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BURLINGTON NORTHERN INC. STATE COMMERCE COMMISSION

EQUIPMENT TRUST OF 1971

Series 3

EQUIPMENT TRUST AGREEMENT

Dated as of December 1, 1971

by and between

FIRST NATIONAL CITY BANK,
Trustee

and

BURLINGTON NORTHERN INC.

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EQUIPMENT TRUST AGREEMENT dated as of December 1, 1971, by and between **FIRST NATIONAL CITY BANK**, a national banking association incorporated and existing under the laws of the United States of America and having its principal Corporate Trust Office at 111 Wall Street, New York, New York 10015, as Trustee (hereinafter called the Trustee), and **BURLINGTON NORTHERN INC.**, a corporation duly organized and existing under the laws of the State of Delaware (hereinafter called the Company).

WHEREAS, the Company has agreed to cause to be sold, transferred and delivered to the Trustee the railroad equipment described herein; and

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

WHEREAS, Burlington Northern Inc. Equipment Trust Certificates of 1971, Series 3 (hereinafter called Trust Certificates), are to be issued and sold in an aggregate principal amount not exceeding \$50,000,000, and the net proceeds of such sale together with such other cash, if any, as may be required to be deposited by the Company as hereinafter provided is to constitute a fund equal to the aggregate principal amount of Trust Certificates so issued and sold, to be known as **BURLINGTON NORTHERN INC. EQUIPMENT TRUST** of 1971, Series 3, to be applied by the Trustee from time to time in part payment of the Cost of the Trust Equipment, the remainder of the Cost thereof to be paid out of advance rentals to be paid by the Company as provided herein; and

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

[FORM OF SERIAL TRUST CERTIFICATE]

No.

\$

BURLINGTON NORTHERN INC.

% SERIAL EQUIPMENT TRUST CERTIFICATE OF 1971, SERIES 3
DUE DECEMBER 1, 197

Total Authorized Issue \$50,000,000

FIRST NATIONAL CITY BANK,
TRUSTEE

FIRST NATIONAL CITY BANK, a national banking association incorporated and existing under the laws of the United States of America, as Trustee (hereinafter called the Trustee) under an Equipment Trust Agreement (hereinafter called the Agreement) dated as of December 1, 1971, by and between the Trustee and BURLINGTON NORTHERN INC., a Delaware corporation (hereinafter called the Company), hereby certifies that

or registered assigns is entitled to an interest of Dollars
in Burlington Northern Inc. Equipment Trust of 1971, Series 3,
payable December 1, 197 , upon surrender of this Certificate to
the Trustee at the principal Corporate Trust Office of the Trustee,
in the Borough of Manhattan, City and State of New York, and to
dividends thereon from the date hereof until the principal amount
represented by this Certificate shall have become due, payable
on June 1 and December 1 in each year, beginning June 1,
1972, at the rate of % per annum, with interest on any overdue
principal and dividends, to the extent legally enforceable, at the

rate of 7.4% per annum; principal and dividends being payable to the registered holder hereof at said office of the Trustee in such coin or currency of the United States of America as, at the time of payment, shall be legal tender for the payment of public and private debts, but only from and out of rentals or other moneys received by the Trustee and applicable to such payment under the provisions of the Agreement.

This Certificate is one of an authorized issue of Trust Certificates (hereinafter called Trust Certificates) in an aggregate principal amount not exceeding \$50,000,000 consisting of not to exceed \$16,000,000 aggregate principal amount (hereinafter called Serial Certificates) which will mature serially in the principal amount of \$3,200,000 on December 1 of each of the years 1972 to 1976, both inclusive, and not to exceed \$34,000,000 aggregate principal amount which will mature on December 1, 1986 (unless theretofore called for sinking fund redemption), all issued or to be issued under the Agreement, under which certain railroad equipment leased to the Company (or cash or obligations defined in the Agreement as "Investment Securities" in lieu thereof, as provided in the Agreement) is held by the Trustee in trust for the equal and ratable benefit of the registered holders of the Trust Certificates issued thereunder. Trust Certificates of different maturities bear different dividend rates. Reference is made to the Agreement (a copy of which is on file with the Trustee at its said office) for a more complete statement of the terms and provisions thereof, to all of which the registered holder hereof, by accepting this Certificate, assents. This Certificate is one of the Serial Certificates.

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

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

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

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

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

Dated as of

FIRST NATIONAL CITY BANK,
Trustee,

By
Attest: *Trust Officer*

.....
Assistant Cashier

.....
Authorized Officer

[FORM OF SINKING FUND TRUST CERTIFICATE]

No.

\$

BURLINGTON NORTHERN INC.

7³/₈% SINKING FUND EQUIPMENT TRUST CERTIFICATE
OF 1971, SERIES 3

DUE DECEMBER 1, 1986

Total Authorized Issue \$50,000,000

FIRST NATIONAL CITY BANK,
TRUSTEE

FIRST NATIONAL CITY BANK, a national banking association incorporated and existing under the laws of the United States of America, as Trustee (hereinafter called the Trustee) under an Equipment Trust Agreement (hereinafter called the Agreement) dated as of December 1, 1971, by and between the Trustee and BURLINGTON NORTHERN INC., a Delaware corporation (hereinafter called the Company), hereby certifies that

or registered assigns is entitled to an interest of

Dollars in Burlington Northern Inc. Equipment Trust of 1971, Series 3, payable December 1, 1986, upon surrender of this Certificate to the Trustee at the principal Corporate Trust Office of the Trustee, in the Borough of Manhattan, City and State of New York, and to dividends thereon from the date hereof until the principal amount represented by this Certificate shall have become due, payable on June 1 and December 1 in each year, beginning June 1, 1972, at the rate of 7³/₈% per annum, with interest on any overdue principal and dividends, to the extent legally enforceable, at the

rate of 7.4% per annum; principal and dividends being payable to the registered holder hereof at said office of the Trustee in such coin or currency of the United States of America as, at the time of payment, shall be legal tender for the payment of public and private debts, but only from and out of rentals or other moneys received by the Trustee and applicable to such payment under the provisions of the Agreement.

This Certificate is one of an authorized issue of Trust Certificates (hereinafter called Trust Certificates) in an aggregate principal amount not exceeding \$50,000,000 consisting of not to exceed \$16,000,000 aggregate principal amount which will mature serially in the principal amount of \$3,200,000 on December 1 of each of the years 1972 to 1976, both inclusive, and not to exceed \$34,000,000 aggregate principal amount (hereinafter called Sinking Fund Certificates) which will mature on December 1, 1986 (unless theretofore called for sinking fund redemption), all issued or to be issued under the Agreement, under which certain railroad equipment leased to the Company (or cash or obligations defined in the Agreement as "Investment Securities" in lieu thereof, as provided in the Agreement) is held by the Trustee in trust for the equal and ratable benefit of the registered holders of the Trust Certificates issued thereunder. Trust Certificates of different maturities bear different dividend rates. Reference is made to the Agreement (a copy of which is on file with the Trustee at its said office) for a more complete statement of the terms and provisions thereof, to all of which the registered holder hereof, by accepting this Certificate, assents. This Certificate is one of the Sinking Fund Certificates.

As a sinking fund for the Sinking Fund Certificates, the Agreement provides for the payment by the Company to the Trustee, on or before the business day next preceding December 1 in each year, commencing December 1, 1977, and continuing to and

including December 1, 1985, of additional rental in an amount sufficient to redeem \$3,400,000 aggregate principal amount of the Sinking Fund Certificates. As more fully provided in the Agreement, the Sinking Fund Certificates are subject to redemption through the application of such additional rental on December 1, 1977, and on each December 1 thereafter to and including December 1, 1985, on not less than 30 nor more than 60 days' prior notice given as provided in the Agreement, at 100% of the principal amount thereof, together with accrued and unpaid dividends to the date fixed for redemption. The Agreement further provides that the Company may, at its option, credit against such rental payment Sinking Fund Certificates not theretofore credited or redeemed, such credit to be in an amount equal to the redemption price (including accrued dividends) of such Sinking Fund Certificates. Any holder of \$100,000 or more in aggregate principal amount of Sinking Fund Certificates (which amount shall be reduced by 1/10th after each redemption date) may elect, by written notice to the Trustee given as provided in the Agreement, to receive his *pro rata* share of each cash sinking fund payment determined as provided in the Agreement.

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

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

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

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

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

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

Dated as of

FIRST NATIONAL CITY BANK,
Trustee,

By

Attest: *Trust Officer*

.....
Assistant Cashier

.....
Authorized Officer

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

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

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

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

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

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

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

ARTICLE THREE

REDEMPTION OF SINKING FUND CERTIFICATES

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

Section 5.04(B)(3) on December 1, 1977, and on each December 1 thereafter to and including December 1, 1985, at a redemption price of 100% of the principal amount thereof, together with accrued and unpaid dividends to the date fixed for redemption.

SECTION 3.02. *Selection of Sinking Fund Certificates for Redemption; Notice of Redemption.* On or before October 25, 1977, and on or before October 25 in each year thereafter to and including October 25, 1985, the Trustee shall select for redemption, in such manner as in its discretion it shall deem appropriate and fair (*provided, however*, that portions of Sinking Fund Certificates shall be selected only in multiples of \$1,000), a principal amount of Sinking Fund Certificates so as to exhaust the amount of rental to be paid by the Company to it in cash pursuant to Section 5.04(B)(4) on or before the Business Day next preceding the next succeeding December 1, subject to the provisions of the next succeeding sentence and the sentence immediately following Section 5.04(B)(5). Any holder of Sinking Fund Certificates in whose name is registered an aggregate principal amount of Sinking Fund Certificates at least equal to the sum obtained by multiplying \$100,000 by a fraction, of which the numerator is the number of redemption dates (including for this purpose the final maturity date) remaining to and including December 1, 1986, and the denominator is 10, may, by written notice to the Trustee delivered at least 60 days prior to a redemption date, direct the Trustee to select for redemption on each redemption date thereafter occurring such principal amount of Sinking Fund Certificates registered in the name of such holder having an aggregate redemption price which bears the same proportion to the aggregate redemption price of all the Sinking Fund Certificates to be called for redemption on such redemption date as (a) the aggregate principal amount of Sinking Fund Certificates registered in the name of such holder on a date selected by the Trustee not more than 15 days prior to the selection by the Trustee of Sinking Fund Certificates for redemption on such redemption date pursuant to the immediately preceding sentence

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

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

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

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

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

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

ARTICLE FOUR

ACQUISITION OF TRUST EQUIPMENT BY TRUSTEE; DEPOSITED CASH

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

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

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

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

SECTION 4.03. *Payment of Deficiency.* The Company covenants that, contemporaneously with any payment by the Trustee pursuant to Section 4.02, it will pay to the Trustee the advance rental provided in Section 5.04(A)(2), and thereupon the Trustee shall, upon Request, pay to the manufacturers or owners of the delivered Trust Equipment, by the use of such advance rental, the portion of the Cost of the delivered Trust Equipment not paid out of Deposited Cash as provided for in Section 4.02; the intention being that the Company shall ultimately pay not less than 20% of the Cost of all the Trust Equipment delivered to the Trustee pursuant to this Article Four, and the Trustee and the Company shall at any time, if occasion arises, adjust their accounts and payments to the end that the Trustee shall pay with Deposited Cash not more than 80% of such Cost and the Company shall pay the remainder, to be not less than 20% of such Cost.

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

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

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

(c) a bill or bills of sale of such Trust Equipment from the manufacturers or owners thereof to the Trustee, which bill or bills of sale shall contain a warranty or guaranty to the Trustee that the title to the Trust Equipment described therein is free from all liens and encumbrances (including any leasehold interest therein) other than the rights of the Company hereunder; and

(d) an Opinion of Counsel to the effect that (i) such bill or bills of sale are valid and effective, either alone or in connection with any other instrument referred to in and accompanying such opinion, to vest in the Trustee title to such Trust Equipment free from all liens and encumbrances (including any leasehold interest therein) other than the rights of the Company hereunder, (ii) in the case of any Trust Equipment not specifically described herein, a proper supplement hereto in respect of such Trust Equipment has been duly executed by the Trustee and the Company and (iii) in the opinion of such counsel, all conditions precedent provided for in this Agreement, relating to the payment in question, have been complied with.

Any Officers' Certificate delivered pursuant to this Section 4.04 may state that the Cost of the Trust Equipment therein referred to is tentatively determined, subject to final adjustment to

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

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

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

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

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

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

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

ARTICLE THREE

REDEMPTION OF SINKING FUND CERTIFICATES

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

Section 5.04(B)(3) on December 1, 1977, and on each December 1 thereafter to and including December 1, 1985, at a redemption price of 100% of the principal amount thereof, together with accrued and unpaid dividends to the date fixed for redemption.

SECTION 3.02. *Selection of Sinking Fund Certificates for Redemption; Notice of Redemption.* On or before October 25, 1977, and on or before October 25 in each year thereafter to and including October 25, 1985, the Trustee shall select for redemption, in such manner as in its discretion it shall deem appropriate and fair (*provided, however*, that portions of Sinking Fund Certificates shall be selected only in multiples of \$1,000), a principal amount of Sinking Fund Certificates so as to exhaust the amount of rental to be paid by the Company to it in cash pursuant to Section 5.04(B)(4) on or before the Business Day next preceding the next succeeding December 1, subject to the provisions of the next succeeding sentence and the sentence immediately following Section 5.04(B)(5). Any holder of Sinking Fund Certificates in whose name is registered an aggregate principal amount of Sinking Fund Certificates at least equal to the sum obtained by multiplying \$100,000 by a fraction, of which the numerator is the number of redemption dates (including for this purpose the final maturity date) remaining to and including December 1, 1986, and the denominator is 10, may, by written notice to the Trustee delivered at least 60 days prior to a redemption date, direct the Trustee to select for redemption on each redemption date thereafter occurring such principal amount of Sinking Fund Certificates registered in the name of such holder having an aggregate redemption price which bears the same proportion to the aggregate redemption price of all the Sinking Fund Certificates to be called for redemption on such redemption date as (a) the aggregate principal amount of Sinking Fund Certificates registered in the name of such holder on a date selected by the Trustee not more than 15 days prior to the selection by the Trustee of Sinking Fund Certificates for redemption on such redemption date pursuant to the immediately preceding sentence

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

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

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

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

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

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

ARTICLE FOUR

ACQUISITION OF TRUST EQUIPMENT BY TRUSTEE; DEPOSITED CASH

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

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

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

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

SECTION 4.03. *Payment of Deficiency.* The Company covenants that, contemporaneously with any payment by the Trustee pursuant to Section 4.02, it will pay to the Trustee the advance rental provided in Section 5.04(A)(2), and thereupon the Trustee shall, upon Request, pay to the manufacturers or owners of the delivered Trust Equipment, by the use of such advance rental, the portion of the Cost of the delivered Trust Equipment not paid out of Deposited Cash as provided for in Section 4.02; the intention being that the Company shall ultimately pay not less than 20% of the Cost of all the Trust Equipment delivered to the Trustee pursuant to this Article Four, and the Trustee and the Company shall at any time, if occasion arises, adjust their accounts and payments to the end that the Trustee shall pay with Deposited Cash not more than 80% of such Cost and the Company shall pay the remainder, to be not less than 20% of such Cost.

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

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

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

(c) a bill or bills of sale of such Trust Equipment from the manufacturers or owners thereof to the Trustee, which bill or bills of sale shall contain a warranty or guaranty to the Trustee that the title to the Trust Equipment described therein is free from all liens and encumbrances (including any leasehold interest therein) other than the rights of the Company hereunder; and

(d) an Opinion of Counsel to the effect that (i) such bill or bills of sale are valid and effective, either alone or in connection with any other instrument referred to in and accompanying such opinion, to vest in the Trustee title to such Trust Equipment free from all liens and encumbrances (including any leasehold interest therein) other than the rights of the Company hereunder, (ii) in the case of any Trust Equipment not specifically described herein, a proper supplement hereto in respect of such Trust Equipment has been duly executed by the Trustee and the Company and (iii) in the opinion of such counsel, all conditions precedent provided for in this Agreement, relating to the payment in question, have been complied with.

Any Officers' Certificate delivered pursuant to this Section 4.04 may state that the Cost of the Trust Equipment therein referred to is tentatively determined, subject to final adjustment to

be evidenced in a final Officers' Certificate to be delivered to the Trustee.

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

ARTICLE FIVE

LEASE OF TRUST EQUIPMENT TO THE COMPANY

SECTION 5.01. *Lease of Trust Equipment.* The Trustee does hereby let and lease to the Company, for the term of 15 years from and after December 1, 1971, all of the Trust Equipment.

SECTION 5.02. *Equipment Automatically Subjected.* As and when any Equipment shall from time to time be delivered hereunder to the Trustee or its agent or agents, the same shall, *ipso facto* and without further instrument of lease or transfer, pass under and become subject to all the terms and provisions hereof.

SECTION 5.03. *Substituted Equipment Subject Hereto.* In the event that the Company shall, as provided in Section 4.01, 4.04 or 5.07, cause to be transferred to the Trustee other Equipment in addition to or in substitution for any of the Equipment herein specifically described or subjected hereto, such other Equipment shall be included as part of the Trust Equipment by supplement hereto

waiver shall extend to or affect any subsequent default or impair any right consequent thereon.

SECTION 6.05. *Obligations of Company Not Affected by Remedies.* No retaking of possession of the Trust Equipment by the Trustee, or any withdrawal, lease or sale thereof, nor any action or failure or omission to act against the Company or in respect of the Trust Equipment, on the part of the Trustee or on the part of the holder of any Trust Certificate, nor any delay or indulgence granted to the Company by the Trustee or by any such holder, shall affect the obligations of the Company hereunder or the obligations of the Company under the guaranty endorsed on the Trust Certificates. The Company hereby waives presentation and demand in respect of any of the Trust Certificates and waives notice of presentation, of demand and of any default in the payment of the principal of and dividends on the Trust Certificates.

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

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

SECTION 6.08. *Unconditional Right of Holders of Trust Certificates to Sue for Principal and Dividends.* Notwithstanding any other provision in this Agreement, the right of any holder of any

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

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

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

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

SECTION 6.11. *Remedies Cumulative.* The remedies in this Agreement provided in favor of the Trustee and the holders of the Trust Certificates, or any of them, shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in their favor existing at law or in equity.

ARTICLE SEVEN

ADDITIONAL COVENANTS AND AGREEMENTS BY THE COMPANY

SECTION 7.01. *Guaranty of Company.* The Company covenants, agrees and guarantees that the holder of each of the Trust Certificates shall receive the principal amount thereof, in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, when and as the same shall become due and payable, in accordance with the provisions thereof or of this Agreement (and, if not so paid, with interest thereon until paid at the rate of 7.4% per annum to the extent legally enforceable), and shall receive dividends thereon in like money at the rate specified therein, at the times and place and otherwise as expressed in the Trust Certificates (and, if not so paid, with interest thereon until paid at the rate of 7.4% per annum to the extent legally enforceable); and the Company further covenants and agrees to endorse upon each of the Trust Certificates, at or before the issuance and de-

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

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

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

and each supplement hereto, respectively, cause this Agreement or such supplement, as the case may be, to be duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and, within 21 days from the execution hereof and thereof, as the case may be, deposited with the Registrar General of Canada, and notice of such deposit to be forthwith thereafter given in the Canada Gazette, pursuant to Section 86 of the Railway Act of Canada. The Company will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register and record any and all further instruments, and file, register and record this Agreement and each supplement hereto in all other jurisdictions, required by law or reasonably requested by the Trustee for the purposes of proper protection of the title of the Trustee and the rights of the holders of the Trust Certificates and of fully carrying out and effectuating this Agreement and the intent hereof.

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

ARTICLE EIGHT

THE TRUSTEE

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

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

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

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

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

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

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

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

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

(d) no provision of this Agreement shall require the Trustee to expend or risk its own funds or otherwise incur personal liability in the performance of any of its duties or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

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

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

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

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

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

SECTION 8.04. *Application of Rentals; Responsibility of Trustee to Insure or Record.* The Trustee covenants and agrees to apply the rentals received by it under Section 5.04(B) when and as the same shall be received, and to the extent that such rentals shall be sufficient therefor, for the purposes specified in said Section 5.04(B).

Except as otherwise provided in Section 8.02, the Trustee shall not be required to undertake any act or duty in the way of

insuring, taking care of or taking possession of the Trust Equipment or to undertake any other act or duty under this Agreement until fully indemnified by the Company or by one or more of the holders of the Trust Certificates against all liability and expenses; and, except as aforesaid, the Trustee shall not be responsible for the filing or recording or refiling or rerecording of this Agreement or of any supplement hereto or statement of new numbers.

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

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

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

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

If the Trustee has no knowledge of the occurrence of an Event of Default specified in Section 6.01(a) and if the Company shall not have notified the Trustee of the occurrence of any other Event of Default or of the occurrence of any event which with notice or lapse of time or both would constitute an Event of Default which shall then be continuing, the Company shall be entitled to receive any interest allowed as provided in the first paragraph of this Section 8.05 and any interest (in excess of accrued interest paid from Deposited Cash or Replacement Funds at the time of purchase) or other profit which may be realized from any sale or redemption of Investment Securities.

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

Except as otherwise provided in Section 8.02, the Trustee may perform its powers and duties hereunder by or through such attorneys, agents and servants as it shall appoint, and shall be answerable for only its own acts, negligence and wilful defaults and not for the default or misconduct of any attorney, agent or servant appointed by it with reasonable care. The Trustee shall not be responsible in any way for the recitals herein contained, for the execution or validity of this Agreement or of the Trust Certificates (except for its own execution thereof) or for the guaranty by the Company.

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

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

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

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

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

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

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

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

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

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

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

SECTION 8.09. *Merger or Consolidation of Trustee.* Any corporation into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger or conversion or consolidation to which the Trustee shall be a party, or any corporation succeeding to the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder, provided such corporation shall be a bank or trust company organized under the laws of the United States of America or of the States of New York or Illinois having a combined capital and surplus of at least \$50,000,000, without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

ARTICLE NINE

CONCERNING THE HOLDERS OF TRUST CERTIFICATES

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

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

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

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

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

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

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

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

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

ARTICLE TEN

MISCELLANEOUS

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

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

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

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

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

SECTION 10.09. *Governing Law.* The provisions of this Agreement, and all the rights and obligations of the parties hereunder, shall be governed by the laws of the State of New York.

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

FIRST NATIONAL CITY BANK

By

[Handwritten Signature]
Trust Officer

[CORPORATE SEAL]

Attest:

[Handwritten Signature]
.....
Assistant Trust Officer

BURLINGTON NORTHERN INC.

By

[Handwritten Signature]
Vice President

[CORPORATE SEAL]

Attest:

[Handwritten Signature]
.....
Assistant Secretary

waiver shall extend to or affect any subsequent default or impair any right consequent thereon.

SECTION 6.05. *Obligations of Company Not Affected by Remedies.* No retaking of possession of the Trust Equipment by the Trustee, or any withdrawal, lease or sale thereof, nor any action or failure or omission to act against the Company or in respect of the Trust Equipment, on the part of the Trustee or on the part of the holder of any Trust Certificate, nor any delay or indulgence granted to the Company by the Trustee or by any such holder, shall affect the obligations of the Company hereunder or the obligations of the Company under the guaranty endorsed on the Trust Certificates. The Company hereby waives presentation and demand in respect of any of the Trust Certificates and waives notice of presentation, of demand and of any default in the payment of the principal of and dividends on the Trust Certificates.

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

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

SECTION 6.08. *Unconditional Right of Holders of Trust Certificates to Sue for Principal and Dividends.* Notwithstanding any other provision in this Agreement, the right of any holder of any

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

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

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

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

SECTION 6.11. *Remedies Cumulative.* The remedies in this Agreement provided in favor of the Trustee and the holders of the Trust Certificates, or any of them, shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in their favor existing at law or in equity.

ARTICLE SEVEN

ADDITIONAL COVENANTS AND AGREEMENTS BY THE COMPANY

SECTION 7.01. *Guaranty of Company.* The Company covenants, agrees and guarantees that the holder of each of the Trust Certificates shall receive the principal amount thereof, in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, when and as the same shall become due and payable, in accordance with the provisions thereof or of this Agreement (and, if not so paid, with interest thereon until paid at the rate of 7.4% per annum to the extent legally enforceable), and shall receive dividends thereon in like money at the rate specified therein, at the times and place and otherwise as expressed in the Trust Certificates (and, if not so paid, with interest thereon until paid at the rate of 7.4% per annum to the extent legally enforceable); and the Company further covenants and agrees to endorse upon each of the Trust Certificates, at or before the issuance and de-

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

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

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

and each supplement hereto, respectively, cause this Agreement or such supplement, as the case may be, to be duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and, within 21 days from the execution hereof and thereof, as the case may be, deposited with the Registrar General of Canada, and notice of such deposit to be forthwith thereafter given in the Canada Gazette, pursuant to Section 86 of the Railway Act of Canada. The Company will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register and record any and all further instruments, and file, register and record this Agreement and each supplement hereto in all other jurisdictions, required by law or reasonably requested by the Trustee for the purposes of proper protection of the title of the Trustee and the rights of the holders of the Trust Certificates and of fully carrying out and effectuating this Agreement and the intent hereof.

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

ARTICLE EIGHT

THE TRUSTEE

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

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

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

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

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

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

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

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

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

(d) no provision of this Agreement shall require the Trustee to expend or risk its own funds or otherwise incur personal liability in the performance of any of its duties or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

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

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

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

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

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

SECTION 8.04. *Application of Rentals; Responsibility of Trustee to Insure or Record.* The Trustee covenants and agrees to apply the rentals received by it under Section 5.04(B) when and as the same shall be received, and to the extent that such rentals shall be sufficient therefor, for the purposes specified in said Section 5.04(B).

Except as otherwise provided in Section 8.02, the Trustee shall not be required to undertake any act or duty in the way of

insuring, taking care of or taking possession of the Trust Equipment or to undertake any other act or duty under this Agreement until fully indemnified by the Company or by one or more of the holders of the Trust Certificates against all liability and expenses; and, except as aforesaid, the Trustee shall not be responsible for the filing or recording or refiling or rerecording of this Agreement or of any supplement hereto or statement of new numbers.

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

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

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

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

If the Trustee has no knowledge of the occurrence of an Event of Default specified in Section 6.01(a) and if the Company shall not have notified the Trustee of the occurrence of any other Event of Default or of the occurrence of any event which with notice or lapse of time or both would constitute an Event of Default which shall then be continuing, the Company shall be entitled to receive any interest allowed as provided in the first paragraph of this Section 8.05 and any interest (in excess of accrued interest paid from Deposited Cash or Replacement Funds at the time of purchase) or other profit which may be realized from any sale or redemption of Investment Securities.

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

Except as otherwise provided in Section 8.02, the Trustee may perform its powers and duties hereunder by or through such attorneys, agents and servants as it shall appoint, and shall be answerable for only its own acts, negligence and wilful defaults and not for the default or misconduct of any attorney, agent or servant appointed by it with reasonable care. The Trustee shall not be responsible in any way for the recitals herein contained, for the execution or validity of this Agreement or of the Trust Certificates (except for its own execution thereof) or for the guaranty by the Company.

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

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

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

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

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

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

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

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

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

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

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

SECTION 8.09. *Merger or Consolidation of Trustee.* Any corporation into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger or conversion or consolidation to which the Trustee shall be a party, or any corporation succeeding to the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder, provided such corporation shall be a bank or trust company organized under the laws of the United States of America or of the States of New York or Illinois having a combined capital and surplus of at least \$50,000,000, without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

ARTICLE NINE

CONCERNING THE HOLDERS OF TRUST CERTIFICATES

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

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

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

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

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

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

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

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

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

ARTICLE TEN

MISCELLANEOUS

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

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

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

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

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

SECTION 10.09. *Governing Law.* The provisions of this Agreement, and all the rights and obligations of the parties hereunder, shall be governed by the laws of the State of New York.

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

FIRST NATIONAL CITY BANK

By


Trust Officer

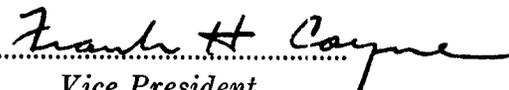
[CORPORATE SEAL]

Attest:


.....
Assistant Trust Officer

BURLINGTON NORTHERN INC.

By


Vice President

[CORPORATE SEAL]

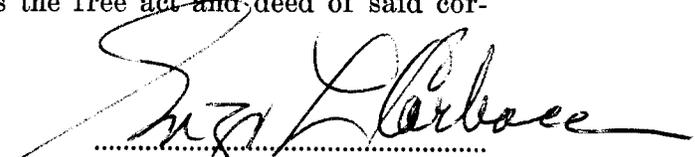
Attest:


.....
Assistant Secretary

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

On this 15th day of December, 1971, before me personally appeared Ralph 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 one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[NOTARIAL SEAL]

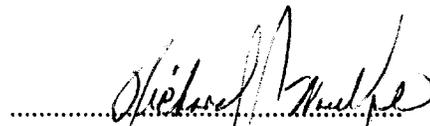

.....
Notary Public

ENZO L. CARBOCCI
Notary Public, State of New York
No. 43-500505
Qualified in Richmond County
Certificate filed in New York County
Certificate filed in Kings County
Certificate filed in Queens County
Certificate filed in Bronx County
Term Expires March 30, 1972

STATE OF MINNESOTA }
COUNTY OF RAMSEY } ss.:

On this 9th day of December, 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 one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[NOTARIAL SEAL]


.....
Notary Public

.....
Notary Public, State of Minnesota
My Commission Expires April 30, 1977.

SCHEDULE A

DESCRIPTION OF TRUST EQUIPMENT

<u>Number and Description</u>	<u>Cost of Acquisition Per Unit</u>	<u>Aggregate Cost of Acquisition</u>
500 Covered Hopper Cars, 100-ton capacity, numbered as follows: 458300 to 458799, both inclusive	\$ 15,430	\$ 7,715,000
200 High-Cube Box Cars, length 50', 100-ton capacity, numbered as follows: 244800 to 244999, both inclusive	20,000	4,000,000
400 Open Hopper Cars, 4000 cu. ft., 100-ton capacity, numbered as follows: 521600 to 521999, both inclusive	15,750	6,300,000
100 Box Cars with load dividers, length 50', 70-ton capacity, numbered as follows: 320600 to 320699, both inclusive	19,500	1,950,000
150 Wood Chip Cars, double end doors, 100-ton capacity, numbered as follows: 586850 to 586999, both inclusive	16,125	2,418,000
300 Gondolas, solid bottom, length 52', 70-ton capacity, numbered as follows: 565600 to 565899, both inclusive	14,100	4,230,000
50 Cabooses, extended cupola, numbered as follows: 10700 to 10749	30,200	1,510,000
25-SD-45 Diesel-electric Locomotives, numbered as follows: 6543 to 6567, both inclusive	323,675	8,091,875
25 SD-40 Diesel-electric Locomotives, numbered as follows: 6300 to 6324, both inclusive	304,910	7,622,750
15 SW-1000 Diesel-electric Switching Locomotives, numbered as follows: 375 to 389, both inclusive	178,455	2,676,825

<u>Number and Description</u>	<u>Cost of Acquisition Per Unit</u>	<u>Aggregate Cost of Acquisition</u>
20 U-30-C Diesel-electric Locomotives, numbered as follows: 5300 to 5319, both inclusive	\$ 332,232	\$ 6,644,640
15 Diesel-electric Freight Locomotives, 3000 H.P., numbered as follows: 6325 to 6339, both inclusive	305,000	4,575,000
15 Diesel-electric Freight Locomotives, 3000 H.P., numbered as follows: 5320 to 5334, both inclusive	332,232	4,983,480
		<u>\$62,717,570</u>