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September 29, 1999

**BY HAND DELIVERY**

Mr. Vernon A. Williams  
Secretary  
Surface Transportation Board  
1925 K Street, N.W.  
Room 711  
Washington, DC 20423

RECORDATION NO. 22438 FILED

SEP 29 '99 11-50AM

Dear Secretary Williams:

Enclosed are an original and two counterparts, properly executed and acknowledged, of the document described below, to be recorded pursuant to 49 U.S.C. § 11301 and the Board's regulations at 49 C.F.R. § 1177.

The document is a Secured Equipment Note Indenture (the "Indenture"), a primary document, dated as of September 24, 1999. The names and addresses of the parties to the Indenture are as follows:

**ISSUER**

Canadian Pacific Railway Company  
Suite 500  
401 9th Avenue, S.W.  
Calgary, Alberta T2P 4Z4

**TRUSTEE**

The Trust Company of Bank of Montreal  
24th Floor  
First Canadian Centre  
350 7th Avenue, S.W.  
Calgary, Alberta T2P 3N9

#125693

September 29, 1999

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A description of the equipment covered by the Indenture follows:

101 General Electric AC4400CW Diesel Electric Locomotives, owned and operated by Canadian Pacific Railway Company, and bearing road numbers CP 9583 through CP 9683, inclusive.

A brief summary of the document to appear in the index follows:

Secured Equipment Note Indenture dated as of September 24, 1999 between Canadian Pacific Railway Company, Suite 500, 401 9th Avenue, S.W., Calgary, Alberta T2P 4Z4, as Issuer, and The Trust Company of Bank of Montreal, 24th Floor, First Canadian Centre, 350 7th Avenue, S.W., Calgary, Alberta T2P 3N9, as Trustee, relating to 101 General Electric AC4400CW Diesel Electric Locomotives, owned and operated by Canadian Pacific Railway Company, and bearing road numbers CP 9583 through CP 9683, inclusive.

The recordation fee of \$26.00 prescribed by 49 C.F.R. § 1002.2 (f)(83) is also enclosed. Please return one file-stamped counterpart of the Indenture and one copy of this transmittal letter via our messenger. Thank you.

Sincerely,



Terence M. Hynes  
Attorney for Canadian Pacific  
Railway Company

Enclosures

RECORDATION NO. 22438 FILED

SEP 29 '99

11-50AM

**CANADIAN PACIFIC RAILWAY COMPANY**

- and -

**THE TRUST COMPANY OF BANK OF MONTREAL**

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**SECURED EQUIPMENT NOTE INDENTURE**

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**September 24, 1999**

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# SECURED EQUIPMENT NOTE INDENTURE

This Secured Equipment Note Indenture is made as of September 24, 1999,

**BETWEEN**

**CANADIAN PACIFIC RAILWAY  
COMPANY**, a corporation incorporated under  
the laws of Canada and having its registered  
office in the City of Calgary, Province of  
Alberta (the "**Corporation**")

-and-

**THE TRUST COMPANY OF BANK OF  
MONTREAL**, a trust company incorporated  
under the laws of Canada and having an office  
in the City of Calgary, Province of Alberta (the  
"**Trustee**")

**WHEREAS** the Corporation wishes to create and issue Secured Equipment Notes in  
the manner provided in this Indenture;

**NOW, THEREFORE, THIS SECURED EQUIPMENT NOTE INDENTURE  
WITNESSES** and it is hereby covenanted, agreed and declared as follows:

## ARTICLE 1 INTERPRETATION

### 1.01 Definitions

In this Indenture and in the Secured Equipment Notes, unless there is something in  
the subject matter or context inconsistent therewith, the following expressions shall have the  
respective meanings indicated:

"**Affiliate**" means, with respect to any Person, any other Person which, directly or indirectly  
through one or more Persons, Controls, is Controlled by, or is under common Control with,  
such Person.

"**Bill of Sale**" means the bill of sale between the Manufacturer and 3443396 Canada Inc.  
dated March 16, 1998.

**“Book Entry Only Secured Equipment Note”** means Secured Equipment Notes which are to be held only by or on behalf of the Depository.

**“Business Day”** means a day other than a Saturday, Sunday or other day on which chartered banks are authorized or required by law not to be open for the transaction of business in Toronto, Canada.

**“CDS”** means The Canadian Depository for Securities Limited and its successors.

**“Central Register”** has the meaning ascribed to such term in Section 3.01.

**“Certificate of the Corporation”, “Order of the Corporation” and “Request of the Corporation”** mean, respectively, a written certificate, order and request signed in the name of the Corporation by any officer of the Corporation.

**“Certified Resolution”** means a copy of a resolution certified by an officer of the Corporation to have been duly passed by the Directors and to be in full force and effect on the date of such certification.

**“Common Shares”** means shares of any class or classes of the share capital of a corporation or Securities representing ownership interests in any Person other than a corporation, the rights of the holders of which are entitled to participate in the distribution of assets upon the voluntary or involuntary liquidation, dissolution or winding up of such corporation or other Person and such rights are not restricted to a fixed sum or to a fixed sum plus accrued dividends or other periodic distributions.

**“Control”, “Controlled”** and similar expressions mean a relationship between two Persons wherein one of such Persons has the power, through the ownership of Securities, by contract or otherwise, to direct the management and policies of the other of such Persons, and includes, in the case of a corporation, the ownership, either directly or indirectly through one or more Persons, of Securities of such corporation carrying more than 50% of the votes that may be cast to elect the directors of such corporation either under all circumstances or under some circumstances that have occurred and are continuing, other than Securities held as collateral for a *bona fide* debt, provided that such votes, if exercised, are sufficient to elect a majority of the directors of such corporation.

**“Corporate Trust Office”** means the corporate trust office of the Trustee at which, at any particular time, its corporate trust business relative to this Indenture shall be administered, which office, at the date hereof, is located at 24<sup>th</sup> Floor, First Canadian Centre, 350-7th Avenue S.W., Calgary, Alberta T2P 3N9.

**“Corporation”** means Canadian Pacific Railway Company and its successors and assigns.

**“Corporation’s Auditors”** means a firm of chartered accountants duly appointed as auditors of the Corporation.

**“Counsel”** means a barrister or solicitor or firm of barristers and solicitors (who may be counsel for the Corporation) retained by the Trustee or retained by the Corporation and acceptable to the Trustee, acting reasonably.

**“Debt Account”** means an account or accounts established by the Corporation (and maintained by and subject to the control of the Trustee) for the Secured Equipment Notes pursuant to and in accordance with this Indenture.

**“Depository”** means CDS or such other Person as is designated in writing by the Corporation to act as depository in respect of the Book Entry Only Secured Equipment Notes.

**“Directors”** means the directors of the Corporation or, whenever duly empowered by a resolution of the directors of the Corporation, a committee of the directors of the Corporation, and reference to action by the Directors means action by the directors of the Corporation or action by any such committee.

**“Equipment”** means collectively those General Electric six-axle AC4400 diesel locomotives described in Appendix A attached hereto and any replacement locomotives subjected to this Indenture in accordance with the provisions hereof, together with any and all appliances, parts, instruments, accessories, furnishings, other equipment, accessions, additions, improvements, substitutions and replacements from time to time incorporated or installed in any of such locomotives, title to which rests in the Corporation.

**“Event of Default”** has the meaning ascribed to such term in Section 7.01.

**“Event of Loss”** has the meaning ascribed to such term in Section 4.06(a).

**“Extraordinary Resolution”** has the meaning ascribed to such term in Section 10.13 and Section 10.16.

**“Generally Accepted Accounting Principles”** means, at any time, Canadian generally accepted accounting principles as applied by the Corporation in the preparation of the consolidated financial statements of the Corporation.

**“Global Secured Equipment Note”** means a Secured Equipment Note representing the aggregate principal amount of the Secured Equipment Notes.

**“Indebtedness”** means and includes all items of indebtedness which in accordance with Generally Accepted Accounting Principles would be included in determining total liabilities as shown on the liability side of a balance sheet as at the date as of which Indebtedness is to

be determined, but in any event including, without limitation, (1) obligations secured by any Security existing on property owned subject to such Security whether or not the obligations secured thereby shall have been assumed, and (2) guarantees and other contingent obligations in respect of, or any obligations to purchase or otherwise acquire or service, obligations of others.

**“Interest Payment Date”** means, in respect of the Secured Equipment Notes, a date on which interest is due and payable in accordance with the terms pertaining thereto.

**“Lien”** means any assignment, mortgage, hypothec, charge (whether fixed or floating), pledge, security interest, lien, or other encumbrance on or interest in property or assets.

**“Manufacturer”** means General Electric Company.

**“Maturity Date”** means, with respect to any Secured Equipment Note, the date on which the remaining principal of and Premium, if any, on such Secured Equipment Note becomes due and payable as therein or herein provided, whether at the Stated Maturity or by declaration of acceleration, prepayment or otherwise.

**“Officers’ Certificate”** means a certificate of the Corporation signed by any authorized officer of the Corporation in his/her capacity as an officer of the Corporation and not in his/her personal capacity.

**“Ordinary Resolution”** has the meaning ascribed to such term in Section 10.12 and Section 10.16.

**“Paying Agent”** means a Person authorized by the Corporation to pay the principal, Premium or interest payable in respect of any Secured Equipment Notes on behalf of the Corporation, and may include the Corporation and the Trustee.

**“Permitted Contest”** means actions taken by a Person to contest in good faith, by appropriate proceedings, including the pursuit of any related appeals, timely initiated and diligently conducted, the legality, validity or applicability to any Unit (or any interest therein) or any Person of (i) any law, regulation, rule, judgment, order, or other legal provision or judicial or administrative requirement, or (ii) any Encumbrance, so long as, in either case, (A) there exists no material risk of sale, forfeiture or loss of, or loss or interference with the use or possession of, or diminution of value, utility or useful life of, any Unit or any interest therein, or any risk of interference with the payment of amounts hereunder or under the Secured Equipment Notes, unless adequately bonded to the reasonable satisfaction of the Trustee, (B) such contest would not result in, or increase the risk of, the imposition of any criminal or civil liability on the Trustee or any Secured Equipment Noteholder, (C) such contest would not materially adversely affect the rights, title and interests of the Corporation, the Trustee or any Secured Equipment Note Holder in or to any Unit or any interest therein

and (D) appropriate reserves with respect thereto are maintained in accordance with Generally Accepted Accounting Principles.

**“Permitted Lessee”** has the meaning ascribed to such term in Section 6.01(i).

**“Permitted Liens”** means:

- (i) the interest of any Permitted Lessee as provided in any lease or sublease permitted pursuant to Section 6.01(i); or
- (ii) any Liens for taxes, assessments, levies, fees and other governmental and similar charges not due and payable or the amount or validity of which is being contested in a Permitted Contest; or
- (iii) any Liens of mechanics, suppliers, materialmen, labourers, employees, repairmen and other like Liens arising in the ordinary course of the Corporation’s (or if a lease or sublease permitted pursuant to Section 6.01(i) is then in effect, any Permitted Lessee’s) business, securing obligations which are not due and payable or the amount or validity of which is being contested in a Permitted Contest; or
- (iv) the Lien granted to the Trustee hereunder; or
- (v) Liens arising out of any judgment or award against the Corporation (or any Permitted Lessee) with respect to which an appeal or proceeding for review is being taken in good faith or with respect to which the Corporation is conducting a Permitted Contest; or
- (vi) salvage rights of insurers under insurance policies maintained by the Corporation pursuant to Section 6.01(k); or
- (vii) any Lien created by or in the Corporation’s outstanding Perpetual Four Per Cent Consolidated Debenture Stock, whether issued, pledged or vested in trust; or
- (viii) undetermined or inchoate Liens, privileges, preferences and charges incidental to current operations which have not at such time been filed pursuant to law against such Person’s property or assets or which relate to obligations not due or delinquent.

**“Person”** means any individual, corporation, body corporate, limited partnership, general partnership, joint stock company, association, joint venture, association, company, trust, bank, fund, governmental authority or other entity or organization, whether or not recognized as a legal entity.

**“Premium”** means, with respect to any Secured Equipment Note at a particular time, the Premium payable by the Corporation to the holder of such Secured Equipment Note as described in the form of Secured Equipment Note attached hereto as Schedule A.

**“Prepayment Date”** has the meaning ascribed to such term in Section 5.03.

**“Prepayment Price”** means, in respect of a Secured Equipment Note, the amount calculated in the manner set out in the form of Secured Equipment Note attached hereto as Schedule A and payable on the Prepayment Date fixed for such Secured Equipment Note.

**“Prepayment Price Determination Date”** has the meaning ascribed to such term in the form of Secured Equipment Note attached hereto as Schedule A.

**“Prime Rate”** means the rate of interest expressed as a rate per annum which the Corporation’s principal Canadian bank designates as its prime rate and which establishes from time to time the reference rate of interest such bank will use to determine the rate of interest it will charge for demand loans in Canadian dollars made in Canada, as such rate may be adjusted from time to time.

**“Record Date”** means a date specified by the Corporation for determining the holders of Secured Equipment Notes entitled to receive interest on an Interest Payment Date therefor.

**“Register”** means a register for the registration of Secured Equipment Notes which the Trustee or a Registrar is required or permitted to maintain pursuant to Section 3.01.

**“Registrar”** means the Trustee or a Person other than the Trustee designated by the Corporation to keep a Register.

**“Replacement Unit”** has the meaning ascribed to such term in Section 4.06(b).

**“Request of the Corporation”** means a request in writing signed by a Responsible Officer of the Corporation with respect to the subject matter stated therein.

**“Required Modification”** has the meaning ascribed to such term in section 6.01(f).

**“Responsible Officer”** means, as to any Person, and with respect to the subject matter of any covenant, agreement or obligation of any party contained herein, the Chairman, President, any Vice President, Secretary, any Assistant Secretary, Treasurer, any Assistant Treasurer, any Manager, any Senior Manager, any Trust Officer, any Assistant Trust Officer or any other officer of such Person who, in the normal performance of his or her operational responsibilities, would have knowledge of such matters and the requirements with respect thereto.

**“Secured Equipment Notes”** means secured equipment notes of the Corporation issued pursuant to this Indenture, in the form attached hereto as Schedule A.

**“Secured Equipment Noteholders”** or **“holders”** means, at a particular time, the Persons entered in the Registers as holders of outstanding Secured Equipment Notes at such time.

**“Secured Equipment Noteholders’ Request”** means, in respect of all Secured Equipment Notes, an instrument signed in one or more counterparts by Secured Equipment Noteholders holding not less than 25% of the aggregate principal amount of all outstanding Secured Equipment Notes, in each case requesting or directing the Trustee to take or refrain from taking the action or proceeding specified therein.

**“Securities”** means any stock, shares, units, instalment receipts, voting trust certificates, bonds, Secured Equipment Notes, notes, other evidences of indebtedness, or other documents or instruments commonly known as securities or any certificates of interest, shares or participation in temporary or interim certificates for, receipts for, guarantees of, or warrants, options or rights to subscribe for, purchase or acquire any of the foregoing.

**“Security”** has the meaning ascribed to such term in Section 4.01.

**“Stated Maturity”** means the date specified, with respect to a Secured Equipment Note, as the fixed date on which the final payment of the principal of and interest on such Secured Equipment Note is due and payable.

**“Subsidiary”** means:

- (a) a corporation Controlled by the Corporation or by one or more Subsidiaries of the Corporation or by the Corporation and one or more Subsidiaries of the Corporation; or
- (b) any other Person (other than a corporation) Controlled by the Corporation or one or more Subsidiaries of the Corporation or the Corporation and one or more Subsidiaries of the Corporation.

**“Substituted Unit”** has the meaning ascribed to such term in Section 6.01(h).

**“Successor”** has the meaning ascribed to such term in Section 9.01.

**“Supplemental Indenture”** means an indenture supplemental to this Indenture pursuant to which, among other things, provisions of this Indenture may be amended.

**“Terms Schedule”** has the meaning ascribed to such term in Section 3.11(b).

“**Trustee**” means The Trust Company of Bank of Montreal or its successor or successors for the time being as trustee hereunder.

“**Unit**” or “**Units**” means each unit or item of Equipment specified on Appendix A attached hereto and any Replacement Unit or Substituted Unit subjected to this Indenture in accordance with the provisions hereof.

“**Warranties**” means any and all applicable assignable Manufacturer’s warranties relating to the Units.

## **1.02 Meaning of “outstanding” for Certain Purposes**

Every Secured Equipment Note certified and delivered by the Trustee hereunder shall be deemed to be outstanding until it is cancelled or delivered to the Trustee for cancellation; provided that:

- (a) if a new Secured Equipment Note has been issued in substitution for a Secured Equipment Note that has been mutilated, lost, stolen or destroyed, only one of such Secured Equipment Notes shall be counted for the purpose of determining the aggregate principal amount of Secured Equipment Notes outstanding;
- (b) Secured Equipment Notes that have been partially amortized, prepaid or purchased shall be deemed to be outstanding only to the extent of the unamortized, unprepaid or unpurchased part of the principal amount thereof; and
- (c) for the purpose of any provision of this Indenture entitling holders of outstanding Secured Equipment Notes to vote, sign consents, requisitions or other instruments or take any other action under this Indenture or to constitute a quorum at any meeting of Secured Equipment Noteholders, Secured Equipment Notes beneficially owned directly or indirectly by the Corporation or any Affiliate of the Corporation shall be disregarded, provided that:
  - (i) for the purpose of determining whether the Trustee shall be protected in relying on any such vote, consent, requisition or other instrument or action or on the Secured Equipment Noteholders present or represented at any meeting of Secured Equipment Noteholders constituting a quorum, only the Secured Equipment Notes which the Trustee knows are so owned shall be so disregarded; and
  - (ii) Secured Equipment Notes so owned that have been pledged in good faith other than to the Corporation or an Affiliate of the Corporation

shall not be disregarded if the pledgee shall establish to the satisfaction of the Trustee, acting reasonably, that the pledgee's right to vote, sign consents, requisitions or other instruments or take such other actions is free from the control of the Corporation or any Affiliate of the Corporation.

### **1.03 Interpretation Not Affected by Headings**

The division of this Indenture into Articles, Sections and clauses, the provision of a table of contents and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation hereof.

### **1.04 Extended Meanings**

In this Indenture, unless otherwise expressly provided herein or unless the context otherwise requires, words importing the singular number include the plural and vice versa; words importing gender include the masculine, feminine and neuter genders; references to "**Indenture**", "**this Indenture**", "**hereto**", "**herein**", "**hereof**", "**hereby**", "**hereunder**" and similar expressions refer to this Secured Equipment Note Indenture, taken as a whole, and not to any particular Article, Section, clause or other portion hereof, and include all Schedules and amendments hereto, modifications or restatements hereof, and any and every Supplemental Indenture and Terms Schedule; and the expressions "**Article**", "**Section**", "**clause**" and "**Schedule**" followed by a number, letter, or combination of numbers and letters refer to the specified Article, Section or clause of or Schedule to this Indenture.

### **1.05 Day Not a Business Day**

Except as otherwise provided herein, if any day on which an amount is to be determined or an action is to be taken hereunder at a particular location is not a Business Day, then such amount shall be determined or such action shall be taken at or before the requisite time on the next succeeding day that is a Business Day at such location.

### **1.06 Currency**

Except as otherwise provided herein, all references in this Indenture to "**Canadian dollars**", "**dollars**" and "**\$**" are to lawful money of Canada.

### **1.07 Other Currencies**

For the purpose of making any computation under this Indenture, any currency other than Canadian dollars shall be converted into Canadian dollars at the Bank of Canada noon rate of exchange on the date on which such computation is to be made.

### **1.08 Statutes**

Each reference in this Indenture to a statute is deemed to be a reference to such statute as amended, re-enacted or replaced from time to time.

### **1.09 Invalidity of Provisions**

Each provision in this Indenture or in a Secured Equipment Note is distinct and severable and a declaration of invalidity or unenforceability of any such provision by a court of competent jurisdiction will not affect the validity or enforceability of any other provision hereof or thereof.

### **1.10 Applicable Law**

This Indenture and the Secured Equipment Notes shall be governed by and construed in accordance with the laws of the Province of Alberta and the laws of Canada applicable in the Province of Alberta and shall be treated in all respects as Alberta contracts.

### **1.11 Language**

In the event of any contradiction, discrepancy or difference between the English language version and the French or other language version of the text of a Secured Equipment Note, the English language version of the text shall govern.

The parties hereto expressly request and require that this document be drawn up in English. Les parties aux présentes conviennent et exigent que cette entente et tous les documents qui s'y rattachent soient rédigés en anglais.

### **1.12 Time of the Essence**

Time shall be of the essence in this Indenture and in the Secured Equipment Notes.

## **ARTICLE 2 THE SECURED EQUIPMENT NOTES**

### **2.01 No Fixed Limitation**

The aggregate principal amount of Secured Equipment Notes which may be issued under this Indenture is unlimited, but Secured Equipment Notes may be issued hereunder only upon the terms and subject to the conditions herein provided.

## **2.02 Issuance**

The Secured Equipment Notes shall be issued in one series in denominations of \$1,000 and integral multiples thereof. The Secured Equipment Notes shall be designated in such manner, shall bear such date or dates and mature on such date or dates, shall bear interest at such rate or rates accruing from and payable on such date or dates, may be issued at such times, may be redeemable before maturity in such manner and subject to payment of such Premium or without Premium, may be payable as to principal, interest and Premium, if any, at such place or places and in such currency or currencies, may be payable as to principal, interest and Premium, if any, in Securities of the Corporation or any other Person, may provide for such mandatory prepayment or other analogous repayment obligations, may contain such provisions for the exchange or transfer of Secured Equipment Notes of different denominations and forms, may have attached thereto or issued therewith Securities entitling the holders to subscribe for, purchase or acquire Securities of the Corporation or any other Person upon such terms, may give the holders thereof the right to convert Secured Equipment Notes into Securities of the Corporation or any other Person upon such terms and may contain such other provisions, not inconsistent with the provisions of this Indenture, as may be determined by the Corporation at or prior to the time of issue of the Secured Equipment Notes and set forth in a Terms Schedule. At the option of the Corporation, the maximum principal amount of Secured Equipment Notes may be limited, such limitation to be expressed in a Terms Schedule.

## **2.03 Form of Secured Equipment Notes**

The Secured Equipment Notes may be of different denominations and forms and may contain such variations of tenor and effect, not inconsistent with the provisions of this Indenture, as are incidental to such differences of denomination and form, including variations in the provisions for the exchange of Secured Equipment Notes of different denominations or forms and in the provisions for the registration or transfer of Secured Equipment Notes.

All Secured Equipment Notes and the registration panel and certificate of the Trustee endorsed thereon may be in the forms set out in Schedule A or in such other form or forms (which may include legends) as the Corporation shall determine prior to the time of issue thereof and as shall be approved by the Trustee, whose approval shall be conclusively evidenced by its certification thereof.

The Secured Equipment Notes may be engraved, lithographed, printed, mimeographed or typewritten, or partly in one form and partly in another, as the Corporation may determine, provided that if the Secured Equipment Notes are issued in mimeographed or typewritten form, the Corporation, on the demand of any registered holder thereof, shall make available within a reasonable time after such demand, without expense to such holder, engraved, lithographed or printed Secured Equipment Notes in exchange therefor.

#### **2.04 Secured Equipment Notes to Rank Equally**

The Secured Equipment Notes will be direct secured obligations of the Corporation. The Secured Equipment Notes will rank equally and *pari passu* with each other (regardless of their actual dates or terms of issue).

#### **2.05 Book Entry Only Secured Equipment Notes**

Except as otherwise provided in a Terms Schedule, the Secured Equipment Notes shall be issued as Book Entry Only Secured Equipment Notes represented by one or more Global Secured Equipment Notes registered in the name of the Depository or its nominee.

Beneficial owners of Book Entry Only Secured Equipment Notes will have no right to receive definitive Secured Equipment Notes until such time, if any, as:

- (a) the Depository notifies the Corporation that it is unwilling or unable to continue to act as depository in connection with such Secured Equipment Notes and the Corporation is unable to locate a qualified successor;
- (b) the Depository ceases to be a clearing agency or otherwise ceases to be eligible to be a depository and the Corporation is unable to locate a qualified successor; or
- (c) the Corporation determines that such Secured Equipment Notes shall no longer be held as Book Entry Only Secured Equipment Notes,

following which Secured Equipment Notes in fully registered form shall be issued to the owners of such Secured Equipment Notes or their nominees.

#### **2.06 Signatures on Secured Equipment Notes**

All Secured Equipment Notes shall be signed (either manually or by facsimile signature) by any two officers of the Corporation. A facsimile signature on any Secured Equipment Note shall for all purposes of this Indenture be deemed to be the signature of the individual whose signature it purports to be and to have been signed at the time such facsimile signature was reproduced, and each Secured Equipment Note so signed shall be valid and binding upon the Corporation notwithstanding that any individual whose signature (either manual or facsimile) appears on a Secured Equipment Note is not at the date of this Indenture or at the date of the Secured Equipment Note or at the date of the certification and delivery thereof an officer of the Corporation.

## 2.07 Certification

No Secured Equipment Note shall be issued or, if issued, shall be obligatory or entitle the holder thereof to the benefit hereof until it has been certified by or on behalf of the Trustee substantially in the form set out in Schedule A or in a Terms Schedule or Supplemental Indenture or in some other form acceptable to the Trustee. Such certificate on any Secured Equipment Note shall be conclusive evidence that such Secured Equipment Note has been duly issued hereunder and is a valid obligation of the Corporation.

The certificate of the Trustee signed on any Secured Equipment Note shall not be construed as a representation or warranty by the Trustee as to the validity of this Indenture or of such Secured Equipment Note or its issuance. The certificate of the Trustee signed on any Secured Equipment Note shall, however, be a representation and warranty by the Trustee that such Secured Equipment Note has been duly certified by or on behalf of the Trustee pursuant to the provisions of this Indenture.

## 2.08 Concerning Interest

Except as otherwise provided in a Terms Schedule:

- (a) every Secured Equipment Note, whether issued originally or in exchange or in substitution for previously issued Secured Equipment Notes, shall bear interest from and including the later of :
  - (i) the original date of issue for such Secured Equipment Note; and
  - (ii) the last Interest Payment Date to which interest shall have been paid or made available for payment on the outstanding principal amount of Secured Equipment Notes;
- (b) interest shall be payable semi-annually;
- (c) interest payable for any period of less than six months shall be computed on the basis of the actual number of days in such period assuming a year of 365 days; and
- (d) whenever interest is computed on the basis of a year (the “**deemed year**”) which contains fewer days than the actual number of days in the calendar year of calculation, such rate of interest shall be expressed as a yearly rate for purposes of the *Interest Act* (Canada) by multiplying such rate of interest by the actual number of days in the calendar year of calculation and dividing such product by the number of days in the deemed year.

Subject to accrual of any interest on unpaid interest from time to time, interest on each Secured Equipment Note will cease to accrue from the Maturity Date of such Secured Equipment Note, unless upon due presentation and surrender of such Secured Equipment Note for payment on or after such Maturity Date, such payment is improperly withheld or refused by the Corporation.

Wherever in this Indenture or the Secured Equipment Notes there is mention, in any context, of the payment of interest, such mention is deemed to include the payment of interest on amounts in default to the extent that, in such context, such interest is, was or would be payable pursuant to this Indenture or the Secured Equipment Notes, and express mention of interest on amounts in default in any of the provisions of this Indenture will not be construed as excluding such interest in those provisions of this Indenture in which such express mention is not made.

If the date for payment of any amount of principal or interest in respect of any Secured Equipment Note is not a Business Day at the place of payment, then payment will be made on the next Business Day at such place and the holder of such Secured Equipment Note will not be entitled to any further interest or other payment in respect of the delay.

Except as otherwise provided in a Terms Schedule, the Corporation shall pay the interest due upon the outstanding principal amount of each interest-bearing Secured Equipment Note (except interest payable on a Maturity Date of a Secured Equipment Note which, at the option of the Corporation, may be paid only upon presentation of such Secured Equipment Note for payment) and principal of any Secured Equipment Note due prior to maturity by forwarding or causing to be forwarded by prepaid ordinary mail (or in the event of mail service interruption, by such other means as the Trustee and the Corporation determine to be appropriate) a cheque for such interest (less any tax required by law to be deducted or withheld) and principal, if any, payable to the holder of such Secured Equipment Note for the time being at the address appearing on the Register unless otherwise directed in writing by the holder or, in the case of registered joint holders, payable to all such joint holders and addressed to one of them at the last address appearing in the applicable Register and negotiable at par at each of the places at which principal of and interest on such Secured Equipment Note is payable. The forwarding of such cheque shall satisfy and discharge the liability for the principal of and interest on such Secured Equipment Note to the extent of the sum represented thereby (plus the amount of any tax deducted or withheld) unless such cheque is not paid on presentation at any of the places at which such principal and interest is payable. In the event of the non-receipt of such cheque by the applicable Secured Equipment Noteholder or the loss, theft or destruction thereof, the Corporation, upon being furnished with evidence of such non-receipt, loss, theft or destruction and indemnity reasonably satisfactory to it, shall issue or cause to be issued to such Secured Equipment Noteholder a replacement cheque for the amount of such cheque. Notwithstanding the foregoing, the Corporation, at its option, may cause the amount payable in respect of principal and interest to be paid to a Secured Equipment Noteholder by wire transfer to an account maintained by

such Secured Equipment Noteholder or in any other manner acceptable to the Trustee.

If payment of principal and/or interest is made by cheque, such cheque shall be forwarded at least three Business Days prior to the applicable Interest Payment Date, and if payment is made in any other manner, such payment shall be made in a manner whereby the recipient receives credit for such payment on the applicable Interest Payment Date.

## **2.09 Payments of Amounts Due on Maturity**

Except as otherwise provided in a Terms Schedule, the Corporation will establish and maintain with the Trustee a Debt Account for the Secured Equipment Notes. Such Debt Account shall be maintained by and be subject to the control of the Trustee for the purposes of this Indenture. Prior to 9:00 a.m., Calgary, Alberta time, on the Maturity Date for outstanding Secured Equipment Notes, the Corporation will deposit in the Debt Account an amount sufficient to pay the amount payable in respect of such Secured Equipment Notes (less any taxes required by law to be deducted or withheld). The Trustee will use the funds deposited in the Debt Account to pay, to the holder of a Secured Equipment Note entitled to receive payment, the outstanding principal amount of, Premium, if any, and interest on the Secured Equipment Note upon surrender of the Secured Equipment Note at the Corporate Trust Office or at such other place or places as shall be designated for such purpose from time to time by the Corporation and the Trustee. The deposit of such amount to the Debt Account will satisfy and discharge the liability of the Corporation for the Secured Equipment Notes to which the deposit relates to the extent of the amount deposited (plus the amount of any taxes deducted or withheld) and such Secured Equipment Notes will thereafter not to that extent be considered to be outstanding and the holders thereof will have no right with respect thereto other than to receive out of the amount so deposited the respective amounts to which the holders are entitled. Failure to make a deposit as required pursuant to this Section 2.09 shall constitute default in payment on the Secured Equipment Notes in respect of which the deposit was required to have been made.

## **2.10 Interim Secured Equipment Notes**

Pending the preparation and delivery to the Trustee of definitive Secured Equipment Notes, the Corporation may execute in lieu thereof (but subject to the same provisions, conditions and limitations as herein set forth) and the Trustee may certify interim printed, mimeographed or typewritten Secured Equipment Notes, in such forms and in such denominations and with such appropriate omissions, insertions and variations as may be approved by the Trustee and any two officers of the Corporation (whose certification or signature, either manual or facsimile, on any such interim Secured Equipment Notes shall be conclusive evidence of such approval) entitling the holders thereof to receive definitive Secured Equipment Notes in any authorized denominations and forms when the same are prepared and ready for delivery, without expense to the holders, but the total amount of

interim Secured Equipment Notes so issued shall not exceed the total amount of Secured Equipment Notes for the time being authorized. Forthwith after the issuance of any such interim Secured Equipment Notes, the Corporation shall cause to be prepared the appropriate definitive Secured Equipment Notes for delivery to the holders of such interim Secured Equipment Notes.

Any interim Secured Equipment Notes when duly issued shall, until exchanged for definitive Secured Equipment Notes, entitle the holders thereof to rank for all purposes as Secured Equipment Noteholders and otherwise in respect of this Indenture to the same extent and in the same manner as though such exchange had actually been made. When exchanged for definitive Secured Equipment Notes, such interim Secured Equipment Notes shall forthwith be cancelled by the Trustee. Any interest paid upon interim Secured Equipment Notes shall be noted thereon by the Paying Agent at the time of payment unless paid by warrant or cheque to the registered holder thereof.

#### **2.11 Issue of Substitutional Secured Equipment Notes**

If any Secured Equipment Note issued and certified hereunder shall become mutilated or be lost, destroyed or stolen, the Corporation, in its sole discretion, may issue, and thereupon the Trustee shall certify and deliver, a new Secured Equipment Note of like date and tenor as the one mutilated, lost, destroyed or stolen in exchange for and in place of and upon cancellation of such mutilated Secured Equipment Note or in lieu of and in substitution for such lost, destroyed or stolen Secured Equipment Note. The substituted Secured Equipment Note shall be in a form approved by the Trustee and shall be entitled to the benefit hereof and rank equally in accordance with its terms with all other Secured Equipment Notes issued or to be issued hereunder. The applicant for a new Secured Equipment Note shall bear the cost of the issue thereof and in case of loss, destruction or theft shall, as a condition precedent to the issue thereof, furnish to the Corporation and to the Trustee such evidence of ownership and of the loss, destruction or theft of the Secured Equipment Note so lost, destroyed or stolen as shall be satisfactory to the Corporation and to the Trustee in their discretion, and such applicant may also be required to furnish indemnity, in amount and form satisfactory to the Corporation and the Trustee in their discretion, and shall pay the reasonable charges of the Corporation and the Trustee in connection therewith.

#### **2.12 Option of Holder as to Place of Payment**

Except as herein otherwise provided, all amounts which at any time become payable on account of any Secured Equipment Note or any interest or Premium thereon shall be payable at the option of the holder at any of the places at which the principal and interest in respect of such Secured Equipment Note are payable.

### **2.13 Record of Payments**

The Trustee shall maintain accounts and records evidencing each payment of principal of and Premium and interest on Secured Equipment Notes, which accounts and records shall constitute, in the absence of manifest error, *prima facie* evidence thereof.

None of the Corporation, the Trustee, any Registrar or any Paying Agent will be liable or responsible to any Person for any aspect of the records related to or payments made on account of beneficial interests in any Global Secured Equipment Note or for maintaining, reviewing or supervising any records relating to such beneficial interests.

### **2.14 Payment Agreements for Secured Equipment Notes**

Notwithstanding any provision in this Indenture or any Secured Equipment Note to the contrary, the Corporation may enter into an agreement (whether in a Supplemental Indenture or otherwise) with the holder of a Secured Equipment Note, or with the Person for whom such holder is acting as nominee, providing for the payment, without presentation or surrender of the Secured Equipment Note or notation of payment thereon, to such holder of the principal of and Premium and interest on such Secured Equipment Note and all other amounts payable hereunder at a place, and by wire transfer of funds or in such other manner, other than the places or the manner specified in this Indenture and in such Secured Equipment Note as the places and the manner for such payment. The Corporation shall lodge a copy of any such agreement with the Trustee prior to the next Interest Payment Date of any Secured Equipment Notes to which such agreement relates. Any payment of the principal of and Premium and interest on any such Secured Equipment Note and other amounts payable under this Indenture at such other place or in such other manner pursuant to such agreement shall, notwithstanding any other provision of this Indenture or the Secured Equipment Notes, be valid and binding on the Corporation, the Trustee, any Registrar, any Paying Agent, and all holders of Secured Equipment Notes.

### **2.15 Surrender for Cancellation**

If the Maturity Date of any Secured Equipment Note is a date prior to the Stated Maturity thereof, the Person presenting such Secured Equipment Note for payment shall surrender the same for cancellation and the Corporation shall pay or cause to be paid any outstanding principal, Premium, if any, and interest accrued and unpaid thereon (computed on the basis set out in Section 2.08(c)), and thereupon the provisions of Section 8.01 shall apply to such Secured Equipment Note.

### **2.16 Right to Receive Indenture**

Each Secured Equipment Noteholder is entitled to receive from the Corporation a copy of this Indenture on written request and upon payment of a reasonable copying charge.

**ARTICLE 3**  
**REGISTRATION, TRANSFER, EXCHANGE AND OWNERSHIP OF SECURED**  
**EQUIPMENT NOTES**

**3.01 Registers**

The Corporation will cause to be kept at the Corporate Trust Office, or at such other place as shall be agreed in writing by the Corporation and the Trustee, a central register (the “**Central Register**”) and may cause to be kept in such other place or places, by the Trustee or by such other Registrar or Registrars (if any) as the Corporation may designate, branch registers (each, a “**Register**” and collectively with the Central Register, the “**Registers**”) in each of which will be entered the names and latest known addresses of holders of Secured Equipment Notes and the other particulars, as prescribed by law, of the Secured Equipment Notes held by each of them and of all transfers of such Secured Equipment Notes. Such registration will be noted on such Secured Equipment Notes by the Trustee or other Registrar. Every Registrar (including the Trustee) from time to time shall, when requested so to do by the Corporation or by the Trustee, furnish the Corporation or the Trustee, as the case may be, with a list of the names and addresses of the holders of Secured Equipment Notes entered on the Register kept by such Registrar, showing the principal amount and serial numbers of such Secured Equipment Notes held by each holder.

The Registers referred to in this Section 3.01 shall at all reasonable times be open for inspection by the Corporation, the Trustee and any Noteholder.

**3.02 Transfer of Secured Equipment Notes**

A registered holder of a Secured Equipment Note may at any time and from time to time have such Secured Equipment Note transferred at any of the places at which a Register is kept pursuant to the provisions of Section 3.01.

No transfer of a Secured Equipment Note will be effective as against the Corporation unless:

- (a) such transfer is made on one of the appropriate Registers by the registered holder of the Secured Equipment Note or the executor, administrator or other legal representative of, or any attorney for, the registered holder, duly appointed by an instrument in form and execution satisfactory to the Trustee or other Registrar, upon surrender to the Trustee or other Registrar of the Secured Equipment Note;
- (b) such transfer is made in compliance with such requirements as the Trustee or other Registrar may prescribe; and

- (c) such transfer has been duly noted on such Secured Equipment Note by the Trustee or other Registrar.

### **3.03 Restrictions on Transfer of Global Secured Equipment Notes**

Notwithstanding any other provision of this Indenture, a Global Secured Equipment Note may not be transferred by the Depository except in the following circumstances or as otherwise specified in a Terms Schedule or Supplemental Indenture relating to such Secured Equipment Note:

- (a) a Global Secured Equipment Note may be transferred by the Depository to a nominee of the Depository or by a nominee of the Depository to the Depository or to another nominee of the Depository or by the Depository or its nominee to a successor Depository or its nominee;
- (b) a Global Secured Equipment Note may be transferred at any time after the Depository for such Global Secured Equipment Note has notified the Corporation that it is unwilling or unable or no longer eligible to continue as Depository for such Global Secured Equipment Note;
- (c) a Global Secured Equipment Note may be transferred at any time after the Corporation has determined, in its sole discretion, that the Secured Equipment Notes represented by such Global Secured Equipment Note shall no longer be held as Book Entry Only Secured Equipment Notes; and
- (d) a Global Secured Equipment Note may be transferred at any time after the Trustee has determined that an Event of Default has occurred and is continuing with respect to the Secured Equipment Notes issued in the form of a Global Secured Equipment Note, provided that at the time of such transfer the Event of Default has not been waived in accordance with the provisions of this Indenture.

### **3.04 Transferee Entitled to Registration**

The transferee of a Secured Equipment Note shall be entitled, after the appropriate form of transfer is lodged with the Trustee or other Registrar and upon compliance with all other conditions with respect thereto required by this Indenture or by law, to be entered on a Register as the owner of such Secured Equipment Note free from all equities or rights of setoff or counterclaim between the Corporation and the transferor or any previous holder of such Secured Equipment Note, except in respect of equities of which the Corporation is required to take notice by statute or regulation or by order of a court of competent jurisdiction.

### **3.05 Closing of Registers**

Except in the case of the Central Register, the Corporation shall have power at any time to close any Register. The Corporation will transfer the registration of any Secured Equipment Notes registered on a Register which the Corporation closes to another existing Register or to a new Register and thereafter such Secured Equipment Notes will be deemed to be registered on such existing or new Register, as the case may be. If the Register in any place is closed and the records transferred to a Register in another place, notice of such change will be given to each Noteholder registered in the Register so closed and the particulars of such change will be recorded in the Central Register.

Neither the Corporation nor the Trustee nor any Registrar shall be required to:

- (a) effect transfers or exchanges of the Secured Equipment Notes on any Interest Payment Date for the Secured Equipment Notes or during the 10 Business Days preceding such Interest Payment Date; or
- (b) effect transfers or exchanges of the Secured Equipment Notes, in respect of which notice of prepayment has been delivered, during the 10 Business Days preceding the Prepayment Date.

### **3.06 Exchange of Secured Equipment Notes**

Subject to Section 3.05, Secured Equipment Notes in any authorized form or denomination may be exchanged upon reasonable notice for Secured Equipment Notes in any other authorized form or denomination, any such exchange to be for an equivalent aggregate principal amount of Secured Equipment Notes, carrying the same rate of interest and having the same Maturity Date and the same prepayment and sinking fund provisions, if any.

Secured Equipment Notes may be exchanged at the Corporate Trust Office or at such other place or places (if any) as may be specified in the Secured Equipment Notes or in the Terms Schedule providing for the issuance thereof, and at such other place or places (if any) as may from time to time be designated by the Corporation. Any Secured Equipment Notes tendered for exchange shall be surrendered to the Trustee. The Corporation shall execute and the Trustee shall certify all Secured Equipment Notes necessary to carry out such exchanges. All Secured Equipment Notes surrendered for exchange shall be cancelled.

### **3.07 Ownership and Entitlement to Payment**

The Person in whose name a Secured Equipment Note is registered shall be deemed to be the owner thereof for all purposes of this Indenture and payment of or on account of the principal of and Premium, if any, and interest on such Secured Equipment Note shall be made only to or upon the order in writing of such Person, and each such payment shall be a

good and sufficient discharge to the Corporation, the Trustee, any Registrar and any Paying Agent for the amount so paid.

If a Secured Equipment Note is registered in the name of more than one Person, the principal, Premium, if any, and interest from time to time payable in respect thereof may be paid to the order of all such Persons, failing written instructions from them to the contrary, and each such payment shall be a good and sufficient discharge to the Corporation, the Trustee, any Registrar and any Paying Agent for the amount so paid.

Notwithstanding any other provision of this Indenture, all payments in respect of Secured Equipment Notes represented by a Global Secured Equipment Note shall be made to the Depository or its nominee for subsequent payment by the Depository or its nominee to holders of interests in such Global Secured Equipment Note.

The registered holder for the time being of a Secured Equipment Note shall be entitled to the principal, Premium, if any, and interest evidenced by such Secured Equipment Note, free from all equities or rights of setoff or counterclaim between the Corporation and the original or any intermediate holder thereof, and all Persons may act accordingly. The receipt by any such registered holder of any such principal, Premium, if any, or interest shall be a good and sufficient discharge to the Corporation, the Trustee, any Registrar and any Paying Agent for the amount so paid, and neither the Corporation nor the Trustee shall be bound to inquire into the title of any such registered holder.

### **3.08 Evidence of Ownership**

The Corporation and the Trustee may treat the registered holder of a Secured Equipment Note as the owner thereof without actual production of such Secured Equipment Note for the purpose of any Secured Equipment Noteholder's Request, requisition, direction, consent, instrument or other document to be made, signed or given by the holder of such Secured Equipment Note.

### **3.09 No Notice of Trusts**

Neither the Corporation nor the Trustee nor any Registrar nor any Paying Agent shall be bound to take notice of or see to the performance or observance of any duty owed to a third Person (whether under a trust, express, implied, resulting or constructive, in respect of any Secured Equipment Note or otherwise) by the owner or the registered holder of a Secured Equipment Note or any Person whom the Corporation or the Trustee treats, as permitted or required by law, as the owner or the registered holder of such Secured Equipment Note, and the Corporation, the Trustee and any Registrar may transfer such Secured Equipment Note on the direction of the Person so treated or registered as the holder thereof, whether named as trustee or otherwise, as though that Person was the beneficial owner of such Secured Equipment Note.

### **3.10 Charges for Transfer and Exchange**

For each Secured Equipment Note exchanged or transferred, the Trustee or other Registrar, except as otherwise herein provided, may make a reasonable charge for its services and in addition may charge a reasonable sum for each new Secured Equipment Note issued (such amounts to be agreed upon in writing by the Trustee and the Corporation from time to time), and payment of such charges and reimbursement of the Trustee or other Registrar for any stamp taxes or governmental or other charges required to be paid shall be made by the party requesting such exchange or transfer as a condition precedent thereto.

Notwithstanding the foregoing, no charge (except a charge to reimburse the Trustee or other Registrar for any stamp taxes or governmental or other charges) shall be made to a holder of Secured Equipment Notes:

- (i) for any exchange or transfer of any Secured Equipment Note applied for within a period of 45 days from the date of the first delivery of Secured Equipment Notes;
- (ii) for any exchange after such period of Secured Equipment Notes in denominations with an original issue amount in excess of \$1,000 for Secured Equipment Notes in lesser denominations, provided that the Secured Equipment Notes surrendered for exchange shall not have been issued as a result of any previous exchange other than an exchange pursuant to Section 3.10(a);
- (iii) for any exchange of any interim Secured Equipment Note that has been issued pursuant to Section 2.10; or
- (iv) for any exchange of any Secured Equipment Note resulting from a partial prepayment pursuant to Section 5.02.

### **3.11 Issuance of Secured Equipment Notes**

The Corporation may issue, and the Trustee shall certify and deliver to or to the order of the Corporation, Secured Equipment Notes issuable under this Indenture, but only upon receipt by the Trustee of the following:

- (a) an Officers' Certificate stating that (i) no default exists in respect of any of the covenants, agreements or provisions of this Indenture or, if any such default exists, specifying the nature thereof and the action, if any, being taken by the Corporation to remedy such default and (ii) it has complied with all other material conditions of this Indenture in connection with the issuance of Secured Equipment Notes in respect of which certification and delivery is

requested;

- (b) an Order of the Corporation for the certification and delivery of such Secured Equipment Notes and having attached a schedule (a “**Terms Schedule**”) specifying the date, principal amount, Maturity Date, amortization schedule, interest rate, if any, Interest Payment Dates, the amount of interest due on the first Interest Payment Date, whether prepayable and, if so, the manner of calculating the Prepayment Price including the Premium, if applicable, place of delivery, and any other terms of such Secured Equipment Note, for each Secured Equipment Note requested to be certified and delivered; and
- (c) an opinion of Counsel in favour of the Trustee to the effect that all legal requirements in connection with the issuance of Secured Equipment Notes have been complied with.

Upon the certification and delivery by the Trustee of Secured Equipment Notes in accordance with an Order of the Corporation or the Terms Schedule attached to such Order of the Corporation shall be deemed to be a Schedule to and form part of this Indenture.

### **3.12 No Secured Equipment Notes to be Issued During Default**

No Secured Equipment Notes shall be certified and delivered hereunder if at the time of such certification and delivery the Corporation, to the knowledge of the Trustee, is in default hereunder, provided that the Trustee may certify and deliver Secured Equipment Notes notwithstanding such knowledge if the Trustee shall be satisfied that such default is not material and that the Corporation is taking appropriate action to remedy such default.

## **ARTICLE 4 SECURITY**

### **4.01 Grant of Security Interest**

To secure the prompt payment by the Corporation of the principal of, Premium, if any, and interest on the Secured Equipment Notes from time to time outstanding and the performance and observance by the Corporation of all the agreements, covenants and provisions for the benefit of the Secured Equipment Noteholders contained herein, and for the uses and purposes and subject to the terms and provisions hereof, and in consideration of the premises and of the covenants herein contained, and of the acceptance and purchase of and payment for the Secured Equipment Notes by the Secured Equipment Noteholders, the receipt and sufficiency of which are hereby acknowledged, the Corporation does hereby grant, bargain, sell, assign, transfer, convey, mortgage, pledge and confirm, unto the Trustee, its successors and permitted assigns, as security only, for the benefit of the Secured

Equipment Noteholders from time to time, and does hereby grant a first fixed security interest in and mortgage lien on, all estate, right, title and interest of the Corporation in, to and under the following described property, rights, interests and privileges (which collectively, including all property hereafter specifically subjected to the lien of this Indenture by any instrument supplemental hereto, are herein called the "Security"):

- (1) the Units and all replacements thereof and substitutions therefor in which the Corporation shall from time to time acquire an interest as more particularly described in the Supplemental Indenture executed and delivered with respect to such Units;
- (2) all rents arising from the lease or sublease, if any, of the Units;
- (3) all insurance proceeds or other proceeds arising out of a taking, condemnation, expropriation, requisition or appropriation by any governmental authority under the power of eminent domain or expropriation or otherwise with respect to the Units or any Unit thereof (in each case to the extent of the Corporation's interest therein) and all other insurance proceeds with respect to the Units;
- (4) the Bill of Sale ;
- (5) the Warranties;
- (6) all instruments and documents of title relating to the foregoing property and all logs and manuals and records of inspection, modification, maintenance and overhaul and component lists, if any, relating only to the Units; and
- (7) all proceeds of the foregoing;

BUT EXCLUDING, HOWEVER, from the Security any and all of the following:

- (i) any insurance proceeds payable under insurance maintained by the Corporation in addition to the insurance required to be maintained pursuant to the provisions hereof;
- (ii) any insurance proceeds (or governmental payments in lieu thereof) payable to the Corporation under any public liability insurance maintained by the Corporation or by any other Person;
- (iii) all right, title and interest of the Corporation in any Security that has been released from the security interest and assignment of this Indenture, whether by satisfaction of the obligations of the Corporation hereunder and under the Secured Equipment Notes or otherwise hereunder;

- (iv) any rights of the Corporation to demand, collect, sue for, or otherwise receive and enforce payment of the amounts described in the foregoing clauses (i) through (iii);
- (v) any rights of the Corporation to exercise any election or option or make any decision or determination or to give or receive any notice, consent, waiver, approval or other communication in respect of the foregoing clauses (i) through (iv); and
- (vi) the rights of the Corporation to the proceeds of the foregoing.

#### **4.02 Attachment**

The security interest constituted by Section 4.01 above shall be effective as of the date of this Indenture whether or not the Secured Equipment Notes are issued, or any monies secured by the Secured Equipment Notes are advanced, before or after or at the same time as the execution of this Indenture.

#### **4.03 Equal and Rateable Security**

As soon as it is duly issued and certified, each Secured Equipment Note, subject to the terms hereof, shall be equally and rateably secured hereby. No preference or priority in the Security shall be given to any Secured Equipment Note over any other Secured Equipment Note.

#### **4.04 Further Assurances**

The Corporation shall take, forthwith and from time to time, such action and execute and deliver to the Trustee such agreements, conveyances, deeds and other documents and instruments and make or cause to be made all such registrations, filing or recordings, in respect of the Security and create such further liens (and provide notices, caveats or financing statements in respect thereof) as, in the opinion of Counsel, are reasonably necessary or advisable for giving the Trustee, and enabling it to constitute, perfect and/or maintain, a fixed and specific first priority security interest and charge in any of the Security, subject only to Permitted Liens.

#### **4.05 Trustee Under No Obligation**

Any other provision of this Indenture notwithstanding, there shall be no obligation on the Trustee to determine or verify where any registration, filing or recording should be effected in respect of the Security.

#### 4.06 Event of Loss

- (a) The term “**Event of Loss**”, with respect to a Unit or Units, shall mean (i) the loss of such Unit or the use thereof as a result of destruction or damage which, in the Corporation’s good faith judgment, makes repair uneconomic or renders such Unit permanently unfit for normal use in the Corporation’s operations; (ii) that such Unit shall suffer damage or destruction resulting in an insurance settlement on the basis of an actual or agreed constructive or compromised total loss; (iii) that such Unit shall have title thereto appropriated, taken or requisitioned by any governmental authority or purported governmental authority; or (iv) that such Unit shall suffer theft or disappearance that shall have resulted in the loss of possession of such Unit by the Corporation (or, if any lease or sublease is then in effect, a Permitted Lessee) for a period in excess of ninety (90) days, unless the location of such Unit is known and the Corporation (or Permitted Lessee) is diligently pursuing recovery of such Unit (but in no event for a period that exceeds one hundred and eighty (180) days).
- (b) Upon the occurrence of an Event of Loss with respect to any Unit or Units, the Corporation shall, promptly after a Responsible Officer of the Corporation has actual knowledge of such occurrence, give the Trustee notice of the occurrence of such Event of Loss. In any event, within forty-five (45) days of the occurrence of an Event of Loss, the Corporation shall give the Trustee notice of its election to replace the Unit or Units which suffered an Event of Loss with a locomotive or locomotives having a value, utility, remaining useful life and residual value at least equivalent to the Unit or Units being replaced (each, a “**Replacement Unit**”), unless the Corporation elects, in its sole discretion, to prepay in part, *pro rata*, in the proportion that the number of Units subject to the Event of Loss bears to the total number of Units then subject to this Indenture, Secured Equipment Notes in accordance with the procedures contained in Article 5 hereof. In the event that the Corporation elects to prepay Secured Equipment Notes upon the occurrence of an Event of Loss, the Corporation shall pay or cause to be paid to the Trustee principal on each outstanding Secured Equipment Note at a prepayment price equal to the sum of (1) an amount equal to the product obtained by multiplying the aggregate outstanding principal amount of such Secured Equipment Note immediately prior to the Prepayment Date related to such Event of Loss (after deducting therefrom the scheduled principal payment, if any, due and payable on such Prepayment Date) by a fraction, the numerator of which shall be the number of Units suffering an Event of Loss and the denominator of which shall be the total number of Units subject hereto immediately prior to such Prepayment Date, plus (2) the aggregate amount of interest accrued and unpaid in respect of the principal amount to be prepaid pursuant to clause (1) above to but not including such Prepayment Date after giving effect to the

application of any payment made by or for the account of the Trustee on or prior to such Prepayment Date, plus (3) the Premium, if any, with respect to the principal amount to be prepaid pursuant to clause (1) above.

- (c) Each prepayment of principal made pursuant to this Section 4.06 shall be (i) applied to the prepayment of the outstanding Secured Equipment Notes being prepaid by the Trustee so that each of the remaining installments of principal of such Secured Equipment Notes shall be reduced in the proportion that the principal amount of the prepayment bears to the aggregate unpaid principal amount of Secured Equipment Notes immediately prior to the prepayment and (ii) made ratably over all Secured Equipment Notes, without priority of any one Secured Equipment Note over any other.
- (d) At the time of or prior to any replacement of any Unit with a Replacement Unit, the Corporation, at its own expense, will (i) execute and deliver to the Trustee a Supplemental Indenture for such Replacement Unit to be delivered to the Trustee for execution whereupon the Corporation shall file the Supplemental Indenture as soon as practicable at every office where the registration or filing thereof may be required or advisable in order to preserve and protect the security thereby created or intended to be created, (ii) upon the request of the Trustee, furnish the Trustee with an opinion of the Corporation's Counsel (it being agreed that the opinion of in-house counsel of the Corporation will be considered by the Trustee in that regard), to the effect that (y) immediately prior to the execution and delivery of the Supplemental Indenture for such Replacement Unit, such Replacement Unit was owned by the Corporation and free and clear of all Liens other than Permitted Liens and (z) all filings, recordings and other action necessary or appropriate to perfect and protect the Trustee's interest in the Replacement Unit have been accomplished, (iii) upon the request of the Trustee, furnish the Trustee with a Certificate of the Corporation certifying that as of said date and upon consummation of the replacement, no Event of Default exists and (iv) furnish such other documents in evidence as the Trustee may reasonably request in order to establish the consummation of the transactions contemplated in this Section 4.06, including without limitation, evidence that the Replacement Unit has a value, utility, remaining useful life and residual value at least equal to the Unit replaced.
- (e) Any Replacement Unit shall be subject, immediately and without further action by any Person, to the Lien of this Indenture. The Trustee, upon receipt of the documents required to be delivered pursuant hereto, shall release all of its rights, interest and Lien in and to such replaced Unit in accordance with the provisions of the following sentence. The Trustee shall execute and deliver to the Corporation an instrument releasing its Lien in and to such replaced Unit

and shall execute for recording in public offices such instruments in writing as the Corporation shall reasonably request in order to make clear upon public records that such Lien with respect to such replaced Unit has been released under the laws of all applicable jurisdictions.

## **ARTICLE 5 PREPAYMENT AND PURCHASE OF SECURED EQUIPMENT NOTES**

### **5.01 General**

The Corporation, when not in default hereunder, shall have the right at its option to prepay, either in whole or in part at any time before the Stated Maturity, Secured Equipment Notes which by their terms are made so prepayable, with such Premium, if any, and on such date or dates and on such terms and conditions as shall have been determined at the time of issue of such Secured Equipment Notes and as shall be expressed in such Secured Equipment Notes or in the Terms Schedule authorizing or providing for the issue thereof. In the event that Secured Equipment Notes are prepaid in whole or in part pursuant to the provisions of this Article 5, the provisions of Section 8.04 with respect to the total or partial discharge of this Indenture and the Security shall apply.

### **5.02 Partial Prepayment of Secured Equipment Notes**

If less than all of the principal amount of the Secured Equipment Notes for the time being outstanding are to be prepaid, the Corporation shall in each such case, at least 15 days before the date upon which the notice of prepayment is required to be given, notify the Trustee in writing of the Corporation's intention to make a prepayment of Secured Equipment Notes and of the aggregate principal amount to be prepaid. Such Secured Equipment Notes shall be prepaid in part on a *pro rata* basis in respect of each \$1,000 principal amount of Secured Equipment Notes subject to such optional prepayment that would otherwise remain unpaid on the Prepayment Date at a prepayment price equal to the sum of (1) an amount equal to the product obtained by multiplying the aggregate outstanding principal amount of the Secured Equipment Notes being prepaid in part immediately prior to the Prepayment Date (after deducting therefrom the scheduled principal payment, if any, due and payable on such Prepayment Date) by a fraction, the numerator of which is the aggregate principal amount to be prepaid and the denominator of which shall be the aggregate outstanding principal amount of all outstanding Secured Equipment Notes plus (2) the aggregate amount of interest accrued and unpaid in respect of the principal amount to be prepaid pursuant to clause (1) above to but not including such Prepayment Date after giving effect to the application of any payment made by or for the account of the Trustee on or prior to such Prepayment Date, plus (3) the Premium, if any, with respect to the principal amount to be prepaid pursuant to clause (1) above. The holder of any Secured Equipment Note which is to be prepaid in part only, upon surrender of such Secured Equipment Note for

payment as required by Section 5.06, shall be entitled to receive, without expense to such holder, one or more new Secured Equipment Notes for the unrepaid part of the Secured Equipment Note so surrendered together with a new amortization schedule, and the Trustee shall certify and deliver such new Secured Equipment Note or Secured Equipment Notes upon receipt of the Secured Equipment Note so surrendered.

Each prepayment of principal made pursuant to this Section 5.02 shall be (i) applied to the prepayment of the outstanding Secured Equipment Notes being prepaid by the Trustee so that each of the remaining installments of principal of such Secured Equipment Notes shall be reduced in the proportion that the principal amount of the prepayment bears to the aggregate unpaid principal amount of Secured Equipment Notes immediately prior to the prepayment and (ii) made ratably over all Secured Equipment Notes, without priority of any one Secured Equipment Note over any other.

### **5.03 Notice of Prepayment**

Notice of intention to prepay the Secured Equipment Notes in whole or in part shall be given by or on behalf of the Corporation to the holders of the Secured Equipment Notes and to the Trustee at least 30 Business Days prior to the date fixed for prepayment (the “**Prepayment Date**”), in the manner provided in Section 11.02. Every notice of prepayment shall specify the Prepayment Date, the Prepayment Price or the Prepayment Price Determination Date, as applicable, the outstanding principal amount, the principal amount to be prepaid, the record date, if any, and the place or places of payment, and shall state that all interest thereon in respect of such prepaid principal shall cease from and after the Prepayment Date. In addition, unless all the outstanding Secured Equipment Notes are to be prepaid in full, the notice of prepayment shall specify:

- (a) in the case of Book Entry Only Secured Equipment Notes, that the prepayment will take place in such manner as may be agreed by the Depository, the Trustee and the Corporation; and
- (b) the new amortization schedule for the outstanding principal amount of the Secured Equipment Notes following such prepayment.

### **5.04 Secured Equipment Notes Due on Prepayment Dates**

Upon notice having been given as specified in Section 5.03, all the Secured Equipment Notes to be prepaid in full shall thereupon be and become due and payable at the Prepayment Price and on the Prepayment Date specified in such notice, in the same manner and with the same effect as if such date was the Stated Maturity specified in such Secured Equipment Notes, anything therein or herein to the contrary notwithstanding, and from and after such Prepayment Date, if the money necessary to redeem such Secured Equipment Notes shall have been deposited as provided in Section 5.05 and affidavits or other proof

satisfactory to the Trustee, acting reasonably, as to the publication or mailing of such notices shall have been lodged with the Trustee, such Secured Equipment Notes shall not be considered as outstanding hereunder and interest upon such Secured Equipment Notes shall cease.

If any question shall arise as to whether any notice has been given as required or any deposit has been made, such question shall be decided by the Trustee, whose decision shall be final and binding upon all parties in interest.

#### **5.05 Deposit of Prepayment Amount**

Except as otherwise provided in a Terms Schedule, upon notice having been provided that the Secured Equipment Notes are to be prepaid in whole or in part, the Corporation shall deposit with the Trustee or any Paying Agent to the order of the Trustee, on or before the Prepayment Date specified in the notice of prepayment, such amount as may be sufficient to pay the Prepayment Price of the Secured Equipment Notes. From the amount so deposited the Trustee or the Paying Agent, as applicable, shall pay or cause to be paid to the holders of such Secured Equipment Notes called for prepayment, upon surrender of such Secured Equipment Notes, the Prepayment Price to which they are respectively entitled on the Prepayment Date.

#### **5.06 Failure to Surrender Secured Equipment Notes Called for Prepayment**

If the holder of any Secured Equipment Note to be prepaid fails on or before the date specified for prepayment to surrender such Secured Equipment Note, or does not within such time accept payment of the Prepayment Price payable in respect thereof or give such receipt therefor, if any, as the Trustee may require, such Prepayment Price may be deposited in trust either with the Trustee or with a chartered bank, including an Affiliate of the Trustee, at such rate of interest as the Trustee or such bank may allow (and the Trustee may receive a fee from such bank in respect of such deposit), and such deposit shall for all purposes be deemed a payment to such holder of the sum so deposited and, to that extent, the Secured Equipment Note shall thereafter not be considered as outstanding hereunder and such holder shall have no right other than to receive payment out of the amount so deposited, upon surrender and delivery of such holder's Secured Equipment Note, of the Prepayment Price of such Secured Equipment Note.

#### **5.07 Purchase of Secured Equipment Notes**

Except as otherwise provided in a Terms Schedule, the Corporation may, at any time when it is not in default hereunder, purchase all or any of the Secured Equipment Notes in the market (which shall include purchase from or through an investment dealer or stock exchange member) or by tender or by private contract, provided that the price at which any Secured Equipment Note may be purchased by private contract shall not exceed the principal amount

thereof together with accrued and unpaid interest thereon and costs of purchase. All Secured Equipment Notes so purchased shall forthwith be delivered to the Trustee and shall be cancelled by it and, subject to Section 5.02, no Secured Equipment Notes shall be issued in substitution therefor.

If, upon an invitation for tenders, more Secured Equipment Notes are tendered at the same lowest price than the Corporation is prepared to accept, the Secured Equipment Notes to be purchased by the Corporation will be selected by the Trustee, in such manner (which may include selection by lot, selection on a proportionate basis, random selection by computer or any other method) as the Trustee considers appropriate, from the Secured Equipment Notes tendered by each tendering Secured Equipment Noteholder who tendered at such lowest price. For this purpose the Trustee may make, and from time to time amend, regulations with respect to the manner in which Secured Equipment Notes may be so selected, and regulations so made shall be valid and binding upon all Secured Equipment Noteholders, notwithstanding the fact that, as a result thereof, one or more of such Secured Equipment Notes become subject to purchase in part only. The holder of a Secured Equipment Note of which a part only is purchased, upon surrender of such Secured Equipment Note for payment, shall be entitled to receive, without expense to such holder, one or more new Secured Equipment Notes for the unpurchased part so surrendered, and the Trustee shall certify and deliver such new Secured Equipment Note or Secured Equipment Notes upon receipt of the Secured Equipment Note so surrendered. The Trustee, upon the purchase by the Corporation of all or any of the Secured Equipment Notes pursuant to this Section 5.07, shall release all of its right, interest and Lien in and to such proportionate number of Units in accordance with the provisions of the following sentence. The Trustee shall execute and deliver to the Corporation an instrument releasing its Lien in and to such proportionate number of Units as the outstanding principal amount of outstanding Secured Equipment Notes being purchased by the Corporation bears to the outstanding principal amount of all outstanding Secured Equipment Notes and shall execute for recording in public offices such instruments in writing as the Corporation shall reasonably request in order to make clear upon public records that such Lien with respect to such number of Units has been released under the laws of all applicable jurisdictions.

#### **5.08 Cancellation of Secured Equipment Notes**

All Secured Equipment Notes purchased or prepaid in whole or in part by the Corporation under the provisions of this Article 5 shall not be reissued or resold and shall be forthwith delivered to and cancelled by the Trustee and, subject to the provisions of Section 5.02 as to Secured Equipment Notes to be prepaid in part, no Secured Equipment Notes shall be issued in substitution therefor and the provisions of Section 8.01 shall apply to any such cancelled Secured Equipment Notes.

**ARTICLE 6**  
**COVENANTS OF THE CORPORATION**

**6.01 General Covenants**

So long as any Secured Equipment Notes remain outstanding, the Corporation shall:

- (a) Pay Secured Equipment Notes. Duly and punctually pay or cause to be paid to every holder of every Secured Equipment Note the principal thereof, interest accrued thereon (including, in the case of default, interest on the amount in default), and Premium, if any, as the case may be, at the dates and places, in the currency and in the manner described herein (and in such Secured Equipment Notes);
- (b) Maintain Corporate Existence. Subject to Article 9 hereof and except as otherwise expressly provided herein, at all times maintain its corporate existence and carry on and conduct its business in a proper, efficient and businesslike manner and in accordance with good business practice;
- (c) Keep Books of Account. Keep proper books of account in accordance with Generally Accepted Accounting Principles and, if and, whenever it is so required in writing by the Trustee, file with the Trustee a copy of each annual and quarterly report of the Corporation after the date hereof;
- (d) Numbering of Units.
  - (i) Cause each Unit (including, without limitation, any Replacement Unit or Substituted Unit) to be numbered, on the date of execution and delivery of the related Supplemental Indenture, with the road numbers shown on the Supplemental Indenture covering such Unit. The Corporation will not change the road number of any Unit except in accordance with a statement of new road number to be substituted therefor, which statement shall be delivered to the Trustee by the Corporation prior to such change and a Supplemental Indenture with respect to such new road numbers shall be, at the sole expense of the Corporation, filed or recorded in all public offices where this Indenture shall have been filed or recorded and in such other places, if any, where the Trustee may reasonably request in order to protect, preserve and maintain the rights of the Trustee hereunder; except as provided hereinabove, the Corporation will not place any such Units in operation or exercise any control or dominion over the same until such road numbers shall have been so numbered on both sides thereon and

will replace promptly any such road numbers which may be removed, defaced, obliterated or destroyed.

- (ii) Except as above provided, the Corporation will not allow the name of any Person to be placed on any Unit as a designation that might reasonably be interpreted as a claim of ownership or of any security interest other than as created hereunder; provided, however that subject to the delivery of the statement as to new road numbers required by Section 6.01(d)(i), the Corporation may cause the Units to be lettered with the names or initials or other insignia customarily used by the Corporation or any Permitted Lessee or any of their respective Affiliates on railroad equipment used by it of the same or a similar type for convenience of identification of the ownership by the Corporation of the Units or the right of a Permitted Lessee to use the Units pursuant to a lease or sublease permitted hereby;
- (e) Negative Pledge. Not sell, transfer or dispose of any of the Units except as permitted by the terms of this Indenture, provided that the Corporation shall not directly or indirectly create, incur, assume, permit or suffer to exist any Encumbrance (other than Permitted Liens) on or with respect to any Security including, without limitation, the Units, and the Corporation shall promptly, at its own expense, take such action or cause such action to be taken as may be necessary to duly discharge (by bonding or otherwise) any such Encumbrance not excepted above if the same shall arise at any time;
- (f) Maintenance of Units. Maintain, repair, service and overhaul each Unit or cause each unit to be maintained, repaired, serviced or overhauled, (i) such that each Unit shall be in good operating order, repair and condition suitable for its intended use (ordinary wear and tear excepted and with such Required Modifications as required by this Section 6.01(f)), (ii) in accordance with prudent Class I railroad industry practice in existence from time to time, (iii) in accordance with the Manufacturer's recommendations for the performance of regular maintenance, repairs and overhauls of the Unit, (iv) in the same manner and with the same care used by the Corporation in respect of other equipment owned or operated by the Corporation similar in type to such Unit and (v) at all times in compliance with all applicable laws and regulations issued by any governmental authority having jurisdiction over the Corporation or any Unit; provided, however, that the Corporation shall have the right to contest the validity or application of any such law or regulation pursuant to a Permitted Contest. In the event the Corporation is required to modify, alter or improve any Unit to comply with laws, rules and regulations issued by any governmental authority having jurisdiction over the Corporation or any Unit (a "Required Modification"), the Corporation shall make such Required

Modification at its own expense; provided, however, that the Corporation may contest the validity or application of any such requirement pursuant to a Permitted Contest;

- (g) Use of Units. Be entitled to the use of the Units in the general operation of the Corporation's business in Canada and the United States and on international railway networks linked to Canada or the United States; provided that in no event shall more than ten percent (10%) of the Units be operated (including operation by a Permitted Lessee) in Mexico at any time unless the Corporation has delivered to the Trustee, at the Corporation's expense, an opinion of Counsel to the effect that with respect to such international use, the rights of the Trustee and the Secured Equipment Noteholders are subject to substantially the same protection as provided in Canada and the United States. The Corporation agrees that each Unit will be used and operated in material compliance with all applicable laws and regulations issued by any governmental authority having jurisdiction over the Corporation or any Unit; provided, however, that the Corporation may contest any such law or regulation pursuant to a Permitted Contest;
- (h) Substitution.
- (i) Be entitled to substitute any Unit with a locomotive having a value, utility, remaining useful life and residual value at least equivalent to the Unit being substituted (each, a "**Substituted Unit**"); provided, however, that if more than 10% of the Units are to be substituted with Substituted Units, the Corporation will obtain a confirmation of the rating of the Secured Equipment Notes by two recognized rating agencies that the rating of such Secured Equipment Notes will not change as a result of the substitution.
- (ii) At the time of or prior to any replacement of any Unit with a Substituted Unit, the Corporation, at its own expense, will (i) execute and deliver to the Trustee a Supplemental Indenture for such Substituted Unit to be delivered to the Trustee for execution whereupon the Corporation shall file the Supplemental Indenture as soon as possible at every office where the registration or filing thereof may be required or advisable in order to preserve and protect the Security thereby created or intended to be created, (ii) upon the request of the Trustee, furnish the Trustee with an opinion of the Corporation's Counsel (it being agreed that the opinion of in-house counsel of the Corporation will be considered by the Trustee in that regard), to the effect that (y) immediately prior to the execution and delivery of the Supplemental Indenture for such Substituted Unit, such Substituted

Unit was owned by the Corporation and free and clear of all liens other than Permitted Liens and (z) all filings, recordings and other action necessary or appropriate to perfect and protect the Trustee's interest in the Substituted Unit have been accomplished, (iii) upon the request of the Trustee, furnish the Trustee with a Certificate of the Corporation certifying that as of said date and upon consummation of the replacement, no Event of Default exists and (iv) furnish such other documents in evidence as the Trustee may reasonably request in order to establish the consummation of the transactions contemplated in this Section 6.01(h) including, without limitation, evidence that the Substituted Unit has a value, utility, remaining useful life and residual value at least equal to the Unit replaced.

(iii) Any Substituted Unit shall be subject, immediately and without further action by any person, to the Lien of this Indenture. The Trustee agrees for the benefit of the Corporation, upon receipt of the documents required to be delivered pursuant hereto, it shall release all of its rights, interest and Lien in and to such substituted Unit in accordance with the provisions of the following sentence. The Trustee shall execute and deliver to the Corporation an instrument releasing its Lien in and to such substituted Unit and shall execute for recording in public offices such instruments in writing as the Corporation shall reasonably request in order to make clear upon public records that such Lien with respect to such substituted Unit has been released under the laws of all applicable jurisdictions;

(i) Lease and Sublease of Units. Be permitted to lease all or any portion of the Units to any Affiliate of the Corporation or to any railroad, the headquarters and operations of which are located in Canada or the United States of America (each, a "**Permitted Lessee**") and such Person may sublease to any such Person (the term "**Permitted Lessee**" shall also include any permitted sublessee hereunder) so long as: (i) on the effective date of any such lease or sublease, no Event of Default has occurred and is continuing, (ii) any lease and any sublease, and the rights and interests of any Permitted Lessee thereunder, shall be expressly subject and subordinate to this Indenture, (iii) the Corporation shall remain primarily and directly liable for the performance of its obligations hereunder, (iv) during the term of any such lease or sublease, the Units subject thereto shall remain subject to a maintenance program no less stringent than the maintenance program of the Corporation, (v) the Corporation will give the Trustee and any rating agency rating the Secured Equipment Notes prior written notice of any lease or sublease (other than to an Affiliate) for a term in excess of one (1) year, (vi) all filings of any lease and sublease necessary to protect the rights of the Corporation and the Trustee in

the Units subject thereto shall have been made in a timely fashion, and (vii) the Corporation's and Trustee's respective rights and interests relating to the Units shall not be impaired or diminished in any material way;

- (j) Running Rights and Pooling. Be entitled to use the Units in accordance with run-through agreements and pooling agreements customary for Class I railroads in Canada and the United States;
- (k) Insurance.
  - (i) insure or self-insure for property damage and third part liability with respect to all the Units to the same extent, in the same manner, and according to the same policies and practices as is the Corporation's practice with respect to other locomotives owned by the Corporation; provided that, subject always to the Corporation's right to self-insure in accordance with this Section 6.01(k), such third party liability coverage shall provide for general liability limits not less than Cdn. \$25,000,000 per occurrence or in the aggregate;
  - (ii) any policies of insurance carried in accordance with this Section 6.01(k) and any policies taken out in substitution or replacement for any of such policies with respect to public liability insurance (i) shall name the Trustee as an additional insured as its interests may appear, and (ii) shall provide that if the insurers cancel such insurance for any reason whatsoever, or if the same is allowed to lapse for non-payment of premium, or the scope of coverage thereof is changed in any way that materially adversely affects the interest of the Trustee, such cancellation, lapse or change shall not be effective as to the Trustee for 30 days after written notice by such insurers to the Corporation of such cancellation, lapse or change. Each such policy (i) shall be primary without right of contribution from any other insurance which is carried by the Corporation or any other Person to the extent that such other insurance provides it with contingent and/or excess liability insurance with respect to its interest as such in the Units, (ii) shall expressly provide that all of the provisions thereof except the limits of liability, shall operate in the same manner as if there were a separate policy covering each insured, (ii) shall provide that the insurer shall waive any rights of set-off, counterclaim or other deduction against the Trustee, (iv) shall provide that the insurer shall waive any rights of subrogation against the Trustee, and (v) shall provide that the Trustee shall not have any obligation or liability for premiums in connection with such insurance or any call, commission, or assessment with respect thereto but shall provide for notice to the Corporation and the

Trustee of any non payment of premium and opportunity for the Corporation or the Trustee to pay such premium without impairing the policy;

- (iii) upon the request of the Trustee (but not more than once in any 12-month period) arrange for appropriate certification as to the satisfaction of the requirements set forth above in this Section 6.01(k) to be made promptly to the Trustee by each insurer or broker with respect thereto; provided that all information contained therein shall be held confidential by such Persons and shall not be furnished or disclosed by them to anyone except as may be required by an order of any court or administrative agency or by any statute, rule, regulation or order of any governmental authority or pursuant to the request of any regulatory or other governmental authority or any auditors or counsel of such Persons or the Trustee and otherwise as may be negotiated; provided that if the Corporation, after good faith efforts, is unable to provide a certificate from its insurers or brokers, it may satisfy the requirements of this Section 6.01(k) by delivering a Certificate of the Corporation describing in reasonable detail the Corporation's insurance program with respect to the Units to the effect that the Corporation's insurance program satisfies the requirements of this Section 6.01(k);
- (l) Notice of an Event of Default. In the event that any Responsible Officer of the Corporation shall have actual knowledge of an Event of Loss or an Event of Default, give prompt written notice thereof to the Trustee; provided that the giving of such notice by the Corporation shall not be a condition to the start of the five day grace period referred to in Section 7.01(a);
- (m) Effect Necessary Registrations. Register or file or cause to be registered or filed this Indenture (or a notice or financing statement in respect hereof) as soon as practicable at every office where the registration or filing thereof is required or advisable in order to preserve and protect the Security hereby created or intended to be created; and
- (n) Maintain Security. Maintain and keep the Security created by this Indenture as a valid effective first fixed security.

## **6.02 Annual Certificate of Compliance**

Within 120 days after the end of each fiscal year of the Corporation and at any other time if requested by the Trustee, the Corporation shall provide the Trustee with an Officer's Certificate, certifying that after reasonable investigation and inquiry the Corporation has complied with all covenants, conditions and other requirements contained in this Indenture,

the non-compliance of which would, with the giving of notice, lapse of time or otherwise, constitute an Event of Default hereunder, or, if such is not the case, setting forth with reasonable particulars the circumstances of any failure to comply and steps taken or proposed to be taken to eliminate such failure to comply or remedy such Event of Default, as the case may be.

### **6.03 Trustee's Remuneration and Expenses**

The Corporation shall pay to the Trustee from time to time reasonable remuneration for its services hereunder and shall pay or reimburse the Trustee upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee in the administration or execution of the trusts created hereby (including the reasonable fees and disbursements of its Counsel and all other advisors and assistants not regularly in its employ), both before any default hereunder and thereafter until all duties of the Trustee under such trusts have been finally and fully performed, except any such expenses, disbursements or advances as may arise from the negligence or wilful misconduct of the Trustee. Any amount due under this Section 6.03 and unpaid 30 days after written request for such payment will bear interest from the expiration of such 30 days at a rate per annum equal to the Prime Rate. In the event of a default, all amounts so payable and the interest thereon shall be payable out of any funds coming into the possession of the Trustee or its successors in the trusts hereunder in priority to the payment of the principal of, Premium, if any, on, and interest on the Secured Equipment Notes.

### **6.04 Not to Accumulate Interest**

In order to prevent any accumulation after maturity of unpaid interest, the Corporation will not, except with the approval of the Secured Equipment Note Holders expressed by Extraordinary Resolution, directly or indirectly, extend or assent to the extension of time for payment of any interest payable on the Secured Equipment Notes or be a party to or approve any such arrangement by purchasing or funding any interest or in any other manner. If the time for payment of any such interest shall be so extended, whether for a definite period or otherwise, the registered owners entitled to such interest shall not be entitled in case of default hereunder to the benefit of these presents except subject to the prior payment in full of the principal of and Premium, if any, on all Secured Equipment Notes and of all interest due and payable on such Secured Equipment Notes, the payment of which has not been so extended, and of all other moneys payable hereunder.

### **6.05 Performance of Covenants by Trustee**

If the Corporation fails to perform any of its covenants contained in this Indenture, the Trustee may itself perform any of such covenants capable of being performed by it, but shall be under no obligation to do so. All sums expended or advanced by the Trustee for such

purpose will be repayable as provided in Section 6.03. No such performance or advance by the Trustee shall relieve the Corporation of any default or any of its obligations hereunder.

**ARTICLE 7**  
**DEFAULT, ENFORCEMENT AND RIGHT TO ACCELERATION**

**7.01 Events of Default**

Each of the following events is herein sometimes referred to as an “**Event of Default**”:

- (a) the Corporation makes default in payment of the principal of, Premium, if any, or interest on, any Secured Equipment Note when the same becomes due under any provision hereof or of the Secured Equipment Notes and any such default shall have continued for a period of five days;
- (b) the Corporation makes default in the observance of the covenant contained in Section 6.01(e);
- (c) an order shall be made or an effective resolution shall be passed for the winding-up or liquidation of the Corporation, except in the course of carrying out, or pursuant to, a transaction which is permitted under Article 9;
- (d) the Corporation shall make a general assignment for the benefit of its creditors or a proposal under applicable bankruptcy laws or otherwise acknowledges its insolvency in writing, or shall be declared bankrupt, or a custodian or a sequestrator or receiver and manager or any other officer with similar powers shall be appointed in respect of the Corporation or of all of the property of the Corporation or any part thereof which is, in the opinion of the Trustee, a substantial and material part thereof and, if such appointment is other than a judicial appointment, such appointment shall not be contested in good faith and remains undischarged for 30 days; or
- (e) the Corporation shall neglect to carry out or observe any other covenant or condition herein on its part to be observed or performed and, notice in writing has been given by the Trustee to the Corporation to put an end to the same, the Corporation shall fail to make good such default within a period of 90 days after the giving to it of such notice, unless the Trustee (having regard to the subject matter of such neglect or non-observance) shall have agreed to a longer period and, in such latter event, within the period agreed to by the Trustee.

## **7.02 Notice of Event of Default**

If an Event of Default shall occur and be continuing, the Trustee shall, within 30 days after it becomes aware of the occurrence of such Event of Default, give notice of such Event of Default to the Secured Equipment Noteholders in the manner provided in Section 11.02.

If notice of an Event of Default has been given to the Secured Equipment Noteholders and the Event of Default is thereafter remedied or cured, notice that the Event of Default is no longer continuing shall be given by the Trustee to the Persons to whom notice of the Event of Default was given pursuant to this Section 7.02, such notice to be given within a reasonable time, not to exceed 30 days, after the Trustee becomes aware that the Event of Default has been remedied or cured.

## **7.03 Acceleration**

Subject to the provisions of Section 7.04, if an Event of Default shall occur and be continuing, the Trustee may, in its discretion, and shall, upon receipt of a Secured Equipment Noteholders' Request, by notice in writing to the Corporation, declare the principal of and interest on all Secured Equipment Notes then outstanding and the Premium, if any, thereon which would have been payable if the Corporation had prepaid the Secured Equipment Notes on the date of such declaration and all other amounts outstanding hereunder to be due and payable and the same shall forthwith become immediately due and payable to the Trustee, anything therein or herein to the contrary notwithstanding. Notwithstanding anything contained in this Indenture or the Secured Equipment Notes to the contrary, if the Trustee makes such declaration, the Corporation will pay to the Trustee forthwith for the benefit of the Secured Equipment Noteholders the amount of principal of and Premium, if any, and accrued and unpaid interest (including interest on amounts in default) on all Secured Equipment Notes and all other amounts payable in regard thereto under this Indenture, together with interest thereon at the rate borne by such Secured Equipment Notes from the date of such declaration until payment is received by the Trustee. Such payment, when made, will be deemed to have been made in discharge of the Corporation's obligations under this Indenture and any amounts so received by the Trustee shall be applied in the manner provided in Section 7.07. Notwithstanding the foregoing, in the event of an Event of Default under Section 7.01(d), the principal of and interest on all Secured Equipment Notes then outstanding and the Premium, if any, thereon, will become immediately due and payable without the necessity for any further action on behalf of the Secured Equipment Noteholders.

## **7.04 Waiver of Event of Default**

Upon the happening of an Event of Default, the holders of not less than 66⅔% of the principal amount of the Secured Equipment Notes then outstanding (or not less than 100% in the case of a failure to make payment of principal or Premium, if any, required by Section 7.01(a)) shall have power by requisition in writing to instruct the Trustee to waive such Event

of Default and to cancel any declaration made by the Trustee pursuant to Section 7.03, and the Trustee shall thereupon waive the Event of Default or cancel such declaration upon such terms and conditions as shall be prescribed in such requisition.

No delay or omission of the Trustee or of the Secured Equipment Noteholders in exercising any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver of any such Event of Default or acquiescence therein, and no act or omission, either of the Trustee or of the Secured Equipment Noteholders, shall extend to or be taken in any manner whatsoever to affect any subsequent Event of Default or the rights resulting therefrom.

#### **7.05 Enforcement by the Trustee**

Subject to the provisions of Section 7.04 and to the provisions of any Extraordinary Resolution, if an Event of Default has occurred and is continuing, the Trustee shall, upon receipt of a Secured Equipment Noteholders' Request and upon being indemnified to its reasonable satisfaction against all costs, expenses and liabilities to be incurred, proceed in its name as trustee hereunder to obtain or enforce the rights of the Trustee and the Secured Equipment Noteholders by such proceedings authorized by this Indenture or by law or equity as the Trustee in such request shall have been directed to take, or if such request contains no such direction, then by such proceedings authorized by this Indenture or by suit at law or in equity as the Trustee shall deem expedient, including, without limitation,

- (a) recover judgment in its own name as Trustee against the Security and may take possession of all or any part of the Security and may exclude the Corporation and all persons claiming under them wholly or partly therefrom;
- (b) if at the time such action may be lawful and always subject to compliance with any mandatory legal requirements, either with or without taking possession, and either before or after taking possession, and without instituting any legal proceedings whatsoever, and having first given notice of such action to the Corporation once at least 30 days prior to the date of such action, and any other notice which may be required by law, sell and dispose of the Security, or any part thereof, or interest therein, at a private sale or sales or a public auction to the highest bidder, in each case, in one lot in its entirety or in separate lots, and either for cash or on credit and on such terms as the Trustee in its sole discretion may determine, and at any place (whether or not it be the location of the Security or any part thereof) and time designated in the notice referred to above; provided, however, that notwithstanding any provision herein to the contrary, the Trustee shall not sell any of the Security or exercise other remedies against the Security seeking to deprive the Corporation of its interest therein unless a declaration of acceleration has been made or an acceleration has otherwise occurred pursuant to Section 7.03. Any

such sale or sales may be adjourned from time to time by announcement at the time and place appointed for such sale or sales, or for any such adjourned sale or sales, without further notice, and the Trustee and any Secured Equipment Noteholder may bid and become the purchaser at any such sale. The Trustee may exercise such right without possession or production of the Secured Equipment Notes or proof of either ownership thereof, and as representatives of the Secured Equipment Noteholders may exercise such right without notice to the Secured Equipment Noteholders or including the Secured Equipment Noteholders as parties to any suit or proceedings relating to foreclosure or any property in the Security. The Corporation hereby irrevocably constitutes the Trustee, the true and lawful attorney-in-fact of the Corporation (in the name of the Corporation or otherwise) for the purpose of effectuating any sale, assignment, transfer or delivery upon enforcement of the Lien created hereunder, whether pursuant to foreclosure or power of sale or otherwise, to execute and deliver all such bills of sale, assignments and other instruments as the Trustee may consider necessary or appropriate, with full powers of substitution.

If an Event of Default has occurred and is continuing, the Corporation shall, at the request of the Trustee, promptly execute and deliver to the Trustee such instruments of title or other instruments as the Trustee may deem necessary or advisable to enable the Trustee or an agent or representative designated by the Trustee, at such time and place or places as the Trustee may specify, to obtain possession or affect the sale of all or any part of the Security. If the Corporation shall for any reason fail to execute and deliver such instruments and documents after such request by the Trustee, the Trustee shall be entitled to a judgment for specific performance of the covenants contained in the forgoing sentence, conferring upon the Trustee the right to immediate possession and requiring the Corporation to execute and deliver such instruments and documents to the Trustee. The Trustee shall also be entitled to pursue all or any part of the Security wherever it may be found and may enter any of the premises of the Corporation or any other Person wherever the Security may be or be supposed to be and search for the Security and take possession of any item of the Security pursuant to this Section 7.05 all without liability on the part of the Trustee for loss or damage to property, or otherwise excepted to the extent arising from its gross negligence or willful misconduct. The Trustee may, from time to time, at the expense of the Security, make all such expenditures for maintenance, insurance, repairs, replacements, alterations, additions and improvements to and of the Security, as it in its sole discretion may deem proper. In each such case, the Trustee shall have the right to use, operate, store, lease, control or manage the Security and to exercise all rights and powers of the Corporation, as owner, relating to the Security as the Trustee shall deem appropriate, including the right to enter into any and all such agreements with respect to the use, operation, storage, lease, control or management of the Security or any part thereof; and the Trustee or any receiver appointed by the Trustee shall be entitled to collect and receive directly all tolls, rents, issues, profits, product, revenues and other income of the Security and every part thereof, without prejudice,

however, to the right of the Trustee under any provision hereof to collect and receive cash help by, or acquired to be deposited, with the Trustee hereunder. In accordance with the terms of this Section 7.05, such tolls, rents, issues, profits, product, revenues and other income shall be applied to pay the expenses of using, operating, storing, leasing, controlling or managing the Security, and of all maintenance, insurance, repairs, replacements, alterations, additions and improvements, and to make all payments which the Trustee may be required to make or elect to make, if any, for taxes, assessments, insurance or other proper charges upon the Security or any part thereof (including the employment of engineers and accountants to examine, inspect and make reports upon the properties and books and records of the Corporation) and all other payments which the Trustee may be required or authorized to make under any provision hereof, including this Section 7.05, as well as just and reasonable compensation for the services of the Trustee and of all persons properly engaged and employed by the Trustee.

If an Event of Default occurs and is continuing and the Trustee shall have obtained possession of or title to the Units, the Trustee shall not be obligated to use or operate the Units or cause the Units to be used or operated directly or indirectly by itself or through agents or other representatives or to lease, license, or otherwise permit or provide for the use or operation of the Units by any other Person unless (i) the Trustee shall have been able to obtain insurance of kinds, at rates and in amounts satisfactory to it in its discretion to protect the Security and the Trustee against any and all liability for loss or damage to the Units and for public liability and for property damage resulting from use or operation of the Units and (ii) funds are available in the Security to pay for all such insurance or, in lieu of such insurance, the Trustee is furnished with indemnification from the Secured Equipment Noteholders or any other Person upon terms and in amounts satisfactory to the Trustee in its sole discretion to protect the Security and the Trustee against any and all liabilities arising out of such use or operation of the Units.

The Trustee shall be entitled and empowered, either in its own name or as trustee of an express trust, or as attorney-in-fact for the holders of the Secured Equipment Notes, or in any one or more of such capacities, to file such proof of debt, amendment of proof of debt, claim, petition or other document as may be necessary or advisable in order to have the claims of the Trustee and of the holders of the Secured Equipment Notes allowed in any insolvency, bankruptcy, liquidation or other judicial proceedings relative to the Corporation or its creditors or relative to or affecting its property. The Trustee is hereby irrevocably appointed (and the successive respective holders of the Secured Equipment Notes by taking and holding the same shall be conclusively deemed to have so appointed the Trustee) the true and lawful attorney-in-fact of the respective holders of the Secured Equipment Notes with authority to make and file in the respective names of the holders of the Secured Equipment Notes or on behalf of the holders of the Secured Equipment Notes as a class, subject to deduction from any such claims of the amounts of any claims filed by any of the holders of the Secured Equipment Notes themselves, any proof of debt, amendment of proof of debt, claim, petition or other document in any such proceedings and to receive payment of any

sums becoming distributable on account thereof, and to execute any such other documents and to do and perform any and all such acts and things, for and on behalf of such holders of the Secured Equipment Notes, as may be necessary or advisable, in the opinion of the Trustee, in order to have the respective claims of the Trustee and of the holders of the Secured Equipment Notes against the Corporation or its property allowed in any such proceeding, and to receive payment of or on account of such claims, provided that nothing contained in this Indenture shall be deemed to give to the Trustee, unless so authorized by Extraordinary Resolution, any right to accept or consent to any plan of reorganization or otherwise by action of any character in such proceeding to waive or change in any way any right of any Secured Equipment Noteholder.

The Trustee shall also have power at any time and from time to time to institute and to maintain such suits and proceedings as it may be advised shall be necessary or advisable to preserve and protect its interests and the interests of the Secured Equipment Noteholders.

All rights of action hereunder may be enforced by the Trustee without the possession of any of the Secured Equipment Notes or the production thereof on the trial or other proceedings relative thereto. Any such suit or proceeding instituted by the Trustee shall be brought in the name of the Trustee as trustee of an express trust, and any recovery of judgment shall be for the rateable benefit of the holders of the Secured Equipment Notes subject to the provisions of this Indenture. In any proceeding brought by the Trustee (and also any proceeding in which a declaratory judgment of a court may be sought as to the interpretation or construction of any provision of this Indenture, to which the Trustee shall be a party), the Trustee shall be held to represent all the holders of the Secured Equipment Notes, and it shall not be necessary to make any holders of the Secured Equipment Notes parties to any such proceeding.

The Trustee may refuse, however, to follow any direction that it determines or is advised by Counsel conflicts with law or this Indenture, that is unduly prejudicial to the rights of the Secured Equipment Noteholders so affected, or that would subject the Trustee to personal liability. The Trustee may take any action deemed proper by it not inconsistent with any such direction. At any time, the Trustee may request instructions from the Secured Equipment Noteholders pursuant to an Extraordinary Resolution with respect to action to be taken hereunder.

#### **7.06 Suits by Secured Equipment Noteholders**

No holder of any Secured Equipment Note shall have any right to institute any action, suit or proceeding at law or in equity for the purpose of enforcing payment of the principal of or any Premium or interest on the Secured Equipment Notes or for the execution of any trust or power hereunder or for the appointment of a liquidator or receiver or for a receiving order under the *Bankruptcy and Insolvency Act* (Canada) or to have the Corporation wound up or to file or prove a claim in any liquidation or bankruptcy proceeding or for any other remedy

unless:

- (a) the Secured Equipment Noteholders, by Extraordinary Resolution or by Secured Equipment Noteholders' Request, shall have made a request to the Trustee and the Trustee shall have been afforded reasonable opportunity either itself to proceed to exercise the powers conferred upon it or to institute an action, suit or proceeding in its name for such purpose;
- (b) the Secured Equipment Noteholders or any of them shall have furnished to the Trustee, when so requested by the Trustee, sufficient funds and security and indemnity satisfactory to the Trustee against the costs, expenses and liabilities to be incurred therein or thereby; and
- (c) the Trustee shall have failed to act within a reasonable time after such notification, request and provision of indemnity.

If a Secured Equipment Noteholder has the right to institute proceedings under this Section 7.06, such Secured Equipment Noteholder, acting on behalf of itself and all other Secured Equipment Noteholders, will be entitled to commence proceedings in any court of competent jurisdiction in which the Trustee might have commenced proceedings under Section 7.05, but in no event will any Secured Equipment Noteholder or combination of Secured Equipment Noteholders have any right to seek any other remedy or institute proceedings out of court. No one or more Secured Equipment Noteholders will have any right in any manner whatsoever to enforce any right under this Indenture or under any Secured Equipment Note, except in accordance with the conditions and in the manner provided in this Indenture.

#### **7.07 Application of Money**

Except as herein otherwise expressly provided, any money received by the Trustee or a Secured Equipment Noteholder pursuant to the provisions of this Article 7 or as a result of legal or other proceedings, or from any trustee in bankruptcy or liquidator of the Corporation, shall be applied, together with other money in the hands of the Trustee available for such purpose, as follows:

- (a) first, in payment or in reimbursement to the Trustee of its compensation, costs, charges, expenses, borrowings, advances or other amounts furnished or provided by or at the instance of the Trustee in or about the execution of its trusts under, or otherwise in relation to, this Indenture, with interest thereon as herein provided;
- (b) second, subject to the provisions of Section 6.04 and this Section 7.07, in payment of the principal of and Premium, if any, and accrued and unpaid

interest and interest on amounts in default on the Secured Equipment Notes which shall then be outstanding in the priority of principal first and then Premium, if any, and then accrued and unpaid interest and interest on amounts in default unless otherwise directed by an Extraordinary Resolution, and in that case in such order or priority as between principal, Premium, if any, and interest as may be directed by such Extraordinary Resolution; and

- (c) third, in payment of the surplus, if any, of such money to the Corporation or its assigns unless otherwise required by law;

provided, however, that no payment shall be made pursuant to Section 7.07(b) in respect of the principal of or Premium, if any, or interest on any Secured Equipment Note held, to the knowledge of the Trustee, directly or indirectly, by or for the benefit of the Corporation or any Affiliate of the Corporation (other than any Secured Equipment Note pledged for value and in good faith to a Person other than the Corporation or any Affiliate of the Corporation, but only to the extent of such Person's interest therein) until the prior payment in full of the principal of and Premium and interest on all Secured Equipment Notes which are not so held.

#### **7.08 Distribution of Proceeds**

Payments to holders of Secured Equipment Notes pursuant to Section 7.07(b) shall be made as follows:

- (a) at least 15 days' notice of every such payment shall be given in the manner provided in Section 11.02 specifying the time and the place or places at which the Secured Equipment Notes are to be presented and the amount of the payment and the application thereof as between principal, Premium, if any, and interest;
- (b) payment in respect of any Secured Equipment Note shall be made upon presentation thereof at any one of the places specified in such notice and any such Secured Equipment Note thereby paid in full shall be surrendered, otherwise a memorandum of such payment shall be endorsed thereon, but the Trustee may in its discretion dispense with presentation and surrender or endorsement in any case upon such indemnity being given as the Trustee shall consider sufficient;
- (c) from and after the date of payment specified in the notice, interest shall accrue only on the amount of principal owing on each Secured Equipment Note after giving credit for the amount of the payment specified in such notice unless the Secured Equipment Note in respect of which such amount of principal is owing is duly presented on or after the date so specified and payment of such specified amount is not made; and

- (d) the Trustee shall not be required to make any payment to the Secured Equipment Noteholders unless the amount in its hands, after reserving therefrom such amount as the Trustee may think necessary to provide for the payments referred to in Section 7.07(a), exceeds two per cent of the aggregate principal amount of the Secured Equipment Notes then outstanding.

#### **7.09 Remedies Cumulative**

No remedy herein conferred upon or reserved to the Trustee or upon or to the Secured Equipment Noteholder is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now existing or hereafter to exist by law.

#### **7.10 Judgment Against the Corporation**

In case of any judicial or other proceedings to enforce the rights of the Secured Equipment Noteholders, judgment may be rendered against the Corporation in favour of the Secured Equipment Noteholders or in favour of the Trustee, as trustee for the Secured Equipment Noteholders, for any amount which may remain due in respect of the principal of the Secured Equipment Notes and the Premium, if any, and the interest thereon.

#### **7.11 Immunity of Shareholders, Directors and Officers**

The Secured Equipment Noteholders and the Trustee hereby waive and release any right, cause of action or remedy now or hereafter existing in any jurisdiction against any past, present or future incorporator, shareholder, director or officer of the Corporation or of any Successor for the payment of the principal of or Premium, if any, or interest on any of the Secured Equipment Notes or on any covenant, agreement, representation or warranty by the Corporation contained herein or in the Secured Equipment Notes.

#### **7.12 Option to Accelerate**

In the event that the Corporation's senior unsecured indebtedness or any Indebtedness (including by way of guarantee) of the Corporation in excess of \$50 million ranking senior to or *pari passu* with the Corporation's senior unsecured indebtedness is declared to be payable before the stated maturity thereof, the Trustee shall, as promptly as practicable after the occurrence of any such event is known to it, send to each Secured Equipment Noteholder written notice of such event and shall call a meeting of Secured Equipment Noteholders. Secured Equipment Noteholders may, in accordance with Section 10.13, pass an Extraordinary Resolution declaring the unpaid principal of all Secured Equipment Notes outstanding immediately due and payable together with all accrued and unpaid interest and Premium, if any, thereon.

## ARTICLE 8 CANCELLATION AND DISCHARGE

### 8.01 Cancellation and Destruction

All Secured Equipment Notes shall, forthwith after payment is made in respect thereof, be delivered to the Trustee and cancelled by it. All Secured Equipment Notes cancelled or required to be cancelled under this or any other provision of this Indenture shall be destroyed by the Trustee, and if required by the Corporation the Trustee shall furnish to the Corporation a destruction certificate in respect of the Secured Equipment Notes so destroyed.

### 8.02 Non-Presentation of Secured Equipment Notes

If the holder of any Secured Equipment Note shall fail to present the same for payment on the date on which the principal thereof and Premium, if any, become payable either at Stated Maturity or otherwise or shall not accept payment on account thereof and give such receipt therefor, if any, as the Trustee may require, then:

- (a) the Corporation shall be entitled to pay to the Trustee and direct it to set aside, or
- (b) in respect of money in the hands of the Trustee which may or should be applied to the payment of the Secured Equipment Notes, the Corporation shall be entitled to direct the Trustee to set aside, or
- (c) in the case of prepayment pursuant to notice given by the Trustee, the Trustee may itself set aside

the principal amount and the Premium and interest, as the case may be, in trust to be paid to the holder of such Secured Equipment Note upon due presentation or surrender thereof in accordance with the provisions of this Indenture, and thereupon the principal amount and Premium, if any, and interest payable on such Secured Equipment Note in respect of which such amount has been set aside shall be deemed to have been paid and the holder thereof shall thereafter have no right in respect thereof other than to receive payment of the amount so set aside (without interest) upon due presentation and surrender thereof, subject to the provisions of Section 8.03. Any interest earned upon the amount so set aside shall be payable to the Corporation.

### 8.03 Repayment of Unclaimed Money

Any amount set aside under Section 8.02 and not claimed by and paid to holders of Secured Equipment Notes as provided in Section 8.02 within six years after the later of the

date of such setting aside and the applicable Maturity Date shall be repaid to the Corporation by the Trustee on demand, together with any interest accrued thereon, and thereupon the Trustee shall be released from all further liability with respect to such amount and thereafter the holders of the Secured Equipment Notes in respect of which such amount was so repaid to the Corporation shall have no rights in respect thereof and the Corporation shall be discharged from its obligations in respect thereof.

#### **8.04 Discharge**

Upon proof being given to the Trustee that the principal of all the Secured Equipment Notes and the Premium, if any, thereon and interest (including interest on amounts in default) thereon and other amounts payable hereunder have been paid or satisfied or that all the outstanding Secured Equipment Notes having matured or having been duly called for prepayment, or the Trustee having been given irrevocable instructions by the Corporation to publish, within 90 days of the Trustee's receipt of such instructions, notice of prepayment of all the outstanding Secured Equipment Notes, such payment or prepayment has been duly and effectually provided for by payment to the Trustee or otherwise, and upon payment of all costs, charges and expenses properly incurred by the Trustee in relation to this Indenture and all interest thereon and the remuneration of the Trustee, or upon provision satisfactory to the Trustee being made therefor, the Trustee shall, at the request and at the expense of the Corporation, execute and deliver to the Corporation such deeds or other instruments as shall be required to evidence the satisfaction and discharge of this Indenture and the Security and to release the Corporation from its covenants herein contained other than those relating to the indemnification of the Trustee.

In the event that only a portion of the outstanding Secured Equipment Notes have been paid or satisfied or been duly called for prepayment, then the preceding sentence shall apply *pro tanto* to the partial discharge of this Indenture and the Security.

### **ARTICLE 9 SUCCESSORS**

#### **9.01 Requirements for Successors**

So long as any Secured Equipment Notes are outstanding, the Corporation shall not enter into any transaction whereby all or substantially all of its undertaking, property and assets would become the property of any other Person (any such Person being herein referred to as a "Successor"), whether by way of reorganization, consolidation, amalgamation, arrangement, merger, transfer, sale or otherwise, unless:

- (a) the Successor is a corporation incorporated under the laws of Canada or any province thereof;

- (b) the Successor shall have executed, prior to or contemporaneously with the consummation of any such transaction, a Supplemental Indenture and such other instruments as are satisfactory to the Trustee, acting reasonably, and in the opinion of Counsel are necessary or advisable to evidence the assumption by the Successor of the Corporation's obligations for the due and punctual payment of the principal of and Premium, if any, and interest on all the Secured Equipment Notes and all other amounts payable and properly deliverable hereunder and the covenant of the Successor to pay the same and its agreement to observe and perform all the covenants and obligations of the Corporation under this Indenture;
- (c) such transaction, to the satisfaction of the Trustee, acting reasonably, and in the opinion of Counsel, shall be upon such terms as substantially preserve, and do not impair in any material respect any of, the rights and powers of the Trustee or of the holders of the Secured Equipment Notes; and
- (d) no condition or event shall exist as to the Corporation or the Successor either at the time of or immediately after the consummation of any such transaction and after giving full effect thereto or immediately after the Successor complying with the provisions of clause (a) above which constitutes or would constitute an Event of Default;

provided, however, the provisions of this Section 9.01 shall not be applicable to any transaction between the Corporation and one or more Subsidiaries of the Corporation or one or more Affiliates, which Affiliate is a direct or indirect wholly-owned subsidiary of Canadian Pacific Limited.

#### **9.02 Vesting of Powers in Successor**

Whenever the conditions of Section 9.01 have been duly observed and performed, the Successor shall possess and from time to time may exercise each and every right and power of the Corporation under this Indenture, in the name of the Corporation or otherwise, and any act or proceeding required by any provision of this Indenture to be done or performed by any directors or officers of the Corporation may be done and performed with like force and effect by the directors or officers of the Successor.

### **ARTICLE 10 MEETINGS OF SECURED EQUIPMENT NOTEHOLDERS**

#### **10.01 Right to Convene Meetings**

The Trustee may at any time and from time to time convene a meeting of Secured

Equipment Noteholders, and the Trustee shall convene a meeting of Secured Equipment Noteholders upon receipt of a Request of the Corporation or a Secured Equipment Noteholders' Request and upon being indemnified to its reasonable satisfaction by the Corporation or by the Secured Equipment Noteholders signing such request against the costs which may be incurred in connection with the calling and holding of such meeting. If the Trustee fails within 30 days after receipt of any such request and such indemnity to give notice convening a meeting, the Corporation or such Secured Equipment Noteholders, as the case may be, may convene such meeting. Every such meeting shall be held in Calgary, Alberta or Toronto, Ontario or at such other place as may be approved or determined by the Trustee or the Corporation.

#### **10.02 Notices of Meetings**

At least 15 days' notice of any meeting shall be given to the Secured Equipment Noteholders in the manner provided in Section 11.02 and a copy thereof shall be sent by mail to the Trustee (unless the meeting has been called by it) and to the Corporation (unless the meeting has been called by it). Such notice shall state the time and place at which the meeting is to be held and shall state briefly the general nature of the business to be transacted thereat, and it shall not be necessary for any such notice to set out the terms of any resolution to be proposed or any of the provisions of this Article 10.

#### **10.03 Chairman**

The Chief Executive Officer of the Corporation, if present, will be the chairman of any meeting of Secured Equipment Noteholders, failing which an individual (who need not be a Secured Equipment Noteholder) nominated in writing by the Trustee shall be chairman of the meeting. If no individual is so nominated, or if the individual so nominated is not present within 15 minutes from the time fixed for the holding of the meeting, the Secured Equipment Noteholders present in person or represented by proxy shall choose an individual present to be chairman.

#### **10.04 Quorum**

Subject to the provisions of Section 10.13, at any meeting of the Secured Equipment Noteholders a quorum shall consist of two or more Secured Equipment Noteholders present in person or represented by proxy and owning or representing at least 25% of the aggregate principal amount of the Secured Equipment Notes then outstanding. If a quorum of the Secured Equipment Noteholders is not present within 30 minutes from the time fixed for holding any meeting, the meeting, if convened by the Secured Equipment Noteholders, shall be dissolved, but in any other case the meeting shall be adjourned to the same day in the next week (unless such day is not a Business Day, in which case it shall be adjourned to the next following Business Day thereafter) at the same time and place, and no notice shall be required to be given in respect of such adjourned meeting. At the adjourned meeting, the

Secured Equipment Noteholders present in person or represented by proxy shall constitute a quorum and may transact the business for which the meeting was originally convened notwithstanding that they may not represent at least 25% of the aggregate principal amount of the Secured Equipment Notes then outstanding.

#### **10.05 Power to Adjourn**

The chairman of a meeting at which a quorum of Secured Equipment Noteholders is present may, with the consent of the holders of a majority of the aggregate principal amount of the Secured Equipment Notes present or represented thereat, adjourn such meeting, and no notice of such adjournment need be given except such notice, if any, as the meeting may prescribe.

#### **10.06 Show of Hands**

Except as otherwise provided in this Indenture, every resolution submitted to a meeting shall be decided by a majority of the votes cast on a show of hands, and unless a poll is duly demanded as herein provided, a declaration by the chairman that a resolution has been carried or carried unanimously or by a particular majority or lost or not carried by a particular majority shall be conclusive evidence of the fact.

#### **10.07 Poll**

On every Extraordinary Resolution and on any other resolution submitted to a meeting in respect of which the chairman or one or more Secured Equipment Noteholders or proxyholders for Secured Equipment Noteholders holding at least \$10,000 principal amount of Secured Equipment Notes demands a poll, a poll shall be taken in such manner and either at once or after an adjournment as the chairman shall direct. Resolutions other than Extraordinary Resolutions shall, if a poll is taken, be decided by the votes of the holders of a majority of the principal amount of the Secured Equipment Notes represented at the meeting and voted on the poll.

#### **10.08 Voting**

On a show of hands, every Person who is present and entitled to vote, whether as a Secured Equipment Noteholder or as proxyholder for one or more Secured Equipment Noteholders or both, shall have one vote. On a poll, each Secured Equipment Noteholder present in person or represented by a proxy duly appointed by an instrument in writing shall be entitled to one vote in respect of each \$1,000 principal amount of Secured Equipment Notes of which he or she is then the holder. A proxyholder need not be a Secured Equipment Noteholder. In the case of joint registered holders of a Secured Equipment Note, any one of them present in person or represented by proxy at the meeting may vote in the absence of the other or others, but if more than one of them are present in person or represented by proxy,

they shall vote together in respect of the Secured Equipment Notes of which they are joint registered holders.

### **10.09 Regulations**

The Trustee, or the Corporation with the approval of the Trustee, may from time to time make and from time to time vary such regulations as it shall from time to time think fit providing for or governing the following:

- (a) voting by proxy by holders of Secured Equipment Notes, the form of the instrument appointing a proxyholder (which shall be in writing), the manner in which it may be executed and evidence of the authority to be provided by any Person signing a proxy on behalf of the registered holder of a Secured Equipment Note;
- (b) the deposit of instruments appointing proxyholders at such place as the Trustee, the Corporation or the Secured Equipment Noteholders convening the meeting, as the case may be, may, in the notice convening the meeting, direct and the time, if any, before the holding of the meeting or any adjournment thereof by which the same shall be deposited; and
- (c) the deposit of instruments appointing proxyholders at an approved place or places other than the place at which the meeting is to be held and the form of such instruments which shall be provided before the meeting to the Corporation or to the Trustee at the place at which the meeting is to be held and the voting of proxies so deposited as though the instruments themselves were produced at the meeting.

Any regulations so made shall be binding and effective and the votes given in accordance therewith shall be valid and shall be counted. Except as such regulations may provide, the only Persons who shall be recognized at a meeting as the holders of any Secured Equipment Notes, or as entitled to vote or be present at the meeting in respect thereof, shall be registered Secured Equipment Noteholders and Persons whom registered Secured Equipment Noteholders have by instrument in writing duly appointed as their proxyholders.

### **10.10 Corporation and Trustee May Be Represented**

The Corporation and the Trustee, by their respective officers and directors, and the legal advisers of the Corporation and the Trustee may attend any meeting of the Secured Equipment Noteholders, but shall have no vote as such.

### **10.11 Powers Exercisable by Secured Equipment Noteholders**

The following powers of the Secured Equipment Noteholders shall be exercisable from time to time only by Extraordinary Resolution:

- (a) power to sanction any modification, abrogation, alteration, compromise or arrangement of the rights of the Secured Equipment Noteholders or the Trustee against the Corporation or in respect of the Security or against any other property of the Corporation, whether such rights arise under this Indenture or the Secured Equipment Notes or otherwise;
- (b) power to assent to any modification of or change in or addition to or omission from the provisions contained in this Indenture which shall be agreed to by the Corporation and to authorize the Trustee to concur in and execute any Indenture supplemental hereto embodying any modification, change, addition or omission;
- (c) power to sanction any scheme for the reconstruction or reorganization of the Corporation or for the consolidation, amalgamation or merger of the Corporation with or into any other Person or for the sale, leasing, transfer or other disposition of the undertaking, property and assets of the Corporation or any part thereof, provided that no such sanction shall be necessary in respect of any such transaction if the provisions of Section 9.01 shall have been complied with;
- (d) power to direct or authorize the Trustee to exercise any power, right, remedy or authority given to it by this Indenture in any manner specified in any such Extraordinary Resolution or to refrain from exercising any such power, right, remedy or authority;
- (e) power to waive and direct the Trustee to waive any Event of Default and to cancel any declaration made by the Trustee pursuant to Section 7.03 either unconditionally or upon any condition specified in such Extraordinary Resolution;
- (f) power to restrain any Secured Equipment Noteholder from taking or instituting any suit, action or proceeding for the purpose of enforcing payment of the principal of, or Premium, if any, or interest on, any Secured Equipment Notes or for the purpose of executing any trust or power hereunder;
- (g) power to direct any Secured Equipment Noteholder who, as such, has brought any action, suit or proceeding to stay or discontinue or otherwise deal with the same upon payment, if the taking of such suit, action or proceeding shall have

been permitted by Section 7.06, of the costs, charges and expenses reasonably and properly incurred by such Secured Equipment Noteholder in connection therewith;

- (h) power to assent to any compromise or arrangement with any creditor or creditors or any class or classes of creditors, whether secured or otherwise, and with holders of any shares or other Securities of the Corporation; and
- (i) power to appoint a committee with power and authority (subject to such limitations, if any, as may be prescribed in the resolution) to exercise, and to direct the Trustee to exercise, on behalf of the Secured Equipment Noteholders, such of the powers of the Secured Equipment Noteholders as are exercisable by Extraordinary Resolution or otherwise as shall be included in the resolution appointing the committee. The resolution making such appointment may provide for payment of the expenses and disbursements of and compensation to such committee. Such committee shall consist of such number of individuals as shall be prescribed in the resolution appointing it and the members need not be Secured Equipment Noteholders. Every such committee may elect its chairman and may make regulations respecting its quorum, the calling of its meetings, the filling of vacancies occurring in its number and its procedure generally. Such regulations may provide that the committee may act at a meeting at which a quorum is present or may act by minutes signed by the number of members thereof necessary to constitute a quorum. All acts of any such committee within the authority delegated to it shall be binding upon all Secured Equipment Noteholders. Neither the committee nor any member thereof shall be liable for any loss arising from or in connection with any action taken or omitted to be taken by them in good faith;

provided, however, that without the consent of each Secured Equipment Noteholder, the Corporation shall not:

- (i) reduce the principal of, or Premium, if any, or interest on, any Secured Equipment Note;
- (ii) change the date on which the principal of, Premium, if any, or any interest on, any Secured Equipment Note is due and payable or otherwise affect the terms of payment of any Secured Equipment Note;
- (iii) except as otherwise provided in this Indenture, create any Lien with respect to the Security ranking prior to or on a parity with that of the Secured Equipment Notes, or deprive any Secured Equipment Noteholder of the benefit of the Lien created hereby;

- (iv) reduce the percentage in principal amount of Secured Equipment Notes outstanding necessary to modify or amend any provision of this Indenture or to waive compliance therewith; or
- (v) make any change to Section 7.04, 7.05, 7.06 or this Section 10.11.

Except as otherwise provided in this Indenture all other powers of and matters to be determined by the Secured Equipment Noteholders may be exercised or determined from time to time by Ordinary Resolution.

#### **10.12 Meaning of Ordinary Resolution**

The expression “**Ordinary Resolution**” when used in this Indenture means, except as otherwise provided in this Indenture, a resolution proposed to be passed as an ordinary resolution at a meeting of Secured Equipment Noteholders duly convened for the purpose and held in accordance with the provisions of this Article 10 at which a quorum of the Secured Equipment Noteholders is present and passed by the affirmative votes of the holders of more than 50% of the aggregate principal amount of the Secured Equipment Notes who are present in person or represented by proxy at the meeting.

#### **10.13 Meaning of Extraordinary Resolution**

The expression “**Extraordinary Resolution**” when used in this Indenture means, except as otherwise provided in this Indenture, a resolution proposed to be passed as an extraordinary resolution at a meeting of Secured Equipment Noteholders duly convened for the purpose and held in accordance with the provisions of this Article at which the holders of at least 51% of the aggregate principal amount of the Secured Equipment Notes then outstanding are present in person or represented by proxy and passed by the affirmative votes of the holders of not less than 66% of the aggregate principal amount of the Secured Equipment Notes who are present in person or represented by proxy at the meeting.

If, at any such meeting, the holders of at least 51% of the aggregate principal amount of the Secured Equipment Notes then outstanding are not present in person or represented by proxy within 30 minutes after the time appointed for the meeting, then the meeting, if convened by or on the requisition of Secured Equipment Noteholders, shall be dissolved, but in any other case the meeting shall stand adjourned to such date, being not less than 21 nor more than 60 days later, and to such place and time as may be appointed by the chairman. Not less than ten days’ notice shall be given of the time and place of such adjourned meeting in the manner provided in Section 11.02. Such notice shall state that at the adjourned meeting the Secured Equipment Noteholders present in person or represented by proxy shall form a quorum, but it shall not be necessary to set forth the purposes for which the meeting was originally called or any other particulars. At the adjourned meeting, the Secured Equipment Noteholders present in person or represented by proxy shall form a quorum and

may transact the business for which the meeting was originally convened, and a resolution proposed to be passed as an Extraordinary Resolution at such adjourned meeting and passed by the requisite vote as provided in this Section 10.13 shall be an Extraordinary Resolution within the meaning of this Indenture, notwithstanding that the holders of at least 51% of the aggregate principal amount of the Secured Equipment Notes then outstanding are not present in person or represented by proxy at such adjourned meeting.

Votes on a resolution proposed to be passed as an Extraordinary Resolution shall always be given on a poll and no demand for a poll on any such resolution shall be necessary.

#### **10.14 Powers Cumulative**

Any one or more of the powers or any combination of the powers in this Indenture stated to be exercisable by the Secured Equipment Noteholders may be exercised from time to time, and the exercise of any one or more of such powers or any combination of powers from time to time shall not be deemed to exhaust the rights of the Secured Equipment Noteholders to exercise the same or any other such power or powers or combination of powers thereafter from time to time. No powers exercisable by the Secured Equipment Noteholders will derogate in any way from the rights of the Corporation under or pursuant to this Indenture or any Secured Equipment Notes.

#### **10.15 Minutes**

Minutes of all resolutions and proceedings at every meeting of Secured Equipment Noteholders shall be made and duly entered in books to be from time to time provided for that purpose by the Trustee at the expense of the Corporation, and any such minutes, if signed by the chairman of the meeting at which such resolutions were passed or proceedings had, or by the chairman of the next succeeding meeting of the Secured Equipment Noteholders, shall be *prima facie* evidence of the matters therein stated and, until the contrary is proved, every such meeting, in respect of the proceedings of which minutes shall have been made, shall be deemed to have been duly held and convened, and all resolutions passed thereat or proceedings had to have been duly passed and had.

#### **10.16 Instruments in Writing**

All actions which may be taken and all powers which may be exercised by the Secured Equipment Noteholders at a meeting held as provided in this Article 10 may also be taken and exercised by an instrument in writing signed in one or more counterparts by the holders of more than 50%, in the case of an Ordinary Resolution, or not less than 66⅔%, in the case of an Extraordinary Resolution, or not less than 100%, in the case of actions requiring the consent of each Secured Equipment Noteholder, of the aggregate principal amount of the outstanding Secured Equipment Notes, and the expressions “**Ordinary Resolution**” and “**Extraordinary Resolution**” when used in this Indenture shall include any

instrument so signed.

### **10.17 Binding Effect of Resolutions**

Every resolution passed in accordance with the provisions of this Article 10 at a meeting of Secured Equipment Noteholders shall be binding upon all the Secured Equipment Noteholders, whether present at or absent from such meeting, and every instrument in writing signed by Secured Equipment Noteholders in accordance with Section 10.16 shall be binding upon all the Secured Equipment Noteholders, whether signatories thereto or not, and each and every Secured Equipment Noteholder and the Trustee (subject to the provisions for its indemnity herein contained) shall be bound to give effect accordingly to every such resolution and instrument in writing.

## **ARTICLE 11 NOTICES**

### **11.01 Notice to the Corporation**

Any notice to the Corporation under the provisions hereof shall be valid and effective if delivered to the Vice President, Legal Services and Corporate Secretary of the Corporation at Canadian Pacific Railway Company, 401-9th Avenue S.W., 5<sup>th</sup> Floor, Calgary, Alberta, T2P 4Z4, with a copy to the Vice President and Treasurer of the Corporation at Canadian Pacific Railway Company, 1800 Bankers Hall East, 855 - 2nd Street S.W., Calgary, Alberta, T2P 4Z5, or if sent by facsimile transmission (with receipt confirmed) to the attention of the Vice President, Legal Services and Corporate Secretary of the Corporation at (403) 319-7473 with a copy to the Vice President and Treasurer of the Corporation at (403) 218-8022, and shall be deemed to have been validly given at the time of delivery or transmission if it is received prior to 4:00 p.m. (Calgary, Alberta time) on a Business Day, failing which it shall be deemed to have been given on the next Business Day. The Corporation may from time to time notify the Trustee of a change in address or facsimile number which thereafter, until changed by like notice, shall be the address or facsimile number of the Corporation for all purposes of this Indenture.

### **11.02 Notice to Secured Equipment Noteholders**

Unless otherwise expressly provided in this Indenture, any notice to be given hereunder to Secured Equipment Noteholders shall be valid and effective if given in the following manner:

- (a) such notice is sent by ordinary mail postage prepaid addressed to such holders at their respective addresses appearing on any of the Registers, provided that if, in the case of joint holders of any Secured Equipment Note, more than one

address appears in the Register in respect of such joint holding, such notice shall be sent only to the first address so appearing; and

- (b) such notice is published once in each of Calgary, Alberta; Toronto, Ontario; and such other cities, if any, at which Registers in respect of such Secured Equipment Notes are required to be kept, each publication to be made in a newspaper of general circulation published in the designated cities and all such publications to be made within a period of seven days, provided that, in the case of the prepayment of Secured Equipment Notes, such notice shall be published twice in each of the said cities in successive weeks.

Any notice so given by mail shall be deemed to have been given on the day on which it is mailed. Any notice so given by publication shall be deemed to have been given on the day on which the first publication is completed in all of the cities in which publication is required. In determining under any provisions hereof the date by which notice of any meeting, prepayment or other event must be given, the date of giving the notice shall be included and the date of the meeting, prepayment or other event shall be excluded. Accidental error or omission in giving notice or accidental failure to mail notice to any Secured Equipment Noteholder shall not invalidate any action or proceeding founded thereon.

### **11.03 Notice to the Trustee**

Any notice to the Trustee under the provisions hereof shall be valid and effective if delivered to an officer of the Trustee at The Trust Company of Bank of Montreal, 1 First Canadian Place, 100 King Street West, Suite 5104, Toronto, Ontario, M5X 1A1, Attention: Senior Trust Officer, or if sent by facsimile transmission (with receipt confirmed) at (416) 867-6264, and shall be deemed to have been validly given at the time of delivery or transmission if it is received prior to 4:00 p.m. (Calgary, Alberta time) on a Business Day, failing which it shall be deemed to have been given on the next Business Day. The Trustee may from time to time notify the Corporation of a change in address or facsimile number which thereafter, until changed by like notice, shall be the address or facsimile number of the Trustee for all purposes of this Indenture.

### **11.04 When Publication Not Required**

If at any time any notice is required by this Indenture to be published in a particular city and no newspaper of general circulation is then being published and circulated on a daily basis in that city, the Corporation shall not be required to publish in that city.

### **11.05 Waiver of Notice**

Any notice provided for in this Indenture may be waived in writing by the Person entitled to receive such notice, either before or after the event, and such waiver shall be the equivalent of such notice. Waivers of notice by Secured Equipment Noteholder shall be filed with the Trustee, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waivers.

## **ARTICLE 12 CONCERNING THE TRUSTEE**

### **12.01 Certain Duties and Responsibilities of Trustee**

In the exercise of the rights, powers and duties prescribed or conferred by the terms of this Indenture, the Trustee shall act honestly and in good faith and exercise that degree of care, diligence and skill that a reasonably prudent trustee would exercise in comparable circumstances, and shall duly observe and comply with the provisions of any legislation and regulations which relate to the functions or role of the Trustee as a fiduciary hereunder.

The Trustee shall read, and act upon (as required), all of the certificates, opinions and other documents delivered to it under or pursuant to this Indenture.

None of the provisions of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties or in the exercise of any of its rights or powers unless the Trustee is indemnified as required in this Indenture.

The Trustee, upon the occurrence or at any time during the continuance of any act, action or proceeding, may require the Secured Equipment Noteholders at whose instance it is acting to deposit with it Secured Equipment Notes held by them, for which Secured Equipment Notes the Trustee will issue receipts.

Every provision of this Indenture that by its terms relieves the Trustee of liability or entitles the Trustee to rely upon any evidence submitted to it is subject to the provisions of applicable legislation, this Section 12.01 and Section 12.02.

No provision of this Indenture shall operate to confer any obligation, duty or power on the Trustee in any jurisdiction in which it does not have the legal capacity required to assume, hold or carry out such obligation, duty or power. For the purposes of this Section 12.01, legal capacity includes, without limitation, the capacity to act as a fiduciary in such jurisdiction.

## **12.02 No Conflict of Interest**

The Trustee represents to the Corporation that at the date of the execution and delivery of this Indenture there exists no material conflict of interest in the Trustee's role as a fiduciary hereunder. If at any time a material conflict of interest exists in respect of the Trustee's role as a fiduciary under this Indenture that is not eliminated within 90 days after the Trustee becomes aware that such a material conflict of interest exists, the Trustee shall resign from the trusts under this Indenture by giving notice in writing of such resignation and the nature of the conflict to the Corporation at least 21 days prior to the date upon which such resignation is to take effect, and will on such date be discharged from all further duties and liabilities hereunder. The validity and enforceability of this Indenture and any Secured Equipment Notes will not be affected in any manner whatsoever by reason only of the existence of a material conflict of interest of the Trustee. If the Trustee contravenes the foregoing provisions of this Section 12.02, any interested party may apply to the Court of Queen's Bench of Alberta for an order that the Trustee be replaced as trustee under this Indenture.

## **12.03 Conditions Precedent to Trustee's Obligation to Act**

The Trustee shall not be bound to give any notice or take any action or proceeding unless it is required to do so under the terms of this Indenture. The Trustee shall not be required to take notice of any Event of Default under this Indenture, other than in respect of payment of any money required by any provision of this Indenture to be paid to it, unless and until the Trustee is notified in writing of such Event of Default by any Secured Equipment Noteholder or the Corporation or unless a Responsible Officer of the Trustee has specific knowledge of an Event of Default. In the absence of such notice or knowledge, the Trustee may for all purposes of this Indenture assume that no Event of Default has occurred.

The obligation of the Trustee to commence or continue any act, action or proceeding under this Indenture will be conditional upon receipt by the Trustee of the following:

- (a) an Extraordinary Resolution, Ordinary Resolution, Secured Equipment Noteholders' Request, or such other notice or direction as is required pursuant to this Indenture, specifying the action or proceeding which the Trustee is requested, directed or authorized to take;
- (b) sufficient funds to commence or continue such act, action or proceeding; and
- (c) an indemnity satisfactory to the Trustee to protect and hold harmless the Trustee against the costs, charges, expenses and liabilities to be incurred thereby and any loss and damage it may suffer by reason thereof.

#### **12.04 Replacement of Trustee**

The Trustee may resign its trusts and be discharged from all further duties and liabilities hereunder by giving to the Corporation three months' notice in writing or such shorter notice as the Corporation may accept as sufficient. If at any time a material conflict of interest exists in the Trustee's role as a fiduciary hereunder, the Trustee shall, within 90 days after ascertaining that such a material conflict of interest exists, either eliminate such material conflict of interest or resign in the manner and with the effect specified in Section 12.02. The Secured Equipment Noteholders by Extraordinary Resolution shall have power at any time to remove the Trustee and to appoint a new trustee. In the event of the Trustee resigning or being removed or being dissolved, becoming bankrupt, going into liquidation or otherwise becoming incapable of acting hereunder, the Corporation shall forthwith appoint a new trustee unless a new trustee has already been appointed by the Secured Equipment Noteholders. Failing such appointment by the Corporation, the retiring trustee or any Secured Equipment Noteholder may apply to a judge of the Court of Queen's Bench of Alberta, on such notice as such judge may direct, for the appointment of a new trustee, but any new trustee so appointed by the Corporation or by the Court shall be subject to removal as aforesaid by the Secured Equipment Noteholders. Any new trustee appointed under any provision of this Section 12.04 shall be a corporation authorized to carry on the business of a trust company in all of the provinces of Canada. On any new appointment, the new trustee shall be vested with the same powers, rights, duties and responsibilities as if it had been originally named herein as Trustee.

Any corporation into which the Trustee may be merged or with which it may be consolidated or amalgamated or any corporation resulting from any merger, consolidation or amalgamation to which the Trustee shall be a party shall be the successor trustee under this Indenture without the execution of any instrument or any further act.

Subject to the foregoing, no resignation, removal or appointment of a successor trustee hereunder shall be effective unless such successor trustee:

- (a) is eligible to act as a trustee,
- (b) certifies that it will not have any material conflict of interest upon becoming the trustee hereunder, and
- (c) executes, acknowledges, and delivers to the Corporation and to the retiring trustee an instrument accepting such appointment,

and thereupon the resignation or removal of the retiring trustee shall become effective and such successor trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring trustee.

Upon the written request of the successor trustee or of the Corporation and upon payment of all outstanding fees and expenses properly payable to the Trustee under this Indenture, the Trustee ceasing to act will execute and deliver all such assignments, conveyances or other instruments (if any) as, in the opinion of Counsel, may be necessary to assign and transfer to such successor trustee the rights and obligations of the Trustee under this Indenture, and will duly assign, transfer and deliver all property and money held by the Trustee to the successor trustee so appointed in its place. If any deed, conveyance or instrument in writing from the Corporation is required by any new trustee for more fully and certainly vesting in and confirming to it such estates, properties, rights, powers and trusts, then any and all such deeds, conveyances and instruments in writing will on the request of the new or successor trustee, acting reasonably, be made, executed, acknowledged and delivered by the Corporation, as the case may require. The cost of any act, document or other instrument or thing required or permitted under this Section 12.04 shall be at the expense of the Corporation.

#### **12.05 Trustee May Deal in Secured Equipment Notes**

The Trustee may buy, sell, lend upon and deal in the Secured Equipment Notes and generally contract and enter into financial transactions with the Corporation or otherwise, without being liable to account for any profits made thereby.

#### **12.06 No Person Dealing with Trustee Need Inquire**

No Person dealing with the Trustee shall be concerned to inquire whether the powers that the Trustee is purporting to exercise have become exercisable, or whether any amount remains due upon the Secured Equipment Notes or to see to the application of any amount paid to the Trustee.

#### **12.07 Investment of Money Held by Trustee**

Unless otherwise provided in this Indenture, any money held by the Trustee which under the trusts of this Indenture may or ought to be invested or which may be on deposit with the Trustee or which may be in the possession of the Trustee may be invested and reinvested in the name or under the control of the Trustee in Securities in which, under the laws of the Province of Alberta, trustees are authorized to invest trust money, provided that such Securities are expressed to mature within two years after their purchase by the Trustee, and unless and until the Trustee shall have declared the principal of, Premium, if any, and interest on, the Secured Equipment Notes to be due and payable, the Trustee shall so invest such money at the direction of the Corporation.

Pending the investment of any money as herein provided, such money shall be segregated from other funds held by the Trustee and shall be deposited in the name of the Trustee in any chartered bank of Canada including an Affiliate of the Trustee or, with the

consent of the Corporation, in the deposit department of the Trustee or any other loan or trust company authorized to accept deposits under the laws of Canada or any province thereof at the rate of interest then current on similar deposits and the Trustee may receive a fee from such bank in respect of such deposit.

All interest or other income received by the Trustee in respect of any investment or deposit made pursuant to the provisions of this Section 12.07 shall belong to the Corporation, and unless and until the Trustee shall have declared the principal of, Premium, if any, and interest on, the Secured Equipment Notes to be due and payable, the Trustee shall pay over to the Corporation all such interest and other income forthwith upon receipt thereof by the Trustee.

#### **12.08 Trustee Not Required to Give Security**

The Trustee shall not be required to give any bond or security in respect of the execution of the trusts and powers of this Indenture or otherwise in respect of this Indenture.

#### **12.09 Trustee Not Required to Possess Secured Equipment Notes**

All rights of action under this Indenture may be enforced by the Trustee without the possession of any of the Secured Equipment Notes or the production thereof on any trial or other proceedings relative thereto.

#### **12.10 Certain Rights of Trustee**

Subject to the provisions of Section 12.01:

- (a) the Trustee may conclusively act and rely as to the truth of, and shall not be bound to make any investigation into the facts or matters of the statements and correctness of the opinions expressed in, and shall be fully protected in acting or relying or refraining from acting upon, any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, note, other evidence of indebtedness 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) any request or direction of the Corporation shall be sufficiently evidenced by a Request of the Corporation or Order of the Corporation and any resolution of the Directors shall be sufficiently evidenced by a Certified Resolution;
- (c) whenever in the administration of this Indenture the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee (unless other evidence is herein

specifically prescribed) may, in the absence of bad faith on its part, rely and act upon a Certificate of the Corporation;

- (d) the Trustee at the expense of the Corporation may consult with Counsel and the advice of Counsel or any opinion of Counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon; and
- (e) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Secured Equipment Noteholders pursuant to this Indenture unless such Secured Equipment Noteholders shall have offered to the Trustee reasonable security or indemnity against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction, and provisions of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section 12.10(e).

#### **12.11 Merger, Conversion, Consolidation or Succession to Business**

Any corporation into which the Trustee may be merged or with which it may be amalgamated or consolidated, or any corporation resulting from any merger, amalgamation or consolidation to which the Trustee shall be a party, or any corporation succeeding to all or substantially all the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder, provided such corporation shall be otherwise qualified and eligible under this Article 12, without the execution or filing of any instrument or any further act on the part of any of the parties hereto.

#### **12.12 Action by Trustee to Protect Interests**

The Trustee shall have power to institute and maintain such actions and proceedings as it may consider necessary or expedient to preserve, protect or enforce its interests and the interests of the Secured Equipment Noteholders.

#### **12.13 Protection of Trustee**

The Corporation hereby indemnifies and saves harmless the Trustee and its directors, officers and employees from and against all claims, demands, losses, actions, causes of action, costs, charges, expenses, damages, taxes (other than income or capital taxes), penalties and liabilities whatsoever brought against or incurred by the Trustee which it may suffer or incur as a result of or arising in connection with the performance of its duties and obligations under this Indenture, including any and all legal fees and disbursements of whatever kind or nature, except only in the event of the gross negligence, wilful misconduct,

breach of fiduciary duty or bad faith of the Trustee. This indemnity will survive the removal or resignation of the Trustee under this Indenture and the termination of this Indenture.

The Trustee will not be liable for or by reason of any statements of fact in this Indenture or in the Secured Equipment Notes (except for the representations contained in Sections 12.02 and 12.14 and in the certificate of the Trustee on the Secured Equipment Notes) or required to verify such statements and all such statements are and will be deemed to be made by the Corporation.

The Trustee will not be bound to give notice to any Person of the execution of this Indenture.

The Trustee will not incur any liability or responsibility whatever or in any way be responsible for the consequence of any breach on the part of the Corporation of any of the covenants contained in this Indenture or in any Secured Equipment Notes or of any acts of the agents or employees of the Corporation.

Neither the Trustee nor any Affiliate of the Trustee will be appointed a receiver or receiver and manager or liquidator of all or any part of the assets or undertaking of the Corporation.

Nothing in this Indenture will impose on the Trustee any obligation to see to, or to require evidence of the registration or filing (or renewal thereof) of this Indenture or any instrument ancillary or supplemental to this Indenture in any jurisdiction.

#### **12.14 Authority to Carry on Business**

The Trustee represents to the Corporation that at the date of execution and delivery by it of this Indenture it is authorized to carry on the business of a trust company in each of the provinces of Canada. If the Trustee ceases to be authorized to carry on such business in any province of Canada, the validity and enforceability of this Indenture and the Secured Equipment Notes issued under this Indenture will not be affected in any manner whatsoever by reason only of such event, but within 90 days after ceasing to be authorized to carry on the business of a trust company in any province of Canada the Trustee either shall become so authorized or shall resign in the manner and with the effect specified in Section 12.04.

#### **12.15 Trustee Not Liable in Respect of Depository**

The Trustee shall have no liability whatsoever for:

- (a) any aspect of the records relating to or payments made on account of beneficial ownership interests in the Secured Equipment Notes held by and registered in the name of a Depository;

- (b) maintaining, supervising or reviewing any records relating to such beneficial ownership interests; or
- (c) any advice or representation made or given by or with respect to the Depository and made or given herein with respect to rules of the Depository or any action to be taken by the Depository or at the direction of a participant of the Depository.

#### **12.16 Global Secured Equipment Notes**

Secured Equipment Notes issued to the Depository in the form of a Global Secured Equipment Note shall be subject to the following:

- (a) the Trustee may deal with the Depository as the authorized representative of the holders of such Secured Equipment Notes;
- (b) the rights of the holders of such Secured Equipment Notes shall be exercised only through the Depository and shall be limited to those established by law and by agreement between the holders of such Secured Equipment Notes and the Depository or direct participants of the Depository;
- (c) the Depository will make book-entry transfers among the direct participants of the Depository and will receive and transmit distributions of principal, Premium, if any, and interest on the Secured Equipment Notes to such direct participants; and
- (d) the direct participants of such Depository shall have no rights under this Indenture or under or with respect to any of the Secured Equipment Notes held on their behalf by the Depository, and the Depository may be treated by the Trustee and its agents, employees, officers and directors as the absolute owner of the Secured Equipment Notes represented by such Global Secured Equipment Note for all purposes whatsoever.

#### **12.17 Trustee Appointed Attorney**

The Corporation hereby irrevocably appoints the Trustee to be the attorney of the Corporation, with full powers of substitution and revocation, in the name and on behalf of the Corporation to execute any documents and to do any acts and things which the Corporation ought to execute and do, and has not executed or done, under the covenants and provisions contained in this Indenture.

## **12.18 Acceptance of Trusts**

The Trustee hereby accepts the trusts in this Indenture declared and provided for and agrees to perform the same upon the terms and conditions set forth in this Indenture and in trust for the Secured Equipment Noteholders from time to time, subject to the terms and conditions of this Indenture.

## **ARTICLE 13 SUPPLEMENTAL INDENTURES**

### **13.01 Supplemental Indentures**

From time to time the Trustee and, when authorized by a resolution of its Directors, the Corporation may, and they shall when required by this Indenture, execute, acknowledge and deliver by their proper officers Supplemental Indentures, which thereafter shall form part of this Indenture, for any one or more of the following purposes:

- (a) adding limitations or restrictions to be observed upon the amount or issue of Secured Equipment Notes hereunder, provided that such limitations or restrictions shall not be prejudicial to the interests of the Secured Equipment Noteholders;
- (b) adding to the covenants of the Corporation herein contained for the protection of the Secured Equipment Noteholders or providing for Events of Default in addition to those herein specified;
- (c) making such provision not inconsistent with this Indenture as may be necessary or desirable with respect to matters or questions arising hereunder, including the making of any modifications in the form of the Secured Equipment Notes which do not affect the substance thereof and which it may be expedient to make, provided that, in the opinion of Counsel, such provisions and modifications will not be prejudicial to the interests of the Secured Equipment Noteholders;
- (d) evidencing the succession, or successive successions, of successors to the Corporation and the covenants of and obligations assumed by any such successor in accordance with the provisions of this Indenture;
- (e) giving effect to any Extraordinary Resolution or Ordinary Resolution; and
- (f) for any other purpose not inconsistent with the terms of this Indenture.

The Trustee may also, without the consent or concurrence of the Secured Equipment Noteholders, by Supplemental Indenture or otherwise, concur with the Corporation in making any changes or corrections in this Indenture which it shall have been advised by Counsel are required for the purpose of curing or correcting any ambiguity or defective or inconsistent provision or clerical omission or mistake or manifest error contained herein or in any Supplemental Indenture, provided that, in the opinion of Counsel, the rights of the Secured Equipment Noteholders are in no way prejudiced thereby.

### **13.02 Effect of Supplemental Indentures**

Upon the execution of any Supplemental Indenture, this Indenture shall be modified in accordance therewith, such Supplemental Indenture shall form a part of this Indenture for all purposes, and every holder of Secured Equipment Notes shall be bound thereby. Any Supplemental Indenture may contain terms which add to, modify or negate any of the terms contained in this Indenture, and to the extent that there is any difference between the terms of this Indenture and the terms contained in a Supplemental Indenture, the terms contained in the Supplemental Indenture shall be applicable to the Secured Equipment Notes to which such Supplemental Indenture relates and the corresponding terms contained in this Indenture shall not be applicable unless otherwise indicated in such Supplemental Indenture.

## **ARTICLE 14 EVIDENCE OF RIGHTS OF SECURED EQUIPMENT NOTEHOLDERS**

### **14.01 Evidence of Rights of Secured Equipment Noteholders**

Any instrument which this Indenture may require or permit to be signed or executed by the Secured Equipment Noteholders may be in any number of concurrent instruments of similar tenor and may be signed or executed by such Secured Equipment Noteholders in person or by attorney duly appointed in writing. Proof of the execution of any such instrument, or of a writing appointing any such attorney or (subject to the provisions of Section 10.09 with regard to voting at meetings of Secured Equipment Noteholders) of the holding by any Person of Secured Equipment Notes shall be sufficient for any purpose of this Indenture if the fact and date of the execution by any Person of such instrument or writing are proved by the certificate of any notary public or other officer authorized to take acknowledgments of deeds to be recorded at the place at which such certificate is made, that the Person signing such request or other instrument or writing acknowledged to him the execution thereof, or by an affidavit of a witness of such execution, or in any other manner which the Trustee may consider adequate.

The Trustee may, nevertheless, in its discretion, require further proof when it deems further proof desirable or may accept such other proof as it shall consider proper.

The ownership of Secured Equipment Notes shall be proved by the Registers as herein provided.

**ARTICLE 15  
EXECUTION AND FORMAL DATE**

**15.01 Counterpart Execution**

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

**15.02 Formal Date**

For the purpose of convenience, this Indenture may be referred to as bearing formal date of September 24, 1999, irrespective of the actual date of execution hereof.

**IN WITNESS WHEREOF** the parties hereto have executed this Indenture under their respective corporate seals and the hands of their proper officers in that behalf.

**CANADIAN PACIFIC RAILWAY  
COMPANY**

By: Robert B. Hodgins  
Name: Robert B. Hodgins  
Title: Vice President and Treasurer

By: John W. Robson  
Name: John W. Robson  
Title: Assistant Treasurer

**THE TRUST COMPANY OF BANK OF  
MONTREAL**

By: Marcia Redway  
Name: MARCIA REDWAY  
Title: Senior Trust Officer and  
Operations Manager

## SCHEDULE A

The following is the English language text of the form of the Secured Equipment Notes, the form of the certificate of the Trustee and the form of the registration panel.

### (FORM OF SECURED EQUIPMENT NOTES)

No. ●

● \$

#### **CANADIAN PACIFIC RAILWAY COMPANY** **(incorporated under the laws of Canada)**

#### **SECURED EQUIPMENT NOTE**

Issue Date: October 1, 1999

Maturity Date: October 1, 2024

Interest Rate Per Annum: 6.91%

Interest Payment Dates: See Appendix "A" - Amortization Schedule

Interest and Principal Payment Dates: See Appendix "A" - Amortization Schedule

Initial Interest Payment Date: See Appendix "A" - Amortization Schedule

Issue Amount (principal at Issue Date): \$●

Canadian Pacific Railway Company (the "Corporation") for value received hereby promises to pay to the registered holder hereof on the dates specified in Appendix "A" hereto, or on such earlier date as the principal amount outstanding as set forth on Appendix A may become due in accordance with the provisions of the Secured Equipment Note Indenture (as defined below), such principal amount in lawful money of Canada at the Corporate Trust Office, and to pay interest on such principal amount at the Interest Rate Per Annum from the later of the original Issue Date and the last Interest Payment Date on which interest has been paid or made available for payment on this Secured Equipment Note in like money half-yearly on the Interest Payment Dates or Interest and Principal Payment Dates, as applicable, in each year, the first such payment to be payable on the Initial Interest Payment Date, and if the Corporation at any time defaults in the payment of any principal or interest, to pay interest on the amount in default at the same rate, in like money, at any of such branches, at the holder's option, and half-yearly on the same dates. Prior to each Interest Payment Date or Interest and Principal Payment Date, as applicable, the Corporation (except in case of payment at maturity or on prepayment at which

time payment of interest will be made only upon surrender of this Secured Equipment Note) shall mail to the registered address of the registered holder of this Secured Equipment Note, or in the case of joint holders to the registered address of the joint holder or holders first named in the register, a cheque for the interest or interest and principal, as applicable, less any tax required by law to be deducted or withheld, payable to the order of such holder or holders and negotiable at par at any of the branches at which interest on this Secured Equipment Note is payable. The mailing of such cheque shall satisfy and discharge the liability for such interest or interest and principal, as applicable, upon this Secured Equipment Note to the extent of the sum represented thereby (plus the amount of any tax deducted or withheld) unless such cheque is not paid on presentation.

This Secured Equipment Note is one of the Secured Equipment Notes of the Corporation issued and to be issued under a Secured Equipment Note Indenture (the "Secured Equipment Note Indenture") dated as of September 9, 1999, made between the Corporation and The Trust Company of Bank of Montreal (the "Trustee"), as trustee. The Secured Equipment Note Indenture specifies the terms and conditions upon which the Secured Equipment Notes are issued or may be issued and held and the rights of the holders of the Secured Equipment Notes, the Corporation and the Trustee, all of which are incorporated by reference in this Secured Equipment Note and to all of which the holder of this Secured Equipment Note, by acceptance hereof, agrees. Capitalized terms used in this Secured Equipment Note and not otherwise defined have the meanings ascribed to such terms in the Secured Equipment Note Indenture.

The Secured Equipment Notes will be issued in one series and in accordance with the terms and subject to the restrictions set out in the Secured Equipment Note Indenture.

At any time when the Corporation is not in default under the Secured Equipment Note Indenture, the Corporation may purchase Secured Equipment Notes in the market or by tender at any price or by private contract at prices not exceeding the principal amount thereof together with accrued and unpaid interest and costs of purchase.

The principal amount outstanding as set forth on Appendix A may become or be declared due before the Maturity Date on the conditions, in the manner, with the effect and at the times set forth in the Secured Equipment Note Indenture. In the event that the Corporation exercises its rights of prepayment of the Secured Equipment Notes set forth in the Secured Equipment Note Indenture, then the following shall apply to the payment of the Prepayment Price:

The Secured Equipment Notes may be prepaid in whole or in part at the option of the Corporation upon at least 30 Business Days' prior notice to the Secured Equipment Noteholders and upon deposit with the Trustee of an amount sufficient to pay the Prepayment Price on the Secured Equipment Notes to be prepaid. The prepayment price ("Prepayment Price") shall be calculated on the Prepayment Price Determination Date in respect of each \$1,000 principal amount of Secured Equipment Notes subject to such optional prepayment that would otherwise remain unpaid on the Prepayment Date as the greater of:

- (a) \$1,000 plus accrued and unpaid interest thereon to the Prepayment Date; and
- (b) that price per \$1,000 principal amount of Secured Equipment Notes remaining unpaid on the Prepayment Date, including accrued and unpaid interest thereon, which would from the Prepayment Date provide a yield to maturity equal to the yield to maturity that would apply to a non-callable Government of Canada bond having a term to maturity equal to the then remaining Average Life of the Secured Equipment Notes, if issued on the Prepayment Price Determination Date at 100% of its principal amount, plus 0.25% (the "Reference Price").

"Premium" means the greater of zero and the amount resulting from subtracting (a) from (b).

"Average Life" means, at any relevant date with respect to any outstanding Secured Equipment Notes, the quotient obtained by dividing (a) the sum of the products of (i) the number of years from such relevant date to the dates of each successive scheduled principal payment on such Secured Equipment Notes and (ii) the amount of each such principal payment by (b) the sum of all such principal payments. Based on the assumption that no prepayment will occur, the Average Life of the Secured Equipment Notes, calculated from October 1, 1999 is 17.4 years.

The Reference Price shall be calculated by two independent investment banking institutions of national standing selected by the Corporation (the "Investment Banks") on the 25<sup>th</sup> Business Day following the delivery of notice to the Secured Equipment Noteholders (the "Prepayment Price Determination Date"). For the purpose of determining the Prepayment Price, the Reference Price shall be the average of the amounts calculated by the two Investment Banks.

The Investment Banks shall also calculate and certify the revised amortization schedule for the Secured Equipment Notes remaining outstanding following such prepayment.

The prepayment of the Secured Equipment Notes will occur five Business Days following the Prepayment Price Determination Date (the "Prepayment Date"). If less than all of the outstanding principal amount of Secured Equipment Notes is being prepaid, the Secured Equipment Notes will be prepaid on a *pro rata* basis.

The Secured Equipment Note Indenture contains provisions for the holding of meetings of Secured Equipment Noteholders and making resolutions passed at such meetings and instruments in writing signed by the holders of a specified majority of the Secured Equipment Notes outstanding binding on all Secured Equipment Noteholders, subject to the provisions of the Secured Equipment Note Indenture.

This Secured Equipment Note may be transferred only upon compliance with the conditions prescribed in the Secured Equipment Note Indenture on one of the registers kept at the principal office of the Trustee in the city of Calgary, Alberta and at such other place or places, if any, and by such other registrar or registrars, if any, as the Corporation may designate, by the registered holder hereof or the holder's legal representative or attorney duly appointed by an instrument in writing in form and execution satisfactory to the Trustee, and upon compliance

with such reasonable requirements as the Trustee or other registrar may prescribe, and such transfer shall be duly noted hereon by the Trustee or other registrar.

This Secured Equipment Note shall not become obligatory for any purpose until it shall have been certified by the Trustee under the Secured Equipment Note Indenture.

IN WITNESS WHEREOF Canadian Pacific Railway Company has caused this Secured Equipment Note to be signed by two of its authorized officers.

**CANADIAN PACIFIC RAILWAY COMPANY**

\_\_\_\_\_  
Authorized Officer

\_\_\_\_\_  
Authorized Officer

(FORM OF TRUSTEE'S CERTIFICATE)

**TRUSTEE'S CERTIFICATE**

This Secured Equipment Note is one of the Secured Equipment Notes referred to above.

**THE TRUST COMPANY OF BANK OF  
MONTREAL**

*Trustee*

By: \_\_\_\_\_  
Certifying Officer

(FORM OF REGISTRATION PANEL)

(NO WRITING HEREON EXCEPT BY THE TRUSTEE OR OTHER REGISTRAR)

DATE OF REGISTRY	IN WHOSE NAME REGISTERED	SIGNATURE OF TRUSTEE OR OTHER REGISTRAR

## Appendix A

<u>Number of Units</u>	<u>Description of Equipment</u>	<u>Road Numbers</u>
101	AC4400 CW locomotives	9583 - 9683 inclusive

## Acknowledgment

Province of Alberta  
City of Calgary; as Notary  
Public of the Province of Alberta

On this 24th day of September, 1999 before me personally appeared Robert B. Hodgins and John W. Robson, each of whom is to me personally known, who being by me duly sworn, says that he is the Vice President and Treasurer and Assistant Treasurer, respectively of Canadian Pacific Railway Company, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and they acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

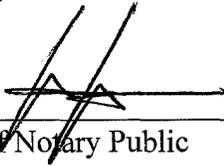


TRUDY M. CURRAN-GOODWAY

My commission expires at the Pleasure of Her Majesty the Queen.

PROVINCE OF ONTARIO  
CITY OF TORONTO

On this 27<sup>th</sup> day of September, 1999 before me personally appeared Marcia Redway, to me personally known, who being by me duly sworn, says that she is the Senior Trust Officer and Operations Manager of The Trust Company of Bank of Montreal, that the foregoing instrument was signed on behalf of said corporation by authority of its Board of Directors, and she acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

A handwritten signature in black ink, consisting of several overlapping loops and a horizontal line, positioned above a solid horizontal line.

Signature of Notary Public