6-201A040

**BURLINGTON NORTHERN**

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*Vice President-Law*

No. JUL 19 1976
Date
Fee $ 50
ICC Washington, D. C.

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Office of the Secretary
Interstate Commerce Commission
Washington, D. C. 20423

July 16, 1976

RECORDATION NO. 8413 Filed & Recorded
JUL 19 1976 12 25 PM
INTERSTATE COMMERCE COMMISSION

Gentlemen:

There is submitted herewith, for filing with the Commission pursuant to Section 20c of the Interstate Commerce Act, six original counterparts of Agreement, dated as of August 1, 1976, between First Trust Company of Saint Paul, Trustee and Burlington Northern Inc., constituting Burlington Northern Inc. Equipment Trust of 1976, Series 3.

Enclosed is check payable to the order of the Commission for $50.00 in payment of the recordation fee.

The names and addresses of the parties to the enclosed equipment trust agreement and the respective capacities of said parties thereunder are as follows:

Equipment Trust Agreement

Trustee: First Trust Company of Saint Paul
332 Minnesota Street
St. Paul, Minnesota 55101

Guarantor: Burlington Northern Inc.
176 East Fifth Street
St. Paul, Minnesota 55101

A general description of the equipment covered by the enclosed equipment trust agreement is as follows:

500 Covered hopper cars, 100-ton capacity, A.A.R. Mechanical Designation LO, FMC Corporation, Builder, Burlington Northern road Nos. 446550 to 447049, both inclusive.

50 Multi-purpose open top hopper cars, 100-ton capacity, A.A.R. Mechanical Designation MWB, Pacific Car and Foundry Company, Builder, Burlington Northern road Nos. 958425 to 958474, both inclusive.

Counterparts — C. H. Kunkel

Each unit of equipment described above will have fastened on each side thereof a metal plate bearing the following words, or such words will be otherwise plainly, distinctly, permanently and conspicuously marked on each side thereof, in either case, in letters not less than one inch in height:

> "OWNED BY A BANK OR TRUST COMPANY UNDER A SECURITY AGREEMENT FILED UNDER THE INTER-STATE COMMERCE ACT, SECTION 20c."

Such equipment will also be lettered "Burlington Northern Inc.", "Burlington Northern", "BNI", or "BN", or in some other appropriate manner for the purpose of identification of the leasehold interest of Burlington Northern Inc. therein.

Please return to the individual presenting these documents for recordation, Mrs. Carolyn H. Kunkel, four of the enclosed documents, stamped and bearing notation as provided in Section 57.5(a) of the Commission's regulations.

Very truly yours,

John C. Smith

JCS/df/4

Enc.

# Interstate Commerce Commission

Washington, D.C. 20423

7/19/76

OFFICE OF THE SECRETARY

Mr. John C. Smith
Burlington Northern Inc.
176 East Fifth Street
St. Paul, Minnesota 55101

Dear Sir:

The enclosed document was recorded pursuant to the provisions of Section 20c of the Interstate Commerce Act, 49 U.S.C. 20c, on 7/19/76 at 12:35pm , and assigned recordation number

8413

Sincerely yours,

Robert L. Oswald
Secretary

Enclosure

SE-39
(2/75)

8413

# BURLINGTON NORTHERN INC.
# EQUIPMENT TRUST OF 1976

## SERIES 3

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## EQUIPMENT TRUST AGREEMENT

*Dated as of August 1, 1976*

**By and Between**

**FIRST TRUST COMPANY OF SAINT PAUL,**
***Trustee***

**and**

**BURLINGTON NORTHERN INC.**

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EQUIPMENT TRUST AGREEMENT, dated as of August 1, 1976, by and between FIRST TRUST COMPANY OF SAINT PAUL, a corporation duly organized and existing under the laws of the State of Minnesota, as Trustee (hereinafter called the Trustee), of the first part, and BURLINGTON NORTHERN INC., a corporation duly organized and existing under the laws of the State of Delaware (hereinafter called the Company), of the second part.

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

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

WHEREAS, Burlington Northern Inc. Equipment Trust of 1976, Series 3 Certificates (hereinafter called Trust Certificates), are to be issued and sold in an aggregate principal amount not exceeding $12,750,000, and the net proceeds (as hereinafter defined) of such sale together with such other cash, if any, as may be required to be deposited by the Company as hereinafter provided is to constitute a fund equal to the aggregate principal amount of Trust Certificates so issued and sold to be known as BURLINGTON NORTHERN INC. EQUIPMENT TRUST OF 1976, SERIES 3, to be applied by the Trustee from time to time in part payment of the Cost of the Trust Equipment, the remainder of the Cost thereof to be paid out of advance rentals to be paid by the Company as provided herein; and

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

[FORM OF TRUST CERTIFICATE WITH DIVIDEND WARRANTS]

$1,000 No. $1,000

BURLINGTON NORTHERN INC.
EQUIPMENT TRUST OF 1976

SERIES 3

Equipment Trust Certificate
Total Authorized Issue $12,750,000

FIRST TRUST COMPANY OF SAINT PAUL,
Trustee

Dividends at the Rate of 8¼% Per Annum
Payable February 1 and August 1
Principal hereof payable August 1, 19

FIRST TRUST COMPANY OF SAINT PAUL, as Trustee under an Equipment Trust Agreement dated as of August 1, 1976, by and between FIRST TRUST COMPANY OF SAINT PAUL, Trustee, of the first part, and BURLINGTON NORTHERN INC. (hereinafter called the Company), of the second part, hereby certifies that the bearer, or, if this Certificate is registered as to principal, the registered holder hereof is entitled to an interest in the principal amount of $1,000 in BURLINGTON NORTHERN INC. EQUIPMENT TRUST OF 1976, SERIES 3, payable on the due date stated above, upon presentation and surrender of this Certificate to the Trustee at its corporate trust office in the City of St. Paul, State of Minnesota, or at the option of the bearer, or registered holder hereof, as the case may be, at the corporate trust office of Morgan Guaranty Trust Company of New York, 23 Wall Street, in the Borough of Manhattan, City and State of New York, and to payment, until said last mentioned date, of dividends on said principal amount at the rate of 8¼% per annum from August 1, 1976, semi-annually on February 1 and August 1 in each year, according to the tenor of

the dividend warrants hereto annexed, upon presentation and surrender of such warrants, as they severally mature, to the Trustee at its said office, in the City of St. Paul, State of Minnesota, or at the option of the bearer, or registered holder hereof, as the case may be, at the corporate trust office of Morgan Guaranty Trust Company of New York, 23 Wall Street, in the Borough of Manhattan, City and State of New York, with interest at the dividend warrant rate on any unpaid principal and on any unpaid dividends to the extent that it shall be legally enforceable, all in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, but payable only out of rentals or other moneys received by the Trustee and applicable to such payment under the provisions of said Agreement.

This Certificate is one of an issue of Certificates of serial maturities having an aggregate principal amount not exceeding $12,750,000, all issued or to be issued under and subject to the terms of said Agreement, under which certain railroad equipment leased to the Company (or cash or obligations defined in said Agreement as "Government Securities" in lieu thereof, as provided in said Agreement) is held by the Trustee in trust for the benefit of the holders of the interests represented by said Certificates, to which Agreement (a copy of which is on file with the Trustee at its said office in the City of St. Paul, State of Minnesota), reference is made for a full statement of the rights and obligations of the Company, the duties and immunities of the Trustee and the rights of the holder hereof thereunder, and to all of which the bearer or registered holder hereof, by accepting this Certificate, assents.

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

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

Every holder of this Certificate and of the attached warrants, by accepting the same, agrees with the Trustee, with the Company, and with every subsequent holder hereof and thereof that this Certificate (unless registered in the name of the holder) and such warrants shall be transferable with the same effect as in the case of a negotiable instrument payable to bearer, by delivery by any person having possession of the same, respectively, howsoever such possession may have been acquired; and the Trustee and the Company may treat the bearer of this Certificate, or the registered holder hereof if this Certificate be registered in his name as above provided, and the bearer of any dividend warrant attached hereto whether or not this Certificate be so registered, as the absolute owner of this Certificate or of said warrants, as the case may be, for all purposes, and shall not be affected by any notice to the contrary.

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

This Certificate shall not be valid or become obligatory for any purpose until it has been manually signed by the Trustee.

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

IN WITNESS WHEREOF, the Trustee has caused this Certificate to be signed by the fascimile signature of one of its

Senior Vice Presidents, and its corporate seal, in facsimile, to be heretunto affixed and to be attested by one of its Assistant Secretaries, and has caused dividend warrants bearing the facsimile signature of one of its Senior Vice Presidents to be attached hereto, the first day of August, 1976.

FIRST TRUST COMPANY OF SAINT PAUL,
Trustee,

By .....
Senior Vice President

ATTEST:

.....
Assistant Secretary

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

$41.25 No.

Due to the bearer hereof on 1, 19 , on surrender hereof at the corporate trust office of the undersigned Trustee in the City of St. Paul, State of Minnesota, or at the option of the bearer, at the corporate trust office of Morgan Guaranty Trust Company of New York, 23 Wall Street, in the Borough of Manhattan, City and State of New York, Forty-One and 25/100 Dollars, being the semi-annual dividend then due on Certificate No. of BURLINGTON NORTHERN INC. EQUIPMENT TRUST OF 1976, SERIES 3, payable only out of rentals or other moneys received by the Trustee and applicable to such payment under the Equipment Trust Agreement referred to in said Certificate.

FIRST TRUST COMPANY OF SAINT PAUL,
Trustee,

By .....
Senior Vice President

[FORM OF GUARANTY FOR
TRUST CERTIFICATE WITH DIVIDEND WARRANTS]

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

BURLINGTON NORTHERN INC.

By .....
Executive Vice President–
Finance and Administration

[FORM OF FULLY REGISTERED TRUST CERTIFICATE]

REGISTERED

No. R $

BURLINGTON NORTHERN INC.
EQUIPMENT TRUST OF 1976

SERIES 3

Equipment Trust Certificate
Total Authorized Issue $12,750,000

FIRST TRUST COMPANY OF SAINT PAUL,
Trustee

Dividends at the Rate of 8¼% Per Annum
Payable February 1 and August 1
Principal hereof payable August 1, 19

FIRST TRUST COMPANY OF SAINT PAUL, as Trustee under an Equipment Trust Agreement dated as of August 1, 1976, by and between FIRST TRUST COMPANY OF SAINT PAUL, Trustee, of the first part, and BURLINGTON NORTHERN INC. (hereinafter called the Company), of the second part, hereby certifies that or registered assigns, is entitled to an interest in the principal amount of Dollars in BURLINGTON NORTHERN INC. EQUIPMENT TRUST OF 1976, SERIES 3, payable on the due date stated above, upon presentation and surrender of this Certificate to the Trustee at its corporate trust office in the City of St. Paul, State of Minnesota, or at the option of the registered holder hereof, at the corporate trust office of Morgan Guaranty Trust Company of New York, 23 Wall Street, in the Borough of Manhattan, City and State of New York, and to payment, until said last mentioned date, of dividends on said principal amount, semi-annually on February 1 and August 1 in each year, at the rate of 8¼% per annum from the date hereof, by check mailed by the Trustee to the order of or as directed by the registered holder hereof or registered assigns, with interest at said dividend rate on any unpaid principal and on any unpaid dividends to the extent that it shall be legally enforceable, all in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, but payable only out of rentals or other moneys received by the Trustee and applicable to such payment under the provisions of said Agreement.

This Certificate is one of an issue of Certificates of serial maturities having an aggregate principal amount not exceeding $12,750,000, all issued or to be issued under and subject to the terms of said Agreement, under which certain railroad equipment leased to the Company (or cash or obligations defined in said Agreement as "Government Securities" in lieu thereof, as provided in said Agreement) is held by the Trustee in trust for the benefit of the holders of the interests represented by said Certificates, to which Agreement (a copy of which is on file with the Trustee at its said office in the City of St. Paul, State of Minnesota) reference is made for a full statement of the rights and obligations of the Company, the

duties and immunities of the Trustee and the rights of the registered holder hereof thereunder, and to all of which the registered holder hereof, by accepting this Certificate, assents.

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

This Certificate is transferable by the registered holder hereof in person or by duly authorized attorney on the books of the Trustee at its said office in the City of St. Paul, State of Minnesota, upon surrender hereof to the Trustee at its said office, accompanied by appropriate instruments of assignment and transfer, duly executed by the registered holder hereof in person or by such attorney, in form satisfactory to the Trustee, and thereupon a new fully registered Certificate or Certificates in authorized denominations for the same aggregate principal amount and having the same date of maturity as this Certificate will be issued to the transferee in exchange herefor. The Trustee and the Company shall be entitled to treat the registered holder hereof as the absolute owner hereof for all purposes, and shall not be affected by any notice to the contrary.

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

This Certificate shall not be valid or become obligatory for any purpose until it has been manually signed by the Trustee.

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

IN WITNESS WHEREOF, the Trustee has caused this Certificate to be signed by the facsimile signature of one of its

Senior Vice Presidents and its corporate seal, in facsimile, to be hereunto affixed and to be attested by one of its Assistant Secretaries.

Dated:

FIRST TRUST COMPANY OF SAINT PAUL,
Trustee,

By .....
Senior Vice President

ATTEST:

.....
Assistant Secretary

[FORM OF GUARANTY FOR
FULLY REGISTERED TRUST CERTIFICATE]

BURLINGTON NORTHERN INC., for a valuable consideration, hereby unconditionally guarantees to the registered holder of the within Certificate the prompt payment of the principal of said Certificate, and of dividends thereon at the dividend rate specified therein on the semi-annual dates specified in said Certificate, with interest at the dividend rate on any unpaid principal and on any unpaid dividends to the extent that it shall be legally enforceable, in accordance with the terms of said Certificate and the Equipment Trust Agreement referred to therein.

BURLINGTON NORTHERN INC.

By .....
Executive Vice President–
Finance and Administration

WHEREAS, it is desired to secure to the holders of the Trust Certificates the payment of the principal thereof in 15 equal annual installments payable on the first day of August in each

year beginning August 1, 1977, and ending August 1, 1991, as hereinafter more particularly provided, with dividends to said dates of maturity, respectively, as hereinafter provided, payable semi-annually on February 1 and August 1 in each year, and to evidence the rights of the holders of the Trust Certificates in substantially the forms hereinbefore set forth;

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

## ARTICLE I
### DEFINITIONS

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

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

*Company* shall mean Burlington Northern Inc.

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

*Deposited Cash* shall mean the aggregate of (a) cash and any advance rentals on deposit with the Trustee as provided in the first paragraph of Section 2.01 hereof and, when required or indicated by the context, any Government Securities purchased by the use of such cash or rentals pursuant to the provisions of Section 7.08 hereof, and (b) any sums restored to Deposited Cash from rentals pursuant to Section 4.04(B) (1) hereof and on deposit with the Trustee.

*Equipment* shall mean standard-gauge railroad equipment (other than passenger cars and work equipment) which shall have been first put into operation after June 1, 1976.

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

The *fair value* of any unit of Equipment shall be considered to be the Cost thereof less depreciation accrued on such Equipment computed by the straight-line method at the rate of one-third of one per cent of the Cost for each calendar month from the date the same was first put into operation to the date as of which the value is to be determined.

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

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

*Officer's Certificate* shall mean a certificate signed by a Vice President or the Treasurer of the Company.

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

*Request* shall mean a written request for the action therein specified signed on behalf of the Company by a Vice President, an Assistant Vice President or the Treasurer of the Company and delivered to the Trustee.

*Trust Certificates* shall mean Burlington Northern Inc. Equipment Trust of 1976, Series 3, issued hereunder, and *dividend warrants* shall mean dividend warrants attached or appertaining to Trust Certificates.

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

*Trustee* shall mean First Trust Company of Saint Paul, a corporation duly organized and existing under the laws of the State of Minnesota, and any successor as trustee hereunder.

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

## ARTICLE II

### TRUST CERTIFICATES AND ISSUANCE THEREOF

SECTION 2.01. The net proceeds (excluding premium and accrued dividends, if any) of the sale of any of the Trust Certificates shall forthwith upon issuance thereof, be deposited in cash with the Trustee. At the same time the Company shall, if necessary, deposit with the Trustee any advance rental payable by the Company to the Trustee under Section 4.04(A)(1) hereof.

Thereupon, without waiting for the recording or filing of this Agreement or of any other instrument respecting the Trust Equipment, the Trustee shall issue and deliver, as the Company shall direct by Request, Trust Certificates substantially in the forms set forth herein and in the aggregate principal amount so sold.

SECTION 2.02. Each of the Trust Certificates shall represent an interest in the principal amount therein specified in the trust created hereunder and shall bear dividends on said amount at the rate of 8¼% per annum, payable semi-annually on the first day of February and of August in each year. The dividend rate may be changed by an agreement in writing between the company and the holders of all outstanding Trust Certificates. A counterpart of any such agreement shall be filed with the Trustee.

The aggregate principal amount of Trust Certificates which shall be executed and delivered by the Trustee hereunder shall not exceed the sum of $12,750,000, except as provided in Sections 2.05, 2.06 and 2.07 hereof. Each of the Trust Certificates shall bear upon its face the due date thereof together with such numbers, descriptions or marks of identification as the Trustee may determine.

The principal amount of the Trust Certificates shall become due in 15 equal annual installments payable on the first day of August in each year beginning August 1, 1977, and ending August 1, 1991, both inclusive. Dividend warrants evidencing the rights of the bearers thereof to the dividends on the Trust Certificates with dividend warrants shall be annexed to such Trust Certificates.

SECTION 2.03. The Trust Certificates, the dividend warrants and the guaranty to be endorsed on the Trust Certificates by the Company as hereinafter in Section 6.02 hereof provided shall be in substantially the forms hereinbefore set forth.

SECTION 2.04. The Trust Certificates shall not be valid or become obligatory for any purpose until signed in the name and on behalf of the Trustee by the facsimile signature of one of its Senior Vice Presidents and its corporate seal in facsimile shall be attested by the manual signature of one of its Assis-

tant Secretaries. The dividend warrants to be attached to the Trust Certificates with dividend warrants shall be authenticated by the facsimile signature of a Senior Vice President of the Trustee. In case any officer of the Trustee whose signature, whether facsimile or not, shall appear on any of the Trust Certificates or on the dividend warrants shall cease to be such officer of the Trustee before the Trust Certificates or dividend warrants shall have been issued and delivered by the Trustee, or shall not have been acting in such capacity on the date of the Trust Certificates, such Trust Certificates and dividend warrants, shall be adopted by the Trustee and be issued and delivered as though such person had not ceased to be, or had then been acting as, such officer of the Trustee. Before executing or delivering any Trust Certificate the Trustee shall detach and cancel all matured dividend warrants thereto appertaining (other than dividend warrants for any period for which dividends are in default on outstanding Trust Certificates).

SECTION 2.05. The Trust Certificates with dividend warrants shall be in the denomination of $1,000 each; shall be payable to bearer; shall be negotiable and transferable by delivery unless registered as to principal, in the manner hereinafter provided; and shall be dated July 1, 1975.

The fully registered Trust Certificates shall be in the denominations of $1,000 or any multiple thereof; shall be registered as to both principal and dividends, in the name of the holder; shall be transferable upon presentation and surrender thereof for transfer at the corporate trust office of the Trustee in the City of St. Paul, State of Minnesota, accompanied by appropriate instruments of assignment and transfer, duly executed by the registered holder of the surrendered Trust Certificate or Certificates or by duly authorized attorney, in form satisfactory to the Trustee; and shall be dated August 1, 1976, or the dividend payment date to which dividends shall have been paid next preceding or coinciding with the date of issue, whichever is later, and shall bear dividends from the date thereof.

Fully registered Trust Certificates may be exchanged for a like aggregate principal amount of Trust Certificates with dividend warrants of the same maturity having all unmatured dividend warrants attached, or for a like aggregate principal amount of fully registered Trust Certificates of the same maturity of authorized denominations, and Trust Certificates with dividend warrants may be exchanged for a like aggregate principal amount of fully registered Trust Certificates of the same maturity of authorized denominations. The Trust Certificates to be exchanged shall be surrendered at said office of the Trustee in the City of St. Paul, State of Minnesota. All Trust Certificates with dividend warrants surrendered for exchange shall have attached all unmatured dividend warrants appertaining thereto, and, in case at the time of any such exchange dividends on the Trust Certificates are in default, they shall in addition have attached all matured dividend warrants in default appertaining thereto. Any of the Trust Certificates with dividend warrants may be registered as to the principal thereof in the name of the holder at said office of the Trustee in the City of St. Paul, State of Minnesota, and such registration shall be noted on the Trust Certificate by or on behalf of the Trustee. Thereafter no transfer thereof shall be valid unless made at said office by the registered holder thereof in person or by his duly authorized attorney, and similarly noted thereon; but the same may be discharged from registration and transferred to bearer as before. No registration, however, shall affect the dividend warrants, but every such dividend warrant shall continue to be transferable with the same effect as in the case of a negotiable instrument payable to bearer, by delivery thereof by any person in possession of the same, howsoever such possession may have been acquired.

Anything to the contrary herein notwithstanding, the parties hereto and any paying agent may deem and treat (i) the bearer of any Trust Certificate not registered as to principal and the bearer of any dividend warrant, whether or not such Trust Certificate shall be registered as to principal, as the absolute owner of such Trust Certificate or dividend warrant, as the case may be, for the purpose of receiving payment thereof and for all other purposes, and shall not be affected

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

For any registration, transfer, exchange or discharge from registration the Trustee shall require the payment of a sum sufficient to cover reimbursement for any 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 registration of transfer of, the whole or any part of one or more other Trust Certificates shall carry all the rights to dividends accrued and unpaid, and to accrue, which were carried by the whole or such part of such one or more other Trust Certificates, and, notwithstanding anything contained in this Agreement, such Trust Certificate shall be so dated, or have attached thereto such dividend warrants, that neither gain nor loss in dividends shall result from such exchange, substitution or transfer.

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

SECTION 2.06. In case any Trust Certificate, or the dividend warrants, if any, thereto appertaining, shall become mutilated or defaced or be lost, stolen or destroyed, then on the terms herein set forth, and not otherwise, the Trustee, upon Request, shall execute and deliver a new fully registered Trust Certificate or a Trust Certificate with dividend warrants, as the case may be, with, if a Trust Certificate with dividend warrants, all unmatured dividend warrants (and any matured dividend warrants representing any period for which dividends are in default on outstanding Trust Certificates) appertaining thereto, of like maturity, tenor and date, and bearing

such number, designation or other mark of identification as the Trustee may determine, in exchange and substitution for, and upon cancellation of, the mutilated or defaced Trust Certificate and dividend warrants, or in lieu of or in substitution for the same if lost, stolen or destroyed, and shall make payment of any matured and unpaid dividend warrants appertaining to the same. The Company shall execute its guaranty on any Trust Certificates so delivered. The applicant for a new Trust Certificate shall furnish to the Trustee and to the Company evidence to their satisfaction of the loss, theft, or destruction of such Trust Certificate and dividend warrants alleged to have been lost, stolen or destroyed, and of the ownership and authenticity of such mutilated, defaced, lost, stolen or destroyed Trust Certificate and dividend warrants, and also such security and indemnity as may be required by the Trustee and by the Company, in their discretion; and shall pay all expenses and charges of such substitution or exchange. All Trust Certificates shall be issued, held and owned upon the express condition that the foregoing provisions are exclusive in respect of the replacement of mutilated, defaced, lost, stolen or destroyed Trust Certificates and dividend warrants, and shall preclude any and all other rights and remedies, any law or statute now existing or hereafter enacted to the contrary notwithstanding.

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

Temporary Trust Certificates shall be exchangeable at the corporate trust office of the Trustee in the City of St. Paul, State of Minnesota, without charge to the holder for the definitive Trust Certificates in lieu of which they are issued, and upon surrender and cancellation of any of such temporary

Trust Certificates the Trustee shall issue and deliver in exchange therefor definitive Trust Certificates of the same maturity and for the same aggregate principal amount. Until so exchanged, the holders of the temporary Trust Certificates shall be entitled to the same rights hereunder as if the temporary Trust Certificates had been so exchanged.

SECTION 2.08. All Trust Certificates and dividend warrants, surrendered to the Trustee or any paying agent for payment, transfer, exchange, replacement or cancellation shall be cancelled by it. The Trustee shall destroy all cancelled Trust Certificates and dividend warrants and deliver a certificate of such destruction to the Company.

## ARTICLE III

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

SECTION 3.01. The Company, as speedily as may be, shall cause to be constructed and shall cause to be sold, assigned, transferred and set over unto the Trustee, as trustee for the holders of the Trust Certificates and dividend warrants appertaining thereto, the Equipment described in Schedule A hereto.

To that end the Company hereby assigns, or as speedily as may be after entering into the contract or contracts for the construction of such Equipment agrees to assign, to the Trustee all its rights, title and interest under said contract or contracts. Such Equipment shall be delivered to the Company, which is hereby designated by the Trustee as its agent to receive such delivery, and an Officer's Certificate as to such delivery shall be conclusive evidence of such delivery.

In the event that it may be deemed necessary or desirable to procure for the transportation services of the Company, and to include in the trust hereby created, other Equipment in lieu of any of the Equipment specifically described in Schedule A hereto prior to the delivery of such Equipment to the Trustee, the Company may cause such other Equipment to be constructed and to be sold, assigned, transferred and set

over unto the Trustee, to be substituted under the trust, and to that end the Company, upon entering into a contract or contracts for the construction of such other Equipment, shall assign to the Trustee all its rights, title and interest under the said contract or contracts.

SECTION 3.02. From time to time, when and as any of the Trust Equipment shall have been delivered to the Trustee or its agent pursuant to this Article III, the Trustee shall (subject to the provisions of Section 3.03 hereof) pay, upon Request, to the manufacturer or manufacturers of the delivered Trust Equipment out of Deposited Cash an amount which, together with all payments previously made out of Deposited Cash upon deliveries of Trust Equipment, will equal not more than 80% of the aggregate Cost of the Trust Equipment then and theretofore delivered to the Trustee.

SECTION 3.03. The Company covenants that, contemporaneously with the delivery to the Trustee of the documents required by Section 3.04 hereof in respect to any delivery of Trust Equipment, it will pay to the Trustee the advance rental provided in Section 4.04(A)(2) hereof, and thereupon the Trustee shall, upon Request, pay to the manufacturer or manufacturers of the delivered Trust Equipment, by the use of such advance rental, the portion of the Cost of the delivered Trust Equipment not paid out of Deposited Cash as provided for in Section 3.02 hereof; the intention being that the Company shall ultimately pay as advance rental not less than 20% of the final Cost of all the Trust Equipment, and the Trustee and the Company shall at any time if occasion arises adjust their accounts and payments to the end that the Trustee shall pay with Deposited Cash not more than 80% of such final Cost and the Company shall pay as advance rental the remainder, to be not less than 20% of such final Cost.

SECTION 3.04. The Trustee shall not pay out any Deposited Cash against the delivery of any of the Trust Equipment unless and until it shall have received:

(a) An invoice or invoices from the manufacturer or manufacturers and an Officer's Certificate which shall state (i) that the Trust Equipment, described and specified by number therein, is Equipment as herein defined, (ii) that the Cost of such Trust Equipment is an amount therein specified or is not less than an amount therein specified, and (iii) that such Trust Equipment has been delivered to the Company, as agent for the Trustee, and has been plated or marked in accordance with the provisions of Section 4.06 hereof;

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

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

(d) In case of any Trust Equipment not specifically described herein, an Opinion of Counsel that a proper supplement hereto in respect of such Trust Equipment has been duly executed by the Trustee and the Company, and duly filed and recorded in accordance with Section 6.04 hereof.

Any Officer's Certificate pursuant to this Section 3.04 may state that the Cost of the Trust Equipment therein referred to is tentatively determined, subject to final adjustment to be evidenced in a final Officer's Certificate to be delivered to the Trustee.

If the aggregate final Cost of the Trust Equipment shall be less than 125% of the aggregate principal amount of Trust Certificates issued hereunder, the Company will cause to be transferred to the Trustee additional Equipment in such amount and of such Cost that the aggregate final Cost of the Trust Equipment will be at least 125% of the aggregate principal amount of Trust Certificates issued hereunder and, whether or not Deposited Cash is to be paid out in respect of such additional Trust Equipment, will furnish to the Trustee in respect of such additional Trust Equipment the documents set forth in the first paragraph of this Section 3.04.

SECTION 3.05. Interest, if any allowed by the Trustee upon any moneys received by it under the provisions hereof and any interest (in excess of accrued interest paid from Deposited Cash at the time of purchase) or other profit accruing upon any investment of Deposited Cash as permitted by Section 7.08 hereof shall belong to the Company and be paid to it by the Trustee, as long as the Company shall not be known to the Trustee to be in default hereunder.

## ARTICLE IV

### LEASE OF TRUST EQUIPMENT TO THE COMPANY

SECTION 4.01. The Trustee does hereby let and lease to the Company, for the term of 15 years from and after August 1, 1976, all the Trust Equipment.

SECTION 4.02. In the event that the Company shall, as provided in Section 3.01 and 3.04 hereof or in Sections 4.07 and 4.09 hereof, cause to be transferred to the Trustee other Equipment in addition to or in substitution for any of the Equipment herein specifically described, such other Equipment shall be included as part of the Trust Equipment by supplement hereto and shall be subject to all the terms and conditions hereof in all respects as though it had been part of the Trust Equipment herein specifically described. Any and all additions to, and replacements of parts of, the Trust Equipment shall constitute accessions to the Trust Equipment and shall be subject to all the terms and conditions hereof in all

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

SECTION 4.03. As and when any Equipment shall from time to time be transferred and delivered to the Company as agent for the Trustee, the same shall, *ipso facto* and without further instrument of lease or transfer, pass under and become subject to all the terms and provisions hereof.

SECTION 4.04. The Company hereby accepts the lease of all the Trust Equipment, and covenants and agrees to accept delivery and possession hereunder of the Trust Equipment as hereinbefore provided; and the Company covenants and agrees to pay to the Trustee at its corporate trust office (or, in the case of taxes, to the proper taxing authority), in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, rent hereunder which shall be sufficient to pay and discharge the following items, when and as the same shall become due and payable (whether or not any of such items shall become due and payable prior to the delivery and lease to the Company of any of the Trust Equipment):

(A) The Company shall pay to the Trustee, as hereinafter provided, as advance rental hereunder, sums which shall be equal to the difference between the Cost of the Trust Equipment (other than Trust Equipment subjected hereto pursuant to Sections 4.07 and 4.09) and the portion of such cost to be provided out of the net proceeds (excluding premium and accrued dividends, if any) of the sale of the Trust Certificates, the intention being that, when all such Trust Equipment shall have been delivered to the Company as agent for the Trustee, the Company shall have paid or shall pay to the Trustee, as advance rental hereunder, a sum equal to the amount by which the aggregate Cost of such Trust Equipment exceeds such net proceeds of the sale of the Trust Certificates. The Company agrees to pay such advance rental as follows:

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

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

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

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

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

(3) (a) The amounts of the dividends payable on the Trust Certificates, when and as the same shall become payable, and (b) interest at the dividend 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 respective stated dates of maturity thereof or otherwise under the provisions thereof or of this Agreement.

Nothing herein or in the Trust Certificates contained shall be deemed to impose on the Trustee or on the Company any obligation to pay to the holder of any Trust Certificate or dividend warrant any tax, assessment or governmental charge required by any present or future law of the United States of America or of any state, county, municipality or other taxing authority thereof to be paid in behalf of, or withheld from the amount payable to, the holder of any Trust Certificate or dividend warrant. The company shall not be required to pay any tax, assessment or governmental charge so long as it shall in good faith and by appropriate legal proceedings contest the validity thereof, unless in the judgment of the Trustee the rights or interest of the Trustee or of the holders of the Trust Certificates or dividend warrants may be materially endangered thereby.

SECTION 4.05. At the termination of the lease provided herein and after all payments due or to become due from the Company hereunder shall have been completed and fully made to the Trustee, (1) such payments shall be applied and treated as purchase money and as the full purchase price of the Trust Equipment, (2) any moneys remaining in the hands of the Trustee after providing for all outstanding Trust Certificates and dividend warrants and after paying the expenses of the Trustee, including its reasonable compensation, shall be paid to the Company, (3) title to all the Trust Equipment shall vest in the Company, and (4) the Trustee shall execute for record in public offices, at the expense of the Company, such instrument or instruments in writing as reasonably shall be requested by the Company in order to make clear upon public records

the Company's title to all the Trust Equipment under the laws of any jurisdiction; *provided, however,* that until that time title to the Trust Equipment shall not pass to or vest in the Company, but title to and ownership of all the Trust Equipment shall be and remain in the Trustee, notwithstanding the delivery of the Trust Equipment to and the possession and use thereof by the Company.

SECTION 4.06. The Company agrees that, at or before the delivery to the Company of each unit of the Trust Equipment, there shall be plainly, distinctly, permanently and conspicuously placed and fastened upon each side of such unit a metal plate bearing the following words, or such words shall be otherwise plainly, distinctly, permanently and conspicuously marked on each side of such unit, in either case in letters not less than one inch in height:

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

Such plates or marks shall be such as to be readily visible and as to indicate plainly the Trustee's ownership of each unit of the Trust Equipment. In case, prior to the termination of the lease provided for herein, any of such plates or marks shall at any time be removed, defaced or destroyed, the Company shall promptly cause the same to be restored or replaced. The Company shall not change, or permit to be changed, the numbers of any of the Trust Equipment at any time covered hereby (or any numbers which may have been substituted as herein provided) except in accordance with a statement of new numbers to be substituted therefor which previously shall have been filed with the Trustee by the Company and which shall be filed and recorded as provided in Section 6.04 hereof.

The Trust Equipment may be lettered "Burlington Northern Inc.", "Burlington Northern", "BNI", "BN", with the name

or initials of any Affiliate which is permitted to use the Trust Equipment as herein provided, or in some other appropriate manner, for convenience of identification of the leasehold interest of the Company therein. During the continuance of the lease provided for herein, the Company shall not allow the name of any person, association or corporation to be placed on any of the Trust Equipment as a designation which might be interpreted as a claim of ownership thereof by the Company or by any person, association or corporation other than the Trustee.

SECTION 4.07. The Company agrees that it will maintain and keep all the Trust Equipment in good order and proper repair at its own cost and expense, unless and until lost, stolen or destroyed. Whenever any of the Trust Equipment shall be lost, stolen or destroyed, the Company shall deliver to the Trustee an Officer's Certificate, describing such Trust Equipment and stating the then fair value thereof and shall either (a) deposit with the Trustee an amount in cash equal to such fair value or (b) cause to be transferred to the Trustee additional Equipment, free from all liens and encumbrances, of a fair value at least equal to the then fair value of such Trust Equipment so worn out, unsuitable for use, lost, stolen or destroyed, and deliver to the Trustee, in respect of such additional Equipment, certificates, bills of sale and Opinions of Counsel, all in like manner as provided in Section 3.04 hereof, and, in addition, an Officer's Certificate describing such additional Equipment and stating the Cost and the then fair value thereof. The rights and remedies of the Trustee to enforce or to recover any of the rental payments shall not be affected by reason of such wearing out, unsuitableness for use, loss, theft or destruction. Cash deposited with the Trustee pursuant to this Section 4.07 shall be held and applied as provided in Section 4.09 hereof.

The Company covenants and agrees to furnish to the Trustee, whenever required by the Trustee, and at least once in every calendar year within sixty (60) days after the anniversary date hereof following the calendar year in which occurs the first delivery of any of the Trust Equipment and during the continuance of the lease provided for herein, an Officer's Certificate stating (1) the amount, description and numbers of all the Trust Equipment that may have become worn out, or that may have become unsuitable for use or lost, stolen or destroyed by accident or otherwise since the date of the last preceding statement (or the date of this Agreement in the case of the first statement), (2) the amount, description and numbers of all the Trust Equipment then undergoing repairs, other than running repairs, or then withdrawn from use for such repairs, and stating that in the case of all the Trust Equipment repainted or repaired since the date of the last preceding statement (or the date of this Agreement in the case of the first statement) the plates or marks required by Section 4.06 hereof have been preserved, or that the same when repainted or repaired have been again plated or marked as required thereby, and (3) such other information as to the condition and state of repair of the Trust Equipment as the Trustee may reasonably request. The Trustee, by its agents, shall have the right once in each calendar year, but shall be under no duty, to inspect at the Company's expense the Trust Equipment, at the then existing locations thereof.

SECTION 4.08. The Company, so long as it is not in default hereunder, shall be entitled to the possession of the Trust Equipment from and after delivery thereof to the Company, and the use thereof upon the lines of railroad owned or operated by the Company (either alone or jointly with another) or by any Affiliate, or upon lines over which the Company or any Affiliate shall have trackage or other operating rights, and the Company shall also be entitled to permit the use of the Trust Equipment upon connecting and other railroads in the usual interchange of traffic and upon connecting and other railroads over which through service may from time to time

be afforded, but only upon and subject to all the terms and conditions of this Agreement.

The Company shall not, without the written consent of the Trustee first had and obtained, assign or transfer its rights hereunder, or transfer or sublet the Trust Equipment or any part thereof except, and then only so long as the Company shall not then be in default under this Agreement (and only subject to this Agreement and to the rights of the Trustee hereunder, and without releasing the Company from its obligations hereunder), to an Affiliate; and the Company shall not, without such written consent, except as provided in this Section 4.08, part with the possession of, or suffer or allow to pass out of its possession or control, any of the Trust Equipment. An assignment or transfer to a railroad company or other purchaser which shall acquire all or substantially all the lines of railroad of the Company, and which, by execution of an appropriate instrument satisfactory to the Trustee, shall assume and agree to perform each and all the obligations and covenants of the Company hereunder and under the guaranty endorsed on the Trust Certificates, shall not be deemed a breach of this covenant. The appointment of a receiver or receivers in equity or reorganization or a trustee or trustees in bankruptcy or reorganization for the Company or for its property shall not be deemed an unauthorized assignment if, prior to any action by the Trustee to exercise the remedies herein provided, such receiver or receivers or trustee or trustees shall be discharged or such receiver or receivers or trustee or trustees shall, pursuant to court order or decree, in writing duly assume and agree to pay or perform each and all of the obligations and covenants of the Company hereunder and under the guaranty endorsed on the Trust Certificates, in such manner that such obligations shall have the same status as obligations incurred by such receiver or receivers or trustee or trustees. The Trustee shall have the right to declare the lease provided for herein terminated in case of any unauthorized assignment or transfer of its rights hereunder or in case of any unauthorized transfer or sublease of any of the Trust Equipment. The election of the Trustee to terminate the lease

provided for herein shall have the same effect as the retaking of the Trust Equipment by the Trustee as hereinafter provided.

SECTION 4.09. Any units of the Trust Equipment which shall have become worn out or unsuitable in any respect for the use of the Company may be released, and it is hereby mutually agreed that at any time hereafter until title thereto shall become vested in the Company the Trustee will release any such units of the Trust Equipment upon the filing with it of a Request and an Officer's Certificate which shall describe such units, shall state that they have become worn out or unsuitable for the use of the Company, shall state the selling price thereof, and shall specify the Cost and the then fair value thereof. No such release shall be made unless and until the Company shall have paid to the Trustee an amount equal to such selling price or fair value, whichever shall be greater.

Any moneys paid to the Trustee pursuant to this Section 4.09 or Section 4.07 hereof, hereinafter called "Replacement Funds", shall be received and held by the Trustee in trust hereunder pending delivery of additional Equipment and may be invested and reinvested as provided in Section 7.08 hereof. Upon the filing with it of a Request and an Officer's Certificate which shall specify the kind and number of units of Equipment to be purchased and the Cost and the then fair value thereof, such moneys, in an amount not exceeding the lesser of such Cost or such fair value, shall, upon receipt by the Trustees of certificates, bills of sale and Opinions of Counsel, all in like manner as is provided in Section 3.04 hereof, be applied to the purchase of such Equipment.

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

United States of America and of all the states in which the Trust Equipment, or any thereof, may be operated, and with all lawful acts, rules, regulations and orders of the Department of Transportation, the Interstate Commerce Commission and of all other commissions, boards and other legislative, executive, administrative or judicial bodies or officers having power to regulate or supervise any of the Trust Equipment, including without limitation all lawful acts, rules, regulations and orders of any body having competent jurisdiction relating to automatic coupler devices or attachments, air brakes or other appliances; *provided, however,* that the Company may in good faith contest the validity of any such law, act, rule, regulation or order, or the application thereof to the Trust Equipment or any part thereof, in any reasonable manner which will not in the judgment of the Trustee materially endanger the rights or interest of the Trustee or of the holders of the Trust Certificates or dividend warrants. The Company shall not be relieved from any of its obligations hereunder by reason of the assertion or enforcement of any such claims or the commencement or prosecution of any litigation in respect thereof.

## ARTICLE V

### Remedies in Event of Default

SECTION 5.01. The Company covenants and agrees that in case

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

(b) the Company shall make or suffer any unauthorized assignment or transfer of its rights hereunder or shall make any unauthorized transfer or sublease of any of the Trust Equipment, or, except as herein authorized,

shall part with 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 by agreement of all parties having any interest therein and recover possession of such Trust Equipment within 30 days after the Trustee shall have demanded in writing such cancellation and recovery of possession, or within said 30 days to deposit with the Trustee a sum in cash equal to the fair value, as of the date of such unauthorized action, or the Trust Equipment so assigned or transferred or subleased or the possession of which shall have been parted with otherwise than as herein authorized (any sum so deposited to be returned to the Company upon the cancellation of such assignment, transfer or sublease and the recovery of possession by the Company of such Trust Equipment), or

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

then, in any such case (herein sometimes called an event of default), the Trustee in its discretion may, and upon the written request of the holders of not less than 25% in principal amount of the then outstanding Trust Certificates shall, by notice in writing delivered to the Company, declare to be due and payable forthwith the entire amount of the rentals (including any unpaid advance rental, but not including rentals required for the payment of dividends accruing after the date of such declaration) payable by the Company as set forth in Section 4.04 hereof and not theretofore paid. Thereupon the entire amount of such rentals shall forthwith become and shall be due and payable immediately without further demand,

together with interest at the dividend rate, to the extent legally enforceable, on any portion thereof overdue; and the Trustee shall be entitled to recover judgment for the total amount so becoming payable by the Company, together with interest thereon at the dividend rate to the extent legally enforceable, and to collect such judgment out of any property of the Company wherever situated.

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

SECTION 5.02. In case of the happening of any event of default, the Trustee may by its agents enter upon the railroads and premises of the Company and of any Affiliate and take possession of all or any part of the Trust Equipment and withdraw the same from said railroads and premises, retaining all payments which up to that time may have been made on account of rental for the Trust Equipment and otherwise, and shall be entitled to collect, receive and retain all unpaid *per diem,* mileage or other charges of any kind earned by the Trust Equipment or any part thereof, and may lease the Trust Equipment or any part thereof, or with or without retaking possession thereof (but only after declaring due and payable the entire amount of rentals payable by the Company as provided in Section 5.01 hereof) may sell the same or any part thereof, free from any and all claims of the Company at law or in equity, in one lot and as an entirety or in separate lots, insofar as may be necessary to perform and fulfill the trust hereunder, at public or private sale, for cash or upon credit, in its discretion, and may proceed otherwise to enforce its

rights and the rights of the holders of interests hereunder in the manner herein provided. Upon any such sale, the Trustee itself may bid for the property offered for sale or any part thereof. Any such sale may be held or conducted at such place and at such time as the Trustee may specify, or as may be required by law, and without gathering at the place of sale the Trust Equipment to be sold, and in general in such manner as the Trustee may determine, but so that the Company may and shall have a reasonable opportunity to bid at any such sale. Upon such taking possession or withdrawal or lease or sale of the Trust Equipment, the Company shall cease to have any rights or remedies in respect of the Trust Equipment hereunder, but all such rights and remedies shall be deemed thenceforth to have been waived and surrendered by the Company, and no payments theretofore made by the Company for the rent or use of the Trust Equipment or any of it shall, in case of the happening of any event of default and such taking possession, withdrawal, lease or sale by the Trustee, give to the Company any legal or equitable interest or title in or to the Trust Equipment or any of it or any cause or right of action at law or in equity in respect of the Trust Equipment against the Trustee or the holders of interests hereunder. No such taking possession, withdrawal, lease or sale of the Trust Equipment by the Trustee shall be a bar to the recovery by the Trustee from the Company of rentals then or thereafter due and payable, and the Company shall be and remain liable for the same until such sums shall have been realized as, with the proceeds of the lease or sale of the Trust Equipment, shall be sufficient for the discharge and payment in full of all the items mentioned in Section 4.04 hereof (other than dividends or interest not then accrued), whether or not they shall have then matured. The holders of a majority in principal amount of the then outstanding Trust Certificates shall have the right from time to time to direct which of the proceedings above provided for shall be taken for the enforcement of the remedies contained herein.

SECTION 5.03. If, in the case of the happening of any event of default, the Trustee shall exercise any of the powers conferred upon it by Sections 5.01 and 5.02 hereof, all payments made by the Company to the Trustee hereunder after such event of default, and the proceeds of any judgment collected from the Company by the Trustee hereunder, and the proceeds of every sale or lease by the Trustee hereunder of any of the Trust Equipment, together with any other sums which may then be held by the Trustee under any of the provisions hereof (other than sums held in trust for the payment of specific Trust Certificates and/or dividend warrants), shall be applied by the Trustee to the payment in the following order of priority: (a) of all proper charges, expenses or advances made or incurred by the Trustee in accordance with the provisions of this Agreement, and (b) of the dividends then due, with interest on overdue dividends at the dividend rate to the extent legally enforceable, and of the principal of all the outstanding Trust Certificates, with interest thereon at the dividend rate to the extent legally enforceable from the date of any declaration by the Trustee under Section 5.01 hereof, 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 dividends.

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

aforesaid the sums of money realized by the Trustee there shall remain a surplus in the possession of the Trustee, such surplus shall be paid to the Company.

SECTION 5.04. If at any time after the principal of all the Trust Certificates shall have been declared and become due and payable or if at any time after the entire amount of rentals shall have been declared and become due and payable, all as in Section 5.01 hereof provided, but before the final payment of the principal amount of the Trust Certificates is due pursuant to the third paragraph of Section 2.02 all arrears of rent (with interest at the dividend rate upon any overdue installments to the extent legally enforceable), the expenses and reasonable compensation of the Trustee, together with all expenses of the trust occasioned by the Company's default, and all other sums which shall have become due and payable by the Company hereunder (other than the principal of Trust Certificates and any other rental installments which shall not at the time have matured according to their terms) shall be paid by the Company before any sale or lease by the Trustee of any of the Trust Equipment, and every other default in the observance or performance of any covenant or condition hereof shall be made good or secured to the satisfaction of the Trustee, or provision deemed by the Trustee to be adequate shall be made therefor, then, and in every such case, the Trustee, if so requested by the holders of a majority in principal amount of the Trust Certificates then outstanding and which shall not have matured (other than by declaration) according to their terms, shall by written notice to the Company waive the default by reason of which there shall have been such declaration or declarations and the consequences of such default, but no such waiver shall extend to or affect any subsequent default or impair any right consequent thereon.

SECTION 5.05. No retaking of possession of the Trust Equipment by the Trustee, or any withdrawal, lease or sale

thereof, nor any action or failure or omission to act against the Company or in respect of the Trust Equipment, on the part of the Trustee or on the part of the holder of any Trust Certificate or dividend warrant, nor any delay or indulgence granted to the Company by the Trustee or by any such holder, shall affect the obligations of the Company hereunder or the obligations of the Company under the guaranty endorsed on the Trust Certificates. The Company hereby waives presentation and demand in respect of any of the Trust Certificates and dividend warrants and waives notice of presentation, of demand and of any default in the payment of the principal of and dividends on the Trust Certificates.

SECTION 5.06. In case the Trustee shall demand possession of the Trust Equipment pursuant to the provisions hereof and shall reasonably designate a point or points upon the railroad of the Company or of any Affiliate for the delivery of the Trust Equipment to it, the Company shall at its own expense forthwith and in the usual manner cause the Trust Equipment to be moved to such point or points of such railroad as shall be designated by the Trustee and shall there deliver or cause to be delivered the same to the Trustee, or the Trustee may at its option keep the Trust Equipment on any of the lines of railroad or premises of the Company or of any Affiliate until the Trustee shall have leased, sold or otherwise disposed of the same, and for such purpose the Company agrees to furnish without charge for rent or storage the necessary facilities at any convenient point or points selected by the Trustee. It is hereby expressly covenanted and agreed that the performance of this covenant is of the essence of this Agreement and that, upon application to any court having jurisdiction in the premises, the Trustee shall be entitled to a decree against the Company requiring the specific performance thereof.

SECTION 5.07. The remedies in this Agreement provided in favor of the Trustee and the holders of the Trust Certificates or dividend warrants, or any of them, shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in their favor existing at law or in equity.

## ARTICLE VI

### ADDITIONAL COVENANTS AND AGREEMENTS BY THE COMPANY

SECTION 6.01. The Company hereby covenants and agrees to make payment of the reasonable expenses and compensation of the Trustee and of any paying agent hereunder, and of all taxes, assessments and governmental charges herein mentioned for which the Trustee, as such, may be liable and of the rentals and of the other amounts provided for herein.

SECTION 6.02. The Company covenants, agrees and guarantees that the holder of each of the Trust Certificates shall receive the principal amount thereof in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, when and as the same shall become due and payable, in accordance with the provisions thereof or of this Agreement (and, if not so paid, with interest thereon at the dividend rate to the extent legally enforceable), and shall receive dividends thereon in like money at the rate specified therein from the date specified therein to the date of maturity of such Trust Certificate, at the times and place and otherwise as expressed in the Trust Certificates and in the dividend warrants (and, if not so paid, with interest thereon at the dividend rate to the extent legally enforceable); and the Company further covenants and agrees to endorse upon each of the Trust Certificates, at or before the issuance and delivery thereof by the

Trustee, its guaranty of the prompt payment of the principal thereof and of the dividends thereon, in substantially the forms hereinbefore set forth. Said guaranty so endorsed shall be signed in the name and on behalf of the Company by the manual or facsimile signature of a Vice President. In case any officer of the Company whose signature shall appear on said guaranty shall cease to be such officer before the Trust Certificates shall have been issued and delivered by the Trustee, or shall not have been acting in such capacity on the date of the Trust Certificates, such guaranty shall nevertheless be as effective and binding upon the Company as though the person who signed said guaranty had not ceased to be, or had then been acting as, such officer.

SECTION 6.03. The Company covenants and agrees that it will pay and discharge, or cause to be paid and discharged, or make adequate provision for the satisfaction or discharge of, any debt, tax, charge, assessment, obligation or claim which if unpaid might become a lien or charge upon or against any of the Trust Equipment, except upon the leasehold interest of the Company therein; but this provision shall not require the payment of any such debt, tax, charge, assessment, obligation or claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings, unless such contest will in the judgment of the Trustee materially endanger the rights or interests of the Trustee or of the holders of the Trust Certificates.

SECTION 6.04. The Company covenants and agrees to pay the expenses incident to the preparation and execution of the Trust Certificates and dividend warrants to be issued hereunder, or connected with the preparation, execution, recording and filing hereof and of any instruments executed under the provisions hereof with respect to the Trust Equipment. The Company with all convenient speed will cause this Agreement and all supplements hereto to be duly filed and recorded

with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and deposited with the Registrar General of Canada and notice of such deposit thereafter given in the Canada Gazette, pursuant to Section 86 of the Railway Act of Canada. The Company will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register and record any and all further instruments required by law or reasonably requested by the Trustee for the purposes of proper protection of the title of the Trustee and the rights of the holders of the Trust Certificates and of fully carrying out and effectuating this Agreement and the intent hereof; and the Company will promptly furnish to the Trustee certificates or other evidences of filing and recording pursuant to the last preceding sentence, and of any other such filing, registration and recording, and an Opinion or Opinions of Counsel with respect thereto.

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

SECTION 6.06. The Company covenants that it will make payment of the rentals on account of the Trust Equipment as provided in this Agreement notwithstanding that any of the Trust Certificates and dividend warrants shall have been acquired by the Company or shall not have been presented for payment.

## ARTICLE VII
### THE TRUSTEE

SECTION 7.01. The Trustee hereby accepts the trusts imposed upon it by this Agreement, and covenants and agrees to perform the same as herein expressed.

SECTION 7.02. The Trustee covenants and agrees to apply and distribute the rentals received by it under Section 4.04

(B) hereof (other than sums restored to Deposited Cash or Replacement Funds from rentals pursuant to Section 4.04 (B)(1) hereof) when and as the same shall be received, and to the extent that such rentals shall be sufficient therefor, for the purposes specified in said Section 4.04(B).

SECTION 7.03. The Trustee shall cause to be kept at its corporate trust office, in the City of St. Paul, State of Minnesota, books for the registration, exchange and transfer of the Trust Certificates; and upon presentation for any such purpose the Trustee will register or cause to be registered, or discharged from registration, exchange or cause to be exchanged, or transfer or cause to be transferred, as the case may be, as hereinbefore provided, under such reasonable regulations as it may prescribe, any of the Trust Certificates.

SECTION 7.04. The Trustee shall not be required to undertake any act or duty in the way of insuring, taking care of or taking possession of the Trust Equipment or to undertake any other act or duty under this Agreement until fully indemnified by the Company or by one or more of the holders of the Trust Certificates against all liability and expenses. The Trustee shall not be responsible for the filing or recording or refiling or re-recording of this Agreement or of any supplement hereto or any other instrument or document which may be required herein or to perfect the security interest of the Trustee in the contracts assigned to it pursuant to Section 3.01 hereof. The Trustee may issue and deliver Trust Certificates in advance of such filing or recording. In accepting delivery of and making payment for the Trust Equipment hereunder, or in accepting any cash payable hereunder in respect of Trust Equipment, the Trustee may rely upon and shall be fully protected by the certificates, bills of sale and Opinions of Counsel to be furnished to it under Sections 3.04, 4.07 or 4.09 hereof, as the case may be, and shall not be required to make any further investigation of or inquiry concerning the matters covered thereby.

SECTION 7.05. The Trustee shall be under no obligation take any action for the execution or enforcement of the trust hereby created unless requested thereunto in writing by the holders of not less than 25% in principal amount of the then outstanding Trust Certificates and unless indemnified to its satisfaction against expense and liability with respect thereto, and unless also furnished with proof satisfactory to it as to the ownership of the Trust Certificates in respect of which any such request may be made; but this provision, in the absence of such request, shall not affect any discretion herein given to the Trustee to determine whether it shall take action in respect of any default hereunder or what action it shall take.

SECTION 7.06. No holder of any Trust Certificate or dividend warrant shall have any right to institute any suit, action or proceeding for the execution and enforcement of the trust hereby created unless, after the aforesaid request in writing by the holders of not less than 25% in principal amount of the then outstanding Trust Certificates shall have been made to the Trustee, and after indemnity satisfactory to it shall have been provided, and after 90 days shall have elapsed after receipt by the Trustee of such request, it shall decline, fail or neglect to institute any proceedings pursuant thereto. Neither the provisions of this Section 7.06 nor the provisions of Section 7.05 hereof shall affect or limit in any way the obligations of the Company under its guaranty hereinabove provided or the rights of the holders of Trust Certificates or dividend warrants to institute suit for the enforcement of payments due under said guaranty in respect of the Trust Certificates or dividend warrants.

SECTION 7.07. The Trustee may for all purposes conclusively assume that the Company is not in default under the terms hereof until notified in writing to the contrary by the

holders of at least 10% in principal amount of the then outstanding Trust Certificates, which notice shall distinctly specify the event of default desired to be brought to the attention of the Trustee. As to any fact or matter the manner of determining which is not specifically prescribed herein, the Trustee may for all purposes rely upon an Officer's Certificate as to such fact or matter. The Trustee shall not incur any liability to anyone in relying conclusively on, and in acting upon, any Request, notice, consent, opinion, order, certificate, warrant or other paper or instrument believed by it to be genuine or authentic and to be signed by the proper party or parties.

SECTION 7.08. Any money at any time paid to or held by the Trustee hereunder until paid out as herein provided may be carried by the Trustee on deposit with itself, without liability for interest thereon except as may be agreed upon between the Trustee and the Company.

At any time, and from time to time, if at the time there shall be no default under the terms of this Agreement, the Trustee, on Request, shall invest and reinvest Deposited Cash and Replacement Funds held by it in Government Securities (the cost thereof to include any premium and accrued interest thereon), as are set forth in such Request, such Government Securities to be held by the Trustee in trust for the benefit of the holder of the Trust Certificates and dividend warrants.

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

The Trustee shall restore to Deposited Cash or Replacement Funds, as the case may be, out of rent received by it for that purpose under the provisions of Section 4.04(B)1) hereof, an amount equal to any expenses incurred in connection with any purchase or sale of Government Securities and also an amount equal to any loss of principal incident to the sale or redemption of any Government Securities for a sum less than the amount paid therefor, including accrued interest and premium. The Company, if not in default under the terms hereof, shall be entitled to receive any profit which may be realized from any sale or redemption of Government Securities.

SECTION 7.09. The Trustee shall not be liable to anyone for any delay in the delivery of any of the Trust Equipment, or for any default on the part of the manufacturer or manufacturers thereof or of the Company, or for any defect in any of the Trust Equipment or in the title thereto, nor shall anything herein be construed as a warranty on the part of the Trustee in respect thereof or as a representation in respect of the value thereof or in respect of the title thereto.

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

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

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

Upon Request, any moneys held by the Trustee which shall have been deposited or are held for the payment of the principal amount of or dividends on any Trust Certificates remaining unclaimed for six years after the date of maturity of such Trust Certificates or the date such dividends were due and payable, as the case may be, shall be repaid by the Trustee to the Company, and all liability of the Trustee with respect to such money shall thereupon cease and the holders of such Trust Certificates and dividend warrants shall thereafter be entitled to look only to the Company for payment thereof; *provided, however,* that the Trustee, before being required to make any such repayment may, at the expense of the Company, cause notice that said moneys have not been claimed and that after a date specified therein, which shall be not less than thirty days after the date of publication, any unclaimed balance of such moneys then remaining upon deposit with the Trustee will be repaid to the Company, 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. In no event shall the holders of such Trust Certificates and dividend warrants be entitled to interest upon such money whether held by the Trustee or so repaid to the Company.

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

fit of the holders of the Trust Certificates and dividend warrants.

SECTION 7.10. If at any time the Trustee or any successor to it in the trust hereby created shall desire to divest itself of title to the Trust Equipment, and to terminate its duties and obligations and rights hereunder and under the Trust Certificates, it shall so notify the Company in writing, and the Company shall thereupon designate in writing to the Trustee a bank or a trust company, qualified as below specified, to serve until a successor is appointed by the holders of Trust Certificates as hereinafter provided, to which may be assigned the entire right, title and interest of the Trustee or such successor in the Trust Equipment, and in which may be vested the rights, powers, duties and obligations of the Trustee hereunder and under the Trust Certificates. Upon the transfer and delivery of all moneys, any Government Securities in which any of said moneys may then be invested and Trust Equipment held by the retiring trustee, and the execution by the retiring trustee of such instruments of transfer as may be reasonably requested by the successor trustee, and upon acceptance by the successor trustee of the assignment and of the trust, the retiring trustee shall be relieved and discharged of all the title, rights, powers, duties and obligations of the trust hereunder and under the Trust Certificates, and the same shall become vested in such successor trustee, and every provision hereof applicable to the retiring trustee shall apply to such successor trustee with like effect as if such successor trustee had been originally named herein in the place and stead of the retiring

trustee. In the event that the Company shall fail to designate such a successor trustee by instrument in writing delivered to the retiring trustee within two weeks from the time of receiving such notice in writing from the retiring trustee, the retiring trustee may thereupon designate such successor trustee or apply to any court of competent jurisdiction for appointment of a successor trustee. The foregoing provisions are, however, subject to the right of the holders of the majority in principal amount of the then outstanding Trust Certificates by an instrument in writing to appoint any successor trustee, if such appointment is made within one year from the date of the giving of such notice to the Company. The Company shall execute all writings recognizing the transfer of title as aforesaid and all instruments of further assurance or otherwise as reasonably may be requested by the successor trustee in the premises, and will do and perform any and all acts necessary to establish and maintain the title and rights of the successor trustee in and to the Trust Equipment. Every successor trustee shall be a bank or a trust company doing business in the Borough of Manhattan, City and State of New York, having a capital and surplus aggregating at least $5,000,000, if there be such bank or trust company willing and able to accept the trust upon reasonable and customary terms and duly qualified to act as such trustee.

SECTION 7.11. Any corporation resulting from any merger, conversion or consolidation to which the Trustee or any successor to it shall be a party, or any corporation in any manner succeeding to all or substantially all of the business of the Trustee or any successor trustee, provided such corporation shall be a bank or a trust company doing business in the City of St. Paul, State of Minnesota or in the Borough of Manhattan, City and State of New York, and shall have a capital and surplus aggregating at least $5,000,000, shall be the successor trustee hereunder without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

## ARTICLE VIII

### MISCELLANEOUS

SECTION 8.01. Any request or other instrument provided by this Agreement to be signed or executed by holders of Trust Certificates may be in any number of concurrent instruments of similar tenor, and may be executed by such holders in person or by an agent or attorney appointed by an instrument in writing. Proof of the execution of any such request or other instrument, or of a writing appointing any such agent or attorney, or of the holding by any person of Trust Certificates, shall be sufficient for any purpose hereof and shall be conclusive in favor of the Trustee with regard to any action taken by the Trustee under such request or other instrument if made in the following manner, viz.:

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

(b) The amount and serial numbers, designations or marks of identification of Trust Certificates with dividend warrants not registered as to principal held by any person executing any such request or other instrument as a holder of such Trust Certificates, and the date of his holding the same, may be proved by a certificate executed by any trust company, bank or other depositary, wheresoever situated, whose certificate shall be deemed by the Trustee to be satisfactory, showing that at the date there-

in mentioned such person had on deposit with or exhibited to such depositary the Trust Certificates with dividend warrants numberd, designated or identified and described in such certificate. The Trustee may presume the continuance of any such holding unless and until it shall receive proof satisfactory to it to the contrary.

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

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

SECTION 8.03. Except as otherwise provided herein, the provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

SECTION 8.04. All demands, notices and communications hereunder shall be in writing and shall be deemed to have been duly given if personally delivered at or mailed by first class mail postage prepaid to (a) in the case of the Company, 176 East Fifth Street, St. Paul, Minnesota 55101, or such other address as may hereafter be furnished to the Trustee in writing by the Company, and (b) in the case of the Trustee, at its corporate trust office in the First National Bank Building, at 332 Minnesota Street, St. Paul, Minnesota 55101, or such other address as may hereafter be furnished to the Company in writing by the Trustee. An affidavit by any person repre-

senting or acting on behalf of the Company or the Trustee, as to such mailing, shall be conclusive evidence of the giving of such demand, notice or communication.

SECTION 8.05. This Agreement has been executed in several counterparts each of which shall be deemed to be an original, and all such counterparts shall together constitute but one and the same instrument.

SECTION 8.06. This Agreement shall be deemed to have been executed on the date of the acknowledgment thereof by the officer of the Trustee who signed it on behalf of the Trustee.

SECTION 8.07. The provisions of this Agreement, and all the rights and obligations of the parties hereunder, shall be governed by the laws of the State of New York; *provided, however,* that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

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

FIRST TRUST COMPANY OF SAINT PAUL,
Trustee,

By _____
Senior Vice President

ATTEST:

_____
Assistant Secretary

BURLINGTON NORTHERN INC.

By _____
Executive Vice President–
Finance and Administration

ATTEST:

_____
Assistant Secretary

STATE OF MINNESOTA
COUNTY OF RAMSEY } ss.

On this 16th day of July, 1976, before me personally appeared D. L. DOYON, to me personally known, who, being by me duly sworn, says that he is a Senior Vice President of First Trust Company of Saint Paul, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Sherron K. Melander

SHERRON K. MELANDER
NOTARY PUBLIC MINNESOTA
RAMSEY COUNTY
My Commission Expires Jan. 9, 1981

STATE OF MINNESOTA
COUNTY OF RAMSEY } ss.

On this 16th day of July, 1976, before me personally appeared Frank H. Coyne, to me personally known, who, being by me duly sworn, says that he is Executive Vice President-Finance and Administration of Burlington Northern Inc., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Richard J. Woulfe

RICHARD J. WOULFE
NOTARY PUBLIC - MINNESOTA
RAMSEY COUNTY
My Commission Expires Apr. 30, 1977

## SCHEDULE A

## DESCRIPTION OF TRUST EQUIPMENT

| | Number and Description | Cost of Acquisition Per Unit | Aggregate Cost of Acquisition |
|---|---|---|---|
| 500 | Covered hopper cars, 100-ton capacity, Burlington Northern road Nos. 446550 to 447049, both inclusive | $29,000 | $14,500,000 |
| 50 | Multi-purpose open top hopper cars, 100-ton capacity, Burlington Northern road Nos. 958425 to 958474, both inclusive | 30,000 | 1,500,000 |
| | | | $16,000,000 |