

BURLINGTON NORTHERN INC.
EQUIPMENT TRUST

Series 1

EQUIPMENT TRUST AGREEMENT

Dated as of August 1, 1970

by and between

THE CHASE MANHATTAN BANK
(National Association),

Trustee

and

BURLINGTON NORTHERN INC.

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EQUIPMENT TRUST AGREEMENT dated as of August 1, 1970, by and between **THE CHASE MANHATTAN BANK** (National Association), a national banking association existing under the laws of the United States of America and having its principal Corporate Trust Office at 1 Chase Manhattan Plaza, New York, New York 10015, as Trustee (hereinafter called the Trustee), and **BURLINGTON NORTHERN INC.**, a corporation duly organized and existing under the laws of the State of Delaware (hereinafter called the Company).

WHEREAS, the Company has agreed to cause to be sold, transferred and delivered to the Trustee the railroad equipment described herein; 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 Certificates, Series 1 (hereinafter called Trust Certificates), are to be issued and sold in an aggregate principal amount not exceeding \$20,000,000, and the net proceeds of such sale together with such other cash, if any, as may be required to be deposited by the Company as hereinafter provided 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, SERIES 1**, 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 and the guaranty to be endorsed on the Trust Certificates by the Company are to be substantially in the following forms, respectively:

[FORM OF SERIAL TRUST CERTIFICATE]

No.

\$

BURLINGTON NORTHERN INC.

% SERIAL EQUIPMENT TRUST CERTIFICATE, SERIES 1
DUE AUGUST 1, 197

Total Authorized Issue \$20,000,000

THE CHASE MANHATTAN BANK (National Association),
TRUSTEE

THE CHASE MANHATTAN BANK (National Association), a national banking association existing under the laws of the United States of America, as Trustee (hereinafter called the Trustee) under an Equipment Trust Agreement (hereinafter called the Agreement) dated as of August 1, 1970, by and between the Trustee and BURLINGTON NORTHERN INC., a Delaware corporation (hereinafter called the Company), hereby certifies that

or registered assigns is entitled to an interest of Dollars
in Burlington Northern Inc. Equipment Trust, Series 1, payable
August 1, 197 , upon surrender of this Certificate to the Trustee
at the principal Corporate Trust Office of the Trustee, in the
Borough of Manhattan, City and State of New York, and to divi-
dends thereon from the date hereof until the principal amount rep-
resented by this Certificate shall have become due, payable on
February 1 and August 1 in each year, beginning February 1,
1971, at the rate of % per annum, with interest on any overdue
principal and dividends, to the extent legally enforceable, at the

rate of 9.80% per annum; principal and dividends being payable to the registered holder hereof at said office of the Trustee in such coin or currency of the United States of America as, at the time of payment, shall be legal tender for the payment of public and private debts, but only from and out of rentals or other moneys received by the Trustee and applicable to such payment under the provisions of the Agreement.

This Certificate is one of an authorized issue of Trust Certificates (hereinafter called Trust Certificates) in an aggregate principal amount not exceeding \$20,000,000 consisting of not to exceed \$6,670,000 aggregate principal amount (hereinafter called Serial Certificates) which will mature serially in the principal amount of \$1,334,000 on August 1 of each of the years 1971 to 1975, both inclusive, and not to exceed \$13,330,000 aggregate principal amount which will mature on August 1, 1985 (unless theretofore called for sinking fund redemption), all issued or to be issued under the Agreement, under which certain railroad equipment leased to the Company (or cash or obligations defined in the Agreement as "Investment Securities" in lieu thereof, as provided in the Agreement) is held by the Trustee in trust for the equal and ratable benefit of the registered holders of the Trust Certificates issued thereunder. Trust Certificates of different maturities bear different dividend rates. Reference is made to the Agreement (a copy of which is on file with the Trustee at its said office) for a more complete statement of the terms and provisions thereof, to all of which the registered holder hereof, by accepting this Certificate, assents. This Certificate is one of the Serial Certificates.

The Trust Certificates are issuable as fully registered Trust Certificates in denominations of \$1,000 and any multiple of \$1,000. The several denominations of Trust Certificates of the same maturity and dividend rate are interchangeable upon presentation thereof for the purpose at said office of the Trustee, but only in the manner, subject to the limitations and upon payment of the charges provided in the Agreement.

This Certificate is transferable by the registered holder hereof in person or by duly authorized attorney on the books of the Trustee upon surrender to the Trustee at its said office of this Certificate accompanied by a written instrument of transfer, duly executed by the registered holder in person or by such attorney, in form satisfactory to the Trustee, and thereupon a new Trust Certificate or Certificates in authorized denominations for the same aggregate principal amount bearing the same dividend rate and having the same maturity date will be issued to the transferee in exchange herefor. The Trustee and the Company may deem and treat the person in whose name this Certificate is registered as the absolute owner hereof for the purpose of receiving payment of principal and dividends and for all other purposes and shall not be affected by any notice to the contrary.

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

IN WITNESS WHEREOF, the Trustee has caused this Certificate to be signed by the facsimile signature of one of its Vice Presidents and a facsimile of its corporate seal to be hereon imprinted and to be attested by the signature of one of its Assistant Secretaries.

Dated as of

THE CHASE MANHATTAN BANK
(National Association),
Trustee,

By
Vice President

Attest:

.....
Assistant Secretary

[FORM OF SINKING FUND TRUST CERTIFICATE]

No. \$

BURLINGTON NORTHERN INC.

9.30% SINKING FUND EQUIPMENT TRUST CERTIFICATE, SERIES 1
DUE AUGUST 1, 1985

Total Authorized Issue \$20,000,000

THE CHASE MANHATTAN BANK (National Association),
TRUSTEE

THE CHASE MANHATTAN BANK (National Association), a national banking association existing under the laws of the United States of America, as Trustee (hereinafter called the Trustee) under an Equipment Trust Agreement (hereinafter called the Agreement) dated as of August 1, 1970, by and between the Trustee and BURLINGTON NORTHERN INC., a Delaware corporation (hereinafter called the Company), hereby certifies that

or registered assigns is entitled to an interest of

Dollars in Burlington Northern Inc. Equipment Trust, Series 1, payable August 1, 1985, upon surrender of this Certificate to the Trustee at the principal Corporate Trust Office of the Trustee, in the Borough of Manhattan, City and State of New York, and to dividends thereon from the date hereof until the principal amount represented by this Certificate shall have become due, payable on February 1 and August 1 in each year, beginning February 1, 1971, at the rate of 9.30% per annum, with interest on any overdue

principal and dividends, to the extent legally enforceable, at the rate of 9.80% per annum; principal and dividends being payable to the registered holder hereof at said office of the Trustee in such coin or currency of the United States of America as, at the time of payment, shall be legal tender for the payment of public and private debts, but only from and out of rentals or other moneys received by the Trustee and applicable to such payment under the provisions of the Agreement.

This Certificate is one of an authorized issue of Trust Certificates (hereinafter called Trust Certificates) in an aggregate principal amount not exceeding \$20,000,000 consisting of not to exceed \$6,670,000 aggregate principal amount which will mature serially in the principal amount of \$1,334,000 on August 1 of each of the years 1971 to 1975, both inclusive, and not to exceed \$13,330,000 aggregate principal amount (hereinafter called Sinking Fund Certificates) which will mature on August 1, 1985 (unless theretofore called for sinking fund redemption), all issued or to be issued under the Agreement, under which certain railroad equipment leased to the Company (or cash or obligations defined in the Agreement as "Investment Securities" in lieu thereof, as provided in the Agreement) is held by the Trustee in trust for the equal and ratable benefit of the registered holders of the Trust Certificates issued thereunder. Trust Certificates of different maturities bear different dividend rates. Reference is made to the Agreement (a copy of which is on file with the Trustee at its said office) for a more complete statement of the terms and provisions thereof, to all of which the registered holder hereof, by accepting this Certificate, assents. This Certificate is one of the Sinking Fund Certificates.

As a sinking fund for the Sinking Fund Certificates, the Agreement provides for the payment by the Company to the Trustee, on or before the business day next preceding August 1 in each year, commencing August 1, 1976, and continuing to and

including August 1, 1984, of additional rental in an amount sufficient to redeem \$1,333,000 aggregate principal amount of the Sinking Fund Certificates. As more fully provided in the Agreement, the Sinking Fund Certificates are subject to redemption through the application of such additional rental on August 1, 1976, and on each August 1 thereafter to and including August 1, 1984, on not less than 30 nor more than 60 days' prior notice given as provided in the Agreement, at 100% of the principal amount thereof, together with accrued and unpaid dividends to the date fixed for redemption. The Agreement further provides that the Company may, at its option, credit against such rental Sinking Fund Certificates not theretofore credited or redeemed, such credit to be in an amount equal to the redemption price (including accrued dividends) of such Sinking Fund Certificates. Any holder of \$100,000 or more in principal amount of Sinking Fund Certificates (which amount shall be reduced by 1/10th after each redemption date) may elect, by written notice to the Trustee given as provided in the Agreement, to receive his *pro rata* share of each cash sinking fund payment determined as provided in the Agreement.

The Trust Certificates are issuable as fully registered Trust Certificates in denominations of \$1,000 and any multiple of \$1,000. The several denominations of Trust Certificates of the same maturity and dividend rate are interchangeable upon presentation thereof for the purpose at said office of the Trustee, but only in the manner, subject to the limitations and upon payment of the charges provided in the Agreement.

This Certificate is transferable by the registered holder hereof in person or by duly authorized attorney on the books of the Trustee upon surrender to the Trustee at its said office of this Certificate accompanied by a written instrument of transfer, duly executed by the registered holder in person or by such attorney, in form satisfactory to the Trustee, and thereupon a new Trust

Certificate or Certificates in authorized denominations for the same aggregate principal amount, bearing the same dividend rate and having the same maturity date will be issued to the transferee in exchange herefor. The Trustee and the Company may deem and treat the person in whose name this Certificate is registered as the absolute owner hereof for the purpose of receiving payment of principal and dividends and for all other purposes and shall not be affected by any notice to the contrary.

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

IN WITNESS WHEREOF, the Trustee has caused this Certificate to be signed by the facsimile signature of one of its Vice Presidents and a facsimile of its corporate seal to be hereon imprinted and to be attested by the signature of one of its Assistant Secretaries.

Dated as of

THE CHASE MANHATTAN BANK
(National Association),
Trustee,

By

Attest: *Vice President*

.....
Assistant Secretary

[FORM OF GUARANTY FOR TRUST CERTIFICATES]

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 the dividends thereon specified in said Certificate, with interest on any overdue principal and dividends, to the extent legally enforceable, at the rate of 9.80% per annum, all in accordance with the terms of said Certificate and the Equipment Trust Agreement referred to therein.

BURLINGTON NORTHERN INC.

By
Vice President, Finance

WHEREAS, it is desired to secure to the holders of the Trust Certificates the payment of the principal thereof at maturity, whether by declaration or otherwise, with dividends to said date of maturity payable as provided therein, all as hereinafter provided, and to evidence the rights of the holders of the Trust Certificates;

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

ARTICLE ONE

DEFINITIONS

SECTION 1.01. *Definitions.* The following terms (except as otherwise expressly provided or unless the context otherwise requires) for all purposes of this Agreement shall have the respective meanings hereinafter specified:

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

Business Day means a day which, in The City of New York, State of New York, is not a day on which banking institutions are authorized by law to close.

Company shall mean Burlington Northern Inc. and any successor or successors to it complying with the provisions of Section 5.08.

Corporate Trust Office shall mean the principal office of the Trustee in the Borough of Manhattan, City and State of New York, at which the corporate trust business of the Trustee shall, at the time in question, be administered, which office is, at the date of execution of this Agreement, located at the address specified in the first paragraph of this Agreement.

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 Com-

panies as in effect at the time in question, or the accounting rules of such other Federal governmental authority as may then have jurisdiction over the accounts of the Company, or, to the extent not determined thereby or in case there shall be no such accounting rules of the Interstate Commerce Commission or other Federal authority in effect at such time, under generally accepted accounting principles.

Deposited Cash shall mean the aggregate of (a) cash and any advance rentals on deposit with or to the credit of the Trustee as provided in the first paragraph of Section 2.01 and, when required or indicated by the context, any Investment Securities purchased by the use of such cash pursuant to the provisions of Section 8.05, and (b) any sums restored to Deposited Cash from rentals pursuant to Section 5.04(B)(1)(b) and on deposit with or to the credit of the Trustee.

Equipment shall mean standard-gauge railroad equipment (other than passenger or work equipment) first put into use on or after June 1, 1970.

Event of Default shall mean any event specified in Section 6.01 to be an Event of Default.

Fair Value, when used with respect to any unit of Equipment, shall mean the Cost thereof less depreciation accrued on such unit to the date as of which such determination is made, such depreciation to be determined by the method in use at such time in standard railroad practice, but in no event exceeding 1/15th of the Cost of such unit per annum.

The word *holder*, when used with respect to Trust Certificates, shall mean the registered holder of such Trust Certificates and shall include the plural as well as the singular number.

Investment Securities shall mean (a) bonds, notes or other direct obligations of the United States or obligations for which the faith of the United States is pledged to provide for the pay-

ment of the interest and principal thereon, (b) commercial paper of a corporation incorporated under the laws of the United States or a state thereof given a rating of "prime" or better (or a comparable rating if such rating system is changed) by the National Credit Office or a successor thereto or a similar rating service substituted therefor and (c) certificates of deposit of or time deposits in banks or trust companies (including the Trustee) incorporated and doing business under the laws of the United States or one of the States thereof having a combined capital and surplus of at least \$50,000,000, in each case having a maturity of one year or less.

Officers' Certificate shall mean a certificate signed by the Chairman of the Board or the President or any Vice President and by the Treasurer or any Assistant Treasurer or the Secretary or any Assistant Secretary of the Company. Each such certificate shall include the statements provided for in Section 10.03 if and to the extent required by the provisions thereof.

Opinion of Counsel shall mean an opinion in writing signed by legal counsel who may, unless in a particular instance the Trustee shall otherwise require, be an employee of or of counsel to the Company. Each such opinion shall include the statements provided for in Section 10.03 if and to the extent required by the provisions thereof.

Request shall mean a written request for the action therein specified, delivered to the Trustee, dated not more than ten days prior to the date of delivery to the Trustee and signed on behalf of the Company by the Chairman of the Board or the President or a Vice President of the Company.

Responsible Officer shall mean the chairman of the board of directors, any vice chairman of the board of directors, the chairman of the executive committee, the vice chairman of the executive committee, the president, any vice president, the cashier, the secretary, the treasurer, any trust officer, any assistant trust officer, any assistant or second vice president, any assistant cashier, any

assistant secretary, any assistant treasurer or any other officer or assistant officer of the Trustee customarily performing functions similar to those performed by the persons who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred because of his knowledge of and familiarity with the particular subject.

Serial Certificates shall mean the Trust Certificates which mature serially on August 1 of each of the years 1971 to 1975, both inclusive.

Sinking Fund Certificates shall mean the Trust Certificates which mature on August 1, 1985 and are subject to redemption as provided in Article Three.

Trust Certificates shall mean the Burlington Northern, Inc. Equipment Trust Certificates issued hereunder.

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

Trustee shall mean the corporation designated as such in the first paragraph of this Agreement and, subject to the provisions of Article Eight, any successor as trustee hereunder.

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

ARTICLE TWO

TRUST CERTIFICATES AND ISSUANCE THEREOF

SECTION 2.01. *Issuance of Trust Certificates.* The net proceeds (excluding accrued dividends and any premium, which shall be paid to the Company) of the sale of any of the Trust Certificates shall, forthwith upon the issuance thereof, be deposited in cash

with or to the credit of the Trustee. At the same time the Company shall, if necessary, deposit with or to the credit of the Trustee any advance rental payable by the Company under Section 5.04(A)(1).

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 in the aggregate principal amount so sold.

Except as provided in Sections 2.05, 2.06, 2.07 and 3.02, the aggregate principal amount of Trust Certificates which shall be executed and delivered by the Trustee hereunder shall not exceed the sum of \$20,000,000, the aggregate principal amount of Serial Certificates which shall be executed and delivered by the Trustee hereunder shall not exceed the sum of \$6,670,000 and the aggregate principal amount of Sinking Fund Certificates which shall be executed and delivered by the Trustee hereunder shall not exceed the sum of \$13,330,000.

SECTION 2.02. *Interests Represented by Trust Certificates; Dividends; Maturity; Denominations.* Each of the Trust Certificates shall represent an interest in the amount therein specified in the trust created hereunder.

The Sinking Fund Certificates shall be payable and bear dividends as specified in the form thereof hereinbefore set forth and shall mature on the date therein specified. The Serial Certificates shall be payable as specified in the form thereof hereinbefore set forth and shall mature on the dates and bear dividends at the rates per annum as follows:

| <u>Principal Amount</u> | <u>Date of Maturity</u> | <u>Dividend Rate</u> |
|-------------------------|-------------------------|----------------------|
| \$1,334,000 | August 1, 1971 | 8.15% |
| 1,334,000 | August 1, 1972 | 8.35 |
| 1,334,000 | August 1, 1973 | 8.50 |
| 1,334,000 | August 1, 1974 | 8.55 |
| 1,334,000 | August 1, 1975 | 8.60 |

Definitive Trust Certificates shall be in denominations of \$1,000 and any multiple thereof. Both Sinking Fund Certificates and Serial Certificates shall be numbered consecutively with appropriate letter prefixes.

The principal of and dividends on the Trust Certificates shall be payable at the Corporate Trust Office in such coin or currency of the United States of America as, at the time of payment, shall be legal tender for the payment of public and private debts, but only from and out of rentals or other moneys received by the Trustee and applicable to such payment under the provisions of this Agreement.

SECTION 2.03. *Forms of Trust Certificates and Guaranty.* The Serial Certificates, the Sinking Fund Certificates and the guaranty to be endorsed on the Trust Certificates by the Company as hereinafter in Section 7.01 provided shall be in substantially the forms hereinbefore set forth. The definitive Trust Certificates shall be printed in fully engraved form or lithographed or printed with steel engraved borders or partially engraved and partially printed with steel engraved borders.

SECTION 2.04. *Execution by Trustee.* The Trust Certificates shall be signed in the name and on behalf of the Trustee by the manual or facsimile signature of its President or one of its Vice Presidents and its corporate seal or a facsimile thereof shall be affixed or imprinted thereon and attested by the manual signature of its Secretary, one of its Assistant Secretaries or one of its Trust Officers. In case any officer of the Trustee whose signature, whether

facsimile or not, shall appear on any of the Trust Certificates shall cease to be such officer of the Trustee before the Trust Certificates shall have been issued and delivered by the Trustee or shall not have been acting in such capacity on the date of the Trust Certificates, such Trust Certificates may be adopted by the Trustee and be issued and delivered as though such person had not ceased to be or had then been such officer of the Trustee.

SECTION 2.05. *Temporary Trust Certificates.* Temporary printed Trust Certificates in such form and denominations as the Company may determine with the approval of the Trustee may be issued by the Trustee, and shall be exchangeable, without charge to the holder thereof, upon surrender thereof to the Trustee, for definitive Trust Certificates in the proper form, having the proper maturity date and bearing the proper dividend rate when the same shall have been prepared. Until such exchange said temporary Trust Certificates shall be entitled to the same benefit of this Agreement in all respects as said definitive Trust Certificates.

SECTION 2.06. *Characteristics of Trust Certificates.* (a) The Trust Certificates 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, 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 as of August 1, 1970, or, if issued after February 1, 1971, as of the dividend payment date immediately preceding the date of issue, unless issued on a dividend payment date, in which case they shall be dated as of the date of issue, or unless issued in exchange or substitution for, or upon transfer of, another Trust Certificate or Certificates bearing unpaid dividends from an earlier date, in which case they shall be dated as of such earlier date, and in any case shall entitle the holder to dividends from the date thereof.

(b) The several denominations of Trust Certificates of the same maturity and dividend rate shall be interchangeable in authorized denominations at the Corporate Trust Office.

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

(d) The Trustee shall cause to be kept at the Corporate Trust Office books for the registration and transfer of the Trust Certificates.

(e) For any transfer or exchange the Trustee shall require the payment of a sum sufficient to reimburse it for any governmental charge connected therewith.

(f) Each Trust Certificate delivered, pursuant to any provision of this Agreement, in exchange or substitution for, or upon the transfer of, the whole or any part, as the case may be, 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, as the case may be, of such one or more other Trust Certificates, and, notwithstanding anything contained in this Agreement, such Trust Certificate shall be so dated that neither gain nor loss in dividends shall result from such exchange, substitution or transfer.

(g) The Trustee shall not be required (i) to issue, transfer or exchange any Trust Certificate for a period of 15 days immediately preceding any dividend payment date, or (ii) to issue, transfer or exchange any Sinking Fund Certificate during a period of 15 days before any selection of Sinking Fund Certificates to be redeemed, or (iii) to transfer or exchange any Sinking Fund Certificates called or being called for redemption in whole or in part.

SECTION 2.07. *Replacement of Lost Trust Certificates.* In case any Trust Certificate shall become mutilated or defaced or be lost, destroyed or stolen, then on the terms herein set forth, and not otherwise, the Trustee shall execute and deliver a new Trust Certificate of like tenor and date, and bearing such identifying number or designation as the Trustee may determine, in exchange and substitution for, and upon cancelation of, the mutilated or defaced Trust Certificate, or in lieu of and in substitution for the same if lost, destroyed or stolen. 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, destruction or theft of such Trust Certificate alleged to have been lost, destroyed or stolen and of the ownership and authenticity of such mutilated, defaced, lost, destroyed or stolen Trust Certificate, and also shall furnish such security or 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. In case any Trust Certificate which has matured is lost, stolen or destroyed, the Trustee may, instead of issuing a new Trust Certificate in lieu thereof, pay the same without surrender thereof. All Trust Certificates are held and owned upon the express condition that the foregoing provisions are exclusive in respect of the replacement of mutilated, defaced, lost, destroyed or stolen Trust Certificates and shall preclude any and all other rights and remedies, any law or statute now existing or hereafter enacted to the contrary notwithstanding.

ARTICLE THREE

REDEMPTION OF SINKING FUND CERTIFICATES

SECTION 3.01. *Right of Redemption and Redemption Price.* The Sinking Fund Certificates are subject to redemption through the application of the rental payable to the Trustee pursuant to Section 5.04(B)(4) and, to the extent specifically provided therein,

Section 5.04(B)(3) on August 1, 1976, and on each August 1 thereafter to and including August 1, 1984, at a redemption price of 100% of the principal amount thereof, together with accrued and unpaid dividends to the date fixed for redemption.

SECTION 3.02. *Selection of Sinking Fund Certificates for Redemption; Notice of Redemption.* On or before June 25, 1976, and on or before June 25 in each year thereafter to and including June 25, 1984, the Trustee shall select for redemption, in such manner as in its discretion it shall deem appropriate and fair (*provided, however*, that portions of Sinking Fund Certificates shall be selected only in multiples of \$1,000), a principal amount of Sinking Fund Certificates so as to exhaust the amount of rental to be paid by the Company to it in cash pursuant to Section 5.04(B)(4) on or before the Business Day next preceding the next succeeding August 1, subject to the provisions of the next succeeding sentence and the sentence immediately following Section 5.04(B)(5). Any holder of Sinking Fund Certificates in whose name is registered an aggregate principal amount of Sinking Fund Certificates at least equal to the sum obtained by multiplying \$100,000 by a fraction, of which the numerator is the number of redemption dates (including for this purpose the final maturity date) remaining to and including August 1, 1985, and the denominator is 10, may, by written notice to the Trustee delivered at least 60 days prior to a redemption date, direct the Trustee to select for redemption on each redemption date thereafter occurring such principal amount of Sinking Fund Certificates registered in the name of such holder having an aggregate redemption price which bears the same proportion to the aggregate redemption price of all the Sinking Fund Certificates to be called for redemption on such redemption date as (y) the aggregate principal amount of Sinking Fund Certificates registered in the name of such holder on a date selected by the Trustee not more than 15 days prior to the selection by the Trustee of Sinking Fund Certificates for redemption on such redemption date pursuant to the immediately preceding sentence

bears to (z) the aggregate principal amount of Sinking Fund Certificates outstanding on such date. In the event of any such direction (i) the principal amount of Sinking Fund Certificates to be selected by the Trustee, as provided in the first sentence of this paragraph, shall be proportionately reduced and (ii) there shall not be included in the selection made, as provided in the first sentence of this paragraph in respect of such redemption date, any Sinking Fund Certificates registered in the name of any holder of Sinking Fund Certificates whose Sinking Fund Certificates are selected for redemption as provided in the second sentence of this paragraph. Any notice given by any holder of Sinking Fund Certificates as provided in the second sentence of this paragraph shall remain in effect unless and until revoked by written notice delivered by such holder to the Trustee at least 60 days prior to the redemption date or dates in respect of which such revocation is expressed to be applicable. In any selection of Sinking Fund Certificates for redemption pursuant to the second sentence of this paragraph, the Trustee shall, according to such method as it shall deem to be proper, make such adjustments, by increasing or decreasing by not more than \$1,000 the principal amount of Sinking Fund Certificates of each holder selected pursuant to said second sentence, as may be necessary to the end that the principal amount of Sinking Fund Certificates of such holder selected for redemption shall be \$1,000 or any multiple thereof.

The Trustee shall mail by first class mail, postage prepaid, a notice of redemption not less than 30 nor more than 60 days prior to each redemption date to the holders of Sinking Fund Certificates so to be redeemed in whole or in part, at their last addresses as they appear upon the registry books. Failure to mail such notice, or any defect therein, shall not affect the validity of the proceedings for the redemption of any other Sinking Fund Certificates. Any notice which is mailed in the manner herein provided shall be conclusively presumed to have been duly given, whether or not the holder received such notice.

The notice of redemption shall specify the date for redemption and shall state that payment of the principal amount of the Sinking Fund Certificates or portions thereof to be redeemed (together with all accrued and unpaid dividends thereon) will be made (provided the Company has deposited the necessary cash for such redemption) at the Corporate Trust Office, upon presentation and surrender of such Sinking Fund Certificates, that accrued dividends to the date fixed for redemption will be paid as specified in said notice, and that from and after said date dividends thereon or on the portions thereof to be redeemed will cease to accrue. The notice of redemption shall also state the aggregate principal amount of Sinking Fund Certificates to be redeemed and the serial numbers thereof; and in case there shall have been selected as aforesaid less than the entire principal amount of any Sinking Fund Certificate, the notice shall identify the serial number of such Sinking Fund Certificate and the principal amount thereof called for redemption, and shall state that on and after the redemption date, upon surrender of such Sinking Fund Certificate, the holder will receive the redemption price in respect of the principal amount thereof called for redemption and, without charge, a new Sinking Fund Certificate for the principal amount thereof remaining unredeemed. The serial numbers of any Sinking Fund Certificates to be redeemed, required to be included in any such notice, may be stated in any one or more of the following ways: individually; in groups from one number to another number, both inclusive; in groups from one number to another number, both inclusive, except such as shall have been previously called for redemption or otherwise retired; or in such other manner as the Trustee shall deem appropriate.

SECTION 3.03. *Payment of Sinking Fund Certificates Called for Redemption.* The Company on or before the Business Day next preceding the redemption date specified in the notice of redemption having deposited with the Trustee an amount in cash sufficient to redeem all the Sinking Fund Certificates or portions thereof called

for redemption, the Sinking Fund Certificates or portions thereof called for redemption shall become due and payable on such redemption date at the Corporate Trust Office, and from and after such redemption date dividends on such Sinking Fund Certificates or portions thereof shall cease to accrue and such Sinking Fund Certificates or portions thereof shall no longer be deemed to be outstanding hereunder and shall cease to be entitled to the benefits of this Agreement, except to receive payment from the moneys reserved therefor in the hands of the Trustee. The Trustee shall hold the redemption moneys in trust for the holders of the Sinking Fund Certificates or portions thereof called for redemption and shall pay the same to such holders respectively upon presentation and surrender of such Sinking Fund Certificates.

Except as provided in Section 3.02, all Sinking Fund Certificates redeemed and paid under this Article Three shall be canceled by the Trustee and no Trust Certificates shall be issued hereunder in place thereof.

ARTICLE FOUR

ACQUISITION OF TRUST EQUIPMENT BY TRUSTEE; DEPOSITED CASH

SECTION 4.01. *Acquisition of Equipment by Trustee.* The Company, as speedily as may be, shall cause to be sold, assigned and transferred to the Trustee, as trustee for the holders of the Trust Certificates, the Equipment described in Schedule A hereto. Such Equipment shall be delivered to the person or persons designated by the Trustee as its agent or agents to receive such delivery (who may be one or more of the officers or agents of the Company) and the certificate of any such agent or agents as to such delivery shall be conclusive evidence of such delivery.

In the event that the Company shall deem it necessary or desirable to procure for the use of the Company, and to include in the trust hereby created, other Equipment in lieu of or in addition

to any of the Equipment specifically described in Schedule A hereto prior to the delivery of such Equipment to the Trustee or its agent or agents, the Company may cause to be sold, assigned and transferred to the Trustee such other Equipment. In the event of such substitution or addition the Trustee shall execute an appropriate supplemental instrument reflecting such substitution or addition.

SECTION 4.02. *Payment of Deposited Cash.* From time to time, when and as any of the Trust Equipment shall have been delivered to the Trustee or its agent or agents pursuant to Section 4.01, the Trustee shall (subject to the provisions of Section 4.03) pay, upon Request, to the manufacturers or owners of the delivered Trust Equipment out of Deposited Cash an amount which will equal 80% of the aggregate Cost of such Trust Equipment, as specified in the Officers' Certificate furnished to the Trustee pursuant to Section 4.04(b).

SECTION 4.03. *Payment of Deficiency.* The Company covenants that, contemporaneously with any payment by the Trustee pursuant to Section 4.02, it will pay to the Trustee the advance rental provided in Section 5.04(A)(2), and thereupon the Trustee shall, upon Request, pay to the manufacturers or owners 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 4.02; the intention being that the Company shall ultimately pay not less than 20% of the Cost of all the Trust Equipment delivered to the Trustee pursuant to this Article Four, 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 Cost and the Company shall pay the remainder, to be not less than 20% of such Cost.

SECTION 4.04. *Supporting Papers.* The Trustee shall not pay out any Deposited Cash against the delivery of any of the Trust Equipment unless and until it shall have received:

(a) a certificate of the agent or agents designated by the Trustee to receive delivery of the Trust Equipment, stating that the Trust Equipment described and specified therein by number or numbers has been delivered to such agent or agents;

(b) an Officers' Certificate which shall state (i) that such Trust Equipment is Equipment as herein defined, (ii) that the Cost of such Trust Equipment is an amount therein specified or is not less than an amount therein specified, (iii) the date each unit of such Trust Equipment was first put into use or that such unit was first put into use not earlier than a specified date and (iv) that, in the opinion of the signers, all conditions precedent provided for in this Agreement, relating to the payment in question, have been complied with;

(c) a bill or bills of sale of such Trust Equipment from the manufacturers or owners 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 (including any leasehold interest therein) other than the rights of the Company hereunder; and

(d) an Opinion of Counsel to the effect that (i) 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 (including any leasehold interest therein) other than the rights of the Company hereunder, (ii) in the case of any Trust Equipment not specifically described herein, a proper supplement hereto in respect of such Trust Equipment has been duly executed by the Trustee and the Company and (iii) in the opinion of such counsel, all conditions precedent provided for in this Agreement, relating to the payment in question, have been complied with.

Any Officers' Certificate delivered pursuant to this Section 4.04 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 Officers' Certificate to be delivered to the Trustee.

If the aggregate final Cost, as specified in the certificates theretofore delivered to the Trustee pursuant to this Section 4.04, of the Trust Equipment delivered to the Trustee or its agent or agents pursuant to this Article Four shall be less than 125% of the aggregate principal amount of Trust Certificates issued pursuant to Section 2.01, the Company will cause to be sold, assigned and transferred to the Trustee additional Equipment in such amount and of such Cost that the aggregate final Cost of the Trust Equipment will be at least 125% of the aggregate principal amount of said Trust Certificates.

ARTICLE FIVE

LEASE OF TRUST EQUIPMENT TO THE COMPANY

SECTION 5.01. *Lease of Trust Equipment.* The Trustee does hereby let and lease to the Company, for the term of 15 years from and after August 1, 1970, all of the Trust Equipment.

SECTION 5.02. *Equipment Automatically Subjected.* As and when any Equipment shall from time to time be delivered hereunder to the Trustee or its agent or agents, 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 5.03. *Substituted Equipment Subject Hereto.* In the event that the Company shall, as provided in Section 4.01, 4.04 or 5.07, cause to be transferred to the Trustee other Equipment in addition to or in substitution for any of the Equipment herein specifically described or subjected hereto, such other Equipment shall be included as part of the Trust Equipment by supplement hereto

and shall be subject to all the terms and conditions hereof in all respects as though it had been part of the Trust Equipment herein specifically described.

SECTION 5.04. *Rental Payments.* The Company hereby accepts the lease of all the Trust Equipment, and covenants and agrees to accept delivery and possession hereunder of the Trust Equipment; and the Company covenants and agrees to pay to the Trustee at the 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 (or, in the case of taxes, in appropriate currency) as at the time of payment shall be legal tender for the payment of public and private debts, rent hereunder which shall be sufficient to pay and discharge the following items, when and as the same shall become due and payable (whether or not any of such items shall become due and payable prior to the delivery and lease to the Company of any of the Trust Equipment):

(A) The Company shall pay to the Trustee, as hereinafter provided, as advance rental hereunder, sums which in the aggregate shall be equal to the difference between the aggregate Cost of the Trust Equipment (other than Trust Equipment subjected hereto pursuant to Section 5.07) 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 Trustee or its agent or agents, 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 Trust Certificates pursuant to Section 2.01, a sum which, when added to such net proceeds of the sale of the Trust Certificates deposited with or to the credit of the Trustee, will make the total sum deposited equal to the principal amount of the Trust Certificates so issued; and
- (2) upon delivery of any such Trust Equipment, a sum equal to the portion of the Cost of such delivered Trust Equip-

ment not paid out of Deposited Cash as provided for in Section 4.02, 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 (notwithstanding that any of the Trust Certificates shall have been acquired by the Company or shall not have been presented for payment), the following:

(1) from time to time upon demand of the Trustee (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 in connection with any purchase or sale of Investment Securities or any loss incident to the sale or redemption of any Investment Securities for a sum less than the amount paid therefor, including any premium and accrued interest;

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

(3) (a) on or before the Business Day next preceding each dividend payment date, the amount of dividends payable on the Trust Certificates on such dividend payment date, and (b) interest at the rate of 9.80% per annum from the due date upon the amount of any instalments of rental payable under this subparagraph (3) and the following subparagraphs (4) and (5) which shall not be paid when due, to the extent legally enforceable;

(4) as a sinking fund for the Sinking Fund Certificates, on or before the Business Day next preceding August 1 in each year, commencing August 1, 1976, and continuing to and including August 1, 1984, an amount in cash sufficient to redeem \$1,333,000 aggregate principal amount of Sinking Fund Certificates; and

(5) the principal of the Trust Certificates (other than those called for redemption and redeemed pursuant to Article Three) upon the maturity thereof, whether by declaration or otherwise.

Notwithstanding the provisions of subparagraph (4) above, the Company may, at its option, in lieu of making all or any part of any rental payment provided for in said subparagraph (4) in cash, credit, pursuant to a Request delivered on or before the June 1 next preceding the August 1 on which such rental payment is due, against such rental payment any Sinking Fund Certificates specified (as to serial numbers and principal amounts thereof) in such Request (not theretofore credited or redeemed). The Company shall, prior to June 25 of the year in which such rental payment is due, deliver to the Trustee for cancelation (if not theretofore delivered to the Trustee) all such Sinking Fund Certificates. The amount of the rental payment in respect of which the Company specifies in such Request that any Sinking Fund Certificate is to be credited shall be reduced by an amount equal to the redemption price (including accrued dividends), specified in Section 3.01, of such Sinking Fund Certificate on the August 1 in respect of which such credit is taken.

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

The Company shall not be required to pay any tax, assessment or governmental charge so long as it shall in good faith and by appropriate legal proceedings contest the validity thereof, provided that the rights or interests of the Trustee or of the holders of the Trust Certificates will not be materially endangered thereby and the Company shall have furnished the Trustee with an Opinion of Counsel to such effect.

SECTION 5.05. *Termination of Lease.* At the termination of the lease provided for herein and after all payments due or to become due from the Company hereunder shall have been completed and fully made to the Trustee, (1) any moneys remaining in the hands of the Trustee after providing for payment in full of all outstanding Trust Certificates and after paying the expenses of the Trustee, including its reasonable compensation, shall be paid to the Company, (2) title to all the Trust Equipment shall vest in the Company and (3) 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 the 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 5.06. *Marking of Trust Equipment.* The Company agrees that, as soon as practicable after the delivery to the Trustee pursuant to this Agreement 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-half of an 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 forthwith 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 in like manner as this Agreement.

The Trust Equipment may be lettered "Burlington Northern Inc.", "Burlington Northern", "BNI", "BN" or in some other appropriate manner for convenience of identification of the leasehold interest of the Company therein; but the Company, during the continuance of the lease provided for herein, will not allow the name of any person, firm, 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, firm, association or corporation other than the Trustee.

SECTION 5.07. *Maintenance of Trust Equipment.* 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 it becomes worn out, unsuitable for use, lost or destroyed (hereinafter called a Casualty Occurrence). Whenever any of the Trust Equipment shall suffer a Casualty Occurrence, the Company shall, within 30 days after it shall have obtained knowledge of such Casualty Occurrence, deliver to the Trustee an Officers' Certificate describing such Trust Equipment and stating the Fair Value thereof as of the date such Trust Equipment suffered such Casualty Occurrence. When the total Fair Value of all of the Trust Equipment having suffered a Casualty Occurrence

(exclusive of Trust Equipment having suffered a Casualty Occurrence in respect of which a payment shall have been made to the Trustee pursuant to this Section 5.07) shall amount to \$100,000 or 1% of the principal amount of the then outstanding Trust Certificates, whichever is less (or such lesser amount as the Company may elect), the Company shall, within 30 days after it shall have obtained knowledge of the Casualty Occurrence requiring such deposit, (a) deposit with the Trustee an amount in cash equal to the Fair Value of such Trust Equipment as of the date of the Casualty Occurrence in respect thereof or (b) cause to be conveyed to the Trustee other Equipment of a Fair Value not less than the Fair Value as aforesaid of such Trust Equipment having suffered a Casualty Occurrence.

If other Equipment is to be conveyed to the Trustee in substitution for Trust Equipment having suffered a Casualty Occurrence as provided in the immediately preceding paragraph, the Company shall deliver to the Trustee the following papers:

(1) an Officers' Certificate stating (i) the date each unit of Equipment so to be conveyed to the Trustee was first put into use (or that such unit was first put into use not later than a specified date), (ii) the original Cost of each unit of the Equipment so to be conveyed, (iii) that each unit so to be conveyed is Equipment as herein defined, (iv) the Fair Value, as of the date of such conveyance, of the Equipment so to be conveyed and (v) that, in the opinion of the signers, all conditions precedent provided for in this Agreement, relating to such conveyance, have been complied with;

(2) a certificate and a bill or bills of sale in respect of such substituted Equipment as provided for in subparagraphs (a) and (c) of the first paragraph of Section 4.04; and

(3) an Opinion of Counsel to the effect that (i) such bill or bills of sale are valid and effective, either alone or together with any other instruments referred to in and accompanying such opinion, to vest in the Trustee title to such substituted

Equipment free from all liens and encumbrances (including any leasehold interest therein) other than the rights of the Company hereunder, (ii) a proper supplement hereto in respect of such substituted Equipment has been duly executed by the Trustee and the Company and (iii) in the opinion of such counsel, all conditions precedent provided for in this Agreement, with respect to such substitution, have been complied with.

Upon the deposit of cash or substitution of Equipment as above provided in this Section 5.07, title to the Trust Equipment having suffered a Casualty Occurrence in respect of which such deposit or substitution was made shall become vested in the Company and, upon Request, 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 such Trust Equipment under the laws of any jurisdiction.

Cash deposited with the Trustee pursuant to this Section 5.07 shall, from time to time, be paid over by the Trustee to the Company upon Request, against conveyance to the Trustee of Equipment having a Fair Value, as of the date of said Request, not less than the amount of cash so paid, and upon compliance by the Company with all of the provisions of the second paragraph of this Section 5.07 insofar as they relate to the action requested.

The rights and remedies of the Trustee to enforce or to recover any of the rental payments shall not be affected by reason of any Casualty Occurrence.

The Company covenants and agrees to furnish to the Trustee whenever required by the Trustee, and at least once, on or before May 15, in every calendar year (commencing in 1971) during the continuance of the lease provided for herein, an Officers' Certificate stating (1) the amount, description and numbers of all Trust Equipment that has suffered a Casualty Occurrence since the date of the last preceding statement (or the date of this Agreement in the case of the first statement), and (2) 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 5.06 have been preserved, or that such Trust Equipment when repainted or repaired has been again plated or marked as required thereby. The Trustee, by its agents, shall have the right once in each calendar year, but shall be under no duty, to inspect the Trust Equipment at the then existing locations thereof.

SECTION 5.08. *Possession of Trust Equipment.* Except as provided in this Section 5.08, the Company will not assign or transfer its rights hereunder, or transfer or sublet the Trust Equipment or any part thereof, without the written consent of the Trustee first had and obtained; and the Company shall not, without such written consent, except as herein provided, 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 corporation which shall acquire all or substantially all of the property of the Company and which, by execution of an appropriate instrument satisfactory to the Trustee, shall assume and agree to perform each and all of the obligations and covenants of the Company hereunder and under the guaranty endorsed on the Trust Certificates shall not be deemed a breach of this covenant.

So long as the Company shall not be in default under this Agreement, the Company and any of its Affiliates shall be entitled to the possession and use of the Trust Equipment in accordance with the terms hereof, and the Company may also furnish the Trust Equipment or any part thereof to railroad companies for use upon the lines of railroad owned or operated by them or over which they have trackage rights and upon connecting and other carriers in the usual interchange of traffic, but only upon and

subject to all the terms and conditions of this Agreement and to all rights of the Trustee hereunder.

SECTION 5.09. *Patent Indemnity.* The Company covenants and agrees to indemnify the Trustee against any and all claims arising out of or connected with the ownership or use of any of the Trust Equipment, and particularly against any and all claims arising out of the use of any patented inventions in and about the Trust Equipment, and to comply in all respects with the laws of the United States of America, and of all the states and other jurisdictions 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 any 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 interests of the Trustee or of the holders of the Trust Certificates. The Company shall not be relieved from any of its obligations hereunder by reason of the assertion or enforcement of any such claims or the commencement or prosecution of any litigation in respect thereof.

ARTICLE SIX

REMEDIES IN EVENT OF DEFAULT

SECTION 6.01. *Events of Default.* The Company covenants and agrees that in case

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

(b) the Company shall make or suffer any unauthorized assignment or transfer of its rights hereunder or shall make any unauthorized transfer or sublease of any of the Trust Equipment, or, except as herein authorized, shall part with the possession of any of the Trust Equipment, and shall fail or refuse either to cause such assignment or transfer or sublease to be cancelled by agreement of all parties having any interest therein and recover possession of such Trust Equipment within 30 days after the Trustee shall have demanded in writing such cancelation 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 conveyance) of the Trust Equipment so assigned or transferred or subleased or the possession of which shall have been parted with otherwise than as herein authorized, as certified to the Trustee (any sum so deposited to be returned to the Company upon the cancelation 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 60 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, or

(d) a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may be hereafter amended, shall be filed by or against the Company and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all of the obligations of the Company under this Agreement and under its guaranty endorsed on the Trust Certificates shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed in such proceedings in such manner that such obligations shall have

the same status as obligations incurred by such trustee or trustees within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier, or

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

then, in any such case (herein sometimes called an Event of Default), the Trustee, by notice in writing to the Company, or the holders of not less than 25% in principal amount of the then outstanding Trust Certificates, by notice in writing to the Company and the Trustee, may 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 or rentals payable pursuant to Section 5.04(B)(4) after the date of such declaration) payable by the Company as set forth in Section 5.04

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 rate of 9.80% per annum, to the extent legally enforceable, on any portion thereof overdue.

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

In case the Company shall fail to pay any instalment of rental payable pursuant to Section 5.04(B)(3), (B)(4) or (B)(5) when and as the same shall have become due and payable hereunder, and such default shall have continued for a period of 30 days, the Trustee, in its own name and as trustee of an express trust, shall be entitled and empowered to institute any action or proceedings at law or in equity for the collection of the rentals so due and unpaid, and may prosecute any such action or proceedings to judgment or final decree, and may enforce any such judgment or final decree against the Company and collect in the manner provided by law out of the property of the Company wherever situated the moneys adjudged or decreed to be payable.

In case there shall be pending proceedings for the bankruptcy or for the reorganization of the Company under the Bankruptcy Act or any other applicable law, or in case a receiver or trustee shall have been appointed for the property of the Company, or in case of any other judicial proceedings relative to the Company, or to the creditors or property of the Company, the Trustee,

irrespective of whether the rental payments hereunder or the principal amount of the Trust Certificates shall then be due and payable as herein or therein expressed, whether by declaration or otherwise, and irrespective of whether the Trustee shall have made any demand or declaration pursuant to the provisions of this Section 6.01, shall be entitled and empowered, by intervention in such proceedings or otherwise, to file and prove a claim or claims for the entire amount of the rentals (including any unpaid advance rental, but not including rentals required for the payment of dividends accruing after the date of such claim or claims or rentals payable pursuant to Section 5.04(B)(4) after the date of such claim or claims) and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for reasonable compensation to the Trustee, its agents, attorneys and counsel, and for reimbursement of all expenses and liabilities incurred, and all advances made, by the Trustee except as a result of its negligence or bad faith) and of the holders of the Trust Certificates allowed in such proceedings and to collect and receive any moneys or other property payable or deliverable on any such claims, and to distribute all amounts received with respect to the claims of the holders of the Trust Certificates and of the Trustee on their behalf; and any receiver, assignee or trustee in bankruptcy or reorganization is hereby authorized by each of the holders of the Trust Certificates to make payments to the Trustee, and, in the event that the Trustee shall consent to the making of payments directly to the holders of the Trust Certificates, to pay to the Trustee such amount as shall be sufficient to cover reasonable compensation to the Trustee, its agents, attorneys and counsel, and all other expenses and liabilities incurred, and all advances made, by the Trustee except as a result of its negligence or bad faith.

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

SECTION 6.02. *Remedies.* In case of the happening of any Event of Default, the Trustee may by its agents enter upon the premises of the Company and of any Affiliate of the Company where any of the Trust Equipment may be and take possession of all or any part of the Trust Equipment and withdraw the same from said 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 6.01) 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 any of the Trust Equipment, the Company shall cease to have any rights or remedies in respect of such 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 such 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 such Trust Equipment or any of it or any cause or right of action at law or in equity in respect of such 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 5.04 (other than dividends not then accrued or rentals payable pursuant to Section 5.04(B)(4) due after the date of the declaration referred to in Section 6.01), whether or not they shall have then matured.

The foregoing provisions are subject to all applicable mandatory requirements of law.

SECTION 6.03. *Application of Proceeds.* If, in case of the happening of any Event of Default, the Trustee shall exercise any of the powers conferred upon it by Sections 6.01 and 6.02, all payments made by the Company to the Trustee hereunder after such Event of Default, and the proceeds of any judgment collected from the Company by the Trustee hereunder, and the proceeds of every sale or lease by the Trustee hereunder of any of the Trust Equipment, together with any other sums which may then be held by the Trustee under any of the provisions hereof (other than sums held in trust for the payment of specific Trust Certificates), shall be applied by the Trustee to the payment, in the following order of priority, (a) of all proper charges, expenses or advances made or incurred by the Trustee, its counsel or other agents in accordance with the provisions of this Agreement and (b) of the dividends and principal then due on the Trust Certificates, with interest on overdue dividends and principal at the rate of 9.80% per annum to the extent legally enforceable, whether such Trust Certificates shall have been matured by their terms or not, all such payments to be in full if such proceeds shall be sufficient, or, 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 6.04. *Waivers of Default.* Prior to the declaration of the acceleration of the maturity of the rentals or of the maturity of all the Trust Certificates as provided in Section 6.01, the holders of a majority in aggregate principal amount of the Trust Certificates at the time outstanding may on behalf of the holders of all the Trust Certificates waive any past Event of Default and its consequences, except an Event of Default in the payment of any instalment of rental payable pursuant to Section 5.04(B)(3), (B)(4) or (B)(5), but no such waiver shall extend to or affect any subsequent default or impair any right consequent thereon.

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 6.01 provided, but before August 1, 1985, all arrears of rent (with interest at the rate of 9.80% per annum upon any overdue instalments, to the extent legally enforceable), the expenses and reasonable compensation of the Trustee, together with all expenses of the trust occasioned by the Company's default, and all other sums which shall have become due and payable by the Company hereunder (other than the principal of Trust Certificates, and any other rental instalments, which shall not at the time have matured according to their terms) shall be paid by the Company before any sale or lease by the Trustee of any of the Trust Equipment, and every other default in the observance or performance of any covenant or condition hereof shall be made good or secured to the satisfaction of the Trustee, or provision deemed by the Trustee to be adequate shall be made therefor, then, and in every such case, the Trustee, if so requested by the holders of a majority in principal amount of the Trust Certificates then outstanding 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 6.05. *Obligations of Company Not Affected by Remedies.* No retaking of possession of the Trust Equipment by the Trustee, or any withdrawal, lease or sale thereof, nor any action or failure or omission to act against the Company or in respect of the Trust Equipment, on the part of the Trustee or on the part of the holder of any Trust Certificate, nor any delay or indulgence granted to the Company by the Trustee or by any such holder, shall affect the obligations of the Company hereunder or 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 waives notice of presentation, of demand and of any default in the payment of the principal of and dividends on the Trust Certificates.

SECTION 6.06. *Company to Deliver Trust Equipment to Trustee.* In case the Trustee shall rightfully demand possession of any of the Trust Equipment in pursuance of this Agreement, the Company will, at its own expense, forthwith and in the usual manner and at usual speed, cause such Trust Equipment to be drawn to such point or points as shall reasonably be designated by the Trustee and will there deliver or cause to be delivered the same to the Trustee; or, at the option of the Trustee, the Trustee may keep such Trust Equipment, at the expense of the Company, on any lines of railroad or premises of the Company or of any Affiliate approved by the Trustee until the Trustee shall have leased, sold or otherwise disposed of the same. The performance of the foregoing covenant is of the essence of this Agreement and upon application to any court having jurisdiction in the premises, the Trustee shall be entitled to a decree against the Company requiring the specific performance thereof.

SECTION 6.07. *Limitations on Suits by Holders of Trust Certificates.* No holder of any Trust Certificate shall have any right by virtue or by availing of any provision of this Agreement to institute any action or proceedings at law or in equity or in bankruptcy or otherwise upon or under or with respect to this Agreement, or for the appointment of a receiver or trustee, or for any other remedy hereunder, unless such holder previously shall have given to the Trustee written notice of default and of the continuance thereof, as hereinbefore provided, and unless also the holders of a majority in aggregate principal amount of the Trust Certificates then outstanding shall have made written request to the Trustee to institute such action or proceedings in its own name as trustee hereunder and shall have offered to the Trustee such reasonable indemnity as it may require against the costs, expenses and liabilities to be incurred therein or thereby, and the Trustee for 60 days after its receipt of such notice, request and offer of indemnity shall have failed to institute any such action or proceedings and no direction inconsistent with such written request shall have been given to the Trustee pursuant to Section 6.09; it being understood and intended, and being expressly covenanted by the holder of every Trust Certificate with every other holder and the Trustee, that no one or more holders of Trust Certificates shall have any right in any manner whatever, by virtue or by availing of any provision of this Agreement, to affect, disturb or prejudice the rights of any other holder of Trust Certificates, or to obtain or seek to obtain priority over or preference to any other such holder or to enforce any right under this Agreement, except in the manner herein provided and for the equal, ratable and common benefit of all holders of Trust Certificates. For the protection and enforcement of the provisions of this Section 6.07, each and every holder of a Trust Certificate and the Trustee shall be entitled to such relief as can be given either at law or in equity.

SECTION 6.08. *Unconditional Right of Holders of Trust Certificates to Sue for Principal and Dividends.* Notwithstanding any

other provision in this Agreement, the right of any holder of any Trust Certificate to receive payment of the principal of, and dividends on, such Trust Certificate, on or after the respective due dates expressed in such Trust Certificate, or to institute suit for the enforcement of any such payment on or after such respective dates, shall not be impaired or affected without the consent of such holder, except no such suit shall be instituted if and to the extent that the institution or prosecution thereof or the entry of judgment therein would, under applicable law, result in the surrender, impairment, waiver or loss of the title reserved under this Agreement upon any property subject hereto.

SECTION 6.09. *Control by Holders of Trust Certificates.* The holders of a majority in aggregate principal amount of the Trust Certificates at the time outstanding shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred on the Trustee; *provided, however,* that, subject to the provisions of Section 8.02, the Trustee shall have the right to decline to follow any such direction if the Trustee, being advised by counsel, determines that the action so directed may not be lawfully taken.

SECTION 6.10. *Right of Court to Require Filing of Undertaking to Pay Costs.* All parties to this Agreement agree, and each holder of any Trust Certificate by his acceptance thereof shall be deemed to have agreed, that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Agreement, or in any suit against the Trustee for any action taken or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; but the provisions

of this Section 6.10 shall not apply to any suit instituted by the Trustee, to any suit instituted by any holder of a Trust Certificate, or group of holders of the Trust Certificates, holding in the aggregate more than 10% in principal amount of the Trust Certificates outstanding, or to any suit instituted by any holder of a Trust Certificate for the enforcement of the payment of the principal of, or dividends on, any Trust Certificate on or after the due date expressed in such Trust Certificate.

SECTION 6.11. *Remedies Cumulative.* The remedies in this Agreement provided in favor of the Trustee and the holders of the Trust Certificates, 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 SEVEN

ADDITIONAL COVENANTS AND AGREEMENTS BY THE COMPANY

SECTION 7.01. *Guaranty of Company.* 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 until paid at the rate of 9.80% per annum to the extent legally enforceable), and shall receive dividends thereon in like money at the rate specified therein, at the times and place and otherwise as expressed in the Trust Certificates (and, if not so paid, with interest thereon until paid at the rate of 9.80% per annum to the extent legally enforceable); and the Company further covenants and agrees to endorse upon each of the Trust Certificates, at or before the issuance and delivery thereof by the Trustee, its guaranty of the prompt payment

of the principal thereof and of the dividends thereon in substantially the form hereinbefore set forth. Said guaranty so endorsed shall be signed in the name and on behalf of the Company by the manual or facsimile signature of its Chairman of the Board, its President or any Vice President, including the Vice President, Finance. 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 such officer.

SECTION 7.02. *Discharge of Liens.* The Company covenants and agrees that it will pay and discharge, or cause to be paid and discharged, or make adequate provision for the satisfaction or discharge of, any debt, tax, charge, assessment, obligation or claim which if unpaid might become a lien or charge upon or against any of the Trust Equipment, except upon the leasehold interest of the Company therein; but this provision shall not require the payment of any such debt, tax, charge, assessment, obligation or claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings, provided that such contest will not materially endanger the rights or interests of the Trustee or of the holders of the Trust Certificates and the Company shall have furnished the Trustee with an Opinion of Counsel to such effect.

SECTION 7.03. *Payment of Expenses; Recording.* The Company covenants and agrees to pay the expenses incident to the preparation and execution of the Trust Certificates to be issued hereunder, or connected with the preparation, execution, recording and filing hereof and of any instruments executed under the provisions hereof with respect to the Trust Equipment. The Company will, promptly after the execution and delivery of this Agreement

and each supplement hereto, respectively, cause this Agreement or such supplement, as the case may be, to be duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and, within 21 days from the execution hereof and thereof, as the case may be, deposited with the Registrar General of Canada, and notice of such deposit to be forthwith thereafter given in the Canada Gazette, pursuant to Section 148 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, and file, register and record this Agreement and each supplement hereto in all other jurisdictions, 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.

Promptly after the execution and delivery of this Agreement and each supplement hereto, the Company will furnish to the Trustee an Opinion of Counsel stating that, in the opinion of such counsel, this Agreement or such supplement, as the case may be, has been properly recorded and filed so as effectively to protect the title of the Trustee to the Trust Equipment and its rights and the rights of the holders of the Trust Certificates hereunder and thereunder and reciting the details of such action.

ARTICLE EIGHT

THE TRUSTEE

SECTION 8.01. *Acceptance of Trusts.* The Trustee hereby accepts the trust imposed upon it by this Agreement, and covenants and agrees to perform the same as herein expressed.

SECTION 8.02. *Duties and Responsibilities of the Trustee; During Default; Prior to Default.* In case an Event of Default has occurred (which has not been cured), the Trustee shall ex-

ercise such of the rights and powers vested in it by this Agreement, and use the same degree of care and skill in their exercise, as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

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

(a) prior to the occurrence of an Event of Default and after the curing of all Events of Default which may have occurred:

(1) the duties and obligations of the Trustee shall be determined solely by the express provisions of this Agreement, and the Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Agreement, and no implied covenants or obligations shall be read into this Agreement against the Trustee; and

(2) in the absence of bad faith on the part of the Trustee, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificates or opinions furnished to the Trustee and conforming to the requirements of this Agreement; but in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Agreement;

(b) the Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer, unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts; and

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

SECTION 8.03. *Certain Rights of the Trustee.* Except as otherwise provided in Section 8.02:

(a) the Trustee may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, trust certificate, guaranty or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties;

(b) the Trustee may consult with counsel, and any Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder in good faith and in accordance with such Opinion of Counsel;

(c) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Agreement at the request, order or direction of any of the holders of the Trust Certificates, pursuant to the provisions of this Agreement, unless such holders shall have offered to the Trustee reasonable security or indemnity against the costs, expenses and liabilities which might be incurred therein or thereby; and

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

SECTION 8.04. *Application of Rentals; Responsibility of Trustee to Insure or Record.* The Trustee covenants and agrees to apply the rentals received by it under Section 5.04(B) 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 5.04(B).

Except as otherwise provided in Section 8.02, 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;

and, except as aforesaid, the Trustee shall not be responsible for the filing or recording or refiling or rerecording of this Agreement or of any supplement hereto or statement of new numbers.

SECTION 8.05. *Funds May be Held by Trustee; Investments in Investment Securities.* Any money at any time paid to or held by the Trustee hereunder until paid out by the Trustee as herein provided may be carried by the Trustee on deposit with itself, and, if and to the extent agreed to between the Trustee and the Company and permitted by applicable law or regulations of governmental authorities having jurisdiction over the Trustee, the Trustee will allow interest upon any such moneys held by it in trust at the rate generally prevailing among New York banks and trust companies or allowed by it upon deposits of a similar character.

At any time, and from time to time, if at the time no Event of Default, and no event which with notice or lapse of time or both would constitute an Event of Default, shall have occurred and be continuing, the Trustee, on Request, shall invest and reinvest Deposited Cash or cash deposited with it pursuant to Section 5.07 (hereinafter in this Section 8.05 called Replacement Funds) in Investment Securities, at such prices, including any premium and accrued interest, as are set forth in such Request, such Investment Securities to be held by the Trustee in trust for the benefit of the holders of the Trust Certificates.

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

The Trustee shall restore to Deposited Cash or Replacement Funds, as the case may be, rent received by it pursuant to Section 5.04(B)(1)(b).

The Company, if to the knowledge of the Trustee no Event of Default or event which with notice or lapse of time or both would constitute an Event of Default shall have occurred and then be continuing, shall be entitled to receive any interest allowed as provided in the first paragraph of this Section 8.05 and any interest (in excess of accrued interest paid from Deposited Cash or Replacement Funds at the time of purchase) or other profit which may be realized from any sale or redemption of Investment Securities.

SECTION 8.06. *Trustee Not Liable for Delivery Delays or Defects in Equipment or Title; May Perform Duties by Agents; Reimbursement of Expenses; Holding of Trust Certificates; Moneys Held in Trust.* Except as otherwise provided in Section 8.02, 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 manufacturers or owners thereof or of the Company, or for any defect in any of the Trust Equipment or in the title thereto, nor shall anything herein be construed as a warranty on the part of the Trustee in respect thereof or as a representation on the part of the Trustee in respect of the value thereof or in respect of the title thereto.

Except as otherwise provided in Section 8.02, the Trustee may perform its powers and duties hereunder by or through such attorneys, agents and servants as it shall appoint, 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, for the execution or validity of this Agreement or of the Trust Certificates (except for its own execution thereof) or for the guaranty by the Company.

The Trustee shall be entitled to receive payment of all of its expenses and disbursements hereunder, including reasonable coun-

sel fees, and to receive reasonable compensation for all services rendered by it in the execution of the trust hereby created, all of which shall be paid by the Company.

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

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

SECTION 8.07. *Resignation and Removal; Appointment of Successor Trustee.* (a) The Trustee may at any time resign by giving written notice of resignation to the Company and by mailing notice of resignation to all holders of Trust Certificates at their last addresses appearing on the registry books. Upon receiving such notice of resignation, the Company shall promptly appoint a successor trustee by written instrument, in duplicate, executed by order of the Board of Directors of the Company, one copy of which instrument shall be delivered to the Trustee so resigning and one copy to the successor trustee. If no successor trustee shall have been so appointed and have accepted appointment within 30 days after the giving of such notice of resignation, the resigning Trustee may thereupon designate such successor trustee.

(b) In case at any time the Trustee shall become incapable of acting, or shall be adjudged a bankrupt or insolvent, or a receiver of the Trustee or of its property shall be appointed, or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation, the Company may remove the Trustee and appoint a successor trustee by written instrument, in duplicate, executed by order of its Board of Directors, one copy of which instrument shall be delivered to the Trustee so removed and one copy to the successor trustee.

(c) The provisions of subsections (a) and (b) of this Section 8.07 are subject, however, to the right of the holders of a majority in principal amount of the Trust Certificates then outstanding, by an instrument or instruments in writing, to appoint a successor trustee if such appointment be made within one year from the date of appointment of a successor trustee by the Company or the retiring Trustee.

(d) Every successor trustee shall be a bank or trust company organized under the laws of the United States of America or of the States of New York or Illinois having a combined capital and surplus of at least \$50,000,000, if there be such a bank or trust company willing and able to accept the trust upon reasonable and customary terms and duly qualified to act as such successor trustee.

(e) Any resignation or removal of the Trustee and appointment of a successor trustee pursuant to any of the provisions of this Section 8.07 shall become effective upon acceptance of appointment by the successor trustee as provided in Section 8.08.

SECTION 8.08. *Acceptance of Appointment by Successor Trustee.* Any successor trustee appointed as provided in Section 8.07 shall execute, acknowledge and deliver to the Company and to its predecessor trustee an instrument accepting such appointment hereunder, and thereupon the resignation or removal of the predecessor trustee shall become effective and such successor trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, duties and obligations of its predecessor hereunder; but, nevertheless, on the written request of the Company or of the successor trustee, upon payment of its charges then unpaid, the trustee ceasing to act shall execute and deliver an instrument transferring to such successor trustee all the rights and powers of the trustee so ceasing to act. Upon request of any such successor trustee, the Company shall execute any and all instruments in writing for more fully and certainly vesting in and con-

firming to such successor trustee all such rights and powers. Any trustee ceasing to act shall, nevertheless, retain a lien upon all property or funds held or collected by such trustee to secure any amounts then due it pursuant to the provisions of Section 8.06, but upon payment of such amounts such trustee shall deliver to its successor all moneys, Investment Securities and other trust assets and papers then held by such trustee.

Upon acceptance of appointment by a successor trustee as provided in this Section 8.08, the Company shall mail notice of the succession of such trustee hereunder to the holders of the Trust Certificates at their last addresses appearing on the registry books. If the Company fails to mail such notice within ten days after acceptance of appointment by the successor trustee, the successor trustee shall cause such notice to be mailed at the expense of the Company.

SECTION 8.09. *Merger or Consolidation of Trustee.* Any corporation into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger or conversion or consolidation to which the Trustee shall be a party, or any corporation succeeding to the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder, provided such corporation shall be a bank or trust company organized under the laws of the United States of America or of the States of New York or Illinois having a combined capital and surplus of at least \$50,000,000, 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 NINE

CONCERNING THE HOLDERS OF TRUST CERTIFICATES

SECTION 9.01. *Evidence of Action Taken by Holders of Trust Certificates.* Whenever in this Agreement it is provided that the

holders of a specified percentage in aggregate principal amount of the Trust Certificates may take any action (including the making of any demand or request, the giving of any notice, consent or waiver or the taking of any other action), the fact that at the time of taking any such action the holders of such specified percentage have joined therein may be evidenced by an instrument or any number of instruments of similar tenor executed by holders of Trust Certificates in person or by agent or proxy appointed in writing.

SECTION 9.02. *Proof of Execution of Instruments and of Holding of Trust Certificates.* Proof of the execution of any instrument by a holder of Trust Certificates or his agent or proxy and proof of the holding by any person of any of the Trust Certificates shall be sufficient if made in the following manner:

The fact and date of the execution by any such person of any instrument may be proved by the certificate of any notary public or other officer of any jurisdiction within the United States of America authorized to take acknowledgments of deeds to be recorded in such jurisdiction that the person executing such instrument acknowledged to him the execution thereof, by an affidavit of a witness to such execution sworn to before any such notary or other such officer, by having the signature of any person executing such an instrument guaranteed by any bank, banker or trust company or by a member of the New York Stock Exchange, or in such other manner as the Trustee deems sufficient.

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

The Trustee may require such additional proof of any matter referred to in this Section 9.02 as it shall deem necessary.

SECTION 9.03. *Trust Certificates Owned by Company Deemed Not Outstanding.* In determining whether the holders of the

requisite principal amount of the Trust Certificates have concurred in any direction, request or consent under this Agreement, Trust Certificates which are owned by the Company or by any Affiliate of the Company shall be disregarded, except that for the purpose of determining whether the Trustee shall be protected in relying on any such direction, request or consent, only Trust Certificates which the Trustee knows are so owned shall be disregarded.

SECTION 9.04. *Right of Revocation of Action Taken.* At any time prior to (but not after) the evidencing to the Trustee, as provided in Section 9.01, of the taking of any action by the holders of the percentage in aggregate principal amount of the Trust Certificates specified in this Agreement in connection with such action, any holder of a Trust Certificate, the serial number of which is shown by the evidence to be included in the Trust Certificates the holders of which have consented to such action, may, by filing written notice with the Trustee at its Corporate Trust Office and upon proof of holding as provided in Section 9.02, revoke such action so far as concerns such Trust Certificate. Except as aforesaid any such action taken by the holder of any Trust Certificate shall be conclusive and binding upon such holder and upon all future holders and owners of such Trust Certificate and of any Trust Certificate issued in exchange or substitution therefor, irrespective of whether or not any notation in regard thereto is made upon such Trust Certificate. Any action taken by the holders of the percentage in aggregate principal amount of the Trust Certificates specified in this Agreement in connection with such action shall be conclusive and binding upon the Company, the Trustee and the holders of all the Trust Certificates.

ARTICLE TEN

MISCELLANEOUS

SECTION 10.01. *Rights Confined to Parties and Holders.* Nothing expressed or implied herein is intended or shall be con-

strued to confer upon or to give to any person, firm or corporation, other than the parties hereto and the holders of the Trust Certificates, any right, remedy or claim under or by reason of this Agreement or of any term, covenant or condition hereof, and all the terms, covenants, conditions, promises and agreements contained herein shall be for the sole and exclusive benefit of the parties hereto and their successors and assigns and of the holders of the Trust Certificates.

SECTION 10.02. *No Recourse.* No recourse under any obligation, covenant or agreement of this Agreement, or of the guaranty endorsed on any Trust Certificate, shall be had against any stockholder, officer or director of the Company, as such, by the enforcement of any assessment or by any legal or equitable proceeding, by virtue of any statute or otherwise; it being expressly agreed and understood that this Agreement and said guaranty are solely corporate obligations, and that no personal liability whatever shall attach to or be incurred by the stockholders, officers or directors of the Company, as such, or any of them, under or by reason of any of the obligations, covenants or agreements contained in this Agreement or in said guaranty, or implied therefrom, and that any and all personal liability, either at common law or in equity, or by statute or constitution, of every such stockholder, officer or director is hereby expressly waived as a condition of and consideration for the execution of this Agreement and said guaranty.

SECTION 10.03. *Officers' Certificates and Opinions of Counsel; Statements to be Contained Therein.* Upon any application or demand by the Company to the Trustee to take any action under any of the provisions of this Agreement (other than the issuance of Trust Certificates), the Company shall furnish to the Trustee an Officers' Certificate stating that all conditions precedent provided for in this Agreement relating to the proposed action have

been complied with and an Opinion of Counsel stating that in the opinion of such counsel all such conditions precedent have been complied with.

Each certificate or opinion provided for in this Agreement and delivered to the Trustee with respect to compliance with a condition or covenant provided for in this Agreement shall include (a) a statement that the person making such certificate or opinion has read such condition or covenant; (b) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based; (c) a statement that, in the opinion of such person, he has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such condition or covenant has been complied with; and (d) a statement as to whether or not, in the opinion of such person, such condition or covenant has been complied with.

SECTION 10.04. *Binding Upon Assigns.* Except as otherwise provided herein, the provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

SECTION 10.05. *Notices.* All demands, notices and communications hereunder shall be in writing and shall be deemed to have been duly given if personally delivered at or mailed by registered mail to (a) in the case of the Company, 176 East Fifth Street, St. Paul, Minnesota 55101, Attention of Vice President, Finance, 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 the address specified in the first paragraph of this Agreement, or such other address as may hereafter be furnished to the Company in writing by the Trustee. An affidavit by any person representing or acting on behalf of the Company or the Trustee as

to such mailing, having the registry receipt attached, shall be conclusive evidence of the giving of such demand, notice or communication.

SECTION 10.06. *Effect of Headings.* The Article and Section headings herein are for convenience only and shall not affect the construction hereof.

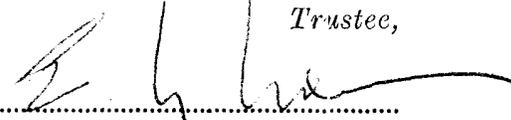
SECTION 10.07. *Counterparts.* This Agreement has been simultaneously executed in several counterparts each of which shall be deemed to be an original, and all such counterparts shall together constitute but one and the same instrument.

SECTION 10.08. *Date Executed.* This Agreement shall be deemed to have been executed on the date of the acknowledgment thereof by the officer of the Trustee who signed it on behalf of the Trustee.

SECTION 10.09. *Governing Law.* 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.

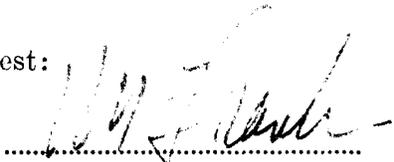
IN WITNESS WHEREOF, the Company and the Trustee have caused their names to be signed hereto by their respective officers thereunto duly authorized and their respective corporate seals, duly attested, to be hereunto affixed as of the day and year first written.

THE CHASE MANHATTAN BANK
(National Association),
Trustee,

By 
.....
Vice President

[CORPORATE SEAL]

Attest:

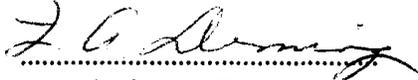

.....
Assistant Secretary

BURLINGTON NORTHERN INC.

By 
.....
Vice President

[CORPORATE SEAL]

Attest:


.....
Assistant Secretary

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

On this 20th day of August, 1970, before me personally appeared E. L. LOUER, to me personally known, who, being by me duly sworn, says that he is a Vice President of THE CHASE MANHATTAN BANK (National Association), 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.

[NOTARIAL SEAL]

Joan M. Coenza
Notary Public

JOAN M. COENZA
Notary Public, State of New York
No. 24 5817690
Qualified in Kings County
Certificate filed with New York Co. Clerk
Commission Expires March 30, 1972

STATE OF ILLINOIS }
COUNTY OF COOK } ss.:

On this 20th day of August, 1970, before me personally appeared *W. M. Coenza*, to me personally known, who, being by me duly sworn, says that he is a Vice President 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.

[NOTARIAL SEAL]

Genevieve A. Schwalb
Notary Public

SCHEDULE A

DESCRIPTION OF TRUST EQUIPMENT

| <u>Number and Description</u> | <u>Cost of Acquisition Per Unit</u> | <u>Aggregate Cost of Acquisition</u> |
|---|---|--|
| 250 High-Cube Covered Hopper Cars, 100-ton capacity, numbered as follows: | | |
| 455200 to 455449, both inclusive | \$14,675 | \$ 3,668,750 |
| 200 Sliding Sill Box Cars, length 50' 6", 70-ton capacity. Load dividers on units numbered 319500 to 319599, both inclusive, and load dividers and side fillers on units numbered 319600 to 319699, both inclusive. Numbered as follows: | | |
| 319500 to 319599, both inclusive | 18,837 | 1,883,700 |
| 319600 to 319699, both inclusive | 19,848 | 1,984,800 |
| 200 Covered Hopper Cars, 100-ton capacity, numbered as follows: | | |
| 455800 to 455999, both inclusive | 15,291 | 3,058,200 |
| 50 Bulkhead Flat Cars, length 60' 0", 70-ton capacity, numbered as follows: | | |
| 621000 to 621049, both inclusive | 16,717 | 835,850 |
| 50 Cabooses, all steel construction, 30' 0" extra wide vision cupola, numbered as follows: | | |
| 10500 to 10524, both inclusive | 29,137 | 728,425 |
| 10525 to 10549, both inclusive | 29,254 | 731,350 |

| | <u>Number and Description</u> | <u>Cost of Acquisition Per Unit</u> | <u>Aggregate Cost of Acquisition</u> |
|-----|--|---|--|
| 250 | Covered Hopper Cars, 4750 cu. ft., 100-ton capacity, numbered as follows: 456000 to 456249, both inclusive | \$15,400 | \$ 3,850,000 |
| 25 | Airslide Cars, 4180 cu. ft., 100-ton capacity, numbered as follows: 410115 to 410139, both inclusive | 20,740 | 518,500 |
| 100 | Insulated Box Cars, length 50' 8", 70-ton capacity, numbered as follows: 749000 to 749099, both inclusive | 23,376 | 2,337,600 |
| 100 | Open Top Triple Hopper Cars, 4000 cu. ft., 100-ton capacity, numbered as follows: 522300 to 522399, both inclusive | 13,928 | 1,392,800 |
| 15 | Diesel-electric Switching Locomotives, AAR designation B-B, 1000 H.P., SW-1000, numbered as follows: 435 to 449, both inclusive | 152,402 | 2,286,030 |
| 6 | SD-45 Diesel-electric Locomotives, AAR designation C-C, 3600 H.P., numbered as follows: 6492 to 6497, both inclusive | 291,271 | 1,747,626 |
| | | | \$25,023,631 |