NORFOLK SOUTHERN CORPORATION

LAW DEPARTMENT
THREE COMMERCIAL PLACE
NORFOLK, VIRGINIA 23510-9241
757-629-2634
FACSIMILE - 2607

RECORDATION NO. 21912 FILED
DEC 30 '98 12-10PM

RECEIVED

WILLIAM A. NOELL, JR.
CORPORATE COUNSEL

December 30, 1998

Counterparts

HAND DELIVERY
Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, NW, Room 711
Washington, DC 20423

Dear Mr. Williams:

In accordance with 49 U.S.C. § 11301 and the Board's Rules, I submit herewith for recording with the Board fifteen (15) original counterparts, properly executed and acknowledged, of the document described below. I request that fourteen (14) of the counterparts (bearing the Board's stamped evidence of recordation) be returned to the person hand-delivering the counterparts for filing.

This document is an Equipment Trust Agreement (a "primary document" under the Board's Rules), dated as of December 15, 1998. The names and addresses of the parties to this document are:

TRUSTEE/LESSOR:
The First National Bank of Maryland
25 South Charles Street - MC 101-591
16 Floor - Corporate Trust Administration
Baltimore, Maryland 21201

LESSEE/GUARANTOR:
Norfolk Southern Railway Company
Three Commercial Place
Norfolk, Virginia 23510-2191

The equipment covered by this document is described generally as follows:

Number of Units	General Description	AAR Mech. Symbol	Railroad's Road Numbers Inclusive
60	DASH 9-40CW Diesel-Electric Locomotives	C-C	**NS9245 to NS9304, inclusive**

The recordation fee of $26.00 (49 C.F.R. § 1002.2(f)(83)) will be paid by the person hand-delivering the counterparts, to whom the unused, stamped counterparts and the extra copy of this transmittal letter are to be returned.

A short summary of this primary document - for use in the index follows:

> Equipment Trust Agreement dated as of December 15, 1998, between The First National Bank of Maryland, 25 South Charles Street - MC 101-591, 16 Floor - Corporate Trust Administration, Baltimore, Maryland 21201, as Trustee/Lessor, and Norfolk Southern Railway Company, Three Commercial Place, Norfolk, Virginia 23510-2191, as Lessee/Guarantor, covering 60 DASH 9-40CW Diesel-Electric Locomotives, bearing road numbers **NS9245 to NS9304, inclusive.**

Please acknowledge receipt on the enclosed copy of this letter.

Sincerely yours,

William A. Noell, Jr.

cc: The First National Bank of Maryland
Attention: Mr. Brown/Corporate Trust Administration

SCHEDULE A

Description of Trust Equipment

Number of Units	Description	Road Numbers
60	DASH 9-40CW Diesel-Electric Locomotives (General Electric)	**NS9245 to NS9304, inclusive**

SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C. 20423-0001

OFFICE OF THE SECRETARY
William A. Noell, Jr.
Norfolk Southern Corporation
Three Commercial Place
Norfolk, Virginia 23510-9241

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of 49 U.S.C. 11301

and 49 CFR 1177.3(c), on 12/30/98 at 12:10PM , and

assigned recordation number(s). 21912.

Sincerely Yours,

Vernon A. Williams

Vernon A. Williams

Enclosure(s)
26.00
$_____ The amount indicated at the left has been received in payment of a fee in connection with a document filed on the date shown. This receipt is issued for the amount paid. In the event of an error or any questions concerning this fee, you will receive a notification after the Surface Transportation Board has an opportunity to examine your document.

Signature----------

RECORDATION NO 21912 FILED

DEC 30 '98 12-10 PM

NORFOLK SOUTHERN RAILWAY
EQUIPMENT TRUST
SERIES "I"

EQUIPMENT TRUST AGREEMENT

DATED AS OF DECEMBER 15, 1998,

BETWEEN

THE FIRST NATIONAL BANK OF MARYLAND

Trustee,

AND

NORFOLK SOUTHERN RAILWAY COMPANY,

Company.

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Schedule A -- Description of Trust Equipment

This **EQUIPMENT TRUST AGREEMENT,** dated as of December 15, 1998, between THE FIRST NATIONAL BANK OF MARYLAND , a corporation duly organized and existing under the laws of the State of Maryland, as Trustee (hereinafter called Trustee), and NORFOLK SOUTHERN RAILWAY COMPANY, a Virginia corporation (hereinafter called Company);

Witnesseth:

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

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

Whereas, the Trust Certificates (as hereinafter defined) are to be issued and sold in an aggregate principal amount not exceeding $100,000,000, and the net proceeds (as hereinafter defined) of such sale together with such other cash, if any, as may be required to be deposited by Company as hereinafter provided are to constitute a fund equal to the aggregate principal amount of Trust Certificates so issued and sold, such fund to be known as **Norfolk Southern Railway Equipment Trust, Series "I",** to be applied by Trustee from time to time in part payment of the Cost (as hereinafter defined) of the Trust Equipment (as hereinafter defined), the remainder of the Cost thereof to be paid out of advance rentals to be paid by Company as provided herein; and

Whereas, the text of the Trust Certificates and the guaranty to be endorsed on the Trust Certificates by Company is to be substantially in the following form as appears between the headings [FORM OF TRUST CERTIFICATE] and [END OF FORM OF TRUST CERTIFICATE]:

[FORM OF TRUST CERTIFICATE]

THIS CERTIFICATE IS A GLOBAL CERTIFICATE AS REFERRED TO IN THE AGREEMENT HEREINAFTER REFERENCED. UNLESS AND UNTIL IT IS EXCHANGED IN WHOLE OR IN PART FOR THE INDIVIDUAL TRUST CERTIFICATES REPRESENTED HEREBY, THIS GLOBAL CERTIFICATE MAY NOT BE TRANSFERRED EXCEPT AS A WHOLE BY THE DEPOSITORY TRUST COMPANY (DTC) TO A NOMINEE OF DTC OR BY A NOMINEE OF DTC TO DTC OR ANOTHER NOMINEE OF DTC OR BY DTC OR ANY SUCH NOMINEE TO A SUCCESSOR DEPOSITARY OR A NOMINEE OF SUCH SUCCESSOR DEPOSITARY.

No..... $ .....

CUSIP No. .....

NORFOLK SOUTHERN RAILWAY
EQUIPMENT TRUST,
SERIES "I"

Equipment Trust Certificate
Total Authorized Issue $100,000,000
The First National Bank of Maryland, Trustee

Interest at the Rate of % Per Annum Payable
January 15 and July 15
Principal hereof payable July 15, _____

The First National Bank of Maryland, as Trustee (hereinafter called Trustee) under a Trust Agreement dated as of December 15, 1998 (hereinafter called the Agreement), between the Trustee and Norfolk Southern Railway Company, a Virginia corporation (hereinafter called Company), hereby certifies that
or registered assigns, is entitled to an interest

in the principal amount of Dollars in **Norfolk Southern Railway Equipment Trust, Series "I"**, payable on the due date specified above, upon presentation and surrender of this Certificate to Trustee at its corporate trust office in the City of Baltimore, State of Maryland, and to payment, until said due date, of interest on said principal amount at the rate per annum specified above from the date hereof, or the date to which interest has been paid next preceding or coinciding with the date hereof, whichever is later, semiannually on January 15 and July 15 in each year, with interest at one quarter of one percent above such interest rate on any overdue principal and on any overdue interest to the extent that it shall be legally enforceable. Principal and interest will be payable to the registered holder hereof at said corporate trust office 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 Trustee and applicable to such payment under the provisions of the Agreement.

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

The Certificates are issuable as fully registered Certificates in denominations of $1,000 and any multiple of $1,000. The Certificates are exchangeable for a like aggregate principal amount of Certificates, in authorized denominations and of the same maturity, upon presentation thereof at said office of Trustee, but only in the manner, subject to the limitations and upon payment of the charges, provided in the Agreement.

This Certificate is transferable by the registered holder hereof in person or by duly authorized attorney on the books of Trustee upon surrender hereof to Trustee at its said office, accompanied by appropriate instruments of assignment and transfer, duly executed by the registered holder in person or by such attorney, in form satisfactory to Trustee, subject to the limitations and upon payment of the charges provided in the

Agreement, and thereupon a new Certificate or Certificates in authorized denominations for the same aggregate principal amount and having the same date of maturity will be issued to the transferee in exchange therefor. Prior to due presentment for registration of transfer of this Certificate, Trustee and Company, without incurring any liability whatsoever to any other party whatsoever or whomsoever, may deem and treat the person in whose name this Certificate is registered as the absolute owner hereof for the purpose of receiving payment of principal and interest and for all other purposes and shall not be affected by any notice to the contrary.

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

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

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

In Witness Whereof, Trustee has caused this Certificate to be signed by one of its Authorized Officers, and to be authenticated by the manual signature of one of its Authorized Officers.

Dated as of

The First National Bank of Maryland,
Trustee,

By_____
Authorized Officer

Authenticated:

_____
Authorized Officer

[FORM OF GUARANTY FOR TRUST CERTIFICATE]

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

Norfolk Southern Railway Company,

By_____
Treasurer

[END OF FORM OF TRUST CERTIFICATE]; and

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

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

ARTICLE ONE

Definitions

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

Acquisition Deposit shall mean any deposit or deposits made pursuant to Section 3.5 hereof.

Affiliate shall mean any corporation or other entity which, directly or indirectly, controls or is controlled by, or is under common control with,

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

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

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

Cost, when used with respect to Trust Equipment, shall mean the actual cost thereof, and shall include only such items as may properly be included in such cost under (i) the Surface Transportation Board's successor to the Interstate Commerce Commission's Uniform System of Accounts for Railroad Companies, as in effect at the time in question, or (ii) the accounting rules of such other Federal governmental authority having jurisdiction over the accounts of the Company, or (iii) to the extent not determined thereby or in case there be no such accounting rules of the Surface Transportation Board or other Federal authority in effect at such time, in accordance with generally accepted accounting practices, principles and standards.

Depositary shall mean, unless otherwise specified by a Request delivered pursuant to Section 2.1 or Section 2.5, with respect to any Trust Certificates issued or issuable as one or more Global Certificates, The Depository Trust Company, New York, New York, or any successor thereto registered as a clearing agency under the Securities Exchange Act of 1934, or other applicable statute or regulation.

Deposited Cash shall mean the aggregate of (a) cash on deposit with Trustee as provided in the first sentence of Section 2.1, any advance rental on deposit with Trustee pursuant to Section 4.4(A)(1) and, when required or indicated by the context, any Investments purchased by the use of such cash pursuant to the provisions of Section 7.7, (b) any funds which may be advanced

by Company to Trustee on a temporary basis (which advances shall be reimbursable to Company upon a Request to Trustee out of cash on deposit with Trustee pursuant to the first sentence of Section 2. 1), (c) any funds which may be deposited with Trustee as an Acquisition Deposit and (d) any sums restored to Deposited Cash from rentals pursuant to Section 4.4(B)(1) and on deposit with Trustee.

Equipment shall mean standard-gauge railroad equipment (other than passenger cars and work equipment) which first shall have been put into operation not earlier than the date hereof.

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

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

Global Certificate shall mean a Trust Certificate issued by the Trustee to the Depositary or pursuant to the Depositary's instruction, all in accordance with this Agreement and pursuant to a request delivered pursuant to Section 2.1 or Section 2.5, which shall be registered in the name of the Depositary or its nominee and which shall represent, and shall be denominated in an amount equal to the aggregate principal amount of, all the outstanding Trust Certificates or any portion thereof, in either case having the maturity and bearing interest on the dates and at the rate or rates and containing such other terms as may be specified in the Request.

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

Investments shall mean (i) direct obligations of the United States of America (or any of its agencies or instrumentalities) or obligations for which the full faith and credit of the United States of America is pledged to provide for payment of principal and interest; (ii) open market commercial paper (rated A-1 or higher by Standard & Poor's, a division of the McGraw-Hill Companies, Inc. or P-1 or higher by Moody's Investors Service, Inc. or having an equivalent rating from a successor thereto or from a similar rating service substituted therefor that is acceptable to both Company and Trustee) of any company incorporated and doing business under the laws of the United States of America or one of the states thereof; (iii) certificates of deposit, banker's acceptances, or commercial paper of domestic commercial banks that have total assets in excess of $1 billion and have outstanding at least one issue of securities rated in at least one of the four highest categories by Standard & Poor's, a division of the McGraw-Hill Companies, Inc. or Moody's Investors Service, Inc.; (iv) repurchase agreements in respect of securities described in clause (i) as to which Trustee has arranged to take delivery of the purchased securities to its registered account at a Federal Reserve Bank; and (v) investment in any mutual fund the portfolio of which is limited to the Investments specified in subsections (i) through and including (iv) of this definition, including any proprietary mutual fund of the Trustee for which the Trustee or any affiliate is investment advisor or provides other services to such mutual fund and receives reasonable compensation for such services.

Officer's Certificate shall mean a certificate signed by any one of the Chairman of the Board, the Vice Chairman of the Board, the President, any Vice President, any Assistant Vice President, the Treasurer, any Assistant Treasurer, the Secretary and any Assistant Secretary of Company.

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

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

Principal Office shall mean the principal office of Trustee at which the corporate trust business of Trustee shall, at any particular time, be administered.

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

Request shall mean a written request for the action therein specified, delivered to Trustee and signed on behalf of Company by any person authorized to sign an Officer's Certificate.

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

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

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

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

ARTICLE TWO

Trust Certificates and Issuance Thereof

Section 2.1. **Issuance of Trust Certificates.** The net proceeds (excluding premium and accrued interest, if any) of the sale of the Trust Certificates from time to time shall forthwith, upon issuance thereof, be deposited with Trustee. At the same time, Company shall, if necessary, deposit with Trustee any advance rental payable by Company to Trustee under Section 4.4(A)(1).

Thereupon, without waiting for the recording or filing of this Agreement or of any other instrument respecting the Trust Equipment, Trustee shall issue and deliver, as Company shall Request, Trust Certificates substantially in the form set forth herein, and in the aggregate principal amount so sold, bearing interest at the rates and having the maturities specified in such Request (including whether such Trust Certificates are to be issued in the form of one or more Global Certificates). If any Trust Certificates are to be issued in the form of one or more Global Certificates, Company may specify by Request the Depositary for such Global Certificates and the terms and conditions, if any, upon which such Global Certificates may be exchanged for other individual Trust Certificates.

The aggregate principal amount of Trust Certificates which shall be executed and delivered by Trustee hereunder shall not exceed the Total Authorized Issue specified in the form of Trust Certificate, except as provided in Sections 2.5, 2.6 and 2.7.

Section 2.2. **Interests Represented by Trust Certificates; Interest; Denominations; Dating; Maturities.** Each of the Trust Certificates shall represent the interest therein specified in the principal amount in the trust created hereunder and shall bear interest on said principal amount at the rate to be specified by Company at the time of delivery thereof by Trustee, payable semiannually on the 15th day of January and July in each year. The interest rate may be changed by an agreement in writing between Company and Holders of all the then-outstanding Trust Certificates. A counterpart of any such agreement shall be filed with Trustee.

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

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

The principal amount of the Trust Certificates shall become due in 15 equal annual installments payable serially on the 15th day of July in each year beginning July 15, 1999, and ending July 15, 2013, both inclusive. Principal and interest will 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 rents or other moneys received by the Trustee and applicable to such payment under the provisions of this Agreement, ***provided, however,*** that payment of interest may be made at the option of the Trustee by check mailed to the address of the person so entitled thereto as such address shall appear on the records of the Trustee; and ***provided further***, that payment of principal and interest in respect of a Global Certificate shall be made in accordance with the Depositary's procedures.

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

Section 2.4. **Execution by Trustee.** The Trust Certificates shall be signed in the name and on behalf of Trustee by the manual or facsimile signature of one of its authorized officers, and shall be authenticated by the manual signature of one of its Authorized Officers. In case any officer of Trustee whose signature, whether facsimile or not, shall appear on any of the Trust Certificates shall cease to be such officer of Trustee before such Trust Certificates shall have been issued and delivered by Trustee, or shall not have been acting in such capacity on the date of such Trust Certificates, such Trust Certificates shall be adopted by Trustee and be issued and delivered as though such person had not ceased to be, or had then been acting as, such officer of Trustee.

Section 2.5. **Transfer of Trust Certificates; Owners Thereof; Exchange of Trust Certificates.** The Trust Certificates shall be registered in the name of the Holder thereof and shall be transferable upon presentation and surrender thereof for transfer at the Principal Office, accompanied by appropriate

instruments of assignment and transfer, duly executed (i) by the Holder of the surrendered Trust Certificate or Certificates or (ii) by duly authorized attorney in either case, in form satisfactory to Trustee.

Prior to due presentment for registration of transfer of any Trust Certificate, the parties hereto may, without incurring any liability whatsoever to any other party whatsoever or whomsoever, deem and treat the Holder of any Trust Certificate as the absolute owner of such Trust Certificate for all purposes and shall not be affected by any notice to the contrary.

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

For any registration, transfer or exchange, Trustee shall require the payment of a sum sufficient to cover reimbursement for any stamp tax or other governmental charge connected therewith.

Each Trust Certificate delivered, pursuant to any provision of this Agreement, in exchange or substitution for, or upon the transfer of, the whole or any part of one or more other Trust Certificates shall carry all the rights to interest accrued and unpaid, and to accrue, which were carried by the whole or such part of such one or more other Trust Certificates (except as provided in the third and fourth paragraphs of Section 2.7), and such Trust Certificate shall be so dated that neither gain nor loss in interest shall result from such exchange, substitution or transfer.

Trustee shall not be required to issue, register, transfer or exchange any Trust Certificate for a period of fifteen days next preceding any interest payment date.

Section 2.6. **Replacement of Mutilated or Lost Trust Certificates.** In case any Trust Certificate shall become mutilated or defaced or be lost, stolen or destroyed, then on the terms herein set forth, and not otherwise, Trustee, upon

Request, shall execute and deliver a new Trust Certificate of like maturity, tenor and date, and bearing a different serial number from the one mutilated, defaced, lost, stolen or destroyed, in exchange and substitution for, and upon cancellation of, the mutilated or defaced Trust Certificate, or in lieu of and in substitution for the same if lost, stolen or destroyed. Company shall execute its guaranty on any Trust Certificates so delivered. The applicant for a new Trust Certificate shall furnish evidence satisfactory to Trustee and to Company 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 Trustee and by Company in their discretion; and shall pay all expenses and charges of such substitution or exchange. All Trust Certificates shall be issued, held and owned upon the express condition that the foregoing provisions are exclusive in respect of the replacement of mutilated, defaced, lost, stolen or destroyed Trust Certificates, and shall preclude and be in lieu of all other rights and remedies, any law or statute now existing or hereafter enacted to the contrary notwithstanding.

Section 2.7. **Temporary Trust Certificates.** At any time prior to the issue of definitive Trust Certificates, Trustee shall, upon Request issue and deliver at the Principal Office, in lieu of definitive Trust Certificates, Temporary Trust Certificates ("TTC" or "TTCs") in any denomination or denominations, and bearing such rates of interest and having such maturities, specified in such Request. Such TTCs shall be substantially of the tenor of the definitive Trust Certificates in lieu of which they are issued and may be issued with such insertions, omissions, substitutions and variations as may be appropriate.

Upon request, TTCs shall be exchangeable at the Principal Office, without charge to the Holder, for the definitive Trust Certificates in lieu of which they were issued, and upon surrender and cancellation of any of such TTCs, Trustee shall issue and deliver in exchange therefor definitive Trust Certificates, bearing the rates of interest and having the maturities specified in such Request, for the same aggregate principal amount. Until so exchanged, the Holders of TTCs shall be entitled to the same rights hereunder as if the TTCs had been so exchanged.

Notwithstanding the provisions of Section 2.5 hereof, upon any resale and transfer of all or any of the TTCs, the transferor shall be permitted, if it so desires (and as evidenced by a writing from the transferor directed to Trustee), to retain all its rights to interest accrued and unpaid as of the date of such resale and transfer, and Trustee shall pay such accrued interest, if at all, only to, or at the direction of, such transferor. Such transferor, however, shall have the additional right, if it so desires (and as evidenced by a writing from the transferor directed to Trustee), to waive and relinquish any of its rights to interest accrued and unpaid as of the date of such resale and transfer of such TTCs. Interest accruing upon the Trust Certificates after such transfer shall be paid, when payment is due, in the usual manner to the then-Holders of the Trust Certificates, as provided in Section 2.5 hereof, the provisions of which otherwise shall remain in effect, and shall be effective, for all the purposes and to the same extent as originally intended.

Upon the resale of any TTC and exchange for definitive Trust Certificates, the Trust Certificates shall bear such rate of interest, from the date of delivery to the purchaser following such resale, and have such maturity, as shall be named by the purchaser and approved by Company (as evidenced by a Request). Such interest rate may be the same as, or greater or lesser than, the interest rate borne by the (corresponding) TTC while owned and held by the transferor thereof

The purchasers of the TTCs, and any subsequent Holder thereof, and of definitive Trust Certificates exchanged therefor, shall succeed to the interests of the original Holder thereof, as the same shall have been constituted at the time of original issuance thereof.

Section 2.8. **Cancellation and Destruction of Trust Certificates.** All Trust Certificates surrendered to Trustee for payment, transfer, exchange, replacement or cancellation shall be cancelled by it. Trustee shall destroy all cancelled Trust Certificates and deliver a certificate of such destruction to Company.

Section 2.9. **Trust Certificates Issuable in the Form of a Global Trust Certificate.** (a) If Company shall direct by Request delivered pursuant to

Section 2.1 or Section 2.5 that the Trust Certificates be issued in whole or in part in the form of one or more Global Certificates, then Trustee shall issue and deliver, as indicated in the Request, such Global Certificate or Global Certificates which (i) shall represent, and shall be denominated in an amount equal to, the aggregate principal amount of the outstanding Trust Certificates to be represented by such Global Certificate or Global Certificates, or such portion thereof as Company shall specify in such Request, (ii) shall be registered in the name of the Depositary for such Global Certificate or Global Certificates or its nominee, (iii) shall be delivered by Trustee to such Depositary or pursuant to such Depositary's instruction and (iv) shall bear a legend substantially to the following effect:

> **"THIS CERTIFICATE IS A GLOBAL CERTIFICATE AS REFERRED TO IN THE AGREEMENT HEREINAFTER REFERENCED. UNLESS AND UNTIL IT IS EXCHANGED IN WHOLE OR IN PART FOR THE INDIVIDUAL TRUST CERTIFICATES REPRESENTED HEREBY, THIS GLOBAL CERTIFICATE MAY NOT BE TRANSFERRED EXCEPT AS A WHOLE BY THE DEPOSITORY TRUST COMPANY (DTC) TO A NOMINEE OF DTC OR BY A NOMINEE OF DTC TO DTC OR ANOTHER NOMINEE OF DTC OR BY DTC OR ANY SUCH NOMINEE TO A SUCCESSOR DEPOSITARY OR A NOMINEE OF SUCH SUCCESSOR DEPOSITARY."**

(b) Notwithstanding any other provision of this Section 2.9 or of Section 2.5, and subject to the provisions of paragraph (c) below, unless the terms of a Global Certificate expressly permit such Global Certificate to be exchanged in whole or in part for individual Trust Certificates, a Global Certificate may be transferred, in whole but not in part and in the manner provided in Section 2.5, only to a nominee of the Depositary for such Global Certificate, or to the Depositary, or to a successor Depositary for such Global Certificate selected or approved by Company or to a nominee of such successor Depositary.

(c) (1) If at any time the Depositary for a Global Certificate notifies Company that it is unwilling or unable to continue as depositary for such Global Certificate, or if at any time the Depositary for such Global Certificate shall no longer be eligible or in good standing under the Securities Exchange Act of 1934, or other applicable statute or regulation, Company shall appoint a successor Depositary with respect to such Global Certificate. If a successor Depositary is not appointed by Company within ninety (90) days after Company receives such notice or becomes aware of such ineligibility, the Trustee, upon receipt of a Request for the issuance and delivery of individual Trust Certificates in exchange for such Global Certificate, will issue and deliver individual Trust Certificates of like tenor and terms in an aggregate principal amount equal to the principal amount of the Global Certificate in exchange for such Global Certificate.

(2) Company may at any time and it its sole discretion determine that the Trust Certificates or portions thereof issued or issuable in the form of one or more Global Certificates shall no longer be represented by such Global Certificate or Global Certificates. In such event, Trustee, upon receipt of a Request for the issuance and delivery of individual Trust Certificates in exchange in whole or in part for such Global Certificate or Global Certificates, will issue and deliver individual Trust Certificates of like tenor and terms in an aggregate principal amount equal to the principal amount of such Global Certificate or Global Certificates representing such Trust Certificates or portion thereof in exchange for such Global Certificates or Global Certificates.

(3) If specified by Request delivered pursuant to Section 2.1 or 2.5 with respect to Trust Certificates issued or issuable in the form of a Global Certificate, the Depositary for such Global Certificate may surrender such Global Certificate in exchange in whole or in part for individual Trust Certificates of like tenor and terms in definitive form on such terms as are acceptable to Company and such Depositary. Thereupon, Trustee shall issue and deliver (i) to each person specified by such Depositary a new Trust Certificate or Certificates of like tenor and terms and of any authorized denominations as request by such person in an aggregate principal amount equal to and in exchange for such person's beneficial interest as specified by such Depositary in such Global Certificates; and (ii) to such Depositary a new Global Certificate of like tenor and terms equal to the

difference, if any, between the principal amount of the surrendered Global Certificate and the aggregate principal amount of individual Trust Certificates delivered to Holders thereof.

(4) In any exchange provided for in any of the preceding three paragraphs, Trustee will issue and delivery individual Trust Certificates in definitive registered form in authorized denominations. Except as provided in the preceding paragraph, Trust Certificates issued in exchange for a Global Certificate pursuant to this Section shall be registered in such names and in such authorized denominations as the Depositary for such Global Certificates shall instruct Trustee. Trustee shall deliver at its Principal Office such Trust Certificates to the persons in whose name such Trust Certificates are so registered.

ARTICLE THREE

Acquisition of Trust Equipment by Trustee; Deposited Cash

Section 3. 1. **Acquisition of Trust Equipment by Trustee.** Company shall, as promptly as practicable, cause to be acquired and shall cause to be sold, assigned, transferred and set over unto Trustee, as trustee for the Holders, the Equipment described in Schedule A hereto, or substitutions therefor or additions thereto as hereinafter provided.

To that end, Company shall, after entering into the contract or contracts for acquisition of such Equipment, cause to be assigned to Trustee all its right, title and interest under said contract or contracts insofar as such contract or contracts relate to such Equipment. Such Equipment shall be delivered to Company, which hereby is designated by Trustee as its agent to receive such delivery, and an Officer's Certificate as to such delivery shall be conclusive evidence of such delivery.

If it may be deemed necessary or desirable to procure for the transportation services of Company, and to include in the trust hereby created,

other Equipment in lieu of any of the Equipment specifically described in Schedule A hereto prior to delivery of such Equipment to Trustee or its agent, Company may cause such other equipment to be sold, assigned, transferred and set over unto Trustee, to be substituted under the trust hereby created, and to that end Company, after entering into a contract or contracts for the acquisition of such other Equipment, shall cause to be assigned to Trustee all its right, title and interest under the said contract or contracts insofar as such contract or contracts relate to such Equipment.

So long as no Event of Default shall have occurred and be continuing, Company shall be authorized to exercise, in the name of Trustee, all rights under the contract or contracts for Equipment assigned hereunder to Trustee, including without limitation the right to enforce any warranty or guaranty provided by the builder of rebuilder of the Equipment.

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

Section 3.3. **Payments of and from Advance Rental.** Company covenants that, contemporaneously with the delivery to Trustee of the documents required by Section 3.4 in respect of any delivery of Trust Equipment, Company will pay to Trustee the advance rental provided in Section 4.4(A)(2), and thereupon Trustee shall pay to the vendor or vendors of the delivered Trust Equipment, upon Request, by the use of such advance rental, the portion of the Cost of the delivered Trust Equipment not paid from Deposited Cash as provided in Section 3.2. It is the intention of the parties hereto that Company shall ultimately pay or cause to be paid as such advance rental not less than 20% of the final Cost of all the Trust Equipment, and Trustee and Company shall from time to time adjust their accounts and payments accordingly.

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

(A) An Officer's Certificate which shall state (i) that the Trust Equipment described and specified therein by number or numbers has been delivered to Company as agent for the Trustee, (ii) that such Trust Equipment is Equipment as herein defined, (iii) that the Cost of such Trust Equipment is an amount therein specified or that the Cost of such Trust Equipment is not less than an amount therein specified and (iv) that such Trust Equipment has been marked in accordance with the provisions of Section 4.6;

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

(C) A bill or bills of sale for such Trust Equipment from the vendor or vendors thereof to Trustee, which bill or bills of sale, either alone or in connection with any other instrument referred to in and accompanying such bill or bills of sale, shall contain a warranty or guaranty to Trustee that the title to the Trust Equipment described therein is free from all prior liens and encumbrances;

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

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

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

If the aggregate final Cost of the Trust Equipment shall be less than 125% of the aggregate principal amount of the Trust Certificates, Company will cause to be sold to, assigned, transferred and set over unto Trustee additional Equipment in such amount and of such Cost that the aggregate final Cost of the Trust Equipment will be at least 125% of the aggregate principal amount of the Trust Certificates and, whether or not Deposited Cash is to be paid out in respect of such additional Trust Equipment, will furnish to Trustee in respect of such additional Trust Equipment the documents set forth in the first paragraph of this Section 3.4.

Section 3.5. **Acquisition Deposit.** At any time prior to the issue of all of the Trust Certificates in the aggregate principal amount authorized to be issued hereunder, at the Request of Company, Trustee shall accept deposits of cash for the acquisition of Trust Equipment in anticipation of the issue of Trust Certificates. Such amounts so deposited shall be treated as Deposited Cash for all purposes hereunder, including the acquisition of Trust Equipment. Upon issue of the Trust Certificates in anticipation of which such deposits shall have been made, (a) such deposits shall be returned to the party making the same, all as specified in a Request and (b) the Holders of such Trust Certificates shall succeed to and shall have all the rights of such party with respect to the Trust Equipment.

The party making such deposit shall be entitled to the benefits and security of a Holder of Trust Certificates hereunder, to the extent of such deposit, except that interest on such deposit shall be limited to amounts specified in such Request, as shall be paid to Trustee by Company as rental hereunder.

ARTICLE FOUR

Lease of Trust Equipment to the Company

Section 4. 1. **Lease of Trust Equipment.** Trustee does hereby lease the Trust Equipment to Company for a term expiring on July 15, 2013.

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

Section 4.3. **Substituted Equipment Subject Hereto; Additions to Trust Equipment.** If Company shall, as provided in Sections 3.1 and 3.4, or in Section 4.9, cause to be transferred to 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 (duly executed by Trustee and Company, the consent of the Holders not being required) and shall be subject to all the terms and conditions hereof in all respects as though it had been part of the Equipment herein specifically described. Any and all additions to, and replacements of parts of, the Trust Equipment shall constitute accessions to the Trust Equipment and shall be subject to all the terms and conditions hereof in all respects and included in the term Trust Equipment as used herein.

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

(A) Company shall pay to Trustee, as hereinafter provided, as advance rental hereunder, sums which in the aggregate shall be equal to the difference between (i) the aggregate Cost of the Trust Equipment (other than Trust Equipment subjected hereto pursuant to Section 4.9) and (ii) the portion of such Cost to be provided out of the net proceeds (excluding premium and accrued interest, if any) of the sale of the Trust Certificates, the intention being that, when all the Trust Equipment shall have been delivered to Company as agent for Trustee, Company shall have paid or have caused to be paid or shall pay to Trustee, as advance rental hereunder, a sum equal to the amount by which the aggregate Cost of the Trust Equipment exceeds such net proceeds of the sale of the Trust Certificates. 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 Trustee, will make the total sum deposited equal the principal amount of the Trust Certificates; and

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

All or any part of the obligation of Company pursuant to clause (2) of this Section 4.4(A) may be satisfied by evidence of prior or contemporaneous payment to any vendor of the Trust Equipment of part of the purchase price thereof, whether in cash or by transfer of other Company property.

(B) In addition to such advance rental Company shall pay to Trustee, as hereinafter provided, as rental for the Trust Equipment, and

whether or not at the time any thereof shall have been delivered to Company, and notwithstanding that any of the Trust Certificates shall have been acquired by Company or shall not have been presented for payment, the following:

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

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

(3)(a) The amount of interest payable on the Trust Certificates, and on any Acquisition Deposit made pursuant to Section 3.5, when and as the same shall become payable; and (b) interest at the Penalty Interest Rate from the due date upon the amount of any installments of rental payable under this subparagraph (3) and the following subparagraph (4) which shall not be paid when due, to the extent legally enforceable; and

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

Nothing contained herein or in the Trust Certificates shall be deemed to impose on Trustee or on Company any obligation to pay to any Holder any tax assessment or governmental charge required by any present or future law of the United States

of America or of any state, county, municipality or other taxing authority thereof, to be paid on behalf of, or withheld from the amount payable to, such Holder. 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 Trustee its rights or interests or those of the Holders may be endangered materially thereby.

Section 4.5. **Termination of Lease.** At the termination of the lease provided herein and after all payments due or to become due to Trustee from Company hereunder shall have been completed and fully made, (a) such payments shall be applied and treated as purchase money and as the full purchase price of the Trust Equipment, (b) any moneys remaining in the hands of Trustee after providing for all outstanding Trust Certificates and after paying the expenses of Trustee, including its reasonable compensation, shall be paid to Company, (c) title to the Trust Equipment shall vest in Company and (d) Trustee shall execute for record in public offices, at the expense of Company, such instrument or instruments in writing as reasonably shall be requested by Company in order to make clear upon public records Company's title to all the Trust Equipment under the laws of any jurisdiction; ***provided, however***, that until that time, title to the Trust Equipment shall not pass to or vest in 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, Company.

Section 4.6. **Marking of Trust Equipment.** Company agrees that at or before the delivery to it of each unit of the Trust Equipment, there shall be plainly, distinctly, permanently and conspicuously placed and fastened upon each side of such unit the reporting marks assigned to Company by the Association of American Railroads and the road numbers specified in Schedule A hereto. In case, prior to the termination of the lease provided for herein, any of such marks shall at any time be removed, defaced, obliterated or destroyed, Company promptly shall cause the same to be restored or replaced. Company shall not change, or permit to be changed, the reporting marks or road numbers of any of the Trust Equipment (or any reporting marks or road numbers which may have been substituted as herein provided) except in accordance with a statement of new

numbers to be substituted therefor which shall previously have been filed with Trustee by Company, and which shall be filed and recorded as provided in Section 6.4.

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

Section 4.7. **Maintenance of Trust Equipment; Casualty Occurrence.** Company agrees that it will maintain and keep the Trust Equipment in good order and proper repair at its own cost and expense. Whenever any of the Trust Equipment shall be lost, stolen, destroyed, irreparably damaged or become unsuitable for use from any cause whatsoever (any such occurrence being herein called a "Casualty Occurrence"), Company, after obtaining notice of such Casualty Occurrence, promptly shall deliver to Trustee an Officer's Certificate describing such Trust Equipment and stating the then Fair Value thereof. Subject to the provision in Section 4.9 hereof for application of any credit resulting from a prior acquisition of additional Equipment, when the aggregate Fair Value of Trust Equipment suffering Casualty Occurrences -- for which no deposit of cash equal to Fair Value has been made as hereinafter provided -- equals $500,000, Company shall either (i) deposit with Trustee an amount equal to such aggregate Fair Value, or (ii) transfer or cause to be transferred to Trustee additional Equipment having an aggregate Cost at least equal to such aggregate Fair Value and, in the case of used Equipment being so

transferred, a remaining useful life at least equal to the period remaining until the final maturity of the latest maturing Certificate, together with an Officer's Certificate specifying the units of Equipment to be transferred and the Cost thereof and the certificates, invoices, bills of sale and opinions of counsel provided for in Section 3.4 hereof. The rights and remedies of Trustee to enforce or to recover any of the rental payments shall not be affected by reason of any Casualty Occurrence. Cash deposited with Trustee pursuant to this Section 4.7 shall be held and applied as provided in Section 4.9.

Company covenants to furnish to Trustee, whenever required by Trustee, and on or before April 30 in every calendar year commencing with the year after the year in the date of this Agreement, and during the continuance of the lease provided for herein, an Officer's Certificate stating, as of the preceding December 31, (a) the amount, description and numbers of the Trust Equipment that may have suffered a Casualty Occurrence since the date of the last preceding statement (or, in the case of the first statement, since the inception of the lease provided for herein), (b) stating that, in the case of the Trust Equipment repainted or repaired since the date of the last preceding statement (or the date of this Agreement in the case of the first statement), the marks required by Section 4.6 have been preserved, or that such Trust Equipment has been again marked as required thereby and (c) such other information as to the condition and state of repair of the Trust Equipment as Trustee reasonably may request. Trustee, by its agents, shall have the right once in each calendar year, but shall be under no duty, to inspect, at Company's expense, the Trust Equipment, and Company covenants in that event to furnish to Trustee all reasonable facilities for the making of such inspection.

Section 4.8. **Possession of Trust Equipment; Assignments.** Company, so long as an Event of Default shall not have occurred and be continuing, shall be entitled to the possession of the Trust Equipment from and after delivery thereof to Company as agent for Trustee, and to the use thereof upon the lines of railroad owned or operated by Company (either alone or jointly with another) or by an Affiliate, or upon lines over which Company or any Affiliate shall have trackage or other operating rights, and Company also shall be entitled to permit the use of the Trust Equipment upon connecting and other

railroads in the usual interchange of traffic and upon connecting railroads and other railroads over which through service may from time to time be afforded, but any unit of Trust Equipment so engaged shall remain subject to all the terms and conditions of this Agreement.

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

An assignment or transfer to a purchaser which shall acquire all or substantially all of the lines of railroad of Company, and which, by execution of an appropriate instrument satisfactory to Trustee, shall assume and agree to perform all of the obligations and covenants of Company hereunder and under its guaranty endorsed on the Trust Certificates, shall not be deemed a breach of this covenant. The appointment of a receiver or receivers in equity or reorganization, or a trustee or trustees in bankruptcy or reorganization for Company or for its property shall not be deemed an unauthorized assignment if, prior to any action by the Trustee to exercise the remedies herein provided, such receiver or receivers or trustee or trustees shall be discharged or such receiver or receivers or trustee or trustees shall, pursuant to court order or decree, in writing duly assume and agree to pay or perform all of the obligations and covenants of Company hereunder and under its guaranty endorsed on the Trust Certificates, in such manner that such

obligations shall have the same status as obligations incurred by such receiver or receivers or trustee or trustees.

Section 4.9. **Release and Replacement of Trust Equipment.** Any unit of the Trust Equipment which shall have become worn out or unsuitable in any respect for the use of, or is no longer needed by, Company may be released, and it is hereby mutually agreed that at any time hereafter until title thereto shall become vested in Company, Trustee will release any such unit of the Trust Equipment upon the filing with it of a Request and an Officer's Certificate which shall describe such units, shall state that they have become worn out or unsuitable for the use of, or are no longer needed by, Company, shall state the selling price thereof and shall specify the Cost and the then Fair Value thereof. No such release shall be made until Company shall have paid to Trustee such selling price or Fair Value, whichever shall be greater; subject, however, to the provision of this Section 4.9 for application of any credit resulting from a prior acquisition of additional Equipment.

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

If the Cost or Fair Value (whichever is the lesser) of such additional Equipment shall exceed such Replacement Funds, then such excess, less depreciation thereof calculated in the manner provided in the definition of "Fair Value," shall constitute a credit toward any further replacement of any Trust Equipment.

Section 4.10. **Company's Indemnities.** Company covenants to indemnify Trustee against all claims arising out of or connected with the ownership or use of any of the Trust Equipment, and particularly against all claims arising out of the use of any patented inventions in and about the Trust Equipment, and to comply with the laws of the United States of America and of all the states and other jurisdictions in which the Trust Equipment, or any part thereof, may be operated, and with all lawful acts, rules, regulations and orders of the Department of Transportation, of the Surface Transportation Board and of all other commissions, boards and other legislative, executive, administrative or judicial bodies or officers having power to regulate or supervise any of the Trust Equipment; ***provided, however,*** that 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 Trustee materially endanger the rights or interests of Trustee or of the Holders. 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.

Section 4.11. **Intention of the Parties.** The parties hereto intend that the lease of Trust Equipment to Company incorporated herein shall be construed as a lease intended as security and a security interest, as such term is defined and used in the Uniform Commercial Code of the Commonwealth of Virginia, and that Trustee, on behalf of each Holder and any party making an Acquisition Deposit, shall have all rights and remedies of a holder of a security interest thereunder. The parties hereto further intend that such security interest shall be a "purchase money security interest" in each and every unit of the Trust Equipment, and that all payments made by Company hereunder, including payments of advance rental pursuant to Section 4.4(A), shall be applied ratably to all units of the Trust Equipment, whether originally subject hereto, substituted pursuant to the provisions of Sections 3.1 or 4.9, or transferred to the Trustee pursuant to Section 3.4.

ARTICLE FIVE

Remedies in Event of Default

Section 5. 1. **Events of Default.** Company covenants that in case:

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

(B) it shall make or suffer any unauthorized assignment or transfer of its rights hereunder or shall make or suffer any unauthorized transfer or sublease of any of the Trust Equipment, or, except as herein authorized, shall part with or suffer the loss of the possession of any of the Trust Equipment, and shall fail or refuse either to cause such assignment or transfer or sublease to be cancelled and recover possession of such Trust Equipment within 30 days after the Trustee shall have demanded in writing such cancellation and recovery of possession, or within said 30 days fail to deposit with Trustee a sum in cash equal to the Fair Value, as of the date of such unauthorized action, of the Trust Equipment so assigned, transferred or subleased or the possession of which shall have been parted with otherwise than as herein authorized (any sum so deposited to be returned to it upon the cancellation of such assignment, transfer or sublease and the recovery of possession by it of such Trust Equipment), or

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

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

(E) a petition for reorganization under Title 11 of the United States Code, as now constituted or as such Title 11 hereafter may be

amended, shall be filed by or against it, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective within 30 days from the filing of such petition (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), and all its obligations under this Agreement and under its guaranty endorsed on the Trust Certificates shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed in such proceedings (whether or not such appointment is subject to ratification) or otherwise, in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees within 60 days after such proceedings shall have been commenced and otherwise in accordance with the provisions of section 1168 of said Title 11, or any successor provision, or

(F) any other proceedings shall be commenced by or against it for any relief under any bankruptcy or insolvency law, or law relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the indebtedness payable hereunder), unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective within 30 days from the commencement of such proceedings (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), and all its obligations under this Agreement and under its guaranty endorsed on the Trust Certificates shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed in connection with any such proceedings (whether or not such appointment is subject to ratification) or otherwise, in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier,

then, in any such case (herein sometimes called an Event of Default), Trustee in its discretion may, and upon the written request of the Holders of not less than 25% in principal amount of the then-outstanding Trust Certificates shall, by notice in writing delivered to Company, declare to be due and payable forthwith the

entire amount of the rentals (including any unpaid advance rental, but not including rentals required for the payment of interest accruing after the date of such declaration) payable by Company as set forth in Section 4.4 and not theretofore paid, whereupon the entire amount of such rentals shall be due and payable immediately without further demand, together with interest at the Penalty Interest Rate to the extent legally enforceable on any portion thereof overdue.

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

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

Section 5.2. **Remedies.** In case of the happening of any Event of Default, Trustee may, subject to any applicable provisions of law, by its agents enter upon the railroads and premises of Company and of any Affiliate or sublessee where any of the Trust Equipment may be and take possession of all or any part of the Trust Equipment and withdraw the same from said railroads and premises, retaining all payments which up to that time may have been made on account of rental for the Trust Equipment and otherwise, and shall be entitled to collect, receive and retain all unpaid per diem, mileage or other charges of any kind earned by the Trust Equipment or any part thereof, and may lease the Trust Equipment or any part thereof, or with or without retaking possession thereof (but only after declaring due and payable the entire amount of the rentals payable by Company as provided in Section 5.1) may sell the same or any part thereof, free from all claims of Company at law or in equity, in one lot and as an entirety or in

separate lots, insofar as may be necessary to perform and fulfill the trust created hereunder, at public or private sale, for cash or upon credit, in its discretion, and may proceed otherwise to enforce its rights and the rights of the Holders in the manner herein provided. Upon any such sale, Trustee may bid for the property offered for sale or any part thereof. Any such sale may be held or conducted at such place and at such time as 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 Trustee may determine, but so that Company shall have a reasonable opportunity to bid at any such sale. Upon such taking possession or withdrawal or lease or sale of the Trust Equipment, or any part thereof, Company shall cease to have any rights or remedies in respect of the Trust Equipment, or such part, hereunder, but all such rights and remedies shall be deemed thenceforth to have been waived by Company, and no payments theretofore made by Company for the rent or use of the Trust Equipment or such part shall, in case of the happening of any such Event of Default and such taking possession, withdrawal, lease or sale by Trustee, give to Company any legal or equitable interest or title in or to the Trust Equipment or such part thereof, or any cause or right of action at law or in equity in respect of the Trust Equipment against Trustee or the Holders. No such taking possession, withdrawal, lease or sale of the Trust Equipment by the Trustee shall be a bar to the recovery by Trustee from Company of rentals then or thereafter due and payable, and Company shall remain liable for the same until such sums shall have been realized as, with the proceeds of the lease or sale of the Trust Equipment, shall be sufficient for the discharge and payment in full of all the items mentioned in Section 4.4 (other than interest not then accrued) whether or not they shall have then matured. The Holders of a majority in principal amount of the then-outstanding Trust Certificates shall have the right from time to time to direct which of the proceedings above provided for shall be taken for the enforcement of the remedies contained herein.

Section 5.3. **Application of Proceeds.** If, in case of the happening of any Event of Default, Trustee shall exercise any of the powers conferred upon it by Sections 5.1 and 5.2, all payments made by Company to Trustee hereunder after such Event of Default, and the proceeds of any judgment collected from Company by Trustee hereunder, and the proceeds of every sale or lease by Trustee hereunder of any of the Trust Equipment, together with any other sums which may then be held by Trustee under any of the provisions hereof (other am sums held in hug for the payment of specific Trust Certificates), shall be applied by

Trustee to the payment in the following order of priority: (a) of all proper charges, expenses or advances made or incurred by Trustee in accordance with the provisions of this Agreement, and (b) of the interest then due, with interest at the Penalty Interest Rate on overdue interest to the extent legally enforceable, and of the principal of all the outstanding Trust Certificates, with interest thereon at the Penalty Interest Rate to the extent legally enforceable from the date of any declaration by Trustee under Section 5.1, whether such Trust Certificates shall have then matured by their terms or not, all such payments to be in full if such proceeds shall be sufficient, and if not sufficient, then pro rata without preference between principal and interest.

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

Section 5.4. **Waiver of Default.** If at any time after the principal of all the Trust Certificates shall have been declared and have become due and payable, or if at any time after the entire amount of rentals shall have been declared and become due and payable, all as provided in Section 5.1, but before the final payment of the principal amount of the Trust Certificates is due pursuant to the fourth paragraph of Section 2.2, all arrears of rent (with interest at the Penalty Interest Rate upon any overdue installments to the extent legally enforceable), the expenses and reasonable compensation of Trustee, together with all expenses of the trust occasioned by Company's default, and all other sums which shall have become due and payable by Company hereunder (other than the principal of the Trust Certificates and any other rental installments which shall not at the time have matured according to their terms) shall be paid by Company before any sale or lease by 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 Trustee, or provision deemed by Trustee to be adequate shall be made therefor, then Trustee, if so requested by the Holders of a majority in principal amount of the Trust Certificates then outstanding and

which shall not have matured (other than by declaration) according to their terms, shall, by written notice to Company, waive the default by reason of which there shall have been such declaration or declarations and the consequences of such default, but no such waiver shall extend to or affect any subsequent default or impair any right consequent thereon.

Section 5.5. **Obligations of Company Not Affected by Remedies.** No retaking of possession of the Trust Equipment by Trustee, or any withdrawal, lease or sale thereof, nor any action or failure or omission to act against Company or in respect of the Trust Equipment, on the part of Trustee or on the part of any Holder, nor any delay or indulgence granted to Company by Trustee or by any such Holder, shall affect the obligations of Company hereunder or under the guaranty endorsed on the Trust Certificates. Company hereby waives presentation and demand in respect of any of the Trust Certificates and waives notice of presentation, of demand and of any default in the payment of the principal of and interest on the Trust Certificates.

Section 5.6. **Company to Deliver Trust Equipment to Trustee.** In case 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 Company or of any Affiliate for the delivery of the Trust Equipment to it, Company shall, at its own expense forthwith and in the usual manner, cause the Trust Equipment to be moved to such point or points on such railroads as shall be designated by Trustee and shall there deliver or cause to be delivered the same to Trustee, or Trustee may at its option keep the Trust Equipment on any of the lines of railroad or premises of Company or of any Affiliate until Trustee shall have leased, sold or otherwise disposed of the same, and for such purpose Company agrees to furnish without charge for rent or storage, the necessary facilities at any convenient point or points selected by Trustee. It is hereby expressly covenanted that the performance of this covenant is of the essence of this Agreement and that, upon application to any court having jurisdiction in the premises, Trustee shall be entitled to a decree against Company requiring the specific performance thereof.

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

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

ARTICLE SIX

Additional Covenants and Agreements by Company

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

Section 6.2. **Guaranty to Holders.** Company covenants and guarantees that each Holder of a Trust Certificate shall receive the principal amount thereof, in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, when and as the same shall become due and payable, in accordance with the

provisions thereof or of this Agreement (and, if not so paid, with interest thereon at the Penalty Interest Rate to the extent legally enforceable), and the Holder of each Trust Certificate shall receive interest thereon in like money at the rate specified therein from the date specified therein from which interest accrues to the date of maturity thereof (and, if not so paid, with interest thereon at the Penalty Interest Rate to the extent legally enforceable); and Company further covenants and agrees to endorse upon each of the Trust Certificates, at or before the issuance and delivery thereof by Trustee, its guaranty of the prompt payment of the principal thereof and of the interest thereon, in substantially the form hereinbefore set forth. Said guaranty so endorsed shall be signed in the name and on behalf of Company by the manual or facsimile signature of any one of its Chairman of the Board, Vice Chairman of the Board, President, its Vice Presidents or Treasurer. In case any officer of Company whose facsimile signature shall appear on said guaranty shall cease to be such officer of Company before the Trust Certificates shall have been issued and delivered by 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 Company as though the person who signed said guaranty had not ceased to be, or had then been acting as, such officer.

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

Section 6.4. **Payment of Expenses; Recording.** Company covenants to pay the expenses incident to the preparation and execution of the Trust Certificates to be issued hereunder, or connected with the preparation, execution, recording and filing hereof and of any instruments executed under the provisions hereof with respect to the Trust Equipment. Company with all convenient speed will cause this Agreement and all supplements hereto to be duly filed and recorded with the Surface Transportation Board in accordance with section 11301 of Title 49, United States Code. 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 Trustee for the purposes of proper protection of Trustee's title and the rights of the Holders and of fully carrying out and effectuating this Agreement and the intent hereof, and Company will promptly furnish to Trustee certificates or other evidences of filing and recording pursuant to the last preceding sentence, and of any other such filing, registration and recording, and an Opinion or Opinions of Counsel with respect thereto.

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

ARTICLE SEVEN

The Trustee

Section 7. 1. **Acceptance of Trusts. Trustee** hereby accepts the trusts imposed upon it by this Agreement and covenants to perform the same as herein expressed.

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

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

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

Section 7.5. **No Obligation to Enforce Trust unless Requested and Indemnified; Enforcement by Trustee.** Trustee shall be under no obligation to take any action for the execution or enforcement of the trust hereby created unless requested thereunto in writing by the Holders of not less than 25% in principal amount of the then-outstanding Trust Certificates and unless indemnified to its satisfaction against expenses and liability with respect thereto, and unless also furnished with proof satisfactory to it as to the ownership of the Trust Certificates in respect of which any such request may be made; but this provision, in the absence of such request, shall not affect any discretion herein given to Trustee to determine whether it shall take action in respect of any default hereunder or what action it shall take.

All rights of action and rights to assert claims under this Agreement, or under any of the Trust Certificates, may be enforced by 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 Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall be for the ratable benefit of the Holders. In any proceedings brought by Trustee (and also any proceedings involving the

interpretation of any provision of this Agreement to which Trustee shall be a party) Trustee shall be held to represent all the Holders, and it shall not be necessary to make any Holders parties to such proceedings.

Section 7.6. **Assumption of No Default; May Rely on Notices and Other Documents.** Trustee may for all purposes conclusively assume that Company is not in default under the terms hereof until notified in writing to the contrary by the Holders of at least 10% in principal amount of the then outstanding Trust Certificates, which notice shall distinctly specify the Event of Default desired to be brought to the attention of Trustee. As to any fact or matter, the manner of determining which is not specifically prescribed herein, Trustee may for all purposes rely upon an Officer's Certificate as to such fact or matter. Trustee shall not incur any liability to anyone in relying conclusively on, and in acting upon, any request, notice, consent, opinion, order, certificate, warrant or other paper or instrument believed by it to be genuine or authentic and to be signed by the proper party or parties.

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

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

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

Trustee shall, on Request - or may, in the event funds are required for payment against delivery of Equipment - sell such Investments, or any portion thereof, and restore to Deposited Cash or Replacement Funds, as the case may be, the proceeds of any such sale up to the amount paid for such Investments, including accrued interest and premium.

Trustee shall restore to Deposited Cash or Replacement Funds, as the case may be, out of rent received by it for that purpose under the provisions of Section 4.4(B)(1), an amount equal to any expenses incurred in connection with any purchase or sale of 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 and premium. Company, if not in default under the terms hereof or of any supplement hereto, shall be entitled to receive any profit which may be realized from any sale or redemption of Investments.

Section 7.8. **No Liability for Trust Equipment; May Act through Others; No Responsibility for Recitals, etc.; Compensation; Owning Trust Certificates; Moneys Unclaimed for Six Years; Moneys Held in Trust.** Trustee shall not be liable to anyone for any delay in the delivery of any of the Trust Equipment, or for any default on the part of any vendor thereof or of 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 Trustee in respect thereof or as a representation in respect of the value thereof or in respect of the title thereto.

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 Company) and shall be answerable for only its own acts, negligence and wilful defaults and not for the default or misconduct of any attorney, agent or servant appointed by it with reasonable care. Trustee shall not be responsible for the recitals herein contained, or for the execution or validity of this Agreement or of the Trust Certificates (except for its own execution thereof), or for the guaranty by Company or for any mistake of fact or law.

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

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

Upon Request, any moneys held by Trustee which shall have been deposited, or are held for the payment of the principal amount of or interest on any Trust Certificates remaining unclaimed for six years after the date when the last annual installment of principal payable on the Trust Certificates becomes due and payable, shall be repaid by Trustee to Company, and all liability of Trustee with respect to such money shall thereupon cease, and the Holders shall thereafter be entitled to look only to Company for payment thereof, ***provided, however,*** that Trustee may, before making any such repayment and at the expense of Company, cause notice that said moneys have not been claimed as aforesaid to be published once in a daily newspaper printed in the English language and published in the Borough of Manhattan, the City of New York, and that after a date specified in such notice, which shall be not less than 30 days after the date of such publication, any unclaimed balance of such moneys then remaining on deposit with Trustee will be repaid to Company. In no event shall the Holders be entitled to interest upon such moneys whether held by Trustee or so repaid to Company.

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

Section 7.9. **Resignation by Trustee; Appointment of Successor Trustee.** If at any time Trustee shall desire to divest itself of title to the Trust Equipment, and to terminate its duties and obligations and rights hereunder and under the Trust Certificates, it shall so notify Company in writing, and Company shall thereupon designate in writing to Trustee a national bank, or a state bank or trust company, qualified as below specified, to serve as and until a new trustee (for purposes of Section 7.9 and Section 7.10, "Successor Trustee") is appointed by the Holders as hereinafter provided, to which may be assigned the entire right, title and interest of Trustee in the Trust Equipment, and in which may be vested

the rights, powers, duties and obligations of Trustee hereunder and under the Trust Certificates. Upon the transfer and delivery of all moneys, records, any Investments in which any of said moneys may then be invested, and Trust Equipment held by the Trustee, and the execution by Trustee of such instruments of transfer as may be reasonably requested by Successor Trustee, and upon acceptance by Successor Trustee of the assignment and of the trust, Trustee shall be relieved and discharged of all the title, rights, powers, duties and obligations of the trust hereunder and under the Trust Certificates, and the same shall become vested in Successor Trustee, and every provision hereof applicable to Trustee shall apply to Successor Trustee with like effect as if such Successor Trustee originally had been named herein in the place of Trustee.

If Company shall fail to designate a Successor Trustee by instrument in writing delivered to Trustee within two weeks from the time of receiving such notice in writing from Trustee, Trustee may thereupon designate such Successor Trustee or apply to any court of competent jurisdiction for the appointment of a Successor Trustee. The foregoing provisions are, however, subject to the right of the Holders of a majority in principal amount of the then-outstanding Trust Certificates by an instrument in writing to appoint a Successor Trustee, if such appointment is made within one year from the date of Trustee's giving of such notice to Company. Company shall execute all writings recognizing the transfer of title as aforesaid and all instruments of further assurance or otherwise as reasonably may be requested by Successor Trustee in the premises, and will do and perform any and all acts necessary to establish and maintain the title and rights of Successor Trustee in and to the Trust Equipment.

Every Successor Trustee shall be a national bank, or a state bank or trust company, having trust powers, doing business in the Borough of Manhattan, City and State of New York, in the City of Norfolk, Commonwealth of Virginia, or in the city in which Trustee does business, having a capital and surplus aggregating at least $50,000,000, if there be such a bank or trust company willing and able to accept the trust upon reasonable and customary terms and duly qualified to act as such trustee.

Section 7.10. **Merger, Consolidation or Conversion of Trustee.** Any corporation resulting from any merger, consolidation, or conversion to which Trustee shall be a party, provided such corporation shall be a national bank, or a

state bank or trust company, having trust powers, qualified as above specified in the case of a Successor Trustee, shall be Successor Trustee hereunder without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

ARTICLE EIGHT

Miscellaneous

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

(A) The fact and date of the execution by any person of any such request or of any other instrument in writing may be proved (i) by the affidavit of a witness to such execution, or by the certificate of any notary public or of any other officer authorized to take acknowledgments of deeds to be recorded in the state where the acknowledgment may be taken, certifying in each case that the person signing such request or other instrument acknowledged to him the voluntary execution thereof, or (ii) in any other manner Trustee shall deem sufficient. Where such execution is by a person acting in other than his individual capacity, such certificate or affidavit also shall constitute sufficient proof of his authority.

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

SCHEDULE A

Description of Trust Equipment

Number of Units	Description	Road Numbers
60	DASH 9-40CW Diesel-Electric Locomotives (General Electric)	**NS9245 to NS9304, inclusive**

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

THE FIRST NATIONAL BANK OF MARYLAND, Trustee,

By _____
Title: Vice President

NORFOLK SOUTHERN RAILWAY COMPANY

By _____
Title: Vice President

State of Maryland

City) **ss.:**

~~County~~ **of Baltimore**

On this 29th day of December, 1998, before me personally appeared **Robert D. Brown**, to me personally known, who, being by me duly sworn, says he is Vice President of **The First National Bank of Maryland,** that the foregoing instrument was signed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Deborah K. Bailey
Notary Public

Commission expires:
[Notarial Seal] MY COMMISSION EXPIRES 4/13/02

Commonwealth of Virginia

) **ss.:**

City of Norfolk

On this 28th day of December, 1998, before me personally appeared **William J. Romig**, to me personally known, who, being by me duly sworn, says he is Vice President of **Norfolk Southern Railway Company,** that the foregoing instrument was signed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Carole K. Johnson
Notary Public

Commission expires:
[Notarial Seal] My Commission Expires May 31, 2002