

Northern Pacific Ry. Co.
Doc. 274 RECORDATION NO. 61154B Filed & Recorded
Office of Sec'y JUN 28 1971 -2 10 PM

CERTIFIED TO BE A TRUE AND CORRECT COPY. INTERSTATE COMMERCE COMMISSION

MANUFACTURERS TRUST COMPANY, Trustee
By *[Signature]*

SAINT PAUL AND DULUTH RAILROAD COMPANY

TO

GUARANTY TRUST COMPANY OF NEW YORK.

First Consolidated Mortgage.

Dated June 1, 1898

This Indenture, made this first day of June, in the year one thousand eight hundred and ninety-eight, between SAINT PAUL AND DULUTH RAILROAD COMPANY, a corporation organized and existing under the laws of the State of Minnesota (hereinafter called the "Railroad Company"), party of the first part, and GUARANTY TRUST COMPANY OF NEW YORK, a corporation organized and existing under the laws of the State of New York (hereinafter called the "Trustee"), party of the second part: WITNESSETH: that

WHEREAS, the Saint Paul and Duluth Railroad Company, a Minnesota corporation, is the successor of the Lake Superior and Mississippi Railroad Company, a corporation heretofore existing in said State of Minnesota under an Act of the Legislative Assembly of the late Territory of Minnesota, entitled an "Act to Incorporate the Nebraska and Lake Superior Railroad Company," approved May 23, A. D. 1857, and especially under the provisions of an act of the Legislature of the State of Minnesota entitled "An Act to amend an act to incorporate the Nebraska and Lake Superior Railroad Company," approved March 8, 1861, by which last named act, amongst other things, the corporate name of said Company was changed to that of "The Lake Superior and Mississippi Railroad Company," which said last above named corporation, under said legislative acts and the several acts amendatory thereof, was empowered to locate, construct, maintain and perpetually operate, and at pleasure to change the line thereof, a railroad with one or more tracks or lines of rail, connecting the waters of Lake Superior with the Mississippi River at St. Paul, in said State, with the right to extend the same to the Minnesota River, and also to construct a branch railroad from said line to the navigable waters of the St. Croix River, together with all proper stations, turnouts, depots, engines, cars, and other

appurtenances and furniture for a railroad, with power to acquire, by purchase or condemnation, all lands necessary or convenient for the purposes of said railroad, and to hold the fee simple of all lands along the line of said railroad, or otherwise granted by the Congress of the United States, or by said State of Minnesota, to said corporation, for the purpose of aiding in the construction of said railroad, and to receive title thereto, and convey the same in fee-simple or otherwise; and

WHEREAS, under and in pursuance of said legislative acts and the acts amendatory thereof, the said The Lake Superior and Mississippi Railroad Company did construct said line of railroad from St. Paul, in Ramsey County, to Lake Superior, at Duluth, in St. Louis County, in said State, a distance of 156 miles more or less, (hereinafter called the Main Line), and did acquire the right of way therefor, and other the lands, franchises, rights, privileges and premises in said legislative acts named; and the said last named Company so owning said line of railroad, on the first day of January, 1872, sold and conveyed to the Northern Pacific Railroad Company a joint and undivided interest in that part of said line of said railroad between the junction of said Northern Pacific Railroad, near Thompson, in Carlton County, in said State, and Duluth, in the County of St. Louis, to be used in common and jointly maintained by said Lake Superior and Mississippi Railroad Company and said Northern Pacific Railroad Company, and their respective successors and assigns, to all which said railroad property, lands, premises, franchises and immunities so held, conferred upon, or in any manner acquired, possessed or used by the said The Lake Superior and Mississippi Railroad Company, the said St. Paul and Duluth Railroad Company, on the 27th day of June, A. D. 1877, became possessed and absolutely invested therewith, and as such successor, owned the same, subject only to the said

rights so, as aforesaid, conveyed to said Northern Pacific Railroad Company, which said line of railroad, the Railroad Company, the party of the first part hereto, is lawfully entitled to possess, use and perpetually operate, and to have and receive the tolls and earnings thereof; and

WHEREAS, also, the said St. Paul and Duluth Railroad Company has, since it so acquired the said railroad and property of the Lake Superior and Mississippi Railroad Company, constructed, owned and lawfully possessed a certain branch railroad known as the Knife Falls Branch, connected with its said Main Line at or near the junction of said Main Line with the railroad of the Northern Pacific Railroad Company, in Carlton County, in said State, and extending thence to a point at or near Cloquet, in said Carlton County, a distance of seven miles, more or less, and a certain other branch railroad, known as the Quarry Branch, connecting with the said Main Line at or near Miller, in Pine County, in said State, and extending thence to the Sandstone Quarries, at or near Banning, in said County, a distance of five miles, more or less, which said branch lines are connected with and operated in connection with said Main Line; and

WHEREAS, also, said St. Paul and Duluth Railroad Company is the lessee of the railroad commonly known as the Minneapolis and Duluth Railroad, extending from the Mississippi River, in the City of Minneapolis, to a junction with the main line of the railroad of the said St. Paul and Duluth Railroad Company near White Bear Lake, a distance of twelve miles, more or less, by indenture of lease, bearing date July 5, 1883, executed by the Minneapolis and St. Louis Railway Company, a corporation existing in said State, the owner of said line of railroad, lessor for the term of ninety-nine (99) years from said date; with the right of either party to terminate the same at the expiration of any three years after said 5th

day of July, 1883, by giving to the other party at least one year's notice in writing of such election, prior to the expiration of said any three years, the lessor to pay the lessee in case of such termination, the value of all betterments by it made upon said leased railroad or premises.

If such notice were given by said lessor, the lessee might elect within sixty days after such notice; and by the express provisions of said lease, the lessee might acquire a joint and equal interest in said railroad and appurtenances for the term of ninety-nine years thereafter, at a rental of three (3) per cent. per annum upon the then cash value of said railroad and appurtenances; to be ascertained by arbitration.

The rental payable under said lease is thirty-five (35) per cent. of the gross earnings of said line of railroad, less three (3) per cent. taxes, and certain switching charges to be deducted.

AND WHEREAS, The said St. Paul and Duluth Railroad Company was fully authorized and empowered by law to locate and construct branch railroads or lease the same, and to aid in the construction of connecting railroads tributary to or feeders of its said main line; and was expressly authorized and empowered to borrow money for the purposes aforesaid, so to be expended in the renewal, construction, repair, replacement, equipment, refurnishing and providing facilities for the operation, maintenance and business of said railroad, branches, and leased lines, and to extinguish any indebtedness incurred in such construction, repairs or replacements; and to issue its bonds therefor, and with full power to make and execute in its said corporate name, and deliver all such mortgages, deeds of trust, or other writings, as the said company might deem necessary or expedient to secure the bonds so to be issued, upon the franchises, railroad, and property aforesaid, now as aforesaid owned and held, or that may be hereafter acquired. Which said power so to borrow money, issue

bonds, and, as aforesaid, secure the same by mortgage or deed of trust, was limited and controlled by the following provisions of section eight of article one of the By-Laws of the said Company, to wit: "No mortgage to be placed on the property (the railroad and property aforesaid) without the written consent of not less than two-thirds of the preferred stock then outstanding, and one-half of the common stock." And

WHEREAS, at a meeting of the stockholders of the St. Paul and Duluth Railroad Company, duly held at the City of St. Paul, Minnesota, on the 14th day of April, A. D. 1898, the stockholders aforesaid, for the purpose of providing for the retirement at maturity of the First and Second Mortgage Bonds hereinbelow described of the said St. Paul and Duluth Railroad Company, for the retirement of the First Mortgage bonds of the Stillwater and St. Paul Railroad Company, of the Taylor's Falls and Lake Superior Railroad Company, and of the Duluth Short Line Railway Company, and for other purposes, by resolution, duly adopted, did advise and consent to the issuance of the bonds provided for in this instrument, and the execution and delivery of these presents to secure the same upon the said railroad and property of the Railroad Company (except the lands granted by the Congress of the United States and State of Minnesota to aid in the construction of said line of railroad acquired, or to be acquired, and not used in connection with said lines of railroad, and the proceeds of sales thereof, as hereinafter specially excepted), and subject to the said joint interest of the Northern Pacific Railroad Company in that part of said line of railroad between the said junction in Carlton County and Duluth, in St. Louis County, and subject also to the lien of a certain mortgage and deed of trust heretofore and on the first day of July, A. D. 1881, executed by the said St. Paul and Duluth Railroad Company to the Central Trust Company of New York, as Trustee, upon the said line of railroad, and

its branch and leased lines, rights of way, franchises and property in said deed of trust particularly described and included, to secure the payment of the interest and principal of the bonds therein provided for and issued, to the amount of one million of dollars (\$1,000,000), of principal, as in and by said mortgage and deed of trust will more fully and at large appear, and subject also, to the lien of a certain mortgage or trust deed heretofore and on the third day of August, 1887, executed by the said St. Paul and Duluth Railroad Company to the said Central Trust Company, Trustee, upon its said line of railroad, and its branch and leased lines, rights of way, franchises and property in said deed of trust particularly described and included, to secure the payment of the interest and principal of the bonds therein provided for and issued, to the amount of two millions of dollars (\$2,000,000) of principal, as in and by said mortgage and deed of trust will more fully and at large appear; and

WHEREAS, the Saint Paul and Duluth Railroad Company, the party hereto of the first part, is the owner and holder of shares of capital stock of the following named corporations, respectively, and is also the lessee of each of the said corporations, to wit:

Of three thousand eight hundred and fifty-five shares out of a total issue of four thousand shares of the capital stock of the Stillwater and St. Paul Railroad Company, a Minnesota corporation, owning a line of railroad extending from the City of Stillwater, in Washington County, in said State, to a junction with the said Main Line at White Bear Lake in Ramsey County aforesaid, a distance of thirteen and seven-tenths miles, more or less, said railroad and franchises, however, remaining subject to outstanding First Mortgage seven per cent. bonds to the amount of \$209,500 of principal.

Of four thousand and fifty shares, being the entire capital stock issued, of the Taylor's Falls and Lake

Superior Railroad Company, a Minnesota corporation, owning a line of railroad extending from a point of junction with the said Main Line at Wyoming, in Chisago County, to Taylor's Falls in said Chisago County, in said State, a distance of twenty-one miles, more or less, said railroad and franchises, however, remaining subject to outstanding First Mortgage six per cent. bonds to the amount of \$210,000 of principal.

Of two thousand one hundred and six shares out of a total issue of two thousand nine hundred and twenty-one shares of the capital stock of the St. Cloud, Grantsburg and Ashland Railroad Company, a Wisconsin corporation owning a line of railroad extending from a point of intersection with the line of Railroad of the Grantsburg, Rush City and St. Cloud Railroad Company, at the St. Croix River, on the boundary line between the States of Minnesota and Wisconsin to the Village of Grantsburg in the County of Burnett in the State of Wisconsin, a distance of twelve miles, more or less:

Of six thousand shares, being the entire capital stock issued, of the Duluth Short Line Railway Company, a Minnesota corporation owning a line of railroad extending from a point of junction with the said Main Line at or near the town of Thompson, in Carlton County in said State, to a connection with said Main Line near the Village of Oneota in the County of Saint Louis in said State, and thence to the Saint Louis River and to West Superior in the State of Wisconsin, a distance of eighteen miles, more or less, and including the bridge over the St. Louis River, said railroad, bridge and franchises, however, remaining subject to outstanding First Mortgage five per cent. bonds to the amount of \$500,000 of principal; and

WHEREAS, the party of the first part is also the lessee of the Grantsburg, Rush City and St. Cloud Railroad Company, a Minnesota corporation, owning a line of railroad

extending from a point of junction with the said Main Line at Rush City in said Chisago County to the St. Croix River in said county, in said State, a distance of five miles, more or less; and

WHEREAS, The holders of more than two-thirds of the preferred stock now outstanding, and of more than one-half of the common stock of the Railroad Company have expressly assented in writing to the issuance of the bonds of the Railroad Company for the purposes hereinafter mentioned, to the amount in the aggregate of five millions of dollars (\$5,000,000), and have in like manner assented to the creation of a mortgage upon the franchises and property hereinafter described to secure the same; and

WHEREAS, The Railroad Company has (deeming the same necessary and expedient) duly resolved to exercise the borrowing power upon it conferred by the laws of the State of Minnesota, and pursuant to the said express assent of its stockholders, and for the purposes aforesaid, in pursuance of a resolution duly passed in this behalf by its Board of Directors, has determined to issue its certain bonds to be denominated "*First Consolidated Mortgage four per cent. Seventy-Year Gold Bond,*" the said bonds not to exceed in the aggregate five millions of dollars (\$5,000,000) as aforesaid, in denominations of one thousand dollars each; and for the purpose of securing the payment of the same has duly directed its President and Secretary to execute in its corporate name and under its corporate seal, and deliver to the Guaranty Trust Company of New York, the party of the second part hereto, a mortgage bearing the date of these presents, of and upon, all and singular the said railroads, branch railroads, franchises, property and leasehold interests, rents and income of the same, hereinafter particularly set forth; and each of said bonds or obligations, with the coupons thereto attached, and the Trustee's Certificate thereon endorsed, to be substantially in the words and figures following, to wit:

be issued as herein provided, the sums of money constituting the principal of said bonds and the interest to grow due thereon, at the times and in the manner stipulated in the said bonds, according to the true intent and meaning thereof, and shall well and truly keep, perform and observe all and singular the covenants, promises and conditions in said bonds and in this Mortgage expressed to be by the Railroad Company kept, performed and observed, then these presents and the estate, property, rights and interests hereby granted shall cease, determine and be void, otherwise to be and to remain in full force and virtue.

It is hereby agreed and declared by and between the parties hereto, that the further trusts, uses, purposes, conditions and covenants for and upon which the franchises, rights, property, real, personal and mixed, contracts and choses in action, hereinbefore mentioned and described are conveyed and are to be held and disposed of by the said Trustee are as follows, that is to say:

ARTICLE FIRST.

The bonds to be issued and secured by this mortgage shall be Five thousand (5,000) in number, each for One thousand dollars (\$1,000), all of like date, tenor and amount, and bearing interest at four per centum per annum. Three thousand (3,000) of said bonds, amounting to \$3,000,000 of principal, shall be reserved for retiring at maturity the outstanding First and Second Mortgage five per cent. Bonds of the Main Line of the Railroad Company, secured by said First and Second Mortgages, respectively dated July 1, 1881, and August 3, 1887, executed by the Saint Paul and Duluth Railroad Company to the Central Trust Company of New York as Trustee. Two thousand (2,000) of said bonds, amounting to \$2,000,000 of principal, to the extent required as certified to the Trustee as hereinafter provided, shall be reserved and used for the re-

tirement by purchase, or otherwise, of the outstanding said First Mortgage Bonds of the several Leased and Branch Lines of the Railroad Company, to wit: The Stillwater and St. Paul Railroad Company's said First Mortgage seven per cent. bonds; The Taylor's Falls and Lake Superior Railroad Company's said First Mortgage six per cent. bonds, and the Duluth Short Line Railway Company's said First Mortgage five per cent. bonds. The aforesaid reserved bonds shall be certified and exchanged by the Trustee from time to time as the same may be required at par for the aforesaid bonds to be retired. The balance of the said issue of bonds shall be forthwith delivered to the President of the Railroad Company upon the execution and delivery of this mortgage, without any order or authority to the Trustee other than these presents.

The Trustee shall not at any time be required to reserve in its hands unissued bonds of the issue herein provided for in par value in excess of the par value of the first and second mortgage bonds of the Railroad Company and of the first mortgage bonds aforesaid of its leased and branch lines outstanding at the same time and not in the hands of the Trustee, and the President of the Railroad Company shall certify to the Trustee from time to time the par value of such outstanding bonds, and such certificates shall be accepted by the Trustee as conclusive evidence of the facts therein stated as a basis of its action under these presents.

All bonds of the said Main and leased and Branch Lines, which may be retired or exchanged for bonds of the issue hereby secured shall, with all coupons thereto attached, be cancelled and destroyed forthwith by the Trustee, provided, however, that in case of any leased line as to which the Railroad Company does not then own either the title or all the issued capital stock, the bonds thereof thus exchanged shall be not destroyed, and shall be subject to the lien of these presents until said title or entire capital stock shall have been acquired by the Railroad Company, when they shall be cancelled and destroyed by the Trustee.

make such sale at the time and place to which the same may be adjourned: *Provided, however*, that no such sale shall be made by the Trustee except upon demand of the holders of not less than twenty-five per centum of the said bonds then outstanding; and, even in the event of such demand, no sale shall take place if the holders of the majority of all the bonds then outstanding shall file with the Trustee a written instrument, executed as in Article Fifth prescribed, objecting to such sale. Upon such sale and in accordance with the terms and conditions thereof the Trustee shall, by proper assurances in the law, and as the attorney in fact irrevocable of the Railroad Company (for that purpose by these presents duly constituted and empowered), or otherwise, grant, sell, convey, assign, transfer and deliver to the purchaser or purchasers possession of all and singular the real, personal or mixed property with the appurtenances so sold, freed and discharged from the trusts hereby created, and shall make, execute and deliver any and all deeds and other instruments necessary and proper to convey, transfer to and vest in such purchaser or purchasers, his or their successors, heirs, executors, administrators or assigns, all the estate, right, title and interest of the Railroad Company of, in and to all premises and property so sold; which sale or sales and the conveyances and other instruments of transfer executed in fulfillment thereof shall be valid and effectual in the law to vest in such purchaser or purchasers, grantee or grantees, assignee or assignees, the title to and ownership of the same, and shall forever bar and foreclose the Railroad Company and its successors and assigns from all right, claim or equity of redemption in, to or in respect of the same, and shall be a perpetual bar both in law and equity against the Railroad Company and its successors, and all persons claiming by, through or under it or them in any manner whatsoever.

The Railroad Company shall and will, if and when thereunto requested, thereafter make, execute and deliver such deeds and other instruments as shall be reasonably

advised or required to confirm and assure such title and ownership in and to such purchaser or purchasers so as to fully effect the sale and conveyance hereby authorized.

The receipt of the Trustee shall be a sufficient discharge to the purchaser or purchasers of all the property so sold or any part thereof, for his or their purchase money, and the purchaser shall not be bound to see to the application of the purchase money.

Any holder or holders of any of the said bonds may become such purchaser or purchasers for his or their own account.

ARTICLE EIGHTH.

The foregoing powers of entry and sale are respectively remedies cumulative to all other remedies, suits, actions and proceedings at law or equity for the protection and security of the several owners of the bonds entitled to the security of and under this Mortgage. And the Trustee, in case of any continuous or other default, as hereinbefore mentioned, or upon or after any other act done or omitted to the injury of the bondholders intended to be secured hereby, or which impairs or jeopardizes the security expressed and intended to be afforded by these presents, may, in its discretion (unless such default, act or omission be waived in writing as aforesaid, by the holders of a *majority* in amount of said outstanding bonds) or upon the request in writing as aforesaid made as in Article Fifth provided, of the holders of twenty-five per centum in amount of said bonds then outstanding hereunder, and upon being indemnified to its satisfaction, shall pursue any other remedy and institute any other suit, action or proceeding to effect the protection and security so hereby sought to be afforded.

The action of the Trustee herein, in regard to the enforcing to any extent the lien created by this

Mortgage, either by taking possession, or by sale at auction, or by lease, or by resort to judicial proceedings, or by any means authorized or contemplated herein, shall be at all times subject to the control of a majority in amount of the holders of said bonds, their wishes being expressed by an instrument in writing executed as in Article Fifth prescribed; but this mortgage shall not be foreclosed, nor shall the property herein mortgaged nor any of the same, be sold, except upon a default in the payment of the principal or interest upon the said bonds, or upon a default or breach in the performance or observance of any other condition, obligation or requirement by the said bonds or by this Mortgage imposed on the Railroad Company, which default or breach shall have continued for more than six months.

In the event of default by the Railroad Company in the payment of principal or interest of said bonds, or otherwise, a majority in interest of the bondholders for the time being shall have the right to provide and agree upon a Plan or Scheme of Re-organization, which plan or scheme, when agreed upon in writing and signified to the Trustee, shall govern its action thereafter, and shall be in all respects binding and obligatory upon all the holders of said bonds.

ARTICLE NINTH.

Upon the filing of a bill in equity or other commencement of foreclosure or other appropriate proceedings, in any proper Court, to enforce the rights of the Trustee and of the bondholders under this Mortgage, the Trustee shall be entitled to the appointment by such Court of a Receiver or Receivers of the railroads and other property and premises hereby mortgaged, and of the earnings, income, rents, revenues, issues and profits thereof, pending such proceedings, with such powers as the Court making such appointment may confer.

ARTICLE TENTH.

In case of any sale of the mortgaged property under the provisions of this Mortgage, the Trustee shall apply the proceeds thereof as follows, that is to say:

- 1st. To the payment of the costs and expenses of such sale, including reasonable compensation of the Trustee, its agents, attorneys and counsel, and all expenses, liabilities and advances whatsoever, made and incurred by the Trustee in the execution of the trust hereby created.
- 2d. To the payment of the whole amount of the principal and interest which shall then be owing and unpaid upon the said bonds and coupons and every one of them, whether the principal by the tenor of the said bonds be then due or yet to become due, and in case of the insufficiency of such proceeds to pay in full the whole amount of principal and interest owing and unpaid upon the said bonds and coupons, the same shall be paid ratably, in proportion to the amount owing and unpaid upon them respectively, without preference of any bond or coupon over any of the others; subject, however, to the provisions of Article Third relating to detached coupons.
- 3d. The surplus, if any, shall be paid over on demand to the Railroad Company, or otherwise as directed by any court of competent jurisdiction in the premises.

ARTICLE ELEVENTH.

Upon any sale of the property and premises hereby mortgaged, or of any part thereof, the purchaser in making payments therefor shall be entitled, after paying in cash so much as shall be necessary to cover the costs and

expenses of the sale and of the proceedings incident thereto, and all other charges that may be required, by decree or otherwise, to be paid in cash, including reasonable compensation to the Trustee and its counsel, agents and servants, to appropriate and use toward the payment of the remainder of the purchase price, any of the bonds or coupons issued hereunder, and entitled to participate in the proceeds of such sale, reckoning each bond or coupon so appropriated and used at such sum as shall be payable thereon out of the net proceeds of the sale; and proper receipts shall thereupon be given to the holders of such bonds or coupons for the amount so payable thereon, and the bonds or coupons, if the net proceeds of the sale shall be sufficient to pay them in full, shall be delivered up to the Trustee or other person making sale under decree of the Court or otherwise hereunder, for cancellation; or if the proceeds of the sale shall not be sufficient to pay such bonds or coupons in full, then proper endorsement shall be made thereon of the amount so paid on account thereof, and they shall then be returned to the holders.

ARTICLE TWELFTH.

The persons in whose names bonds are registered shall be taken by the Trustee to be the holders and owners of such bonds for the purpose of executing any requests required to be executed by bondholders and for all other purposes of this Mortgage; and the Trustee may require the ownership of bonds issued under this Mortgage and not registered to be proven by the production of the bonds, or by such other evidence as the Trustee may deem sufficient.

The Trustee shall not be bound to recognize any person as a bondholder until his bonds are submitted to the Trustee for inspection, if required, and his title satisfactorily established, if disputed.

The Railroad Company covenants and agrees that it shall and will at all times hereafter keep open an office or agency in the Borough of Manhattan, City of New York, for the payment of the principal and interest of and upon the bonds hereby secured and at any time outstanding, as the same shall become payable, and for the transfer and registration of the said bonds, and that any and every default in the due performance of this covenant shall be deemed and taken to be a waiver of presentment and a demand of payment of all and every of the bonds and coupons aforesaid which may become payable during the continuance of said default.

If the Railroad Company shall be satisfied that any bond issued and certified hereunder has been lost or destroyed, the Railroad Company, upon such terms and conditions as it may deem advisable and to be prescribed by resolution of its Board of Directors, may execute and issue in lieu of such lost or destroyed bond, a new bond of like date, tenor and amount, and bearing the same serial number, but conspicuously and indelibly marked or stamped with the word "*substitute*" across the face of said bond and of the coupons attached thereto, which bond, when so issued, shall be certified by the Trustee without any liability on its part, to be one of the series of bonds described herein, and the sole and conclusive evidence to the Trustee of its duty to certify said new bond shall be a certified copy of the resolution of the Board of Directors of the Railroad Company authorizing the issue of, and requesting the Trustee to certify, said new or "*substitute*" bond.

ARTICLE THIRTEENTH.

It is expressly agreed that the Trustee may from time to time, as it shall deem it necessary and proper, apply (at the expense of the trust estate) to any court of competent jurisdiction for aid or instructions in any matter con-

be issued as herein provided, the sums of money constituting the principal of said bonds and the interest to grow due thereon, at the times and in the manner stipulated in the said bonds, according to the true intent and meaning thereof, and shall well and truly keep, perform and observe all and singular the covenants, promises and conditions in said bonds and in this Mortgage expressed to be by the Railroad Company kept, performed and observed, then these presents and the estate, property, rights and interests hereby granted shall cease, determine and be void, otherwise to be and to remain in full force and virtue.

It is hereby agreed and declared by and between the parties hereto, that the further trusts, uses, purposes, conditions and covenants for and upon which the franchises, rights, property, real, personal and mixed, contracts and choses in action, hereinbefore mentioned and described are conveyed and are to be held and disposed of by the said Trustee are as follows, that is to say:

ARTICLE FIRST.

The bonds to be issued and secured by this mortgage shall be Five thousand (5,000) in number, each for One thousand dollars (\$1,000), all of like date, tenor and amount, and bearing interest at four per centum per annum. Three thousand (3,000) of said bonds, amounting to \$3,000,000 of principal, shall be reserved for retiring at maturity the outstanding First and Second Mortgage five per cent. Bonds of the Main Line of the Railroad Company, secured by said First and Second Mortgages, respectively dated July 1, 1881, and August 3, 1887, executed by the Saint Paul and Duluth Railroad Company to the Central Trust Company of New York as Trustee. Two thousand (2,000) of said bonds, amounting to \$2,000,000 of principal, to the extent required as certified to the Trustee as hereinafter provided, shall be reserved and used for the re-

tirement by purchase, or otherwise, of the outstanding said First Mortgage Bonds of the several Leased and Branch Lines of the Railroad Company, to wit: The Stillwater and St. Paul Railroad Company's said First Mortgage seven per cent. bonds; The Taylor's Falls and Lake Superior Railroad Company's said First Mortgage six per cent. bonds, and the Duluth Short Line Railway Company's said First Mortgage five per cent. bonds. The aforesaid reserved bonds shall be certified and exchanged by the Trustee from time to time as the same may be required at par for the aforesaid bonds to be retired. The balance of the said issue of bonds shall be forthwith delivered to the President of the Railroad Company upon the execution and delivery of this mortgage, without any order or authority to the Trustee other than these presents.

The Trustee shall not at any time be required to reserve in its hands unissued bonds of the issue herein provided for in par value in excess of the par value of the first and second mortgage bonds of the Railroad Company and of the first mortgage bonds aforesaid of its leased and branch lines outstanding at the same time and not in the hands of the Trustee, and the President of the Railroad Company shall certify to the Trustee from time to time the par value of such outstanding bonds, and such certificates shall be accepted by the Trustee as conclusive evidence of the facts therein stated as a basis of its action under these presents.

All bonds of the said Main and leased and Branch Lines, which may be retired or exchanged for bonds of the issue hereby secured shall, with all coupons thereto attached, be cancelled and destroyed forthwith by the Trustee, provided, however, that in case of any leased line as to which the Railroad Company does not then own either the title or all the issued capital stock, the bonds thereof thus exchanged shall be not destroyed, and shall be subject to the lien of these presents until said title or entire capital stock shall have been acquired by the Railroad Company, when they shall be cancelled and destroyed by the Trustee.

make such sale at the time and place to which the same may be adjourned: *Provided, however*, that no such sale shall be made by the Trustee except upon demand of the holders of not less than twenty-five per centum of the said bonds then outstanding; and, even in the event of such demand, no sale shall take place if the holders of the majority of all the bonds then outstanding shall file with the Trustee a written instrument, executed as in Article Fifth prescribed, objecting to such sale. Upon such sale and in accordance with the terms and conditions thereof the Trustee shall, by proper assurances in the law, and as the attorney in fact irrevocable of the Railroad Company (for that purpose by these presents duly constituted and empowered), or otherwise, grant, sell, convey, assign, transfer and deliver to the purchaser or purchasers possession of all and singular the real, personal or mixed property with the appurtenances so sold, freed and discharged from the trusts hereby created, and shall make, execute and deliver any and all deeds and other instruments necessary and proper to convey, transfer to and vest in such purchaser or purchasers, his or their successors, heirs, executors, administrators or assigns, all the estate, right, title and interest of the Railroad Company of, in and to all premises and property so sold; which sale or sales and the conveyances and other instruments of transfer executed in fulfillment thereof shall be valid and effectual in the law to vest in such purchaser or purchasers, grantee or grantees, assignee or assignees, the title to and ownership of the same, and shall forever bar and foreclose the Railroad Company and its successors and assigns from all right, claim or equity of redemption in, to or in respect of the same, and shall be a perpetual bar both in law and equity against the Railroad Company and its successors, and all persons claiming by, through or under it or them in any manner whatsoever.

The Railroad Company shall and will, if and when thereunto requested, thereafter make, execute and deliver such deeds and other instruments as shall be reasonably

advised or required to confirm and assure such title and ownership in and to such purchaser or purchasers so as to fully effect the sale and conveyance hereby authorized.

The receipt of the Trustee shall be a sufficient discharge to the purchaser or purchasers of all the property so sold or any part thereof, for his or their purchase money, and the purchaser shall not be bound to see to the application of the purchase money.

Any holder or holders of any of the said bonds may become such purchaser or purchasers for his or their own account.

ARTICLE EIGHTH.

The foregoing powers of entry and sale are respectively remedies cumulative to all other remedies, suits, actions and proceedings at law or equity for the protection and security of the several owners of the bonds entitled to the security of and under this Mortgage. And the Trustee, in case of any continuous or other default, as hereinbefore mentioned, or upon or after any other act done or omitted to the injury of the bondholders intended to be secured hereby, or which impairs or jeopardizes the security expressed and intended to be afforded by these presents, may, in its discretion (unless such default, act or omission be waived in writing as aforesaid, by the holders of a *majority* in amount of said outstanding bonds) or upon the request in writing as aforesaid made as in Article Fifth provided, of the holders of twenty-five per centum in amount of said bonds then outstanding hereunder, and upon being indemnified to its satisfaction, shall pursue any other remedy and institute any other suit, action or proceeding to effect the protection and security so hereby sought to be afforded.

The action of the Trustee herein, in regard to the enforcing to any extent the lien created by this

Mortgage, either by taking possession, or by sale at auction, or by lease, or by resort to judicial proceedings, or by any means authorized or contemplated herein, shall be at all times subject to the control of a majority in amount of the holders of said bonds, their wishes being expressed by an instrument in writing executed as in Article Fifth prescribed; but this mortgage shall not be foreclosed, nor shall the property herein mortgaged nor any of the same, be sold, except upon a default in the payment of the principal or interest upon the said bonds, or upon a default or breach in the performance or observance of any other condition, obligation or requirement by the said bonds or by this Mortgage imposed on the Railroad Company, which default or breach shall have continued for more than six months.

In the event of default by the Railroad Company in the payment of principal or interest of said bonds, or otherwise, a majority in interest of the bondholders for the time being shall have the right to provide and agree upon a Plan or Scheme of Re-organization, which plan or scheme, when agreed upon in writing and signified to the Trustee, shall govern its action thereafter, and shall be in all respects binding and obligatory upon all the holders of said bonds.

ARTICLE NINTH.

Upon the filing of a bill in equity or other commencement of foreclosure or other appropriate proceedings, in any proper Court, to enforce the rights of the Trustee and of the bondholders under this Mortgage, the Trustee shall be entitled to the appointment by such Court of a Receiver or Receivers of the railroads and other property and premises hereby mortgaged, and of the earnings, income, rents, revenues, issues and profits thereof, pending such proceedings, with such powers as the Court making such appointment may confer.

ARTICLE TENTH.

In case of any sale of the mortgaged property under the provisions of this Mortgage, the Trustee shall apply the proceeds thereof as follows, that is to say:

- 1st. To the payment of the costs and expenses of such sale, including reasonable compensation of the Trustee, its agents, attorneys and counsel, and all expenses, liabilities and advances whatsoever, made and incurred by the Trustee in the execution of the trust hereby created.
- 2d. To the payment of the whole amount of the principal and interest which shall then be owing and unpaid upon the said bonds and coupons and every one of them, whether the principal by the tenor of the said bonds be then due or yet to become due, and in case of the insufficiency of such proceeds to pay in full the whole amount of principal and interest owing and unpaid upon the said bonds and coupons, the same shall be paid ratably, in proportion to the amount owing and unpaid upon them respectively, without preference of any bond or coupon over any of the others; subject, however, to the provisions of Article Third relating to detached coupons.
- 3d. The surplus, if any, shall be paid over on demand to the Railroad Company, or otherwise as directed by any court of competent jurisdiction in the premises.

ARTICLE ELEVENTH.

Upon any sale of the property and premises hereby mortgaged, or of any part thereof, the purchaser in making payments therefor shall be entitled, after paying in cash so much as shall be necessary to cover the costs and

expenses of the sale and of the proceedings incident thereto, and all other charges that may be required, by decree or otherwise, to be paid in cash, including reasonable compensation to the Trustee and its counsel, agents and servants, to appropriate and use toward the payment of the remainder of the purchase price, any of the bonds or coupons issued hereunder, and entitled to participate in the proceeds of such sale, reckoning each bond or coupon so appropriated and used at such sum as shall be payable thereon out of the net proceeds of the sale; and proper receipts shall thereupon be given to the holders of such bonds or coupons for the amount so payable thereon, and the bonds or coupons, if the net proceeds of the sale shall be sufficient to pay them in full, shall be delivered up to the Trustee or other person making sale under decree of the Court or otherwise hereunder, for cancellation; or if the proceeds of the sale shall not be sufficient to pay such bonds or coupons in full, then proper endorsement shall be made thereon of the amount so paid on account thereof, and they shall then be returned to the holders.

ARTICLE TWELFTH.

The persons in whose names bonds are registered shall be taken by the Trustee to be the holders and owners of such bonds for the purpose of executing any requests required to be executed by bondholders and for all other purposes of this Mortgage; and the Trustee may require the ownership of bonds issued under this Mortgage and not registered to be proven by the production of the bonds, or by such other evidence as the Trustee may deem sufficient.

The Trustee shall not be bound to recognize any person as a bondholder until his bonds are submitted to the Trustee for inspection, if required, and his title satisfactorily established, if disputed.

The Railroad Company covenants and agrees that it shall and will at all times hereafter keep open an office or agency in the Borough of Manhattan, City of New York, for the payment of the principal and interest of and upon the bonds hereby secured and at any time outstanding, as the same shall become payable, and for the transfer and registration of the said bonds, and that any and every default in the due performance of this covenant shall be deemed and taken to be a waiver of presentment and a demand of payment of all and every of the bonds and coupons aforesaid which may become payable during the continuance of said default.

If the Railroad Company shall be satisfied that any bond issued and certified hereunder has been lost or destroyed, the Railroad Company, upon such terms and conditions as it may deem advisable and to be prescribed by resolution of its Board of Directors, may execute and issue in lieu of such lost or destroyed bond, a new bond of like date, tenor and amount, and bearing the same serial number, but conspicuously and indelibly marked or stamped with the word "*substitute*" across the face of said bond and of the coupons attached thereto, which bond, when so issued, shall be certified by the Trustee without any liability on its part, to be one of the series of bonds described herein, and the sole and conclusive evidence to the Trustee of its duty to certify said new bond shall be a certified copy of the resolution of the Board of Directors of the Railroad Company authorizing the issue of, and requesting the Trustee to certify, said new or "*substitute*" bond.

ARTICLE THIRTEENTH.

It is expressly agreed that the Trustee may from time to time, as it shall deem it necessary and proper, apply (at the expense of the trust estate) to any court of competent jurisdiction for aid or instructions in any matter con-

nected with the interpretation of this Mortgage or the execution of this trust.

And it is further agreed that the Trustee shall have full power and authority, *inter alia*, and generally at the expense of the trust estate, to do any act or thing in respect of the property and premises hereby mortgaged as fully and completely as if it were the absolute owner thereof, and in case of a sale of any of the property and premises hereby mortgaged, after default, to buy in, for the benefit of the holders of the bonds hereby secured and then outstanding, in proportion to their respective interests, the said railroad properties and premises, or any part thereof, which may be sold under the provisions hereof, at a price not exceeding the principal and accrued interest of said bonds, and any sums paid out by the Trustee, and herein prescribed to be collectible out of the trust estate.

ARTICLE FOURTEENTH.

The Trustee may resign the trust hereby created, and become and remain wholly discharged from all further duty or responsibility hereunder upon giving sixty days' notice in writing to the Railroad Company, or such shorter notice as the Railroad Company may accept as sufficient. The Trustee may be removed from office as such Trustee by the vote of a majority in interest of the holders of the said bonds then outstanding, the said vote being had at a meeting of the said bondholders duly called, as hereinbelow provided, for such purpose, and being attested by an instrument in writing executed in the manner hereinbelow provided.

In the event of the refusal, failure, neglect or incapacity of the Trustee herein named, or of its successor or successors in this trust, to accept or execute the same, or in the event of the resignation or removal of the Trustee, then it shall be the duty of the Railroad Company to give

notice to the bondholders by advertisement for four successive weeks in one or more of the daily newspapers in general circulation, published, respectively, in the said cities of St. Paul and New York, of the time and place of meeting for the election of a Trustee, at which meeting a majority in interest of the bonds, there represented, may, with the concurrence of the Railroad Company in the choice of said majority, elect or appoint a Trustee; and in the event that the Railroad Company and said majority cannot agree upon a Trustee, then upon application of any bondholder under these presents, and notice to the Railroad Company, or upon application of the Railroad Company, a Trustee may be appointed by a Judge of the Circuit Court of the United States for the District of Minnesota. Upon the election or appointment of any such Trustee at any meeting as aforesaid, a statement or certificate of such election or appointment shall be made, showing the amount of said bonds represented at said meeting and the amount thereof voting for the Trustee so elected or appointed, which statement or certificate shall be signed by the President or Chairman and Secretary of said meeting and by the proper officers of the Railroad Company, and said statement or certificate shall have attached thereto a copy of said printed notice, with proof of publication thereof. If an appointment of Trustee shall be made by a Judge of said Circuit Court as hereinbefore provided, the party applying for such appointment shall procure the appointment to be signed by said Judge making the same, and attested by the Clerk of said Court, and shall have attached thereto a copy of the application for such appointment: The said statement or certificate of election or appointment at such bondholders' meeting, or the appointment of the Trustee signed by such Judge, shall be filed with the Secretary of the State of Minnesota and a duplicate thereof with the Secretary of the State of Wisconsin, and the person or persons or corporation named in such statement or

certificate, or in such Judge's appointment, shall thereupon be and become the Trustee for the time being of these presents, as fully to all intents and purposes as if this present mortgage had, in the first place, been executed and delivered to such person, persons or corporation.

The parties hereto shall in any and every such case make and execute upon request any such assignments, grants, conveyances, releases, instruments and assurances as may be legally necessary or advisable for the more fully vesting in and confirming to such new Trustee or Trustees such estate, rights, powers and duties.

The word "Trustee," when used in these presents, shall and for all purposes be taken, held and construed to mean, include and describe the persons or persons or corporation who or which shall for the time being, and from time to time, be charged with the trusts hereby created and herein expressed.

ARTICLE FIFTEENTH.

The several covenants, promises and agreements by the Railroad Company herein contained shall be binding as well upon its respective successors and assigns.

For the debt and bonds secured hereby, the Railroad Company is liable *in personam*, and any deficiency, after exhausting the property and premises hereby mortgaged, may be enforced against the Railroad Company, but not against its officers, directors or stockholders individually, and it is expressly agreed between the parties hereto, and by every person who shall take or hold any bond or bonds, coupon or coupons issued hereunder, that the existing and all future officers, directors and stockholders of the Railroad Company shall not be individually liable to any extent or for any purpose with respect to said bonds or coupons or any of them.

ARTICLE SIXTEENTH.

It shall be no part of the duty of the Trustee to see to the recording or filing of this Mortgage, as a Mortgage of real estate or as a Chattel Mortgage, or to procure any further, other or additional instrument of further assurance, or to take any action, or to do any other act for the protecting, perpetuating or keeping good the lien of this Mortgage upon the whole or any portion of the property hereby mortgaged, or to give notice of the existence of the lien hereof, or to extend or supplement the lien sought to be created hereby, save in its discretion, nor shall it be any part of the duty of the Trustee hereunder to effect insurance against fire or other damage to any portion of the property hereby mortgaged, or to renew any policy of fire or other insurance, or to keep itself informed or advised as to the existence or payment of any taxes or assessments that may be imposed upon the property, real or personal, affected by this Mortgage, or to require the payment of such taxes or assessments; but the Railroad Company, its successors or assigns, shall and will, from time to time, do all things needful in that behalf. The Trustee may in its discretion at any time or from time to time and at the expense of the Railroad Company, do any or all of the matters and things in this Article set forth, or require the same to be done.

ARTICLE SEVENTEENTH.

The Trustee hereby accept the trusts and assumes the duties herein created and imposed, upon and only upon, the following terms and conditions, to wit:

(1.) The recitals of fact herein contained, and contained in the bonds hereby secured, shall be taken as statements by the Railroad Company and shall not be construed as made by the Trustee.

make such sale at the time and place to which the same may be adjourned: *Provided, however*, that no such sale shall be made by the Trustee except upon demand of the holders of not less than twenty-five per centum of the said bonds then outstanding; and, even in the event of such demand, no sale shall take place if the holders of the majority of all the bonds then outstanding shall file with the Trustee a written instrument, executed as in Article Fifth prescribed, objecting to such sale. Upon such sale and in accordance with the terms and conditions thereof the Trustee shall, by proper assurances in the law, and as the attorney in fact irrevocable of the Railroad Company (for that purpose by these presents duly constituted and empowered), or otherwise, grant, sell, convey, assign, transfer and deliver to the purchaser or purchasers possession of all and singular the real, personal or mixed property with the appurtenances so sold, freed and discharged from the trusts hereby created, and shall make, execute and deliver any and all deeds and other instruments necessary and proper to convey, transfer to and vest in such purchaser or purchasers, his or their successors, heirs, executors, administrators or assigns, all the estate, right, title and interest of the Railroad Company of, in and to all premises and property so sold; which sale or sales and the conveyances and other instruments of transfer executed in fulfillment thereof shall be valid and effectual in the law to vest in such purchaser or purchasers, grantee or grantees, assignee or assignees, the title to and ownership of the same, and shall forever bar and foreclose the Railroad Company and its successors and assigns from all right, claim or equity of redemption in, to or in respect of the same, and shall be a perpetual bar both in law and equity against the Railroad Company and its successors, and all persons claiming by, through or under it or them in any manner whatsoever.

The Railroad Company shall and will, if and when thereunto requested, thereafter make, execute and deliver such deeds and other instruments as shall be reasonably

advised or required to confirm and assure such title and ownership in and to such purchaser or purchasers so as to fully effect the sale and conveyance hereby authorized.

The receipt of the Trustee shall be a sufficient discharge to the purchaser or purchasers of all the property so sold or any part thereof, for his or their purchase money, and the purchaser shall not be bound to see to the application of the purchase money.

Any holder or holders of any of the said bonds may become such purchaser or purchasers for his or their own account.

ARTICLE EIGHTH.

The foregoing powers of entry and sale are respectively remedies cumulative to all other remedies, suits, actions and proceedings at law or equity for the protection and security of the several owners of the bonds entitled to the security of and under this Mortgage. And the Trustee, in case of any continuous or other default, as hereinbefore mentioned, or upon or after any other act done or omitted to the injury of the bondholders intended to be secured hereby, or which impairs or jeopardizes the security expressed and intended to be afforded by these presents, may, in its discretion (unless such default, act or omission be waived in writing as aforesaid, by the holders of a *majority* in amount of said outstanding bonds) or upon the request in writing as aforesaid made as in Article Fifth provided, of the holders of twenty-five per centum in amount of said bonds then outstanding hereunder, and upon being indemnified to its satisfaction, shall pursue any other remedy and institute any other suit, action or proceeding to effect the protection and security so hereby sought to be afforded.

The action of the Trustee herein, in regard to the enforcing to any extent the lien created by this

Mortgage, either by taking possession, or by sale at auction, or by lease, or by resort to judicial proceedings, or by any means authorized or contemplated herein, shall be at all times subject to the control of a majority in amount of the holders of said bonds, their wishes being expressed by an instrument in writing executed as in Article Fifth prescribed; but this mortgage shall not be foreclosed, nor shall the property herein mortgaged nor any of the same, be sold, except upon a default in the payment of the principal or interest upon the said bonds, or upon a default or breach in the performance or observance of any other condition, obligation or requirement by the said bonds or by this Mortgage imposed on the Railroad Company, which default or breach shall have continued for more than six months.

In the event of default by the Railroad Company in the payment of principal or interest of said bonds, or otherwise, a majority in interest of the bondholders for the time being shall have the right to provide and agree upon a Plan or Scheme of Re-organization, which plan or scheme, when agreed upon in writing and signified to the Trustee, shall govern its action thereafter, and shall be in all respects binding and obligatory upon all the holders of said bonds.

ARTICLE NINTH.

Upon the filing of a bill in equity or other commencement of foreclosure or other appropriate proceedings, in any proper Court, to enforce the rights of the Trustee and of the bondholders under this Mortgage, the Trustee shall be entitled to the appointment by such Court of a Receiver or Receivers of the railroads and other property and premises hereby mortgaged, and of the earnings, income, rents, revenues, issues and profits thereof, pending such proceedings, with such powers as the Court making such appointment may confer.

ARTICLE TENTH.

In case of any sale of the mortgaged property under the provisions of this Mortgage, the Trustee shall apply the proceeds thereof as follows, that is to say:

- 1st. To the payment of the costs and expenses of such sale, including reasonable compensation of the Trustee, its agents, attorneys and counsel, and all expenses, liabilities and advances whatsoever, made and incurred by the Trustee in the execution of the trust hereby created.
- 2d. To the payment of the whole amount of the principal and interest which shall then be owing and unpaid upon the said bonds and coupons and every one of them, whether the principal by the tenor of the said bonds be then due or yet to become due, and in case of the insufficiency of such proceeds to pay in full the whole amount of principal and interest owing and unpaid upon the said bonds and coupons, the same shall be paid ratably, in proportion to the amount owing and unpaid upon them respectively, without preference of any bond or coupon over any of the others; subject, however, to the provisions of Article Third relating to detached coupons.
- 3d. The surplus, if any, shall be paid over on demand to the Railroad Company, or otherwise as directed by any court of competent jurisdiction in the premises.

ARTICLE ELEVENTH.

Upon any sale of the property and premises hereby mortgaged, or of any part thereof, the purchaser in making payments therefor shall be entitled, after paying in cash so much as shall be necessary to cover the costs and

expenses of the sale and of the proceedings incident thereto, and all other charges that may be required, by decree or otherwise, to be paid in cash, including reasonable compensation to the Trustee and its counsel, agents and servants, to appropriate and use toward the payment of the remainder of the purchase price, any of the bonds or coupons issued hereunder, and entitled to participate in the proceeds of such sale, reckoning each bond or coupon so appropriated and used at such sum as shall be payable thereon out of the net proceeds of the sale; and proper receipts shall thereupon be given to the holders of such bonds or coupons for the amount so payable thereon, and the bonds or coupons, if the net proceeds of the sale shall be sufficient to pay them in full, shall be delivered up to the Trustee or other person making sale under decree of the Court or otherwise hereunder, for cancellation; or if the proceeds of the sale shall not be sufficient to pay such bonds or coupons in full, then proper endorsement shall be made thereon of the amount so paid on account thereof, and they shall then be returned to the holders.

ARTICLE TWELFTH.

The persons in whose names bonds are registered shall be taken by the Trustee to be the holders and owners of such bonds for the purpose of executing any requests required to be executed by bondholders and for all other purposes of this Mortgage; and the Trustee may require the ownership of bonds issued under this Mortgage and not registered to be proven by the production of the bonds, or by such other evidence as the Trustee may deem sufficient.

The Trustee shall not be bound to recognize any person as a bondholder until his bonds are submitted to the Trustee for inspection, if required, and his title satisfactorily established, if disputed.

The Railroad Company covenants and agrees that it shall and will at all times hereafter keep open an office or agency in the Borough of Manhattan, City of New York, for the payment of the principal and interest of and upon the bonds hereby secured and at any time outstanding, as the same shall become payable, and for the transfer and registration of the said bonds, and that any and every default in the due performance of this covenant shall be deemed and taken to be a waiver of presentment and a demand of payment of all and every of the bonds and coupons aforesaid which may become payable during the continuance of said default.

If the Railroad Company shall be satisfied that any bond issued and certified hereunder has been lost or destroyed, the Railroad Company, upon such terms and conditions as it may deem advisable and to be prescribed by resolution of its Board of Directors, may execute and issue in lieu of such lost or destroyed bond, a new bond of like date, tenor and amount, and bearing the same serial number, but conspicuously and indelibly marked or stamped with the word "*substitute*" across the face of said bond and of the coupons attached thereto, which bond, when so issued, shall be certified by the Trustee without any liability on its part, to be one of the series of bonds described herein, and the sole and conclusive evidence to the Trustee of its duty to certify said new bond shall be a certified copy of the resolution of the Board of Directors of the Railroad Company authorizing the issue of, and requesting the Trustee to certify, said new or "*substitute*" bond.

ARTICLE THIRTEENTH.

It is expressly agreed that the Trustee may from time to time, as it shall deem it necessary and proper, apply (at the expense of the trust estate) to any court of competent jurisdiction for aid or instructions in any matter con-

nected with the interpretation of this Mortgage or the execution of this trust.

And it is further agreed that the Trustee shall have full power and authority, *inter alia*, and generally at the expense of the trust estate, to do any act or thing in respect of the property and premises hereby mortgaged as fully and completely as if it were the absolute owner thereof, and in case of a sale of any of the property and premises hereby mortgaged, after default, to buy in, for the benefit of the holders of the bonds hereby secured and then outstanding, in proportion to their respective interests, the said railroad properties and premises, or any part thereof, which may be sold under the provisions hereof, at a price not exceeding the principal and accrued interest of said bonds, and any sums paid out by the Trustee, and herein prescribed to be collectible out of the trust estate.

ARTICLE FOURTEENTH.

The Trustee may resign the trust hereby created, and become and remain wholly discharged from all further duty or responsibility hereunder upon giving sixty days' notice in writing to the Railroad Company, or such shorter notice as the Railroad Company may accept as sufficient. The Trustee may be removed from office as such Trustee by the vote of a majority in interest of the holders of the said bonds then outstanding, the said vote being had at a meeting of the said bondholders duly called, as hereinbelow provided, for such purpose, and being attested by an instrument in writing executed in the manner hereinbelow provided.

In the event of the refusal, failure, neglect or incapacity of the Trustee herein named, or of its successor or successors in this trust, to accept or execute the same, or in the event of the resignation or removal of the Trustee, then it shall be the duty of the Railroad Company to give

notice to the bondholders by advertisement for four successive weeks in one or more of the daily newspapers in general circulation, published, respectively, in the said cities of St. Paul and New York, of the time and place of meeting for the election of a Trustee, at which meeting a majority in interest of the bonds, there represented, may, with the concurrence of the Railroad Company in the choice of said majority, elect or appoint a Trustee; and in the event that the Railroad Company and said majority cannot agree upon a Trustee, then upon application of any bondholder under these presents, and notice to the Railroad Company, or upon application of the Railroad Company, a Trustee may be appointed by a Judge of the Circuit Court of the United States for the District of Minnesota. Upon the election or appointment of any such Trustee at any meeting as aforesaid, a statement or certificate of such election or appointment shall be made, showing the amount of said bonds represented at said meeting and the amount thereof voting for the Trustee so elected or appointed, which statement or certificate shall be signed by the President or Chairman and Secretary of said meeting and by the proper officers of the Railroad Company, and said statement or certificate shall have attached thereto a copy of said printed notice, with proof of publication thereof. If an appointment of Trustee shall be made by a Judge of said Circuit Court as hereinbefore provided, the party applying for such appointment shall procure the appointment to be signed by said Judge making the same, and attested by the Clerk of said Court, and shall have attached thereto a copy of the application for such appointment: The said statement or certificate of election or appointment at such bondholders' meeting, or the appointment of the Trustee signed by such Judge, shall be filed with the Secretary of the State of Minnesota and a duplicate thereof with the Secretary of the State of Wisconsin, and the person or persons or corporation named in such statement or

certificate, or in such Judge's appointment, shall thereupon be and become the Trustee for the time being of these presents, as fully to all intents and purposes as if this present mortgage had, in the first place, been executed and delivered to such person, persons or corporation.

The parties hereto shall in any and every such case make and execute upon request any such assignments, grants, conveyances, releases, instruments and assurances as may be legally necessary or advisable for the more fully vesting in and confirming to such new Trustee or Trustees such estate, rights, powers and duties.

The word "Trustee," when used in these presents, shall and for all purposes be taken, held and construed to mean, include and describe the persons or persons or corporation who or which shall for the time being, and from time to time, be charged with the trusts hereby created and herein expressed.

ARTICLE FIFTEENTH.

The several covenants, promises and agreements by the Railroad Company herein contained shall be binding as well upon its respective successors and assigns.

For the debt and bonds secured hereby, the Railroad Company is liable *in personam*, and any deficiency, after exhausting the property and premises hereby mortgaged, may be enforced against the Railroad Company, but not against its officers, directors or stockholders individually, and it is expressly agreed between the parties hereto, and by every person who shall take or hold any bond or bonds, coupon or coupons issued hereunder, that the existing and all future officers, directors and stockholders of the Railroad Company shall not be individually liable to any extent or for any purpose with respect to said bonds or coupons or any of them.

ARTICLE SIXTEENTH.

It shall be no part of the duty of the Trustee to see to the recording or filing of this Mortgage, as a Mortgage of real estate or as a Chattel Mortgage, or to procure any further, other or additional instrument of further assurance, or to take any action, or to do any other act for the protecting, perpetuating or keeping good the lien of this Mortgage upon the whole or any portion of the property hereby mortgaged, or to give notice of the existence of the lien hereof, or to extend or supplement the lien sought to be created hereby, save in its discretion, nor shall it be any part of the duty of the Trustee hereunder to effect insurance against fire or other damage to any portion of the property hereby mortgaged, or to renew any policy of fire or other insurance, or to keep itself informed or advised as to the existence or payment of any taxes or assessments that may be imposed upon the property, real or personal, affected by this Mortgage, or to require the payment of such taxes or assessments; but the Railroad Company, its successors or assigns, shall and will, from time to time, do all things needful in that behalf. The Trustee may in its discretion at any time or from time to time and at the expense of the Railroad Company, do any or all of the matters and things in this Article set forth, or require the same to be done.

ARTICLE SEVENTEENTH.

The Trustee hereby accept the trusts and assumes the duties herein created and imposed, upon and only upon, the following terms and conditions, to wit:

(1.) The recitals of fact herein contained, and contained in the bonds hereby secured, shall be taken as statements by the Railroad Company and shall not be construed as made by the Trustee.

(2.) The Trustee may select and employ, in and about said trusts and duties, suitable agents and attorneys, whose reasonable compensation shall be paid to the Trustee by the Railroad Company, or, in default of such payment, shall be a charge upon the hereby mortgaged property and the proceeds thereof, paramount to said bonds; and the Trustee shall not be liable for any neglect, omission or other wrongdoing of any of such agents or attorneys, if reasonable care has been exercised in their selection; nor shall it be otherwise answerable except for its own wilful negligence or fault.

(3.) The Trustee shall have a first lien upon the mortgaged premises and fund for its reasonable expenses, counsel fees and compensation incurred in the performance of the said trust powers and duties.

(4.) The Trustee shall be under no obligation or duty to perform any act hereunder for the purpose of enforcing this trust which involves expense or liability, immediate or contingent; or to defend any suit in respect hereof unless fully indemnified to its satisfaction.

(5.) The exclusive right of action hereunder shall be vested in the Trustee until the refusal of the Trustee so to act, and no bondholder shall have a right to enforce these presents until after a demand upon the Trustee, accompanied by a tender of indemnity satisfactory to it as aforesaid, and a refusal by the Trustee to act in accordance with said demand.

IN WITNESS WHEREOF, the SAINT PAUL AND DULUTH RAILROAD COMPANY, the party hereto of the first part, has caused these presents to be subscribed in its corporate name, by its President, and its corporate seal to be hereto affixed and attested by its Assistant Secretary, and said GUARANTY TRUST COMPANY OF NEW YORK, the party hereto of the second part, has likewise caused these presents

to be subscribed by its 2d Vice-President, and its corporate seal to be hereunto affixed and attested by its Treasurer, all on the day and year first above written.

ST. PAUL AND DULUTH RAILROAD COMPANY,
By R. SOMERS HAYES,
President.

(Corporate Seal
St. P. & D. R. Co.)

Attest:

F. S. ROLLINS,
Assistant Secretary.

Sealed and delivered as to Saint
Paul and Duluth Railroad
Company in the presence of
J. SANFORD BARNES, JR.
WM. FINKENAUER.

GUARANTY TRUST COMPANY OF NEW YORK,
By GEO. R. TURNBULL,
2nd Vice-President.

(Corporate Seal
G. T. Co. of N. Y.)

Attest:

H. A. MURRAY,
Treasurer.

Sealed and delivered as to Guar-
anty Trust Company of New
York in the presence of
W. J. B. MILLS.
WM. FINKENAUER.

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

On this 19th day of August, 1898, before me appeared R. SOMERS HAYES, to me personally known, who, being by me duly sworn, did depose and say that he resided in Borough of Manhattan, New York, N. Y.; that he is the President of the SAINT PAUL AND DULUTH RAILROAD COMPANY, the corporation described in and which executed the above instrument; that he knew the seal of said corporation; that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that it was so affixed by order of the Board of Directors of said corporation and that he signed his name thereto by like order in behalf of said corporation; and said R. Somers Hayes acknowledged said instrument to be the free act and deed of said corporation.

WM. FINKENAUER,
Notary Public No. 84,
New York County.

(Notarial Seal.)

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

On this 19th day of August, 1898, before me appeared GEORGE R. TURNBULL, to me personally known, who, being by me duly sworn, did depose and say that he resided in Borough of Brooklyn, City of New York, N. Y.; that he is the 2nd Vice-President of GUARANTY TRUST COMPANY OF NEW YORK, the corporation described in and which executed the above instrument; that he knew the seal of said corporation; that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order in behalf of said corporation, and said George R. Turnbull acknowledged said instrument to be the free act and deed of said corporation.

WM. FINKENAUER,
Notary Public No. 84,
New York County.

(Notarial Seal.)

(U. S. Revenue Stamps \$2,500.00 duly cancelled.)