6088
RECORDATION NO. 6088 Filed & Recorded
MAR 25 1971 -11 55 AM
INTERSTATE COMMERCE COMMISSION
EXECUTED IN 10 COUNTERPARTS OF
WHICH THIS IS COUNTERPART No. 5

BURLINGTON NORTHERN EQUIPMENT TRUST
OF 1971, SERIES I

AGREEMENT

Dated as of March 1, 1971

BURLINGTON EQUIPMENT COMPANY,
VENDOR,

FIRST NATIONAL CITY BANK,

TRUSTEE,

AND

BURLINGTON NORTHERN INC.

LEASE

Dated as of March 1, 1971

FIRST NATIONAL CITY BANK,

TRUSTEE,

TO

BURLINGTON NORTHERN INC.

For Issue of $8,610,000 Equipment Trust Certificates

THIS AGREEMENT, dated as of March 1, 1971, by and among BURLINGTON EQUIPMENT COMPANY, a corporation duly organized and existing under the laws of the State of Illinois (hereinafter called the "Vendor"), of the first part,

FIRST NATIONAL CITY BANK, a national banking association duly incorporated and existing under the laws of the United States of America (hereinafter called the "Trustee"), of the second part, and

BURLINGTON NORTHERN INC., a corporation duly organized and existing under the laws of the State of Delaware (hereinafter called the "Company"), of the third part;

WITNESSETH:

THAT WHEREAS, the Company desires to obtain additional equipment in order that traffic over its lines may be properly transported, and deems it expedient to make provision therefor through the medium of an equipment trust; and

WHEREAS, the Vendor has contracted to acquire, or will acquire or contract to acquire, the equipment specifically described in the Lease from the Trustee to the Company annexed to this Agreement (hereinafter referred to as the "Lease"), which equipment, together with the additional and substituted equipment provided for in this Agreement and in said Lease, is hereinafter called the "Trust Equipment"; and

WHEREAS, the title to said Trust Equipment is to be vested in the Trustee and is to be retained by the Trustee until transferred under the provisions of this Agreement and said Lease; and

WHEREAS, subscriptions have been secured to the amount of Eight Million Six Hundred Ten Thousand Dollars ($8,610,000), aggregate par value of the Trust Certificates hereinafter mentioned, the net proceeds of such subscriptions, together with the cash, if any, necessary to be deposited by the Company, as hereinafter provided in Article I, Section 2, of this Agreement, constituting a fund of not less than Eight Million Six Hundred Ten Thousand Dollars ($8,610,000), to be known as "BURLINGTON NORTHERN EQUIPMENT TRUST OF 1971, SERIES 1," which said fund is to be furnished to the Vendor to be applied by it in part payment of the cost of said Trust Equipment; the remainder of such cost to be discharged out of advance rentals to be paid by the Company under the terms of this Agreement and said Lease; and

WHEREAS, the Vendor desires to secure to the parties subscribing to said fund or their assigns the repayment of the par value thereof in fifteen equal annual installments payable on the first day of March in each year commencing with March 1, 1972, and ending with March 1, 1986, as hereinafter more particularly provided, with dividends at the rate of seven and one-quarter per centum (7¼%) per annum from March 1, 1971, payable semi-annually on the first day of March and September in each year, commencing September 1, 1971, and to evidence the rights of the subscribers to said fund by Trust Certificates in substantially the forms hereinafter set forth:

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

ARTICLE I

SECTION 1. The Vendor, as speedily as practicable, will acquire the Trust Equipment specifically described in the Lease, to which reference is hereby made, and will sell, assign, transfer and set over said Trust Equipment, or cause it to be assigned, transferred and set over, unto the Trustee, as trustee for the holders of the Trust Certificates hereinafter described, when and as the Trust Equipment or any part thereof is acquired.

If, as a result of strikes, material shortages, or other causes beyond its control, the Vendor is unable to acquire any unit or units of the Trust Equipment specifically described in the Lease, the Vendor may acquire in place of such unit or units of equipment it is so unable to acquire, and substitute therefor under the Trust as and when acquired, other new standard-gauge railroad equipment, other than work or passenger equipment, of such classes or types and of such material and construction as may be approved by the Company. The total cost of such substituted equipment shall be not less than the estimated cost of the equipment in place of which it was acquired as set forth in the Lease. Such substituted equipment shall be subjected to the Lease by supplemental lease, and shall be deemed a part of the Trust Equipment for all purposes, including the payment of "deposited cash" in respect of the cost thereof, and the equipment in place of which such substituted equipment is acquired shall be eliminated from the Trust Equipment by said supplemental lease.

The Vendor will deliver or cause to be delivered the Trust Equipment, f.o.b. tracks of the Company at points to be specified from time to time by the Company, to the person or persons designated by the Trustee as its agent or agents to receive such delivery, who may be any one or more of the officers or agents of the Company, and the certificate of any agent or agents so designated shall be conclusive evidence of such delivery.

The Vendor shall incur no liability hereunder, or under any bill of sale executed by it as herein provided, or for anything other than its own wilful default, misconduct or negligence. The Vendor shall be entitled to the advice of counsel (who may be counsel for the Company) and shall be protected by the advice of such counsel in anything done or omitted to be done by it in accordance with such advice.

The Trustee and the Company, simultaneously with the execution of this Agreement, have executed and delivered the Lease of the Trust Equipment in the form annexed hereto, and the Trustee, pursuant to the terms of the Lease, shall deliver or cause to be delivered to the Company the Trust Equipment when received by the Trustee.

SECTION 2. Upon the execution of this Agreement, the Vendor shall deposit or cause to be deposited with the Trustee, in cash, the net proceeds of the sale of the Trust Certificates issuable as hereinafter provided, and at the same time the Company shall deposit with the Trustee, in discharge *pro tanto* of advance rental payable by the Company to the Trustee under the Lease, such additional amount in cash as may be necessary, if any, to make the total sum

deposited equal to Eight Million Six Hundred Ten Thousand Dollars ($8,610,000). Thereupon without waiting for the recording, registration or filing of this Agreement or of the Lease or any other instrument respecting the Trust Equipment, the Trustee shall issue and deliver to or upon the written order of the Vendor, Trust Certificates to be designated "Burlington Northern Equipment Trust of 1971, Series 1 Serial Equipment Trust Certificates," substantially in the forms set forth in Article II of this Agreement of the aggregate par value of Eight Million Six Hundred Ten Thousand Dollars ($8,610,000), and in such amounts and in the case of fully registered Trust Certificates, registered in such names as may be designated in such order. For the purpose of this Agreement and the Lease, the terms "net proceeds" and "deposited cash" shall not be construed to include any premium or accrued dividends collected or received upon the sale of the Trust Certificates, but the amount of any such premium and such accrued dividends shall, nevertheless, be deposited with the Trustee and shall be applied by it on account of the first and next succeeding installments of rental payable under subparagraph (c) of subdivision B of Article First of the Lease.

SECTION 3. Any money at any time paid to or held by the Trustee hereunder or under the Lease shall be held by the Trustee in trust for the benefit of holders of the Trust Certificates, until paid out by the Trustee as herein or therein provided, and may be carried by the Trustee on deposit with itself, without liability for interest thereon save as may be agreed upon between it and the Company and need not be segregated in a separate account. Any interest allowed by the Trustee upon any such moneys shall be paid from time to time to or upon the order of the Company by

the Trustee so long as the Company shall not be known by the Trustee to be in default hereunder or under the Lease.

SECTION 4. From time to time, when and as any of the Trust Equipment shall be delivered to the Trustee, the Trustee shall, subject to the provisions of Section 5 of this Article, pay to the Vendor, or upon its written order, out of and to the extent of the "deposited cash," an amount not exceeding (a) eighty per centum (80%) of the estimated cost as set forth in the Lease (or, as to any substituted or additional equipment, as set forth in any supplemental lease) of the Trust Equipment so delivered, or (b) eighty per centum (80%) of the cost thereof as specified in the certificate or certificates delivered pursuant to Section 5 (d) of this Article if such cost be less than such estimated cost.

The term "deposited cash" when used in this Agreement shall mean only the cash deposited with the Trustee as in Section 2 of this Article provided and, when required or indicated by the context, any cash deposited by the Company in lieu of or pending replacement of equipment under Article Seventh of the Lease, and bonds or other obligations of the United States of America purchased by the use of such cash pursuant to the provisions of the first paragraph of Section 6 of this Article, or the proceeds of the sale of such bonds or other obligations together with any deficit deposit provided for in the first and second paragraphs of said Section 6 of this Article.

The Company covenants that, contemporaneously with each such payment by the Trustee, the Company will pay to the Trustee, as advance rental provided in the Lease, amounts equal to the remainder of the cost of the equipment delivered, being not less than twenty per centum (20%) of the said cost. Thereupon the Trustee shall pay to the Vendor

or upon its written order, by the use of such advance rental, the portion of the cost of the delivered Trust Equipment not discharged by the payment above described out of the "deposited cash."

SECTION 5. 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 road number or numbers, has been delivered to such agent or agents and by such agent or agents delivered to the Company, and marked in accordance with the provisions of Article Third of the Lease.

(b) A bill or bills of sale to the Trustee of such Trust Equipment from (a) the manufacturer or owner thereof or (b) the Vendor; such bill or bills of sale to contain or be accompanied by a warranty or guaranty to the Trustee that the title to the Trust Equipment described therein is free from all liens and encumbrances.

(c) An opinion of counsel (who may be counsel for the Company) satisfactory to the Trustee, that such bill or bills of sale are valid and effective, either alone or in connection with any other instrument executed in connection therewith, to vest in the Trustee title to the Trust Equipment described therein free from all liens and encumbrances and that the Agreement and Lease describing such Trust Equipment has been duly filed, registered or recorded, as required by Section 4 of Article III of this Agreement.

(d) A certificate as to the cost of such Trust Equipment, signed by a Vice President, the Treasurer or an Assistant Treasurer of the Company, which certificate shall state that such Trust Equipment is new standard-gauge railroad equipment; that it is of a character called for by this Agreement and the Lease, or is substituted equipment the acquisition of which is authorized by the second paragraph of Section 1 of this Article; and that it has been approved, received and accepted by the Company in accordance with this Agreement and the Lease.

The cost of the Trust Equipment whenever referred to herein or in the Lease shall mean the actual cost thereof, including only such items as may properly be included in such cost under the accounting rules of the Interstate Commerce Commission. Any certificate as to cost may state that the cost of the Trust Equipment therein referred to is tentatively determined, subject to final adjustment as evidenced by final certificate or certificates of cost to be delivered to the Trustee within such time as the Trustee in its discretion in each instance may allow. The cost of the Trust Equipment shall be conclusively established by such certificate or certificates, and the Trustee shall proceed on the basis of a tentative certificate pending final determination by final certificate if a final certificate be required.

If the aggregate final cost of all the Trust Equipment acquired by the Vendor as specifically described in the Lease or in substitution therefor pursuant to the provisions of the

second paragraph of Section 1 of this Article should be less than the estimated cost of Ten Million Seven Hundred Eighty Five Thousand One Hundred Sixty Nine Dollars ($10,785,169), the Vendor shall acquire and transfer, or cause to be acquired and transferred, to the Trustee, subject to all the terms of this Agreement, other new standard-gauge railroad equipment, other than work or passenger equipment, of such classes or types as may be approved by the Company, of substantially as good material and construction as the equipment specifically provided for in said Lease, and of such cost that the aggregate final cost of all the Trust Equipment acquired shall equal at least said estimated cost of Ten Million Seven Hundred Eighty Five Thousand One Hundred Sixty Nine Dollars ($10,785,169), of which aggregate final cost not more than eighty per centum (80%) shall be paid from "deposited cash" to the extent thereof, and not less than twenty per centum (20%) by the Company as provided in Section 4 of this Article.

SECTION 6. The Trustee, upon written instructions from the Company, signed by a Vice President, the Treasurer or an Assistant Treasurer of the Company, shall, at any time prior to the vesting of title to the Trust Equipment in the Trustee, invest the "deposited cash" applicable to the acquisition of such Trust Equipment in such bonds or other obligations of the United States of America having maturities not later than March 1, 1986, hereinafter sometimes called "United States Government securities," as the Company shall designate. If pursuant to the provisions of Article Seventh of the Lease, the Company is required to and pays over cash to the Trustee, the Trustee, upon written instructions from the Company, signed by a Vice President, the Treasurer or an Assistant Treasurer of the Company, shall

invest such cash in such United States Government securities. The Trustee shall collect the interest on any securities in which any part of the moneys may be invested from time to time and, so long as the Company shall not be known to the Trustee to be in default under this Agreement or under the Lease, the Trustee shall pay over such interest as and when collected by it to or upon the written order of the Company without restriction or limitation upon its use; *provided,* that if at any time the market price of any such securities shall be less than the price at which they were purchased the Trustee shall out of the interest collected by it retain an amount sufficient to cover the deficit so long as such deficit shall exist.

At any time and from time to time upon written instructions from the Company, or at any time when the Trustee in its discretion shall deem such action advisable, the Trustee shall sell all or part of the United States Government securities that may have been purchased in accordance with the foregoing provisions; *provided,* that if the proceeds of the sale of such United States Government securities, plus any interest thereon withheld under the provisions of the next preceding paragraph, shall be less than the amount of the "deposited cash" or cash held under Article Seventh of the Lease applied to the purchase thereof, the Trustee shall restore to "deposited cash" or such other cash from rentals received by it under subparagraph (a) of subdivision B of Article First of the Lease, such amount or amounts as will be sufficient to make up the deficit. The Trustee shall hold the proceeds of any sale of United States Government securities purchased from "deposited cash" or deficit deposit with respect to such securities under this paragraph as "deposited cash," and apply the same as provided in Section 4 of this Article. The Trustee shall hold the proceeds of any sale of United States Government securities purchased with cash

deposited pursuant to Article Seventh of the Lease or any deficit deposit with respect to such securities for the purposes set forth in said Article Seventh.

The Trustee shall be reimbursed, out of rentals received by it under the provisions of subparagraph (a) of subdivision B of Article First of the Lease, for or on account of any premium or accrued interest required to be paid in the event of any such investment in United States Government securities, and for or on account of any expenses incurred in the event of any purchase or sale of such United States Government securities. The Company, if not in default under the terms of the Lease or of this Agreement, or of any supplemental lease or supplemental agreement, shall be entitled to receive any amount realized from any sale by the Trustee of such United States Government securities in excess of the "deposited cash" or cash from Article Seventh of the Lease, applied to the purchase thereof.

SECTION 7. Any "deposited cash" remaining in the hands of the Trustee after the delivery of all of the original Trust Equipment (meaning all the equipment specifically described in the Lease or substituted therefor plus any additional equipment acquired pursuant to the last paragraph of Section 5 of this Article to make up any deficiency) and payment therefor in the manner provided in this Agreement shall be applied by the Trustee toward payment of the par value of the next maturing Trust Certificates then outstanding, when and as the same shall become payable, and, to the extent that such payments are so made by the Trustee out of the balance of the "deposited cash" in its hands, the said next maturing installment of rental payable pursuant to subparagraph (d) of subdivision B of Article First of the Lease shall be correspondingly reduced.

SECTION 8. Anything in this Agreement contained to the contrary notwithstanding, the aggregate par value of the Trust Certificates which shall be executed and delivered by the Trustee under this Agreement shall not exceed Eight Million Six Hundred Ten Thousand Dollars ($8,610,000), except as provided in Section 6 of Article II hereof in respect of replacement of Trust Certificates mutilated, defaced, lost, destroyed or stolen.

ARTICLE II

SECTION 1. Each of the Trust Certificates shall represent an interest of the par value of each therein specified in the trust hereby created and shall bear dividends on said par value at the rate of seven and one-quarter per centum (7¼%) per annum from March 1, 1971, payable semi-annually on the first day of March and September in each year commencing September 1, 1971. Of the aggregate par value of the Trust Certificates, $574,000 shall become due and payable on March 1, 1972 and on the first day of March in each year thereafter to and including March 1, 1986.

The due date and dividend rate shall appear upon the face of each Trust Certificate together with such numbers, descriptions or marks of identification as the Trustee may determine.

Bearer Trust Certificates shall have annexed thereto dividend warrants evidencing the right of the holders of such Trust Certificates to the dividends thereon.

SECTION 2. The texts of the Trust Certificates, the dividend warrants, and the guaranty to be endorsed on the Trust Certificates by the Company, as provided in Article III hereof, shall be in substantially the following forms, respectively:

[FORM OF BEARER TRUST CERTIFICATE]

$1,000 **No. M.....**

BURLINGTON NORTHERN EQUIPMENT TRUST OF 1971, SERIES 1
SERIAL EQUIPMENT TRUST CERTIFICATE

Total Issue $8,610,000

DIVIDENDS AT THE RATE OF SEVEN AND ONE-QUARTER PER CENTUM (7¼%) PER ANNUM, PAYABLE MARCH 1 AND SEPTEMBER 1

FIRST NATIONAL CITY BANK, TRUSTEE
Par Value payable March 1, 19....

FIRST NATIONAL CITY BANK, Trustee under Agreement dated as of March 1, 1971, by and among BURLINGTON EQUIPMENT COMPANY, of the first part, FIRST NATIONAL CITY BANK, of the second part, and BURLINGTON NORTHERN INC., of the third part, hereby certifies that the bearer, or, if this certificate be registered as to par value, the registered holder hereof, is entitled to an interest of the par value of One Thousand Dollars ($1,000) in Burlington Northern Equipment Trust of 1971, Series 1, and, as hereinafter more fully provided, is entitled to the payment on the due date stated above of said par value, upon surrender of this certificate to the undersigned at its corporate trust office in the Borough of Manhattan, City and State of New York, and to payment, until said last mentioned date, of dividends on said par value at the rate of seven and one-quarter per centum (7¼%) per annum from March 1, 1971, semi-annually on March 1

and September 1, in each year commencing September 1, 1971, according to the tenor of the dividend warrants hereto annexed, upon surrender of such warrants, as they severally mature, to the undersigned at its said office in the Borough of Manhattan, City and State of New York, both the par value of this certificate and the dividends thereon being payable in such coin or currency of the United States of America as at the time of payment is legal tender for the payment of public and private debts, but only from and out of rentals when received by the undersigned pursuant to the provisions of said Agreement dated as of March 1, 1971, and the Lease of Railroad Equipment made by First National City Bank, Trustee, to Burlington Northern Inc., dated as of March 1, 1971, or from and out of any moneys otherwise received by the undersigned under the provisions of said Agreement and Lease.

This certificate is one of an issue of Eight Million Six Hundred Ten Thousand Dollars ($8,610,000) aggregate par value of certificates, all issued or to be issued under said Agreement, under which said railroad equipment (or "deposited cash" and cash or United States Government securities in which such cash may be invested as provided in said Agreement) and said Lease thereof are held by the undersigned in trust for the equal benefit of the holders of the interests represented by said certificates, to which Agreement and Lease, filed with the undersigned at its said office in the Borough of Manhattan, City and State of New York, reference is made for a full statement respecting the terms and conditions governing the issuance of this certificate, the rights and obligations of Burlington Northern Inc., the duties and immunities of the undersigned and the rights of the bearer or registered holder hereof thereunder.

The certificates are issuable as bearer certificates with dividend warrants attached, registrable as to par value, in the denomination of $1,000, and as fully registered certificates in the denominations of $1,000 and any multiple of $1,000.

The certificates with dividend warrants and the fully registered certificates and the several denominations of fully registered certificates are interchangeable upon presentation thereof at said office of the undersigned, but only in the manner, subject to the limitations and upon payment of the charges, provided in said Agreement.

This certificate may be registered as to par value at the corporate trust office of the undersigned in the Borough of Manhattan, City and State of New York, in the name of the holder hereof, and such registration shall be noted hereon by or on behalf of the undersigned. Thereafter title to the interest represented by this certificate shall pass only by transfer registered at said office, unless and until a transfer to bearer shall have been similarly registered and noted hereon. Such registration shall apply only to the par value of this certificate and not to the dividend warrants hereunto appertaining, which shall continue to be payable to bearer and transferable by delivery.

Every taker and holder of this certificate, and of the dividend warrants appertaining hereto, by accepting the same agrees with the undersigned and with every subsequent taker and holder hereof and thereof, that this certificate (unless registered as to par value), and such warrants, shall be transferable with the same effect as in the case of a negotiable instrument payable to bearer, by delivery by any person having possession of the same, howsoever such possession may have

been acquired; that the undersigned may treat the bearer of this certificate, or the registered holder thereof if this certificate be registered as above provided, and the bearer of the warrants appertaining hereto, whether or not this certificate be so registered, as the absolute owner of this certificate or of said warrants, as the case may be, for all purposes; and that the undersigned shall not be affected by any notice to the contrary.

In case of default in the performance or observance of any of the covenants of Burlington Northern Inc. in said Agreement or Lease contained, the par value represented by this certificate may be declared due and payable, as provided in said Agreement.

Neither this certificate nor the dividend warrants appertaining hereto shall be deemed in anywise a promise to pay of the undersigned.

IN WITNESS WHEREOF, the undersigned has caused this certificate to be signed by the facsimile signature of one of its Trust Officers and a facsimile of its corporate seal to be hereon imprinted and to be attested by one of its Assistant Cashiers, and dividend warrants bearing the facsimile signature of one of its Trust Officers to be attached hereto, as of the first day of March, 1971.

FIRST NATIONAL CITY BANK,
Trustee,

By

Trust Officer.

Attest:

Assistant Cashier.

[FORM OF DIVIDEND WARRANT]

No. $36.25

Due to the bearer hereof on the first day of 19 , on the surrender hereof at the corporate trust office of the undersigned in the Borough of Manhattan, City and State of New York, Thirty Six and 25/100 Dollars payable in such coin or currency of the United States of America as at the time of payment is legal tender for the payment of public and private debts, being the semi-annual dividend then due on Certificate No. of Burlington Northern Equipment Trust of 1971, Series 1, but only out of rentals or other moneys received by the undersigned pursuant to the Agreement and Lease, dated as of March 1, 1971, referred to in said certificate, and as therein provided.

FIRST NATIONAL CITY BANK,
Trustee,

By

Trust Officer.

[FORM OF GUARANTY FOR BEARER TRUST CERTIFICATE]

Burlington Northern Inc., for a valuable consideration, hereby unconditionally guarantees to the bearer, or, if registered as to par value, to the registered holder, the prompt payment of the par value of the within certificate and to the bearer of each of the dividend warrants appertaining thereto, whether or not the within certificate be so registered, the prompt payment of the dividends specified in such

warrants, in accordance with the terms of said certificate and the Agreement and Lease referred to therein.

BURLINGTON NORTHERN INC.,

By

Vice President.

[FORM OF FULLY REGISTERED TRUST CERTIFICATE]

$..... No. R.....

BURLINGTON NORTHERN EQUIPMENT TRUST OF 1971, SERIES 1

SERIAL EQUIPMENT TRUST CERTIFICATE
Total Issue $8,610,000

DIVIDENDS AT THE RATE OF SEVEN AND ONE-QUARTER PER CENTUM (7¼%) PER ANNUM, PAYABLE MARCH 1 AND SEPTEMBER 1

FIRST NATIONAL CITY BANK, TRUSTEE
Par Value payable March 1, 19....

FIRST NATIONAL CITY BANK, Trustee under Agreement dated as of March 1, 1971, by and among BURLINGTON EQUIPMENT COMPANY, of the first part, FIRST NATIONAL CITY BANK, of the second part, and BURLINGTON NORTHERN INC., of the third part, hereby certifies that , or registered assigns, is entitled to an interest of the par value of Dollars in Burlington Northern Equipment Trust of 1971, Series 1, payable on the due date stated above, upon surrender of this certificate to the undersigned at its corporate trust office in the Borough of Manhattan, City and State of New York, and to payment at said office, until said last mentioned date, of dividends on said

par value at the rate of seven and one-quarter per centum (7¼%) per annum from the date hereof, semi-annually on March 1 and September 1 in each year commencing September 1, 1971, all in such coin or currency of the United States of America as at the time of payment is legal tender for the payment of public and private debts, but only from and out of rentals when received by the undersigned pursuant to the provisions of said Agreement dated as of March 1, 1971, and of Lease of Railroad Equipment made by First National City Bank, Trustee, to Burlington Northern Inc., dated as of March 1, 1971, or from and out of any moneys otherwise received by the undersigned under the provisions of said Agreement and Lease.

This certificate is one of an issue of Eight Million Six Hundred Ten Thousand Dollars ($8,610,000) aggregate par value of certificates, all issued or to be issued under said Agreement, under which said railroad equipment (or "deposited cash" and cash or United States Government securities in which such cash may be invested as provided in said Agreement) and said Lease thereof are held by the undersigned in trust for the equal benefit of the holders of the interests represented by said certificates, to which Agreement and Lease, filed with the undersigned at its said office in the Borough of Manhattan, City and State of New York, reference is made for a full statement respecting the terms and conditions governing the issuance of this certificate, the rights and obligations of Burlington Northern Inc., the duties and immunities of the undersigned and the rights of the registered holder hereof thereunder.

The certificates are issuable as bearer certificates with dividend warrants attached, registrable as to par value, in the denomination of $1,000, and as fully registered certificates in the denominations of $1,000 and any multiple of $1,000.

The certificates with dividend warrants and the fully registered certificates and the several denominations of fully registered certificates are interchangeable upon presentation thereof at said office of the undersigned, but only in the manner, subject to the limitations and upon payment of the charges, provided in said Agreement.

As provided in said Agreement and upon payment of the charges provided in said Agreement, this certificate is transferable by the registered holder hereof in person or by duly authorized attorney at the corporate trust office of the undersigned in the Borough of Manhattan, City and State of New York, upon surrender hereof at said office, accompanied by appropriate instruments of assignment and transfer, duly executed by the registered holder hereof in person or by such attorney, in form satisfactory to the undersigned, and thereupon a new fully registered certificate or certificates in authorized denominations for the same aggregate par value and having the same date of maturity as this certificate will be issued to the transferee in exchange herefor. The undersigned and Burlington Northern Inc. shall be entitled to treat the registered holder hereof as the absolute owner hereof for all purposes, and shall not be affected by any notice to the contrary.

In case of default in the performance or observance of any of the covenants of Burlington Northern Inc. in said Agreement or Lease contained, the par value represented by this certificate may be declared due and payable, as provided in said Agreement.

SECTION 4. At any time prior to the issue of definitive Trust Certificates the Trustee shall, upon request of the Company, issue and deliver, in lieu of definitive Trust Certificates, temporary Trust Certificates in any denomination or denominations, specified in such request. Such temporary Trust Certificates shall be substantially of the tenor of the definitive Trust Certificates in lieu of which they are issued and may be issued with or without dividend warrants and with such insertions, omissions, substitutions and variations as may be appropriate.

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

SECTION 5. The bearer Trust Certificates shall be in the denomination of $1,000 each; shall be negotiable and transferable by delivery unless registered as to par value, in the manner hereinafter provided; and shall be dated as of March 1, 1971.

The fully registered Trust Certificates shall be in the denominations of $1,000 or any multiple thereof; shall be registered as to both par value and dividends, in the name of the holder; shall be transferable upon presentation and

surrender thereof for transfer at the corporate trust office of the Trustee, in the Borough of Manhattan, City and State of New York, accompanied by appropriate instruments of assignment and transfer, duly executed by the registered holder of the surrendered Trust Certificates or Certificates or by duly authorized attorney, in form satisfactory to the Trustee; and shall be dated as of March 1, 1971, or the dividend payment date to which dividends shall have been paid, next preceding or coinciding with the date of issue, whichever is later, and shall bear dividends from the date thereof.

Fully registered Trust Certificates may be exchanged for a like aggregate par value of bearer Trust Certificates of the same maturity having all unmatured dividend warrants attached, or for a like aggregate par value of fully registered Trust Certificates of the same maturity of authorized denominations, and bearer Trust Certificates may be exchanged for a like aggregate par value of fully registered Trust Certificates of the same maturity of authorized denominations. The Trust Certificates to be exchanged shall be surrendered at said office of the Trustee in the Borough of Manhattan, City and State of New York. All bearer Trust Certificates surrendered for exchange shall have attached all unmatured dividend warrants appertaining thereto, and in case at the time of any such exchange dividends on the Trust Certificates are in default, they shall in addition have attached all matured dividend warrants in default appertaining thereto.

Any of the bearer Trust Certificates may be registered as to the par value thereof in the name of the holder at said office of the Trustee in the Borough of Manhattan, City and State of New York, and such registration shall be noted on

SECTION 4. At any time prior to the issue of definitive Trust Certificates the Trustee shall, upon request of the Company, issue and deliver, in lieu of definitive Trust Certificates, temporary Trust Certificates in any denomination or denominations, specified in such request. Such temporary Trust Certificates shall be substantially of the tenor of the definitive Trust Certificates in lieu of which they are issued and may be issued with or without dividend warrants and with such insertions, omissions, substitutions and variations as may be appropriate.

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

SECTION 5. The bearer Trust Certificates shall be in the denomination of $1,000 each; shall be negotiable and transferable by delivery unless registered as to par value, in the manner hereinafter provided; and shall be dated as of March 1, 1971.

The fully registered Trust Certificates shall be in the denominations of $1,000 or any multiple thereof; shall be registered as to both par value and dividends, in the name of the holder; shall be transferable upon presentation and

surrender thereof for transfer at the corporate trust office of the Trustee, in the Borough of Manhattan, City and State of New York, accompanied by appropriate instruments of assignment and transfer, duly executed by the registered holder of the surrendered Trust Certificates or Certificates or by duly authorized attorney, in form satisfactory to the Trustee; and shall be dated as of March 1, 1971, or the dividend payment date to which dividends shall have been paid, next preceding or coinciding with the date of issue, whichever is later, and shall bear dividends from the date thereof.

Fully registered Trust Certificates may be exchanged for a like aggregate par value of bearer Trust Certificates of the same maturity having all unmatured dividend warrants attached, or for a like aggregate par value of fully registered Trust Certificates of the same maturity of authorized denominations, and bearer Trust Certificates may be exchanged for a like aggregate par value of fully registered Trust Certificates of the same maturity of authorized denominations. The Trust Certificates to be exchanged shall be surrendered at said office of the Trustee in the Borough of Manhattan, City and State of New York. All bearer Trust Certificates surrendered for exchange shall have attached all unmatured dividend warrants appertaining thereto, and in case at the time of any such exchange dividends on the Trust Certificates are in default, they shall in addition have attached all matured dividend warrants in default appertaining thereto.

Any of the bearer Trust Certificates may be registered as to the par value thereof in the name of the holder at said office of the Trustee in the Borough of Manhattan, City and State of New York, and such registration shall be noted on

the Trust Certificate by the Trustee. Thereafter no transfer thereof shall be valid unless made at said office by the registered holder thereof in person, or by his duly authorized attorney and similarly noted thereon; but the same may be discharged from registration and transferred to bearer as before. No registration, however, shall affect the dividend warrants, but every such dividend warrant shall continue to be transferable with the same effect as in the case of a negotiable instrument payable to bearer, by delivery thereof by any person in possession of the same, howsoever such possession may have been acquired.

Anything to the contrary herein notwithstanding, the parties hereto may deem and treat (i) the bearer of any Trust Certificate not registered as to par value and the bearer of any dividend warrant as the absolute owner of such Trust Certificate or dividend warrant, as the case may be, for the purpose of receiving payment thereof and for all other purposes, and shall not be affected by any notice to the contrary and (ii) the registered holder of any fully registered Trust Certificate or of any bearer Trust Certificate registered as to par value, as the case may be, as the absolute owner of such Trust Certificate for all purposes (except payment of dividends in the case of bearer Trust Certificates registered as to par value), and shall not be affected by any notice to the contrary.

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

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

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

SECTION 6. In case any Trust Certificate, or the dividend warrants, if any, thereto appertaining, shall become mutilated or defaced or be lost, stolen or destroyed, then on the terms herein set forth, and not otherwise, the Trustee, upon written request, shall execute and deliver a new fully registered Trust Certificate or a bearer Trust Certificate, as the case may be, with, if a bearer Trust Certificate, all unmatured dividend warrants appertaining thereto, of like maturity, tenor and date, and bearing such number, designation or other mark of identification as the Trustee may determine, in exchange and substitution for, and upon cancellation of, the mutilated or defaced Trust Certificate and dividend warrants, if any, or in lieu of or in substitution

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

ARTICLE III

SECTION 1. The Company hereby accepts and becomes bound by all the terms of this Agreement, and hereby covenants and agrees to make payment of the reasonable expenses, including counsel fees, and of reasonable compensation of the Trustee, including all thereof incurred in connection with the enforcement of any of the provisions hereof or of the Lease, and of all taxes, assessments and governmental charges assessed upon the property included

in the trust and all taxes, assessments and governmental charges herein mentioned for which the Trustee, as such, may be liable, and of the other rentals and of the other amounts provided for herein or in the Lease.

SECTION 2. The Company covenants, agrees and guarantees that the holder of each of the Trust Certificates, definitive or temporary, shall receive the par value thereof in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, when and as the same shall become due and payable, in accordance with the provisions thereof or of this Agreement (and, if not so paid, with interest thereon at the dividend rate to the extent legally enforceable), and shall receive dividends thereon in like money at the rate specified therein from the date specified therein to the date of maturity of such Trust Certificate, at the times and place and otherwise as expressed in the Trust Certificates and, in the case of bearer Trust Certificates, in the dividend warrants (and, if not so paid, with interest thereon at the dividend rate to the extent legally enforceable); and the Company further covenants and agrees to endorse upon each of the Trust Certificates, definitive or temporary, at or before the issuance and delivery thereof by the Trustee, its guaranty of the prompt payment of the par value thereof and of the dividends thereon, in substantially the forms hereinbefore set forth.

Said guaranty so endorsed shall be signed in the name and on behalf of the Company, by the manual or facsimile signature of one of its Vice Presidents without the corporate seal of the Company which is hereby expressly waived. In case any officer of the Company whose signature shall appear on said guaranty shall cease to be such officer before the Trust

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

SECTION 3. 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; but this provision shall not require the payment of any such debt, tax, charge, assessment, obligation, or claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings unless such contest will, in the judgment of the Trustee, materially endanger the rights or interests of the Trustee or of the holders of the Trust Certificates.

SECTION 4. The Company covenants and agrees to pay the expenses incident to the preparation and execution of the Trust Certificates and dividend warrants, including any temporary Trust Certificates to be issued hereunder, or connected with the preparation, execution, recording, rerecording, registration, reregistration, filing and refiling hereof or of the Lease and of any instrument executed under the provisions hereof or of said Lease in respect of the Trust Equipment or of any equipment or parts used to replace any of the same.

The Company covenants that it will with all convenient speed cause this Agreement and the Lease and all supplemental agreements and leases which may be executed under the terms of this Agreement or of the Lease, to be filed and recorded pursuant to Section 20c of the Interstate Commerce Act and otherwise as may be required by law for the full protection of the title of the Trustee and the rights of the holders of the Trust Certificates, so that this Agreement and the Lease and all said other instruments shall at all times be duly filed and recorded.

SECTION 5. The Company covenants and agrees from time to time to do all such acts and execute all such instruments of further assurance as it shall be reasonably requested by the Trustee to do or execute for the purpose of fully carrying out and effectuating this Agreement and the Lease and the intent hereof and thereof.

The Company covenants that it will make payment of the rentals on account of the Trust Equipment as provided in this Agreement and in the Lease, notwithstanding that any of the Trust Certificates and dividend warrants shall have been acquired by the Company and not presented for cancellation or shall not have been presented for payment. Any and all Trust Certificates and dividend warrants acquired by the Company shall be presented to the Trustee for payment on the respective due dates thereof, or, at the option of the Company, may be presented to the Trustee for cancellation prior to such dates, in which latter event the rentals applicable to such cancelled certificates or dividend warrants shall not be deposited with the Trustee. The Trustee, having received the rentals applicable to the pay-

ment of the Trust Certificates and dividend warrants, shall make payments in discharge of the same as therein provided, and thereupon shall cancel the Trust Certificates and dividend warrants so paid, and no Trust Certificates or dividend warrants in substitution therefor shall be issued.

SECTION 6. It being contemplated that all of said Eight Million Six Hundred Ten Thousand Dollars ($8,610,000) of certificates shall be issued forthwith upon the deposit with the Trustee or to its credit as Trustee hereunder of Eight Million Six Hundred Ten Thousand Dollars ($8,610,000) in cash, as in Article I of this Agreement provided, the Company covenants that it will pay to the Trustee the said rentals when and as the same shall become due and payable, as in this Agreement and in said Lease provided, notwithstanding that any of such payments shall have become so due and payable prior to the delivery under the Lease to the Company of any of the Trust Equipment.

ARTICLE IV

SECTION 1. Neither the Trustee nor the Company will directly or indirectly extend or assent to the extension of the time for the payment of any Trust Certificate or dividend thereon or dividend warrant, but the same shall be paid as herein provided and cancelled, and no Trust Certificate or dividend warrant in substitution therefor shall be issued; and neither the Trustee nor the Company shall directly or indirectly be a party to or assent to any arrangement for purchasing or funding any of said Trust Certificates or dividends thereon or dividend warrants, or for any advance or loan upon the same, at or after maturity. In case the time

for payment of any Trust Certificate or dividend thereon or dividend warrant shall be so extended, whether or not such extension be by or with the assent of the Trustee or the Company, or in case, at or after maturity, any Trust Certificates or dividends thereon or dividend warrants shall be purchased or funded, or an advance or loan upon the same be made, by or on behalf of the Trustee or the Company or pursuant to any arrangement requested or assented to by either of them or to which either of them shall be a party or made with the privity of the Trustee or the Company, such Trust Certificates, dividends and dividend warrants shall not be entitled to the benefit of the Lease or of this Agreement, except subject to the prior payment in full of the par value of all other Trust Certificates, dividends and dividend warrants, whether the same be then matured or unmatured.

SECTION 2. In case one or more of the events of default specified in Article Sixth of the Lease shall occur and shall continue for the time and after the notice therein prescribed, the Trustee in its discretion may, and upon the written request of the holders of not less than twenty-five per centum (25%) in aggregate par value of the Trust Certificates then outstanding shall, upon being indemnified as hereinafter in Article V provided, by notice in writing delivered to the Company, declare the par value of all the Trust Certificates then outstanding to be due and payable, and thereupon the same shall become and be immediately due and payable without further demand, together with interest, to the extent permitted by law, at the dividend rate on any portion thereof overdue and the Trustee shall be entitled to enforce all the terms and stipulations of the Lease for the benefit of the holders of the Trust Certificates. In case the Trustee shall retake possession of the Trust Equipment, it either may hold

or may lease, or publicly or privately, and for cash or upon credit, may sell or dispose of said Trust Equipment, or any part thereof, as the Trustee in its discretion may deem most beneficial to the holders of the Trust Certificates and as may be authorized by law. The proceeds of any such lease or sale or disposition, together with any other moneys collected by the Trustee from the Company or from any other proceeding for any enforcement of this Agreement or of the Lease, after deducting the expenses of the trust and the compensation, expenses and liabilities of the Trustee and its counsel, all advances made by the Trustee, and any sums paid for taxes, assessments and other governmental charges which the Trustee may be required by law to pay in respect of the property included in said trust or imposed upon the Trustee in respect of said property or the income of said trust or the Trust Certificates or the dividends thereon or this Agreement or the Lease, shall be applied by the Trustee to the payment:

(1) of the dividends and dividend warrants then due according to their terms, with interest thereon, to the extent permitted by law, on overdue dividends at the dividend rate from their respective due dates; and

(2) of the par value of each of the Trust Certificates then outstanding, whether or not then matured according to its terms, with interest thereon at the dividend rate from the maturity thereof or the last preceding dividend date, whichever is earlier;

all of said payments to be in full, if such proceeds shall be sufficient, and if not sufficient, then *pro rata* without preference of par value over dividends or dividends over par value, but subject to the provisions of Section 1 of this Article.

The holders of a majority in par value of the Trust Certificates then outstanding shall have the right from time to time, if and when the Trustee shall have been indemnified as hereinafter in Article V provided, to direct which of the proceedings provided for herein and in the Lease shall be taken for the enforcement of the remedies contained herein and therein.

The foregoing provisions, however, are subject to the condition that if at any time after the Trust Certificates shall have been declared due and payable, as provided in this Agreement, all past due Trust Certificates and all arrears of dividends (with interest, to the extent permitted by law, at the dividend rate upon all past due Trust Certificates and all arrears of dividends at the dividend rate), the compensation, expenses and liabilities of the Trustee and all other sums which shall have become due and payable under this Agreement or under the Lease, other than the then outstanding Trust Certificates or rental installments which would not then have become due except for having been so declared due and payable, shall be paid, or funds for the payment thereof shall be in the hands of the Trustee, before any taking possession, withdrawal, 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 of this Agreement or the Lease 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 may, and if so requested by the holders of a majority in par value of the Trust Certificates then outstanding and which would not have matured except for having been so declared due and payable shall, by written notice to the Company, waive the default or defaults, under this Agree-

ment and under the Lease, and this Agreement and the Lease shall, upon such waiver, be and continue in full force and effect; but no such waiver shall extend to or affect any subsequent default or impair any right consequent thereon.

Neither taking possession of, nor any withdrawal or lease or sale of, the Trust Equipment by the Trustee, nor any action or failure or omission to act against the Company or in respect to the Trust Equipment on the part of the Trustee or on the part of any holder of any Trust Certificate or the holder of any dividend warrant, nor any delay or indulgence granted to the Company by the Trustee or any such holder, shall affect the obligations of the Company under this Agreement or under the Lease or under its guaranty.

The Trustee may at any time, upon notice in writing to the Company, apply to any court of competent jurisdiction for instructions as to the application and distribution of any funds or property held by it.

ARTICLE V

SECTION 1. The Trustee hereby accepts the trusts imposed upon it by this Agreement and the Lease, and covenants and agrees to perform the same as herein and therein expressed.

SECTION 2. The Trustee covenants and agrees to apply and distribute the rentals received by it under subdivision B of Article First of the Lease, when and as the same shall be received, for the following purposes and in the following order, to-wit:

(a) To the payment of the necessary and reasonable expenses of the trust, including compensation, expenses and liabilities provided for in this Agreement and all expenses connected with the Trust Equipment and the Lease thereof, including the purposes referred to in subparagraph (a) of subdivision B of Article First of the Lease;

(b) To the payment of any and all taxes, assessments and other governmental charges assessed or levied upon the income or property of the trust, or this Agreement and the Lease evidencing the same, which the Trustee as such may be required to pay;

(c) To the payment of the dividends payable on the Trust Certificates when and as such dividends shall become payable, subject to the provisions of Section 1 of Article IV hereof;

(d) To the payment of the par value of the Trust Certificates outstanding when and as the same shall become payable according to the terms thereof or hereof, subject to the provisions of Section 1 of Article IV hereof; and

(e) To the payment of interest, to the extent permitted by law, at the dividend rate, upon any due and unpaid dividends on the Trust Certificates and upon any due and unpaid amounts of par value of Trust Certificates.

Nothing herein or in the Trust Certificates or the Lease contained shall be deemed to impose on the Trustee or on the Company any obligation to pay to the bearer or registered holder of any Trust Certificate or to the bearer of any dividend warrant any amount required by any law of the United States of America or of any State or subdivision thereof or of any Territory or of the District of Columbia to be withheld from the amount payable to the holder of any Trust Certificate or dividend warrant.

SECTION 3. The Trustee shall cause to be kept, at its corporate trust office, in the Borough of Manhattan, City and State of New York, books for the registration, exchange and transfer of the Trust Certificates; and upon presentation for any such purpose the Trustee will register or cause to be registered, exchange or cause to be exchanged, or transfer or cause to be transferred, as the case may be, as hereinbefore provided, and under such reasonable regulations as it may prescribe, any of the Trust Certificates.

SECTION 4. The Trustee shall not be required to undertake any act or duty in the way of taking care of or taking possession of the Trust Equipment or to undertake any other act or duty under this Agreement or the Lease until indemnified to its satisfaction by the Company or by one or more holders of the Trust Certificates against all liability and expenses. No duty of insurance or of repair or protection of any of the Trust Equipment is incumbent upon the Trustee, nor shall it be responsible for the filing, registration or recording or the refiling, reregistration or rerecording of this Agreement or of the Lease or of any other instrument executed pursuant hereto or thereto as herein

provided; and the Trustee may issue and deliver Trust Certificates in advance of such filing, registration or recording. In accepting delivery of and making payment for the Trust Equipment hereunder, the Trustee may rely upon and shall be fully protected by the certificates, bills of sale and opinions of counsel to be furnished to it under Section 5 of Article I of this Agreement and shall not be required to make any further investigation of or inquiry concerning the matters covered thereby.

SECTION 5. The Trustee shall be under no obligation to take any action for the execution or enforcement of the trust hereby created unless requested thereunto in writing by the holders of not less than twenty-five per centum (25%) in aggregate par value of the Trust Certificates then outstanding and unless indemnified to its satisfaction against expense and liability and unless also furnished with proof satisfactory to it as to the ownership of the Trust Certificates and dividend warrants in respect of which any notice or request may be made; but neither any such request nor this provision therefor shall affect any discretion herein elsewhere or in the Lease specifically given to the Trustee either to determine whether it shall take action in respect of any such default or to take action without request.

SECTION 6. No holder of any Trust Certificate or dividend warrant issued hereunder shall have any right to institute any suit, action, or proceeding for the execution and enforcement of the trust hereby created unless, after the aforesaid request in writing by the holders of not less than twenty-five per centum (25%) in aggregate par value of the Trust Certificates then outstanding shall have been

made upon the Trustee, and after indemnity satisfactory to it shall have been provided, the Trustee shall decline, fail or neglect for ninety (90) days after the furnishing of such indemnity to institute proceedings or take action for the execution and enforcement of the trust; nor shall any holder have any such right if the holders of a majority of the par value of the Trust Certificates shall have directed that no action be taken.

SECTION 7. The Trustee may conclusively assume for all purposes that the Company is not in default under the terms hereof or of the Lease until notified in writing to the contrary by the holders of not less than ten per centum (10%) in aggregate par value of the Trust Certificates then outstanding, which notice shall distinctly specify the event of default desired to be brought to the attention of the Trustee.

SECTION 8. The Trustee shall not be liable on account of any action of the Trustee based upon any notice, consent, order, certificate, warrant or other paper or instrument believed by it to be genuine or authentic or to be signed by the proper party or parties.

SECTION 9. The Trustee shall not be liable for any delay in the delivery of any of the Trust Equipment, or for any default on the part of the manufacturers thereof, or of the Vendor, or for any defect in any of said Trust Equipment, nor shall anything herein or in the Lease be construed as a warranty on the part of the Trustee in respect thereof or as a representation in respect of the value thereof or in respect of the title thereto.

The Trustee may perform its powers and duties hereunder and under the Lease by or through such attorneys, agents and servants as it shall appoint, and shall be entitled to rely upon the advice of counsel (who may be counsel of the Company), and shall be protected by the advice of such counsel in anything done or omitted to be done by it in accordance with such advice. The Trustee shall not be answerable for any act or omission to act in connection with the trust hereby created unless the same shall happen through its own negligence or wilful default. The Trustee shall not be responsible in any way for the recitals herein or in the Lease contained, or for the execution or validity of this Agreement or of the Lease, or of the Trust Certificates, or the guaranty by the Company, or for any mistake of fact or law.

The Trustee shall be entitled to receive payment of its liabilities and all its reasonable expenses and disbursements hereunder and under the Lease, including reasonable counsel fees, and to receive reasonable compensation for all services rendered by it in the execution of the trust hereby created, all of which shall be paid by the Company or, in default of such payment, out of the rentals or proceeds or avails of the Trust Equipment.

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

SECTION 10. If at any time the Trustee shall desire to divest itself of title to the Trust Equipment and to terminate its duties and obligations and rights under this Agreement, the Lease and the Trust Certificates, it shall so notify

the Company in writing and the Company shall thereupon designate in writing to the Trustee a bank or a trust company, qualified as below specified, to serve as successor to the Trustee until and unless a substituted successor Trustee shall be appointed by the holders of Trust Certificates as hereinafter provided, to which may be assigned the entire right, title and interest of the Trustee in the Trust Equipment and in which may be vested the rights, powers, duties and obligations of the Trustee under this Agreement, the Lease and the Trust Certificates. Upon the transfer and delivery of all moneys, United States Government securities, if any, and Trust Equipment held by the Trustee, and of all books, records, documents and instruments necessary for the execution of the trust, and payment of its compensation, expenses and liabilities, and upon the execution by the retiring Trustee of such instruments of transfer as reasonably may be required by the successor, and upon acceptance as provided below by the successor of the assignment and of the trust, the retiring Trustee shall be relieved and discharged of all the title, rights, powers, duties and obligations of the trust under this Agreement, the Lease and the Trust Certificates, and the same shall become vested in such successor as Trustee, and every provision of this Agreement and the Lease applicable to the retiring Trustee shall apply to such successor Trustee with like effect as if originally named herein in the place and stead of the party of the second part and in the Lease in the place and stead of the party of the first part. In the event that the Company shall fail to designate such a successor by instrument in writing delivered to the retiring Trustee within fifteen (15) days from the date of receipt of such notice in writing from the retiring Trustee, the retiring Trustee may thereupon designate such successor

Trustee. In case a successor Trustee shall be appointed at any time by the Company or by the retiring Trustee pursuant to the foregoing provisions of this Section, the holders of a majority in par value of the Trust Certificates then outstanding shall have the right, at any time within six months after the date of said written notice received by the Company under this Section, to appoint and substitute a successor Trustee chosen by such majority of said holders. Such appointment shall be made by an instrument in writing executed by such majority of such holders, in duplicate, and by delivery of one copy thereof to the Company and one copy thereof to the successor Trustee appointed by the Company or by the Trustee under this Section. Thereupon, within fifteen (15) days after such delivery of such written instrument of appointment, such successor Trustee shall transfer and deliver to such substituted successor Trustee all moneys, United States Government securities, if any, and Trust Equipment held by it and all books, records, documents and instruments necessary for the execution of the trust, and shall execute such instruments of transfer as reasonably may be required by the substituted successor Trustee; and upon acceptance thereof as provided below by such substituted successor Trustee the retiring successor Trustee shall be relieved and discharged of all title, rights, powers, duties and obligations of the trust under this Agreement, the Lease and the Trust Certificates, and the same shall become vested in such substituted successor Trustee, and every provision of this Agreement and the Lease applicable to the successor Trustee shall apply to such substituted successor Trustee with like effect as if originally named herein in the place and stead of the party of the second part and in the Lease in the place and stead of the party of the first part.

In any such event such successor Trustee or substituted successor Trustee shall execute and deliver to the Company an acceptance of the trust in such form as the Company shall reasonably request, and the Company shall execute all such writings recognizing the transfer of title as aforesaid and all such instruments of further assurance or otherwise as may be reasonably requested by the successor Trustee or substituted successor Trustee in the premises, and shall do and perform any and all acts necessary to establish and maintain the title and rights of the successor Trustee or substituted successor Trustee in and to the Trust Equipment. Every successor Trustee or substituted successor Trustee shall be a bank or a trust company doing business in the Borough of Manhattan, City and State of New York, and having a capital and surplus aggregating at least Five Million Dollars ($5,000,000), if there be such bank or trust company willing and able to accept the trust upon reasonable and customary terms.

Any corporation resulting from any merger or consolidation to which the Trustee or its corporate successor shall be a party, or any corporation shown to the satisfaction of the Company to have succeeded in any manner to the business of the Trustee as a whole or substantially as a whole, provided in either event such corporation shall be one having corporate power to act as trustee hereunder organized under the laws of the United States of America or of the State of New York, doing business in the Borough of Manhattan, City of New York, State of New York, and having a capital and surplus aggregating at least Five Million Dollars ($5,000,000), shall be the successor Trustee under this Agreement and the Lease 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.

All of the provisions of this Section relating to retirement of the Trustee, appointment of successor Trustee by the Company, by the Trustee, or by the holders of Trust Certificates, and succession (whether by appointment or otherwise) and qualification of successor Trustee, shall apply to any future Trustee in like manner as to the party of the second part.

ARTICLE VI

No recourse under any obligation, covenant or provision of this Agreement or of the Lease, or of the guaranty of the Company respecting any Trust Certificate or dividend warrant issued hereunder, shall be had against any stockholder, officer or director of the Company, 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, said Lease 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, or any of them, under or by reason of any of the obligations, covenants or agreements contained in this Agreement or in said Lease or in the guaranty of the Company respecting any of the Trust Certificates or dividend warrants issued hereunder, or implied therefrom or from any present or future law relative thereto, 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 direc-

tor is hereby expressly waived as a condition of and consideration for the execution of this Agreement and of said Lease and the issue of such Trust Certificates and dividend warrants.

ARTICLE VII

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

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

(b) The amount of unregistered Trust Certificates held by any person executing any such request or other

instrument as a holder of Trust Certificates, and the numbers of the Trust Certificates held by such person and the date of his holding the same, may be proved by a certificate executed by any trust company, bank, bankers or other depositary, wheresoever situated, if deemed satisfactory by the Trustee, showing that at the date therein mentioned such person had on deposit with or exhibited to such depositary the unregistered Trust Certificates numbered and described in such certificate. The Trustee may presume the continuance of any such holding unless and until it shall receive proof satisfactory to it to the contrary; and

(c) The ownership of bearer Trust Certificates registered as to par value and of fully registered Trust Certificates shall be proved only by the registration books of the Trustee.

ARTICLE VIII

At the termination of the Lease to the Company, any moneys and securities derived from this Agreement or the Lease remaining in the hands of the Trustee, after paying the par value of and any dividends upon the Trust Certificates, and the expenses and liabilities of the Trustee, including its reasonable compensation and counsel fees, shall be paid or delivered to the Company.

ARTICLE IX

Nothing in this Agreement or in the Lease expressed or implied is intended or shall be construed to confer upon, or to give to, any person, firm or corporation other than the

parties hereto and the holders of the Trust Certificates and dividend warrants any right, remedy or claim under or by reason of this Agreement, or of any term, covenant or condition thereof, and all of the terms, covenants, conditions, promises and undertakings of this Agreement and the Lease shall be for the sole and exclusive benefit of the parties hereto and their successors and assigns and, subject to the provisions of Section 6 of Article V of this Agreement, of the holders of the Trust Certificates and dividend warrants.

ARTICLE X

The term "Trustee" as used herein and in the Lease shall be held and construed to mean and include First National City Bank, and, unless otherwise indicated by the context, any successor Trustee or substituted successor Trustee appointed pursuant to the provisions of Section 10 of Article V hereof, and the word "Company" shall be held and construed to mean and include Burlington Northern Inc., its successors and assigns; and the word "holder" shall include the plural as well as the singular number and, unless otherwise indicated by the context, shall mean and include the bearer of any unregistered Trust Certificate and of any dividend warrant and the registered holder of any registered Trust Certificate. The liabilities of the Trustee wherever referred to herein or in the Lease shall be held and construed to mean all liabilities incurred by the Trustee arising out of or connected with this Agreement or the Lease or the ownership or use of any of the Trust Equipment other than those liabilities resulting from its own negligence or wilful default. The term "Trust Equipment," wherever used herein or in the Lease, unless otherwise indicated by the con-

text, is intended to include all railroad equipment at any time covered by the Lease or any supplemental lease or this Agreement or required or intended so to be.

Whenever under the provisions hereof or of the Lease it is necessary or proper for any notice or demand to be made to or upon the Company, or the Trustee, or if at any time it is desired to give any such notice or make any such demand, such notice or demand may be given or made by depositing a written statement thereof, securely enclosed in a postpaid wrapper, for transmission by registered United States mail, directed to the Company at 176 East Fifth Street, St. Paul, Minnesota 55101, or to such other address as the Company at any time shall designate by written notice to the Trustee, or directed to First National City Bank, 111 Wall Street, New York, N.Y. 10015, Corporate Trust Division, or to such other address as the Trustee at any time shall designate by written notice to the Company, and an affidavit by any person representing or acting on behalf of the Trustee or of the Company, respectively as to such mailing, having the registry receipt attached, shall be conclusive evidence of the giving of such notice or the making of such demand.

This Agreement may be executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument.

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

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

BURLINGTON EQUIPMENT COMPANY,

By Frank H Coyne
President.

Attest:
Secretary.

FIRST NATIONAL CITY BANK,

By
Trust Officer.

Attest:
Assistant Trust Officer.

BURLINGTON NORTHERN INC.,

By Frank H Coyne
Vice President.

Attest:
Secretary.

State of Minnesota }
County of Ramsey } ss.

On this 17th day of March, 1971, before me personally appeared Frank H. Coyne, to me personally known, who, being by me duly sworn, says that he is President of Burlington Equipment Company, that the seal affixed to the foregoing instrument is the corporate seal of said corporation; that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Richard J. Woulfe

Notary Public, Ramsey County, Minn.
My Commission Expires April 30, 1977

State of New York
County of New York } ss.

On this 19th day of March, 1971, before me personally appeared R. E. Johnson, to me personally known, who, being by me duly sworn, says that he is a Trust Officer of First National City Bank, that the seal affixed to the foregoing instrument is the corporate seal of said association, that said instrument was signed and sealed on behalf of said association 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 association.

John L. Grimmelbein
Notary Public, State of New York
No. 30-6675350
Qualified in Nassau County
Certificate filed in New York County
Term Expires March 30, 1972

State of Minnesota }
County of Ramsey } ss.

On this 12th day of March, 1971, before me personally appeared Frank H. Coyne, to me personally known, who, being by me duly sworn, says that he is a Vice President of Burlington Northern Inc., that the seal affixed to the foregoing instrument is the corporate seal of said corporation; that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Richard J. Woulfe

Notary Public, Ramsey County, Minn.
My Commission Expires April 30, 1977

LEASE

LEASE OF RAILROAD EQUIPMENT, dated as of March 1, 1971, between FIRST NATIONAL CITY BANK, a national banking association duly incorporated and existing under the laws of the United States of America, Trustee, as hereinafter mentioned (hereinafter called the "Trustee"), party of the first part, and BURLINGTON NORTHERN INC., a corporation duly organized and existing under the laws of the State of Delaware (hereinafter called the "Company"), party of the second part:

WHEREAS, by a certain agreement dated as of March 1, 1971, by and between Burlington Equipment Company, Vendor, said First National City Bank, as Trustee, and said Burlington Northern Inc., a counterpart original whereof is hereto prefixed and made a part hereof, there was constituted the "Burlington Northern Equipment Trust of 1971, Series 1", under which the railroad equipment which said Vendor has agreed to transfer or cause to be transferred to the Trustee thereunder is to be leased by the Trustee to the Company; and

WHEREAS, pursuant to the provisions of said agreement the railroad equipment hereinafter described has been or will be transferred to the Trustee thereunder, and the title to said railroad equipment vested in the Trustee;

NOW, THEREFORE, THIS AGREEMENT WITNESSETH:

That the Trustee (acting in pursuance of said agreement), for and in consideration of the sum of One Dollar ($1.00) to it in hand paid by the Company at or before the ensealing and delivery hereof, the receipt of which is hereby acknowledged, and of the rents and covenants hereinafter mentioned to be paid, kept and performed by the Company, has let and leased, and does hereby let and lease, to the Company all the

following railroad equipment of the Burlington Northern Equipment Trust of 1971, Series 1, to-wit:

No. of Units	*Description of Equipment*	*Name of Builder*
300	100-ton open top hopper cars. Burlington Northern road Nos. 522700 to 522999, inclusive. Estimated cost $14,049 each.	Bethlehem Steel Corporation
150	100-ton woodchip cars. Burlington Northern road Nos. 585200 to 585349, inclusive. Estimated cost $15,765 each.	Gunderson Bros. Engineering Corp.
200	100-ton 3000 cu. ft. covered hopper cars. Burlington Northern road Nos. 440150 to 440349, inclusive. Estimated cost $14,078 each.	Pullman-Standard Division of Pullman Incorporated
47	50-ton 30' all steel cabooses. Burlington Northern road Nos. 10550 to 10596, inclusive. Estimated cost $29,577 each.	International Car Co. Division of International Ramco, Inc.

together with such additional railroad equipment as may be acquired for said trust and subjected to this lease as hereinafter provided (hereinafter collectively called the Trust Equipment).

The cost of the railroad equipment above specifically described, when completed, is estimated by the Company to be approximately $10,785,169.

In case the actual cost of said equipment specifically described above shall not amount to at least $10,785,169, then, in accordance with the provisions of said agreement, in addition to that equipment, there is to be acquired by said Vendor other new standard-gauge rolling stock (other than work or passenger equipment) of substantially as good material and construction, and approved as to character by the Company of such cost that the aggregate cost of all the Trust Equip-

ment will be at least $10,785,169, and such additional equipment shall be subjected to this lease, in accordance with the provisions of Section 5 of Article I of said agreement; and the Trustee shall execute to the Company a supplemental lease thereof, describing the same, upon and subject to the terms and conditions hereof and of said agreement and such additional equipment shall be part of the Trust Equipment, subject to all the terms and conditions hereof and of said agreement in all respects as though it had been part of the original Trust Equipment herein described.

As and when any of the Trust Equipment shall from time to time be transferred and delivered to the Trustee under said agreement and marked in accordance with the provisions of Article Third hereof, the same shall be delivered by the Trustee to the Company at the same point or points of delivery provided for in Section 1 of Article I of said agreement and shall upon such delivery to the Company *ipso facto* and without further deed of lease or transfer, pass under and become subject to all the terms and provisions of this lease, and be deemed a portion of the Trust Equipment leased by the Trustee to the Company hereunder in all respects as if the same had been so delivered simultaneously with the execution and delivery hereof.

And the Company, in consideration of the premises, by these presents, covenants and agrees with the Trustee:

ARTICLE FIRST.

The Company hereby accepts (subject to the conditions mentioned in said agreement) this lease of all the Trust Equipment, and hereby covenants and agrees to accept delivery and possession hereunder of the Trust Equipment as hereinbefore provided; and the Company covenants and agrees to pay to the Trustee (except as in this Article First

otherwise provided) or its assigns, 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 under this lease of the Trust Equipment or any thereof):

A. From time to time, as provided in said agreement, the Company shall pay to the Trustee, as advance rental under this lease, sums which in the aggregate shall be equal to the difference between the total cost of the Trust Equipment and the portion of such cost to be provided out of the net proceeds of sale of the Trust Certificates to be issued as set forth in said agreement, the intention being that when all of the Trust Equipment shall have been delivered to the Trustee, the Company shall have paid or shall pay to the Trustee, as advance rental under this lease, a sum equal to the amount by which the entire cost of the Trust Equipment exceeds the net proceeds of the sale of the aforesaid Trust Certificates and in no event less than twenty per cent (20%) of the aggregate cost of the Trust Equipment. The Company agrees to pay such advance rental as follows:

(1) Upon the deposit with the Trustee of the amount of the net proceeds of the sale of the Trust Certificates, a sum which when added to such amount will make the total sum deposited with the Trustee equal to $8,610,000;

(2) Upon delivery of any of the Trust Equipment to the Trustee, amounts equal to the cost of such equipment in excess of the portion, if any, of such cost payable out of "deposited cash" (as defined in Section 4 of Article I of said agreement), and being not less than twenty per cent (20%) of such cost.

B. In addition to such advance rental the Company shall pay to the Trustee (or, in the case of taxes, assessments or other governmental charges, to the proper governmental authority), from time to time as below provided, as rental for the Trust Equipment, and whether or not at the time any thereof shall have been delivered to the Company, the following:

(*a*) The necessary and reasonable expenses of the trust, including compensation, expenses and liabilities provided for in said agreement and any and all expenses connected with the Trust Equipment and this lease thereof; and expenses or obligations for any other amounts incurred or sustained in connection with any purchase or sale of United States Government securities including premium and accrued interest payable in connection with any said purchase; and, when and as demanded by the Trustee, any sums which under the provisions of Section 6 of Article I of said agreement shall be required to make up any deficit resulting from the sale of United States Government securities for less than the amount of "deposited cash" or other cash applied to their purchase.

(*b*) The amount of any and all taxes, assessments and other governmental charges assessed or levied upon or on account of the income or property of the trust, or said agreement and this lease evidencing the same, which the Trustee as such under said agreement may be required to pay.

(*c*) The amount of the dividends payable on the par value of the Trust Certificates (whether or not evidenced by dividend warrants), on the respective dates on which such dividends shall severally become

payable; also, to the extent permitted by law, a sum equal to interest at the dividend rate, from the due date, upon the amount of any installments of rental payable under this sub-paragraph (*c*) and the following sub-paragraph (*d*) theretofore due and unpaid.

(*d*) The amount of the par value of the Trust Certificates, when and as the same shall become payable, whether upon the respective dates of maturity thereof or otherwise under the provisions thereof or of said agreement.

The Company shall not be required, however, to pay any amount in respect of any tax, assessment or governmental charge so long as the Company shall in good faith and by appropriate legal proceedings contest the validity thereof, unless thereby, in the judgment of the Trustee, the rights or interest of the Trustee or of the Trust Certificate holders may be materially endangered.

All payments of rental hereunder shall be made at the corporate trust office of the Trustee in the Borough of Manhattan, City and State of New York, 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.

Anything herein contained to the contrary notwithstanding, the Trustee shall, for all purposes of this lease and said agreement, accept as the cost of any of the Trust Equipment the respective amounts certified to it pursuant to subsection (d) of Section 5 of Article I of said agreement. In case any certificate filed pursuant to said subsection (d) of said Section 5 shall state that the cost of the equipment therein referred to is tentatively determined, subject to final adjustment, such certificate shall nevertheless be accepted and acted upon pending adjustment.

ARTICLE SECOND.

This lease shall continue in force until the rent paid hereunder shall furnish moneys sufficient to meet, discharge, and cancel all the interests of the Trustee and the holders of the Trust Certificates in said Burlington Northern Equipment Trust of 1971, Series 1, created in respect of the Trust Equipment. At the termination of this lease and after all payments due or to become due from the Company hereunder and under said agreement shall have been completed and fully made to the Trustee, (1) such payments shall be applied and treated as purchase money and as the full purchase price of the Trust Equipment, (2) title to all of the Trust Equipment shall vest in the Company, and (3) thereupon the Trustee shall execute for recording and filing with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act and otherwise as may be required by law such instrument or instruments in writing as reasonably shall be requested by the Company in order to transfer to the Company all of the right, title and interest of the Trustee in and to all of the Trust Equipment; provided, however, and it is hereby agreed, that until then the title to none of the Trust Equipment shall pass to or vest in the Company, but title to and ownership of all the Trust Equipment shall be reserved to and remain in the Trustee, notwithstanding the delivery of the Trust Equipment to and the possession and use thereof by the Company.

ARTICLE THIRD.

At or before delivery to the Company of each unit of the Trust Equipment, there shall be plainly, distinctly, permanently and conspicuously placed and fastened upon each side of each thereof a metal plate bearing the following words,

or such words shall be otherwise plainly, distinctly, permanently, and conspicuously marked on each side thereof, in either case, in letters not less than one inch in height:

"BURLINGTON NORTHERN EQUIPMENT TRUST OF 1971, SERIES 1. FIRST NATIONAL CITY BANK, TRUSTEE, OWNER, LESSOR."

Such plates or marks shall be such as to be readily visible and as to indicate plainly the Trustee's ownership of said equipment. In case, during the continuance of this lease, any of such plates or marks shall at any time be removed, defaced or destroyed, the Company shall immediately cause the same to be restored or replaced.

The Company shall not change, or permit to be changed, the serial numbers or names of any of the Trust Equipment at any time covered by this lease (nor any serial numbers or names which may be substituted as herein provided), except in accordance with a statement of new serial numbers or new names to be substituted therefor, which shall previously have been filed with the Trustee by the Company and consented to by the Trustee and recorded or filed in each public office where this instrument shall have been recorded or filed.

The Company will not allow the names of any persons, associations or corporations to be placed on any of the Trust Equipment as a designation which might be interpreted as a claim of ownership by the Company or anyone other than the Trustee, provided, however, that the Company may cause the said equipment to be lettered "Burlington Northern Inc", "Burlington Northern" or "BN", or in some other appropriate manner for convenience of identification of the leasehold interest of the Company therein.

ARTICLE FOURTH.

The Company covenants and agrees to furnish to the Trustee, whenever required by the Trustee, and at least once in every year during the continuance of this lease, an accurate statement, signed by one of its Vice Presidents or Assistant Vice Presidents, of the amount, description and serial numbers or names of the Trust Equipment then covered hereby showing (a) the Trust Equipment then in actual service, (b) any that may have been worn out, or that may have become unsuitable for use, or lost or destroyed by accident or otherwise, or released, and the replacements thereof, and (c) any then undergoing general repairs or then withdrawn from use for general repairs, according to a standard classification of repairs in use by steam railroad companies in the United States. Together with said statement the Company shall also furnish to the Trustee a statement signed by one of its Vice Presidents or Assistant Vice Presidents stating that in the case of all of the Trust Equipment repaired or repainted during the preceding year the plates or marks required by Article Third hereof have been preserved thereon. And the Trustee shall have the right, by its agents, but shall be under no duty, to inspect the Trust Equipment once in every year during the continuance of this lease.

The Company covenants and agrees to indemnify and protect the Trustee against all claims arising out of or connected with the ownership or use of any of the Trust Equipment, and particularly against any or all claims arising out of the use of any patented inventions in and about the Trust Equipment, and to comply in all respects with the laws of the United States of America and of all the States in which the Trust Equipment, or any thereof, may be operated, and with all lawful acts, rules, regulations and orders of the Interstate

Commerce Commission and of all other commissions, boards and other legislative, executive 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 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 under this lease by reason of the assertion or enforcement of any such claims or the commencement or prosecution of any litigation in respect thereof.

ARTICLE FIFTH.

The Company, so long as it shall not be in default under this lease, shall be entitled to the possession of the Trust Equipment and the use thereof upon the lines of railroad owned or operated by it or by any corporation a majority of whose stock shall be owned directly or indirectly by the Company or over which the Company or any such corporation has trackage rights, and shall also be entitled to the use of (1) any cars included in the Trust Equipment upon connecting and other railroads in the usual interchange of traffic, from and after the delivery of the Trust Equipment by the Trustee to the Company, and (2) any locomotives included in the Trust Equipment in the transportation of such locomotives from the place of delivery to the lines of

railroad of the Company pursuant to arrangements therefor made by the Company; but only upon and subject to all the terms and conditions of this lease.

The Company covenants to file or record and to refile or re-record this lease and said agreement and any supplemental lease provided for herein or in said agreement, as provided in Section 4 of Article III of said agreement.

The Company shall not assign or transfer this lease, or transfer or sublet (except to some company all of whose capital stock is owned by the Company, of which written notice shall be given promptly to the Trustee) 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 hereinbefore provided, part with the possession of, or suffer or allow to pass out of its possession or control, any of the Trust Equipment. A transfer or assignment to a railroad company which shall acquire all or substantially all the lines of railroad of the Company and which shall assume and agree to perform each and all the obligations and covenants of the Company hereunder and under said agreement, of which written notice shall be given promptly to the Trustee, shall not be deemed a breach of this covenant, but the appointment of a receiver or receivers or trustee or trustees in bankruptcy for the Company, or its property, or the filing of a petition under the Bankruptcy Act shall be deemed an unauthorized assignment by the Company of its rights and interests in the Trust Equipment and shall be deemed a breach of this covenant. The discharge of any such receiver or receivers or trustee or trustees or the withdrawal of any such petition and the termination of proceedings thereon with leave of Court shall be deemed a

cancellation of such assignment by agreement of all parties having any interest therein for purposes of Article Sixth hereof. The Trustee shall have the right to declare this lease terminated in case of any unauthorized assignment or transfer of this lease or of any unauthorized transfer or sublease of the Trust Equipment. The election of the Trustee to terminate this lease under this clause shall have the same effect as the retaking of the Trust Equipment by the Trustee as hereinafter provided.

ARTICLE SIXTH.

In case the Company

(1) shall make default in the payment of any part of said rent for more than thirty (30) days after same shall become due and payable, or

(2) shall make or suffer any unauthorized assignment or transfer of its rights or interest in the Trust Equipment or any thereof or any unauthorized transfer or sublease of, or, except as herein authorized, part with the possession of, the Trust Equipment or any thereof, 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 thirty (30) days after the Trustee shall have demanded in writing such cancellation and recovery of possession, or within said thirty (30) days to deposit with the Trustee a sum in cash equal to the original cost of the Trust Equipment so assigned or transferred or subleased and not so recovered (any sum so deposited to be returned to the Company upon the cancellation of such assignment.

transfer or sublease and the recovery of possession by the Company of such Trust Equipment), or

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

then, in any such case (herein and in said agreement sometimes called events of default), the Trustee in its discretion, may, and upon the written request of the holders of not less than twenty-five per cent (25%) in par value of the then outstanding Trust Certificates shall, by notice in writing to the Company, declare to be due and payable forthwith the entire amount of the rentals (including any unpaid advance rental) payable by the Company as set forth in Article First of this lease, and not theretofore paid; and thereupon the entire amount of said rentals shall become and shall be due and payable immediately, without further demand, together with interest, to the extent permitted by law, at the dividend rate on any portion thereof overdue and with interest at the dividend rate from the last preceding dividend date to the date of such declaration on all installments of rental not yet due on such date of declaration, representing the amount of the par value of outstanding Trust Certificates; and for the total amount so becoming forthwith payable by the Company, the Trustee shall be entitled to recover judgment, with interest at the rate permitted by law, and to collect such judgment out of any property of the Company wherever situate.

The Company covenants that, subject as aforesaid, the Trustee, in case of the happening of any such event of de-

fault, also may by its agents enter upon the railroads and premises of the Company and of any corporation a majority of whose capital stock is owned directly or indirectly by the Company and take possession of all or any part of the Trust Equipment, and withdraw the same from said railroads and premises, retaining all payments which up to that time may have been made on account of rental for the Trust Equipment and otherwise, and shall be entitled to collect, receive and retain all unpaid *per diem*, mileage or other charges of any kind earned by the Trust Equipment or any part thereof, and may lease the Trust Equipment or any part thereof, or with or without retaking possession thereof (but only after making the declaration hereinabove provided for) may sell the same or any unit 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, so far as may be necessary to perform and fulfill the trusts under said agreement, at public or private sale, for cash or upon credit, in its discretion, and otherwise proceed to enforce its rights and the rights of the holders of the Trust Certificates under said agreement and under this lease in the manner therein and herein provided. Any such sale or sales may be held or conducted at such place or places and at such time or times 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 such sale. Upon any such sale, the Trustee itself may bid for the property offered for sale or any part thereof.

Upon such taking possession or withdrawal or lease or sale of the Trust Equipment, the Company shall cease to have any rights or remedies in respect of the Trust Equip-

ment under this lease, and all such rights and remedies shall be deemed thenceforth to have been waived and surrendered by the Company, and no payments theretofore made by the Company for the rent or use of the Trust Equipment or any of it shall, in case of the happening of any such event of default and such taking possession, withdrawal, lease or sale by the Trustee, give to the Company any legal or equitable interest or title in or to the Trust Equipment or any of it or any cause or right of action, at law or in equity, in respect of the Trust Equipment against the Trustee or the holders of the Trust Certificates. No such taking possession or withdrawal or 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 various items mentioned in Article First hereof, whether they shall have then matured or not.

If the Trustee shall exercise any of the powers or remedies conferred upon it hereunder, the Company shall have the right, after all rentals and other sums due hereunder to the Trustee shall have been received by the Trustee, to require title to such of the Trust Equipment as shall not previously have been sold, assigned or otherwise disposed of by the Trustee to others, to be transferred and conveyed by the Trustee to the Company, free from any further liabilities or obligations to the Trustee hereunder.

In case the Trustee shall rightfully demand possession of the Trust Equipment in pursuance of this lease, and shall reasonably designate a point or points upon the railroad

of the Company, or upon the railroad of any company a majority of whose capital stock is at the time directly or indirectly owned by the Company, for the delivery of the Trust Equipment to it, the Company shall, at its own expense, forthwith and in the usual manner, cause the Trust Equipment to be moved to such point or points on said railroads as shall be designated by the Trustee and shall there deliver or cause to be delivered the same to the Trustee; or, at the option of the Trustee, the Trustee may keep the Trust Equipment on any of the lines of railroad or premises of the Company until the Trustee shall have leased, sold or otherwise have disposed of the same, and for such purpose the Company agrees to furnish, without charge for rent or storage, the necessary facilities at any convenient point or points selected by the Trustee. It is hereby expressly covenanted and agreed that the performance of the foregoing covenants is of the essence of the contract and that, upon application to any court having jurisdiction in the premises, the Trustee shall be entitled to a decree against the Company requiring the specific performance thereof.

The remedies in this lease and in said agreement provided in favor of the Trustee and the holders of 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 SEVENTH.

The Company, during the continuance of this lease, shall maintain and keep all of the Trust Equipment in good order and proper repair, at its own cost and charge, and shall cause to be replaced, at its own cost, any of the Trust Equipment that may be released as hereinafter in this

Article provided, worn out, unsuitable for use, lost, or destroyed, by new standard-gauge rolling stock (other than work or passenger equipment) of substantially as good material and construction and of a value at least equal to the fair value, at the time when the obligation to replace shall arise, of the equipment so released, worn out, unsuitable for use, lost or destroyed, the value of the new rolling stock to be figured at cost if that be below market value, or at market value if that be below cost; provided, however, that the Company may, pending such replacement, deposit with the Trustee, in trust for the benefit of the holders of the Trust Certificates, cash to an amount equal to such fair value of the equipment so released, worn out, unsuitable for use, lost, or destroyed, such fair value to be determined and any moneys so deposited to be held and applied as hereinafter in this Article provided. The rights and remedies of the Trustee to enforce or to recover any of the rental payments shall not be affected by reason of such release, wearing out, unsuitableness for use, loss or destruction.

The title to all rolling stock procured for such replacement shall be taken in the name of the Trustee, free from liens and encumbrances; and such rolling stock shall be marked in accordance with the provisions of Article Third hereof. At the time of every such replacement the Company shall deliver or cause to be delivered to the Trustee a certificate or certificates of a Vice President of the Company, stating such fair value of the Trust Equipment so released, worn out, unsuitable for use, lost, or destroyed and the cost and market value of such new equipment (and such certificate or certificates shall be full and complete protection to the Trustee) together with a bill or bills of sale to the Trustee, an opinion of counsel (who may be of counsel for the Company) satisfactory to the Trustee and a certificate as to delivery, in like

manner as is provided in Section 5 of Article I of said agreement. Thereupon the Trustee shall execute to the Company a supplemental lease of such new equipment, describing the same, and such new equipment shall be deemed part of the Trust Equipment, subject to all the terms and conditions hereof and of said agreement as though it had been part of the original Trust Equipment.

The Company shall promptly and fully inform the Trustee with regard to any loss or destruction of any of the rolling stock, and with regard to any substantial repairs made or being made upon it, or any of it.

It being desirable in the interest of both parties to this lease that any of the Trust Equipment, which in any respect shall have become worn out, or unsuitable or unnecessary for the use of the Company, should be released and promptly sold and replaced, it is hereby mutually understood and agreed that at any time hereafter until title thereto shall become vested in the Company, the Trustee will sell any such units of the Trust Equipment then subject to this lease, upon the written request of the Company, signed by a Vice President or the Treasurer or an Assistant Treasurer of the Company, accompanied by a certified copy of a resolution of its Board of Directors or Executive Committee, authorizing such request, describing such units and reciting that they have become worn out or unsuitable or unnecessary for the use of the Company, stating the selling price thereof and specifying the original cost and the fair value thereof at the time of such request; provided, however, that the proceeds of such sale or sales, and any money paid to the Trustee as in the first paragraph of this Article provided, shall be received by the Trustee in trust for the benefit of the holders of the Trust Cer-

tificates pending replacement of such Trust Equipment, and upon the written request of the Company, signed in like manner, shall be applied to the purchase by the Trustee of such new standard-gauge rolling stock (other than work or passenger equipment) of value at least equal to such fair value of the equipment replaced, and of substantially as good material and construction, as shall be specified in writing by the Company. Such new rolling stock shall be treated as hereinabove provided for replacements, and shall become and shall be subject to this lease and said agreement and to all the terms and conditions hereof and thereof.

No sale of any unit of Trust Equipment hereunder shall be made by the Trustee for less than the fair value of said unit at the time of sale unless and until the Company shall have deposited with the Trustee the difference between the price at which it is to be sold and such fair value.

For all purposes under this Article the fair value of any unit of Trust Equipment to be replaced shall be considered to be the cost thereof, determined as herein provided, less five per cent (5%) of said cost for each full year during which this lease and said agreement have run prior to the date at which the fair value is so to be determined.

A certificate signed by a Vice President or the Treasurer or an Assistant Treasurer of the Company, setting forth the facts necessary to be known by the Trustee before taking action under this Article, and that the method employed in arriving at the fair value of any equipment was that provided for in this Article, may be received by the Trustee as conclusive evidence of the statements therein contained. The Trustee shall incur no liability or responsibility whatever

by reason of any action taken or suffered in reliance on any such certificate.

ARTICLE EIGHTH.

This lease may be simultaneously executed in several counterparts, each of which so executed shall be deemed to be an original.

ARTICLE NINTH.

This lease shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, the Trustee, acting in accordance with the terms and conditions of said agreement, and the Company, pursuant to due corporate authority, have caused these presents to be signed in their respective corporate names and their respective corporate seals to be hereunto affixed, duly attested, as of the day and year first above written.

FIRST NATIONAL CITY BANK,
as Trustee,

By _____
Trust Officer.

Attest: _____
Assistant Trust Officer.

BURLINGTON NORTHERN INC.,

By Frank H Cayne
Vice President.

Attest: Moriarty
Secretary.

State of New York
County of New York } ss.

On this 19th day of March, 1971, before me personally appeared R. E. Johnson, to me personally known, who, being by me duly sworn, says that he is a Trust Officer of First National City Bank, that the seal affixed to the foregoing instrument is the corporate seal of said association, that said instrument was signed and sealed on behalf of said association 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 association.

John L. Grimmelbein
Notary Public, State of New York
No. 30-6675350
Qualified in Nassau County
Certificate filed in New York County
Term Expires March 30, 1972

State of Minnesota
County of Ramsey } ss.

On this 24 day of March, 1971, before me personally appeared Frank H. Coyne, to me personally known, who, being by me duly sworn, says that he is the Vice President of Burlington Northern Inc., that the seal affixed to the foregoing instrument is the corporate seal of said corporation; that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Richard J. Woulfe

Notary Public, Ramsey County, Minn.
My Commission Expires April 30, 1977