

**BURLINGTON NORTHERN**

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RECORDATION NO. \_\_\_\_\_ Filed & Recd.

FEB 22 1971

INTERSTATE COMMERCE COMMISSION

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James A. Anderson  
Kurt W. Kroschel  
Attorneys

Office of the Secretary  
Interstate Commerce Commission  
Washington, D. C. 20423

February 19, 1971

Dear Sirs:

Enclosed for filing pursuant to Section 20c of the Interstate Commerce Act are thirteen original counterparts each of Conditional Sale Agreement dated as of February 1, 1971 among General Motors Corporation (Electro-Motive Division), First Western Bank and Trust Company and Burlington Northern Inc.; Conditional Sale Agreement dated as of February 1, 1971 among General Electric Company, First Western Bank and Trust Company and Burlington Northern Inc.; and Lease of Railroad Equipment dated as of February 1, 1971 between Burlington Northern Inc. and First Western Bank and Trust Company.

The names and addresses of the parties to the enclosed Conditional Sale Agreements and Lease and the respective capacities of said parties thereunder are as follows:

Conditional Sale Agreement:

Vendor: General Motors Corporation  
(Electro-Motive Division)  
LaGrange, Illinois 60525

Trustee: First Western Bank and Trust  
Company  
235 Montgomery Street  
San Francisco, California 94104

Guarantor: Burlington Northern Inc.  
176 East Fifth Street  
St. Paul, Minnesota 55101

Conditional Sale Agreement:

Vendor: General Electric Company  
2901 East Lake Road  
Erie, Pennsylvania 16501

Trustee: First Western Bank and Trust  
Company  
235 Montgomery Street  
San Francisco, California 94104



**BURLINGTON NORTHERN**

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Guarantor: Burlington Northern Inc.  
176 East Fifth Street  
St. Paul, Minnesota 55101

Lease of Railroad Equipment:

Lessor: First Western Bank and Trust  
Company  
235 Montgomery Street  
San Francisco, California 94104

Lessee: Burlington Northern Inc.  
176 East Fifth Street  
St. Paul, Minnesota 55101

A general description of the equipment covered by the enclosed Conditional Sale Agreements and Lease is as follows:

- 45 3600 H.P. Model SD-No. 45 Locomotives, A.A.R. Mechanical Designation C-C, General Motors Corporation (Electro-Motive Division, Builder, BN road nos. 6498-6542, inclusive.
- 20 3600 H.P. Model F-No. 45 Locomotives, A.A.R. Mechanical Designation C-C, General Motors Corporation (Electro-Motive Division), Builder, BN road nos. 6626-6645, inclusive.
- 39 3300 H.P. Model U33C Locomotives, A.A.R. Mechanical Designation C-C, General Electric Company, Builder, Burlington Northern Nos. 5725-5763, inclusive.

Each unit of the equipment described above will be plainly, distinctly, permanently and conspicuously marked on each side thereof in letters not less than one inch in height with the following legend:

"FIRST TRUST COMPANY OF SAINT PAUL, AGENT,  
SECURITY OWNER."

Such equipment will also be lettered "Burlington Northern Inc.", "Burlington Northern" or "BN" or in some other appropriate manner for the purpose of identification of the leasehold interest of Burlington Northern Inc. therein.



BURLINGTON NORTHERN

Office of the Secretary - 3 - February 19, 1971

Enclosed is check to your order for \$150 in payment of the recordation fee. Please return eleven of the counterparts of each of the three documents with the recording data noted thereon.

Very truly yours,

*James A. Anderson*  
James A. Anderson  
Attorney

JAA:nm  
Enc.

RECORDATION NO. 5450-B Filed & Recorded

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INTERSTATE COMMERCE COMMISSION

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**LEASE OF RAILROAD EQUIPMENT**

**Dated as of February 1, 1971**

**between**

**BURLINGTON NORTHERN INC.,**

**and**

**FIRST WESTERN BANK AND TRUST COMPANY,  
as Trustee**

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**LEASE OF RAILROAD EQUIPMENT** dated as of February 1, 1971, between BURLINGTON NORTHERN INC., a Delaware corporation (hereinafter called the Lessee) and FIRST WESTERN BANK AND TRUST COMPANY, a California banking corporation (hereinafter called the Lessor), as Trustee under a Trust Agreement dated as of February 1, 1971 (hereinafter called the Trust Agreement), with United California Bank, Wells Fargo Bank, N.A. and The First National Bank of Denver.

WHEREAS, the Lessor and the Lessee have entered into two Conditional Sale Agreements dated as of February 1, 1971 (hereinafter called the Security Documents), with GENERAL MOTORS CORPORATION (Electro-Motive Division) and GENERAL ELECTRIC COMPANY, respectively (hereinafter called the Builders), wherein the Builders have agreed to manufacture, sell and deliver to the Lessor the railroad equipment described in Schedule A hereto;

WHEREAS, the Builders have assigned or will assign their interests in the Security Documents to FIRST TRUST COMPANY OF SAINT PAUL, as Agent (hereinafter, together with its successors and assigns, referred to as the Vendor); and

WHEREAS, the Lessee desires to lease all the units of said equipment, or such lesser number (hereinafter called the Units) as are delivered and accepted and settled for under the Security Document on or prior to October 31, 1971 (hereinafter called the Cut-Off Date), at the rentals and for the terms and upon the conditions hereinafter provided;

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter men-

tioned to be kept and performed by the Lessee, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions, but, upon default of the Lessee hereunder or under the Security Documents, subject to all the rights and remedies of the Vendor under the Security Documents:

§ 1. *Incorporation of Model Provisions.* Whenever this Lease incorporates herein by reference, in whole or in part or as hereby amended, any provision of the document entitled "Model Lease Provisions" annexed to the Security Documents as Part II of Annex C thereto (hereinafter called the Model Lease Provisions), such provision of the Model Lease Provisions shall be deemed to be a part of this instrument as fully to all intents and purposes as though such provision had been set forth in full in this Lease.

§ 2. *Delivery and Acceptance of Units.* § 2 of the Model Lease Provisions is herein incorporated as § 2 hereof.

§ 3. *Rentals.* The Lessee agrees to pay to the Lessor as rental for each Unit subject to this Lease 31 consecutive semiannual payments, payable on the business day next preceding May 1 and November 1 in each year commencing with the business day next preceding May 1, 1971. The first such payment shall be in an amount equal to 0.02389% of the Purchase Price (as such term is defined in the Security Document pursuant to which such Unit is being acquired by the Lessor) of each Unit subject to this Lease for each day elapsed from and including the date such Unit is settled for under such Security Document to May 1, 1971; the next such payment shall be in an amount equal to 0.02389% of the Purchase Price of each Unit subject to this Lease for each day elapsed from and including the later of May 1, 1971 or the date such Unit is settled for under such Security Document to November 1,

1971 plus 4.96073% of the Purchase Price of each Unit subject to this Lease on the date of such payment; the next 29 semiannual payments shall each be in an amount equal to 4.96073% of the Purchase Price of each such Unit.

The Lessor irrevocably instructs the Lessee to make all the payments provided for in this Lease in Federal funds (including but not limited to the payments required under § 7 hereof) for the account of the Lessor, c/o First Trust Company of Saint Paul, First National Bank Building, St. Paul, Minnesota 55101. On or before the date upon which payments to the Vendor under the Security Documents are due and owing, First Trust Company of Saint Paul is hereby authorized to apply funds received hereunder in Federal funds to make such payment to the Vendor (or to any assignee of the Vendor pursuant to Section 7 of the Agreements and Assignments between the Builders, respectively, and the Vendor, dated as of February 1, 1971, under which the Security Documents are being assigned to the Vendor). Such payments shall be applied by the Vendor to satisfy the obligations of the Lessor under the Security Documents payable on the May 1 and November 1 next succeeding the time such payments are due hereunder and, so long as no event of default under the Security Documents shall have occurred and be continuing, any balance shall be paid to the Lessor.

This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent, reduction thereof or set-off against rent, including, but not limited to, abatements, reductions or setoffs due or alleged to be due, or by reason of, any past, present or future claims of the Lessee against the Lessor under this Lease or under the Security Documents, including the Lessee's rights by subrogation under Article 8 thereof, or the Builders or the Vendor or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations

of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency, bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever.

§ 4. *Term of Lease.* The term of this Lease as to each Unit shall begin on the date of the delivery to and acceptance by the Lessee of such Unit and, subject to the provisions of §§ 7 and 10 hereof, shall terminate six months after the date on which the final semiannual payment of rent in respect thereof is due hereunder.

Notwithstanding anything to the contrary contained herein, all rights and obligations under this Lease and in

and to the Units, upon default by the Lessee hereunder, or under the Security Documents in its capacity as Guarantor or otherwise, are subject to the rights of the Vendor under the Security Documents. If an event of default should occur under a Security Document, the Vendor may terminate this Lease (or rescind its termination), all as provided therein, unless the Lessee is not so in default under this Lease or under a Security Document.

§ 5. *Identification Marks.* § 5 of the Model Lease Provisions is herein incorporated as § 5 hereof.

§ 6. *Taxes.* § 6 of the Model Lease Provisions is herein incorporated as § 6 hereof.

§ 7. *Payment for Casualty Occurrences; Insurance.* In the event that any Unit shall be or become worn out, lost, stolen, destroyed, or, in the opinion of the Lessor or the Lessee, irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (such occurrences being hereinafter called Casualty Occurrences) during the term of this Lease, the Lessee shall promptly and fully notify the Lessor and the Vendor with respect thereto. On the rental payment date next succeeding such notice, the Lessee shall pay to the Lessor an amount equal to the accrued rental for such Unit to the date of such payment plus a sum equal to the Casualty Value (as hereinafter defined) of such Unit as of the date of such payment in accordance with the schedule set out below. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue as of the date of such payment, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft or complete destruction of such Unit) the Lessor shall be entitled to recover possession of such Unit.

The Casualty Value of each Unit as of any rental payment date shall be that percentage of the Purchase

Price of such Unit as is set forth in the following schedule opposite the number of such rental payment date:

<u>Payment No.</u>	<u>Percentage</u>	<u>Payment No.</u>	<u>Percentage</u>
1 . . . . .	104.13790%	17 . . . . .	68.91970%
2 . . . . .	104.13790	18 . . . . .	65.08290
3 . . . . .	104.79253	19 . . . . .	61.24612
4 . . . . .	104.74980	20 . . . . .	57.28577
5 . . . . .	104.09099	21 . . . . .	53.32523
6 . . . . .	102.65359	22 . . . . .	49.24105
7 . . . . .	100.88415	23 . . . . .	45.15672
8 . . . . .	98.73900	24 . . . . .	40.94891
9 . . . . .	96.33465	25 . . . . .	36.74128
10 . . . . .	93.54053	26 . . . . .	32.41064
11 . . . . .	90.47290	27 . . . . .	28.11964
12 . . . . .	87.00092	28 . . . . .	23.77737
13 . . . . .	83.53072	29 . . . . .	19.31931
14 . . . . .	79.93846	30 . . . . .	15.00
15 . . . . .	76.34723	31 . . . . .	15.00
16 . . . . .	72.63325		

Except as hereinabove in this § 7 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit after delivery to and acceptance thereof by the Lessee hereunder.

The Lessee will, at all times while this Lease is in effect, at its own expense, cause to be carried and maintained insurance in respect of the Units at the time subject hereto, and public liability insurance, in amounts and against risks customarily insured against by railroad companies on similar equipment, and in any event in amounts and against risks comparable to those insured against by the Lessee on equipment owned by it and the benefits thereof shall be payable as provided in the Security Documents. Any net insurance proceeds as the result of insurance carried by

the Lessee received by the Lessor in respect of Units suffering a Casualty Occurrence shall be deducted from the amounts payable by the Lessee to the Lessor in respect of Casualty Occurrences pursuant to this § 7. If the Lessor shall receive any such net insurance proceeds after the Lessee shall have made payments pursuant to this § 7 without deduction for such net insurance proceeds or such condemnation payments, the Lessor shall pay such proceeds to the Lessee up to an amount equal to the Casualty Value with respect to a Unit paid by the Lessee and any balance of such proceeds shall remain the property of the Lessor.

§ 8. *Annual Reports.* § 8 of the Model Lease Provisions is herein incorporated as § 8 hereof.

§ 9. *Disclaimer of Warranties; Compliance with Laws and Rules; Maintenance; and Indemnification.* § 9 of the Model Lease Provisions is herein incorporated as § 9 hereof.

§ 10. *Default.* If, during the continuance of this Lease, one or more of the following events (each such event being hereinafter sometimes called an Event of Default) shall occur:

A. default shall be made in payment of any part of the rental provided in § 3 hereof and such default shall continue for ten days;

B. the Lessee shall make or permit any unauthorized assignment or transfer of this Lease or of possession of the Units, or any thereof;

C. default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein or

in the Security Documents and such default shall continue for 30 days after written notice from the Lessor to the Lessee specifying the default and demanding that the same be remedied;

D. any proceedings shall be commenced by or against the Lessee for any relief which includes, or might result in, any modification of the obligations of the Lessee hereunder or under the Security Documents under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of the Lessee hereunder or under the Security Documents), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease and under the Security Documents shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Lessee or for the property of the Lessee in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such a trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceeding shall have been commenced, whichever shall be earlier; or

E. a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may hereafter be amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered

ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under the Security Documents and this Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier;

then, in any such case, the Lessor, at its option, may:

(a) proceed by appropriate court action or actions either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; or

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided; and thereupon the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for

such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee (i) as damages for loss of the bargain and not as a penalty, a sum, with respect to each Unit, which represents the excess of (x) the present value, at the time of such termination, of the entire unpaid balance of all rental for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over (y) the then present value of the rentals which the Lessor reasonably estimates to be obtainable for the Unit during such period, such present value to be computed in each case on a basis of a 6% per annum discount, compounded semiannually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, (ii) any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Lessor shall have sustained by reason of the breach of any covenant or covenants of this Lease other than for the payment of rental, and (iii) an amount which, after deduction of all taxes required to be paid by the Lessor in respect of the receipt thereof under the laws of the United States of America or any political subdivision thereof, calculated on the assumption that the Lessor's Federal, state and local taxes computed by reference to net income or excess profits are based on a 48% effective Federal tax rate and the highest effective state and local income tax and/or excess profit tax rates generally applicable to or imposed upon corporations incorporated under the laws of the State of California, including therein the effect of any applicable surtax,

surcharge and/or other tax or charge related thereto, and deducting from any such Federal tax 48% of the amount of any such state and local tax (such rates as so calculated being hereinafter in this Agreement called the Assumed Rates), shall be equal to such sum as, in the reasonable opinion of the Lessor, will cause the Lessor's net return (taxes being calculated at the Assumed Rates) under this Lease to be equal to the net return (taxes being calculated at the Assumed Rates) that would have been available to the Lessor if it had been entitled to utilization of all or such portion of the amortization deduction with respect to a Unit provided for in Section 184 of the Internal Revenue Code, as amended (hereafter called the Rapid Amortization Deduction) which was lost, not claimed, not available for claim, disallowed or recaptured in respect of a Unit as a result of the termination of this Lease, the Lessee's loss of the right to use such Unit, any action or inaction by the Lessor or the sale or other disposition of the Lessor's interest in such Unit after the occurrence of an Event of Default.

Anything in this § 10 to the contrary notwithstanding, any default in the observance or performance of any covenant, condition or agreement on the part of the Lessee which results solely in the loss by the Lessor of, or the loss by the Lessor of the right to claim, or the disallowance with respect to the Lessor of, or the recapture of, all or any portion of the Rapid Amortization Deduction available to non-railroad lessors of railroad equipment shall be for all purposes of this Lease deemed to be cured if the Lessee shall, on or before the next rental payment date after written notice from the Lessor of the loss, or the loss of the right to claim, or the disallowance of or the recapture of the

Rapid Amortization Deduction in respect of such Unit, agree to pay to the Lessor the revised rental rate in respect of such Unit determined as provided in the second paragraph of § 17 hereof.

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is permitted by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make rental payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

The failure of the Lessor to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

§ 11. *Return of Units Upon Default.* § 11 of the Model Lease Provisions is herein incorporated as § 11 hereof.

§ 12. *Assignment; Possession and Use.* § 12 of the Model Lease Provisions is herein incorporated as § 12 hereof except that the last two sentences of the first paragraph thereof shall be deleted and replaced with the following:

“All the rights of the Lessor hereunder (including, but not limited to, the rights under §§ 6, 7, 10 and 17 and the rights to receive the rentals payable under this Lease) shall inure to the benefit of any beneficiary of the Lessor if Lessor is a trust

and to the Lessor's assigns (including the partners or any beneficiary of any such assignee if such assignee is a partnership or a trust, respectively). Whenever the term Lessor is used in this Lease it shall apply and refer to each such beneficiary or assignee of the Lessor and, where the context so requires (including but not limited to certain of the provisions of § 17 of this Lease), shall refer only to such beneficiary or assignee."

§ 13. *Purchase Option.* Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may by written notice delivered to the Lessor not less than six months prior to the end of the term of this Lease, elect to purchase all, but not fewer than all, the Units covered by this Lease at the end of such term of this Lease for a purchase price equal to the "Fair Market Value" of such Units as of the end of such term.

Fair Market Value shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an arm's-length transaction between an informed and willing buyer-user (other than (i) a lessee currently in possession and (ii) a used equipment dealer) and an informed and willing seller under no compulsion to sell and, in such determination, costs of removal from the location of current use shall not be a deduction from such value. If on or before four months prior to the expiration of the term of this Lease, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Value of the Units, such value shall be determined in accordance with the foregoing definition by a qualified independent Appraiser. The term Appraiser shall mean such independent appraiser as the Lessor and the Lessee may mutually agree upon, or failing such agreement, a panel of three independent appraisers, one of whom shall be selected by the Lessor, the

second by the Lessee and the third designated by the first two so selected. The Appraiser shall be instructed to make such determination within a period of 30 days following appointment, and shall promptly communicate such determination in writing to the Lessor and the Lessee. The determination so made shall be conclusively binding upon both Lessor and Lessee. The expenses and fee of the Appraiser shall be borne by the Lessee.

Upon payment of the purchase price, the Lessor shall upon request of the Lessee execute and deliver to Lessee, or to the Lessee's assignee or nominee, a bill of sale (without representations or warranties except that such Units are free and clear of all claims, liens, security interests and other encumbrances by or in favor of any person claiming by, through or under the Lessor) for such Units, and such other documents as may be required to release such Units from the terms and scope of this Lease and to transfer title thereto to the Lessee or such assignee or nominee, in such form as may reasonably be requested by the Lessee, all at the Lessee's expense.

§ 14. *Return of Units upon Expiration of Term.* § 14 of the Model Lease Provisions is herein incorporated as § 14 hereof.

§ 15. *Opinion of Counsel.* § 15 of the Model Lease Provisions is herein incorporated as § 15 hereof.

§ 16. *Recording; Expenses.* § 16 of the Model Lease Provisions is herein incorporated as § 16 hereof.

§ 17. *Federal Income Taxes.* The Lessor, as the owner of the Units, shall be entitled to such deductions, credits and other benefits as are provided by the Internal Revenue Code of 1954, as amended to the date hereof (hereinafter called the Code), to an owner of property, including (without limitation) an allowance for the Rapid Amortization De-

duction (as defined in § 10 of this Lease), with respect to the Units.

If the Lessor shall lose, or shall not have or shall lose the right to claim, or there shall be disallowed with respect to the Lessor, or the Lessor shall be required to recapture, all or any portion of the Rapid Amortization Deduction with respect to any Unit the rental rate applicable to such Unit set forth in § 3 of this Lease shall, on and after the next succeeding rental payment date after written notice to the Lessee by the Lessor that such Rapid Amortization Deduction has not been claimed, or if claimed and then disallowed or recaptured on and after the next succeeding rental date after payment of the tax attributable thereto, be increased by such amount for such Unit which, after deduction of all taxes required to be paid by the Lessor in respect of the receipt thereof under the laws of the United States of America or any political subdivision thereof (calculated at the Assumed Rates as defined in § 10 hereof), in the reasonable opinion of the Lessor, will cause the Lessor's net return over the term of the Lease (taxes being calculated at the Assumed Rates) in respect of such Unit under this Lease to equal the net return (taxes being calculated at the Assumed Rates) that would have been available if the Lessor had been entitled to utilization of all or such portion of the Rapid Amortization Deduction which was not claimed or was disallowed or was recaptured and the Lessee shall forthwith pay to the Lessor the amount of any interest which may be assessed by the United States against the Lessor attributable to the loss or recapture of all or any portion of the Rapid Amortization Deduction; *provided, however*, that such rental rate shall not be so increased if the Lessor shall have lost, or shall not have, or shall have lost the right to claim, or if there shall have been disallowed with respect to the Lessor, all or any portion of such Rapid Amortization Deduction with respect to such Unit as a direct result of the occurrence of any of the following events:

(i) a Casualty Occurrence with respect to such Unit, if the Lessee shall have paid to the Lessor the amounts stipulated under § 7 hereof;

(ii) a voluntary transfer by the Lessor of legal title to such Unit, the disposition by the Lessor of any interest in such Unit or the reduction by the Lessor of its interest in the rentals from such Unit under the Lease, unless, in each case, an Event of Default shall have occurred and be continuing;

(iii) the amendment of the Security Documents without the prior written consent of the Lessee;

(iv) the failure of the Lessor to claim such Rapid Amortization Deduction in its income tax return for the appropriate year or the failure of the Lessor to follow proper procedure in claiming such Deduction; or

(v) the failure of the Lessor to have sufficient income to benefit from the Rapid Amortization Deduction.

The Lessor agrees that if, in the opinion of independent tax counsel selected by the Lessor and acceptable to the Lessee (herein referred to as Counsel), a bona fide claim to all or a portion of the Rapid Amortization Deduction on any Unit exists in respect of which the Lessee is required to pay increased rental and interest as aforesaid to the Lessor as above provided, the Lessor shall, upon request and at the expense of the Lessee, take all such legal or other appropriate action deemed reasonable by Counsel in order to sustain such claim. The Lessor may take such action prior to making payment of the amounts claimed pursuant to a notice of disallowance or may make such payment and then sue for a refund. In the latter event, if the final determination shall be adverse to the Lessor, the Lessee shall pay to Lessor interest on the amount of the tax paid attributable

to the Rapid Amortization Deduction disallowed, computed at the rate of 8.60% per annum from the date of payment of such tax to the date the Lessee shall reimburse the Lessor for such tax in accordance with the provisions of this § 17. The Lessor shall not be obligated to take any such legal or other appropriate action unless the Lessee shall first have indemnified the Lessor for all liabilities and expenses which may be entailed therein and shall have furnished the Lessor with such reasonable security therefor as may be requested.

The Lessee's agreement to pay any sums which may become payable pursuant to this § 17 shall survive the expiration or other termination of this Lease.

§ 18. *Interest on Overdue Rentals.* Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay, to the extent legally enforceable, an amount equal to 9.10% per annum of the overdue rentals for the period of time during which they are overdue or such lesser amount as may be legally enforceable.

§ 19. *Notices.* Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when deposited in the United States certified mails, first-class postage prepaid, addressed as follows:

(a) if to the Lessor, at 235 Montgomery Street, San Francisco, California 94104, Attention: Edgar H. Canfield, Vice President and Trust Officer; and

(b) if to the Lessee, at 176 East Fifth Street, St. Paul, Minnesota 55101.

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing.

§ 20. *Severability; Effect and Modification of Lease; Modification of Trust Agreement.* Any provision of this Lease which is prohibited or unenforceable in any jurisdiction, shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

This Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the Units and supersedes all other agreements, oral or written, with respect to the Units. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Lessor and the Lessee.

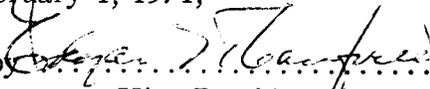
The Lessor agrees not to enter into any amendment or modification of the provisions contained in Articles 2, 6 or 7 of the Trust Agreement without the prior written consent of the Lessee and the Vendor.

§ 21. *Execution.* This Lease may be executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument. Although this Lease is dated as of February 1, 1971, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

§ 22. *Law Governing.* The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of Minnesota, *provided, however*, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed as of the date first above written.

FIRST WESTERN BANK AND TRUST  
COMPANY, as Trustee under a  
Trust Agreement dated as of  
February 1, 1971,

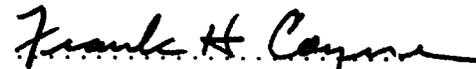
by   
Vice President &  
Trust Officer

[CORPORATE SEAL]

Attest:

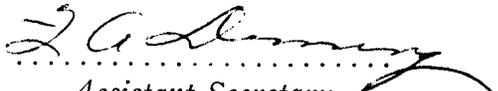
  
Assistant Secretary

BURLINGTON NORTHERN INC.

by   
Vice President, Finance

[CORPORATE SEAL]

Attest:

  
Assistant Secretary

STATE OF MINNESOTA }  
COUNTY OF RAMSEY } ss.:

On this 16<sup>th</sup> day of February, 1971, before me personally appeared **FRANK H. COYNE**, to me personally known, who, being by me duly sworn, says that he is the Vice President, Finance of BURLINGTON NORTHERN INC., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority if its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

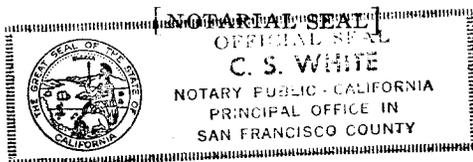
.....  
Notary Public  
RICHARD J. WOLFE,  
Notary Public, Ramsey County, Minn.  
My Commission Expires April 30, 1977.

[NOTARIAL SEAL]  
My Commission Expires

STATE OF CALIFORNIA }  
CITY AND COUNTY OF SAN FRANCISCO } ss.:

On this 17 day of February, 1971, before me personally appeared **EDGAR H. CANFIELD** to me personally known, who, being by me duly sworn, says that he is a Vice President & Trust Officer of FIRST WESTERN BANK AND TRUST COMPANY, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

.....  
Notary Public  
My Commission Expires March 9, 1971  
C. S. WHITE



**SCHEDULE A**

<u>Type</u>	<u>Builder's Specifications</u>	<u>Builder's Plant</u>	<u>Quantity</u>	<u>Lessee's Road Numbers (Both Inclusive)</u>	<u>Unit Base Price</u>	<u>Total Base Price</u>	<u>Estimated Time and Place of Delivery</u>
3600 H. P. Model SD-No. 45 Locomotives	No. 8062 dated June 2, 1969	McCook, Illinois	45	6498- 6542	\$321,740	\$14,478,300	February- October, 1971 at Builder's plant
3600 H. P. Model F-No. 45 Locomotives	No. 8069 dated June 2, 1969	McCook, Illinois	20	6626- 6645	\$336,470	\$ 6,729,400	February- October, 1971 at Builder's plant
3300 H. P. Model U33C Locomotives	3490A dated September, 1968	Erie, Pennsylvania	9	5735- 5743	\$308,792	\$ 2,779,128	February- October, 1971 at Builder's plant
3300 H. P. Model U33C Locomotives	3490A dated September, 1968	Erie, Pennsylvania	6	5729- 5734	\$307,367	\$ 1,844,202	February- October, 1971 at Builder's plant
3300 H. P. Model U33C Locomotives	3490A dated September, 1968	Erie, Pennsylvania	4	5725- 5728	\$297,117	\$ 1,188,476	February- October, 1971 at Builder's plant
3300 H. P. Model U33C Locomotives	3490A dated September, 1968	Erie, Pennsylvania	20	5744- 5763	\$309,262	\$ 6,185,240	February- October, 1971 at Builder's plant