thereof, shall be paid and redeemed by the Company, at par, together with interest on overdue payments at the dividend rate plus 1%, together with the applicable Make-Whole Premium Amount and dividends accrued to the date fixed for redemption (except that if such date be a semiannual dividend payment date, such payment shall not include accrued dividends which shall be paid in the usual manner). Such Trust Certificates shall be presented and surrendered at said place of payment.

Upon any partial redemption of the Trust Certificates, the amount so redeemed shall be allocated to all Trust Certificates at the time outstanding in proportion to the unpaid principal amounts thereof, but only in units of \$1,000, and to the extent that such proportionate allocation shall not result in an even multiple of \$1,000, adjustment may be made by the Company to the end that successive allocations shall result in substantially proportionate payments.

Upon presentation of any Trust Certificate which is redeemed in part only, the Trustee shall execute and register and deliver to the Holder thereof, at the expense of the Company, a new Trust Certificate or Trust Certificates in an aggregate principal amount equal to the unredeemed portion of the Trust Certificate so presented with the Guaranty of the Company endorsed thereon.

Notwithstanding the foregoing, the Initial Holders, but excluding their successors, assigns, or transferees, shall not be required to present and surrender the Trust Certificates in the event of a redemption in part only, provided that any such Initial Holder provides prior to such redemption its written agreement to make notation of such redemption on the Trust Certificate or any Trust Certificate to be redeemed. Such Holder shall also furnish to the Trustee and the Company such security and indemnity as may be required by the Trustee and by the Company in their discretion; provided, however, that the written undertaking of such Holder delivered to the Trustee and the Company shall be sufficient security and indemnity under this Section 4.4.

SECTION 4.5. Certain Prepayments. The Trustee, if the Company so requests, shall apply all or a portion of Released Equipment Funds as defined in Section 6.10 to the prepayment, at par, of the Trust Certificates together with accrued dividends to the date of prepayment. In addition:

(a) With respect to Released Equipment Funds on deposit with the Trustee allocable to Worn Out Equipment, as defined in Section 6.7, which are less than \$2,000,000, the Company shall have a period of time up to but not exceeding the fifth business day prior to the second principal payment date after the date of the Officer's Certificate identifying such Worn Out Equipment to add additional Equipment to the Trust pursuant to Section 6.7 and Section 6.10. In the event the Company does not for any reason whatsoever add such additional Equipment within such time period, the Company shall cause the Trustee to apply the Casualty Value allocable to such Worn Out Equipment to the prepayment, at par, of the Trust Certificates, together with accrued dividends to the date of prepayment, on or prior to such second principal payment date after the date of such Officer's Certificate.

(b) In the event Released Equipment Funds on deposit with the Trustee allocable to Worn Out Equipment as defined in Section 6.7, at any time exceed \$2,000,000, the Company shall, within 85 days of the date of the Officer's Certificate identifying the last unit or units of such Worn Out Equipment that causes the Released Equipment Funds to exceed \$2,000,000, either add additional Equipment to the Trust pursuant to Sections 6.7 and 6.10 hereof or upon expiration of 90 days from the date of the Officer's Certificate, cause the Trustee to apply all of the cash then on deposit with the Trustee applicable to Worn Out Equipment and the Casualty Value of the unit or units of Trust Equipment which is then the subject of a determination that it constitutes Worn Out Equipment to the prepayment, at par, of the Trust Certificates together with accrued dividends to the date of prepayment.

All partial prepayments shall be applied pro rata among all outstanding Trust Certificates and in each case first against the final maturities of all outstanding Trust Certificates. Notice of prepayments pursuant to this Section 4.5 shall be delivered by the Trustee to the Holders of the Trust Certificates at least five business days prior to such prepayment.

## ARTICLE FIVE

### ACQUISITION OF TRUST EQUIPMENT BY TRUSTEE; DEPOSITED CASH

SECTION 5.1. Acquisition of Equipment by Trustee. The Company, as speedily as may be but in any event no later than the Outside Delivery Date, shall cause to be constructed and/or shall cause to be sold, assigned, transferred and set over unto the Trustee, as trustee for the Holders of the Trust Certificates, the Equipment described in Schedule A hereto.

To that end, the Company hereby assigns to the Trustee, all of its rights, title and interest under said construction contract or contracts and in and to said Equipment. Said Equipment shall be delivered to the Company on or prior to the Outside Delivery Date, which is hereby designated by the Trustee as its agent to accept such delivery, and an Officer's Certificate as to such delivery and acceptance shall be conclusive evidence of such delivery.

In the event that any unit of the Equipment described in Schedule A hereto shall suffer a Casualty Occurrence as defined in Section 6.7, prior to the Closing Date as defined in the Purchase Agreement, the Company may cause to be sold to the Trustee other Equipment of the same kind, condition, value, service life, and utility to be substituted under the Trust as provided in Sections 6.7 and 6.10, whereupon such other equipment shall become Equipment hereunder, and to that end the Company, upon entering into a contract or contracts for such other Equipment, shall assign to the Trustee all its rights, title and interest under the said contract or contracts. This Equipment Trust Agreement and Schedule A hereto shall be appropriately supplemented and such supplement duly filed with the Interstate Commerce Commission, and the Registrar General of Canada, if required by the provisions of Section 6.9, upon any such addition or substitution.

SECTION 5.2. Payments Out of Deposited Cash. From time to time, when and as any Equipment shall have been delivered to and accepted by the Trustee or its agent pursuant to Section 5.1, the Trustee shall (subject to the provisions of Section 5.3) pay, upon Request, to the manufacturer or manufacturers or owner or owners of the delivered Trust Equipment out of Deposited Cash then held by the Trustee, together with such additional sums, if any, paid by the Company to the Trustee in Advance Rentals such amounts as are necessary to provide for payment in full of the aggregate Cost of such Trust Equipment as specified in the Officer's Certificate furnished to the Trustee pursuant to Section 5.3(a). The Company covenants that, contemporaneously with any such payment by the Trustee out of Deposited Cash, it will pay to the Trustee such necessary amounts, if any, of Advance Rentals.

SECTION 5.3. Supporting Papers. The Trustee shall not pay out any Deposited Cash against the delivery of any of the Trust Equipment unless and until it shall have received:

(a) An invoice or invoices from the manufacturer or manufacturers and an Officer's Certificate which shall state (i) that such Trust Equipment is Equipment as herein defined, (ii) that the Cost of such Trust Equipment is an amount therein specified or is not less than an amount therein specified, and (iii) that such Trust Equipment was delivered to and accepted by the Company, as agent for the Trustee, and has been plated or marked in accordance with the provisions of Section 6.6 hereof.

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

(c) An Opinion of Counsel, satisfactory to the Trustee, that such bill or bills of sale are valid and effective, either alone or in connection with any other instrument referred to in such opinion, to vest in the Trustee upon purchase thereof title to such Trust Equipment free from all Liens except those contemplated under this Agreement; and

(d) A written notice from Chapman and Cutler, special counsel to the Initial Holders that all of the closing conditions contained in Section 7 of the Purchase Agreement have been satisfied; provided, however, that the foregoing written notice shall be required only in connection with the initial payment out of Deposited Cash for the first Delivery Date, as that term is defined in the Purchase Agreement and shall not be required on any subsequent payment.

(e) In case of any Trust Equipment not specifically described herein, an Opinion of Counsel that a proper supplement hereto in respect of such Trust Equipment has been duly executed by the Trustee and the Company, and duly filed and recorded in accordance with Section 8.4 hereof.

Any Officer's Certificate pursuant to this Section 5.3 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 delivered to the Trustee.

SECTION 5.4. Interest on Moneys Received by Trustee. Interest, if any, allowed by the Trustee upon any moneys received by it under the provisions hereof and any interest (in excess of accrued interest paid from Deposited Cash at the time of purchase) or other profit accruing upon any investment of Deposited Cash as permitted by Section 10.8 hereof shall belong to the Company and be paid to it by the Trustee, as long as the Company shall not be known to the Trustee to be in default hereunder.

SECTION 5.5. Application of Surplus Deposited Cash. Any Deposited Cash remaining in the hands of the Trustee after the Outside Delivery Date of all the Trust Equipment to be delivered pursuant to Section 5.1 and Section 5.3 hereof and payment therefor in the manner provided herein shall be applied by the Trustee to prepayment of the Trust Certificates on or before December 31, 1988 in the manner as described in Section 4.5.

## ARTICLE SIX

### LEASE OF TRUST EQUIPMENT TO THE COMPANY

SECTION 6.1. Lease of Trust Equipment. The Trustee does hereby let and lease all the Equipment to the Company, for a term of approximately 15 years ending not later than April 15, 2003.

SECTION 6.2. Inclusion of Additional or Substituted Equipment. In the event that the Company shall, as provided in Section 5.1 or Section 5.4(a) or in Section 6.7 and 6.10 hereof, cause to be purchased, constructed or remanufactured and transferred to the Trustee other equipment in addition to or in substitution for any of the Equipment herein specifically described, such other equipment shall be included as part of the Trust Equipment by supplement hereto executed by the Company and the Trustee and to be filed with the Interstate Commerce Commission (and the Registrar General's Office of Canada, if required by Section 6.9 hereof), and shall be subject to all the terms and conditions hereof in all respects as though it had been part of the Trust Equipment herein specifically described.

SECTION 6.3. Equipment Subjected Hereto by Delivery. As and when any Equipment shall from time to time be transferred and delivered to the Company as agent for the Trustee, the same shall, ipso facto and without further instrument of lease or transfer, pass under and become subject to all the terms and provisions hereof.

SECTION 6.4. Rental Payments; Limitation on Tax Liability. The Company hereby accepts the lease of all the Trust Equipment, and covenants and agrees to accept delivery and possession hereunder of the Trust Equipment as hereinbefore provided; and the Company covenants and agrees to pay to the Trustee (or, in the case of taxes, to the proper taxing authority), in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, rents 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 and whether or not at the time any thereof shall have been delivered to the Company):

(A) The Company shall pay to the Trustee, as hereinafter provided, as Advance Rental hereunder, sums which shall be equal to the difference between the Cost of the Trust Equipment (other than Trust Equipment subjected hereto pursuant to Sections 6.7 and 6.10 hereof) and the portion of such Cost to be provided out of the net proceeds 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, if any, 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 to the principal amount of the Trust Certificates issued;

(2) Upon delivery of any of such Trust Equipment, a sum equal to the portion of the Cost of such delivered Trust Equipment not paid out of Deposited Cash as provided for in Section 5.2 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, 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 Investments;

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

(3) The amounts of the dividends payable on the Trust Certificates, when and as the same shall become payable, and to the extent legally enforceable, interest at the applicable dividend rate plus 1% from the due date upon the amount of any dividends which shall not have been paid when due until the same shall be paid in full; and

(4) The installments of principal of the Trust Certificates and any applicable Make-Whole Premium Amount, when and as the same shall become payable, and interest at the applicable dividend rate plus 1% from the due date of any installment of principal or the due date of the Make-Whole Premium Amount which

shall not have been paid when due until the same shall be paid in full, whether upon the due dates thereof or maturity of the Trust Certificates 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 any government or taxing authority of the United States of America or of any state, county, municipality or other taxing authority to be paid on behalf of, or withheld from any payment of principal of, Make-Whole Premium Amount, if any, or dividends on or in respect of any Trust Certificate payable to, the Holder of any Trust Certificate. The Company shall not be required to pay any tax, assessment or governmental charge so long as it shall in good faith and by appropriate legal proceedings contest the validity thereof, unless in the judgment of the Holders of not less than 51% of the outstanding principal amount of the Trust Certificates the rights or interests of the Trustee or of the Holders of the Trust Certificates may be materially endangered thereby.

SECTION 6.5. Termination of Trust and Lease. After all sums due or to become due from the Company hereunder or the Purchase Agreement and under the Company's guarantees endorsed on the Trust Certificates shall have been paid in full, (a) such payments shall be deemed to represent payment of the full purchase price for the Company's purchase at such time of the Trust Equipment from the Trustee, (b) any moneys remaining in the hands of the Trustee after payment in full of the principal of, Make-Whole Premium Amount, if any, dividends and to the extent legally enforceable, together with interest at the applicable dividend rate plus 1% on any portion thereof overdue on all outstanding Trust Certificates, after paying the expenses of the Trustee, including its reasonable compensation, and after payment of all other sums due and owing from the Company under this Agreement, or the Purchase Agreement shall be paid to the Company, (c) the term of the lease hereunder shall terminate and title to all the Trust Equipment shall vest in the Company, and (d) the Trustee shall execute for recordation 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 the public records the Company's title to all the Trust Equipment under the laws of any jurisdiction; provided, however, that (subject to Section 6.7 hereof with respect to any Trust Equipment which has suffered a Casualty Occurrence) 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 which shall have been deposited or are held for the payment of the principal amount of or dividends, and to the extent legally enforceable, together with interest at the applicable dividend rate plus 1% on any portion thereof overdue on any Trust Certificates, remaining unclaimed for six years after the date of maturity of such Trust Certificates or the date such dividends, were due and payable, as the case may be, shall be repaid by the Trustee to the Company, and all liability of the Trustee with respect to such money shall thereupon cease and the Holders of such Trust Certificates shall thereafter be entitled to look only to the Company for payment thereof; provided, however, that the Trustee, before being required to make any such repayment, shall provide written notice to the Holders 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 such notice, any unclaimed balance of such moneys then remaining upon deposit with the Trustee will be repaid to the Company. Any proceeds as of a result of investment of such money shall be retained by the Company. In no event shall the Holders of such Trust Certificates be entitled to interest upon such money whether held by the Trustee or so repaid to the Company.

SECTION 6.6. Marking of Trust Equipment; Permissible Markings. The Company agrees that, at or before the delivery to the Company of each unit of the Trust Equipment, there shall be plainly, distinctly, permanently and conspicuously marked upon each side of such unit, by a metal plate or otherwise, the following words, in letters not less than one inch high:

OWNED BY A BANK OR TRUST COMPANY UNDER A SECURITY AGREEMENT  
FILED WITH THE I.C.C. PURSUANT TO 49 U.S.C. 11303

Such marking shall be readily visible and shall 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 such marking shall at any time be removed, defaced or destroyed, the Company shall promptly cause the same to be restored or replaced. The Company shall not change, or permit to be changed, the numbers of any of the Trust Equipment at any time covered hereby (or any numbers which may have been substituted as herein provided) except in accordance with a statement of new numbers to be substituted therefor which previously shall have been filed with the Trustee by the Company and which shall be filed and recorded as provided in Section 8.4 hereof.

The Trust Equipment may be lettered "ATSF" or "SANTA FE", and may bear the circle and cross emblem of the Company in any of its forms, and may be lettered with the name or initials of any railroad company which is permitted to use such equipment as hereinafter provided, or may be lettered in some other appropriate manner for convenience of identification of the

leasehold interest of the Company therein. The Trust Equipment may also be numbered for convenience of identification and bear identifying symbols and lettering of the Company. During the continuance of the lease provided for herein, the Company shall not allow the name of any person, association or corporation to be placed on any of the Trust Equipment as a designation which might be interpreted as a claim of ownership thereof by the Company or by any person, association or corporation other than the Trustee.

SECTION 6.7. 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, (a) at all times meeting the standards set by the Federal Railroad Administration, (b) doing all things necessary in maintaining the Trust Equipment to meet any new standards set by the Federal Railroad Administration and (c) agreeing that anything added to the Trust Equipment to meet any such new standards will be deemed to be an accession to the Trust Equipment, unless and until it becomes worn out (hereinafter referred to as "Worn Out Equipment") or shall be lost, stolen, destroyed or irreparably damaged, or shall be requisitioned or taken over by any governmental authority under the power of eminent domain, or otherwise (each such occurrence, except for any requisition which by its terms is indefinite or does not exceed the final maturity date of the Trust Certificates, being hereinafter called a "Casualty Occurrence"). The Company shall as soon as possible following the occurrence of any specific event but in any event, within 90 days after such occurrence, determine whether a unit of Equipment has suffered a Casualty Occurrence and within 30 days after such determination the Company shall deliver to the Trustee an Officer's Certificate describing such unit and stating the then Casualty Value of such Equipment and shall at such time either (A) deposit with the Trustee an amount in cash equal to the Casualty Value of such Equipment or (B)(i) cause to be transferred to the Trustee additional Equipment: (x) free from all Liens (y) having a net book value at least equal or greater than to the then Casualty Value of such Equipment having suffered the Casualty Occurrence and (z) having a Casualty Value and remaining service life at least equal to or greater than that of the Equipment having suffered the Casualty Occurrence immediately prior thereto, (ii) deliver to the Trustee, in respect of such additional Equipment, certificates, bills of sale and opinions of counsel, all in like manner as provided in Section 5.3 hereof, and in addition, an Officer's Certificate describing such additional Equipment and stating the Cost and the then Casualty Value thereof, and (iii) cause Schedule A hereto to be supplemented and such supplement shall be duly filed with the Interstate Commerce Commission (and the Registrar General's Office of Canada, if required by Section 6.9 hereof), all in accordance with all applicable requirements. With respect to additional Equipment added to the Trust pursuant to this Section 6.7 and Section 6.10, the Casualty Value of such additional Equipment added to the Trust

shall be deemed to be the Casualty Value of the Equipment having suffered the Casualty Occurrence. The rights and the remedies of the Trustee to enforce or to recover any of the Rentals shall not be affected by reason of such Casualty Occurrences. Cash deposited with the Trustee pursuant to this Section 6.7 shall be held and applied as provided in Section 4.5 or Section 6.10, as applicable.

As long as cash on deposit with the Trustee allocable to Worn Out Equipment does not exceed \$2,000,000, the Company shall have a period of time up to but not exceeding the fifth business day prior to the second principal payment date after the date of the Officer's Certificate identifying any unit or units of Trust Equipment as Worn Out Equipment, to either add additional Equipment pursuant to Section 6.10 to the Trust (and satisfy the requirements of clauses (B)(i), (ii) and (iii) of the first paragraph of this Section 6.7 with respect thereto) or to apply the Casualty Value allocable to the applicable unit or units of Worn Out Equipment to the prepayment, at par, of the Trust Certificates, together with accrued dividends to the date of prepayment, all as provided in Section 4.5(a).

In the event cash on deposit with the Trustee allocable to such Worn Out Equipment exceeds \$2,000,000, at the time any unit or units of Trust Equipment shall be determined to be Worn Out Equipment, the Company shall, within 85 days of the date of such Officer's Certificate, either add additional Equipment to the Trust pursuant to Section 6.10 to the Trust (and satisfy the requirements of clauses (B)(i), (ii) and (iii) of the first paragraph of this Section 6.7 with respect thereto) or apply all of the cash then on deposit with the Trustee applicable to Worn Out Equipment and the Casualty Value of the unit or units of Trust Equipment which is then the subject of a determination that it constitutes Worn Out Equipment to the prepayment, at par, of the Trust Certificates, together with accrued dividends to the date of prepayment, all as provided in Section 4.5(b).

SECTION 6.8. Reports. The Company covenants and agrees to furnish to the Trustee and each Holder of Trust Certificates, whenever required by the Trustee or any such Holder, and at least once in every calendar year, following the calendar year in which occurs the first delivery of any of the Trust Equipment and during the continuance of the lease provided for herein, an Officer's Certificate stating (a) the amount, description and numbers of all the Trust Equipment that may have become worn out, or that may have suffered a Casualty Occurrence since the date of the last preceding statement, and (b) such other information as to the condition and state of repair of the Trust Equipment as the Trustee or any Holder of the Trust Certificates may reasonably request. Any Holder of the Trust Certificates, upon at least ten business days prior written notice to the Company and the Trustee, by their respective agents and at their sole cost and risk shall have the right once in each calendar year, but shall be under no duty, to inspect the Trust Equipment, at the then existing

locations thereof; provided that in no event may the Holders of the Trust Certificates inspect the Trust Equipment more than once collectively in any calendar year, provided further, however, that such inspections may be unlimited in number following an Event of Default. The Trustee shall give written notice to each Holder of the Trust Certificates of any such election to so inspect the Trust Equipment within five business days after the Trustee has received notice from any Holder of any such election and shall permit participation in said inspection by any and all Holders of the Trust Certificates.

**SECTION 6.9. Possession of Trust Equipment; Assignments.**  
The Company, so long as an Event of Default shall not exist and be continuing hereunder, shall be entitled to the possession of the Trust Equipment from and after delivery thereof to the Company, and the use thereof, whether under lease or otherwise, upon the lines of railroad owned or operated by the Company (either alone or jointly with another) or by any Affiliate of the Company (either jointly or with another), or upon lines over which the Company or any such Affiliate shall have trackage or other operating rights, and the Company shall, so long as no Event of Default shall exist and be continuing hereunder, also be entitled to permit the use of the Trust Equipment upon connecting and other carriers in the usual interchange of traffic with the Company and upon connecting and other carriers over which through service may from time to time be afforded to the Company, but only upon and subject to all the terms and conditions of this Agreement, and provided in any such case that the Company shall have made, in any such case where any of the Trust Equipment shall be in regular or dedicated use outside the continental United States at any one time all such filings or registrations as may be necessary to ensure that the Trustee's title to and Lien on the Trust Equipment continues to be fully secured and perfected; provided, however, that no more than 20% of the Trust Equipment may be outside the continental United States at any one time. Prior to the use or possession in Canada of any of the units of Trust Equipment (exclusive of maintenance or service thereof by the manufacturer or such other company that provides maintenance of the Equipment) the Company shall deposit, or cause to be deposited, this Equipment Trust Agreement and supplements thereto, if any, and any other relevant documents and agreements with the Registrar General of Canada and shall provide for publication of notice of such deposit, all in accordance with Section 86 of the Railway Act of Canada. Prior to any regular or dedicated use or the use of more than 10% of the Trust Equipment outside the continental United States, the Company shall deliver to the Trustee a favorable opinion from Canadian counsel for the Company in the form contemplated by the next following paragraph of this Section 6.9. Anything contained in this Section 6.9 to the contrary notwithstanding, in no event shall any of the Trust Equipment be used outside the continental United States or Canada.

Without limiting the foregoing provisions of this Section 6.9, and subject to the provisions of the following paragraph, governing sublease of the Trust Equipment, the Company may sublease up to 20% of the units of Trust Equipment for use and operation in Canada subject to the following: prior to such sublease: (a) the Company shall have deposited or caused to be deposited, supplements to this Agreement, if and to the extent necessary, and any other relevant documents and agreements with the Registrar General of Canada and shall have provided for publication of notice of such deposit, all in accordance with Section 86 of the Railway Act of Canada, (b) shall have delivered to the Trustee a favorable opinion from Canadian counsel for the Company acceptable to the Trustee and the Holders, in form and substance satisfactory to the Trustee and the Holders, to the effect that:

(i) this Equipment Trust Agreement and supplements, if any, have been duly deposited with the Registrar General of Canada in accordance with Section 86 of the Railway Act;

(ii) provision has been made for publication of notice of the deposit of this Equipment Trust Agreement and supplements, if any, as required by Section 86 of the Railway Act, and

(iii) no other filing or recordation is necessary for the protection of the rights of the Trustee to the Trust Equipment in Canada while the Equipment is located, moving or running on or over the lines of tracks of a railway company within the meaning of the Railway Act, or having maintenance or service performed, and;

(iv) the Equipment Trust Agreement has been duly filed with the Registrar General of Canada and no filing or recordation is necessary to establish and preserve the right of the Trustee or the Holders of the Trust Certificates in and to the Trust Equipment as delivered under the Equipment Trust Agreement in Canada.

and (c) the Company shall have satisfied the requirements of the next following paragraph of this Section 6.9 with respect to the proposed sublessee and sublease.

The Company shall not, except as provided in the next succeeding paragraph, assign or transfer its rights hereunder, and shall not without first obtaining the written consent of the Trustee sublet the Trust Equipment or any part thereof except to an Affiliate, in which case such sublease shall only be for use of the Trust Equipment within the limitations provided for in the first paragraph of this Section 6.9 and shall be expressly made subject and subordinate to all the provisions of this Agreement and the rights and remedies of the Trustee hereunder; and the Company shall not, without such written consent, except as provided in this Section 6.9, 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 no Event of Default shall have occurred and be continuing under this Agreement, shall be entitled without such prior written consent to sublet the Trust Equipment or any part thereof to another Class I railroad company and to sublet up to 10% at any one time of the Trust Equipment to any other corporation, in any such case under a written sublease for use within the limitations provided for in the first two paragraphs of this Section 6.9 and which expressly provides (a) that the rights of the sublessee in and to such Trust Equipment shall be subject and subordinate to this Agreement and to the rights of the Trustee in and to such Trust Equipment, including the rights of the Trustee upon the happening of an Event of Default hereunder and (b) 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 6.6 hereof. Notwithstanding any sublease of the Trust Equipment, the Company shall remain primarily liable for the Company's obligations hereunder. The Company shall deliver to the Trustee a copy of any such sublease promptly after its execution.

The Company may assign or transfer its rights and obligations hereunder to a railroad company or other acquiring entity which shall acquire all or substantially all the lines of railroad of the Company whether by purchase from or merger with the Company; provided, however, that such railroad or acquiring entity (a) shall be a corporation duly organized, validly existing and in good standing under the laws of the United States or a state thereof; (b) shall execute an appropriate instrument satisfactory in form to the Trustee by which such railroad or acquiring entity expressly assumes and agrees to perform each and all of the obligations and covenants of the Company hereunder and under the Purchase Agreement and the Guaranty endorsed on the Trust Certificates; and provided further, however, that no Event of Default shall have occurred and be then continuing and none shall occur upon such purchase or merger.

The Trustee shall, with the Written Direction given by the Holders, have the right to declare the lease provided for herein terminated in case of any unauthorized assignment or transfer of the Company's rights hereunder or in case of any unauthorized transfer or sublease or use of any of the Trust Equipment. The election of the Trustee with Written Direction to terminate the lease provided for herein shall have the same effect as the retaking of the Trust Equipment by the Trustee as hereinafter provided.

In the event that prior to the expiration of the term of this Agreement the use of any unit of Trust Equipment is requisitioned or taken by any governmental authority under the power of eminent domain or otherwise for an indefinite period or for a stated period ending on or before the final maturity of the Trust Certificates, the Company's duty to pay Rentals in respect thereof and to perform all of its obligations under the

Purchase Agreement and the Guaranty endorsed on the Trust Certificates shall continue for the duration of such requisitioning or taking. The Company shall be entitled to receive and retain for its own account all sums payable for any such period by such governmental authority as compensation for requisition or taking of possession, but if any Event of Default shall have occurred and be continuing, such sums shall be paid over to the Trustee upon receipt and be applied in like manner as provided in Section 7.3, or paid over to the Company if or when such Event of Default shall have been cured or waived.

**SECTION 6.10. Release and Replacement of Trust Equipment.** Any units of the Trust Equipment which shall have been the subject of Casualty Occurrence 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 satisfaction of the terms and conditions of Section 6.7 and this Section 6.10 with respect to such units. No such release shall be made unless and until the Company shall have paid to the Trustee an amount equal to such Casualty Value of such Unit of Trust Equipment or caused to be transferred to the Trust additional Equipment as provided for in Section 6.7.

Subject to the terms of Section 4.5 and Section 6.7, any money paid to the Trustee pursuant to this Section 6.10 and Section 6.7 hereof (the "Released Equipment Funds") shall, so long as no Event of Default shall have occurred and be continuing, be applied either to or toward the payment in full of the Cost of a unit or units of Equipment to replace such unit or units of Trust Equipment being replaced in respect of which such Released Equipment Funds have been paid by the Company to the Trustee or to the prepayment of the Trust Certificates pursuant to Section 4.5. Anything herein contained to the contrary notwithstanding, the deposit of Released Equipment Funds with the Trustee pursuant hereto shall not be deemed or construed to relieve the Company of its obligations with respect to the payment in full of installments of principal, Make-Whole Premium Amount, if any, and dividends and interest on overdue payments of principal and dividends at the applicable dividend rate plus 1% on and in respect to the Trust Certificates as and when the same become due and payable on or in respect to its obligations under the Guaranties endorsed on the Trust Certificates.

So long as no Event of Default shall have occurred and be continuing, any money paid to the Trustee pursuant to Section 6.7 and this Section 6.10 shall be invested, pending its application as hereinabove provided, in Investments as provided in Section 10.8 hereof.

The Company will cause any replacement unit of Equipment to be marked as provided in Section 6.6. Any and all such

replacements of Equipment shall constitute accessions to the Trust Equipment and shall be subject to all of the terms and conditions of this Agreement as though part of the original Trust Equipment delivered hereunder and shall be included in the term "Trust Equipment" as used in this Agreement. Title to all such replacements shall be free and clear of all Liens and shall be taken initially and shall remain in the name of the Trustee subject to the provisions hereof, and the Company shall promptly execute, acknowledge, deliver, file and record all such documents (including the filing with the Interstate Commerce Commission in accordance with Section 11303 of the Interstate Commerce Act and the Registrar General's Office of Canada, if required by the provisions of Section 6.9 hereof, of an appropriate supplemental agreement describing such replacements) and do, or cause to be done, any and all such acts as may be necessary to cause such replacements to come under and be subject to this Agreement and to protect the title of the Trustee to such replacements. All such replacements shall be warranted in like manner as the units of Trust Equipment replaced if replaced with new Equipment.

Whenever the Company shall file with the Trustee, pursuant to the provisions of this Section 6.10, a Request to apply money to or toward the Cost of a replacement unit of Equipment, the Company shall file therewith in such number of counterparts as may reasonably be requested:

(a) an Officer's Certificate certifying (1) that such replacement unit is Equipment as defined herein and has been marked as required by the provisions of this Section 6.10; (2) the Cost of such replacement unit, (3) that the Casualty Value of such replacement unit is not less than the Casualty Value of the unit being replaced; and (4) that the Casualty Value and remaining service life of such replacement unit is at least equal to the Casualty Value and remaining service life of the unit of Trust Equipment which has been the subject of the related Casualty Occurrence; and

(b) an Opinion of Counsel for the Company that (1) title to such replacement unit is vested in the Trustee free and clear of all Liens and that such unit has come under and become subject to this Agreement, and (2) that a supplement to this Agreement has been duly filed with the Interstate Commerce Commission in accordance with 49 U.S.C. §11303 and the Registrar General's Office of Canada, if required by the provisions of Section 6.9, and that no other filing or recordation is necessary to establish and preserve the rights of the Trustee or the Holders of the Trust Certificates in and to such replacement unit in any state of the United States of America or the District of Columbia.

If an Event of Default shall have occurred and be continuing, all money then held by the Trustee pursuant to

Section 6.7 and this Section 6.10 shall be applied by the Trustee as if such money were money received upon the sale of Equipment pursuant to Section 7.3.

In order to facilitate the sale, or other disposition of any unit of Trust Equipment suffering a Casualty Occurrence or no longer being suitable for use, the Trustee shall upon request, after deposit by the Company of the required amount, execute and deliver to the Company or the Company's vendee, assignee or nominee, a bill of sale (without warranties) for such unit, and such other documents as may be required to release such unit from the terms and scope of this Agreement, in such form as may be reasonably requested by the Company.

SECTION 6.11. Indemnification by the Company. The Company covenants and agrees to indemnify the Trustee and each Holder 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 material respects with the laws of the United States of America and of all the states and any other jurisdiction in which the Trust Equipment, or any part thereof, may be operated, and with all lawful acts, rules, regulations and orders of the Interstate Commerce Commission and of all other commissions, boards and other legislative, executive, administrative or judicial bodies or officers having power to regulate or supervise any of the Trust Equipment, including without limitation all lawful acts, rules, regulations and orders of any body having competent jurisdiction relating to automatic coupler devices or attachments, air brakes or other appliances and requirements for the alteration or maintainance of any unit of the Trust Agreement. Provided, however, that the Company may in good faith contest the validity of any such law, act, rule, regulation or order, or the application thereof to the Trust Equipment or any part thereof, in any reasonable manner which will not in the judgment of the Trustee materially endanger the rights or interests of the Trustee or of the Holders of the Trust Certificates. The Company shall not be relieved from any of its obligations hereunder by reason of the assertion or enforcement of any such claims or the commencement or prosecution of any litigation in respect thereof. The indemnification obligations of the Company under this Section 6.11 shall survive the termination of this Agreement and the payment in full of the Trust Certificate.

SECTION 6.12 Insurance. The Company will, at all times while this Agreement is in effect and at its own expense, cause to be carried and maintained in full force and effect with financially sound and reputable insurers in such amounts and with such terms (including coinsurance, deductibles, limits of liability and loss payment provisions) as are customary under the Company's risk management programs and in keeping with

risks assumed by corporations of established reputation engaged in the same businesses and similarly situated: (i) public liability insurance (including Federal Employer Liability Act coverage) against loss or damage for personal injury, death or property damage suffered upon, in or about any premises occupied by it or occurring as a result of the ownership, maintenance or operation by it of any automobile, truck or other vehicle or services rendered by it; (ii) all risk property insurance on the Trust Equipment; and (iii) insurance against such other risks as are usually insured against by corporations of established reputation engaged in the same businesses and similarly situated; provided, however, that the Company may self-insure with respect to any or all of the above as is customary under the Company's risk management programs and in keeping with the risks assumed by corporations of established reputation engaged in the same businesses and similarly situated; and provided further, that any such self-insurance will be comparable to self-insurance provisions generally applicable to other comparable equipment owned or leased by the Company.

## ARTICLE SEVEN

### REMEDIES IN EVENT OF DEFAULT

SECTION 7.1. Events of Default. The Company covenants and agrees that in case:

(a) the Company shall default in the payment of any part of the Rental (including Advance Rental) payable hereunder for more than 10 days after the same shall have become due and payable; or

(b) the Company shall make or suffer any unauthorized assignment or transfer of its rights hereunder or shall make or permit 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 or any Holder of the Trust Certificates shall have demanded in writing to the Company such cancellation and recovery of possession; or

(c) the Company shall, for more than 30 days after the Trustee or any Holder of the Trust Certificates shall have demanded in writing addressed to the Company performance thereof, fail or refuse to comply with any other of the terms and covenants hereof on its part to be kept and performed or to make provision satisfactory to the Trustee, or such Holder, as the case may be, for such compliance; or

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

(e) the guaranty of the Company in respect of any Trust Certificate shall cease to be in full force and effect for any reason whatsoever, including, without limitation, a determination by any governmental body or court that such guaranty is invalid, void or unenforceable or the company shall contest or deny in writing the validity or enforceability of any of its obligations in respect of any such guaranty; or

(f) any warranty, representation or other statement by or on behalf of the Company contained in this Agreement, the Purchase Agreement or in any instrument furnished in compliance with or in reference to this Agreement or the Purchase Agreement is false in any material respect when made; or

(g) any proceeding shall be commenced by or against the Company under Title 11 of the United States Code, as now constituted or as hereafter amended, and, unless dismissed, nullified, stayed or otherwise rendered ineffective within 60 days from the filing (but then only so long as any of such shall continue in force or such ineffectiveness shall continue), all of the obligations of the Company under this Agreement, the Purchase Agreement and the obligations of the Company under the Company's 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 (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees within 60 days after such shall have been filed, 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

(h) 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 extension (other than a law which does not permit any readjustment of the indebtedness payable hereunder) and, unless such proceedings shall have been dismissed, nullified, or stayed otherwise rendered ineffective within 60 days from the commencement of such proceedings (but then only so long as any of such shall continue in force or such ineffectiveness shall continue), all of the Company's obligations under this Agreement, the Purchase Agreement and the 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 60 days after such proceedings shall have been commenced;

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 in the case of any default pursuant to Section 7.1(a), and upon the written request of the Holders of not less than 51% in principal amount of then outstanding Trust Certificates in the case of all other Events of Default, shall, by notice in writing delivered to the Company, declare to be due and payable forthwith upon expiration of the applicable period of grace the entire amount of the Rentals and any other amounts hereunder (including any unpaid Advance Rental, but not including Rentals required for the payment of dividends accruing after the date of payment of the accelerated Rentals) payable by the Company and not theretofore paid. Thereupon the entire amount of such Rentals shall forthwith upon expiration of the applicable period of grace become and shall be due and payable immediately without further demand, and to the extent legally enforceable, together with interest at the applicable dividend rate plus 1% on any portion thereof overdue; and the Trustee shall be entitled to recover judgment for the total amount so becoming payable by the Company, and to collect such judgment out of any property of the Company wherever situated.

In addition, in case one or more Events of Default shall happen, the Trustee, upon the written request of the Holders of not less than 25% in principal amount of the then outstanding Trust Certificates in the case of any default pursuant to Section 7.1(a), and upon the written request of the Holders of not less than 51% in principal amount of then outstanding Trust Certificates in the case of all other Events of Default, 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, and, to the extent legally enforceable, together with interest at the applicable dividend rate plus 1% on respective portions thereof overdue.

Notwithstanding the acceleration of the Rentals and the outstanding principal amount of the Trust Certificates, the Company shall only be required to pay an amount equal to the outstanding principal amount of, and accrued dividends on the Trust Certificates and, to the extent legally enforceable, together with interest at the applicable dividend rate plus 1% on any portion thereof overdue and all expenses of collection, including reasonable attorney's fee.

In case the Company shall fail to pay, or cause to be paid, any installment of Rental payable pursuant to Section 6.4B(3) or B(4) hereof when and as the same shall have become due and payable or any other sum due and owing hereunder or under the Purchase Agreement and such default shall have continued beyond the applicable period of grace, 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 or other sums so due and unpaid and/or for the payment of sums due and owing pursuant to the Guaranties endorsed on the Trust Certificates 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. The Company shall bear all such expenses of collection, including reasonable attorneys' fees and expenses.

In case there shall be pending proceedings for the bankruptcy or for the reorganization of the Company or other obligor upon the Trust Certificates under Title 11 of the United States Code 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 such other obligor 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 or for such other obligor, the Trustee, irrespective of whether the Rental or Advance 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 7.1, 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 payment of the accelerated Rentals, 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 at any trial or other proceedings relative thereto, and any such action or proceedings instituted by the Trustee shall be brought in its own name 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 7.2. Remedies. In case of the happening of any Event of Default, the Trustee shall have and may exercise all rights of a secured party under Article 9 of the Uniform Commercial Code of any applicable jurisdiction and may by its agents enter upon the railroads and premises of the Company and of any sublessee or user of the Trust Equipment and take possession of all or any part of the Trust Equipment and withdraw the same from said railroads and premises, retaining all payments which up to that time may have been made on account of Rental for the Trust Equipment and otherwise, and shall be entitled to collect, receive and retain all unpaid per diem, mileage or other charges of any kind earned by the Trust Equipment or any part thereof, and may lease the Trust Equipment or any part thereof, or, with or without retaking possession thereof (but only after declaring due and payable the entire amount of Rentals payable by the Company as provided in Section 7.1 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, in so far as may be necessary to perform and fulfill the trust hereunder, at public or private sale for cash or upon credit, in its discretion, and may proceed otherwise to enforce its rights and the rights of the Holders of the then outstanding Trust Certificates hereunder in the manner herein provided. Upon any such sale, the Trustee itself may bid for the property offered for sale or any part thereof. Any such sale may be held or conducted at such place and at such time as the Trustee may specify, or as may be required by law, and without gathering at the place of sale the Trust Equipment to be sold, and in general in such manner as the Trustee may determine, but so that the Company may and shall have a reasonable opportunity to bid at any such sale. Upon such taking possession or withdrawal or lease or sale of the Trust Equipment, the Company shall cease to have any rights or remedies in respect of the Trust Equipment hereunder, but all such rights and remedies

shall be deemed thenceforth to have been waived and surrendered by the Company, and no payments theretofore made by the Company for the rent or use of the Trust Equipment or any of it shall, in case of the happening of any Event of Default and such taking possession, withdrawal, lease or sale by the Trustee, give to the Company any legal or equitable interest or title in or to the Trust Equipment or any of it or any cause or right of action at law or in equity in respect of the Trust Equipment against the Trustee or the Holders of interests hereunder. No such taking possession, withdrawal, lease or sale of the Trust Equipment by the Trustee shall be a bar to the recovery by the Trustee from the Company of Rentals then or thereafter due and payable, and the Company shall be and remain liable for the same until such sums shall have been realized as, with the proceeds of the lease or sale of the Trust Equipment, shall be sufficient for the discharge and payment in full of all the items mentioned in Section 6.4 hereof (other than dividends or interest not then accrued), whether or not they shall have then matured.

SECTION 7.3. 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 7.1 and 7.2 hereof, all payments made by or for 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 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 and the Holders in accordance with the provisions of this Agreement, (b) of the dividends then due, with interest on overdue dividends at the applicable dividend rate plus 1%, to the extent legally enforceable, and of the principal of all the outstanding Trust Certificates whether such Trust Certificates shall have then matured by their terms or not, with interest on overdue principal at the applicable dividend rate plus 1%, all such payments to be in full if such proceeds shall be sufficient, and, if not sufficient, then applied first to dividends and interest and second to principal, (c) all other charges, expenses, advances or sums due and owing from the Company in accordance with the provisions of this Agreement, the Purchase Agreement, or the guaranties, and (d) the remainder thereof to the Company.

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 7.4. Waiver of Default. If at any time after the principal of all the Trust Certificates shall have been declared and/or become due and payable or if at any time after the entire amount of Rentals shall have been declared and/or become due and payable, all as in Section 7.1 hereof provided, but before April 15, 2003, all arrears of Rentals and Advance Rentals (with, to the extent legally enforceable, interest upon any overdue Rental installments at the applicable dividend rate plus 1% on the respective portions of such Rental installments allocable to the outstanding Trust Certificates and any overdue Advance Rentals), the expenses and reasonable compensation of the Trustee and Holders, 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 or under the Purchase Agreement or Guaranties (other than payments in respect of Trust Certificates and Rental installments which shall not at the time have matured according to their terms except by reason of such acceleration) shall be paid by or for 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 not less than 51% 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 7.5. Obligations Not Affected by Remedies. No retaking of possession of the Trust Equipment by the Trustee, or any withdrawal, lease or sale thereof, nor any action or failure or omission to act against the Company or in respect of the Trust Equipment, on the part of the Trustee or on the part of 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 7.6. Delivery of 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 of the Company 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 and assembled at such point or points on such railroad as shall be designated by the Trustee and shall there deliver or cause to be delivered the same to the Trustee, or the Trustee may at its option keep the Trust Equipment on any of the lines of railroad or premises of the Company or of any Affiliate of the Company until the Trustee shall have leased, sold or otherwise disposed of the same, and for such purpose the Company agrees to furnish, or cause to be furnished, without charge for rent or storage the necessary facilities at any such point or points selected by the Trustee. The Company agrees to maintain and keep the Trust Equipment in good order and proper repair all as provided in Section 6.7 hereof after possession of the Trust Equipment has been demanded by the Trustee until such Trust Equipment has been delivered to the Trustee for disposition. 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 7.7. Trustee to Give Notice of Default. The Trustee shall give to the Holders of the Trust Certificates notice of each Event of Default hereunder actually known to a responsible officer of the Corporate Trust Department of the Trustee immediately upon such officer so learning of the same.

SECTION 7.8. Control by Holders of Trust Certificates. The Holders of not less than 51% in aggregate unpaid principal amount of the then outstanding Trust Certificates, by Written Directions executed and delivered to the Trustee, shall have the right to direct the time, method, and place of conducting any proceeding for any remedy available to the Trustee or exercising or refraining from exercising any trust or power conferred on the Trustee; provided, however, that the Trustee shall have the right to decline to follow any such direction (a) if the Trustee shall be advised by counsel that the action so directed may not lawfully be taken or (b) if the Trustee shall be advised by counsel that the action so directed may involve it in personal liability unless it shall have received a satisfactory indemnity therefor. The Trustee may take any other action deemed proper by the Trustee which is not inconsistent with any such direction given hereunder.

SECTION 7.9. Unconditional Right of Holders of Trust Certificates to Sue for Principal and Interest. Notwithstanding any other provision in this Agreement, the right (which, it is understood, shall exist) of any Holder of any Trust Certificate to receive payment of the principal of,

Make-Whole Premium Amount, and dividends and interest on, such Trust Certificate on or after the respective due dates expressed in such Trust Certificate, or to institute suit for the enforcement of any such payment or the guarantee thereof by the Company on or after such respective dates, shall not be impaired or affected without the consent of such Holder, except no such suit shall be instituted if and to the extent that the institution or prosecution thereof or the entry of judgment therein would, under applicable law, result in the surrender, impairment, waiver or loss of the title reserved under this Agreement upon any property subject hereto.

SECTION 7.10. Remedies to be 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 EIGHT

### ADDITIONAL COVENANTS AND AGREEMENTS BY THE COMPANY

SECTION 8.1. 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 (including Advance Rentals) and of the other amounts provided for herein, including but not limited to any Make-Whole Premium Amount.

SECTION 8.2. Guaranty to Holders of Trust Certificates. The Company absolutely and unconditionally covenants, agrees and guarantees that the Holder of each of the Trust Certificates shall receive all installments of the principal amount of such Trust Certificates thereof and applicable Make-Whole Premium Amounts, if any, 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 shall receive dividends thereon in like money at the rate specified therein from the date specified therein to the date of maturity or earlier redemption, if any, of such Trust Certificate, at the times and place and otherwise as expressed in the Trust Certificates (and, if not so paid, with interest thereon on the dividends and principal at the applicable dividend rate plus 1% 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, Make-Whole Premium Amount, if any, and of the dividends thereon and to the extent legally enforceable interest at the applicable dividend rate plus 1% on any portion thereof overdue, 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 manual signature of one of its authorized officers. In case any officer of the Company whose signature shall appear on said guaranty shall cease to be such officer before the Trust Certificates shall have been issued and delivered by the Trustee, or shall not have been acting in such capacity on the date of the Trust Certificates, such guaranty shall nevertheless be as effective and binding upon the Company as though the person who signed said guaranty had not ceased to be, or had then been acting as, such officer.

SECTION 8.3. Discharge of Liens, Taxes, etc. The Company will pay or satisfy and discharge any and all sums claimed by any party by, through or under the Company which, if unpaid, might become a Lien upon any unit of Trust Equipment and any Lien which might be levied against or imposed upon any unit of Trust Equipment (except upon the leasehold and residual interest of the Company therein) as a result of the failure of the Company to perform or observe any of its covenants or agreements under this Agreement or pursuant to the guaranties, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested by the Company in good faith and by appropriate legal proceedings in any reasonable manner and, in the opinion of counsel to the Company to such effect, the nonpayment thereof does not materially and adversely affect the property or rights of the Trustee or the Holders of the Trust Certificates hereunder.

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.

(b) All payments to be made by the Company hereunder will be free of expense to the Trustee for collection or other charges and will be free of expense to be Trustee with respect to the amount of any local, state, provincial or federal Canadian or United States or Mexican taxes (other than net income, gross receipts, excess profits and similar taxes imposed on the Trustee in connection with the execution of its duties under this Agreement), assessments or license fees (and any charges, fines or penalties in connection therewith) (hereinafter called "Impositions") hereafter levied or imposed upon or in connection with or measured by this Agreement or any of the instruments or agreements referred to herein or contemplated hereby or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof, all of which Impositions the Company agrees to cause to be paid

on demand in addition to the payments to be made by it provided herein. The Company will also cause to be paid promptly all Impositions which may be imposed upon any unit of the Trust Equipment or for the use or operation thereof or upon the earnings arising therefrom or upon the Trustee solely by reason of its interest therein, and any and all Impositions upon or on account of the trust created by this Agreement, or the instruments or agreements referred to herein or contemplated hereby, and will cause to be kept at all times all and every part of such unit free and clear of all Impositions which might in any way affect the interest of the Trustee or result in a Lien upon such unit and will supply the Trustee with a receipt or other evidence of such payment satisfactory to be Trustee; provided, however, that the Company shall be under no obligation to pay any Impositions so long as it is contesting in good faith and by appropriate legal proceedings such Impositions and the non-payment thereof does not materially adversely affect the property or rights of the Trustee of the Holder of the Trust Certificates hereunder. If any Impositions shall have been charged or levied against the Trustee directly and paid by the Trustee, the Company shall reimburse the Trustee, on presentation of invoice therefor; provided, however, that the Company shall not be obligated to reimburse the Trustee for any Impositions so paid unless the Trustee shall have been in the opinion of its counsel legally liable with respect thereto, or unless the Company shall have approved the payment thereof.

In the event any reports with respect to Impositions are required to be made on the basis of individual units of the Trustee Equipment the Company will either make or cause to be made such reports in such manner as to show the interest of the Trustee in such units or will notify the Trustee of such requirement and will make or cause to be made such reports in such manner as shall be satisfactory to the Trustee.

In the event that, during the continuance of this Agreement, the Company becomes liable for the payment or reimbursement of any Impositions, pursuant to this Section 8.3, such liability shall continue, notwithstanding the expiration of the term of this Agreement, until all such Impositions are paid or reimbursed by the Company.

**SECTION 8.4. Payment of Expenses; Filing and 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 and in connection with any amendments, waivers or consents, or Written Direction executed by the Holders at the written request of the Company, pursuant to the provisions hereof, including without limitation, any amendment, waiver or consent resulting from any work-out, restructuring or similar

proceeding relating to the performance by the Company of its obligations under this Agreement and the Purchase Agreement and pursuant to the guarantees. 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, or any successor provision thereto, and with the Registrar General of Canada, if required by Section 6.9 hereof. 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 8.5. 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.

SECTION 8.6. Payment Notwithstanding Acquisition of Trust Certificates by Company. The Company covenants that it will make payment of the Rentals on account of the Trust Equipment as provided in this Agreement notwithstanding that any of the Trust Certificates shall have been acquired by the Company or shall not have been presented for payment.

## ARTICLE NINE

### CONCERNING THE HOLDERS OF TRUST CERTIFICATES

SECTION 9.1. Evidence of Action Taken by Holders of Trust Certificates. Whenever in this Agreement it is provided that the Holders of a specified percentage in aggregate unpaid principal amount of the Trust Certificates may take any action (including the making of any demand or request, the giving of any notice, consent or waiver or the taking of any other action), the fact that at the time of taking any such action the Holders of such specified percentage have joined therein may be evidenced by any instrument or any number of instruments of similar tenor executed by Holders of Trust Certificates in person or by agent or proxy appointed in writing.

SECTION 9.2. Proof of Holding of Trust Certificates. The ownership of Trust Certificates may be proved by the register of such Trust Certificates or by a certificate of the registrar thereof.

SECTION 9.3. Right of Revocation of Action Taken. At any time prior to (but not later than) the evidencing to the Trustee, as provided in Section 9.1, of the taking of any action by the Holders of the percentage in aggregate unpaid principal amount of the Trust Certificates specified in this Agreement in connection with such action, any Holder of a Trust Certificate the serial number of which is shown by the evidence to be included in the Trust Certificates the Holders of which have consented to such action may, by filing written notice with the Trustee at its Corporate Trust Office, revoke such action insofar as concerns such Trust Certificate. Except as aforesaid any such action taken by the Holder of any Trust Certificate shall be conclusive and binding upon such Holder and upon all future Holders and owners of such Trust Certificate and of any Trust Certificate issued in exchange or substitution therefor, irrespective of whether or not any notation in regard thereto is made upon such Trust Certificate. Any action taken by the Holders of the percentage in aggregate unpaid principal amount of the Trust Certificates specified in this Agreement in connection with such action shall be conclusive and binding upon the Company, the Trustee and the Holders of all the Trust Certificates.

## ARTICLE TEN

### THE TRUSTEE

SECTION 10.1. 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.

SECTION 10.2. Duties and Responsibilities of the Trustee. In case an Event of Default has occurred which has not been cured and of which the Trustee has knowledge, the Trustee shall exercise such of the rights and powers vested in it by this Agreement and use the same degree of care and skill in its exercise as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

No provision of this Agreement shall be construed to relieve the Trustee from liability for its own negligent action, its own negligent failure to act, or its own wilful misconduct, except that

(a) prior to the occurrence of an Event of Default and after the curing of all Events of Default which have occurred, the duties and obligation of the Trustee shall be determined solely by the express provisions of this Agreement, and the Trustee shall be liable except for the performance of such duties and obligations as are specifically set forth in this Agreement, and no implied covenants or obligations shall be read into this Agreement against the Trustee;

(b) the Trustee shall not be liable for any error of judgment made by it in good faith, unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts or that its action or inaction was contrary to the express provisions of this Agreement;

(c) The Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders of a majority in aggregate principal amount of the then outstanding Trust Certificates relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred upon the Trustee under this Agreement; and

(d) the Trustee shall not be liable for any action taken by it in good faith and reasonably believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Agreement.

SECTION 10.3. Application of Rentals. The Trustee covenants and agrees to apply and distribute the Rentals received by it under Section 6.4 hereof [other than sums restored to Deposited Cash from Rentals pursuant to Section 6.4(B)(1)(b) hereof] when and as the same shall be received, and, in the order of payment for the purposes specified in said Section 6.4(B).

SECTION 10.4. Duties in Respect of the Trust Certificates. The Trustee shall cause to be kept at its Principal Office books for the registration, exchange and 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 transfer or cause to be transferred, as the case may be, as hereinbefore provided, under such reasonable regulations as it may prescribe, any of the Trust Certificates.

SECTION 10.5. 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 re-recording of this Agreement or of any supplement hereto. The Trustee may issue and deliver Trust Certificates in advance of such filing or recording. In accepting delivery of and making payment for the Trust Equipment hereunder, or in accepting any cash payable hereunder in respect of the Trust Equipment, the Trustee may rely upon and shall be fully protected by the certificates, bills of sale and Opinions of

Counsel to be furnished to it under Section 5.3 hereof, as the case may be, and shall not be required to make any further investigation of or inquiry concerning the matters covered thereby.

SECTION 10.6. No Power to Enforce Trust Unless Requested and Indemnified. The Trustee shall not take any action for the execution or enforcement of the trust hereby created unless requested in writing by the Holders of not less than 51% (except as may be otherwise provided herein) in principal amount of the then outstanding Trust Certificates and unless indemnified to its satisfaction against expense and liability with respect thereto.

SECTION 10.7. Assumption of No Default; Reliance on Notices and Other Documents. Prior to the time that an Event of Default shall be actually known to a responsible officer of the Corporate Trust Department of the Trustee the Trustee may for all purposes conclusively assume that the Company is not in default under the terms hereof. As to any fact or matter the manner of determining which is not specifically prescribed herein, the Trustee may for all purposes rely upon an Officer's Certificate as to such fact or matter. The Trustee shall not incur any liability to anyone in relying conclusively on, and in acting upon, any notice, consent, order, certificate, warrant or other paper or instrument reasonably believed by it to be genuine or authentic and to be signed by the proper party or parties.

SECTION 10.8. Money Held by Trustee; Authorized Investments. Any money at any time paid to or held by the Trustee hereunder until paid out by the Trustee as herein provided may be carried by the Trustee on deposit with itself, and the Trustee will allow interest upon any such moneys held by it in trust at the rate generally prevailing among Chicago banks and trust companies or allowed by it upon deposits of a similar character.

At any time, and from time to time, if at the time there shall be no default under the terms of this Agreement, the Trustee, as requested by the Company, shall invest and reinvest Deposited Cash and Released Equipment Funds held by it in Investments, at such prices, including any premium and accrued interest, as requested by the Company, such Investments to be held by the Trustee in trust for the benefit of the Holders of the Trust Certificates.

The Trustee shall, as requested by the Company, or the Trustee may, in the event funds are required for payment against delivery of Equipment or in the event funds are required for any redemption or prepayment pursuant to Article 4, sell such Investments, or any portion thereof, and restore to Deposited Cash or Released Equipment Funds, as the case may be, the proceeds of any such sale up to the amount paid for such Investment, including accrued interest.

The Trustee shall restore to Deposited Cash or Released Equipment Funds, as the case may be, out of Rentals received by it for that purpose under the provisions of Section 6.4(B)(1)(b) hereof, an amount equal to any expenses incurred in connection with any purchase or sale of Investments and also an amount equal to any loss of principal incident to the sale or redemption of any Investments for a sum less than the amount paid therefor, including accrued interest. The Company, if not in default under the terms hereof, shall be entitled to receive any profit which may be realized from any sale or redemption of Investments.

SECTION 10.9. No Liability for Trust Equipment; Miscellaneous Matters. The Trustee shall not be liable to anyone for any delay in the delivery of any of the Trust Equipment, or for any default on the part of the manufacturer, manufacturers, remanufacturer or remanufacturers thereof or the owner or owners 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.

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

The Company agrees to indemnify the Trustee for, and to hold it harmless against, any loss, liability or expense incurred without negligence or bad faith on the part of the Trustee, arising out of or in connection with the acceptance or administration of the trust hereby created or the authentication and delivery of Trust Certificates issued hereunder including the costs and expenses of defending against

any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder.

SECTION 10.10. Reports. The Trustee shall, at least once in each year, render to the Company a statement of its said trust and of the accounts relating thereto, and covering such matters as the Company may reasonably require, and the Company may from time to time examine the books and accounts of the Trustee relating to the Trust Certificates, to this Agreement and to the acts of the Trustee hereunder.

SECTION 10.11. Resignation and Removal; Appointment of Successor Trustee. (a) The Trustee may resign and be discharged of the trust created by this Agreement by giving 60 days' written notice to the Company and the Holders of Trust Certificates. Such resignation shall take effect upon receipt by the Trustee of an instrument of acceptance executed by a successor trustee as herein provided in this Section.

(b) The Trustee may be removed at any time by an instrument in writing signed by the Holders of not less than 51% in aggregate unpaid principal amount of the Trust Certificates then outstanding, delivered to the Trustee and to the Company.

(c) If at any time the Trustee shall resign or be removed or otherwise become incapable of acting or, if at any time a vacancy shall occur in the office of the Trustee for any other cause, a successor trustee may be appointed by the Holders of a majority in aggregate unpaid principal amount of the then outstanding Trust Certificates by an instrument in writing delivered to the Company and the Trustee. Until a successor trustee shall be appointed by the Holders of Trust Certificates as herein authorized, the Board of Directors of the Company or an executive committee thereof shall appoint a trustee to fill such vacancy. A successor trustee so appointed by the Company shall immediately and without further act be superseded by a successor trustee appointed by the Holders of Trust Certificates in the manner provided above if such appointment is made within one year after completion of the notice, in the manner provided in the next succeeding paragraph, of the appointment of a successor trustee by the Company. Every successor trustee appointed pursuant to this Section shall be a national bank or a bank or trust company incorporated under the laws of the State of Illinois or the State of New York having its principal office in the City of Chicago or the City of New York and having a capital and surplus of not less than \$100,000,000, if there be such an institution willing, qualified and able to accept the trust upon reasonable or customary terms.

(d) The Company shall give notice as provided in Section 11.4 to the Holders of all outstanding Trust Certificates of each resignation or removal of the then Trustee and of each

appointment by the Company of a successor trustee pursuant to this Section 10.11.

SECTION 10.12. Acceptance of Appointment by Successor Trustee. Any successor trustee appointed as provided in Section 10.11 shall execute, acknowledge and deliver to the Company and to its predecessor trustee an instrument accepting such appointment hereunder, and subject to the provisions of Section 10.11(a), thereupon the resignation or removal of the predecessor trustee shall become effective and such successor trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, duties and obligations of its predecessor hereunder, with like effect as if originally named as Trustee herein; but, nevertheless, on the Request of the Company or written request of the successor trustee, the trustee ceasing to act shall execute and deliver an instrument transferring to such successor trustee all the rights and powers of the trustee so ceasing to act. Upon written request of any such successor trustee, the Company shall execute any and all instruments in writing for more fully and certainly vesting in and confirming to such successor trustee all such rights and powers. Any trustee ceasing to act, shall, nevertheless, retain a Lien upon all property or funds held or collected by such trustee to secure any amounts then due it pursuant to the provisions of Section 10.9.

SECTION 10.13. Merger or Consolidation of Trustee. Any corporation into which the Trustee may be merged or converted or with which it may be consolidated or any corporation resulting from any merger, conversion or consolidation of which the Trustee shall be a party shall be the successor of the Trustee hereunder, provided such corporation shall be qualified under the provisions of Section 10.11(c), 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 10.14. Trustee's Liens. The Trustee covenants and agrees, for the benefit of the Company and the Holders from time to time of the Trust Certificates, to keep the Trust Equipment free and clear at all times of any Trustee's Lien.

SECTION 10.15. Trust Certificates Owned by Company Deemed Not Outstanding. In determining whether the Holders of the requisite principal amount of the Trust Certificates have concurred in any direction, request or consent under this Agreement, Trust Certificates which are owned by the Company or by any other obligor on the Trust Certificates or by any Affiliate of the Company or any such other obligor shall be disregarded, except that for the purpose of determining whether the Trustee shall be protected in relying on any such direction, request or consent, only Trust Certificates which the Trustee knows are so owned shall be disregarded.

## ARTICLE ELEVEN

### MISCELLANEOUS

SECTION 11.1. Limitation of Rights. 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 11.2. 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 respective successors and assigns, including any subsequent Holders of the Trust Certificates.

SECTION 11.3. Amendments, Waiver and Termination. Any provision of this Agreement or of the Trust Certificates may be amended or waived as provided in a Written Direction with the consent of the Company and the Trustee, copies of which shall have been delivered by the Company to any Holder of the Trust Certificate who did not execute such Written Direction. provided, however, that without the consent of each Holder of the Trust Certificates, no such amendment or waiver shall (a) change the amount of principal, change the amount or dates of payment of installments of principal, change the rate or change the time of payment of interest with respect to the Trust Certificates, or effect the time or amount of any required redemption or prepayment of principal thereof, (b) change the amount of or change the time of payment of any Rentals payable under this Agreement or release or provide for the release of any of the Trust Equipment or any other property or cash held by the Trustee in trust, otherwise than as expressly permitted by the present terms of this Agreement, (c) change the percentage of the aggregate unpaid principal amount of Trust Certificates then outstanding, the Holders of which are required to approve any amendment or to effect any waiver, (d) release any Trust Equipment from this Agreement which has been accepted and settled for under Article 5, otherwise than as specifically contemplated by the provisions hereof, or (e) modify any of the provisions of this Section 11.3. In the event the Company desires to propose an amendment or waiver which, in the reasonable judgment of the Company and the Trustee, shall not be materially adverse to any Holder of a Trust Certificate, then the Trustee may give each Holder written notice thereof, which notice shall specify in detail any such proposed amendment or waiver and state clearly that

such amendment is not in the judgment of the Trustee, materially adverse to any Holder of a Trust Certificate and is proposed to become effective 45 days after the giving of such notice unless any Holder gives written notice to the Trustee of its objection to such proposed amendment or waiver within the 45-day period following such notice from the Trustee. Such amendment or waiver shall become effective only at the expiration of such 45 days period. If such proposed amendment or waiver is objected to at or prior to the end of such 45-day period by any Holder of a Trust Certificate, it shall not become effective except upon the Written Direction of the Holders as aforesaid. Except as the context otherwise requires, the term "Agreement" means this Agreement as supplemented pursuant to this Section 11.3.

SECTION 11.4. Notices. All demands, notices and communications hereunder shall be in writing and shall be deemed to have been duly given if personally delivered at or mailed by registered mail to (a) in the case of the Company, at its office in the City of Chicago, Illinois, or such other address as may hereafter be furnished to the Trustee and the Holders, in writing by the Company, and (b) in the case of the Trustee, at its Principal Office in the City of Chicago, Illinois, or such other address as may hereafter be furnished to the Company and the Holders in writing by the Trustee and (c) in the case of the Holder of Trust Certificates, at the address of such Holder appearing upon the books maintained by the Trustee pursuant to Schedule I of the Purchase Agreement hereof, or as otherwise furnished in writing to the Trustee. An affidavit by any person representing or acting on behalf of the Company, any Holder or the Trustee, as to such mailing, having the registry receipt attached, shall be conclusive evidence of the giving of such demand, notice or communication.

SECTION 11.5. Counterparts. This Agreement has been simultaneously executed in two or more 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 11.6. Date of Execution. 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. This Agreement shall be effective as of the date and year first above written.

SECTION 11.7. Effect of Headings. The Article and Section headings herein are for convenience only and shall not affect the construction hereof.

SECTION 11.8. Illinois 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 Illinois; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. 11303.

SECTION 11.9. Legal Holidays. In any case where the date of any dividend payment or installment payment of principal or redemption payment or maturity of any Trust Certificate or the date of any notice required by the Agreement is, at the place where payment is to be made or notice is to be given (or, in the event of wire transfers pursuant to Section 3.2, the place to which such wire transfers are to be made), a legal holiday or a day on which banking institutions are authorized by law to close, then payment of the installment of principal or redemption or dividends may be made on the next succeeding day which is not a legal holiday or a day on which banking institutions are authorized by law to close, and no overdue interest thereon shall accrue for the period after such nominal date.

SECTION 11.10. Severability. Should any part of this Agreement for any reason be declared invalid, such decision shall not affect the validity of any remaining portion, which remaining portion shall remain in force and effect as if this Agreement had been executed with the invalid portion thereof eliminated and it is hereby declared the intention of the parties hereto that they would have executed the remaining portion of this Agreement without including therein any such part, parts or portion which may, for any reason, be hereafter declared invalid.

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

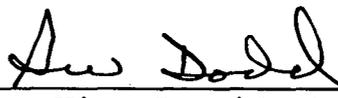
HARRIS TRUST AND SAVINGS BANK  
as Trustee

By   
Vice President

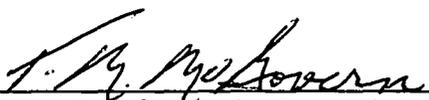
ATTEST:

  
Assistant Secretary

THE ATCHISON, TOPEKA AND SANTA FE  
RAILWAY COMPANY

By   
Senior Vice President-Finance  
and Chief Financial Officer

ATTEST:

  
Assistant Secretary



EQUIPMENT TRUST, SERIES T  
Dated April 15, 1988

SCHEDULE A

<u>No. of Units</u>	<u>Description</u>	<u>Estimated Costs Per Unit</u>	<u>Total</u>
10	GP60, 3800 H.P., four axle, diesel-electric locomotives (including event recorders); General Motors Corporation (Electro-Motive Division), builder. Nos. 4000, 4002, 4004, 4006, 4008, 4010, 4012, 4014, 4016, and 4018	\$1,178,390	\$11,783,900
10	GP60, 3800 H.P., four axle, diesel-electric locomotives; General Motors Corporation (Electro-Motive Division), builder. Nos. 4001, 4003, 4005, 4007, 4009, 4011, 4013, 4015, 4017, and 4019	1,175,390	11,753,900
10	Dash 8-40B, 4000 H.P., four axle, diesel-electric locomotives (including event recorders and modifications for flange lubricators); General Electric Company, builder. Nos. 7410, 7412, 7414, 7416, 7418, 7420, 7422, 7424, 7426, and 7428	1,151,015	11,510,150
10	Dash 8-40B, 4000 H.P., four axle, diesel-electric locomotives (including event recorders and modifications for flange lubricators); General Electric Company, builder. Nos. 7411, 7413, 7415, 7417, 7419, 7421, 7423, 7425, 7427, and 7429	1,134,215	11,342,150
40	TOTAL UNITS		<u>\$46,390,100</u>